Framing ‘Internet Governance’ Policy Discourse: Fifteen Baseline Propositions

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Introduction

- The term, “Internet governance,” has become a Rorschach test onto which some people project their fears and hopes.
- Need for a neutral, non-ideological, and systematic discourse about the character and scope of governance activities.
- To help facilitate discussion, fifteen baseline propositions on definitional matters, institutional attributes, key political issues.
- Argue for a broad view of the governance architecture, include diverse mechanisms with varying degrees of direct & indirect impact; does not preclude intensive focus on infrastructure/core resources, but rather contextualizes this.
- Internet governance is a key galaxy in the universe of ICT global governance; the growing interrelations with other, more broadly framed governance arrangements must be considered.

1. “Governance” comprises shared rules, procedures, and programs that give rise to expectations and practices, assign roles to participants, and shape their interactions.

- In the intra-organizational context, e.g. corporate governance, governance often involves centralized, top-down management.
- In the inter-organizational context, or for a social collectivity, governance generally involves *cooperation to define communally recognized and accepted* rules, procedures, and programs.
- Of course, special cases of governance that is unilaterally imposed on collectivities by exceptionally powerful entities, e.g.
  - Extraterritorial applications and impact of U.S. laws, regulations, and practices.
  - Concentrated market power, e.g. Microsoft’s ‘code is law.’
- However, the focus here is on cooperative governance.

2. As with many other cases of global governance, Internet governance already includes both public intergovernmental & private transnational authority.

- *Intergovernmental authority:* International regimes based on treaties and/or voluntary or “soft” agreements.
- *Private authority:* Agreements between businesses and other organizations based on contracts and/or voluntary or “soft” agreements.
- In some cases, there may be emerging mixed hybrid models, e.g. co-regulation.
- These different forms have varying degrees of direct and indirect influence across cases.
- In the traditional telecommunications environment, the overall balance has shifted over time from public to increasing private authority; what trajectory will be followed in the Internet environment?

3a. Internet governance comprises the heterogeneous and distributed array of shared rules, procedures, and programs that shape Internet infrastructure and the transactions and content it conveys: *Issues*.

- *Infrastructure (physical and logical)*, e.g. underlying services, applications, facilities and their interconnection, domain names and IP addresses, technical standards, root server and zone file operations, network security.
- *Transactions and Content*, e.g. e-commerce, e-signatures, e-contracting, trade in digital goods and services, consumer protection, intellectual property, speech, alternative dispute resolution, encryption, privacy and "information security."
- (These categories are heuristic ideal types; in reality, technology can blur the boundaries, and many governance mechanisms impact across both levels)

3b. Internet governance comprises the heterogeneous and distributed array of shared rules, procedures, and programs that shape Internet infrastructure and the transactions and content it conveys: *Institutions.*

Infrastructure

Intergovernmental: e.g. ITU, regional telecom bodies (CITEL, APT, etc), WTO (potentially), WIPO/UDRP, EU

Private Sector: e.g. Telecom standards bodies, IANA, ICANN, IETF, IESG, IAB, RIRs (Regional IP Address Registries), W3C, MINC (Multilingual Names Consortium)

Transactions and Content

Intergovernmental: WTO, WCO, WIPO, UNCITRAL, UN/CEFACT, COE, OECD, EU, Hague Convention (proposed)

Private Sector: TRUSTe, Internet Content Rating Association (limited), industry association codes, alternative dispute resolution systems

4. Hence, “Internet governance” should not be confused or conflated with particular organizations or organizational modes.

- The term, “Internet governance,” does not presume that the Internet is a singular system that is or can be managed in a centralized, “one size fits all” manner.
- “Internet governance” is *not* ICANN or the functions it performs; this popular formulation is a case of pernicious path dependence.
- Rather, ICANN is an organization that performs a particular set of Internet governance functions in cooperation (and contestation) with other entities.
- Conversely, American libertarian discourse notwithstanding, “Internet governance” is not a synonym for centralized, bureaucratic, slow moving, outmoded, “old paradigm,” technology inhibiting, intergovernmental regulation.
- The “slippery slope” argument does not wash.

5. Instead, Internet governance mechanisms vary greatly in institutional form.

Institutional settings: linked to formal organizations (as forums, or as joint facilities with semi-independent programmatic responsibilities), vs. free standing mechanisms

Agreement type: Intergovernmental (e.g. treaties, recommendations, guidelines, declarations, MOUs, custom); Private Sector (e.g contracts, MOUs, codes, custom)

Decision making procedures: voting/consensus, recognition and representation

Rule strength: Formal or informal, binding or voluntary

Scope: range and interrelatedness of issues covered

Domain: Public/private sector/civil society, universal vs. smaller-n groupings

Compliance mechanisms: Monitoring and enforcement

Distributional bias: market or administrative allocation of benefits across participants

6. Internet governance mechanisms may perform a wide range of functions.

- Allocate resources, create property rights, and establish procedures for the resolution of competing claims
- Constrain actors from undertaking certain actions
- Empower actors to undertake others (that might be controversial or costly on a unilateral basis) with community assent
- Reduce transaction costs in devising management frameworks
- Reduce information costs for members
- Facilitate individual and collective learning, as well as organizational and national policy formulation
- Establish rules of liability and, in some cases, mechanisms for sanctioning non-compliance
- Facilitate market formation and access
- Manage public goods
- Raise and mobilize resources via joint programs

7. Internet governance mechanisms vary greatly in domain (participation).

Intergovernmental Multilateral

- ITU, WTO, WIPO, UNICTRAL, Hague Convention

Intergovernmental Plurilateral, Regional, Bilateral

- OECD, Wassenaar Arrangement, COE, EU, APC, FTAs

Private Sector "Self Governance"

- IANA, ICANN, IETF, etc.

Hybrid Multistakeholder Partnerships

<u>Type 1:</u> actors serve on delegations of others that control the process (ITU)

<u>Type 2:</u> actors directly participate in processes controlled by others (WSIS)

<u>Type 3:</u> Nominal/formal equality of actors (DOT Force, IETF)

8. Institutional forms should match the functional problem at hand (economic/efficiency criteria).

For example, *centralized* forums and administrative mechanisms may be needed to deal with:

- Collaboration problems characterized by strong incentives to defect from/cheat on commitments (e.g. international trade).
- Especially high informational and transaction costs.
- Allocation of (truly) scarce resources; Operating joint facilities.

Decentralized forums or policy/management networks may be sufficient to deal with:

- Coordination problems characterized by weaker incentives to defect from/cheat on commitments (e.g. many cases of technical standardization).
- Issues that can be addressed through localized action involving only baseline harmonization, or mutual recognition.
- Issues for which there is a vibrant, competent, and broadly distributed community of practice in place.

9. However, political/equity criteria are equally important, and will become more so as the Internet becomes increasingly pervasive & thus affects a wider range of stakeholder interests.

- *Transparency:* Information on decision making processes and criteria should be freely and easily available; where practical, employing ‘notices of proposed rule making,’ ‘requests for comment,’ due process concerning reconsiderations & appeals.
- *Accountability:* Governance should be democratically responsible to concerned stakeholders and wider publics.
- *Effective Participation:* Decision making should be as inclusive as possible, with appropriate support for non-dominant stakeholders.
- *Fairness and Social Justice:* Substantively, governance should promote a fair balance of benefits among stakeholders & of competing but legitimate objectives (e.g. commercial vs. social empowerment).

10. Some Internet governance mechanisms do not fare well when evaluated by these political/equity criteria.

- Governance mechanisms often inadequately transparent & accountable, controlled & ‘captured’ by powerful stakeholders.
- *Infrastructure*
  - U.S. control of core resources raises concerns among some governments about the potential for discriminatory treatment.
  - Address allocations favor powerful firms.
  - Lack of disciplines on interconnection pricing, concentration of ownership.
- *Transactions and Content*
  - Strict & expansive international trade & intellectual property rules raise problems for developing countries & other non-dominant stakeholders.
  - Privacy and consumer protections are anemic.

11. In particular, the effective inclusion of developing countries requires much greater attention.

Intergovernmental Institutions

- Universal bodies (e.g. ITU, WTO): formal equality of members, but small group bargaining & deals can limit DvC influence.
- Plurilateral or ‘small-n’ bodies (e.g. OECD, G-8, regionals): Exclusionary dialogues & collective learning, decisions may become *fait accomplis* for larger international community.

Private Sector Institutions

- Even where formally open, difficult to participate in complex technical discussions among insiders shaped by unfamiliar intellectual/organizational cultures, roaming around the world rather than in fixed locals close to diplomatic missions.
- Problems often aggravated by capacity constraints, legacy PTT-style culture, domestic interest configurations.
- LDCs particularly need support, special & differential treatment.

12. Similarly, greater attention is needed to the inclusion of civil society organizations, small and medium-sized firms, and individual users.

Intergovernmental Institutions

- Some organizations especially restrictive, e.g. ITU, WTO.
- Others a bit more open at times, e.g. WIPO, OECD.
- Even in WSIS, “multistakeholder” rhetoric not matched by real willingness to include CSOs in open dialogue & accept input.

Private Sector Institutions

- Despite problems, greater access in some key bodies, e.g. ICANN, IETF.
- Not just a normative matter; CSOs, SMEs, and individual ‘netzians’ have contributed much to Internet development, have expertise to bring to the table, & can be partners to developing countries & other stakeholders that seek to improve Internet governance.

13. Viewing the architecture of Internet governance as a complex whole may reveal some gaps.

- Piecemeal creation of mechanisms in response to individual functional problems = no overarching framework; inevitably, some issues are treated lightly or “fall between the cracks” of cooperation entirely, e.g.:
  - Internet interconnection pricing and backbone deployment
  - Spam (beyond U.S. FTC’s secure server initiative)
  - Network security
  - Competition policy and restrictive business practices
  - Consumer protection
  - Cultural & linguistic diversity
  - Taxation
  - Jurisdiction
  - Internet/ICT & development, universal access

14. With technological convergence & related changes, the boundaries between Internet governance and the larger ICT global governance environment will blur.

- Transition from a PSTN world to an IP-based world (with VOIP, ENUM, etc.) will challenge international agreements that are relevant but not ‘native’ to the Internet environment, e.g. ITU Regulations & Recommendations, WTO’s GATS, WIPO.
- In parallel, the expansion & differentiation of Internet-based transactions will give rise to new issues for which many governments may desire collective public policy solutions.
- Hence, Internet issues inevitably will become central to broader intergovernmental governance efforts.
- It would be better for the technical & business communities to engage these processes than to wish them away.

15. While it is not clear that existing institutions can meet these & other challenges, it is even less clear what new arrangements might hold greater promise.

- *Narrowly tailored*, *issue-specific mechanisms* (e.g. Karl Auerbach's proposals for a new Root Services Oversight Board, ccTLD Policy Organization, etc.)?
- *Broader*, *multi-issue mechanisms*, even a "one stop shop?" =>
- *GAC Plus?* Accumulated problems regarding transparency, accountability, and inclusion would make it difficult to build on this foundation.
- *ITU-I?* Would require a substantial reinvention to create an open, inclusive, and widely supported mechanism; at present, little evidence of Member willingness to consider such steps.
- *Inter-organizational policy networks?* Turf considerations and related problems often have impeded even minimal efforts to date, e.g. ITU/WTO/WIPO.

Conclusions: A Progressive Research Program (in the social science sense of the term).

Need for systematic analysis of existing governance mechanisms and potential improvements

- Develop taxonomies by functional problems, institutional options.
- Assess individual arrangements in terms of efficiency, equity, other criteria.
- Identify which issues do & don't give rise to public policy concerns requiring greater governmental participation, oversight, or consultation.
- Map stakeholder interests---On which issues are there what levels of (dis)agreement among which parties, what space exists for more cooperative solutions?
- Assess the architecture of the whole to identify gaps, complementarities, tensions, horizontally generalizable lessons and opportunities.

Conclusions: Institutionalizing International Dialogue.

- ITU and UNICT Task Force meetings can be useful beginnings, but only if there is sustained follow-up.
- Need for continuing assessment and discussion, e.g. WSIS Civil Society Declaration's call for a governance observatory.
- WSIS process has baggage and ongoing problems, would need significant re-engineering to make a substantial contribution.
- Consider linkages to broader discussions on improving global governance, e.g. as recently addressed by a report of the World Commission on the Social Dimension of Globalization---the Internet is not a world unto itself.