

Markus Kummer
Federal Department of Foreign Affairs
Switzerland

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Internet Governance: The way from Geneva to Tunis

The way ahead is short: a year and a half – and the task ahead of us is daunting. As you are all well aware, the first phase of the WSIS in Geneva decided to start a broad based multilateral process on Internet governance. To this end it requested the Secretary-General of the United Nations to set up a Working Group with the task “to investigate and make proposals for action, as appropriate, on the governance of Internet”. The Working Group on Internet Governance (WGIG) is to report to the second phase of the Summit in Tunis in November 2005.

All in all, this was a significant outcome of the Geneva Summit. The international community placed a new issue on the agenda of multilateral co-operation. Some critics of the Geneva Summit failed to grasp the significance of this decision when they said that the WSIS had been unable to reach an agreement. To the contrary: this can be considered a major breakthrough, as only a few months prior to the Summit there were two firmly entrenched positions, namely those who wanted Internet Governance to be brought under the umbrella of the UN and those who said there was nothing to be discussed.

As a convinced multilateralist I consider a dialogue always to be preferable to a refusal to address the concerns of the other side.

Of course the result of the first phase of the Summit was a compromise and a compromise never pleases everybody. For some it goes too far and for others not far enough. However, in this case all parties to the negotiations seemed to have found what they had been looking for. And by recognizing some important principles, the Geneva Declaration laid the conceptual groundwork for any future form of Internet Governance.

These principles are the following:

- the Internet by now is a global facility
- its management should be multilateral, transparent and democratic and
- its management should involve fully governments, private sector, civil society and international organizations.

This outcome addresses the needs of governments who are trying to find their role in this new policy environment. These governments voiced their concern that they have no intergovernmental forum to address questions that are important to them.

This problematique also needs to be seen in the context of discussions on global governance. The Summit agreed on no more no less than the need to adapt traditional models of governance to the needs of the 21st Century and find new forms of cooperation which allow for the full and active participation of all stakeholders.

Now we are at the beginning of a reflection process on how best to coordinate Internet governance. The two documents adopted in Geneva set the parameters for the Working Group and contain its Terms of Reference. It is asked *inter alia* to deal with the following issues:

- i). Develop a working definition of Internet Governance;
- ii). Identify the public policy issues that are relevant to Internet Governance;
- iii). Develop a common understanding of the respective roles and responsibilities of governments, existing international organizations and other forums as well as the private sector and civil society from both developing and developed countries.

Thus, the concept of the process we initiated in Geneva is an open one and does not prejudge anything. It is about looking into how the Internet works, taking stock of who does what and looking into ways of improving the coordination among and between the different actors. This is very sensible. It makes sense to gather the facts first and then to try to agree on definitions before taking any possible decision on the future of the Internet. Furthermore, we have to recognize that the Internet on the whole functions well and that we need to be careful should we introduce any changes.

The two Geneva documents attach as much importance to the process as to the substance under discussion. They stress that it should be “open and inclusive” and ensure “a mechanism for the full and active participation of governments, the private sector and civil society from both developing and developed countries, involving relevant intergovernmental and international organizations and forums”.

The modalities of the process ahead of us will therefore be important. In order to understand the significance of the various elements that need to be taken into account, it may be helpful to have a brief look back at the history of our negotiations.

The main sticking point was a paragraph on how to coordinate "Internet issues of an international nature related to public policies". Delegations were firmly entrenched in positions that were diametrically opposed and it would have been over optimistic to find a far reaching solution. The only way out was to establish a process to deal with these issues and in order to reach agreement we had to concentrate on the modalities of the process we hoped to initiate.

Drawing on this experience, I can read out of the documents the following three process-related priorities:

- Firstly, it was not possible to agree on any one single organization that would be in charge. This is the reason why the Summit asked the Secretary-General of the UN to set up a working group to deal with the issue. The institutional independence of the working group is therefore of paramount importance.
- Secondly, equally important is the open and inclusive character of the group. The qualifier "open and inclusive" has two aspects, one of them concerns the stakeholders and the other one the governments.
 - The issue of stakeholder participation was one of the reasons why an original proposal we put forward - that is to set up a working group as part of the WSIS process – was not accepted. It was felt by a significant number of key players that the WSIS process had not proved satisfactory with regard to the inclusion of private sector and civil society. It was hoped that the formula finally agreed on

would give sufficient flexibility to be more inclusive. The multi-stakeholder nature of the UN ICT Task Force was specifically mentioned as a possible model in this regard. Whatever the format, all stakeholders and all relevant intergovernmental and other international organisations will have to be given equal access to the work of the group.

- Furthermore, throughout the WSIS process we had a strong emphasis on open-ended meetings. Any attempt to create, for efficiency's sake, a group with limited membership was doomed to failure. This Working Group of course is different. It is not a negotiating group, but a group with the task of gathering facts and drafting a report with recommendations for possible solutions. It seems therefore obvious that its membership will have to be limited. There is however a need for a compromise between efficiency and legitimacy. The working group will need to be sufficiently representative with regard to its governmental as well as stakeholder members. However it will also need to interact with all governments and stakeholders in an open-ended mode. We therefore will need a two tier, if not a three tier system to respect the spirit and the letter of the Geneva Documents.
- Thirdly, developing countries need to be given the possibility of making their voice heard. Their full and meaningful participation in this process will be essential. This of course involves travelling costs, but not only. There is also a need for efforts aimed at capacity building among developing countries, to allow them to defend their interests effectively.

We need to make sure that the process leading to Tunis reflects these priorities. Of course, this is only the starting point. But we will have to get the modalities right before starting the substantive work of the Working Group.

In order to carry out this task the Secretary-General of the United Nations decided to set up a Secretariat that would have as its principal mandate to provide support to him in order to establish the WGIG and to provide substantive, organizational and administrative support to the Working Group in preparing its report and recommendations to the second phase of the WSIS. I was asked to head this Secretariat. In first discussions in New York we looked at ways on how best to move forward. Time is short and the lifespan of the Secretariat as well as the Working Group will be very limited. That is why we thought it would be best to build up both the Secretariat and the Working Group simultaneously. As far as the Secretariat is concerned, it will be one of my priorities to make sure that the Secretariat will also include staff from developing countries.

One of the main concerns with regard to the Working Group will be to ensure that it is balanced and representative. To this end, various criteria such as geographical, gender and stakeholder balance will have to be taken into account.

At this stage, the tentative road map on the way to Tunis foresees the following three main phases:

- During a first preparatory phase both the Secretariat and the WGIG will need to be set up. The Secretariat is expected to start functioning as a small core group as from June. It will gradually be completed and should be fully operational by October 2004. Its first activity will be to assist the Secretary-General with the appointment of the Chairperson of the WGIG, hopefully by June 2004, and thereafter support him/her to hold consultations on the composition of the WGIG and on how best to structure its work. The remaining members of the WGIG should be selected through an open-ended round of

consultations to be held by the Chairperson. The composition of the WGIG should be completed by October 2004.

- The second phase would begin in October, once the WGIG is appointed and the Secretariat is operational. It would be devoted to the implementation of the mandate set out by the Summit and to prepare a report as its main output. Three or four meetings of the WGIG will be needed. In between, the WGIG will hold maybe two rounds of consultations with all governments and stakeholders in an open-ended format. As a third tier, the WGIG may wish to draw on selected resource persons and advisers as well as on regional or thematic meetings and workshops, already undertaken or to be held in the future. The report should be issued not later than July 2005.
- The third phase will begin after the publication of the report. As there would be no further meeting activities of the WGIG the Secretariat would be scaled down gradually. The WGIG and a core group of Secretariat members would accompany the process until the Tunis Summit.

But what is the substance the working group is supposed to deal with?

First of all, it is to be expected that the working group will have to deal with the concerns that were already expressed during the negotiations. In particular, the basic positions have remained the same and the two schools of thought that manifested themselves in the WSIS negotiations are bound to resurface: those calling for multilateral cooperation under the UN framework and those who are happy with the status quo (their motto is: "if it ain't broke, don't fix it").

Let me briefly sum up the reasoning behind these two schools of thought:

- The first group argued that at national level governments played a role, that they had a platform for a dialogue with the various stakeholders. They pointed out that at the international level however there was no such forum for inter-action. They stressed the need for establishing a multilateral mechanism, preferably with the legitimacy of the UN system. This would not replace any existing mechanism (ICANN was mentioned specifically in the regard), nor infringe on the work of any existing organisation, but would be supplementary and deal with policy issues. Furthermore, these delegations felt that Internet Governance related to national sovereignty.
- The other group highlighted that the present system worked well and - before trying to solve a problem - it would be necessary to know what the problems were that needed to be addressed. On the whole, these delegations insisted on the importance of full and active involvement of the private sector and all stakeholders.

In Geneva we accepted that there was a role for governments, but we were not really ready to discuss what we meant with these "public policy issues", in particular we were unable to spell out whether we were thinking about a narrow, technical definition, or whether we were referring to a broad definition, including issues such as network security, intellectual property rights, consumer and data protection. All these issues are listed in both the Declaration of Principles and the Plan of Action. However, it will be up to the working group to decide on the scope of its mandate.

There might be some merit in starting with a definition as broad as possible and then narrowing it down and focusing on some priority issues. This might have the advantage of avoiding an early polarization or an undue focus on any single organisation.

Before starting the substantive work however and based on passed experience we will have to consult widely to make sure that all governments and major stakeholder feel represented by the WGIG. It seems clear that the group can only be successful if all stakeholders will recognize themselves in its final report.