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# The way forward for Internet governance?

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It has been stated that the calls for continuation of representative-based meeting of national delegations within the narrow confines of telecommunications sector to subsume the public policy agenda of the Internet suffer from a limited perspective of the Internet itself[[1]](#footnote-1).

This would be correct, if in fact there were calls for all Internet issues to be discussed within such a narrow confine. But that is not the case. On the contrary, most call for different types of Internet issues to be discussed in different venues.

The bone of contention appears to be what, if anything, should be discussed within certain venues, in particular the ITU. The ITU membership appears to have reasonably clear views on that matter, having resolved, by consensus[[2]](#footnote-2):

to explore ways and means for greater collaboration and coordination between ITU and relevant organizations\* involved in the development of IP-based networks and the future internet, through cooperation agreements, as appropriate, in order to increase the role of ITU in Internet governance so as to ensure maximum benefits to the global community;
\*Including, but not limited to, the Internet Corporation for Assigned Names and Numbers (ICANN), the regional Internet registries (RIRs), the Internet Engineering Task Force (IETF), the Internet Society (ISOC) and the World Wide Web Consortium (W3C), on the basis of reciprocity.

And having invited Members States, by consensus, to recognize the scope of work of ITU on international Internet-related public policy matters, represented by the list[[3]](#footnote-3):

1. Multilingualization of the Internet Including [Internationalized (multilingual) Domain Names](http://www.itu.int/publ/T-RES/publications.aspx?lang=en&parent=T-RES-T.48-2008)
2. International Internet Connectivity
3. International public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses
4. The security, safety, continuity, sustainability, and robustness of the Internet
5. Combating Cybercrime
6. Dealing effectively with spam
7. Issues pertaining to the use and misuse of the Internet
8. Availability, affordability, reliability, and quality of service, especially in the developing world
9. Contributing to capacity building for Internet governance in developing countries
10. Developmental aspects of the Internet
11. Respect for privacy and the protection of personal information and data
12. Protecting children and young people from abuse and exploitation

However, those decisions have been challenged both within and outside ITU, in particular by arguing that Internet governance matters call for open multi-stakeholder participation in an open dialogue that directly reflect the diversity of the interests and activities that collectively form the Internet itself.[[4]](#footnote-4)

Of course nobody argues that one single body can (or should) be the forum for such discussions. Rather, the argument is that no particular Internet governance matter should be decided except by multi-stakeholder bodies.

Taken literally, this means that the World Intellectual Property Organization (WIPO) should not decide online copyright or patent matters, unless one takes the view that those matters are not related to Internet governance. But this is rarely argued. Indeed, the US explicitly argues the contrary, namely that the WIPO treaties should be applied to the Internet[[5]](#footnote-5) and the US, the European Union, and Australia argue that the World Trade Organization (WTO) is competent to make certain decisions regarding the Internet[[6]](#footnote-6). And nobody has (at least yet) argued that the US Department of Commerce, the US Congress, the European Commission, the Council of Europe, or the European Parliament should not discuss Internet governance matters because those institutions are not multi-stakeholder institutions.

Rather, what is really being argued is that certain particular Internet governance matters should be decided by multi-stakeholder bodies. Perhaps not coincidentally, the matters in question are those that are handled by the existing prominent Internet bodies such as ICANN, IETF, W3C, and the Regional Internet Registries (RIRs).

Also perhaps not coincidentally, the bulk of the organized political support for this view comes from countries whose companies and citizens participate intensively in the work of those bodies.[[7]](#footnote-7)

But perhaps improvements could be made to the Internet simply by studying the situation of other public infrastructures and applying the same principles to the Internet[[8]](#footnote-8). Among the public infrastructures to consider, we cite electric power distribution, water distribution, sewage disposal, roads, trains, air transport, and telecommunications networks other than “the Internet”.

And, conversely, perhaps improvements could be made to other networks (such as the telephone network) by considering whether some of the unique characteristics of the Internet could or should be applied to other networks. In particular, consideration could be given to the merits of the receiver-pays model, routing that is not based on national borders, and greater centralization of naming[[9]](#footnote-9). The differences between Internet and telephony in this respect are primarily due to the different historical evolution of the two networks, and not to some inherent technological constraints.

In this context, ITU has an obvious role, and, as noted above, the ITU membership itself has agreed that ITU has a role. Opposition to the role of ITU comes from various sources:

1. Those who reject any role for governments regarding any aspect of the Internet: *a fortiori*, they reject the role of any intergovernmental organization.[[10]](#footnote-10)
2. Those who accept a role for governments, but only on an equal footing with other stakeholders. Since governments have greater rights in ITU than other ITU members, they reject the role of ITU. For what it is worth, the insistence on equal rights for all stakeholders is not consistent with the WSIS agreements which stipulate that *“Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.”* The WSIS agreements use the expression “equal footing” only to refer to relations between states[[11]](#footnote-11).
3. Commercial interests who fear that any international agreements might hinder their ability to carry out their operations under their own rules[[12]](#footnote-12).
4. Governments who fear that any agreements reached in ITU would not be favourable to the commercial interests of their companies or would reduce their influence on Internet governance[[13]](#footnote-13).

There are various way for dealing with dissenting views. One can ignore them. One can use political and/or economic pressure to force the other party to change its views (often referred to as “power negotiation” or “win/lose negotiation”). Or one can try to understand better the interests of the other party, to see if a common, mutually beneficial solution can be found (often referred to as “win/win negotiation”).

At the international level, such win/win negotiations take various forms, including discussions between governments in intergovernmental organizations.[[14]](#footnote-14)

The ITU has a long tradition of facilitating win/win negotiations so as to facilitate the growth of telecommunications worldwide[[15]](#footnote-15). Thus it would appear that those who accept that there is a role for governments with respect to Internet governance should be willing to conduct at least some discussions within the framework of the ITU.[[16]](#footnote-16)

In this context, it is worth noting that nobody has seriously questioned the need for inter-governmental cooperation regarding radio frequency matters, because it is understood that inappropriate use of radio transmitters can create problems, so states should have laws prohibiting that and should enforce such laws, and some international coordination is needed. That international coordination is done within the ITU Radio Sector.

Thus it would appear appropriate to discuss what, if any, level of international harmonization or coordination would be appropriate with respect to Internet-related issues that are within the mandate of the ITU.

Indeed, it is hard to see how the ideal of a borderless Internet can be achieved without international cooperation and agreement. And it is hard to see why the ITU should not be used as one forum for discussions on such international cooperation given that the ITU’s mission is to facilitate peaceful relations, international cooperation among peoples and economic and social development by means of efficient telecommunication services[[17]](#footnote-17), and to maintain and extend international cooperation among all its Member States for the improvement and rational use of telecommunications of all kinds[[18]](#footnote-18).

1. Geoff Huston, “An End-to-End View of Telecommunications Policy Frameworks”, available at:
<http://www.itu.int/md/S13-WTPF13IEG3-INF-0001/en> [↑](#footnote-ref-1)
2. See ITU Resolutions 101, 102, and 133 (Guadalajara, 2010) [↑](#footnote-ref-2)
3. ITU Council Resolution 1305 [↑](#footnote-ref-3)
4. Geoff Huston, *ibid.* [↑](#footnote-ref-4)
5. See Catherine Saez, “US Defender Of Internet Freedom, Keen On Protecting IP Rights”, *Intellectual Property Watch* (8 March 2013), available at:
 <http://www.ip-watch.org/2013/03/08/us-as-defender-of-internet-freedom-keen-on-protecting-ip-rights> [↑](#footnote-ref-5)
6. See WTO Council for Trade in Services paper S/C/W/338 of 13 July 2011 “Communication from the European Union and the United States: Contribution to the Work Programme on Electronic Commerce”; and paper S/C/W/349 of 26 September 2012 “Communication from Australia: Suggestions on ICT principles”. [↑](#footnote-ref-6)
7. See footnote 77 below for references. [↑](#footnote-ref-7)
8. Although the comparison with other types of infrastructure was not mentioned at the time, the Internet Society’s (ISOC’s) creation of the Internet Ad Hoc Committee (IAHC) in 1996 was an explicit attempt to see how traditional governance structures, including the ITU and WIPO, could contribute to Internet governance. See Milton Mueller, *Ruling the Root* (2004 ) MIT Press, p. 142 ff.; and <http://en.wikipedia.org/wiki/IAHC> .
As documented by Mueller and others, the United States government rejected the recommendations of the IAHC and imposed its own solution, namely ICANN. [↑](#footnote-ref-8)
9. In the modern telephone system, E.164 telephone numbers are “names” and are thus the functional equivalent of Internet domain names. The functional equivalent, in telephony, of IP addresses are, respectively, E.212 International Mobile Subscriber Identifications (IMSIs) for mobile, and Q.708 International Signalling Point Codes (ISPCs) for fixed. [↑](#footnote-ref-9)
10. See for example Milton Mueller, “WTPF? WTPF! The continuing battle over Internet governance principles”, *The Technology Liberation Front* (23 April 2012), available at:
<http://techliberation.com/2013/04/23/wtf-wtpf-the-continuing-battle-over-internet-governance-principles/> . [↑](#footnote-ref-10)
11. In paragraph 69 of the Tunis Agenda, which states: *“We further recognize the need for enhanced cooperation in the future, to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues.”* [↑](#footnote-ref-11)
12. Such opposition to ITU agreements was explicitly stated as early as 1949 by the US operators AT&T. See Jill Hills, *Telecommunications and Empire*, University of Illinois Press (2007), p. 51. More recent manifestations are described in Dan Schiller, “Masters of the Internet”, *Le Monde Diplomatique*, available at:
<http://mondediplo.com/2013/02/15internet> ;
Michael Gurstein, “(Whose) Hands off (What) Internet: Reflections on WCIT 2012”, *Gurstein’s Community Informatics*, available at:
<http://gurstein.wordpress.com/2012/12/09/whose-hand-off-what-internet-some-reflections-on-wcit-2012/> ;
Selin Bucak, “NANOG Rhetoric and WCIT-12 Reality”, *The Global Journal*, available at:
<http://theglobaljournal.net/article/view/930/> ;
Jody Westby, “Google’s Media Campaign Against the UN Slapped Down”, *Forbes*, available at:
<http://www.forbes.com/sites/jodywestby/2012/12/04/googles-media-campaign-against-the-un-slapped-down/> ;
Jean-Christophe Nothias, “The Battle for the Future of the Internet?”, *Huffington Post*, available at:
<http://www.huffingtonpost.com/jeanchristophe-nothias/internet-governance_b_2227820.html> ;
Parminder Jeet Singh, “Hyping one threat to hide another”, *The Hindu*, available at:
<http://www.thehindu.com/opinion/lead/hyping-one-threat-to-hide-another/article4140922.ece> ;
Michael Geist, “UN Internet meeting about who pays, not who rules: Geist”, *The Star*, available at:
<http://www.thestar.com/business/2012/11/25/un_internet_meeting_about_who_pays_not_who_rules_geist.html> ;
and Jean-Christophe Nothias, “The Hypocrisy Threatening the Future of the Internet”, *The Global Journal*, available at: <http://theglobaljournal.net/article/view/904/>: [↑](#footnote-ref-12)
13. See the references given in the footnote above. [↑](#footnote-ref-13)
14. In the context of Internet, see Jeremy Malcolm, *“Internet Freedom in a World of States”*, available at:
 <http://www.digitalnewsasia.com/insights/internet-freedom-in-a-world-of-states> ;
a longer version is available at:
 <http://www.igfwatch.org/discussion-board/three-false-assumptions-internet-freedom-in-a-world-of-states-part-1> [↑](#footnote-ref-14)
15. See Booz, Allen, Hamilton, “The World’s Most Enduring Institutions”, available at:
<http://www.boozallen.com/media/file/143411.pdf> [↑](#footnote-ref-15)
16. In this context, see Gregory Francis, *“ITU 2.0: Take Time to Make Good Decisions”*, available at:
<http://www.circleid.com/posts/20130225_itu_20_take_time_to_make_good_decisions/> [↑](#footnote-ref-16)
17. Preamble of the ITU Constitution. [↑](#footnote-ref-17)
18. Article 1.1(a) of the ITU Constitution. [↑](#footnote-ref-18)