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1. Which stakeholder category do you belong to?

Non-Government

If non-government, please indicate:

Civil society

If non-government, please indicate if you are:

Individual consultant and entrepreneur with participation in the WSIS process from regional preparatory meetings (Bamako 2002) to Tunis WSIS 2005 and follow-up processes, and active in civil society groupings such as the Internet Governance Caucus. These responses are submitted in my capacity as the Founder of DIGILEXIS in fulfillment of duties pertaining to its Public and Social Responsibility (SPR).

2. What do you think is the significance, purpose and scope of enhanced cooperation as per the Tunis Agenda? a) Significance b) Purpose c) Scope**a) Significance**

The phrase “enhanced cooperation” came about during the negotiations leading up to the WSIS-Tunis Summit and was included in the Tunis Agenda as a result of a political compromise in response to the demand of many governments to have a space and a process in place whereby governments can, on an equal footing, address cross-cutting, international or transnational public policy issues pertaining to the governance of the internet.

The focus on governments here resulted from the eminent role played by only one of them – the United States’ – and the desire to balance that position and to share that responsibility and authority equally among governments. In other words, the intention was to achieve the internationalization of the oversight role so far assumed by United States alone regarding ICANN and the IANA functions.

The significance of the dynamic that led to the enhanced cooperation mandate however goes beyond governments, as that very issue of the formally exclusive role of the US Government overseeing ICANN processes and sanctioning its outcomes emerged from the outset of the WSIS process, particularly among significant fractions of civil society, and it then on captivated a lot of energies throughout the deliberations of the first phase WSIS leading up to the decision to set up the Working Group on Internet Governance (WGIG). The release of the WGIG final report opened up yet another round of contention mainly due to the different models it put forward in order to address precisely the issues of legitimacy and internationalization of the oversight mechanism that should be exercised over the entities dealing with day to day operation, management and coordination of the internet infrastructure. In a sense, “enhanced cooperation” may be understood as the generic and neutral phrase used to capture the common goal underlining the range of policy options outlined in the WGIG report and what they were meant to achieve, as there was no consensus on the format of any single one of the actual options put forward in the report.

b) Purpose

Therefore the purpose of enhanced cooperation mandate is to be the vehicle that will enable the emergence of an internationally accepted and politically legitimate policy framework for

the exercise of a coordinated global authority in matters of internet governance, particularly at the oversight and accountability level (based on the consensus on the principle that governments should not be involved in day to day operations.)

In particular the Tunis Agenda identifies that enhanced cooperation would enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet” (para. 69). From the implementation of enhanced cooperation, it is expected that internet governance mechanisms would become more pluralistic (relying on a more inclusive authority base or answering to a wider range of authoritative sources in public policy matters) and subsequently more transparent and more fair to the concerns of a globally diverse population of internet users. In the same time as a potentially powerful reform tool and a new cooperative model, enhanced cooperation could bring about practical and useful mechanisms that might help address other significant shortcomings or perceived deficits in the current internet governance institutional ecosystem as well as emerging issues.

c) Scope

The enhanced cooperation mandate “should include the development of globally-applicable principles on public policy issues” (para 70) and “also could envisage creation of a suitable framework or mechanisms, where justified” (para 61). Enhanced cooperation is suggested as a mechanism to “enable” governments to carry out their roles and responsibilities, but it does not envision the involvement of governments “in the day-to-day technical and operational matters, that do not impact on international public policy issues” (para 69).

While governments appear to be the primary focus of the notion of enhanced cooperation which was crafted to bring governments together around internet public policy issues, that doesn't mean only governments have a role to play in public policy-making for internet governance. Furthermore, enhanced cooperation may well have been intended, primarily, to address the discrepancy perceived among governments in terms of their ability to influence relevant public policy aspects of internet governance processes and outcomes, nothing from Tunis proceedings indicates however that enhanced cooperation was meant to apply only to government. Indeed the scope of enhanced cooperation also encompasses all relevant stakeholders as per para 70 (“organisations responsible for essential tasks”) and the process towards enhanced cooperation will involve “all stakeholders” per para 71. Moreover, in light of the overarching principle of multistakeholder governance, enhanced cooperation will inevitably have to scale up from intra-government stakeholder group to inter-multiple stakeholder groups. In other words once governments as an internet stakeholder group solve their problem internally through an instance of enhanced cooperation, the principle should also apply for enabling inclusive and effective participation by non-governmental stakeholders alongside governments, if not formally in the same capacity and with the same functions, at least with full participation rights and same consideration given to substantive contributions made by all those other stakeholder groups in the policy processes and outcomes.

3. To what extent has or has not enhanced cooperation been implemented? Please use the space below to explain and to provide examples to support your answer.

It follows that for any public policy issue related to Internet governance that lacks at least one transparent, accountable, multilateral process, involving all stakeholders, for the development of globally-applicable principles to enable that issue to be addressed in a coordinated manner, or any framework or mechanisms to support such a process, the enhanced cooperation mandate is yet to be implemented. Yet varying degrees of enhanced cooperation may be instantiated here and there in the IG institutional environment.

For example, the progress made at ICANN with respect to issues of critical Internet resources, involving the role of the Framework of Commitments (FoC) and the Government Advisory Council (GAC) may be seen as a movement towards fulfilling the enhanced cooperation mandate in that context. Less evidence of such can be seen in the work of WIPO on intellectual property enforcement, that of UNCTAD on cross-border consumer protection, that of the UN Human Rights Council on the human rights impacts of government surveillance, or that of the World Wide Web Consortium on online behavioral advertising. There are other issues still for which there is no institution with a clear responsibility to implement the enhanced cooperation mandate: for example, there is no global body that deals comprehensively with data protection and privacy rights, and similar gaps exist in many other areas of a social, economic, political and cultural nature (see question 4).

Indeed while the IGF has developed, across now seven annual sessions, enhanced cooperation has not really got off the ground. There was a session in New York the end of 2010, seeking wider input. And CSTD has held various meetings on the subject. But enhanced cooperation – as conceived in the grand bargain of WSIS – has so far not been taken to serious steps. Meanwhile the tensions that led to the enhanced cooperation bargain are still very much in play, as illustrated by the impasse at the ITU's World Conference on International Telecommunications (WCIT) in 2012 between governments seeking to assert greater control over the Internet, and those opposing international treaties as a method of such control. We can agree with both camps: that the enhanced cooperation mandate has not been adequately implemented, but also that going for an intergovernmental treaty is not the right way to begin implementing the EC imperative.

4. What are the relevant international public policy issues pertaining to the Internet?

Relevant international public policy issues pertaining to the internet may not be identified once for all, as this is one of the most rapidly evolving technologies with socio-political implications lagging behind every innovation. So far however, much work has been done pointing out some of the most relevant such issues. This work includes the WGIG report, the background report that accompanied it, and ITU Resolution 1305 with regard to “scope of work of ITU on international Internet-related public policy matters”. Drawing on those and other sources as well as on our own experience, we propose the following non-comprehensive list.

1. Multilingualism: not only in terms of internet infrastructure naming systems and promoting multilingual Web content but also, and most decisively as an international public policy matter, in terms of making all the relevant working resources available in the (top) five official languages of the United Nations. Every meaningful player in the IG institutional field must thrive to make their materials and proceedings instantaneously accessible in all those languages. Interpretation and translation should be provided not only on site but also through remote participation channels. While one language or another may be adopted as the source language for the purposes of resolving conflicts of interpretation. Organizations such as ICANN must become truly international and get rid of requirements such as one has to be fluent in English to be eligible to positions at executive levels of the organization (even for voluntary positions.) Even IETF wouldn't be the first technical standard setting entity that would have to work in several languages; other organizations have done it before so we know it is possible. We often hear about the phrase “that's the cost of doing business” often referring to incidental, non-productive expenses from the standpoint of the normal operation of the particular business at hand. We also need to realize that there is a cost for running a global mechanism or gaining relevance and legitimacy in the eye of a global audience and constituency. Effective and integral multilingualism is definitely a fundamental portion of that cost.
2. Data protection, transborder data flows and privacy rights
3. Human rights, particularly Freedom of Expression and Assembly, with an emphasis on the protection of vulnerable groups such as children, women, traditional communities, etc.
4. The problem of Internet intermediary operators as private agents for extra-territorial law enforcement, Internet service providers (ISPs) and third party liabilities
5. Interconnection costs (especially global interconnection) and international Internet connectivity with the promotion of and support to the implementation of IXPs wherever they are lacking and as a result, connectivity cost remains notably high.
6. Affordable and universal access
7. Accessibility policies for the disabled
8. Access to knowledge and free information flows, deepening the public domain on the Internet
9. Net neutrality (that all data is given equal priority on networks)
10. Search neutrality (that global search engines give neutral results)
11. Contributing to capacity building for Internet governance in developing countries
12. Developmental aspects of the Internet accompanied with a sustained research effort to evidence and rigorously document the socio-economic developmental impact of the internet
13. Critical Internet resources management and oversight, along with the administration of the root zone files and system
14. New generic Top Level Domain application process (to provide equal opportunity to economic players from around the world, including from developing regions)

15. IPv6 transition and implementation
16. Jurisdiction over an Internet exchange
17. Vetting the social dimensions of technology design and choices as well as specifications of technical standards
18. Cryptography, cybercrime and privacy as a security component
19. Promotion and protection of e-commerce
20. Tax allocation among different jurisdictions with regard to global e-commerce
21. Intellectual Property Rights: copyright, patents and trademarks
22. Competition policy, liberalization, privatization and regulations
23. Cloud computing and protection of digital assets across borders/jurisdictions
24. Internet and viable e-health systems and e-education systems
25. Regulation of global Internet businesses (in terms of adherence to competition policies, consumer rights, law enforcement etc.)
26. Development and protection of local contents, applications, e-services, and local/ domestic Internet businesses

5. What are the roles and responsibilities of the different stakeholders, including governments, in implementation of the various aspects of enhanced cooperation?

The formulation referring to “respective roles and responsibilities” for stakeholders in the Tunis outcomes is misleading. Multistakeholder governance is not meant to be conducted in silos but rather in an integrated manner. The roles and responsibilities of stakeholders cannot be fixed in Internet governance. For example civil society can in some instances represent specific marginalized communities or user or interest groups (e.g. the visually impaired). At other times civil society can be experts providing input and guidance on how to approach policy issues. Still at other times civil society can play a ‘watch’ role to monitor the behavior of business or government in order to protect the public interest, and so on. Roles and responsibilities of stakeholder groups will depend on the type of process, and the specific interests involved and the stake in the outcome of each process. This is why it is so important to uphold the multistakeholder principle at all levels of decision-making as opposed to compartmentalizing stakeholders into fixed and definitive roles. Otherwise stated, every stakeholder group must seek consultation with the other stakeholders regarding whatever issues the former is leading on. This applies to the technical community, civil society, business and, of course, government. Most particularly, government being a unique power wielder of its kind among all Internet stakeholders, we will go as far as to say the government has a particular duty to include and consult with Internet user groups, business and civil society within their jurisdiction for any policy they seek to formulate and enforce. There can’t be any meaning to enhanced cooperation at any level, particularly at international level, if governments do not understand or live up to the spirit of openness and inclusiveness that characterize multistakeholder governance. It is equally important that the technical community, in the decisions they make regarding technology design and implementation, afford to all other stakeholders the opportunity to understand what is at stake and provide inputs which should be given serious consideration and addressed to the extent possible in the spirit of consensus. In that process, governments may provide, make requests or recommendations. It goes without saying that without the appropriate technology being available in the first place, either business or civil society can do little that may impact internet policy while bypassing the government.

6. How should enhanced cooperation be implemented to enable governments, on an equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the Internet?

We acknowledge that so far governments have been the main representative structure for international public policy development, adoption/ratification and enforcement. Typically, such policy development takes place through the UN and other multi-lateral institutions such as the WTO, etc. But on Internet-related public policy issues, there are transnational interests and impacts that governments cannot adequately take into account without the full participation of other stakeholders. There is room for discussion about the best way of involving those stakeholders so that government business still remains the job of those elected or appointed

in public office without confusion or conflict of competence whatsoever in that regard with non-governmental stakeholders. However, governments need to remind themselves that there are meant to represent the overall will of their nationals and putting in place mechanisms that will make it possible to consult and include their informed views on complex issues and in a decision-making process is only a more efficient way to fulfill their representative mandate. We contend that in this digital era, in this information and knowledge society, it is a formalist illusion to think that governments operate on an equal footing just because they have signed and appended official seals on a document stating that every government without exception counts for one vote. From our perspective, in this day and age, the truth is that governments that flank themselves with a cohort of business insiders, civil liberties advocates, experts and academics, all prepared to help their government officials understand all aspects of the issues debated and to remind them of the full spectrum of national interests at stake, those governments are more equal than the others notwithstanding intergovernmental democratic formalism.

There is also a link between the global and national level. Governments need to put in place transparent and accountable processes at the national level to support those at the global level. If one takes, for example, ICANN and the GAC, many governments are now participating in the GAC, but their participation is not always transparent to national stakeholders, and it is not clear who they are accountable to at national level. Member states need to fulfill WSIS process criteria at the national level otherwise it does not make much sense in the context of the internet to implement them (only) at the global level. For then governments will revert back to the notion of national sovereignty or even state absolutism when it comes to domestic internet which will sooner or later defeat the purpose of enhanced cooperation at global level.

There would be value in establishing a framework or mechanism to address Internet related public policy issues that do not already have a home in any existing global forum, or where that forum does not fulfill the WSIS process criteria, including the participation of all stakeholders. Such a framework or mechanism should be non-duplicative and should take advantage of the expertise of existing arrangements, mechanisms, institutions or organizations where relevant.

7. How can enhanced cooperation enable other stakeholders to carry out their roles and responsibilities?

See responses to questions #5 and #6

8. What are the most appropriate mechanisms to fully implement enhanced cooperation as recognized in the Tunis Agenda, including on international public policy issues pertaining to the Internet and public policy issues associated with coordination and management of critical Internet resources?

Enhanced cooperation is a process, not a structure. The key features that should come with any implementation of such process include transparency and inclusiveness. As a process, EC should be implemented in Internet governance related issues in any relevant organizational settings (e.g., ICANN, ITU, WIPO, etc.). However a forum such as the IGF offers an exceptional venue for an all-inclusive EC process, as it is not tied to a particular organization.

The CSTD Working Group is itself an important mechanism for the stakeholders to set in train a process to fully implement enhanced cooperation, which may in turn eventually result in changes to frameworks, structures or institutions. At this point we are still in a kind of exploration phase with emerging trends for reform including the IGF and IGF-like processes trying to create more cooperative opportunities for engagement, and institutions like ICANN and the ITU putting in place certain reforms, and institutions that previously ignore the Internet beginning to take it seriously (e.g. the Human Rights Council).

Ultimately for enhanced cooperation to be effective and fulfill its promises as institutional innovation, some form of structure and mechanisms will need to be put in place. The first set of structure-mechanism will be multistakeholder and international in its composition with the task to broaden ICANN oversight beyond the United States alone and to implement and sanction accountability mechanisms for ICANN on a regular basis. This will not be a UN body.

It may take the form of a new international oversight board with techno-political membership derived from different geopolitical regions. The mandate of this oversight mechanism would be very narrow, more or less the same as exercised by the Department of Commerce of the United States Government at present. ICANN would become an international organization and enter into a host country agreement with the United States, giving it complete immunity from US law or any other form of control or interference.

A second set of changes will be an independent international committee in charge of making a policy assessment for any major internet related policy to be adopted at a supranational level (for instance, in the case of ICANN, a policy developed by any relevant Supporting Organization or Committee but not yet voted on by the Board.) That independent and autonomous body will operate a bit like the US Congressional Budget Office which evaluates and provides an estimated cost for a bill being passed in the Congress. The difference here is that this internet related body will be analyzing the global significance and impact of a new policy developed by any of the main player in the IG institutional field. Mechanisms should be in place for stakeholder groups to petition the said committee/body/office to undertake such analysis of a policy being considered by any relevant organization in the IG field.

Lastly, a third set of functions will be to attend to those emerging global Internet policy issues or long standing ones that are not adequately addressed by any existing mechanism, which have only grown in number and complexity since the WSIS. Whilst we agree that existing mechanisms should be used where available, we are more skeptical about the interest of having a plethora of overlapping IG bodies or mechanisms. This limits the ability for developing country governments and civil society representatives to participate, because of their limited resources. New frameworks or mechanisms might therefore be needed for dealing with more general public policy issues of various political, economic, social and cultural kinds, which do not pertain to or derive from the primary functions of existing IG structures.

In any case, none of the three sets of functions outlined above shall be carried out by an intergovernmental structure or by any international treaty-based mechanism (unless the notion of treaty changes to include non-sovereign, non-state actors as signatories.) The first steps shall be to agree on the relevant and necessary functions, then all stakeholders must work relentlessly to come up with innovative institutional design that reflects the innovation that is the internet not only as technology but at the social, economic and political level. If the CSTD does recommend a process that leads to some new framework or mechanism in the future, any such new framework or mechanism should be based on the principles of subsidiarity, and be innovative in terms of mandate, structure, and functions, to be adequate to the unique requirements of global Internet governance. It must be participative of all stakeholders, promoting the democratic and innovative potential of the Internet. Exactly what shape it takes will emerge through reasoned deliberation among all stakeholders.

9. What is the possible relationship between enhanced cooperation and the IGF?

The IGF complements the enhanced cooperation mandate, but as it stands, it does not fulfill that mandate. The IGF however could be the perfect readily available space for furthering and feeding into enhanced cooperation mechanisms and processes around ICTs at the most global level. For instance we mentioned above that based on the genesis of the notion, enhanced cooperation would begin to apply more significantly among governments as a stakeholder group, but it would then need to scale up to a full multi-stakeholder level where governments will coexist with the other stakeholder groups. Once EC is successfully implemented to define and institutionalize the working relationships between all stakeholder groups, IGF will become the natural yearly gathering where the full bodies and mechanisms defined through EC will come together with the public and Internet users at large in order to report, to engage, to listen to the concerns of the public and pay attention to the current and emerging issues facing the broader internet community. Ideally, a process should be put in place for the relevant EC structure in place to collect a minimum number of the most pressing issues which it will commit to putting on its agenda for the next cycle and to reporting back on progress at the next IGF.

In this scenario, IGF will need to be significantly strengthened, with appropriate long-term funding support, to host the new framework or mechanism resulting from all-stakeholder enhanced cooperation, in its effort to facilitate the development of globally-applicable principles on public policy issues through a multi-stakeholder process. IGF would be the

largest embodiment of the global public sphere around internet policy issues and the largest marketplace for related ideas. The strengthened IGF will be set up in a way that there will always be outcomes, whether as propositions or recommendations, for the newly EC-enabled frameworks or mechanisms to take away and form the basis or the pool for their next sessions' agenda items.

10. How can the role of developing countries be made more effective in global Internet governance?

Developing countries have taken recourse to the ITU because they feel that they are not otherwise represented in the existing global Internet governance arrangements, which are dominated by developed countries and by companies and organizations based in those countries. This points to the need for reforms such as those advocated above. However that alone will not be enough. Developing countries are excluded at so many different levels, and they self-exclude, so addressing this problem is not at all trivial. The way in which Internet governance for development (IG4D) has been conceived and addressed in the IGF and in other global spaces is not helpful. It is narrow, and top down, and often does not go beyond affordable access issues. Clarifying the role of governments in Internet governance (see questions 5, 6, 7 and 11) is the first step. Developing country governments must be involved in this discussion otherwise they will not buy into its outcomes. Another necessary step is to foster more engagement with Internet governance issues at the national level in developing countries. In the way that developing countries have made an impact on global issues such as trade justice, for example, so too they could in Internet governance. The challenge here is to bring internet issues to fore in a way that manifests their relevance and potential impact in people's life. Critical thinking needs to be applied at national and regional level, with involvement of non-governmental stakeholders for more effective developing country representation at global level, and vice versa. Global Internet governance processes need to report and feed into national processes. In short, making developing countries (government and other stakeholders) play a more effective role in global Internet governance requires mechanisms at national and regional level as well as a process of democratization at the global level.

11. What barriers remain for all stakeholders to fully participate in their respective roles in global Internet governance? How can these barriers best be overcome?

We have already mentioned and elaborated on the language barrier and the need for effective multilingualism.

It is also critical that every stakeholder group from all regions feel that they are fairly accounted for, and that reporting and accountability mechanisms are held to the highest international standards.

Work should continuously be done to raise awareness about IG issues, especially in developing countries, to build capacity and enable ownership of the issues at grassroots level. Left to its own devices, no government can be fully trusted to live up to its fundamental democratic responsibilities and to fully open up its policies and actions to the new promise of multi-stakeholder governance at the national or the global level. The international environment should enable the empowerment of non-state and social network of actors so that they can speak out and be heard whenever the circumstances demand it.

12. What actions are needed to promote effective participation of all marginalised people in the global information society?

Information and communication policy and practice at national level that is based on (and committed to) processes supporting political, social and economic development. Access to ICTs can empower marginalized people and create more inclusion, but political and economic processes need to enable this for the full potential of this empowerment to make a difference.

13. How can enhanced cooperation address key issues toward global, social and economic development?

(Not answered.)

14. What is the role of various stakeholders in promoting the development of local language content?

(Not answered.)

15. What are the international internet-related public policy issues that are of special relevance to developing countries?

Of note are the market mechanisms, particularly the regulatory mechanisms of the domain name market, should make provisions for economic and community players from developing countries and with modest means to have a chance to compete for the opportunity to enter the domain name registration and gTLD market.

16. What are the key issues to be addressed to promote the affordability of the Internet, in particular in developing countries and least developed countries?

Promote and implement internet exchange points

Promote more dynamic and smarter methods for managing the radio spectrum, and tap into the unused frequency bands also known as TV White Spaces in order to solve connectivity issues in remote and rural areas.

ITU should put the necessary effort into demonstrating to its membership that it is possible to reduce the cost of internet access for the end user without the state necessarily losing in revenue on the long run.

17. What are the national capacities to be developed and modalities to be considered for national governments to develop Internet-related public policy with participation of all stakeholders?

(Not answered.)

18. Are there other comments, or areas of concern, on enhanced cooperation you would like to submit?

In institutionalizing and operationalizing enhanced cooperation, it is critically important to create a deliberative process in which all stakeholder perspectives are appropriately taken into consideration. It is not enough to just allow the various stakeholders to voice their perspectives. All the various comments must also be taken in consideration in a logical analysis process, in which for every important policy question, a set of possible answers is worked out, and each of the possible answers is evaluated against the objective of sustainable global, social and economic development as well as in regard to the fundamental principles of democracy, rule of law, and the internationally recognized human rights.