UNITED NATIONS COMMISSION ON SCIENCE AND TECHNOLOGY FOR DEVELOPMENT

Working Group on Enhanced Cooperation

Contributions from WGEC members to the guiding questions agreed during first meeting of the Working Group

19 January 2017

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Contributions Submitted by Representatives from Civil Society

1. "Enhanced Cooperation", Richard Hill, APIG

Enhanced Cooperation

Richard Hill
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19 November 2016

This submission addresses the question: "1. What are the high level characteristics of enhanced cooperation?"

It does so by first identifying some examples of what are not characteristics of enhanced cooperation, and then proposing an operational definition of high level characteristics of enhanced cooperation.

Introduction

It has been difficult to date to agree on what was meant by enhanced cooperation in the Tunis Agenda. In this paper we propose to recognize what was not meant by enhanced cooperation, and we propose a possible for consideration for acceptance as a basis for enhanced cooperation. Specifically:

1. Enhanced cooperation was not meant to give private companies equal rights with respect to states for what regards public policy decisions.
2. The IANA transition process is not a good example of enhanced cooperation.
3. Recognition of sovereign equality, political independence and self-determination of peoples could be high level characteristics of enhanced cooperation.

Before considering those specific matters, we present the relevant agreed documents.

Background

The Tunis Agenda states:

> **34.** A working definition of Internet governance is the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.
>
> **35. We reaffirm** that the management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organizations. In this respect it is recognized that:
>
> **a. 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.**

[1] http://www.apig.ch

b. The private sector has had, and should continue to have, an important role in the development of the Internet, both in the technical and economic fields.

c. Civil society has also played an important role on Internet matters, especially at community level, and should continue to play such a role.

d. Intergovernmental organizations have had, and should continue to have, a facilitating role in the coordination of Internet-related public policy issues.

e. International organizations have also had and should continue to have an important role in the development of Internet-related technical standards and relevant policies.

68. We recognize that all governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet. **We also recognize** the need for development of public policy by governments in consultation with all stakeholders.

69. 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.

As already noted, it has proven difficult over the years to agree on exactly what enhanced cooperation is and how to implement it.

The purpose of the next two sections is to clarify what enhanced cooperation is not. We then propose in section 3 a high level principle that could be a basis for enhanced cooperation.

1. Enhanced cooperation is not equal rights in decisions-making

With respect to Internet governance, some[2] favor: "a multistakeholder approach that enjoins national governments to participate in Internet governance issues on equal footing with the private sector, civil society, and academia."

Note the use of the term "equal footing" to apply not just to governments, as it is used in the Tunis Agenda, but to all stakeholders, thus putting non-government actors on an equal level with governments, including for public policy matters.

We submit that this formulation of the multi-stakeholder model is not consistent with the roles and responsibilities outlined in the Tunis Agenda and reaffirmed in UN Resolution A/RES/70/125[3], the Outcome document of the high-level meeting of the General Assembly on the overall review of the implementation of the outcomes of the

[2] See for example: http://www.circleid.com/posts/20160429_internet_governance_in_transition_itu_battleground_rival_visions/

[3] http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/125

World Summit on the Information Society, as well as in the outputs of the WSIS+10 High Level Event[4] and Netmundial[5].

Further, if private companies were to have equal rights with respect to governments for decisions relating to public policy matters, then it would be impossible to make certain decisions. In particular, network neutrality regulations could never be imposed, because some private companies are opposed to such regulations.

We submit that a multi-stakeholder approach that places national governments on an equal footing with the private sector is not consistent with the Tunis Agenda and is therefore not an implementation of enhanced cooperation.

2. Enhanced cooperation is not the IANA transition

Regarding specific processes, it has been said[6] that "the IANA transition process is an outstanding example of 'enhanced cooperation', involving all stakeholder groups in an unprecedented way."

While it is correct that the IANA transition process is unprecedented, we disagree that it is a good example of enhanced cooperation, and we submit that it is not a good example of a multi-stakeholder process. According to a peer-reviewed academic analysis[7], the IANA transition does not comply with best practices regarding multi-stakeholder processes for a number of reasons, including:

1. Preconditions for the transition were set unilaterally by the US government, without any public consultation.
2. One of those preconditions was that ICANN, the entity providing the IANA function, would itself conduct the process to prepare a recommendation for the transition. Since ICANN was widely held to be insufficiently accountable at the time, it does not seem appropriate to ask it to convene a process that was supposed to be accountable to the 'global multi-stakeholder community'.
3. The role of governments in ICANN is not consistent with the roles and responsibilities outlined in the Tunis Agenda (and recently reaffirmed), because in ICANN governments have a purely advisory role.
4. Several of the groups that prepared the actual transition proposal were not fully open (in the sense that anybody could participate with equal rights) and were not representative of the global community.
5. The volume of work was such that only dedicated participants could meaningfully influence the work, and the discussions were dominated by stakeholders with a commercial interest in the outcome.
6. The US government, and the US parliament (Congress) influenced the process and conditioned its outcome.
7. The outcome did not reflect the consensus of the 'global Internet community', even if it did reflect the view of the large majority of those who participated in the process.

[4] http://www.itu.int/net/wsis/implementation/2014/forum/
[5] http://www.netmundial.br/
[6] http://unctad.org/meetings/en/Presentation/ecn162016p06_Kummer-ICANN_en.pdf
[7] http://dx.doi.org/10.1080/23738871.2016.1227866

8. While the proposals were published for public comment, the final version was not published for further public comment. Thus, there was no mechanism for the public to express their views regarding whether or not the final version incorporated their comments.
9. The final outcome does not create any meaningful oversight of ICANN, it increases the dominance of the domain name and addressing industries with respect to the management of Internet names and addresses, and it still allows the US government to exercise influence because the IANA function remains under the jurisdiction of the United States.[8]

In summary, the IANA transition "cannot serve as an example to the world that the multi-stakeholder model can be used to address internet governance issues, even if it is an example of how a particular version of the multi-stakeholder model can be used to address a difficult issue and propose a solution that has broad, but not unanimous, support amongst a certain set of participants that represent a certain set of interests."[9]

Thus, while it would be appropriate for the Working Group on Enhanced Cooperation to consider the IANA transition process in particular, and ICANN's processes in general, we are of the view that those processes should be viewed critically and not be taken as models for multi-stakeholder processes to be used in the future.

3. A possible basis for enhanced cooperation

It is not disputed that offline law applies equally online, and that this is the case both for national law and international law. The *jus cogens* (mandatory international law) principles of the UN Charter include sovereign equality and political independence of states[10]. The UN Charter also recognizes the principle of self-determination of peoples. We submit that these principles should be characteristics of enhanced cooperation.

Thus we propose the following high level principle as a basis for enhanced cooperation:

> "Member States shall have the sovereign right to establish and implement public policy, including international policy, on matters of Internet governance, to the extent that they respect international law, and in particular human rights, and to the extent that they do not impinge on the rights of other states to establish and implement their own national policies and regulations."

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[8] http://www.epw.in/journal/2016/42/web-exclusives/internet-governance.html and http://cis-india.org/internet-governance/blog/jurisdiction-the-taboo-topic-at-icann

[9] http://dx.doi.org/10.1080/23738871.2016.1227866 . For a contrary view, see: http://dx.doi.org/10.1080/23738871.2016.1241812

[10] See in particular Article 2 of the Charter, and Kamrul Hossain, *The Concept of Jus Cogens and the Obligation Under The U.N. Charter*, 3 Santa Clara J. Int'l L. 72 (2005), p. 24. Available at: http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1011&context=scujil

2. "Equal footing with respect to ccTLDs", Richard Hill, APIG

Equal footing with respect to ccTLDs

Richard Hill
Association for Proper Internet Governance[11]
19 November 2016

1. This submission addresses the question: "2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?"

2. The specific proposed recommendations are shown as underlined text in paragraphs 10-12 below.

Background

3. The Tunis Agenda states:

> **68.** We recognize that all governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet. **We also recognize** the need for development of public policy by governments in consultation with all stakeholders.
>
> **69.** 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.

4. On 6 June 2016, as part of the IANA transition process, the Internet Corporation for Assigned Names and Numbers (ICANN) and the US National Telecommunications and Information Administration (NTIA) exchanged letters[12]. In its letter, ICANN confirmed that it will not take any action to re-delegate the top-level domain names ".edu", ".gov", ".mil", and ".us" (which are administered by the US Government) without first obtaining express written approval from NTIA.

5. This exchange of letters is presumably a binding contract between ICANN and the US government. That is, ICANN cannot take actions regarding these domain names without the agreement of the US government.

Equal treatment of ccTLDs

6. The top-level domain name ".us" is a country code domain name, that is, a ccTLD.

7. According to the Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains[13] of ICANN's Government Advisory

[11] http://www.apig.ch
[12] https://www.ntia.doc.gov/page/exchange-letters-us-government-administered-tlds
[13] https://gacweb.icann.org/display/GACADV/ccTLDs?preview=/28278844/28475457/ccTLD_Principles_0.pdf

Committee (GAC), approved on 5 April 2005 (emphasis added): "4.1.2. Every country or distinct economy with a government or public authority recognised in accordance with article 3.8 above should be able to ask for its appropriate country code to be represented as a ccTLD in the DNS and to designate the Registry for the ccTLD concerned."

8. The term "should" is used elsewhere in the cited GAC Principles and Guidelines.

9. Thus the cited GAC Principles and Guidelines do not create a binding obligation for ICANN not to take actions regarding ccTLDs without the agreement of the concerned government.

10. In line with the principles of equal footing and equal roles and responsibilities of all governments enunciated in the Tunis Agenda, it is proposed to recommend that ICANN provide to all governments the same treatment that it has given to the USA.

11. Specifically, it is proposed to recommend that ICANN exchange letters with any country that so requests, stating that it will not take any action to re-delegate the country's ccTLD without first obtaining express written approval from the government of the country in question.

12. Further, given that the US government administers four top-level domain names, and again in keeping with the principles of equal footing and equal roles and responsibilities of all governments, it is proposed to recommend that ICANN delegate to any country that so requests up to three additional ccTLDs, with names of the form "ccXYZ", where "cc" is the two-letter country code, and "XYZ" are strings chosen by the country, for example "gov", "mil", "edu", or "01", "02", "03". Thus, if "rt" were a valid country code (which it is not), the corresponding country could request delegation of "rtgov" or "rt01"m etc.

3. "Good Faith: a Characteristic of Enhanced Cooperation", Richard Hill, APIG

Good Faith: a Characteristic of Enhanced Cooperation

Richard Hill
Association for Proper Internet Governance[14]
19 November 2016

1. This submission addresses the question: "1. What are the high level characteristics of enhanced cooperation?"

2. We submit that good faith in negotiations is a characteristic of enhanced cooperation, and make a specific recommendation in paragraph 8 at the end of this paper. The recommendation is underlined.

3. The concept of "good faith" is an important element of many, but not all, legal systems, including international law, as explained in a draft academic paper[15] by Barry O'Neill. However, the concept is not defined precisely and it is not always easy to determine whether a certain act is or is not in "good faith" in the legal sense of the term.

4. We propose to adopt as a working definition the one proposed by O'Neill (emphases in original): "Parties negotiate in good faith if they use **reasonable negotiating strategies** implemented **sincerely** with the **mutual intention** to **negotiate** an agreement, if that agreement is **possible**."

5. It is sometimes easier to determine that an act is not in good faith.[16] Acts that are widely considered to be not in good faith include:

1. To contradict oneself, referred to legally as *venire contra factum proprium*. According to this principle, "A party cannot set itself in contradiction to its previous conduct vis-à-vis another party if that latter party has acted in reasonable reliance on such conduct."[17]
2. To violate the principle of procedural good faith, which requires that procedural objections be raised as soon as possible, and not at the last minute.
3. To make inconsistent or contradictory statements in different forums dealing with the same matter.

6. There are undoubtedly many examples of the violation of the principle of good faith in negotiations, both nationally and internationally. We outline here, purely for illustrative purposes, and without criticizing the concerned states, some particular situations that illustrate the violations outlined above. The details of the situations have been omitted in order to maintain anonymity. However, full written evidence can be provided if necessary:

[14] http://www.apig.ch
[15] http://www.sscnet.ucla.edu/polisci/faculty/boneill/goodfaith5.pdf
[16] See the examples in the cited paper.
[17] http://www.trans-lex.org/907000/

1. A party proposed to discuss topic X in forum Y, arguing that the topic meets condition Z, despite objections from other parties that the topic did not meet condition Z. After discussion of the topic, forum Y adopted a decision. Party X now opposed that decision, on the grounds that the topic did not meet condition Z. Since forum Y acted in reasonable reliance of Party X's submission that the topic met condition Z, Party X should not have contradicted itself by subsequently taking the position that the topic did not meet that condition.
2. In Forum X, party Y proposed that Provision X be included in a decision. Party W opposed that inclusion. After much discussion, the Chairman proposed that the provision in question be removed from the decision. Despite this, Party W continued to oppose the decision. Thus Party W contradicted itself, because there was a reasonable expectation that it would have approved the decision once Provision X was removed.
3. In sub-committee X of Forum Y, decision X was taken. That decision related to administrative and financial issues. Subsequently, in sub-committee Z of Forum Y, which dealt with substantive and not administrative issues, Party W proposed to refer to decision X in a decision that related to substantive matters and not to administrative matters. Thus Party W contradicted itself, because there was a reasonable expectation that decision X, which related to administrative issues, would not be referred to in the context of substantive issues.
4. The rules of Forum X provide that decisions can be made by consensus (meaning lack of formal opposition), or by majority vote. Following difficult discussions, the Chairman announced that decision Y was approved. Several parties objected, but they did not call for a vote (if there had been a vote, decision Y would have been approved by a majority). Consequently, under the rules of Forum X, the decision was approved. Subsequently, some of the parties that had objected declared that they did not accept decisions that were not made by consensus. That is, they refused to abide by the rules of the organization that provide for making decisions by majority vote.
5. Forum X decided that its sub-committee Y should study Issue Z. When some parties proposed to study that issue, other parties objected. The parties that had proposed to study the issue in question had a reasonable reliance that the other parties would not oppose discussions of the matter. Thus, the opposition to considering the issue can be viewed as contradictory behavior.
6. Forum X discussed topic Y. The forum uses a hierarchical structure for discussions, that is, sub-committees within committees. Topic Y was discussed in a sub-sub-committee, then is a sub-committee, then in a committee. Provision Z was agreed at all three levels. Subsequently, prior to formal approval by the plenary of Forum X, a party proposed to delete provision Z. The party in question had participated in the discussions in the sub-sub-committee, the sub-committee, and the committee. Thus the party in

question should have raised its objection to provision Z earlier in order to conform to the principle of good faith in procedure.

7. During a discussion in forum X, it was unanimously agreed that statement Y was factually correct. Some parties request that the agreed statement be included in a document, but other parties refuse to include the statement, while admitting that it was factually correct.

7. We submit that such situations are not characteristics of enhanced cooperation, and, as stated above, we submit that negotiation in good faith is a characteristic of enhanced cooperation.

8. We would therefore recommend that it be agreed that a characteristic of enhanced cooperation is that parties use **reasonable negotiating strategies** implemented **sincerely** with the **mutual intention** to **negotiate** an agreement, if that agreement is **possible.**

4. "International Internet Public Policy Issues: Gaps Requiring Study", Richard Hill, APIG

International Internet Public Policy Issues: Gaps Requiring Study

Richard Hill
Association for Proper Internet Governance[18]
24 November 2016

This submission addresses the question: "2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?"

Specific proposed recommendations are shown as text in boxes below. For convenience, the recommendations are numbered.

We refer to one of the outputs of previous meetings of the Working Group on Enhanced Cooperation, document E/CN.16/2015/CRP.2[19], Mapping of international Internet public policy issues, 17 April 2015.

That document states in Chapter 9, Concluding remarks:

> The tension between the transborder nature of the Internet, on the one hand, and predominantly national regulations that govern public policy issues pertaining to the Internet, on the other, results into challenges for the implementation of regulation. Making diverse legislation more interoperable and aligning national laws with existing international instruments helps in overcoming these challenges. At the international level, this calls for strengthened cooperation, capacity building and sharing of information and best practices.
>
> The review indicates that improvements could be made in respect of these gaps. At international level, strengthened coordination and collaboration across stakeholder groups will be critical in efforts to bridge them.

We concur with that finding and are of the view that the rule of law must exist at the international level for the Internet, given that the Internet is an international phenomenon.

We note that many sections of the cited document identify areas where further study would be appropriate, in particular:

> 2.7 Net neutrallity
>
> 2.8 Cloud
>
> 2.10 Internet of Things (IoT)
>
> 3.1 Cybersecurity
>
> 3.2 Cybercrime

[18] http://www.apig.ch
[19] http://unctad.org/meetings/en/SessionalDocuments/ecn162015crp2_en.pdf

3.4 Cyber conflict

3.6 Encryption

3.7 Spam

4.1 Freedom of expression

4.2 Privacy and data protection

5.3 Copyright

5.5 Labour law

5.6 Intermediaries

0. We concur with the findings of the document E/CN.16/2015/CRP.2, Mapping of international Internet public policy issues, 17 April 2015, and propose to recommend that all the recommendations for further study in the cited document be endorsed.

Further, we have indentified some additional areas where further studies would be appropriate. Consequently, we submit specific proposals regarding the following international Internet public policy issues that require more study than is taking place at present:

1. The economic and social value of data and its processing
2. Takedown, filtering and blocking
3. Intermediary liability
4. Privacy, encryption and prevention of inappropriate mass surveillance
5. How to deal with the Internet of Things (IoT)
6. Externalities arising from lack of security and how to internalize such externalities
7. Ethical issues of networked automation, including driverless cars
8. How to deal with the job destruction and wealth concentration induced by ICTs in general and the Internet in particular
9. How to deal with platform dominance
10. How to deal with the increasing importance of embedded software

1. The economic and social value of data and its processing

It is obvious that personal data has great value when it is collected on a mass scale and cross-referenced.[20] Indeed, the monetization of personal data drives today's Internet services and the provision of so-called free services such as search engines.[21] Users

[20] See for example pp. vii and 2 of the GCIG report, available at: http://ourinternet.org/sites/default/files/inline-files/GCIG_Final%20Report%20-%20USB.pdf . Henceforth referenced as "GCIG". See also 7.4 of http://www.oecd-ilibrary.org/taxation/addressing-the-tax-challenges-of-the-digital-economy_9789264218789-en

[21] http://www.theatlantic.com/technology/archive/2014/08/advertising-is-the-internets-original-sin/376041/ and 7.4 of the cited OECD report.

should have greater control over the ways in which their data are used.[22] All states should have comprehensive data protection legislation.[23] The development of so-called "smart cities" might result in further erosion of individual control of personal data. As one journalist puts the matter[24]: "A close reading [of internal documentation and marketing materials] leaves little room for doubt that vendors ... construct the resident of the smart city as someone without agency; merely a passive consumer of municipal services – at best, perhaps, a generator of data that can later be aggregated, mined for relevant inference, and acted upon." Related issues arise regarding the use of employee data by platforms (such as Uber) that provide so-called "sharing economy" services[25].

The same issues arise regarding the replacement of cash payments by various forms of electronic payments. It is important to maintain "alternatives to the stifling hygiene of the digital panopticon being constructed to serve the needs of profit-maximising, cost-minimising, customer-monitoring, control-seeking, behaviour-predicting commercial"[26] companies.

Further, mass-collected data (so-called "big data") are increasingly being used, via computer algorithms, to make decisions that affect people's lives, such as credit rating, availability of insurance, etc.[27] The algorithms used are usually not made public so people's lives are affected by computations made without their knowledge based on data that are often collected without their informed consent. It is important to avoid that "big data", and the algorithmic treatment of personal data, do not result in increased inequality and increased social injustice which would threaten democracy.[28]

While some national legislators and/or courts have taken steps to strengthen citizens' rights to control the way their personal data are used[29], there does not appear to be adequate consideration of this issue at the international level.

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[22] See for example pp. 42, 106 and 113 of GCIG. See also http://www.internetsociety.org/policybriefs/privacy ; and http://www.faz.net/aktuell/feuilleton/debatten/the-digital-debate/shoshana-zuboff-secrets-of-surveillance-capitalism-14103616.html ; and http://ec.europa.eu/commission/2014-2019/oettinger/announcements/speech-conference-building-european-data-economy_en

[23] See for example p. 42 of GCIG;
and section 5 of http://www.itu.int/en/council/cwg-internet/Pages/display-feb2016.aspx?ListItemID=70

[24] https://www.theguardian.com/cities/2014/dec/22/the-smartest-cities-rely-on-citizen-cunning-and-unglamorous-technology

[25] See "Stop rampant workplace surveillance" on p. 12 of:
http://library.fes.de/pdf-files/id-moe/12797-20160930.pdf

[26] http://thelongandshort.org/society/war-on-cash

[27] http://time.com/4477557/big-data-biases/?xid=homepage ; an academic discussion is at:
http://www.tandfonline.com/doi/full/10.1080/1369118X.2016.1216147 and in the individual articles in:
Information, Communication & Society, Volume 20, Issue 1, January 2017,
http://www.tandfonline.com/toc/rics20/20/1

[28] See Cathy O'Neil, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy*, Crown Publishing, 2016; article at:
https://www.wired.com/2016/10/big-data-algorithms-manipulating-us/

[29] A good academic overview of the issues is found at:
http://www.ip-watch.org/2016/10/25/personality-property-data-protection-needs-competition-consumer-protection-law-conference-says/

Indeed, the International Conference of Data Protection and Privacy Commissioners has "appealed to the United Nations to prepare a legal binding instrument which clearly sets out in detail the rights to data protection and privacy as enforceable human rights" [30].

Regarding algorithmic use of data, what a UK parliamentary committee[31] said at the national level can be transposed to the international level:

> After decades of somewhat slow progress, a succession of advances have recently occurred across the fields of robotics and artificial intelligence (AI), fuelled by the rise in computer processing power, the profusion of data, and the development of techniques such a 'deep learning'. Though the capabilities of AI systems are currently narrow and specific, they are, nevertheless, starting to have transformational impacts on everyday life: from driverless cars and supercomputers that can assist doctors with medical diagnoses, to intelligent tutoring systems that can tailor lessons to meet a student's individual cognitive needs.
>
> Such breakthroughs raise a host of social, ethical and legal questions. Our inquiry has highlighted several that require serious, ongoing consideration. These include taking steps to minimise bias being accidentally built into AI systems; ensuring that the decisions they make are transparent; and instigating methods that can verify that AI technology is operating as intended and that unwanted, or unpredictable, behaviours are not produced.

Similarly, the recommendations of a national artificial intelligence research and development strategic plan[32] can be transposed at the international level:

> **Strategy 3**: Understand and address the ethical, legal, and societal implications of AI. We expect AI technologies to behave according to the formal and informal norms to which we hold our fellow humans. Research is needed to understand the ethical, legal, and social implications of AI, and to develop methods for designing AI systems that align with ethical, legal, and societal goals.
>
> **Strategy 4**: Ensure the safety and security of AI systems. Before AI systems are in widespread use, assurance is needed that the systems will operate safely and securely, in a controlled, well-defined, and well-understood manner. Further progress in research is needed to address this challenge of creating AI systems that are reliable, dependable, and trustworthy

1. Consequently, it is proposed to recommend that UNCTAD[33] and UNCITRAL be mandated to study the issues related to the economic and social value or data, in particular "big data" and the increasing use of algorithms (including artificial intelligence) to make decisions, which issues include economic and legal aspects. In

[30] https://icdppc.org/wp-content/uploads/2015/02/Montreux-Declaration.pdf
[31] http://www.publications.parliament.uk/pa/cm201617/cmselect/cmsctech/145/14502.htm
[32] https://www.nitrd.gov/news/national_ai_rd_strategic_plan.aspx
[33] For a description of UNCTAD's work addressing related issues, see: http://unctad14.org/EN/pages/NewsDetail.aspx?newsid=31

particular, UNCITRAL should be mandated to develop a model law, and possibly a treaty, on personal data protection[34].

2. Takedown, filtering and blocking

An increasing number of states have implemented, or are proposing to implement, measures to restrict access to certain types of Internet content[35], e.g. incitement to violence, gambling, copyright violation, or to take measures[36] against individuals who post certain types of content.

While such measures are understandable in light of national sensitivities regarding certain types of content, the methods chosen to restrict content must not violate fundamental human rights such as freedom of speech[37], and must not have undesirable technical side-effects.

Any restrictions on access to content should be limited to what is strictly necessary and proportionate in a democratic society.

At present, there does not appear to be adequate consideration at the international level of how best to conjugate national sensitivities regarding certain types of content with human rights and technical feasibilities.

This issue is exacerbated by the fact that certain Internet service providers apply strict rules of their own to content, at times apparently limiting freedom of speech for no good reason.[38]

2. Since the right of the public to correspond by telecommunications is guaranteed by Article 33 of the ITU Constitution (within the limits outlined in Article 34), it is proposed to recommend that IETF, ITU, OHCHR, and UNESCO be mandated jointly to study the issue of takedown, filtering, and blocking, which includes technical, legal, and ethical aspects.

3. Intermediary liability

The issue of the extent to which Internet service providers, and other intermediaries such as providers of online video content, are or should be liable for allowing access to illegal material has been addressed by many national legislators.[39]

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[34] Such a model law could flesh out the high-level data security and protection requirements enunciated in 8.7 of Recommendation ITU-T Y.3000, Big data – Cloud computing based requirements and capabilities, available at:
https://www.itu.int/rec/T-REC-Y.3600-201511-I/en ;
and the privacy principles enunciated in 6 of Recommendation ITU-T X.1275, Guidelines on protection of personally identifiable information in the application of RFID technology, available at:
https://www.itu.int/rec/T-REC-X.1275/en

[35] See the report at:
http://www.un.org/ga/search/view_doc.asp?symbol=A/71/373 and the press release at:
http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20717&LangID=E

[36] See for example
http://www.cps.gov.uk/news/latest_news/cps_publishes_new_social_media_guidance_and_launches_hate_crime_consultation/ ; and the summary article at:
https://techcrunch.com/2016/10/12/ai-accountability-needs-action-now-say-uk-mps/

[37] See the report cited above, A/71/373.

[38] See for example https://www.theguardian.com/technology/2016/sep/09/facebook-deletes-norway-pms-post-napalm-girl-post-row

However, there does not appear to be adequate consideration of this issue at the international level.

3. Consequently, it is proposed to recommend that UNCITRAL be mandated to study the issue of intermediary liability, with a view to proposing a model law on the matter.

4. Privacy, encryption and prevention of inappropriate mass surveillance

Privacy is a fundamental right, and any violation of privacy must be limited to what is strictly necessary and proportionate in a democratic society.[40] Certain states practice mass surveillance that violates the right to privacy[41] (see for example A/HRC/31/64[42] and A/71/373[43]).

Encryption is a method that can be used by individuals to guarantee the secrecy of their communications. Some states have called for limitations on the use of encryption, or for the implementation of technical measures to weaken encryption. Many commentators have pointed out that any weakening of encryption can be exploited by criminals and will likely have undesirable side effects (see for example paragraphs 42 ff. of A/HRC/29/32[44]). Many commentators oppose state-attempts to compromise encryption.[45]

At present, most users do not use encryption for their E-Mail communications, for various reasons, which may include lack of knowledge and/or the complexity of implementing encryption. There is a general need to increase awareness of ways and means for end-users to improve the security of the systems they use.[46]

Secrecy of telecommunications is guaranteed by article 37 of the ITU Constitution. However, this provision appears to be out of date and to require modernization. In particular, restrictions must be placed on the collection and aggregation of meta-data.[47]

There does not appear to be adequate consideration of the issues outlined above at the international level.

4. Consequently, it is proposed to recommend that IETF, ISOC, ITU, and OHCHR be mandated to study the issues of privacy, encryption and prevention of inappropriate mass surveillance, which include technical, user education, and legal aspects.

5. Internet of Things (IoT)

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[39] https://cyberlaw.stanford.edu/our-work/projects/world-intermediary-liability-map-wilmap
[40] See for example pp. vii, 32, 106 and 133 of GCIG.
[41] For an academic discussion, see http://dx.doi.org/10.1080/23738871.2016.1228990
[42] http://ohchr.org/Documents/Issues/Privacy/A-HRC-31-64.doc
[43] http://www.un.org/ga/search/view_doc.asp?symbol=A/71/373
[44] https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/095/85/PDF/G1509585.pdf?OpenElement
[45] See for example pp. vii, 106, and 113 of GCIG. See also http://science.sciencemag.org/content/352/6292/1398 ; http://www.internetsociety.org/policybriefs/encryption ; section 4 of http://www.itu.int/en/council/cwg-internet/Pages/display-feb2016.aspx?ListItemID=70
[46] See for example p. 66 of GCIG.
[47] See p. 31 of GCIG.

In the current environment, it can be expected that networked devices (the so-called Internet of Things – IoT)[48] will transmit data to manufacturers and service providers with little or no restrictions on the use of the data. [49] The recipients of the data could then correlate the data and resell it, as is currently the case for data collected by so-called free services such as search engines. Further, national surveillance programs could acquire such data and use it to construct profiles of individuals.

Such uses of data that are collected automatically for a specific purpose could have wide-reaching and unforeseen consequences.[50]

Further, interconnected devices may make decisions affecting daily life,[51] and this may call for the development of a regulatory framework to protect the interests of citizens.

In addition, the security risks posed by interconnected devices may require government actions.[52] For example, there may be a need to provide incentives to those who make interconnected devices to make them secure: such incentives might be penalties for failure to build-in adequate security. In this context, it is worth considering past experience with various devices, including electrical devices: they all have to conform to legal standards, all countries enforce compliance with such standards. It is not legitimate to claim that security and safety requirement stifle technological innovation. It must be recalled that the primary goal of private companies is to maximize profits. The purpose of regulation is to prevent profit-maximization from resulting in the production of dangerous products. Since IoT products will be interconnected, at least to some degree, chaos can ensue if the products are not sufficiently secure[53] (e.g. all medical systems fail to work). Thus it is important to ensure that the products are sufficiently secure for mass deployment.

This is not a theoretical consideration. Insufficiently insecure IoT devices have already been used to perpetrate massive denial of service attacks, and such attacks could be used to bring down critical infrastructures.[54] As one security manager put

[48] A good overview of the technology, and the issues it raises, can be found at: http://www.internetsociety.org/doc/iot-overview

[49] See https://www.theguardian.com/technology/2015/jul/15/internet-of-things-mass-surveillance and the articles it references.

[50] See for example: http://www.itu.int/en/ITU-T/Workshops-and-Seminars/01072016/Documents/S1P3_Corinna_Schmitt_v3.pdf ; see also the "weaponization of everything", see p. 2 of GCIG.

[51] http://policyreview.info/articles/analysis/governance-things-challenge-regulation-law

[52] https://www.schneier.com/blog/archives/2016/07/real-world_secu.html and https://www.scribd.com/document/328854049/DDoS-Letter-to-Chairman-Wheeler#download and https://www.euractiv.com/section/innovation-industry/news/commission-plans-cybersecurity-rules-for-internet-connected-machines/ and http://www.dailydot.com/layer8/bruce-schneier-internet-of-things/

[53] A particularly frightening scenario is presented at: https://www.schneier.com/blog/archives/2016/11/self-propagatin.html

[54] See http://hothardware.com/news/latest-iot-ddos-attack-dwarfs-krebs-takedown-at-nearly-1-terabyte-per-second http://hothardware.com/news/your-iot-device-could-be-part-of-a-ddos-botnet-how-to-shut-it-down https://www.schneier.com/blog/archives/2016/09/someone_is_lear.html

the matter[55]: "In a relatively short time we've taken a system built to resist destruction by nuclear weapons and made it vulnerable to toasters."

At present, there does not appear to be adequate consideration of this issue at the international level.

5. Consequently, it is proposed to recommend that ITU, UNCITRAL and UNESCO be mandated to study issues related to IoT (including security of IoT devices, use of data from IoT devices, decisions made by IoT devices, etc.), which include technical, legal, and ethical aspects (for a partial list of such aspects, see Recommendation ITU-T Y.3001: Future networks: Objectives and design goals[56]). The studies should take into account Recommendation ITU-T Y.3013: Socio-economic assessment of future networks by tussle analysis[57].

6. Externalities arising from lack of security and how to internalize such externalities

Security experts have long recognized that lack of ICT security creates a negative externality.[58] For example, if an electronic commerce service is hacked and credit card information is disclosed, the users of the service users will have to change their credit cards. This is a cost both for the user and for the credit card company. But that cost is not visible to the electronic commerce service. Consequently, the electronic commerce service does not have an incentive to invest in greater security measures.[59]

As the Global Internet Report 2016 of the Internet Society puts the matter[60]:

> There is a market failure that governs investment in cybersecurity. First, data breaches have externalities; costs that are not accounted for by organisations. Second, even where investments are made, as a result of asymmetric information, it is difficult for organizations to convey the resulting level of cybersecurity to the rest of the ecosystem. As a result, the incentive to invest in cybersecurity is limited; organisations do not bear all the cost of failing to invest, and cannot fully benefit from having invested.

As noted above, the externalities arising from lack of security are exacerbated by the Internet of Things (IoT)[61]. As a well known security expert puts the matter[62]: "Security engineers are working on technologies that can mitigate much of this risk, but many solutions won't be deployed without government involvement. This is not something that the market can solve. ... the interests of the companies often don't match the interests of the people. ... Governments need to play a larger role: setting

[55] Jeff Jarmoc, head of security for global business service Salesforce, quoted in the excellent summary article at:
http://www.bbc.com/news/technology-37738823
[56] https://www.itu.int/rec/T-REC-Y.3001-201105-I
[57] http://www.itu.int/rec/T-REC-Y.3013-201408-I/en
[58] https://www.schneier.com/blog/archives/2007/01/information_sec_1.html ; a comprehensive discussion is given in pages 103-107 of the Global Internet Report 2016 of the Internet Society, see in particular the examples on p. 101. The Report is available at:
https://www.internetsociety.org/globalinternetreport/2016/
[59] See also pp. vii and 66 of GCIG.
[60] See p. 18 of the cited Global Internet Report 2016.
[61] See p. 107 of the cited Global Internet Report 2016.
[62] https://www.schneier.com/blog/archives/2016/07/real-world_secu.html

standards, policing compliance, and implementing solutions across companies and networks."

While some national authorities are taking some measures[63], at present, there does not appear to be adequate consideration of these issues at either the national or international levels.

6. Consequently, it is proposed to recommend that IETF, ISOC, ITU, UNCITRAL, and UNCTAD be mandated to study the issue of externalities arising from lack of security, which has technical, economic, and legal aspects. In particular, UNCITRAL should be mandated to develop a model law on the matter.

7. Ethical issues of networked automation, including driverless cars

More and more aspects of daily life are controlled by automated devices, and in the near future automated devices will provide many services that are today provided manually, such as transportation. Automated devices will have to make choices and decisions.[64] It is important to ensure that the choices and decisions comply with our ethical values. According to one analysis, the new European Union Data Protection Regulation "will restrict automated individual decision-making (that is, algorithms that make decisions based on user-level predictors) which 'significantly affect' users. The law will also create a 'right to explanation,' whereby a user can ask for an explanation of an algorithmic decision that was made about them." [65] See also the discussion of algorithmic data processing and artificial intelligence presented under item 1 above.

At present, there does not appear to be adequate consideration of these issues at the international level.

7. Consequently, it is proposed to recommend that UNESCO and UNICTRAL be mandated to study the ethical issues of networked automation, including driverless cars, which include ethical and legal aspects.

8. How to deal with induced job destruction and wealth concentration

Scholars have documented the reduction in employment that has already been caused by automation. It is likely that this trend will be reinforced in the future.[66] Even if new jobs are created as old jobs are eliminated, the qualifications for the new jobs are

[63] For example, for cybersecurity for motor vehicles, see: http://www.nhtsa.gov/About-NHTSA/Press-Releases/nhtsa_cybersecurity_best_practices_10242016 . For a general approach see Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union, at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.194.01.0001.01.ENG&toc=OJ:L:2016:194:TOC

[64] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML%2BCOMPARL%2BPE-582.443%2B01%2BDOC%2BPDF%2BV0//EN

[65] http://arxiv.org/abs/1606.08813

[66] http://robertmcchesney.org/2016/03/01/people-get-ready-the-fight-against-a-jobless-economy-and-a-citizenless-democracy/ and http://www.newsclick.in/international/review-schiller-dan-2014-digital-depression-information-technology-and-economic-crisis and p. 88 of GCIG and http://library.fes.de/pdf-files/wiso/12864.pdf and http://library.fes.de/pdf-files/wiso/12866.pdf and http://unctad.org/en/PublicationsLibrary/presspb2016d6_en.pdf

not the same as the qualifications for the old jobs.[67] These developments, including the so-called sharing economy, pose policy and regulatory challenges.[68]

Further, it has been observed that income inequality is increasing in most countries, due at least in part to the deployment of ICTs. More broadly, it is important to consider the development of ICTs in general, and the Internet in particular, from the point of view of social justice[69]. Indeed, it has been posited that the small number of individuals who control the wealth generated by dominant platforms (see below) may be using that wealth to further particular economic and political goals, and that such goals may erode social justice.[70] Further, the algorithms that are increasingly used to automate decisions such as granting home loans may perpetuate or even increase inequality and social injustice.[71]

At present, there does not appear to be adequate consideration of these issues at the international level.

8. Consequently, it is proposed to recommend that ILO and UNCTAD be mandated to study the issues of induced job destruction, wealth concentration, and the impact of algorithms on social justice and that UNCTAD compile, and coordinate the studies made by other agencies such as OECD, World Bank, IMF.

9. How to deal with platform dominance

It is an observed fact that, for certain specific services (e.g. Internet searches, social networks, online book sales, online hotel reservations) one particular provider becomes dominant. If the dominance is due to a better service offer, then market forces are at work and there is no need for regulatory intervention.

But if the dominance is due to economies of scale and network effects, then a situation akin to a natural monopoly[72] might arise, there might be abuse of dominant market power[73], and regulatory intervention is required[74]. Appropriate regulatory

[67] See for example p. viii of GCIG; see also http://www.economist.com/news/leaders/21701119-what-history-tells-us-about-future-artificial-intelligenceand-how-society-should ; and https://www.technologyreview.com/s/601682/dear-silicon-valley-forget-flying-cars-give-us-economic-growth/ ;
and https://www.technologyreview.com/s/602489/learning-to-prosper-in-a-factory-town/

[68] See for example p. 89 of GCIG. And the recent call for doing more to help globalization's losers by Mario Draghi, the president if the European Central Bank, Donald Tusk, the president of the European Council, and Christine Lagarde, the head of the International Monetary Fund, reported in the Financial Times: https://www.ft.com/content/ab3e3b3e-79a9-11e6-97ae-647294649b28

[69] By "social justice" we mean the fair and just relation between the individual and society. This is measured by the explicit and tacit terms for the distribution of wealth, opportunities for personal activity and social privileges. See https://en.wikipedia.org/wiki/Social_justice

[70] http://www.commondreams.org/news/2016/01/20/just-who-exactly-benefits-most-global-giving-billionaires-bill-gates and
http://www.thedailybeast.com/articles/2016/08/11/today-s-tech-oligarchs-are-worse-than-the-robber-barons.html

[71] https://www.fordfoundation.org/ideas/equals-change-blog/posts/weapons-of-math-destruction-data-scientist-cathy-o-neil-on-how-unfair-algorithms-perpetuate-inequality/

[72] https://en.wikipedia.org/wiki/Natural_monopoly

[73] https://newint.org/features/2016/07/01/smiley-faced-monopolists/ ; and the more radical criticism at:
http://www.rosalux-nyc.org/wp-content/files_mf/scholz_platformcoop_5.9.2016.pdf

[74] For a high-level outline of the issues, see Recommendation ITU-T D.261, Principles for market definition and identification of operators with significant market power – SMP.

intervention might be different from that arising under competition or anti-trust policies.[75] As one commentator puts the matter[76] (his text starts with a citation):

> *"'I do not divide monopolies in private hands into good monopolies and bad monopolies. There is no good monopoly in private hands. There can be no good monopoly in private hands until the Almighty sends us angels to preside over the monopoly. There may be a despot who is better than another despot, but there is no good despotism'* William Jennings Bryan, speech, 1899, quoted in Hofstadter (2008)

> The digital world is currently out of joint. A small number of tech companies are very large, dominant and growing. They have not just commercial influence, but an impact on our privacy, our freedom of expression, our security, and – as this study has shown – on our civic society. Even if they mean to have a positive and constructive societal impact – as they make clear they do – they are too big and have too great an influence to escape the attention of governments, democratic and non-democratic. Governments have already responded, and more will."

As noted above, the dominance of certain platforms raises issues related to freedom of speech, because some platforms apply strict rules of their own to censor certain types of content[77], and, for many users, there are no real alternatives to dominant platforms[78].

As *The Economist* puts the matter[79]:

> "Prudent policymakers must reinvent antitrust for the digital age. That means being more alert to the long-term consequences of large firms acquiring promising startups. It means making it easier for consumers to move their data from one company to another, and preventing tech firms from unfairly privileging their own services on platforms they control (an area where the commission, in its pursuit of Google, deserves credit). And it means making sure that people have a choice of ways of authenticating their identity online.
>
> …
>
> … The world needs a healthy dose of competition to keep today's giants on their toes and to give those in their shadow a chance to grow."

National authorities in a number of countries have undertaken investigations,[80] and even imposed measures,[81] in specific cases. And at least one influential member of a

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[75] https://www.competitionpolicyinternational.com/let-the-right-one-win-policy-lessons-from-the-new-economics-of-platforms/

[76] Martin Moore. *Tech Giants and Civic Power*. Centre for the Study of Media, Communication, and Power, King's College. April 2016. Available at: http://www.kcl.ac.uk/sspp/policy-institute/CMCP/Tech-Giants-and-Civic-Power.pdf

[77] See for example https://www.theguardian.com/technology/2016/sep/09/facebook-deletes-norway-pms-post-napalm-girl-post-row

[78] https://www.theguardian.com/technology/2016/nov/17/google-suspends-customer-accounts-for-reselling-pixel-phones

[79] http://www.economist.com/news/leaders/21707210-rise-corporate-colossus-threatens-both-competition-and-legitimacy-business

[80] See for example http://europa.eu/rapid/press-release_IP-16-1492_en.htm ; http://europa.eu/rapid/press-release_IP-16-2532_en.htm and

national parliament has expressed concern about some major Internet companies "because they control essential tech platforms that other, smaller companies depend upon for survival."[82]

However, it does not appear that there is an adequate platform for exchanging national experiences regarding such matters.[83]

Further, dominant platforms (in particular those providing so-called "sharing economy" services) may raise issues regarding worker protection, and some jurisdictions have taken steps to address such issues.[84]

9.1 Consequently, it is proposed that UNCTAD be mandated to study the economic and market issues related to platform dominance, and to facilitate the exchange of information on national experiences, and that the ILO be mandated to study the worker protection issues related to platform dominance and the so-called "sharing economy".

Further, dominant search platforms may, inadvertently or deliberately, influence election results, which may pose an issue for democracy.[85]

9.2 Consequently, it is proposed to recommend that the Inter-Parliamentary Union (IPU) and the UN HCHR be mandated to study the potential effects of platform dominance on elections and democracy.

10. How to deal with embedded software

More and more devices used in ordinary life, including in particular automobiles, depend more and more on software. Software is protected by copyright law. Thus users who buy a device have increasingly less control over the device, because they cannot change the software controls the device. This raises significant policy issues.[86] In fact, attempts to change the software may be criminal acts in some countries.

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http://europa.eu/rapid/press-release_IP-15-5166_en.htm ;
a more general approach is described at:
http://www.accc.gov.au/media-release/accc-to-undertake-market-study-of-the-communications-sector

[81] See for example
http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=606&id_article=2534

[82] http://www.cnet.com/news/senator-warren-says-apple-google-and-amazon-have-too-much-power/

[83] Except for certain specific issues relating to Over the Top (OTT) services and telecommunications operators which are discussed in ITU. A good summary of those specific issues is found in the section on OTT services of:
http://www.itu.int/md/T13-WTSA.16-INF-0009/en

[84] See for example pp. 12 and 13 of http://library.fes.de/pdf-files/id-moe/12797-20160930.pdf and
https://www.theguardian.com/technology/2016/oct/28/uber-uk-tribunal-self-employed-status .
A more general discussion of various issues arising out of platform dominance is at:
http://www.alainet.org/en/articulo/181307

[85] https://newint.org/features/2016/07/01/can-search-engine-rankings-swing-elections/ and
https://www.theguardian.com/world/2016/oct/27/angela-merkel-internet-search-engines-are-distorting-our-perception and
http://singularityhub.com/2016/11/07/5-big-tech-trends-that-will-make-this-election-look-tame/ and
http://money.cnn.com/2016/11/09/technology/filter-bubbles-facebook-election and
http://www.pnas.org/content/112/33/E4512.full.pdf ;
for a possible impact on free speech, see:
http://www.globalresearch.ca/google-corporate-press-launch-attack-on-alternative-media/5557677 .

[86] http://copyright.gov/policy/software/

This situation may result in a significant shift of market power away from consumers, thus reducing competition. At present, there does not appear to be adequate consideration of these issues at the international level.

10. Consequently, it is proposed to recommend that UNCTAD and WIPO be mandated to study the issues related to embedded software, which include economic and legal issues.

5. "Jurisdiction and equal footing with respect to Internet domain names and addresses", Richard Hill, APIG

Jurisdiction and equal footing with respect to Internet domain names and addresses

Richard Hill
Association for Proper Internet Governance[87]
19 November 2016

1. This submission addresses the question: "2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?"

2. The specific proposed recommendations are shown as underlined text in paragraphs 11, 12, 15, and 17 below.

3. The Tunis Agenda states:

> **68.** We recognize that all governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet. **We also recognize** the need for development of public policy by governments in consultation with all stakeholders.
>
> **69.** 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.

4. In the process of revising its bylaws as part of the IANA transition process, the Internet Corporation for Assigned Names and Numbers (ICANN) has explicitly chosen to subject itself to the laws of California, see for example articles 6.1(a) and 24.1 of the new bylaws[88]. Further, ICANN's articles of incorporation[89] specify that it is a California corporation. Article 6 of the bylaws and the articles of incorporation can only by changed upon approval by a three-fourths vote of all the Directors and the approval of the Empowered Community[90]. A change to a fundamental bylaw is approved by the Empowered Community only if it is not objected to by more than one member of that body[91].

5. Since ICANN is legally a US entity, it is subject to the jurisdiction of US courts[92]. US courts have exercised that jurisdiction in the past[93].

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[87] http://www.apig.ch
[88] https://www.icann.org/en/system/files/files/adopted-bylaws-27may16-en.pdf
[89] https://www.icann.org/resources/pages/governance/articles-en
[90] See article 25 and 25.2(b).
[91] See 1.4(b)(ii) of the Annex D of the bylaws.
[92] A detailed explanation of why this is significant, including the historical background of the issue, is provided at:
http://cis-india.org/internet-governance/blog/jurisdiction-the-taboo-topic-at-icann ; a shorter account is

8. In line with the principles of equal footing and equal roles and responsibilities of all governments enunciated in the Tunis Agenda, ICANN should not be subject to the jurisdiction of a particular country.

9. One solution would be for the USA (or some other country) to grant some form of immunity to ICANN.

10. But, since ICANN has chosen to subject itself to the jurisdiction of the USA, it does not appear that ICANN would accept some form of immunity.

11. Therefore it seems more appropriate to propose to recommend that the USA make a binding agreement with other states to the effect that it would not exercise its jurisdiction over ICANN in ways that would violate the principles of equal footing and equal roles and responsibilities of all governments. For example, the USA could agree that it would not exercise its jurisdiction in order to force ICANN to re-delegate a ccTLD or to reassign IP addresses[94].

12. Such a binding agreement would have to take the form of a treaty. The exact language of the treaty would have to be carefully negotiated. Therefore, it is proposed to recommend that concerned states consider the matter and consider inviting the USA to convene a treaty negotiation on this matter.

13. Further, the IANA transition process provides that the management and operation of the authoritative root zone server will continue to be provided by Verisign, but under a contract with ICANN, and not under a contract with the US government as was the case in the past.[95]

14. This decision was not the result of a public consultation. Verisign is a US company, subject to US jurisdiction, so US courts could order Verisign directly to change the root, they don't necessarily need to order ICANN to do so. So long as Verisign had a contract with the US government, it was unlikely that Verisign could be sued directly, because it was just implementing whatever NTIA told it do. But now the US government is no longer in the loop, so Verisign can be sued directly.

15. Therefore, it is proposed to recommend that the USA make a binding agreement with other states to the effect that it would not exercise its jurisdiction over Verisign

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provided at:
http://www.epw.in/journal/2016/42/web-exclusives/internet-governance.html

[93] See for example https://www.icann.org/news/announcement-2-2016-03-05-en and
https://www.prlog.org/12539064-united-states-court-has-granted-an-interim-relief-for-dca-trust-on-africa.html
and the court case filed just prior to the IANA transition:
https://www.texasattorneygeneral.gov/files/epress/Net_Complaint_-_FILED.pdf
http://ia601506.us.archive.org/17/items/gov.uscourts.txsd.1386946/gov.uscourts.txsd.1386946.7.0.pdf
http://ia601506.us.archive.org/17/items/gov.uscourts.txsd.1386946/gov.uscourts.txsd.1386946.10.1.pdf

A full compendium of litigation concerning ICANN is found at:
https://www.icann.org/resources/pages/governance/litigation-en

[94] This example is not theoretical. The equivalent of such remedies, namely "attachment" has been requested in a lawsuit involving Iran, see: https://www.icann.org/resources/pages/icann-various-2014-07-30-en
and in particular page 1 of https://www.icann.org/en/system/files/files/appellants-brief-26aug15-en.pdf
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[95] https://www.icann.org/news/blog/root-zone-management-transition-update-preservation-of-security-stability-and-resiliency

(or any future operator of the authoritative root zone file) in ways that would violate the principles of equal footing and equal roles and responsibilities of all governments. Such a binding agreement could be part of the treaty referred to above.

16. Further, ten of the thirteen root servers which provide the data used by all other instances of root servers are managed by US entities (three of which are US government agencies: NASA, Defense Systems Information Agency, and US Army); the other three servers are managed by entities in Japan, the Netherlands, and Sweden.[96] An operator of a root server could misuse it in various ways, in particular to collect certain types of data or to degrade certain services.[97]

17. Therefore, it is proposed to recommend that the USA, Japan, the Netherlands, and Sweden make a binding agreement with other states to the effect that they would not exercise their jurisdiction or operational control over any root server in ways that would violate the principles of equal footing and equal roles and responsibilities of all governments. In the case of the USA, such a binding agreement could be part of the treaty referred to above.

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[96] See https://en.wikipedia.org/wiki/Root_name_server
[97] See http://www.cavebear.com/old_cbblog/000232.html

6. "Protection of country names", Richard Hill, APIG

Protection of country names

Richard Hill
Association for Proper Internet Governance[98]
19 November 2016

1. This submission addresses the question: "2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?"

2. The specific proposed recommendation is shown as underlined text in paragraph 9 below.

Background

3. The Tunis Agenda states:

> **68.** We recognize that all governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet. **We also recognize** the need for development of public policy by governments in consultation with all stakeholders.
>
> **69.** 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.

4. In 2000, the World Intellectual Property Organization was requested by 20 states to study certain intellectual property issues relating to Internet domain names that had not been considered in the First WIPO Internet Domain Name Process, including protection of geographic identifiers.[99]

5. WIPO duly studied the issues and, on 21 February 2003, informed ICANN[100] that its Member States formally recommended, inter alia, that country names should be protected against abusive registration as domain names. The decision to make that recommendation was supported by all Member States of WIPO, with the exception of Australia, Canada and the United States of America, which dissociated themselves from the decision. Japan also expressed certain reservations. WIPO recommended that the protection of country names should be implemented through an amendment of the Uniform Dispute Resolution Policy (UDRP) and should apply to all future registrations of domain names in the gTLDs.

6. The recommendation was discussed in ICANN, but it was not agreed and, consequently, the UDRP was not modified. Thus, at present, the UDRP does not protect country names.

[98] http://www.apig.ch
[99] http://www.wipo.int/amc/en/processes/process2/index.html
[100] http://www.wipo.int/export/sites/www/amc/en/docs/wipo.doc

7. Following the privatization of ICANN on 1 November 2016, this matter was brought to the attention of the ITU World Telecommunication Standardization Assembly (WTSA) in Addendum 22 to Document 42-E[101], which states:

> There are two main categories of Top Level Domains, Country Code (ccTLDs) and Generic (gTLDs). One of the differences between the administration of the ccTLDs and the gTLDs is the national sovereignty of the administration of the ccTLDs as opposed to the global and ICANN managed administration of gTLDs.
>
> While WTSA focuses on ccTLDs, the recent expansion of generic TLDs initiated in 2012 by ICANN introduced many new applications some that have geographic implications, which require addressing various challenges, including resolution of various conflicts. **Therefore "*special attention should be given to the issue of geographic gTLDs as a concept (in generic terms), as they intersect with core areas of interests of any state*"**.

The submission to WTSA provides a summary of events relating to the delegation of the gTLD ".africa" and states:

> These challenges to delegating a regional geographic Top Level Domain raises important principle concerns for the Africa region and others over the issue of jurisdiction, who should control the delegation of critical regional geographic names like dot Africa, the role of governments and intergovernmental organizations in the ICANN multi-stakeholder model and the effectiveness and reliability of government protection mechanisms for ccTLDs and geographic names related to their distinct regions.

The submission to WTSA proposed, inter alia, to instruct ITU-T Study Group 2:

> 2 to study necessary measures that should be taken to ensure that country, territory and regional names must be protected and reserved from registration as new gTLDs; and that these names should include but not be limited to capital cities, cities, sub-national place names (county, province or state) and geographical indications;
>
> 3 to study, in collaboration with relevant bodies, on ways and means to maintain the right of Member States to request the reservation and to oppose the delegation of any top-level domain (even if it is not included on that list) on the basis of its sensitivity to regional and national interests,

8. The matter was discussed at WTSA, but no agreement was reached on whether ITU-T should study the matter, and if so how[102].

9. Consequently, it is proposed to recommend that the USA agree to transpose into its national law the WIPO recommendations cited above regarding protection of country names, so that they could be enforced in the US courts that have jurisdiction over ICANN.

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[101] http://www.itu.int/md/T13-WTSA.16-C-0042/en
[102] See DT/60, http://www.itu.int/md/T13-WTSA.16-161025-TD-GEN-0060/en

7. "Revisiting roles and responsibilities", Richard Hill, APIG

Revisiting roles and responsibilities

Richard Hill
Association for Proper Internet Governance[103]
21 November 2016

This submission addresses the question: "2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?"

The specific proposed recommendations are shown as underlined text in paragraphs 10-12 below.

The Tunis Agenda states:

> **68.** We recognize that all governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet. **We also recognize** the need for development of public policy by governments in consultation with all stakeholders.
>
> **69.** 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.

We are of the view that the roles and responsibilities of the several stakeholders outlined in paragraph 35 of the Tunis Agenda should be revisited in light of developments and discussions that have taken place over the past 10 years. Therefore, we propose the following revisions to paragraph 35 of the Tunis agenda:

> **35. We reaffirm** that the management of the Internet encompasses both technical and public policy issues, which may be inter-related, and should involve all stakeholders and relevant intergovernmental and international organizations. Decisions should always be informed as appropriate by inputs from stakeholders. In this respect it is recognized that:
>
> **a)** 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, and in particular for the protection of all human rights. Decisions should be informed by inputs from other stakeholders as appropriate.
>
> **b)** The private sector has had, and should continue to have, an important role in the development of the Internet, both in the technical and economic fields, and in providing objective factual information to policy decision-makers, so as to further the public interest and to achieve the shared goal of an equitable information society.
>
> **c)** Civil society has also played an important role on Internet matters, ~~especially at community level~~ at both the national and international levels, and should

[103] http://www.apig.ch

continue to play such a role. Further, it should provide views, opinions, and information to policy decision-makers and should be invited to comment, as appropriate, regarding public policy issues at both the national and international levels. Representatives, if representation is needed, should be selected through open, democratic, and transparent processes. Internal processes should be based on inclusive, publicly known, well defined and accountable mechanisms.

d) Intergovernmental organizations have had, and should continue to have, a facilitating role in the coordination of Internet-related public policy issues and in the harmonization of national laws and practices.

e) International organizations have also had and should continue to have an important role in the development of Internet-related technical standards and relevant policies.

The respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion.

8. Anriette Esterhuysen, Association for Progressive Communication

Submission to the CSTD Working Group on Enhanced Cooperation from the Association for Progressive Communications
December 2016

The Association for Progressive Communications (APC) welcomes the opportunity to provide our input into the work of the Working Group on Enhanced Cooperation on Public Policy Issues Pertaining to the Internet (WGEC).

Our view is that, enhanced cooperation should aim to improve and democratise the governance of the internet at all levels, not only to establish more equitable influence for and among sovereign states. Central to progress on this issue is recognition of the following:

1) There are real imbalances in the status quo of internet-related policymaking processes with developing countries having less influence and access;

2) The difference between an approach to enhanced cooperation as more equal multilateral cooperation solely among states, and an approach which sees enhanced cooperation as more effective and inclusive policy making involving all stakeholders; and

3) In spite of some ongoing challenges, the process of enhanced cooperation is progressing well, inspired in part by discussions and processes initiated at the Internet Governance Forum (IGF), and such progress should be taken into consideration by the WGEC.[104]

We encourage WGEC to take a phased and an issue-based approach to its work and welcome the questions to which we respond below. For a next phase we recommend looking at specific areas of policymaking and identifying where there are gaps in

[104] In fact, Para 65 of UNGA Resolution A/RES/70/125 specifically instructs WGEC to develop recommendations on how to ***further*** implement enhanced cooperation as envisioned in the Tunis Agenda, ***taking into consideration the work that has been done on this matter thus far."*** [emphasis added] http://unctad.org/en/PublicationsLibrary/ares70d125_en.pdf

cooperation that need to be addressed, and proposing concrete ways forward rather than considering approaches to internet governance in the abstract.

1) What are the high level characteristics of enhanced cooperation?

Equal opportunity to participate among governments The internet is a global public resource and policy decisions that impact on its development and use should be made in the broadest possible public interest. No single government should be able to dominate internet policy discussions in order to promote the interest of, for example, companies based in its territory. Nor should governments of countries with larger numbers of internet users have more say than those who are still facing connectivity challenges. All governments, irrespective of their size, wealth, or connectivity level, should have equal opportunity to participate in public policy issues pertaining to the internet.

Multistakeholder participation Multistakeholder participation is not an end in itself, it is a means to achieve the end of inclusive democratic internet governance that enables the internet to be a force for "the attainment of a more peaceful, just and prosperous world."[105] Improving multistakeholder processes, and thereby, the outcomes of those processes, cannot take place by only looking at the role of governments. Enhanced cooperation cannot be achieved through implementation by one stakeholder alone. Cooperation is needed both within and between all stakeholder groups that have an interest in internet governance. So is debate.

Stakeholders and their "respective" roles and responsibilities are approached in a flexible manner Who the precise stakeholders are, as well as their respective roles and responsibilities in an internet-related policy process will vary according to the issue under discussion.[106] It is also critical to bring in relevant expertise for the matter under discussion, which can require reaching out beyond the actors that typically participate in internet policymaking spaces. For example, policies on developing regional fibre backbone in Africa will need to involve the

[105] Geneva Declaration, para 2.

[106] http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf

communities that live in the areas where the digging will take place, the companies with whom infrastructure can be shared, governments (national and local) and regulators of all concerned countries, as well as intergovernmental groups and civil society, technical and academic actors involved in internet development. But, it will also be important to involve actors involved in renewable energy and conservation of biodiversity to consider the environmental impact of development of this new infrastructure.

Inclusivity Improving and democratising the governance of the internet at all levels requires an inclusive approach, bringing in diverse expertise and experiences. For example addressing the gender digital divide requires not only measuring the nature and underlying causes of women's exclusion from the information society, but including women in internet governance spaces where such challenges are discussed and addressed. The establishment of national multistakeholder forums and processes for dealing with internet governance and internet policy issues, and ensuring that they include marginalised voices, will help to improve inclusivity.

Trust in the integrity of the process Clear and predictable rules and modalities are critical for the integrity and legitimacy of internet-related public policy processes. When rules are unclear, it is often the powerful players that are able to exploit ambiguity and benefit most. Transparency is also critical for building trust in the process, even if not all stakeholders agree with the outcome.

Effective dialogue and debate Enhanced cooperation can only take place if participants are able to interact effectively. Event formats where one read statement is followed by another cannot constitute cooperation. Working sessions that require off-script debate and interaction amongst and between stakeholders are needed for real progress around issues.

Also important are the following which we see as enablers of enhanced cooperation:

Facilitation and support from a secretariat or coordination mechanism: Dialogue between bodies dealing with different cross-cutting public policies issues regarding the internet has been happening organically. However we see the value of mapping of ongoing policy spaces and the creation of a mechanism for information sharing with these spaces to ensure interaction

between content and outcomes of discussions at policymaking spaces.

Capacity building Investment in capacity building is needed in order to facilitate the participation of underrepresented and marginalised groups in internet governance spaces. Capacity building on internet-related public policy issues, as well as the inner-workings of the internet governance institutions and processes, are essential for enabling all stakeholders. This is particularly (but not only) the case for stakeholders from developing countries, as well as actors who are currently excluded from internet governance debates, to strengthen their participation in internet governance processes and debates at the national, regional and global level and thus to enhance cooperation around public policy issues relating to the internet. Capacity building is also necessary for those actors from developed countries who do not have sufficient understanding of the challenges faced by their counterparts in the global South.

Access to information Enhanced cooperation requires sharing information among stakeholders and between policy spaces. In order for this to happen, information, including working documents, agendas, draft inputs and outputs, and outcomes must be easily accessible to all interested stakeholders. Likewise, modalities for participation in internet governance processes must be clear and predictable.

Funding Stable and sustainable, public, and other public interest funding mechanisms that are transparent and accountable are critical for enhanced participation so that underrepresented and marginalised stakeholders, from developing countries in particular, are able to meaningfully participate in internet governance processes. All stakeholders should be involved in the process of developing these mechanisms.

2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

We encourage WGEC to consider paragraph 68 of the Tunis Agenda (in addition to paragraphs 69-71) which says that public policy must be determined in a multistakeholder manner, and as such enhanced cooperation should be among all stakeholders. Now that

the US government transferred responsibility for oversight of the Internet Assigned Numbers Authority (IANA) to the internet community, and the names and numbers issue is largely solved, we suggest that WGEC makes recommendations pertaining the social and economic issues as well as technical issues. We also recommend that WGEC makes recommendations to all stakeholders. Selecting a non-governmental co-Chair could help reinforce the multistakeholder nature of this group.

With respect to the kind of recommendations we would like to see WGEC make:

Recommendations that relate to existing internet-related policy processes in the UN. For example, recommendations on:

- How the IGF, the primary UN-based forum for discussion of internet-related public policy, can be a more effective platform for enhanced cooperation among governments? It is already an effective platform for other stakeholder groups.
- How resolutions relating to internet policy from the Human Rights Council and General Assembly, as well as recommendations from human rights treaty bodies and Special Procedures, can inform policy processes elsewhere in the UN system.
- How bodies such as the ITU, UNESCO and UNDP and others who play a role in the WSIS follow up make linkages with the implementation and follow up of the Sustainable Development Goals (SDGs).

***Recommendations that relate to non-governmental internet-related policy processes*.** For example, recommendations to technical and industry bodies on:

- How to meet their obligations under the UN Guiding Principles on Business and Human Rights and contribute to the achievement of the SDGs.
- How they can interact more effectively with intergovernmental processes and how they can include developing country stakeholders in their work.

Recommendations to national governments. For example, recommendations on:

- How to strengthen their participation in global internet-related policy processes by convening multistakeholder delegations and bringing more diverse delegations with relevant expertise to internet policymaking spaces, such as members of national human rights institutions and environmental agencies, for example.
- How to deepen implementation of regional and international agreements on internet-related policy at the national level.

Recommendations pertaining to principles for internet governance should be based on the WSIS principles. The NETmundial principles would be also be a good starting point.

9. "Jurisdiction of ICANN" Jointly by Parminder Jeet Singh, IT for Change, and Richard Hill, APIG

Jurisdiction of ICANN

Parminder Jeet Singh and Richard Hill

15 December 2016

Statement issued by 8 Indian civil society organisations,

supported by two key global networks, involved with Internet governance issues,

to the meeting of ICANN in Hyderabad, India, from 3rd to 9th November, 2016

Internet's core resources are a global public good

– They cannot remain subject to one country's jurisdiction

Recently, the US gave up its role of signing entries to the Internet's root zone file, which represents the addressing system for the global Internet. This is about the Internet addresses that end with .com, .net, and so on, and the numbers associated with each of them that help us navigate the Internet. We thank and congratulate the US government for taking this important step in the right direction. However, the organisation that manages this system, ICANN[107], a US non-profit, continues to be under US jurisdiction, and hence subject to its courts, legislature and executive agencies. Keeping such an important global public infrastructure under US jurisdiction is expected to become a very problematic means of extending US laws and policies across the world.

We the undersigned therefore appeal that urgent steps be taken to transit ICANN from its current US jurisdiction. Only then can ICANN become a truly global organisation[108]. We would like to make it clear that our objection is not directed particularly against the US; we are simply against an important global public infrastructure being subject to a single country's jurisdiction.

Domain name system as a key lever of global control

A few new top level domains like .xxx and .africa are already under litigation in the US, whereby there is every chance that its law could interfere with ICANN's (global) policy decisions. Businesses in different parts of the world seeking top level domain names like .Amazon, and, hypothetically, .Ghaniancompany, will have to be mindful

[107] *Internet Corporation for Assigned Names and Numbers*

[108] The "NetMundial Multistakeholder Statement" , endorsed by a large number of governments and other stakeholders, including ICANN and US government, called for ICANN to become a "truly international and global organization".

of *de facto* extension of US jurisdiction over them. US agencies can nullify the allocation of such top level domain names, causing damage to a business similar to that of losing a trade name, plus losing all the 'connections', including email based ones, linked to that domain name. For instance, consider the risks that an Indian generic drugs company, say with a top level domain, .genericdrugs, will remain exposed to.

Sector specific top level domain names like .insurance, health, .transport, and so on, are emerging, with clear rules for inclusion-exclusion. These can become *de facto* global regulatory rules for that sector. .Pharmacy has been allocated to a US pharmaceutical group which decides who gets domain names under it. Public advocacy groups have protested[109] that these rules will be employed to impose drugs-related US intellectual property standards globally. Similar problematic possibilities can be imagined in other sectors; ICANN could set "safety standards", as per US law, for obtaining .car.

Country domain names like .br and .ph remain subject to US jurisdiction. Iran's .ir was recently sought to be seized by some US private parties because of alleged Iranian support to terrorism. Although the plea was turned down, another court in another case may decide otherwise. With the 'Internet of Things', almost everything, including critical infrastructure, in every country will be on the network. Other countries cannot feel comfortable to have at the core of the Internet's addressing system an organisation that can be dictated by one government.

ICANN must become a truly global body

Eleven years ago, in 2005, the Civil Society Internet Governance Caucus at the World Summit on the Information Society demanded that ICANN should "negotiate an appropriate host country agreement to replace its California Incorporation".

A process is currently under-way within ICANN to consider the jurisdiction issue. It is important that this process provides recommendations that will enable ICANN to become a truly global body, for appropriate governance of very important global public goods.

Below are some options, and there could be others, that are available for ICANN to transit from US jurisdiction.

1. ICANN can get incorporated under international law. Any such agreement should make ICANN an international (not intergovernmental) body, fully preserving current ICANN functions and processes. This does not mean instituting intergovernmental oversight over ICANN.

[109] See, https://www.techdirt.com/articles/20130515/00145123090/big-pharma-firms-seeking-pharmacy-domain-to- crowd-out-legitimate-foreign-pharmacies.shtml

2. ICANN can move core internet operators among multiple jurisdictions, i.e. ICANN (policy body for Internet identifiers), PTI[110] (the operational body) and the Root Zone Maintainer must be spread across multiple jurisdictions. With three different jurisdictions over these complementary functions, the possibility of any single one being fruitfully able to interfere in ICANN's global governance role will be minimized.

3. ICANN can institute a fundamental bylaw that its global governance processes will brook no interference from US jurisdiction. If any such interference is encountered, parameters of which can be clearly pre-defined, a process of shifting of ICANN to another jurisdiction will automatically set in. A full set-up – with registered HQ, root file maintenance system, etc – will be kept ready as a redundancy in another jurisdiction for this purpose.[111] Chances are overwhelming that given the existence of this bylaw, and a fully workable exit option being kept ready at hand, no US state agency, including its courts, will consider it meaningful to try and enforce its writ. This arrangement could therefore act in perpetuity as a guarantee against jurisdictional interference without actually having ICANN to move out of the US.

4. The US government can give ICANN jurisdictional immunity under the United States International Organisations Immunities Act . There is precedent of US giving such immunity to non-profit organisations like ICANN.[112] Such immunity must be designed in such a way that still ensures ICANN's accountability to the global community, protecting the community's enforcement power and mechanisms. Such immunity extends only to application of public law of the US on ICANN decisions and not private law as chosen by any contracting parties. US registries/registrars, with the assent of ICANN, can choose the jurisdiction of any state of the US for adjudicating their contracts with ICANN. Similarly, registries/registrars from other countries should be able to choose their respective jurisdictions for such contracts.

We do acknowledge that, over the years, there has been an appreciable progress in internationalising participation in ICANN's processes, including participation from governments in the Governmental Advisory Committee. However, positive as this is, it does not address the problem of a single country having overall jurisdiction over its decisions.

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[110] Public Technical Identifier, a newly incorporated body to carry out the operational aspects of managing Internet's identifiers.

[111] This can be at one of the existing non US global offices of ICANN, or the location of one of the 3 non-US root servers. Section 24.1 of ICANN Bylaws say, "The principal office for the transaction of the business of shall be in the County of Los Angeles, State of California, United States of America. may also have an additional office or offices within or outside the United States of America as it may from time to time establish".

[112] E.g., International Fertilizer and Development Center was designated as a public, nonprofit, international organisation by US Presidential Decree, granting it immunities under United States International Organisations Immunities Act . See https://archive.icann.org/en/psc/corell-24aug06.html .

Issued by the following India based organisation:

Centre for Internet and Society, Bangalore
IT for Change, Bangalore
Free Software Movement of India, Hyderabad
Society for Knowledge Commons, New Delhi
Digital Empowerment Foundation, New Delhi
Delhi Science Forum, New Delhi
Software Freedom Law Center, India, New Delhi
Third World Network - India, New Delhi

Supported by the following global networks: Association or Progressive Communications
Just Net Coalition

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10. Parminder Jeet Singh, IT for Change

By Parminder Jeet Singh[113], IT for Change[114], Civil Society participant in the Working Group on Enhanced Cooperation

Dated:15th December, 2016

(1) What are the high level characteristics of enhanced cooperation?

Enhanced Cooperation is clearly defined by para 69 of Tunis Agenda:

> 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.

This definition of enhanced cooperation amply clarifies what it is supposed to mean, and what its high level characteristics are.

1. It is about "public policies" pertaining to the Internet: Tunis Agenda (para 34) takes a broad view of Internet governance including in its remit many kinds and levels of "principles, norms, rules, decision-making procedures, and programmes" related to shaping of the Internet. Of this broad area of Internet governance, enhanced cooperation relates only and specifically to "public policies". What are "public policies" is generally well-understood, and there is not much scope for confusion in this regard. Public policies are widely seen as directions for action laid out for an entire social-political unit by its legitimate political authorities, which may have the backing of coercive force of the state, or a combination of them (as at the international level).

2. Enhanced cooperation relates to "international" public policies, and not national ones: In an increasingly interconnected world, the world community agrees to some common international policies, and this area alone is what "enhanced cooperation" concerns itself with. We know of such policies as ranging from the human rights instruments to the global trade agreements. Some such policies exist in virtually every area/ sector, from health, education and agriculture to communication, trade and warfare. It is difficult to imagine our globalised world without such commonly agreed international public policies. More we get globalised – and Internet is a strong force towards that – more such international public policies are needed.

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3. T*echnical and operational activities are excluded:* Tunis Agenda specifically excludes Internet-related "day-to-day technical and operational matters, that do not impact on international public policy issues" from the rubric of enhanced cooperation. Therefore, the activities of ICANN and its associated technical organisations are not included here. Such exclusion, however, is only as far as they "do not impact on international public policy issues". Tunis Agenda is clear that enhanced cooperation does include 'the development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resource'. This clear separation of role of public policy from "day-to-day technical and operational matters" is very significant.

4. It is about "governments' role" in public policy making: Enhanced cooperation is specifically about government's role in international public policies. Other stakeholders too have important roles in public policy development, but, as is well known, "public policies" are definitionally made by governments. (Governments, definitionally, being agencies who make and enforce public policies.) Para 35 of Tunis Agenda reaffirms this fact. There may be other organisations that are focussed on role of other stakeholders in policy making, Internet Governance Forum being one such important body. But the call for enhanced cooperation is *specifically* about means or mechanism for enabling the central role of governments in making Internet-related international public policies.

***5. All* governments must be on an equal footing:** All governments should be able to fulfil their role with respect to Internet-related international public policies "on an equal footing". As will be discussed later, there are many instances of Internet-related public policies that have a global impact but in their development all governments do not have an "equal footing" role. This goes against the idea and requirement of "enhanced cooperation".

We commend the current exercise of beginning with a focus on what are the high level fundamental characteristics of "enhanced cooperation" as defined by the Tunis Agenda. A discussion on how to operationalize "enhanced cooperation", as is the mandate of the Working Group on Enhanced Cooperation, cannot take place in any fruitful manner without first developing a basic agreement at this level.

We have seen previous discussions on the subject often meander into areas which have nothing to do with "enhanced cooperation" as defined by the Tunis Agenda. This should be avoided at all cost, in order to move forward on the mandate of the Working Group on Enhanced Cooperation (WGEC).

Recommendations of the working group on means for enhanced cooperation must be tested against and conform to all these five fundamental high level characteristics of enhanced cooperation.

(2) Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

This version of WGEC must build upon the work done by the previous WGEC, especially as encapsulated in the documents listing the public policy and corresponding institutional gaps. These gaps have only been further accentuated in the past years, and more gaps are appearing at a very rapid pace. ***We are concerned at the view expressed by some WGEC members that the important work done in this regard, as put together by the relevant secretariat document on public policy and institutional gaps, be abandoned.*** Very ironically, most of these actors were the ones who, at the start of the previous WGEC, had insisted on doing a public policy mapping first before proceeding to institutional recommendations.

The WGEC is mandated to provide recommendations on means of enhanced cooperation as defined in paras 69 to 71 of Tuns Agenda. In the light of the above described high level characteristics of enhanced cooperation, such ***recommendations should aim at providing means or mechanisms for governments to be able to fruitfully fulfil their role and responsibility, on an equal footing, with regard to Internet-related international public policies.***

As for what kind of means or mechanisms will be appropriate to be recommended in this regard, the WGEC will need to inquire into three sequential questions. These are;

(a) Are there enough important international public policy issues pertaining to the Internet?

(b) If the response to (a) is yes, then are governments able to appropriately fulfil their roles and responsibilities, *on an equal footing*, with regard to these international public policy issues?

(c) If the response to (b) is in the negative, then what means or mechanisms will be appropriate and adequate for enabling governments to fulfil their required role, on an equal footing, especially looking at the nature and importance the existing and emergent Internet-related international public policies.

Let us briefly consider these questions in turn.

Are there enough important international public policy issues pertaining to the Internet?

Internet, and its associated digital technologies, constitute a paradigmatic social force and are fundamentally transforming practically every sector, from media and communication, to education, health and education, to

business, transportation and tourism, to governance and warfare. The succession of powerful avatars or aspects of this paradigm – dotcoms, search engines, social media, Internet platforms, big data, algorithmic decision-making, Internet of Things, and now artificial intelligence – seems unending, and their impact has been far-reaching. Indeed, we have hardly seen it all yet. Even a cursory look at the newspapers, much less going through contemporary social analysis, provides a good picture of the extent, potency and importance of the social changes that the Internet is causing. In the circumstances, it is but obvious that there are numerous immensely important public policy issues that arise around these phenomena.

Lets choose at random just one issue to judge the importance and urgency of public policy action in this area. Right now, as we write this in the last week of November, 2016, post US election results, newspapers are agog with the problem of fake news on the Internet and the possibilities of elections in one country being able to be manipulated from another, through various digital means. Today, as this note is being drafted, the news is that German Chancellor Angela Merkel, to quote the heading, "fears social bots may manipulate German election". The same news item[115] says that "Merkel has raised the idea of a code of conduct for social networks". Everyone seems to want to have something done about such monumental problems, and if public policy does not have a role here, one cant see what might have. We have deliberately chosen just one issue that is hot right now, in these weeks. The importance and urgency of this randomly picked issue shows how significant this overall field of Internet-related public policy is, and how crucial are the needed international public policy responses. This example of one issue being so important and urgent right now, in the narrow current window of time, shows both the vastness of the field of issues and their rapidly evolving nature.

The month before, it was artificial intelligence being discussed everywhere. An area that seems to have entered the general public vision just earlier this year is already seeing strong consumer-focussed applications around us; it is being employed in search engines, and the next version of top smart phones will carry artificially intelligent personal assistants (some already do). With artificial intelligence, even the coder cannot explain the basis of outcomes that the software provides, raising many ethical and practical questions of great social and political bearing. Over 2016, we also witnessed many social commentaries and regulatory battles around Uberification of work, and AirBnB-ification of distributed private resources. While the phenomenon, and the strong actors behind it, are global, the regulatory bodies are city- or nation-based, finding themselves not equipped at all for the new situations. The manner in

115 http://in.reuters.com/article/germany-merkel-socialbots-idINKBN13J1WR, November 24, 2016

which global digital corporations are very easily able to move their legal offices, finances, and their key assets – software and data – across the globe, because of their peculiar nature of business, leaves most nationally-bound policy regimes frustrated.

It is therefore also equally evident that, perhaps like no other phenomenon before (other than climate change), Internet related issues are of a global nature. Internet was deliberately designed in a trans-national manner, and its key elements continue to carry this characteristic. It is therefore undeniable that the public policies associated with the Internet, existing or the required ones, have a strong international aspect or dimension. Ask any nation, especially from the South, how much policy control it feels it has over the globalised digital phenomenon, even as it deeply affects and is transforming all sectors of its society! This situation is simply not sustainable. We urgently require a global response to it, and it is the high duty of this working group to come up with the required response.

One has, for instance, to just look at the very full agenda of the OECD's Committee on Digital Economy Policies, which is continually taking up newer and newer issues for consideration, to judge the nature, extent and importance of Internet-related international public policy issues.

The above clearly shows that there exist numerous very important international public policy issues pertaining to the Internet, and new ones keep emerging as we sit on the cusp of an epochal social transformation ushering in a post-industrial digital society.

This leads us to consider the second question: are governments able to appropriately fulfil their roles and responsibilities, on an equal footing, with regard to these international public policy issues?

We have already indicated that most nations remain utterly confused and feel helpless in this regard. Mostly, there is not much that can be done at the national level, and no proper forum exists at the international level for Internet-related international public policy issues.

With regard to such a powerful social phenomenon as the Internet and its associated digital technologies, which are transforming all sectors, and whose nature is fundamentally global, it is an obvious anomaly, of epic proportions, that there exists no international public policy forum for Internet related policies. The danger it poses, and in fact the damage it is already doing, to global public interest should be self-evident.

Absence of a democratic ("equal footing") global public policy forum does not mean that Internet/digital polices that are applicable globally are not being made. As they say, 'politics abhor a vacuum'. It is important to understand what or who is driving these default global policy regimes. OECD's mentioned Committee on Digital Economy Policies has been

developing many such policy frameworks. A few years ago, it developed "Principles for Internet Policy Making", about which there has been stated intent to make them applicable globally. In the circumstance, it is extremely ironical that, at globally democratic forums, like the WGEC itself, it is the OECD countries that are most active to assert that there are no important Internet-related international public policy issues that need addressing. They presumably mean that that they themselves are doing a good enough job for the whole world!

Meanwhile, with most key global digital corporations being US based, US policy regimes in any case apply to them (as they also apply to the ICANN). Through the global operation of these corporations, these US's public policy priorities then get applied over the whole world. EU recently held a consultation on public policy issues pertaining to Internet platforms. EU has also been active to prevent digital corporations from avoiding taxes in the countries where they actually sell their services. Trans-border flows of data – that most vital of digital asset, as well as the bearer of key rights – is a constant pre-occupation of EU authorities. Strangely, however, these do not seem to them as important international Internet-related public policy issues when participating in globally democratic forums like UN bodies, including the WGEC.

From the work of OECD's Committee on Digital Economy Policies, and other pluri-lateral activities of the developed countries, it seems evident that they would prefer to develop "globally applicable" policy frameworks for the extremely important and powerful digital phenomenon, especially in this crucial formative stage, all by themselves, excluding the developing countries. These efforts clearly do not meet the "equal footing" criterion of the definition of enhanced cooperation.

Apart from rich countries dominated plurilateral bodies dealing with these important international public policy issues, the digital arena is also fast getting subject to private governance, dominated by global corporations. Lets again take the currently hot example of artificial intelligence. An October, 2016, news-story[116] reports that a UK parliamentary committee has urged the government to act pro-actively — and to act now — to tackle "a host of social, ethical and legal questions" arising from growing usage of autonomous technologies such as artificial intelligence. Another US government report[117] of the same month asserts: "As the technology of AI continues to develop, practitioners must ensure that AI -enabled systems are governable; that they are open, transparent, and understandable; that they can work effectively with people; and that their operation will remain consistent with human values and aspirations."

116 https://techcrunch.com/2016/10/12/ai-accountability-needs-action-now-say-uk-mps/

117 https://www.whitehouse.gov/sites/default/files/whitehouse_files/microsites/ostp/NSTC/preparing_for_the_future_of_ai.pdf

Artificial Intelligence is obviously an immensely important new phenomenon, of global dimensions and importance, with extra-ordinary social policy significance. But in the absence of any democratic international platform for taking up Internet/ digital governance issues, the world is perhaps left to look up to a recently formed private sector platform called the "Partnership on AI – To Benefit People and Society" floated by the top six digital corporations. Its declared aim is 'to study and formulate best practices on AI technologies, to advance the public's understanding of AI, and to serve as an open platform for discussion and engagement about AI and its influences on people and society'. Aren't these appropriately an international public policy function to be addressed by democratic political mechanisms? Again, this is just one example, of a currently much discussed issue. (We can discuss dozens, if not more, of other similarly important Internet-related public policy issues but the space and context does not allow us to do that.)

The real meaning and purpose of enhanced cooperation therefore is to provide a democratic mechanism (meaning all "governments" are on an "equal footing") for development of the very much needed international Internet-related public policies. Such a mechanism is urgently needed if global public interest is to be safeguarded with respect to this most powerful social force, the Internet and its associated digital technologies, and the vast and deep social impact they are causing everywhere.

Every day that is being lost in not putting up the required institutional response, which is participative and democratic, means great damage to public interest. Because, in default, powerful actors keep shaping the new social paradigm in their interests. As the new structural designs become entrenched, it will become very difficult, at any latter time, to reverse their defects and harmful features, as too much economic, social and political capital would have got invested in them. This underlines a great urgency to this matter.

This brings us to the third, and the key, question; what means or mechanisms will be appropriate and adequate to enabling governments to fulfil their required role, on an equal footing, especially looking at the nature and importance the existing and emergent Internet-related international public policies, and therefore should constitute the recommendations of this working group.

The mandate of this working group is to provide recommendations to implement enhanced cooperation as envisaged in Tunis Agenda, paras 69 to 71. In light of the above analysis, its recommendations must be in form of suggesting a mechanism(s) that can enable all governments, on an equal footing, to develop the much needed international public policies pertaining to the Internet, and its associated digital phenomenon.

For a phenomenon that is so powerful as well as pervasive, and which is strongly global, such an institutional mechanism can be only in form of a UN body dedicated to this subject. This would be similar to how there is WHO for health, UNESCO for education, FAO for food and agriculture, UNICEF for child issues, UNDP for development, UN Women for gender, and so on.

It can even be argued that the important issues addressed by the mentioned UN agencies are by themselves much less global, and more local, that the digital phenomenon. The needs for an independent global agency for Internet/ digital issues is therefore particularly important. Further, to claim that creating a UN body on Internet/ digital issues means UN control over the Internet – whatever it means – is as far-fetched as to argue that because of existence of these various UN agencies the UN has taken control of education, health, food/ agriculture, child, development, and gender policies at national levels. These UN agencies provide research and analysis for policy support to member countries, build normative frameworks both for national and international activities of countries, and, as and when required, helps develop soft or hard international law, including in form of required treaties, which requires consensus among all members. An UN body for Internet/ digital issues would also only do as much.

OECD's Committee on Digital Economy Policies provides a good model for a UN body for Internet/ digital issues. In this OECD Committee, decisions are taken in an inter-governmental manner, but with extensive inputs from and discussions with all stakeholders. Proposing a similar model at the UN level should, at least *prima facie,* make it harder for OECD countries to oppose it, since they themselves develop digital policies in this manner.

In 2011, India had proposed a UN Committee On Internet-related Policies, which seems to be very similar in design to OECD's Committee on Digital Economy Policies. However, there was a lot of opposition to one proposed function of this committee, which was to coordinate and oversee Internet's technical bodies (read, ICANN et al). This function was read by many to contradict the requirement in Tunis Agenda for any means or mechanism of enhanced cooperation to stay out of day-to-day technical and operational issues. This proposal for a new UN agency can stand even if this one function is deleted (which in our view should be deleted). However, this committee will still have the task laid in the Tunis Agenda of 'the development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resource'.

It must be mentioned here that, such is the vastness and importance of Internet- related policy issues, and their fast changing nature, that an important function of this new mechanism or body will have to be of

undertaking extensive research and providing support[118], especially to the developing countries, on Internet related public policy issues. The kind of extensive work that is needed in this regard at the global level really requires a full-fledged UN body for Internet/ digital technologies, and not just a UN committee, however well-resourced, as sought by the mentioned Indian proposal.

(ICANN earns a lot from what constitutes a global tax on domain name holders, a part of which can be employed to support this new agency.)

The importance and urgency for such a new UN based institutional mechanism can be judged by a simple consideration: ***If a developing country today finds difficulties with how data is being handled by global digital corporations in that country, and wants policy guidance, better policy harmonisation with other countries, especially with where the concerned company may be based, or real enforcement action to ensure the rights of its people, which global forum can it turn to today? Similar things can be said about Internet platforms, Internet of Things, social media, cross-border artificial intelligence applications, and so on.*** (We have deliberately excluded technical issues, focussing only on economic and social policy issues, since for the former there is ICANN and ITU, but there is none for the latter, which may increasingly be even the more important set of issues.)

If this does not constitute a severe global governance deficit, it is difficult to imagine what will. Especially so in this age, when digital phenomenon is transforming practically every sector, and public policies are simply not able to keep up. If all countries get together, in the global public interest, there may just be a chance!

It is therefore most important for the WGEC to recommend a clear mechanism for governments to be able to develop international public polices pertaining to the Internet, in consultation with all stakeholders. We are unable to see what such mechanism can be, in any effective form, other than a new UN agency dedicated to Internet/ digital issues.

An appropriate international legal framework will be required sooner rather than later for the overall global Internet governance eco-system. Accordingly, one of the early tasks of the proposed "new body" dealing with Internet-related public policy issues, discussed above, will be to help negotiate a "Framework Convention on the Internet" (somewhat similar to the Framework Convention on Climate Change). Governance of the Internet concerns a variety of issues that are ever evolving. It is, therefore, preferable to formulate an enabling legal structure as a

118 As UNCTAD provides research and other inputs for developing countries on the issue of international trade.

"framework convention" rather than as a specific treaty or convention that addresses only a bounded set of issues.

In the penultimate part below, we briefly discuss three kinds of institutional mechanisms that are proposed by different actors for the task at hand, arguing why there are inappropriate and/or inadequate.

Some people advocate that the role proposed for the new UN Internet/ digital agency can simply be taken over by the ITU, which is already the UN body for telecommunication. It may be possible to sufficiently change the mandate, and equally importantly, the form, of the ITU for it to be up to this task, but we are sceptical. The ITU is organised for a technical mandate, and it should best stick to that. The key Internet/ digital issues we have discussed in this note are of social, economic, political and cultural kind, which require a very different approach than ITU can take. It also needs a more open, participative social policy development process (focussing on non-technical or policy actors) than exists in the ITU. There will continue to be very important technical issues in the Internet/ digital area, which technical agencies like the ITU, ICANN etc should keep addressing. However, they are not appropriate for economic and social policy aspects of this new phenomenon, which is the focus of enhanced cooperation. The real governance deficit is with regard to such larger public policy issues, and not regarding technical policies. It is important to begin seeing the Internet/ digital sector as not just a technical field, but as an important and powerful social force and phenomenon.

Other actors propose that Internet Governance Forum (IGF) is already fulfilling the role of enhanced cooperation, and/ or it can be further shaped/ strengthened for such a role. The IGF mandate is to enable "other stakeholders" – the non governmental ones – to fulfil their very important, discursive and participatory, role in Internet-related public policy making. It does not provide an avenue for governments to fulfil their role of actually making Internet-related public policies. (Though it enables governments to fulfil their role of taking public inputs that are very essential part of policy development.) We must not conflate these very different roles, and the different structures needed for different roles. The IGF is by design an "equal footing" structure, to ensure free and open policy deliberations. Public policy making, however, can never be made with government and non government actors on an equal footing – a global digital corporation, for instance, certainly cannot have an equal role in policy making on par with governments.

Lastly, some actors claim that since the Internet is a horizontal or meta phenomenon encompassing almost all sectors, which have their dedicated policy mechanisms, including at the UN level, it is best that Internet-related policies are developed within the respective sectors. Such a stance denies the uniqueness and power of the Internet and the digital

phenomenon as a social force in its own right. This phenomenon has its strong generic features even though its impacts is seen mostly in existing sectors, like media, transport, health and governance. Phenomena like social media, big data, Internet platforms, Internet of things, algorithmic decision making, and artificial intelligence, and the list is still unending, direct and underpin special kinds of social changes everywhere. They have also to be understood, assessed, and governed generically, beyond just seeing them from within different impacted sectors (which too is important). This is imperative for effective governance in the digital age.

Almost all countries have a separate ministry or department dealing with Internet/ digital issues. A similar structure is needed at the global level. Such an agency/ body however should work in close relationship with sectoral governance bodies, providing expertise and governance inputs/instruments for the generic features of the phenomenon, while keeping a close watch on its specific sectoral manifestations. In absence of a global Internet/ digital issues specialist agency, that looks at the sector from a holistic social, economic and cultural standpoint, some of the most important digital governance issues are by default being decided in trade treaties. For instance, as the US and the EU spar (in trade treaty negotiations like TISA and TTIP[119]) over whether data has basically to be seem through a trade lens or a rights lens, and whether the yet evolving, and some yet unknown, digital services, which will form the digital age, can peremptorily be declared to remain unregulated, there is no democratic global agency specialising in this sector that can weigh in on this all-important Internet/ digital policy issue. This would be analogous to how the views and principles of WHO, UNESCO, ILO and UNEP respectively on health, education, labor and environment related issues provide the context within which the more narrowly immediate self-interest focussed trade treaties may deal with key issues of social policy.

The WGEC has the historic responsibility to recommend a global institutional framework that would adequately address the numerous extremely important public policy issues that arise as our societies undergo a digital transformation. This responsibility cannot be taken lightly. WGEC must rise to the occasion and do all that is needed to be done to protect the public interest in these key times of flux – which contains both immense opportunity but also crippling challenges. Abdication at this crucial time will lead to long-term, and potentially irreversible, damage to the prospects of a prosperous, equitable and just digital society.

To end, we will very briefly address an important issue which was at the centre of discussions in Tunis over issues that got framed in

119 Respectively, Trade in Services Agreement and Trans-Atlantic Trade and Investment Partnership

the "enhanced cooperation" rubric – the issue of oversight of and jurisdiction over ICANN.

In this regard we refer to two document:

(1) A statement issued by key civil society organisations, supported by two global networks of civil society organisations, on the issue of jurisdiction over ICANN. This is the annex 1 to this document.

(2) The submission made by Just Net Coalition to the NetMundial Conference regarding the "Roadmap for the further evolution of the Internet Governance eco-system" which is at http://content.netmundial.br/contribution/democratising-global-governance-of-the-internet/164 . Apart from dealing with the issue of oversight of ICANN plus, this submission ***also details other institutional recommendations made above.*** It forms the annex 2 to this document.

Annex 1

Statement issued by 8 Indian civil society organisations, supported by two key global networks, involved with Internet governance issues,

to the meeting of ICANN in Hyderabad, India, from 3rd to 9th November, 2016

Internet's core resources are a global public good

– They cannot remain subject to one country's jurisdiction

Recently, the US gave up its role of signing entries to the Internet's root zone file, which represents the addressing system for the global Internet. This is about the Internet addresses that end with .com, .net, and so on, and the numbers associated with each of them that help us navigate the Internet. We thank and congratulate the US government for taking this important step in the right direction. However, the organisation that manages this system, ICANN[120], a US non-profit, continues to be under US jurisdiction, and hence subject to its courts, legislature and executive agencies. Keeping such an important global public infrastructure under US jurisdiction is expected to become a very problematic means of extending US laws and policies across the world.

We the undersigned therefore appeal that urgent steps be taken to transit ICANN from its current US jurisdiction. Only then can ICANN become a truly global organisation[121]. We would like to make it clear that our objection is not directed particularly against the US; we are simply against an important global public infrastructure being subject to a single country's jurisdiction.

Domain name system as a key lever of global control

A few new top level domains like .xxx and .africa are already under litigation in the US, whereby there is every chance that its law could interfere with ICANN's (global) policy decisions. Businesses in different

120 *Internet Corporation for Assigned Names and Numbers*

121 The "NetMundial Multistakeholder Statement" , endorsed by a large number of governments and other stakeholders, including ICANN and US government, called for ICANN to become a "truly international and global organization".

parts of the world seeking top level domain names like .Amazon, and, hypothetically, .Ghaniancompany, will have to be mindful of *de facto* extension of US jurisdiction over them. US agencies can nullify the allocation of such top level domain names, causing damage to a business similar to that of losing a trade name, plus losing all the 'connections', including email based ones, linked to that domain name. For instance, consider the risks that an Indian generic drugs company, say with a top level domain, .genericdrugs, will remain exposed to.

Sector specific top level domain names like .insurance, health, .transport, and so on, are emerging, with clear rules for inclusion-exclusion. These can become *de facto* global regulatory rules for that sector. .Pharmacy has been allocated to a US pharmaceutical group which decides who gets domain names under it. Public advocacy groups have protested[122] that these rules will be employed to impose drugs-related US intellectual property standards globally. Similar problematic possibilities can be imagined in other sectors; ICANN could set "safety standards", as per US law, for obtaining .car.

Country domain names like .br and .ph remain subject to US jurisdiction. Iran's .ir was recently sought to be seized by some US private parties because of alleged Iranian support to terrorism. Although the plea was turned down, another court in another case may decide otherwise. With the 'Internet of Things', almost everything, including critical infrastructure, in every country will be on the network. Other countries cannot feel comfortable to have at the core of the Internet's addressing system an organisation that can be dictated by one government.

ICANN must become a truly global body

Eleven years ago, in 2005, the Civil Society Internet Governance Caucus at the World Summit on the Information Society demanded that ICANN should "negotiate an appropriate host country agreement to replace its California Incorporation".

A process is currently under-way within ICANN to consider the jurisdiction issue. It is important that this process provides recommendations that will enable ICANN to become a truly global body, for appropriate governance of very important global public goods.

Below are some options, and there could be others, that are available for ICANN to transit from US jurisdiction.

122 See, https://www.techdirt.com/articles/20130515/00145123090/big-pharma-firms-seeking-pharmacy-domain-to-crowd-out-legitimate-foreign-pharmacies.shtml

1. ICANN can get incorporated under international law. Any such agreement should make ICANN an international (not intergovernmental) body, fully preserving current ICANN functions and processes. This does not mean instituting intergovernmental oversight over ICANN.

2. ICANN can move core internet operators among multiple jurisdictions, i.e. ICANN (policy body for Internet identifiers), PTI[123] (the operational body) and the Root Zone Maintainer must be spread across multiple jurisdictions. With three different jurisdictions over these complementary functions, the possibility of any single one being fruitfully able to interfere in ICANN's global governance role will be minimized.

3. ICANN can institute a fundamental bylaw that its global governance processes will brook no interference from US jurisdiction. If any such interference is encountered, parameters of which can be clearly pre-defined, a process of shifting of ICANN to another jurisdiction will automatically set in. A full set-up – with registered HQ, root file maintenance system, etc – will be kept ready as a redundancy in another jurisdiction for this purpose.[124] Chances are overwhelming that given the existence of this bylaw, and a fully workable exit option being kept ready at hand, no US state agency, including its courts, will consider it meaningful to try and enforce its writ. This arrangement could therefore act in perpetuity as a guarantee against jurisdictional interference without actually having ICANN to move out of the US.

4. The US government can give ICANN jurisdictional immunity under the United States International Organisations Immunities Act . There is precedent of US giving such immunity to non-profit organisations like ICANN.[125] Such immunity must be designed in such a way that still ensures ICANN's accountability to the global community, protecting the community's enforcement power and mechanisms. Such

123 Public Technical Identifier, a newly incorporated body to carry out the operational aspects of managing Internet's identifiers.

124 This can be at one of the existing non US global offices of ICANN, or the location of one of the 3 non-US root servers. Section 24.1 of ICANN Bylaws say, "The principal office for the transaction of the business of shall be in the County of Los Angeles, State of California, United States of America. may also have an additional office or offices within or outside the United States of America as it may from time to time establish".

125 E.g., International Fertilizer and Development Center was designated as a public, nonprofit, international organisation by US Presidential Decree, granting it immunities under United States International Organisations Immunities Act . See https://archive.icann.org/en/psc/corell-24aug06.html .

immunity extends only to application of public law of the US on ICANN decisions and not private law as chosen by any contracting parties. US registries/registrars, with the assent of ICANN, can choose the jurisdiction of any state of the US for adjudicating their contracts with ICANN. Similarly, registries/registrars from other countries should be able to choose their respective jurisdictions for such contracts.

We do acknowledge that, over the years, there has been an appreciable progress in internationalising participation in ICANN's processes, including participation from governments in the Governmental Advisory Committee. However, positive as this is, it does not address the problem of a single country having overall jurisdiction over its decisions.

Issued by the following India based organisation:

Centre for Internet and Society, Bangalore

IT for Change, Bangalore

Free Software Movement of India, Hyderabad

Society for Knowledge Commons, New Delhi

Digital Empowerment Foundation, New Delhi

Delhi Science Forum, New Delhi

Software Freedom Law Center, India, New Delhi

Third World Network - India, New Delhi

Supported by the following global networks:

Association For Progressive Communications

Just Net Coalition

Annex 2

Submission made by Just Net Coalition[126] to the Net Mundial Conference on the required institutional architecture for global Internet governance

23, 24 - April 2014 *São Paulo,* **Brazil**

Democratising Global Governance of the Internet

How to Achieve a Just and Equitable Internet for All

The Internet has become a vitally important social infrastructure that profoundly impacts our societies. We are all citizens of an Internet-mediated world whether as the minority who uses it or the majority who does not. *The Internet must advance human rights and social justice. Internet governance must be truly democratic.*

The Internet is reorganising public institutions, including those related to governance, welfare, health, and education, as well as key sectors such as media, communications, transport and finance. It has transformed the way we do many things but the benefits promised for all have not been adequately realized. On the contrary - we have seen mass surveillance, abusive use of personal data and their use as a means of social and political control; the monopolization, commodification and monetisation of information and knowledge; inequitable flows of finances between poor and rich countries; and erosion of cultural diversity. Many technical, and thus purportedly 'neutral', decisions have in reality led to social injustice as technology architectures, often developed to promote vested interests, increasingly determine social, economic, cultural and political relationships and processes.

Opportunities for the many to participate in the very real benefits of the Internet, and to fully realize its enormous potential, are being thwarted by growing control of the Internet by those with power - large corporations and certain national governments. They use their central positions of influence to consolidate power and to establish a new global regime of control and exploitation; under the guise of favouring liberalization, they are in reality reinforcing the dominance and profitability of major corporations at the expense of the public interest, and the overarching position of certain national interests at the expense of global interests and well being.

Existing governance arrangements for the global Internet are inadequate. They suffer from a lack of democracy; an absence of legitimacy, accountability and transparency; excessive corporate influence and regulatory capture; and too few opportunities for effective participation by people, especially from developing countries. The situation can be remedied only through fundamental changes to the current governance arrangements.

126 http://justnetcoalition.org/

The governance of the Internet must proceed from the position that inter-connectivity cannot serve human rights and social justice unless it leads to and supports distributed power, particularly to the grassroots but also across the various Internet divides—social, economic, political. Ensuring that the Internet does not in fact lead to greater centralisation of power will therefore require appropriate interventions at all levels of Internet governance. Building an effective framework to achieve these objectives is the greatest challenge today in terms of global governance of the Internet.

We have outlined elsewhere the principles that, in our view, must underpin the Internet in the future.

We offer here an outline of a framework for how to implement these principles in the future. This framework should underpin the emergence of an Internet that advances human rights and social justice globally, and the reconfiguration of Internet governance into a truly democratic space.

A roadmap for democratising global governance of the Internet

1. New global governance mechanisms are needed. We believe that two distinct mechanisms are needed: one that looks at the global Internet-related public policy issues in various social, economic, cultural and political domains, and another that undertakes oversight of the technical and operational functions related to the Internet (basically, replacing the current unilateral oversight of ICANN and IANA by the US government). This will require the setting up of appropriate new global governance bodies as well as a framework of international law to facilitate their work, as follows.

2. A new UN body for Internet-related public policy issues: An anchor global institution for taking up and addressing various public policy issues pertaining to the Internet in an ongoing manner is urgently required. It can be a committee attached to the UN General Assembly or a more elaborate and relatively autonomous body linked loosely to the UN (as a specialized UN body). It should have a very strong and institutionalized public consultative mechanism, in the form of stakeholder advisory groups that are selected through formal processes by different stakeholder constituencies, ensuring adequate representativeness. (OECD's Committee on Computer, Information and Communication Policy and India's recent proposal for a UN Committee on Internet-related Policies are two useful, and somewhat similar, models that can be explored.) This 'new body' will stay abreast of global Internet-related issues; where necessary, develop international level public policies in the concerned areas; seek appropriate harmonization of national level policies; and facilitate required treaties, conventions and agreements. It will also have the necessary means to undertake studies and present analyses in different policy areas.

Most Internet-related public policy issues are of a cross-cutting nature, and overlap with mandates of other existing global governance bodies, such as WIPO, UNESCO, WTO, UNDP, UNCTAD, ITU and so on. This proposed new 'body' would establish appropriate relationships with these other existing bodies, including directing relevant public policy issues to them, receiving their inputs and comments, and itself contributing specific Internet-related perspectives to issues under the purview of these other bodies.

3. A new 'Internet Technical Oversight and Advisory Board': This Board will replace the US government's current oversight role over the technical and operational functions performed by ICANN. The membership of this oversight Board can be of a techno-political nature, *i.e.* consisting of people with specialized expertise but who also have appropriate political backing, ascertained through a democratic process. For instance, the Board can be made of 10/15 members, with 2/3 members each from five geographic regions (as understood in the UN system). These members can perhaps be selected through an appropriate process by the relevant technical standards bodies and/or country domain name bodies of all the countries of the respective region. They could perhaps come from top recognised technical academic bodies of each country/ region. One member each from each Regional Internet Registries could also be included. (Other mechanisms for constituting the techno-political membership of this Board could also be considered.)

3.1 The Internet Technical Oversight and Advisory Board will seek to ensure that the various technical and operational functions related to the global Internet are undertaken by the relevant organizations as per international law and public policy principles developed by the concerned international bodies.

3.2 The Technical Oversight and Advisory Board will have a dual role: (1) oversight of decisions of ICANN related to its various functions of managing and coordination of critical Internet resources, and (2) advice on public policy perspectives to various technical standards bodies, and in this regard be the link between public policy bodies and these standards bodies. The function of oversight could be arranged to be undertaken either ex ante - before changes are made in the root files, or ex post - after the changes are made, as confirming them. The advisory role of this Board vis a vis technical standards bodies will be non-binding.

3.2 With regard to ICANN, the role of this Board will be comparable to that exercised by the US government in its oversight over ICANN. As for the decentralized Internet standards development mechanisms, like the Internet Engineering Task Force, these self organising systems based on voluntary adoption of standards will continue to work as at present. The new Board will have operating principles ensuring a very light touch and non-binding role. It will bring in imperatives from, and advise technical standards bodies on, international public policies, international law and norms being developed by various relevant bodies.

3.3 The enable the Board to fulfil its oversight mandate, ICANN must become an international organisation, without changing its existing multistakeholder character in any substantial manner. It would enter into a host country agreement with the US government (or with the government of another country). It would have full immunity from national law and executive authority, and be guided solely by international law, and be incorporated under it. Supervision of the authoritative root zone server would also be transferred to this Board, and it would exercise this role with the help of an internationalised ICANN.

3.4 This board will also advise the afore-mentioned new public policy body on technical matters pertaining to the Internet policy making, as well as take public policy inputs from it.

4. Framework Convention on the Internet: An appropriate international legal framework will be required sooner rather than later for the above bodies to function properly. Accordingly, one of the early tasks of the proposed "new body" dealing with Internet-related public policy issues, discussed above, will be to help negotiate a "Framework Convention on the Internet" (somewhat similar to the Framework Convention on Climate Change[3]). Governance of the Internet concerns a variety of issues that are ever evolving. It is, therefore, preferable to formulate an enabling legal structure as a "framework convention" rather than as a specific treaty or convention that addresses only a bounded set of issues.

4.1 Such a Framework Convention can initially introduce a series of principles, protocols and processes that can then frame further treaties, agreements, etc. on more specific issues. It will thus enable appropriate and ongoing global policy responses to various opportunities and challenges presented by the fast-evolving phenomenon of the Internet. It will also formalise the basic architecture of the global governance of the Internet; *inter alia* recognising and legitimising the existing roles and functions of the various bodies currently involved with managing the technical and logical infrastructure of the Internet, including the ICANN, Regional Internet Registries, Internet technical standards bodies and so on.

4.2 There will also be a need for the development of institutional mechanisms for crisis response and dispute resolution in relation to the global Internet, and the social activities that depend on it.

4.3 The idea of a framework convention, and/or greater involvement of UN institutions, has been criticized for various reasons, including a reduction of democracy, infringement on national sovereignty, threats to freedom of speech, a risk of slowing innovation.

4.4 In our view, only appropriate government involvement can ensure democracy, for a number of reasons: Private companies are not democratic institutions and are obliged to act in the interests of owners and shareholders; nations can and frequently do limit their sovereignty voluntarily by agreeing treaties, and such treaties are binding only after they are ratified by national parliaments, thus ensuring the respect of democratic decision-making; human rights, including the right to free speech, are protected by customary internal law enunciated in the Universal Declaration of Human Rights and cannot be limited by any of the mechanisms outlined above; and appropriate government intervention can foster competition and innovation, and indeed calls for net neutrality regulation are intended to have exactly this effect.

5. Funding: Recognising that the current process of domain name registration in reality acts as a license fee or excise tax on Internet users, funding for the proposed new global Internet policy mechanisms would come from the collections made by relevant bodies from the allocation of naming and numbering resources pertaining to the global Internet (like the fee that ICANN collects annually from each domain name owner). These accruals now run into millions of dollars every year and could be adequate to fund a large part of the needed mechanisms for democratic governance of the global Internet.

Contributions Submitted by Representatives from the Business Community

11. Jimson Olufuye, Africa Information & Communication Technologies Alliance (AfICTA)

AfICTA Input to the 2 Questions from the 1st Meeting of WGEC 2.0
15 December, 2016

Introduction

Reflecting on the Tunis Agenda 71
71. The process towards EC, to be started by the UN SG, involving all relevant organizations by the end of the first quarter of 2006, will involve all stakeholders in their respective roles, will proceed as quickly as possible consistent with legal process, and will be responsive to innovation. Relevant organizations should commence a process towards enhanced cooperation involving all stakeholders, proceeding as quickly as possible and responsive to innovation. The same relevant organizations shall be requested to provide annual performance reports.

Acknowledging that WGEC 1.0 identified operation groups towards Enhanced Cooperation viz

A. Implementation of the Tunis Agenda
B. Public policy issue and possible mechanisms
C. Role of stakeholders
D. Developing countries
E. Barriers for participation in enhanced cooperation

Africa Information and Communication Technology Alliance (AfICTA) is pleased to submit the following contributions to the two (2) posed by WGEC 2.0.

Question 1

What are the high level characteristics of enhanced cooperation?

From the perspective of AfICTA, some of the high level characteristics of enhanced cooperation (EC) include:

i. Peace: EC we believe should foster peace and harmony in the global Internet community

ii. Openness: The global Internet community would benefit greatly from an open society where stakeholders are free to share their view points

iii. Inclusivity: EC through any mechanism should be inclusive of all stakeholders particularly those from developing and least developed nations

iv. Multi-stakeholderism: EC we also believe should involve all stakeholders and stakeowners involved in the evolution, support and sustenance of the one global Internet

v. Result driven: EC of any form should be result oriented and benefit driven towards the realization of the sustainable development goals

Question 2

Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should be considered?

AfICTA proposes that the following recommendations should be considered

1. That all governments on equal footing should participate in the work of the Government Advisory Committee of Internet Corporation for Assigned Names and Numbers in the management of the Critical Internet Resources (CIR)
2. That on need basis, government, business, civil society, technical and academic community should evolve and engage on processes of inclusive cooperation on diverse global public policy matters pertaining to the Internet
3. That efforts be made to increase awareness of diverse global public policy matters pertaining to the Internet especially in the developing and least developed nations
4. All countries including developing and least developed are encouraged to evolve national multi-stakeholder mechanism to address current and emerging regulatory and policy issues pertaining to the Internet.
5. Recognizing capacity gap in addressing Internet public policy matters in developing and least developed countries appropriate support mechanism should be enabled to bridge the gap.

Conclusion

An example of enhanced cooperation was the process operationalized by the global Internet stakeholder community and engendered by ICANN which produced management products that led to the successful transition of the United States National Telecommunication and Information Administration (NTIA) stewardship to the global stakeholder community for which the transition on 1 October, 2016 went smoothly without any hitch to the functioning of the Internet. It is important to note that the process under discourse satisfied the characteristics outlined in answer to question 1 above.

About AfICTA – Africa ICT Alliance

Africa Information & Communication Technologies Alliance (AfICTA) is a concerned private sector led alliance of ICT Associations, multi-national corporations, companies, organisations and individuals in the ICT sector in Africa. Membership is currently from 27 African countries with the vision to fulfil the promise of the digital age for everyone in Africa. For more information on AfICTA, please visit http://aficta.org.

Submitted by
Jimson Olufuye PhD
Chair,
AfICTA

12. Timea Suto, ICC Basis

ICC BASIS responses to guiding questions for the second meeting of the CSTD WGEC2

This document is the response of the International Chamber of Commerce (ICC) Business Action to Support the Information Society (BASIS) initiative to the guiding questions for the second meeting of the Commission on Science and Technology for Development (CSTD) Working Group on Enhanced Cooperation (WGEC2).

Q1: What are the high level characteristics of enhanced cooperation?

The below characteristics do not aim for an exclusive defining answer to "what is enhanced cooperation", rather intend to start a dialogue on answering the question: "what kind of enhanced cooperation do we want?" While mindful that this list might not be an exclusive one, business believes the below characteristics are equally weighted and mutually reinforcing. ICC BASIS believes that enhanced cooperation should be:

- **Participatory and inclusive**
  Enhanced cooperation should be open to participation by stakeholders with all views taken into account. Participation should be inclusive of all who have an interest in the international Internet-related public policy issue, paying particular attention to the needs of stakeholders from developing countries.
- **Responsive**
  Enhanced cooperation should develop continuously in response to innovation and with foresight towards new developments that may have international Internet-related public policy implications.
- **Flexible**
  Enhanced cooperation should be flexible recognizing that different kinds of international Internet related public policy issues require different kinds of stakeholder cooperation in different circumstances.
- **Respecting human rights and fundamental freedoms**
  Enhanced cooperation should support and foster respect for human rights and fundamental freedoms, recognising they are universal, indivisible, interdependent and interrelated.
- **Effective and sustainable**
  Enhanced cooperation should be focused on achieving mutually agreed objectives aimed at long-term sustainability.
- **Evidence-based**
  Enhanced cooperation should be based on a broad and robust evidence base that is accessible and to which all stakeholders are able to contribute.
- **Transparent**
  Enhanced cooperation should be transparent to all stakeholders. Participating stakeholders should take responsibility for their actions and should be prepared to explain them.

Q2: Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

The Tunis Agenda introduced the concept of enhanced cooperation coining the term in paragraphs 69 to 71, but offering little indication on the manner with which enhanced cooperation could be achieved, and most importantly, how it could prevail in the long run. What these three paragraphs refer to in relation to enhanced cooperation are: development of globally-applicable principles (paragraph 70), involvement of all stakeholders in their respective roles (paragraph 71), and responsiveness to innovation (paragraph 71).

Driving from these three elements, ICC BASIS believes that in order to productively and effectively progress on the process of enhanced cooperation, any and all recommendations made by the WGEC2 should rest on the following three pillars:

- **Recommendations should be general**
  In order to be "globally applicable", recommendations should be developed considering how different stakeholders, in different parts of the world, facing different issues have implemented and will need to implement enhanced cooperation. Therefore any recommendations should have an indicative, high-level character and avoid going into specifics, so that they could easily be adopted and usefully implemented by all stakeholders everywhere.
- **Recommendations should be inclusive**
  In order to "respect the involvement of all stakeholders in their respective goals", recommendations should be based on commitment to openness, inclusivity and outreach so that they encourage all stakeholders to actively participate in discussions that are critical to the responsible development of the Internet, whether speaking of enhanced cooperation in governmental, intergovernmental, non-governmental, or international organizations. This will ensure that all those stakeholders, who may be affected by decisions, are able to participate in the development and implementation of those decisions.
- **Recommendations should be future-proof**
  In order to be "responsive to innovation" recommendations should be developed with a mind-set cognizant of the pace at which technology has developed and changed the Internet Governance landscape since the Tunis Agenda was accepted in 2005, and already since the WSIS+10 review in December 2015. Any recommendations considered should be flexible and dynamic enough make sure to endure in time and respond to this fast-paced environment. New approaches, new venues and new forums have arisen to respond to new opportunities and challenges and will continue to develop in the future. It is vital that all stakeholders continue to participate in these.

In September 2015, the member states of the United Nations adopted an ambitious global agenda for sustainable development. Both leading up and subsequent to their adoption, governments, business and other stakeholders have been actively engaged in cooperative efforts to put in place the actions necessary to achieve the SDGs. The 2030 Agenda for Sustainable Development adopted by the UN General Assembly (UNGA) in 2015 is a worthy global framework enhanced cooperation could contribute to meaningfully. The 2030 Agenda relates in particular to the work of the WGEC2 as it pays particular attention to the needs of stakeholders from developing countries and recognizes the value of the Internet and ICTs and their inherent

potential to “accelerate human progress, to bridge the digital divide and to develop knowledge societies”[127].

It is now up to the WGEC2 to connect the ground work done by WGEC1 and formulate recommendations on enhanced cooperation linking those to the 2030 Development Agenda, and especially its elements directly related to policy areas pertaining to the Internet.

Based on the inputs to its questionnaire and the mapping exercise, the WGEC1 considered recommendations under five broad topics. This general outline could be maintained and recommendations discussed on the following topics:

- Implementation of the Tunis Agenda
- Public policy issues and possible mechanisms
- Role of stakeholders
- Developing countries
- Barriers for participation in enhanced cooperation

Recommendations aligning with the above-mentioned principles should be supported through examples from the database developed by WGEC1 for the mapping of international Internet public policy issues.

Based on these considerations and the three pillars outlined above, ICC BASIS believes that the WGEC2 should consider the following recommendations.

Implementation of the Tunis Agenda

The Tunis agenda provides that enhanced cooperation should be a multistakeholder process, not a governments-only process and should include participation by relevant international organizations, including inter-governmental, multistakeholder and private-sector led organizations. Enhanced cooperation is an important opportunity to continue to build better informed approaches and better equipped initiatives within and across relevant stakeholders, including the plethora of organizations working on the broad spectrum of Internet governance issues. It improves coordination, cooperation, exchange of information and can be leveraged to avoid duplication in activities and work plans. It has demonstrated effectiveness in promoting partnerships that effectively leverage the experience, expertise and capacity of all stakeholders.

Well-established processes for enhanced cooperation have been initiated in the past ten years through outreach to relevant UN agencies and also relevant multistakeholder and technical organizations, including all stakeholders.

The mapping exercise of WGEC1 identified numerous examples of enhanced cooperation already taking place around the world. There are many examples of enhanced cooperation that can be drawn from the initiatives of ICANN, ITU, ISOC, IETF, W3C, GCCS, UNESCO, OECD, WIPO and the Asia Pacific Economic Cooperation (APEC) forum, to name a few.

The Internet Governance Forum and its many national and regional initiatives has propagated this kind of cooperation, bringing together different stakeholders—nationally, regionally and globally—to address global, regional and local policy matters in an open setting, and among a wide range of organizations and stakeholders as well as producing intersessional output in the forms of best practice material, and policy insights focused on a particular question or challenge.

These initiatives should be recognized by the WGEC2 and widely shared across all stakeholders and geographies with the aim of encouraging all stakeholders to partake in and further shape and develop these processes.

[127] A/RES/70/1 paragraph 15

Public policy issues and possible mechanisms

There are a host of critical public policy issues related to the Internet that all stakeholders are grappling with, including, but not limited to privacy, transparency, security, cross-border data flows, free flow of information, market development, protection of intellectual property, creativity and innovation. The Internet, and thus issues relevant to the Internet, touch a wide range of forums, and stakeholders. As a result, cooperation among different institutions, partnerships, and enhancing operations enables the different interests, those impacted by an issue, and stakeholders, to discuss policy matters openly.

The new paradigm introduced by the 2030 Agenda, that also recognizes the important role of the Internet and ICTs, calls for a stronger alignment of all stakeholders in setting an objective for Internet policies and actions to support the agenda of sustainable and inclusive development. This need was also recognized in paragraph 12 of the Outcome document of the UNGA WSIS+10 review that formalizes a commitment to "harnessing the potential of information and communications technologies to achieve the 2030 Agenda for Sustainable Development and other internationally agreed development goals" and calls "upon all Governments, the private sector, civil society, international organizations, the technical and academic communities and all other relevant stakeholders to integrate information and communications technologies into their approaches to implementing the Goals, and request United Nations entities facilitating the World Summit on the Information Society action lines to review their reporting and work plans to support implementation of the 2030 Agenda"[128].

Enhanced cooperation as catalogued among relevant stakeholders on the range of Internet governance issues should continue to be strengthened and encouraged at the national, regional and international levels not as the goal but as the means to better deliver the actions and results needed to realize our shared vision of more inclusive and sustainable development.

Role of stakeholders

The years of learning since Tunis have demonstrated that multistakeholder involvement is the necessary understanding for innovative approaches to achieve what has already been done and what remains left to do. UNGA resolution 70/125 starts out by reaffirming the "value and principles of multi-stakeholder cooperation and engagement that have characterized the WSIS process since its inception, recognizing that effective participation, partnership and cooperation of Governments, the private sector, civil society, international organizations, the technical and academic communities and all other relevant stakeholders, within their respective roles and responsibilities, especially with balanced representation from developing countries, has been and continues to be vital in developing the information society" and calls on continued commitment from all stakeholders throughout the document.

In accordance with resolution 70/125, echoing the Tunis Agenda, all stakeholders have a responsibility and role in operationalizing enhanced cooperation. Continued and collective efforts should be made to facilitate and increase the participation of the relevant stakeholders, particularly those that have not been engaged, in cooperative processes and forums at national, regional, and international levels.

Governments acting in a multistakeholder environment should contribute according to their mandates and competencies. However, when it comes to implementing policy, it is counterproductive to act alone. Working with the private sector, civil society, technical expertise and others is what delivers intended consequences because more complete understanding and insights are leveraged. The importance of multistakeholder processes, and hence enhanced cooperation between and among

[128] A/RES/70/125 paragraph 12

stakeholders, is fundamental to the successful operationalizing and implementation of public policy issues pertaining to the Internet in a manner that scales, is effective and benefits all, while not harming innovation, creativity, investment, and opportunities to users globally.

ICC recognizes that different stakeholders should take the lead on particular issues but transparency, dialogue and openness are key to successful cooperation that delivers innovative and adaptive responses to challenges. Enhanced cooperation, with openness to participation, enables stakeholders to better carry out their roles and responsibilities because it ensures transparency, awareness, responsibilities, and accountability, of addressing different facets of a public policy issue.

Multistakeholder processes create procedures whereby there is automatic consultation with all stakeholders on Internet-related public policy issues, in particular entities impacted by the results, responsible for the implementation, or part of what the policy impacts. Whether at the national or international level, any policy issue that impacts stakeholders needs to engage those stakeholders for the appropriate policy. To this end the following actions might prove helpful:

- Continue to foster national IGF initiatives and promote the contributions they are willing to make into to regional IGF initiatives as well as into the annual global IGF.
- From a practical point of view, a single national governmental point of contact or ambassador for Internet-related issues would help.
- Create national-level policy dialogue and consultation processes with all stakeholders, various countries already have different models of this to offer as examples.

Developing countries

As access to the Internet has occurred globally and in particular in emerging regions, and as the Internet has become increasingly important to local and regional economies, the engagement of stakeholders in policies impacting national and regional frameworks has increased. National and regional initiatives reflect the priorities of regions – such priorities are critical contributions to the overall global Internet governance evolution. The 2030 Agenda sets out the ambitious goal to "significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020"[129] and the UNGA WSIS+10 review outcome document paragraphs 12 to 20 lay out in detail the progress made in this direction so far. The outcome document also recognizes the value of the IGF. It is worth mentioning here again, how the IGF and the increasing numbers of national and regional IGF initiatives have contributed, in addition to other similar initiatives, to the spread of dialogues on public policy issues and identification of priorities and challenges in all regions and in particular emerging regions. It is important to recognize this progress because it is also indicative of the efforts made to make this happen.

However, the WSIS+10 outcome document in paragraphs 21 to 27 also refers to a number of areas where more work needs to be done. And indeed, more opportunities could be created to enable all stakeholders, regardless of region, to engage in Internet governance – whether directly at the global level or by fostering mutually reinforcing links between national, regional initiatives and global activities. We believe that there are several ways to continue to build on the existing progress:

- Stakeholders working together to raise awareness across all relevant actors about the important Internet governance processes and forums at the national, regional and global levels.

[129] A/RES/70/1 Goal 9.c

- Foster mutual reinforcement of efforts by continuing to connect national and regional stakeholders at IGF initiatives, ICANN global and regional meetings, Internet Society and other Internet technical community events, as well as business community meetings such as ICC events and others.
- Continue to enhance information resources to explain the opportunities and cross-link initiatives so awareness of the different enhanced cooperation activities is increased among all stakeholders.
- Fellowship and ambassador programmes sponsored by many stakeholders to help support developing country governments and other stakeholders with travel costs as well as youth outreach programmes to encourage awareness and participation of local or regional youth when in developing countries help fuel future participation. There is a need to continue building on and raising awareness of these opportunities
- Remote participation opportunities, webcasting, transcripts, and translation are extremely important today and need to be ensured where possible.

Barriers for participation in enhanced cooperation
Barriers include financial, informational, and operational elements.

Financial support and available resources are lacking from all stakeholders to engage in global Internet governance. Paying for travel costs is only one constraint, in today's economy and environment of do more with less, human resources are stretched. Processes need to be easier to participate in, more accessible and easier to understand particularly for newcomers.

Global Internet governance processes need to continue to operationalize in ways that scale to a global stakeholder constituency, including governments – recognizing that different stakeholders may lead on different issues and recognizing the issues, processes, and forms of engagement that best enable the respective participation.

In order to promote effective participation of underrepresented people in the global information society the following actions should be considered:
- increasing awareness raising efforts by linking local actors to each other as well as to regional and global initiatives;
- assessing whether additional financial support to facilitate participation in processes and forums would be helpful, and focusing this on giving newcomers access to see and understand why participation is important;
- easing the ability to engage, whether physically or remotely; and
- ensuring ease of information dissemination.

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About the International Chamber of Commerce (ICC)

The International Chamber of Commerce (ICC) is the world's largest business organization with a network of over 6.5 million members in more than 130 countries. We work to promote international trade, responsible business conduct and a global approach to regulation through a unique mix of advocacy and standard setting activities—together with market-leading dispute resolution services. Our members include many of the world's largest companies, SMEs, business associations and local chambers of commerce.

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Contributions Submitted by Intergovernmental and International Organizations

13. European Union

The European Commission would like to make these contributions to the questions posed by the Chairman of the Working Group on Enhanced Cooperation at the first meeting held on 30 September 2016

Question 1:

What are the high level characteristics of enhanced cooperation?

The characteristics of enhanced cooperation should be clear enough to establish common understanding but broad enough to ensure that all stakeholders can commit to them. They should also be sufficiently future-proof to endure dynamic technological change. We suggest the following high level characteristics:

1. **Participatory and inclusive**
   Enhanced cooperation should be open to participation by stakeholders with all views taken into account. Participation should be inclusive of all who have an interest in the international Internet-related public policy issue, paying particular attention to the needs of stakeholders from developing countries and the principles of inclusive and sustainable development.

2. **Diverse and flexible**
   Different issues require different kinds of stakeholder cooperation and need to adapt accordingly. Enhanced cooperation should be diverse and flexible enough to enable all stakeholders to contribute according to their roles and responsibilities.

3. **Responsive**
   Enhanced cooperation should develop continuously in response to innovation and with foresight towards new developments that may have international Internet-related public policy implications.

4. **Effective and sustainable**
   Enhanced cooperation should focus on achieving mutually agreed objectives aimed at long-term sustainability.

5. **Respecting human rights and fundamental freedoms**
   Enhanced cooperation should support and foster respect for human rights and fundamental freedoms, recognising that they are universal, indivisible, interdependent and interrelated.

6. **Transparent**
   Enhanced cooperation should be transparent to all stakeholders. Participating stakeholders should take responsibility for their actions and should be prepared to explain them.

7. **Evidence-based**

   Enhanced cooperation should be based on a broad and robust evidence base that is accessible and to which all stakeholders are able to contribute. To that end the

European Commission's project to develop a Global Internet Policy Observatory (GIPO) should help to provide a platform for storing and providing information and data.

Question 2:

Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

In accordance with the principles proposed for enhanced cooperation, WGEC recommendations should be capable of implementation by stakeholders according to their different roles and responsibilities. To that end recommendations should technologically neutral while being sufficiently flexible and "future-proof" to withstand technological change and development. Recommendations should also ensure that inclusive and sustainable development goals are incorporated.

We suggest that WGEC recommendations could include:

- Promote best practice in **consultation and engagement**, including how stakeholders can reach out proactively to one another in an informative and easily understandable way

- Consider how stakeholders can **make information and evidence available** in an open, accessible and timely way in order to support meaningful participation and engagement

- Develop principles on how stakeholders can **open up their policy-making processes** to input and scrutiny from other stakeholders

- Make practical suggestions for enabling **participation of stakeholders from developing countries**, taking into account cultural and linguistic diversity and the capacity constraints faced by least developed countries

- Consider how stakeholder representatives are chosen, including best practice in ensuring a **balance of stakeholder representatives** in multi-stakeholder forums

- Support **sustainable development**, particularly in terms of capacity-building, education and skills, in order to help bridge the digital divide

- Promote an **enabling environment for investment**, in particular promoting cooperation and partnership between governments, the private sector and other stakeholders which promotes investment in infrastructure and increases affordable connectivity in developing countries

- Promote an **enabling environment for innovation**, in particular ensuring that the Internet remains an open environment which facilitates innovation and encouraging cooperation between stakeholders to this end

- Avoid **duplicating existing work** but instead seek to develop existing forums, including building understanding of multi-stakeholder enhanced cooperation processes in the full range of existing international organisations

- Consider how best to **build cooperation on emerging topics**, particularly new issues presented by newly emerging technology, in a way which allows all stakeholders to participate.

We expect that the discussions in WGEC, based on the contributions from all stakeholders, will help to provide the basis for a solid list of recommendations that the WGEC will be able to agree by consensus as these will have the authority and support to make an effective impact.

14. UNESCO

2 December 2016

UNESCO contribution to the two questions raised by the Chair of the Working Group on Enhanced Cooperation

What are the high level characteristics of enhanced cooperation?

As defined in the Tunis Agenda and through the work of the previous Working Group on Enhanced Cooperation, high level characteristics of enhanced cooperation include that it be open, inclusive, democratic, and multistakeholder, involving closer cooperation between governments, the private sector, civil society, and the technical and academic communities.

In this light, UNESCO acknowledges the significant process that has been made towards achieving enhanced cooperation since 2005. This includes, inter alia, the:

- Annual Internet Governance Forum, as well as more than 70 national and regional IGFs, as a key forum for multi-stakeholder dialogue on public policy issues related to Internet governance, through the exchange of ideas, sharing of good practices and experiences, identification of emerging issues, and contribution to capacity building;

- Annual WSIS Forum, as a mechanism of coordination of multi-stakeholder implementation activities, sharing of good practices, and development of public/private partnerships to advance development goals;

- Mapping of international Internet public policy issues, led by the Commission on Science and Technology for Development;

- Broadband Commission for Sustainable Development, to promote the use of ICT and broadband-based technologies for sustainable development;

- IANA stewardship transition of key technical Internet functions to the global multistakeholder community and the process to enhance ICANN's accountability.

Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

The WGEC may wish to consider the following kind of recommendations:

- Recommendations for improving the IGF, particularly to ensure sustainable funding;

- Recommendations for how enhanced cooperation can contribute to the 2030 Agenda for Sustainable Development and the creation of inclusive Knowledge Societies;

- Recommendations for how to support Member States in ensuring that their Internet-related laws, policies and regulations involve the participation of all stakeholders and are aligned with international human rights and the principles of openness and accessibility.

15. UNESCWA

ESCWA Contribution

Following is the input of UN-ESCWA - based on consultations on the regional level - on the two guiding questions:

(1) What are the high level characteristics of enhanced cooperation?

Over the last decade, the Arab Region has increasingly acknowledgesd the value of IG AIGF as a multistakholder dialogue non-outcome platform. That's why, the envisaged Enhanced cooperation process should provide complementarities to the IGF in being distinct from it in many aspects, but at the same time follow a similar governance style.

First, IG EC needs to be similar to the WSIS process itself; i.e all governments at equal footing in a multilateral paradigm where every country has a multistakholder participation. That's one distinction that provide complementarity to the IGF. Similar to the WSIS Community, IG EC should become a community on itself led by governments and involving all stakeholders in various capacities and mandate..

Second, it needs to be outputs producing and decision making machinery. That's another differentiator from IGF which provides complementarity. Outputs can vary from recommendations to declarations to joint statements to resolutions to agreements.

Third, it needs to have a clear linkage to IGF per se. Dialogue is IGF should land somewhere for Decisions to be taken. That should be the EC platform. Input to such a platform can also come from any dialogue platform like the IGF or even different. All to be put on the table for the perusal of IG EC

community. Off course this machinery would have to be creative, innovative, and geared towards text building negotiations/consensus.

The above 3 distinctive characteristics are paramount in making the IG EC meaningful: ***multilateral led with multistakeholder engagement; geared towards output; linked to other dialogue platforms***. Otherwise, IGF needs to develop such characteristics itself which is impossible, and a major vacuum will continue to exist in the international sphere regarding the above.

(**2) Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?**

* Develop ways to define a distinctive characteristics for IG EC process to make it different from IG IGF process.

* Encourage regional efforts to develop models for IG EC platforms among governments of particular regions.
* Acknowledge and recognize the same regional zoning. For example and for the Arab countries, use the same countries covered in the Arab IGF.

Best regards,

Haidar Fraihat, Director
Technology for Development Division, On behalf of UN-ESCWA, WGEC member

Contributions Submitted by Representatives from the Technical Community and Academia

16. Constance Bommelaer, The Internet Society

Open consultations – December 2016

The Internet Society (ISOC) welcomes the opportunity to contribute to the consultation organized by the Chair of the Working Group on Enhanced Cooperation, ahead of the next meeting by the Working Group on 26-27 January 2017 in Geneva. ISOC has been involved in the World Summit on the Information Society (WSIS) process since its very beginning, and we hope our input will prove to be useful in the multistakeholder discussions to be held next year.

- **What are the high-level characteristics of enhanced cooperation?**

The Internet was designed to foster innovation as an unprecedented tool for collaboration and human empowerment. As a result of its fundamental properties, the Internet is a dynamic technology, enabling new connected devices, services, users and applications. While the Internet is a continuous source of opportunities, the same fundamental properties spawn new challenges. Access to the Internet is increasingly seen as integral for social and economic development, but real threats are also undermining the trust so critical to its success.

Given the Internet's interdependent nature, collaboration is key to solve these challenges. **The Internet Society sees enhanced cooperation among all stakeholders as a foundation on which to build the trusted relationships necessary to develop common and successful solutions**. This approach, which was endorsed by the ten-year Review of the World Summit on the Information Society (WSIS+10), demonstrated again its efficacy in the recent success of the IANA transition.

Indeed, the Internet is a complex but robust ecosystem in which actors, institutions, and infrastructures must act independently while maintaining interoperability. The nature of the ecosystem favors a similarly structured governance system, in which power is widely distributed, all actors must work together, and independence and interoperability are of paramount importance.

Enhanced cooperation reinforces collaboration between the various communities of the Internet ecosystem, including governments, business, civil society and the technical and academic communities. For policy makers, enhanced cooperation ensures interoperability with governance mechanisms developed through the various processes and regimes of the decentralized system.

In a recent publication entitled *"*Why the Multistakeholder Approach Works, the Internet Society highlights key principles to enhance cooperation among stakeholders*:*

- **Inclusiveness and transparency**

Inclusiveness is the source of legitimacy in collaborative decision-making. Those significantly affected by a decision should have the chance to be involved in making it. Inclusiveness is not just an admirable goal, but an essential part of an effective decision-making process. The less inclusive a process is, the less likely it is to engender the trust and support of stakeholders. Transparency is an essential condition for inclusiveness, as it brings expert and affected groups into the process.

Transparent inputs, process and decision-making are fundamental to the Internet. The global technical community has long practiced a publicly archived process for developing technical standards. Secrecy, while sometimes necessary, is far less useful for effective decision-making than the wider range and quality of inputs gained through a transparent process. Transparency is also essential to legitimacy as it can document that stakeholders had the opportunity to engage.

- **Collective responsibility**

All stakeholders share a collective responsibility for the continued vitality of the Internet and the benefits it brings to our societies and the global economy. The technical community shares a sense of collective stewardship of the Internet and of the open standards its technologies are based on.

The Internet is a common global resource and a highly interdependent system where each node is not only connected *to* the Internet, but is also a *part of* the Internet.

Collective responsibility extends to the system as a whole. Stakeholders are not just responsible for their part of the ecosystem. Instead, they must have a common understanding of the problem, shared solutions, common benefits, and maintain open communication channels.

- **Effective decision-making and implementation**

The most effective decisions are those based on an open and deliberative process. These processes should consider a broad range of information sources and perspectives. This holds for both the quality and implementation of the decision.

As the Internet is operated by a variety of public sector, private sector and civil society stakeholders, for decisions to be successfully implemented, imaginative and collaborative solutions are needed. Simply passing a national law will not be sufficient. Stakeholders who have been part of the process work harder to make its implementation a success.

- **Collaboration through distributed and interoperable governance**

Collaboration is the process of two or more people or institutions coming together to achieve a common goal. The Internet is the outcome of the collaborative efforts of many different actors. It benefits from an increasing amount of actors teaming up and working together.

To effectively harness the efforts of many actors, the technical community has evolved autonomous governance systems based on collaboration and mutual respect. Organisations that coordinate the Internet can collaborate where needed and otherwise focus on successfully carrying out their respective jobs. The organisations involved in Internet governance have complementary roles to play. Recognising this autonomy and keeping dialogue and mutual participation in areas of overlap between organisations, is how the distributed global governance system will remain fully interoperable.

- **Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?**

As stated above, enhanced cooperation can only be effective if it involves all stakeholders. In this spirit, the Internet Society would like to recommend the following:

1) Collaboration and collective responsibility to strengthen security

The Internet's openness has been the driver of its success, and the determining factor of the innovations that spur its continued evolution. There will always be risks and challenges to an open network system, where malicious actors will find ways to exploit vulnerabilities. However, the Internet's openness also provides the means to protect itself through facilitating robust, flexible and agile solutions. But these solutions demand a collaborative approach to security that recognizes the system's global interdependent nature, in which no single stakeholder can solve the issues on its own.

This interdependency also demands a collective responsibility towards the Internet system as a whole. Unilateral solutions, but also negligence, can create residual damage to other stakeholders. The increase of data breaches, highlighted in ISOC's 2016 **Global Internet Report**, is one example of where the inactions of many organizations is putting users' data at risk, and in turn undermines the trust in the Internet as a whole.

2) **Increased collaboration to expand access**

The efforts to bridge the digital divide and to expand access to those currently offline will require increased efforts of collaboration among stakeholders.

As highlighted in ISOC's paper on "**A policy Framework for Enabling Internet Access**", we see three priority areas to create an enabling environment for access:

- Expanding Infrastructure
- Fostering Skills and Entrepreneurship
- Supportive Governance.

All stakeholders have a role in shaping this environment, and facilitating multistakeholder dialogues and mechanisms at the national and regional levels is essential to ensure that the right policies are adopted. As one successful illustration of this framework, there has been extensive progress on the development of

Internet Exchange Points (IXPs), allowing Internet service providers to peer Internet traffic locally. Many of these IXPs are being developed in partnership with different stakeholders (government, content owners, service providers, research and education networks), and demonstrate the value of enhanced cooperation at the level of local and regional Internet communities.

3) **Strengthen participation of underrepresented stakeholders**

There is a continued need to facilitate the active participation of governments, in particular from developing countries, into the existing processes and forums that shape Internet policies and the network's technical developments. The Internet Society is actively working to strengthen the connection between different communities. As an example, it has been offering fellowships for policy makers to participate to the Internet Engineering Task Force (IETF) meetings since 2012. To date, more than 170 policy makers from 53 different countries have participated in the program.

4) **Continued implementation of the improvements to the Internet Governance Forum**

The Internet Governance Forum has proven to be an important forum for strengthening the ties between the different stakeholder communities. Its open, inclusive and multistakeholder nature has been of practical value to share information and develop best practices, where the IGF is providing a global platform for cooperation among all stakeholders. Similarly, National and Regional IGFs are also valuable platforms for local stakeholders to address key local Internet governance issues in a multistakeholder framework, which have proved useful networking platforms to facilitate cooperation between local actors to address local priorities. Strengthening the IGF model, at both the global and regional and national level, would therefore also enhance cooperation.

To this end, ISOC welcomed the UN Secretariat's initiative of a two-day working retreat, and the open call for input on improving the IGF process. Through this process, ISOC has contributed its views on the needed improvements to the IGF, including the need to implement the recommendations from "Working Group on improvements to the Internet Governance Forum (IGF)", and emphasizing the need to strengthen participation from developing countries.

17. Janvier Ngnoulaye, University of Yaoundé

Contribution to Question 2:

Dear Chair and WGEC members,

As per the text of paragraph 69 (Tunis), there are the day-to-day activities of the Internet, there are also the public policy issues on the Internet. Some relationships or partnerships have been established or developed progressively between some Internet players because of their daily core business. With these context, for me, "enhanced cooperation" today among all players in the Internet means

- Redefining the Internet ecosystem as a layered system, in defining and fixing clearly the role and function of each layer.

- The relationship between each layer must be clearly defined in the two ways (upper direction and lower direction, in term of offering the services to or using the services from).

- Each layer has it function and offers the service to the other

- No layer is more essential than others

- Each actor must understand and identify itself within one layer

- With this redesign or upgrading of the ecosystem of Internet, we come out with a standard model which can be named as the Standard Layer Model of the Internet Ecosystem (SLMIE) for enhanced and stabilized cooperation.

- No layer can work alone withing the SLMIE

- Etc.

The graph of the SLMIE can be designed and submit to all the players of the Internet Ecosystem for adoption.

Warm regards,

Mr. Janvier NGNOULAYE
ICT Teacher, IT Manager & Consultant
Po. Box 337 Yaounde, Cameroon

18. Nick Ashton Hart, Geneva Centre for Security Policy

Response to the consultation of the working group for consideration at its second meeting

Submission of Nick Ashton-Hart, member from the technical community.

What are the high-level characteristics of enhanced cooperation?

I think this is one of the most difficult areas to gain consensus on and we should ask ourselves how much value addition our report can produce by trying to agree on a specific list of characteristics or principles. I think we should not try to do this, but instead to identify a selection of existing such documents. These would likely have many common elements which are generally agreeable and some which might be agreeable to some, but not others.

I think that would be a good compromise; it would illustrate where the gaps in agreement are and we can make clear that we don't all agree on all elements of all the principles in the listed documents, but we do agree that each of them embodies important perspectives.

This will allow us more time to spend on recommending areas for cooperation that could positively impact on the Internet everyone uses every day. Arguing about principles to find a common denominator is unlikely to have that kind of real-world impact. Wherever we can, we should prioritise spending time developing recommendations that will have a direct positive impact in the lives of others.

What kind of recommendations should the working group consider?

My view is that we cannot agree on what recommendations to develop before agreeing on some fundamentals. I suggest the following, and follow that with explanation and some ideas for specific areas we could explore.

1. We should agree that there are areas where the current level of enhanced cooperation as defined in Tunis have yet to deliver adequate results;
2. We should agree to focus on recommendations that relate to what is communicated, and avoid those related to the network as a shared platform and resource that all communications rely upon – and further explicitly state that intra-national and international activities in relation to online communications should be least distortive or disruptive as possible to that shared platform. We should further identify some areas which impact this platform that all actors should avoid taking when pursuing public policy priorities related to content online;
3. We should identify areas where greater cooperation would be of general socioeconomic value, especially to developing and least-developed countries, and prioritize cooperation that is most likely to be effective in practical terms;
4. Within those areas we identify, we should further prioritize those which would have a direct positive impact on achievement of one or more of the SDGs.

Where more enhanced cooperation would deliver value

I think we all must accept that there are aspects of international Internet-related public policy where more action is needed and that governments have a role to play, just as Tunis states.

For example, it would be absurd to suggest that efforts to combat transboundary crime online are sufficiently effective at present. We ought to be able to say so.

We may differ about precisely how to deal with all aspects of crime online, but we ought to be able to agree on *some* venues and activities where greater cooperation is both needed and clearly within their mandate.

For instance, the two international organizations with a clear mandate to deal with transboundary crime are INTERPOL and the UN Office on Drugs and Crime (UNODC) – yet the latter has effectively no funding for activities related to crime online despite being the intergovernmental 'home' of the relevant international agreement with the largest number of states-parties,

the Convention on Transboundary Organised Crime (three times as many as the Budapest Convention).

Nothing prevents member-states from providing more funding to UNODCs efforts – and our final report ought to call on them to do so. It is all very well to say – and it is clearly true – that enhanced cooperation is ongoing outside of the WSIS process, but member-states should go further and ensure both adequate funding and a robust work programme at the venues they point to.

Other areas we could highlight are:

- The need to ensure the Human Rights Council and the Office of the High Commissioner for Human Rights can effectively advise on the development of cooperation in online crime interdiction, the evolution of the work of the UNGGE, the development of the Talinn Manual, and the like;
- How to take the principles of mutual legal assistance developed at UNODC and in other fora – like the Manila Principles – and operationalize them such that international human rights obligations are demonstrably respected *and* crime is more effectively and quickly prevented and criminals prosecuted;

Are there areas where member-states' national legal frameworks ought to be interoperable – not harmonized, but interoperable – to facilitate sustainable development and bridging of the digital divide? The answer is clearly yes. We should try and list a few areas, such as safe harbours for platforms, data protection laws (more than 100 countries don't have any data protection law at all), and consumer protection frameworks. We don't have to argue about what precise laws countries should have – this is a conversation states to have with their stakeholders and is a sovereign matter – but we could make clear that the Internet will work better for everyone if national legal frameworks in certain areas are interoperable with those of other countries.

The difference between the network and the data it carries

The working group should agree that the publicly-accessible Internet is two separate things *for the purposes of our work*:

1. The network that makes communications between any connected devices possible - the "network as a platform";
2. The data and associated services that use that network as a communications platform (or "data carried by the platform").

The data that the network carries are the applications and services that people use and the data that those applications and services create. The network is the hardware, interconnections and essential communications between them.[130]

I propose that we agree that our outcomes should focus on measures related to the second.

Annexed to this document is a more complete elaboration on this concept and some thoughts for measures that we could recommend related to it.

[130] For the technically minded, the network as a platform corresponds to the lowest four layers of the OSI model and the lowest three of the TCP/IP (RFC 1122) model.

ANNEX: The Network as a shared platform

The network is an interrelated web of hardware and software that utilize common standards to ensure each component is interchangeable with other's performing the same function. This concept – referred to as "interoperability"[131]– is important because it allows maximum flexibility in designing networks and related systems

The grouping of standards that make communications interconnection in the network possible are known as the "Internet protocol (IP) stack." IP-based networks are designed to operate with maximum efficiency, and a continuous process of evolution of these standards responds to the need for greater performance, interoperability, resiliency, trust and security over time.

What we call the public Internet is a "network of networks," the large majority of them privately owned and managed by corporations, whether for the use of their employees or, in the case of Internet service providers (ISPs), for the public to connect to the rest of the Internet.

Keeping things simple, there are three types of entity that collectively make basic connectivity, and therefore the public Internet, possible:

- Internet Service Providers (ISPs): entities that provide connectivity for end-users (ranging from single mobile devices to the largest corporations), of which most countries have from several to dozens
- Backbone providers: entities that connect ISPs to one another, but that do not have end-users as customers; these entities are often responsible for making connections between countries and continents possible
- The processes and institutions that manage those processes by which unique identifiers are allocated, such as IP addressing and the domain name system (DNS). These are analogous to telephone numbers or postal addresses in that they allow any "node" (of which your mobile phone is one, and your desktop PC or laptop is another) of the network

[131] For a user-friendly overview of the Internet and the "network of networks" that it is comprised of, the Internet Society's "An Introduction to Internet Interconnection Concepts and Actors" (Internet Society, 2012) is recommended (see www.Internetsociety.org/sites/default/files/bp-interconnection.pdf).

to be identified and reached from any other node, and ensure that worldwide every single address is used only once.

Each ISP or backbone provider must do two things aside from connecting to its customers:

- Connect to other ISPs so the exchange of data between their respective customers is possible, and connect to backbone providers (either directly or indirectly) to allow international traffic exchange. Without these agreements (often known as "peering" or "interconnection" agreements), the Internet would cease to be a global platform and exist solely as ISP-specific "islands" that would only allow users to connect to the other customers of their own ISP.
- Acquire the various types of technical addresses necessary for its equipment and that of its customers to use to connect to others, and implement the related services (like DNS servers) that allow every single device on the public Internet to have a unique address and to allow its customers to be found and to find all others.

The result of all this is that these networks (if left to themselves and the web of stakeholders who operate and maintain them) can:

- **Automatically find the optimal (which is not necessarily the most direct) *route* between any two points at any given time**.[132] An important fact to remember is that the route between any two points may traverse third countries, and that route may pass through *different* third countries at different times of the same day. This is especially common in border areas where two countries have dense populations near a shared border.
- Create a communications connection between any two points in a way that optimizes *performance* in the networks through which that communication passes. This can result in a route being taken that is *geographically* complex to ensure the communication "performs" better.

[132] Throughout this paper illustrations refer to connections between two points ("point to point"), to make key points easy to follow. There certainly are communications where a single origin is connecting to multiple endpoints simultaneously and each of these endpoints may be in different countries from one another.

- **Ensure that anyone may extend the public Internet** simply by connecting a router[133] to the "edge" of the network and applying for a unique address for that router. Acquiring that address is often automatic, though public Internet addresses are ultimately assigned by regional Internet registries (RIRs)[134] to ensure every single device on the public Internet has a unique address.

The public Internet as a platform is inherently blind to geography in a way that the "offline" world is not. Goods trade, for example, would generally be biased against shipping via third countries to deliver a package sent from, and bound for, destinations in the same country to avoid the potential "friction" of border measures such as customs, tax compliance and other formalities.

How to treat the network as a platform

Looking at the network as a platform suggests several policy objectives; that our working group could usefully endorse:

- **Avoid actions that impede or distort basic functions such as addressing and traffic routing.** Where a country needs to prevent some communication from taking place, or prevent access to certain information that the network carries for whatever reason (such as to block child pornography), it must do so in a way that does not affect the operation of the network that carries those communications.
- **Avoid actions that might impact upon "transit traffic.**" As we have seen, traffic often – for very good reasons – transits a country for which it is neither the destination nor the source. This argues strongly for such transit traffic to remain untouched and unhindered – after all, failing to

[133] A router is a device that "talks" to other such devices to figure out how to forward requests from any device connected to it to any other part of the network. The standards used ensure that this can happen automatically, and as the network topology changes in real time these changes are "learnt" by those devices that need to know about them. Pretty much every business and residence has a router, in the latter case generally provided by the Internet service provider.

[134] These organisations are responsible for managing the key forms of addressing on the Internet, which are akin to the various types of addresses in the worldwide postal system in the functions they perform. All of them are ultimately linked to the Internet Assigned Numbers Authority (IANA), managed by the Internet Corporation for Assigned Names and Numbers (ICANN). IANA and the RIRs work together (more information is available at http://www.iana.org/numbers).

respect transit traffic of others could lead to reciprocal lack of respect for your own.

- **Avoid national or international policies that distort private-sector choices about how equipment or services integral to the functioning of the network as a platform are made**. Measures of this type – often called "local hosting" obligations – can refer to elements of the network as a platform (like submarine cables, routers or related equipment), but they are most often intended to influence where applications, data and related services are hosted. Obligations that distort investment choices that would otherwise seek to optimize performance and resilience in the network everyone uses as a platform should be avoided: aside from anything else, we cannot connect the unconnected 4 billion-plus people as quickly if individual countries' choices make the network more expensive for everyone. An example from the offline world is roads: we want roads to be well maintained and with enough lanes to handle peak traffic, and ideally to have multiple connections between locations so that when traffic congestion affects one road we have alternative routes to take.

19. Nigel Hickson, ICANN

CSTD WORKING GROUP ON ENHANCED COOPERATION

ICANN REPLY TO "QUESTIONS"

December; 2016

1. What are the high level characteristics of enhanced cooperation?

2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

Summary

ICANN is pleased to have opportunity to contribute to this important debate. We believe this work is important in establishing, post the WSIS in 2003 and 2005, how we move forward in the debate on the role and responsibilities of the different actors in the Internet Governance debate. In doing so, we believe that while paying due regard to what was discussed and agreed upon in the WSIS dialogue, we need to reflect on the different circumstances we now find ourselves in 2016. Essentially we have to recognise that no single entity, be they governments, business or civil society has monopoly of wisdom in the issues of Internet Governance. Thus, while in any particular issue there will, naturally, be lead actor, this should not exclude other voices. In the same way as governments should have an input into the development of technical standards, the technical Community and civil society should be involved establishing norms for acceptable behavior for states in terms of cyber defense.

Thus the debate going forward, and thus the outputs of this important Working group, should focus on the principles and arrangements under which **all** actors work together. The exam question is not limited to how governments should affect their rightful and critical role with respect to Internet public policy on Internet Governance issues but how all actors should be able to cooperate in establishing agreed and sensible policy positions.

Detail

1. What are the high level characteristics of enhanced cooperation?

Essentially they come down to an understanding on how Internet Governance issues should, in the main, be debated. Given the diverse nature of such issues any characteristics would have to be at a relatively high level. It is clear, for example that certain issues concerning governance *on* the Internet, for example dealing with cross border crime or of judicial cooperation is primarily one for governments to act on while the determination of Internet technical standards are for those in business and the technical Community.

There are, however, no absolute barriers and while the delineation of responsibilities found in the Tunis Agenda is still useful[135] the mix of Internet governance issues we now face requires a more nuanced and sophisticated response. For example e-privacy and data protection are clearly Internet public policy issues but are clearly ones that require the direct input and consideration on several non-government actors. Conversely dealing with the coordination of Internet identifiers and the associated names may be primarily the responsibility of non-government actors but this does not mean (as we witness at ICANN) that governments should not play their part when it comes to public policy issues.

There is therefore more to the notion of Enhanced Cooperation (as it is broadly understood today) than simply a way of ensuring that governments can exercise their public policy responsibilities with respect to Internet Governance issues. If it has utility it has to have a broader concept, one that looks at how all actors can work together to achieve the best outcomes and policy decisions with regards to the broad range of issues we are confronted with.

Thus a number of common characteristics could be useful to look at:

Transparency: That the debate on such issues – whoever the actors – should be open and available to all stakeholders. It is not acceptable for one group of actors to determine policy in the complete absence of the views of others; whether it is a technical or a public policy issue. This also means that stakeholders have to take responsibility for their views and be willing to articulate them.

Accountability: That the representation (should it be so) by any group of actors should be effected in a representative manner consistent with normal standards of democracy and inclusion. It is not acceptable to have a representative voice of government, business or of the Technical Community that is not so. This is an important area for many institutions and one that ICANN, through the on-going work on Accountability is taking very seriously.

Inclusion: That representation by actors should be inclusive taking into account diversity. This is particularly important in global dialogue where geographical and gender balance is key. There also should be no "membership" requirements as such; though recognising that appropriate representation of different groups is often needed;

Factual backing: Discussions on Internet public policy issues have to take place on an agreed and preferably independent evidence base;

Sustainable Development: That discussions and dialogue should lead to solutions that are consistent with the objectives set out in the UN 2030 Sustainable Developmental Agendas and contribute (where appropriate) to achieving targets under the 17 Sustainable Development Goals (SDGs).

2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

We should, while indeed taking due notice of what was deliberated in the Tunis Agenda, look to craft a new dialogue that recognises value of **all** voices in whatever context or role, and seeks to

[135] http://www.itu.int/net/wsis/docs2/tunis/off/6rev1.html

build consensus as a result. No single group has a monopoly of wisdom. Important public policy decisions (for example on development) would have not been possible without civil society input while the roll out of advanced mobile technologies have significantly benefited through the voice of state actors.

Closer to home; the recent transition of the IANA stewardship from the US Administration (NTIA) to the global Internet Community has demonstrated how actors working together can discuss, debate and finally agree upon complex policy issues in a consensual environment.

Taking into account the above it is self evident that any recommendations from the UN, in taking a dialogue forward, would need to recognise that Enhanced Cooperation is an evolutionary concept and one which is already taking place. It is though one where diverse dialogues on issues of Internet Governance need to take account of the principles outlined above.

Thus rather than crafting specific Recommendations at this stage it is probably better to think of broad principles under which future dialogue could take place. These could perhaps include:

1. That discussions on Internet public policy issues should be effected in line with the Characteristics enumerated above;

2. That while any actor might initiate dialogue on a particular issue they should take account of the Characteristics on Enhanced Cooperation in taking that dialogue forward;

3. That dialogue should, of course respect human rights and other fundamental freedoms (such as freedom of expression);

4. That it should be open, transparent and not subject to constraints such as membership or qualification.

ICANN; December; 2016

Contributions Submitted by Member States

20. Asia-Pacific Regional Group, India

Permanent Mission of India
Geneva

Response from India to the consultation of the Working Group on Enhanced Cooperation for its 2nd meeting

1. The Working Group for Enhanced Cooperatio(WGEC), which was established in 2016 in response to UNGA Resolution A/RES/70/125 of December 16, 2015, with a view to develop recommendations to further implement enhanced cooperation as envisioned in the Tunis Agenda of the World Summit on Information Society(WSIS), conducted its 1st meeting in Geneva on September 30, 2016. On its conclusion, the WGEC agreed that its Secretariat would gather inputs from its members and other relevant stakeholders with regard to two questions enumerated below and carry out a detailed discussion on Enhanced Cooperation during the 2nd session based on the inputs received. The two questions on which the stakeholders have been requested to submit their responses are as follows:

1. What are the characteristics of Enhanced cooperation?
2. Taking into consideration the work of the first WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should be considered?

2. Information and Communication Technologies(ICTs), with its multifarious uses which serve both as an engine of growth and development as well as raise concerns of security due to its trans-border and anonymous nature, has emerged as one of the most exciting and challenging fields which require international attention and cooperation. The fact that the ICTs do not respect national boundaries, are evolving at an extraordinary pace with new technologies and innovative applications, have become a platform for astounding volumes of commerce and business and form the backbone of many critical infrastructures such as banking, transport and aviation, to name a few, demand that the world community comes together and finds ways and means for enhanced cooperation . This cooperation is essential not only to ensure that Internet remains open, accessible and affordable to all the stakeholders which have played a role in its evolution but also to evolve mechanisms to meet the challenges of Cybersecurity and the increasing complexities of cybercrime including the terrorist use of Internet.

What are the characteristics of Enhanced Cooperation ?

3. The purpose of enhanced cooperation should be to evolve and develop common perspectives and strategies on public policies on Internet in a fair, transparent, democratic and equitable manner duly taking into account the digital divide that exists between the nations and genders, the roles of different stakeholders in various aspects of internet governance and usage and the recognition of the primacy of the Governments to regulate, monitor and frame

policies consistent with its national laws and objectives on issues of Cybersecurity.

4. The above objectives of Enhanced Cooperation have not been realized so far for a variety of reasons. Foremost among them is the absence of a suitable forum or a body or a mechanism by which the stakeholders have the opportunity to sit together at the table, exchange views on various aspects of the use of ICTs in a transparent and democratic manner and develop convergence of views on cyber issues. While many attempts have been made in the past in various global, multilateral and regional forums, including those under the aegis of UN, a majority of them, have so far, remained mere recommendations and not reached the stage of implementation. On the other hand, there have been many parallel and simultaneous efforts by states and private sector, to study cyber issues , make regional pacts and agreements and implement them in isolation. This approach is untenable in cyberspace for two reasons, one, the interconnectivity of the ICTs and two, the absence of coordination mechanisms among these parallel bodies, without which any effort to make the most of the potential of ICTs will remain unrealized. Any attempt at enhanced cooperation therefore needs to take into account these critical factors and deliberate around ways and means to find solutions to the issues of coordination among the various forums dealing with the subject, preferably through the creation of a centralized body under the aegis of UN to guide the activities. Of significance would be the procedures adopted to form such a body which would need to be democratic, transparent and representative of both developed and developed nations. The WGEC is a good forum to address these issues where some kind of framework towards evolving such a mechanism can be deliberated upon.

5. Among the other main elements for enhanced cooperation in respect of internet governance, the following are proposed:-

(a) Governments have been entrusted with the leading role in Cybersecurity matters relating to national security [para 55, WSIS+10 Review outcome document]. All stakeholders thus need to work with the Government to build robust domestic security of and in the use of ICTs.

(b) Governments also have to play leading role in addressing cross-cutting international public policy issues relating to the management of the critical internet resources. This entails Governments to play a proactive role in the post-IANA transition process through the Government Advisory Committee (GAC) of ICANN.

(i) It is noted that para 70 of the Tunis Agenda provides for cooperation of the relevant international organization (such as ICANN) for the development of globally-applicable principles on public policy issues associated with the coordination management of critical Internet resources. In this regard, ICANN needs to contribute to creating an environment that facilitates this development of public policy principles through its Committees including the GAC and ICANN Board.

(ii) As provided under the para 71 of the Tunis Agenda, relevant organization such as ICANN need to provide an annual performance report on the cooperation with GAC in the development of globally-applicable principles on public policy issues relating to the management of internet.

(iii) As enhanced cooperation essentially aims at ensuring participation of all stakeholders

in the formulation of public policy issues pertaining to internet, greater participation of all the stakeholders should be sought to bring about an inclusive, well-represented and secure internet governance process. This would essentially mean that the stakeholders would be given ample opportunities to express their views which would be taken into due consideration while formulating policies. In order to achieve this, the roles and responsibilities of different stakeholders need to be broadly defined. In this regard, we concur with the recommendations of the Working Group on Internet Governance on the role of different stakeholders.

The main barrier to the participation of stakeholders so far has been the absence of a mechanism where they can participate effectively in their respective roles. Another barrier is the nature of the selection process of participants who represent these stakeholders. Therefore, we propose that the process of selection of the representatives should be made in a transparent and inclusive manner. Similarly, the challenges of accessibility, availability and affordability of information services as also their effective participation must be addressed through the medium of an enhanced cooperation at regional, national and international level

(v) There is also a need to maximise the participation of developing countries in decisions regarding internet governance, which should reflect their interests as well as in the development of capacity building. The developing countries are an integral part of the global internet governance and should be provided opportunities to participate at an equal footing in the policy development processes.

Question 2: Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69 to 71, what kind of recommendations should be considered?

Considering the work accomplished by the previous WGEC and the Tunis Agenda, this WGEC has to consider a wide array of issues. The suggested recommendations on how to further implement enhanced cooperation as envisioned by the Tunis Agenda of the World Summit on the Information Society (WSIS) are as follows:

(i) The internet is a space which comprises of a wide variety of users, all of whom cannot, due to a variety of reasons, make their voices heard. The WGEC should encourage all stakeholders to come forward, participate and make their voices be heard in the formulation of public policies pertaining to the internet.

(ii) The working group should also ensure that the true diversity of the internet is reflected in the formulation of internet public policy, and hence should actively work towards promoting diversity; be it geographical, ethnic, linguistic, cultural or even regarding the development status of the countries participating in policy formulation. One of the main tasks to undertake to ensure a diverse representation is the bridging of the digital divide which is essentially a chasm between those connected and those not connected to the internet.

(iii) The working group should keep in mind that the needs of developing countries are at times vastly different from those of developed countries. Hence, to ensure that they do not lag behind in the multi-stakeholder model participation, special attention should be paid to them. As these countries often struggle with problems relating to access and affordability regarding internet services, the working group should look into capacity building programmes for such nations so as to ensure that the next billion users (which are to be from developing countries)

become connected to the internet, and that these countries do not lag behind in formulating internet policies. Some of these countries and stakeholders do not possess the funds to enable them to participate in the multi-stakeholder model of internet policy formulation. Hence the working group may look into avenues to increase participation such as fellowships, remote participation etc.

(iv) The working group should also make conscious efforts to build inclusive mechanisms for public policy issues regarding the internet, such as keeping an open mind and being accommodative towards new and emerging issues that appear with the advent of new technology.

(v) While formulating internet public policies, the working group should keep in mind that for national security, States have a greater obligation than other stakeholders. Hence, there is a need for the working group to consider such issues and allow for states to have primacy in all matters related to policy formulation.

(vi) The working Group should also look at existing mechanisms which involves multistakeholder participation and the efficacy of their functioning. This could guide the Working Group in making its recommendations for any new mechanism, if required.

(vii) There is a need to create new institutional mechanism to enable governments to carry out their roles and responsibility in international public policy issues.

(viii) There is a need to empower Government Advisory Committee (GAC) of ICANN to play a meaningful and substantial role in international public policy issues relating to management of critical internet resources and security in the use of ICTs.

(ix) An institutional mechanism need to be created for Government Advisory Committee (GAC) to report to ECOSOC through CSTD WG on an annual basis on the public policy issues relating to internet.

(x) CSTD WG, in coordination with GAC, may constitute a Sub-Group to identify the international public policy issues pertaining to the Internet and to make recommendation for achieving the goals of the 2030 Agenda for Sustainable Development by ensure security in the use of ICTs.

(xi) With regard to the relevant international Public policy issues which may be considered by the WGEC, we propose that issues related to Internet Infrastructure and management of critical Internet resources, use of Internet including spam, network security and cybercrime, issues related to developmental aspects of Internet Governance, in particular capacity building in developing countries and issues relating to interconnection costs, meaningful participation in global policy development, data access and jurisdiction, trade and e commerce, cloud computing, big data mining and analytics, artificial intelligence and next generation networks may be included.

(xii) The WGEC may also consider on priority ways and means to develop national capacities, particularly in developing countries, through setting up of Centres of Excellence on Internet Governance and related issues, establishment of R&D Centres in the area of Internet related public policy, introduction of formal courses on Internet Governance in

premier educational institutions for Industries, academia and civil society and creation of online knowledge Repository Portal on Internet Governance.

21. Asia-Pacific Regional Group, Iran (Islamic Republic of)

Submission by
The Islamic Republic of Iran
14 December, 2016
Geneva

Response to the two guiding questions of the Chair, agreed upon during the first meeting of the Working Group on Enhanced Cooperation, held on 30 September, 2016

Q 1: What are the high level characteristics on enhanced cooperation?

The concept of "enhanced cooperation" is crucial for the promotion of information society across the globe and should have the following major characteristics:

1. Any policy and measure under the enhanced cooperation must contribute to the achievement of the internationally agreed 2030 Agenda for Sustainable Development. The 17 Goals are supposed to cover, as an umbrella, our activities and direct the deliberations, decisions and measures of the international community until 2030. Although "cooperation" and "information technology and knowledge" are among cross-cutting issues and do not fall in a single or two goal(s), it seems that the Goals 9 and 17 are the most relevant ones. Goal 9 addresses the promotion of inclusive and sustainable industrialization and fostering innovation, in general and information and communications technology, in particular (9c). The Goal 17 refers to science, technology development and transfer, and capacity building as means of implementation which play crucial role in achievement of the 2030 Agenda

Moreover, the Geneva Declaration of Principles, Geneva Plan of Action, Tunis Commitments as well as Tunis Agenda for Information Society are the other internationally agreed documents and guidelines which should direct our deliberations in the Working Group on Enhanced Cooperation.

2. The Working Group is a body for deliberations and exchange of views among all States as well to increase the common understanding of the international community with regard to the appropriate ways and means to remove the barriers, while promoting the information society, as well as increasing cooperation between governments at regional and international levels.

3. Paragraph 69 of the Tunis Agenda stipulates that, enhanced cooperation shall enable governments, on equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the Internet.

4. There are serious concerns regarding the digital divide between the developed and the developing countries while there are closer and closer relationships between the two in all walks of life. While progress has been made in terms of closing the gaps and differences in some areas, a considerable technological divide still exists between and within countries. Such divides often act as impediments in harnessing the potential of science, technology and innovation for the ongoing processes, such as the implementation of the Sustainable

Development Goals. To overcome this lasting gap, technology development and transfer and capacity building has crucial role.

5. Internet governance is an important component of the information society, and should be accomplished in an appropriate way. As referred to in the Geneva Principles, all governments should have an equal footing to carry out their roles and responsibilities in the international public policy issues pertaining to the Internet.

6. It is highly expected that the Working Group would contribute pursuing the implementation of the mandate and the common understanding about enhanced cooperation which could be acquired through relevant paragraphs of the Tunis Agenda. In this regard, paragraph 68 and 69 of Tunis Agenda provides a division of functions among different stakeholders. It clearly articulates 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. Para 68 of the Tunis Agenda further clarifies this right, role and responsibility. Based on that paragraph, all governments should have an equal role and responsibility, for international Internet governance and for ensuring the stability, security and continuity of the Internet.

Q2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

1. Bearing in mind the past deliberations of the Working Group on Enhanced Cooperation and the final report, the new WG should consider ways and means for ensuring transparency, inclusiveness and diversity of views, including by being open to active participation of all Member States and Observer States of the Commission. Furthermore, it should aim to adopt its report and recommendations by consensus, reflecting different possible options and opinions.

2. It is of great importance that WGEC be engaged in constructive deliberations, based on the provisions of the relevant internationally agreed documents, and to consider the establishment of a mechanism which will be conducive to the implementation of enhanced cooperation. Every effort should be made to treat countries, both the developed and developing ones, on an equal footing, to carry out their roles and responsibilities with respect to the international policy issues pertaining to the Internet.

3. The Working Group is highly expected to come up with concrete proposals and recommendations which will be beneficial to all sectors and societies and help governments and other stockholders to cooperate better with the information and communications sector.

4. The new WG members should have a vision to the future and bear in mind the fact that collaboration and coordination between the developed and developing states is essential. It is worth noting the undeniable need for the collective efforts of all the relevant stakeholders to achieve the Sustainable Development Goals. Innovation is essential key in this new digital era and affordability is crucial for realization of the Sustainable Development Goals.

5. The 2030 Agenda for Sustainable Development is very ambitious and WGEC will play an important role in achieving the SDGs and other parts of the Development Agendas. The 2030 Agenda as well as the Addis Ababa Action Agenda have made repeatedly several direct and

indirect references to science, technology and innovation (STI). Bearing in mind paragraph 69 of the Tunis Agenda, the Islamic Republic of Iran is of the view that the WGEC should pave the way to materialize the access to technology by developing countries in order to play their role on equal basis.

6. The members of the WG in their final recommendations should highlight the need to respect the cultural diversity, local languages, ethical concerns and useful traditions, based on which many societies continue to live and enrich herewith the civilizations across the globe.

7. To this end, the national efforts of the developing countries for creating, improving, and expanding capacities to allow their involvement in all aspects of the global information society should be facilitated by other governments and institutions. This could be done through, inter alia, sharing knowledge and experiences, enhancing capacity building, creating an enabling global environment, and transfer of technology.

The I.R. Iran stands ready to provide further details, if necessary, and make its invaluable contributions to the work of the Working Group on Enhanced Contribution.

22. Asia-Pacific Regional Group, Japan

○Introduction

Japan would like to thank the chairman and the secretariat for their hard work in preparing the WGEC.

○Comments to the questionnaire

Q1: What are the high level characteristics of enhanced cooperation?

We understand that we should ensure transparency, fair process and accountability and promote the open, distributed and interconnected nature of the Internet with the engagement of multi-stakeholders in the approach to the international public policy issues pertaining to the Internet. With this in mind, we believe enhanced cooperation should have the characteristics of transparency, accountability and the engagement of all stakeholders.

Q2: Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

We think enhanced cooperation has been implemented to a substantial extent. Since the 1st Internet Governance Forum (IGF) was held in 2006, with the participation of stakeholders from many countries, information has been shared and opinions have been exchanged on international public policy issues pertaining to the Internet. As a result, the cooperation required in solving challenges concerning international public policy issues pertaining to the Internet has been making progress.

In addition, when it comes to the topic of governance of the Internet, particularly Internet resource management, while the diversity and number of participating global stakeholders, including governments are increasing, the reform of ICANN is progressing. As we know, IANA transition has been successfully accomplished at the end of this September. We support this progress as an ideal one, since it aims to enable governments, on an equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the Internet. We believe the recommendations should foster this movement and contribute to the multi-stakeholder approach to Internet Governance.

23. Asia-Pacific Regional Group, Pakistan

What are the high-level characteristics on Enhanced Cooperation?

The possible high level characteristics of enhanced cooperation are as under:

- E-Governance. Roles, shared principles, norms, rules, decision-making procedures and programs of governments, private sector and civil society, in their respective areas, in Internet-related public policy issues;
- Cross-cutting international public policy issues that require attention at international for effective functioning of Internet resources
- Agreements on Technology Transfer
- Strategic Technology Planning
- Regional Backbone Infrastructure
- Capacity Building and Knowledge Sharing to bridge the development divide
- Strengthening Cyber Security
- Development of ICT Infrastructure and ICT Enabled Services
- Development and Adoption of Technical Standards
- Strengthening of cooperation in ICT matters such as promotion of Open Source Software Applications in the member countries and focus on software products and ICT Education
- Deployment of safe and secure ICT infrastructure including data centers & IT parks and sharing of countries experiences
- Capacity Building programs through exchange of technical & skilled human resource, IT Training & Education
- Entrepreneurship, Research and Innovation

Taking into consideration the work of the previous WGEC and the Tunis Agenda, what kind of recommendations should we consider?

- Recommendations on enhancing/improving e-Governance
- Recommendations on Internet Governance (International Internet Connectivity)
- Recommendations on universal access and connectivity (national, regional and international levels)
- Recommendations on the use of ICTs for socio-economic uplift
- Recommendations on cyber security standards/practices and their adoption
- Recommendations on capacity building programs

- Recommendations on assistance to developing countries including Least Developed for local development and manufacturing of ICT applications, equipment and technologies

24. Eastern Europe Regional Group, Bulgaria

Working Group on Enhanced Cooperation on Public Policy Issues Pertaining to the Internet (WGEC) 2016-2018

Following the first meeting of the WGEC on 30 September 2016, stakeholders were invited to answer the two questions by 7 December 2016. These will be discussed at the next WGEC meeting on 26-27 January 2017

Question 1:
What are the high level characteristics of enhanced cooperation?
Question 2:
Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

UN, CSTD: "For the Sustainable Development Goals (SDGs) to be achieved within 15 years, unprecedented forms of collaboration and cooperation will be required across regions, sectors and stakeholders as well as solutions that balance economic, social, and environmental concerns. New innovation approaches are needed that foster collaboration across different sectors, unlock financing for innovation in unconventional ways, and promote locally-contextual solutions for and by grassroots communities."

High level characteristics of enhanced cooperation require a high level multistakeholder agreement.
The vision of multistakeholderism recommends a more collaborative, global and decentralized model of decision making, enhanced coordination and cooperation across institutions and actors, increased interoperability in terms of identifying and describing issues and approaches for resolution throughout the ecosystem, open information sharing and evidence-based decision making, and expertise to allow for both localization and scale in problem solving.

The exponential spread and scale-up of Information and Communication Technologies (ICT), including the Internet, have profound global implications, creating opportunities in terms of sustainable development and inclusive growth, as well as people empowerment and enhanced democratic governance. It however entails also new challenges and threats. Digitalisation needs to be properly mainstreamed across all policy areas, while addressing cyber challenges and assuring the promotion and protection of human rights, including privacy, data protection and freedom of expression, with particular attention to freedoms online, in the digital age;
There is reference to ICT throughout the UN 2030 Agenda both as specific targets and as means ofimplementation of the Sustainable Development Goals (SDGs). The WSIS+10 review in December 2015 is calling all relevant stakeholders to integrate ICT when implementing the SDGs.

It is underlined the significant contribution of digital technologies in all socio-economic and environmental dimensions as well as their role in promoting democracy, good governance, inclusion and participation in decision-making processes, non-discrimination, equality and equity,as well as transparency and accountability, including through eGovernment processes. Digital technologies hold great potential for enhancing the effectiveness of the public administration services and making them more citizen and business oriented, particularly, open data is critical for an evidenced-based policy-making that boosts development and growth;

In spite of good progress achieved in recent years, there is concerns about the persistent digital divides and the unequal distribution of ICT benefits. There is need to bridge these divides with a particular focus on facilitating access, affordability, and the further development of content and services in a variety of languages and formats that are accessible to all people who also need the capabilities and capacities, including media, information and digital literacy skills, to make use of and further develop information and communication technologies. In line with the overarching principle of the 2030 Agenda to "Leave No One Behind", particular focus should be placed on access for underserved and marginalised communities, notably in least developed countries, as well as on promoting gender equality, youth empowerment and the inclusion of persons with disabilities, in order to prevent the enlargement of existing inequalities and the rise of new ones;

Sound institutional governance and access to energy are key conditions for improving access to digital technologies. Access to affordable and non-discriminatory digital infrastructure and broadband connectivity remain major obstacles to development in many developing countries, notably in rural and remote areas. Its deployment requires a business friendly environment based on legal certainty and the reduction of administrative obstacles in order to boost investment.

Publicly financed open access infrastructures can also be used to extend services where private investment is lacking. Developing independent and neutral Internet peering capacities represents a crucial prerequisite to improve the quality of Internet connection and reduce prices;

It is important promoting a free, open, inclusive and safe Internet. Recalling paragraph 29 of the Tunis Agenda, it is recognised that the management of the Internet as a global facility includes multilateral, transparent, democratic and multi-stakeholder processes, with the full involvement of governments, the private sector, civil society, international organisations, technical and academic communities, and all other relevant stakeholders with their respective roles and responsibilities. It is welcomed the Internet Assigned Numbers Authority function stewardship transition to the global multi-stakeholder community. Autonomous and effective management of national internet domains (ccTLDs) represents a key part of ICT development in each country;

Enhancing digital literacy and skills is essential to ensure that development interventions, enhanced by the use of digital technologies, generate positive outcomes for the target groups and leave no one behind;

It is important using ICT as an enabler for sustainable development, inclusive growth and inclusive societies. Digital by default should be a guiding principle for implementing development projects in the 21st century, with sensitivity to existing digital divides;

There is need to enhance knowledge sharing and coordination in a balanced manner. Fostering partnerships with all relevant stakeholders that are active in the ICT sector is essential to enhance the positive impact of ICT on sustainable development. Stronger coordination and engagement in multilateral fora as well as multi-stakeholder policy dialogue

with developing and emerging economies can also create common ground for global governance mechanisms preventing trends of Internet fragmentation.

25. Eastern Europe Regional Group, Hungary

CSTD Working Group on Enhanced Cooperation of Public Authorities and stakeholders on Internet Governance

The first meeting of the Working Group on Enhanced Cooperation (WGEC) – held in Geneva on 30th September, 2016 discussed questions on the methods of work, proposals, etc.

Regarding the topics of the next meeting, WGEC agreed on two questions for guiding the discussions on the next meeting. The Group also agreed about opening written replies to these questions with the deadline of 7th December, 2016.

Question 1.

What are the high level characteristics of enhanced cooperation?

The task of the group is to consider questions about one of the most far-reaching changes – the development, use of the internet and the development of new economic and societal environment around the internet and the internet enabled overall connectedness in the future of digital world.

I suggest the following high level characteristics:

1. **Closely linked with UN Sustainable Development Goals**

   In our view, the work of the WGEC should be closely linked to the UN Sustainable Development Goals. Though the direct subject of the Group is internet and its development, but nowadays internet is not anymore a sectorial infrastructure, rather it interweaves society and economy, the entire Earth, all nations. It is about development and progress of economies and societies in any part of our Globe.

   Less and less it is possible to speak about isolated societal and political problems in our World, thanks to – among others – globally available connectivity, to the internet and the information and messages communicated and exchanged via it. If we want characteristics of enhanced cooperation – like: inclusive, flexible, respecting human rights and freedom, responsible, not mentioning others as effective and sustainable, evidence-based – then we cannot miss Sustainable Development Goals during the work of the Group, and also in its outcomes for the annual report of the Secretary General (see below at Q.2 first bullet).

2. **Inclusive, participatory**

Enhanced cooperation shall be open for all stakeholders in order to allow them to express and state their views and to be sure that these views will be listened and taken. Special attention has to be given to the participation of stakeholders from developing countries.

3. Respecting human rights and freedoms

Respect for human rights and fundamental freedoms should be one of the cornerstones of enhanced cooperation.

4. Transparent

Enhanced cooperation should be the responsibility of multistakeholder communities. So, it has to be transparent to all participants/stakeholders.

5. Sustainable and effective

Enhanced cooperation should be aimed at reaching consensus, focusing on achieved mutual objectives with an aim at sustainability. Consensus is one of the most important conditions to stay alive and become sustainable.

6. Responsive

Innovation, fast progress, new emerging technologies are the core of internet-based digital economy and society. Enhanced cooperation has to be mindful and attentive in response to the needs of innovation and constant development. When doing so, security and safety of the internet and the digital world should also be tackled in particular as a backer to innovation, development and motivation to be part of the internet communities.

7. Flexible and diverse

The participation of different stakeholder and their interests should be flexibly taken into consideration in the course of enhanced cooperation.

8. Following and learning from evidence

During the committed work of the multistakeholder participation, good and best practices may be achieved and observed, anywhere. They shall be made available for all stakeholders in order learn from each other and/or contribute to each other.

Question 2.

Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69 – 71, what kind of recommendations should be considered?

- As it has already been stated, the activities of WGEC should be **linked to UN Sustainable Development Goal**s (see point 1 above). The recommendations of the Group should take into consideration the SDG-s via promoting internet-offered benefits for economic and societal progress. Special attention should be given to capacity-

building, skills and education and also policy making in regions that need help and advices.

The close links with SDG may substantively contribute to the **creditability and perceptibility of WGEC and its outcomes,** particularly in developing countries. We, the members of the WGEC have been and are dedicated to reach the best and most of the benefits of Internet, digital world in their contribution to global economic and societal progress and to bridging the gap of the existing economic and digital divide. Hence, our responsibility should be closely linked to the aims of SDG-s.

- Encourage **wide engagement** and **participation in consultations** of all stakeholders.
- Promote **information and consultation materials availability** (in particular on the web) to wide circle of stakeholders all those who will be interested in the work or the outcomes of the work of the Group.
- Promote publication and **availability of best practices and evidence**.
- Encourage the participation from all professional, civil and academia representatives with a **special attention to developing countries' representatives**.
- Encourage formation of **favourable environment for investment** also in developing countries, e.g. via promoting partnership, cooperation, public-private partnerships.
- Promote **innovation enabling** environments.
- Follow closely the **newest achievement in technological progress, emerging new technologies** in order to build cooperation for the benefits of future progress.

26. Eastern Europe Regional Group, Russian Federation

The contributions of the Russian Federation to 2nd meeting of CSTD Working Group on Enhanced Cooperation.

1) What are the high level characteristics of enhanced cooperation?

The resolution A/70/125 reaffirmed that Internet governance should continue to follow the provisions set forth in the outcomes of the summits held in Geneva and Tunis, including para 49 of the Geneva Declaration of Principles and paras 35 - 37, 58-60, 69-71 of the Tunis Agenda and there are many cross-cutting international public policy issues that require attention and have not been adequately addressed.

The high level characteristics of enhanced cooperation have been clear defined the Tunis Agenda:

1.1 All governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet.

1.2 Development of public policy by governments in consultation with all stakeholders in their respective roles.

1.3 Governments, on an equal footing, shall 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 influence international public policy issues.

1.4 Development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resources, maintaining global coordination in this area, while ensuring the national interest and rights of countries in that particular region.

1.5 Enhanced cooperation should also include public policy issues such as, inter alia, the infrastructural, content and sustainable developmental aspects pertaining to the use of the Internet, security and safety of Internet as well as ethics in Internet.

2) Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should be considered?

2.1 Based on the abovementioned high level characteristics of enhanced cooperation WGEC-2 should:

- consider and agreed recommendations on public policy, including globally-applicable principles on issues associated with the coordination and management of critical Internet resources, based on:

- the equal role and responsibility of governments for international Internet governance and for ensuring the stability, security and continuity of the Internet;

- roles and responsibilities of governments 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,

- define what is the subject for enhance cooperation and agree relevant items to be considered;
- recommend where these items should be considered.

2.2 Enhance cooperation could include:

- enhance cooperation between governments on international public policy issues pertaining to the Internet with the involvement of all relevant stakeholders;

- enhance cooperation between governments and all others relevant stakeholders on other aspects of Internet governance.

2.3 It is proposed to concentrate efforts of WGEC-2 first of all at the international public policy issues:

- Infrastructural level

- Content level

- Social-economic development

2.4 Relevant international organizations responsible for essential tasks associated with the Internet should create an environment that facilitates this development of public policy principles.

HLPF, WSIS Forum, IGF could provide necessary platform for regular wide multi-stakeholder discussions.

2.5 Development of public policy by governments shall be with ensuring the full involvement of all relevant stakeholders.

2.5 States should encourage the leading role of UN organizations in the context of international public policy issues pertaining to the Internet and establish conditions, mechanisms and modalities to enable governments on an equal footing to carry out their roles and responsibilities in addressing these issues.

27. Latin America and Caribbean Regional Group, Cuba (English version)

Unofficial translation – (Original in Spanish)

ANSWER OF THE CUBAN EXPERT TO THE QUESTIONS AGREED AT THE 1RST MEETING OF THE WORKING GROUP ON ENHANCED COOPERATION ON PUBLIC POLICY ISSUES PERTAINING TO THE INTERNET (WGEC) OF THE UNITED NATION'S COMMISSION ON SCIENCE AND TECHNOLOGY FOR DEVELOPMENT, HELD IN GENEVA, SWITZERLAND, ON SEPTEMBER 30, 2016

What are the high level characteristics of "enhanced cooperation"?

From the Tunis Agenda for the Information Society[136], adopted by the World Summit on the Information Society, Tunis Phase, at its Eighth Plenary Meeting, 18 November 2005, paragraphs 35.a) y 68 al 71, the following high level characteristics of "enhanced cooperation" can be derived:

· It is reaffirmed that policy authority for Internet-related public policy issues is the sovereign right of States. (para.35.a)

· Is recognized the need for development of public policy by governments in consultation with all stakeholders. (para.68)

· Is recognized 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. (para.69)

· Therefore, the "enhanced cooperation" is a desired state, it is not a process. The process is the way to reach the desired state of "enhanced cooperation". (para.71)

· The process towards "enhanced cooperation" and the desired state obtained at the end of that process must involve all relevant organizations and stakeholders in their respective roles. (para.71)

Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should be considered?

· The outcome of the WGEC must be to achieve the desired state of "enhanced cooperation".

· The end result should be the establishment of a mechanism that allows:

[136] Document: WSIS-05/TUNIS/DOC/6(Rev.1)

— that all governments have an equal role and responsibility for international Internet governance. (para.68)
— the development of public policy by governments in consultation with all stakeholders. (para.68)
— governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet. (para.69)
— the development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resources. (para.70)

· Such a mechanism should not replace any existing organization, but rather be a coordination mechanism that call upon the organizations responsible for essential tasks associated with the Internet to contribute to creating an environment that facilitates this development of public policy principles. (para.70)

· This mechanism should be an intergovernmental mechanism based on the United Nations and with formal links with other stakeholder's organizations.

Juan Alfonso Fernández González

La Habana, December 12, 2016

28. Latin America and Caribbean Regional Group, Mexico (English version)

UNOFFICIAL TRANSLATION

MEXICO

WORKING GROUP ON ENHANCED COOPERATION (WGEC),

The concept of enhanced cooperation arises from the outcomes of the World Summit on the Information Society. In particular, paragraphs 69 to 71 of the Tunis Agenda for the Information Society provide a general guide on the processes of enhanced cooperation that should be supported by all interested parties.

In addition to the Summit documents and the evaluation result process, this Working Group must take into account the work of the previous Working Group (WGEC 1.0), established by the Commission on Science and Technology for Development. Both, the Summit documents and the WGEC 1.0 sessions provide an important guide on which it is necessary to build-up.

For the Government of Mexico, the work of this new Working Group represents an invaluable opportunity to identify the best practices and challenges that the internet community faces to continue enhancing cooperation. There are several cooperation opportunity areas for stakeholders which are a tangible and concrete reality, although we recognize the need to improve the respective mechanisms in many other fields.

In this context, the Government of Mexico provides the following answers to the questions rose by the Chair of the Working Group, with the aim of fostering dialogue among members of the group and contributing to its work.

What are the high-level characteristics of enhanced cooperation?

While paragraph 69 of the Tunis Agenda for the Information Society explicitly refers to the role of governments, we consider that efforts aimed to strengthen cooperation should involve all community stakeholders under the multiple stakeholders' approach. For the Government of Mexico there are several successful examples of the implementation of this approach in which cooperation among actors has been fundamental and decisive. For instance, the IANA functions transition to the global community included a number of meetings within the framework of the diverse community and multiple ICANN stakeholders. In the same sense, the meetings of the Internet Governance Forum - in particular the work of the Multistakeholder Advisory Group - are a benchmark for the global community, not just for the diversity of views and actors present during the meetings, but for the deep cooperation during the preparatory process. Having this in mind, we consider that enhanced cooperation has the following top level characteristics:

Adaptable.

The efforts undertaken by the community to strengthen cooperation between stakeholders should be adaptable to the broad range of the Internet public policies. The Internet ecosystem offers several examples of multi-stakeholder processes with different mechanisms of participation, actors and purposes. We believe that enhanced cooperation should be applied to this diversity, without attempting to unify formats and respecting the characteristics of each mechanism.

Collaborative.

The Tunis Agenda for the Information Society recognizes the need to involve all stakeholders in public policy issues related to Internet. The Government of Mexico considers that a genuine enhanced cooperation should involve all community stakeholders. The results achieved under this approach must be produced from the beginning in a collaborative way, without limiting the stakeholders to a mere role of observers or as part of non-binding consults.

Consensus-based

The best outcomes in public policy issues related to the Internet result from a broad, plural and diverse discussion and take into consideration the views of all interested parties in the Internet community. Enhanced cooperation should be based on consensus, in order to promote an informed, active, plural and diverse participation of all stakeholders.

Evidence-based

It is widely recommended that the cooperation efforts are based on accurate evidence. The community of stakeholders produces diverse reports, studies and documents of invaluable interest for discussion by the Internet community. Enhanced cooperation should take into account the already existing material and, if necessary, promote its dissemination in open and accessible formats, including the use of open data.

Transparent.

Enhanced cooperation is strengthened by practices that generate certainty around the positions and decisions taken by all multiple stakeholders. An informed, plural and diverse dialogue is necessary in the discussions on public policies related to the Internet.

Sustainable.

In addition to the characteristics outlined before, enhanced cooperation should take into account the relationship between the Agenda 2030 for Sustainable Development and the overall review of the implementation of the outcomes of the World Summit on the Information Society. Such efforts must take into account the favorable role of information and communication technologies, especially the Internet and its decentralized management model of multiple stakeholders.

Taking into account the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

The work of the previous WGEC shows the importance of fostering the debate and involvement of all multiple stakeholders of the Internet community. The outcome of previous group should not be a burden for the new Group but an opportunity to avoid starting from zero.

As for the Tunis Agenda provisions, it is important to note that while paragraphs 69 to71 explicitly mention the role of governments in strengthening cooperation, both the Agenda itself and the outcome document on the overall review of the implementation of the outcomes of the World Summit on the Information Society recognize the importance of the involvement of all stakeholders. In addition, the Internet ecosystem fosters the collaboration among stakeholders on a permanent basis. Recommendations should focused on the role of a single interested party might not lead to consider the full potential of the subject.

In this context, the recommendations should be relevant for the work of governments and other interested parties. The adaptability of enhanced cooperation, should allow that the recommendations issued by the Group could resist their analysis under various schemes and existing collaboration mechanisms among the various community organizations.

The recommendations should have to be flexible and resilient enough to be implemented in different fields at different levels. They should encourage innovation *per se* as a feature of the Internet, its applications and services. At the same time, the recommendations should be compatible with the multi-stakeholder approach for Internet Governance.

The recommendations should be a sign of the willingness and commitment of interested parties and adopted by consensus by all participants. For this reason, it is of particular importance that its drafting takes place in an open, participatory and inclusive environment, making use of various mechanisms - including the virtual ones – to empower stakeholder’s participation.

29. Western Europe and Other States Regional Group, Canada

Canadian contribution to the
Working Group on Enhanced Cooperation

Canada is pleased to submit the following in answer to the questions posed by the Working Group on Enhanced Cooperation (WGEC). In providing this input to the discussions, Canada's goal is to ensure the Internet continues to provide the economic, social, and cultural gains we have benefited from since the Internet's inception and phenomenal growth. Canada's proposals here aim to sustain an open, free and secure Internet where individual's rights and freedoms are protected; where information and ideas flow freely; where innovation flourishes and continues to generate prosperity, and where both the information it holds and its digital infrastructure are protected.

1. What are the high level characteristics of enhanced cooperation?

Canada believes that when decisions regarding the Internet are reached with broad support from all stakeholders, this provides a form of guarantee that the implementation of these decisions will be facilitated by all those who took part in the decision. Therefore, enhanced cooperation **must be open to, and inclusive of,** all stakeholders. This does not mean that everyone must be involved in every decision but it must allow that, if a party believes it has an interest, then: they are a stakeholder and should be allowed to participate in the process. The role of a stakeholder cannot be fixed. It will evolve depending on the task at hand. In enhanced cooperation, Internet users, business, expert technical organizations, academics, civil society representatives, and governments collectively develop policies and make decisions based on consensus in a transparent and inclusive manner.

As people's lives increasingly move online, we need to be careful to ensure that human rights are respected in every process in which we engage. From a governmental perspective, our national security and prosperity rely inherently on the protection and promotion of these rights. Such a fundamental infrastructure as the Internet must be in line with this priority. Therefore, **enhanced cooperation should result in outcomes which would protect and promote human rights, as defined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.**

Enhanced Cooperation is inherently transparent. Because many stakeholders are involved and as they are accountable to their respective constituencies, it would be impossible and unhelpful to reach decisions behind closed doors. This transparency prevents arbitrary decisions being made as the flow of information in and out of an enhanced cooperation decisional process ensures that the factual basis underlying decisions are continually checked and double-checked by the community of stakeholders. This also creates a permanent permeability to new facts which can continue to inform and improve the decision-making process.

Canada believes that these characteristics of openness, inclusivity, transparency, using facts, and aiming to promote and protect human rights can apply in both developing and developed country contexts and can be used to address any of the issues related to the Internet. These high-level characteristics will stand the test of time in a fast-changing, technology-driven environment, and are drawn from common provisions found in previous articulations of Internet principles, existing international law, and based on Internet-related tenets that already enjoy widespread or universal support.

We acknowledge that Enhanced Cooperation is not an easy process, but it is a strong process which has the best chances of bringing about good decisions.

2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

The recommendations of this WGEC should be in line with the priorities the world has set for itself in 2015 with the Sustainable Development Goals (SDGs). We should ask ourselves which parts of public-policy related issues of the Internet can advance the 2030 Agenda and ensure that Enhanced Cooperation is applied to bring solutions about.

Our recommendations should promote and protect human rights, commit to a single, interoperable, inclusive and un-fragmented technology to allow all Internet users to innovate and capture the inherent social and economic benefits. They should also ensure that Internet users are able to have trust and confidence that they are safe online and not subject to malicious cyber activity. All stakeholders have a role to play in improving security of digital networks that support economic prosperity and social development. Furthermore, our work should aim at preserving the security, stability and resiliency of the Internet, which is of paramount importance. All stakeholders can and must work together to ensure that it is preserved.

Enhanced cooperation must be undertaken in a way to encourage innovation and promote economic growth and development. Canada's experience has taught us that reinforcing an open and decentralized Internet brings economic benefits to all. It is critical that the international community rally to preserve and foster an inclusive online environment that promotes, rather than constrains, dynamism and human creativity. Government-centric approaches would stifle the innovation and dynamism associated with the Internet. The current model has led to enhanced productivity, innovation and inclusion, creating better quality of life and economic growth in the global digital economy.

Over a billion new Internet users are expected to come online in the next few years, with the vast majority connecting via mobile devices in the global south. It will be important to ensure that these new Internet users are able to contribute and influence outcomes as part of the multistakeholder decision-making processes at the relevant institutions. In this regard, the last WGEC had intended to look at barriers for participation in Enhanced Cooperation. In our view, this remains a problem and a report explaining these barriers and how to overcome them would be a successful outcome.

30. Western Europe and Other States Regional Group, Switzerland

Contribution from Switzerland
Dear CSTD-WGEC Secretariat
Please find below our contribution to the two guiding questions:

(1) What are the high level characteristics of enhanced cooperation?

The high-level principles of enhanced cooperation in the Internet Governance realm would in our view need to be guided by the following:

- They should aim at a people-centered Internet, based on principles of
  - transparency,
  - inclusiveness,
  - democratic participation and
  - accountability.

- They should be responsive to the needs of all stakeholders in the world, in particular those from developing countries.

- They should foster freedoms and innovation online, and at the same time be built on mutual respect and shared responsibilities of all stakeholders on national, regional and global levels.

- They should foster respect for the rule of law and human rights; freedom and self-determination coupled with responsibility, solidarity and respect for cultural and political diversity.

- They should promote good governance and checks and balances in all IG processes, which would need to be transparent in their work and accountable to all stakeholders of the world, taking into account their different needs and cultures and building on the respective roles and responsibilities of all stakeholder – governments, business, civil society and the technical and academic communities. All IG processes should act in the global public interest(s) and not just in the interest(s) of those few who have the means to be at the forefront of the technical and economic development

(2) Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

WGEC recommendations should be sufficiently broad as to be capable of implementation by diverse organizations and stakeholders according to their different mandates, roles and responsibilities.
To that end recommendations should be technologically neutral to the extent feasible and be sufficiently flexible and "future-proof" to withstand technological change and development.
Recommendations should also ensure that inclusive and sustainable development goals are incorporated.

With kind regards,

Jorge
Cancio

31. Western Europe and Other States Regional Group, Turkey

CSTD 2nd Working Group on Enhanced Cooperation (WGEC)
Contribution of Turkey
7 December 2016

In the first meeting of the WGEC in Geneva on 30th Sep 2016, two guiding questions were set by the group as follows and the members were asked submit their contributions by e-mail to the CSTD Secretariat until 7th Dec 2016:

1) What are the high level characteristics of enhanced cooperation?
2) Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

First of all, Turkey would like to extend her thanks to the CSTD Chair of the WGEC and the CSTD secretariat for this opportunity to respond to those questions given above and in advance to all distinguished members of the Working Group for their contributions. We believe that the group will provide a platform to improve the global Internet governance processes going on. The response of Turkey to the questions is given below.

1 - What are the high level characteristics of enhanced cooperation?

- **Multistakeholder:** Although "governments-only" reading of enhanced cooperation may be possible by looking at the words in paragraph 69 of the Tunis Agenda, paragraph 70 and 71 indicates that enhanced cooperation should be carried out through multistakeholder processes where all relevant stakeholders are involved within their respective roles and responsibilities.
- **Transparent:** Enhanced cooperation processes should be transparent and publicly and properly documented for future reference.
- **Flexible:** Enhanced cooperation processes should be flexible enough to adapt to changing public policy issues pertaining to the internet.
- **Effective**: Enhanced cooperation processes should be effective to achieve concrete results and avoid unnecessary procedural matters.
- **Collaborative**: Enhanced cooperation processes should be collaborative and take into account all points of views from all stakeholders.
- **Consensus-based**: Enhanced cooperation processes should proceed with consensus-based decisions to the possible extent.
- **Inclusive**: All relevant parties should be allowed to participate on an equal footing in enhanced cooperation processes, bearing in mind the nature of some intergovernmental processes.

2- Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

Recommendations should;

- Be related to the international public policy issues pertaining to the internet identified by the previous WGEC and the CSTD as listed in the document named "*Mapping of international Internet public policy issues*", but there should be room for adjustments, additions or deletions of those issues considering the fast pace of changes of the internet.
- Describe how better flow of information among relevant actors can be achieved.
- Describe how governments are enabled on equal footing.
- Describe among who and how enhanced cooperation should be furthered.
- Involve indicators to measure whether the objective of the enhanced cooperation is reached where applicable.
- Not duplicate if a certain issue is covered by an international organization in an effective and appropriate manner.
- Focus on the priority areas to be defined by this working group where no action causes immediate negative effects on enjoyment of internet equally and effectively by all humanity.
- Allow flexibility since a "one-size-fits-all" approach may not be suitable for all countries where different cases may be at stake.
- Take into consideration specific needs of developing countries.
- Involve a mechanism to periodically test the validity of each recommendation made by this group so that recommendations are still relevant in future.
- Address national best practices regarding the internet governance to be mapped to the international level.

32. Western Europe and Other States Regional Group, United Kingdom

CSTD Working Group on Enhanced Cooperation (WGEC)

Contribution from the UK Government

Introduction

1. The UK Government welcomes the opportunity to respond to the two questions that were set by the Working Group at its first meeting. We look forward to discussing these questions with other stakeholders in order to share understanding and build consensus. Although there are differences of perspective and differences of view, we believe that the Working Group now has an opportunity to identify where there is common ground and develop consensus-based recommendations.

2. The Internet is a global network of networks, with difuse ownership and management of its infrastructure and products. It works and it has developed successfully due to cooperation by a wide range of different stakeholders. As the Internet has become more global and as we work together to bridge the digital divide, it has been important to continue to develop and enhance cooperation between stakeholders. In our view, the Working Group on Enhanced Cooperation is a chance to reinforce that cooperation and to consider how it can promote sustainable development, in particular by encouraging inclusive participation by stakeholders from developing countries.

Q1 - What are the high level characteristics of enhanced cooperation?

3. The last WGEC ran into difficulty when it tried to engage with many individual specific policy issues in great detail without first developing broader consensus on the concept of “enhanced cooperation”. It may not be possible to produce a single definition of “enhanced cooperation” that all stakeholders sign up to, but agreement on the characteristics of enhanced cooperation, at a high level, could allow us to make significant progress in identifying shared objectives and finding agreement.

4. We believe that identifying and agreeing a set of high level characteristics of enhanced cooperation will enable us build greater common understanding. It will increase confidence in the work of the WGEC, which will allow us to make more progress. We hope that consensus on the characteristics of enhanced

cooperation will be a guide to us when we consider more difficult or complex recommendations and it will be a basis on which we can measure our progress.

5. We recognise that there are many possible characteristics of enhanced cooperation and many ways of expressing them. We look forward to hearing the views of other colleagues. The UK would suggest the following characteristics for consideration:

- **Participatory and inclusive** - Enhanced cooperation should be open to participation by stakeholders with all views taken into account. Participation should be inclusive of all who have an interest in the international Internet-related public policy issue, paying particular attention to the needs of stakeholders from developing countries.

- **Responsive** - Enhanced cooperation should develop continuously in response to innovation and with foresight towards new developments that may have international Internet-related public policy implications. It should also be responsive to sustainable development priorities.

- **Flexible** - Enhanced cooperation should be flexible, recognising that different kinds of international Internet related public policy issues require different kinds of stakeholder cooperation in different circumstances.

- **Effective and sustainable** - Enhanced cooperation should be focused on achieving mutually agreed objectives aimed at long-term sustainability.

- **Respecting human rights and fundamental freedoms** - Enhanced cooperation should support and foster respect for human rights and fundamental freedoms, recognising they are universal, indivisible, interdependent and interrelated.

- **Evidence-based** - Enhanced cooperation should be based on a broad and robust evidence base that is accessible and to which all stakeholders are able to contribute.

- **Transparent** - Enhanced cooperation should be transparent to all stakeholders. Participating stakeholders should take responsibility for their actions and should be prepared to explain them.

In addition, running through all these high level characteristics, we believe that enhanced cooperation should contribute to the **2030 Sustainable Development Agenda** and pay particular attention to the needs of stakeholders from developing countries.

6. These characteristics are equally weighted and mutually reinforcing. In our view it is important to avoid a "shopping list" of specific policy issues: we are proposing instead a set of generic, high level characteristics which can be applied to the broad range of policy issues.

Q2 - Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

7. We will do our job most effectively if we develop recommendations which as far as possible can be useful to different stakeholders, in different circumstances, facing different issues at different times. Developing a recommendation for one specific issue or one limited group of stakeholders at a particular time would not be so useful.

8. Paragraph 71 of the Tunis Agenda says that the process towards enhanced cooperation should involve all stakeholders in their respective roles. The Internet governance framework is a distributed ecosystem involving different organisations and forums and stakeholders. Enhanced cooperation can only succeed if all stakeholders are included. The WGEC should develop recommendations that as far as possible can be generally applied by all stakeholders, including governments, the private sector, civil society, the technical community and the academic community.

9. Our recommendations should be flexible and recognise that different stakeholders will have different roles in different issues and situations. The Internet and Internet-enabled new technology is having an impact on almost every aspect of modern life and almost every aspect of public policy. The range

of issues and the range of stakeholders affected are now extremely broad. This means that we need to develop recommendations that can be applied to different kinds of issues and stakeholders in different kinds of circumstances.

10. Our recommendations should as much as possible be “future-proof”. Paragraph 71 also says that the process towards enhanced cooperation will be responsive to innovation. We need to recognise that technology has developed incredibly quickly since the Tunis Agenda was agreed in 2005. We believe that the pace of change will continue to accelerate and the new opportunities and challenges for public policy will also increase in pace. The WGEC should develop recommendations that are future proof - recommendations which will still be useful and applicable in ten years’ time and beyond.

11. With this in mind, we believe that the WGEC can produce a set of recommendations across a range of different areas, which will further the process of enhanced cooperation. Our recommendations should:

- Promote best practice in **consultation and engagement**, including how stakeholders can reach out proactively to one another in an informative and easily understandable way.

- Consider how stakeholders can **make information and evidence available** in an open, accessible and timely way in order to support meaningful participation and engagement.

- Develop principles on how stakeholders can **open up their policy-making processes** to input and scrutiny from other stakeholders.

- Make practical suggestions for enabling **participation of stakeholders from developing countries**, taking into account cultural and linguistic diversity and the capacity constraints faced by least developed countries.

- Consider how stakeholder representatives are chosen, including best practice in ensuring a **balance of stakeholder representatives** in multi-stakeholder forums.

- Support **sustainable development**, particularly in terms of capacity-building, education and skills, in order to help bridge the digital divide.

- Promote an **enabling environment for investment**, in particular promoting cooperation and partnership between governments, the private sector and other stakeholders which promotes investment in infrastructure and increases affordable connectivity in developing countries.

- Promote an **enabling environment for innovation**, in particular ensuring that the Internet remains an open environment which facilitates innovation and encouraging cooperation between stakeholders to this end.

- Avoid **duplicating existing work** but instead seek to develop existing forums, including building understanding of multi-stakeholder enhanced cooperation processes in the full range of existing international organisations.

- Consider how best to **build cooperation on emerging topics**, particularly new issues presented by newly emerging technology, in a way which allows all stakeholders to participate.

We believe that these kinds of issues represent a hugely valuable opportunity for the WGEC to make significant progress in developing enhanced cooperation.

12. Our recommendations will be most effective if they are agreed by consensus, as recommended by ECOSOC Resolution 2016/22. Although that resolution says that we can reflect different options and opinions if necessary, it would be a wasted opportunity to do so. Recommendations that are agreed by consensus have the authority and support to make an effective impact.

13. In our view, although we may not be able to reach agreement on every issue, there is a very broad and important agenda here where we should be able to find significant areas of agreement. The WGEC now has an opportunity to identify that common ground a make real progress on this issue.

2 December 2017

33. Western Europe and Other States Regional Group, United States of America

Contribution of the Government of the United States of America to the CSTD Working Group on Enhanced Cooperation

The United States is pleased to provide the following input to the CSTD Working Group on Enhanced Cooperation (WGEC). We believe that the WGEC continues to be the best venue for discussing the complicated, but important, issue of enhanced cooperation and look forward to working with all stakeholders to produce a positive, consensus outcome.

The WGEC commences its work in a much better position than its predecessor. Over the past decade, progress has been made to bring Internet issues to the global, multi-stakeholder community for appropriate consideration, deliberation, and action. In just the past year, the mandate of the IGF was extended for an additional ten years, the transition of the IANA stewardship to the multistakeholder community was completed, and many stakeholders, including the UN, WEF, IEEE, and World Bank, launched multistakeholder initiatives to help bridge the digital divide.

As deliberations begin in the WGEC, the United States offers the following contextual framework for considering enhanced cooperation:

- **Goal:** The goal of enhanced cooperation is to continually strengthen and improve existing institutions and processes that are discussing Internet public policy issues, so the Internet remains an open, interoperable, secure, and reliable platform where everyone can create, access, utilize, and share information and knowledge to achieve their full potential, exercise human rights and fundamental freedoms, promote sustainable development, and improve quality of life.
- **Scope**: Enhanced cooperation is focused on improving processes and institutions that develop public policy relating to the Internet. It is not, in theory or practice, a platform for developing or debating Internet public policies, and it does not include decision-making authority regarding day-to-day technical and operational matters of the Internet.

1. What are the high level characteristics of enhanced cooperation?

- **Continuous Process:** Enhanced cooperation is a process. It is continuous, ongoing, interactive, and without a narrowly defined ending or outcome.
- **Transparency:** Cooperation is dependent upon trust and a common basis for engagement. In order for enhanced cooperation to work, therefore, it must be open and transparent.
- **Participation:** Enhanced cooperation involves different types of cooperation and consultation among diverse stakeholder groups needed for different policy deliberations.
- **Range of Cooperation:** Enhanced cooperation is interdisciplinary and inclusive of many cooperative and collaborative measures, programs, and initiatives undertaken by any combination of stakeholders to achieve either discrete or broad objectives.

- **Distribution:** Due to the distributed nature of the Internet, enhanced cooperation must recognize that no single institution, arrangement, or instrument can manage the entirety of the Internet's policy demands and infrastructure.
- **Voluntary Implementation:** Enhanced cooperation depends on the voluntary implementation by a range of stakeholders and institutions concerning improvements to processes that develop Internet public policy.
- **Support for Other Processes:** Enhanced cooperation should support, enhance, and help implement decisions and outcomes from other fora, including the WSIS outcome documents, UNGA Resolution 75/125, and relevant UN Human Rights Council Resolutions, among others. It is not a platform for renegotiating those decisions and outcomes.
- **Special considerations:** Recognizing the realities and challenges facing the various processes and institutions developing Internet public policy, enhanced cooperation should give special consideration and attention to stakeholders that are often marginalized or underrepresented in these discussions, including women, developing countries, persons with disabilities, youth, and unaffiliated users.

2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

The WGEC should consider:

- Proposals from all stakeholders, including both members and non-members of the WGEC, that are likely to garner consensus support of the WGEC and broad acceptance by all stakeholders.
- Recommendations that enhance and support the full involvement of all stakeholders in developing Internet public policy, including at the national and local levels.
- Recommendations focused on tangible and non-binding recommendations that improve processes and institutions that are discussing or developing Internet public policy, including at the national and local levels.
- Examples of enhanced cooperation that have already been implemented by institutions and processes, including procedural and participation improvements and best practices.
- Recommendations that enhance the participation of developing countries, women, persons with disabilities, youth, and unaffiliated users in institutions and processes that are developing Internet public policy.
- The previous work of CSTD working groups (but not with absolute deference to them).

The WGEC should NOT consider:

- Policy issues pertaining to day-to-day technical and operational matters of the Internet.
- Recommendations or proposals that have been repeatedly rejected in other fora and are unlikely to garner consensus support now.

- Recommendations that attempt to promote the role or interest of one stakeholder over other stakeholders.
- Recommendations that attempt to adopt binding recommendations that could undermine the voluntary, bottom-up nature of Internet governance.
- Recommendations that undermine or contradict the principles and spirit embodied in the outcome documents of WSIS or UNGA Resolution 70/125.