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Global Internet Governance and the Public Interest in Communication

par

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Résumé et mots clés

Résumé

Élaborée à partir d'une étude de cas extensive focalisant sur les perspectives multiples et concurrentes ayant émergé lors des négociations sur la gouvernance de l'Internet, thématique ayant dominé l'agenda politique du Sommet mondial sur la société de l'information (SMSI), cette thèse examine les manières avec lesquelles les débats mondiaux sur la gouvernance de l'Internet influencent la notion d'intérêt public en communication.

Établie sur la base d'une observation participante extensive, d'entrevues semi-structurées et de l'analyse d'une documentation formelle et informelle associée au SMSI, cette thèse fait état de l'émergence des enjeux associés à la gouvernance de l'Internet au SMSI et présente une analyse approfondie des négociations ayant porté sur cet enjeu. Le cadre théorique développé par Lawrence Lessig au travers duquel « le code est la loi » est appliqué afin d'expliquer comment les différents acteurs ont débattu et ultimement atteint un consensus sur les frontières venant séparer les enjeux normatifs de politique publique et les questions techniques de régulation et de gestion du réseau. Cette thèse discute également de l'évolution des débats autour de la gouvernance mondiale de l'Internet ayant pris place à la suite de la conclusion du SMSI. Sur la base de cette étude de cas, un ensemble de conclusions sont formulées sur les acteurs et les caractéristiques institutionnelles ayant influencé les négociations sur la gouvernance de l'internet.

Il est également suggéré que le SMSI a redéfini une discussion étroite sur la gestion d'un ensemble de fonctions techniques de l'Internet en un domaine de politique publique plus large de gouvernance mondiale de l'Internet. Il est également défendu que la notion d'intérêt public dans la gouvernance mondiale de l'Internet est conceptualisée autour des processus de participation et d'intégration des différentes parties prenantes au processus politique. Les implications directes et indirectes qui découlent de ce constat pour comprendre plus largement la notion d'intérêt public dans le domaine de la communication sont également présentées et discutées. En conclusion, cette thèse s'interroge sur les implications programmatiques des éléments ayant été précédemment soulevées pour la recherche médiatique et communicationnelle.

Mots clés:

Gouvernance mondiale de l'Internet; régulation de l'Internet, mondialisation; gouvernance mondiale; politique de communication; économie politique de la communication; Sommet mondial sur la société de l'information; intérêt public.

Abstract and Key Words

Abstract:

Centred on an extensive case study of the multiple and competing perspectives that emerged over the course of the controversial internet governance negotiations that dominated the United Nation's World Summit on the Information Society (WSIS), this thesis examines *how the global debate on internet governance influences the public interest in communication.*

On the basis of extensive participant observation, targeted semi-structured interviews and analyses of a range of formal and informal documents associated with the WSIS, this thesis reviews the emergence of the issue of internet governance at the WSIS and provides an in-depth accounting of the negotiations that followed. Lawrence Lessig's theory of "code is law" is applied in explaining how various actors debated and ultimately reached conclusions about the boundaries between normative public policy issues and questions of technical regulation and management. The evolution of the debate over global internet governance since the conclusion of the WSIS is also discussed. On the basis of this case study, a series of conclusions are drawn about the actors and institutional characteristics that influenced the WSIS negotiations on internet governance.

It is suggested that the WSIS redefined a narrow debate over the management of a series of internet technical functions as a more broad public policy field of global internet governance. It is argued that the public interest in global internet governance however is process-focused and preoccupied with the political welfare of various stakeholders. The direct and indirect implications for understanding the larger public interest in communication are considered. In conclusion, this thesis reflects on the programmatic implications for the media and communication studies research agenda.

Keywords:

global internet governance; internet regulation; globalization; global governance; digital technology; communication policy; political economy of communication; World Summit on the Information Society; public interest

-TABLE OF CONTENTS-

-LIST OF FIGURES-

-LIST OF ABBREVIATIONS AND ACRONYMS-

CCTLD	Country Code Top Level Domain
CoE	Council of Europe
CRIS	Communication Rights in the Information Society (Activists)
CRTC	Canadian Radio-Television and Telecommunications Commission
CS	Civil Society
CSTD	Commission on Science and Technology for Development (UN)
DNS	Domain Name System
DoC	Department of Commerce (US Government)
ECOSOC	The Economic and Social Council (UN)
EU	European Union
GAC	Government Advisory Committee (of ICANN)
GMP	Global Media Policy (research programme)
GTLD	Global Top Level Domain
IAB	Internet Architecture Board
IANA	Internet Assigned Numbers Authority
ICANN	Internet Corporation for Assigned Names and Numbers
ICT	Information, Communication Technology
IETF	Internet Engineering Task Force
IGF	Internet Governance Forum
IGP	Internet Governance Project (Syracuse University)
IP	Internet Protocol
ISOC	Internet Society
ISP	Internet Service Provider
ITU	International Telecommunication Union
JPA	Joint Project Agreement (between ICANN and US Gov.)
MoU	Memorandum of Understanding
NGO	Non Governmental Organization
NTIA	National Telecommunication and Information Administration (US Gov.)
NWICO	New World Information and Communication Order
OECD	Organization for Economic Cooperation and Development
PEC	Political Economy of Communication (research programme)
PrepCom	Preparatory Committee (of WSIS)
UK	United Kingdom
UN	United Nations
UNESCO	UN Education, Science and Culture Organization
UNSG	UN Secretary General
USG	United States Government
WCIT	World Conference on International Telecommunications (ITU)
WGIG	Working Group on Internet Governance
WIPO	World Intellectual Property Organization
WSIS	World Summit on the Information Society
WTPF	World Telecommunications Policy Forum (ITU)

-DEDICATION-

To My Mother: Catherine Elspeth Shtern

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-PREFACE-
From e-Democracy to More Democratic Electronic Networks

My Entry Points into the Subject

Chances are that some of you entirely rejected or merely ignored the hype about how the internet was going to lead to a revitalization of democracy. Most of us didn't. Then again, in our defense, "most of us haven't got a clue about how networks work", Lawrence Lessig- someone who has more insight than most about how networks work- offers by way of absolution in his 2006 revision of his 1999 book *Code and Other Laws of Cyberspace*. (Lessig 2006, 32; see also Lessig 1999). I would like to think that I was a bit skeptical, but I am certain that I had little clue about how networks worked around the turn of the century. I went off to cyberspace looking for democracy regardless.

Darin Barney wrote in 2000 (20-21) about how governments of the day were "hoping to catch the wave and trying to avoid being stigmatized as anti-democratic" by engaging in what he called "online discussion groups and electronic plebiscites, and the provision of a variety of information resources". I saw the emerging e-democracy or e-citizen engagement practices described by Barney as the most promising place to find the internet democracy I was hearing so much about.

Between 2001 and 2003 I worked on, and researched, e-democracy projects in the United Kingdom and in Canada. These included national online policy consultations, smaller local online consultations and a variety of assessments of how internet technologies like email and the world wide web were contributing more generally to the dialogue between citizens and governments (cf. Coleman 2002). I had various roles in these projects.

In my role as moderator I was responsible for exercising the internet's celebrated practice of informal community governance or netizenship. Indeed, one episode in which I intervened (as an anonymous moderator) into a discussion forum to caution participants about the importance of maintaining civility has even found its way into the academic literature on the subject (Hurrell 2005).

In my role as analyst and researcher, I came across many instances where citizens engaged in deep, rich, fundamentally democratic discussion with strangers from around the country. If not for the convenience of internet mediated communication they might not have otherwise been able or willing to participate. Echoing the classic cartoon in which a dog waxes that "the best thing about the internet is that nobody knows you're a dog", I watched a drycleaner with little formal education express her gratitude for a forum in which she could have her opinions treated seriously because nobody knew that they were coming from a drycleaner with little formal education. I was gratified to read that victims of flooding in the UK found enough cathartic value in the opportunity to discuss flood prevention and response with others who had experienced flooding, that they would have been glad to have participated even if the consultation failed to influence government policy. A well-conceived and attentively managed e-democracy project could facilitate instances where citizens engaged in informed debate and occasionally deliberation over issues of general concern.

But, these were small victories and hardly the flood of democracy that had been promised and that I was expecting. For one thing, this public sphere was accessible to only those with access to the technologies required to connect and the literacy required to participate in dense, text-intensive discussion that was restricted to officially recognized

languages (English in the UK, French and English in Canada). There is nothing intrinsic to internet technology that addresses these sorts of democratic divides.

I was also involved in the direction of e-democracy projects, interacting with both the software developers and the political partners. One of the e-democracy projects on which I worked was an online consultation that was staged as part of a general effort to consult the Canadian public on Canada's foreign policy. While the entire process was planned prior to the events of 9/11/2001, the online consultation component was launched in January 2003 at a time when it was becoming increasingly clear that the United States was going to invade Iraq. The consultation was structured around a series of general, more conceptual questions about Canada's foreign policy principles. But, the war in Iraq and Canada's possible roles in it, became an obvious lighting-rod issue for anyone interested in discussing Canada's place in the world at the time.

This project was called "A Dialogue on Foreign Policy". The choice of the word dialogue reflected very specific ambitions that it would be a deliberative space in which informed citizens exchanged ideas and the discussion built upon previous contributions. In contrast to the idea that citizens simply deposit their own opinions and leave it at that, a dialogue presupposes that the participants engage the perspectives of others and reconsider and evolve their own views accordingly.

These ambitions were built into the technical and informational infrastructure of the e-democracy project. For instance, though the dialogue idea required that participants build on the responses of others, it was unreasonable to expect that participants in the dialogue were going to be able to read the hundreds of responses submitted by their fellow citizens before considering their own answers. As a compromise, the website

would feature frequent summaries to be written by moderators like me. The site was set up in a way that these summaries were unavoidable, so that participants *had* to read them (or make an equally strenuous effort not to) before giving their own opinions. A democratic bias towards deliberation was embedded into this particular technology. But it did not have to be.

"An overwhelming majority of participants in the Foreign Policy Dialogue expressed the view that Canada should not support the United States in an invasion of Iraq". I wrote this in one of my summaries. Despite the fact that "Should Canada support the US in an invasion of Iraq?" was not one of the questions being asked by the foreign policy dialogue, it was one of the subjects being discussed most frequently in the submissions. This caused problems and debate. The problem was that Canada had not yet adopted a public position on the war in Iraq and our governmental partners felt that, if Canada did eventually join the war effort, having such statements visible on the internet and under Department of Foreign Affairs and International Trade letterhead could be highly problematic in defending that decision. The debate ended up being about whether summaries were appropriate and, in the end, over whether the site was going to be a highly deliberative forum for democratic discussion or something else.

To our government partners, the summaries constituted a subjective take that necessarily involved editorializing and thus compromised the neutrality of the civil service. They argued that the war in Iraq was not a question and thus that the views on it were not relevant to summarizing the answers to the questions that were actually being asked. "No more summaries", they pronounced. "That would mean no more deliberations", we fought back. But, just as easily as a democratic bias towards

deliberative discussion rather than mere opinion-giving had been embedded into the technology, it was undermined by politics and coded out by software developers. Participants were still advised that they *should* consider all of the hundreds of answers of their fellow citizens before giving their own opinion. But, with a bit of coding, there was suddenly nothing in either the informational or technological architectures of the Foreign Policy Dialogue that made it likely that they would. Code and politics, governments and technologists. That was it. The technologies of the internet can be democratic, but they do not have to be.

-CHAPTER 1-
Internet Governance: States, Technology and the Public Interest

"Internet time" meets "UN time"

The timetable would, Ambassador Khan re-assured the increasingly restless crowd of national delegations and business and civil society interlocutors assembled in one of the secondary amphitheatres of the *Palais des Nations* in Geneva, be "aggressive". Masoud Khan, a Pakistani diplomat was speaking in his role as Chair of Subcommittee A of the third preparatory committee meeting (PrepCom) of the second phase of the United Nations (UN) World Summit on the Information Society (WSIS) and he was speaking in response to concerns raised in consecutive interventions made by the delegations of Brazil and the United Kingdom (UK). The UK was speaking in its role as president of the European Union (EU).

Subcommittee A, under Ambassador Khan's chairmanship, was charged with negotiating an agreement on the issues related to internet governance that had to be accepted unanimously by all UN country delegations. Internet governance had emerged during the first phase of the WSIS as both the most important and most controversial of all of the issues treated by the Summit. Were it not for a desperate 11th hour compromise brokered on the eve of the first phase of the WSIS by the government of Switzerland, internet governance could have taken the entire process off the rails in 2003 (see Furrer 2005). Since it seemed impossible to arrive at a resolution to the debate over global internet governance by the end of phase I of the WSIS, a working group was instead created to study the issue. The seemingly intractable task of negotiating an agreement on internet governance was pushed back to some future point during the 2nd phase.

By the time Ambassador Khan found himself addressing the Brazilian and EU concerns that things were not going fast enough on Thursday September 22, 2005, not only had the working group been convened, met and delivered its report, but the first week of the PrepCom was winding down. Some future point, in other words, was now. Discussion of the heart of the issue, the question of what sort of institutional framework should exist for governing internet technologies and internet-mediated communication and the crucial question of the role of the international community in that framework, had already been put off by at least two years in the hope that some combination of further study, informal negotiation and the passage of time would somehow diminish the level of disaccord between the divergent, competing and often mutually exclusive positions of various delegations to the WSIS. And now the fourth of the ten remaining negotiation days scheduled for phase II, PrepCom III was concluding and the real controversial issues were still not being discussed. The possibility that time was, for once and for all, running out must have crossed the minds of everyone and the concern of the Brazilian and EU delegations that things were not moving quite fast enough was certainly understandable.

Brazil had, in most diplomatic terms of course, suggested that, after four days of preliminary, general discussions, perhaps more explicit focus on the controversial issues of substance was now required. The list of delegations awaiting the floor was already long and Ambassador Khan had let this point of order pass without comment, instead immediately granting the floor to the UK/EU delegation. The intervention of the EU touched on a number of important issues of substance but also pointed out that there was much work to be done in order to build on common ground, and asked the chair directly about the timetable for the completion of negotiations and about when he- Ambassador

Khan- envisioned text for negotiation being tabled. It was at this point that Khan felt obliged to pre-empt the next delegation on his list of scheduled speakers and intervene with his own comments about an aggressive timetable. Aggressive, in timetable terms, included the promise that the hitherto one-a-day negotiating sessions would shortly evolve into two-a-day negotiating sessions and that exact deadlines for progress would be discussed soon.

If the message of the Brazilian and EU delegations was that a sense of urgency seemed lacking, then either the message was only partially received by the other WSIS delegations, or the very concept of a sense of urgency is incompatible with the culture and processes of global governance, at least within the UN system.

After Ambassador Khan's intervention, a series of delegations took the floor. One after another, various country delegations from around the globe waived their country name plates, waited to be acknowledged by the chair, thanked and passed along their best wishes to all of their colleagues and congratulated Ambassador Khan on his appointment as chair (in the case of delegations who were taking the floor to speak for the first time in PrepCom III), all as prologue to stating the same essential point: "we agree with Brazil and the EU that time is running out and that we need to speed things up". So many countries in fact, felt the need to go on record in their agreement with Brazil and the EU that time was running out and that things needed to be sped up that, by the time each had performed the required rituals and made their point in the not always succinct language of international diplomacy, the Thursday session was effectively over. The principle that time was running out and that things needed to be sped up having firmly been established as more or less "the world's view" and not just the view of Brazil and the EU, getting on

with the business of speeding things up to avoid running out of time would have to wait for another day.

As we shall see in discussing the case study at the centre of this research, this episode was hardly a watershed moment in the outcome of the WSIS process, much less in the broader trajectory of global internet governance.[1] But the object of negotiation at WSIS phase II, PrepCom III was not usual inter-governmental fare. It was, after all, the internet- the same internet whose alleged immunity to regulatory efforts was supposed to make it the standard bearer for globalization, libertarian politics and free market enthusiasm. While regulation of media and communication at both the national and intergovernmental levels is commonplace, the tendency has been to treat the internet as neither requiring nor tolerating regulation- certainly not from the sort of system wherein even registering the point that time is wasting, wastes time.

Statement of Research Question

This thesis examines the *global debate on internet governance*, its topic is *the reconstitution of the public interest in communication in the context of globalization and digital technologies*.

[1] Indeed, there is every indication that such grandstanding about the speed of negotiation progress is both a commonplace and strategic move in inter-governmental negotiations. For instance, when I mentioned my fondness for the irony of this moment in an interview with one veteran of such processes, he responded: "that's the way that international negotiations work" and it was clear that he had seen too much of it to find it amusing. (interview subject in discussion with author, July 2007). Strategically, the Brazilian delegation subsequently pointed out the extent to which the amount of time available to negotiate impacts the possible outcomes of negotiation, arguing that the status quo requires little time to negotiate whereas major changes require significant amounts of time to work out and thus, by seeking to maximize the amount of time available to negotiate, whatever else Brazil hoped to accomplish with its intervention, it was certainly additionally attempting to structure the process around the optimal terms for its own interests.

The internet has emerged as a mainstream mass medium and as a legitimate subject for consideration within debates over the regulation of communication. This thesis asks *how does the global debate on internet governance influence the public interest in communication?*

The Public Interest

Drawing on Napoli (2001, 72) the public interest can be defined as "the primary decision-making guidepost for policymakers" and "the primary criterion against which policies are assessed".

Even the earliest reflections on human beings as social creatures were accompanied by efforts to discern what decisions should be taken on behalf of their collective. Influential contributions to this intellectual project have included notions such as Aristotle's "common interest", Locke's "public good of the people" and Rousseau's "common good" (Pal and Maxwell 2004). McQuail (1992, 3) defines public interest claims as the supposed benefits to wider society that go beyond immediate, particular and individual interests. They are used to justify regulatory action in a variety of sectors including the entire range of media and communication regulation issues (Feintuck and Varney 2006, 74). In questions of media and communication regulation, such claims are typically linked to a complex of supposed informational, cultural and social benefits and are said to reflect the wider interests of both senders and receivers of public communication (McQuail 1992, 3).

Over the course of its long march through history, the public interest has become a fragmented and contested term. Some argue that the concept of the public interest has

become so fluid and prone to manipulation and misuse over the years that it is largely devoid of meaning (Schubert 1960; Sorauf 1957; see Napoli 2001) or should be abandoned entirely (Barry 1965; see McQuail 1992).

Despite its lack of precision, the idea of the public interest contains undeniable normative dimensions and is crucial to understanding how power is exercised in communication policy making. If the concept were simply abandoned as too problematic, whatever new discursive formation was adopted in its place to justify how society benefits from the decisions made in the management of communication systems would inevitably confront much the same set of complexities and controversies (V. Held 1970; McQuail 1992).

The literature recognizes a series of different approaches to defining the public interest[2]:

- *Preponderance theory* of the public interest is a majoritarian approach wherein the public interest is argued to lie with the will of the majority of the people;
- *Common interest theory* of the public interest implies that certain interests are common to all and thus that certain courses of action are in society's best interest, regardless of whether or not those decisions are demanded or supported by a majority;
- *Unitary theory* of the public interest is defined as an assertion of some absolute normative principle;

[2] The typology that follows draws on a synthesis of the following models: Downs (1962) describes three main schools of thought on the public interest which are further refined in V. Held (1970) under the headings of the "Preponderance"; "Common Interest" and "Unitary" theories of the public sphere. V. Held's model forms the basis of a similar discussion by McQuail (1992) which in turn is featured in Feintuck and Varney (2006). See also Pal and Maxwell (2004) for discussion of these and separate and distinct criteria that have been invoked as benchmarks for defining the public interest.

- *Results-focused approach* to the public interest reflects the view that the public interest is whatever those charged with making decisions in the public interest decide[3];
- *Process approach* to the public interest focuses on the procedures used in arriving at decisions, such as concern for representativity; legality; transparency etc;
- *Utilitarian value approach* to the public interest considers solutions that maximize benefits for society as a whole but also compromise between different interests represented in the process.

On another analytical plane, van Cuilenberg and McQuail (2003) suggest that the public interest has historically fluctuated based on a continuous renegotiation between three sub-goals: political welfare, social welfare and economic welfare. These we could usefully label as the different 'interests'. When focused on political welfare, the public interest is defined by goals which support or advance democratic institutions. A social welfare approach to the public interest places a premium on social order and cohesion through the promotion of social and cultural objectives as well as the prevention of harm and offense in public communication. When the public interest focuses on economic welfare, relevant values include efficiency, employment and profitability, and the focus is on infrastructure provisions that enable the economy to function in "production and market terms" (p. 184).

[3] The results-focused approach is alternatively labeled as processional approach to the public interest; (Cochran 1974; see also Napoli 2001) and as the pragmatic approach (Downs1962; see also McQuail 1992.

Public interest in communication: The Critical Media Studies Research Agenda

Much of the research agenda for critical social science on the public interest in the governance of communication is influenced by the political economy of communication research programme (PEC) (Mosco 1996). The PEC shapes the perspective of this thesis. PEC research adopts a realist epistemological stance that no division should be made between research and action that, at its best, stimulates a highly interventionist dialogue on issues such as how public interest concerns regarding communication should be promoted by governments and regulatory agencies (Mosco and Reddick 1997). PEC research addresses the relationship between media and communication systems and the broader structure of society and involves a commitment to a particular moral philosophy, an interest in the values that constitute social behavior and those moral principles that should lead efforts to change it. Finally, PEC research insists on the power of capital and of the role of communication industries and the decisions made in the allocation of communication and information resources in the accumulation of capital (Mosco 1996; McChesney, Wood and Foster 1998; Mosco and Reddick 1997).

For the PEC, the emergence of global internet governance challenges the linkage between the realist epistemological commitment to intervention and the desire to manifest social change that, in the words of Robert McChesney (2008, 17) "transcend[s] the status quo of really existing capitalism with something better". In particular, the emergence of globalization and digital technologies and their impact upon the governance of communication destabilizes the linkages between nation states and control of communication and, in the process, the normative and epistemological foundations of the PEC programme.

Globalization

Globalization is a catchword for describing a particular contemporary political, economic and social process. As defined by David Held (1998, 13)

> globalization today implies at least two distinct phenomena. First, it suggests that many chains of political, economic and social activity are becoming interregional or intercontinental in scope and, secondly, it suggests that there has been an intensification of levels of interaction and interconnectedness within and between states and societies.

Held argues that digital technologies have been one of the defining portents and instigators of the highly globalized condition of contemporary international relations: "What is noteworthy about the modern global system is the stretching of social relations in and through new dimensions of activity and the chronic intensification of patterns of interconnectedness mediated by such phenomena as modern communications networks and new information technology" (D. Held 1998, 13).

Globalization directly challenges the existing nation state-based system of communication governance by problematizing the definition and jurisdiction of national sovereignty. Furthermore, globalization extends the co-ordination role of international organizations active in communication governance. Above all, globalization stresses this patchwork system and its basis on the primacy of national sovereignty.

For example, in support of increased liberalization in trade and the accompanying emergence of international markets for commerce, global flows of people and goods have formed the basis for the emergence, within nation states, of both heterogeneous multi-culturalism and homogeneous diasporas- populations in one jurisdiction that have a group

and community identity which is, at least in part, taken from another. This tendency fundamentally challenges the national basis of media regulation, both when nations look inwards from their own borders and when they look outwards towards their globally dispersed native populations. In one of the defining works on the cultural impact of globalization, Appadurai (1996, 306) argues that "because of the disjunctive and unstable interplay of commerce, media, national policies and consumer fantasies, ethnicity, once a genie contained in the bottle of some sort of locality however large, has now become a global force, forever slipping through the cracks between states and borders". Yet, it is precisely within these borders- which are argued to align less and less with any 'national' identity- where media regulation lays claim to sovereignty on behalf of its own conception of 'the nation'. In this sense, globalization problematizes communication governance by highlighting the artificiality of the notion of citizenship in the modern, heterogeneous nation state, by pulling the curtain back on what Anderson (1983) describes as the 'imagined community'. Furthermore, globalization creates international constituencies for media contents which national regulatory frameworks are ill-equipped to deal with. Anderson suggests that the nation state is, by definition, unable to function as a source of good governance to an international constituency. The nation state is, in his terms, "an imagined political community- imagined as both inherently limited and sovereign…no nation imagines itself coterminous with mankind" (Anderson 1983, 6-7).

In addition, globalization challenges communication governance through the increasing reach and power of multi-national media conglomerates whose interests are best served through access to, and standardization across, global markets. As such, they have become powerful actors and, supported by increasingly liberal trade agreements,

represent a formidable lobby for global economies of scale. Global networks of non governmental organizations (NGOs) and civil society activists have organized as a form of counter power (c.f. Diebert 2002; Raboy and Landry 2005; Sassen 2006). These increasingly organized and professionalized stakeholder networks bypass the representative apparatus of the national government and further undermine the idea of national sovereignty over communication regulation.

Digital Technologies

In addition to their transnational scope, digital technologies challenge communication governance by virtue of the following attributes: the convergence of broadcasting, telecommunications and computing technologies; the reconstitution of the relationship between users and producers; a technical architecture that minimizes choking points; and the perception that internet technologies are inherently democratic.

Digital technologies are said to represent a convergence of technologies in that virtually all forms of existing media content are accessible through the internet. Thus, while the world wide web diffuses its own unique forms of media content, it also acts as carriage to the contents of what have been traditionally thought of as the specific sectors of telecommunications, broadcasting, radio, film, music and computing (including, for example, software and videogames). Furthermore, the internet supports both point-to-mass communication, following the model of broadcasting, and point-to-point communication, as does telecommunications (Raboy and Shtern 2005). This juxtaposes, and often brings into conflict, differing traditions of media regulation. This form of mediated communication does not meet any of the existing sector-specific governance

criteria. At the same time, any attempt to combine together the distinct governance regimes that apply to different existing forms of technology mediated communication inevitably results in conflicts and contradictions. This makes it difficult to develop an overarching approach to the governance of converged or 'everything over internet protocol (IP)' communication.

Digital technologies challenge communication governance by virtue of their reconstitution of the user/producer relationship. A common perception is that the interactive attributes and relatively low barriers to entry (in comparison to broadcast media, for example) empower users as producers and create a form of communication which, rather than hierarchal, can be described as 'flat' or 'open'. This challenge to the gate-keeping role of institutional production is argued to undermine the possibility that communication mediated by digital technologies can be 'controlled' to the same extent as analog communication technologies such as broadcasting.

The end-to-end principle of the internet- the idea that intelligence is built into the end devices rather than the network itself- has been argued to leave few choke points at which gate keeping could even occur. "Information wants to be free" (c.f. Brand 1987), it is often put. Packet-switched communication across distributed networks allows information to seamlessly adjust the route it takes to arrive at its destination when obstructions are encountered (Barney 2000). Communication would thus, only be routed around control, leading many to determine that internet technologies are unregulatable.

Furthermore, internet technologies have tended to be seen as self-governing. The end-to-end principle, after all, meant that values such as untrammeled free expression, community and democracy were embedded into the technology itself. Descriptions of the

internet from the 1990s and early 21st century often adopted the form of anthropological field notes (Goldsmith and Wu 2006) and were thickly laced with territorial, particularly frontier metaphors (Barney 2000; c.f. Reinhold 1993). In cyberspace- a term imported from the novels of the science fiction writer William Gibson to describe life online- such commentators saw the possibility of a libertarian utopia. The values embedded into internet technology were argued to be, in the words of one infamous proponent, "more humane and fair than the world your governments have made before" (Barlow 1996).

Cyberspaces?: Internet and Global Governance

The incompatibility of digital technologies with the very idea of government sovereignty was a preoccupation- most often expressed in terms of the decline of the nation state and the emergence of new post-territorial forms of global governance- that overlapped the work of globalization and internet regulation scholars in the late 1990s and early 21st century.

One American jurist characterized the internet as "insensitive to geographic distinctions".[4] In the landmark ACLU v. Reno case the American Supreme Court Justice John Paul Stevens wrote that because it is "located in no particular geographical location but available to anyone, everywhere […] no single organization controls any membership on the web, nor is there any centralized point".[5] In light of the impacts of globalization and digital technologies, many came to the same conclusion as Nicholas Negroponte, co-

[4] 969 F. Supp 170-171 (SDNY 1997).
[5] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997)

founder of MIT's Media Lab, that the 'borderless' type of communication facilitated by the internet means that "the internet cannot be regulated" .[6]

Backed by the premise that networked digital communication technologies were central protagonists in the incubation of a new social, economic and political order (c.f. Castells 1996) Negroponte rejoined other technologists such as Esther Dyson (1997) and various globalization scholars (cf. Strange 1996; Ohmae 1995) in concluding that the nation state had become "irrelevant".[7] "This new revolution in information and communications technologies destroys the idea of territorial sovereignty", French author and diplomat Jean-Marie Guehenno wrote in 1997.

American jurists Johnson and Post agreed and proposed in 1996 that "any effort to map local regulation and physical boundaries onto cyberspace are likely to prove futile" (p. 1372). They argued instead for recognition of a new form of sovereignty decoupled from territorial claims: "a new boundary, made up of screens and passwords that separate the virtual world from the 'real world' of atoms" (p. 1367). The shared values and self-governing ethos of "cyberspace" led to a great deal of enthusiasm for the idea that virtual communities could be endowed with sovereignty rights in the same way that territorially defined communities are.

Subsequent policy developments arguably reified these claims. The Clinton Administration's *Framework for Global Electronic Commerce* and the European Union

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[6] Negroponte's comments cited from Higgins and Azhar (1996), but see generally Negroponte (1995). See also Goldmsith and Wu (2006); Barney (2000) and Geist (2003) for discussion of the juridical, political and populist foundations of the view that internet regulation would be impossible. See Wellman's (2004) programmatic reflection on 10 years of internet research for discussion of the extent to which what he calls the 'first age' of internet research was similarly "often unsullied by data and informed only by conjecture and anecdotal evidence" (124), with the result being mainly utopian but occasionally dystopian treatments that either way tended to lack perspective and succumb to "presentism" and "parochialism".

[7] As above Negroponte comments cited from Higgins and Azhar (1996). See also Negroponte 1995. On the globalization and global governance literature that weighs in on the question of "are states still important?" see Raboy and Mawani (forthcoming) See also Calabrese 1999.

Ministerial Declaration on Global Information Networks, both released in 1997, as well as the Canadian Radio-Television and Telecommunications Commission (CRTC) 1999 New Media Decision, all opposed government regulation of the internet (see Clinton and Gore 1997; EU 1997; CRTC 1999).

Against this backdrop, a series of standards-making bodies, populated by engineers and technologists and orchestrated by a core group of internet "founding fathers", were meanwhile making decisions about the functioning and development of the internet.[8] In this sense, the internet was less unregulated than it was self-regulated through this 'private technical management'. The view that the internet was somehow immune to control by governments was thus premised on ignorance of the fact that self-regulation "rarely exists without some relationship to the state" (Verhulst 2003, 144; see also Price and Verhulst 2005) and indeed of the extent to which the US Government in particular, but also the European Commission, became embroiled in controversies that were emerging in the "private technical management" of the internet in the late 1990s.[9]

Such arguments about unregulatibilty of the internet and about its role in the decline of the state overlooked (or else intentionally drew attention away from) the fact that the internet is a built environment. The democratic values that were argued to be part of its essence were embedded into the network through its design and management. Regulation of the type identified with government interventions linked to claims of national sovereignty may not have been commonplace or seemed likely to commentators. But, the democratic values that so many saw as embedded into the internet had to flow in

[8] Including the Internet Architecture Board (IAB), the Internet Engineering Task Force (IETF) and the Internet Society (ISOC). See Mueller (2002); Paré (2003) and Goldsmith and Wu (2006) for overviews of these various bodies, their mandates, relationships, and back-stories.
[9] Discussed in Appendix 1 of this thesis.

somewhere. Concerns were raised that "negotiations among actors in the public and private sectors may be giving rise to a potential weakening of effective public control over the design and terms and conditions of access and use of new electronic networks and services" (Mansell 1996, 188). Indeed, governments were concerned about this too.

The initial round of non-intervention on the part of governments was fueled by what is best encapsulated as technology-deterministic hype about the internet (see Goldsmith and Wu 2006; Barney 2000). As the penetration, value and influence of the internet increased dramatically, the non-interventionist approach was quickly eclipsed by a more hands-on approach to internet policy development (Geist 2003) and by a series of coordinated efforts to constrain the actions of various stakeholders through the regulation of intermediaries and the application of existing legal frameworks to online behavior (See Goldsmith and Wu 2006).

Internet as mass communication

The internet was not created to be a mass medium of communication. Pointing out that, in 1969, there were 200 people connected at 21 nodes, "The ARPANET", Milton Mueller (2002, 74) writes, "was not the internet". The ARPANET was, Mueller continues, "an experimental backbone of leased lines connecting research scientists in university, military and industry sites". Funded by the US Defense Department's Advanced Research Projects Agency, the purpose of the ARPANET was, Mueller (*ibid*) continues, to "facilitate time sharing on mainframe computers".

The International Telecommunication Union (ITU) estimates that there were 1,542,000,000 global internet users as of 2008 and that, since 2007, there have been more

internet users in the world than fixed-line telephones.[10] In many OECD countries, more than two-thirds of households had broadband subscriptions by 2007. In Korea for example, more than 90% of households had broadband internet connections by 2005.[11] The specifics of these statistics are less important than the essential point that they underline: whatever the ARPANET was created to be, it has grown in terms of its use and influence into a medium of mass communication. Social media platforms connect neighbours and families separated by continents. Online news sources ranging from the Huffington Post to the blogs of individuals (c.f. Elmer et al 2007) dramatically influence political affairs. Internet content, in other words, can now be described in the terms that Raboy (2004a) uses to explain how the regulation of broadcasting is justified: "public discourse and communication that takes place in a particular moral and ethical environment"' (see also Raboy 2010). In particular, the internet is a crucial platform for inter-cultural dialogue, for the exercise of citizenship and for the promotion and protection of cultural diversity- contributions that are fundamental to social life in a globalized world.

Through voice over internet protocol (VoIP) telephony and internet broadcasting services, the internet is increasingly taking over functions of other information and communication technologies. Education, government and a variety of other public services are offered over the internet. Digital technologies are central to work and commerce in modern society but also to entertainment, cultural production and creativity (see Lessig 2004; 2008; Benkler 2006). Perhaps nowhere is this ubiquity and mainstream status more apparent than in the way that blogs, youtube videos and social media were used

[10] Source: The International Telecommunication Union: "ITU Key Global Telecom Indicators for the World Telecommunication Service Sector". http://www.itu.int/ITU-D/ict/statistics/at_glance/KeyTelecom99.html

[11] Source: OECD Broadband Portal, document 1d: "Broadband subscribers per 100 inhabitants (Dec. 2008)" http://www.oecd.org/document/54/0,3343,en_2649_34225_38690102_1_1_1_1,00.html

in the campaign of US President Barack Obama. Indeed, it is significant that point 1 of Obama's technology policy platform was : "Ensure the Full and Free Exchange of Ideas through an Open Internet and Diverse Media Outlets" (Obama'08 n.d.).

Regulation of mass communication is justified by *normative* as well as *technical* dimensions. Radio was not created to be a medium of mass communication either; its initial regulation was dominated by specialists and focused on technical considerations such as frequency allocation and standard setting (c.f. Barendt 1993). But broadcasting grew beyond the grasp of the network of engineers, hobbyists and specialists who created and nurtured it and the communication that it supported became intertwined with public life and discourse. Thus, normative regulations were developed alongside technical ones. Normative broadcasting regulations were developed because of the ubiquity and influence of mass communication. These were justified as being in the public interest because, the prospects for democracy in a society no longer suited to resolving political issues through face-to-face communication are contingent upon mass communication, in particular, on the protection of vulnerable values and social groups within it and the extent to which its public character is insulated from capture by the interests of the state and private power-holders (Raboy 2004a, 2010; Hoffmann-Riem 1996; Tambini and Verholst 2000; Peters 1989).

The spread of digital technologies and their linkages to globalization have made the public interest in the regulation of mass communication more complex. The internet facilitates a type of borderless communication; there is no guarantee that the source of the message resides within the same jurisdiction as its receiver. However, both technical and normative regulation of global communication has existed since at least the introduction of the telegraph. Dating back to the League of Nations, international organizations have

dealt with coordination and standards setting issues related to cross-border implications of various information and communication technologies including: the telegraph (c.f. Nordenstreng 2005); telecommunications (c.f. MacLean 2003), radio and wireless spectrum attribution and satellite broadcasting (cf. Price 2002; Grant and Wood 2004).

Normative regulation of communication at the global level has proven more controversial. During the drafting of the Universal Declaration of Human Rights, free expression was originally framed not as an autonomous right in and of itself, but as part of a larger right, the right to freedom of information. However, political squabbling between western countries and the Soviet bloc about whether the freedom of information meant 'the freedom to impose cultural imperialism' or the 'freedom to practice censorship and propaganda' (this was not particularly a citizen-focused discussion) quickly escalated (Raboy and Shtern 2010a). The result of this intractable polarized debate was that freedom of expression emerged as the only element of communication where there was enough common ground to form the basis of a universal human right (see Binder 1952; Kortteinen, Myntti and Hannikainen 1999). By the 1960s, efforts to buttress and expand upon freedom of expression began to be renewed. French public servant Jean D'Arcy (1969) is credited with launching the concept of a right to communicate in a paper written for the European Broadcasting Union. The idea would elicit discussion, refinement and several more rounds of polarized and intractable debate within UNESCO. By the 1980s enthusiasm for discussing, let alone formalizing, globally constituted normative principles for the regulation of communication had understandably ebbed (see Padovani 2005; Raboy and Shtern 2010a).[12]

[12] Notable subsequent efforts to bridge the ideological divides that define efforts to establish globally applicable normative principles for communication regulation include the joint ITU/UNESCO (1995) paper

But, contrary to the decline of state thesis, governments were never simply going to stand aside and relinquish their sovereign responsibilities and rights to enforce their laws. Commentators began to see globalization and digital technologies as the basis of a regulatory regime rather than as an obstacle to one. Marsden (2000, 13), for example wrote that "the internet is global in scope and its societal and political impact, and thus its governance […] will equally become global. The internet can be regulated and will be regulated". Understanding how global internet governance is emerging and the role of the public interest within it necessitates a greater unpackaging of two issues that have tended to receive essentialist treatment in discussion of the regulation of the internet: *digital technologies* and *global governance*.

Unpackaging digital technologies and global governance

The emergence of the internet as a medium of mass communication is being accompanied by a shift in thinking about its regulation. In particular, about the linkages between the largely private basis of its governance, and the normative dimensions of the public communication it supports. Within the internet governance literature, critiques emerged that the interests of governments, intellectual property lobbyists and the internet technical elite were politicizing technological management functions that could and should be apolitical, neutral and facilitative (c.f. Mueller 2002). Scholars working in what Paré (2003) labels the commons school argued that the internet can be defined as

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"The right to communicate at what price?" and the report of the UNESCO (1998) World Commission on Cultural Development.

one singular object and coalesced around calls for imposing top-down forms of governance.[13]

Technology, in the philosophical terms of Andrew Feenberg (1999, 131), can have a "legislative authority" that tends to be masked by discourse about its neutral and apolitical nature. The work of a series of scholars, Stanford Law Professor Lawrence Lessig most prominent among them, has illustrated how this is particularly true in regard to internet technology.[14] Lessig's work underlines and problematizes the legislative authority of internet technologies by arguing that the values that are embedded into the code or architecture of the internet function to regulate its use. This approach has been the basis of a fundamental challenge to the view that the internet is not subject to regulation.

Lessig argues that the premise that the internet is not, or cannot be, regulated misunderstands and misrepresents regulation. Regulation stems, in Lessig's view, not only from law, but from the interaction of four separate factors: laws, social norms the market and architecture or code. By code, Lessig (2006, 121) means

> The instructions embedded into the software or hardware that makes cyberspace what it is. This code is the "built environment" of social life in cyberspace. It is its architecture.

In this sense, internet technical regulation is also normative regulation. Making decisions that shape the technological code or architecture of the internet is, in Lessig's view, both an act of regulation and an exercise of power. Rather than a benign or

[13] See Chapter 3 in Paré (2003) for his comprehensive overview of this literature.
[14] Lessig and his more immediate contemporaries will be the focus of this literature review. Other important contributions to the debate over the political implications of internet architecture and design include: Trudel (2000); Reidenberg (1998; 2005) and Mitchell (1995).

inherently democratic regulator, internet technology is, in Lessig's view, less transparent and fair and more open to capture by powerful interests than other possible internet regulatory approaches grounded in social norms, the market or law. For Lessig (2006: 78) the configuration of the architecture of the internet and its contingency for being otherwise is power.

The conditions that led many to celebrate the libertarian freedom and democratic values of cyberspace had little, according to Lessig, to do with the nature or essence of internet technologies. Indeed the fact that cyberspace proved so malleable to the embedding of those values only suggests that the technology could be recoded with other values. The extent to which code is law on the internet means that technology can be regulated to increase regulatability. In this sense, Lessig proposes that the potential for more powerful actors such as governments and commercial interests to apply normative regulation to internet technologies is, rather than an impossibility, a clear and present threat. "In answer to those who say the net cannot be regulated", Lessig (2006: 151) argues that governments could easily take steps to transform existing internet architecture from unregulatable to regulatable.

Goldsmith and Wu (2006) focus more specifically on two of the claims that emerged from the essentialist view of internet technology problematized by Lessig. They examine the notion that the internet is creating a borderless world as well as the claim that the internet would facilitate the emergence of the sort of post-territorial order forecast by Johnson and Post (1996) and others. Goldsmith and Wu systematically discuss how real institutions are evolving to use real world laws, as well as pressures associated with norms and markets, to effectively regulate the internet. In the process,

they dissect the claim that borderless communication is unregulatable or unregulated. Goldsmith and Wu problematize the decline of the state thesis by illustrating that the effect of the internet on the power of nation states is neither drastic nor uniform. They argue that nation states can use national law to protect and enforce constraints upon the impact that communication has within their borders, regardless of the jurisdiction of origin of that communication. This can be accomplished because, in their view, the mediation of behaviors and services over the internet creates an intermediary that might not have otherwise existed. Goldsmith and Wu also point out that the enforcement of rules of any kind related to the use of the internet relies on powers of investigation, seizure and punishment- public goods monopolized by nation states. So-called 'borderless' internet phenomena like eBay often succeed they suggest, not due to their ability to skirt regulations or some uniform altruistic characteristic embedded in the technology and the internet community, but precisely because they are backed by the threat that nation states can force people to pay their bills and honour their contracts.

Rather than a challenge to the nation state, the internet has, in other words, come to reinforce its value in new ways. But unevenly so, as smaller states have more trouble influencing the behavior of intermediaries. For example, whereas Yahoo! may modify its business model in order to conform with the laws of France and stay in the large French marketplace, it is doubtful that Yahoo! would make the same sort of concessions to stay in a more limited market of the size of say, Finland, let alone Morocco or Senegal. Furthermore, where public goods such as the predictable rule and enforcement of law by police and courts are not present, internet regulation is very difficult. Goldsmith and Wu cite the refusal of eBay to enter the Russian market as an example.

Thus, rather than being irrelevant to the regulation of borderless communication, Goldsmith and Wu (2006, 165) argue that governments are the central protagonists. “Whether the issue is online gambling, internet domain name governance or privacy law”, they observe, “governments are fighting one another to favor themselves using the traditional tools of international politics and international law”.

These moves echo a similar debate within the globalization and global governance literatures to problematize the presentism and overly deterministic thinking at the root of much of the narrative of the demise of the state (D. Held 1999). Sassen (2006) observes a tendency for commentators to approach global governance as “international law” that emerges from harmonization- through conflicts, law or force- of different national legal frameworks rather than to consider “the formation of global regimes”. To Sassen (2006, 268) global law is “emergent”, “autonomous” and “partial” but is unique rather than synthetic. By restricting evaluations of global governance to the prospects for, and power dynamics of, overlapping national interests, the “international law” view lends itself to unqualified support for the decline of the state thesis. Sassen (2006, 192) suggests that the narrative of the decline of the state also ignores the internal transformations and reorganizations that occur as the state manages what she calls “the shift of public regulatory functions to the private sector where they emerge as specialized corporate services, accounting, legal and other such ‘maintenance’ services”. Sassen argues that the devolution of state power through private governance arrangements is based on a “utility logic” that tends to shift regulation from serving the public good to serving a private good. “As efficiency becomes the objective”, Sassen writes (196), “it tends to replace or function as a stand in for the public interest”.

The view of the regulatibility of the internet, and the place of governments within it, arguably came full circle in 2002 with the publication in "Foreign Affairs" of an article entitled "Governing the Internet". Its author was Zoe Baird, head of the Markle Foundation and a former Clinton administration nominee for attorney general. Writing that "although governments do not all share the same values, they are the only institutions that can provide stability and a place for debate over what public values need to be protected", Baird (2002, 2) insists that "government participation in regulating the internet is necessary". "These issues", Baird *(ibid)* continues, "are significant policy questions that require democratic resolution, not just technical matters that can be left to experts". Baird (2002, 4) used the platform of a decidedly mainstream venue to argue that "the internet has become part of the mainstream, and therefore, mainstream governmental institutions will be expected to step in and protect people from harm and encourage innovation".

The sum effect was a challenge to the unregulatable internet technology and decline of the state theses based on the principles that:

- internet technology is embedded with values and politics,
- states can and do regulate global internet mediated communication according to their own sovereign interest;
- states exercise agency over the global order through their internal transformations, in particular those related to their devolution of public regulatory functions to private global regimes that bury normative impacts within service and efficiency mandates.

The implications of this shifting perspective are that private technical management should not be approached as something distinct from the question of the regulatibility of the internet or the power of nation states. Instead, over the course of the evolution of the internet, regulatory functions have shifted from the sphere of public governance into the sphere of private technical management where they have been walled off from widespread public and government participation in decision making.

Internet and Public Interest

The typology presented at the beginning of this chapter suggests that the public interest in communication is neither uniform nor static. The conceptual unpackaging of global governance and digital technologies reviewed above has underlined the extent to which normative regulation of the internet is possible and is occurring. But what do we actually know, in practice, about the public interest in the normative regulation of the internet? What notion of the public interest is being used to justify decisions that are being made in the normative and technical governance of the internet and to assess those decisions by commentators and policy analysts? How does the public interest in global internet governance fit within and/or suggest the need to modify existing typologies of the public interest? The balance of this chapter is devoted to the construction of a theoretical framework in which such questions can be meaningfully addressed.

Influenced by Lessig's model of internet regulation and its implications, the work of a group of scholars is collectively developing a series of normative claims about the public interest principles that ought to be considered alongside efficiency in the global governance of the internet. Lessig himself (2006, 4), for instance, argues for the need to

develop a constitution of cyberspace. By this he means: “not just a legal text but a way of life that structures and constrains social and legal power to the end of protecting fundamental values”. For Zittrain (2008) the internet should adapt to new tasks, be easily mastered by non-experts and promote modification and improvement of existing architectures rather than development of new ones. In a similar vein, Benkler (2006, 385) argues that practices of non-market information production, individually free creation, and cooperative peer production can be linked to “gains in autonomy, democracy, justice”. “The network environment makes possible a new modality of organizing production”, Benkler (2006, 60) writes. What he calls “commons based peer production” is defined as

> radically de-centralized, collaborative and non-proprietary; based on sharing resources and outputs among widely distributed, loosely connected individuals who cooperate with each other without relying on either market symbols or management commands.

Of these approaches, Benkler’s view is the most developed.

Commons based peer production is in Benkler’s view, innately related to a certain kind of public interest: the public sphere. In Benkler’s model, the term the public sphere is “used in reference to the set of practices that members of a society use to communicate about matters they understand to be of public concern and that potentially require collective action or recognition” (177).

These are significant developments where the public interest in communication is concerned. The understandings of internet regulation that were dominant during the 1990s and early part of the 20th century led Verhulst (2002) to describe a “paradigm

shift" in the way communication is governed. The actions of governments of the day were turning discourses about unregulatable digital technology and declining state power into self-fulfilling prophecies. If not broken, Price (2002) observed that this cycle would lead to a "collapse" of the very idea that decisions made in the governance of communication centre on their implications on the public interest. The claims Benkler, Lessig and Zittrain forward about how the public interest in internet regulation should be understood underlines the evolution in discourses about sovereignty and the regulatability of internet technology. The paradigm, to reuse Verhulst's turn of phrase, is again shifting. Rather than collapsing, debate over the question of how the regulation of communication can and should be justified by the public interest is, through the work of these and other important commentators, moving from the periphery to the centre of efforts to understand and theorize global internet regulation.

As general theories of the public interest in internet governance, however, there are gaps in, and limitations to, the approach of Lessig and his contemporaries.[15] There are gaps between the normative frameworks developed and the empirical characteristics of actually existing internet governance; between the unabashed 'global issue through an American perspective' mode through which the subject has been engaged and the global dynamics involved in internet governance; and between the public interest in internet governance and the public interest in communication more generally. I review each below.

[15] In the 2nd version of Code 2.0 Lessig invites readers to view his work alongside the books of Zittrain, Goldmsith and Wu and Benkler as a school of thought.

Normative v. Empirical

Lessig and his contemporaries present sound and compelling theoretical arguments about the public interest principles that *should* challenge efficiency as the primary objective of internet governance and, in the process, transform private technical management into a more public, accountable form of governance.

However, as described in the insightful literature review of Paré (2003), the utility of these arguments is restricted by their speculative accounts and prescriptive, normative focus. These characteristics, Paré (2003, 157) writes, ensure that the work of Lessig and his contemporaries can "explain how the technical architecture of the internet may influence regulatory processes and the promulgation of certain types of social order", but that "it cannot explain why particular changes manifest themselves or why certain groups of actors may succeed in exerting greater influence than others over how the process of change is manifested". "Despite recognizing the process of value allocation as being inherently political", Paré (*ibid*) writes, "Lessig's essentially linear view of change offers no means of interpreting how social actors involved in such processes make choices, or how they assess the legitimacy of emergent changes." In short, Paré (2003, 57) insists that "these shortcomings highlight the need for an empirical analysis of what social actors *actually* do in contrast to prescriptive and/or ideologically laden speculation about what they *should* do". Proposing normative principles that ought to form the basis of decision making in, and assessment of, internet governance is, in other words, separate from evaluating how the public interest is being defined and treated by such processes.

American v. Global

This literature also attends to the global basis of questions of internet regulation in a very particular, ultimately partial way. Lessig, Goldsmith, Benkler, and Wu are all American and/or American-based scholars. It is also noteworthy that they are American lawyers[16]. As such, they tend to come to the question of regulating global communication from the perspective of the American legal system. This is in and of itself not particularly a fatal flaw. The American legal system is, after all, the dominant legal influence in the global governance of the internet and much of the related debate has centred around American policy. Furthermore, as Goldsmith and Wu point out, the market power of the United States in internet mediated services assures that multi-national companies are heavily incentivized to conform with American law. In addition, the close linkages between American companies and officials and the technological and institutional development of the internet leads many in the United States to claim a sense of ownership over the internet. But, these books are written from the perspectives of American jurists for largely American audiences. Lessig (2006, 8), for instance is clear that when he asks if "we" are up to the challenges posed by internet governance, he means Americans. In this sense, Lessig's work and the work of Benkler and also Mueller represents more of an examination of the interactions between the US perspective and a global issue than it does a comprehensive examination of the global dimensions of internet governance.

[16] This comment about the tendency to view the global through the lens of the United States also most certainly applies to the work of Milton Mueller. Though Mueller is not a lawyer and his focus and approach should be seen as distinct from the Lessig School, he is unquestionably a leading figure in scholarly discussions about the Internet Domain Name System (DNS) and the sub-field of internet governance. (see Mueller 2002).

Despite being one of the most important recent contributions to the globalization literature on the role of the state, Goldmsith and Wu's book addresses the global in anecdotal respect. *Illusions of a Borderless World* addresses a variety of interactions between nation states and the global dimensions of internet governance: France, China, Saudi Arabia and of course, the United States. But, typical of its grounding in legal scholarship and the conventional mode of legal argument, it does so anecdotally, in support of more conceptual arguments about the relationship between "The State" and "The Internet". In the process, we discover interesting details about France, China and other countries but there is no claim made that these countries represent all or even the most important actors in global internet governance. Sassen (2006, 325) underlines that "we can think of digital assemblages as a sort of theoretical frontier for understanding the character of the global". There are crucial insights to be made on the basis of the study of the global dynamics shaping internet governance. But to what extent does this literature offer insight into the global dynamics shaping internet governance? In regard to the crucial question of the global basis of internet communication and its governance, this literature- despite providing insight about *what* the state as a unitary actor can do as well as about what certain specific states are doing- fails to provide a comprehensive picture of *who* the global is in global internet governance and *how* global governance works in the internet domain.

Some form of a natural corrective to this blind spot is already occurring. As internet governance has emerged as an increasingly important topic for global debate, a series of non-US based scholars have emerged as active participants and influential

voices (c.f. Kleinwächter 2004a; 2004b; Hoffmann 2007).[17] This trans-national dialogue is important and is contributing to a more globally-based approach to the study of internet governance. These developments underscore broad recognition of the fundamentally global character of the internet and its governance. Such efforts must be supported in parallel by research programs that more explicitly confront the challenge of theorizing the dynamics, characteristics and implications that define the global element of global internet governance.

Communication v. Technology

Much of the so-called internet governance literature adopts a narrow, instrumental focus on largely technical processes such as DNS management and standards setting (see Paré 2003). The work of the Lessig school operationalizes a sophisticated critique of over-simplistic, over-deterministic understandings of the relationship between internet technology and governance. It also imports broader fundamental questions about the governance of society in the age of internet including free speech (Goldsmith and Wu 2006); labour and production (Benkler 2006) and creativity (Lessig 2004; 2008 and Zittrain 2008).

However, this approach too, is often addressed narrowly to the particularities of the technologies of the internet. Under-theorized is the extent to which broader social processes of communication are shaped by the technologies of the internet, but also by

[17] As a reflection, in 2006, the Global Internet Governance Academic Network (GIGANET) was formed as a broadly international scholarly association focused on internet governance research. There has also been a certain degree of cross-fertilization between global and American perspectives. For instance, Jeanatte Hoffman- a German-born professor at the London School of Economics- was recently appointed to the scientific committee of the Syracuse University Internet Governance Project. Leading American internet governance expert Milton Mueller was, conversely, appointed to the faculty of Delft University.

various other platforms of mass communication and debates about their regulation as well. Lessig (2006, 9) suggests that the internet can be just another medium of communication, but that it can also support a unique richer experience called cyberspace. Goldsmith and Wu (2006, 73) essentially dismiss the claims about cyberspace. But they also distinguish between what they call "the feuding worlds of media and technology" (18). Zittrain's (2008) contribution to this school of thought expands the code is law framework beyond the internet to consideration of a series of digital information and communication technologies including some, such as the personal digital video recorder, that link conventional media with internet. As evidenced by his prescriptive conceptual construct of generative technology however, Zittrain's faith and attention is with the design of the devices that connect to the internet rather than the impact that emergence of the internet is having on the public interest in communication.

This boundary between mass communication and the public interest in the internet is most apparently (and interestingly) drawn in Benkler's treatment of the public sphere. The linkage between the public sphere and communication governance is not unique to the new media nor the scholarship of Benkler. Public service broadcasting (PSB), which Raboy (1995) defines as: "a set of objectives and practices based on democratic principles and the view that broadcasting can be a means of social and cultural development" (p.10) is, in many respects, the personification of the link between communication governance and the public sphere (Garnham 1990).

The public sphere has also been integrated into the critical media studies and PEC research programs. For Mosco and Reddick (1997, 21) to give an example, the public sphere is "set forward as a set of principles, including democracy, equality, participation

and citizenship". The utility of the notion of the public sphere is that it encapsulates a set of practices that, bound up with commodification, conceptualize a certain, specific, highly normative understanding of the public's interest in communication (Garnham 1990; Mosco and Reddick 1997).

In Benkler's view, the internet-mediated public sphere could be magnitudes more dynamic than that of the traditional mass media public sphere. Yet, despite the relative gains made in embedding the priorities of the public sphere into the governance of broadcasting through the notion of public service, Benkler argues that the legacy of broadcast regulation represents a threat rather than opportunity to the internet-mediated public sphere. Viewing traditional media, in particular commercial broadcasters and Hollywood as the vanguard of efforts to use the commodification power of intellectual property rights in ways that will enclose common resources and curtail the peer-to-peer commons based production that he argues to be bound up in the hopes for the internet mediated public, Benkler (385) argues that "law would have to achieve a great deal in order to replicate the 20th century model industrial information economy in the new technical-social context". In his view, none of which would positive. For Benkler, Law would have to: curtail fundamental technical characteristics of computer networks; extinguish fundamental human motivations and practices of sharing and cooperation; shift the market away from cheaper general purpose to more controlled and predictable devices; and squelch wireless and other emerging technologies. Benkler's view is rooted in philosophical assumptions about politics and technology. "There is more freedom to be found through opening up institutional spaces for voluntary individual and cooperative action", Benkler (2006, 22) writes, "than there are in intentional public action through

the state". In short, though Benkler argues that hopes for the realization of the internet-mediated public sphere are crucially bound up in what he calls "the battle over the institutional ecology of the digital environment", the struggle for the public sphere takes the form of resistance to the efforts of the incumbents to use regulation to enclose the commons. In this sense, Benkler seeks not rejoinder with the gains made by the public sphere in the broadcasting realm but a radical disjuncture wherein media and internet practices remain separate. Thus, Benkler's public sphere remains rooted in perceived particularities about the technologies of the internet and what they could accomplish for the public sphere.

Benkler's public sphere is one in-depth example of how communication over the internet tends, in other words, to be viewed by the Lessig school as a radical disjunture rather than as part of an existing ecology of mass media and a historical continuum of efforts to determine the most appropriate role for mass communication in society.

Critical Media Studies

The critical media studies research programme, in particular through the political economy of communication research tradition, would seem to be ideally placed to complement the work of Lessig and other internet regulation scholars by filling the three significant knowledge gaps outlined above.

In regard to the normative vs. empirical gap, critical media scholars have historically been engaged in ongoing policy debates around issues such as public service broadcasting, the concentration of media ownership, and universal access to

telecommunication, offering trenchant critical analysis while remaining close enough to the issues to contribute to policy debates.[18]

Regarding the need to internationalize the research program around global internet governance, political economy of communication is also argued to have "always been particularly well suited to examinations of international issues" (McChesney, Wood and Foster 1998, 11). PEC scholars were particularly effective through their analyses of, and interventions, in the New World Information and Communication Order (NWICO) debates at UNESCO in the 1970's and 1980's (c.f. Nordenstreng 1986; UNESCO 2004). Furthermore, global media policy (GMP) (c.f Raboy and Padovani 2008) is an emerging research area that represents an effort to reintegrate the critical media studies research programme within the contemporary communication governance framework that is increasingly being restructured by globalization. By developing more comprehensive, even if preliminary understandings of the global media policy environment, the GMP approach aims to contribute the sorts of empirical and conceptual understandings required "as progressive politics come to be redefined in keeping with the new political challenges of globalization" (Raboy 2007, 344). Based on the stance that the governance of global communication is a key structural component of globalization in general and of the emerging global governance regime (c.f. Raboy in 2002), the GMP research programme operates in dialogue with literatures on globalization and global governance.

Greater integration of the perspective of critical media studies into the scholarly dialogue on the regulation of the internet would assure that consideration is given to the public interest in communication as well as the public interest in the regulation of

[18] See Mosco's (1996) broad and comprehensive survey of PEC research and its contributions as well as McChesney's (2007) account of the "rise and fall" of the PEC programme and its policy relevance.

internet-based platforms and technologies. The view that the internet constitutes a radical disjuncture from other mass medias of communication is in stark contrast to the perspective of many communication scholars on the subject. For Raboy (2002, 131):

> The question of internet regulation illustrates some of the most important issues at the cutting edge of global communications policy. The powerful technology of the internet exacerbates many old problems related to communications policy at the national level and introduces new ones globally.

Carey (1998, 34) writes that the internet is at the centre of what he calls "a new media ecology". Meaning, Sandra Braman wrote in 1995 (7) that, "as we attempt to make policy for the new technology of the internet we must at the same time remake policy for print, broadcast and common carriage".

The regulation of communication on the internet is, in this view, only one- albeit one fundamentally important- determinate of the status of communication in contemporary society. The critical communication studies perspectives suggests that decisions made in the governance of the internet fundamentally influence the governance of other media, but also that policy issues and regulatory responses related to the regulation of communication have been debated in various contexts and in regard to generations of new technical platforms for mass communication.

The sum result is that the media and communication studies field should be particularly well placed to contribute to the emerging multi-disciplinary dialogue on the issues surrounding global internet governance and to contribute much needed analysis of the public interest implications of it. But treatment of internet governance from PEC has remained largely at the normative level and neglects the consensus forming in other

disciplines that the internet may indeed be regulated. As a result, few inroads have been made in applying the insights on the public interest in communication governance that were developed by PEC in regard to traditional media to a new media politics (McChesney 2007; Mansell 2004). Thus, a more significant overlap between the internet regulation and critical communication studies research programs contains the potential to enrich each.

Problematic and Research Question

As stated previously, the internet has emerged as a mainstream mass medium and as a legitimate subject for consideration within debates over the regulation of communication. This thesis asks *how does the global debate on internet governance influence the public interest in communication?*

To return to the definition of the public interest cited in the beginning of this chapter, the evolving multi-stakeholder dialogue on the regulation of the internet has yet to meaningfully address what notion of the public interest in communication is emerging in practice, as "the primary decision-making guidepost for policymakers" (Napoli 2001, 72). Nor does the research into global internet governance operationalize a public-interest based assessment of actually existing policy making.

Writing in 1997, Boyle offered that "if we are to have some alternatives to the jurisprudence of digital libertarianism we will have to offer a richer picture of internet politics than that of the coercive (but impotent) state and the neutral facilitating technology". In the interim, a compelling theoretical debate has emerged about the regulatability of digital technologies and the conventional wisdoms about the decline of

the state in the context of globalization have shifted. Yet, our picture of internet politics is largely restricted to: argumentative accounts based on a series of essentially arbitrarily linked case studies from Goldsmith and Wu, Lessig and others; Paré's (2003) case study of the politics surrounding the UK's top level domain name; and Milton Mueller's empirical work on and critical analysis of ICANN (2002). A "richer" picture of global interenet govenance is called for that contributes additional empirical evidence about the interaction between state sovereignty and internet politics, and about the extent to which institutions and governments will accept the delineation between regulation by code and regulation by law (c.f. Paré 2003; McChesney 2007). Crucially, hypotheses about how discourses on technology and efficiency factor into how power is exercised in the allocation of internet resources remain largely untested.

In sum, the literature on internet governance offers a conceptual framework for approaching the normative regulation of the internet but further empirical investigation into if, and how, these models operate in practice is needed. As is further unpackaging of the concepts of global governance and of the linkages between technology and communication. Such a corrective, I argue, can be achieved through integrating the conceptual discussions of Lessig and other internet regulation scholars into the critical communication studies research program.

Of particular importance to this synthesis of approaches are the efforts underway within the global media policy research area to develop an empirical approach to researching global governance. Global media policy research investigates the practices and institutional processes through which actors articulate their interests and engage in political contest over decision making related to the governance of media and

communication.[19] Such activity can be said to be part of the global media policy domain when the issues, actors or institutions are active simultaneously or in close succession across the national and supra-national (regional, intergovernmental, etc.) levels. In this sense, global media policy is "multi-leveled". It is also "multi-sectoral" in the sense that, for example, decisions that influence global communication governance are made through policies related to international trade and intellectual property as readily as they are in discussions about telecommunication policy, universal human rights or internet standards. Because what Raboy (2002) calls "the global media policy environment" is simply too vast a terrain to be approached through any one or series of studies, global media policy research is indiscriminately multi-leveled and multi-sectoral; insights gained through analysis localized to even one sector and one level contribute to filling in knowledge gaps related to the entire global environment (Raboy and Padovani 2008).

Thesis Structure

This framework is operationalized through a case study of the negotiations over an agreement on internet governance that occurred at the UN World Summit on the Information Society that were held between 2001-2005.

In chapter 2, I present the research design and provide context to the subject of my case study. In chapter 3, I narrate the story of the case study. I discuss the emergence of the issues of internet governance at the WSIS and provide an in-depth accounting of the negotiations that followed. I operationalize Lawrence Lessig's theory of "code is law"

[19] This definition draws on a text written by Raboy and Padovani (2008) to summarize the research project on "Mapping Global Media Policy" to which I am contributor. Thus, it reflects my perspective on the subject and I have been parti to the discussions through which it was developed. That said, of course I will be very clear when the words I use on the subject are not my own.

by explaining how various actors debated and ultimately reached conclusions about the boundaries between normative public policy issues and questions of technical regulation and management. Chapter 4 presents an overview of how the debate over global IG has evolved since the conclusion of the WSIS. In Chapter 5, I use the case study to draw a series of conclusions about the actors and institutional characteristics that influenced the WSIS negotiations on IG. Chapter 6 offers some concluding remarks about what the case study suggests about the public interest implications of this debate and then reflects on the programmatic implications for the media and communication studies research agenda.

-CHAPTER 2-
Research Design, Case Study Overview and Background

Chapter Overview

This thesis will be focused on an in-depth case study (c.f. Yin 1989) of the negotiations over an agreement on internet governance that occurred at the United Nations World Summit on the Information Society. This chapter will introduce the case study and review the existing literature on the WSIS. Chapter 1 reviewed the compelling theoretical perspectives that are emerging in response to questions about the regulation of the internet and the global governance of communication. It also underlined that comprehensive empirical assessments of these concepts are needed. This chapter will review the literature on the WSIS and suggest the questions raised by the problematic of this thesis were indeed in play during the WSIS. From there, this chapter will explain the research design of this study as well as the processes through which data has been collected and analyzed. Presentation of this methodology will conclude with a reflexive assessment of its limitations and an attempt to anticipate some of the possible methodological issues that might be raised.

The UN World Summit on the Information Society: Overview and Literature Review

The World Summit on the Information Society was a two-phased United Nations Summit hosted by the International Telecommunications Union (ITU). Its participants included representatives from governments, the private sector and civil society organizations. The first summit was held in Geneva in 2003, the second in Tunis in 2005. The preparatory committee (PrepCom) meetings- the venue for formal discussion of

issues, resolutions and modalities of participation- began as early as 2001. The WSIS was initially devised as a framework for developing global policy that would contribute to extending the "digital revolution" across the "digital divide".[20] From the start however, participants seemed intent on pushing a whole series of broader concerns including the role of global policy in the control and management of the internet (see Kummer 2005). Rejection of the original narrow, prescriptive policy agenda can be attributed in part to the active participation of NGOs, academics and activists through the formal inclusion of civil society in the WSIS process (cf. Raboy and Landry, 2005) but also to the absence of existing institutional venues in which appropriate policy responses to public-interest concerns about issues such as the use and management of the internet could be discussed. The need to understand the challenges of internet governance was identified during the first phase of the WSIS as one of the most problematic concerns arising from the technological changes of the turn of the century.

A great deal has been written about the WSIS. The back-story of the Summit is covered in detail through: published accounts of the gradual emergence and taking shape of the summit (Stauffacher and Kleinwächter 2005; in particular the introduction); broad overviews of the general institutional modalities of UN World Summits and how they apply to the WSIS (Klein 2005b); and descriptive accounts of the development of structures for incorporating civil society actors into the WSIS (Raboy and Landry 2005).

The evolution of the literature on the WSIS largely reflects the trajectory of the issue of global internet governance that is discussed in chapter 3. That is to say that literature published during and around phase I treated the WSIS as a broad discussion of

[20] Quoted from: The International Telecommunication Union, "Basic Information about WSIS: Why a Summit on the Information Society", ITU, http://www.itu.int/wsis/basic/why.html.

information and communication policy but that the parameters of the WSIS literature, like the debate, narrowed over the course of phase II into more focused discussion of internet governance.

One important strain of the broader literature associated with Phase I is the connection between the WSIS and previous efforts at global governance of communication, in particular the NWICO debates at UNESCO during the 1970s and 1980s (c.f. Padovani and Nordenstreng 2005; Mansell and Nordenstreng 2008; Pickard 2007; Afonso 2005). This reflects the importance during the first phase of the WSIS of the issue of human rights in relation to the information society[21] as well as the important discussions that occurred around the participation of the Communication Rights in the Information Society (CRIS) campaign (c.f. CRIS 2005; Hamelink 2002, 2003, 2004a; Ó Siochrú 2004c; Kuhlen 2004; Birdsall, McIver and Rasmussen. 2002; McIver, Birdsall , and Rasmussen 2003; McIver and Birdsall 2004; Raboy 2006). Commentators questioned the vision and ideologies underlying the summit itself (Zhao 2004; Pickard 2007; Moll and Shade 2004; Ó Siochrú 2004b), and in regard to the debate over internet governance in particular (Sarikakis 2004; McLaughlin and Pickard 2005). Through working papers and blogs, research centres such as the Syracuse Univeristy-based Internet Governance Project (IGP) and the Oxford Internet Institute (OII) contributed resources to, and analysis of, WSIS issues on an ongoing basis. Commiserate with the spike in academic interest in the subject, the Global Internet Governance Academic Network was created in 2006 to acknowledge and push forward the status of internet governance as an emerging subfield of inter-disciplinary academic research.

[21] c.f. the special edition of Revue Québécoise de Droit International entitled "Beyond WSIS: Incorporating Human Rights Perspectives into the Information Society Debate" (Lavoie and Leuprecht 2005) see also Jørgensen 2006.

The coming to prominence of the internet governance issue around the conclusion of the Summit's first phase was paralleled by a series of articles and reports on the subject (c.f. Dutton 2005; Klein 2005a; 2005b; Dugré 2005; Peake 2004). A collection of edited papers on the subject was commissioned by the UN ICT task force (MacLean 2004). A series of texts have since chronicled and assessed the emergence, resolution and aftermath of the WSIS debate; both as an issue in and of itself (Mayer-Schonberger and Ziewitz 2007) or as part of a discussion of a series of parallel developments in internet regulation (Lessig 2006; Goldsmith and Wu 2006) or information society politics broadly defined (McDowell, Steinberg and Tomasello 2008).

Elsewhere, the problems with, as well as the structures and benefits of, civil society participation in the WSIS has been a significant focus of the literature (Raboy and Landry 2005; Mueller, Kuerbris, and Pagé 2007; Ó Siochrú 2004a, 2005a; Cammaerts, B. and Carpentier 2005; Cammaerts 2008).

A series of edited collections were published over the course of the WSIS in which prominent WSIS participants and observers describe and assess events from their perspectives (MacLean 2004; Stauffacher and Kleinwächter 2005; Drake 2005b; Drossou and Jensen 2005; Lavoie and Leuprecht 2005). The articles contained within such collections are a mixed bag of broadly focused analytical efforts, transparent attempts to spin certain position and push specific issues, useful descriptive syntheses of important events, and cynical examples of how platforms for public communication become currency for currying favour with high level dignitaries in the UN system.

Commentators have attempted to asses the impacts of the summit (Hamelink 2004b) and, crucially, its implications for understanding global communication governance (Raboy 2004b; 2004c; 2005).

Thus, WSIS is relatively well-covered in the literature. Yet a crucial gap emerges where the problematic of this thesis is concerned. Dots have not been connected between the experiential accounts of WSIS participants and the need to ground emerging debates over the regulation of the internet and the public interest in global communication governance in empirical case study. For example, the insightful and important 2007 article by Schonberger and Ziewitz is probably the most in-depth published account of the WSIS IG negotiations to date. It makes broad conclusions about the gap between the positions of the European Union and the United States. Yet, it does so through a 70 page article that repeatedly cites newspaper stories as the source of important details. Newspaper stories are also cited in Goldsmith and Wu (2006) and McDowell, Steinberg and Tomasello's (2008) accounts of similar events. While there are literally volumes of published first hand accounts of the WSIS, they collectively make no claim to comprehensively covering all of the important events and perspectives

The problematic outlined in chapter 1 suggests that empirical evidence is required in order to evaluate an important set of emerging conceptual debates over the regulatibility of the internet and the public interest in global communication governance. The WSIS negotiations of IG are an ideal test case for doing so. But, such an agenda requires a comprehensive, ethnographic approach that can fill in gaps around the numerous important existing contributions.

Methodology

The methodology deployed within this case study is what could be described as an ethnographic stakeholder approach. Rather than restrict my analysis to outcomes of the policy process, I focus on the actors, issues, practices and institutional frameworks that shape them. The period covered by the primary case study of this research was the lead-up to the first preparatory conferences of the Summit in 2001 until the end of the Second phase of the Summit itself in November 2005, though I have provided additional detail on some of the events that followed (see Chapter 4) in the aim of further contextualizing the primary case study.

Such approaches have provided valuable insight within the critical media studies literature. By asking "what are the goals and purposes an actor can have in relation to the mass media?", McQuail and Siune (1986, 14) "learned about the issues involved and the processes at work" (1986, 7). Thus, the foundation of their work in developing generalizable understandings of the balance between forces of change and forces of preservation in the contemporary media was informed by "the empirical data about media structures, policy, politics and actual events" gained through this approach.[22]

Similarly, actor-centred qualitative methodologies are used within various strains of constructivist sociology of technology as the basis of empirical investigation into the sorts of questions about how normative values come to be embedded into technologies that are treated conceptually in the work of Lessig and his contemporaries.[23]

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[22] McQuail and Siune (1986, 11). See also Raboy (1990) who describes the similar approach he took to a series of Canadian media policy processes in what is largely, and beneficially, a methodological text.

[23] See, for example, Bijker 1997; Callon 1986; Woolgar 1991; Law and Hassard 1999. The work of Lessig is suggested to share a set of epistemological beliefs about technology with the constructivist sociology of technology: (Barney 2004; McDowell, Steinberg and Tomasello 2008).

Data collection techniques

Data was collected for this thesis using the following techniques: participant observation; semi-structured interviews; document and policy analysis.

The contribution of the technique of participant observation is well established in media and communication research (c.f. Hansen et al 1988). It is also central to the sociological and media studies actor-focused frameworks described above. Participant observation provided me a necessary sense of context within what was a complex and multi-faceted research terrain. In this study the participant observation phase included the following elements:

- Participation as a civil society representative (as researcher) in the first phase of the WSIS in December 2003;
- Participation as a civil society representative (as a researcher) in the 3rd preparatory conference of the second phase of the WSIS;
- Participation as a civil society representative (as a researcher) at the 2nd phase of the WSIS in November 2005;
- Participation in various WSIS civil society organizations, most notably the WSIS Civil Society Internet Governance Caucus which was a valuable network of knowledge sharing amongst WSIS civil society participants;
- Participation in various national and regional consultations, meetings and briefings on the WSIS including the Canadian Commission for UNESCO's meeting in Ottawa in Jan. 2004 and consultation of Canadian Civil Society in Winnipeg in June 2005 as well as the US State Department, Working Group on Internet Governance (WGIG) and Internet Governance Project co-sponsored

briefing on the American reaction to the WGIG report in Washington in June 2005;

- Participation as civil society delegate in the internet governance forums of 2006 and 2008 (in person) and in the 2007 IGF (remotely);
- Observing, following and participating in email and listserv exchanges. The availability online of streamed video and written transcripts of many of these meetings also proved valuable in cases where I was not personally in attendance or I wanted to re-evaluate the context around points I had made in my field notes before drawing final conclusions.

In addition to providing me with a large volume of observational data that formed the basis of this study, this experience as participant observer has privileged me with the necessary context from which I can evaluate events that have occurred in other summit meetings and events at which I was not physically present.

I should be clear though that my functional involvement as a participant was limited. While I was present for meetings, negotiating sessions and policy development exercises such as those carried out through the structures of WSIS civil society, I made no substantive interventions suggesting one course of policy development in place of various alternatives.

At the onset of my field-work, I established a set of self-imposed boundaries. I determined that advocacy for one policy alternative over another would compromise the goal of researching the processes itself and of following the important actors. Naturally, I found certain positions more convincing than others. While I may have worked through various issues in discussion with WSIS colleagues, I consciously shied away from

entering the larger WSIS or even internal civil society debates in public or meaningful ways.

My role then could perhaps be described as “non-participant observer”. However, consistent with my view of the responsibilities of an accredited “delegate” and as an interlocutor in various civil society structures, I committed to contributing to the WISS process in whatever fashion I could within the boundaries. Thus, I performed a variety of facilitative tasks including: sharing versions of my field notes of the negotiation sessions over various WSIS email discussion lists; sharing general and informal impressions and information with various stakeholders based on my observations; providing decidedly amateurish simultaneous English-French and French- English translation of a series of civil society meetings; and contributing to the administration of civil society structures and to discussions on their evolution.

In this sense, I am more comfortable with the term “participant” observation though I believe there is an important distinction to be made about the extent to which my participation actually influenced the case study. In particular I would emphasize the efforts that I made to establish and maintain distance between my own involvement and the core dynamics being observed. That said, my accreditation as a “delegate” must be seen to have influenced the predispositions of other WSIS participants toward me as well as their manner of interacting with me. As I argue later on in this chapter, whatever criticism one might be inclined to associate with participant observation, this technique is justified in this case by the value of filling in the knowledge gaps related to this research’s problematic.

In terms of documentary analysis, the WSIS produced an astounding volume of official and internal documentation. This represents the most instructive and most abundant resource of information on the different actors and their approaches to internet governance. As such, much of the analysis draws on official documents and on statements, draft proposals, chair's papers, and all of the other forms of documents where different actors express their perspectives. These records were used to investigate how different perspectives emerged and how various actors have abandoned earlier positions, joined forces with other perspectives and more generally, how the parameters of debate and balance between perspectives have shifted over the course of the process.

Semi-structured interviews are a central component of most approaches to qualitative research and are accepted as a valid standalone methodology themselves (Hansen et al 1988). A series of semi-structured interviews targeted certain key actors in the WSIS process. These were conducted mainly with key participants and government delegates who functioned as spokespeople for certain crucial positions within the process. Consistent with the ethical agreement presented to, and approved by, the Research Ethics Committee of the Faculty of Arts and Science at the University of Montréal[24], participants were given a range of options about the formality of these interviews. Some participated under the expressed condition that their comments were "off the record" while other interviews were recorded, transcribed and are quoted at places throughout this thesis. In analyzing my data, I have tried to minimize the extent to which the availability of "on the record" interview quotes related certain ideas and perspectives might have influenced my presentation of the material. I have tried to use interview

[24] A copy of the ethics approval certificate issued to this project by the *Comité d'éthique de la recherche de la faculté des arts et des sciences (CÉRFAS)* of the Université de Montréal is included in this thesis as Appendix III.

quotations only illustrate points that I am confident I would have made with or without being able to draw on the words of interview subjects. In particular, I have been extremely careful not exclude any important points for lack of quotable interview data.

Respecting my ethical obligations, I do not give hints where conclusions are presented that draw on the careful notes taken from "off-the-record" interviews. I recognize that this might lead to an imbalance in the weight of proof attributed to certain points in relation to others and open my research to criticisms of being unaccountable. However, I am happy with the extent to which the interviews that I conducted covered the terrain. These interviews were designed as informational resources- to summarize, fill in and put in participants' own words- details about information and interactions in the process. These interviews were not intended as sociological study of how different individuals use the international political position to further their own ends. Subjects were asked to speak to the positions that they represented. The interviews filled in necessary knowledge gaps. In some cases, they added backroom context to existing public events. Crucially, these interviews allowed me to triangulate the conclusions of my participant observation and documentary analysis. In this sense, I would argue that they provide a measure of inter-coder reliability.

As mentioned, much of the communication in the periods between WSIS sessions was coordinated by the use of email discussion lists maintained by various civil society structures. Though I had initially given some consideration to approaching this as a separate technique of data collection, I have in fact decided that the nature of the information shared by this medium of communication is entirely consistent with both the participant observation and the analysis of public and internal statements described

above. It was therefore treated as such- as were the numerous volumes of articles written by WSIS participants during and since the WSIS process discussed earlier in this chapter.

Analysis of Data

Data collected through all of these different tracks was assembled and analyzed over the course of the case study. The most focused analysis occurred after the participant observation and interviews had been concluded. In presenting the material and drawing conclusions, various data sources were treated relatively inter-changeably. However, the general thematic focus for analysis was largely developed on the basis of the participant observation phase of the data collection. This formed the basis of the protocol for a pilot semi-structured interview. After reflection on the pilot interview, the framework was refined for the remainder of the semi-structured interviews.

Documentary analysis was an iterative process, occurring over the course of the participant observation to assure that I could follow the proceedings, and during the interview phase to inform my discussions with interview subjects. Finally- on a much larger scale- literally hundreds of WSIS documents were reviewed to provide a comprehensive grounding of preliminary conclusions reached during the participant observation and interview phases. Some preliminary observations and possible themes of this study were thrown out along the way either because they proved to be off-base or simply in the effort to reduce the scope of the study. The general analytic framework examined:

- the major actors, issues and positions in the WSIS process and their evolution over the course of the process and since;

- the story and events of the negotiation of the WSIS IG agreements;
- the understandings of internet technology and the linkages between internet technology and public policy that informed various delegations and positions;
- the linkages between the domestic level and the global level in terms of policy development, policy consultation and the interests of various delegations;
- descriptive accounts of what global communication governance involves and who does it.

Chapter Conclusion: Reflections on this method

The potential criticisms related to this methodological framework include:

- the mélange of techniques of data collection;
- the iterative and post-hoc jumps between analysis and the field;
- the impossibility of comprehensively covering a research terrain as large as WSIS;
- the subjectivity of my own perspective in this process.

Concerning the combination of multiple techniques of data collection, critiques of this approach could point to the fact that there is no formal organization of the relationship between the field research and analysis and that there are not clearly established relative merits nor roles for each. Certainly this represents a nebulous process, but this sort of 'the more the better' approach to data collection is argued by proponents of the grounded theory methodological approach to be not only acceptable but to be entirely necessary in regards to research that demands the generation of new theoretical concepts rather than the verification of existing theory (Glaser and Strauss 1967). This is certainly the most apt response to the problematic pursued by this dissertation. According

to Charmaz (2000, 509), “grounded theory methods consist of systematic inductive guidelines for collecting and analyzing data to build middle-range theoretical frameworks that explain the collected data”. As such grounded theory refers to strategic approaches to the data collection and analysis process, and any and all qualitative and quantitative techniques for investigation can be utilized- either individually or in combination- for data collection. The problematic of this thesis demands the extraction of as much data as possible from a field site that could never be claimed to have been comprehensively investigated.

The most serious point of reflection in any methodological approach to social science research is the inherent subjectivity of the researcher’s perspective. This is especially the case in regard to this project where my perspective on the events is inherently limited. The criteria which I established for organizing this analysis are obviously shaped by my pre-dispositions and I, as a participant observer, am not a neutral observer but am myself implicated in the terrain. In response to these concerns, I would suggest that again the grounded theory approach can be utilized to justify this subjectivity. In conducting this research, I have gone to lengths to reflect on, acknowledge and minimize the impact of my own subjectivity. I would argue that, of course, truly objective research does not exist in any context and that this is realistically all that can be asked of social science research. People have offered and will offer conflicting accounts of what transpired over the course of the WSIS as well as disparate interpretations of its significance. However, as I outlined in Chapter 1, the context of this research is a series of fundamental issues confronting contemporary society; responses to

which are being obstructed by knowledge gaps, under-theorization and the absence of empirical data. Each subjective voice that enters this conversation enriches it.

-CHAPTER 3-
Case Study: The UN World Summit on the Information Society
Negotiations of a Framework for Global Internet Governance

Chapter Overview

Neither internet regulation in the broad sense, nor the more narrowly defined issue of the governance of the internet domain name system (DNS), figured prominently in the plans or initial agendas of the WSIS.[25] This chapter reviews how, through the chaotic process through which delegations and summit organizers sorted out an agenda for a policy object as abstract as the 'information society', a series of competing problems and claims coalesced, in various and changing combinations, to push internet regulation and governance up the WSIS agenda. It will examine the fluid and inconsistent manner in which the issue of internet governance was framed over the course of the first phase of the WSIS and the intractable debate that followed over the extent to which public policy issues apply to internet governance. This chapter examines how- through WSIS- internet governance came to be seen as encompassing a much wider range of issues and concerns than merely domain name management.

This chapter examines the emergence of internet governance as a more broadly defined policy field; in particular the contribution to this evolution of the Working Group on Internet Governance (WGIG). The Internet Cooperation of Assigned Names and Numbers (ICANN) was eventually determined to not relate directly to many of the broader internet governance, ICT policy and information society issues that were raised over the course of the first phase of the WSIS. But, the extent to which such issues were discussed alongside, and conflated with, ICANN underlined the extent to which issues

[25] For a background and historical overview of the DNS and of ICANN, see Appendix I of this thesis.

such as the digital divide, communication rights, spam etc. were closely associated with internet governance. As a result, in defining the term going forward to the second phase of the WSIS, lines were drawn about what issues were considered to fall under the heading of global internet governance. The story of the first phase of the WSIS thus is significant to consider within the conceptual debate over the regulatibility of the internet.

However, the mere recognition of the public policy implications of internet governance is not the end of the story. This chapter reviews the focused- but equally charged and controversial- debate that occurred as internet governance came to dominate the agenda of the second phase of the WSIS. It provides in-depth accounts of the sensationalized split between the US and the EU on the issue of governmental oversight of ICANN and the dynamics of the Tunis deal that brokered compromise through the creation of the Internet Governance Forum- a new multi-stakeholder global governance organization- as well as an ill-defined process of "enhanced cooperation".

In conclusion, this chapter suggests that Lessig's code is law theory introduced in Chapter 1 is particularly well suited for unpackaging the enigma of internet governance and the power dynamics that defined the WSIS.

"Something Must be Done About…"

As discussed in Chapter 2, the WSIS was initially devised as a framework for developing global policy for extending the "digital revolution" across the "digital divide".[26]

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[26] Quoted from: The International Telecommunication Union, "Basic Information about WSIS: Why a Summit on the Information Society", ITU, http://www.itu.int/wsis/basic/why.html.

The initial summit agenda's mapping of "issues that may be relevant" included mention of some of the questions that would come to define the debate over internet governance. For instance, the "developing a framework" issue pointed to defining the "roles of government, the private sector and civil society" and "establishing appropriate policy, regulatory and market structures" objectives. The same document defines the agenda for the "Democracy and governance" theme of the Summit around the implications of the use of ICT by governments in (or e-governance) in the governance of Society.[27] This was a qualitatively different notion of governance *and* the internet than the debate that would emerge about the governance *of* the internet itself and the role of governments within it.

But the "information society" is a nebulous and fluid term. There is no agreed definition and it is easily manipulated to suit a wide range of agendas. It was apparent from the start that any effort to use the WSIS to define the 'information society' would be complex and controversial. Absent a clear and agreed upon overarching set of priorities that could be imposed top-down to define the issues to be debated, the agenda of the WSIS was quickly captured bottom-up by calls for global governance responses to a series of emerging policy problems. As one interview subject put it, much of the early agenda of the WSIS was structured around "a general feeling that *something must be done*, but for all sorts of different reasons".[28]

Many of these calls that "something must be done" related to concrete obstacles that certain developing country governments had encountered whilst trying to enforce

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[27] WSIS Geneva Phase PrepCom I, "Document WSIS/PC-1/DOC/4-E", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|1 (at para 24)

[28] Tim Kelly, (ITU Strategy and Policy Unit and the WSIS Executive Secretariat), in conversation with author, July 2007.

what they perceived to be their sovereign rights in relation to internet resources and communication. Issues arose from the more general objections of countries related to the management and use of the internet. The 'somethings' that the WSIS was being asked to do included:

- …a 1998 report of the Asia-Pacific Economic Cooperation Telecommunicatons & Information Working Group (APEC Tel) entitled *International Charging Arrangements for Internet Services* (ICAIS) that underlined the inequity of internet interconnection pricing.[29] Developing countries wishing to connect to the global internet backbone must pay for the full costs of the international leased line to the country providing the hub. As of 2000, more than 90% of internet connectivity passed through North America and the marketplace for international internet interconnection works on the principle that payment flows upstream: small local ISPs pay national tier two ISPs who pay tier one global backbone providers. Thus, despite the fact that traffic passes in both directions and benefits customers in the hub country as well as the spoke country once an interconnection agreement is established, the costs are primarily borne by the local and national ISPs in countries that do not have tier one global backbone providers. In 2000, ISPs in Asia Pacific reported a net deficit of US $5 billion per year from international interconnection costs and, in 2002, African ISPs were thought to have paid US$ 500 million in interconnection costs. These higher costs are, of course, passed on to customers making internet service more expensive in the

[29] For more see: APEC, "APEC Principles on International Charging Arrangements for Internet Services ", APEC,http://www.apec.org/apec/ministerial_statements/sectoral_ministerial/telecommunications/2000/annex_b.html

developing world. This situation is a stark contrast to the ITU's Accounting Rate program which was strategically biased toward settling international telephone interconnections in favour of developing countries, resulting in significant payouts to developing countries in US dollars intended as subsidies for further telecommunication infrastructure development. This issue was taken up at the ITU before emerging on the WSIS agenda (Peake 2004);

- … the fact that in Brazil, and other places, country code top level domain names (CCTLDs) were not being managed in ways that reflect their status as effectively sovereign territory. Jurisdiction over country code top level domain names (CCTLDs) was assigned many years ago by internet founding father John Postel to individuals and organizations on behalf of each country, often without involving governments.[30] Something had to be done in particular, to rectify the situation of the government created, multi-stakeholder "Steering Committee for the Internet in Brazil" (know by its Portuguese acronym CGIbr). Efforts on the part of CGIbr to develop a technically sophisticated registry that would be well-protected from fraud and run as an "asset of the commons" for the people of Brazil were being undermined by its institutional status. CGIbr was being formally run as a project of FAPESP, the state of Sao Paulo's Research Foundation. The lack of an institutional status for the CGIbr meant that FAPESP

[30] See Mueller (2002) at 125-126. For example, a 2003 survey conducted by Geist (2004) polled all 189 ITU members states about the management of their CCTLDs. Of the 66 countries who responded to the survey, only 43% of governments reported that they retain "ultimate control" over their CCTLD in one of the following ways: directly operating it themselves through a government ministry or agency; through a company that was created as a subsidiary of a government ministry or agency; through enacting legislation asserting government authority; through operational contracts with the appointed national CCTLD manager. Pointing the growing dissatisfaction with allocation of CCTLDs, 39% of respondents were either in the process of taking steps to formalize the government relationship with the CCTLD or actively planning to do so and only 7% of respondents had neither control nor plans to acquire it.

was able to restrict the use of monies made through, and earmarked for, the registry. FAPESP also decided to convert the CGIbr's internet exchange point (IEP) from a not-for-profit service into a business and then sell it to a Miami-based company called Terremark. Generally, efforts in Brazil were perceived to have been undermined by the lack of a guaranteed right to have ".br" appear in the root server and an inability ultimately decide who technically controls the country's name space and critical internet resources (Afonso 2004)[31];

- …about the fact that the domain name "southafrica.com" was registered by a private, Seattle-based tourism company called Virtual Countries Inc. who refused to hand it over when the government of South Africa later decided to get into the e-government business. During the ensuing litigation, the Government of South Africa resisted the efforts of Virtual Countries to have the case resolved in American courts;

- …because over 80% of allocated IPv4 addresses have been given to North

[31] There were other examples. Tuvalev had sold the rights for its ".tv" domain name to entrepreneurs in the US who, instead of operating it as a traditional country code, are marketing it as an alternative to .com for webservices offering media content. When a dispute developed between the government of Lybia and the manager of its CCTLD, ICANN deliberated for more than two years about whether or not the CCTLD should be re-delegated and the ".ly" domain name fell inactive. The ".iq" domain name for Iraq was delegated to a company run by a man named Saud Alani who had a Baghdad telephone number but lived, operated his businesses and hosted his servers in Texas. His Palestinian chief technical operator Bayan Elashi and four of Elashi's brothers- all of whom worked for InfoCom- were arrested in December of 2002 on terrorism related charges. In other words, less than 6 months before they would invade Iraq in March of 2003, the US was able to effectively shut down the ".iq" domain name and procure what ever intelligence and information warfare value it could from the ".iq" servers that had been hosting ".iq" as evidence in an unrelated proceeding (McCarthy 2003)

American institutions[32];

- …to rectify a situation in which email and website addresses could only be typed in the American Standard Code for Information Interchange (ASCII). As a result, only non-accented Latin characters are accepted and languages that use non-Roman scripts have to be transliterated into what are essentially English phonetics or abbreviations in order to be integrated into the naming and addressing system. Non-English speaking internet users in China for example, are required to use ".cn" as their domain name rather than ".**中国**", the Chinese characters that signify ".china". The Internet Engineering Task Force (IETF)- a technical standards making body- and the Internet Cooperation for Assigned Names and Numbers (ICANN)- the organization in charge of allocating and managing internet identifiers that allow for interconnection- were each working on the multi-lingual domain name issue over the course of 2001 and 2002. When it became clear that the technical standards could be put in place to create internationalized domain names, questions started to be asked about the process by which internationalized domain names would be arrived at. For example, questions were asked about which of the governments of the mainland People's Republic of China and the Taiwanese "Republic of China" would be granted the (likely to be contested) international domain name ".**中国**"?[33] How could the

[32] Peake (2004) points out that this number reflects early block allocations that were made "under a system that did not anticipate the rapid growth of the internet" (p.13) and that, under the current system of regional allocation that was introduced in the early 1990s, geographic fairness has improved to the point that allocations since 1999 are relatively balanced (p.14). Nonetheless, when viewed through prism of the early-WSIS focus on the digital divide, the optics of these statistics proved to be a source of consternation.

[33] Thank yous are extended to Siu-Min Jim and Tiffanie Ing for helping me clarify that ".**中国**" is simplified Chinese script for ".china" and that, though Taiwan generally uses the traditional Chinese

Peoples' Republic of China tolerate a system in which internet technologists and industry representatives working through ICANN could conceivably bestow the defacto recognition of an ostensibly international organization onto Taiwan's historical claim to being the 'real' China? Given that the only avenue available to governments such as the People's Republic for participating in such discussions at ICANN is through the decidedly non-binding Government Advisory Committee (GAC), questions were also asked about how the US Government might use its oversight of ICANN in such instances where intergovernmental relations were clearly at stake;

- …about American dominance of GTLDs. There are two types of top level domains: generic top level domains (GTLDs) such as .com, .gov, .mil, .edu etc. and country code top level domains (CCTLDs) such as .ca for Canada or .fr for France. Of the original seven GTLDs created, "dot.mil" and "dot.gov" were effectively reserved for US interests. The general perception was that the highly restricted GTLD space was geared toward US interests and not the global internet community. Such complaints were only reinforced during the WSIS when the .xxx GTLD was initially proposed by bottom up ICANN policy development process and then was ultimately overruled by the USG for domestic political reasons[34];

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characters, the domain name would be legible as ".china" for both Cantonese and Mandarin speakers in mainland China and Hong Kong and for the majority of Taiwanese.

[34] The idea was that the ".xxx" GTLD could be used to create a red light zone that would encourage pornographers to identify themselves and thus make it easy for parents to filter their childrens' use of the internet. The creation of a .xxx domain name was first proposed in 2000, but was one of many failed new proposals for new GTLDs occurred during the 'domain name wars' that are discussed in Appendix I (see also Mueller 2002). The .xxx idea re-emerged in 2003 when ICANN's so-called bottom-up policy

- …about the high overhead and transaction costs involved in ICANN's not-for-profit governance of the domain name system. ICANN has been responsible for a comodification of internet identifiers that has introduced a largely unnecessary level of cost to internet domain registration that has, in turn, created a cottage economy around the organization (Mueller 2002). What's more, with American companies such as Verisign being the chief beneficiaries of the cost of domain name registration, with the organization itself operating in the United States and with the litigious practices associated with ICANN disputes and dispute resolution requiring parties to hire American lawyers (Mayer-Schonberger and Ziewitz 2007), the ICANN micro-economy provides jobs to Americans and ensures that capital flows from around the world to the American businesses that service ICANN, its clients and employees. For all stakeholders- in particular for developing countries- the exchange value cost that ICANN's not-for-profit governance has fixed to domain name registration is out of line with the use value of internet identifiers, in many cases prohibitively so. The case was being made, in other words, that perhaps another organization could do not-for-profit governance with lower transaction costs, or at least that opting to pay the same transaction costs to an intergovernmental institution would be preferable to, in effect, being forced by the United States to line the pockets of American businesses;

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development process initially approved the creation of ".xxx". However, after the Department of Commerce (DoC) and various American government agencies and political figures were bombarded by an organized protest from the "family values" lobby, a politely worded letter from a DoC high up requested that the ICANN board delay their implementation of the proposal so that the (mostly negative) comments that were still coming in could be heard. When delay turned into reversal and ".xxx" was abandoned, many suspected that the ICANN board had read between the lines of the letter from the DoC and acquiesced to the wishes of its political master. In other words, the ".xxx" questioned the extent to which DoC oversight is, as claimed, merely administrative. (see Internet Governance Project 2006; Raboy and Shtern 2010b)

- … about pornography and “cybercrime”. Though it was not ratified until 2004, by the early stages of the WSIS, the Council of Europe Convention on Cybercrime (see Council of Europe 2004) had been drafted as an effort to establish a common criminal policy aimed at the protection of society against cybercrime by obligating ratifying states to adopt a set of prescribed legislation and to participate in a framework aimed at promoting international co-operation in preventing, investigating and prosecuting cybercrime. Despite the reservations of many (c.f. Peake 2004; Shariff 2008), the CoE treaty was a strong statement that some global coordination on preventing undesirable uses of the internet might be feasible and a variety of governments were interested in discussing how international agreements could be used to fight cyber crime, including through the regulation of various categories of speech whose legality tends to be defined on a country by country basis such as hate speech, spam and pornography.

Some of these calls that “something must be done” related directly to the management of the DNS system, what was conventionally defined as internet governance prior to the WSIS. They posed fundamental challenges to the instrumental view that technical regulation of the internet of the type preformed by ICANN is a neutral, facilitative, apolitical process and that the regulatory objective of efficiency can be accomplished without normative impacts. Other claims problematized the very premise of such narrow, prescriptive definitions of internet governance by underlining the extent to which issues related to how the internet is governed can be external to the DNS system. Each call that “something must be done” asserted the need to reconsider the place of law in regard to regulatory functions that have been left to the market and

devolved to code.

The American political scientist John Kingdon (1984, 122) draws on a concept from biology to describe the process through which ideas and issues compete for space on political agendas as "the policy primeval soup". "There is a long process of softening up", Kingdon (123) writes, continuing that

> ideas are floated […] speeches made; proposals are drafted, then amended in response to reaction and floated again. Ideas confront one another (much as molecules bumped into one another) and combine in various ways. The "soup" changes only through the appearance of wholly new elements, but even more through the recombination of previously existing elements.

The extent to which ideas emerged from the policy soup to set the agenda of the WSIS is unusual when assessed within Kingdon's framework. Kingdon (1984, 4) defines the policy agenda as "the list of subjects to which government officials and those around them are paying serious attention". Typically though, the agenda is set top-down by a fairly narrow, pre-defined set of interests. Political agendas can, under certain conditions (see Kingdon 1984, chapter 6), be effectively influenced from the bottom-up. The unresolved definitional complexity of the term 'the information society' meant that, at WSIS, unanticipated issues emerging bottom-up from the "soup" could claim to be every bit as integral to whatever "the information society" was as those that came top-down from summit organizers. The WSIS agenda was, in other words, unusually open to being set bottom-up.

Within the policy soup, these calls that "something must be done" jockeyed for space on the WSIS agenda with numerous other issues that seemed to contain some dimension of internet regulation. Alleviating the digital divide and the deployment of information technology for development were primary focuses of the first phase of the WSIS. Other important and related ICT policy issues raised over the first phase of the WSIS included:

- The use and status of free and open source software and other copyright and intellectual property issues;

- the need to stimulate local content creation in many languages as a counterbalance to English-language, developed country dominance of web content;

- The status of freedom of expression and, more generally, human rights in relation to communication. On one hand there were some countries seeking to assert the limits of article 19 of *the Universal Declaration of Human Rights* (UDHR) on their sovereign right to restrict locally defined categories of criminalized expression in the name of promoting "public order". At the other end of the spectrum, Brazil and elements of civil society advocated that the WSIS be used to go beyond the UDHR by creating a right to communicate that would expand speech rights for the information society.

There were also calls that "something be done" in regard to the general trajectory of governance in the information society, about underdevelopment and about the stark gap between the information society's haves and have-nots that is intrinsic to a system based on market-reliance, global economic integration and the spread of Western

style consumerism and capitalism. This view was perhaps best captured in discussion of the following paragraph from an early draft of the Geneva Phase *Declaration of Principles*:

> 6. **Faced** with complex and ever-evolving challenges, all of us: governments, the private sector and civil society, have challenges that require new forms of solidarity and cooperation and new or increased roles and responsibilities.

A proposal from the delegation from Iran would have grafted an additional sentence onto the end of this draft paragraph reading: "In this context, special attention must be paid to particular problems facing negative aspects and impacts of globalization".[35] Given the centrality of the internet to all of these broad processes, such claims certainly also seemed to prescribe some consideration of internet regulation. In other words, issues significantly broader than the DNS were being considered in the context of internet governance at WSIS (see figure 1).

Over the course of the first phase of the WSIS each of these issues was pushed and pursued by various stakeholders and coalitions of interests. Kindgon (1984, 130) suggests that

> origins become less important than the process of mutation and recombination that occur as ideas continuously confront one another and are refined until they are ready to enter a serious decision phase.

[35] WSIS Geneva Phase intersessional period, "WSIS/PCIP/DT/3-E", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all|

Figure 1: "Internet Governance-Related" Issues Raised at Phase I of WSIS

Level of Debate	*Something must be done about…*
1. DNS/ICANN	-US unilateral control -lack of government input -cost and US monopoly of economy -CCTLDs -multi-lingual domain names -allocation and geographic inequity of IP addresses
2. Broader IG Governance	-the sovereign rights of countries -cybercrime -pornography -international interconnection costs -English dominance of Web/local content -stability and security of internet
3. ICT governance	-access /digital divide -free software -copyright -expression and communication rights
4. Information Society Governance	-impacts of globalization -development and capacity building

Kingdon's description applies to the evolution of internet governance at the WSIS. Internet governance- in the narrow sense of the management of the DNS system- emerged as an issue at WSIS. But, in the manner described by Kingdon, within the policy soup that was the agenda of the first phase of the WSIS, efforts to get and keep a whole series of issues external to the management of the DNS were grafted on in various

combinations, at various times by different actors and collations of interests. Some of these moves were strategic while others have been attributed to mis- and under-informed delegations. The next section reviews this process through an in-depth chronological summary of the emergence of the debate over internet governance at the first phase of the WSIS.

WSIS Phase I: [International/Intergovernmental]

"Somebody is raising internet governance", an email from the Canadian contingent to a meeting in Bucharest reported to the Industry Canada team working on the WSIS file in Ottawa. It concluded by asking what would become *the* fundamental question of the entire WSIS process: "any idea what that means?".[36]

The Canadian delegation "interpreted it immediately as meaning ICANN".[37] Many others did as well. As discussed earlier, ICANN is a not for profit private organization that coordinates the naming and numbering registry that allows the global internet to function. Operating through a series of agreements with the Department of Commerce of the United States Government, ICANN was the controversial outcome of a decade long discussion over how the internet domain name system should be governed.[38]

ICANN is an essentially unique experiment in global governance (O Siochru and Girard 2002). It is a not-for-profit corporation based in Marina Del Ray California incorporated under the statutes of the State of California. ICANN coordinates the DNS

[36] Bill Graham (Industry Canada), as discussed with author, Oct. 2006. The Bucharest meeting in question is presumably the Pan-European Regional Conference for WSIS that was held in Bucharest between 7-9 Nov, 2002.

[37] Bill Graham (Industry Canada), as discussed with author, Oct. 2006

[38] See Appendix I of this thesis for a brief summary. For more detailed background see Mueller (2002); Paré (2003); Goldsmith and Wu (2006).

system, the root server system, the allocation of IP addresses and policy development related to these functions (Hoffmann 2007; see also Appendix I of this thesis). It does so through what it describes as a bottom-up, multi-stakeholder policy development process that is typically framed as an extension of the standards making processes the internet technical community has developed through the structures such as the Internet Architecture Board (IAB) and Internet Engineering Task Force (IETF). ICANN has been a lightning rod for criticism in its short history. For example, it is seen as prone to being captured by the agendas of technical elites, the US Government and multi-national communication firms in particular (c.f. Mueller 2002). More generally, it is seen- simply put- as not sufficiently democratic or accountable (Goldsmith and Wu 2006, 170). In particular, ICANN has institutionalized the tension between *private technical management* and *public communication governance* discussed in chapter 1. ICANN has always insisted that its role is neutral, technical management. As Esther Dyson, the first president of ICANN, once quipped: "ICANN governs the plumbing not the people" (quoted from Mueller 2002, 8-9).

From the first WSIS PrepCom there were indications that disaccord over the ICANN system was going to push the WSIS agenda. Brazil's intervention at PrepCom I of phase one complained that

> democratic and representative Governments should not be replaced by arbitrary groupings of private business and non-governmental institutions in decisions regarding the economic space brewing within powerful digital networks, such as the internet. Organizing this new environment to the satisfaction of all, and

> ensuring the beneficial participation of developing countries and their societies is central to our work.[39]

The EU's contribution was more specific, calling for the WSIS "to indicate a set of common principles underlying future actions and initiatives" related to "electronic communications regulatory frameworks" as well as "legal aspects of e-commerce and internet governance"[40].

Slotted between PrepCom I and PrepCom II, the International Telecommunication Union (ITU) held its regularly scheduled Plenipotentiary Conference in Marrakech in October of 2002. According to Kleinwächter (2004a, 42), "a bitter controversy about private sector leadership and the future role of ITU in internet governance took place". A series of resolutions were passed underlining the need to reinforce the sovereignty of governments in domain name related matters and directing the ITU secretary general to encourage all ITU member states to participate in discussions over international management of domain names and numbers. These resolutions also encouraged the Secretary General of the ITU to himself take a "significant role" in such debates and initiatives.[41]

From there, the issue of internet governance percolated onto the WSIS agenda through a series of declarations made by regional WSIS preparatory meetings that were also held between PrepComs I and II (Kleinwächter 2004a). The declaration of the already alluded to European WSIS Ministerial Meeting in Bucharest (Nov 2002)

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[39] WSIS Geneva Phase, PrepCom I, "Statement from Brazil", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|1

[40] WSIS Geneva Phase, PrepCom I, "Document WSIS/PC-1/CONTR/3-E" , ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|1

[41] see Resolutions 102 and 133 of the 2002 Marrakech ITU Plenipotentiary Conference, http://www.itu.int/osg/spu/resolutions/2002/resplen5.html

mentions in passing that "management of domain names" is one among many issues that should "be addressed with the active participation of all stakeholders".[42] The declaration of the January 2003 Asian WSIS Ministerial Conference in Tokyo declares that

> the transition to the information society requires the creation of appropriate and transparent legal, regulatory and policy frameworks at the global, regional and national levels. These frameworks should give due regard to the rights and obligations of all stakeholders.

The subsequent list of policy issues requiring such reforms includes "management of internet addresses and domain names".[43] Two weeks later, the Latin American Regional Ministerial conference held in Bávaro called for "multi-lateral transparent and democratic internet governance" as part of an effort to establish "appropriate national legislative frameworks that safeguard the public and general interest and intellectual property that foster electronic communications and transactions".[44] Finally, in February 2003, in Beirut, the West Asia Ministerial Conference for WSIS mentioned "multilingualism" and "national sovereignty" as two of the reasons that "the responsibility for root directories and domain names should rest with a suitable international organization".[45]

Thus, the controversies that were emerging around ICANN outside of the main WSIS plenary made the WSIS a logical venue to raise the issue of internet governance.

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[42] WSIS Geneva phase, PrepCom II, "Document WSIS/PC-2/DOC/5-E : Final Declaration of the Pan European Regional Conference", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=rc|pe&c_type=all|

[43] WSIS Geneva phase, PrepCom II, "Document WSIS/PC-2/DOC/6-E: Final Declaration of the Asia-Pacific Regional Conference", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=rc|as&c_type=all|

[44] WSIS Geneva phase, PrepCom II, "Document WSIS/PC-2/DOC/7-E: Bávaro Declaration", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=rc|l&c_type=all|

[45] WSIS Geneva phase, PrepCom II, "Document WSIS/PC-2/DOC/8-E : Final Declaration of the Western Asia Preparatory Conference", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=rc|l&c_type=all|

Yet, as discussed, the WSIS agenda was far from set and domain name system problems were competing for the limited space on it alongside much broader internet, ICT and information society public policy issues. By PrepCom II, ICANN issues were being raised at WSIS, but often inter-changeably with, and indistinguishably, from other broader concerns about the governance of communication and the public's interest in it. A Brazilain intervention to PrepCom II for instance argued that

> internet has evolved into a global public good and its governance should constitute a core issue of the information society agenda. Developing countries should have full access to take part in all decision making bodies and processes concerning the structure and functioning of the cyberspace, within which public, private and non-governmental agents will increasingly conduct their social and economic activities. [46]

Supporters of ICANN largely chose to ignore calls that the issue of its reform be placed on the WSIS agenda, presumably hoping that the issue would simply go away. By PrepCom II, some veiled support for the existing institutional framework for internet governance did begin to creep into certain interventions. The Coordinating Committee of Business Interlocutors (CCBI) contribution to PrepCom II offered a carrot in the direction of calls for more intergovernmental cooperation on internet governance: "many cross-border issues have already been and are being coordinated by international fora". [47] But also a stick:

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[46] WSIS Geneva phase, PrepCom II, "Document WSIS/PC-2/CONTR/57-E", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|2

[47] WSIS Geneva Phase PrepCom II, "Document WSIS/PC-2/CONTR/35-E", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|2

> the critical role of the private sector must be recognized more clearly and actively in the WSIS process. This has not been adequately done to date. […]Given the right conditions, business will assume the risks necessary, and invest. […] 'No investment, no information society. [48]

Updated drafts of the *Plan of Action* and *Declaration of Principles* were circulated on March 21, 2003 and comments were solicited from all stakeholders in advance of the 'intersessional" meeting planned for Paris in July. The March, 2003 draft documents reformulated and reorganized the language on internet governance slightly. [49] The new formulation in the plan of action was particularly revealing. At paragraph 33, the plan of action reads:

> **Internet governance:** A transparent and democratic governance of the internet shall constitute the basis for the development of a global culture of cyber-security. An [international][intergovernmental] organisation should ensure multilateral, democratic and transparent management of root servers, domain names and Internet Protocol (IP) address assignment.[50]

That the words "international" and 'intergovernmental" are inserted into para 33 in square brackets is significant. In the referencing system used to mark-up negotiation documents in the UN system, square brackets are commonly used to indicate text that has been suggested by one or more delegation but that lacks unanimous approval (c.f Riles

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[48] WSIS Geneva Phase PrepCom II, "Document WSIS/PC-2/C/0035 (add. 1)", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|2

[49] c.f. WSIS Geneva Phase intersessional period, "Document WSIS/PCIP/DT/1-E", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all|

[50] WSIS Geneva Phase intersessional period, "Document WSIS/PCIP/DT/2-E", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all|

2006). By the intersessional meeting, in other words, it was clear that some WSIS delegations were campaigning for reform of the ICANN model or for its replacement by a more traditional, intergovernmental organization while others supported the existing model of an international organization that is not intergovernmental. The first phase of the debate over internet governance would be a battle over which word was going to have its square brackets removed. What was not clear was whether this debate was only about the DNS system or what exactly internet governance meant in the context of the WSIS. After lurking at the margins for the first months of the WSIS, by the end of PrepCom II, internet governance had officially arrived on the WSIS agenda, whatever it meant.

In their comments on this draft of the *Declaration of Principles*, Cuba suggests inserting the word "intergovernmental" into the first sentence of paragraph 44 so that it would read: "internet governance must be multilateral, *intergovernmental,* democratic and transparent".[51] Brazil is more explicit, suggesting that its previously cited comments about the internet as a public good be amended to acknowledge that:

> The International Telecommunication Union, as a specialized agency of the United Nations System, shall play a leading role in the emergent information society and in the regulation of the global information and communications infrastructure.[52]

By this point it was becoming clear that, for Brazil, an intergovernmental organization was required to govern a global public good. What was less clear at the time however,

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[51] WSIS Geneva Phase intersessional period, "Document WSIS/PCIP/DT/3-E: (Reference document: Compilation of comments received by March 31, 2003)", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all|

[52] WSIS Geneva Phase intersessional period, "Document WSIS/PCIP/DT/3-E: (Reference document: Compilation of comments received by March 31, 2003)", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all|

was whether the global public good was, in Brazil's view, the DNS system or communication on the internet.

For example, in their comments on the *Plan of Action*, Brazilian proposed amendments include: "the internet is the base of the information society. The internet must be considered a public international domain. Every country and every person have the right to be connected and to take full advantage of the benefits offered by the internet". However, Brazil then goes on to insist- in the very same paragraph- that the administration of the DNS must occur through an intergovernmental organization and involve developing countries.[53] Again, the result is that when Brazil frames 'internet governance' "as a key issue of the information society"[54], it is entirely unclear whether internet refers to the DNS system or something much broader.

The responses from developed country governments, the internet technical community and the private sector supporting the status quo were varied.

The comments of certain delegations appear to be aimed at diffusing the tension by replacing references to specific organizations and institutional labels with more general terms. Australia, for example, simply calls for "administrative and coordination activities related to the internet [to] remain the responsibility of *an organization* with broad stakeholder input". Canada insists that "the coordination responsible for root servers, domain names and Internet Protocol (IP) address assignment should rest with a *suitable* organization". Leveraging the expressive potential of the conventions for

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[53] WSIS Geneva Phase intersessional period, "Document WSIS/PCIP/DT/3-E: (Reference document: Compilation of comments received by March 31, 2003)", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all| (at para 44)

[54] WSIS Geneva Phase intersessional period, "Document WSIS/PCIP/DT/3-E: (Reference document: Compilation of comments received by March 31, 2003)", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all| (at para 33)

marking up UN negotiating documents to the hilt, Japan's contribution was simply:

> "An [international]~~[intergovernmental]~~ organization should ensure multilateral…".[55]

'Broad', 'suitable', 'international': rather than referencing a definable institutional forum, each are vague normative catch-alls that could be argued to be present in the ICANN system as it was configured at the time, or to be a goal that the ICANN system was capable of working toward without fundamental changes in its mandate.

Other comments were slightly more restrictive and prescriptive. The US emphasized the need for "public-private parternship" in DNS management in order to "preserve and enhance the necessary global interoperability and coordination of the internet's unique identifier system while recognizing its technical limitations and requirements".[56] The intervention of the Internet Society (ISOC)- a coordinating body for the activities and interests of the internet technical community- reinforced the implication that the calls for reform seemed to be neglecting the extent to which the characteristics of internet technologies effectively constrain the range of policy alternatives. ISOC professed to be

> very concerned by statements in the draft documents that imply the need for new, intergovernmental organizations to "manage" the internet. In particular, proposals to replace ICANN and create a new mechanism for managing root servers, domain names and IP addresses is unnecessary, will lead to significant disruption,

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[55] WSIS Geneva Phase intersessional period, "Document WSIS/PCIP/DT/3-E: (Reference document: Compilation of comments received by March 31, 2003)", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all|

[56] WSIS Geneva Phase intersessional period, "Document WSIS/PC-3/CONTR/47-E", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all|

and is unlikely to succeed.[57]

Inter-governmental oversight of the internet, was in other words, a total non-starter to a series of delegations.

The invocation, at this juncture, of discourses on the limited extent to which the technology of the internet would tolerate such efforts is revealing. By asserting that the power dynamics of global internet governance simply preclude the possibly of dramatic calls for reform, the US, the ISOC and their sympathizers underline how, in the absence of a more intrusive legal framework, the ability to control and define technology is power. A subsequent CCBI intervention threatened that "business cannot accept any reference to an inter-governmental organization engaging in such management".[58] In other words, technological power was being wielded alongside political economic power by the chief beneficiaries of the status quo in the effort to use their capacity leverage to bully the debate over meaningful reform of internet governance right off the WSIS agenda before it even got off the ground.

The delegation comments on the March 21, 2003 draft documents were compiled into a single document that was distributed on June 12 and, despite their obvious contradictions, formed the basis of new versions (June 5, 2003) of the draft documents.[59]

The WSIS entered the so-called intersessional meeting (July 15-18, 2003 in Paris) with a singular, if contradictory and controversial, set of draft paragraphs on internet governance. WSIS delegates thus arrived at the intersessional meeting entirely aware of

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[57] WSIS Geneva Phase intersessional period, "Document WSIS/PC-3/89-E", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all|

[58] WSIS Geneva Phase intersessional period, "WSIS/PC-3/CONTR/10-E", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pci|1&c_type=all|

[59] c.f. WSIS Geneva Phase PrepCom III, "Document WSIS03/PCIP/DT/4(Rev.1)-E", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|3 and WSIS Geneva Phase PrepCom III, "WSIS/PCIP/DT/5", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|3

the degree of divergence in opinions on internet governance. In recognition that the WSIS was further away from reaching consensus on the language on internet governance than it was on many of the other issues being discussed, governments created an "Internet Governance Ad-Hoc Working Group" at the intersessional meeting. With the exception of its first meeting, this Working Group did not adopt the multi-stakeholder rules of participation in force in the wider WSIS activities. Meetings of the IG Ad-Hoc Working Group were largely restricted to government delegations, even if many sympathetic government delegations chose to openly report back to civil society and private sector would be interlocutors (see Kleinwächter 2004a).

By the conclusion of the intersessional meeting, the draft *Declaration of Principles* proposed three possible formations of the main text on internet governance. Each agreed that the "the international management of the internet should be democratic, multilateral and transparent". Opinions however, diverged from there.

One proposal recognized that internet governance contained technical as well as policy issues. While private sector leadership should continue at the technical level, governments, it was argued, ought to

> take a lead role, in partnership with all other stakeholders, in developing and coordinating policies of the public interests related to stability, security, competition, freedom of use, protection of individual rights and privacy, sovereignty, and equal access for all.

This proposal remained unclear about whether this should occur within a traditional intergovernmental organization (presumably the ITU) or an 'international' one such as ICANN. The second proposal focused explicitly on the DNS. It asserted the sovereign

rights of countries over policy authority of their CCTLDs and called for multi-lingualism in internet governance. Responsibility for management of the DNS should reside, it continues, with an intergovernmental organization. The third proposed model suggested that global internet governance should "respect geographic diversity" and ensure the participation of those governments that are particularly *"interested"* in internet governance.[60]

The *Extract from the Draft Plan of Action* was already managing expectations about the prospects for agreement prior to the conclusion of the Geneva phase of the summit, suggesting that the second phase of the WSIS should be devoted to reviewing the continuing international dialogue on the subject.[61] In other words, by convening an Ad-Hoc working group on the subject, the WSIS probably did more to reinforce the differences between delegations on the issue of internet governance than it did to resolve them, at least initially.

As an issue for the WSIS, internet governance was hardly unique in respect to its lack of progress. The initial two PrepComs and the intersessional period had largely been devoted to debate over the agenda and procedures of the Summit. There were very real logistical and financial obstacles to the efficient administration of negotiation[62] and, in

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[60] WSIS Geneva Phase PrepCom III, "Document WSIS03/PCIP/DT/4(Rev.3)-E", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|3

[61] WSIS Geneva Phase PrepCom III, "Document WSIS03/PCIP/DT/7-E.", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|3 (at 104 and 105)

[62] Numminen (2005, 65) writes that, in addition to all of the procedural questions raised by the inclusion of non-governmental stakeholders in the WSIS, there was the more basic issue of the effect that an exponentially increased population of accredited participants has on the secretariat. More people being allowed to speak means more words that need to be organized and taken into consideration. For example, the call for comments issued on the March 21, 2003 version of the plan of action alone solicited more than 800 pages of responses that had to be read, analyzed and re-packaged in a useable format for WSIS participants. The need to do all of this before meetings can resume made immediate resumption of meetings difficult. Numminen also reminds us that "unlike the other UN Summits, WSIS preparations rely on voluntary contributions" meaning that, meeting time was required beyond what had originally planned for the PrepComs "nobody could guarantee that the costs of the resumed meeting would be covered".

addition to the emergence of unanticipated issues such as internet governance, the inclusion of non-governmental stakeholders in the WSIS to a degree that was essentially without precedent in the UN system had incited a prolonged discussion of procedures and modalities of participation. "PrepCom III in September 2003 was", as Finish Ambassador Asko Numminen (2005, 65) put it, "the first formal preparatory committee to focus really on substance".[63] Thus, progress had not been made on emergent issues like internet governance. But then, progress had not really been made anywhere, including on issues that had been logical items for the WSIS agenda since the beginning such as: financing the digital divide; the role of media in the information society; and freedom of expression and communication rights. However, amongst the general pressure and tension at PrepCom III, internet governance was particularly singled out as a difficult issue.

Negotiation of internet governance at PrepCom III was, according to Swiss Diplomat Marcus Kummer (2007, 6), "both very polarized and, to a large extent, also very abstract. There were misunderstandings on both sides". The obstacles created by the fluid definitions of what internet governance was and the misunderstandings about what ICANN did and did not do were not lost on the participants to the debate. One government delegate recalled making a series of interventions

> stressing that we that we needed to get a handle on what [internet governance] was and what people mean about it. We couldn't possibly negotiate something as amorphous as the phrase 'internet governance'. So our submissions were, okay- "we need a process to define what this is that will break out what governments

[63] After spending the weekend break of PrepCom III sequestered in the ITU building for 24 hours aiding the WSIS secretariat in expediting a workable set of new draft documents, the Finish delegation might have been given more cause than most to reflect on the how the WSIS had managed to arrive at PrepCom III with so little time remaining and so much work to do. *(ibid)*

> can deal with from what they can't"- which I think is just sort of policy making 101, you can't do policy until you understand the topic.[64]

The 'governments only' edict of the Ad-Hoc Working Group on Internet Governance meant that many of the world's leading practitioners of, and experts on, internet Governance were left milling around in the corridors outside the rooms in which the negotiations were taking place when they very easily could have been called upon to help fill in knowledge gaps and offer explanations when it became clear that misunderstandings were holding up progress. In what has become an oft-repeated parable in WSIS civil society circles, even ICANN CEO Paul Twomey himself had to leave the room so that governments could resume their debate (Kleinwächter 2004a).

By the end of the first week of PrepCom III, a new (Septmeber 19, 2003) draft had broken out the three competing versions of the *Declaration of Principles'* paragraph 44 into a series of new paragraphs. The divisive point remained the question of how issues that were now being discussed under the decidedly broader-than-ICANN label of "internet issues of an international nature related to public policies" should be coordinated. There were a series of alternative linguistic formations proposed, but the sticking point remained the role of governments and the imposition of an intergovernmental institution dedicated to internet governance.[65]

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[64] Bill Graham, (Industry Canada), in discussion with author, Oct. 2006.
[65] WSIS Geneva Phase PrepCom III, "WSIS/PC-3/DT/1", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|3 (at para 44).

Over the rest of the September sitting of PrepCom III however, these paragraphs would change only slightly[66] and they would not change at all over the course of the first resumed PrepCom III session held in November 2003.[67]

In a stroke of nomenclature that could only have been produced within the UN system, it was decided that there would be a "PrepCom III resumed II" to take place immediately before the first phase of the Summit, on December 5 and 6, 2003. Determined not to let the Geneva phase of the Summit fail on its watch, the Swiss delegation, led by Secretary of State for WSIS Marc Furrer, effectively took ownership over this final stage of the negotiation.[68] Responsibility for pushing through a compromise on internet governance was assigned to Marcus Kummer.

Faced with five different proposals for the conclusion of the paragraph on 'Internet issues of an international nature related to public policies' that he saw as "mutually exclusive" and confronted with delegations that "were firmly entrenched in positions that were diametrically opposed", Kummer (2007, 7) concluded that "the only way out was to establish a process to deal with these issues". The last ditch efforts of PrepCom III resumed II focused less on bridging the gap between the different perspectives and instead "focused on the modalities of the process [delegates] hoped to initiate" to continue the discussion going forward (Kummer 2007 , 7). A key domino of compromise fell when the secretary general of the ITU was replaced as the presumptive

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[66] c.f. WSIS Geneva Phase PrepCom III, "Document WSIS/PC-3/DT/1(Rev.2 B)-E", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|3

[67] WSIS Geneva Phase PrepCom III, "Document WSIS/PC-3/DT/6-E", ITU, http://www.itu.int/wsis/documents/listing-all-pc.asp?lang=en&c_event=pc|3

[68] In an article written after the WSIS, Furrer (2005, 73) admits that "behind the scenes, we had been preparing the ground for this facilitation work as early as October" suggesting that the debates over the controversial issues such as internet governance during the September sitting of PrepCom III were combative enough that it was already clear- at least to the Swiss- that the PrepCom III resumed session was not going to produce consensus.

convener of the proposed follow-up study group by the Secretary General of the UN itself. The initial proposal to appoint the head of the ITU as the chair of this group that was to study an issue being defined by a debate over the role of ICANN vs. the role of the ITU was politically fraught from the start. In Kummer's words, the formula of including some form of United Nations involvement without favouring calls for greater ITU leadership provided "the flexibility required to be inclusive" to both the intergovernmental (ITU) and private sector (ICANN) factions (Kummer 2005, 246). Alongside this compromise there was some massaging of the language so that, in Kummer's *(ibid)* terms

> the wording of the final documents addresses the needs of both groups: it takes care of those governments trying to find their role in this new policy environment, and it respects the views of those who emphasize the importance of the private sector and civil society.

Under these conditions, without reaching any kind of agreement about what internet governance means or who ought to be responsible for it, agreement on language on internet governance for the Geneva *Declaration of Principles* and *Plan of Action* was reached late night on December 6th 2003; four days before the opening of the Geneva Summit and three days before a compromise would be reached on the creation of a funding program for the alleviation of the digital divide, the final unresolved phase I issue.

Internet governance is discussed in the final Geneva Declaration of Principles in the following terms:

> **48.**The Internet has evolved into a global facility available to the public

and its governance should constitute a core issue of the Information Society agenda. The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations. It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism.

49. 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;

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.

50. International Internet governance issues should be addressed in a coordinated manner. We ask the Secretary-General of the United Nations to set up a working group on Internet governance, in an open and inclusive process that ensures a mechanism for the full and active participation of governments, the private sector and civil society from both developing and developed countries, involving relevant intergovernmental and international organizations and forums, to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005.[69]

And, in the Geneva Plan of Action (at 13b):

> We ask the Secretary General of the United Nations to set up a working group on Internet governance, in an open and inclusive process that ensures a mechanism for the full and active participation of governments, the private sector and civil society from both developing and developed countries, involving relevant intergovernmental and international organizations and forums, to investigate and make proposals for action, as

[69] WSIS, Geneva Phase Summit. "Geneva Declaration of Principles: WSIS-03/GENEVA/DOC/4-E", ITU, http://www.itu.int/wsis/documents/doc_multi.asp?lang=en&id=1161|1160

appropriate, on the governance of Internet by 2005. The group should, inter alia:

i. develop a working definition of Internet governance;

ii. identify the public policy issues that are relevant to Internet governance;

iii. develop a common understanding of the respective roles and responsibilities of governments, existing intergovernmental and international organisations and other forums as well as the private sector and civil society from both developing and developed countries;

iv. prepare a report on the results of this activity to be presented for consideration and appropriate action for the second phase of WSIS in Tunis in 2005[70].

Internet Governance at WSIS Round II: The WGIG

"Before it would have been possible to find a solution", Kummer (2007, 7) understood, "there needed to be a common understanding that there was a problem that needed to be resolved". More than a year after one head of delegation had been contacted by a colleague attending a WSIS regional meeting in Bucharest who knew internet governance was emerging on the WSIS agenda but did not know what it meant, internet governance had become a focal point of the WSIS agenda and there still was not a clear

[70] WSIS, Geneva Phase Summit. "Geneva Plan of Action: WSIS-03/GENEVA/DOC/0005", ITU, http://www.itu.int/wsis/documents/doc_multi.asp?lang=en&id=1161|1160

understanding of what it meant. This is actually not as laughable as it might seem. It could be said that internet governance as a new field of regulation was invented at this point of the WSIS.

The creation of the Working Group on Internet Governance (WGIG) was the response to the definitional problem. The WGIG secretariat was formed in July 2004 and held a series of open consultations in Geneva from 20-21 September 2004. The composition of the Working Group was announced on November 11, 2004. There were 40 members drawn from civil society, governments, industry, the internet technical community, NGOs and academia.[71] "All members of the group had", MacLean's (2005, 11) "Brief History of WGIG" explains, "expertise in some aspect of internet governance" and "many had also been involved in WSIS-I and previous multi-stakeholder policy processes such as the G-8 Digital Opportunities Task Force and the United Nations Information and Communication Technologies Task Force". The usual UN overtures were made toward ensuring geographic and gender balance and toward promoting the representation of developing countries. Special Advisor to the UN Secretary General Nitin Desai was appointed Chairman and Marcus Kummer directed the secretariat.

The first formal meeting of the WGIG was convened on November 23, 2004. In what was a somewhat auspicious beginning, ITU Secretary General, Yoshio Utsumi delivered a speech that one WGIG member summarized "in a few words" as making the case that:

> the focus of the group's work should be the managing of names, addresses and protocols- the rest, according to Utsumi, was illusory […] the group should concentrate on discussing proposals for the worldwide management of the

[71] For a list of WGIG membership see its report (WGIG 2005).

internet's logical infrastructure (Afonso 2005, 9).

Given the ITU's declared interest in worldwide management of the internet and the fact that the WGIG owed its mandate in part to the intractability of the WSIS phase I conflict over the role of the ITU, some interpreted this speech as a transparent and self-interested effort to set the WGIG agenda. In the aftermath of this episode however (and perhaps partially because of the animosity it inspired), the WGIG was- by all accounts- able to take a broad-based and fresh look at the issues being discussed by the WSIS under the heading of internet governance in a cordial and productive manner (c.f. Drake 2005b).

The WGIG held four meetings: November 23-25, 2004; February 14-18, 2005; April 18-20, 2005; and June 14-17 2005. All of these meetings took place at UN offices in Geneva although, during the final meeting, the group decamped to the Chateau de Bossey located in the country-side *environs* of Geneva to facilitate the report drafting process. In addition to the open consultations, a variety of WSIS regional and sub-regional meetings provided input to the WGIG's work (see Drake 2005b, 4). ICANN, the ISOC and a variety of internet technical organizations and academic institutions also held what were described as "various contributory sessions to the ongoing debate" (*ibid*).

The WGIG submitted a preliminary report to WSIS phase II PrepCom II which was discussed in a plenary session on Feburary 24, 2005, and released its final report July 14, 2005. The methodology of the WGIG was to start by identifying all of the public policy issues relevant to internet governance and then to progressively build bottom-up toward a working definition of internet governance that would "capture the essential elements that were common to all of these issues" (MacLean 2005, 11).

From ICANN to Internet Governance

The WGIG report provides an accounting of what were determined to be the 13 highest priority "public policy issues that are potentially relevant to internet governance[72]" which were organized into four "key public policy areas":

a. Issues relating to infrastructure and the management of crucial internet resources;

b. Issues relating to the use of the internet;

c. Issues relevant to the internet but, like intellectual property rights or international trade, "have an impact much wider than the internet and for which existing organizations are responsible";

d. Development and capacity building in developing countries.

The WGIG understood that ICANN was just one dimension of the calls that "something must be done about…" that had dominated the first phase of the WSIS. The fundamental disconnect was that calls for reform of ICANN were being based not just on the need to do something about ICANN, but also the need to do something about a series of issues over which ICANN possessed no mandate.

The WGIG accepted that if a policy field of internet governance was going to be defined, then issues outside the mandate of ICANN had to be a part of it. Furthermore, the WGIG was clear that, if issues that were external to ICANN could be considered to

[72] Namely: Administration of the root zone files and system; interconnection costs; internet stability, security and cybercrime; spam; meaningful participation in global policy development; capacity-building; allocation of domain names; IP addressing; intellectual property rights (IPR); freedom of expression; data protection and privacy rights; consumer rights; multi-lingualism. (WGIG 2005, 4-6).

be internet governance issues, than internet governance had to be defined as something broader than the management of the DNS system. It is significant in this respect, that within the WGIG's efforts to map the policy field of internet governance, "administration of the root zone files and system" was but one of the thirteen policy issues. It was also only one of a series of issues mentioned under the "Issues relating to infrastructure and the management of crucial internet resources" policy area (WGIG 2005).

As promised, the WGIG report presented a working definition of internet governance:

> 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 (WGIG 2005, 3).

The WGIG report provided an accounting of the roles and responsibilities of governments, civil society and the private sector. It concluded that "some adjustments needed to be made to bring" the existing internet governance arrangements "more in line with the WSIS criteria of transparency, accountability, multilateralism and the need to address all public policy issues related to internet governance in a coordinated manner" (WGIG 2005, 9). In response it presented a proposal for creation of a forum that would function as a "new space for dialogue for all stakeholders on an equal footing on all internet governance related issues" (*ibid*). The WGIG report also proposed four different institutional models that could serve as the basis of a reformed system of "global public policy and oversight" which are outlined below in Figure 2.

Figure 2: Summary- The WGIG Models for Institutional Reform of Global Internet Public Policy and Oversight

Italics: Proposed new organization/institution; Underscored: Existing organizations/institutions subject to reform (reform details in brackets)

	Oversight	Government Input	Policy making	Management of Root	Buoyed	Sidelined
Model 1	*Global Internet Council (GIC)* [anchored in the UN system]	*GIC*	*GIC*	ICANN, (formally accountable to GIC)	-UN -govs.	-ICANN GAC -US DOC -Civil Society and Private Sector (advisory roles)
Model 2	None	ICANN GAC (enhanced)	- *IGF** [coordination/ analysis function]	-ICANN	-govs. (only slightly)	-US DOC -UN
Model 3	*International Internet Council (IIC)*	*IIC*	*IIC*	ICANN, (accountable to IIC, with a host country agreement)	-govs.	-ICANN GAC -US DOC -UN -Civil Society and Private Sector (advisory roles in IIC)
Model 4	*Oversight Committee* (Appointed by the *Global Internet Policy Council* [GIPC])	-*GIPC* -*Oversight Committee* -Advisory function in WICANN	-*GIPC* -*GIGF* (Global internet governance forum)	WICANN ("World ICANN": linked to UN with a host country agreement)	-UN -govs.	-US DOC -Civil Society (observer role in GIPC and WICANN in observer capacity) -Private Sector (lead operational role in WICANN but observer status in GIPC and WICANN policy making)

When the discussion of internet governance resumed in the WSIS at phase II, PrepCom III, there was palpable appreciation evident for the work of the WGIG direction and membership. For staunch supporters of multi-stakeholder global governance, the WGIG is often pointed to as an ideal; a common refrain amongst WSIS civil society

participants who participate in the IGF is that “The IGF is no WGIG”. Former WGIG member Bill Drake (2005b) makes the case that the WGIG facilitated the WSIS negotiations on internet governance by:

- Providing a common vocabulary to the terms and issues being debated that reduced the frequency of, and frustration over, the sort of misunderstandings that had plagued the internet governance debates during WSIS phase I;

- Allowing for civil society, internet technical and industry experts to be in the room while government representatives addressed internet governance issues, thereby facilitating a process of institutional learning (see also Drake 2005a) that organically cleared up and filled in many of the misconceptions and knowledge gaps that had been evident during WSIS-1 (and thus also demonstrating the benefits of multi-stakeholder collaboration);

- Creating a non-binding process wherein members could discuss openly and thus clarify not only the issues themselves but where various other delegations stood on them;

- Incubating and developing the concept of an internet governance forum;

- Deflecting the calls for reform away from a focus on the ITU’s possible role in global internet governance;

- Creating a year and half long period of détente while the WSIS process largely put aside the issue of internet governance waiting for the conclusion of the WGIG. Thus allowing for the temperature to be reduced a bit and for delegations

to better coordinate and work through their positions;

- Working through concepts and definitions.

As we have seen, the WSIS did not step into a vacuum on internet governance. The context in which the issue was raised at the WSIS was set by the legacy of the initial rounds of the domain name wars as well as the conventional view that pretty much everything else related to the internet was some combination of inherently democratic and immune to control. The result, according to Drake (2005a, 144), was that when the term first emerged during the WSIS

> the nearly standard practice [had] been to equate the term 'internet governance' with the social organization of internet identifiers and the root server system and, by extension, the functions preformed by the ICANN.

This "narrow definition", Drake continues

> was inconsistent with the empirical reality that there are a variety of collectively applicable, private and public sector rules, procedures and programs that shape both the internet's infrastructure (physical and logical) and the transactions and content conveyed thereby.

What emerged in its place over the course of the first phase of the WSIS debate was what Drake (*ibid*) calls "a broader and more holistic conception that could encompass the full range of internet governance mechanisms and facilitate their systematic evaluation and coordinated improvement".

Explicitly disaggregated from the question of ICANN oversight, certain public policy issues that had been discussed over the first phase of the WSIS lent themselves to

relatively uncontroversial resolution in phase II. This was the case, for example, with international interconnection costs, the questions related to the regional internet registrars and the linkages between government sovereignty and CCTLDs. Other issues that had been prominent topics of discussion during the first phase of the WSIS and that had been identified by the WGIG as legitimate concerns within the field of internet governance such as free software and freedom of expression/communication rights virtually dropped off of the WSIS agenda altogether.

But the question of ICANN oversight, despite the work that the WGIG did to strip it of the mostly external public issues that had been grafted onto it over the course of phase I, remained a contested and controversial focus throughout.

The US Government, for instance, released a statement of four internet principles in June of 2005 and conceded that

> Governments have legitimate interest in the management of their country code top level domains (CCTLD). The United States recognizes that governments have legitimate public policy and sovereignty concerns with respect to the management of their CCTLD. As such, the United States is committed to working with the international community to address these concerns, bearing in mind the fundamental need to ensure stability and security of the internet's DNS […]we encourage an ongoing dialogue with all stakeholders around the world in the various fora as a way to facilitate discussion and to advance our shared interest in the ongoing robustness and dynamism of the internet.

But insisted that

> ICANN is the appropriate technical manager of the Internet DNS […] the United

> States is committed to taking no action that would have the potential to adversely impact the effective and efficient operation of the DNS and will therefore maintain its historic role in authorizing changes or modifications to the authoritative root zone file.[73]

But, despite making progress in achieving broad-based recognition- even from the US Government- of the need to establish public policies related to certain internet governance issues external to the question of ICANN's oversight, many governments still wanted control of the DNS switch.

Internet Governance at WSIS Round III: The Tunis Compromise

Responses to the WGIG report were collected over the course of the summer[74] and the effort to negotiate an agreement on global internet governance resumed in the WSIS with the opening of the third and final planned PrepCom of the 2nd phase on September 19th, 2005. As during the run up to the first phase, it was clear that it was going to be difficult- if not impossible- to reach an agreement before the Summit. Whereas internet governance was just one of a handful of issues that were not close to resolution by the final PrepCom of phase I, PrepCom III of the 2nd phase consisted of two subcommittees: Subcommittee A devoted to negotiation of internet governance and Subcommittee B that was devoted to negotiation of everything else to do with the 2nd phase of the Summit. The debate over internet governance had grown in significance at the WSIS, but had it evolved?

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[73] US Department of Commerce, National Telecommunications and Information Administration (NTIA), "Domain Names: U.S. Principles on the Internet's Domain Name and Addressing System", NTIA, http://www.ntia.doc.gov/ntiahome/domainname/usdnsprinciples_06302005.htm

[74] WSIS Tunis Phase PrepCom III, "Document WSIS-II/PC-3/DT/7(Rev. 2) E", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pc2|3&c_type=all|

The work of the WGIG in itemizing and explaining these categories undoubtedly proved instructive to many delegations and provided a lexicon for framing issues and perspectives going forward. While such efforts may have cleared up previous misunderstandings and prevented new ones from occurring, the WGIG's terms of reference provided a common language in which stakeholders could express not only their agreements, but their differences as well.

The responses to the WGIG report revealed a general consensus that the WGIG definition of internet governance was at least workable and that there was little objection to using the WSIS to express aspirations that a handful of the public policy goals outlined in the WGIG report- combating spam, increasing capacity of developing countries to participate in internet governance, reinforcing the principle that governments have sovereignty over their CCTLDs, underlining the need for multi-lingualism, etc.- might eventually be realized.[75] In regard to institutional and operational questions- about the roles and responsibilities of different stakeholders, about the creation of an internet governance forum and crucially about the question of governmental oversight- however, the comments on the WGIG report reveal stark differences of opinion.

These differences were emphatically underlined only minutes into the first session of Subcommittee A of PrepCom III on September 20, 2005 by a Brazilian intervention that described internet governance in "three words: lack of legitimacy". From there, Brazil moved on to argue that the adage "if it ain't broke don't fix it" was a non-sensical and Orwellian construct, and to suggest instead that delegates consider

[75] WSIS Tunis Phase PrepCom III, "Document WSIS-II/PC-3/DT/7(Rev. 2) E", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pc2|3&c_type=all|

"Stein's law" that says that "things that can't go on forever don't".[76] Brazil, in other words, got straight to the point in summarizing the veracity of the calls for reform of global internet governance and in making an effort to disavow WSIS participants of any notion that the WGIG had somehow eliminated the fundamental differences that existed between the status quo and reform perspectives during the first phase.

What was clear from the comments that were received on the WGIG report and from the early discussions at PrepCom III was that the difference in opinion, though it had not gone away, had evolved. There was little direct discussion of the ITU in the PrepCom III round of the debate. Instead of ICANN vs. ITU, the discussion was largely over "the current system" vs. "a different system with a larger role for governments". A knock-on effect of this discursive shift was the space that it created between the two poles for middle ground positions. Whereas many delegations had previously been unsure whether they preferred the ICANN or the ITU or had joined one or the other camp as a lesser of two evils choice, over the course of PrepCom III the notion that change to the existing system of global internet governance could occur in degrees and was not an all or nothing proposition emerged as viable negotiating position.

By the end of a first week in which the meetings of PrepCom III Subcommittee A were largely devoted to general discussion of the issues and repeated debate of procedural concerns (including the status of various working documents, the participation of non-governmental stakeholders and, generally, the working methods of the subcommittee), a "Chair's Paper" Draft of the chapter on internet governance was

[76] The if "it ain't broke, don't fix it" line of defense of the status quo was articulated in various formations on numerous occasions. For example, it is spelled it in exactly those terms in then ICANN executive and 'internet founding father' Vinton Cerf's contribution to a UN-ICT Task Force published volume of articles on internet governance circulated to WSIS participants (see Stauffacher and Kleinwachter 2005).

prepared.[77] The level of detail in most sections reflected a growing sense of confidence on the part of the chair that consensus was emerging on certain issues. But the part labelled "Follow-up and Possible Future Arrangements" contained only a point-form laundry list of the really contentious issues: oversight, institutions and the creation of an internet governance forum (*ibid*). The comments that were received on this part of the first draft made it clear that the reform-minded governments and the defenders of the status quo were still very far apart.

The EU and a "New Cooperation Model"

A significant change in the dynamics of the WSIS IG negotiations occurred on Wednesday September 28th, 2005.

After arranging a meeting of senior officials- many of whom flew to Geneva from capitals all around Europe just for the occasion, the European Union introduced its own proposal for follow-up and future arrangements. The proposal was introduced by the head of the British delegation (acting in his capacity as head of the EU delegation) as "something that we hope the people from the extreme positions of the discussion could come to agree on". "We hope", he continued- obviously anticipating how it might actually be received- "that they will take it away and react tonight or react tomorrow rather than reacting as they hear it or read it" and, "with that explanation…", he read aloud a proposal from the EU for "a new cooperation model" for global internet governance that involved:

- International government involvement at the level of principles over various naming, numbering and addressing related matters including: allocation of IP

[77] WSIS Tunis Phase PrepCom III, "Document WSIS-II/PC-3/DT/10-E", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pc2|3&c_type=all|

blocks; procedures for changing the root zone file (particularly for new top level domain name creation and changes to CCTLD managers); DNS system rules; contingency planning for ensuring the continuity of the DNS functions; establishment of arbitration and dispute resolution mechanisms linked to international law;

- Creation of an internet governance forum; and, in parallel a separate process to transition to the new model of international cooperation.

The "new cooperation model" was to be based on the principles of: not replacing existing mechanisms or institutions; maintaining a multi-stakeholder public private partnership; and reinforcing the involvement of government in the "principle issues of public policy". The latter objective was, the proposal suggested, to be accomplished without granting governments any "involvement in the day-to-day operation" or threatening the existing "architectural principles of the internet, including the interoperability, openness and the end-to-end principle". [78]

Privately, the chair and secretariat and other delegations- including the EU- had been informed about the American "red line"; the maximum extent of the concessions that the US delegation was willing and authorized to make.[79] In any case, despite being introduced with a disclaimer that called for other delegations to sleep on the proposal before reacting, the response of the Americans suggests that they immediately interpreted the proposal as a challenge to their authority.

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[78] WSIS Phase II PrepCom III, "28 September 2005: European Union", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pc2|3&c_type=all|

[79] point corroborated by various interviews for this thesis.

At the conclusion of the evening sitting of Subcommitte A on September 28th, 2005 the US delegation asked for and was granted the floor. The interventions of US spokesperson Dick Beaird had, over the course of the PrepCom III, offered a master-class in the rhetoric of diplomacy. Disarmingly civil, Beaird's interventions generally managed to be non-confrontational and support points made by other delegations while deflecting focus and discussion away from key issues and the specifics of US positions on them. In response to the EU proposal, rather than deflecting attention away from the issue, the US delegation chose to be direct and to the point in emphatically restating its position and what it was not willing to accept. "We want to make perfectly clear once again", Beaird began

> [the distinction] between public policy and the day-to-day operations of the internet. The day-to-day operations of the internet, of which any changes or modifications to the authoritative root zone file is a part, is essential to the trust and confidence that the world may have and should have in the internet. It is a responsibility that the US takes with great seriousness and we will not do anything to adversely impact that responsibility. On the other hand, there are many issues that we would say fall in the domain of the public policy realm. That includes: spam, viruses, cybersecutiry, cybercrime all of the issues that we are very much concerned with and that we wish to engage in actively on a dialogue that will lead to the resolution of those issues.

Concluding with the salutation, "Mr. Chairman, these are issues that this delegation takes as fundamental"[80], the Americans emphatically reinforced the point that this was- in no

[80] Due to the length of this important intervention my field notes were checked against the streamed video archive of the session in which it occurred for accuracy. See ITU, "Broadcasting services for the Third

uncertain terms- their red line. The WSIS would either reach an agreement on internet governance that did not challenge it, or would reach no agreement that the Americans would accept.

The US was not alone in arriving at this interpretation of the EU proposal. Over the course of the first session of Subcomittee A on Thursday September 29th, 2005, a series of delegations took the floor to express interest in and support for the EU proposal. Making matters worse for EU/American relations, these new-found friends included: the governments who had been most vocal in their calls for reform to the global internet governance system over the course of the WSIS such as Brazil and China; governments such as Saudi Arabia whose interest in communication regulation has historically been very different from that of most European Countries; and countries such as Iran, Venezuela and Cuba with whom the United States was actively engaged in diplomatic hostilities of varying degrees at the time.[81]

Delegations supporting proposals from Iran, Brazil and Argentina were encouraged by the chair to discuss their positions with the EU with an eye to condensing the series of proposals into one. The reports returned the next day- what was supposed to be the final day of PrepCom III- were clear that common ground had not been found between the EU and the other delegations.

Meeting of the Preparatory Committee for WSIS (PrepCom-3)" , ITU, http://www.itu.int/ibs/WSIS/p2/pc3/index.phtml

[81] For instance: Cuba was under embargo until 2009; Venezuela under the Chavez presidency has gone out of its way to be antagonistic toward and isolated from the US and, over the later part of the George W. Bush presidency Iran's refusal to abandon its nuclear program and its threatening behavior toward Israel, the US and the UN was the source of considerable discussion of a possible American military campaign against Iran (as was perhaps most famously captured by presidential candidate John McCain's 2007 expression of foreign policy by other means in which he sang "Bomb, Bomb, Bomb, Bomb Iran" to the melody of the Beach Boys song "Barbara Ann").

Regardless, there was a sudden spike in media attention on the WSIS that included a series of "EU and US clash over control of net" headlined stories that appeared in papers such as the New York Times and the International Herald Tribune on September 30th, [82] implying that the EU might be capitalizing on anti-Iraq War backlash to send a message about US unilateralism.

With that, Subcommittee A of precpom III ended much the way it had started: with a debate over the status of a document (the WGIG report in the beginning, a proposed Chair's paper in the end).[83] A draft declaration that was coming together on many issues, but sparse on the crucial questions of institutional reform, as well as a series of proposals on oversight and the internet governance forum, were forwarded for further negotiations planned in a PrepCom III resumed session scheduled for the days preceding the Tunis phase of the Summit. [84] But, with the Tunis Summit fast approaching and the debates receiving sensational coverage in the global media, the stakes were higher.

Of the proposals on the table, those of Saudi Arabia (on behalf of the Arab Group) and Iran centred on explicit creation of a new intergovernmental institution for oversight of the internet. Proposals from the EU, Ghana (on behalf of the African Group), Argentina and Russia each implied some process of gradual internationalization of internet governance. This was typically framed as an increase in the role of governments in internet public policy that remained vague about where internet public policy stops and oversight begins. The proposals from Brazil, Canada and Japan focused only the creation of the forum, though Ghana, Argentina, the EU and Saudi Arabia also advocated creation

[82] c.f. Wright (2007). This is beyond the scope of this thesis but it would be fascinating for further research to explore how this came about and what the whole episode suggests about the general problem of media coverage of communication policy and political economy issues.
[83] The particular document status debate that concluded this session is described in Chapter 5.
[84] I have summarized these proposals in a table presented in Appendix II.

of a forum. The Brazilian delegation framed its proposal for the forum as separate from its view on an intergovernmental oversight mechanism while Canada did not support new oversight at all and the Japanese proposal was clear that the discussion of new models should continue in the forum.[85]

In other words, the first- and initially only planned- sitting of PrepCom III concluded with calls for radical overhaul of the system that were entirely at odds with the line in the sand that had been drawn by supporters of the status quo. In the middle had emerged a perspective centred around progressive or evolutionary change and the idea that a forum could be created as a new institution whose non-binding mandate would not substantively impact the status quo. "I think at that stage that it became clear" to the chair and the secretariat that "when you get a problem that you can't solve, you have to devolve a mechanism to continue to talk about it. The mechanism in the first phase was WGIG, the mechanism in the second phase was the IGF". The forum was not only, in that sense "the way out", it was essentially "the same way out that had been decided at the first phase". [86]

Between the conclusion of the September sitting of PrepCom III and the resumed session in Novemeber, 2005 work and politics continued behind the scenes. In the lead-up to the resumed PrepCom III session, the US is said to have exercised pressure at the highest diplomatic levels of its special friendship with the UK in order to convey the gravity of the EU proposal.[87]

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[85] All of these proposals are available on the Prepocom III documents site. http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pc2|3&c_type=all| More details are available in Appendix 2 of this thesis (see previous note).

[86] Tim Kelly, (ITU Strategic Planning and WSIS Executive Secretariat), in discussion with author, July 2007.

[87] In what has become the stuff of WSIS lore, Condelezza Rice is rumored to have personally sent her

The Tunis Compromise

Subcommittee A of PrepCom III resumed in Tunis on November 14, 2005 with a reminder from the chair that "we have a responsibility to citizens and constituencies around the world to come up with a result". In plenary sessions and break out drafting groups, debate continued, often picking up where it had left off in September.

On the forum function, the US was willing to admit that "the United States always believes in dialogue" but Australia was insisting that the forum should be "pro-market" and that it was "not the time to talk about governments". When Saudi Arabia requested insertion of "a new cooperation model" into a room document list of common ground principles, Australia was quick to point out that there was not agreement that WSIS should advocate new models and the US insisted that, rather than a middle ground position, "a new cooperation model has become indistinguishable with a new intergovernmental model".

From there, discussion shifted to the question of whether the ICANN GAC could be reformed to improve the participation of governments or whether a new body needed to be formed instead. Arguing that "we will never find a compromise on the word

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British counter part, Jack Straw a diplomatic letter expressing American concern for the EU (The British were, at the time, head of the EU delegation in their capacity as President of the EU) position on internet governance. What is claimed to be a text of the letter found its way to being available on the internet (http://www.theregister.co.uk/2005/12/02/rice_eu_letter/). Exerts include:

> The success of the internet lies in its inherently decentralized nature, with the most significant growth taking place at the outer edges of the network through innovative new applications and services. Burdensome, bureaucratic oversight is out of place in an internet structure that has worked so well for many around the globe. We regret the recent positions on internet governance(i.e., the "new cooperation model") offered by the European Union, the Presidency of which is currently held by the United Kingdom, seems to propose just that - a new structure of intergovernmental control over the internet[…]we ask the European Union to reconsider its new position on internet governance and work together with us to bring the benefits of the Information Society to all.

oversight", the EU responded that the goal of the WSIS should come down to "creat[ing] a legal ground for the improvement of the GAC". At that point, the Chair introduced a letter from then Chairman of the ICANN Board Vinton Cerf to GAC chair Mohamed Sharil Tarmizi discussing the need for reform. Acknowledging that, through the WSIS, "a great deal of attention has been devoted to the role of governments in the process of 'Internet Governance'", Cerf suggests scheduling a meeting to "discuss how to best address these concerns, and what measures need to be taken to make our cooperation more effective, including ensuring the participation of developing countries".[88] At a crucial moment, ICANN was making very public overtures to its critics.

At the start of the evening session on November 14th, in response to a new Chair's paper that included creation of a forum, discussion focused on the institutional teeth that the forum would be given. Australia argued against use of the word "governance" in the name of the forum, suggesting a change from "Internet Governance Forum" to "Internet Dialogue Forum". The same intervention also advocated the ISOC as the host organization of the forum, a call which was echoed by the US in an intervention that criticized the UN and the ITU as unsuitable potential host organizations. Imagining newspaper headlines along the lines of "Internet Kindergarten Forum", Brazil, for one, voiced concern that a non-binding forum hosted outside of the UN system would not be taken seriously as en effort to internationalize internet governance.

The final planned day of negotiations began with the EU's self proclaimed effort to "fit between two opposing sides". They put forth a proposal that the forum be

[88] ICANN Correspondence, "Letter from Cerf to Tarmizi". ICANN, http://www.icann.org/correspondence/cerf-tarmizi-08nov05.pd

accompanied by a parallel process of "enhanced cooperation" which would "enable governments, on equal footing to carry out their roles and responsibilities in international public policy issues pertaining to the internet not in the day to day or technical operation or arrangements".

The US was satisfied that, within the proposed compromise, "the UN does not have a regulatory or oversight function". Thus, it proved willing to accept a proposal to ask the Secretary General of the UN to convene the IGF. To the US, Australia and others, ISOC would have been a preferable institutional home for the IGF. But, the UNSG was a good deal less problematic as convener of the forum for these delegations than the ITU would have been. The vague parallel process of enhanced cooperation was accepted in principle. After resolving a debate over the relative merits of the words "framework" vs. "mechanisms" and of "structures" vs. "systems", the massaging of the final language concluded late on November 15th 2005. Saudi Arabia (as well as Iran and South Africa) threatened to reopen previously agreed upon paragraphs if the US did not concede to removing the clause "if justified" from the section on creating suitable multilateral mechanisms. The US promised to respond in kind by revisiting the concessions it had made elsewhere. The EU proposed reformulating "if justified" to "when justified", which was rejected by the Saudis, Iranians and South Africans who then accepted a follow-up EU proposal for "where justified". With that the WSIS negotiations on internet governance concluded and the square brackets were removed around the Tunis texts on internet governance.[89]

[89] The Chapter from the *Tunis Agenda for the Information Society* on internet governance is excerpted in Appendix 4 of this thesis. The entire document and its companion *Tunis Commitment* are available online. http://www.itu.int/wsis/documents/doc_multi.asp?lang=en&id=2266|2267

Chapter Conclusion: Global Internet Governance between Code and Law

As reviewed in chapter 1, the characteristics of digital technologies and the processes associated with globalization were typically interpreted as making regulation of the internet impossible. Internet governance before the WSIS tended to be defined in very narrow terms, referring to a series of technical management functions associated with the DNS system rather a broad normative process of regulating communication.

Over the course of the case study that was narrated in this chapter, a series of seemingly isolated grievances about the allocation of internet resources effectively problemitized this instrumental view of internet governance. This was described by one interview subject as the "something has got to be done about…." school of thought. While certain policy issues pertained to the failure of markets or to the incapacity of developing countries to engage in them (the questions of English dominance of internet content, internet interconnection costs and of free vs. propriety software, for example), the majority of the things that "something had to be done" about reflected dissatisfaction with the performance of regulatory functions that had been devolved to the law of code. For example:

- The "technical management" functions preformed in the DNS system were increasingly being seen to codify values into the internet about the economic and cultural attributes of communication, about taste, about languages, cultures and even about the sovereignty of peoples and nations;

- The experiences of South Africa, Brazil and other governments as well as the controversy over the .xxx GTLD were leading many to see the regulatory

> functions of the DNS systems as propriety, clandestine and closed rather than transparent, open and fair.

The absence of global oversight of the DNS system means that, for the majority of the world's governments, the DNS system is essentially a self-executing regulator, and Brazil and South Africa clearly saw themselves as having had subjective constraints imposed upon them through the ICANN system.[90]

The "something" around which the majority of these calls that "something must be done" were framed was juridical intervention. But, the debate over the applicability of public policy issues to global internet governance during the first phase of the WSIS often failed to distinguish between different types of policy issues and was largely devoid of specifics and solutions. Absent specifics about what different public policy issues involved, the IG discussions at WSIS phase I lent themselves toward conceptual catch-all debate over whether public policy applied to internet governance or not. As one delegate described it:

> people had been talking about public policy as if public policy was some single unified homogeneous thing that you could recognize because it wore a long green dress. And anything that wasn't public policy wore anything apart from a long green dress.[91]

The work that the WGIG did on parsing out the phase I debate into separate silos of "oversight", "forum" and "public policy issues" informed the WSIS as to how

[90] In Lessig's sense, the term "self-executing" regulator applies to the absence of human agency and oversight on automatic processes in checking architectural constraints. The WSIS debate suggests that the lack of political agency and oversight over the people who are charged with devising architectural constraints of the internet can be viewed as a logical extension of the problem of self-executing regulation by code.

[91] Martin Boyle, (Department of Trade and Industry, Government of the UK), in conversation with author, Nov. 2006.

public policy and internet governance interact and, in the process, underlined how code and law interact in the regulation of the internet. The presence of officially sanctioned resource material that contradicted claims about both the absence and ubiquity of public policy issues within the system of global internet governance provided something of a check on the rhetoric of supporters of both the reform and status quo positions.

The Chair's introductory remarks to Phase II, PrepCom III included a plea for "the custodians of the internet" to "acknowledge that the internet can and is governed". The either "global internet governance is regulatable by law" or "it is not" debate of phase I evolved into a discussion of what public policy issues legitimately should be treated as internet governance issues, which ones are related to the DNS systems and what balance between regulation by code and regulation by law needed to be struck as a result.

The acknowledgement in the Tunis Phase final documentation that public policy issues such as the sovereignty of CCTLDs and interconnection costs interface directly with the technical management of the internet, underlines an acceptance by WSIS of the point that law can be- in principle- a more appropriate regulator in internet governance than code. The WSIS recognizes that in certain cases, public policy issues may emerge from the governance of certain specific and disparate functions that might warrant juridical intervention. The debate over the functioning of the DNS system also concedes that, regardless of whether or not the internet can be described as a singular object, the internet at least contains singular choking points.

Thus, the WSIS established in both empirical and political terms that *the internet can be regulated* and that *the concerns of governments can and must influence this process*. Yet, while the WSIS proved to be an effective venue for gaining recognition of the existence of public policy issues within internet governance, efforts to use public policy intervention as tool of reform were largely unsuccessful.

Over the course of the first phase of the summit, many of the higher order, more abstract calls that would have contributed to the formation of a legal framework for regulating mass communication in the information society were gradually massaged out of the WSIS documents or diluted past the point of having a substantive effect. The anti-globalization language proposed by Iran was ultimately rejected. Despite the knock-on awareness raising benefits that they produced, efforts to get the "right to communicate" mentioned in the Geneva *Declaration of Principles* ultimately proved unsuccessful.[92] Early drafts of the Geneva documents included strong language that free and open software "should be used more broadly", in particular, that the "adoption of open-source/free software shall be actively considered by all public authorities and bodies" in order to "to provide freedom of choice and to facilitate access to ICTs by all citizens, at an affordable cost".[93] By the final Geneva phase documents however, the language on free and open source software had been massaged to refer only to the need to "promote awareness" of the "different software models and licenses" including both proprietary and free and open source. The effort to deal with financing telecommunications

[92] See O'Siochru (2010) for an overview of these efforts, their impact and the ultimate decision not to include the R2C in the Geneva documents.
[93] WSIS Geneva Phase intersessional meeting. "Document WSIS03/PCIP/DT/5-E", ITU, http://www.itu.int/wsis/preparatory/PrepCom/intersessional/index.html

infrastructure and connectivity in the developing world as a response to the digital divide was downgraded from an obligatory tax on developed countries to a voluntary "digital solidarity fund". At present, it is widely regarded as having entirely collapsed. And, of course, the effort to redefine the legal framework for oversight of the DNS led to no meaningful reform of the existing system.

As discussed at length in chapter 1, in Lessig's model, law is one form of regulation alongside social norms, the market and what he calls code. Lessig suggests the internet has been structured to be predisposed to regulation by code and resistant to efforts to apply laws. The WSIS supports this theory by suggesting that the existing technological architecture of the internet and the political economies of internet governance combine to constrain the application of law and define power within this process. This is evident in the extent to which, for all the talk of laws and public policies, the WSIS process was defined by contest over the configuration of technology.

While the main challenges to the status quo during the WSIS often proposed juridical intervention into domains regulated by code, other calls for reform simply pitted proposals for different sets of code-based regulations. The one real threat that backed up the calls for ICANN reform was that dissatisfaction with the current system could lead certain governments to "fracture" the root server system and create their own autonomous domain name systems, thereby potentially reducing the global reach and utility of the internet.[94] The major EU challenge to the status quo was also, for example, premised in part on the technical principle of respecting the open and end-to-end architectural

[94] This possibility is explored in Bertola (2005). For an example of how it played within the discourse around the WSIS see: Richard Wray, "EU says internet could fall apart", Guardian online, http://www.guardian.co.uk/business/2005/oct/12/newmedia.media.

characteristics of internet design.

A defining principle of Lessig's model is the idea that code can be used to regulate for increased regulatibility. Something had to be done at WSIS about a whole series of issues, of which the status and mandate of ICANN was but one. The first phase of the WSIS proved that the self-executing nature of regulation by code makes it very easy to counter calls for reform on issues that are not framed explicitly around a switch that can be pulled to institute proposed changes. Something had to be done about pornography but the DNS- at least as presently configured- is not typically a switch that can turn off pornography. But, under different conditions, it could be.[95] Thus while the first phase of the WSIS was defined by a push to broaden the collective understanding of the policy field of global internet governance, after doing so failed to substantively change the normative regulation of communication over the internet, the calls for reform focused narrowly on control of the DNS switch in the second phase.

The voracity with which the status quo was defended and the resounding endorsement that it received in regard to the 'control of the switch' issue by the final outcome documents suggests that any effort to use law to get control of the ICANN system in the aim of regulating it for greater regulatibilty and broadening its mandate to incorporate more law-based and top down regulatory functions would be a long march that would face steep opposition and be unlikely to succeed.

Rather than accepting the premise that ICANN and its associated functions- as currently configured- constitute benign, neutral technology management functions, the

[95] The controversy over .xxx reviewed earlier illustrates exactly this point.

WSIS redefined the field of internet governance in broad terms that identify public policy issues that require normative regulation, and exposed the normative implications of existing technical regulation. However, this broad recognition of the jurisdiction of law over cyberspace is not the same thing as its application. The extent to which the debate focused on control of the DNS system, to which American possession of that switch withstood the pressure of the global community working through the United Nations, and the tendency for challenges to the status quo to pursue normative regulation indirectly through technical initiatives, all suggest that power in global internet governance continues to be primarily defined by the configuration of the architecture of the internet and its contingency for being otherwise. As Canadian internet law specialist Michael Geist summarized at the time

> The U.S. simply had a very strong hand and played it well. Changes to the governance structure ultimately requires U.S. agreement since possession is even more than the proverbial 9/10th of the law. The U.S. had loudly indicated that it was not prepared to make concessions […]Without a credible threat (the threat being the creation of alternate root), the U.S. was able to maintain its position and ultimately force everyone else to deal.[96]

This is to suggest, as Lessig (2006, 79) predicted, that the WSIS case study underlines that "how the code regulates, who the code writers are and who controls the code writers" are the essential "questions on which any practice of justice must focus in the age of cyberspace".

[96] Michael Geist, "The WSIS Deal", http://www.michaelgeist.ca/index.php?option=com_content&task=view&id=1010

-CHAPTER 4-
Enhanced Cooperation? Global Internet Governance Since the WSIS

Chapter Overview

Geist concludes his analysis of the "Tunis deal" (cited at the conclusion of chapter 3) by suggesting that "the safe bet is that the future of the internet governance issue lies in whether the forum emerges into a powerful venue for change and whether/how ICANN responds".[97] The true impact of the WSIS was always going to be measured by how the field of global internet governance that it defined, and the debates that it incubated, evolved in other venues. This chapter will survey some of the most significant post-WSIS developments in the global governance of the internet in the aim of adding context to the central case study of this thesis.

The post-WSIS institutional landscape of internet governance has changed. There are new organizations involved. This chapter will reflect on the first three meetings of the Internet Governance Forum (IGF), the multi-stakeholder, non-binding space for discussing global internet governance issues that was created by the compromise that was struck at WSIS. Other predominantly government-based institutions such as the OECD and the Council of Europe have, in the aftermath of the WSIS, taken steps to expand and reposition their involvement in global internet governance. These will be reviewed as well, as will the extent to which ICANN has undergone a continuous process of organizational reform- particularly where the role of the Governmental Advisory Committee (GAC) is concerned. Since the WSIS, the ITU has launched a series of ambitious internet governance initiatives. At the national level, a series of governments

[97] http://www.michaelgeist.ca/index.php?option=com_content&task=view&id=1010

and domestic law-makers have turned their attention to internet governance issues including cyber-security and network neutrality.

In the aftermath of the WSIS there has been a noticeable push to increase cooperation in global internet governance. Through an ever-increasing number of institutional arrangements as well as through informal partnerships and collaborations, stakeholders are talking and working with each other with greater frequency and effect. How does all of this reflect on the process of enhanced cooperation that was created by the Tunis compromise on internet governance? What can and cannot be attributed to enhanced cooperation is, as will be discussed, very much unclear at present.

In this sense, global internet governance has evolved post-WSIS, but it has stayed the same too. Definitional problems and debate over process and procedures remain central to it. In addition, the US continues to drag its heels on the internationalization of ICANN and the EU continues to push its new cooperation model. All of these developments are reviewed in greater detail in this chapter.

IGF

The IGF meets annually under the aegis of the Security General of the United Nations. At time of writing, it has met three times: 2006 Athens, 2007 Rio de Janeiro and 2008 Hyderabad, India. The mandate of the IGF calls for the Secretary General of the United Nations to conduct a review and evaluate whether or not the mandate of the IGF will be extended beyond an initial five-year period.

While the IGF does not pass resolutions, seek to establish consensus or negotiate texts, it provides a platform where stakeholders can coalesce for action around issues of

common concern. So-called ‘dynamic coalitions’ have emerged from the IGF as a way of using, in principle, the multi-stakeholder platform of the IGF to facilitate coordination, capacity building and awareness raising of internet governance issues elsewhere.

The IGF is primarily intended to be a forum for multi-stakeholder dialogue, an institution endowed with the potential for considerable influence and ‘soft power’, not an agent in its own right in the international arena. It is also an innovative arrangement set up in a highly contentious area of policy with extremely limited resources that depends on the goodwill and cooperation of its participants. In this respect, even its “soft power” potential was severely constrained from the start.

Over the course of its first three sessions, the IGF process has incubated coordinated, multi-stakeholder responses to a handful of internet governance policy issues. Protection against online child pornography and multi-lingualism stand out as issues where the IGF has been a valuable venue for coordinated, multi-stakeholder activity.

Through ongoing debate over the setting of agendas, the organization of meetings and the composition and role of its organizing committee, the IGF has continued to refine the process of multi-stakeholder global governance. The IGF multi-stakeholder format has been lauded by many of its loyal participants. It has also been repurposed within various other institutions involved in global communication governance such as: the World Intellectual Property Organization (WIPO); the OECD; and WSIS follow-up activities. In parallel, a variety of regional and national level IGF processes have emerged.

As a venue for meaningfully continuing the WSIS debate over internet governance however, the IGF model of non-binding multi-stakeholder governance has proven to be a source of frustration for reform minded governments. "It's not by talking about principles merely that we can solve this problem" the Chinese delegation intervened to a consultation on the review of the IGF's mandate. Arguing that developing countries lack the resources and capacity to meaningfully participate in the IGF, the Chinese government was clear that

> China does not agree with extending the mission of the IGF beyond the five years. We feel that after the five years are up, we would need to look at the results that have been achieved. And we need, then, to launch into an intergovernmental discussion. [98]

Despite what the IGF has accomplished as an experiment in global governance and as a forum for sharing best practices and discussing emerging issues, the frustration of China is understandable. The IGF has, in setting its own agenda, at times shied away from addressing controversial issues. In particular, questions about ICANN oversight and internationalization of other 'critical internet resources' were left off of the first IGF agenda and the issue of "rights and the internet" was rejected as a theme for the 2009 meeting.[99]

The IGF suffers from a lack of meaningful engagement on the part of many government delegations. Questions have been raised from the start about how the idea of

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[98] The Internet Governance Forum. "Transcript of the 13 May Open Consultations Full Transcript", IGF, http://www.intgovforum.org/cms/index.php/component/content/article/71-transcripts-/410-transcript-of-the-13-may-open-consultations-

[99] Though, ironically, China was a driver behind the push to get rights off of the agenda of IGF 2009; illustrating that the frustration expressed by China can be shared by many IGF stakeholders, for very different reasons (see the transcript cited above for China's comments on the proposed theme of rights).

multi-stakeholder governance can be structured around the ethical challenges facing civil servants who are participating in their own capacity, but also representing their governments. This in turn has led to a situation in which other stakeholders, in particular civil society, are engaging in what amounts to self-censorship in the effort to frame discussions in a way that will attract government engagement and prevent government disengagement.

The IGF fails to demonstrate the levels of coordination and sufficient political capital required to influence other organizations, despite innovating the idea of 'dynamic coalitions'- multi-stakeholder working groups incubated at the IGF who could work to improve internet governance in other organizations. Many of the dynamic coalitions instead seem largely confined to meeting at the annual IGF event.

In regard to its mandate to help build capacity and encourage developing country participation in global internet governance, local organizers have decided, on every occasion except the Rio IGF, to hold the meeting at more exclusive/expensive location than had originally been proposed.[100] Raising funding to provide fellowships for developing country participants has been a challenge and remote/online participation has been unreliable, inconsistent and largely underused.

Fundamentally, with the exception of certain areas, the IGF remains preoccupied with process questions over substance questions. The dominant topics include debate about agenda setting, the role of various stakeholders and the status and

[100] the 2006 IGF was held in the affluent beach side suburb of Voulegamini instead of the originally proposed Athens in '06: reducing the choice of budget accommodation; the move of IGF '08 from Delhi- where many international flights to India land- to Hyderabad added an additional flight cost for most participants and, the '09 IGF that was initially awarded to Cairo has already been moved to the exclusive Red Sea resort of Sharim El Shek which will likely mean both additional fight costs and fewer choices in budget accommodations.

constitution of its multi-stakeholder advisory group. The upcoming five-year review of its mandate called for in the Tunis deal and the review process that is already underway threaten to only accentuate this tendency. As a result, the IGF has been very slow to get off the ground in building any kind of real momentum.

The sum result is that, as other international organizations expand their involvement in global internet governance, and as reform-minded governments critique and disengage from its non-binding modalities, the IGF faces a serious threat from organizational competition right as its mandate is being reviewed, despite its status as a still-evolving provocative and innovative model of global internet governance.

ICANN

Leading ICANN expert Milton Mueller points out that ICANN's "Core Values" were revised in December 2002 to "recognize that governments and public authorities are responsible for public policy and duly tak[e] into account governments' or public authorities' recommendations". [101] Mueller argues that, as a result, "ever since 2002, it has been practically mandatory for ICANN to follow GAC's 'policy advice'".[102]

The reinforcement of the role of the GAC is one way in which ICANN has responded to the pressures that emerged over the course of the WSIS. "WSIS has clear repercussions for ICANN's further orientation", according to Hoffmann (2007, 42). "As a result of WSIS", Hoffmann (*ibid*) continues, "ICANN takes more notice of other international organisations related to information and communications technology (ICT)

[101] ICANN, "ICANN Bylaws Article 1, Section 2", ICANN, http://www.icann.org/en/general/bylaws.htm

[102] Internet Governance Project Blog "Governments, ICANN and the JPA (part 2)" , IGP, http://blog.internetgovernance.org/blog/_archives/2008/1/29/3494481.html

policies".

ICANN developed a new "Accountability and Transparency Framework" in 2007.[103] ICANN's strategic planning for 2006-2009 and 2009-2012 includes a number of objectives that directly respond to the pressure confronted by ICANN over the course of the WSIS. These include[104]:

- Improve ICANN's relationship with key external stakeholders;
- Participate in IGF and other international fora to contribute to global internet governance discussions;
- Develop the "ability to work globally";
- Increase international participation and develop and implement a policy for translating ICANN processes into various languages;
- Introduce new GTLDs;
- Develop and operationalize internationalized domain names.

This is, according to Hoffman, part of a coordinated effort on the part of the organization to craft a "post-WSIS ICANN", as well as "an appropriate role" for ICANN "in the

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[103] ICANN, "ICANN Accountability and Transparency Framework October 2007", http://www.icann.org/transparency/acct-trans-frameworks-principles-17oct07.pdf

[104] This section heavily draws on, and was inspired by, Hoffmann's (2007) discussion of how the 2006-2009 ICANN strategic plan reflects the efforts of ICANN to response to pressures of the WSIS. For the ICANN documents assessed see:

ICANN, "ICANN Strategic Plan July 2006- June 2009", ICANN, http://www.icann.org/en/strategic-plan/consultation-process-2006-07/

and

ICANN, "ICANN Strategic Plan July 2009- June 2012", ICANN, http://www.icann.org/.../strategic-plan/strategic-plan-2009-2012-09feb09-en.pdf -

broad group of international entities involved in internet functions" (Hoffmann 2007, 42).

Most fundamentally, much of the post-WSIS attention to ICANN has focused on its relationship with the US Government.

United States Government in Internet Governance Since WSIS

A 2003 amendment to, and extension of, the ICANN- USG Memorandum of Understanding (MoU)[105] was qualified by US Government insistence that ''much work remained for ICANN to evolve into an independent, stable, and sustainable DNS management organization".[106] This amendment extended the MoU through September 30, 2006 to allow sufficient time for ICANN to meet these objectives.

After public consultation in mid-2006, the Department of Commerce, on September 29, 2006, signed what was called a Joint Projects Agreement (JPA) that extended the ICANN-MOU until September 30, 2009 and mandated a mid-term review. The Department of Commerce's National Telecommunications Administration (NTIA) conducted this review between late 2007 and early 2008. The mid-term review suggested, according to NTIA, that, four years after the WSIS had challenged ICANN's legitimacy, there "remained key areas where further work was required to increase institutional confidence in ICANN". The areas identified by the NTIA included: long–term stability; accountability; responsiveness; continued private sector leadership; stakeholder participation; increased contract compliance; and enhanced competition.[107]

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[105] see Appendix I of this thesis for background on the ICANN MoU.
[106] US Government: Department of Commerce. "Statement Regarding Extension of Memorandum of Understanding with ICANN", NTIA, http://www.ntia.doc.gov/ntiahome/domainname/agreements/sepstatement_09162003.htm

[107] NTIA, "Federal Register/Vol. 74, No. 78/Friday, April 24, 2009/Notices", NTIA, www.ntia.doc.gov/frnotices/2009/FR_ICANNVol.74_No78_Apr242009.pdf

Between April and June 2009, NTIA solicited public comments on a range of questions about whether or not ICANN has evolved to the point where the US Government can end its oversight of ICANN and allow the JPA/MoU arrangement to expire.[108] On June 4, 2009 The US House of Representatives Subcommittee on Communications, Technology, and the Internet held a hearing entitled, "Oversight of the Internet Corporation for Assigned Names and Numbers (ICANN)" that discussed the future of USG involvement in the JPA amongst other issues.

These consultations reflect how the internet governance debate has evolved since the WSIS. A series of non-US based individuals, and civil society organizations including German Academic Wolfgang Kleinwächter, South African-based NGO the Association for Progressive Communication (APC), Indian NGO IT for Change and the global network of activists in the WSIS Civil Society Internet Governance Caucus all submitted comments to an American government policy consultation. Comments were also received from foreign government departments including Industry Canada and the Swiss Federal Office of Communications.[109] The latest round of debates within the US on the ICANN-MoU underlines the extent to which the debate on IG has globalized and to which the WSIS has incubated an international, multi-stakeholder policy community around internet governance.

The recent MoU consultation also hints at how American discourse on internet governance is shifting post-WSIS. Despite the Obama administration's overall

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[108] NTIA, "Federal Register/Vol. 74, No. 78/Friday, April 24, 2009/Notices", NTIA, www.ntia.doc.gov/frnotices/2009/FR_ICANNVol.74_No78_Apr242009.pdf

[109] All comments can be accessed at: NTIA, "Public Comments: DNS Transition", NTIA, http://www.ntia.doc.gov/comments/2009/dnstransition/index.html

commitment to multilateralism, there is a deep skepticism evident about the potential impacts on American interests of renouncing US Government oversight of ICANN. Some of the views expressed during the testimony and discussion at the congressional hearing suggest that American politicians are increasingly suspicious of proposals to end US Government oversight of ICANN. Thus, WSIS-era framing of US Government oversight as some kind of handmaiden to the emergence of a different and better system seems to be in the process of being eclipsed by overtly nationalistic tones and explicit discussion of how its monopoly over ICANN oversight benefits American interests.[110]

Indeed, also introduced in April 2009 was a new commitment to cybersecurity from the Obama administration that, among other initiatives including the creation of a "cybersecurity czar" position (c.f. Nakashima 2009), would, according to the IGP blog

> require a Presidentially appointed cybersecurity advisory panel to ensure that national security would not be compromised before approving the renewal or modification of the contract between the US Government and the Internet Corporation for Assigned Names and Numbers. According to a summary of the bill, it would "make sure that ICANN does not succumb to foreign pressure" to end its relationship with the US Government[111]

The 2008-2009 collapse and subsequent government bailout of the American banking system has arguably been a major driver of this shifting discourse and indeed of

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[110] See Gross (2007). When this section was drafted, the streaming video archives of this session were available. However, as of June 27, 2009, the link seemed to be no longer working. However, there are numerous blog and listserv reports on the event available including in the archives of the list serve of the WSIS Civil Society Internet Governance Caucus which are available online at http://lists.cpsr.org/lists/info/governance

[111] Milton Mueller, "ICANN gets 'securitized'", IGP Blog, http://blog.internetgovernance.org/blog/_archives/2009/4/2/4141451.html

the (to be discussed) global push for interventionist cybersecurity policy. Having been burned by the implosion of one crucial but under-regulated facilitator of modern capitalism, American politicians seem justifiably skeptical of the plan to willingly place another key cog in their suddenly fragile economy outside the oversight of the US Government- at least not without proof that the stability and security of the internet, and America's interests in its use, will endure.

In other words, US Government policy during the WSIS may have aligned with American foreign policy but, in the post-WSIS internet governance debate, American domestic policy is emerging as a leading driver of the seminal role that the US Government plays in global internet governance.

ITU

Only days after the first IGF was held in Greece, the ITU held its 2006 Plenipotentiary Conference in Turkey. The 2006 ITU plenipot passed a series of resolutions calling for ITU involvement in internet governance issues.[112] Particularly significant- given the role that the ICANN vs. ITU debate of the first phase of the WSIS- were the Antalya 2006 revisions to ITU resolution 102 that instructed the Secretary General of the ITU to, among other tasks, take a "significant role" in the management of internet and DNS resources, the coordination of public policy issues pertaining to the internet and the process of enhanced cooperation. By way of follow-up, the Antalya plenipot resolved to launch the Forth World Telecommunication Policy Forum (WTPF),

[112] including; *Resolution 101 (Rev. Antalya, 2006*) on Internet Protocol-based networks; *Resolution 102 (Rev. Antalya, 2006*) on ITU's role with regard to international public policy issues pertaining to the internet and the management of Internet resources, including domain names and addresses and *Resolution 133 (Rev. Antalya, 2006)* on Role of administrations of Member States in the management of internationalized (multilingual) domain names. These can be accessed through: ITU, "ITU Plenipotentiary Conference (Antalya, 2006)", ITU, http://www.itu.int/osg/csd/mina/index.html

"in order to discuss and exchange views regarding internet-related public policy matters, among other themes". The role of the WTPF is to "prepare reports and, where appropriate, opinions " for further consideration of possible reforms to the International Telecommunication Regulations at a World Conference on International Telecommunications (WCIT) to be convened by ITU in 2012. The WTPF forum was planned for Lisbon in April 2009.[113]

In the interim the ITU sponsored World Telecommunication Standardization Assembly, was held in Johannesburg in October 2008. This meeting passed a series of resolutions related to internet governance.[114]

In the follow-up and implementation of the WSIS agreements, the ITU was assigned Action Point C5: "building confidence and security in the use of ICTs". As a response, ITU Secretary-General Touré formally announced the launch of the Global Cybersecurity Agenda (GCA) on 17 May 2007.[115] In addition, at a November, 2008 ICANN meeting in CIARO Touré also made very public scathing critiques of the ineffectiveness of the IGF and its non-binding modalities. "I personally believe", Touré offered in Cairo, " that the IGF is just going around and around, avoiding the topics, and

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[113] ITU, "Final Acts of the Plenipotentiary Conference (Antalya, 2006): A Selection of internet related resolutions November 2006, ITU, http://www.itu.int/osg/csd/mina/index.html

[114]including: *WTSA Resolution 48 (rev. Johannesburg, 2008)* on Internationalized domain names; *WTSA Resolution 49 (rev. Johannesburg, 2008)* on ENUM; *WTSA Resolution 50 (rev. Johannesburg, 2008)* on Cybersecurity; *WTSA Resolution 52 (rev. Johannesburg, 2008)* on Countering and Combating spam by technical means; *WTSA Resolution 69 (Johannesburg, 2008)* on Non-discriminatory access and use of Internet resources; *WTSA Resolution 75 (Johannesburg, 2008)* on ITU-T's contribution in implementing the outcomes of the World Summit on the Information Society, and the establishment of a Dedicated Group on Internet-related Public Policy Issues as an integral part of the Council Working Group on World Summit on the Information Society. See WTSA, "World Telecommunication Standardization Assembly (WTSA-08)", ITU, http://www.itu.int/ITU-T/wtsa-08/

[115] see ITU, "A Framework for Global Cooperation: GCA", ITU, http://www.itu.int/osg/csd/cybersecurity/gca/

becomes sometimes a waste of time". [116] During the opening session of the 2008 Hyderabad IGF itself, Touré addressed his Cairo comments, insisting

> I make no apology for stating bluntly that I believe the IGF was not on track to meet the expectations of many countries that participated in the Tunis phase of WSIS [...] who were hoping for frank and fruitful discussions and concrete solutions on globally applicable principles for the management of critical internet resources.[117]

Tension between the IGF and ITU was evident as well at the WTPF in Lisbon in 2009. Internet governance was again a highly controversial topic of discussion. Some of the 'opinions' that the WTPF produced to be considered as the basis for reforms at the WCIT in 2012 propose a larger, more formal role for the ITU within global internet governance. In particular, Opinion 1, the provocatively titled "On Internet Public Policy Matters", advises that ways and means ought to be sought to: "enable ITU to continue playing its role in facilitating the coordination of internet-related public policy issues" and to

> develop and promote an enabling environment that allows all governments, on an equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the internet and in ensuring the stability, security and continuity of the internet.

More generally, Opinion 1 supports and enables the involvement and intervention of

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[116] ICANN Cairo, "Hamadoun Toure Speech ICANN Meeting – Cairo Thursday, 6 November 2008", ICANN, https://cai.icann.org/files/meetings/cairo2008/toure-speech-06nov08.txt

[117] IGF, "Internet Governance Forum: Hyderabad, India Opening Session 3 December 2008" , IGF, www.intgovforum.org/cms/hydera/Opening%20Session.pdf

governments- through the ITU- in public policy development related to internet governance. Opinion 6 meanwhile, suggests amendments to the International Telecommunication Regulations that would expand the ITU's role in internet issues such as spam, cybersecurity and domain name and address related processes. Opinion 6 explicitly encourages the application of "the ITU-T Resolutions and Recommendations relating to naming, numbering, addressing and identification".[118]

From participant accounts, the discussion of internet governance issues at the WTPF was tense and confrontational, seemingly reflecting the same differences of opinion over greater ITU involvement in global internet governance that dominated the early stages of the WSIS. In particular, questions were raised about the formality of the enhanced cooperation process and the ITU's role in it. A Syrian intervention complained that enhanced cooperation had yet to be meaningfully taken up in the two years following the WSIS. The Syrian delegate to the WTPF demanded that enhanced cooperation be the focus of a dedicated working group of the council of the ITU composed of elected member states. Bertrand de la Chapelle, Special Envoy for the Information Society at the French Ministry of Foreign and European Affairs, responded that "enhanced cooperation was not the exclusive responsibility of the ITU Council working group, but that all international organizations should equally contribute".[119]

Thus, the ITU has, in the post-WSIS environment, reemerged as a challenge to existing institutions treating internet governance issues, and as a champion of the power-

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[118] Text of the "opinions" cited in this paragraph can be found in: WTPF, "Report by the Chairman of WTPF (contains the Lisbon Consensus)", ITU, http://www.itu.int/osg/csd/wtpf/wtpf2009/

[119] Quote taken and discussion of this exchange drawn from : Monika Ermert, "2009 World Telecom Policy Forum: All About The ITU Mandate", Intellectual Property Watch Blog, http://www.ip-watch.org/weblog/2009/04/28/2009-world-telecom-policy-forum-all-about-the-itu-mandate/

sharing aspiration of certain governments. The ITU's inter-governmental structure enables governments to use bottom-up policy development processes to create structures and, as we have seen, direct its leadership to advocate for greater institutional recognition of the sovereignty and interest of all governments in the governance of the internet. The push to position the ITU as an intergovernmental internet governance organization that dominated the first phase of the WSIS is arguably re-emerging. It is likely little coincidence that the WCIT is being planned for what would be year 6 of the IGF's existing five-year mandate. If the IGF mandate is not renewed, the WCIT will be well positioned to fill the space vacated by the IGF. The institutional competition that defined the WSIS debates over ICANN vs. ITU is likely to continue with the ITU continuing to bear the standard for the ambitions of those governments who favour intergovernmental internet governance.

National Level

Since the conclusion of the WSIS, a series of governments including Italy[120], France[121], Canada[122], Germany[123] and the UK[124] have all enacted or introduced domestic

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[120] See: Senatto della Repubblica [in Italian], *"Art. 50-bis.Repressione di attività di apologia o incitamento di associazioni criminose o di attività illecitecompiuta a mezzo internet",* Senatto della Repubblica, http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Emend&leg=16&id=392701&idoggetto=413875;. For English Commentary see: Corinna di Gennaro, "Internet censorship arrives in Italy", Internet & Democracy Blog, http://blogs.law.harvard.edu/idblog/2009/02/15/internet-censorship-arrives-in-italy/ . The issue was also discussed in a Mach 2009 email exchange that is available through the public archives of the list serve of the WSIS Civil Society Internet Governance Caucus at http://lists.cpsr.org/lists/info/governance

[121] see Sénate [in French], "Loi favorisant la diffusion et la protection de la création sur Internet", Sénate (de la France), http://www.senat.fr/dossierleg/pjl07-405.html. And, Le Portail Société de l'Information", [in French], "Lancement d'une nouvelle étape de la lutte anti cybercriminalité", Gouv.fr, http://www.internet.gouv.fr/information/information/actualites/lancement-une-nouvelle-etape-lutte-anti-cybercriminalite-502.html

cybersecurity policies that allow for increased monitoring and surveillance of internet communication. Even Brazilian internet governance activists report that "we are right now in Brazil fighting against draconian bills of law which would in practice eliminate the internet as we know it".[125]

On March 1st, 2006, China unilaterally instituted some form of an internationalized domain name policy, creating "中国"(China), ".公司"(company) and ".网络" (Network) domains. Amidst uncertainty and speculation about whether or not China was fracturing the root, Chinese government sources were clear about one thing: whatever they had done was intended to be perceived as sabre-rattling by ICANN and the existing internet governance world order (The Economist 2006).

The role of national regulation in protecting the end-to-end principle of internet architecture has also come under interrogation since the WSIS. Efforts to establish the conditions under which internet service providers are permitted to shape or manage network traffic have been studied and politicized by a variety of national governments

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[122] Department of Justice Canada, "Investigative Powers for the 21st Century (IP21C) Act", JusticeCanada, http://www.justice.gc.ca/eng/news-nouv/nr-cp/2009/doc_32388.html and Public Safety Canada, "Technical Assistance for Law Enforcement in the 21st Century Act", Public Safety Canada, http://www.publicsafety.gc.ca/media/nr/2009/nr20090618-1-eng.aspx

[123] see: Netzpolitik, "The Dawning of internet censorship in Germany", Netzpolitik, http://netzpolitik.org/2009/the-dawning-of-internet-censorship-in-germany/ .The issue was also discussed in a June 2009 email exchange that is available through the public archives of the list serve of the WSIS Civil Society Internet Governance Caucus at http://lists.cpsr.org/lists/info/governance

[124] DirectGov. "Communications Data Bill", DirectGov, http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/Parliament/DG_078075 see also Home Office, "Protecting the Public in a Changing Communications Environment", Home Office, http://www.homeoffice.gov.uk/documents/cons-2009-communications-data?view=Binary

[125] Carlos Afonso, email to WSIS Civil Society Internet Goverancce Caucus listserv, May 14, 2009. See also Notes from the Ubiquitous Surveillance Society, "Internet Surveillance in Brazil 2' , Notes from the Ubiquitous Surveillance Society http://ubisurv.wordpress.com/2009/01/24/internet-surveillance-in-brazil-2/

including: Norway[126]; the US[127]; and Canada[128]. In addition to its public consultations devoted to the issue of network traffic shaping, the Canadian Radio-television and Telecommunications Commission (CRTC) also launched a review of its 1999 new media decision (see CRTC 1999, as discussed in Chapter 1). The resulting Broadcasting policy, released in June 2009, maintained the principle that Canadian broadcasting over 'new media' services are exempt from regulation. The 2009 decision however, did provide some constraints on non-neutral network traffic shaping practices and underlined the problems created by a general lack of information on, and coordination of, digital communication markets, services and regulation in Canada and the need to reconsider existing definitions of "new media".[129]

International "clubs"

In the absence of formalized inter-governmental structures, global internet governance has received considerable attention within what Raboy (2002, 118) labels

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[126] Norwegian Post and Telecommunications Authority, "Internet industry reaches agreement on network neutrality", Post-OG Teletilsynet, http://www.npt.no/portal/page/intra/PG_NPT_NO_EN/PAG_NPT_EN_HOME/PAG_NEWS?p_d_i=-121&p_d_c=&p_d_v=109606

[127] Federal Communications Commission, " FCC Policy Statement of 23 September 2005" see also " 4/16/07 FCC Launches Inquiry into Broadband Market Practices (FCC 07-31)", FCC, http://www.fcc.gov/broadband_network_management/. In addition ,Barack Obama made network neutrality legislation one of his early campaign promises and, as president, features it as point 1 of his plan for technology and innovation policy (cf. Huffington Post 2007; Obama'08 n.d.).

[128] CRTC "Telecom Public Notice CRTC 2008-19 (Review of the Internet traffic management practices of Internet service providers)" CRTC, http://www.crtc.gc.ca/eng/archive/2008/pt2008-19.htm and CRTC, "Telecom Decision CRTC 2008-108: The Canadian Association of Internet Providers' application regarding Bell Canada's traffic shaping of its wholesale Gateway Access Service" , CRTC, http://www.crtc.gc.ca/eng/archive/2008/dt2008-108.htm

[129] CRTC, "Broadcasting Regulatory Policy CRTC 2009-329: Review of broadcasting in new media" , CRTC, http://www.crtc.gc.ca/eng/archive/2009/2009-329.htm. See also Bram Abramson and Grant Buchanan, "CRTC New Media Policy Released", McCarthy Tétrault, http://www.mccarthy.ca/article_detail.aspx?id=4554

"international clubs"-

> political and economic arrangements involving various groups of states, such as NAFTA, the European Union and the G7 [that] create new transnational regulatory regimes for governing a range of activities, including communication. These groupings each operate differently, each according to its own *raison d'être*.

In the post WSIS period, there has been unsubstantiated speculation about the possibility that the G-8 or G-20 might eventually emerge as point organizations on internet governance or at least provide the institutional model for a new governmental oversight club. [130] Other club type organizations including the OECD, and the Council of Europe have been involved in important internet-related policy development since the WSIS.

OECD (Organization of Economic Cooperation and Development)

The "Working Party on Communication Infrastructures and Services Policy" of the OECD's Committee for Information, Computer and Communications Policy (CISP) issued a report on "Internet Traffic Prioritization" (OECD 2007). McIver (2010) writes that

> Among the CISP's key findings in this study were that (1) network service providers should operate in a manner that is transparent to customers with respect to network traffic shaping policies and their expected impacts; (2) antitrust laws must be re-examined in the context of traffic shaping concepts and realities; and (3) entry into the broadband market should be made easier to encourage

[130] This premise was, for example, discussed by prominent internet governance experts Wolfgang Kleinwachter, Jovan Kurbalija and others in a March 2009 email exchange that is available through the public archives of the list serve of the WSIS Civil Society Internet Governance Caucus at http://lists.cpsr.org/lists/info/governance

competition.

But significantly, McIver *(ibid)* points out, "the OECD report does not, however, deal with cross border issues of network neutrality". Subsequent OECD activity in the area of internet governance gives greater consideration to the role that an international organization like the OECD can play in responding to the global governance challenges created by the internet.

In June 2008, a wide swath of internet governance stakeholders from government, civil society and the private sector were brought together around an OECD ministerial meeting on "The Future of the Internet Economy". A background report entitled "Shaping Policies for the Future of the Internet Economy" recognizes that "the open and collaborative nature of the internet challenges traditional policymaking". In response it suggests that

> a multi-stakeholder approach to achieving an appropriate balance of laws, policies, self-regulation and consumer empowerment may be the only way to promote the internet economy effectively. An effective and innovative multi-stakeholder approach has to be developed for government, the private sector, the technical community, civil society and individual users to join forces in shaping the policy environment for the future of the internet economy.

In the OECD's view, more effective internet policy-making is directly linked with improvements in our ability "to boost economic performance and social well-being, and to strengthen societies' capacity to improve the quality of life for citizens worldwide".[131]

The Seoul 2008 meeting was planned to mark the 10th anniversary of the previous

[131] OECD, "Shaping Policies for the Future of the Internet Economy", OECD, http://www.oecd.org/site/0,3407,en_21571361_38415463_1_1_1_1_1,00.html

Ottawa ministerial meeting. In the interim, the OECD's involvement in internet policy is described as being aimed narrowly "at fostering growth of, and building trust in, the digital economy". This focus is significantly broadened by the Seoul declaration which directs the OECD to work not just in the area of "building trust and security in the use of the internet" but also to help: respond to the global internet economy; foster creativity in the development use and application of the internet; facilitate the convergence of digital networks, devices, applications and services; among other objectives The declaration mandates the OECD to interface with relevant international organizations as well as to:

> Reinforc[e] co-operative relationships and mutually beneficial collaboration with the Asia-Pacific Economic Co-operation, the Council of Europe as well as the internet technical community, the private sector and civil society within fora such as the Internet Governance Forum.

A three-year review of the progress achieved at the global level and within OECD governments is called for in the declaration. The OECD is, in other words, in the process of taking a broader, more active and hands-on involvement within the institutional architecture of global internet governance. [132]

Council of Europe (CoE)

The council of Europe held its first "Council of Europe Conference of Ministers responsible for Media and New Communication Services" in May 2009, in Reykjavik, Iceland.

The most interesting development at this meeting was its explicit effort to

[132] OECD, "The Seoul Declaration for the Future of the Internet Economy", OECD, http://www.oecd.org/site/0,3407,en_21571361_38415463_1_1_1_1_1,00.html

address the policy issues that are common to both internet communication and traditional mass media. Going beyond simply recognizing the internet as a mass medium, the CoE calls for a reflection on how the emergence of the internet is redefining the social impact and governance of mass communication. Background reports prepared for the conference examined the issues of public service media and internet governance.[133]

The CoE declaration points out that fundamental communication rights including freedom of expression "have to be promoted and protected, regardless of changes in the media and media-like landscape", despite the trans-border nature of the communication facilitated by "media-like" digital platforms. In response, the Action Plan proposes a "new definition of media"- reflection on the question of "whether our understanding of media and mass-communication services remains valid in the new information and communications environment". It also interrogates a notion of "technology- neutral" public service- exploration of "the extent to which universal access to the internet should be developed as part of member states' provision of public services".

These concerns are presented alongside resolutions on "Internet governance and critical internet resources" and "Developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information". [134]

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[133] See Council of Europe, "Council of Europe Secretariat, Internet governance and critical internet resources" and "Council of Europe Secretariat, Public service media governance: looking to the future", Council of Europe, http://www.ministerialconference.is/agenda/conference-documents/

[134] CoE, "1st Council of Europe Conference of Ministers responsible for Media and New Communication Services A new notion of media? (28 and 29 May 2009, Reykjavik, Iceland) Political declaration and resolutions", CoE, http://www.ministerialconference.is/

Thus, while the policy field of global internet governance that was created by the WSIS was significantly more broadly defined than what passed for internet governance pre-WSIS, broader concerns about media and communication governance are just starting to enter the debate in meaningful ways. The most significant development of the CoE meeting may be its indication that what was once seen as a debate for technologists over technologies is beginning to emerge as a mainstream issue of media and social policy.

International Clubs and Member's Only Governance?

Membership in many of these clubs is exclusively defined. The OECD, G-8 and G-20 exclude all but the world's most important economic players. In contrast, membership in other clubs such as the Council of Europe is based on geographic or ideological proximity. The growing push to use the international club institutional model reflects the extent to which the internet governance debate is being polarized along economic and geographic lines. The interests of developed, Western countries are being challenged by a collation of interests from non-Western and developing states. This occurred at the WSIS, but has continued, as discussed, at the ITU since. In the absence of an overarching global institutional framework, the use of the institutional model of exclusive international clubs allows the developed world to leverage its significant capacity advantages to make agenda-setting moves and insulate its interests.

But, even when membership in these clubs is not exclusive, organizations that group together some- but not all- governments are increasingly active in global internet governance. For example, the UN Commission on Science and Technology for Development (CSTD), a subsidiary body of the Economic and Social Council (ECOSOC), was made a focal point in the system-wide follow-up to the WSIS. Rather

than a comprehensive multi-lateral assembly in which all states always participate, the CSTD is an inter-governmental body with a rotating membership on which representatives of 43 governments sit at any given time. It also makes allowances for multi-stakeholder participation on WSIS follow-up. The ICANN GAC as well as the IGF, and its dynamic coalitions, are similar examples of relatively open international clubs in which certain governments- but crucially not all governments at once- are working together, often alongside other stakeholders, on global internet governance. The emergence of exclusive and even more open institutions in which some governments work together suggests that the polarization of the debate over internet governance lends itself to the international club model of global governance.

EU Post-WSIS

EU governments and representatives from the European Commission were active participants in the first two IGF meetings and had planned a significant role for the third IGF before the Commission refused to send representatives to India in the aftermath of the Mumbai terrorist attacks. The government of France, through its "Special Envoy for the Information Society"- a position created within its Foreign Affairs Ministry in the aftermath of the WSIS- has been particularly committed and involved in the IGF process. The European Commission has emerged as the primary driver of the "evolutionary" institutional change advocated by the EU during the WSIS.

Speaking in advance of a symposium on "Future Internet Governance Arrangements" and a meeting of the EU High Level Internet Governance Group (HLIGG), European Commissioner for Media and the Information Society Viviane

Reding used her May 4th, 2009 "weekly message" to call for dramatic reform to the institutional structure of global IG including:

- an end to US "oversight" of day to day management of the internet in the form of a fully privatized ICANN at the conclusion of the JPA in September 2009;
- a shift in ICANN litigation and dispute resolution from American law to International law;
- the creation of a "G-12 for internet governance", defined as: "a multilateral forum available for governments to discuss general internet governance policy issues [...] includ[ing] two representatives from each North America, South America, Europe and Africa, three representatives from Asia and Australia, as well as the Chairman of ICANN as a non-voting member".[135]

In other words, Reding advocated a more detailed version of the same essential model proposed by the EU during the WSIS.

This time EU governments immediately went to great lengths to be clear that this version of "a new cooperation model" did not reflect the wider view of the EU. Participants in the "Future Internet Governance Arrangements" symposium such as Milton Mueller were quickly informed that Reding's statement was "her own personal initiative, not an official or vetted product of the European Commission".[136] This

[135] Vivane Reding, ":"The Future of Internet Governance: Towards an Accountable ICANN, 4 May 2009", ITU, http://www.itu.int/osg/blog/ct.ashx?id=22fc013d-9551-42ba-aeb3-c771515ac2c5&url=http%3a%2f%2fec.europa.eu%2fcommission_barroso%2freding%2fvideo%2ftext%2fmessage_20090504.pdf

[136] Milton Mueller, "The EU High-Level Internet Governance Group Hearing", IGP blog, http://blog.internetgovernance.org/blog/_archives/2009/5/7/4177879.html

message was repeated soon after to those in attendance at the EU High Level Internet Governance Group (HLIGG) meeting. Wolfgang Kleinwachter reported back to the WSIS Civil Society Internet Governance Caucus listserv that "the proposal by the Commissioner was not discussed in detail, but it got mixed reaction and was watered down as a 'personal reflection' and a 'contribution to the debate'".[137]

Thus, the EU position going forward is not particularly clear, though it is nominally familiar. Absent the need for Europe to speak in one voice that was created by the intergovernmental nature of the WSIS, the opinions of various European governments and agencies may diverge more publicly as internet governance evolves. Certainly, the immediate spin that was put on Reding's message suggests that something was learned from the reaction to the previous new cooperation model proposal.

Enhanced Cooperation

The impact of one of the major elements of the WSIS compromise- the vaguely worded "enhanced cooperation" process to be convened by the UN Secretary General- has proven difficult to asses. The lack of a transparent and concrete structure for enhanced cooperation has led to uncertainty about how the term should be interpreted and confusion about which post-WSIS developments in internet governance, if any, are linked to the process of enhanced cooperation that was created in paragraphs 69 and 71 of the *Tunis Agenda for the Information Society* at the conclusion of the WSIS (see Chapter 3).

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[137] Wolfgang Kleinwachter, email the WSIS Civil Society Internet Governance Caucus listserv, May 8th2009, available through the public archives of the list serve of the WSIS Civil Society Internet Governance Caucus at http://lists.cpsr.org/lists/info/governance

With no information forthcoming and no discernable institutional structure in place, various stakeholders were, by early 2007, using the IGF consultation process to push for answers and register their frustration about the lack of details about and progress on enhanced cooperation.

Pointing out that a letter sent to the UNSG's office from the chairman of the G77 group of developing country government delegations seeking to clarify the state of the enhanced cooperation process had gone unanswered, an Iranian delegate observed that enhanced cooperation "seems to have slipped quietly off the agenda". "What happened to the mandate which was given also as regards to enhanced cooperation?", he then asked Nitin Desai, the IGF chair and a UNSG special advisor. Desai responded that he had- as requested- done some consultations and submitted a report to the office of the UNSG, but that, since Ban Ki-moon had replaced Kofi Annan in that position, he had not heard back.

Pressed by a subsequent intervention from the Brazilian delegation for a "glimpse" contents of the report and an indication of what the next steps might be, Desai responded that, on enhanced cooperation,

> my purpose, mandate was to canvass views, to find out what people expected, what people's expectations were, which is what I did by talking to many people. And what I have conveyed is that range of views, rather than a single proposal […] there are some points of commonality, but there are also still substantial differences on next steps. So at this stage, I cannot say that there is any particular modality that I would be able to suggest as one which is generally acceptable to everybody.[138]

[138] IGF, "13 February 2007 IFG Consultations Geneva", IGF, http://www.intgovforum.org/cms/Feb_igf_meeting/13_February_Consult_2007.txt

In other words, the notion of 'enhanced cooperation' that was agreed upon in Tunis in 2003 was not clearly defined by 2007, not even by the person who was nominally responsible for it.

In early 2008, a new, more concrete face was given to the enhanced cooperation process by a leaked letter that certain central IG stakeholder organizations received from a UN Under-Secretary that described Desai's survey as an effort to "find common ground with respect to this process" and requested reports on how various organizations had enhanced their level of cooperation since Tunis.[139] A subsequent resolution of the UN Commission on Science Technology for Development (CSTD) described these as the sole activities under the enhanced cooperation mandate; suggesting only that the Committee- a focal point for UN follow-up on the WSIS- "looks forward to the UNSG's report, which may contain recommendations on how the process should be pursued".[140]

Despite objections from some prominent IGF stakeholders that enhanced cooperation was a controversial subject that was best left vague and was outside of the IGF mandate, Parminder Jeet Singh, in his capacity as co-chair of the WSIS Civil Society Internet Governance Caucus, pushed to get a discussion of enhanced cooperation onto the programme of the 2008 IGF.

In a move that rejoined the WGIG's mandate to define the issue of internet governance after the WSIS had already been negotiating an agreement on it for more than two years- and, almost three years after the Tunis agreement that launched the process of

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[139] ISOC, "UN report request", ISOC, https://wiki.tools.isoc.org/@api/deki/files/73/=UNrequest20080312.pdf

[140] CSTD, "Draft resolution recommended by the CSTD to ECOSOC for adoption Assessment of WSIS-implementation 2008", UNCTAD, www.unctad.org/sections/wcmu/docs//ecn162008_r004_en.pdf

enhanced cooperation was reached- a proposal was put in for an IGF session entitled "Enhanced Cooperation - What Was Meant By the Tunis Agenda, and What Is the Status of It". The session was to be structured around IGF participants' responses to four very basic questions:

(1) what do different actors mean and understand by the term enhanced cooperation?

(2) what are your experiences with the state of enhanced cooperation in internet governance in your field?

(3) What do you believe should be the direction of enhanced cooperation going forward and your vision for the future?

(4) what further steps are needed to create enhanced cooperation, if any?"[141]

The IGF workshop succeeded in fleshing out the lack of consensus on what exactly enhanced cooperation referred to. The different opinions tended to reflect the competing perspectives on IG that emerged over the course of the WSIS. A critical assessment from a Brazilian delegate tied the issue directly back to the place of governments within ICANN:

> Governments are underrepresented, in particular from developing countries, which leads me to conclude that the current GAC-ICANN arrangements are not conducive to enhanced cooperation and need to be reviewed.

US Government spokesperson Dick Beaird saw things differently: "I would like to assert that since 2005, the process that was envisioned in Tunis has been remarkably successful

[141] For a copy of the event proposal- which is no longer available on the IGF website- see the email "Discussion on 'enhanced cooperation' at the IGF Hyderabad" sent from Parminder Jeet Singh on November 8, 2008, available on the public archives of the list serve of the WSIS Civil Society Internet Governance Caucus at http://lists.cpsr.org/lists/info/governance

across many fora and international organizations". Haiyan Qian from the UN Division for Administration and Development Management, who had personally been involved in the March 2008 survey on enhanced cooperation, admitted that

> The term 'enhanced cooperation' does not seem to provide us with much practical guidance as to what makes up enhanced level of cooperation or what makes cooperation truly enhanced. Thus, when requesting the relevant organizations' contributions for this report, we found ourselves in a rather difficult situation, as we could not provide clear or more specific guidelines to the organizations on how to prepare such reports or contribution.[142]

The status of enhanced cooperation is largely uncertain. Was enhanced cooperation a relatively meaningless construct that existed only to help with the optics of compromise during the WSIS that is unlikely to develop beyond the token gesture of the UN under-SG's survey?

It is undeniable that there has been a noticeable push to increase cooperation in global internet governance since the WSIS. The most likely explanation is that the process of enhanced cooperation has emboldened reform minded governments by giving an air of legitimacy to their push for greater structure. The enhanced cooperation mandate has likely also pushed would-be defenders of the status quo to proactively engage in (or at least demonstrate) that they are indeed cooperating and that their level of cooperation has been enhanced since the WSIS as part of a coordinated effort to hold off calls for further intervention.

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[142] all quotes from: "IGF, Internet Governance Forum Hyderabad, India Arrangements for Internet Governance, Global and National/Regional 5 December 2008", IGF, http://www.intgovforum.org/cms/hyderabad_prog/AfIGGN.html

Generally however, pending further evidence being made public, enhanced cooperation is best viewed as a principle that is being used at the convenience of various actors to justify a variety of often competing post-WSIS activities. The threat that a more interventionist enhanced cooperation structure could be developed is only going to push the status quo so far, however. Tension surrounding the push to establish binding intergovernmental internet regulation is likely to eventually either force the UNSG to spell out what enhanced cooperation means and how it gets institutionalized, or else reveal its lack of substance and teeth. It is possible that the latter has already occurred.

Chapter Conclusion: The Emerging Global Internet Governance Regime

Global internet governance post-WSIS has developed in a variety of directions. Enhanced cooperation has been revealed to be something of a phantom process. Dissatisfaction with the non-binding mandate of the IGF may manifest in pressure to non-renew its mandate after five years. At the same time, American government interests seem to be digging their heels on oversight of ICANN. Governments are working to position the ITU in a more significant role in internet governance. The EU is reasserting its new cooperation model.

It is possible, in other words, that by 2012, there could be no IGF as well as no real process of enhanced cooperation, and that the proposed World Conference on International Telecommunications (WCIT) could initiate round two of the ICANN vs. ITU debate. In that scenario, recent developments suggest the EU could even once again occupy the middle ground with its new cooperation model. In some senses, it would be as though WSIS never happened.

In other respects however global internet governance is dramatically altered post-WSIS. National governments, in particular governments from OECD countries are passing invasive internet regulations. Through these cybercrime and security laws, as well as policy development on issues such as network neutrality and internet broadcasting, governments- in particular governments from developed countries with established regulatory and enforcement capacity- have begun to take much more serious looks at how the global communication of the internet can be regulated within the borders of states. Various organizations have become more interested in internet governance and are considering the points of overlap between internet governance and other policy areas such as media regulation and economic policy. A new American administration is seeking to shed the "unilateral cowboy" (see Bolton 2007) image of its predecessor but has a new, more pressing problem to consider in the collapse of the unregulated American banking system. Different pressures, discourses and politics are emerging from within the American government as to their unique role in the governance of the internet. Finally, even if the future of the IGF is not yet clear, the multi-stakeholder governance model of the IGF has proved to be a contagious model for confronting internet policy issues in both emerging and traditional institutions.

This survey of global internet governance post-WSIS underlines the impact of the WSIS process. The WSIS reframed a limited debate over whether or not the DNS system can be said to regulate the internet as the broad and distributed policy field of global internet governance that was described in this chapter. Thus, even if global internet governance does travel the road back to from where it came, it can never go home again.

-CHAPTER 5-
Unpackaging Global Internet Governance

Chapter Overview

This chapter evaluates this thesis's case study of the WSIS internet governance negotiations and their aftermath by making a series of observations about the mechanics of global governance and the participation of governments and other stakeholders. Its aim is to provide empirical insight into the set of largely theoretical assumptions that inform the research agenda on global governance of communication.

It is organized around three questions: Who does global governance?; What is global governance?; How is global governance done?

Under the heading of "who does…", I have developed my own typology to summarize the various competing perspectives on internet governance that emerged over the course of the WSIS. From there, this chapter moves on to discuss delegation compositions, in particular focusing on understanding the different approaches that various states take to engaging in global governance. The division of powers and labour in certain delegations between ICT specialists and foreign affairs departments is suggested to be particularly crucial to understanding global governance in the media/communication policy area. The effect of delegation composition on the capacity of certain countries to influence global governance is discussed as an important component of how power is exercised by states within global governance and distributed unequally between them.

The second part of this chapter turns to the question of "what is global governance?". I revisit the division between foreign affairs departments and ICT policy

specialists to reflect broadly on how global internet governance balances the politics of broader international relations with those that surround the internet as a specific object of policy making. From there, this chapter investigates the linkages between the national and global policy spheres. Drawing mostly on interviews conducted with important WSIS delegations, I examine how domestic policies influenced the positions adopted at the WSIS, how different governments consulted domestically on the positions they adopted globally and finally, on the tendency for governments to frame their global positions differently for domestic audiences.

Under the heading of "how is global governance done?" I consider how the need to arrive at unanimous consensus on global internet governance influenced the outcomes of the WSIS. I reflect on how the negotiations unfolded and conclude that global governance of the internet is pre-occupied with issues of process over substance and with the sovereignty of states in place of the rights of individuals.

In conclusion, I propose that global internet governance needs to be approached as a multi-leveled and multi-sectoral policy field in order to be meaningfully engaged and analyzed.

Who Does Global Governance?

The Emergence of Competing Perspectives on IG: A Typology of Actors

As we have seen, the WSIS debate on internet governance evolved over the course of the two-phased, four year process. A polarized, broad and il-defined debate in which government delegations took sides between ICANN and ITU became a gradually more nuanced discussion in which a broad array of actors, generally speaking, coalesced

around one of a variety of position[143]:

The Status Quo and Status Quo Plus: OECD governments outside of Europe largely supported the private sector and internet technical community's calls to leave the system as it was from the beginning of the debate over internet governance. The "plus" refers to the move to reluctantly accept the creation of the IGF as a compromise position that various OECD governments, Canada and Japan most visibly, made at the end of the WSIS.[144]

This view largely opposed the convening of the IGF and highly scrutinized its parameters once it became obvious that one would need to be created in the interest of compromise. It vehemently contested any suggestions about the need to alter the existing structures of political oversight of the internet. In place of new models which would have given governments a greater role in internet governance, the United States, for instance, consistently proposed conservative language such as: "we recognize and acknowledge the vital role played by many existing organizations in the technical management of the internet, and strive to build on the current structures which have facilitated a rapid, global expansion of the internet in a secure and stable manner". A recurring theme of Status Quo interventions echoed the following ISOC contention that "many issues related to internet usage are covered by existing treaties", that "many issues related to internet resources and

[143] See also the related assessment of the various proposals for the final outcomes of the WSIS in Appendix II of this thesis.

[144] There where also arguably a *Status Quo Plus and Minus Position* through the various interventions made by some of the more active and influential members of the civil society internet governance caucus focused on the possibility of maintaining the ICANN system, but as a fully independent or privatized entity. But, according to Adam Peake, one of the Caucus co-chairs, "views on internet governance, its problems and solutions varied among civil society participants almost as much as they did among government delegates… civil society does not have a unified position on internet governance, the range of issues involved are too broad and civil society too diverse"(Peake 2004, 4). However, the extent to which WSIS civil society could be said to have a position on anything as well as the role of civil society in the process itself are complex questions that I deal with in part in chapter 6.

administration are successfully addressed through existing mechanisms" and, more generally, that "the role of the WSIS should be to encourage participation in these existing mechanisms before assuming that some other overarching mechanism is necessary". Most often, the Status Quo position distilled to the oft-repeated mantra that "whatever action is taken should not threaten the stability and security of the internet". [145] In this respect, it relied heavily on promoting a fear of the unknown as a rationale for avoiding change.

The Status Quo Plus approach can also be viewed as a compromise position between the advocates of change and the defenders of the status quo. It is thus not surprising that it is the position that is most reflected in the final documents of the Tunis phase of the Summit.

The pragmatic conservatives and reluctant evolutionists: As the debate became less polarized over the course of the 2nd phase of the WSIS, a variety of middle ground positions emerged. To certain governments, in an ideal world, the DNS would not be subject to unilateral control by one government. But, given the success of the current system and the risks associated with making changes to it, many governments viewed the maintenance of the current order as an acceptable- if not ideal- arrangement that should not be altered unless demonstrated that the gains would outweigh the risks.

The progressive evolutionists: In contrast, others delegations- including the EU- argued that the system, though working, needed to evolve to allow for greater involvement of the global community. The evolutionary approach advocated the creation of a forum as a possible first step toward increased internationalization of internet

[145] All quotes in this paragraph from: WSIS Tunis Phase, PrepCom III, "WSIS-II/PC-3/DT/14 (Rev.3)", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pc2|3&c_type=all|

oversight. Though it argued that a new cooperation model is necessary in order to facilitate "the development and application of globally applicable public policy principles and provide an international government involvement at the level of principles over [certain] naming, numbering and addressing-related matters", the evolutionary perspective agreed that this new model "should not replace existing mechanisms or institutions, but should build on the existing structures of internet governance".[146] This view simultaneously demanded that changes be made to internet governance but did so whilst acknowledging the oft-voiced fears about the need to maintain the stability and security of the system. It argued for the IGF but framed it as part of a transition from the current system to a more internationalized system that would create a greater role in oversight of the internet for governments and the international community.

The revolutionaries: Some governments including Iran, Saudi Arabia and Brazil called for what would have amounted to replacing the current system with an intergovernmental body. The revolutionary approach centered around the demand that the oversight of the internet be transferred to the jurisdiction of governments through the establishment of a formal intergovernmental institution. Not content with only a non-binding forum for discussion, the revolutionary perspective differs from the evolutionary approach in the sense that this council would replace existing mechanisms and institutions of internet governance rather than build upon them.

[146] WSIS Tunis Phase PrepCom III, "WSIS-II/PC-3/DT/21-E", http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pc2|3&c_type=all|

Delegation Compositions and Capacities

The gap between the capacity that developed and developing countries have to participate in global communication policy making was well established prior to the WSIS turning its attention to it.[147] An unavoidable irony of the "capacity building" issue being raised at the WSIS was that, of course, there were stark differences in composition, resources and capacity between the WSIS delegations negotiating the issue. As mentioned in Chapter 1, theories of global governance tend to overlook crucial questions about the internal processes which influence how specific states engage in intergovernmental policy making. The WSIS negotiation on internet governance was revealing in this sense as to the capacities of different states to participate in internet governance and also as to how various states engage in global governance.

At one end of whatever capacity spectrum might be devised are most certainly the Americans. The American delegation to the WSIS included inputs and contributions from a wide swath of agencies and government departments including: the Commerce Department's NTIA; the Justice Department; the Patent and Trade Office; the Library of Congress; the National Science Fund; the Federal Communications Commission; the Department of Defense; NASA; as well as several elements of the State Department including its international policy, legal, human rights and UN experts. Arriving at meetings with a roster of civil servants (many of whom worked exclusively in the domain of ICT policy) significantly larger than the amount of space reserved for each delegation

[147] c.f. Panos London, "Louder Voices: Strengthening Developing Country Participation in International ICT Decision-Making", Panos London, http://www.panos.org.uk/?lid=324

on the plenary floor[148], having existing working relationships with ICANN and various industry and technical associations and being able to work in a native tongue that was an official UN language, the capacity of the US delegation was, in a word, formidable.

In contrast, the delegation of Brazil- like many delegations to the WSIS- was largely composed of staff from the Brazilian Permanent Mission to Geneva. Many countries run permanent missions in Geneva and other diplomatic centres. By having permanent mission diplomatic staffs liaise with various departments and agencies on policy development, governments avoid the travel costs and lost productivity of sending delegations from their capital to the frequent meetings and consultations that occur in UN hubs like Geneva and New York. While Geneva permanent mission diplomatic staff have a wealth of experience representing their countries in international policymaking to draw on, they are required to cover each and every issue that comes through the UN offices in Geneva. As one head of delegation described it: "today it is environment, tomorrow it is WSIS, the day after it is nuclear".[149] Good Geneva permanent mission staff in other words, are skilled diplomats who handle numerous issues simultaneously, typically by learning just enough about each to get by. They may not posses a specialist's degree of knowledge in any specific policy field and they are unlikely to be able to devote the attention that would be required to any one of the many issues that they cover in order to develop one. That said, the fundamental role that the position of Brazil played in the internet governance debate at WSIS is attributable to the efforts of its permanent mission

[148] This fact I know intimately as much of my participant observation of the plenary took place from a vantage point that was adjacent to where the spillover of the US delegation camped out in the observer gallery. In addition to everything else the Americans did during the WSIS, they brought with them a power bar attached to an extension cord that made it possible to plug in laptops while sitting in the observer gallery and, in this case at least, only occasionally exercised their unilateral control of that system to favour their own interests over those of other would be global internet users.

[149] Valerie D'Costa, (Government of Singapore), in conversation with author, Nov. 2006.

staff. As one WSIS participant put it: the Brazilian Geneva Permanent Mission staff involved in the WSIS "really got the internet governance issue".[150]

Foreign Affairs vs. ICT policy specialists

Normative approaches to global governance tend to view states as unitary actors and, in so doing, neglect important dimensions of how state power is exercised within globalization (Sassen 2006).[151] It is thus important to understand how states organize their response to issues of global communication policy. It was tempting during the WSIS to equate the positions adopted by various delegations with that country's view of global internet governance, in particular from delegations that included a significant contingent of ICT policy experts dispatched from the capital.

In the substantive sense, the WSIS was a communication or internet policy making forum, but the positions adopted by specific delegations typically reflected an intersection of policy spheres.[152] The balance that delegations struck between the inputs of foreign affairs departments and ICT policy specialists was a topic discussed by various interviews with WSIS participants conducted for this thesis. Many delegations functioned so that ICT policy specialists vetted positions with their foreign affairs departments. In most cases, the positions adopted by governments over the course of the WSIS are properly framed as the view of the foreign affairs department on global internet

[150] Tim Kelly, (ITU Strategic Planning and WSIS Executive Secretariat), in conversation with author, July 2007.
[151] Though he is not quoted extensively here, I would like to acknowledge the extent to which my interview with Martin Boyle influenced my view of the significance of this topic.
[152] Even the issue of which intergovernmental organization hosted the summit factored in. For example, had the exact same debate been held in a summit hosted by UNESCO rather than the ITU, the Canadian delegation and policy development process would have been led by the Ministry of Heritage rather than Industry.

governance of a given country, rather than as the view of that government of global internet governance full stop.[153]

What is Global Governance?

Internet Governance/ Global politics

To many delegations, the WSIS was as much a summit on international relations as it was on the information society or global internet governance, if not more. Indeed, the complex question of defining the information society itself went essentially unresolved. There is certainly a case to be made that the positions adopted by various governments might have been motivated by issues that had nothing to do with the WSIS subject matter, reflecting more general international relations issues, protest against Bush Administration unilateralism and the invasion of Iraq for example. The stout defense of its interests and its outright rejection of the European proposal- despite the fact that it contained some elements that could have appealed to American sensibilities (c.f. Mayer-Schonberger and Ziewitz 2007)- reflects the suspicious attitude and siege mentality toward UN policy making evident elsewhere in the Bush-era American diplomatic core.[154] A common theme of media coverage of the EU proposal at PrepCom III (c.f. Wright 2007) was the suggestion that the EU was capitalizing on anti-American backlash in an effort to flex its diplomatic clout.[155]

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[153] For example, had American ICT policy experts been more sympathetic to the calls for creating a new UN organization for IG or even supported an IGF with more teeth, such a position would have had to have conformed to the US Zero Nominal Growth (ZNG) policy toward the UN's budget that precludes American support for any UN initiative that requires additional funds.

[154] Consider for example the title of Former US Ambassador to the UN John Bolton's (2007) memoirs: *Surrender is Not an Option: Defending America at the United Nations and Abroad.*

[155] The general climate of international relations at the time also explains the stakes of the EU's break with

Domestic and Global

Domestic policy approaches to internet governance are not only revised on their way to the global level, but may be filtered-and even subsumed- by more general, non-issue specific foreign politics. That said, interviews conducted for this study suggested that existing domestic ICT policy did fundamentally contribute to the process of developing policy for the World Summit.

For the Canadian delegation, the already-mentioned definitional issues created by the emergence of global internet governance as a negotiation issue necessitated consideration of how domestic policy applied: "nobody knew what the term meant in the beginning and so we had to draw very much on what we were doing domestically and extrapolate it into the international sphere".[156]

The drive for the Canadian delegation to extrapolate domestic policy into the international sphere was attributed primarily to the need for harmonization between global and national perspectives. A secondary consideration was a self-consciously proselytizing interest in

> sharing what we have learned because Canada was one of the early- and continues to be one of the earlier- developers in terms of community use of network. So we think we feel that what we've learned, and the policies we've developed nationally

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the US on internet governance. Bolton (2007, 131) writing about how the fear of breaking with the EU led to a revision of the American position on Iran's nuclear armament "after Iraq, the fear of being separated from the Europeans was too great to overcome, even within an administration of supposed unilateralist cowboys". Yet this is precisely what occurred in a different context at WSIS.

[156] Bill Graham, (Industry Canada), in conversation with author, Oct. 2006.

> will genuinely be of value to the developing world, and in fact, to other developed countries dealing with their own internal policies.[157]

A third, relatively small element of the drive to extrapolate domestic policy to the international sphere was that Canada "didn't have time to come up with a whole new policy development process". This was attributed frankly to the fact that there simply "wasn't a domestic driver and the World Summit on the Information Society wasn't enough of a domestic driver to force a domestic policy development process". As a result, "just out of sheer pragmatism", Canada had to draw on and extrapolate from existing policy frameworks".[158]

A common feature of the domestic policy development process was domestic stakeholder consultation with varying degrees of formality. British stakeholder consultations were

> informal, some had a certain degree of formality. But, by and large they were discussions around developing understanding, a few formal meetings, mostly not. By the time we got into the PrepCom, we had got a very, very good dialogue going with all of the actors.[159]

British domestic consultations involved academics and NGOs in areas like human rights to an extent. However, reflecting the status the Department of Trade and Industry as the policy lead on matters related to internet governance in the UK, their focus was predominantly on discussion of the issues with private sector firms.

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[157] Bill Graham, (Industry Canada), in conversation with author, Oct. 2006.

[158] Bill Graham, (Industry Canada), in conversation with author, Oct. 2006.

[159] Martin Boyle, (Department of Trade and Industry, Government of the UK), in conversation with author, Nov. 2006.

In Canada, consultations were organized by the Canadian Commission for UNESCO and were decidedly multi-stakeholder. Despite the fact that the Canadian government delegation "shared material on issues with [stakeholders] on an informal basis", the ad hoc, time sensitive nature of the consultations coupled with the stakeholders' relative lack of familiarity with the issues meant that "[stakeholders] didn't really input very much". [160]

While some governments operationalized the multi-stakeholder approach of the WSIS primarily through coordinating policy development between delegations and domestic stakeholders, other governments- Canada, Sweden and Germany for example- included civil society or industry representatives on their delegation. This had real impact on the participation of civil society in the WSIS. At various times over the course of the process government delegations were given priority access to proceedings, for example in regard to the plenary sessions at the first phase of the summit. At other times- during breakout negotiation working groups for example- access was restricted to participants who had government delegation badges. In each case civil society representatives who had been included in various government delegations were able to attend and report back to wider civil society through email listservs, as well as face-to-face civil society structures and meetings (see Raboy and Landry 2005 for an overview of these CS structures). Interestingly, civil society delegates were not always even citizens of the countries whose delegations they were invited to be a part of.

[160] Bill Graham, (Industry Canada), in conversation with author, Oct. 2006.

Thus, there was continuity between the national and global level, but also disjuncture. Some governments with deregulated domestic telecommunication sectors were active advocates for the imposition of an intergovernmental framework on global internet governance. The United States illustrated a separate form of disjuncture between the global and the national level. The rhetoric that circulated through WSIS about the symbolic nature of US Government oversight of the ICANN and about how the US Government did not get involved in the day-to-day operations of the internet was directly contradicted during the .xxx episode (discussed in Chapter 3). A freedom of information request subsequently filed by the ICM registry contains a copy of a poster in which the Congressional Internet Caucus was invited to a talk by high ranking NTIA officials describing how the US Government was able to use its historic role in the oversight of the DNS to strong arm ICANN into rescinding the .xxx GTLD (see Internet Governance Project 2006). Thus, at the WSIS, the American line was, in effect, that 'we' should keep oversight because we don't use it, in Washington the message was more of that 'we' should keep oversight because we need it and use it effectively. This is an example of how the same policy issues and positions can be reframed at the global and national levels at the same time.

How is Global Governance Done?:

UN Modalities: Contested Processes and the Politics of Unanimity and Compromise

In the morning session of the final day of the September 2005 sitting of phase II, PrepCom III, when it had become apparent that there were "more divisions than agreements", and that the issue of internet governance would "remain contentious and

divisive until it was resolved", Subcommittee A chair Masoud Khan asked delegations whether they would prefer to keep consulting on their own or if it might be helpful for him to prepare a "Chair's Paper that would satisfy no one perspective", in the effort to push negotiations forward. Brazil's delegation responded with a refrain that is commonly used to describe unanimous consensus-based negotiation: "as long as you promise to disappoint us all equally".

From there, over the course of two separate meetings of Subcommittee A, a debate ensued about what the status of such a paper would be and it was gradually demoted from "Chair's Paper" to "Chair's non-Paper" to "Food-For-Thought Document" to "a paper with no status that will not be used in negotiations". After being printed and circulated, the US suggested that the document had been published over the objections of Senegal and pointed out that the crucial proposal for creation of an Internet Governance Forum submitted earlier by Argentina did not bear the WSIS logo and a formal document number while the paper of the chair had both. Seemingly challenging the chair's authority by suggesting that "as a matter of equity [….] contributions of sovereign states [should] be on equal footing with your own", the US delegation nonetheless stopped short of actually making any kind of specific request by adding another refrain that was oft-repeated by delegations in their interventions on agenda issues and matters of process: "we're in your hands Mr. Chairman".

Each of these characteristics- the focus on process and the politics of unanimity- are crucial to the evaluation of how policy making frames global governance. The burden of producing outcomes that are accepted not just by a majority of delegations but, by *all* delegations, fundamentally shaped the outcome of the WSIS. As we saw

throughout the narrative presented in chapter 3, strong statements are easily rendered uncontroversial with the deployment of the conditional mode (wherein "must" becomes "should" or "could", and "is" becomes "can", etc.) or by simply inserting clauses that balance out language that was initially proposed to express a preference. The journey taken by efforts to use the Geneva Phase documents to make a strong statement about free/open source software discussed in chapter 3 is exemplary of both tendencies.

At WSIS, the politics of unanimity also involved what was a palpable pressure for the need to keep everyone happy and "get a deal done". The term "red line" which many of the interview subjects used is revealing as to the effect that the burden of unanimity has on negotiation. Fundamentally, anything that is past the red line of any one delegation is, in principle, off the table as an alternative. In practice of course, there was a code of diplomacy evident that seemed to create a pressure for delegations- in particular minor delegations- to set their red lines in good faith. In the case of the WSIS, given the need to have the US sign off an any changes to the institutional structure of the DNS system under its control, the threat that US objections would- within a system that requires unanimity- prevent *any* kind of deal from getting done was very real. This fact was emphasized after the EU was perceived to have challenged the US red line. The collective sense of responsibility for coming up with *some kind* of text based on the years and millions of dollars that had been invested in the WSIS process certainly produced pressure on delegations to compromise on their demands. The internet governance negotiations at WSIS, however, illustrate how the politics of unanimity can also be a double-edged sword.

Whereas in majoritarian forums, one dissenting voice can easily be

marginalized, the ability of Brazil to hold up the early stages of the proceedings with an opinion that was not widely shared or supported allowed it to operate as what John Kingdon (1984, 129) would call a "policy entrepreneur" for the cause of reforming global internet governance. The Brazilians invested a great deal in taking ownership over an otherwise marginalized idea and pushing it up the WSIS agenda. Consistent with Kingdon's notion of policy entrepreneurship, it is likely that they did so- at least partially- out of an interest in the reputational capital benefits associated with being the driver of an issue. In the case of Brazil at the WSIS these likely related to a desire to be perceived by other developing and post-colonial country delegations as a champion of copy left and progressive information politics.

Kingdon's research suggests that "an item's chances for moving up on an agenda are enhanced considerably by the presence of a skillful entrepreneur and damped considerably if no entrepreneur takes on the case" (Kingdon 1984, 215). It is quite likely that the issue would not have emerged as it did without the push of Brazil in the early phases of the WSIS. The need for unanimous consensus makes it effectively impossible for the forcefully supported dissenting view of one delegation to be completely marginalized. In this sense, the politics of unanimity enabled Brazil's policy entrepreneurship during the WSIS.

The preoccupation with matters of process that was evident in the discussion of the status of the chair's paper cited above was common over the course of the WSIS. In addition to the status of various documents, common processional topics for discussion included: whether language would be negotiated in full subcommittee plenary or in break-out groups; and whether non-governmental stakeholders were permitted in the

room during these breakout groups. If so, there were further debates over whether non-governmental stakeholders would be permitted to give statements to these negotiating sessions before being required to leave, whether they would be permitted to stay as observers, or alternatively whether they would be active parties to the negotiations. A related larger debate was over who was and was not accredited to the Summit. There were also points of order raised relating to missing or inaccurate translation of documents and statements. The WSIS was, in many respects, forging new ground for the inclusion of non-governmental stakeholders in UN processes (c.f. Raboy and Landry 2005), and a certain amount of this processional discussion can be explained by the ambiguity caused by situations that largely lacked precedent. Regardless, the volume of discussion time during the WSIS that was devoted to process over substance reflects a broader thematic point that has been raised by other commentators (c.f. Mayer-Schonberger and Ziewitz 2007). The WSIS IG negotiation that occurred within this oft-contested framework itself was largely devoted to debate over the institutional processes of other organizations involved in internet governance. From roles and responsibilities of governments and other stakeholders, to the question of ICANN oversight and the discussion of the IGF, the WSIS debate was largely- though not exclusively- a debate about what could be described as the institutional process in which internet governance occurs.

Interviews conducted with WSIS delegates for this study reinforced this point. After listening to the critiques of the reform-minded governments over the first phases of the WSIS debate, one delegate confessed to being tempted to respond:

> what's the problem? How did it affect your CCTLD? What actually went wrong? I mean was there a time when you asked for addressing blocks and were not given

> them? Or, was there a time when the master root was used to obfuscate a request that you made?[161]

But this delegate eventually came to the conclusion that the calls for reform were based more on the potential for abuse endemic to a system in which only a few stakeholders have a direct role in the management of the master root rather than on the existence of clear evidence that the current system was actively being abused. Given that an ever increasing segment of global internet users live in countries without a say in the management of the root, this delegation came to understand how this potential for abuse emerged as a geo-political issue:

> When countries say 'I want the UN involved', what they are really saying is: 'I want more of a voice' , what they are really saying is 'I want a more transparent and participative structure' and what I assume they are really saying is: 'I want to be a coequal just as any other country'.[162]

In this sense, just as the WSIS was more about process than substance, the debate was less about the decisions that are, and have been, taken by the governors of the internet and more about the process through which those governors are selected and the decisions that they arrive at are reached. In particular, this debate was about the power of governments within these processes relative to other broad categories of actors.

Much of the WSIS debate focused on the roles of the private sector, civil society and governments within the institutional arrangements for internet governance. Of these three actors, governments are, in principle, unique in their ability to claim the

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[161] Valerie D'Costa, (Government of Singapore), in conversation with author, Nov. 2006.

[162] Valerie D'Costa, (Government of Singapore), in conversation with author, Nov. 2006.

authority and legitimacy of representing broadly-based constituencies. However, just as in previous debates over communication and information at the intergovernmental level (see chapter 1), the WSIS internet governance negotiations centred on the jurisdiction of states over mass communication rather than the rights of the individual citizen to communicate.[163] Through its focus on process rather than end results and substance, the global internet governance debate is more closely associated with a fight over the sovereignty divide created by the internet than it is over the digital divide.

Chapter Conclusion: Global Internet Governance as Multi-Leveled, Multi--Sectoral

Global governance of the internet is complex and controversial. The decisions that are made within it are shaped by these characteristics. Analysis of the normative value and potential impact of these decisions must crucially be informed by sophisticated understandings of how decisions are arrived at, who participates in decision making and what ends are being pursued by various actors.

This chapter underlined the extent to which global internet governance is what Raboy and Padovani (2008) describe as multi-level and multi-sectoral. It is multi-leveled in the sense that it involves a dynamic policy development processes in which issues and delegations navigate seamlessly between the national and global levels as well as through regional bodies and club-type organizations. Global internet governance is multi-sectoral in the sense that it directly implicates stakeholders from government, civil society and the private sector. The so-called 'internet technical community' is also a fundamentally

[163] See Raboy and Shtern 2010a: Chapter 2 for an overview of the history of intergovernmental debates of communication issues dating back to the drafting of article 19 of the UNDHR and Chapter 2 and 11 for discussion of the tendency for state sovergnity concerns to monopolize these discussions at the expense of the rights of individuals within society.

embedded group of actors whose interests and perspectives do not directly overlap with any of the three classic stakeholder categories. There are no hard and fast rules about who states send to represent them in global governance institutions and how they attribute the positions adopted to domestic policies or the views of their citizenship. Understanding global internet governance as multi-sectoral thus involves unpackaging the internal transformations of the state and the overlaps that exist between various policy spheres.

The extent to which global internet governance is a multi-leveled and multi-sectoral policy field has only been reinforced since the WSIS. Consider, for example, what is involved in the emerging global regulatory framework for online child protection. Online child protection is often pointed to as one of the areas on which the most significant progress has been made by the emerging global internet governance regime.[164]

Problems related to online child protection were identified by the WGIG[165] and prevention of cyber-crime and online child protection issue were discussed in the final

[164] For example, participants at the 2008 IGF underlined how their discussions of online child protection illustrate the utility of the IGF format. Brazilian government delegate Everton Lucero, for example, suggested that "it seems that discussion has matured enough in this area so that now we perhaps could think of creating a common environment where all relevant stakeholders could build trust and work together". See IGF, "Internet Governance Forum Hyderabad, India Open Dialogue December 4, 2008", IGF, http://www.intgovforum.org/cms/hyderabad_prog/Open%20Dialogue.html

[165] Including: tensions between efforts to investigate missue of the internet and the privacy rights of internet users; between criminal law approaches to combating internet missue and fundamental rights such as freedom of expression. As well as questions about: whether individuals should be required to identify themselves when using the internet, or whether the information necessary to track them *ex post* should be mandatorily recorded and kept by ISPs and service operators, and to what extent; whether services that increase the degree of privacy or fully anonymize the usage of the internet should be allowed, encouraged, or forbidden; to which extent applications installed on a personal computer (including so-called spyware) should be allowed to monitor its usage, report information back to the software supplier or vendor, or take control of the content and capabilities of the personal computer . Also, the point is raised that "to avoid the creation of 'cybercrime havens', it will be necessary to ensure that criminalization of specific conduct committed in cyberspace, should be put in place on a global level, respecting the diversity of cultures and legal systems". (WGIG 2005).

agreements and documents produced by the WSIS[166] as well as in the parallel civil society declaration produced for the Geneva phase of the summit[167] and have emerged as

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[166] Geneva Phase: (see http://www.itu.int/wsis/documents/doc_multi.asp?lang=en&id=1161|1160)

Declaration of Principles
(A11) We are also committed to ensuring that the development of ICT applications and operation of services respects the rights of children as well as their protection and well-being; (B10) All actors in the Information Society should take appropriate actions and preventive measures, as determined by law, against abusive uses of ICTs, such as illegal and other acts motivated by… violence, all forms of child abuse (also 25b of Plan of Action)

Plan of Action
12b Governments, in cooperation with the private sector, should prevent, detect and respond to cyber-crime and misuse of ICTs by: developing guidelines that take into account ongoing efforts in these areas; considering legislation that allows for effective investigation and prosecution of misuse; promoting effective mutual assistance efforts; strengthening institutional support at the international level for preventing, detecting and recovering from such incidents; and encouraging education and raising awareness.

Tunis Phase: (http://www.itu.int/wsis/documents/doc_multi.asp?lang=en&id=2266|2267)

Tunis Agenda

90q incorporating regulatory, self-regulatory, and other effective policies and frameworks to protect children and young people from abuse and exploitation through ICTs into national plans of action and e-strategies.

92. We encourage countries, and all other interested parties, to make available child helplines, taking into account the need for mobilization of appropriate resources. For this purpose, easy-to-remember numbers, accessible from all phones and free of charge, should be made available.

40. We underline the importance of the prosecution of cybercrime, including cybercrime committed in one jurisdiction, but having effects in another. We further underline the necessity of effective and efficient tools and actions, at national and international levels, to promote international cooperation among, inter alia, law-enforcement agencies on cybercrime. We call upon governments in cooperation with other stakeholders to develop necessary legislation for the investigation and prosecution of cybercrime, noting existing frameworks, for example, UNGA Resolutions 55/63 and 56/121 on "Combating the criminal misuse of information technologies" and regional initiatives including, but not limited to, the Council of Europe's Convention on Cybercrime.

42. We reaffirm our commitment to the freedom to seek, receive, impart and use information, in particular, for the creation, accumulation and dissemination of knowledge. We affirm that measures undertaken to ensure internet stability and security, to fight cybercrime and to counter spam, must protect and respect the provisions for privacy and freedom of expression as contained in the relevant parts of the Universal Declaration of Human Rights and the Geneva Declaration of Principles.

Tunis Commitment

one of the primary issues of discussion as well as areas of progress at the IGF.[168] Online child protection issues are also treated by the activities of various other organizations including: the Council of Europe Convention on Cybercrime[169] and *Internet Literacy Handbook*[170]*;* the European Commission (EC) Safer Internet Programmes[171] and public

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24. We recognize the role of ICTs in the protection of children and in enhancing the development of children. We will strengthen action to protect children from abuse and defend their rights in the context of ICTs. In that context, we emphasize that the best interests of the child are a primary consideration.

[167] 2.1.4 Importance of Youth
we commit to develop and use only those ICTs that ensure the well-being, protection, and harmonious development of all children.

2.2.7 Rights of the Child
Information and communication societies must respect and promote the principles of the Convention on the Rights of the Child. Every child is entitled to a happy childhood and to enjoy the rights and freedoms available to all persons under the Universal Declaration of Human Rights. All persons, civil society, private sector and governments should commit to uphold the Rights of the Child in information and communication societies.

[168] A dynamic collation on child online safety was created during the 2007 IGF in Rio with the aim of creating: "a permanent, open platform for discussion on fundamental and practical issues related to child online safety within the agenda of the Internet Governance Forum, ensuring dialogue among representatives from children's organizations, government, industry, academia and other civil society groups". At the 2008 IGF in Hyderabad, India, online child protection issues were topics of frequent discussion. Workshops were organized with titles such as "Child Safety Online: measures to protect children from exploitation – the challenge of keeping pace with technological developments"; "Dignity, security and privacy of children on the internet – applying international law to protect their best interests"; "Strategies to prevent and fight child pornography in Developing Countries"; "The internet goes mobile - child protection in the always connected age" and "An Interpol for the Internet?". British online child advocate John Carr was given a high profile speaking slot in one plenary session.

[169] The Cybercrime Convention represents an effort to establish a common criminal policy aimed at the protection of society against cybercrime by obligating ratifying states to adopting a set of prescribed legislation and to participate in a framework aimed at promoting international co-operation in preventing, investigating and prosecuting cybercrime. Article 9: "Offences related to child pornography" as well is in the additional protocol that criminalizes racist and xenophobic propaganda spread via computer networks. When taken in combination with the data interception powers granted to law enforcement agencies by Article 21 and the "General Principles Related to International Cooperation" outlined in Article 23, the CoE Convention on Cybercrime approach establishes a framework for placing and enforcing an embargo on a particular undesirable category of internet-mediated speech in the aim of protecting children (Council of Europe 2004).

[170] See http://www.coe.int/t/dghl/StandardSetting/InternetLiteracy/hbk_en.asp

[171] For example, The "New Safer Internet Program" has been launched for 2009-2013 and addresses issues such as "grooming" (where a person befriends a child for sexual abuse), cyber-bullying and "Reducing

consultations on related issues[172]; the ITU's Child Online Protection (COP) initiative as part of the ITU Global Cybersecurity Agenda (GCA)[173]. The .xxx episode at ICANN was centred around child protection issues. The need to protect children online has been a prominent justification for various intrusive national cybersecurity laws (see chapter 4).

Thus, there is no one-stop shop for global internet governance of the issue of child protection. The response involves a range of organizations: domestic governments; international organizations; multi-stakeholder assemblages; broad-based intergovernmental organizations; and exclusive governmental clubs. It also involves a variety of stakeholders including various levels of government and government ministries, civil society and the private sector. Looking at these different institutions and policy frameworks together, we can also identify at least four distinct forms of regulatory response to children online: technological fixes; criminal law; victim rights-based speech regulation and what could be described as multi-stakeholder cooperation (Raboy and Shtern 2010b).

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illegal content and tackling harmful conduct online" by increasing understanding, awareness, cooperation and accountability amongst all stakeholders in regard to the illicit conduct. Activities planned range from establishing points where members of the public can report concerns and awareness raising campaigns to efforts to promote research into the effects of harmful online conduct and share best practice solutions. See: Council of Europe, "Safer Internet Programme: Empowering and Protecting Children Online", CoE, http://ec.europa.eu/information_society/activities/sip/index_en.htm

[172] Including: "Safer Internet and online technologies for children"; "Child safety and mobile phone services" and the recently concluded consultation on "Age Verification, Cross Media Rating and Social Networking".
http://ec.europa.eu/information_society/activities/sip/public_consultation/index_en.htm

[173] The key objectives of the initiative are to: Identify the key risks and vulnerabilities to children in cyberspace; Create awareness of the risks and issues through multiple channels; Develop practical tools to help governments, organizations and educators minimize risk; Share knowledge and experience while facilitating international strategic partnerships to define and implement concrete initiatives. See: ITU, "Protecting Children Online", ITU, http://www.itu.int/osg/csd/cybersecurity/gca/cop/index.html

These dynamics do not lend themselves to oversimplifications or generalizations. The unpackaging of global internet governance called for in Chapter 1 requires context specific understanding of how the perspectives of various actors are developed and restructured over the course of negotiations and emerging institutional practices.

-CHAPTER 6-
The Public Interest in Communication: Conclusions and Research Agenda

Chapter Overview

The case study of this thesis, the WSIS negotiations of internet governance, has defined the issues, set the agenda for a global debate on internet governance and incubated the competing positions that continue to define it. In this sense, while it is tempting to dismiss the WSIS due to the fact that it did not produce fundamental change within the system, this case study has revealed the extent to which an in-depth accounting of the WSIS is in fact crucial to understanding the parameters of the ongoing debate over global internet governance and, by extension, the public interest in communication.

The WSIS focused on governments, existing internet users, technology and process rather than citizens, the entire public of the information society and the place of communication in society. But, a series of cross-cutting observations about the public interest implications of the case study of the WSIS apply to the ongoing debate over internet governance and, more broadly speaking, fill in crucial knowledge gaps in our understanding of global media governance and the central role that the governance of digital networks plays within it.

Summary of Key Conclusions from Case Study

Contrary to notions that the sort of borderless communication facilitated by the internet somehow diminishes the political significance of territory, the WSIS case study suggests that *geography still matters to the regulation of communication*. From the location of root servers and the headquarters of governing bodies, to the architecture of international interconnection arrangements, the WSIS underlined the importance of the

physical location of the components of internet governance. Symbolically, considerable significance was attached to the disconnect between the internet's status as a global medium of communication and the clustering of internet governance resources within American territory.

For instance, the original creation of thirteen root servers was intended to provide duplication that would preclude the possibility of all copies of the root being disabled at once. Eleven of these thirteen root servers are physically located within the borders of the US and none of them were placed in non-OECD countries (see Appendix I for more details). This should not matter to cyberspace; the system was designed only to ensure redundancy. But the optics of the exclusion of the Global South and American domination of resources did matter; the issue was a point of contention during the WSIS. It was resolved through a technique called 'anycasting' that, according to Peake (2004: 10) means that "since the beginning of 2003, 'cloned' root servers have appeared on every continent, [and, as of 2004], in 22 countries and territories". Establishing additional clones of the mirror root servers in various non-OECD countries obviously increases the degree of redundancy to this system. But given the improbability that all thirteen original root servers could ever be disabled simultaneously, a much more significant impact of the existence of the cloned mirror root servers is the extent to which it enrolls non-OECD countries into the DNS management system and enables a more globally-constituted notion of internet governance. Cloned root servers, in this sense, matter more for geographic reasons rather than for technical ones.

Practically, the issue of internet interconnection costs underlined the extent to which the internet is not entirely virtual in the sense that the physical location of crucial

network nodes differentiates the cost of accessing cyberspace from one location as opposed to another. Social norms and concern for linguistic and cultural diversity were linked in meaningful ways to the manner in which the geographic location of certain resources and institutions shapes the decisions that are made in the governance of the internet and the perception of their legitimacy.

Most fundamentally, geography mattered during the internet governance negotiations at the WSIS through the extent to which *governments defended their sovereignty in relation to borderless communication.* As an extension of this, the debate over internet governance is preoccupied with questions about the rules and *processes* that define how decisions are made. Concern that government sovereignty is not adequately embedded within the institutional/structural framework of global internet governance is driving this debate. Through the push to create multi-stakeholder global governance, important actors in civil society, the internet technical community and the private sector are also fundamentally concerned with processes and their roles and responsibilities within them.

This focus on process simultaneously reflects and reinforces the extent to which power within the global internet governance regime is being defined as *the ability to control technical switches and mandates for institutional oversight*. The question of the extent of government involvement in ICANN decision making dominated the WSIS and has remained a pre-occupation since. This reflects Lessig's (2006: 78) view that *the configuration of the architecture of the internet and its contingency for being otherwise is power.* The WSIS process has clearly demonstrated that, when understood, the technical functioning of the internet can be engaged, interrogated, and even changed to conform

with political directives. In effect, the paradigm has shifted from questioning 'if the internet can be controlled', to asking 'how should it be controlled and in whose interests?'. Lessig (2006, 79) writes that "how the code regulates, who the code writers are and who controls the code writers" are the essential "questions on which any practice of justice must focus in the age of cyberspace". However, the tendency for issues that do not relate directly to recognizable institutional choking points or technical switches to be easily marginalized has combined with preoccupations about decision making process and sovereignty to focus the global internet governance debate on the questions of "who the code writers are and who controls the code writers" at the expense of concern for the end result of "how the code regulates". Global internet governance is largely focused on means, that is to say, rather than ends.

Internet governance is increasingly seen to take place within what Drake (2004, 257) calls a "highly distributed governance architecture compromising a heterogeneous array of public and private sector arrangements". In this sense, *global internet governance is multi-leveled and multi-sectoral*. It involves a cross-cutting look at internet policy emanating from national governments, intergovernmental organizations, and multi-stakeholder global assemblages which engage a range of actors including governments, the private sector, civil society and non-governmental organizations, and the internet technical community. Specific internet governance issues are often treated by various organizations through a range of regulatory approaches. Stakeholders themselves are similarly multi-leveled and multi-sectoral.

Different governments are organizing internal policy responses to the problems of global internet governance in dramatically different ways. Some government delegations

to the WSIS were dominated by ICT specialists, others were lead by Foreign Affairs departments or even generalist diplomatic staff. Consultation with domestic constituencies varied. Certain governments are engaged in parallel internet governance policy development through domestic lawmaking, regional institutions and club-type intergovernmental organizations such as the OECD. Others participate only in global bodies such as the IGF or ITU and even venue shop their agendas between them. Non-governmental stakeholder categories are similarly heterogeneous and subject to internal transformation. Within civil society participants to the IGF process, for example, opinions are starkly divided between privacy activists and child protection activists as to the desirability of emerging efforts to protect children in the online environment (cf. Raboy and Shtern 2010b).

Drake underlines the importance of assessments of global internet governance that address this distributed architecture in what he calls a "holistic or horizontally cross-cutting manner" (2004, 258). But, attempts to even identify all of the organizations that shape the distributed architecture of the global internet governance regime offer competing accounts, ranging from many (c.f. MacLean 2004, 85-99) to many dozen organizations.[174]

The limited capacity of many governments to follow, participate in and meaningfully influence all of these organizations simultaneously was a topic of much discussion during the WSIS. Whereas broad substantive concern for the normative values

[174] c.f. The International Chamber of Commerce, "The ICC Compendium of ICC Internet governance related policy and practice tools", ICC, http://www.iccwbo.org/uploadedFiles/BASIS/Compendium_FINAL_IGF(1).pdf

embedded in global internet governance requires simultaneous engagement in a multitude of initiatives and forums, the achievement of political welfare goals through processional means can be accomplished within one organization. This practicality both reflects and reinforces the push from governments and, to a certain extent, the private sector and civil society activists, to set political agendas around narrow concern for reforming the processes of a specific organization so that political power and oversight of key network choking points are redistributed. It reflects them in the sense that, within the distributed multi-leveled, multi-sectoral architecture of global internet governance, working vertically within one or more organizations on process rather than horizontally or holistically on more substantive issues that span many organizations is more feasible and realistic. It reinforces these tendencies in the sense that the inability of stakeholders with less capacity to meaningfully participate more broadly in global internet governance underlines the need for the establishment of a more formal one-stop intergovernmental internet governance organization.

The debate on global internet governance is, this case study suggests, preoccupied with switches, who controls them and the modalities through which decisions made about the manner in which they are used are arrived at. The extent to which decisions made in global internet governance are justified by, and assessed for, their impact on the public interest emerges from within these relatively narrow parameters.

The Public Interest in Global Internet Governance

The typology of various approaches to defining the public interest that was presented in Chapter 1 suggests that efforts at pre-WSIS internet governance tended to be

justified and assessed against the normative principle that the internet was unregulatable. Alternatively, the public interest was attributed to the decisions that were being made by the internet technical community, regardless of what was decided. In this sense, a case can be made that pre-WSIS internet governance was based on some combination of a unitary theory of the public interest, (defined as an assertion of some absolute normative principle), and a results-focused or pragmatic approach to the public interest (the view that the public interest is whatever those charged with making decisions in the public interest decide). Pre-WSIS internet governance was cloaked in rhetoric about community and democratic values but was ultimately largely captured by the economic welfare concerns of powerful actors (c.f. Mueller 2002). It is clear however, that the WSIS became the site of a significant shift in thinking about the regulation of the internet as a series of constituencies challenged these assumptions. How can this be conceptualized in terms of the public interest?

The case study that is central to this thesis suggests that the global internet governance regime that has emerged over the course of the WSIS internet governance negotiations and since is defined by a process-based approach to the public interest in which political welfare is the ultimate priority. Where the public interest was relevant to legitimizing the contested claims being forwarded, it was attributed to process-oriented terms, through the representative apparatus of the state and through the involvement of civil society in the negotiations.

Public Interest in Communication

Thus, this was not a debate over the global public's interest in internet mediated communication but a discussion of the extent to which governments should have a say in

the processes by which regulatory decisions (mostly technical rather than normative regulatory decisions at that) are made on behalf of internet users. How then, does the global debate on internet governance influence the public interest in communication?

There are obvious and direct linkages between the debate on global internet governance and the manner in which communication as a larger area of social activity will be regulated in the future. Transnational and national policymaking bodies such as the CoE and the CRTC, for example, have already made moves- since the WSIS- to consider media in the internet governance debate and vice versa. In light of the extent to which the WSIS ultimately and publicly discredited the logic that the internet is immune to regulation, we can likely expect other organizations to undertake similar initiatives in the years to come. As was discussed in Chapter 1, the internet has been something of a standard bearer in regard to regulatory approaches to convergence. The extent to which market reliance and self-regulation are perceived to work in regard to the internet will affect the regulatory status of other ICTs, in particular if the fundamental challenges that are being made within the global internet governance debate prove to be successful.

More significant however is the extent to which process-focused, political welfare notions of the public interest in global internet governance impacts the public interest in global communication indirectly.

Indirect Regulation

I suggested earlier that this focus on process and on political welfare defines power within the global internet governance regime as the ability to control technical switches and mandates for institutional oversight rather than the capacity to influence the normative character of communication in any meaningful way. But is this all that is really

at stake?

The case study at the centre of this thesis reviewed how controversy over the domain name system and ICANN emerged alongside other issues such as the role of human rights in the information society, bridging the digital divide, etc. at the beginning of the WSIS (see Figure 1 in chapter 3). All the constituencies and interest groups fought to broaden the boundaries to force their issues onto the internet governance agenda and lines were drawn.

Over the course of the first phase of the summit, many of the higher order, more abstract calls that would have contributed to the formation of an expanded legal framework for regulating mass communication in the information society were gradually massaged out of the WSIS documents or diluted past the point of having a substantive effect.

"Something had to be done", one of this study's interview subjects put it, about a whole series of issues, of which the status and mandate of ICANN was but one. However, the first phase of the WSIS proved that it can be very easy to counter calls for reform on issues that are not framed explicitly around a switch that could be pulled to institute proposed changes, in particular in a process defined by the need for unanimously approved resolutions (see Chapter 5).

As one of the only clear institutional interfaces with communication on the internet, the DNS/ICANN issue emerged as a logical focal point for the WSIS debate, even if much of what was really at issue had little to do with ICANN's mandate. In 2004, MacLean described internet governance as a "wedge issue" that many governments viewed "as the standard bearer for a much broader governance reform agenda, both

positively and negatively" (p.78). ICANN was, in other words, one of the most easily identifiable switches not only in the internet governance system, but arguably in the information society as well. In this respect, the broad calls for reform of the political and economic structure of the information society and the internet's place within it were essentially collapsed into the struggle to enlarge the role played by law in the regulation of the ICANN and DNS systems.

The institutional learning that surrounded the WGIG process and its report allowed all WSIS delegations to: consider where the existing switches in the system are; consider what public policy issues attach to the various switches; and develop a more realistic view of the possibilities for dealing with public policy issues to the satisfaction of all governments within the system as it is currently configured.

I see a parallel institutional learning process in which delegations learned the hard way about the importance of attaching calls for reform to recognizable institutional choking points as more significant however. Delegations becoming aware that the DNS system is not entirely the appropriate venue for "something to do be done" about the issues driving calls for reform during the first phase should have diverted the tension away from the DNS issue and into discussion of the various "public policy" issues that the WGIG report disaggregated from it. Yet, as we have seen, something was done (or at least said) about a variety of public policy issues including interconnection costs, the sovereignty of CCTLDs, etc. But the level of political contentiousness in the debate over the DNS system arguably increased over the course of the WSIS to the point where the international press and the top diplomats of the US and UK were drawn into it.

The reform-minded delegations in other words, having been made aware as to the narrow scope of the DNS system within a broadly re-defined sphere of internet governance, and educated as to what things can and cannot be done through ICANN and the DNS system, still wanted to be able to get their hands on the switch. Code, after all, Lessig reminds us, can be regulated to increase regulatablity. While the current configuration of the DNS system might valorize free market principles and largely restrict opportunities for politics and governments to intervene, the devolution of regulation to code contains the built-in possibility for code to be reconfigured in a way that makes the space more regulatable; even extremely regulatable.

In other words, the current iteration of the global internet governance debate was not born preoccupied with switches, questions about who controls them and the modalities through which decisions made as to the manner in which they are used are arrived at. But it has become so. This case study reveals how the issue of DNS oversight emerged as a narrow part of a broad discussion of the regulation of communication in the context of globalization and digital technologies. Do rhetorical efforts to establish a process-based definition of the public interest actually reflect changing ambitions on the parts of stakeholders? Or, at least where governments are concerned, is the direct focus on the DNS part of a strategic move to use control of such important technical switches with the objective of using them to regulate the normative characteristics of communication over the internet?

Calls for greater governmental involvement in the name of legitimacy, transparency and democratic accountability emanate from governments such as China, Iran and Saudi Arabia who are notorious for their censorship of mass communication (c.f.

Goldsmith and Wu 2006). At the same time, while industry lobbies and technologists may not be accountable, legitimate actors in global governance or be entitled to forward political welfare claims in any normatively established sense, they do at least have undeniable stakes in the continued stability and functioning of the internet. In contrast, indications are that many of the governments that are cloaking their calls for potentially cumbersome and gear-grinding intergovernmental bureaucracy in the language of accountability, transparency and political welfare, may see communication networks they cannot control as causing more harm than benefit. China's post-WSIS steps to fracture the global root server system for instance illustrate that the interests of the global internet-using public may at times be contrary to the political welfare of various states, in particular to many of the same states justifying that the public interest requires them to be more involved in the processes of global internet governance. We also saw how various governments might have been using internet governance to register protest against American policies and Western ideologies without broad concern for the implications of such proposals on the functioning of the internet itself.

In this sense, despite the tendency for debates to be framed in narrow, instrumental terms, global internet governance should be seen as affecting the regulation of communication and the public's interest in it, but through indirect regulation. Lessig (2006, 133) defines indirect regulation as occurring when a public authority "uses other structures of constraint to impose a constraint it could impose directly". Indirection "undermines political accountability" and "confuses responsibility, hence confuses politics". Control of key internet technical resources, in the absence of overarching legal frameworks, creates a situation in which:

> Indirectly, by regulating code, the government can achieve regulatory ends, often without suffering the political consequences that the same ends, pursued directly, would yield (Lessig 2006, 136).

Lessig suggests that, in principle, we should worry about this. On the basis of this case study of the emergence of a global internet governance debate that defines the public interest in process terms and in relation to the political welfare of states, and remains preoccupied with control over technical switches, we should, in practice, worry about what the likes of China and Iran want to do with these switches.

"The internet is a revolutionary medium of *communication* and communication is speech", Jack Goldsmith and Tim Wu (2006, 150) remind us in their important book *Who Controls the Internet: Illusions of a Borderless World.* "In that sense", they continue, "just about every debate about internet governance is at bottom a debate about speech governance". The global internet governance regime is, in a larger sense, the venue in which the fundamental dilemma at the base of all forms of communication policy making is, right now, being interrogated anew: what are the acceptable limits on free expression in mass communication?

The balance between free speech and the need to protect the values that are made vulnerable by internet mediated communication is being questioned, established and challenged within the global internet governance regime; just as communication regulation has always been used to establish what limits a democratic society can justify on free expression.

The decisions made in global internet governance do, in this sense, pass normative judgements about the public interest in communication. These judgements are

highly distributed and are often embedded in discussion of technological regulation. Regardless, broader awareness that the internet can and is being governed necessitates more analysis of these decisions and a greater focus on how they are being justified.

Political Welfare: Stakeholderism in Global Internet Governance

Within the multi-stakeholder governance discourse that emerged from WSIS and has been operationalized through the IGF process and elsewhere, the public interest implications have become crucially bound up in the participation of civil society and governments in the institutional arrangements under discussion.

Consistent with the reduction of the issue of internet governance into a debate over who gets which seats at the decision making table, substantive concern for the public interest in the decisions that are made through internet governance has emerged as a secondary concern in relation to the drive to embed civil society delegations within the institutional structures of internet governance as presumptive checks on the power of governments and industry.

With respect to civil society, this approach contains many normatively troubling features, including:

- the lack of accountability and legitimacy of civil society actors;
- the porous boundaries between stakeholders that can allow anyone- ICANN representatives and Tunisian government sponsored agitators included- to present themselves as representatives of civil society;
- the tendency for process-focused discussion to valorize individuals who are adept

at, and experienced in, questions of process technicalities and create high barriers of entry to potentially influential and innovative voices who have little familiarity with (nor interest in) the relevant processes;

- the absence of meaningful consideration of how the voices of non-users of the internet might be made more integral in the discussion of its governance. A defining characteristic of the term stakeholder that is at the core of the idea of multi-stakeholder governance is the notion that those who possess eligibility to participate in internet governance are those who have a demonstrable stake in its use.

In spite of the focus on processes in the global internet governance debate, establishing the normative value of one set of processes in relation to alternative ones remains a challenge. For example, progressive politics tend to valorize "bottom-up" over "top-down" policy making for the perceived ability of grass-roots social movements and the disenfranchised to use "bottom-up" politics to challenge political elites. However, the "bottom-up" processes of internet governance have tended to be captured by technical community and business elites at the expense of governmental voices that legitimately represent broader constituencies. Calls for greater accountability, transparency and legitimacy thus suppose the top-down imposition of a more formal framework with a greater focus on broad-based rule making, oversight and an apparatus of representivity. However, this in turn leads back to the impact that global internet governance processes have on the political welfare of states and to the related conundrums for the global internet public outlined above.

Furthermore, the tendency for global internet governance to be addressed to processes that function vertically within organizations has a number of knock-on effects relevant to the consideration of the public interest in communication.

In the first place, it encourages venue-shopping: different constellations of actors have, since WSIS, sought to raise internet policy issues in different institutions in the effort to target the ones that are most likely to favor their vision over the others. A balkanization of the global community on internet governance is arguably in progress as pro-intergovernmental oversight governments coalesce within the ITU and are becoming progressively disengaged in the IGF process. Conversely, the threat of institutional competition also pushes reform of existing bodies. From ICANN reforms, to moves from the ITU to incorporate civil society participation, and from the OECD and Council of Europe to expand their engagement with internet governance, existing organizations have, since WSIS, broadened their mandates, memberships and practices in light of the emergence of these much wider parameters.

The public interest in global communication governance is being defined through global internet governance, in other words, by an emerging set of institutions, but most prominently by the cross-cutting normative issues that slip into the gaps between them. This sort of architecture does not lend itself to broad, over-simplistic normative evaluations. The question is, do we possess the conceptual tools to analyse, engage and contribute to this process?

What is required is close monitoring of the actors, institutions and agendas that are shaping global internet governance as a policy field. The public interest in communication needs to be injected in a more meaningful way into this debate. Doing so

requires a horizontal or cross-cutting view of the multi-level, multi-sectoral architecture of global internet governance that is informed by the dynamics involved in these processes and by the extent to which decisions tend to be justified on processional public interest grounds and pursuant to political welfare goals.

The public interest in communication governance has always been a central preoccupation to communication and media studies, in particular to the political economy programme. In conclusion, I will argue that the shifts in the public interest in communication that are evident in this case study of global internet governance suggest that certain normative, conceptual and methodological priorities of the PEC may need to be rethought.

Rethinking the PEC and critical media studies public interest research agenda

With the internet being the offspring of collaboration between the US military and multinational corporations and inexorably linked to globalization, assessment of the political economy of internet governance lends itself too easily to broad stroke treatments and straw man arguments that the global internet is simply not governed in the public's interest. Deeper, context-specific investigations are required that underline power dynamics and the range of alternatives that are available.

By foregrounding the extent to which the values that define the public interest in internet governance are, at present, being contested and open to negotiation, and analyzing how power is exercised in establishing policies around certain interests over others, research on the public interest in global internet governance can respond to Melody's (1990) challenge to steer the attention of policy makers and activists towards

the very existence of such debates, even when rhetoric and conventional wisdom consigns them to the margins.

The insights of this thesis' empirical study of the communication policy-making process in the context of globalization and digital technologies suggest that responses to programmatic calls to refocus on questions of power in new media (c.f. Mansell 2004) should draw on a variety of academic disciplinary perspectives. Importing insights from the work of Lessig and other legal scholars into the theoretical framework of this dissertation allowed it to understand and expand upon some of the ways in which technologies, and discourses around them, constitute power in the new media domain. Drawing on insights from scholars in globalization and global governance has provided a frame of reference for understanding and explaining how power is contested and stratified through global internet governance. In this sense, it underlines the importance of the emerging critical media and communication studies subfield of global media policy.

PEC should be influential within the framework of such projects, in particular where theorizations of power and the broader role of communication in society are concerned. But such influence demands from the PEC greater conceptual and empirical recognition of the transformative impact of digital technologies and globalization on communication policy making and the public interest in it.

Reflecting programmatic calls from Mansell (2004), McChesney (2007) and, indeed, those embedded in the framework of the global media policy research programme (c.f. Raboy and Padovani 2008), this thesis underscores the contribution to be made by foregoing broad normative analysis in favour of this sort of empirical investigation of

policy making dynamics. Attentiveness to the need to engage actually-existing policy making processes should not readily be sacrificed, in other words, in favour of more abstract critiques. Such an approach has allowed this thesis to view the public interest as contingent upon the decisions made in global communication governance rather than as external to them.

In this sense, I suggest that this thesis underlines the value of the programmatic call from McChesney for PEC research to coalesce around the objective of "a much richer understanding of the policy making process". "We need", McChesney (2007, 203) continues:

> a detailed empirical and possibly ethnographic examination of the policy making process today. We need to develop theoretical understanding of policy making and we need hard empirical analysis of how people influence policy making.

The insights of this policy program can contribute to Mansell's (2004) "revitalization of research on the new media in the tradition of political economy". Following Mansell, we must insist that this policy program reflect a critical, rather than mainstream research agenda. But, this thesis illustrates that- within its case study of global internet governance at least- the transformations in the public interest in communication associated with the emergence of digital technologies and globalization demand that many core critical assumptions be re-evaluated in light of empirical realities.

Much more is required toward these ends, in particular, in regard to more detailed theorizations of global communication governance and the internet as a mass medium of communication. The implications of the emerging global internet governance regime on the orientation of other frameworks of communication governance around the world are

seldom discussed but important. The role of intellectual property law in fundamentally determining the normative regulation of mass communication is the subject of provocative discussion in various literatures (c.f. Benkler 2006; Murray 2010). Empirically-informed understandings of the multi-leveled, multi-sectoral basis of the global governance of intellectual property and of its broader impacts on the public interest in communication are required.

Finally, the knowledge gaps associated with emerging issues such as global internet governance enable the voices of critical researchers to intervene and influence ongoing policy processes. This disposition is only enhanced by the emergence of multi-stakeholder models of governance and their openness to observation and intervention. Meaningfully capitalizing on such opportunities however, necessitates a close proximity between critical perspectives and the empirical situation of on the ground governance issues and institutions.

To return, in conclusion, to the episode that I used to introduce this thesis: from my vantage point at the back of the amphitheatre in the *Palais des Nations,* observing as the governments of the world- once brushed aside as "weary giants of flesh and steel" that are "unwelcome" and "have no sovereignty" over affairs of the internet (Barlow 1996) - not only discussed internet governance under the aegis of the United Nations, but belaboured questions of processional minutia in the finest rhetorical traditions of professional international diplomacy, it was very clear that global internet governance is no longer an exclusive and impenetrable static function that can be consigned to some broad neoliberal project. Global internet governance is a dynamic and politically controversial issue. The public interest intervenes in, and is affected by, these debates,

even if in a very partial and narrow respect. The presence of significant knowledge gaps within these debates only reinforces the power of dominant actors. There are opportunities for critical research to help build the capacity of important voices to participate, and for critical researchers themselves to intervene. More fundamentally, the steps that are taken to resolve these controversies will provide precedents that will fundamentally impact the direction of communication governance in the information society. The core concerns of critical communication studies are in play and it is time for programmatic reflection about how the normative principles that have defined the PEC can be integrated into a new policy research programme that steers PEC from the sidelines and into the global internet governance debate.

-REFERENCES-

Afonso, C. 2004. ".br": CCTLD as asset of the commons. in D. MacLean (ed), *Internet Governance: A Grand Collaboration*. New York: UN ICT Task Force. 291-299.

--2005. Internet governance: a review in the context of the WSIS process. Prepared for Instituto del Tercer Mundo (ITeM), http: www.wsispapers.choike.org/internet_governance.pdf

Anderson, B. 1983. *Imagined communities : reflections on the origin and spread of nationalism*. London: Verso.

Appadurai, Arjun. (1996). *Modernity at Large: Cultural Dimensions of Globalization*. Minneapolis U.S.A: University of Minnesota Press.

Baird, Z. 2002. Governing the internet. *Foreign Affairs* 81 (6). 15.

Barendt, E. 1993. *Broadcasting law : a comparative study*. New York : Oxford University Press, 1993.

Barlow, J.P. 1996. A Declaration of the Independence of Cyberspace. http://homes.eff.org/~barlow/Declaration-Final.html

Barney, D. (2000). *Prometheus wired*. Vancouver, BC: UBC Press.

--2004. *The network society*. Malden, MA: Polity Press.

Barry, B. 1965. *Political argument.* New York: Humanities Press.

Benkler, Y. 2006. *The wealth of networks* : *how social production transforms markets and freedom*. New Haven: Yale University Press.

Bertola, V. 2005. Oversight and multiple root servers. in W. Drake (ed), *Reforming internet governance: Perspectives from the Working Group on Internet Governance (WGIG).* New York: UN ICT Taskforce.

Bijker, Wiebe. 1997. *Of bicycles, bakelites and bulbs: Toward a theory of sociotechnical change*. Cambridge Mass.: MIT press.

Binder, C. 1952. Freedom of information and the united nations. *International Organization*, 6(2). 210-226.

Birdsall, W.; W. McIver and M. Rasmussen. 2002. Translating a right to communicate into policy. Righttocommunicate.org, http://www.righttocommunicate.org/viewReference.atm?id=26

Bolton, J. 2007. *Surrender is not an option: defending America at the United Nations and abroad*. New York: Threshold Editions.

Boyle, J. 1997. Foucault in cyberspace : surveillance sovereignty and hard wired censors. *University of Cincinnati Law Review* 66.

Braman, S. 1995. Policy for the net and the internet. *Annual Review of Information Science and technology (ARIST)* 30. 5-75.

Brand, S. 1987. *The media lab: inventing the future at M. I. T*. New York : Viking.

Calabrese, A. 1999. Communication and the end of sovereignty?. *Info* 1(4). 313 – 326.

Callon, M. 1986. Some elements of the sociology of translation: Domestication of the scallops and the fishermen of St Brieuc Bay. in: Law, J. (ed.), *Power, Action and belief: A New Sociology of Knowledge?.* London: Routledge & Kegan Paul. 196-233.

Cammaerts, B. 2007. Civil society participation in multi-stakeholder processes: in between realism and utopia. in L. Stein, C. Rodriquez and D. Kidd, (eds.) *Making Our Media: Global Initiatives Toward a Democratic Public Sphere*. Cresshill NJ: HamptonPress.

Cammaerts, B. and N. Carpentier, N. 2005. The unbearable lightness of full participation in a global context: WSIS and civil society participation. in J. Servaes and N. Carpentier (eds.), *Towards a Sustainable Information Society: Beyond WSIS.* Bristol: Intellect, pp. 17-49.

Carey, J. 1998. The Internet and the end of the national communications system: Uncertain predications of an uncertain future. *Journalism and Mass Communications Quarterly* 75(1). 28-34.

Castells, Manuel. 1996. *The rise of the network society.* Oxford: Blackwell Publishers.

Charmaz, K. 2000. Grounded theory : objectivist and constructivist methods. in N.K. Denkin and Y.S. Lincoln (eds.), *Handbook of Qualitative Research 2nd Edition.* London: Sage. 509-536.

Clinton, W.J. and A. Gore. 1997. Framework for Global Electronic Commerce. http://clinton4.nara.gov/WH/New/Commerce/read.html

Cochran, J. 1974. Political science and the public interest. *Journal of Politics* 36(2). 327-355.

Coleman, S. 2002. Technology : enhancing representative democracy in the UK?.

London : The Hansard Society e-Democracy Programme.

Council of Europe. 2004. Convention on cybercrime CETS No.: 185. Council of Europe Treaty Office, http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm.

CRIS. 2005. Assessing communication rights: a handbook. The Campaign for Communication Rights in the Information Society (CRIS), http://www.centreforcommunicationrights.org/tools-and-training/40-tools/125--cris-campaign-assessing-communication-rights-a-handbook-.html?layout=citation

CRTC. 1999. Broadcasting public notice CRTC 1999-84, telecom public notice CRTC 99-14: New Media. CRTC, http://www.crtc.gc.ca/archive/eng/notices/1999/pb99-84.htm.

D'Arcy, J. 1969. Direct broadcast satellites and the right to communicate. in *EBU Review* 118 (14-18), Republished in L. Harms, J. Richstad and K. Kie (ed) [1977] *Right to communicate: Collected Papers*, Honolulu: University of Hawaii Press. (1-9).

Diebert, R. 2002. Civil society activism on the world wide web: the case of the anti-mai lobby". *Street Protests and Fantasy Parks*. Vancouver: UBC Press. 88-108.

Downs, A. 1962. The public interest: its meaning in democracy. *Social Research* 29(1). 1-36.

Drake, W. 2004. Reforming internet governance: fifteen baseline propositions. in D. MacLean (ed) 2004. *Internet Governance: A grand collaboration*. New York: UN ICT Task Force. 122-161.

---2005a. Collective learning in the world summit on the information society. in D. Stauffacher, D. and W. Kleinwächter (eds). *The World Summit on the Information Society: Moving from the Past into the Future*. New York: UN ICT Task Force. 135-136.

--2005b.(ed). *Reforming internet governance: Perspectives from the Working Group on Internet Governance (WGIG)*. New York: UN ICT Taskforce.

Drossou, O. and H. Jensen 2005. *Visions in process II*. Germany: Heinrich Boll Foundation.

Dugré, P. ed. 2004. Paving the road to Tunis/ WSIS II. Ottawa, CAN: Canadian Commission for UNESCO.

Dutton, W. 2005. A New framework for taking forward the global internet governance

debate. Draft Position Papers for the Oxford Internet Institute Discussion Forum. May 6th, 2005.

Dyson, E. 1997. *Release 2.0 : a design for living in the digital age*. New York : Broadway Books.

Economist, the. 2006. Chinese walls; Internet infrastructure. *The Economist* Vol. 378, Iss. 8467, March 4, 2006. 75.

Elmer, G.; P. M. Ryan et al. 2007. Election bloggers: methods for determining political influence". *First Monday* 12 (4).

EU. 1997. Declaration of the ministerial conference on global information networks. (also know as the Bonn Declaration). July 8, 1997.

Feenberg, A. 1995 *Alternative modernity : the technical turn in philosophy and social theory*. Berkeley, Calif. : University of California Press.

--1991. *Questioning technology.* New York: Routledge.

Feintuck, M. and M. Varney. 2006. *Media regulation, public interest and the Law*. Edinburgh : Edinburgh University Press.

Furrer, M. 2005. Last minute diplomacy: the WSIS in Geneva 2003. In D. Stauffacher, *D.* and W. Kleinwächter (eds). *The World Summit on the Information Society: Moving from the Past into the Future*. New York: UN ICT Task Force. 71-78.

Jørgensen, R.F. (ed). 2006. Human rights in the global information society. Cambridge Mass: MIT Press.

Garnham, N. (1990). *Capitalism and communication : global culture and the economics of information*. London: Sage.

Geist, M. 2003. Cyberlaw 2.0. *Boston College Law Review* 44. 323- 358.
---2004. Governments and country-code top level domains: a global survey. in D. MacLean (ed), *Internet Governance: A grand collaboration*. New York: UN ICT Task Force. 282-290.

Glaser, B. G. and A. L. Strauss. 1967. *The discovery of grounded theory*. Chicago: Aldine Pub. Co.

Gross, G. 2009. Lawmakers: keep ICANN oversight with US. *The Industry Standard*, 06/04/2009, http://www.thestandard.com/news/2009/06/04/lawmakers-keep-icann-oversight-us?page=0%2C1

Goldsmith J. and T. Wu. 2006. *Who controls the internet?: Illusions of a borderless*

world. New York: Oxford Press.

Grant, P., and C. Wood. 2004. *Blockbusters and trade wars: Popular culture in a globalized World*. Vancouver, BC : Douglas and McIntyre Inc.

Guéhenno, J-M. 1995. *The end of the nation-state*. Minneapolis : University of Minnesota Press.

Hamelink, C. 2002. Draft declaration on the right to communicate. Geneva: World Summit on the Information Society.

--2003. Human rights for the information society. In B. Girard and S. Ó Siochrú (ed), *Communicating in the Information Society*. Geneva: UNRISD.121-163

--2004a. 2003 Graham Spry lecture: toward a human right to communicate. *The Canadian Journal of Communication* 29(2). 205-212.

--2004b. Did WSIS achieve anything at all?. *Gazette: The international Journal for Communication Studies* 66(3-4). 281-290.

Hansen, A.; S. Cottle; R. Negrine et al. 1998. *Mass communication research methods*. New York: Palgrave.

Held, D. 1998. Democracy and globalization. in D. Archibugi, D. Held and M. Kohler (eds.), *Re-imagining Political Community*. Stanford California : Stanford University Press. 11-27.

Held, V. 1970. *The public interest and individual interests*. New York: Basic Books.

Higgins, A. and A. Azhar, 1996. China Begins to Erect Second Great Wall in Cyberspace. *The Guardian*, 5 February 1996.

Hoffmann, J. 2007. ICANN. in *Global Information Society Watch 2007*. Uruguay: Association for Progressive Communication and Third World Institute.

Hoffmann-Riem, W. 1996. *Regulating media: The licensing and supervision of broadcasting in six countries.* New York: Guilford Press.

Huffington Post. 2007. Obama promises to reinstate net neutrality during first year in office. The Huffington Post, Oct. 29, 2007. http://www.huffingtonpost.com/2007/10/29/obama-promises-to-reinsta_n_70317.html

Hurrell, A. C. 2005. Civility in online discussion: the case of the foreign policy dialogue. *Canadian Journal of Communication* 30(4).

Internet Governance Project. 2006. Review of documents released under the Freedom of Information Act in the .XXX case: Internet Governance Project paper IGP06-003. IGP, http://internetgovernance.org/pdf/dist -sec.pdf

ITU and UNESCO. 1995. The right to communicate. At what price?. UNESCO, http://unesdoc.unesco.org/images/0010/001008/100803e.pdf.

Johnson, D. and D. Post. 1996. Law and borders: The rise of law in cyberspace. *Stanford Law Review* 48. 1367.

Kingdon, J. 1984. *Agendas, alternatives and public policies*. Boston: Little, Brown and Company.

Klein, H. 2005a. ICANN reform: establishing the rule of law. A policy analysis prepared for the WSIS. Georgia Institute for of Technology Internet and Public Policy Project.

--2005b. Understanding WSIS: an institutional analysis of the summit. *Information Technologies and International Development* 1(3-4). 3-13.

Kleinwächter, W. 2004a. Beyond ICANN vs. ITU : will WSIS open new territory for internet governance?. in D. MacLean (ed), *Internet Governance: A Grand Collaboration*. New York: UN ICT Task Force. 31-52.

--2004b. WSIS: A new diplomacy? multistakeholder approach and bottom up policy global ICT governance. *Information Technology and International Development* 1(3-4).

Korttein, J., K. Myntti, and L. Hannikainen. 1999. Article 19. in G. Alfredsoson and A. Eide (eds), *The Universal Declaration of Human Rights a Common Standard of Achievement*. The Hague, Netherlands: Kluwer Law International. 393-416

Kuhlen, R. 2004. Why are communication rights so controversial?. *The World Association for Christian Communication (WACC) publications 2004/3*. WACC, http://archive.waccglobal.org/wacc/programmes/recognising_and_building_communication_rights/why_are_communication_rights_so_controversial

Kummer, M. 2005. Agree to disagree: The birth of the working group on internet governance. in D. Stauffacher and W. Kleinwächter (eds). 2005. *The World Summit on the Information Society: Moving from the Past into the Future*. New York: UN ICT Task Force. 245-248.

--2007. The debate on Internet governance: From Geneva to Tunis and beyond. *Information Polity* 12 (1-2). 5-13.

Lavoie, M. and P. Leuprecht (eds). 2005. Beyond WSIS: Incorporating Human Rights

Perspectives into the Information Society Debate . *Revue Québécoise de Droit International* (special edition) 18 (1).

Law, J. and J. Hassard (eds). 1999. *Actor network theory and after*. Oxford, UK: Blackwell.

Lessig, L. 1999. *Code and other laws of cyberspace*. New York: Basic Books.

--2004. Free culture : how big media uses technology and the law to lock down culture and control creativity. New York: Penguin Press

--2006. *Code version 2.0* ([2nd ed].). New York: Basic Books.

--2008. *Remix : making art and commerce thrive in the hybrid economy*. New York: Penguin Press.

MacLean, D. 2003. The quest for inclusive governance of global ICTs: lessons from the ITU in the limits of national sovereignty. *Information Technologies and International Development* 1(1). 1-18.

--(ed) 2004. *Internet governance: a grand collaboration*. New York: UN ICT Task Force.

--2005. A brief history of the WGIG. in W. Drake (ed), *Reforming Internet Governance: Perspectives from the Working Group on Internet Governance (WGIG)*. New York: UN ICT Taskforce. 9-24.

Mansell, R. 1996. Network governance: designing new regimes. in R. Mansell and R. Silverstone,. eds. *Communication by Design: The Politics of Information and Communication Technologies*. Oxford UK: Oxford Press. 187-212.

-- 2004. Political economy, power and new media. *New Media & Society* 2004-6. 96-105.

Mansell, R and K. Nordrenstrung. 2008. Great media and communication debates: WSIS and the MacBride Report. *Information Technologies and International Development* 3(4). 15-36.

Marsden, C. (ed). 2000. *Regulating the global information society*. London : Routledge.

Mayer-Schönberger and M. Ziewitz. 2007. Jefferson rebuffed, the United States and the future of internet governance. *The Columbia Science and Technology law review* 8. 188-228.

McCarthy, K. 2003. Iraq, its domain and the ‘terrorist-funding’ owner: A tale of intrigue,

confusion and Internet oddities. *The Register,* April 9, 2003, http://www.theregister.co.uk/2003/04/09/iraq_its_domain/

McChesney, R. 2007. *Communication revolution: critical junctures and the future of media*. New York: The New Press.

---2008. *Political economy of media: Enduring issues, emerging dilemmas*. New York: Monthly Review Press.

McChensy, R; E. Wood and J.B. Foster (eds) 1998. *Capitalism and the information age: the political economy of the global communication revolution*. New York: Monthly Review Press

McDowell, S.; P. Steinberg and T. Tomasello. 2008. *Managing the infosphere: governance, technology and cultural practice in motion*. Philadelphia: Temple University Press.

McIver, W.J. 2010. Internet. in M. Raboy and J. Shtern. *Media divides: communication rights and the right to communicate in canada*. Vancouver : UBC.

McIver, W.; W. Birdsall , and M. Rasmussen. 2003. The internet and the right to communicate. *First Monday* 8(12), http://www.firstmonday.org/issues/issue8_12/mciver/

McIver, W and W. Birdsall, W. 2004. Technological evolution and the right to communicate: The implications for electronic democracy. Electronic Journal of Communication. 14(3-4) http://www.cios.org/EJCPUBLIC/014/3/01433.html

McLaughlin, L and V. Pickard. 2005. What is bottom up about global internet governance? Global Media and Communication 1(3). 357- 373.

McQuail, D. 1992. *Media performance : mass communication and the public interest*. London : Sage.

McQuail, D. and K. Siune. 1986. *New media politics : comparative perspectives in western Europe*. London ; Beverly Hills : Sage.

Melody, W.H. 1990. Communication policy in the global information economy: whither the public interest. In M. Ferguson (ed.), *Public Communication: The New Imperatives.* London: Sage. 16-39

Mitchell, J. 1995. City of bits: Space, place and the infobaun. Cambridge Mass: MIT Press.

Moll, M. and L.R. Shade. 2004. Vision impossible? the World Summit on the

Information Society. In M. Moll and L.R. Shade (eds), *Seeking Convergence in Policy and Practice*. CCPA: Ottawa. 45-80.

Mosco, V. 1996. The political economy of communication. London: Sage.

Mosco , V. and A. Reddick. 1997. Political economy, communication and policy. in D. Winseck and M. Bailie (eds), *Democratizing Communication?: Comparative Perspectives on Information and Power*. Cresskill, New Jersey: Hampton Press. 11-32.

Mueller, M. 2002. *Ruling the root: internet governance and the taming of cyberspace.* Cambridge, Mass: MIT Press.

Mueller, M., B. Kuerbris, and C. Pagé. 2007. Democratizing global communication? global civil society and the campaign for communication rights in the information society. *International Journal of Communication* 1. 267-296.

Murray, L. 2010. Copyright. in M. Raboy and J. Shtern. Media divides: Communication rights and the right to communicate in Canada . Vancouver: UBC Press.

Nakashima, E. 2009. Obama set to create a cybersecurity czar with broad mandate. The Washington Post, May 26, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/05/25/AR2009052502104.html

Napoli, P. 2001. *Foundations of communications policy : principles and process in the regulation of electronic media*. Cresskill, NJ : Hampton Press Inc.

Negroponte, N. 1995. Being Digital. New York, Vintage Books,

Nordenstreng, K.ed. 1986. *New international information and communication order : sourcebook*. Prague : International Organization of Journalists.

--2005. The forgotten history of global communication negotiations at the League of Nations. in D. Stauffacher, D. and W. Kleinwächter (eds). *The World Summit on the Information Society: Moving from the past into the future*, New York: UN ICT Task Force. 119-124.

Numminen, A. 2005. Searching for consensus. in D. Stauffacher and W. Kleinwächter (eds), 2005. *The World Summit on the Information Society: Moving from the past into the future*. New York: UN ICT Task Force. 64-70.

Obama'08. n.d. Barak Obama: Connecting and empowering all Americans through technology and innovation. Barackobama.com, http://www.barackobama.com/issues/technology/

OECD. 2007. Working Party on telecommunication and information services policies.

Internet traffic prioritization: an overview. Paris: OECD.

Ohmae, K. 1995. The end of the nation state: the rise of regional economies. New York : Free Press.

Ó Siochrú, S. 2004a. A tale of paragraph 4: stating the obvious at the WSIS. In *Information Technologies and International Development* 1(3-4). 49-50.

---2004b. Will the real WSIS please stand-up? The historic encounter of the 'information society' and the 'communication society. *Gazette: The International Journal for Communication Studies* 66(3-4). 203-224.

--- 2004c. Communication rights defend, expand and create spaces for democratic discussion. *The World Association for Christian Communication (WACC) publications 2004/3.* WAC, http://www.wacc.org.uk/wacc/publications/media_development/2004_3/communication_rights_defend_expand_and_create_spaces_for_democratic_discussion

--- 2005a. Finding a frame: towards a transnational advocacy campaign to democratize communication. in R. Hackett and Y. Zhao (eds.), *Democratizing Global Media: One world, Many Struggles*. New York, Oxford: Roman & Littlefield. 289- 311

--- 2005b. Global media governance as a potential site of civil society intervention. in R. Hackett and Y. Zhao (eds.), *Democratizing Global Media: One world, Many Struggles*. New York, Oxford: Roman & Littlefield. 205-221.

---2010. Implementing communication rights globally. in M. Raboy and J. Shtern *Media divides: Communication rights and the right to communicate in canada*. Vancouver: UBC Press.

Ó Siochrú, S. and B. Girard. 2002. *Global media governance: A beginners guide*. Boulder & London: Rowman & Littlefield

Padovani, C. 2005. Debating communication imbalances from the MacBride Report to the World Summit on the Information Society: an analysis of a changing discourse. *Global Media and Communication* 1(3). 316-338.

Padovani, C., and K. Nordenstreng. 2005. From NWICO to WSIS: another world information and communication order?. *Global Media and Communication* 1(3). 264-272.

Pal, L. and Maxwell, J. 2004. Assessing the public interest in the 21st century: a framework. A report prepared for the Canadian Government External Advisory Committee on Smart Regulation. Ottawa, ON: The Canadian Policy Research Network (CPRN).

Paré, D. 2003. *Internet governance in transition : Who is the master of this domain?*. Lanham, MD : Rowman & Littlefield.

Peake, A. 2004. Internet governance and the World Summit on the Information Society (WSIS). A report prepared for the Association for Progressive Communications (APC). APC, http://www.apc.org/en/pubs/governance

Peters, John D. (1989) Democracy and American communication theory: Dewey, Lipman, Lazerfelds. *Communication* 11(3).

Pickard, V. 2007. Neoliberal visions and revisions in global communications policy from NWICO to WSIS. *Journal of Communication Inquiry* 32(2). 118-139.

Price, M. 2002. *Media and sovereignty: the global information revolution an its challenge to state power*. Cambridge, Mass. : MIT press.

Price, M. and S. Verhulst. 2005. *Self-regulation and the internet*. The Hague: Kluwer Law International.

Raboy, M. 1990. Le rôle des acteurs dans l'élaboration de la politique canadienne de la radiodiffusion. *Communication et Information v.11 n. 2*. 251- 271.

--(ed.)1995. *Public broadcasting for the 21st century*. Luton, Bedfordshire, England: University of Luton Press.

--2002. Communication and globalization: a challenge for public policy. in. D. Cameron and J.G. Stein (eds), *Street Protests and Fantasy Parks: Globalization, Culture and the State*. Vancouver: UBC Press. 109-140.

--2004a. Report on the matter of broadcasting regulation. prepared for the Department of Justice, Ottawa, Canada, In the case of Genex Communications inc. v. the Attorney General of Canada and the Canadian Radio-Television and Telecommunications Commission (CRTC). Federal Court of Appeal no. A-464-04.

--2004b. The World Summit on the Information Society and its legacy for global governance. *Gazette: The International Journal for Communication Studies* 66. 225-232.

--2004c. The WSIS as a political space in global media governance. *Continuum: Journal of Media and Cultural Studies* 18 (3). 345-359.

--2005. Globalization in the information society. in D. Stauffacher, D. and W. Kleinwächter (eds.), *The World Summit on the Information Society: Moving from the Past into the Future*. New York: UN ICT Task Force. 131-134.

---2006. The 2005 Graham Spry Memorial Lecture- making media: creating the conditions for communication in the public good. *The Canadian Journal of Communication* 31(2). 289: 306.

--2007. Broadening media discourses: global media policy defining the field. *Global Media and Communication* 3(3). 343-347

--2010. Media. In M. Raboy and J. Shtern. *Media divides: Communication rights and the right to communicate in Canada*. Vancouver: UBC Press.

Raboy, M., and N. Landry. 2005. *Civil society, communication and global governance: Issues from the World Summit on the Information Society*. New York: Peter Lang.

Raboy, M and A. Mawani. forthcoming. Are States still Important? reflections on the Nexus Between National and global media and communication policy. in A. Calabrese and C. Padovani (eds.), *Communication Rights and Global Justice: Reflections on the Short History of a Social Movement*. Creskill, NJ: Hampton Press.

Raboy, M. and C. Padovani. 2008. Mapping global media policy. IAMCR Working Group on Global Media Policy, http://www.iamcr.org/content/blogcategory/37/148/

Raboy, M. and J. Shtern. 2005. The Internet as a global public good: towards a Canadian position on internet governance for WSIS phase II. in Dugré, Pauline (ed). *Paver la voie de Tunis- SMSI II*. Ottawa: Canadian Commission for UNESCO. 126-132.

--2010a *Media divides: communication rights and the right to communicate in canada*. Vancouver: UBC Press.

--2010b. Mediated speech and communication rights: situating cyber-bullying within the emerging global internet governance regime. in S. Shariff and A. Churchill (eds.), *Truths and Myths of Cyber-bullying: Stakeholder Responsibility and Children's Safety.* New York: Peter Lang Editions. (193-228).

Reidenberg, J. 1998. Lex informatica: the formulation of information policy rules through technology. *Texas Law Review* 76. 553.

--2005. Technology and internet jurisdiction. *University of Pennsylvania Law Review* 153. 1951 .

Reinhold, Harold. (1993). *Virtual communities: Homesteading on the virtual Frontier*. Cambridge, Mass.: MIT Press.

Riles, A. (ed). 2006. *Documents: artifacts of modern knowledge*. Ann Arbor: University of Michigan Press.

Sarikakis,, K. 2004. Ideology and policy: notes on the shaping of the Internet. *First Monday* 9(8), http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1167/1087

Sassen, S. 2006. *Territory. authority. rights. from medieval to global assemblages*. Princeton, NJ: Princeton University Press.

Schubert, G. 1960. *The public interest: a critique of the theory of a political concept*. Glencoe, IL: The Free Press.

Shariff, S. 2008. *Cyber-bullying : Issues and solutions for the school, the classroom and the home*. London ; New York: Routledge.

Sorauf, F.J. 1957. The public interest reconsidered. *Journal of Politics* 19(4). 616-639.

Stauffacher, D. and W. Kleinwächter (eds). 2005. *The World Summit on the Information Society: Moving from the Past into the Future*. New York: UN ICT Task Force.

Strange, S. 1996. *The retreat of the state: the diffusion of power in the world economy*. Cambridge : Cambridge University Press.

Tambini, D. and S. Verhulst. 2000. The transition to digital and content regulation. in , D. Tambini (ed.), *Communications revolution and reform*. London: Institute for Public Policy Research. 5-20.

Trudel, P. 2000. Quel droit et quelle regulation dans le cyberspace ?. *Sociologie et sociétès* 32(2). 189-209.

UNESCO. 1998. Our Creative Diversity. Report of the World Commission on Culture and Development, http://portal.unesco.org/culture/en/ev.php-URL_ID=36624&URL_DO=DO_TOPIC&URL_SECTION=201.html

--2004. International Commission for the Study of Communication Problems. *Many voices, one world : towards a new, more just, and more efficient world information and communication order* . Lanham, MD : Rowman & Littlefield.

van Cuilenburg, J. and D. McQuail. 2003. Media policy paradigm shifts. *European Journal of Communication* 18(2). 181-207.

Verhulst, S. 2003. Shifting paradigms: reconsidering regulation of digital content. *L'avenir de la réglementation de la radiodiffusion*. Centre des études sur les médias : Quebec. 131-151.

Wellman, B. 2004. The three ages of internet studies: ten, five and zero years ago. *New Media and Society* 6(1). 123-129.

WGIG. 2005. Report of the Working Group on Internet Governance. Working Group on Internet Governance, http://www.wgig.org/

Woolgar, Steve. 1991. The turn to technology in the social studies of science. *Science, Technology & Human Values* 16(1). 20-50.

Wright, T. 2007. EU and US clash over control of Net. *The New York Times*, Sept. 30. 2005, http://www.nytimes.com/2005/09/29/business/worldbusiness/29iht-net.html

Yin, R.K.1989. *Case study research: design and methods (revised edition)*. Newbury Park UK, Sage.

Zhao, Y. 2004. Between a world summit and a Chinese movie: visions of the 'Information Society'. *International Communication Gazette* 66(3-4). 275-280.

Zittrain, J. 2008. *The future of the internet and how to stop it*. New Haven, CT: Yale University Press.

-APPENDIX I-
A Brief History and Overview of the Internet Domain Name System

There are a series of names and numbers that allow one computer to identify and connect to another. The internet effectively facilitates global communication because these numbers are unique: type in www.umontreal.ca (or 132.204.5.67, the domain name number that it represents) from any computer anywhere in the world and you are routed to the same website. In order to support this crucial element of internet mediated communication, a system was devised in which one master list of internet names and numbers would be kept. In order to ensure that the master list is non-duplicative, the authority to update this list must be highly restricted. Such authority is the basis of the root server system which Milton Mueller (2002, 6) describes as "*the* point of centralization in the internet's otherwise thoroughly decentralized architecture" [emphasis added]. The history of the root server system encapsulates the changing politics around internet regulation.[i] The DNS can be said to consist of the following elements:

- *IP addresses:* each node on the internet is assigned a unique number. Internet Protocol (IP) addresses provide organization to nodes within different networks without reducing their interoperability by including one series of numbers that identifies the network number and another that identifies the number of the node within that network;[ii]

[i] This is the pre-history to this study's case study. This period of DNS controversies have been extensively covered in the literature. My treatment of it is consciously synthetic rather than investigative or analytical. For well-written summaries, see Paré (2003) and Goldsmith and Wu (2006). For the definitive, full-length narrative account of the DNS wars from the creation of the internet to the founding of ICANN, see Mueller (2002).

[ii] See Paré 2003 (9-10) for a more detailed overview of IP addressing.

- *Domain names:* IP numbers are coupled to relatively simple alphanumeric character strings that users can input in place of the string of numbers. The DNS system matches the names with the corresponding IP addresses and seamlessly facilitates communication between the two computers without the user having to input the IP address or even know it;
- *The Root Zone File:* a non-duplicative database that, when queried, allows computers to match the domain names that the user enters with the IP addresses that the computers require in order to establish a connection over the network with the desired location. The Root Zone's defining characteristics are its hierarchal structure and its distributed architecture;
- *Top Level Domain Names (TLDs)*: The root is divided into a series of top level domains. There are two types of top level domains: generic top level domains (GTLDs) such as .com, .gov, .mil, .edu etc. and country code top level domains (CCTLDs) such as .ca for Canada or .fr for France. Each of these TLDs is further categorized into subdomains;
- *Subdomains:* The DNS hierarchically differentiates between various levels of the network on the basis of a *node.host.domain* model. For example, the domain name http://www.com.umontreal.ca/ refers to the department of communication (node) dot Université de Montréal (host) dot Canada (domain name). The hierarchy is not just semantic, it reflects jurisdiction or what could be described as a chain of command. In this case, the department of communication would have received an IP address allocation and been assigned a name by the network administrators of the Université de Montréal who would have in turn received IP

and name allocations for the managers of the ".ca" domain name. The Université de Montréal would be responsible for registering how they had allocated their IP addresses and for identifying and ensuring the uniqueness of the corresponding domain names and for making this information available to the managers of ".ca" who, in turn, would be responsible for ensuring that this information is contained in the root. This structure implies that, although the root sits atop the hierarchy, the root itself is simply a database of all domains and not directly responsible for the operation of any of them. This is one respect in which the DNS was structured as a distributed mechanism. A second, more direct respect is in the architecture of the root servers themselves;

- *Root Servers:* While "the" root is often discussed as a singular object, there are in fact multiple copies of the complete database of names and numbers. According to Paré (2003, 12)

  > each individual root server contains information about all the domains below the root and the location of name servers containing additional data about the contents of specific domains.

  As of the beginning of the WSIS process in 2001 there were thirteen root servers identified with the letters "A" to "M". All but the "K" (United Kingdom), "I" (Sweden) and "M" (Japan) servers were physically located in the United States. While all root severs contain the same data, the "A" root server is considered to be the authoritative version of the root zone file. Modifications to the root zone file are made on the "A" server and the other 12 root severs are updated through routine downloads of the "A" server data. The distributed architecture of the root

server system is designed to ensure contingency; if the "A" root server were to be compromised, or put out of service (for example by being hacked or if there were a natural disaster or military strike in the physical area of the server's location) the system is designed to be easily reconfigured to acknowledge any of the other versions as the authoritative version of the root zone file (Paré 2003). Despite this decentralized architecture, the authority of the "A" root server represents an obvious central choking point;

- *The IANA function:* Mueller (2002, 6), describes this choking point as a conflux of three functions:
    - authority to set policy for an allocate IP addresses;
    - authority to define the root zone by creating new top level domain names; and to assign management authority over top level domain names;
    - authority over the operation of the root server system.

This choking point goes by various names, Mueller calls it simply "the root" and Goldsmith and Wu (2006, 30-31) call it "root authority" or "internet naming and numbering authority". It had no official title until 1988 when prominent internet engineer Jon Postel proposed the label "Internet Assigned Numbers Authority" (IANA) to describe the series of naming and numbering related task that had informally been made his responsibility over the course of the design and evolution of the DNS.

The DNS From ARPANET to ICANN

As of 1971, the responsibility for assigning and keeping track of which computer names corresponded with what network node numbers on the ARPANET was a service

provided by The University of Southern California based Information Sciences Institute (ISI), under contract to the USG Defense Communications Agency.[iii] This process involved the maintaining, updating and sharing (and version control protection) of one file called "hosts.txt". As of 1977 a UCLA PhD working at the ISI named John Postel assumed responsibility for "hosts.txt" (Goldsmith and Wu 2006).

Later renamed DARPA, the government and military backers became interested in making the ARPANET interoperable with its other packet-based networks, many of the scientists and engineers who had been instrumental to the functioning of the ARPANET turned their attention to internetworking. Jon Postel worked closely with Vinton Cerf and others on the development of the TCP/IP protocol that effectively launched the internet. The principles of the modern domain name system were proposed in 1982 by Postel colleagues and it was developed over the course of the 1980s under Postel's direction and according to his plans. The successful implementation of the DNS only increased Postel's stature as a "father of the internet" and his authority over internet naming and numbering went unquestioned to the extent that his role could be described as "benevolent dictator" (Goldsmith and Wu 2006, 34).

Between 1991 and 1993 the US Defense Department and the (now involved) National Science Foundation ran a series of procurement competitions that opened ISI's contracts to manage the root to bids from private sector government service firms. The big winner was a private firm called Network Solutions Inc. (NSI) which was granted effective responsibility for executing the day to day management of the root server system but a crucial stipulation summarized by Paré (2003, 19) emphasized that "the continued role of

[iii] This function was labeled: Defense Data Network- Network Information Center (DDN-NIC) see Mueller 2002: 82.

IANA in overseeing the administration of the DNS and implied to that NSI's activities in this realm were to be guided by IANA". Postel, in other words, maintained the authority to make decisions about new top-level domains and define the root zone accordingly (Goldsmith and Wu 2006, 65). The concrete institutional mechanics from which the legitimacy and jurisdiction of this power-sharing agreement extended were seldom discussed and left strategically vague (Mueller 2002). However, both the number of computers connected to the network (see Paré 2003, 20) and the demand for domain name registrations were escalating exponentially over the course of the early 1990s.

By 1995 the World Wide Web was taking off and the launch of a series of web browsers including Netscape and Microsoft's Internet Explorer increased the visibility of, and demand for domain names. Uniform Resource Locators (URLs), the Web standard addressing format, adopted the convention that website addresses would begin with the domain name and follow, in a descending hierarchy delineated by "/", with details on the directory and subdirectory on that computer where the information was located (for example: http://www.umontreal.ca/employeurs/stages_disciplines.html is "http//www. (domain name) umontreal.ca (slash directory) employeurs (slash subdirectory) stages….etc).

The emergence of the World Wide Web fundamentally altered how the DNS was understood and managed by people who had not been involved in its creation. Mueller (2002, 108) writes that domain names "were originally conceived of as locators of IP addresses or other resources of interest to the *network* , not of things that people would be interested in seeing". While web addresses are, in contrast, "names for *resources* which

meant any kind of object that might be placed on the web […] URLs were not just addresses but locators of content".

Viewed restrictively as text-based stand ins for numerical addresses, Postel's assumption was that internet users would of course have preferences, but would not put much stock in which domain name they were given or not given and thus, that the stakes in domain name allocation would be relatively low. However, by linking domain names more directly to content, the meteoric rise of URL browsing on the World Wide Web grafted an expressive function onto the instrumental logic underlining the domain system. As such, the preferences of certain users for specific domains grew stronger and the stakes in domain name allocation increased dramatically.

The stakes were only magnified as more firms sought to develop a web presence and entrepreneurs began experimenting with various e-commerce business models.[iv] In addition, Mueller (2002, 80) also points out that, shorter URLs are more user friendly (and marketable) and that the shortest URL is simply a domain name (www.umontreal.ca for example, is both domain name and URL). Coming to terms with these logics led many users to point multiple domain names to the same computer. This practice was seen to make more sense than registering one domain name and differentiating content hosted on the computer it identified with complicated URLs featuring numerous levels of subdirectories.[v] The sum result was that the demand for domain name registrations

[iv] Including the business model of "cybersquatting" or registering domain names that would be useful to prominent people or corporations with no intent to develop websites and in the hope that the affected parties would pay significantly to have the right to the domain name transferred to them (see Mueller 2002 for an overview of various forms of cybersquatting).

[v] For example, the URL of under-utilized website of the Montréal Joint PhD in Communication Program is the rather unwieldy http://artsandscience.concordia.ca/phdcom/index_en.html. Without moving the files themselves out of their subdirectory on the server of the faculty of arts and science at Concordia University, a more concise and easier to remember one-level domain name-based URL- for example

increased dramatically in the mid 1990s and that controversies emerged in the decisions that were being made in the allocation of domain names.[vi]

An overwhelmed NSI responded by automating the registration process[vii], by introducing fees for domain name registrations[viii] and by instituting a dispute resolution policy to adjudicate between competing domain name claims (see Paré 2003, 22). The DNS that Jon Postel and his contemporaries had envisioned was a public service that would treat the assignment of domain names as a utilitarian and pragmatic task. The move by NSI to start charging for registrations in effect put an official seal of approval on the public's perception that the domain names had not only use value, but exchange value as well. The high price and continued growth of registrations meant that NSI was quickly taking in revenues from domain names that far exceeded their cost-recovery point (Paré 2003). The NSI dispute resolution recognized rights claims related to registrations (*ibid*) and effectively legitimized the view that domain names were property that could be owned and debated. Thus, the NSI dispute resolution policy was at odds with Postel's view that domain names were immaterial labels and that registrars should pass them out on a first come, first serve basis, with concern over nothing more than the question of whether or not they are unique. Postel and the internet community sought to resolve this culture clash by effectively sidelining their commercial partner NSI through the creation

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"montrealjointphd.com" could simply be "pointed" to the same content. As could a mirror URL that would appeal to the French-speaking students and faculty such as "phdconjointemontreal.com".

[vi] For a detailed general typology of different kinds of domain name disputes see Mueller 2002 at section 6.2.

[vii] Meaning that the rules that had been applied by the NSI analysts who had previously considered every domain name application were no longer enforced. Individuals could easily register more than one domain and that distinctions between .net, .com, and .org ceased to be relevant (Mueller 2002, 112)

[viii] NSI requested permission from its government partners to do so and, upon receiving it, was purchased by Science Applications International Corp. (SIAC) which Mueller (2002, 11) describes as " a multi-billion dollar Washington-area defense contractor".

of 150 new top level domains assigned to 50 different registrars that would compete with the NSI and thereby constrain their monopolistic behavior. What followed was a chain of events that forced the competing interests and values of the internet technical community, the US Government and NSI to converge on the jurisdictional grey zone at the centre of the entire root server system.

Simply put, nobody was sure that Postel and the IANA function had the authority to update the root zone file so that it would recognize these new top-level domains; not even Postel himself (see Mueller 2002, 134). IANA after all, had no legal or charter status as an institution and was more or less a term "coined" (Paré 2003, 17) or "invented" (Mueller 2002, 93) by Postel to describe what he did in the DNS space. But, in 1995, Postel decided to take steps to formalize IANA's claim to root authority by repatriating the IANA function to the charter of the Internet Society (ISOC). Despite immediate US Government queries about how such claims could be justified (c.f. Goldmsith and Wu 2006, 37), ISOC set on a course that aimed to operationally demonstrate their theoretical authority in 1997.

Anticipating the 1998 expiration of NSI's contract with the USG, the ISOC brought together a coalition of internet stakeholders that included trademark and intellectual property interests, large multi-national communications firms and the ITU and established the "Generic Top-Level Domain Memorandum of Understanding" or gTLD-MoU as the presumptive successor to the NSI contract with USG. The US Government was concerned: concerned about the revenues that would be lost by the move of internet governance off-shore; concerned about the proximity of the root to interventionist European governments; concerned, in general, for the impacts that the gTLD-MoU might

have on the "predictably and security" of the internet and in turn on the trust and confidence levels of would be commercial investors in internet infrastructure development. These analytical concerns were magnified when politicians and lobbyists turned their attention to the issue by accentuating its nationalistic overtones. Over the course of 1997, in discussions with internet community luminaries including Cerf and Postel, Clinton's Internet Czar Ira Magaziner delivered the message that the US Government had paid for and contracted out development of the DNS system and would not allow the "A" root server hosted and maintained by NSI in Hendon Virginia to recognize authority of the gTLD-MoU over the root.

Nothing happened to change the root on Jan. 1, 1998, what had been proposed as the first operational day of the gTLD-MoU regime (Goldsmith and Wu 2006, 40-42). Instead, the USG moved forward with plans first described in a July 1, 1997, Executive Memorandum directing the Secretary of Commerce to "privatize the internet's domain name and addressing system (DNS) in a manner that increases competition and facilitates international participation in its management". On Jan. 28th, 1998 the first step in this direction was made through the release of a USG Green Paper that publicly outlined plans for domain name privatization while asserting USG authority over the root and failing to mention the gTLD-MoU process or the linkages between IANA and ISOC. On the same day, John Postel instructed the managers of all but the military-controlled root servers to recognize his computer as the authorative "A" root server instead of the one hosted by NSI in Hendon. Though all parties agreed to calling it a "test" after the fact, this event has come to be seen as an effort by Postel to assert the extent to which the internet community could use technical means to assert defacto authority over the root,

regardless of how legal jurisdiction was conceived (See Goldsmith and Wu 2006, at chapter 3).

In the aftermath of this episode, the gap between the internet community and the USG closed significantly and Postel, Cerf and others were enrolled in the task of helping the USG define the process through which the DNS system would be privatized. (see Mueller 2002, chapter 8). A more detailed White Paper laid out the foundational principles of a new international organization for DNS management indicating that the Department of Commerce was "prepared to enter into an agreement with a new not–for–profit corporation formed by private sector internet stakeholders". A process was launched that aimed to allow internet stakeholders from around the world to design this organization together. The so-called "International Forum on the White Paper" collapsed as the views of some participants diverged from the interests that the ISOC leadership had in the parallel backroom deals that were in the process of being brokered (Mueller 2002, 179). In the end, with support and funding from the multi-national communication industry lobby and token nods to internationalization, the internet technical community, in the guise of IANA, agreed to divide up the pie with NSI and the USG. In 1998 the Department of Commerce entered into a Memorandum of Understanding (MOU) with ICANN under the following conditions: The MOU does not give the Department of Commerce the ability to exercise oversight in the traditional context of regulation and the Department of Commerce plays no role in the internal governance or day–to– day operations of ICANN.

The details of the three-way bargain struck between the internet community, USG and NSI would not be finalized until after ICANN's start-up date. In the end, the internet

community was granted operational authority of the DNS. NSI relinquished its monopoly over the .com domain by agreeing to wholesale to other domain name suppliers and committed to making no changes to the root zone file located on the "A" root in its possession without written authorization from the USG but procured the renewal of (and eventually the presumptive renewal right for) its contract as the delegated manager of the .com domain name. Despite the gTLD-MoU process being founded in part around objections to for-profit registrars, in the bargain, NSI was able to enshrine its ability to continue to operate .com as a profit making enterprise. The US Government maintained the sole ultimate authority for updating the root zone file hosted on the "A" root server.

-APPENDIX II-
Analysis of Internet Governance Proposals from WSIS Phase II Prepcom III

Note: All proposals analyzed below can accessed at: WSIS Phase II prepcom III, "Official Documents", ITU, http://www.itu.int/wsis/documents/listing-all.asp?lang=en&c_event=pc2|3&c_type=all|

	Model	Forum	Oversight	Cooperation/ Internationalization
Africa	*a progressive approach* which aims to set up an efficient, transparent and democratic mechanism and ensure equitable resources distribution leading to internationalized multi stakeholder oversight functions of the Internet public policy	Request the UNSG convene by 2006 to review in depth the general policies on Internet Governance. Such a framework should facilitate participation for all stakeholders	multi- stakeholder oversight functions of the Internet public policy	To ensure the role of Governments in decision making with regard to all Internet Public policy development issues; The reinforcement of the Internet Regional Resource Management Institution, to ensure regional autonomy in Internet resources management; The Internationalization of root server management; The strengthening of the participation of specialized institutions from developing countries in the technical management and standardization Internet bodies.
Argentina	*Evolutionary approach to existing arrangements* which aims to ensure that they operate in an efficient, transparent, and democratic multistakeholder fashion, and also to ensure equitable	Request the UNSG convene by 2006 Should not: -replace existing mechanisms or institutions; -have any involvement in the day to day operation of the		the reinforcement of the role of Governments in ICANN decision making with regard to relevant Internet public policy issues; The reinforcement of the Internet Regional Resource Management Institutions, The continued internationalization of ICANN and its functions; The strengthening of the participation of developing countries in specialized institutions for the technical management and standardization Internet

	resource distribution leading to internationalized functions of the Internet,	Internet. Should: -contribute to the sustainability, stability and robustness of the Internet by addressing appropriately public policy issues that are not otherwise being adequately addressed; -be constituted as a neutral, non-duplicative and non-binding process to facilitate the exchange of information and best practices and to identify issues and make known its findings, to enhance awareness and build consensus and engagement; -periodically be reviewed to determine the need for its continuation.		bodies.
Brazil	*new space for dialogue for all stakeholders*	Linked to the UN: and shall assume, inter alia, the following functions: - Interface with intergovernmental bodies and other institutions relevant to Internet governance,;		

		-Identify emerging issues, bring to the attention of the appropriate bodies and make recommendations; - Address issues that are not being dealt with elsewhere and make proposals for action, as appropriate; - Connect different bodies involved in Internet management; -Contribute to capacity building for Internet governance for developing countries, drawing fully on local sources of knowledge and expertise; -Promote and assess on an ongoing basis the embodiment of WSIS principles in Internet governance processes		
Canada	*Enhancing the capacity of all stakeholders*	Constituted: as a neutral, non-duplicative and non-binding process chiefly to facilitate the exchange of information and best practices and to identify issues that are not otherwise being adequately addressed The forum mechanism should		

		be established in a timely fashion to: -Strengthen and enhance stakeholders' engagement in existing and future Internet governance mechanisms, particularly by those from developing countries; -Develop capacity to participate in discussions and decisions on pertinent topics under consideration in relevant institutions; -Encourage the full involvement and participation of all stakeholders and experts engaged in Internet governance to benefit from their expertise, including those of the academic and scientific communities, to facilitate coordination and collaboration, and to avoid duplication; -Make full use of the tools of the information society to conduct capacity building activities, minimizing the need for conferences and face-to-face meetings; and -Establish ongoing electronic forums on pertinent topics and, when appropriate, create a		

		permanent on-line record for future use in capacity development activities, and to continue to add value over time.		
EU	*Transition to a New Cooperation Model*	The task of this Forum is to address multidimensional and interrelated public policy issues, through the exchange and sharing of information and good practices. It shall work on the basis of a clear mandate for a predefined period. It should work with existing institutions or organisations and not try to dominate issues already dealt with elsewhere. It should not perform oversight tasks	The new cooperation model should include the development and application of globally applicable public policy principles and provide an international government involvement at the level of principles over the following naming, numbering and addressing-related matters: a. Provision for a global allocation system of IP number blocks, which is equitable and efficient; b. Procedures for changing the root zone file, specifically for the insertion of new top level domains in the root system and changes of ccTLD managers; c. Establishment of contingency plans to ensure the continuity of crucial DNS functions; d. Establishment of an	The new model for international cooperation should adhere, besides the Geneva principles, to the following guiding principles: - it should not replace existing mechanisms or institutions, but should build on the existing structures of Internet Governance, with a special emphasis on the complementarity between all the actors involved in this process, including governments, the private sector, civil society and international organisations each of them in its field of competence; - this new public-private co-operation model should contribute to the sustainable stability and robustness of the Internet by addressing appropriately public policy issues related to key elements of Internet Governance; - the role of governments in the new cooperation model should be mainly focused on principle issues of public policy, excluding any involvement in the day-to-day operations; - the importance of respecting the architectural principles of the Internet, including the

			arbitration and dispute resolution mechanism based on international law in case of disputes; e. Rules applicable to DNS system.	interoperability, openness and the end-to-end principle.
Iran	*Intergovernmental Council for Global Public Policy and Oversight*		establish an intergovernmental Council for Global Public Policy and Oversight based on the principles of transparency and democracy with the involvement, in an advisory capacity, of the private sector, civil society and the relevant intergovernmental and international organizations. The Council shall be anchored in the United Nations and have, inter alia, the following functions: -Setting of international Internet public policy and providing the necessary oversight relating to Internet resource management, especially the related to ICANN/IANA competence in the areas such as additions or deletions to the root zone file, management of IP addresses, introduction of Global Top level Domains (gTLDs), delegation and redelegation of Country Code To	

			Level Domain (ccTLDs). The relationship between the Council and technical and operational Internet institutions, such as the reformed and internationalized ICANN/IANA, should be formalized. In this model, the reformed ICANN/IANA will be accountable to the Council. This internationalization should be accompanied by an adequate United Nations like host-country agreement for reformed ICANN/IANA. -In addition, its functions might include international public policy issues relating to Internet resource management and international public policy issues that do not fall within the scope of other existing intergovernmental organizations. -Facilitating negotiation of treaties, conventions and agreements on Internet-related public policies. -Fostering and providing guidance on certain developmental issues in the broader Internet agenda, including but not limited to capacity-building, multilingualism, equitable and cost-based international interconnection costs, and	

			equitable access for all. -Approving rules and procedures for dispute resolution mechanisms and conduct arbitration, as required.	
Japan	*Forum for Dialogue*	Forum will: -address multidimensional public policy issues, through the exchange and sharing of information, -work with existing institutions or organizations Forum will not: -try to deal with issues already dealt by elsewhere; -perform oversight tasks	new models should continue to be discussed with other various in the Forum together issues.	Such consideration should however, be made based on the current structure in an evolutionary manner.
Russia	*Some Adjustments need to be made to the existing model*		Any organizational form for the governance function/oversight function should adhere to the following principles: -No single Government should have a pre-eminent role in relation to international Internet governance. -The organizational form for the governance function will be multilateral, transparent and	

Russia	*Some Adjustments need to be made to the existing model*		Any organizational form for the governance function/oversight function should adhere to the following principles: -No single Government should have a pre-eminent role in relation to international Internet governance. -The organizational form for the governance function will be multilateral, transparent and democratic, with the full involvement of Governments, the private sector, civil society and international organizations. -The organizational form for the governance function will involve all stakeholders and relevant intergovernmental and international organizations within their respective roles.	

-APPENDIX III-
Certificat d'éthique (CÉRFAS)

Université de Montréal

COMITÉ D'ÉTHIQUE DE LA RECHERCHE DE LA FACULTÉ DES ARTS ET DES SCIENCES (CÉRFAS)

CERTIFICAT D'ÉTHIQUE

Le Comité d'éthique de la recherche de la Faculté des arts et des sciences, selon les procédures en vigueur, a examiné le projet de recherche intitulé :

« Communication governance and the public sphere in the context of digital technologies and globalization »

et soumis par : ***Jérémy Shtern, étudiant au doctorat, Département de communication***

Le Comité a conclu que la recherche proposée respecte les règles d'éthique énoncées à la « Politique sur la recherche avec des êtres humains » de l'Université de Montréal.

Tout changement anticipé au protocole de recherche doit être communiqué au CÉRFAS qui devra en évaluer l'impact au chapitre de l'éthique afin de déterminer si une nouvelle demande de certificat d'éthique est nécessaire.

Toute interruption prématurée du projet ou tout incident grave devra être immédiatement signalé au CÉRFAS.

Signatures blocked from final copy

Sylvie Normandeau, présidente
CÉRFAS

Katia Maliantovitch, secrétaire
CÉRFAS

Date de délivrance : 05 JUIN 2007

-APPENDIX IV-

Paragraphs 29-81 of The Tunis Agenda for the Information Society

World Summit on the Information Society

Document: WSIS-05/TUNIS/DOC/6(Rev. 1)-E

Date: 18 November 2005

Original: English

[Full Document available at: http://www.itu.int/wsis/docs2/tunis/off/6rev1.html]

TUNIS AGENDA FOR THE INFORMATION SOCIETY

[...]

INTERNET GOVERNANCE

29. We reaffirm the principles enunciated in the Geneva phase of the WSIS, in December 2003, that the Internet has evolved into a global facility available to the public and its governance should constitute a core issue of the Information Society agenda. The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations. It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism.

30. We acknowledge that the Internet, a central element of the infrastructure of the Information Society, has evolved from a research and academic facility into a global facility available to the public.

31. We recognize that Internet governance, carried out according to the Geneva principles, is an essential element for a people-centred, inclusive, development-oriented and non-

discriminatory Information Society. Furthermore, we commit ourselves to the stability and security of the Internet as a global facility and to ensuring the requisite legitimacy of its governance, based on the full participation of all stakeholders, from both developed and developing countries, within their respective roles and responsibilities.

32. We thank the UN Secretary-General for establishing the Working Group on Internet Governance (WGIG). **We commend** the chairman, members and secretariat for their work and for their report.

33. We take note of the WGIG's report that has endeavoured to develop a working definition of Internet governance. It has helped identify a number of public policy issues that are relevant to Internet governance. The report has also enhanced our understanding of the respective roles and responsibilities of governments, intergovernmental and international organizations and other forums as well as the private sector and civil society from both developing and developed countries.

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:

Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.

The 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.

Civil society has also played an important role on Internet

matters, especially at community level, and should continue to play such a role.

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

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

36. We recognize the valuable contribution by the academic and technical communities within those stakeholder groups mentioned in paragraph 35 to the evolution, functioning and development of the Internet.

37. We seek to improve the coordination of the activities of international and intergovernmental organizations and other institutions concerned with Internet governance and the exchange of information among themselves. A multi-stakeholder approach should be adopted, as far as possible, at all levels.

38. We call for the reinforcement of specialized regional Internet resource management institutions to guarantee the national interest and rights of countries in that particular region to manage their own Internet resources, while maintaining global coordination in this area.

39. We seek to build confidence and security in the use of ICTs by strengthening the trust framework. **We reaffirm** the necessity to further promote, develop and implement in cooperation with all stakeholders a global culture of cybersecurity, as outlined in UNGA Resolution 57/239 and other relevant regional frameworks. This culture requires national action and increased international cooperation to strengthen security while enhancing the protection of personal information, privacy and data. Continued development of the culture of cybersecurity should enhance access and trade and must take into account the level of social and economic development of each country and respect the development-oriented aspects of the Information Society.

40. We underline the importance of the prosecution of cybercrime, including cybercrime committed in one jurisdiction, but having effects in another. **We further underline** the necessity of effective and efficient tools and actions, at national and international levels, to promote international cooperation among, *inter alia*, law-enforcement agencies on cybercrime. **We call upon governments** in cooperation with other stakeholders to develop necessary legislation for the investigation and prosecution of cybercrime, noting existing frameworks, for example, UNGA Resolutions 55/63 and 56/121 on "*Combating the criminal misuse of information technologies*" and regional initiatives including, but not limited to, the Council of Europe's *Convention on Cybercrime*.

41. We resolve to deal effectively with the significant and growing problem posed by spam. **We take note** of current multilateral, multi-stakeholder frameworks for regional and international cooperation on spam, for example, the APEC Anti-Spam Strategy, the London Action Plan, the Seoul-Melbourne Anti–Spam Memorandum of Understanding and the relevant activities of OECD and ITU. **We call upon** all stakeholders to adopt a multi-pronged approach to counter spam that includes, *inter alia*, consumer and business education; appropriate legislation, law-enforcement authorities and tools; the continued development of technical and self-regulatory measures; best practices; and international cooperation.

42. We reaffirm our commitment to the freedom to seek, receive, impart and use information, in particular, for the creation, accumulation and dissemination of knowledge. **We affirm** that measures undertaken to ensure Internet stability and security, to fight cybercrime and to counter spam, must protect and respect the provisions for privacy and freedom of expression as contained in the relevant parts of the Universal Declaration of Human Rights and the Geneva Declaration of Principles.

43. We reiterate our commitments to the positive uses of the Internet and other ICTs and to take appropriate actions and preventive measures, as determined by law, against abusive uses of ICTs as mentioned under the *Ethical Dimensions of the Information Society* of the Geneva Declaration of Principles and

Plan of Action.

44. We also underline the importance of countering terrorism in all its forms and manifestations on the Internet, while respecting human rights and in compliance with other obligations under international law, as outlined in UNGA A/60/L.1 with reference to Article 85 of the *2005 World Summit Outcome*.

45. We underline the importance of the security, continuity and stability of the Internet, and the need to protect the Internet and other ICT networks from threats and vulnerabilities. **We affirm** the need for a common understanding of the issues of Internet security, and for further cooperation to facilitate outreach, the collection and dissemination of security-related information and exchange of good practice among all stakeholders on measures to combat security threats, at national and international levels.

46. We call upon all stakeholders to ensure respect for privacy and the protection of personal information and data, whether via adoption of legislation, the implementation of collaborative frameworks, best practices and self-regulatory and technological measures by business and users. **We encourage all stakeholders**, in particular governments, to reaffirm the right of individuals to access information according to the Geneva Declaration of Principles and other mutually agreed relevant international instruments, and to coordinate internationally as appropriate.

47. We recognize the increasing volume and value of all e-business, both within and across national boundaries. **We call for** the development of national consumer-protection laws and practices, and enforcement mechanisms where necessary, to protect the right of consumers who purchase goods and services online, and for enhanced international cooperation to facilitate a further expansion, in a non-discriminatory way, under applicable national laws, of e-business as well as consumer confidence in it.

48. We note with satisfaction the increasing use of ICT by governments to serve citizens and encourage countries that have not yet done so to develop national programmes and strategies for e-government.

49. We reaffirm our commitment to turning the digital divide into digital opportunity, and **we commit** to ensuring harmonious and equitable development for all. **We commit** to foster and provide guidance on development areas in the broader Internet governance arrangements, and to include, amongst other issues, international interconnection costs, capacity building and technology/know-how transfer. **We encourage** the realization of multilingualism in the Internet development environment, and **we support** the development of software that renders itself easily to localization, and enables users to choose appropriate solutions from different software models including open-source, free and proprietary software.

50. We acknowledge that there are concerns, particularly amongst developing countries, that the charges for international Internet connectivity should be better balanced to enhance access. **We therefore call for** the development of strategies for increasing affordable global connectivity, thereby facilitating improved and equitable access for all, by:

- **Promoting Internet transit and interconnection costs that are commercially negotiated in a competitive environment and that should be oriented towards objective, transparent and non-discriminatory parameters, taking into account ongoing work on this subject.**

- **Setting up regional high-speed Internet backbone networks and the creation of national, sub-regional and regional Internet Exchange Points (IXPs).**

- **Recommending donor programmes and developmental financing mechanisms to consider the need to provide funding for initiatives that advance connectivity, IXPs and local content for developing countries.**

- **Encouraging ITU to continue the study of the question of International Internet Connectivity (IIC) as a matter of urgency, and to periodically provide output for consideration and possible implementation. We also encourage other relevant institutions to address this**

issue.

- **Promoting the development and growth of low-cost terminal equipment, such as individual and collective user devices, especially for use in developing countries.**

- **Encouraging Internet Service Providers (ISPs) and other parties in the commercial negotiations to adopt practices towards attainment of fair and balanced interconnectivity costs.**

- **Encouraging relevant parties to commercially negotiate reduced interconnection costs for Least Developed Countries (LDCs), taking into account the special constraints of LDCs.**

51. We encourage governments and other stakeholders, through partnerships where appropriate, to promote ICT education and training in developing countries, by establishing national strategies for ICT integration in education and workforce development and dedicating appropriate resources. Furthermore, international cooperation would be extended, on a voluntary basis, for capacity building in areas relevant to Internet governance. This may include, in particular, building centres of expertise and other institutions to facilitate know-how transfer and exchange of best practices, in order to enhance the participation of developing countries and all stakeholders in Internet governance mechanisms.

52. In order to ensure effective participation in global Internet governance, **we urge** international organizations, including intergovernmental organizations, where relevant, to ensure that all stakeholders, particularly from developing countries, have the opportunity to participate in policy decision-making relating to Internet governance, and to promote and facilitate such participation.

53. We commit to working earnestly towards multilingualization of the Internet, as part of a multilateral, transparent and democratic process, involving governments and

all stakeholders, in their respective roles. In this context, **we also support** local content development, translation and adaptation, digital archives, and diverse forms of digital and traditional media, and recognize that these activities can also strengthen local and indigenous communities. **We would therefore underline** the need to:

Advance the process for the introduction of multilingualism in a number of areas including domain names, e-mail addresses and keyword look-up.

Implement programmes that allow for the presence of multilingual domain names and content on the Internet and the use of various software models in order to fight against the linguistic digital divide and to ensure the participation of all in the emerging new society.

Strengthen cooperation between relevant bodies for the further development of technical standards and to foster their global deployment.

54. We recognize that an enabling environment, at national and international levels, supportive of foreign direct investment, transfer of technology, and international cooperation, particularly in the areas of finance, debt and trade, is essential for the development of the Information Society, including for the development and diffusion of the Internet and its optimal use. In particular, the roles of the private sector and civil society as the drivers of innovation and private investment in the development of the Internet are critical. Value is added at the edges of the network in both developed and developing countries when the international and domestic policy environment encourages investment and innovation.

55. We recognize that the existing arrangements for Internet governance have worked effectively to make the Internet the highly robust, dynamic and geographically diverse medium that it is today, with the private sector taking the lead in day-to-day operations, and with innovation and value creation at the edges.

56. The Internet remains a highly dynamic medium and therefore any framework and mechanisms designed to deal with Internet governance should be inclusive and responsive to the exponential growth and fast evolution of the Internet as a common platform for the development of multiple applications.

57. The security and stability of the Internet must be maintained.

58. We recognize that Internet governance includes more than Internet naming and addressing. It also includes other significant public policy issues such as, *inter alia*, critical Internet resources, the security and safety of the Internet, and developmental aspects and issues pertaining to the use of the Internet.

59. We recognize that Internet governance includes social, economic and technical issues including affordability, reliability and quality of service.

60. We further recognize that there are many cross-cutting international public policy issues that require attention and are not adequately addressed by the current mechanisms.

61. We are convinced that there is a need to initiate, and reinforce, as appropriate, a transparent, democratic, and multilateral process, with the participation of governments, private sector, civil society and international organizations, in their respective roles. This process could envisage creation of a suitable framework or mechanisms, where justified, thus spurring the ongoing and active evolution of the current arrangements in order to synergize the efforts in this regard.

62. We emphasize that any Internet governance approach should be inclusive and responsive and should continue to promote an enabling environment for innovation, competition and investment.

63. Countries should not be involved in decisions regarding another country's country-code Top-Level Domain (ccTLD). Their legitimate interests, as expressed and defined by each country, in diverse ways, regarding decisions affecting their ccTLDs, need to be respected, upheld and

addressed via a flexible and improved framework and mechanisms.

64. We recognize the need for further development of, and strengthened cooperation among, stakeholders for public policies for generic Top-Level Domain names (gTLDs).

65. We underline the need to maximize the participation of developing countries in decisions regarding Internet governance, which should reflect their interests, as well as in development and capacity building.

66. In view of the continuing internationalization of the Internet and the principle of universality, **we agree** to implement the Geneva Principles regarding Internet governance.

67. We agree, *inter alia*, to invite the UN Secretary-General to convene a new forum for multi-stakeholder policy dialogue.

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.

70. Using relevant international organizations, such cooperation should include the development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resources. In this regard, **we 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.

71. The process towards enhanced cooperation, to be started by

the UN Secretary-General, 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.

72. We ask the UN Secretary-General, in an open and inclusive process, to convene, by the second quarter of 2006, a meeting of the new forum for multi-stakeholder policy dialogue—called the *Internet Governance Forum* (IGF). The mandate of the Forum is to:

Discuss public policy issues related to key elements of Internet governance in order to foster the sustainability, robustness, security, stability and development of the Internet.

Facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet and discuss issues that do not fall within the scope of any existing body.

Interface with appropriate intergovernmental organizations and other institutions on matters under their purview.

Facilitate the exchange of information and best practices, and in this regard make full use of the expertise of the academic, scientific and technical communities.

Advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the Internet in the developing world.

Strengthen and enhance the engagement of stakeholders in existing and/or future Internet governance mechanisms, particularly those from developing

countries.

Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations.

Contribute to capacity building for Internet governance in developing countries, drawing fully on local sources of knowledge and expertise.

Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet governance processes.

Discuss, *inter alia*, issues relating to critical Internet resources.

Help to find solutions to the issues arising from the use and misuse of the Internet, of particular concern to everyday users.

Publish its proceedings.

73. The Internet Governance Forum, in its working and function, will be multilateral, multi-stakeholder, democratic and transparent. To that end, the proposed IGF could:

Build on the existing structures of Internet governance, with special emphasis on the complementarity between all stakeholders involved in this process – governments, business entities, civil society and intergovernmental organizations.

Have a lightweight and decentralized structure that would be subject to periodic review.

Meet periodically, as required. IGF meetings, in principle, may be held in parallel with major relevant UN conferences, *inter alia*, to use logistical support.

74. We encourage the UN Secretary-General to examine a range of options for the convening of the Forum, taking into

consideration the proven competencies of all stakeholders in Internet governance and the need to ensure their full involvement.

75. The UN Secretary-General would report to UN Member States periodically on the operation of the Forum.

76. We ask the UN Secretary-General to examine the desirability of the continuation of the Forum, in formal consultation with Forum participants, within five years of its creation, and to make recommendations to the UN Membership in this regard.

77. The IGF would have no oversight function and would not replace existing arrangements, mechanisms, institutions or organizations, but would involve them and take advantage of their expertise. It would be constituted as a neutral, non-duplicative and non-binding process. It would have no involvement in day-to-day or technical operations of the Internet.

78. The UN Secretary-General should extend invitations to all stakeholders and relevant parties to participate at the inaugural meeting of the IGF, taking into consideration balanced geographical representation. The UN Secretary-General should also:

draw upon any appropriate resources from all interested stakeholders, including the proven expertise of ITU, as demonstrated during the WSIS process; and

establish an effective and cost-efficient bureau to support the IGF, ensuring multi-stakeholder participation.

79. Diverse matters relating to Internet governance would continue to be addressed in other relevant fora.

80. We encourage the development of multi-stakeholder processes at the national, regional and international levels to discuss and collaborate on the expansion and diffusion of the Internet as a means to support development efforts to achieve internationally agreed development goals and objectives,

including the Millennium Development Goals.

81. We reaffirm our commitment to the full implementation of the Geneva Principles.

82. We welcome the generous offer of the Government of Greece to host the first meeting of the IGF in Athens no later than 2006 and **we call upon** the UN Secretary-General to extend invitations to all stakeholders and relevant parties to participate at the inaugural meeting of the IGF.