



Appraising the Success of the Internet Governance Forum

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This paper was written by Dr. Jeremy Malcolm, with some editing and additions by the IGP Scientific Committee. IGP does not wholly endorse the positions taken by Malcolm but is publishing the paper because we believe it raises important points about the degree to which the Internet Governance Forum is fulfilling its mission. Our goal is to advance discussion of the IGF's performance in order to contribute to the review of the IGF and the possible renewal of its mandate in 2010. For specific debates and discussions of this paper, see the IGP Blog at <http://blog.internetgovernance.org>

Abstract: *The Internet Governance Forum provides a venue where stakeholders from government, the private sector and civil society can discuss issues of public policy related to the Internet. It has been widely lauded as a success. Such accolades may be premature, however. Although there is inherent value in a multistakeholder discussion forum, the IGF is also mandated to make progress on the issues that it discusses, including through making recommendations where appropriate. This is a task for which the IGF is neither structurally nor procedurally equipped in its present form. To take on that part of its mandate, issues raised for discussion within the IGF should be the subject of moderated, small group deliberation, both face-to-face and online. Its Multistakeholder Advisory Group should then be charged with assessing whether any consensus on an issue has emerged, and in appropriate cases, authorized to express that consensus in a recommendation.*

1 The success of the IGF

Since its formation in 2006, the Internet Governance Forum (IGF) has been widely lauded as an innovative experiment in global governance, bringing together stakeholders from government, the private sector and civil society to jointly address public policy issues for the Internet domain.¹ Such effusive praise (though mostly from within) contrasts markedly with the more critical reception given to that other revolutionary institution of Internet governance, ICANN, during its early days of operation.²

However the IGF is no ICANN. Most obviously, the IGF was established from the outset under the aegis of the United Nations as an outcome of the World Summit on the Information Society (WSIS), whereas ICANN continues to struggle to overcome its own legacy as essentially a private sector contractor to the United States

1 For example, [ICC, ICC/BASIS Feedback on First Internet Governance Forum \(IGF\) in Athens, Greece URL: \[http://www.iccwbo.org/uploadedFiles/BASIS/Documents/ICCBASIS_input_on_IGF_Athens_Final_12_01_07.pdf\]\(http://www.iccwbo.org/uploadedFiles/BASIS/Documents/ICCBASIS_input_on_IGF_Athens_Final_12_01_07.pdf\)](http://www.iccwbo.org/uploadedFiles/BASIS/Documents/ICCBASIS_input_on_IGF_Athens_Final_12_01_07.pdf) and [ISOC, Contribution to the Internet Governance Forum Consultations May 2007 URL: \[http://www.intgovforum.org/May_contributions/ISOC%20IGF%20May%2007.pdf\]\(http://www.intgovforum.org/May_contributions/ISOC%20IGF%20May%2007.pdf\)](http://www.intgovforum.org/May_contributions/ISOC%20IGF%20May%2007.pdf).

2 For example, [Milton Mueller, ICANN and Internet Governance: Sorting through the Debris of Self-Regulation, Info 1 1999](#) and [A Michael Froomkin, Wrong Turn in Cyberspace: Using ICANN to Route Around the APA and the Constitution, Duke LJ 50 2000](#).

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Department of Commerce. With its more cosmopolitan roots the IGF was always more likely to enjoy a broader base of support, not to mention that diplomatic nicety requires, as IGF Multistakeholder Advisory Group Chair Nitin Desai put it, that a UN meeting be judged “either a success or an outstanding success.”³

ICANN’s purpose is both more immediately consequential and more specific than that of the IGF.⁴ When ICANN was established in 1998 it assumed the relatively clearly-defined (if not easily fulfilled) mandate “to coordinate, at the overall level, the global Internet's systems of unique identifiers” which was already by then a function of key political and economic significance.⁵ The IGF’s mandate was more novel, and put forward in much more open and ambiguous terms.⁶ Thus it might well be asked of those who have been quick to claim the IGF a success, in exactly what has it been so successful?

One response would be to highlight those aspects of the IGF’s mandate from the Tunis Agenda (the IGF’s constitutional document from WSIS) that the IGF has fulfilled. such as the mandate to “Discuss public policy issues related to key elements of Internet governance.” There are, however, at least as many aspects of the Tunis Agenda’s mandate that the IGF, even on the the most benevolent assessment, has not begun to fulfill. IGF has done little, for example, to “Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet governance processes;” or to “Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations.”

A more holistic assessment of the IGF’s performance requires one to delve back beyond the Tunis Agenda to examine the original impetus for the establishment of an Internet Governance Forum. This was the recognition of the Working Group on Internet Governance (WGIG) of

a vacuum within the context of existing structures, since there is no global multi-stakeholder forum to address Internet-related public policy issues. [WGIG] came to the conclusion that there would be merit in creating such a space for dialogue among all stakeholders. This space could address these issues, as well as emerging issues, that are cross-cutting and multidimensional and that either affect more than one institution, are not

3 During the IGF’s May 2006 open consultation meeting, a transcript of which is available at <http://www.intgovforum.org/contributions/IGF-190506am.txt>.

4 Compare [Center for Democracy & Technology, Assessing ICANN: Towards Civil Society Metrics to Evaluate the ICANN Experiment](http://www.cdt.org/dns/icann/030731assessingicann.pdf) URL: <http://www.cdt.org/dns/icann/030731assessingicann.pdf> and [John Mathiason, The Road to Rio and Beyond: Results-based Management of the UN Internet Governance Forum](http://www.internetcgovernance.org/pdf/roadtorio.pdf) URL: <http://www.internetcgovernance.org/pdf/roadtorio.pdf>.

5 [ICANN, Articles of Incorporation](http://www.icann.org/general/articles.htm) URL: <http://www.icann.org/general/articles.htm>

6 [WSIS, Tunis Agenda for the Information Society](http://www.itu.int/wsis/docs2/tunis/off/6rev1.html) URL: <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>, paragraph 72

dealt with by any institution or are not addressed in a coordinated manner.⁷

This recognition was reflected in the Tunis Agenda's acknowledgment of the existence of "many cross-cutting international public policy issues that require attention and are not adequately addressed by the current mechanisms."⁸

So in the broadest terms, the IGF can be rated a success if it has filled this institutional vacuum by providing a new venue for Internet-related public policy issues to be addressed by all stakeholders in concert. Its function would be roughly analogous to the venue that the Internet Engineering Task Force (IETF) provides for the development of Internet technical standards, or that ICANN provides for developing and implementing policies for Internet identifiers. To the extent that it has not filled this vacuum, it must be rated a failure.

2 The failure of the IGF

Early indications are that it has not. Internet-related public policy issues continue to be addressed primarily in an *ad hoc*, isolated manner in individual stakeholder silos, outside the IGF, rather than in collaboration between stakeholder groups through the IGF. To give two examples:

- Across a number of jurisdictions, organisations representing copyright owners have been privately negotiating with Internet Service Providers (ISPs) to limit or terminate the Internet access of customers suspected of illegally sharing copyright material online, without such alleged infringements having been proved to a court or other authority. Such negotiations take place in the shadow of the threat of government regulation, for which these organisations have also been strongly lobbying (so far with success in France).⁹ However because such discussions have taken place outside a multistakeholder policy body such as the IGF, they have been dominated by the voices of intellectual property holders, without the opportunity for Internet consumers to interject with balancing perspectives.
- Similarly, the issue of private sector involvement in the Internet monitoring and filtering programmes of countries such as China and Iran, which was raised at the Athens IGF meeting, has not since been the subject of multistakeholder deliberation, but rather has been dealt with in isolation and outside of the IGF. A coalition of corporations including Microsoft, Google and Yahoo!, in conjunction with a small group of civil society organizations acting outside of the IGF, have been privately developing a code of conduct

7 [WGIG, Report of the Working Group on Internet Governance URL:](http://www.wgig.org/docs/WGIGREPORT.pdf)

<http://www.wgig.org/docs/WGIGREPORT.pdf>, paragraph 40

8 [WSIS, Tunis Agenda for the Information Society \(as in n. 6\)](#), para 68

9 [Nate Anderson, Three Strikes Efforts Hit Worldwide Home Run URL:](#)

<http://arstechnica.com/news.ars/post/20080819-ifpi-three-strikes-efforts-hit-worldwide-home-run.html>

on this issue without the benefit of governmental input,¹⁰ whilst meanwhile legislation has been proposed for both the United States and European parliaments addressing the same issue from a different angle.¹¹

- IGF also has played no apparent role in facilitating progress on issues related to the unilateral oversight of ICANN by the U.S. government. This issue was one of the main factors that led to the creation of the Working Group on Internet Governance and the IGF. And yet key post-WSIS developments in that relationship do not utilize the Forum at all. For example, U.S. Commerce Department proceedings remain the authoritative platform for the important discussions of who should sign the root zone to facilitate the global implementation of a secure DNS. Although the Internet Governance Project has twice brought the issue into IGF Workshops, this pressing topic has never made it into a main session and none of the principals involved view the Forum as the place to work out the issues. Similarly, during the Commerce Department's 2008 mid-term review of ICANN's oversight contract, there were proposals that IGF might provide a kind of "soft oversight" in lieu of the U.S. government.¹² This idea was not picked up; the lack of interest from the U.S. was unsurprising, of course, but the idea seemed to frighten the Forum Secretariat and many Forum supporters, as well.

Even where multistakeholder governance is taking place, it is sometimes within other institutions than the IGF. For example, the Future of the Internet Economy was the subject of an OECD ministerial meeting in June 2008, at which recommendations from parallel fora of other stakeholder groups were presented, though the Seoul Declaration concluded by the meeting was open only to governmental signature. The meeting summary recorded that "[m]any of the questions raised ... could not be dealt with effectively in a domestic context; they would benefit from a global debate, in which all stakeholders participate," but made no reference at all to the central role of the IGF in this process, at least according to the original conception of WGIG.¹³

As another example of parallel initiatives in multistakeholder Internet governance that have bypassed the IGF, ICANN, although notionally an institution with a purely technical mandate, has continued to attempt to determine issues of public policy such as the balancing of privacy interests in the WHOIS service that identifies the

10 [Center for Democracy & Technology, Companies, Human Rights Groups, Investors, Academics and Technology Leaders to Address International Free Expression and Privacy Challenges](http://www.cdt.org/press/20070118press-humanrights.php) URL: <http://www.cdt.org/press/20070118press-humanrights.php>

11 The *Global Online Freedom Act of 2007* (HR 275) (which was introduced in the 110th session of Congress, but lapsed), and based on it, [Jules Maaten et al., Proposal for a Directive of the European Parliament and of the Council Concerning the EU Global Online Freedom Act](http://www.julesmaaten.eu/uploads/EU%20GOFA.htm) URL: <http://www.julesmaaten.eu/uploads/EU%20GOFA.htm>

12 Comments of the Internet Governance Project, *The Continued Transition of the Technical Coordination and Management of the Internet's Domain Name and Addressing System: Midterm Review of the Joint Project Agreement* <http://internetgovernance.org/pdf/IGP-JPA-08-comments.pdf>

13 [OECD, Summary of the Chair](http://www.oecd.org/dataoecd/53/49/40989438.pdf) URL: <http://www.oecd.org/dataoecd/53/49/40989438.pdf>, 3

ownership of Internet domains,¹⁴ and in setting non-technical specifications for the introduction of new top-level generic domain names (gTLDs).¹⁵ Indeed, whilst ICANN hosted a session at the second meeting of the IGF in Rio de Janeiro, in doing so it was essentially giving a trade show presentation rather than submitting public policy issues for multistakeholder deliberation.

That such issues are being dealt with in other fora than the IGF is not a problem in itself; indeed a healthy ecosystem of competing governance institutions only helps to promote their mutual accountability. However it can become a concern when the other institutions are more narrowly constituted, and therefore less democratically legitimate than the open and multi-stakeholder IGF. It is also a concern when it allows powerful players to “forum shop” to avoid appropriate scrutiny and accountability.

The public policy issues mentioned above, including intellectual property, Internet filtering and privacy, are amongst those that fall squarely within the mandate of the IGF to be addressed through a multistakeholder process.¹⁶ Why haven’t they been? Why has governance of these issues been left to other, more narrowly-constituted institutions and mechanisms while the IGF has been left on the sidelines?

There are three plausible explanations. First is that the IGF could never have constituted the peak Internet public policy body that WGIG anticipated, and that the authors of the Tunis Agenda never really intended it to do so. Rather, the IGF was intended as a mostly aspirational first step towards the promotion of the ideal of multistakeholder governance, but not actually to realise that lofty ideal, which would be left to the future “process towards enhanced cooperation” that the Tunis Agenda also foreshadowed.¹⁷

This first explanation is that of the realist, and there is much to commend it. After all, the establishment of the IGF was nothing more than a compromise, arising out of the refusal of the United States to countenance the broadening of public oversight over management of the root of the domain name system (DNS). Nitin Desai frankly acknowledged this in February 2008, stating:

in many ways the way the IGF as actually operated in Rio and in Athens and possible [*scil* possibly] how it can operate in Hyderabad onwards is possibly quite different from what people thought it would be like when the decision was taken to set up an IGF. Do remember that the origins of the IGF lie in a political compromise in Tunis.¹⁸

14 [GNSO Council, Recent GNSO Policy Development Activities on WHOIS URL: http://gnsocouncil.org/whois-privacy/gnsocouncil-report-board-whois-15nov07.pdf](http://gnsocouncil.org/whois-privacy/gnsocouncil-report-board-whois-15nov07.pdf)

15 [GAC, GAC Principles Regarding New gTLDs URL: http://gac.icann.org/web/home/gTLD_principles.pdf](http://gac.icann.org/web/home/gTLD_principles.pdf)

16 [WSIS, Tunis Agenda for the Information Society \(as in n. 6\)](#) paras 39, 42, 46, and 49

17 [WSIS, Tunis Agenda for the Information Society \(as in n. 6\)](#) para 71

18 At the open consultation meeting of 26 February which is transcribed at <http://www.intgovforum.org/feb26/Geneva-IGF-2-26-08%20Full%20Day%20ver1.txt>.

On this account, even if it was once intended that the IGF should exercise an effective role in global Internet governance, it is clear now that the political will no longer exists for it to do so. It is therefore unrealistic to demand that the IGF now fulfil the mission envisioned for it by WGIG when that mission no longer enjoys broad support from the IGF's stakeholders.

However, there is a second explanation for the apparent failure of the IGF to meet its original objectives, one that accords more closely with the IGF's public rhetoric than the first realist explanation does. This is that the IGF has in fact begun to achieve its objectives, but in a more subtle way than would be possible if it were endowed with formal authority. On this account, although on the surface the IGF may appear to provide nothing more than a venue for discussion, such discussion, even without more, is a form of public discourse that allows all stakeholders to contribute their perspectives upon public policy issues, which those institutions that do have formal authority can then draw upon in making decisions.

After all, the IGF's mandate is ambiguous, and certainly narrower than WGIG intended it to be.¹⁹ It is therefore arguable that the formal structure and procedures of the IGF were never intended to amount to more than an open venue for discussion. Even as such, the IGF can amount essentially to a public sphere for deliberation, which over the longer term can be expected to permeate other governance institutions and influence decisions taken there.²⁰

This second explanation for the IGF's apparent failure is also attractive; it recognises that soft power may exist even in the absence of decision-making authority,²¹ and explains for example why, after the issue of corporate involvement in governmental Internet filtering and monitoring was raised at the IGF's first meeting, this issue was taken further not by the IGF but by government (through proposed legislation) and the private sector (through the mechanism of norms, in the form of a non-binding code of conduct).

The fatal weakness of this rationalisation for the shortcomings of the IGF is that it places too much of a gloss on the IGF's mandate, both as first outlined by WGIG and as reduced to its final form in the Tunis Agenda. As noted above, to "discuss public policy issues related to key elements of Internet governance" is only the first paragraph of that mandate, which also requires the IGF to pursue a number of activities that cannot be accomplished by discussion alone; for example to "identify

19 Compare paragraph 72 of the Tunis Agenda with [WGIG \(as in n. 7\)](#), 11.

20 [Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* Cambridge, MA: MIT Press, 1996](#), 371

21 [Annie-Marie Slaughter, *Democratic Governance and International Law* Cambridge: Cambridge University Press, 2000](#), chap. Government Networks: the Heart of the Liberal Democratic Order

emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations.”

Moreover, to reduce the IGF to an impotent annual conference is to unacceptably subordinate the autonomy of those actors who lack formal authority – principally civil society, since both governments and the private sector possess ample authority in their respective spheres of state and market – to those who do. The Geneva Declaration of Principles that was agreed at the first phase of WSIS laid down that future Internet governance arrangements should be “multilateral, transparent, democratic and with the full involvement of governments, the private sector, civil society and international organizations.”²²

There must be a more transparent and accountable mechanism for linking the deliberations of the IGF (as a public sphere in miniature) to other, more authoritative institutions and mechanisms of Internet governance, than simply the hope that those deliberations will be disseminated upward through some form of osmosis. Until there is, the WSIS process criteria that demand the full involvement of all stakeholders in Internet governance processes have not been fulfilled.

This leads to the third and final explanation for the IGF’s failure to fill the observed vacuum in global governance for the Internet: not that the IGF was never intended or expected to work as a multistakeholder governance forum, nor that it is sufficient for that forum to operate as a venue for discussion only, but rather that the IGF’s failure to fulfil its mandate stems from flaws in the structure and processes established for it principally by its Secretariat and Multistakeholder Advisory Group. If this is the case, then there is no *a priori* reason why the IGF could not be reformed to redress these flaws.²³

The remainder of this article will briefly consider what some of those necessary reforms might be, under two headings: reforms to the IGF’s processes, and reforms to its structure. Since space does not permit an examination of the reforms required to further each individual paragraph of the IGF’s mandate, focus will be given to its policy development roles, best exemplified by the last-mentioned paragraph that requires the IGF to be able to conclude recommendations on appropriate issues of Internet-related public policy – or more generally, to WGIG’s directive that there should be a body to address cross-cutting Internet policy issues in accordance with the

22 [WSIS, Geneva Declaration of Principles URL: http://www.itu.int/wsis/docs/geneva/official/dop.html](http://www.itu.int/wsis/docs/geneva/official/dop.html), para 48

23 Of course, this assumes that the Secretariat and MAG did not establish the structure and procedures they did in response to the demands of powerful stakeholders to prevent the IGF from altering the status quo. From an institutionalism perspective, it would not be surprising if such pressures were prevalent.

WSIS process criteria.²⁴

It will be concluded that an IGF that more fully realised the ambitions of those who proposed it could have taken shape in place of the lesser body that exists today, and that by refining its processes and structure it may yet be possible to bring it closer to that ideal.

3 Reforming the IGF's processes

If the IGF is to have the capacity to make recommendations on Internet-related public policy issues in appropriate cases, it will be necessary for it to develop processes to support decision-making; not in the sense that it would ever issue formal, let alone binding decisions, but simply because the weight of any recommendations it might make as a body would depend upon those recommendations having first met with at least an IETF-style “rough consensus.”

One common objection to the idea that the IGF could produce such recommendations is that the body lacks a defined membership that could reach a consensus. Thus before the IGF even convened for its first meeting, its future Chairman Nitin Desai sharply observed, “It’s not a decision-making body. It cannot be a decision-making body. It does not have a membership, so who is going to author a decision? So there’s no way it can ever become a decision-making body.”²⁵

This objection can be dealt with shortly, in that the IETF provides an obvious counter-example. It too lacks a defined membership, since anyone can freely participate in its online working groups (though their reputation within the technical community certainly affects the weight that will be paid to their contributions). Yet for many years the IETF has developed non-binding technical standards for the Internet upon which it builds consensus – or more specifically rough consensus – at three levels.²⁶

First a consensus must be reached within the working group of the IETF that initiated the proposal for a new standard. Then the proposal is circulated for comment within the IETF’s membership at large. Finally it is forwarded to an executive committee of the IETF, the Internet Engineering Steering Group (IESG), where it must also meet with consensus, before it gains the formal status of a Proposed Standard (and thence might become a full Internet Standard once it becomes sufficiently ubiquitous).

24 Broadly speaking, the IGF’s mandate also encompasses roles of coordination and capacity building that are not directly addressed here, but see [Jeremy M Malcolm, Multi-Stakeholder Governance and the Internet Governance Forum Perth: Terminus Press, 2008](#), 422–423.

25 The statement is referred to at [Darren Waters, Warning Over "Broken Up" Internet](#) URL: <http://news.bbc.co.uk/1/hi/technology/6037345.stm>, but more accurately transcribed above from the audio recording available at <http://kierenmccarthy.co.uk/mp3s/nominet-igf-9oct06/nitin-desai-combined.mp3>.

26 [IETF, The Internet Standards Process—Revision 3](#) URL: <http://www.ietf.org/rfc/rfc2026.txt>

The IGF, too, has working groups – although they are termed dynamic coalitions (due to the early fears of some stakeholders that the term “working group” would imply the excessive formality endemic to working groups of intergovernmental organisations). It also has an executive committee; the Multistakeholder Advisory Group (MAG). On this basis, following the model of the IETF, there seems to be no reason in principle why the IGF could not produce recommendations in an analogous manner: by developing proposals within its specialist working groups, the dynamic coalitions, by then raising those proposals before the IGF at large at its annual plenary meeting (or, as in the IETF, in an equivalent online forum), and finally by having the MAG formalise and issue those proposals as recommendations if it is satisfied that they reached a rough consensus at both of those earlier stages.

There is, however, a further objection that is commonly raised to the notion that the IGF could develop non-binding recommendations by consensus: that generating recommendations would transform IGF into a much more political forum, in which free and open discussion would be overcome by strategic behaviour and bargaining. This is supposed to be less of a problem within the more homogenous technical community of the IETF in which contentious issues of public policy do not generally arise (although in fact the dichotomy is not so stark, as technical and public policy issues are very often intertwined).²⁷

Fears about the politicization of dialogue in the IGF are not baseless, but this is not a novel problem. Consequently there is already a great deal of literature and practice addressing it. In particular, the field of deliberative democracy is devoted to the resolution of deep-set disagreements through a methodical process that requires participants to engage with each other as equals with the object of reaching a rational consensus.²⁸

Unlike other forms of decision-making process such as representative democratic voting, deliberative democratic processes are designed not simply to reflect the participants’ views, but to refine and potentially transform those views by divesting them of the power they draw from the exogenous status or authority of their proponents, and by testing them against the perspectives of diverse other stakeholders and experts.

A number of implementations of the deliberative democratic ideal have been trialled in practice. One of these is the 21st Century Town Meeting, in which participants are provided with a briefing paper covering all major perspectives upon

27 [Malcolm \(as in n. 22\)](#), 68–69

28 [Philip Pettit, *Debating Deliberative Democracy* London: Routledge, 2003, chap. *Deliberative Democracy, the Discursive Dilemma, and Republican Theory*; John S Dryzek, *Deliberative Democracy and Beyond* Oxford: Oxford University Press, 2002; Joshua Cohen, *The Good Polity: Normative Analysis of the State* New York: Basil Blackwell, 1989, chap. *Deliberation and Democratic Legitimacy*](#)

the questions in issue, and are seated in small table groups to hear further presentations on those questions. With the assistance of a moderator, they debate the issues with the aim of reaching agreement around the table, then transmit their conclusions to the meeting at large. The conclusions of all table groups are compiled, and the meeting is asked to vote upon the most widely held positions.²⁹

Deliberative Polling is a somewhat similar technique distinguished by the fact the participants are polled for their opinions on the issues under consideration prior to their deliberation on those issues, and again afterwards, so that the extent to which they have revised their views can be assessed. Depending on the issues in question, participants' opinions have been found to change quite dramatically following democratic deliberation.³⁰

A third technique, the speed dialogue, is notable for the fact that it was briefly scheduled for trial at the second meeting of the IGF, until certain stakeholders objected during the preparatory meetings. Unlike the other techniques referred to above, the speed dialogue is not usually used for the purposes of decision-making, but otherwise shares many features with the other techniques: participants are briefed on an issue for discussion, then with the assistance of a moderator intensively debate that issue in table groups, before the conclusions of each table are summarised for further discussion in the larger group. Another distinguishing feature of the speed dialogue format is that each table group discusses a distinct issue, and that the table groups rotate until all participants have had an opportunity to consider all the issues raised.³¹

This contrasts markedly with the seminar format that the IGF's plenary meetings have taken to date, which have cast the audience as passive recipients of knowledge, rather than as co-contributors to its development. Admittedly, for the Hyderabad meeting, it is planned that each seminar-style presentation will be followed by a moderated debate. However the key difference between a debate and democratic deliberation is that the former is an adversarial process in which the object is for one side to prevail over the other, whereas the latter is designed to encourage all stakeholders to constructively engage with each others' perspectives, with the aim of working towards a rational consensus in which those perspectives can be reconciled.

A more deliberative democratic process for the IGF might therefore be one in which:

29 [Carolyn J Lukensmeyer and Steve Brigham, Taking Democracy to Scale: Creating a Town Hall Meeting for the Twenty-First Century, National Civic Review 91:4 2002](#)

30 [J S Fishkin, Consulting the Public Through Deliberative Polling, Journal of Policy Analysis and Management 22:1 2003](#)

31 Speed dialogues were introduced to the IGF via the International Telecommunications Union (ITU), where they are known as speed exchanges: [ITU, Introduction to Action Line C5 Speed Exchanges URL: http://www.itu.int/osg/spu/cybersecurity/pgc/2007/events/docs/c5-speed-exchange-information-document-14-may-2007.pdf](http://www.itu.int/osg/spu/cybersecurity/pgc/2007/events/docs/c5-speed-exchange-information-document-14-may-2007.pdf).

- agenda-setting takes place through a bottom-up process whereby the MAG draws upon the input of stakeholders, particularly through the self-organised dynamic coalitions and workshops, in selecting policy proposals for discussion;
- participants are supplied with balanced background briefing material on each proposal, both in written form and as presented by subject matter experts in a like manner as at the IGF's existing plenary sessions;
- participants then divide into small groups to discuss the proposals in depth, with the assistance of expert moderation to ensure that all participants are treated as equals and that no intimidation or force can be used to influence the decision-making process; and
- the output of these small group discussions is brought back to the plenary forum for further discussion, at the conclusion of which the MAG will be in a position to document any consensus that may have emerged, and if appropriate to begin to formalise it as a recommendation of the IGF.

It is also important to note that there is no reason why any part of this process needs to take place only at a face-to-face setting. Democratic deliberation is also well suited to being replicated online. In fact, it has been found that online communities naturally tend to overcome the divisions of status, race, gender and disability that create power imbalances in face-to-face discussions.³² Indeed, the format of the IETF's online deliberations on Internet standards has been put forward as a model of how an online community can constitute a virtual public sphere for deliberation.³³

Apart from these intrinsic advantages of online deliberation, supporting the capacity for effective online deliberation would also of course open up the IGF to a vastly greater and more diverse body of stakeholders, given that the cost of travelling to the IGF's annual meeting places participation out of the reach of most, particularly from the developing world.

However, just as a conference-style presentation is ineffective to involve face-to-face participants in democratic deliberation, so too online deliberation involves more than simply making available a Web-based discussion board and a chat forum during meetings, as the IGF's Secretariat has done. Rather, just as intensive moderation is required to support deliberation in person, so too it is required for online deliberation, in order to ensure that participants uphold the requirements of deliberative democracy such as diversity and equality, and avoid common dysfunctions of online discussion such as flaming and groupthink.

³² [Barry Wellman and Milena Gulia, *Communities in Cyberspace* London: Routledge, 1999, chap. Virtual Communities as Communities: Net Surfers Don't Ride Alone, 186;](#) [Vitaly J Dubrovsky, Sara Kiesler and Beheruz N Sethna, *The Equalization Phenomenon: Status Effects in Computer-Mediated and Face-to-Face Decision-Making Groups*, *Human-Computer Interaction* 6:2 1991;](#) [Tim Jordan, *Cyberpower: The Culture and Politics of Cyberspace and the Internet* London: Routledge, 1999, 80](#)

³³ [A Michael Froomkin, *Habermas@discourse.net: Toward a Critical Theory of Cyberspace*, *Harv LR* 116 2003](#)

Importantly, the moderators of the IGF's online deliberative fora should also act as rapporteurs to bridge online and offline discussions, so that participants in each medium are apprised of the perspectives of the others in forming their own views, and to ensure that the MAG has a complete understanding of the conclusions of all stakeholders before considering whether a consensus upon a proposed recommendation has been formed.

4 Reforming the IGF's structure

Whilst these reforms to the IGF's processes would go far towards empowering it to more fully address its mandate to contribute to multistakeholder public policy development for the Internet, there remain grounds for skepticism as to whether, even through democratic deliberation, consensus could be reached on issues as to which stakeholder groups have widely diverging interests, particularly when those interests reflect significant disparities in those groups' political and economic power.

As an example, let us return to the case mentioned in the introduction, whereby the private sector has been entering into partnerships with ISPs to terminate or restrict the Internet connectivity of users suspected of having engaged in the unauthorised reproduction of copyright material online. This example is one in which the interests of civil society and the private sector have clearly been brought into conflict: civil society (in general) promotes the liberalisation of intellectual property laws as they relate to the Internet, whereas the private sector (again, in general) has displayed its strong resolve to strengthen the enforcement of intellectual property rights online to discourage what it describes as piracy of its creative output.

It may be that, with the assistance of a moderator around a table engaged in democratic deliberation, individual civil society and private sector representatives could have produced a recommendation that balanced their respective interests better than the present private arrangements between the representatives of copyright holders and ISPs. However, with its enormous investment in the prevailing commercial models of music, motion picture and software distribution to protect, there would be no obvious incentive for the private sector to follow any such recommendation.

The same applies, but all the more so, to governments. Whilst they may have agreed for strategic reasons to allow other stakeholders to sit with them in a non-binding forum for Internet-related public policy dialogue, it is something else again to expect them to uphold the fruits of that dialogue in the absence of any exogenous compulsion. A government's internal economic, security and, decisively, electoral priorities are likely to prevail in any contest with its commitment to the principles of multi-stakeholder governance. The problem is simply this: even if powerful

stakeholders *could* compromise their interests through democratic deliberation, why *would* they?

There are two responses that go part way towards resolving this dilemma. The first is that although a stakeholder may gain no direct benefit from reaching a compromise with other stakeholders on a particular public policy issue, its participation in the IGF facilitates its productive collaboration with other stakeholders on many other issues, which may be to that stakeholder's long-term benefit. The ability for stakeholders to engage in such mutually beneficial collective action through the IGF can be termed social capital,³⁴ and the more successful the IGF is in bringing stakeholders together in this way, the more social capital it will accumulate, which in turn justifies stakeholders in abiding by the IGF's recommendations.

The second response is that if stakeholders would not follow a recommendation of the IGF, then so be it. The IGF's output was, after all, always expressly intended to be a non-binding.³⁵ Thus although multistakeholder governance is an important value to aspire to (because other mechanisms of governance alone are not accountable to as broad a range of transnational interests), there are some public policy issues that are simply not suited to resolution through this mechanism. Such issues should instead be left to be dealt with by some other mechanism or mechanisms of governance, such as international or domestic law, norms, markets, or even the architecture of the Internet itself (which, to return to an earlier example, might for instance constrain the ability of repressive countries to control the flow of information across their borders).

But this begs an important question: if powerful stakeholders such as media corporations and governments can disregard with impunity any recommendation of the IGF that doesn't suit them, surely this defeats the Geneva Declaration's call for "full involvement of governments, the private sector, civil society, and international organizations" in governance of the Internet, not to mention the central premise of deliberative democracy that all stakeholders negotiate from a position of equality. After all, civil society stakeholders cannot with such impunity disregard the dictates of governments or markets.

What this indicates is that while all stakeholders within the IGF may be equal, some are more equal than others. This is also reflected in:

- The fact that both the Secretariat and the MAG are appointed not by multistakeholder means but by decree of the intergovernmental authority of the United Nations;

34 [N Uphoff, Social Capital, A Multifaceted Perspective Washington, DC: The World Bank, 1999, chap. Understanding Social Capital: Learning from the Analysis and Experience of Participation, 218-219](#)

35 [WSIS, Tunis Agenda for the Information Society \(as in n. 6\), para 77](#)

- The composition of the MAG, which contains approximately one half governmental members, with the balance divided between the other stakeholder groups; and
- That the opposition principally of developed governments and the private sector (including the Internet technical community) has constrained the IGF from developing the capacity to develop recommendations as its mandate requires.³⁶

Such an imbalance cannot be sustained if the IGF is to cultivate the participation of all stakeholders over the long term. After all, as an intergovernmental organisation, the United Nations does not represent and is not directly accountable to private sector or civil society stakeholders, and the latter, in particular, will only continue to invest in the IGF's social capital if they are afforded equal access to its fruits. At the same time, the IGF is an institution that enters an already-populated regime of Internet governance, in which a number of its stakeholders (such as the United States government, Google and Microsoft), and several other powerful governance institutions (such as ICANN and the OECD) already hold sway, and will naturally be reluctant to share their power.

Any proposal for structural reform of the IGF intended to address the effective disparity between the power of its stakeholders must therefore also respect the political and economic realities of the regime.

One model which attempts to do precisely that is that of the consociation. This is a form of political organisation, first studied by Arend Lijphart, that is specifically designed to bring stakeholder groups together in a structure that preserves their autonomy, in part by allowing each group to veto a proposal to which the others are agreed.³⁷ This could be institutionalised within the IGF by allowing any stakeholder group within the IGF's MAG to veto any recommendation upon which the MAG as a whole considers that the plenary body has reached consensus.

The advantages of such a consociational MAG are several:

- It formally equalises the power of the stakeholder groups, in that it provides civil society with the same right of veto over proposed recommendations that governments, and to a large extent the private sector, will always enjoy in practice by reason of their greater political and economic power.
- It obviates the need for those most powerful stakeholders to obstruct the IGF from developing the capacity to produce recommendations, because they

³⁶ See for example [Government of Canada, Questionnaire on the Convening the Internet Governance Forum URL: http://www.intgovforum.org/contributions/GOC_IGF%20Questionnaire%20Response%20.pdf](http://www.intgovforum.org/contributions/GOC_IGF%20Questionnaire%20Response%20.pdf) and [ICC \(as in n. 1\)](#).

³⁷ [Arend Lijphart, Consociational Democracy, World Politics 21 1969; idem, Democracy in Plural Societies: A Comparative Exploration New Haven, CT: Yale University Press, 1977](#)

will retain the authority to veto any such recommendations before they are formalised by the IGF's MAG.

- By reserving to the MAG the power to veto a recommendation that has been accepted by consensus by the IGF's plenary body, and thereby restricting the plenary body's independent authority, the potential for politicisation of the plenary's work is reduced.
- The consociational structure even allows the characteristic working methods of each of the stakeholder groups to be accommodated, in that whilst the balance of their deliberations will be conducted *en banc*, the decision to veto a recommendation will be made separately by each stakeholder group within the MAG. The decision can therefore be made by the method that each such group prefers; for example, face-to-face meeting for governmental diplomats, online "rough consensus" for civil society, and so on.

Alongside the reform of the IGF's MAG along these lines, two other reforms are required in order to ameliorate the structural bias of the IGF towards governmental stakeholders. First, whilst the IGF must for now continue to be formally convened under auspices of the United Nations, in order to anchor this multi-stakeholder experiment to the existing intergovernmental order, the composition of its MAG should be determined by the stakeholders themselves. This may be accomplished through the use of a randomly-selected nominating committee, to which any stakeholders could submit their names for selection, and which would contain equal numbers from each stakeholder group (as well as satisfying certain other minimum criteria of diversity).

Once again the IETF illustrates how this would work in practice, as its executive committee, the IESG, is appointed in much the same manner. In the case of the IETF's nominating committee, the appointments it makes are confirmed by a higher authority (the Internet Architecture Board or IAB, for appointments to the IESG). In like manner political realism dictates that appointments of the IGF's nominating committee would be confirmed by the Secretary-General of the United Nations; but this remains an advance on the present situation in which stakeholders may only recommend appointments to the Secretary-General, who chooses the final appointees by reference to criteria that are not made public.

Finally, for the same reason that the MAG should not be appointed solely by the Secretary-General, neither should the IGF's Secretariat. Again in accordance with a model established by the IETF (as well as many other existing institutions of Internet governance), it is appropriate that the Secretariat be appointed by and remain accountable to the MAG, and thereby to the stakeholders whom it serves rather than to the United Nations which is accountable only to its member governments.

5 Conclusion

The Internet Governance Forum, whilst proclaimed a success by many of its active stakeholders, has in fact made little mark on the landscape of Internet governance. It remains the case today, as it was when WSIS first convened in 2003, that there is no institutional home for stakeholders to effectively collaborate upon the development of global public policy for the Internet. To that extent, the IGF cannot yet be judged an unqualified success.

The basic template of the IGF as sketched in the Tunis Agenda however remains sound: as an open, multistakeholder forum, it carries the potential to act as a legitimate governance network for the Internet regime, whose discussions not only carry normative influence on their own account, but are also reflected in the development and implementation of policy by other institutions and mechanisms, both public and private, either through their direct participation in the IGF or through the IGF's coordination of its activities with theirs.

Where the IGF falls down is that it has not yet earned such authority within the regime, and it will not do so without developing the capacity to more fully carry out its mandate, including the generation and communication of policy recommendations to other institutions and the general public. One possible means to endow it with this capacity involves two streams of reform: firstly to the IGF's processes, relevantly including the development of the capacity for democratic deliberation on policy issues, and secondly to the IGF's structure, most importantly in constituting its MAG as a consociational executive committee responsible for formalising the consensus of its plenary body as recommendations only where each of the stakeholder groups within the MAG is also in accord.

The time for such reforms is ripe. The United Nations Secretary-General is 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.³⁸

As matters stand on the eve of the IGF's third meeting, this imminent review will not be able to accurately report that the IGF has fulfilled its mandate as set out in the Tunis Agenda. In order to justify the renewal of that mandate, the IGF should therefore demonstrate a recognition of its own shortcomings, and take steps such as those outlined here and elsewhere³⁹ by which they may be addressed and overcome.

³⁸ [WSIS, Tunis Agenda for the Information Society \(as in n. 6\)](#), para 76
³⁹ [Malcolm \(as in n. 22\)](#), 415–521