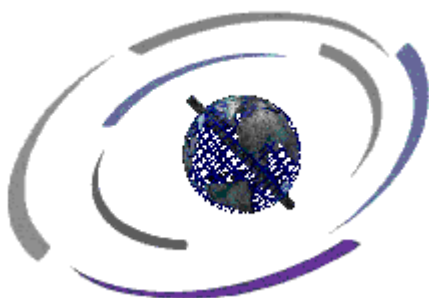




A Legal Analysis of the Internet Governance Forum process.

**A civil society contribution to the
[Internet Governance Forum \(IGF\) consultation meeting](#)
(23 May, 2007, Geneva)
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Introduction.

Internet Governance is the topic of the second part of the WSIS Tunis Agenda (November 2005) from articles 29 to 82. The Internet Governance Forum (IGF) is mentioned in articles 67 and 72 -78. The web site of the IGF (<http://www.intgovforum.org>) only features article 72 concerning the [Mandate](#) of the IGF, leaving in the shadow articles 73 to 78 dealing with IGF working, function and organization.

On May 17, 2006, the [UN Secretary-General established an advisory group to assist him in convening the Internet Governance Forum.](#)

The secretariat of the WGIG (Working Group of the Internet Governance) established by the article 13 b) of the Geneva [Plan of Action](#) continued as the IGF secretariat under the direction of the same person : Markus Kummer. It is interesting to notice that article 13 b) did not bother to mention the establishment of a WGIG secretariat, whose existence appeared as an obvious clerical necessity that was recognized in the acknowledgments of Article 32 of the Tunis Agenda. Currently, this secretariat was not an executive secretariat, it was just a clerical body.

There were consultations on the convening of the IGF 16-17 February 2006 - 19 May 06 2006, and more recently a stocktaking session on 13 February 2007.

The transcripts of all those consultations ([Morning Session](#) - [afternoon Session](#) 16 February 2006 ; [morning Session](#) - [afternoon Session](#) 17 February 2006 ; [morning session](#) - [afternoon session](#) 19 May 06 2006, [full session](#) 13 February 2007) are quite useful in order to take into account the positions and interpretations from stakeholders.

There is an urgent need to offer a clarification of the legal framework of the IGF process. The advisory group mandate is expired, no clear direction has been proposed for the future meetings. Many stakeholders are more getting more concerned about the IGF process.

According to the tradition and spirit of the Civil Society at the United Nations, in every topics (conflicts, human rights, biological hazards, environment, etc..), the Civil Society fights so that the rule of International Public Law prevails and that UN decisions and recommendations are applied by all stakeholders. It would be very dangerous in-

deed, in consideration of all the processes that are underway at the United Nations, if such principles were not applied when Internet Governance is concerned.

This draft study does not result from an official inquiry at international or national levels. It is a contribution from some Civil Society stakeholders with limited time and means. Despite our efforts in that direction, this study does not claim to be exhaustive. The reader is warned and encouraged to check all the texts and facts mentioned in this study. The authors cannot be held responsible for any misinterpretation that could arise from this study. The goal of this study is simply to spark a clear and constructive discussion among all stakeholders.

We are going first to analyze one by one the articles of the Tunis Agenda that concern the Internet Governance Forum.

Analysis of the Tunis Agenda articles concerning the IGF

Articles 29 to 68 relate to internet governance in general, and should provide guidance to understand the topics and road map of the IGF.

Articles 69 to 71 are dealing with yet another process called “Enhanced Cooperation” that has not started yet and that might be operationally connected with the IGF. This is not the focus of this study.

Article 72 (see reference I) states that the UN Secretary-General, in an open and inclusive process, convene the IGF, therefore the IGF is an event organized within the legal framework of the United Nations. This was quite clear in Athens, where the UN flag was raised by UN security officers over UN territory for the duration of the meeting. Therefore it is not possible to set aside UN rules and practices (including WSIS open practices, this is a crucial point) during the IGF. It would be also a parody to suggest that the words in the WSIS texts do not have the customary meaning they have within the UN context, unless it is stated otherwise.

Article 72 then deals with the mandates of the IGF. Concerning procedures, it is possible to distinguish several missions within its mandates :

1. to hold or facilitate discussions or information exchanges : sub-articles a) b) d) j)
2. publish its proceedings : sub-article l)
3. interface : sub-article c) which implies to establish some level of relationship with the IGF being considered as a body *per se*.
4. advise or identify : sub-article e) and first part of g) . It does not mean that in the matter being mentioned, the IGF just facilitates the exchanges of advices between stakeholders, but that the IGF itself, as a body, is producing advisory documents to the address of all stakeholders.
5. strengthen, contribute and help : sub-article f) h) k). This means the IGF should take actions on the issues being mentioned. It implies an operational activity.
6. make recommendations : second part of sub-article g)

It appears that the vast majority of the missions of the IGF, ie missions 3 to 6, requires that the IGF shall determine itself as a collective body and therefore there is a

need to establish rules of procedures so that those collective decisions could be agreed upon by all stakeholders within the IGF. The collective decisions relate to the establishment of interfaces and liaisons, production of advisory documents, taking actions to reinforce or help, and last but not least to make recommendations.

There is no indication in the Tunis Agenda about the rules of procedures that could be adopted concerning such a new multi-stakeholder body as the IGF. The UN legal framework applies to the IGF process and as a consequence UN rules and procedures may apply concerning relationships between governments (eg host country agreement). However, the WSIS intergovernmental process decided that the IGF shall be a fully inclusive multi-stakeholder process that is not only of an intergovernmental nature. It is very important to underline that UN rules concerning observers simply do not apply at the IGF, simply because there are no observers as such, since all stakeholders are participants on an equal footing. It does not mean that the IGF process does not possess any intergovernmental character, this would be a reductive and incorrect analysis, it means the intergovernmental character is one component within a much larger picture. The IGF is not a non-governmental process but a multistakeholder process with an intergovernmental component.

However there are no rules of procedures currently at the UN concerning such type of multi-stakeholder process.

The WSIS practices were a step towards multi-stakeholderism. Building on the positive experience of WSIS, all stakeholders may rely on the pragmatic and innovative approach of WSIS to determine rules of procedures concerning multi-stakeholder process. It is a pragmatic evolution, not a revolution coming out from nowhere..

In **article 73 (first paragraph)**, it is quite clear that in its working and function the IGF is multi-stakeholder, democratic and transparent. The IGF is not a purely intergovernmental process.

Article 73 a) , concerning furthermore IGF working and function, underlines that existing structures of internet governance should be involved as building blocks of the IGF. In other words, it means that existing structures such as ISOC, ICANN, IETFs, ISO, W3C, etc.. (often named as the “internet community”) are entitled to be considered as a distinct class of stakeholders that complements the others classes of stakeholders : governments, business entities, civil society and intergovernmental organizations.

Article 73 b) recommends a lightweight decentralized structure. As it turns out, the IGF meeting has become an itinerant event, being held in various countries, taking into account geographical balance according to UN practices. In this sense the IGF has become decentralized beyond any expectations, but the structure might truly qualify as decentralized only if the host country at each stopover of this “world tour” chairs the body (eg program committee or whatever) that determines the content of the program at each stopover.

Article 73 c) : There are two issues :

1) So far the IGF meeting is planned to be held once a year, but it does not preclude “intersession meetings IGF” of a limited scope, as proposed by France.

2) The IGF in Athens has not been held in parallel with any other conferences, possibly because there was no need of logistical support thanks to the generous hospitality of Greece. However, it could be a good idea to enhance convening efficiency to organize Information Society related events prior and after the IGF itself.

Concerning **article 74**. Mr Nitin Desai, the Secretary-General's Special Adviser for WSIS must be commended for having considered a wide range of options for the convening of the Forum.

Article 75 raises the issue on the procedure to be adopted by the IGF in order to produce a draft report to be submitted to the UN Secretary-General who shall then report to UN Member States on the operation of the Forum. Some governments have raised the issue if this report was also an opportunity for feedback by governments, and in turn, if this is case, what would be the procedures to handle those feedbacks.. Since "periodically" has been used in article 73 c) concerning IGF meeting, it fair to assume that this report should be submitted once a year. This formal report according to article 75 should be distinguished from a report sent by the Secretary-General's Special Adviser for WSIS, to the UN Secretary-General. The MAG may also send a report to the UN Secretary-General, but only in relationship to its mandate : ie convening.

Article 76 concerning the continuation of the Forum requires a formal consultation process of IGF participants. Rules of procedure must be established to manage the formal consultation and to determine and identify participants. Participants could be either tentatively understood as stakeholders that participated to one IGF meeting, or stakeholders that simply contributed to the IGF process. Rules of procedure must be also established to produce the draft recommendations that would be examined by the UN Secretary-General, and then submitted to the UN membership.

Article 77 indicates some limits to the function of the IGF, that would apply mostly to its mandate to strengthen, contribute and help (sub-articles 72 f) h) k)). However, since advices and recommendations are not binding by definition, article 77 does not impart limits on IGF mandate as per sub-articles 72 e) g).

Article 78 (first paragraph) underlines the role of the UN Secretary-General in convening all stakeholders to the first meeting of the IGF, and seemingly his involvement as convenor is limited only to the inaugural meeting. It follows that the advisory group that the [UN Secretary-General has established to assist him in convening the Internet Governance Forum](#) has now ended, after the inaugural meeting.

Article 78 a) authorizes the UN Secretary-General to call for specific external resources (not excluding financial resources) from "interested" stakeholders seemingly for the operation of IGF. It leaves also the door open to a yet unspecified role for the ITU. It could be recalled that ITU organized the WSIS according to United Nations resolution A/RES/ 56/ 183 : *with the International Telecommunication Union taking the lead role in its preparation, in cooperation with interested United Nations bodies and other international organizations as well as the host countries.*)

Article 78 b) It is one of the most important sub-article. : *establish an effective and cost-efficient bureau to support the IGF, ensuring multi-stakeholder participation.* It brings a natural answer to all the questions concerning the body that shall establish the rules of procedures that are required so that the IGF could work and function according to its mandate. There are interesting features to underline in this article. All stakeholders should be ensured to participate to this bureau, this means that this is a truly multi-stakeholder bureau. The bureau must be effective, meaning that this bureau must take action, it implies that the bureau must be assisted and represented by an effective executive secretariat (to be distinguished from a clerical secretariat with no operational activity).

When considering a multi-stakeholder bureau that could comprise a large number of people, cost-efficiency is a valid concern. The cost-efficiency concern applies also to the executive secretariat and the clerks of the staff. If there is an executive secretariat, most often its staff includes the clerical secretariat.

Analysis of the advisory group mandate

According to the official announcement (see reference II) the main task *is to prepare the substantive agenda and programme for the first meeting of the Internet Governance Forum, which is to be held in Athens from 30 October to 2 November.*

It is rather interesting to note that this advisory group was acting as a program committee. It dealt with matters of substance. The advisory group has not been given a mandate to determine the IGF structure and the rules of procedures including the working methods. The advisory group *is chaired by Nitin Desai, the Secretary-General's Special Adviser for the World Summit on the Information Society (WSIS).* It is unclear if the IGF chair is the UN SG special adviser for WSIS as a position (*ex officio*), or Nitin Desai on a personal basis (*intuitu personae*).

It is rather clear that the mandate of the advisory group is limited to the inaugural meeting which is coherent with the first paragraph of article 78. The field is completely open for subsequent meetings : *Decisions on how to prepare subsequent meetings and on any future structure and working methods of the Forum will be taken in light of the experiences gained during the preparatory process for the Athens meeting.* This fact is confirmed by the answer of the Chair Nitin Desai to Robert Guerra during the morning session of the May 19 consultation meeting, as we shall see later.

It appears therefore the advisory group mandate is expired. It is unclear what could be the legal basis to formally renew the MAG for the Rio meeting.

Analysis of the consultation meetings.

At the last IGF consultation meeting on February 13, Chairman Nitin Desai has invited all stakeholders to refer to the transcripts of the previous consultations meetings for clarification and we are following his useful suggestion. Indeed, the availability of transcripts is a procedural asset of the on going IGF process.

The consultations meetings are analyzed on two accounts :

1. the procedures being used in the consultation meetings themselves
2. the content of the meetings that is shedding light on how to interpret and under-

stand the wordings of the Tunis Agenda and the Advisory group announcement.

A striking fact is that the consultations meetings themselves provide an example of an open multi-stakeholder meeting with an open-ended membership, with no written rules seemingly, where all participants are treated on an equal footing, and where an approximate consensus is being sought by the chair.

The consultations meeting are mostly dealing with matter of procedures, and only dealing with matter of substance only as far the themes of the program are concerned. It is quite interesting and somewhat paradox that in those very meetings the chair is telling in numerous occasions that those very same rules cannot be achieved within the IGF !. However, this is exactly what is attempted within the consultations meetings themselves !. Therefore it difficult to understand why the format of the consultation meetings could not be adopted both for the sessions of a multi-stakeholder bureau dealing with procedures, and the sessions of a multi-stakeholder program committee. It could be also exported to Rio for ad hoc working group sessions.

However it must be noted that the chair has taken decisions, for example the formation of the advisory group, outside the framework of the consultation meetings, therefore it must be clear that it is the consultation meeting themselves, and not the behavior of the chair, must be underlined as an example.

Concerning the content of the consultation meetings, they provide useful information, in a inclusive manner, about the opinions and inputs of all stakeholders in order to understand how we got into the current situation. A selection of excerpts of the transcripts is provided in the reference section IV of this document and has been regrouped into six items in order to facilitate the analysis: 1) The bureau (Article 78 b) , 2) The secretariat , 3) Mandate, interface and outcome (Article 72) , 4) Recommendations and emerging issues (Article 72 g): , 5) Additional meetings and related events (Article 73 c)) , 6) The Internet (or technical) community as a distinct class of stakeholders (Article 73 a) , Article 36) , 7) Function and rules of procedures (Article 73 a) b) Articles 74-77) including items not mentioned in the Tunis Agenda such as various Committees or Groups. The last item is the largest in size and overlap somewhat with all items, including the first item concerning the bureau, but we have too little time to reach academic perfection.

1) The bureau (Article 78 b) :

The very existence and function of the Bureau should not be even open to debate as this body has been explicitly mentioned in the Tunis Agenda, a UN text, where words have a UN meaning. The composition of the Bureau, however, since it is not indicated in the Tunis Agenda, is open to debate, and this would have been the focus of the discussions, under the guidance of the chair. It is highly questionable that the chair allows for a process that amounts to be a re-negotiation of the Tunis Agenda. We understand that some governments very reluctantly agreed to the Tunis agenda, but the consultation meetings should be not an opportunity to re-negotiate the Tunis agenda. Some stakeholders may become worried that the IGF is entering very treacherous seas.

It is interesting to follow, through the transcripts, how this re-negotiation process prevailed little by little, during the first consultation meeting (16-17 Feb 06 and 19 May 06).

In the contributions from the CCBI (16 Feb 06), El Salvador, China, Brazil, Senegal, Morocco, Cuba, and F. Muguet, a bureau is mentioned seemingly in the UN sense, its existence and role is not called into question, while the focus is on its composition. Brazil and China proposed a three bureaus scheme : government bureau, private sector bureau, and civil society bureau, building from the positive experience of the WSIS.

However in the contributions from the USA (19 May 06 AM) (*to act as a program committee*), UNESCO (16 Feb. 06, *preparatory committee*), CCBI (16 Feb 06, *program committee*), Milton Mueller (16 Feb 06 PM *a program committee or bureau*) the existence of the bureau is not called directly into question, but its meaning and role is. This is helped by the chair who belittles the point as just a question of terminology (*The terminology used varied. Some people called it a program committee, some called it a steering group, some called it a bureau*) while the difference is very important in legal terms.

In other contributions, the very existence of the bureau is put bluntly into question : Switzerland (16 Feb 06 AM) :*It is also important for us to have not a rigid bureau under the U.N. system, but, rather, a steering committee* ; K. Banks (16 Feb 06 PM) : *We don't see a need for a bureau* , Vittorio Bertola (16 Feb 06 PM) *Not a bureau, but a steering group*, R. Echeberria (17 Feb 06 AM) : *the forum should not have a bureau but, rather, it should be headed by a program committee* ; ISOC (17 Feb 06 AM) : *the bureau should be renamed into a program committee ... as the term bureau has specific connotations in the U.N. System.*

Other stakeholders simply avoid to mention the bureau. Australia (16 Feb 06 AM) voiced a *strong preference for the IGF to be run as a multistakeholder entity by a competent multistakeholder organization or consortium; an IGF Secretariat and advisory group being multistakeholder.* Korea (17 Feb 06 AM) only mentions a *steering committee*, the EU (17 Feb 06 AM) only a *program committee*.

It is clear there was no consensus on the fact of not creating a bureau. Some stakeholders did not strongly protest, because the advisory group was created on May 17, 2006, in an emergency, only for the inaugural meeting

At the 13 February 2007 consultation meeting, the question of the bureau was again set forward by F. Muguet : *So we believe that in order that a recommendation (on emerging issues) could be made, then a bureau should be set up in order to determine this procedure, in order to make this recommendation* and discussed further by Brazil ; *it would be more convenient to have the support of a bureau that is constituted, taking into account a balanced geographical representation which is also called for in paragraph 78, and taking into account a balanced multi-stakeholder participation as well. As we are touching new grounds of organizing our work, we are not sure how to organize this bureau.* The chair replied that the question of the bureau *was discussed last February and it was clarified by -- then by the people who were involved in the negotiations that they had -- the bureau was basically -- what we called Advisory Group was supposed to be the same.* It is uncertain whether this interpretation corresponds to the facts. The main reason given by the chair is that a bureau cannot be created : *But when you have a multi-stakeholder forum with everybody on an equal basis, the very process of constituting a bureau itself is problematic, but even more so when there's no membership.* This reason has been given only by the chair, and by no other stakeholder. The chair also claims the absence of a bureau results from an agreement between the parties that ne-

gotiated the Tunis Agenda: *if you look up in the transcripts of the last February meeting, you will see extensive discussion on this, including the clarifications which came from the people involved in the negotiating process.* We have not been able to draw, from the transcripts, the conclusion that a consensus has been reached concerning those *clarifications*. Jean-François Morfin noted that : *I am not sure that I understood why the legitimacy of the Advisory Group representing something which has no membership would be different from a bureau representing something which has started having some face-to-face relationship ... and I find extremely welcome the idea of a new kind of bureau following the Tunis recommendation, and taking advantage from the experience of Athens which was very positive.* The chair replied : *Let me explain this question about bureau, et cetera, which people keep coming up with. It was discussed a year ago, but **the term "bureau" was not used either for Secretariat or for the Advisory Group because the word "bureau" has a very precise meaning in the U.N. System, and it's for that reason it was felt that we should avoid using the word "bureau."*** It is now clarified that the chair, on one hand advises not to create a bureau, because it has a precise meaning in the UN system, and on the other hand recognizes that the advisory group cannot be considered as a bureau, and therefore terminology is a major issue in contradiction to earlier statements.

Instead of trying to find ways to form the bureau, it is claimed without much discussion that the bureau cannot be formed. A few key stakeholders who had no experience with the WSIS negotiating process, do not try to build on or relate to the WSIS practices. Furthermore, it is alleged that because there is no bureau, no procedures can be determined so that the IGF can fulfill its mandate, and therefore, according to this vicious circle, it follows that the IGF should be only a place of discussion.

Obviously this is a very frustration situation.

2) The secretariat

First, it is interesting to notice that WSIS Geneva Plan of Action text (Article 13b) that established the working group on internet governance (WGIG) did not mention the creation of a secretariat, and yet the WGIG secretariat was created, and played an important role under the widely acclaimed management of Markus Kummer. The WGIG secretariat was maintained by the Swiss government. The role of the WGIG secretariat is mentioned and acknowledged in article 32 of the Tunis agenda.

As the China (16 Feb 06 AM) put it *now we have a Secretariat, there is an interim Secretariat, headed by -- I suppose, by Mr. Kummer.* The WGIG secretariat continued as the IGF secretariat.

Dr. Milton Mueller (16 Feb 06 PM) and John Mathiason (19 May 06 AM) on behalf on the Internet governance project proposed the interesting concept of a [Distributed Secretariat](#) that would be indeed multi-stakeholder and inclusive. The chair and the head of the secretariat did not care to consider this proposal. It is suggested that this proposal should be further explored to increase the efficiency of the IGF convening process.

Interestingly, the IGF secretariat has being recognized in some circles, as a body *sui generis* that has been acting as a partner (cf logo below) of the [DiploFoundation](#) along with ICANN and other groupings.



Secretariat of the
Internet Governance
Forum

It would be informative if the IGF secretariat partnerships were also announced on the IGF web site.

Concerning [funding](#) of the secretariat, the names of the generous donors are disclosed but not the amount of the grants as it was the case for the ITU trust fund for the WSIS. An amount of 200,000 US\$ is mentioned by Dr. Milton Mueller (see reference V) in those terms : *It's clear that if the results of WSIS did not signal overall acceptance of ICANN's legitimacy and current structure by the intergovernmental system, the initial results of the Forum's MAG selection do. One cannot avoid mentioning in this context the \$200,000 contribution ICANN made to the Forum. That probably didn't hurt.*

3) Mandate, interface and outcome (Article 72)

According to some stakeholders, the output of the IGF should mainly comprise the transcripts of the IGF discussions. For CCBI (16 Feb 06 PM) : *the tangible outcomes should be neutral summaries of the discussions, and in addition, we should consider that a real outcome is the actual exchange of information*, for ISOC (17 Feb 06 AM): *the IGF should merely present findings for consideration by interested parties*, for Prof. Wolfgang Kleinwaechter (13 Feb 07) : *At the moment, the final result is the full text, you know, hundreds of pages, transcripts, where you can say, okay, this is what the forum has produced. The other alternative would be to have a document of two or three pages.* He further added : *The forum was established to send messages to the organizations involved in the process in Athens. So it means organizations like the ITU, like UNESCO, like ICANN, like IETF, and others, and to say this is what we discussed, and, here, this is an input for you. Please take this into consideration. And probably we can create a new, you know, form of this which we could call message, **messages** from the IGF. It is not a recommendation, it is not a resolution, it is not any declaration or something like that. This is just a message. And we can also send mixed messages, so that -- say, okay, one message is this, but we have to the same issue also another message, but it's now up to you, to the decision-making body to consider these mixed messages and then to start the negotiation process where you have an appropriate organization which has a mandate to negotiate a special issue.* This interpretation does not seem to correspond to the WSIS texts. Incidentally, the hundred of pages of the Athens transcripts is an unformatted output that is difficult to make any use of, and that cannot be assimilated to Proceedings according to Article 72 I).

Other stakeholders have broader perspectives. For Brazil (16 Feb 06) the forum could constitute an opportunity to *to initiate negotiations on a framework treaty to deal with international Internet public policy issues.* For Irini Vassilaki (19 May 06 AM). *The first meeting in Athens should assist in the preparation of international agreements that enable cooperation between international backbone operations and the local ISPs.* In this vision, the Forum is also diplomatic forum.

Some stakeholders proposed as one of the IGF outcome, the Internet Bill of Rights. For Vittoria Bertola (17 Feb 06 AM) one of the focus is *to draft and adopt a Bill of Rights of the Internet, stating rights and duties of the users of the net.* (Carlos Afonso) (13 Feb 07) further underlined this proposal : *we propose the human rights and the bill of rights become one issue grouping itself, starting from the Rio meeting. Moreover, we propose that the bill of rights becomes one of the main working items of the IGF in the overall, with the objective to reach consensus and release documents and other results pertaining to this issue by the last IGF meeting in 2010.* This proposal could be based on article 42 of the Tunis agenda, however, It is clear that if the IGF legal framework is uncertain, the legal nature of this proposed IGF outcome would be even less certain.

Some stakeholders proposed that the IGF should interface with specific UN entities. For the Danish institute for human rights, the UN high commissioner for Human Rights should be involved: (16 Feb 06 PM) *How do we transform them into concrete policy recommendations which protect and uphold and respect these standards? And this work should, of course, involve the relevant U.N. bodies, not least, the U.N. high commissioner for human rights.* This suggestion makes sense if the Internet Bill of Rights is on the IGF agenda.

Senegal (16 Feb 06 PM) suggested. *that the WTO become involved in the discussions on the Internet Governance Forum.* This suggestion makes sense if there are discussions concerning interconnection agreements (Tunis Agenda article 50) and more generally development issues as emphasized by H.E Massood Khan, the widely acclaimed chair of the Tunis governance sub-committee (17 Feb 06 AM). *The Group of 77 and China would like to mention this, because we noticed that many interventions yesterday adopted a reductionist approach to the development aspects of Internet governance, limiting it to capacity-building. The issue is more complex and has been addressed in a number of paragraphs in the Tunis Agenda, including paragraph 49, which affirms commitment on the part of the international community to turning the digital divide into digital opportunity by ensuring harmonious and equitable development for all and addressing issues like international interconnectivity costs, technology know-how, transfer, multilingualism, and providing the users with choice of different software models, including open source, free, and proprietary software.*

4) Recommendations and emerging issues (Article 72 g):

Another very important outcome should be recommendations. Japan (16 Feb 06 AM) found that *it's important for the IGF to identify emerging issues, as stated in paragraph 72 (G) of Tunis Agenda.* El Salvador envisioned (16 Feb 06 PM) *the forum, as a body of experts that generates non-binding recommendations.*

Vittorio Bertola (16 Feb 06 PM) proposed that a steering group should be constituted in order not only to deal with the program but also to adopt recommendations : *Not a bureau, but a steering group that can advance the work and oversee the advancement of this work, can adopt the documents and the recommendations that are prepared and agreed by the different working groups, and also can take care, of course, of the program of the meeting.*

For Brazil (19 May 06 AM): *even though we are not going to take decisions in the forum, that's why we are calling it a forum, we can have recommendations...then my suggestion, Mr. Chairman, then we have an opening plenary, a closing plenary. Panels,*

groups, study groups in between, as many as we want, as we decide, as the group decides. Each one producing recommendations on a consensus basis. Of course there will be no votes. Recommendations goes back to the last plenary, and then we approve, and we are ready to go to . However the chair replied : *Who is the "we" in the plenary? This isn't intergovernmental meeting with 1200 defined borders. This is an open-door meeting. Who is the "we"?* and Brazil answered : *the "we" will be the list of participants. As simple as that.* The chairman (19 May 06 AM) raised some doubts about the possibility of a consensus between 500 participants from multiple sectors groups. but he added *I will put it to the advisory group. It's an interesting thought. I will put it to them and see how they feel about it.* We do not know if this question has been formally raised with the advisory group, but there has been no official response from the chair and the advisory group in this crucial matter. According to Prof. Wolfgang Kleinwachter (19 May 06 PM): *The IGF has, as we know, no decision-making capacity, but it should be more than a talking shop. If good ideas and strong arguments are produced during the forum and will find its way into recommendations, relevant bodies will take this into consideration when they make decisions.* Saudi Arabia (19 May 06 PM) stated that *the IGF is a forum for multi-stakeholder policy dialogue. With this understanding, the forum will generate recommendations to issues related to Internet Governance. And as you indicated, these recommendations will be taken forward and followed up by specialized entities or interest groups.* Bertrand de la Chapelle LLE (19 May 06 PM) : *And the last point is, as a consequence, according to the mandates of the IGF itself, which is paragraph 72 of the Tunis Agenda, the IGF has several roles depending on the different issues. It can make recommendations for emerging issues.*

Francis Muguet (19 May 06 PM) proposed that : *there should be at least two groups, one related to emerging issues, because there is possibility to make recommendations, and one related to current issues where I propose to make RFCs ([Request for Comments](#),) and again (13 Feb 07 AM): *We think that the IGF should closely follow the mandate as determined by the WSIS, and in particular, there is the recommendation 72g)* “. The chairman concluded (13 Feb 07): *There are open questions which have come up about outcomes, et cetera, and there is language in paragraph 72 which talks of recommendations as appropriate, and we still do not have a process for figuring out how to get to those recommendations.**

5) Additional meetings and related events (Article 73 c)

Japan (16 Feb 06 AM) proposed that *any private sector-held forums that satisfy the criteria indicated in paragraph 72 and 77 of the Tunis Agenda should be regarded as candidates for additional joint IGF meetings in addition to a forum that the United Nations secretary general convenes.* Australia (16 Feb 06 AM) suggested : *a relatively flat structure without a proliferation of subgroups and subcommittees, relatively short, focused annual meetings, possibly back-to-back with related events, both intergovernmental and private sector or civil society.* [Norbert Bollow](#) from the [Foundation for a Free Information Infrastructure - FFII](#)) (17 Feb 06 AM) suggested *to schedule the Internet Governance Forum back to back with a technical conference which is of interest to the leading thinkers that everybody has been emphasizing should be attracted to the Internet Governance Forum. And such technical conference would also give diplomats and everyone else here the opportunity to set your feet into the world of how technical experts think and interact with each other.* Francis Muguet (17 Feb 06 PM) suggested also that it

would be possible to look at also a **world forum for digital solidarity**. And this could be an event that would occur just after the first forum. African civil society (17 Feb 06 PM) underlined the *irreplaceable role played by ECA ([UN Economic Commission for Africa \(UNECA\)](#)), in particular, by regional meetings and other ensuing meetings*. Wolfgang Kleinwaechter (19 May 06 PM) informed that *there is a project now under discussion to form a global Internet Governance academic network. The acronym would be GIGANET, to bring researchers from all over the world together into a process of enhanced communication. So far, more than 40 academic institutions from all over the world are included in this initiative.* and he further suggested that *the GIGANET could become a partner of the IGF*. Carlos Afonso (13 Feb 07) announced that *the dynamic coalition on the Internet bill of rights would like to report to the IGF community about its activities and progress. We have recently established a Web site at the URL [internet-bill-of-rights.org](#). We welcome the generous offer by the **government of Italy to host an international meeting** on this matter.*

All these event proposals see quite interesting, and would contribute effectively both to the convening and the outcome process, but unfortunately the advisory group for the Athens meeting has not conducted a formal review of those proposals.

6) The Internet (or technical) community as a distinct class of stakeholders (Article 73 a) , Article 36)

Raul Echeberria, (17 Feb 06 AM) (executive director of LACNIC, chair of the NRO) was *eager to repeat something that has already been said in this room; namely, the importance for the technical community to be involved, which was recognized in paragraph 36 of the Tunis Agenda. So the technical community is a valuable stakeholder.* He further declared (17 Feb 06 PM) : *It's our hope and it's the hope of the NRO, that we can have as much participation as possible by the technical community within the program committee.*

ISOC (17 Feb 06 AM) was quite clear : *the Internet society and other organizations, as you have heard, believe that the Internet community should be recognized as a distinct principal stakeholder in the Internet Governance Forum for a number of reasons, not least of is which was the technical and academic communities recognition in the Tunis Agenda in paragraph 36. This request for recognition as a distinct principal stakeholder is, we believe, more than warranted given that the Internet community, including many tens of thousands of individuals and thousands of organizations, comprises inter alia organizations responsible for operating and managing the Internet.*

7) Function and rules of procedures (Article 73 a) b) Articles 74-77) including items not mentioned in the Tunis Agenda such as various Committees or Groups.

Some stakeholders advocate that UN rules should not apply : The USA (16 Feb 06 AM) stressed that : *it is important that it not be encumbered by extensive, existing United Nations processes and procedure.* SIDN, (the registry for .NL. 16 Feb 06 PM) thinks that *the applicability of U.N. rules is questionable, to say the least.* MEDEF (16 Feb 06 PM): *MEDEF also thinks that links to the U.N. should be kept at minimum for the IGF.* Bell South (17 Feb 06 AM): *The earlier discussions were held under the procedural*

rules of the United Nations and intergovernmental organization. Those rules, Mr. Chairman, in my opinion, are not suitable for the Internet Governance Forum, which is of entirely different nature. It is not an intergovernmental meeting. It's a meeting of all participants. Therefore, the rules of participation to allow people like myself and others here to speak freely and present views is really what is needed. In other words, the traditional rules of intergovernmental organizations are really not applicable to the Internet Governance Forum.

One stakeholder is going further while rejecting WSIS rules, ISOC Argentina (16 Feb 06 AM): *In this regard, WSIS rules of procedures should not be considered as a starting point. These rules were tailored for a different kind of forum and are not treatable for a much broader, inclusive policy dialog. The nature of the IGF is different than WSIS, and hence this should be reflected in the rules. WSIS practices are not mentioned, tentatively because that they might be not cognizant of them.*

Some stakeholders proposed to follow rules of procedures influenced by those in use within the internet community. ISOC Argentina (16 Feb 06 AM) advocated that *these consultations of the convening for the IETF provide a good example of how a multi-stakeholder forum should be put in place.* Federation for Free Information (16 Feb 06 PM): *Also, all decision-making processes must have genuine transparency. That is also an essential element of integrity. On the other hand, if we claim that this forum is democratic, then we have higher standards to be met, which involve that, for example, every controversial decision could be challenged to a voting. And then you have to have a voting procedure which is really representative of the wide variety of stakeholder interests so that you don't have rich companies sending just 100 delegates to get 100 votes. An alternative to this difficult thing of democracy would be what Australia has proposed in their written proposal, that ISOC could be entrusted with running the Internet Governance Forum. I believe ISOC has earned this trust.*

Bertrand de la Chapelle (17 Feb 06 AM) suggested that *the IGF should be established in the most pragmatic and self-organizing manner possible.*

CONGO (16 Feb 06 AM) stressed two aspects : *So at the same time, need to see that the rules and procedures will be as flexible as possible...I would like to see that the Internet Governance Forum has the linkages and has the synergies with all other mechanisms for follow-up, including the mechanism of the commission (ie CSTD).*

It has been underlined by a few stakeholders that IGF should be a process not being , William Drake (16 Feb 06 PM), *referred as an "event" or "a meeting," which sounds like a series of one-off sessions that would be held on an annual basis... We have long thought of the IGF as a process, not as a series of one-off meetings but as a process that would promote collective dialogue, learning, and mutual understanding on an ongoing basis. The IGF in this formulation would be an umbrella under which various initiatives could be taken on a bottom-up basis by concerned stakeholders. ..We envision, like Mr. Drake, the IGF as an ongoing process, with annual meetings as simply a capstone.* Vittorio Bertola (16 Feb 06 PM) : *I would like to reiterate the idea that the IGF should be seen as a process and not as an event.*

Another body has been suggested : a **program committee**. It has been discussed first as a synonym for a bureau: Milton Mueller (16 Feb 06 PM) *In general, we proposed a specific structure with a defined role for a plenary, a program committee or*

bureau, and a process for recognizing topics, a bottom-up process for recognizing topics for IGF activities. The chair made it clear that the two concepts were different : Chairman Desail (17 Feb 06 AM): *to avoid confusion, I'm proposing to just refer to it as the program committee. Because I think to use concepts from intergovernmental negotiations, words like "bureau" and so on, adds to confusion. Whereas I think "program committee" makes it very clear, its job is to manage the program. And so there are -- I think there is a general agreement on the need for a multi-stakeholder process for this program management. And I will call this process the program committee.* This was a turning point of the consultation meeting, from then on, the bureau was deliberately left in the background in favor of the concept of a program committee. Stakeholders eager on renegotiating the WSIS text jumped on the occasion. Adam Peake (17 Feb 06 PM): *../.. The first question, I think, was the membership of the program committee. And we did agree on the concept of a program committee. Quite simply, all stakeholders should be represented, we think equally, and as equals. All regions should be represented. We think we can learn much from the WGIG process in terms of selection and composition. There are certainly lessons there to be learned. But, essentially, more balanced in terms of representation than we saw the eventual WGIG, although that was very favorable.* It became clear that in the eyes of quite a few stakeholders, the IGF program committee have some similarity with the working group on Internet governance (WGIG) although the mandate is completely different. Australia (17 Feb 06 PM):: *Australia generally concurs with what appears to be the emerging consensus on the structure and the operation of the IGF, namely that.. it's Secretariat be guided in its preparation by some kind of multi-stakeholder committee .* United States (17 Feb 06 PM): *We would encourage the adoption of just one multistakeholder program committee which would include participation from both developed and developing countries.* Switzerland (17 Feb 06 PM): *../.. On the Program Committee, I think we want to keep it simple and practical. And one single committee, with all the various participants involved, government, private sector, civil society and international organizations, would be enough..* Wolfgang Kleinwachter(17 Feb 06 PM): *You can keep a lot of trouble out if you give the Program Committee only a limited mandate. The real work which has to be done by the Program Committee is to draft an agenda and to guarantee that the invited speakers are really representatives for the global Internet community,*

Vittorio Bertola (16 Feb 06 PM) proposed yet another concept ; a **steering group** constituted in order not only to deal with the program but also to adopt recommendations He added that steering group *should be a sort of moral leader of this entire process, a group of people coming from all the different stakeholders that are spears in their individual capacities, that are broadly respected and are especially open minded. And possibly, these people should be self-selected by the different constituencies and stakeholder groups. But perhaps just to advance the work at an interim stage, I would suggest that they are appointed by the secretary general.*

Concerning online collaborative and discussion methods, one can witness the fact they have not been used extensively so far in the official IGF process. More attention should be paid to the working methods in this area. Bret Fausset (16 Feb 06 PM) recommended *that you appoint Internet rapporteurs or list managers to manage and steer the online discussions so they move forward productively. Unmanaged, open forums unread by the leadership of the IGF can quickly become black holes for public comment, creating the illusion of participation while providing no meaningful access to the IGF. These*

rapporteurs who would work with the Secretariat would participate in the online forums and help define areas of consensus and highlight areas of disagreement for further work or discussion. Jovan Kurbalija (16 Feb 06 PM) underline the procedural aspect and added that the main challenge will be, and probably the main inhibition by other stakeholders, like government representatives, is to create the proper working environment for the -- considering online contributions. It includes the question of the status of online contributions and follow-up to each online contribution.

Chairman Desai (17 Feb 06 PM) underlined that host country was expected to play an important role, and would probably chair any group or committee in charge of defining the program : *I incidentally here mention that the very normal practice in the United Nations when you have a host country which is taking on the responsibility of organizing a meeting which the United Nations has been asked to convene, it's fairly normal practice to request the host country to provide the chair for the process. That has been the case with all the summits that we have run. And that also is a simple solution of the issue of who is the chair of the process. And it's a very common practice. It's then entirely up to the host country to decide whether it will be somebody from the private sector, somebody from the civil society sector, somebody from the government sector. It's their responsibility. But we don't -- as the United Nations, we don't get into that issue.*

The consultation meeting on 16-17 February 2006 ended with the idea of a program committee floating around, without any clear consensus on anything. Nitin Desai (17 Feb 06 PM) concluded *I think we have not had an agreement, or I don't sense a consensus on the issue of the management structure for the forum. There have been various ideas which have been thrown out. I think terms like "Program Committee," "steering committee," et cetera have been used. Sometimes the terminology has caused confusion. Let's for the moment simply says a multistakeholder group.../.. And second, how it will be constituted, whether it will be constituted as a single group, if so, how large, or whether it is constituted as multiple groups.*

Then Nitin Desai came up with yet another concept that was never publicly debated or even suggested : the concept of an advisory group with a mandate limited in time for the inaugural IGF meeting while procrastinating on the structure and the rules of procedures including the working methods. The selection process of the members of this group proceeded expeditiously without a further consultation meeting and the advisory group was announced on May 17. The mandate of the multi-stakeholder advisory group (MAG) was to prepare the agenda and program, in other words, the MAG acted as a program committee for the meeting in Athens.

The second consultation meeting on May 19 occurred just the Advisory group announcement. The acceptance of the MAG as a stopgap solution may be tentatively explained for several reasons :

1/ the sudden political inactivity of the host country after the departure of G. Papadatos. The host country was unable to chair any committee or group as underlined by chairman Desai (17 Feb 06 PM) : *it's fairly normal practice to request the host country to provide the chair for the process. That has been the case with all the summits that we have run. And that also is a simple solution of the issue of who is the chair of the process. And it's a very common practice.* Greece just dealt with logistics. In these conditions, it could be understood that Chairman Desai was forced into action, thereby alleviating some of the criticisms about his expeditious management.

2/ its limited mandate to prepare only the meeting in Athens alleviated the concerns of stakeholders that wished the IGF to fulfill entirely its mandate, and also alleviated the worries of some stakeholders about the MAG composition.

3/ conversely, some stakeholders whose goal is to limit the IGF to a discussion arena were quite happy with this measure, yet hoping that the temporary would persist.

4/ the same familiar faces within a well respected secretariat which evolved seamlessly from the WGIG secretariat into the IGF secretariat.

Therefore it was a compromise.

Chairman Desai (19 May 06 AM): *... And the secretary general has constituted this **advisory group** to assist him in convening the Internet Governance Forum...and therefore this -- the primary purpose of this advisory group is to advise the secretary general on the processes of convening this meeting. ... I would like to stress that at this stage, we are only focusing on the **first** meeting.* Chairman Desai (19 May 06 AM) latter emphasized : *at the present stage, this forum's job is preparing for the Athens meeting. ...This is an experiment. And we will see how it works out before we jump in and commit ourselves to a particular model for five years. We don't know. This is the first time we are trying something like this out in the U.N., and let's see how it works out, and how effective it is in generating a valuable and useful meeting. So we'll take stock afterwards. Nothing is ruled out, nothing is off the table. But right now, our focus is just the Athens meeting.*

Pakistan (19 May 06 AM): *I take the floor on behalf of the Group of 77 and China. .. we are glad to see the process of preparations of the IGF getting on road with the composition of the **ad hoc** advisory process being posted on the Web site.*

United States (19 May 06 AM): *A multistakeholder bureau will be extremely important to act as a program committee and to offer input as to discussion topics, speakers, and format.*

Russian Federation (19 May 06 AM): *The international community should give close attention to the principles of the Internet Governance Forum. We also would like to mention that the above-mentioned problems could not be started and resolved **without ITU participation.***

Some stakeholders were pleased with the composition of the MAG : (Cisco Systems) (19 May 06 AM) : *My name is Art Reilly speaking on behalf of the International Chamber of Commerce and the CCBI. ... We are pleased that the U.N. Secretary-General has announced the members of the Multistakeholder Advisory Group, and we welcome the selection of this group.*

Some others much less. Dr. Milton Mueller observed in his 18 May article (reference 5) on the [ICANNcannwatch](#) web site, that of the twenty non-governmental positions *all but a handful are directly associated with the ICANN regime.*

Robert Guerra (19 May 06 AM) noted that *it would be important over the course of the day to (have) more idea and information on the exact scope and term limit of any of the advisory group. There is perhaps a misunderstanding, perhaps it might be personal, that the advisory group has been set up only to prepare the Athens meeting. Shall it be set up to prepare other meetings, that should be known in advance because it would be important to have that information.* Brazil (19 May 06 AM) remarked, not without irony that : *the idea of IGF is not to have a school, to organize a school for little boys and girls to go there to be taught by big companies and academics. That's not the idea, or humor that our secretary general, Kofi Annan, is very wise when he selected the group. From*

what I've seen from the list, we have four representatives from the ICANN. Three of them from the board of ICANN, and one employee of ICANN. If we have ICANN over there, maybe we could discuss governance. That's what ICANN used to do. The second point, Mr. Chairman, about the list. .../. But I would like to know which and who the others are representing, then it will help us, including a kind of C.V. of the organization they are working for. .../. And I think this could make this Advisory Group more transparent.

On the latter issue raised by Brazil, chairman Desai (19 May 06 AM) replied : I think certainly we can make information available. But I would like to stress that the people who are participating in the [Advisory Group](#) are advising the secretary general. They are advising the secretary general. They are participating there. And they are named people. It's not the organization which has been asked. It was the individuals who were asked. Yes, the individuals were asked after consultation with organizations, including governments and regional groups. Let me also say that in addition, the secretary general has authorized me, as the chairman of this group, to have, so to speak, [Advisors](#) to assist me. Because I do understand that this process needs more institutionalization.

The question of the composition and nature of the defunct MAG was a controversial issue, and the consensus was not reached.

The fundamental issue about the **legal nature** of the IGF process is the key issue and has been discussed without being resolved.

Switzerland (17 Feb 06 PM): On the rules to be applied, the IGF is a rather special sort of entity. It's an ELIOD (phonetic ?) as you would put it, as legal experts would put it in Latin. It's not what you can classify on what already exists. It's not the U.N., as most speakers have said, but some U.N. rules could apply. For example, languages, a matter raised several times. It's very important for us to be able to use the six U.N. languages. Whereas, it's also been frequently said that we don't want the overly rigid U.N. rules involving participation, in particular because of the inclusive nature of the IGF. So I think we have to be creative, take some of the U.N. rules but not forget that the IGF was something -- was intended to be something autonomous.

Chairman Desai (17 Feb 06 AM) declared that in certain respects, we have to recognize that this is a forum which is born out of a U.N.-based process; that it is the U.N. later which will be looking into its functioning as well as the various decisions, as we were reminded yesterday. But nevertheless, it's not a U.N. intergovernmental forum. The language is very clear. It is an Internet Governance Forum. It is not a classical U.N. subsidiary body of any sort. That is -- and this is certainly the legal opinion as far as I look. The point, however, is we have to see what aspects of the connection with the U.N. would be of use and value in this whole process. For instance, if we are to have host countries for this, as we have now, and this is probably almost unavoidable, because since nobody has a budget for this forum, it is going to depend very much on host countries and on voluntary funding. It would seem to me that it's useful to use some of the practices of the U.N. when it comes to the -- that aspect. I think as far as other aspects are concerned, it could be done, as things evolve. Chairman Desai (17 Feb 06 PM): *The summit is a product of a United Nations process. The secretariat support is being provided by the United Nations. And for legal reasons, we will have to have a host country agreement with Greece. I incidentally here mention that the very normal practice in the United Nations when you have a host country which is taking on the responsibility of*

organizing a meeting which the United Nations has been asked to convene, it's fairly normal practice to request the host country to provide the chair for the process. Chairman Desai (19 May 06 AM): As you will recollect, this forum is something which is of a very unique character. It is in not a formal intergovernmental meeting, as most U.N. meetings are, but it is a meeting which will be convened by the secretary general of the United Nations.

The IGF was legally created with a standard UN intergovernmental process : a UN summit whose recommendations were later formally ratified by the UN general assembly and therefore the IGF operates within the UN legal context and therefore within an international public law context, but it is fully acknowledged the IGF is not a purely intergovernmental process. It appears that there is a consensus on both assessments that seem *prima facie* contradictory to many. The point which is in strong dispute, is whether or not the so-called "UN rules" apply. If they do apply, many stakeholders are worried that the process would be legally qualified as intergovernmental, rejecting stakeholders such as the business sector, internet community and civil society as mere observers.

Building on the general assessment that we are in a unique legal situation, our analysis is that the IGF is a UN process, but it is not a purely intergovernmental process, it is a UN multi-stakeholder process. This is completely new at the UN and in International Public Law anywhere. There are no UN rules concerning a full, equal footing, multi-stakeholder process., only concerning intergovernmental processes, it is as simple as that, and this allows to go forwards, breaking the deadlock of the "membership". The IGF participants (as stated by Brazil) are the members of this multi-stakeholder open-ended process. For example, the very question concerning "observers" is meaningless because there are no "observers" since all stakeholders are on an equal footing. However, there is no reason why a UN multi-stakeholder process should exclude an inner intergovernmental process, between governments, using existing UN rules, within a defined membership. There is no need to bend existing UN rules, but to find new ones, when none exist. UN multi-stakeholder rules of procedures and working methods are to be invented.

This approach helps to clarify the debate and to resolve contradictions. Ralf Bendrath (13 Feb 07) very constructively and cleverly underlined that *Paragraph 72g of the Tunis Agenda clearly says, at least for emerging issues, that the IGF can issue recommendations, and this is definitely something we will address in the dynamic coalition on privacy. I am not yet sure how we will handle this -- how we will come up with outcomes. But I wouldn't say just because we don't have a defined membership it's not possible to agree on anything. If I look back on the -- to the WSIS process, where I participated in civil society, there was no clear membership on who was a member of civil society, who can decide and vote and whatever on our joint documents. But we still managed to come up with a lot of joint documents, a lot of joint statements, and even with two large, about 20 pages each, civil society declarations for the two summits. That was possible. And we just used maybe more innovative, more open, more tolerant mechanisms instead of the diplomatic negotiation mechanism. There are mechanisms like the IETF is using, [rough consensus](#), things like that. As you said, we are entering uncharted waters here, so we have to be creative. But I think we should discuss and think about how to come up with recommendations and outputs like this.* It must be noted that the rough consensus procedure is well practiced within the Internet community and is documented in the [RFC 2418](#) (IETF Working Group Guidelines and Procedures. 1998).

Chairman Desai (13 Feb 07) reply to Ralf Bendrath : *Yes. I wish we could introduce the rough consensus method into diplomacy. But, unfortunately, we can't. It would be wonderful to have a procedure in diplomacy where you say, "Everybody but other than the nut case has agreed." But, unfortunately, that's not possible.* In fact, both Nitin Desai and Ralf Bendrath are right but within their respective domains. Nitin Desai cannot introduce the rough consensus method into an intergovernmental process such a diplomacy, but the rough consensus method may be be used with the other stakeholders constituencies.

For example, within the IGF process, it might be proposed that an overall multi-stakeholder consensus is reached concerning a recommendation when a rough consensus is achieved within all non-governmental constituencies, and when there is an agreement within the governmental constituency according to well-accepted UN rules (eg. closed membership consensus as during the WSIS). In this example the non-governmental constituencies have chosen to use the rough consensus procedure, but each constituency may elect the rules of agreement of their own choosing. What matters is that we need to have an agreement from each constituency, and this agreement constitutes a multi-stakeholder consensus. No multi-stakeholder agreement can be achieved except by consensus between the four actors corresponding to the four constituencies.

Overall analysis

The MAG mandate is expired and the Bureau has not been created. The current situation corresponds to a legal vacuum that can no longer persist. The host country undersigned an intergovernmental agreement with the United Nations. The host country is bound within the dispositions of the Tunis Agenda. The host country could be also liable if it has not made its best efforts in order to facilitate the IGF meeting, and therefore the host country is entitled, and obliged, to contact the UN Secretary General if there is any procedural issue that hinders the IGF process. In fact, because of the multi-stakeholder nature of the IGF, any stakeholder may contact, in a legitimate way, the UN Secretary General.

The Internet Governance Forum constitutes a new legal situation at the United Nations. It is both a challenge and an opportunity for all.

In these circumstances, it is required to be cautious, which means to follow all the little guidance that is provided by the WSIS texts. Disregarding the WSIS texts would be indeed very foolhardy and therefore the texts must be applied in their integrity. It is also required to be creative in order to supplement the WSIS texts when these texts are silent.

One may witness the fact that the Tunis agenda is giving no indication concerning the rules of procedures and working methods of this new multi-stakeholder body, which is not a UN subsidiary body, because all UN subsidiary bodies are intergovernmental in nature. We are in a situation where an intergovernmental process has given birth to a more inclusive, more open-ended process that includes an intergovernmental component, but which is larger in scope than an intergovernmental process.

The only guidance that is provided by the Tunis agenda concerning is that a bur-

eau (article 78 b)) must be established. We may call this bureau, the IGF multi-stakeholder bureau or simply the IGF bureau. It should be up to the Bureau to formally adopt the new multi-stakeholder rules of procedures and working methods.

According to the discussions held during the IGF consultation meetings, it appears that there is a need, in order to reach an appropriate and effective level of inclusion that four classes of stakeholders (governments , business sector, internet community, civil society) be recognized. Nothing in Tunis agenda prevents to adopt this level of inclusion as the technical or internet community is quoted twice (Article 36, Article 72d) .

Concerning International Organizations, UN rules prevent them to take part in intergovernmental decision making processes, but within a multi-stakeholder approach this obstacle may be partly overcome. The ITU whose role has been acknowledged (Article 78a) could be included and represented within the Internet Community. International Organization may also contribute to a multi-stakeholder distributed secretariat (cf infra). The issue of the status and involvement of International Organizations is a sensitive and complex question, and our above suggestions are very exploratory, but the fact remains that the multi-stakeholder legal framework could provide very positive opportunities for International Organizations.

There is a consensus that a Bureau has a precise meaning with the UN system as far as relationships between governments are concerned. This demands that the intergovernmental component of the multi-stakeholder bureau, called for the sake of brevity, the intergovernmental bureau, shall be created according to existing UN rules. Chairman Desai mentioned during the consultation meetings that forming such a bureau is rather a routine within the UN system.

Concerning the other constituencies, it is up to them to get self-organized. In a similar fashion the various components of the IGF bureau, could be called for the sake of brevity : the CCBI, the [Civil Society Bureau](#), and the Internet Community Bureau. During the two preparatory phases of the WSIS, the term of a business bureau or a private sector bureau was not used, and the term CCBI ([coordinating committee of business interlocutors](#)) was used instead and could be continued to be used for the business component of the IGF bureau, if the business sector wishes to do so. There is no need for it to be called a bureau as it is a component of the IGF bureau.

The business sector and civil society may build on their own WSIS practices. The internet community is already well self-organized, and since the composition of the MAG has been deemed appropriate by the Internet Community, the members of the MAG could constitute the nucleus of an Internet Community Bureau.

It is without saying that each component of the Bureau should make extensive consultations within their respective constituencies before adopting multi-stakeholders procedures. It is also without saying that the spirit of the IGF Bureau should be flexible and inclusive, it should not consist in formal meetings of four different bureaus which have reached beforehand their own conclusions. Anyway, this kind of rigid approach is not feasible in practice because all constituencies have inside them a wealth of diverse opinions that must be shared between all stakeholders.

The Tunis agenda does not forbid the Forum to create any operational body that is needed to fulfill its mandate. It seems that there is a consensus concerning the need of a program committee that is not mentioned in the Tunis Agenda, and the IGF Bureau could

indeed adopt the creation of such a program committee that could be chaired by the host country.

Concerning the secretariat, the IGF should determine if the secretariat should stay as a mere clerical body, or would act as the executive secretariat of the IGF bureau, which would be required to carry any of the operational activity according to the IGF mandate. In this context, it would highly appropriate to review the proposal of a [Distributed Secretariat](#). Indeed it would be coherent if the IGF secretariat would also be multi-stakeholder.

It is possible that each constituency (governments , business sector, internet community, civil society) to held internal discussions and to reach agreements with the procedures and practices in accordance to their own diversity. However it is quite clear that decisions reached only by a constituency should not qualify as an IGF outcome. All constituencies must be in agreement according to the multi-stakeholder procedures before generating an IGF output (advice, recommendations, publication) or contribution.

It could be also envisioned that the “enhanced cooperation” process (Article 69,70, 71) could be linked with the IGF process to avoid redundancy and improve coherence. The rules of procedures concerning the “enhanced cooperation” process that has not started yet, remain to be determined. It might be a good idea if the IGF multi-stakeholder bureau could also determine the rules of procedures and working methods concerning the “enhanced cooperation” process.

Conclusions

Following Prof. Wolfgang Kleinwaechter, we may qualify this unique legal situation as *terra incognita* (unknown territories). In the middle ages, this *terra incognita* situation generated much fear as these unchartered territories were supposed to be haunted by dragons : *hic sunt dracones* ([here be dragons](#)). The fear and the existence of the dragons happened to be finally unwarranted. We are in a similar situation : IGF stakeholders should not be afraid of dragons that do not exist, and should boldly assess the current situation : we are all explorers, and there are no dragons.

References

- I) Tunis Agenda
- II) Constitution of the Advisory Group
- III) Article 13 b) of the Geneva Plan of Action (WGIG)
- IV) Excerpts of the Transcripts of the IGF Consultation meetings.
- V) The Forum MAG: Who Are These People? (Dr. Milton Mueller, May 18 2006)

Reference I

TUNIS AGENDA

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:

- a) 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;
- b) 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;
- c) Interface with appropriate inter-governmental organisations and other institutions on matters under their purview;
- d) 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;
- e) Advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the Internet in the developing world;
- f) Strengthen and enhance the engagement of stakeholders in existing and/or future Internet Governance mechanisms, particularly those from developing countries;
- g) Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations;
- h) Contribute to capacity-building for Internet Governance in developing countries, drawing fully on local sources of knowledge and expertise;
- i) Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet Governance processes;
- j) Discuss, *inter alia*, issues relating to critical Internet resources;
- k) Help to find solutions to the issues arising from the use and misuse of the Internet, of particular concern to everyday users;
- l) 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:

- a) 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 inter-governmental organisations;
- b) Have a lightweight and decentralised structure that would be subject to periodic review;

c) 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:

a) draw upon any appropriate resources from all interested stakeholders, including the proven expertise of ITU, as demonstrated during the WSIS process; and

b) establish an effective and cost-efficient bureau to support the IGF, ensuring multi-stakeholder participation.

Reference II

CONSTITUTION of the ADVISORY GROUP

Secretary-General
SG/A/1006
PI/1717

17 May 2006

SECRETARY-GENERAL ESTABLISHES ADVISORY GROUP TO ASSIST HIM IN CONVENING INTERNET GOVERNANCE FORUM

United Nations Secretary-General Kofi Annan today established an Advisory Group to assist him in convening the Internet Governance Forum, a new forum for a multi-stakeholder dialogue on Internet governance. The Group includes 47 members from Government, the private sector and civil society, including the academic and technical communities, who represent all regions of the world (see list below). It is chaired by Nitin Desai, the Secretary-General's Special Adviser for the World Summit on the Information Society (WSIS), who may also select special advisers to assist him.

The Advisory Group will meet on 22 and 23 May in Geneva, following an open consultation on 19 May 06, also in Geneva. Its main task is to prepare the substantive agenda and programme for the first meeting of the Internet Governance Forum, which is

to be held in Athens from 30 October to 2 November. Decisions on how to prepare subsequent meetings and on any future structure and working methods of the Forum will be taken in light of the experiences gained during the preparatory process for the Athens meeting.

The Internet Governance Forum is an outcome of the Tunis phase of the WSIS, which took place in November 2005, In the Tunis Agenda for the Information Society, Governments asked the Secretary-General to convene the Forum, giving it the mandate to discuss the main public policy issues related to Internet governance, in order to foster the Internet's sustainability, robustness, security, stability and development.

Governments called for the Forum to be convened in an "open and inclusive process". Accordingly, the Advisory Group will carry out its work in an open, inclusive and transparent manner, and will seek to make the best possible use of electronic working methods, including online consultations.

Reference III

Article 13 b) of the Geneva Plan of Action, (12 December 2003) establishing the WGIG

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. The group should, inter alia:

1. develop a working definition of Internet governance;
2. identify the public policy issues that are relevant to Internet governance;
3. 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;
4. 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.

Reference IV

Excerpts of the Transcripts of the IGF Consultation meetings.

The excerpts have been regrouped with a little redundancy, according to the following topics :

1) The bureau (Article 78 b)

2) The secretariat

3) Mandate, interface and outcome (Article 72)

4) Recommendations and emerging issues (Article 72 g)):

5) Additional meetings and related events (Article 73 c)

6) The Internet (or technical) community as a distinct class of stakeholders (Article 73 a) , Article 36)

7) Function and rules of procedures (Article 73 a) b) Articles 74-77) including items not mentioned in the Tunis Agenda such as various Committees or Groups.

Of course, despite our best efforts, this selections of excerpts cannot be unbiased, and we invite all interested stakeholders to refer to the original transcripts.

The bureau (Article 78 b) :

USA (16 Feb 06 AM) : *a multistakeholder **bureau** will be extremely important to act as a program committee and to offer input as to discussion topics, speakers, and format.*

UNESCO (16 Feb 06 AM) : *IGF meetings should be prepared by a preparatory committee or **bureau** which comprises representatives from all stakeholders.../..the IGF **bureau** (inaudible) committee should have the authority to modify the sequence of work.*

CCBI (16 Feb 06 AM) : *on matters supporting the IGF, we see a fully multistakeholder **bureau** taking any and all operational and program decisions by consensus, in consultation with all stakeholder groups regarding the IGF.*

Switzerland (16 Feb 06 AM) : *It is also important for us to have not a rigid **bureau** under the U.N. system, but, rather, a steering committee with the participation of all those involved, in other words, governments, but also civil society, the private sector, and international organizations.*

CHAIRMAN DESAI (16 Feb 06 AM : *../. Quite a few people mentioned the importance of having a multistakeholder group to direct the work, to organize the work, if you like. The terminology used varied. Some people called it a program committee, some called it a steering group, some called it a **bureau**, but everybody said something like this is required. ../. How will we constitute such a multistakeholder **bureau**. when we constitute a group such as this, there are certain well-established proceedings we can follow in terms of representation on an equal basis from all regions and so on. We don't have proceedings in the case of this, and I invite your thoughts and reflections; if necessary, In a thinking aloud, which is how could we do this, what are the categories that we would have, who would name the members of the (inaudible).*

In the case of the member states, there's a very simple process we have in the U.N. which is easy to use, which is you simply turn to the regional groups and say that we need two names from that regional group and they have their own process, and say these other two names. Now, how do we follow -- what's the process that can be followed for the others? Is there perhaps a distinction between the way the first group of direction gets constituted and the subsequent ones? In a sense, a problem in the first one is we have no

starting point. We have nobody to whom we can pass the responsibility and say please a constitute a bureau because WE HAVE NOT HAD A MEETING. SO MAYBE THE PROBLEM IS LESS AFTER THE FIRST MEETING. BUT please give A LITTLE thought and reflection to this and come up and see what sort of suggestions you have.

El Salvador (16 Feb 06 PM) :*./.. El Salvador considers that the forum will need a **bureau as well as a Secretariat**. The setup of both should be multistakeholder in nature. For us, the decentralized structure that appears in the Tunis Agenda could refer to the working group that would then report to the forum.*

KAREN BANKS (16 Feb 06 PM) : *We don't see a need for a **bureau** in the context of the WSIS or other U.N. processes. And we feel it raises questions of representativity that are very difficult to address in the context and spirit of the IGF and feel more comfortable with a trusted chair, a resource Secretariat, and the support of a multistakeholder program committee advisory group and working groups..*

CHINA: (16 Feb 06 PM): *./.. But there is still something lacking, that is, the **bureau**, which also in the Tunis Agenda. ./.. So at the moment, I think we should focus on the arrangement or the structure or organizational work of this forum. And, to me, I think at this moment, the bureau or the steering committee is something very essential, because we do need somebody to start the real arrangement for the forum. Of course, our Iranian colleague has mentioned the possible model as IO. There might be some other kind of models, for example, the WSIS process is -- itself is a model. We have a **governmental bureau**. We also have a **private sector bureau and civil society bureau**. We have very close cooperation among these bureaus. And we are ready to listen to more opinions on those models or organizational arrangement for our first meeting of the forum.*

BRAZIL (16 Feb 06 PM): : *./.. The problem, Mr. Chairman, is the bureau, how to select people to be there in the bureau. We heard some suggestions from Iran, from China. I think we have to keep in mind and discuss this tomorrow, how to do it. ./..*

KOREA (17 Feb 06 AM): *./.. we believe that it is necessary to have multistakeholder steering committee to prepare the Internet Governance Forum and facilitate the decision-making process.*

SENEGAL (17 Feb 06 AM): *./.. This means that the forum needs an operational Secretariat, as we've already had in the Working Group on Internet Governance. It doesn't need a cumbersome, inefficient administration. The **bureau** of the forum should be the same sort of thing, lightweight and operational. ./.. I think it would be useful to reproduce models which have shown that they can do. We could refer to the implementation of the bureau and that sort of thing.*

RAUL ECHEBERRIA (17 Feb 06 AM) : *thank you, Mr. Chairman. My name is Raul Echeberria, as you said, and I am the executive director of LACNIC, the registrar of addresses for Latin America and the Caribbean, and I am the chair of the NRO, the number resources organization. ./..I agree with those who have taken the floor to say that the forum should not have a **bureau** but, rather, it should be headed by a program committee. We support that approach. Of course, it being understood that this committee, program committee, must be multistakeholder and the conditions for participation for this committee must be the same conditions for all the stakeholders. In this respect I would*

like to repeat something that has already been said in this room; namely, the importance for the technical community to be involved, which was recognized in paragraph 36 of the Tunis Agenda. So the technical community is a valuable stakeholder, and they have made extremely valuable contributions to the current situation of the Internet.../..

BRAZIL (17 Feb 06 AM) : .../.. I think we could profit from our experience in the WSIS. We used to have -- used to have **three bureaus**. We used to have the government bureau, private sector bureau, and the civil society bureau. We could have something similar there. Now, three bureaus, 15 representatives in each bureau, which makes a total number of 45. In the governmental bureau, that I understand a little bit more than the other ones, we could have -- we have five regions, we could have three representatives per region making 15 representatives. It's reasonable. It worked in the first phase. In the second phase I think we increased the number of representatives from the regions. But it's manageable. Then the Brazilian proposal to the format of the bureau, which is different from the Secretariat, as I told you, I would like to see you there along with Mr. Markus Kummer heading the Secretariat, we could have the **three bureaus**, and manage to have a way to exchange information among the three bureaus and take decisions on how to do, how to proceed, which topics to select and things like that.

E.U.(17 Feb 06 AM) : ../..we support the idea of a slim workable and representative program committee working in an open and transparent manner../..

MOROCCO (17 Feb 06 AM) : ../.. It would be desirable for the number of participants in the **bureau** to be sufficiently large to allow developing countries to be represented and also allow all stakeholders to take an active part in the forum meetings.

CUBA (17 Feb 06 AM): With regard to the **bureau**, we also believe that we should follow the successful model of the summit, and that the respect we found very interesting what was said by the delegate from Brazil.

ISOC (17 Feb 06 AM): ../.. With regard to the multistakeholder **bureau**, ISOC believes the bureau should be renamed into a program committee as many here have said, that the term bureau has specific connotations in the U.N. System. ../..With regard to the program committee, we see it having an important role in reaching out and encouraging the participation of experts. In addition, we see the program committee as having an important role in encouraging the fullest participation across regions and stakeholders, with a particular emphasis on the developing world.

CHAIRMAN DESAI 17 Feb 06 AM): ../.. I also am impressed by the fact that there's general agreement on the need for a relatively organized multistakeholder management process for this, and for -- to avoid confusion, I'm proposing to just refer to it as the program committee. Because I think to use concepts from intergovernmental negotiations, words like "bureau" and so on, adds to confusion. Whereas I think "program committee" makes it very clear, its job is to manage the program. And so there are -- I think there is a general agreement on the need for a multistakeholder process for this program management. And I will call this process the program committee. I would like to say that there is agreement on how this will be constituted, but, frankly, there have been many -- people have not given a very precise idea on what they would see this committee as. One notion has been a committee with balanced representation from all of the stakeholders, governments, civil society, private sector, Internet community, also ensuring geographical balance across all of these sectors. Another concept which has been put

forward is the notion of three bureaus, à la WSIS, but presumably the three bureaus would have to work together if it is a multistakeholder process to arrive at a decision. But by implication of that three bureaus, it would mean that any one stakeholder group, so to speak, would -- that all stakeholder groups must decide that this is worth doing. That's, I think, the implication as I read it of the three bureau concept which has been put forward. But nevertheless, there are differences in terms of how this Program Committee should be put together or constituted. And also, people are not entirely -- have not been entirely explicit about how they see it being constituted.

AYESHA HASSAN (17 Feb 06 PM): On behalf of CCBI and ICC, ../. On the program committee, we view it as an integrated program committee, with equal, multistakeholder representation **from governments, business, civil society, and the technical community**. We believe that these representatives should be selected in close consultation with stakeholders and would be looking to ensure diversity of geographic representation as well as experience in the representatives put forward. ../. On the idea of multiple **bureaus** or program committees representing each stakeholder group, any one of the interested groups could always meet to discuss areas of mutual interest related to the integrated, multistakeholder program committee.

FRANCIS MUGUET (17 Feb 06 PM): ../. And secondly, to know whether or not the terms, terms such as "**bureau**," must be taken within the U.N. sense or on the basis of perhaps a broader, more commonplace type of use or practice. Now, having said that, if there is a bureau in the United Nations sense of the term, well, this bureau must deal with matters of procedure, and, furthermore, the bureau must be a multistakeholder one.

UNITED STATES (19 May 06 AM): ../. Finally, a multistakeholder **bureau** will be extremely important to act as a program committee and to offer input as to discussion topics, speakers, and format.

FRANCIS MUGUET: (13 Feb 07 AM): We believe this recommendation 72g) is very important, and this brings the questions of how the IGF can make these recommendations, and what should be the procedure to make a recommendation, and this brings us to paragraph 78 b) "78. ../.The UN Secretary-General should also:establish b) an effective and cost-efficient bureau to support the IGF, ensuring multi-stakeholder participation.' (text quoted since this paragraph is not quoted on the <http://www.intgovforum.org> site) where the bureau and not a Secretariat office has been specifically provided by the text. And we all know that a bureau has a specific meaning in diplomatic terms, and a bureau deals with procedural issues. So we believe that in order that a recommendation (on emerging issues) could be made, then a bureau should be set up in order to determine this procedure, in order to make this recommendation. We propose that as a first step, as a nuclei of this bureau, for formation of this bureau, that the host country of the next IGF should be first the official (ie de officio) member of this bureau and should make consultation with other members of the IGF to form this bureau in order to determine in Rio the procedures to make these recommendations on emerging issues.

BRAZIL (13 Feb 07 AM):I was also glad to hear a suggestion that came from a representative of the civil society present here earlier today that was calling our attention to the Tunis Agenda, paragraphs 78 -- in particular, 78b which says about the establishment of a **bureau** to support the IGF ensuring multistakeholder participation../.

I believe that the organization of work, as you said, includes a lot of political sensitive issues., and perhaps it would be too much responsibility for the Secretariat alone, even for the secretary-general of the United Nations, to take decisions of policy, of political nature, alone. I know that the Advisory Group has played -- has done a very good job in preparing for the first IGF, and it should continue working as an Advisory Group to the secretary-general. But, in fact, the decision is that of the secretary-general. It's not that of the Advisory Group. And it means that it would be perhaps -- even for the Secretariat, it would be more convenient to have the support of a bureau that is constituted, taking into account a balanced geographical representation which is also called for in paragraph 78, and taking into account a balanced multistakeholder participation as well.

As we are touching new grounds of organizing our work, we are not sure how to organize this bureau. But we should try. And having the responsibility of chairing the second IGF, the Brazilian government would be very much open to discuss that with you and all other interested participants. For instance, issues that could have -- could be taken up by this bureau could be the selection of themes, the idea if we do need or we don't need a multi-year program, what we do with dynamic coalitions and how do we bring them up to the process, how do we select workshops that are meaningful in terms of the general scope and the agenda of the meeting. The question of whether the transcripts are enough or the secretariat's summary is enough as a result or not. How could we go beyond.

*I think that it will be extremely helpful if we could have this sort of bureau, which is a group that would be politically responsible for helping not only the chair, but also the -- you as chairman, and the Secretary-General as well, in presenting some political considerations for this. I know that a **bureau** does not touch on -- take political decisions on substance, but on -- we are talking -- all these issues are related to the organization of work, and it's normal that at any U.N. conference there is a bureau to help precisely on the organization of work, which includes agenda and so on.*

*CHAIRMAN DESAI(13 Feb 07 AM): If I may just clarify on the question of the paragraph that you talked about of the **bureau**, this was discussed last February.*

And it was clarified by -- then by the people who were involved in the negotiations that they had -- the bureau was basically -- what we called Advisory Group was supposed to be the same. The reason for this is, this is not a membership body, there's nobody who can elect a bureau, because there's no membership.

So who's going to elect a bureau? So I would say that that was discussed last February.

And the -- it was clarified that what they had in mind when this paragraph was negotiated by the people who were involved in the negotiations was that this would be the -- the Advisory Group would be that.

Now, what I think is important is the procedure for the constitution of the Advisory Group. Many questions have been raised about this, about its composition, its membership, the nature of the process, and those certainly are things which I will convey to the Secretary-General. But it was discussed a year ago. Because, basically, the question is that this is not a membership forum. So there is no electorate there to -- to decide that -- A, B, C.

We are used to a system in the U.N. where we have only governments. So we can use regional groups and say, "This is the way it will be." But when you have a multistakeholder forum with everybody on an equal basis, the very process of constituting a bureau itself is problematic, but even more so when there's no membership. It's an open door. So that was -- Then we clarified. We asked this question to the people that sponsored. And they said, "This is what we had in mind." Because I said, "How do I constitute a bureau in an

open forum?" and then they explained that this is how it was supposed -- we thought. But I just thought -- But these are surely issues which can be looked at. And this is partly the reason why we need to also connect the forum with the high-level processes which oversee WSIS. But I don't think it's possible for us to resolve this issue. But when we clarified it, this is the way we had done it. And I will certainly convey to the Secretary-General this --particularly on how the Advisory Group is to be constituted.

That, I think, is part of the -- because it's a multistakeholder group. It represents countries as well as others. And this is -- I just thought I would clarify that this was discussed. **If you look up in the transcripts of the last February meeting**, you will see extensive discussion on this, including the clarifications which came from the people involved in the negotiating process.

But nothing is cast in stone. Anything can be revisited, redone, and there's no reason why we have to stick to any -- I'm just saying, right now, we are -- my advice would be to the Secretary-General yes to a multistakeholder forum, yes to have -- constitute an Advisory Group to plan the -- this forum. And that these are the questions which have been raised about the constitution of the Advisory Group, which he may wish to take into account. and, of course, all of the other questions that I have talked about.

JEAN-FRANCOIS MORFIN (13 Feb 07) : ../. I understand what the president said about the Advisory Group and the bureau. But I am not sure that I understood why the legitimacy of the Advisory Group representing something which has no membership would be different from a bureau representing something which has started having some face-to-face relationship. As long as I have understood the (bureau, the bureau was created --) the Advisory Group (it) was created in February of last year to support the Athens meeting, and I find extremely welcome the idea of a new kind of **bureau** following the Tunis recommendation, and taking advantage from the experience of Athens which was very positive.

CHAIRMAN DESAI (13 Feb 07) : Let me explain this question about bureau, et cetera, which people keep coming up with. It was discussed a year ago, but **the term "bureau" was not used either for Secretariat or for the Advisory Group because the word "bureau" has a very precise meaning in the U.N. System**, and it's for that reason it was felt that **we should avoid using the word "bureau."**

The secretariat :

The EU (Austria 16 Feb 06 AM) : It would be necessary to have in line with the Tunis Agenda both a representative multistakeholder steering committee and a **Secretariat** which is small and cost-effective..

CCBI (16 Feb 06 AM) : The host would take the logistical decisions necessary on the ground and a **Secretariat** in cooperation with those providing logistical support should put the operational decisions of the bureau into practice and facilitate the participation of all stakeholders.

Switzerland (16 Feb 06 AM) : Switzerland would be prepared to contribute substantially if the **Secretariat** were to be set up in Geneva.

MILTON MUELLER:(16 Feb 06 PM) ../. I want to note that the Internet governance project issued a paper addressing many of those questions. That paper is available ([The Distributed Secretariat: Making the Internet Governance Forum Work](#) .16 May

2006)

CHINA: (16 Feb 06 PM): ../. For the first meeting of the forum, now we have a Secretariat, there is an interim Secretariat, headed by -- I suppose, by Mr. Kummer.

BRAZIL (16 Feb 06 PM): : ../. On the structure, we will be happy, Mr. Chairman, to see you there, along with Mr Markus Kummer, sharing in taking care of the Secretariat.

SENEGAL: ..(17 Feb 06 AM): ../. This means that the forum needs an operational Secretariat, as we've already had in the Working Group on Internet Governance. It doesn't need a cumbersome, inefficient administration.

CHAIRMAN DESAI (17 Feb 06 AM): ../. I think the funding issue is important. As I said, none of us have a budget for this in the U.N. At the moment, a small Secretariat -- and let me be clear, the Program Committee is the management committee, like the political management committee for the forum, the Secretariat is just right now three of us, and I'm very part time. I work roughly 20 days a year for the Secretariat, whereas Markus and his assistant are there all the time, so it is pretty lightweight. If it is any lighter than that it will disappear

JOHN MATHIASON (from Syracuse University 17 Feb 06 PM.) : ../. And one of the issues is secretariat funding. And I would just like to bring to everyone's attention that there are two secretariat functions. One is the technical **secretariat** that organizes things, which Markus Kummer and his colleagues have done with exceptional competence, integrity, and efficiency. And the second is substantive servicing, where the **secretariat** tries to provide information, ideas, and whatnot, that can provide the starting point for debate, move it along, and that sort of thing. And that's the kind of thing which usually costs the most in resource terms. Since the forum is a -- an innovative approach to issues of governance, we might want to think about an innovative approach to secretariats. And using a computer analogy, perhaps one might consider in terms of the substantive secretariat a kind of distributed secretariat, where organizations that are willing to provide the secretariat-like function, meeting the criteria that secretariats usually have of independence, neutrality, and technical competence, to provide a kind of analysis that would be considered a useful starting point for discussions in whatever issue is chosen for the IGF.

CHAIRMAN DESAI '(17Feb PM): ../. The summit is a product of a United Nations process. The **secretariat** support is being provided by the United Nations

CHAIRMAN DESAI (19 May 06 AM): ../. But we encourage people to workshops? Do we encourage the **secretariat** to find people who would write background papers in this? Would that be a possibility of the stakeholders also contributing their expertise and knowledge in order to prepare for this?

JOHN MATHIASON (19 May 06 AM): he Internet Governance Project with which I participate has just issued a paper which we call : The Distributed Secretariat: Making the Internet Governance Forum Work, this is available on the Web site <http://www.internetgovernance.org>) But it substantially makes a series of proposals on how the function of substantive secretariat, which in many events is very important, is a way of making a -- putting a common set of facts and normative principles on the table to expedite discussion, could be prepared in a new way, through finding a way of distributing the

function among different stakeholders.

CHAIRMAN DESAI(19 May 06 AM): *... Is there a distinction between events which would be organized by the IGF secretariat and events which would be organized by others. Or do we have a much more free policy of what constitutes an IGF event. For instance, at the other extreme we are the World Social Forum where the forum **secretariat** does not organize any meeting. It simply provides a space.*

Mandate, interface and outcome (Article 72)

Brazil (16 Feb 06 AM) : *Therefore, at Athens ... we have an excellent opportunity to initiate negotiations on a framework treaty to deal with international Internet public policy issues.*

CCBI: (16 Feb 06 PM).... *the tangible outcomes should be neutral summaries of the discussions, and in addition, we should consider that a real outcome is the actual exchange of information.*

SENEGAL (16 Feb 06 PM): *... we suggest that the WTO become involved in the discussions on the Internet Governance Forum. ...*

Danish institute for human rights: (16 Feb 06 PM).... *How do we transform them into concrete policy recommendations which protect and uphold and respect these standards? And this work should, of course, involve the relevant U.N. bodies, not least, the U.N. high commissioner for human rights.*

ISOC (17 Feb 06 AM): *... the IGF ... should merely present findings for consideration by interested parties.*

VITTORIO BERTOLA (17 Feb 06 AM) : *... The purpose of the campaign is to ask the United Nations to lead an open, inclusive, collaborative process involving all stakeholders, both online and offline, to draft and adopt a Bill of Rights of the Internet, stating rights and duties of the users of the net.*

IRINI VASSILAKI (German Foundation for Law and Informatics) (19 May 06 AM). *... The first meeting in Athens should assist in the preparation of international agreements that enable cooperation between international backbone operations and the local ISPs. ...*

BRAZIL (Carlos Afonso) (13 Feb) : *... We do not pretend to know everything or have ready solutions, but we believe in the need to gather an international environment to devote the utmost attention to this matter in advanced declaration, **formalization of consensus** about it. ... , we propose the human rights and the bill of rights become one issue grouping itself, starting from the Rio meeting. Moreover, we propose that **the bill of rights becomes one of the main working items of the IGF in the overall**, with the objective to reach consensus and release documents and other results pertaining to this issue by the last IGF meeting in 2010.*

WOLFGANG KLEINWAECHTER(13 Feb 07): *...At the moment, the final result is the full text, you know, hundreds of pages, transcripts, where you can say, okay, this is what the forum has produced. The other alternative would be to have a document of two or three pages. But probably we can be innovative to have something in between.*

Recommendations and emerging issues (Article 72 g):

Japan (16 Feb 06 AM): we find it's important for the IGF to identify **emerging issues**, as stated in paragraph 72 (G) of Tunis Agenda.

El Salvador (16 Feb 06 PM) ./..The forum, as a body of experts that generates non-binding **recommendations**, should have the ability to refer to any issue linked to Internet governance. The recommendations themselves that arise from the forum will be assessed by another mechanism in accordance to its merits and its inclusive nature. The recommendations of the forum should be adopted by consensus. The vote should not be used, because whilst it could speed up the work, on the other hand, it could give rise to actions that undermine the credibility of the forum or the merits of the recommendations themselves.

BRAZIL: (19 May 06 AM) ./.. And this goes to my second point, which is again, even though we are not going to take decisions in the forum, that's why we are calling it a forum, we can have recommendations. And to have recommendations, we need to divide ourselves in topics, in groups, for each group to recommend something on specific topics, and then goes back to the second plenary and the last one where we are going to approve recommendations, nonbinding **recommendations**, but it would be recommendations for -- to be delivered -- we are going to send back, I suppose, to the secretary-general of the United Nations, and then these recommendations can be delivered to specific bodies that takes decisions on matters. Then my suggestion, Mr. Chairman, then we have an opening plenary, a closing plenary. Panels, groups, study groups in between, as many as we want, as we decide, as the group decides. Each one producing recommendations on a consensus basis. Of course there will be no votes. Recommendations goes back to the last plenary, and then we approve, and we are ready to go to

CHAIRMAN DESAI (19 May 06 AM) : I want to go a little further. You have used the word "we approve." Who is the "we" in the plenary? This isn't intergovernmental meeting with 1200 defined borders. This is an open-door meeting. Who is the "we"?

BRAZIL (19 May 06 AM) : Thank you, Mr. Chairman. Of course this is not an intergovernmental body, as I told at the beginning. It is a forum. And I suppose the Greek government is going to organize a list of participants. They are going to have -- people are going to apply to be part of the forum. The "we," I suppose it will be delegations from countries, because we are going to send a delegation to Greece, and you will have a Brazilian delegations. We are going to have NGOs from Brazil going to there, representatives from the private sector going to Greece. And the "we" will be the list of participants. As simple as that. Thank you.

CHAIRMAN DESAI (19 May 06 AM) : ...consensus between 500 participants from multiple sectors groups. I will put it to the advisory group. It's an interesting thought. I will put it to them and see how they feel about it.

AZERBAIJAN (19 May 06 AM) : ./.. And I don't know if we go for plenary, and then we reconvene at the end to work on the recommendations to approve them. Well, in quotes, "Approve." But certainly they should be the fruit of the meeting in Athens. ./..

WOLFGANG KLEINWAECHTER (19 May 06 PM) : ./..The IGF has, as we know, no decision-making capacity, but it should be more than a talking shop. If good ideas and strong arguments are produced during the forum and will find its way into recommendations, relevant bodies will take this into consideration when they make decisions.

FRANCIS MUGUET (19 May 06 PM) : ./..: . it will be interesting to map and to

identify the emerging issues, because considering emerging issues, the IGF may make a recommendation.

ABDULLAH DAFTARDAR: (Saudi Arabia)(19 May 06 PM) : ../. the IGF is a forum for multistakeholder policy dialogue. With this understanding, the forum will generate recommendations to issues related to Internet Governance. And as you indicated, these recommendations will be taken forward and followed up by specialized entities or interest groups.

BERTRAND DE LA CHAPELLE (19 May 06 PM) : And the last point is, as a consequence, according to the mandates of the IGF itself, which is paragraph 72 of the Tunis Agenda, the IGF has several roles depending on the different issues. It can make recommendations for emerging issues.

FRANCIS MUGUET(19 May 06 PM) : I think that there should be at least two groups, one related to emerging issues, because there is possibility to make recommendations, and one related to current issues where I propose to make RFCs. One more thing I would like to add, we have recommendations on our own Web site called FreeW3.org, and we welcome the fact that the W3C is involved in the advisory group. And we will be glad if the free software community will be facilitated better within the Internet Governance Forum.

FRANCIS MUGUET: (13 Feb 07 AM): We think that the IGF should closely follow the mandate as determined by the WSIS, and in particular, there is the recommendation 72g) “,Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations. “

JEAN-FRANCOIS MORFIN (13 Feb 07) : There is two important new additions to the IANA. The first one has been the addition of the codes for languages, which is by far and away the most important database of registry in the IANA, and the second point is a question of its evolution, architectural revolution from decentralized to either centralized or distributed. On these four points, today the IETF is discussing decisional options which will engage forever the new form of the Internet. This is on naming, addressing, all languages and wiring and who is going to allocate the IP addresses. Will it be a worldwide system or will that be a ccTLD/LAC system. We can approve this, we can disapprove this, but I think we cannot be unconcerned by this. And this is typically something that the IGF is meant for.

CHAIRMAN DESAI (13 Feb 07) : There are open questions which have come up about outcomes, et cetera, and there is language in paragraph 72 which talks of recommendations as appropriate, and we still do not have a process for figuring out how to get to those recommendations.

Additional meetings and related events (Article 73 c) :

Japan (16 Feb 06 AM): any private sector-held forums that satisfy the criteria indicated in paragraph 72 and 77 of the Tunis Agenda should be regarded as candidates for **additional joint IGF meetings** in addition to a forum that the United Nations secretary general convenes. In order to discuss the diversity of Internet issues, the utilization of these forums should be taken into consideration to incorporate a broad range of professional opinions.

Australia (16 Feb 06 AM): In interprets of the IGF's design, this suggestion a rel-

atively flat structure without a proliferation of subgroups and subcommittees, relatively short, focused annual meetings, possibly **back-to-back** with related **events**, both inter-governmental and private sector or civil society.

NORBERT BOLLOW (the [Foundation for a Free Information Infrastructure - FFII](#)) (17 Feb 06 AM) : ..I would suggest to schedule the Internet Governance Forum back to back with a technical conference which is of interest to the leading thinkers that everybody has been emphasizing should be attracted to the Internet Governance Forum. And such technical conference would also give diplomats and everyone else here the opportunity to set your feet into the world of how technical experts think and interact with each other.

[Norbert Bollow](#) (17 Feb 06 PM) : I would just like to give a short follow-on to my statement this morning, where I spoke about giving leading technologists reason to come to the IGF. And during discussions over lunchtime, I found that there seems to be considerable interest and reason for having a small workshop either before or after the IGF, focused on the question which technologies can build a bridge over the digital divide. So I would very much like to invite everybody who thinks this is a great idea to get in touch with me, and we will get something organized.

FRANCIS MUGUET (17 Feb 06 PM): And this is that following the first event of Internet governance, well, some players think that we're only looking at Internet governance, but it would be possible to look at also a **world forum of digital solidarity**. And this could be an event that would occur just after the first forum.

African civil society (17 Feb 06 PM). ..African experience has shown the extremely important role in terms of logistics and preparation of content and substance on the themes dealt with by the summit. It's an almost irreplaceable role played by ECA ([UN Economic Commission for Africa \(UNECA\)](#)), in particular, by regional meetings and other ensuing meetings.

WOLFGANG KLEINWAECHTER (19 May 06 PM) : ..There is a project now under discussion to form a global Internet Governance academic network. The acronym would be GIGANET, to bring researchers from all over the world together into a process of enhanced communication. So far, more than 40 academic institutions from all over the world are included in this initiative. The GIGANET could become a partner of the IGF. ..

BRAZIL (Carlos Afonso) (13 Feb) : The dynamic coalition on the Internet bill of rights would like to report to the IGF community about its activities and progress. We have recently established a Web site at the URL internet-bill-of-rights.org. ..We welcome the generous offer by the **government of Italy to host an international meeting** on this matter

The Internet (or technical) community as a distinct class of stakeholders (Article 73 a) , Article 36)

RAUL ECHEBERRIA (17 Feb 06 AM) : thank you, Mr. Chairman. My name is Raul Echeberria, as you said, and I am the executive director of LACNIC, the registrar of addresses for Latin America and the Caribbean, and I am the chair of the NRO, the number resources organization. ..In this respect I would like to repeat something that has already been said in this room; namely, the importance for the **technical community** to

be involved, which was recognized in paragraph 36 of the Tunis Agenda. So the technical community is a valuable stakeholder, and they have made extremely valuable contributions to the current situation of the Internet.../..

ISOC (17 Feb 06 AM): ../.The Internet society and other organizations, as you have heard, believe that the **Internet community** should be recognized as a distinct principal stakeholder in the Internet Governance Forum for a number of reasons, not least of which was the technical and academic communities recognition in the Tunis Agenda in paragraph 36. This request for recognition as a distinct principal stakeholder is, we believe, more than warranted given that the **Internet community**, including many tens of thousands of individuals and thousands of organizations, comprises inter alia organizations responsible for operating and managing the Internet. Standards setting organizations, international, regional, national, and local organizations responsible for the management and physical distribution of global resources. Organizations responsible for the long-term development of the Internet, and organizations such as the Internet society with 20,000 members and more than 80 chapters around the world, not forgetting the thousand of Internet user groups across the globe.

RAUL ECHEBERRIA (17 Feb 06 PM) : ../.It's our hope and it's the hope of the NRO, that we can have as much participation as possible by the **technical community** within the program committee. ..

Function and rules of procedures (Article 73 a) b) Articles 74-77) including items not mentioned in the Tunis Agenda such as various Committees or Groups.

The USA (16 Feb 06 AM) : it is important that it not be encumbered by extensive, existing United Nations processes and **procedure**

ISOC Argentina (16 Feb 06 AM): In this regard, WSIS **rules of procedures** should not be considered as a starting point. These rules were tailored for a different kind of forum and are not treatable for a much broader, inclusive policy dialog. The nature of the IGF is different than WSIS, and hence this should be reflected in the rules.../.. These consultations of the convening for the IETF provide a good example of how a multistakeholder forum should be put in place.

CONGO(16 Feb 06 AM) : So at the same time, need to see that the rules and **procedures** will be as flexible as possible.../..I would like to see that the Internet Governance Forum has the linkages and has the synergies with all other mechanisms for follow-up, including the mechanism of the commission (ie CSTD).

Australia (16 Feb 06 AM): these include open and ongoing consultation like that we are currently engaged in on crucial issues; a strong preference for the IGF to be run as a multistakeholder entity by a competent multistakeholder organization or consortium; an IGF **Secretariat** and advisory group being multistakeholder; accreditation and **procedural rules**.

CCBI: (16 Feb 06 PM).../.. First, for the private sector, multistakeholder participation on an equal footing is a fundamental principle that shall guide all aspects of the IGF, including participation, representation, leadership, access, operations, all dimensions.

WILLIAM DRAKE (16 Feb 06 PM): ../. I have heard the forum referred to this

morning as an "event" or "a meeting," which sounds like a series of one-off sessions that would be held on an annual basis, sort of like the ITU's world telecom forums, with some online dialogue in between. I've also heard it said that there should not be any subsidiary bodies related to the IGF. From the beginning, civil society participants have understood this differently. We have long thought of the IGF as a process, not as a series of one-off meetings but as a process that would promote collective dialogue, learning, and mutual understanding on an ongoing basis. The IGF in this formulation would be an umbrella under which various initiatives could be taken on a bottom-up basis by concerned stakeholders. One possible formulation in that regard would be to create working groups. If there is a set of actors who have a particular interest, they could form a working group.

MILTON MUELLER:(16 Feb 06 PM) ../.. In general, we proposed a specific structure with a defined role for a plenary, a program committee or bureau, and a process for recognizing topics, a BOTTOM-UP process for recognizing topics for IGF activities. We envision, like Mr. Drake, the IGF as an ongoing process, with annual meetings as simply a capstone.

VITTORIO BERTOLA: (16 Feb 06 PM) : I would like to reiterate the idea that the IGF should be seen as a process and not as an event, and the reason is clear. I think that -- I mean, can you solve issues by meeting once a year for three days, maybe discussing 10 or 15 different issues, maybe in a room filled up by 500 people? I think it's clear that you can't. And so if you want to change the Internet, I think you need to do it the Internet way...../.. I think you need some coordination among all these different working groups. And this is why I think you also need a steering group. Not a bureau, but a steering group that can advance the work and oversee the advancement of this work, can adopt the documents and the recommendations that are prepared and agreed by the different working groups, and also can take care, of course, of the program of the meeting. And I think this should be a sort of moral leader of this entire process, a group of people coming from all the different stakeholders that are spears in their individual capacities, that are broadly respected and are especially open minded. And possibly, these people should be self-selected by the different constituencies and stakeholder groups. But perhaps just to advance the work at an interim stage, I would suggest that they are appointed by the secretary general. ../..

FRANCIS MUGUET (16 Feb 06 PM) : ../.. I would suggest that it (IGF) should be structured with a specific unit dedicated to the study of emerging technologies which are building the Internet of tomorrow, which will soon be today's Internet...../.. it would be pointless for this meeting not to end in recommendations at the political and technical levels, because, otherwise, if it's simply to have a summary of the discussions, it's difficult to see how useful this forum would be.

FEDERATION FOR FREE INFORMATION (16 Feb 06 PM): ../.. Also, all decision-making processes must have genuine transparency. That is also an essential element of integrity. On the other hand, if we claim that this forum is democratic, then we have higher standards to be met, which involve that, for example, every controversial decision could be challenged to a voting. And then you have to have a voting procedure which is really representative of the wide variety of stakeholder interests so that you don't have rich companies sending just 100 delegates to get 100 votes. An alternative to this difficult thing of democracy would be what Australia has proposed in their written proposal, that ISOC

could be entrusted with running the Internet Governance Forum. I believe ISOC has earned this trust.

MEDEF (16 Feb 06 PM): *I wanted to emphasize on the need for the IGF to be fully multistakeholder and to emphasize, of course, on the fact that businesses must have their own place in this process. MEDEF also thinks that links to the U.N. should be kept at minimum for the IGF.*

SIDN, the registry for .NL. (16 Feb 06 PM): *The IGF should have a structure that is lightweight, flexible, consists of professionals, and thereby is effective and efficient. ... I think that the applicability of U.N. rules is questionable, to say the least. I feel the IGF should not contemplate technical issues, but should focus on end user issues, topics, thereby, that merit coordinated global attention. ... but in fact the main objective should be clear-cut proposals and recommendations for improvement or further development of the Internet in general and Internet Governance in particular.*

IRAN (16 Feb 06 PM): *... I see in paragraph 75 of the Tunis outcome that U.N. secretary-general, I think in this case it would be through you, would report to you and member states periodically on the operation of the forum. And then at the end, in 76, we ask the U.N. 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 recommendation to the U.N. membership in this regard. I would like to ask clarification. I think this is very important to know that who is this membership, U.N. membership. Is this general assembly to which we would give our input? Do we get any feedback from them, or it is only a forum for being a forum, for the sake of a forum? If we think that it's only a forum for the sake of a forum, then I think we are just engaging in a, let's say, no matter we are pro choice or pro life, but we are engaging in an abortive process. At the end of the day, i think we would be left with no decision and no, let's say, decisive and conclusive decision and outcome. So this is very important how we construe and interpret these two paragraphs.*

BRET FAUSETT (16 Feb 06 PM): *...I would like to recommend that you appoint Internet rapporteurs or list managers to manage and steer the online discussions so they move forward productively. Unmanaged, open forums unread by the leadership of the IGF can quickly become black holes for public comment, creating the illusion of participation while providing no meaningful access to the IGF. These rapporteurs who would work with the Secretariat would participate in the online forums and help define areas of consensus and highlight areas of disagreement for further work or discussion. ...*

JOVAN KURBALIJA (16 Feb 06 PM):: *... The main challenge will be, and probably the main inhibition by other stakeholders, like government representatives, is to create the proper working environment for the -- considering online contributions. It includes the question of the status of online contributions and follow-up to each online contribution. ...*

AMB. MASOOD KHAN (17 Feb 06 AM): *... The Group of 77 and China would like to mention this, because we noticed that many interventions yesterday adopted a reductionist approach to the development aspects of Internet governance, limiting it to capacity-building. The issue is more complex and has been addressed in a number of paragraphs in the Tunis Agenda, including paragraph 49, which affirms commitment on the*

part of the international community to turning the digital divide into digital opportunity by ensuring harmonious and equitable development for all and addressing issues like international interconnectivity costs, technology know-how, transfer, multilingualism, and providing the users with choice of different software models, including open source, free, and proprietary software.

BERTRAND DE LA CHAPELLE (17 Feb 06 AM): ../.. the IGF should be established in the most pragmatic and self-organizing manner possible..!

Francis Urbany (17 Feb 06 AM):: Thank you, Mr. Chairman. My name is Francis Urbany with BellSouth corporation in the United States. ../.. The earlier discussions were held under the procedural rules of the United Nations and intergovernmental organization. Those rules, Mr. Chairman, in my opinion, are not suitable for the Internet Governance Forum, which is of entirely different nature. It is not an intergovernmental meeting. It's a meeting of all participants. Therefore, the rules of participation to allow people like myself and others here to speak freely and present views is really what is needed. In other words, the traditional rules of intergovernmental organizations are really not applicable to the Internet Governance Forum.

ISOC (17 Feb 06 AM): ../.. the IGF should be a neutral, nonduplicative and nonbinding process, ../..

CHAIRMAN DESAI (17 Feb 06 AM): ../.. I also am impressed by the fact that there's general agreement on the need for a relatively organized multistakeholder management process for this, and for -- to avoid confusion, I'm proposing to just refer to it as the program committee. Because I think to use concepts from intergovernmental negotiations, words like "bureau" and so on, adds to confusion. Whereas I think "program committee" makes it very clear, its job is to manage the program. And so there are -- I think there is a general agreement on the need for a multistakeholder process for this program management. And I will call this process the program committee. We have to be creative in this process. The reason I'm stressing that we discuss a little, the whole question of the Program Committee in the afternoon and see whether we can get to some -- whether there is some further ideas which I could convey to the secretary-general, is because it's possible that the next round of further consultations would really be done by the Program Committee, who would then -- who would have the responsibility for managing the forum itself. There have been many references to how close or how far it should be from the U.N. I think in certain respects, we have to recognize that this is a forum which is born out of a U.N.-based process; that it is the U.N. later which will be looking into its functioning as well as the various decisions, as we were reminded yesterday. But nevertheless, it's not a U.N. intergovernmental forum. The language is very clear. It is an Internet Governance Forum. It is not a classical U.N. subsidiary body of any sort. That is -- and this is certainly the legal opinion as far as I look. The point, however, is we have to see what aspects of the connection with the U.N. would be of use and value in this whole process. For instance, if we are to have host countries for this, as we have now, and this is probably almost unavoidable, because since nobody has a budget for this forum, it is going to depend very much on host countries and on voluntary funding. It would seem to me that it's useful to use some of the practices of the U.N. when it comes to the -- that aspect. I think as far as other aspects are concerned, it could be done, as things evolve.

FRANCIS MUGUET (17 Feb 06 PM): I believe that there are two fundamental aspects that must be dealt with if we want to move ahead in our discussion. The first one is to know whether or not IGF, as part of a U.N. summit, has to obey the rules of procedure of the United Nations. ... Now, when it comes to matters of content, and not talking about procedure, but content, we could envisage a program committee that would deal with matters of content. And this **program committee** also should be multiactor and multistakeholder in nature. And we should also make a distinction between the organizing committee for the first event looking at this forum on Internet governance. Then this committee, this same committee, could benefit, as I said earlier, from a scientific committee. This scientific committee would prepare the proposals for different themes and also keep the public abreast of different themes that are emerging. And when I say the public, I mean all the actors, it be the government, governmental sector, civil society, but also the private sector as well. And so I think that these are matters that should be set forth very clearly, on a very clear basis.

ADAM PEAKE (17 Feb 06 PM): ... The first question, I think, was the membership of the **program committee**. And we did agree on the concept of a program committee. Quite simply, all stakeholders should be represented, we think equally, and as equals. All regions should be represented. We think we can learn much from the WGIG process in terms of selection and composition. There are certainly lessons there to be learned. But, essentially, more balanced in terms of representation than we saw the eventual WGIG, although that was very favorable. ... We do believe that the program committee should not be an advocacy space. It's not something that people should lobby to get their pet issue taken up. A trusted group that works to consider suggestions from all stakeholders is what we were really thinking about. And we suggest that it should be a working-level group. ...

AUSTRALIA (17 Feb 06 PM):: Australia generally concurs with what appears to be the emerging consensus on the structure and the operation of the IGF, namely that it be an open and multistakeholder, ... and that it's Secretariat be guided in its preparation by some kind of **multistakeholder committee** ...

UNITED STATES OF AMERICA (17 Feb 06 PM): ... The United States would like to see as light a process as possible with as few cumbersome procedures as possible. We would like to see a multistakeholder process. We would encourage the adoption of just one **multistakeholder program committee** which would include participation from both developed and developing countries.

SWITZERLAND (17 Feb 06 PM): ... On the **Program Committee**, I think we want to keep it simple and practical. And one single committee, with all the various participants involved, government, private sector, civil society and international organizations, would be enough. ... We would be doing a disservice to the forum if it were to deal with topic which were already dealt with in depth elsewhere. I think people might get tired of that sort of thing. So we need some sort of balance. On the rules to be applied, the IGF is a rather special sort of entity. It's an ELIOD (phonetic ?) as you would put it, as legal experts would put it in Latin. It's not what you can classify on what already exists. It's not the U.N., as most speakers have said, but some U.N. rules could apply. For example, languages, a matter raised several times. It's very important for us to be able to use the six U.N. languages. Whereas, it's also been frequently said that we don't want the overly rigid U.N. rules involving participation, in particular because of the inclusive nature of the

IGF. So I think we have to be creative, take some of the U.N. rules but not forget that the IGF was something -- was intended to be something autonomous.

African civil society (17 Feb 06 PM). ../.. And as long as the structure is centralized here in Geneva and everything passes through Geneva, obviously, developing country participation will be low, because people just can't afford to go to Geneva every time to take part. So the idea of decentralizing structures, in particular, working through the United Nations economic commissions (<http://www.uneca.org/>) seem to me a basic idea. In any case, African experience has shown the extremely important role in terms of logistics and preparation of content and substance on the themes dealt with by the summit. It's an almost irreplaceable role played by ECA ([UN Economic Commission for Africa \(UNECA\)](#)), in particular, by regional meetings and other ensuing meetings.

WOLFGANG KLEINWAECHTER(17 Feb 06 PM): You can keep a lot of trouble out if you give **the Program Committee** only a limited mandate. The real work which has to be done by the Program Committee is to draft an agenda and to guarantee that the invited speakers are really representatives for the global **Internet community**, that means come from several countries, from all around the globe, gender-balanced and things like that. That means to have a very limited mandate for the Program Committee would make it much more easier and help to avoid conflicts. And it would make the life easier for the Program Committee if you would start soon

GREECE (Papadatos 17 Feb 06 PM.): ../..In our view, the forum's character is unique. It should be multilateral, multistakeholder, democratic and transparent, as it emerged from delicate consultations involving all stakeholders. ../.. The minister of transport and communications, Mr. Mihalis Liapis, has set up a steering committee to tackle the various tasks required for the organization of the IGF's inaugural meeting.

CHAIRMAN DESAI 17 Feb 06 PM):.. The summit is a product of a United Nations process. The secretariat support is being provided by the United Nations. And for legal reasons, we will have to have a host country agreement with Greece. I incidentally here mention that the very normal practice in the United Nations when you have a host country which is taking on the responsibility of organizing a meeting which the United Nations has been asked to convene, it's fairly normal practice to request the host country to provide the chair for the process. That has been the case with all the summits that we have run. And that also is a simple solution of the issue of who is the chair of the process. And it's a very common practice. It's then entirely up to the host country to decide whether it will be somebody from the private sector, somebody from the civil society sector, somebody from the government sector. It's their responsibility. But we don't -- as the United Nations, we don't get into that issue. I think we have not had an agreement, or I don't sense a consensus on the issue of the management structure for the forum. There have been various ideas which have been thrown out. I think terms like "Program Committee," "steering committee," et cetera have been used. Sometimes the terminology has caused confusion. Let's for the moment simply say a multistakeholder group../.. And second, how it will be constituted, whether it will be constituted as a single group, if so, how large, or whether it is constituted as multiple groups. ../..

CHAIRMAN DESAI (19 May 06 AM): ../.. And the secretary general has constituted this **advisory group** to assist him in convening the Internet Governance Forum. As you will recollect, this forum is something which is of a very unique character. It is in not a formal intergovernmental meeting, as most U.N. meetings are, but it is a

meeting which will be convened by the secretary general of the United Nations. And therefore this -- the primary purpose of this advisory group is to advise the secretary general on the processes of convening this meeting. ... I would like to stress that at this stage, we are only focusing on the first meeting.

PAKISTAN (19 May 06 AM): I take the floor on behalf of the Group of 77 and China. Most of you may know already that this statement is therefore on behalf of 133 member states of the United Nations. Mr. DESAI, we are glad to see the process of preparations of the IGF getting on road with the composition of the ad hoc advisory process being posted on the Web site.

UNITED STATES (19 May 06 AM): ... The United States believes that the IGF should be a truly multistakeholder event. Therefore, it is important that it not be encumbered by extensive existing United Nations processes and procedures. Attendance and participation in the IGF should be open to a broad array of stakeholders, including governments, business entities, civil society, scientists, and intergovernmental organizations. Linkages to the U.N. should be minimal in terms of procedures. And the IGF should avoid burdensome preparatory processes. The secretariat should be small, with the mission to support the smooth functioning of the IGF, and to facilitate broad participation in the event. Finally, a multistakeholder bureau will be extremely important to act as a program committee and to offer input as to discussion topics, speakers, and format.

RUSSIAN FEDERATION (19 May 06 AM): ... Ensuring the stability, security, and continuity of the Internet is required for any activity that is carried out in this global information network or uses it. The international community should give close attention to the principles of the Internet Governance Forum. We also would like to mention that the above-mentioned problems could not be started and resolved **without ITU participation**.

ART REILLY (Cisco Systems) (19 May 06 AM) : My name is Art Reilly speaking on behalf of the International Chamber of Commerce and the CCBI. ... We are pleased that the U.N. Secretary-General has announced the members of the Multistakeholder Advisory Group, and we welcome the selection of this group. ...

ROBERT GUERRA (19 May 06 AM) : ... In regards to discussions that have been taking place on civil society discussion spaces on the **advisory group** I think it would be important over the course of the day to (have) more idea and information on the exact scope and term limit of any of the advisory group. There is perhaps a misunderstanding, perhaps it might be personal, that **the advisory group has been set up only to prepare the Athens meeting**. Shall it be set up to prepare other meetings, that should be known in advance because it would be important to have that information.

CHAIRMAN DESAI (19 May 06 AM) : Just a clarification on a question you raised. Your understanding is correct. At the present stage, this forum's job is preparing for the Athens meeting. And what press release says is, decisions on how to prepare subsequent meetings and on any future structured working methods of the forum will be taken in the light of experiences gained during the preparatory process for the Athens meeting. Let's put it this way. This is an experiment. And we will see how it works out before we jump in and commit ourselves to a particular model for five years. We don't know. This is the first time we are trying something like this out in the U.N., and let's see how it works out, and how effective it is in generating a valuable and useful meeting. So we'll take stock afterwards. Nothing is ruled out, nothing is off the table. But right now, our focus is just the Athens meeting.

BRAZIL: (19 May 06 AM) :/..the idea of IGF is not to have a school, to organize a school for little boys and girls to go there to be taught by big companies and academics. That's not the idea./.. And our secretary general, Kofi Annan, is very wise when he selected the group. From what I've seen from the list, we have four representatives from the ICANN. Three of them from the board of ICANN, and one employee of ICANN. If we have ICANN over there, maybe we could discuss governance. That's what ICANN used to do. The second point, Mr. Chairman, about the list./.. But I would like to know which and who the others are representing, then it will help us, including a kind of C.V. of the organization they are working for./.. And I think this could make this Advisory Group more transparent. I

CHAIRMAN DESAI (19 May 06 AM) :/..I think certainly we can make information available. But I would like to stress that the people who are participating in the [Advisory Group](#) are advising the secretary general. They are advising the secretary general. They are participating there. And they are named people. It's not the organization which has been asked. It was the individuals who were asked. Yes, the individuals were asked after consultation with organizations, including governments and regional groups. Let me also say that in addition, the secretary general has authorized me, as the chairman of this group, to have, so to speak, [Advisors](#) to assist me. Because I do understand that this process needs more institutionalization.

CHAIRMAN DESAI(19 May 06 AM):/.. I don't think that we have to be prisons of any mixed model. At one end you have a U.N. model with a very set pattern. There has to be a plenary and then groups for negotiations, et cetera. Now, that is not required in our case. We are not going to negotiate anything there, in Athens. But we are really focused he that we must always have a plenary, a grand meeting, where everybody speaks on the full issue./..

BRAZIL: (19 May 06 AM)/.. we are going to have statements. And for statements, we need a plenary. Then the first question, yes, we need a plenary. Second point, we need to divide ourselves later on in groups to discuss topics. And this goes to my second point, which is again, even though we are not going to take decisions in the forum, that's why we are calling it a forum, we can have recommendations. And to have recommendations, we need to divide ourselves in topics, in groups, for each group to recommend something on specific topics, and then goes back to the second plenary and the last one where we are going to approve recommendations, non-binding recommendations, but it would be recommendations for -- to be delivered – we are going to send back, I suppose, to the secretary-general of the United Nations, and then these recommendations can be delivered to specific bodies that takes decisions on matters. Then my suggestion, Mr. Chairman, then we have an opening plenary, a closing plenary. Panels, groups, study groups in between, as many as we want, as we decide, as the group decides. Each one producing recommendations on a consensus basis. Of course there will be no votes. Recommendations goes back to the last plenary, and then we approve, and we are ready to go to

FRANCIS MUGUET (19 May 06 PM) :/..: Concerning what could be identified as current issues, we suggest that the IGF, with inspiration from the best practice of existing Internet Governances, to use the format of **request for comments** as a way to formalize and gather in in fact the different advices on different issues./..

ABDULLAH DAFTARDAR: (Saudi Arabia)(19 May 06 PM) :/..The second point is with regards to the coming – to coming with concrete proposals out of the IGF, it would

be practically not possible to both discuss topics and come to reasonable conclusions in the same meeting. We therefore recommend that the topics be put forward for discussion prior to the meeting itself, and a mechanism be established to allow initial discussions to prepare for the meeting. The results of these discussions should be published electronically for everybody's preparation.

CHAIRMAN DESAI (13 Feb 07 AM): The Advisory Group, which was charged with the responsibility of helping to organize the Athens meeting of the Internet Governance Forum met yesterday. ... the Secretary-General set up this process essentially for focusing on the Athens meeting. And the intention was always that after the Athens meeting, we would evaluate how this process functioned so that we could learn lessons for the remaining meetings of the forum

*FRANCIS MUGUET (13 Feb 07 AM): We believe this recommendation 72g) is very important, and this brings the questions of how the IGF can make these recommendations, and what should be the procedure to make a recommendation, and this brings us to paragraph 78 b) "78. ... The UN Secretary-General should also: establish b) an effective and cost-efficient **bureau** to support the IGF, ensuring multi-stakeholder participation.' (text quoted since this paragraph is not quoted on the <http://www.intgovforum.org> site) where the bureau and not a Secretariat office has been specifically provided by the text. And we all know that a bureau has a specific meaning in diplomatic terms, and a bureau deals with procedural issues. So we believe that in order that a recommendation (on emerging issues) could be made, then a bureau should be set up in order to determine this procedure, in order to make this recommendation. We propose that as a first step, as a nuclei of this **bureau**, for formation of this bureau, that the host country of the next IGF should be first the official (ie de officio) member of this bureau and should make consultation with other members of the IGF to form this bureau in order to determine in Rio the procedures to make those recommendations on emerging issues. Now considering the general output for all recommendations so done far in a more informal way, it has been proposed to formalize them in terms of the scheme of request for comments (RFCs),*

RALF BEUDRATH (13 Feb 07):And I think the idea that the IGF is a non-negotiating body is a great chance to have really open discussions about these things without getting into the square bracket, you know, trenches.

The second point is, how far should the IGF go in terms of output. Paragraph 72g of the Tunis Agenda clearly says, at least for emerging issues, that the IGF can issue recommendations, and this is definitely something we will address in the dynamic coalition on privacy. I am not yet sure how we will handle this -- how we will come up with outcomes. But I wouldn't say just because we don't have a defined membership it's not possible to agree on anything. If I look back on the -- to the WSIS process, where I participated in civil society, there was no clear membership on who was a member of civil society, who can decide and vote and whatever on our joint documents. But we still managed to come up with a lot of joint documents, a lot of joint statements, and even with two large, about 20 pages each, civil society declarations for the two summits. That was possible. And we just used maybe more innovative, more open, more tolerant mechanisms instead of the diplomatic negotiation mechanism.

There are mechanisms like the IETF is using , [rough consensus](#) , things like that. As you said, we are entering uncharted waters here, so we have to be creative. But I think we

should discuss and think about how to come up with recommendations and outputs like this.

CHAIRMAN DESAI (13 Feb 07): Yes. I wish we could introduce the rough consensus method into diplomacy. But, unfortunately, we can't. It would be wonderful to have a procedure in diplomacy where you say, "Everybody but other than the nut case has agreed." But, unfortunately, that's not possible.

LOUIS POUZIN (13 Feb 07): However, there are still functions in the IGF mandate which cannot be fulfilled unless we have procedures in place for just to do the work; and that's a number of functions which are labeled under the paragraph 72 in the Tunis Agenda. So I would suggest that even if you're not talking about bureau, we still have a group of people who would identify or try to define procedures in Rio for helping the work of the participants, in particular, for example, for the subject which was just mentioned by a colleague, Bendrath, from Germany, emerging issues and how do we report on that, how to make recommendations, if needed, how to distribute documents, and so on/.

WOLFGANG KLEINWAECHTER(13 Feb 07):: Thank you, Mr. Chairman, my name is Wolfgang Kleinwaechter from the University of Aarhus, and I'm also a special advisor member of the Advisory Group. Again and again both yesterday and today, we have heard that people want to have a more concrete outcome from the forum in the form of recommendations or something else. My conclusion from the success of the Athens meeting is, the success became possible because there were no negotiations -- there was no negotiation process. This played an extremely important role to allow people to speak much more freely in an environment where they had in the end of the day not to vote in favor or against a certain text So I would really warn the group to go down this road and to say, okay, probably in the second and third forum, you know, we start something like a semi or quasi negotiation process to come out with some recommendations. It's not only the fact that by its statute, the IGF is not a negotiation body. Because the IGF has -- is not a decision-making body. So it's really in the spirit of discussion, that there is no need to have any consensus at the end of the day, even not a rough consensus/. The forum was established to send messages to the organizations involved in the process in Athens. So it means organizations like the ITU, like UNESCO, like ICANN, like IETF, and others, and to say this is what we discussed, and, here, this is an input for you. Please take this into consideration. And probably we can create a new, you know, form of this which we could call message, **messages** from the IGF. It is not a recommendation, it is not a resolution, it is not any declaration or something like that. This is just a message. And we can also send mixed messages, so that -- say, okay, one message is this, but we have to the same issue also another message, but it's now up to you, to the decision-making body to consider these mixed messages and then to start the negotiation process where you have an appropriate organization which has a mandate to negotiate a special issue.

CHAIRMAN DESAI (13 Feb 07): As I said, I don't think there's anything in the mandate which precludes any issue from being discussed in the IGF , But I would urge one thing. If the IGF is to discuss controversial issues, it should discuss them within a framework of a debate of good faith,/. The IGF can help when there is an attempt at trying to find common ground, an attempt at understanding which can then be taken up somewhere else. It's useful also in identifying issues which are not being addressed elsewhere and which need to be picked up, and where, if you like, early work can be done in the IGF. There are open questions which have come up about outcomes, et cetera, and

there is language in paragraph 72 which talks of recommendations as appropriate, and we still do not have a process for figuring out how to get to those recommendations.

Reference V

The Forum MAG: Who Are These People?

Dr. Milton Mueller, May 18 2006

United Nations Secretary-General Kofi Annan [established an Advisory Group](#) to manage the new Internet Governance Forum Tuesday. If anyone was still worried about a "UN takeover" of ICANN or the Internet, they can rest easy. If the composition of the Advisory Group is any guide to the politics of the Forum, ICANN and the traditional internet community are doing just fine in global governance debates, thank you. Indeed, they are on the march. Let's take a look at the composition of the multistakeholder advisory group (MAG) that meets in Geneva this weekend.

The MAG's size was set at 40 people. Of those, 20 positions were set aside for governments, and 20 more for a combination of private business, civil society, academic and technical "stakeholder" groups.

Surprise number 1 is that of the 20 non-governmental positions, all but a handful are directly associated with the ICANN regime. Two (Alejandro Pisanty and Veni Markovski) are sitting ICANN Board members; one (Theresa Swineheart) is an ICANN staff member; two more (Nii Quaynor and Masanobu Katoh) are former ICANN Board members; two (Chris Disspain and Emily Taylor) represent ccTLD operators; two (Raul Echeberria and Adiel Akplogan) represent Regional Internet Address Registries (RIRs). Even the public interest or "civil society" representatives are long time players in the ICANN sandbox: Adam Peake of Glocom, Robin Gross of IP Justice, Jeanette Hofmann of WZ Berlin, and Erick Iriarte of Alfa-Redi are all associated with either ICANN's At Large Advisory Committee or its Noncommercial Users Constituency (or both). To that one can add an IETF representative, Patrik Faltstrom, often utilized by ICANN as a consultant, and the Internet Society's public policy advocate (ISOC is the corporate parent of the IETF and the owner of the .org registry).

What are we to make of this? Obviously the views and perspectives of these ICANN-related actors are far from homogeneous. ccTLD operators, especially Nominet UK and Australia's Disspain, are known for their independence of ICANN central. RIRs are also wary of ICANN itself and relatively autonomous. And the ALAC and NCUC participants are known as much for their opposition to ICANN's policies as for their participation in the regime. I am particularly happy that Gross, Hofmann and Peake are on there; all three have public interest-oriented policy positions and a wider view of the role of civil society in the global governance debate. Of course, I have to issue the disclaimer and note that Hofmann is a partner with me in the [Internet Governance Project](#).

But the over-representation of direct ICANN agents, via Board members and staff, is troublesome. Three people from the same organization is too many. Indeed, no other international organization or organization of any type has three representatives on the

MAG. And that's not counting the ISOC and IETF guys, or the former Board members. It's clear that if the results of WSIS did not signal overall acceptance of ICANN's legitimacy and current structure by the intergovernmental system, the initial results of the Forum's MAG selection do. One cannot avoid mentioning in this context the \$200,000 contribution ICANN made to the Forum. That probably didn't hurt.

Surprise number two: Michael D. Gallagher, currently working for a Washington law firm but just a few months ago head of the US Commerce Department's NTIA, which supervises ICANN and protects us against Internet porn er...instability, is on the MAG too. Now in some ways this is a good sign. It shows that the powers that be in the United States are not ignoring the Forum. Indeed, Gallagher has to be considered a semi-official appointee. It was Gallagher, after all, who issued the two most notorious documents in recent Internet governance history: 1) the June 30 statement by the US government that it owns the DNS root and has no intention of giving it up; and 2) the August 11 letter to ICANN regarding the .xxx top level domain, which constituted the first overt political intervention in ICANN by the US government. In some ways it is great that Gallagher is going to be sitting around deliberating in an unofficial capacity with some real techies from Europe and Africa, government ministers from Africa and the middle East, and civil society advocates. If he is a flexible and intelligent man he will learn a lot. And his presence signals buy-in from "Important" people.

Surprise number three was much less pleasant. The MAG names were not announced until Tuesday, only a few days before it was supposed to meet. The delay, we hear from the grapevine, came from political wrangling among governments, especially the G77 governments. Indeed, it was mainly the G77 that insisted on such a large and unwieldy MAG, as it wanted a large enough number to accommodate all the political and regional differences among its members. As one of my colleagues has remarked, that too is a sign that the governments are taking this seriously, and thus could be interpreted as a positive. But that kind of wrangling can also be crippling, and may signal that governments view the MAG as a source of power rather than as a purely advisory group meant to facilitate -- not control -- the Forum. But then, the same criticism could be made of the ICANN/ISOC crowd, which obviously went out of its way to gain positions.

In general, the large size of the MAG empowers the Secretariat of the Forum, run by Markus Kummer and Nitin Desai; this group will be too large and diverse to do much on its own and will rely quite heavily on the Secretariat for organization, agenda-setting, and results. But it will be able to veto and block people, ideas or notions that are offensive to a given faction. Not the recipe for innovative governance.

Longer term, let's hope the Forum comes up with a better mechanism for selecting people for its positions, one not completely dependent on patronage and lobbying.

source : <http://www.icannwatch.org/article.pl?sid=06/05/18/226205&mode=thread>



The Distributed Secretariat: Making the Internet Governance Forum Work

15 May, 2006

Drafters:

John Mathiason

Concurring:

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Milton Mueller

Lee McKnight

Derrick Cogburn

The Internet Governance Forum is an innovative approach to international policy deliberation. If it is to work, equally innovative support mechanisms must be developed. This paper explains why international policy discussions are heavily dependent on the substantive preparatory activities of a Secretariat. And yet the Internet Governance Forum lacks the staff and resources needed to provide those services on its own. Keeping its structure “lightweight” is a requirement of the Tunis Agenda.¹ This paper outlines a new way for the Forum to meet the need for a substantive Secretariat. It proposes to create a “distributed Secretariat” wherein the Forum delegates to qualified academic or professional groups the responsibility for preparing the factual and normative analysis that can serve as the starting point for its public deliberations. This idea can be profitably combined with the idea of bottom-up discussion groups, first proposed in the IGP paper of February 3, 2006,² to develop an open, lightweight and flexible mechanism for efficiently identifying, defining and discussing Internet Governance issues.

The Need for a Substantive Secretariat

Since the founding of the United Nations, the success of intergovernmental deliberations has depended heavily on the work of Secretariat units that support their processes. There are two distinct ways secretariats support discussions. The first is that of technical secretariat. This involves organizing meetings, handling coordination with elected chairs, vice-chairs, rapporteurs and group spokespersons, as well as with non-governmental participants. It includes processing the reports of meetings, as well as formal meeting management.

The second is the function of substantive secretariat. This involves review and synthesis of the issues to be discussed and making the results available to participants as a keynote document. The keynote document provides a common starting point for discussions. Without a common document that sets out the relevant facts, previous agreements, current positions and possible directions, intergovernmental discussion is usually unfocused. The problem of preparation cannot be solved if all interested parties

¹ Tunis Agenda for an Information Society, para. 73.

² Milton Mueller and John Mathiason, "Building an Internet Governance Forum" (February 3, 2006). Internet Governance Project. Paper IGP06-001. Available at <http://internetgovernance.org/pdf/igp-forum.pdf>

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simply submit their own documents and positions prior to a meeting. First, the volume of documentation involved is prohibitive (the first IGF consultation in February 2006 had 35 written contributions). More importantly, none of these submissions could become the starting point for discussion without a political decision by someone that would indicate a bias toward a particular stakeholder. As a result, the discussion starts without a common basis. Often, these discussions only succeed in narrowing the definitions and issues – an outcome that could have been accomplished at the outset with a well-written keynote document. Given the broad range of issues the Forum must face, the communities involved in Internet governance cannot afford to waste that much time.

The evidence from some sixty years of United Nations system practice is clearly that a well-functioning secretariat can largely determine the extent to which intergovernmental deliberations are successful. There has been no systematic study of this, in part because if they are successful, secretariats are largely invisible and credit for success is given to the governmental negotiators. However, studies done of the processes of the United Nations Framework Convention on Climate Change (Paterson, 1996), the United Nations Convention on the Law of the Sea (DeMarffy, 1995), and the Beijing Declaration and Platform for Action (Mathiason, 1998) clearly indicate that secretariat services significantly affected the outcomes of discussions. This suggests that the IGF also needs a substantive secretariat.

For most international discussions an existing secretariat performs both the technical and substantive functions. The IGF, however, has only a small technical secretariat. There are no funds for the typical United Nations substantive secretariat. While this could be a problem, it can also be an opportunity.

The resource constraints encourage us to develop a new method of substantive secretariat support. That new method is what we term, using computer language, a distributed secretariat. By “distributed” we mean that critical functions of the substantive secretariat are delegated or distributed to appropriate stakeholder groups. The official IGF Secretariat remains in control of the delegation, but outsources most of the consultation, analysis and preparation work to others. We explain how this would work in greater detail in the third section of this paper. In the section below, we examine the criteria for determining what kinds of entities can take on these functions.

Characteristics of Good Secretariat Support

Secretariat support is effective because it provides a neutral, technically competent basis for discussion. It is presumed that the only interest that the secretariat has is in achieving consensus, within the mandate of the body concerned. Each of these concepts needs to be explored.

Neutrality customarily means that the secretariat does not represent the interest of any state involved in the process. Typically, international secretariats

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are multi-national in composition. Moreover, neutrality is one of the rules for United Nations secretariats included in Article 100 of the UN Charter:

In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

This does not mean moral neutrality. Secretariats are expected to support and promote the basic values of the organization, one of which is that Member States are responsible for decision-making and another is that non-governmental organizations shall be heard. In this context, secretariats are the custodians of what has been agreed and maintain the organization's institutional memory. Neutrality is particularly important in emerging multi-stakeholder arrangements, where the engaged parties not only have different legal statuses but also represent different constituencies with different interests.

Technical competence means that the secretariat is a credible provider of the information necessary to carry on an orderly debate. In regime theory, the first stage of agreement has to be on the facts and causal relationships in any situation. This is followed by an agreement on the norms and standards to apply in dealing with these facts. The importance of these agreements on principles for Internet governance has been underscored by Mueller, Mathiason and Klein (2006). Secretariats, through their surveillance of the academic and professional communities and literature, as well as of information collected by national governments, are able to assemble what would appear to be the full range of views about a situation. They are gatekeepers rather than innovators, users of information rather than producers.

To be credible, secretariats have to be able to show that they are aware of and sensitive to the main intellectual trends in a given field. This is not easy, especially in technical fields where contestation is frequent and data analysis complex. They must be able to understand the bases for disagreements. They must be able to show the nature of the balance between different perspectives and, ensure that factual evidence relating to different positions is presented fairly and accurately.

In order to maintain technical competence, good secretariats recruit for their staff professionals who understand the fields over which they are undertaking surveillance. They also develop working relationships with the main institutions and other actors in a field, both academic and professional. They demonstrate openness to hearing new ideas and weighing new evidence.

Criteria for a Distributed Secretariat

The characteristics of a good secretariat can be applied to the operation of a

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distributed secretariat. A distributed secretariat simply means that the substantive secretariat functions for the IGF are provided by non-United Nations entities that are charged with the task by the United Nations. These functions would include:

- Providing the factual and normative analysis to use as the starting point of discussions.
- Expert consultations intended to explore the extent to which consensus already exists on a given issue
- Indicating where the Forum discussion could most effectively focus on the issue

The entities performing the function would have to meet two criteria that would test their credibility: political neutrality and technical competence.

The neutrality test would be whether the entity considered itself, or was considered by other stakeholders, to be able to assemble all known positions and to present them in a systematic and balanced way. The entity's main interest in the outcome of discussion would be in ensuring that a consensus was achieved. Many stakeholders in the IGF would not meet the test. National governments by definition have vested interests, although these clearly must be taken into account. International intergovernmental organizations would also have trouble meeting the neutrality test in most instances. If the organization is active in setting policy in the area under discussion, it might have a vested interest in the outcome and thus would not be an appropriate party to mediate an unbiased discussion of public policy by other stakeholders and organizations. Even if the organization had no institutional self-interest in a topic, its status as an agent of member states would seriously hamper its attempt to be an impartial facilitator of a multistakeholder discussion; its channels of communication and consultation would be biased toward governments. Private sector stakeholders, particularly individual corporations or trade associations formed to lobby for public policies that advance the industry's interests, also have very direct economic interests in many issues. Among civil society stakeholders, those devoted to advocacy of a particular policy position also would have vested interests determined by their purposes. However, many professional associations and academic research institutes are comparatively good at analyzing and presenting issues in a balanced way because this is how they have been trained to work and deliberate. These civil society entities are also more independent of the divisive intergovernmental politics that often stall policy discussions.

Many stakeholders could meet the test of technical competence, although for any given organization competence would vary by issue. Most governments can draw on the work of their technical ministries. International organizations often have extensive expertise in their specific domain. Private sector corporations likewise have research and technical staff that can provide information, although the extent to which that extends to policy issues might vary. Civil so-

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ciety organizations are often built on epistemic communities, reflect their views and use the technical analysis provided by their members. Within civil society, professional associations and academic entities in particular build their reputations on the quality of their analysis.

Clearly, the analytical neutrality test is the more important of the two. Although both tests are necessary, the role of preparing the ground for discussion requires an unbiased and systematic approach to the framing of the issues. Here, professional societies and academic entities would provide one of the most appropriate choices for delegating the Forum's substantive secretariat function.

Operation of a Distributed Secretariat

How could the delegation of substantive secretariat functions be organized? Its operation could involve both bottom up and top down elements. Substantive secretariats in the United Nations often contract with outside consultants to provide specialized analyses. These consultants are given standing because they were commissioned, and the technical secretariat takes responsibility for them. A similar procedure could be followed in designating entities that would undertake substantive secretariat functions for sessions of the IGF. At the same time, a distributed Secretariat could take advantage of the voluntary work of discussion groups. It might function in this way:

1. The IG Forum should encourage self-organized, primarily virtual multi-stakeholder discussion groups to identify and explore possible topics for consideration by the main Forum. These bottom-up efforts would apply to the Forum's Multi-stakeholder Advisory Group (MAG) for recognition and to get on the Forum's meeting agenda.
2. Once the MAG accepts a topic, stakeholders would be encouraged to volunteer to provide substantive support in the issue area. Applicants would agree to incorporate the work of the discussion group(s) that gained recognition for the topic, find their own funding, produce a major discussion paper and, probably, agree to organize at least one pre-session expert group meeting either in-person or through online collaboration tools.
3. The IG Forum Secretariat would review the proposals and make a recommendation to its Multistakeholder Advisory Group.
4. The IGF Multistakeholder Advisory Group would decide which entity would serve as the substantive secretariat for that issue.
5. The selected entity would participate in the Forum, presenting its issue paper and the results of any expert consultations held.

A first decision of the IGF Multistakeholder Advisory Group should be to determine how the substantive secretariat function can be performed. We recommend that it use the distributed secretariat model suggested here.

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