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A Development Agenda for Internet Governance - Call for a 'Framework Convention on the Internet'

In recent times, 'development agendas' in WIPO and WTO have challenged the inequitable basis of global policy regimes. The first meeting of the IGF is an appropriate occasion for developing countries and civil society to articulate a 'development agenda for Internet Governance'. The imperative for this is in the fact that the Internet is playing an ever increasing role in shaping, as well as in the governance, of many social and economic areas at the global level, and constitutes a very significant political space.

However, dominant political and business interests have captured advantageous positions with respect to the governance of the Internet. There is great urgency therefore for developing countries and civil society to challenge the primarily business-led vision of the Internet, and to establish its character as an essential social infrastructure that should be driven by the political vision for the emerging information society laid by the recent World Summit on the Information Society (WSIS). The first meeting of the IGF should underscore this political vision as providing the guiding principles for Internet Governance, and begin a process of developing new mechanisms for global governance of the Internet.

IGF is the right forum to propose a global 'framework convention on the Internet' for the above purposes. In fact, the call for "enhanced cooperation" for developing "globally applicable principles on public policy" regarding the Internet in the Tunis Agenda adopted at the WSIS can be interpreted as a mandate for moving towards a framework convention process.

Global Policy Frameworks and Development Agenda

In the last few decades, as forces of globalization have pulled people and nations closer, global policy frameworks have become increasingly relevant to people's daily lives. These global policy frameworks however are often developed and promoted by dominant countries and interests, and do not serve the needs of the developing and less developed countries equally. In many instances, such frameworks have manifestly been detrimental to developing and (the) least (or less) developed countries. For instance, a UNDP report

¹ www.ITforChange.net . For any clarifications or further information, please contact Parminder Jeet Singh, Parminder@ITforChange.net .



estimates that “under the WTO regime, in the period 1995 to 2004, the 48 least developed countries will actually be worse off by \$600 million a year, with sub-Saharan Africa actually worse off by \$1.2 billion”. The UNDP also says that 70% of the gains of the Uruguay Round (of WTO) will go to developed countries².

What has marked the last few years however is the fact that developing countries have come together and challenged these dominant policy paradigms, and proposed alternatives that are more just and equitable. In the arenas of WTO and WIPO³, these alternatives have referred to as ‘development agenda’. While the specificities of course differ, ‘development agendas’ in global policy frameworks have come to denote alternatives to the dominant paradigms that are seen as partisan to developed countries and other dominant interests. They expose the basic premises of the dominant policy frameworks that have been passed off as ‘natural’ and as equally beneficial to everyone.

When the need for new development agendas to challenge partisan policy frameworks is being acknowledged in some critical areas of globalization, the relevance of a development agenda for the governance of the very forces that have unleashed globalization - the new ICTs - should be self-evident.

The Evolving Context of Internet Governance

The hallmark of status-quoist arguments in Internet governance (IG) has been to present IG mostly in terms of technical issues – issues like stability, security and robustness of the infrastructure – where there can be no two opinions. It is, however, not difficult to establish the political nature of the Internet and its governance, if we look at how the Internet has evolved from a simple communication protocol to being one of the strongest social phenomena in the world today.

When the Internet was an experimental communication platform, it was ‘governed’ by the public spirited values of its inventors – whereby principles of openness, transparency and egalitarianism got embedded in its basic design. In the second phase of its governance, the Internet was identified by the US, the country of its origin, primarily as a platform for national and global commerce - an electronic marketplace. This was decidedly a political stance, and the governance mechanisms for the Internet were set up to serve this objective. The anchorage of many present IG mechanisms in the Department of Commerce of the US government, and early US government’s policy papers like ‘A Framework for Global Electronic Commerce’, which led to the birth of ICANN⁴, are just some of the more obvious indicators of this fact.

Not only have commercial interests been established as the basis for IG mechanisms, the latter also take their cue from the dominant view of the US establishment – both political and business - about what the political principles for an ideal market and commerce should be. (Some of these principles are being strongly challenged by the ‘development agendas’ in WTO and WIPO).

² Quoted in “An Agenda for the Development Round of Trade Negotiations in the Aftermath of Cancun” by Joseph E Stiglitz.

³ World Intellectual Property Organization

⁴ Internet Corporation for Assigned Names and Numbers. A US incorporated non-profit which does many of the basic technical governance functions for the Internet.

Worldwide, the Internet is seen today as much more than a platform for commerce. It has grown into a potent social force, which the world community has described as a “central element of the infrastructure of the Information Society” (WSIS Tunis Agenda), with a vision of “enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life” (opening paragraph of the WSIS Declaration of Principles). However, the policy and governance mechanisms for the Internet are still to take note of this political vision.

From the first generation governance of the Internet as an experimental communication protocol, and its second generation governance as primarily a platform for commerce driven by the political and business interests of one country, it is now necessary to move to the Internet’s ‘third generation’ governance framework, in accordance with its characterization as the central element of the infrastructure of the information society, and with the political vision given for the information society by the WSIS⁵.

The Political Nature of the Internet

Even those who do agree that the Internet has strong political implications, often argue that these implications are best dealt in the arenas that are already dealing with the substantive policy issues – like WIPO with IPR⁶ and hopefully with access to knowledge; and WTO with trade, including of services like telecommunication. There is some merit in these arguments, because substantive expertise is essential in each of these areas. However, it is important to note that as the Internet becomes the arena of a lot of global and sub-global social and economic activity, (1) any governance issues for Internet based activities may have substantial links to the nature and governance of the infrastructure itself, and (2) once on the Internet, the nature of the activity itself may undergo substantive changes, bringing in new governance issues. Also, it is of great relevance that the end-to-end principle⁷ in the Internet’s architecture is increasingly under threat, and as more and more intelligence gets invested in the network it makes it more pliable to multiple options.

The above factors make the Internet and its governance a highly political space, which dominant interests have already been exploiting. Lack of formal processes for its governance has undoubtedly allowed the Internet to evolve in an open, global and more or less egalitarian manner. However, **it appears that Internet’s period of innocence may be over as more and more economic and political powers realize its importance and put their covetous attention to it.** Increasingly, political power is being exercised in relation to the Internet, but mostly in an illegitimate manner.

The default or enforced control over the governance of the Internet, whose influence in our social and economic affairs is growing rapidly, may in the future be used even more to push forward a neo-liberal world order that serves entrenched interests. To give just two examples of such an trend; the increasing replacement of traditional global telecommunication networks with Internet based ones has been used to convert a pro-developing countries interconnection-regime to a pro-

⁵ See WSIS Declaration of Principles at <http://www.itu.int/wsis/docs/geneva/official/dop.html>

⁶ Intellectual Property Rights.

⁷ A basic architectural principle for the Internet, whereby the network itself is (mostly) dumb, and all intelligence resides with the devices at the ends of the network. This principle makes the network neutral to different activities or applications over it, and thereby promotes innovation.

developed countries one⁸; and while the Internet is supposed to be a vehicle for freer flow of information, the default IPR regimes in the ICT sector and on the Internet seem to increasingly work towards making IPR barriers to information even stronger than before.

It does not take much foresight to see that the Internet will play an ever increasing role in the governance of many social and economic areas at the global level. **The threat is that as we are pulled towards greater, and perhaps inevitable, 'harmonization'⁹ of national policies in many arenas – whether of content, IPR, privacy or consumer protection – such harmonization will happen on the terms of those who have captured advantageous positions with respect to the governance of the Internet.** It is therefore important to identify the looming danger early, and for developing countries, and progressive forces in civil society, to construct an alternative basis and mechanism for IG, which uses the information society opportunity in service of the ideals of social and human development. This will constitute the 'development agenda' in IG.

Shaping a Development Agenda for IG

Most demands of developing countries during IG related discussions have come on piecemeal issues, like inter-connection charges and capacity building. This is akin to early engagements with global policy regimes like WTO and WIPO, where specific concessions were sought within the existing political framework of the system. However, in recent times, developing countries have realized the limitations of such negotiations, and have come up with 'development agendas' that basically challenge the political vision and direction of these institutions. **In the sphere of IG as well, developing countries need to bring up the challenge at the level of political principles.**

For this purpose, it is important to identify the political principles underlying the present IG establishment, and propose alternative visions. **At the very basic level, it is important to challenge the primarily business-led vision for the Internet, and recognize it as an essential social infrastructure that should be driven by an egalitarian and inclusive political vision.**

The Internet should be claimed as a public infrastructure with a strong public goods perspective. This of course does not mean discouraging private investment in ICT infrastructure, which is very much needed, but that such investments should be promoted within a strong public policy framework, which is pro-development.

In many ways, this new infrastructure, as a basis of socio-economic opportunity and access to knowledge, has strong similarity to a public education infrastructure, which developed countries invested in during the period that can be considered formative for their present socio-economic strengths. It is in keeping with the internationally recognized Right to Development for developing countries to take a public goods view of this new infrastructure, which gives them leap-frogging opportunities, and make appropriate social, political, and economic investments into it. The same right should also be invoked in framing the political principles that should guide the global governance of this important infrastructure.

⁸ The ITU's asymmetric telephone inter-connection regime worked in favor of developing countries, while the present 'self-regulated' Internet inter-connection regime works in favor of developed countries.

⁹ The terms 'harmonization' and 'coherence', used in the international policy arena, have often caused concern with respect to the default political principles on which such 'harmonization' or 'coherence' is sought.

In claiming its public goods nature, it is important to define the Internet as encompassing all four layers – logical, applications, content and physical or access-infrastructure - and IG as concerning all these layers as well. IG needs to be driven by public interest, overriding commercial or business interests, but also facilitating free and fair trade and commerce. **The Internet cannot be allowed to create a new alternative world where dominant players rule the roost, and public interest is subservient. That would be living out the worst fears about globalization.**

Specific IG Issues versus Broader Political Principles

It is important for developing countries to get together with progressive civil society actors (WIPO's development agenda is a good example of such an alliance), and develop the basic political principles for governance of the Internet. At the same time, the political basis underlying the present IG establishment has to be systematically challenged. For example, its allegiance to an unidentifiable 'internet community' (as if technologists have a prior political claim to the Internet) or 'user community' (as if present non-users have no political stake in the Internet) needs to be politically deconstructed. Similarly, many other justifications, like the insistence that most IG activity today is politically-neutral, can easily be countered. The special character of the Internet which transcends present political boundaries, and confers a new kind of 'global citizenship', however, needs to be acknowledged and provided for adequately in any IG mechanisms.

The call for complete internationalization of IG mechanisms will also hold more traction when the political principles of its global governance are laid out, and work begins on identification of a suitable mechanism.

At the same time, as an overall political agenda for IG is shaped, developing countries must keep up the pressure on specific IG issues like access, inter-connection charges and capacity building. However, when seen under the canopy of broader political principles that must be laid out for the Internet and its governance, these issues will take on much stronger and wider implications.

Access: Access in WSIS and other IG discussions has mostly been seen as infrastructural access. However, if we see the Internet in its wider social significance, infrastructural access is of little use if access to necessary content and services is also not included in the concept and discussions of 'access'. IPR regimes on the Internet, and recent developments towards a tiered Internet¹⁰, have huge implications for access to socially useful content and services. The development agenda proposed at WIPO by some countries has called for a treaty to "promote access by the developing countries to the results of publicly funded research in the developed countries". The Internet is the main vehicle for such access, and the above stated developments may already be compromising the possibilities of achieving the objectives of the proposed development agenda for WIPO.

Interconnection charges: The issue of interconnection regimes that are favorable to developing countries is a specific implication of seeing the Internet as an essential socio-developmental infrastructure with a strong public goods nature. Such a political vision for

¹⁰ An arrangement where not only the content user pays (for Internet access) but those who put content on the Internet also pay the connectivity infrastructure provider, and different levels of content relay services are available for different payments.

the Internet however also makes it incumbent on the governments of developing countries to follow progressive and pro-development Internet infrastructural policies within their national boundaries, for example, promoting open access policies, and investing in public infrastructure in areas whose needs are not addressed by the market.

Capacity building: Similarly, the capacity building issue needs to be seen more in terms of building capacities, both in developing and installing technologies, and in their regulatory policies, which enable realization of the larger political vision for the Internet, rather than as hand-me-downs from the dominant paradigm. It is important that the political context of what is needed, and for what purpose, is developed, before the issue of capacity building is taken up. This is especially relevant given the wider technology options available today, which may challenge dominant technology paradigms, (free and open source software, VoIP¹¹ and open spectrum wireless access systems, for instance) as also a greater variety of regulatory options with differing socio-economic impacts.

Developing Countries Have the Greatest Stake in Strengthening the IGF

The Internet Governance Forum (IGF) is the only international forum for IG that is truly open, and is not (yet) under the stranglehold of the interests that occupy the dominant political space in IG. This is therefore the ideal forum for developing countries and civil society to bring up a 'development agenda' in IG. **It is in the specific interest of developing countries to strengthen the IGF, and to make sufficient political investments into it. And the first meeting of the IGF may be crucial for defining its scope and strength.**

In the IG and the information society arena, regrettably, there appears to be great distance between governments of the developing countries and global civil society. There may be strong reasons – political as well as structural - for this, both on the part of the governments and civil society. However, it is important to remember that there is much closer cooperation between developing country governments and civil society in many other global policy arenas – to repeat the examples, WTO and WIPO. Therefore, if development issues in IG are more clearly articulated, many areas of close convergence are likely to emerge.

For developed countries and business interests, it may appear that they have little to gain from changes to the present IG regime. However, it may be pertinent to note that while the Internet provides the opportunity for a more globalized world with more shared social space, a global political regime for Internet governance which is perceived as just and equitable by all is imperative to realize this possibility fully. **If not, it is not difficult to foresee a future where countries increasingly balkanize the Internet to conform it to their national boundaries and national policies, and in this a great opportunity may be lost.** Apart from its ethical basis therefore, supporting a development agenda for IG may in any case be in the interest of all involved. **The IGF is the space to carry on from where we left at the WSIS. Translating the political vision for the information society into the basis and mechanisms of governance of its central infrastructure, the Internet, is one of the most important unfinished tasks.**

¹¹ Voice over Internet Protocol

A 'Framework Convention on the Internet'

It is widely acknowledged that WSIS just about prefaced the process of developing a more legitimate governance structure for the Internet. Its main outcomes in terms of IG have been (1) the setting up of the multi-stakeholder IG Forum for policy deliberations, and (2) calling for starting a formal process for a, somewhat vaguely worded, "enhanced cooperation" among all actors in IG for developing "globally applicable principles on public policy" regarding the Internet¹².

It is important for the global community to use the IGF to develop broad principles for governance of the Internet that recognize the social significance of the Internet in terms of the values that have been adopted by it in form of various international declarations of rights, including civil and political rights as well as economic, social and cultural rights, and the right to development.

The first meeting of the IGF is therefore the right opportunity to call for a 'framework convention¹³ on the Internet', which should lay out the broader public policy principles concerning the Internet. This framework should define the Internet, its social significance and the principles for its governance.

In fact, WSIS's exhortation for launching a formal process for an "enhanced cooperation" involving all stakeholders for developing "globally applicable principles on public policy" regarding the Internet can itself be interpreted as a mandate for moving towards a 'framework convention' process¹⁴.

¹² See Tunis Agenda at <http://www.itu.int/wsisis/docs2/tunis/off/6rev1.pdf>

¹³ Framework conventions are more appropriate than detailed treaties or conventions in evolving areas such as IG, where, in the first instance, laying out the broader principles is important. These principles can then guide more detailed agreements among various actors on specific issues. The UN Framework Convention on Climate Change is a good example of an existing framework convention.

¹⁴ A framework convention or a similar process for Internet governance has also been proposed by the Internet Governance Project and by Association for Progressive Communications (See www.internetgovernance.org/pdf/igp-fc.pdf and www.itu.int/wsisis/docs2/pc3/contributions/co103.pdf).