IT for Change's Contribution to the
Consultations on Enhanced Cooperation
being held at the United Nations Headquarters in New York in December 2010
(Dated 30th November, 2010)

This input addresses two specific questions raised in the communication from UN DESA regarding the forthcoming consultations on 'enhanced cooperation'.

What international public policy issues pertaining to the Internet are not being adequately addressed by current mechanisms?
Given the Internet's inherently global nature, as the Internet gets increasingly enmeshed with almost all social, economic, cultural and political activities, international public policy issues pertaining to the Internet would keep becoming more and more important and urgent for us to resolve collectively. As new issues keep arising in this essentially unpredictable area, standing global mechanisms have to be in place to deal with them dynamically. It is difficult to construct right institutional systems anew every time a global Internet policy exigency arises; and we are still only at the start of the fast-moving Internet powered information society era.

In this context, the following is merely a suggestive list of some public policy issue areas that are already very important and urgent to resolve, but are not being addressed by current mechanisms.

- Global Internet traffic flows – in terms of interconnection systems as well as globally open architecture of such flows (global net neutrality, also including global policy frameworks for downstream net neutrality)

- Resolving specific cross-border Internet related issues (content, security, privacy, crime, access to knowledge, commerce etc) (a Council of Europe expert group is right now looking into possible new mechanisms for addressing such cross-border issues)

- Globally democratic regulation in public interest of global digital corporations that have huge monopolies across the globe, and have a defining impact on our emerging social systems, including in the areas of knowledge, media, market, politics and culture (due to their immense global power, national regulations, especially in less powerful countries, have little leverage over these hegemonic digital corporations)

- Globally democratic political supervision of technical governance of Critical Internet Resources, without replacing/subverting the current governance systems (which includes domain name systems, IP allocation, root servers, security systems at the root level etc)

- Going beyond person- and social group- neutral Internet policy frameworks informed largely by technical thinking towards shaping frameworks that take into account different socio-economic advantages and marginalisations, whereby they specifically address social-structural location of people, groups and countries (framing a development agenda in the area of global Internet related policies as is being shaped in the areas of trade and intellectual property related global policies)

What is of great concern across all these areas is that while a few powerful countries either have direct policy influence in these areas because many of the concerned activities are legally registered in and operate from these countries, or these countries are entering into exclusive plurilateral treaties among themselves to gain the needed policy influence or leverage (examples are cyber-crime treaty, ACTA, proposed CoE initiative on cross-border Internet related issues), developing countries are getting further marginalised with ever decreasing policy leverage.

What specific processes should be pursued to enhance international cooperation in these areas?

While some of the Internet related public policy issues may have a strong affinity with the themes addressed by existing global forums like the WIPO and the WTO, many new important issues without any clear institutional home do keep surfacing. As mentioned earlier, we need to have sufficient standby institutional capacity to deal with the constant stream of important global Internet related public policy issues arising from the manner in which the Internet is becoming a crucial social, economic, cultural and political determinant. Such an institutional system must be flexible enough to take into account a fast moving reality which is difficult to predict. Also, it must be sufficiently inclusive and participative because the resolution of concerned public policy issues require different competencies and impact different social groups in a variety of different ways.

The specific processes or institutional responses that are required in this regard can be seen at different levels. One would be to take a theme or issue based approach. Global approaches to more pressing issues like cyber-security and child protection are already being considered in various ways. However, organising issue-specific global responses, like treaties, take a long time, and many Internet related public policy issues require more urgent and dynamic responses. Such a required dynamic and responsive global system for addressing important Internet related public policy issues can build over two connected institutional processes:

(1) A framework convention on the Internet, which will lay out both the broad context and the overarching principles for addressing Internet related public policy issues, as well as provide the legal basis for a standing institutional system of global Internet policy development.

(2) A new 'body' anchored to the UN system that is the 'home' for all efforts addressing global Internet related public policy issues. The anchorage with the UN system is to ensure that this new 'body' is globally democratic, as against numerous exclusive plurilateral initiatives in the area of globally-applicable Internet policies.

The idea of a framework convention on the Internet was mooted by some developing countries towards the end of the WSIS. It is now time to take this idea seriously and move it forward. Having broad principles that build on the articulated global political perspectives and priorities – including various human rights declarations and other global covenants – would serve as the required bedrock for all Internet policy and Internet governance processes worldwide. The Internet makes us global citizens in ways that are unprecedented; correspondingly, we cannot shy away from articulating global socio-political principles that should inform the governance of the Internet.

The proposed new 'body' for addressing global Internet policy issues could be a 'Global Internet Council' (GIC) mentioned as a part of Model 1 presented in the report of the Working Group on Internet Governance (WGIG) during the WSIS. In the interim, as this GIC is instituted, a Committee on Internet Policy (CIP) can take up a lot of groundwork needed in the area of global Internet policies, on the lines of the OECD's Committee for Information, Computer and Communications Policy, which reports to the OECD Council. This global CIP can similarly report initially to the ECOSOC or the CSTD, and later directly to the GIC.

It is unlikely that an open consultation can reach any conclusions on such a range of complex issues. **It will therefore be most appropriate to set up a CSTD Working Group to examine the various options for taking the process of enhanced cooperation forward**, so that important global Internet related public policy issues can be properly addressed.

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The Tunis Agenda (TA) devotes a lot of space to discussing a global Internet policy vacuum, that needs to be filled in urgently, especially Paragraph 61 onwards.

> We are convinced that there is a need to initiate, and reinforce, as appropriate, a transparent, democratic, and multilateral process, with the participation of governments, private sector, civil society and international organizations, in their respective roles. This process could envisage creation of a suitable framework or mechanisms, where justified, thus spurring the ongoing and active evolution of the current arrangements in order to synergize the efforts in this regard.

Section 71 calls a for a specific process of Enhanced Cooperation "to be started by the UN Secretary-General, …... by the end of the first quarter of 2006".

It is unfortunate that five years after the WSIS, and four after the deadline given for starting the process, nothing has been done in this regard. It is therefore of urgent importance that a decision is reached to start the process immediately, no later than the first quarter of 2011. We expect the consultations on the process of Enhanced Cooperation in December to provide concrete directions in this regard.

However, if this does not happen and further discussions are required, it may be useful to take such a discussion up in a Working Group. **We therefore suggest that a CSTD Working Group on the modalities of the mandated 'Enhanced Cooperation' be set up with a clear timeline, on similar lines as the CSTD Working Group on IGF improvements.**

All actors should address this key areas of building appropriate global institutions for developing Internet related public policy with due earnestness. We cannot celebrate the 'uniquely global phenomenon' of the

Internet, and the great enhancement that it is triggering in globalisation at economic, social and cultural levels, without looking at the concomitant global political aspects as well. Avoiding the political, which unfortunately is the attitude of many actors at present in this regard, is very unfortunate, and greatly regressive. The 'political' is necessary not only to 'manage' the new uniquely global phenomenon of the Internet, but also to address issues of global fairness and justice in this area. In absence of the necessary political institutions at the global level, the Internet would turn into a force of further consolidation of the power of the already dominant, and further marginalization of those who are excluded, as is already happening.

It appears that those dealing with the current distributed architecture of managing the Critical Internet Resources (CIRs) seem to have strong misgivings that a process of enhanced cooperation may disrupt this architecture that has worked very well, and lead to centralised structures in this area. We think that it is important to address these misgivings, as the Tunis Agenda, already does in paragraph 69, which expressly excluded from the ambit of 'enhanced cooperation' (EC, hereafter) "day-to-day technical and operational matters, that do not impact on international public policy issues."

We may reassert once again that the present distributed architecture of CIR management has worked very well, and is rather a great governance innovation, and should not be disturbed in any substantial manner.

In fact, the Tunis Agenda is clear that the ambit of EC goes much beyond CIR related public policies. In fact, we are of the considered opinion that the **most pressing and important policy related issues requiring urgent global attention lie outside the CIR area. It appears that progress in this important area is also being blocked due to misgivings over the CIR area.**

It may be therefore be a pragmatic approach at this point of time to consider the matter of going forward on EC through two distinct threads or streams

(1) One covering all non-CIR areas, with trans-border public policy implications, like global net neutrality, interconnection regimes, security, privacy, content related issues, Web 2 Governance, regulation of global mega-corporates, especially with monopolistic presence in areas of significant importance to the global digital architecture, etc.

(2) and, another stream related to EC on public policy issues that may concern the CIR area (which, we are sure, may be a very 'thin' institutional mechanism, more or less on the lines of the role of the US

government in global CIR management at present).

The proposed Working Group should therefore organise its work over these two threads, (at least initially), as largely proceeding separately from one other, at least during the initial discussions.

Why do we need appropriate global public policy institutions
It is important to note that in the absence of appropriate public policy institutions, it is not that those 'decisions' which are needed to be taken through democratic political processes **are not being taken.** In that sense, there is never a real political or power vacuum. If power does not get exercised in the due democratic manner, it will be exercised undemocratically, as is indeed being done at the present.

Power in relation to the evolution and working of the Internet is today increasingly concentrated in the hands of a few mega global corporations, with an extent of monopoly in key areas which would have triggered anti-monopoly and pro-competition regulatory activity long back, if it were in any other commercial area with an appropriate political/ regulatory processes in place. In the absence of the latter, not only these few dominant players continue to exercise huge unregulated power, which can obviously be harmful to the public interest, but perhaps even more importantly, through their immense market power, they are distorting the architecture of the Internet as per their own narrow interests. **Such architectural distortion** – the increased compromising of the net neutrality principle across the globe being a key case in point – **may not be possible to ever set right if appropriate political interventions are not urgently made.**

At the same time, plurilateral policy initiatives among the most powerful nations – like, OECD and CoE based ones – continue to develop inter-country policies in this area. Once adopted among these powerful nations, such is the inescapable globalness of the Internet, and so huge the combined economic and political strength of these powerful countries, it does not take much time for their policies or policy frameworks to become 'globally applicable' by default. Such deep global democratic deficit in the area of Internet related public policies is a matter of deep concern, and this deficit must be addressed urgently.

Many governments of the North, working through the above plurilateral structures, have repeatedly spoken of the 'democratic or democratising role' of the Internet. It is paradoxical then that they shy away for the urgent imperative of (global) democracy in governing the Internet itself. **An undemocratically governed phenomenon cannot contribute to furthering democracy.**

Some specific Institutional models

We do understand that institutional developments take time and may need to proceed in steps, taking note of some practical realities. However, this is also the moment for all actors to rise up to the occasion and show commitment to make historic decisions, which the future Internet enabled world can look back on proudly, as we do often to path-breaking political instruments like country constitutions and declaration of human rights etc. An absence of sufficient political coherence at the global level should not be used as an excuse for not proceeding forward in this important area, because such statements beg the question. Political will must precede political coherence and institutional developments, and does not come as consequence of it. If we do think that the Internet creates a new 'global information society', democratic global governance of the 'key infrastructure of the information society' (which is how the Tunis Agenda describes the Internet) is not an option.

Some institutional models suggested in the report of the Working Group on Internet Governance may give us a good starting point. For instance, the suggested 'Model 1' speaks of a Global Internet Council, which idea can be developed further. Quoting from the WGIG report,

> This model envisages a Global Internet Council (GIC), consisting of members from Governments with appropriate representation from each region and with involvement of other stakeholders. This council would take over the functions relating to international Internet governance currently performed by the Department of Commerce of the United States Government. It would also replace the ICANN Governmental Advisory Committee (GAC).
>
> The functions of the GIC should include:
> - Setting of international Internet public policy and providing the necessary oversight relating to Internet resource management, such as additions or deletions to the root zone file, management of IP addresses, introduction of gTLDs, delegation and redelegation of ccTLDs.
> - Setting of international public policy and coordination for other Internet related key issues, such as spam, privacy, cybersecurity and cybercrime, which are not being fully addressed by other existing intergovernmental organizations.
> - Facilitating negotiation of treaties, conventions and agreements on Internet-related public policies.
> - Fostering and providing guidance on certain developmental

> issues in the broader Internet agenda, including but not limited to capacity-building, multilingualism, equitable and cost-based international interconnection costs, and equitable access for all.
> - Approving rules and procedures for dispute resolution mechanisms and conduct arbitration, as required.

However, we think that the above description is too CIR-centric which approach, as discussed earlier, often muddies the water, so as to say, in proceeding on EC. We should describe the mandate of the proposed GIC more as a generic global institution with responsibility for the full range of Internet related public policies with global relevance or application. **It is suggested that such a Global Internet Council is formed with 3 government representatives from each region, and six non-governmental members.**

The Tunis Agenda mentions at several places that any new mechanisms should be 'responsive to innovation'. As important as the imperative that the unique global nature of the Internet urgently requires new institutional developments in the area of global public policies, is the fact that these new institutions should be adequately innovative. In this regard, the much acclaimed practices in the current IG area related to openness and transparency, consultation-intensive processes, multistakeholder participation, working groups based activity etc should inform the proposed new institutional design.

It may be of use to look at the institutional design around the plurilateral systems that are doing intensive inter-country public policy development related work, especially in the OECD and the CoE. However, these OECD/ CoE based institutional systems may still not be appropriately open, transparent and multistakeholder, and the proposed new global institutions should go beyond these models in these regards. It is, in any case, certainly the responsibility of the countries involved in OECD, CoE etc to support and encourage similar institutional developments at the global level.

As an illustration, and **a possible model to take from, the mandate of the OECD's Committee for Information, Computer and Communications Policy is cited below.**

> The Committee for Information, Computer and Communications Policy shall be responsible for promoting the policy and regulatory environments needed for the expansion of the Internet and information and communications technologies (ICTs) as a driver of innovation, productivity, growth, sustainable development, and

social well-being. It will also be responsible for strengthening co-operation in this field between the Member countries and, as appropriate, between Member countries and non-Members.

The Committee shall, in particular, examine policy issues arising from the development and increasing use of the Internet and ICTs, and develop policies to:

a)Support innovation, investment, and competition in ICTs and related areas across the economy and society, and encourage creativity in the development and use of the Internet and ICT goods and services as a leading area of innovation;

b)Facilitate convergence of digital networks, devices, applications and services, and promote ubiquitous access to ICT networks and services, calling the attention of Member governments to the major implications of such developments;

c)Contribute to strengthening the resilience and security of information systems and networks as well as the protection of privacy to enhance trust in the use of Internet and ICT goods and services;

d)Foster co-operation among Member countries and facilitate the development, and, as appropriate, the co-ordination of their policies at the national and international levels;

e)Promote exchange of experience among Member countries in the information, computer and communication policy areas, including the development of indicators to measure the information society.

The Committee shall determine the strategic orientations of its subsidiary bodies, and receive regular reports from them to ensure the co-ordination of their activities in furthering these orientations.

The Committee shall maintain close working relationships with

other relevant bodies within the OECD to ensure complementarity of efforts and effective use of resources. In the conduct of its work, the Committee will also, as appropriate, draw on the views and expertise of non-Members, international organisations and non-governmental stakeholders, and work with business, trade unions, civil society, and the Internet technical community within a framework of co-operation that promotes mutual understanding and participation.

A similar committee working with the ECOSOC can be a starting point before an appropriate dedicated Global Internet Council is formed. (However, the economic focus of the OECD committee, because of OECD's overall mandate, will be need to be broadened for a UN committee with a similar function.)

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