

Response to the questionnaire issued by CSTD Working Group on Enhanced Cooperation

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Responding organization – IT for Change, India. www.ITforChange.net

1. Which stakeholder category do you belong to?

NGO – in Special Consultative Status with UN ECOSOC

2. What do you think is the significance, purpose and scope of enhanced cooperation as per the Tunis Agenda?

(a) Significance

The significance of the term 'enhanced cooperation' lies in the need to address the unfinished task left from the WSIS of democratizing the global governance of the Internet. The Internet is one of the most powerful contemporary social phenomenon – with enormous economic, social, political and cultural impact across the world. It is therefore needed that the global Internet is governed in a globally democratic manner. However, there either exist huge governance deficits in the global governance of the Internet, or its governance is done in a US-centric and North-centric manner, and with a few global corporations determining much of the evolving architecture of the global Internet. Such a situation is patently undemocratic and non participative, and it does not adequately address the needs of the developing countries. Eight years after the WSIS, governance issues pertaining to the international dimensions of the Internet continue to become more and more important and urgent, and this upward spiral is expected to continue for a long term to come. It has therefore become even more urgent today than ever before to undertake the needed 'new institutional developments', as envisaged in the 'enhanced cooperation' mandate of the the WSIS.

(b) Purpose

Section 60 of Tunis Agenda recognizes “that there are many cross-cutting international public policy issues that require attention and are not adequately addressed by the current mechanisms”. The number and importance of such issues has only increased since the WSIS. The purpose of 'enhanced cooperation' is clearly laid out in the section 58 and 69 of the Tunis Agenda, which is to provide a platform “to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet”, in consultation with all stakeholders.

(c) Scope

The concerned international public policies pertaining to the Internet, for which an appropriate platform has to be provided, include “(globally-applicable principles on) public policy issues associated with the coordination and management of critical Internet resources” but do not include “the day-to-day technical and operational matters, that do not impact on international public policy issues” (section 69 of Tunis Agenda). One could therefore consider the scope of 'enhanced cooperation' in two parts; (1) general international public policy issues pertaining to the Internet, and (2) public policy issues associated with the coordination and management of critical Internet resources.

In terms of 'globally-applicable principles on public policy issues associated with coordination and management of critical Internal resources', it will also be required to set up an appropriate mechanism to ensure that these principles are adhered to through oversight authority over organizations dealing with critical Internet resources.

3. To what extent has or has not enhanced cooperation been implemented?

Please use the space below to explain and to provide examples to support your answer.

There is no global platform to address the full range of international public policies related to the Internet, in a holistic and cross-cutting manner. Neither has the required internationalized oversight of organizations dealing with critical Internet resources taken place. It can therefore be said that the process of 'enhanced cooperation', as envisaged in the Tunis Agenda, has not been implemented at all.

Since 'enhanced cooperation' has not been implemented at all, it is not possible to give any examples. The significant areas of non-implementation are; (1) lack of a globally democratic space for dealing with the full range of international public policies related to the Internet in an holistic and cross-cutting manner, and (2) lack of internationalization of the oversight over organizations dealing with critical Internet resources.

Stray, one-off meetings and/or agreements between different bodies dealing with Internet governance cannot be considered as implementation of 'enhanced cooperation'. The term cannot be taken in its normal meaning of more coordination and working together, but has to be seen in the specific meaning in which it is used in the Tunis Agenda, which is about a standing mechanism for addressing public policy issues. Similarly, for instance, progressive changes to the MOU between one country and an organization dealing with critical Internet resources cannot be called as 'enhanced cooperation', since the Tunis Agenda is clear in affirming the status and role of all governments as being 'on an equal footing'. (It is sometimes claimed that 'enhanced cooperation' is taking place when, for instance, UNECSO and ICANN enter into a non-binding agreement concerning some issues related to internationalised domain names, or when US modifies its MOU with ICANN to include some outside parties in performance review of ICANN.)

4. What are the relevant international public policy issues pertaining to the Internet?

The report of the Working Group on Internet Governance¹ (WGIG), set up during the WSIS process, identified many international public policy issues pertaining to the Internet. This output of the Working Group was recognized by the Tunis Agenda, which reasserts most of these issues. Some more issues were identified in the background report² to the WGIG report. More recently, the ITU Council Resolution 1305 (2009), in its Annex 1, recognized some public policy issues pertaining to the Internet, especially those with rather significant technical aspects.

It is difficult to have a closed list of international public policy issues pertaining to the Internet, since new ones keep cropping up, with amazing rapidity. An indicative, non-exhaustive, list of public policy issues pertaining to the Internet is given below. It is difficult at this stage to do such a listing in any strict order of priority. We start with issues listed in the WGIG report and its background report, move to the listing made by the ITU, and then add some more emergent issues.

Issues listed in the WGIG report (see the report for elaboration of each issue)

- Administration of the root zone files and system
- Interconnection costs (especially global interconnection)
- Internet stability, security and cybercrime
- Spam
- Allocation of domain names

1 www.wgig.org/WGIG-Report.html

2 www.itu.int/ws/wgig/docs/wgig-background-report.pdf

- IP addressing
- Intellectual property rights (IPR)
- Freedom of Expression
- Data protection and privacy rights
- Consumer rights
- Multilingualism
- Convergence and next generation networks
- trade and e-commerce

Some additional public policy issues mentioned in the background report to the WGIG report (elaborated in the report)

- Applicable jurisdiction, cross border coordination
- Internet service providers (ISPs) and third party liabilities
- National policies and regulations (harmonization of)
- Competition policy, liberalization, privatization and regulations
- Affordable and universal access
- Cultural diversity
- technical standards, and technology choices

Public policy issues recognized in the ITU Resolution 1305, with regard to “scope of work of ITU on international Internet-related public policy matters”

- Multilingualization of the Internet including Internationalized (multilingual) Domain Names
- International Internet Connectivity
- International public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses
- The security, safety, continuity, sustainability, and robustness of the Internet
- Combating cybercrime
- Dealing effectively with spam
- Issues pertaining to the use and misuse of the Internet
- Availability, affordability, reliability, and quality of service, especially in the developing world
- Contributing to capacity building for Internet governance in developing countries
- Developmental aspects of the Internet
- Respect for privacy and the protection of personal information and data
- Protecting children and young people from abuse and exploitation

There are many more, existing as well as emergent ,public policy issues pertaining to the Internet, like;

- Cloud computing (global issues involved)
- Cross border Internet flows
- Tax allocation among different jurisdictions with regard to global e-commerce
- Economics of personal data (who owns, who makes money from, and so on)
- Net neutrality (that all data is given equal priority on networks)
- Search neutrality (that global search engines give neutral results)
- Media convergence - Internet and traditional media (Internet companies versus newspapers, radio, cable and TV, book publishing industry etc)

- Regulation of global Internet businesses (in terms of adherence to competition policies, consumer rights, law enforcement etc)
- Internet intermediary companies as private agents for extra-territorial law enforcement (problems with)
- Access to knowledge and free information flows, deepening the public domain on the Internet
- Accessibility policies for the disabled
- Development of, and protection to, local content, local application, local e-services, and local/ domestic Internet businesses
- Protection of vulnerable sections, like children, women, traditional communities etc
- Internet and health systems, education systems, governance systems and so on.
- Many many more... this being an unending and ever-evolving list, such is the transformational influence of the Internet on our social systems.

5. What are the roles and responsibilities of the different stakeholders, including governments, in implementation of the various aspects of enhanced cooperation?

Enhanced cooperation has been defined above as a mechanism for global public policy making in the Internet governance space. Therefore the question boils down to – what is the role of different stakeholders in policy making. Policies have to be developed by legitimate representative bodies in a democratic fashion. However, democracy is always a work-in-progress, and therefore no particular body or system can declare that it fully represents the people and thus can do as it likes. At present, of course, national government representatives working through the UN based multi-lateral system constitute the most legitimate actors to develop international Internet related public policies. At the same time, it must be observed that a lot of, if not most/all, governments fails the test of a 'full democracy' ideal. Therefore their role should be seen within the required context of continual deepening of democracy at the global level. In the case of the Internet, there are new forms of trans-national 'realities' that are emerging that further make the case of deepening democracy through giving even greater weightage to non-governmental 'representation' of various constituencies and their interests.

However, obtaining and legitimizing any kind of non-governmental representation is an extremely tricky issue. Civil society groups do often represent constituencies that can otherwise get under-represented – like women, disabled persons, indigenous people, and so on. Civil society groups representing specific areas of work that pertain to people's rights, like those working on right to education, to health, to free speech, to livelihood, to reproductive health, to information, and so on, also brings in legitimate representation. However, merely declaring good intentions and civil society status is not enough – such groups must continually demonstrate their 'representativeness' and legitimacy through, (1) live networking with the concerned constituencies, and groups directly working with them, and (2) actual work that promotes the concerned interests. Still, their role stops at one point, and they cannot be participating in actual voting for an policy making process, nor have a veto on it. This is due to the fact that under the present conditions, only governments based representation, howsoever imperfect, is verifiable and can be validated. Policy making gives a potential right to monopoly coercive power – the legitimate domain of the state – and, therefore, one has to be extremely cautious about which political systems and actors are allowed to wield such power. It is possible, and greatly desirable, that in future some elements of a democratic system built over constituencies other than nation-states may also emerge. Processes of deepening global democracy would contribute to such a

possibility. However, there is not much globally of that nature at present.

The role of business is very different from that of civil society, of the kind spoken of here, which has demonstrated links with specific constituencies. Even if those links are not demonstrated, a civil society organization specifically professes public interest. A business representative however clearly only represents the private and purely monetary interests of the concerned shareholders. This is a widely known and accepted fact. Therefore business does not bring in additional representation, and cannot be placed in a similar role as civil society. On the other hand, for instance, the case of a think-tank advocating free market, promotion of big business and reduced regulation as an ideology is a different matter. It would be a civil society organization, as long as it is clear that it is not being manipulated to push a few private interests. Also, a trade association which expressly represents a *wide enough* set of individual parties, and is not dominated by a few big business, does also, to some extent, represent a part of public interest. Making such clear distinctions in building a multistakeholder process is very important, but is mostly missed in currently advocated multistakeholder models.

What business does bring in is expertise about economic organization and operation of markets, which expertise is extremely important for Internet governance. However, one has to be careful to make a clear distinction between expertise and interest representation, a distinction which is often missed in what gets called as multistakeholder models of Internet governance. This is, in our view, the primary shortcoming in most of such models. Technical community similarly brings in technical expertise, which again should not front any specific interest representation, something which one has to be very careful about. However, many people with technical expertise would otherwise be associated with genuine public interest causes, in which respect their work and, if relevant, organizations are simply a part of civil society.

6. How should enhanced cooperation be implemented to enable governments, on an equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the Internet?

Implementation of 'enhanced cooperation' requires developing a platform(s) where all governments, on an equal footing, and in consultation with all stakeholders, can be enabled to carry out their roles and responsibilities, with regard to international public policy issues pertaining to the Internet. It will be appropriate for the CSTD Working Group on Enhanced Cooperation (WGEC) to give its recommendations for creating such a new platform(s), and ensuring corresponding required institutional changes/developments, to the UN General Assembly through the ECOSOC. Taking note of UN General Assembly's recommendations in this regard, the high level WSIS review, to be held in 2015, should further finalize the appropriate form and modalities for setting up the required mechanism(s). It would then require an UN General Assembly decision for establishing proposed new mechanism(s) (see under question 8 below). The same decision should lay out the relationship of this new mechanism(s) with (1) other international bodies, including of the UN system, that deal with international public policy issues that may have Internet-related aspects, and (2) with organizations dealing with critical Internet resources. This should be able to provide a democratic and participative architecture of global governance of the Internet whereby the world can maximize the numerous opportunities provided by the Internet, while also addressing the many new dangers that are being encountered.

7. How can enhanced cooperation enable other stakeholders to carry out their roles and

responsibilities?

The roles of various stakeholders have been described under question 5. The mechanisms of enhanced cooperation should make sure that each stakeholder is appropriately able to fulfill its role which as mentioned are quite different, even among non-governmental stakeholders. In this regard, the role and mechanisms of bringing in additional forms of 'interest representation' (deepening democracy) should be seen as very different from the role and mechanisms of availing expertise, which is (or any rate, should be) non-interest based. Trying to dump all stakeholders as equals in policy making process defies democratic logic, and is highly regressive for our social and political progress. Most importantly, possibilities against capture should be as assiduously built in, as we have in representative democratic structures.

8. What are the most appropriate mechanisms to fully implement enhanced cooperation as recognized in the Tunis Agenda, including on international public policy issues pertaining to the Internet and public policy issues associated with coordination and management of critical Internet resources?

The below is extracted from a joint position proposed by 43 organizations and networks, from around the world, including 10 NGOs in Consultative Status with UN ECOSOC. It is supported by many more individuals. (See the list [here](#)).

New global governance mechanisms are needed

We are of the view that it would be useful to have two distinct mechanisms – one that looks at the global Internet-related public policy issues in various social, economic, cultural and political domains, and another that should undertake oversight of the technical and operational functions related to the Internet (basically, replacing the current unilateral oversight of the ICANN³ by the US government). This will require setting up appropriate new global governance bodies as well as a framework of international law to facilitate their work, as follows.

A new UN body for Internet-related public policy issues: An anchor global institution for taking up and addressing various public policy issues pertaining to the Internet in an ongoing manner is urgently required. It can be a committee attached to the UN General Assembly or a more elaborate and relatively autonomous set up linked loosely to the UN (as a specialized UN body). It should have a very strong and institutionalized public consultative mechanism, in the form of stakeholder advisory groups that are selected through formal processes by different stakeholder constituencies, ensuring adequate representativeness. (OECD's [Committee on Computer, Information and Communication Policy](#) and India's recent proposal for a [UN Committee on Internet-related Policies](#) are two useful, and somewhat similar, models that can be looked at.)

This 'new body' will stay abreast of global Internet-related issues; where necessary, develop international level public policies in the concerned areas; seek appropriate harmonization of national level policies, and; facilitate required treaties, conventions and agreements. It will also have the necessary means to undertake studies and present analyses in different policy areas.

Most Internet-related public policy issues are of a cross-cutting nature, and involve overlaps with

3 Internet Corporation for Assigned Names and Numbers, the US based non-profit that manages much of technical and logical infrastructural functions related to the Internet.

mandates of other existing global governance bodies, like WIPO, UNESCO, WTO, UNDP, UNCTAD, ITU and so on. Due to this reason, the proposed new 'body' will establish appropriate relationships with all these other existing bodies, including directing relevant public policy issues to them, receiving their inputs and comments, and itself contributing specific Internet-related perspectives to issues under the purview of these other bodies.

A new 'Internet Technical Oversight and Advisory Board': This board will replace the US government's current oversight role over the technical and operational functions performed by ICANN. The membership of this oversight board can be of a techno-political nature, *i.e.* consisting of people with specialized expertise but who also have appropriate political backing, ascertained through a democratic process. For instance, the board can be made of 10/15 members, with 2/3 members each from five geographic regions (as understood in the UN system). These members can perhaps be selected through an appropriate process by the relevant technical standards bodies and/or country domain name bodies of all the countries of the respective region. (Other mechanisms for constituting the techno-political membership of this board can also be considered.)

The Internet technical oversight and advisory board will seek to ensure that the various technical and operational functions related to the global Internet are undertaken by the relevant organizations as per international law and public policy principles developed by the concerned international bodies. With regard to ICANN, the role of this board will more or less be exactly the same as exercised by the US government in its oversight over ICANN. As for the decentralized Internet standards development mechanisms, like the Internet Engineering Task Force, these self organizing systems based on voluntary adoption of standards will continue to work as at present. The new board will have a very light touch and non-binding role with regard to them. It will bring in imperatives from, and advise these technical standards bodies on, international public policies, international law and norms being developed by various relevant bodies.

For this board to be able to fulfill its oversight mandate, ICANN must become an international organization, without changing its existing multistakeholder character in any substantial manner. It would enter into a host country agreement with the US government (if ICANN has to continue to be headquartered in the US). It would have full immunity from US law and executive authority, and be guided solely by international law, and be incorporated under it. Supervision of the authoritative root zone server must also be transferred to this oversight board. The board will exercise this role with the help of an internationalized ICANN.

This board will also advise the afore-mentioned new public policy body on technical matters pertaining to the Internet policy making, as well as take public policy inputs from it.

Framework Convention on the Internet: An appropriate international legal framework will be required sooner than later for the above bodies to function properly. Accordingly, one of the early tasks of the proposed 'new body' dealing with Internet-related public policy issues, discussed above, will be to help negotiate a 'Framework Convention on the Internet' (somewhat like the [*Framework Convention on Climate Change*](#)). Governance of the Internet concerns different kinds of issues that are ever-evolving. It is, therefore, preferable to formulate an enabling legal structure as a 'framework convention' rather than as a specific treaty or convention that addresses only a bounded set of issues. It may also be easier to initially agree to a series of principles, protocols and processes that can then frame further agreements, treaties etc on more specific issues.

Such a Framework Convention will thus enable appropriate and ongoing global policy responses to various opportunities and challenges that the fast-evolving phenomenon of the Internet throws up. It will also formalize the basic architecture of the global governance of the Internet; *inter alia* recognizing and legitimizing the existing role and functions of the various bodies currently involved with managing the technical and logical infrastructure of the Internet, including the ICANN, Regional Internet Registries, Internet technical standards bodies and so on.

Appropriate mechanisms for crisis response and dispute resolution in relation to the global Internet, and the social activity dependent on it, will also be required to be set up.

Funding

An innovative way to fund the proposed new global Internet policy mechanisms, and also the IGF, is to tap into the collections made by the relevant bodies from allocation of names and numbers resources pertaining to the global Internet (like the fee that ICANN collects annually from each domain name owner). These accruals now run into millions of dollars every year and could be adequate to fund a large part of the needed mechanisms for democratic governance of the global Internet.

In the end, we may add that there is nothing really very novel in the above proposal for setting up new mechanisms for global governance of the Internet. Similar models, for instance, were proposed in the report of the Working Group on Internet Governance that was set up during the World Summit on the Information Society, back in 2004.

9. What is the possible relationship between enhanced cooperation and the IGF?

WSIS envisaged 'enhanced cooperation' and IGF (Internet Governance Forum) to be two distinct processes. One was supposed to be a mechanism “to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet”, and the other was to be a “new forum for multi-stakeholder policy dialogue”. Such a clear distinction is obvious in the entire relevant text of the Tunis Agenda. This distinction is further clarified in the UN GA's resolutions on ICTs for development of 2010, 2011 and 2012, all of which clearly state that:

“...the process towards enhanced cooperation and the convening of the Internet Governance Forum, are to be pursued by the Secretary-General through two distinct processes, and recognizing that the two processes may be complementary.”

'Enhanced cooperation' is to be a 'policy making space' and the IGF is a 'policy dialogue space'. The two cannot be confused or conflated, although a relationship between the two should certainly be fostered. IGF should contribute its outcomes as inputs into the policy development/ making processes undertaken by the new mechanism of 'enhanced cooperation', and all possible means to enable this should be developed and supported.

The proposed global Internet policy mechanism, especially the new UN based body, will maintain a close relationship with the IGF. IGF affords a very new kind of participative mechanism for policy making, whereby the participation realm is institutionalized, and relatively independent of the policy making structures. The IGF should preferably pre-discuss issues that are taken up by this new policy body and present diverse perspectives for its consideration. A good part of the agenda for this new body can emerge from the IGF. Whenever possible, draft proposals to be adopted by this new body should be

shared with the IGF.

To perform such a participation enhancing role, the IGF must be adequately strengthened and reformed, especially to address the dominance of Northern corporatist interests in its current working. It must be supported with public funds, and insulated from any funding system that can bring in perverse influences on its agenda and outcomes. Other required processes must also be put in place to ensure that the IGF indeed brings in constituencies that are typically under-represented, rather than provide further political clout to the already dominant.

A participative body is only as good as the policy making mechanisms that feed off it. To that extent, the meaningfulness and effectiveness of the IGF itself requires a strong policy development mechanism, as suggested in this document, to be linked to it. Investing in the IGF is useful only if its outputs and contributions lead to something concrete.

10. How can the role of developing countries be made more effective in global Internet governance?

This can be done by providing platforms for developing policies relating to the 'global Internet' in which all countries can participate as equals. It requires discontinuing with the model whereby *default* policies for the 'global Internet' get made either by one country where most big Internet business are located, or by exclusive clubs of rich countries like the OECD (example, the 'Principles for Internet Policy Making' recently adopted by the OECD and now being promoted with other countries).

11. What barriers remain for all stakeholders to fully participate in their respective roles in global Internet governance? How can these barriers best be overcome? (Please try not to exceed 200 words)

Considerable barriers to fully participate in their respective roles in global Internet governance exist for civil society, small businesses, and diverse technical views and expertise, from developing countries. 'Fragmentation of policy spaces', and absence of a convergent platform for policy development, greatly undermines the capacity of such under-resourced groups to engage with global Internet governance, because they are unable to be present in all places. Simply opening up policy spaces to all, without due recognition of relative economic and social power and resources can oftentimes actually further skew participation rather than democratize it. This is being witnessed in many multistakeholder spaces of global Internet governance, in which the so-called 'open spaces' get quickly dominated by people and organizations from developed countries. This has the effect of further skewing participation in global public spaces towards the global North. Merely being 'open', therefore, is not enough to ensure that all stakeholders are able to fully participate in their respective roles in global Internet governance. It requires strong processes of 'positive discrimination' in favor of those who are actually seen as under-represented. Such an assessment and ensuring necessary correctives have to be an ongoing process. Such 'positive discrimination' will include resource support, including funds for attending events, giving equal and proportionate representation on agenda setting and/ or advisory committees, speaking slots, and so on.

Existing and envisaged global Internet governance bodies also need to have sufficient transparency and responsiveness, as well as develop adequate, institutionalized spaces for participation of all stakeholders in their respective roles.

