A Development Agenda in Internet Governance

Outlining Global Public Policy Issues and Exploring New Institutional Options

A draft paper by IT for Change, India

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Introduction

Internet Governance(IG) was authoritatively recognised for the first time as a key global governance issue and priority by the World Summit on the Information Society (WSIS), during 2003-2005. While the Internet has been impacting our societies in many transformational ways, often in ways unforeseen even in 2005, public interest based global governance of the Internet is still to take off. Meanwhile, mindful of the role of the Internet in determining the new social, economic, cultural and political configurations of the emerging information society, powerful interests, both in the private sector and among governments, continue to shape the Internet. These powerful actors have been quite active in holding parleys on Internet Governance (IG) issues amongst themselves, and also making key decisions. At the same time, they block all attempts at development of a globally representative agenda and democratic institutions in this arena.

The WSIS mandated the creation of a multistakeholder global policy dialogue space, the Internet Governance Forum (IGF), which held much promise of becoming an innovative institution ensuring broad and inclusive participation in global policy making. It has, however, been rendered ineffective, as a mere talk-shop, by those who exercise power in the global Internet space. Instead of shaping it in a complementary role with the other WSIS mandated process of 'Enhanced Cooperation', that is supposed to directly address the global Internet-related policy making imperative, the IGF is now often posited as a replacement for such a required process of global Internet policy making.

In these circumstances, it falls upon developing countries to pro-actively take the lead in proposing and shaping a new global agenda for IG, and the architecture of global institutions that is required in this regard, building on the mandate given by the WSIS. If done in an appropriate manner, capturing the progressive and egalitarian potential of the Internet, such an agenda can capture the imagination of progressive actors from across the world who have started to strongly feel the need for a progressive global IG agenda. However, to take up such a leadership role, developing country governments must be seen as making a genuine effort for rescuing themselves from the common, if deliberately hyped, perception of having a single-minded agenda of a statist political and cultural control of the Internet. At the same time, it has to be argued why and how it is needed that the democratic choices made at the national and other jurisdictional levels have to also apply to the Internet, although in a manner appropriate to its inherent global-ness.

In looking at what kind of global Internet-related public policy issues need to be addressed, especially from a developing country point of view, and what kind of institutional options may be required in this regard, it is useful to refer back to the Tunis Agenda of WSIS. Paragraphs 58 to 61 of the Tunis Agenda have important issue-framing significance and are worth re-visiting.

Paragraph 58 reads:

> "We recognize that Internet governance includes more than Internet naming and addressing. It also includes other **significant public policy issues** such as, *inter alia*, critical Internet resources, the security and safety of the Internet, and **developmental aspects** and issues pertaining to the use of the Internet". **(emphasis added)**

Further, paragraph 59 recognised that:

> '[…] Internet governance includes **social, economic** and technical issues [...]'

The significant public policy issues pertaining to the developmental aspects of the Internet, in their many social and economic implications, are yet to be systematically explored and expounded. How does global IG relate to development, or, in other words, **what is the development agenda for global IG, becomes the key question in this regard.** This question, implicating systemic issues relating to the very nature of the Internet, is in important ways different from the question of how to lay the infrastructure to provide the Internet to everyone. The former question of IG is to a significant extent a global policy issue, while ensuring access is largely a national and local issue. **While seeking to ensure greater access for its people, developing countries need to also ensure that they are able to influence the manner in which the Internet is shaping up. Thus, they need to own up to the future of the Internet, depending on who exercises its governance, and how the Internet can shape up in significantly different ways, with varied implications for developed and developing countries. It is not enough to simply wait to be delivered Internet goodies, when non-engagement with the core issues of governance of the Internet comes at an enormous cost. The response to the problem of the 'digital divide' should not be to build a North-South 'digital dependency' at the global level, as what is unfortunately being witnessed at the moment. This is the principal point of departure for this document.**

The following paragraphs from India's input to the UN Commission for Science and Technology for Development's (CSTD) Working Group on IGF Improvements make the point and context of a development agenda for IG very well.

> Too much of the Internet governance discourse currently is centred on technical issues, with not enough economic, social, cultural and political analysis [...] In fact, many of the technical governance issues will [...] need to be revisited from the standpoint of these more fundamental considerations.
>
> The Internet globalises economic, social, cultural and, even, political flows, setting up new forms of comparative advantages as also new forms of exclusions. In this, there are immense opportunities as there are challenges for the developing countries. It is generally appreciated that the Internet can contribute to connecting everyone, or most, to the global economic and social systems, and thus probably enhance the overall opportunity availability for everyone. What is, however, much less examined is the question: what kind of an Internet, and what kind of social phenomenon shaping around the Internet, would provide a level playing field for all in the emerging Internet-enabled global systems, especially for developing countries, and more so, for the marginalised sections in the developing countries? Global Internet-related policies have an important role in this regard. They should not only ensure that everyone is connected, but also that the Internet is developed in a manner that provides a level- playing field for all.
>
> While the manner of development of the Internet at present poses challenges to the possibility of a level-playing field (increasing violation of the network neutrality principle, for instance, can be a major disadvantage for late entrants from developing countries to global Internet businesses), what is needed is to go even further and provide protective discrimination to the structurally disadvantaged countries and

> groups. What looks equal and participative from a mature market/ Northern point of view may not be so equal and participative from a developing country's point of view. These kinds of structural inequalities obtaining among countries, and among different groups within each country, require a well-considered and nuanced approach to Internet policies which alone can ensure that the future shaping/development of the Internet contributes to sustainable and equitable socio-economic development. Addressing such structural issues underpin most developmental discussion in global forums like the WIPO, WTO, UNESCO (for instance, the recent cultural goods treaty) etc. However, the global discourse on Internet governance remains peculiarly 'technicalised' and individual user-centric – a standpoint which tends to ignore larger structural issues of exclusion and marginalisation.

The first part of this document attempts a quick reconnaissance of some systemic issues regarding the global Internet from the point of view of developing countries. This is not an exhaustive listing and treatment of the implicated issues. It is just meant to give a bird's-eye view of the landscape of 'Internet governance and development'. The second part of the paper takes its cue from the Tunis Agenda's mandate for new institutional development in the area of global Internet-related public policies. For instance, paragraphs 60 and 61 following the above quoted paragraphs 58 and 59, that *inter alia* speak of public policy issues pertaining to developmental aspects of the Internet, clearly underline institutional gaps in the global policy space and the need for new developments in this area.

> 60. We further recognise that there are **many cross-cutting international public policy** issues that require attention and **are not adequately addressed by the current mechanisms**.
>
> 61. 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 organisations, in their respective roles. T**his 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 synergise the efforts in this regard.

Any real forward movement in the area of global Internet-related public policies requires getting into the specifics of what kind of new institutional processes and mechanisms a may be needed. The document goes on to suggest some clear institutional options to move forward , which hopefully would provoke the much-needed discussion on this subject.

An Overview of Some Substantive Global IG issues

The following is meant merely to be a suggestive list of some Internet-related public policy issues that are especially important from a developing country point of view. Each of these issues is touched upon very briefly, without going into a detailed examination.

Cross border and jurisdiction issues

The global sweep of the Internet brings about unique cross-border issues involving jurisdictional and enforcement problems. A recent Council of Europe document on 'International and multi-stakeholder co-operation on cross-border Internet' speaks of **providing some level of guarantees for all people and countries that the basic Internet infrastructure, applications and services**, which have become so important to many aspects of our lives, will not be interrupted. It observes:

> States should, in co-operation with each other and with all relevant stakeholders, take all reasonable measures to prevent, manage and respond to significant transboundary disruption of and interference with the stability, robustness, resilience and openness of the Internet, or at any event minimise the risk and consequences thereof.

Since **the most important 'nodes' of the Internet system are in countries of the North, developing countries have an even greater stake in addressing this global IG issue.** In 2011, the US government seized the domain name of the Spanish website Rojadirecta.org which provided links to streaming of some sports events. The website was based in Spain, and basically catered to the local population. Its model was tested in Spanish courts a few time and found not to violate Spanish law. US could seize the domain name and close the website simply because .org is run by an entity registered in the US. A couple of years ago, a website of a Spanish travel agency which was selling Cuban holidays to a client based in the UK was similarly seized by the US because the US has a trade embargo on Cuba. These are just two instances from innumerable cross-border issues settled by the application of extra-jurisdictional power by countries, chiefly the US, which are the home to most of the key 'nodes' of the global Internet. Such seizures of globally operating Internet systems have become very frequent in the US lately, with new reports pouring in almost on a daily basis.

There are other significant jurisdictional issues beyond extra-territorial enforcement of IP and selective trade restrictions. In WikiLeaks investigations, US officials asked Twitter to hand over the details of the Twitter account of an Icelandic Member of Parliament. The Iceland government summoned the US Ambassador to get an explanation over this. Wikileaks was also attacked through cutting off web-hosting services and payment services based in the US. Similar actions can asphyxiate any other global Internet based activities in no time, based on US whims.

The fact of the matter is that the architecture of the Internet today is such that the US has significant control over the whole global Internet. Its executive and judicial agencies are now increasingly employing this control. The recent legislation in the US, theStop Online Piracy Act, sought to leverage the US-centricity of the global Internet, in terms of traffic routing, web hosting, online payment services and Internet advertisement services, for extra-territorial enforcement of US' IP regime. The OECD's Anti- Counterfeiting Trade Agreement (ACTA) obligates the signatory countries to implement an IP enforcement regime over the Internet which will have similar consequences. In the US, even though SOPA has been shelved for now, the courts are providing remedies to IP holders, that in pieces cover most of SOPA provisions. Therefore a new extra-

territorial IP regime is already being shaped through judicial remedies and precedents if not, not yet, by explicit laws. The cost of not submitting this regime is to be largely if not entirely cut off the Internet, something few can afford today.

ICANN instituted the .xxx TLD against objections by most members of its Governmental Advisory Committee (GAC). However, its decision has now been challenged under competition law in a US court by some US porn companies . **The court has taken up the case which means that there is an assertion of US jurisdiction over the issue**, and it is at least *possible* that the decision of the ICANN will be annulled. If this was to happen it, in fact already the assertion of a US court's jurisdiction over ICANN's 'global governance' decision, **makes mockery of the ICANN's status as a global governance body.**

Rather than waiting for insurmountable problems to emerge with regard to jurisdictional issues vis a vis the global Internet , which no doubt will crop up sooner than later, developing countries need to seek global agreements that ensure mutual respect for, and recognition of, relevant territorial jurisdictions in Internet-related issues, and developing the means for global coordination and harmonisation, to the extent possible and desirable. This has to be accomplished in a manner that is democratic and fair to all involved.

IP and access to knowledge

One of the most important characteristics of the Internet is that it offers a seamless platform for the global sharing of information and knowledge. At the same tim**e, knowledge has become the key resource tobe controlled and manipulated for economic domination**, which makes its propreitarisation the key economic agenda of the more powerful countries. The new strong push on IP, even more so on the cross border enforcement of IP, has important connections to the phenomenon of the Internet. The Internet is being used as an instrument of cross border enforcement of IP in extra legal ways. One such way is through the use of invasive technology measures often with doubtful ethical and legal validity. These are called technology protection measures or TRMs (also known as digital rights management). The second way is to use private intermediaries as a kind of private police for IP enforcement. **The recent Organisation for Economic Cooperation and Development (OECD) ministerial meeting in France in 2011 came out with Principles for Internet Policy Making, which stress on stronger IP enforcement, and voluntary codes of conduct by intermediaries.** Since most intermediaries are either located in the North or are subsidiary companies of North-based corporations, these private codes of conduct will only help enforce the law of developed countries on the whole world through what can be called as 'private policing'.

IP law and IP enforcement on and through the Internet is a specialised subject involving both core technology as well as legal and jurisdictional issues, and needs to be seen within a larger IG context.

In fact, **the new way to control knowledge** is not only through legal regimes of IP but also **through the architecture of the Internet, which gives primary 'locational advantage' in the global digital ecology,** to control the pipes and the taps of flow of knowledge, and more generally, of economic, social, political and cultural opportunities. A **potent mix of old IP (as in intellectual property) and new IP (as in, Internet Protocols**, signifying architectural controls over the Internet) underlies the new paradigm of global geo-economic domination by the North. It needs to be understood, addressed and confronted by the South in appropriate ways.

The much touted 'users rights' movement often led by the companies like Google (who directed the

movements in the US against violating net neutrality and against SOPA and PIPA), which is posited against champions of tighter intellectual property controls like Motion Pictures Association of America, merely represents a struggle between 'old IP' based controls and 'new IP' (Internet Protocol) based ones (Google et al being in control of a good part of the Internet's architecture). However very soon an 'appropriate' equilibrium will be found between the two kinds of controls which best represents the interests of the North, and its global businesses.

Trade / commerce and tax issues

There are two kinds of trade and commerce issues that are implicated here. One is the use of the Internet only for making contact, interaction and payment, whereas the goods are delivered physically. The second kind involves digital services traded over the Internet, where the entire transaction, including delivery, and often consumption as well, takes place over the Internet. The second kind, especially, creates significant new governance challenges. It may be difficult to track the transaction to be able to apply relevant laws applicable to it. There have been numerous problems that have arisen in relation to the application of consumer rights laws to sales made remotely in this manner[1]. Levying legitimate taxes on such transactions is another important issue. While the digital service exporting companies pay taxes in the jurisdiction of their location and registration, authorities in the area where the consumption of services takes place find it difficult to levy their taxes on such transactions. Considerable work has been done in the EU towards a rationalisation of taxes applicable to such a cross border digital trade. However, developing countries are not part of any such arrangement. Things can become much more complex when digital services are traded using private digital currencies, like Facebook Credits. (Such transactions have also faced anti-trust complaints, including one filed by an NGO in India against Facebook Credits.)

“In France , the Zelnick Report in 2010 proposed to impose a tax on advertising revenue generated by the use of online services from France. According to estimates put forward by the authors, between 10 to 20 million euros would be collected mainly from U.S. content providers (Google, Microsoft, AOL, Yahoo and Facebook). It is pertinent to note that the report expresses concerns about the drop in advertising revenues of the French content providers, citing the poor state of competition in the French market for search engines, and certain behaviours -never clarified in the text- of Google.”[2]

Globalisation of trade in a seamless manner over and through the Internet is a fact. However, such trade needs to be subject to necessary regulations that are democratically developed and are fair to all. They should ensure a fair distribution of tax receipts. There is indeed a genuine problem of myriad local laws and their applicability to trade on the Internet. However, local autonomies and diversities are important to preserve, as and where required. At the same time, some degree of global coherence is also imperative. **Appropriate broad normative and legal frameworks allowing sufficient local autonomies, perhaps over a specific set of options, may be necessary, as has been tried in global regulation in many other areas.**

Interconnection regimes

Trading of global Internet connectivity is an important and complex issue, unfortunately left entirely to unregulated markets. Interconnection charges was the key development issue recognised

1 Recently, the Taipei city government fined Google for not following a full-refund-within-7-days of a local regulation for goods bought remotely, in this case, for digital applications from the Android market. The Taipei government had earlier specifically instructed Google to follow this rule. Following the penalty, Google withdrew Android market services from Taipei.

2 'Public consultations on Net Neutrality: USA, EU and France', SulanWong, Julio Rojas-Mora, Eitan Altman

by the Tunis Agenda of WSIS. The fact that little has been done till date with regard to this issue shows the kind of consideration systemic development issues receive in the extant global IG regimes. **To the issue of trading of Internet connectivity or traffic has now been added the issue of different quality of carriage made available at different prices on the same 'pipe', which is the 'global net neutrality' issue.** Such tiered traffic flows will further disadvantage developing countries by creating further asymmetries of up and down flows. It reduces the active participation of developing countries in the global digital space, further pushing them towards consumption (rather than production) and dependency models. A larger public interest approach to global interconnection regimes is therefore urgently warranted in order to enable developing countries to make the best of the digital opportunities, nationally as well as on the global level.

Competition issues in the global digital industry

The global Internet industry is characterised by near absolute monopolies because of the peculiar increasing economies of scale in this area. Microsoft, Google, Facebook, Twitter and Apple-iTunes are prime examples of this. Instead of confronting such a natural condition for anti-competitive behaviour through appropriate strong regulation, the global Internet industry is almost completely unregulated. Two important reasons for such a unsustainable situation are: (1) global Internet companies are simply too powerful for any country, especially any developing country, to effectively regulate on its own, and (2) almost all these companies are based in the North, chiefly the US, and are such a central feature of the IP and Internet based new economic domination plan of developed countries that they get highly pampered, and their anti-competitive practices overlooked. This occurs to the extent that even the negative domestic impact of these monopolies are ignored for the considerable global economic (and perhaps also social, cultural and political) advantage they provide.

Non-application of competition law and other necessary economic regulations mean that the late entrants from developing countries to the global Internet Industry hardly stand a chance to be in the top quadrant of the industry's value chain. (Network neutrality issue mentioned above is also an important competition issue.) In fact, they find it very difficult even to establish themselves within their own countries in front of the global monopolistic or oligopolistic companies. Developing countries' Internet companies are then reduced to doing the menial digital job-work for very low margins for mega corporations that siphon hefty monopolistic profits northwards. A new form of economic production relationship between the digital labour of the South and digital capital of the North is taking shape.

Developing countries are not able to apply competition law and other economic regulations effectively against these global monoliths because of the fear that they may refuse to service their citizens, in a situation where no other comparable services may be available. Also, **they are afraid of the flight of these digital companies from their country affecting employment etc**, forcing them toward short term pragmatism against long term visionary policies for promoting the local industry. It is therefore obvious that economic regulation of the global digital industry needs to be negotiated at the global level, *inter alia* in order to provide enabling frameworks for all countries to be able to effectively exercise their local jurisdictions. It is not only the technical architecture of the Internet whose openness has to be ensured, but the architecture of the global Internet industry also has to be kept sufficiently open. Unfortunately, current trends, having become worse over the last couple of years, reflect an intensification of the closing and consolidation of this industry.

Governing the global Internet corporations

Global Internet companies are difficult to regulate not only with regard to economic issues. It is

perhaps even more difficult to regulate them on social and cultural issues. **Digital platforms like Google, Facebook and Twitter increasingly define a new social architecture, respectively of knowledge, maintaining social relationships and instant media.** These architectures are almost entirely made in the image of social realities as well as, probably, the political, economic and cultural interests, of the countries of the North. Some of these corporations do have some kind of national-level social/ cultural 'experts' to localise their services and products to some extent. These are, however, mostly superficial adjustments, based on commercial interests.

There is very little national/local political leverage available for ensuring conformity of these new 'social infrastructures' to local norms, laws and standards. Corporations like Facebook and Twitter which have been used as platforms for political activism have often been found to arbitrarily adopt different approaches in different contexts and countries[3]. Increasingly, as these technical platforms become the main means of political mobilisation and activism, their neutrality and commitment to agreed general principles of human rights and political expression, as well as compliance to law enforcement requirements, becomes very important. Once again, global frameworks with adequate local social and political autonomies may need to be worked out in this area.

Recently, in a case which became quite famous in the digital social space, the Google account of someone in the US, who had based almost his entire digital life on the Google cloud platform, was suddenly deleted with a cryptic one line notice that it was found associated with some illegal activity. No further information was forthcoming despite the person's best attempts, including writing repeatedly to Google. His whole virtual identity was wiped out without any explanation or opportunity to seek redress. In this case, the involved person was lucky to be able to raise enough hue and cry through his blogs for Google executives to contact him. It was then found that this person, who was doing an art history project, had a picture online which got tagged as child pornography, consequent to which his whole account was deleted without explanation. (His account has since been restored.) Any such action in most countries would allow proper legal recourse. But in the digital realm, which is increasingly an important part of our social lives, no such recourse may generally be available against highly arbitrary acts of digital companies based in distant countries. One can well imagine the plight of a person in a developing country whose online account may get deleted without explanation. Recently, when US government took down the server of 'Megaupload' a popular file sharing service, many people across the worked lost their legitimate online stored documents and other works, with no avenue to apply to get them back; what was lost was lost.

Openness, open standards net neutrality

The Internet is a game-changing communication platform essentially because of its all-to-all open architecture. However, as the Internet has become more and more complex, it is increasingly losing its open egalitarian architecture. While basic Internet protocols are still open, today's Internet is dominated by proprietary applications which have a closed architecture, built to enable various kinds of rent-seeking. The Internet was supposed to be a public network of millions of networks, as it has been for many years. **Today, a very large proportion of Internet traffic, perhaps the major part, flows through the gates of just a handful of proprietary digital spaces.** Since mobile Internet architecture was built more recently, in a largely commercial environment, in contrast to the public environment in which the the original Internet was born and sustained initially, it is much more closed and vertically integrated. This is something developing countries must be conscious of rather than succumb to any facile 'mobile rather than Internet' kind of hype

3 Facebook removed numerous pages that were being used by student protesters in the UK against fee increases, public expenditure cuts, etc. around the time of the wedding of Prince William. This may be compared to its role and apparent enthusiasm during the recent Arab world uprisings.

that often goes around.

Net Neutrality, or the end-to-end principle which was considered basic to the Internet, is increasingly being challenged. It is especially eroding fast in the mobile Internet space. There has been some efforts in developing countries to address this issue, especially in Europe and the US. However, d**ue to global geopolitical and geo-economic interests, whereby it is the North-based digital corporations that benefit the most from the violation of the net neutrality principle by considerably raising the barrier-to-entry for late comers,** which may often be from developing countries, there is a complete lack of interest among developed countries to advance the net neutrality agenda at the global level. (Recently, in the earlier mentioned OECD communiqué on principles for policy making, due to industry pressure, the term 'net neutrality' was replaced in the last stages of drafting by 'technology neutrality' which means something entirely different.)

Because of the inherently global nature of the Internet, its technical standards are clearly a global governance issue. Developing countries have very little leverage, if any, to impact these technical standards. However, keeping the Internet a level playing field through ensuring open standards and enforcing competition law prohibiting improper vertical integration, is of most interest to developing countries. This is also an urgent imperative because as the global digital architecture is set, it may soon become too late to undo it. As Lawrence Lessig said, in the digital realm 'code is law, and architecture is policy'. **Through the Internet's architecture, which is almost completely designed in the North, the underlying principles and policies that by default will govern the basic information, knowledge, communication and social-relational infrastructure and flows of the emerging information society is being shaped right now. And this process has almost no participation of developing countries. They are in fact cut out from developing the *constitution* of a new world, and it is important that these countries begin to take note of this.**

It is important for developing countries to frame and assert their stake and interests in this regard, and be able to participate in important architectural decisions about the Internet. For this purpose, developing countries have to get over the mindset of; 'lets make the most of the Internet as it is offered to us (which is so marvellous, isnt it!), let others concern themselves with the nitty-gritty of the management and governance work, for us, it is the access and use of the Internet in its myriad possibilities that should remain the highest priority.'

Critical Internet Resources, technical coordination and standard setting

Critical Internet Resources (CIRs) relating to the Internet's naming and addressing system have attracted the most attention and acrimony in the IG realm. It is not because, *per se*, it is the most important issue in IG, but it has appeared to be the most critical here-and-now issue. Moreover, control over these resources seem to symbolise the control of the Internet. The CIRs issue remains very important, although as discussed, control over and through the Internet is today exercised in a much more complex manner, involving many far more important IG issues. Relatively speaking, just managing the addressing and traffic directing systems and other protocols that keep the Internet running may appear to be a rather straight-forward matter. **It is important that developing countries get over, what appears to be, a certain CIR-fixation in the global IG arena, and develop larger and more nuanced positions based on the way control over and through the Internet is exercised in the present times.**

The existing decentralised mechanism of managing CIRs has its positive features though having considerable scope for improvement. This mechanism may not need to be replaced as much as it is required to put it under the broad policy supervision of a democratic public interest body. At present, such broad policy control is exercised by the Government of US, which is of course not an

acceptable arrangement for developing countries. It may be useful for developing countries to focus efforts on this most important single agenda in the CIR realm – of **seeking transfer of US' oversight to a representative global body – rather than more broadly seek alternative mechanisms of CIR management.**

One important recent development in the area of CIRs has been that new security protocols are being embedded in the name/numbers and routing system. This may have the effect of increasing / intensifying control points over the global Internet in the hands of those who run the CIR management today, along with the possibility of their misuse. The dangers of US being able to exercise an Internet 'kill switch' over the entire Internet or selectively becomes more real in this context. In fact, a legislation giving US President executive control over the Internet in 'emergency situations' was proposed recently, although it is shelved for the present.

Most Internet related protocols and standards are developed by independent technical bodies like the Internet Engineering Task Force (IETF) and by industry consortia. Ensuring public interest in private industry-led standards development is obviously an important imperative. However, almost all the powerful players in this area are in the North, and standards get developed without due regard to the specific differential needs of developing countries. Developing countries have also largely failed to articulate such differential contexts and needs.

Even independent bodies like the IETF have now developed (too) close connections with global digital corporations, and a lot of their work gets done by individuals paid full time by mega digital corporations who have significant partisan interests in the standards development process. To take just one example of the domination of technical standards making process by the North and its businesses, 11 out of the 12 board members of the Unicode Consortium, an important standards body, are from the US, and all 12 belong to large business groups.

While preserving their decentralised and soft-enforcement style of working most suited to the open architecture of the Internet, i**t is important to ensure that the technical standards development mechanism for the Internet works in the global public interest, in its variously differentiated form.** Some institutional reforms in this regard are urgently required, including such that ensure greater participation of developing country actors.

Online and offline security

As a globally interconnected system, it is not only the Internet, and along with it, our private digital spaces, alone that are at grave security risk. Even other infrastructures, strategic installations, industries, organisations, etc. can be fatally hit through the Internet. As is well known, in 2010, a virus was implanted remotely at an Iranian nuclear facility. This required sophisticated skills, also perhaps access to proprietary software code owned by big businesses in the North. Analysts believe that if the attack had been successful, it may not only have crippled the nuclear plant but could have also triggered a nuclear disaster. News of cyber-attacks on government systems are daily news today. Often directed by states, they can be organised through private agents who may not even be located inside the offending state.

There could similarly be cases of industrial espionage, and other kinds of private harm taking place remotely through the Internet. Strategies to fight such security threats will importantly involve technology standards and other IG issues. **It is obvious that threats to security *vis*-à-*vis* the global Internet require an urgent and sustained global cooperation, which will require development of some kind of a formalised means to do so.**

US often suggests that the security concerns of other countries vis a vis US control over the CIRs are unreal, or, at least, exaggerated. If indeed so be the case, it is difficult to understand why should US get someone who is a sworn member of the US' Homeland Security Advisory Council and its Council on Foreign Relations to he the head of the security at ICANN (*Internet Corporation for Assigned Names and Numbers*). And if there were any doubts about US government's role in this appointment it would be cleared by the fact that in the latest IANA (Internet Assigned Names Authority) contract offer**, the US government has made it mandatory that the chief security officer for this function will be chosen on its advice . ICANN runs the IANA function** at present and its contract is expected to be renewed.

It is rather hypocritical for the US to say that the security concerns of other countries vis a vis the roots of the Internet are unreal or exaggerated even as it itself, while already having considerable oversight control, is further insisting through the recent IANA contract documents that the security function with respect to the root of the Internet is subject to its direct control.

In addition to the control over the CIRs, US has unacceptable and increasing level of strategic control over the Internet due to other factors as well. Much of the international Internet traffic is routed through the Internet. Also, all mega digital corporations, that together constitute most of the Internet today, are located in the US. There is increasing evidence that US government has close and strategic access to the 'control rooms' of the global operations of these mega digital corporations. **Twitter postponed its maintenance work during the last Iranian elections, so as not to disturb 'a possible revolution', on the directions of a top US official.** The same official now heads Google Ideas, a think-tank plus action space which openly talks about regime change as one of its agendas. It apparently works in some relationship with US government agencies. Recently, US Justice Department sought an injunction for not revealing what a top US NGO says is a secret deal between Google and the National Security Agency. Such a close relationship is also said to exist between US government agencies and Facebook. In any case, as US based businesses all these companies that have access to crucial information from across the globe, and support important social activities all over, are obliged to cooperate with US government agencies in various ways, on an ongoing manner.

In the US, devices like the Critical Infrastructure Information Plan and the proposed Cyber Intelligence Sharing and Protection Act are aimed at developing close cooperation between the US government and the major US based Internet and other digital companies. This emerging new 'security' alliance among the most powerful forces on the Internet constitute an area of considerable concern. The large digital businesses know which side of their bread is buttered. Less than four years after Huawei Technologies and Symantec teamed up to develop computer network security products, the joint venture is being dismantled because Symantec feared the alliance with the Chinese company would prevent it from obtaining United States government classified information about cyberthreats.[4] The increasing concentration of strategic control over the global infrastructure and information systems that these movements signify need to be urgently addressed by developing countries.

Media convergence

National media is an important institution, including for governance and democracy. The dynamics of national media, which has emerged as a major force or platform for political mediation between governments and citizens, is changing rapidly with the advent of the Internet. With IP TV and the convergence of Internet and TV on the anvil, we are in for major disruptions in the media sector.

4 http://www.nytimes.com/2012/03/27/technology/symantec-dissolves-alliance-with-huawei-of-china.html

Traditional media has been regulated from many public interest angles. The Internet is largely untouched by these regulations. It may also be true that the old/ existing regulations cannot be applied to the new Internet-centric context in the same manner. In addition, what new regulatory frameworks will be required in this regard, is a question that is difficult to fully decide and settle at a national level; such is the essentially global nature of the Internet. Some kind of global discussions and frameworks may be required to address the global nature of an Internet-based media, as it becomes mainstream as the global/national public sphere, and in our drawing rooms and other private spaces.

To provide an insight into the kind of complex issues that are involved, it is important to look at the manner in which traditional media is losing out on advertisements to new media, and the kind of possible structural ramifications that this phenomenon will have on the national media scene which is largely advertisement revenue based. It should be remembered that on the Internet, advertisement revenue is highly centralised, mostly in the hands of a few US based companies. Google's targeted Internet advertisement services dominate even most non-Google Internet spaces.

How can effective national and sub-national media spaces be carved out and maintained inside the global Internet? **What are the structural implications of the new developments on the national public sphere, democratic institutions and representation of voices of the marginalised?** What are the concerned global IG issues, like technical standards, net neutrality, jurisdiction enforcement, etc? These become key questions in the emerging context.

Cultural diversity

UNESCO recently facilitated a Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which declares that ‘cultural activities, goods and services have both an economic and a cultural nature […] and must therefore not be treated as solely having commercial value’. Audio visual goods and services are an important part of the mentioned cultural activities, goods and services. In the spirit of this convention, many governments impose quotas on foreign films that may be imported into their countries.

With the Internet serving as a seamless and border-less space for almost an infinite global flow of cultural activities, goods and services, it will be interesting to study the implications of the UNESCO Convention on Internet-based digital services. It is of course of much greater importance for developing countries that are more threatened by a global homogenisation of culture to look into this issue closely, and explore its relationship with all the other global IG issues. On the other hand, with the right enabling environment, the Internet, with its greatly reduced cost of content production and transmission, can be a great force for promoting cultural diversity. This bespeaks the need for the right polices and support for good practices in this area, an issue that requires the urgent consideration of developing countries. In order to protect and promote cultural diversity the Internet should develop in a more decentralised manner that seen in the current trends. Global IG has an important role to play in this regard, but the relevant progressive agenda will need to be shaped by developing countries.

Development and human rights

In fundamentally changing our social paradigm, the governance of the Internet has deep implications for the cross-cutting issues of development and human rights. For developing countries, the impact of the Internet at the ground level in ensuring proper and rapid economic, social and human development is the lens that would primarily determine their perspectives on IG, including global IG. However, development is still seen in global IG as an add-on issue, rather than

a structural/ systemic one. **A systematic exploration of how IG impacts development at its macro as well as micro/community level in typical 'development situations' is very much required.**

The Internet also significantly impacts human rights – both in potentially positive and negative ways. **Much of the current human rights discourse *vis*-à-*vis* the Internet is construed almost exclusively in the framework of negative rights, or civil and political rights.** It is important to see the Internet and human rights connection in a more holistic manner, which has otherwise been the practice in the UN, referred to as upholding the indivisibility of rights. Such a broader conception of human rights in the Internet age will require to be shaped through the leadership of developing country actors. It is this framework of human rights, along with the imperatives of development, which should then inform global IG. This is not to dilute the human rights angle of IG, but to accentuate it. Often, a uni-focal view of human rights has been used for partisan interests, both by countries of the North and its big corporations, as is evident in the call for considering freedom of expression as a trade issue. It is such an instrumentalisation of human rights which amounts to their dilution rather than looking at human rights in a larger and holistic framework that builds from the actual human situation and human aspirations that underlie the conception of the indivisibility of human rights. **However, what do economic, social and cultural rights, along with the right to development, really mean *vis*-à-*vis* the Internet, and what are their connections to civil and political rights, has to be fleshed out in full conceptual and practical details.** Then alone can the issue of the indivisibility of human rights *vis*-à-*vis* the Internet be effectively taken up on global IG platforms.

Some Institutional Options for Global Internet-Related Policies

Our discussion on the kind of Internet-related issues that are important and urgent to be resolved at a global stage from a developing countries' perspective, sets the stage for discussing the institutional options that may need to be sought for doing so.

In relating important global IG issues to the institutional mechanisms required to address them, it may be useful to classify these issues into three kinds. **First, are issues** related to technical standards, coordination and management that are being dealt with a variety of bodies at present in a distributed architecture which has its useful and good points. There is a general agreement that this arrangement has largely worked and there may not be any need for a drastic overhaul. However, the overall supervision of these bodies, which can ensure their adherence to global public interest, needs to be more democratic, with the participation of all countries, and other stakeholders. These bodies seem increasingly more susceptible to capture by special commercial interests, while the lack of transparency and involvement of all countries in the oversight mechanism raises significant sovereignty and security-related concerns.

The second kind of issues arise out of the unique Internet-related new developments in areas that are at present being addressed by different UN and other global agencies. There are areas like IP and access to knowledge, trade and commerce, cultural diversity, media security and development. Often, the impact of the Internet in these areas is such that it requires a specialised and coordinated IG-centric response, in close coordination with bodies that are already dealing with these issues.

The third category consists of inherently Internet-related social, economic, cultural and political issues. Cross-border jurisdictional issues on the Internet and with regard to Internet-related activities are prime among them. Specifically, the public interest regulation of global monopoly digital companies that increasingly underpin key social structures across the world, is a huge challenge. What public interest principles and rules should govern search engines, social networks, etc.? (This category of issues will keep expanding, presenting more and more complex challenges.)

There are of course many issues that fall across the above mentioned categories. For instance, network neutrality has strong technical standards implications while it is primarily an economic and media regulation issue. Similarly, security has both technical standards and regulation as well as social/ political aspects. Rules governing search engines will have strong access to knowledge and media/ cultural diversity angles, while also technical standards related implications.

Each of the above category of issues may require different but coordinated global public policy response. An appropriate global IG institutional mechanism must be able to address all these imperatives. It must be able to appropriately preserve the bottom-up and distributed system of technical standards making and management of critical internet resources, collaborate with different UN and other global bodies for issues of the second kind of issues described above, and be able to develop principles, frameworks and policies for core Internet-related global policy issues.

Before exploring the kinds of options that may be available for us to move forward towards democratic global IG, we will briefly touch upon the background of debates on global institutional requirements in the IG arena.

Background – Global IG or not?

WSIS was clear about the new global governance imperatives in the area of IG and the need to address them urgently. The first summit set up a Working Group on Internet Governance (WGIG), which defined some key Internet-related public policy areas requiring governance, and outlined a few institutional options for doing so. There are many important and useful elements in the four different institutional models presented by the WGIG[5]. The second edition of WSIS in 2005, adopted the Tunis Agenda which described the need for setting up two inter-related institutional processes. One was to be a deliberative space, the Internet Governance Forum, for recognising and obtaining multi-stakeholder perspectives on key IG issues that require global resolution. The other was to be an institutional space and process that would enable directly addressing public policy issues related to the Internet, what was referred to as the process of 'Enhanced Cooperation'.

The mandated process of 'Enhanced Cooperation' was provided a far less clear institutional architecture by the Tunis Agenda than the IGF, something which is attributed to negotiations running out of time in the last few days and hours before the Summit. However, WGIG models do provide some interesting leads. Tunis Agenda mandates that the modalities of operationalising 'Enhanced Cooperation' should have been started to be worked out in 2006 itself. Unfortunately, nothing has happened in this vital area of addressing global public policy issues relating to the Internet in the last six years since WSIS. Meanwhile, the number and kinds of issues that require urgent resolution have kept multiplying, intensifying and becoming more complex. This trend is expected to continue for a considerable period of time as an information society takes shape. Consequently, a large and deep gap has been cleaved in the global governance system, which adversely impacts developing country interests the most.

There are three active areas of global IG today. One consists of the CIRs and technical standards governance mechanisms that we have discussed earlier as largely controlled by the North. The second is governance through actions and decisions taken by global digital corporates and industry consortia based in the North, over which Northern governments do have considerable influence, but not developing countries. Thirdly, recognising that some of the most important IG issues have to be dealt with by governments through explicit policy frameworks and policies, although with some degree of multistakeholder participation, governments of the North have been rather active with inter-governmental initiatives among themselves on shaping cross-border and global Internet policy frameworks, as well as developing specific common policies.

The Council of Europe has numerous initiatives in the area transnational Internet policy frameworks and also specific policies. It has set up an Advisory Group on Cross Border Internet. Its terms of reference include:

> "i. Continue to examine the shared or mutual responsibilities of states in ensuring that critical Internet resources are managed in the public interest and as a public asset, ensuring delivery of the public service value to which all persons under their jurisdiction are entitled. Make proposals, in particular, relating to the prevention and management of events, including malicious acts, falling within member states' jurisdictions or territories, which could block or significantly impede Internet access to or within fellow members of the international community with the objective of guaranteeing the ongoing functioning and universal nature and integrity of the Internet;

5 See the WGIG report at *www.**wgig**.org/docs/**WGIGREPORT**.pdf*

ii. Explore the feasibility of drafting an instrument designed to preserve or reinforce the protection of cross- border flow of Internet traffic openness and neutrality."

On the basis of the work of this group a draft Council of Europe Committee of Ministers Declaration on Internet Governance Principles has been prepared.

OECD's high-level meeting in 2008 came out with the 'The Seoul Declaration for the Future of the Internet Economy', based on, and endorsing, a background report 'Shaping Policies for the Future of the Internet Economy'. The brochure for the 2008 meeting observes:

> "The Internet is increasingly critical to our economies and societies, with implications across all policy domains. […] It is time for **Ministers, CEOs and Internet Experts from around the world to strength principles, policies and practices** to form an enabling environment for the Internet economy ." (Emphasis added.)

A high level meeting of OECD in July 2011 has come up with a 'Communique on Principles for Internet Policy Making'. Recently, OECD has resolved to work towards getting more and more non OECD countries to accept these Principles for Internet Policy Making, underlying the new global governance model that North proposes to pursue, which is to **exclude other countries from policy related decision-making but expecting them to follow the policies that are developed at the OECD high table.**

The US Assistant Secretary for Communications and Information and National Telecommunications and Information Administration (NTIA) Administrator Lawrence E. Strickling had the following to say with regard to the above referred OECD meeting:

> "The OECD agreement is a major achievement [...] The policy-making principles provide a shared framework for addressing Internet issues while promoting an open, interconnected Internet that encourages investment and the trust of its users. […] The High Level meeting and the resulting communiqué are examples of U.S. action to **build consensus around international norms for cyberspace**, as described in the President's International Strategy for Cyberspace."(Emphasis added.)

TheUS International Strategy for Cyberspace released in May 2011 speaks of the urgent need for international cooperation on Internet matters, which we quote here at length:

> "The United States will work internationally to promote an open, interoperable, secure, and reliable information and communications infrastructure that supports international trade and commerce, strengthens international security, and fosters free expression and innovation. To achieve that goal, we will build and sustain an environment in which **norms of responsible behaviour guide states' actions, sustain partnerships, and support the rule of law in cyberspace**.
>
> **The collaborative development of consensus-based international standards for information and communication technology** is a key part of preserving openness and interoperability, growing our digital economies, and moving our societies forward [...]
>
> **The United States will work with like-minded states to establish an environment of expectations, or norms of behaviour, that ground foreign and defense policies and**

> **guide international partnerships** […] These events have not been matched by **clearly agreed-upon norms for acceptable state behaviour in cyberspace.** To bridge that gap, we will work to build a consensus on what constitutes acceptable behaviour, and a partnership among those who view the functioning of these systems as essential to the national and collective interest.
>
> In other spheres of international relations, shared understandings about acceptable behaviour have enhanced stability and provided a basis for international action when corrective measures are required. A**dherence to such norms brings predictability to state conduct, helping prevent the misunderstandings that could lead to conflict** [...] unique attributes of networked technology require additional work to clarify how these norms apply and what additional understandings might be necessary to supplement them. **We will continue to work internationally to forge consensus regarding how norms of behaviour apply to cyberspace,** with the understanding that an important first step in such efforts is applying the broad expectations of **peaceful and just inter-state conduct to cyberspace**."

It is obvious that the countries of the North have a clear and keen understanding of the need for cooperation and possible agreements among countries to sustain the phenomenon of the Internet, and its role in transforming our societies. However, when it comes to practice, these countries appear comfortable only with parleys and decisions on policy frameworks and polices among themselves, with the exclusion of developing countries. Witnessing the interventions of these countries at various IG-related forums in the UN, like the CSTD and the IGF, it may appear unbelievable that the above quotations come from considered pronouncements by these countries. There is a complete reticence and foot-dragging on, in fact, active blocking of, any effort to shape democratic global forums where the many urgent issues of global Internet policies can be taken up. As seen during the meetings of the CSTD's[6] Working Group on Improvement to the IGF, governments of the North are against even giving a more purposive role to the open, multistakeholder and non-decision-making forum of the IGF. Developing countries hope that a fully-functioning IGF could at least come up with some cogent policy options in the area of global Internet policies.

Such a stand appears to be in clear contradiction with the unbounded enthusiasm for cross-border cooperation and agreements that is seen when Northern countries are speaking from platforms that do not have the participation of developing countries. The reason for this may not be difficult to understand if a geopolitical and geo-economic lens is applied. This apparent paradox has to be understood in the background of how the Internet underpins a new global political, economic, social and cultural domination strategy of the North. To keep IG in safe (read, their own) hands is obviously eminently useful in this regard.

Therefore, apart from supporting and encouraging various private governance realms discussed earlier (standards and practices set by the Northern Internet industry, and the new-age technical governance systems that do not have a clear public interest-based supervision), Northern countries have stuck to developing policy frameworks and agreements among themselves. At the same time, any such policy development possibilities at the more globally democratic UN spaces are actively blocked. **Once the policy frameworks and policy instruments are agreed upon amongst these countries, they mostly get enforced globally by default, since the basic ICT paradigm is anchored in the North**, with all technology-shaping and standards-making happening there, and almost all the digital space-defining companies located in the North. Through technology practices imported by the South, default technology polices also get imported. Additionally, after explicit

6 UN Commission on Science and Technology for Development

policy instruments are negotiated and decided amongst the Northern countries, they are then offered to developing countries to sign on. This, for instance, happened in the case of the Council of Europe's treaty on cyber-security. Similar is the intent of the the Anti-Counterfeiting Trade Agreement (ACTA) being negotiated among the countries of the North. ACTA is likely to have a defining impact on the architecture of the Internet, and the flow of knowledge, trade and services over it. An EU fact-sheet on ACTA observes:

> "The ACTA is being negotiated by a group of trading partners that together represent about half of all global trade. The ACTA will be open to accession by interested countries[7]."

Everton Lucero of the Brazilian government had the following observations to make during the panel discussion on Enhanced Cooperation during the 3rd IGF meeting in Hyderabad in 2008:

> "Both the cybercrime convention and ACTA made use of a negotiation arrangement that is rather restricted. And it indicates a pattern of behaviour of some governments which openly defend multistakeholderism, democracy, and inclusion, but prefer to follow restricted, behind-doors, exclusive arrangements to negotiate new legal instruments."

There is obviously a serious democratic deficit in global Internet policy making, even as the important and urgent imperative in this regard is recognised by everyone (even if often selectively expressed by Northern actors, depending on the venue). At the same time, a systemic architecture of Internet policy making and enforcement is being crafted in a manner that leaves out developing countries almost completely. It is important that developing countries urgently take notice of these adverse developments, and collectively consider what corrective and forward-moving measures can and should be taken in this regard. However, due to capacity problems, developing countries have not been able to develop a coherent stance on this issue. Their global IG engagements have largely been piece-meal, addressing the high-visibility issues like the political supervision of ICANN and the here-and-now issues like ccTLDs (Country Code Top Level Domain spaces) and multilingualism in the domain name space. Their antennae may temporarily go up when immediate transgressions like an online security threat or a digital mega-corporation's intransigence *vis*-à-*vis* the application of some national law occurs. However, t**here has not been any systemic effort to recognise the larger global IG issues and imperatives from a developing country point of view, and the practical directions that must be pursued in order to address them appropriately.**

Lately, however, developing countries have begun to be expressive about the complete lack of progress on the WSIS mandate of starting the process of Enhanced Cooperation for addressing the imperative of shaping the required global Internet policies. The joint IBSA statement to the UNDESA consultation on Enhanced Cooperation in New York in December 2010, observed that key public policy issues related to the Internet,

> "[...] are yet to be discussed among UN Member States in depth from a public policy point of view due to **the absence of an intergovernmental platform mandated to systematically discuss them and make decisions as appropriate**. It is thus necessary for governments to **be provided a formal platform under the UN that is mandated to discuss these issues**. Such a platform would also complement the Internet Governance Forum, a multi-stakeholder forum for discussing, sharing experiences and networking on Internet governance." (Emphasis added.)

7 See EU's ACTA fact sheet at *trade.ec.europa.**eu**/doclib/html/142039.htm*

More recently, in July 2011, another Joint IBSA statement to the annual ECOSOC meeting sought:

"[...] **filling up the existing institutional vacuum at the global level** by providing a platform at the global level for systematic consideration and decision-making on international public policy issues pertaining to the Internet. This will help address and find global solutions to the urgent and cross-cutting global Internet issues of the day in a systematic, coherent and integrated manner, while also providing a **level playing field for all Member States in internet governance,** as envisaged in the Tunis Agenda."(Emphasis added.)

In this regard, the IBSA statement expressly called for "**establish(ing) a nodal coordinating agency for Internet issues in the UN system, at the earliest possible".**

Looking forward – Towards democratic global governance of the Internet

Since, IG has very significant, in fact, paradigmatic, implications for global geopolitical and geo-economic distribution of power, getting a new globally democratic Internet policy body will certainly not be an easy task. In this regard, it may be necessary to work along two planks: (1) on the global stage, pressing on forcefully with **clear** institutional options for the democratic global governance of the Internet, and making it a high foreign policy imperative, and (2) South-South cooperation on Internet-related policy principles, including on actual trans-border policies, and regarding practices that build the Internet's architecture.

As sought by the IBSA statement to the referred consultations on 'Enhanced Cooperation'**, an agency within the UN system to deal with Internet-related global policies, with an open and participative architecture that provides sufficient avenues for non-governmental participants, is what is urgently required to be pursued**. The UN IGF is already shaping well into the required participative space, which has to be complemented by a coordinating and decision making structure within the UN system.

The required dynamic and responsive global system for addressing important Internet related public policy issues can build over two connected institutional processes:

(1) Initiating a Framework Convention on the Internet, which will lay out both the broad context and the overarching principles for addressing specific Internet-related public policy issues, as well as provide the legal basis for a new institutional system of global Internet policy development. (It is important to note that the idea of a framework convention on the Internet was mooted by some developing countries towards the end of the WSIS[8].)

(2) Setting up 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 pluri-lateral initiatives in the area that at present set the default global law vis a vis the Internet.

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

8 Association of Progressive Communications also made such a proposal through a document on this subject around that time. Some civil society actors also held a workshop on the idea of the Framework Convention in the first meeting of the IGF in 2006 in Athens.

"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, and the delegation and re-delegation 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 organisations.

• Facilitating the 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.

The prescribed functions should however take note of the fact that over the last seven years since the WGIG report, many more Internet policy issues have become important and urgent, some of which could not be envisaged at the time of the WGIG. From hindsight, the WGIG report now seems to have a disproportionate focus on CIR management and its political supervision, which issue undoubtedly remains very important,.

There may still be issues about how a GIC like body will be set up. It could be an independent global treaty based body like WTO and WIPO under the UN. Or, it could make a more humble start as a Committee attached to the UN General Assembly on the lines of the Committee for Information, Computer and Communication Policy[9] (CICCP) attached to the OECD Council. CICCP "develops policies to maximise the benefits of the Internet economy"[10]. CICCP membership is open to all OECD countries. It is the CICCP which held the the 2008 and 2011 high-level OECD meetings. It has a very busy work schedule around the year, which prominently includes framing policy principles and guidelines[11].

The mandate of the CICCP is of:

9 http://webnet.oecd.org/OECDGROUPS/Bodies/ShowBodyView.aspx?BodyID=1837&Lang=en&Book=True
10 http://www.oecd.org/department/0,3355,en_2649_34223_1_1_1_1_1,00.html
11 Abid

> "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."

CICCP has three separate advisory groups, one each for civil society, the technical community and business sector, which self-organises. CICCP closely coordinates with these advisory groups, including the sharing confidential drafts, etc. and takes their inputs for various documents.

It is possible to mandate a body similar to OECD's CICCP, which could be called the UN Committee on Internet-Related Policies (CIRP), attached to the UN General Assembly. Its role could be similar to the CICCP, and likewise, its membership open to all UN member states. It can get into a relationship with other stakeholders in a similar manner as the three advisory groups of CICCP operate. It will of course work in close relationship to the IGF, and take note of issues and possible policy options that get discussed and recognised at the IGF. In this regard, this UN-based system would, in fact, have an **even more open and participative architecture that the CICCP which has no body akin to the IGF associated with it. It would also be interesting to confront OECD countries as to why they think a CICCP-like policy making body is required among OECD countries and such a body is not required for cooperation among all countries, despite (1) the Internet being an essentially global phenomenon and (2) there being a clear mandate from the WSIS to develop a global mechanism of addressing Internet-related public policy issues.**

This UN Committee on Internet-Related Policies (CIRP) should be mandated to solicit views on and convene the process of a Framework Convention on the Internet, which, while providing the broad contours of the global Internet policy framework can also institute the final shape, mandate, powers, etc. of the proposed Internet related policy body within the UN system.

Since, many urgent, often unexpected, issues arise in relation to the Internet that may need to be addressed globally without delay, the CIRP should have clear provisions and processes in place to be able to do so.

Other Institutional Possibilities

There is a view among some actors that it may be easier and more expedient to just get ITU to do the work of developing global Internet related policies. While this option should certainly be considered and discussed widely, we see a few significant problems with going down this path.

Firstly, ITU is a technical standards body, and we have argued throughout this document that while very important, technical standards may not be the most crucial set of issues in the global Internet governance and policies space. Increasingly, the most important issues are of economic, social, cultural and political nature. The over a hundred years-old technical standards body that the ITU is, its structures and 'mindset' are simply not geared to appropriately addressing such larger social issues. We all know that institutions have unique personalities and propensities, in keeping with their mandate and functions. For instance, UNESCO[12] looks, feels and speaks very differently from ITU, which is of course the right thing since the two institutions have very different areas of work

12 Incidentally, thinking aloud about the possible home for the proposed new Internet related policies making mechanism, someone suggested to us to also consider UNESCO. UNESCO did lead the famous New World Information and Communication Order (NWICO) agenda and activities. Internet does embody some of the issues of NWICO, while going considerably beyond in its policy implications.

and competencies.

If, as a hypothetical consideration, ITU does take up the global Internet policy agenda, developing countries' efforts at raising the numerous economic, social, cultural and political issues at this body will easily be resisted by the North by describing them as beyond the narrow technical mandate of the ITU. This will be a major problem for developing countries, and **will leave the most significant gaps in the global governance of the Internet unaddressed.** How much ever tweaking is made to the ITU structure, it will be difficult to ever go much beyond technical standards and coordination issues, some technical architectural issues, and possibly, to some extent, cyber-security issues. The requirements of global Internet governance, however, go much beyond these issues.

Secondly, the structure of the ITU, because of its vintage and largely technical mandate, is much more closed than most global governance bodies. On the other hand, due to many reasons, what we need is a somewhat new age body which is as open and participative as possible. It will be difficult to develop such a structure within the ITU. This makes any ITU centric proposal subject to strong criticism and resistance from non-state actors in the global IG space, whose opinion will not be possible to disregard.

Thirdly, the range of issues in the global Internet arena and their sudden urgencies requires a different kind of open ended consideration of issues and turn-around time, than an ITU based body can plausibly provide. What is needed is a new-age body that is specifically structured to meet these imperatives, which is perhaps only possible if it is constructed *de novo*, within minimum existing institutional constrains.

Also, an ITU-centric proposal, since ITU is a technical standards and coordination body, seems to directly attack the current decentralised mechanisms for Internet's technical standards and coordination. **Most actors in the IG space are most sensitive to protecting this current architecture, and thus any such proposal will run into near insurmountable opposition.** On the other hand, it is much easier to make more convincing arguments with regard to need for new mechanisms for broader socio-economic policy issues vis a vis the global Internet (for instance, the argument that, 'when OECD makes such policies, why not a UN body'). Within such broader mandate and functions, the oversight role over technical systems (as just transferring it from the US government to a more globally representative body) can be placed with *relatively* less opposition, whereby their decentralised nature is largely left undisturbed.

For the above reasons, while ITU, being an *existing* body with a *related* mandate, may *prima facie* appear as an easier and more expedient institutional option, it may in fact be the more difficult one, in terms of resistance by other powerful actors. Additionally, as discussed, framing a global Internet policy system within a narrow technical domain ill-serves the economic, social, cultural and political interests of the South.

(The ITU option however can be continue to be discussed, since many developing country see a greater probability of forward movement within an existing institutional set-up rather than creating a new one. This is especially because developed countries have been against creating any new UN body. It may be the case that within the ITU, enough innovation and metamorphosis is indeed possible to prepare a home for the much needed global body for Internet related policies, though it does look like a very formidable challenge, and, in our view, is very unlikely.)

There are others who tend to agree to the need for a new global body for Internet-related policies, roughly on the lines we described above, but are hesitant to place it within any existing UN

structure. Such a opinion may be accommodated by agreeing that any proposed UN-CIRP like body will be temporary, and that it will immediately begin a process of developing a framework convention for the Internet, which would provide the final structure and location of the global Internet policies body, which can be an *independent* treaty based body.

In any case, whether the location of the needed body is as a committee of the UN General Assembly, inside a reformed ITU, or outside either of them, as a standalone independent body, may be a subsidiary issue, and can be left for later discussions. It will be important to first agree on the (1) justification, (2) structure and (3) functions of the required global body, leaving the question of its location open. If such an approach is taken, it will be much easier to arrive at a consensus among developing countries, and subsequently with other countries and actors. This will constitute considerable progress towards fulfilling the mandate of 'Enhanced Cooperation' and can help break the current deadlock. Instead of starting arguments on the 'location' issue first, which seems to be divisive, it will be prudent to first agree on the justification, structure and mandate of the required body.

Funding the new body for Internet-related public policies

When discussing any new agency or institution, within the UN system or outside, the issue of 'where would the money come from' becomes foremost[13]. The Internet is an unprecedented force of globalisation, and the creator of so much value, globally. An extremely minuscule part of this value can be used for proper governance of the Internet, in a globally democratic manner. The implication of course is that the money spent in such governance of the Internet will have manifold returns in terms of social and economic value created by globalisation. This, however, may appear to be just a theoretical formulation begging the question of how the required money can actually be channelised to fund the proposed new body for global IG. In this regard, it is important to note that ICANN collects what amounts to taxes on anyone seeking to have a presence on the Internet. It really is quite a lot of money, which is expected to multiply with the addition of many more TLDs to the domain space this year. This tax, collected on the global Internet, should be used for its governance in public interest.

Provisions should therefore be made to fund the proposed new body from the proceeds of such collections, routed through ICANN, but on a compulsory and not voluntary basis. This can be achieved as the political supervision of ICANN also moves to the newly proposed body, as per the WGIG Model 1.

A recent European paper in 'ICANN staff and finances' proposes that;

> The GAC (Government Advisory Committee of ICANN) should initiate discussion with the Board (of ICANN).... on the options for transferring any operating surplus to an appropriate public interest goal as decided in the spirit of multistakeholder approach. Different goals may be identified, for instance strengthening standardisation or **financing the activities of bodies involved in Internet governance** . (Emphasis added.)

All over the world, within countries, the funds collected from running Country TLDs are used for public interest activities connected to the governance of the Internet. A good example of such a practise is the range of public interest activities undertaken by the Brazilian Internet Steering committee employing funds collected from the operation of .Br Country TLD. WIPO gets a

13 This is unfortunate that at a time when we are getting organised globally in an unprecedented manner, global public funds required for governing and managing such high degree of globalisation are shrinking. Developing countries should take note of and address this unsustainable situation that hurts their interests most.

substantial part of its funding from patent registration, a model not too different from that suggested for the proposed new global Internet policy body, which should be funded from fees for domain registration on the Internet. This is just one option as a source for possible funding. The proposed new body could be ensured stable and predictable public funding through the UN system.

Framing Policy Principles for the Internet, and using the IGF platform

We earlier mentioned some initiatives among developed countries to frame Internet policy principles. Brazil's Internet Steering Committee also came out with 'Principles for Governance and Use of the Internet'[14] in 2009. These principles were discussed at a workshop in IGF, Vilnius, in 2010 and were also presented generally to the IGF. In the closing session of the Vilnius IGF, many participants felt that the Brazilian principles were the kind of initiative that the IGF could work more closely on and perhaps lend support to. Such sentiments were also expressed in the Chairman's closing remark.

For developing countries, development of such normative principles for the global governance of the Internet will be a good place to start from. This is something they can begun doing on their own. **A common set of progressive principles prepared by developing countries will help put the right kind of pressure on the global IG agenda.** There is an important caveat, however, in this regard. The principles that are framed must not simply be defensive, for instance, trying to protect the turf of the states to control Internet content flows within their borders. There should be a visionary set of principles that takes a holistic view of the Internet and Internet Governance for its globally egalitarian potential, anchored in principles of global equity and social and economic justice. It should be able to capture the fancy of the global progressive civil society which today is in need of such **a framework that looks at equity, social justice and distributive issues** going beyond IG agendas that almost exclusively dominate global IG today – technical coordination and management, privacy, freedom of expression, security, IP, e-commerce facilitation, etc. **Coming up with a holistic and ethical framework including such alternative conceptions and agendas will help developing countries take a leadership role in global IG.** This can be expected to attract progressive groups world-over, including from developed countries, as has happened in some other areas of global governance like WIPO, WTO, climate change, etc.

Shaping an agenda for global IG positively, rather than reactively as at present, developing countries should use the platform of the IGF much more purposively. **The IGF should be used to build and propagate a progressive global IG agenda, rather than abandoning it to the North-based dominant actors in the Internet space.** The legitimacy of the less powerful is often in the ethical or moral value of their viewpoint, and an open forum like the IGF, if used well, can help precipitate such moral power towards achieving concrete objectives. Developing countries should regularly hold sessions and workshops at the IGF on **the development agenda in global IG**, including its more detailed specific points, and coordinate their positions closely in all areas of working of the IGF.

14 http://www.cgi.br/english/regulations/resolution2009-003.htm

South-South Cooperation on Practical and Implementation Issues

Apart from taking up the global policy front as discussed above, it is also important to build processes and institutions for South-South cooperation in actually shaping the architecture of the Internet in a manner that most suits developing country interests. Developing countries together have considerable 'digital power' to be able to so, if a good perspective and implementation plan is developed. We have discussed earlier how the socio-technical architecture of the Internet at present is almost entirely developed in the North and then exported to the South. This both subjects the South to the economic, social, political and cultural thinking and norms of the North, and puts it into a position of abject dependency on the North. As the Internet becomes a key and integral part of more and more aspects of our social lives, such a growing 'digital dependency' will become more pernicious than perhaps any earlier kind of dependency ever witnessed across the North-South axis. This issue requires urgent attention and a thorough exploration by Southern, in fact all progressive, actors.

It is important therefore that developing countries cooperate closely in terms of practical measures towards shaping the socio-technical architecture of the Internet in progressive directions. **Closer cooperation in the areas of technical standards, ensuring net neutrality, developing new more open Internet applications, open source software, promoting competition and reducing barriers-to-entry in the digital/Internet business domestically and globally, etc. are important areas to work on**. At present, there is some cooperation in certain areas, as in the case of open source software. However, this should be a part of a systematic effort to leverage IT and Internet technologies as a strategic resource for developing countries, in a manner that does not allow the building of unsustainable dependencies in the North. For any country to work separately in this regard may not be easy, given the power and strength of the dominant global Internet industry. Therefore, **a collective and coordinated approach is called for.**

Such efforts should centrally involve support to domestic digital industries, and the public sector should work closely with them in this regard. Taking a page out of the open source software paradigm, a close partnership can be forged between the domestic industry, voluntary efforts of the community and the public sector in many areas. However, it will require institutional support to develop and sustain such partnerships, which if successful will no doubt be of immense economic and social value to developing countries. In this regard, the Public Software project of the Brazilian Government and also the Public Software project in some parts of India by some civil society organisations with the support of UNESCO, are good examples. Such open paradigms, which allow greater competition and better opportunities for late entrants, should be taken from the standalone software level (the open source movement) to the networked digital ecology of the Internet.

The draft perspective plan of the Department of IT of the Government of India mentions National Applications Store for mobiles, and also some public initiatives in the area of social media and cloud computing. More such projects on Public ICTs and Public Internet Technologies, Architecture and Applications are required. In this regard developing a committed '**South-South mechanism to promote open (or public) network technologies**' should be considered. Such an initiative can bring tremendous value to developing countries, and help shape the Internet's architecture, in general, in a more open and distributed manner. **This will open up high value digital opportunities in economic and social spheres for developing countries, as against the current trend of entrenchment of Northern 'digital domination' and Southern 'digital dependency'.**

It is only when developing countries develop enough mass and momentum of South-South

cooperation on technical standards, Internet applications, and Internet policy coordination and coherence that there will be pressure on Northern countries to take these issues up democratically at a global stage, possibly through a new global Internet policy body. At present, with the Internet architecture and Internet business being more or less completely in the hands of governments and companies of the North, it will may, to some degree, also take the pressure of practical changes on the ground to bring them to the global policy table.

If developing countries begin to coordinate more formally on **trans-border Internet policy frameworks and policies**, it will also put pressure on the North to come to a global policy table. For this purpose, **setting up formal or semi-formal mechanisms can be considered.**

An immediate area of cooperative work in the area of global Internet policies among developing countries is to set up an **observatory of emerging global Internet issues, as seen from a developing country perspective.** The OECD's CICCP does this for OECD countries and also regularly issues a policy newsletter. Such a **policy newsletter, and also online information-exchange and discussion spaces, will help develop a commonality of understanding and perspective among developing country's public interest actors**. This will then help shape the strategies and plans that are needed for developing countries to leverage the best potential of the Internet for their social, economic and human development, and also address the possible negative impacts of the Internet. It would therefore be advisable to set up some kind of a **Resource Centre or Observatory on IG and Development**, which should provide space for exchange of information, regular online discussions, and continuous research and the provision of policy papers, etc. on 'IG and development' issues.