

CSTD meeting on enhanced cooperation on public policy issues pertaining to the Internet

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First of all I must say how glad I am that we have finally sat down to discuss in the right earnest the very important WSIS mandate of 'enhanced cooperation' on public policies pertaining to the Internet. I am sure that today's meeting makes a beginning that would have a lasting impact on democratising global Internet governance.

We all know that 'enhanced cooperation' is a very complex and a much contested area. Before we begin to sort out how to operationalize 'enhanced cooperation', we need to discuss what is meant by this term, and also why has progress on this mandate been so difficult. In this regard, there are two important basic questions, and what I call as *one* very large elephant in the room. These two important questions are; Are there enough important and urgent *global* public policy issues pertaining to the Internet and, if there indeed are, it brings up the second question, what institutional system would best address them and how. And the the elephant in the room that I mentioned is multistakeholderism, an issue tied to *what, who and how of EC*. Let me briefly engage with these key issues that frame a purposive and worthwhile discussion on EC.

Talking to people nowadays, one hardly finds anyone, at least anyone informed well-enough, who is not quick to admit that Internet is big, and it is global; and that, therefore, public policy issues around it are big and global too. Pick up the International Strategy for Cyberspace of the US, browse through OECD's pronouncements in this area or look at the CoE experts' report 'cross border Internet' or, for that matter, any other well- researched document about global Internet governance. They leave us in no doubt about the existence of important global public issues pertaining to the Internet. Therefore, I dont think we should waste too much time on this question – there are indeed very critical global Internet related policy issues, and they keep getting more critical and complex by the day. Global public interest demands that these global public policy be addressed in an appropriate and timely manner. *With the Internet in its formative stages, and its basic architecture getting set, which in turn determining the structure of a new social order, we do not have the luxury of dithering and wasting valuable time.*

Next, we come to the question, who should address these critical global policy issues and how. And now the problem begins! Lets first map out where power resides or rather is concentrated in the Internet system today, and who at present takes critical decisions about the global Internet. Any such power mapping will reveal that the greatest power resides in the US, both with its government and its monopoly Internet companies, and increasingly, in their close mutual relationship. I would not be able to go into the detail in this matter here. Then there is the next concentric circle which includes a few most powerful countries; operating through OECD's, and also CoE's, Internet policy making mechanisms, which have a very active calender of activities and future plans. Such is the global nature of the Internet that whether it is the unilateral law or executive power of the US, private decisions of global monopoly Internet companies, or policy principles developed by the OECD, they tend to quickly spread and entrench across the Internet's architecture to take up global reach and application. *The most telling observation of Lawrence Lessig is important to recall here. With the Internet, architecture is policy. If we do not have the right public policies, the architecture of the Internet itself becomes the policy. And thus we, I mean the rest of the world not involved with Internet governance decisions, get politically determined by the outside.*

Undoubtedly, governments exercise immense power over the Internet within their national boundaries, and there are very important issues about how this power is exercised at present. However, today our concern here is mainly the power over the global Internet and the issue of its democratisation. Also, I remain of the firm belief that global democratization of Internet governance will always have a positive role in its democratisation within national borders.

Notwithstanding the claims by the US of a 'historic role' vis a vis the Internet, or citing of the privilege by the OECD of being the major global economic bloc, it should not be difficult to argue, because we all have this basic democratic urge and spirit - that every country should be present at the global policy table on an equal footing. And, one can see such a thing happen only in the UN or UN like body. Perhaps since this 'all countries should be present' justification of changing the status quo is difficult to argue against, almost all arguments against change are centred on the issue multistakeholderism – what I had identified as the elephant in the room, that we must confront, well, frontally.

One admits that institutionalizing representativity is never easy – and remains the central concern of democratic thought and practice. Governments purport to represent people and public interest, but there are indeed significant gaps in the chains of representativity from the people to governments, and further to the global governance spaces. In some cases such gaps are more acute than in others, and this 'governance problem' has to be dealt in an appropriate, evolving and contextual manner. However we cant knock off democracy just because we dont have it well enough yet.

I say this with regard to, I understand, there being proposals on the table that want all stakeholders to be treated on an equal footing in any enhanced cooperation mechanism, whereby, apparently, that they should have the same or similar roles. I find this proposition very problematic. While one will like to know more details of how exactly is such an 'equal footing' proposition meant to work in practice, prima facie it seems to throw up very problematic issues vis a vis some basic principles of democracy. For instance, is it desired by such proposals, to put it somewhat bluntly, that a representative of Google or Microsoft should be voting on policy making at the same level as a government representative? If it is so intended, we are indeed going past the ideals and principles of democracy that has been the single most powerful political ideology and force of the last few centuries, and we must seriously debate this *intended shift*. In the alluring haze of multistakeholderism, we must not forget that big businesses expressly represent private interests, and mostly of those who already have much greater economic and social power.

Similarly, the role of civil society is different from both the governments and business. Participation of civil society deepens democracy. It adds greater range, diversity and depth to articulation of public interest. Unlike business, civil society essentially represents public interest - in its differentiated shades and even internal tensions. Yet, such is the way in which civil society's legitimacy and role is structured, civil society actors will not like to claim an equal role to government representatives in actual decision-making processes.

Like business brings valuable expertise about society's production systems to the table, the technical community brings expertise on technologies. In addition, many of the technical community are adherent upholders of some public interest values and principles, in which regard they are just a specialized section of the civil society. But the technical community must understand that the needs and demands of decisions making for larger public policy issues can be significant;y different from those for making technical decisions.

Here, I have only briefly touched upon the different roles of different stakeholders. What I mean to underline is the urgent need to address this issue *openly and earnestly, by all sides*. *Tunis agenda asked for any mechanism of enhanced cooperation to be innovative. Yes, we do have this opportunity here to improve global governance system so that they better serve global public interest. Internet has transformed so many social arenas, and it must have its impact on global governance systems as well. But let us seek these changes while staying within the long cherished norms and principles of democracy and public interest, and not, in our enthusiasm for change, breach them.*

If we can agree on the principles that govern such a differential role - and I stress this phrase - of different stakeholders, we would have crossed perhaps the most significant block that prevents progress on this issue of enhanced cooperation, which is of immense and epochal significance to global public interest, and to the future of our social systems, as an information society matures. In this regard, while we need not remain too closely stuck to the Tunis Agenda definition of the respective roles of stakeholders, we also must not breach the boundaries of democratic ideology and practice, and the distinction between public and private interest.

In my view, we should approach the enhanced cooperation conundrum through the following steps. First we agree on the need and justification for a new mechanism for enhanced cooperation, which I think should not be difficult since everyone seems to accept that there are indeed critical global Internet related public policy issues. Next, we need to figure out what functions a new mechanism must perform to meet this important and urgent need. Thirdly, we come to the structure of the new mechanism, where it should not be difficult to accept that all countries must be represented equally. However, the role of different stakeholders, as I discussed, would be the key question to agree upon. If we have a focused, open and principled, discussion on this issue, I am sure we can overcome this key 'problem area'. At least, it is useful to know that this is the key 'problem area' with regard to moving the dialogue and process of enhanced cooperation forward.

Once we have the justification, functions and the overall structure of a new mechanism on EC, it will be that much easier to find the appropriate location of such a mechanism. EC discussions seem too quickly to veer towards this sticky point, of whether such a mechanism should be inside the UN, ITU, or somewhere else altogether. Agreeing to keep such a discussion and decision for the last may be a good way to move out of the logjam in which the enhanced cooperation issue is caught today. This way we do not get too early into institutional politics that can cloud discussion about real basic issues which are more important to first address and sort out.

To conclude, I must say that many of us in the civil society have received India's proposal for a UN Committee on Internet-Related Policies with much interest. It follows the Tunis mandate and principles for an appropriate body for enhanced cooperation, and has proposed a promising structuring for the role of different stakeholders, especially if seen in conjunction with India's 2010 proposal for strengthening the IGF. Of course, the proposal can indeed do with many improvements. We think that India's proposal is a good basis to start a dialogue on how to operationalize enhanced cooperation. In this regard, setting up a CSTD working group on enhanced cooperation should be a good first step in this direction.