Developing Countries in the Emerging Global Digital Order
– A Critical Geopolitical Challenge to which the Global South Must Respond[1]

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Summary

Global regimes around trade, investment and intellectual property have mostly been conceptualised and written by the North. Developing countries were typically late to understand their real implications, by which time these had got too entrenched to admit structural changes towards fairly including developing country interests. A similar situation is arising with regard to the geo-economics of the global digital phenomenon.

A global digital order is gradually and steadily taking shape. Various social sectors are getting transformed by digital "platforms", like the information sector by Google, commerce by Amazon, and urban transportation by Uber. Companies that own these platforms are largely multinational, US-based monopolies. They soak up free raw data from developing countries and convert it into "digital intelligence", which is employed in reorganisation and consequent domination of all sectors. Apart from becoming a sustained model of economic exploitation of developing countries, this new form of digital dependency also carries dire political, social and cultural consequences.

Viewing the digital phenomenon through narrow frameworks of a promising industry and/or neutral tool for socio-economic development, developing countries have ignored larger policy issues like internalising network effects of data and digital intelligence to support national industry, regulation of platforms, and ownership of publicly important digital data.

Developing countries remain at the margins of global Internet/digital governance processes, with no vision or common strategies. Absence of a body in the UN system dedicated to digital policy issues, and the lack of support of a strong South-South institutional mechanism needed to deal with this complex subject matter, are the main reasons for such a situation. In default, the North continues to develop the norms and policy principles for the global digital society, on the basis of its interests and its geopolitical vision.

The current times are of critical importance to shape the key features of the emerging global digital order. If existing trends continue, developing countries will soon be locked into strong digital dependency. The global reach through the Internet of unimaginably intelligent technologies carries the very real prospect of invasive domination by the North and denial of national sovereignty to developing countries. The Global South needs to get its act together by undertaking urgent measures that range from understanding and framing issues in this domain, to establishing appropriate mechanisms for South-South cooperation, and evolving common geopolitical strategies for engagement with global forums.

The objective of this paper is to contribute to sensitizing developing countries to the overall context in which the global digital order is evolving today, and to argue the need for a holistic approach to the epochal challenge that it represents.

Digital re-ordering of society

A global digital society is unmistakably forming around us. From daily lives of people getting organised around the mobile phone; to the small shopkeeper subscribing to an Internet-platform for accounting and inventory management; to governments unthinkingly ceding the public responsibility of geo-mapping and other public statistical activities to global digital corporations; the trends towards deep social changes cannot be clearer. And, all of these have a strong global angle. Meanwhile, we are still only at the threshold of the digital society! The fundamental transformation that our societies will witness in the next few decades could be compared to the advent of the industrial society.

Two systemic elements of these societal changes already stand out. One is that as a sector undergoes digital transformation it gets organised around a networking "platform". For instance, Google is the "platform" for information, Facebook for media, Uber for urban transportation, and Airbnb for short-term accommodation. This will happen in all sectors. Companies are vying to build similar monopoly platforms for health, education, agriculture services, and so on. Sectoral digital "platforms", of a monopoly nature[2], can be considered as a generic feature of social re-organisation under digital impact.

A related phenomenon is of big data, the key resource of the new socio-economic structures. Digital services are routinely provided free in exchange for this most valuable of resources. As "platforms" monopolise sectors they collect vast amounts of data for each sector[3]. This data, fed into digital cognitive systems, whether algorithms or artificial intelligence, produces the required intelligence for the platforms to increasingly dominate the respective sector. Data fed intelligence is an exponentially cumulative phenomenon. The intelligent "platform" soon begins to act as, what could be considered, the "brain" of that sector. Such centralisation of "digital intelligence"[4] in data-run platforms, and its commodification, enables a business model that surpasses any other in profitability and durability. Its unbeatable network effect greatly rewards centralisation and monopolisation, quickly eliminating most competition.

This model may be explained through an analogy with a hypothetical situation where human body parts have to pay a rent to the brain for every function they perform, for partaking of its intelligence. At the same time, every new detail of bodily activity provides additional (free) data to strengthen the brain's leverage over it. ***The defining feature of the emerging digital society is the use of disembodied, machine-based intelligence for a very high degree of integrated and autonomous functioning of every sector – almost like that of an organism. To occupy the nodes or centres of such "digital intelligence" will be the most effective way to dominate the society or the world, economically and***

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2   *Monopoly behaviour in the digital sector is unprecedented, due to the network effects that provide positive economies of scale. In some areas there may exist a (very) few oligopolies, mostly no more than two or three, but the trend remains towards monopolization.*

3   *Data is collected from people's digital interactions as well from inanimate objects connected through what is called as the Internet of Things.*

4   *We use "digital intelligence" in preference to the more common term "artificial intelligence" or AI because the latter has strong technical connotations whereas we wish to focus on the implicated social phenomenon – less in terms of how such intelligence technically gets formed and operates and more with regard to its social manifestation and impacts. Also, AI is just one form of digital intelligence, although increasingly ascendant and all-dominating. Straight-forward data analytics and algorithms too contribute significant "digital intelligence". Importantly, this "digital intelligence" is a kind of "collective intelligence" as against the normal notion of individual intelligence.*

politically. Corresponding ly, the most important political economy question for the digital society is whether the disembodied intelligence enabling its organic functioning should be treated in a public goods framework[5] or should it primarily be a private good, made available on rent? Or should an appropriate middle-ground be sought between these two political economy archetypes?

Without venturing any deeper into these complex changes, let us turn to their geo-economic implication. Digital networks or "platforms" are mostly global, monopolistic, corporate-owned, and almost all of them are centred in the US. (Just one country, China, has bucked this trend and thus qualifies as a special case.) These platforms, often providing so-called "free" services, soak up huge amounts of data from across the world, feeding the "brains" at the network centres. More a country avails of these free digital services deeper it digs itself into a hole in terms of the huge outflows of that most vital resource, data, to the nerve-centres or the "brains" of global networks. This resource is being hoarded at these foreign centres for creating the digital intelligence required to exercise control over the country's various sectors and social systems.

A question arises; why does the outflow of value at such a scale fail to generate concern among those who lose it? The reason is two-fold. Firstly, data is worthless without the means to harness intelligence out of it. Such means are resource-intensive and highly centralised, and, at present, not normally available at the peripheries of the networks. Secondly, the current major use of big data based digital intelligence is for improving "free" services like search and translation, and for targeted and personalised advertising. People may find the latter somewhat irritating, but accept it as a small cost for the "free" services that bring them extraordinary benefits and conveniences. However, there is a limit to the profits that can be made from advertising. As discussed earlier, the real digital age business model is different. It is to monopolise and commoditise big data -based digital intelligence for all sectors, for sectoral consolidation and systemic control. ***The real costs involved are (1) social and long-term, as unregulated monopolies begin to leverage their positions for profiteering, and curbing competition and innovation, and (2) geo-economic and geopolitical, as key national resources of personal and social data[6], as well as data from inanimate sources connected to the Internet of Things, are siphoned off and exploited by foreign corporations and governments.***

One can already witness how global digital platforms employ data-fed digital intelligence to dominate the "commanding heights" of every sector, and of society. In areas of early digital advance like automobiles and health, stand-offs[7] and alliances[8] between digital corporations and corporations traditionally dominating these sectors reflect the ongoing power struggles. Interesting new corporate directions are emerging; Google is getting

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5   *Public goods are not necessarily all publicly or state provided. These could be provided by private players but with strong regulation, often under public licence, like communication services, health services, education, and so on.*

6   *While much gets spoken about "personal data" there is little discussion on data which may not pertain to individual persons but is about the behaviour of larger social units, like a classroom, or daily commuters in a city, which is what we call as "social data". Although no privacy implications may be involved in case of "social data" – often constructed out of anonymised personal data – it is an equally important economic resource as personal data. This also shows very well how the digital society discourse remains entirely perched on civil and political rights and has not extended to cover social, economic and cultural rights, and the right to development.*

7   *http://www.patentlyapple.com/patently-apple/2015/09/daimler-ceo-rants-that-they-wont-be-the-foxconn-of-car-makers-for-apple.html*

8   *http://www.theverge.com/2016/8/1/12340454/gsk-google-bioelectronic-medicine-company*

into cars[9], and Monsanto is becoming a data company[10].

Facebook, with its new "Instant Articles" platform, is set to become the arbiter of what is news.[11] Uber seeks to dominate urban transportation, through control over data that its operations provide.[12] Monsanto employs digital intelligence to infringe farmer's autonomy.[13] Google has been accused of directing queries on its search engine towards its own companies.[14] In this race for monopolistic control, not even public policy making and governance are to be spared. Smart city oriented platforms represent moves in this direction.[15] Public statistics critical for public policy are now being displaced by privately generated and owned digital intelligence in all social areas. Soon, public authorities will need to regularly buy the necessary "public" data and statistics from these digital platforms. Apart from the huge public finance implications, the political issues arising from almost all of these "platforms" being US-based should be obvious.

(It is pertinent to state here that we have no doubt about the extraordinary capability of digital intelligence to transform every social sector in a positive sense – from health, education and agriculture to manufacturing and governance. This document however focusses only on the global imbalances of power that its unregulated use can create.)

Our societies are reorganising around networked systems with disembodied, machine-based intelligence. As the brains of our societies, such digital intelligence systems or platforms will centrally coordinate and thus control all sectors. They are globally organised, corporate-owned, unregulated, and have a marked monopolistic tendency. Almost all of them are currently based in the US. This is an extremely important geo-economic and geopolitical issue that begs urgent attention.

Geopolitics of data-based intelligence

What are the options for developing countries under these circumstances? It is certainly not to step back to pre-digital social forms. The problems with Uber's increasing control over urban transportation, and its data, for instance, cannot be addressed by mandating that old-fashioned metered taxis alone will be allowed, or even by favouring them. A city taxi service on a digital platform is hugely efficient; there is no going back from it. The issues for public consideration and decision are different, like: How such platforms can be regulated, so that they do not profiteer by exploiting either taxi-drivers or commuters?: Can and should the huge network efficiencies be internalised within the local social system – a community or city?: Who owns the publicly beneficial digital intelligence arising from taxi operations, for example that which could be crucial to town planning?: Should certain key digital platforms be considered public goods, to be provided by a public agency, through cooperatives[16], or by private companies as licensed by the state?

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9   https://www.nytimes.com/2016/12/13/technology/google-parent-company-spins-off-waymo-self-driving-car-business.html?_r=0

10   http://www.motherjones.com/environment/2014/11/monsanto-big-data-gmo-climate-change

11   https://www.theguardian.com/media/greenslade/2016/jun/15/facebook-is-an-existential-threat-to-newspapers

12   https://www.tnooz.com/article/uber-data-boston/

13   https://policyreview.info/articles/analysis/ethics-big-data-big-agriculture

14   https://www.ft.com/content/643f49ec-e285-11e4-aa1d-00144feab7de

15   http://www.theverge.com/2016/11/30/13793262/alphabet-sidewalk-labs-contest-internet-city-google

16   There is a new movement called "platform cooperativism". It may be logical, for instance, for a cooperative of taxi owners to run the digital platform for city taxis.

From a geo-economic and geopolitical perspective, the key considerations are: Can and should the efficiencies that arise from platform based digital management of a social system be internalised within the country, preventing avoidable resource outflows to other countries (as China has quite effectively done)?: Is there a need and a possibility for supporting domestic competition, enforcing, for example, some amount of data transparency, platform-interoperability and open standards?: Should some areas of digital operations be reserved for domestic players?: What kind of regulation, especially of foreign operators, would ensure a fair profit for the value added, and a fair private ownership of data versus its public availability as a commons[17]?: What kind of political due diligence and regulation is required for politically and socially sensitive data?: How can South-based digital corporations operate successfully in global markets, and dominate them?

Many more policy concerns exist, for instance, around the agency and responsibility of artificial intelligence and robots, in their many implications in almost all areas, from fake news to social welfare to criminal justice administration and warfare. Our listing of some issues in this emerging sector does not intend to map its vast expanse; it merely underlines its fundamental social and geopolitical importance.

Looking beyond trade, investment and intellectual property, it is time for developing countries to include centrally in their geo-economic calculations this new and extremely significant digital sector. ***To give an analogy with industrial age geo-economics, digital data is the raw material collected from developing countries, on extremely unfair terms, which gets "manufactured" into "digital intelligence" in developed countries, largely the US, and then sold back to developing countries.*** The analogy, however, holds only partially because the manufactured product, digital intelligence, is mostly not actually sold back; it is employed to develop new digitally-enabled services in all sectors which are then sold, or more commonly rented[18].

In the emerging global digital order, developing countries, with the exception of China, are pushed to the periphery even more than in the traditional geo-economic arenas. A handful of nodes or centres, almost all of them in the US, control global networks of digital intelligence. ***Going by current trends, the level of structural dependency of developing countries in the digital society context is evidently going to be higher than ever. The phenomenon has also been called digital colonisation.***

Developing countries must recognise data and digital intelligence as vital economic resources. To the extent their economic value can be internalised within national borders, it must be done. Global flows and trade of these vital resources should be on fair terms, ensuring national economic benefits as well as social and cultural protections. The social significance and value of big data and digital intelligence is immense and primary. This requires close regulation, as well as possible public or cooperative ownership, of many aspects of the digital phenomenon. The limited scope of this paper does not allow a greater elaboration of such

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17 *Commons for data is a more complex matter than for information, which can be developed just by putting it in public domain or under creative commons licences. Data commons require new kinds of institutional arrangements that are beyond the scope of this paper to go into, other than to state that they are possible.*

18 *The digital society business models are more often about renting than selling. Here, even after paying the consumer never actually owns anything, she is only using "things" under licence conditions. Such licensed right to use can be unilaterally revoked at any time. US laws that form the core of the global techno-legal regime, like the Digital Millennium Copyright Act, underpin such exploitative economic relationships.*

needs and possibilities.

Meanwhile, we must make it clear that we are not advocating digital de-globalisation. What is sought is simply a fair place for developing countries, and for public interest, in the emerging global digital order. Unfortunately, not even a beginning has yet been made in the direction of framing this very important sector from a Southern perspective. There also exists no meaningful global forum where developing countries can get together to do so, away from the domineering gaze of the very same global digital corporations whose power needs to be checked.

Missing the larger picture, developing countries continue to view the digital sector as a set of technologies, as a promising national industry, and/or as providing apolitical tools for social development. It may be useful to briefly deconstruct these currently dominant stances.

The technology-centric view places the digital or ICTs[19] phenomenon in technology related global forums and normative systems, like those calling for "technology transfer". Digital technologies, however, are a unique case of distributed social technologies that do not easily lend themselves to traditional "technology transfer" frameworks. "Open technologies" and "technology commons" models, already strong movements in the civil society space, may be more appropriate for developing countries to promote in this regard. Besides, the digital phenomenon today is more centrally about a set of deep social-structural changes, as discussed, and not just some technologies. This calls for a very different geopolitical approach.

Next, the phenomenon is interpreted by developing countries mostly in relation to the national IT industry. This industry sector has great potential for developing countries, in terms of job creation, economic growth and foreign trade, as well as society-wide efficiency gains. ***The geopolitical manifestation of such an orientation is that of developing countries cosying up to digital corporations at the top of global digital value chains, and to the US, the main home of these corporations. While mutually beneficial economic relationships are useful to foster, they do not necessitate sacrificing a country's overall policy thinking and space for the digital phenomenon, in pursuance of national interest.*** It may be pertinent to note that one of the largest recipients of IT-related foreign investments from the US is China, a country with a strong and independent political thinking in the digital arena, that has not shied away from supporting its local industry, nor from imposing strong regulatory conditions on foreign firms.

The third major way that developing countries view the digital phenomenon is in its social development role. Digital technologies are indeed transformative, and can change the trajectories of social development. In global forums concerning development, like those on the SDGs[20], ICTs get treated as basically apolitical tools for development. This may only result in US based digital platforms getting pushed deeper into national social systems, including through foreign public and private aid or investment. Their immediate benefits look huge, and are difficult to resist. But these must not come at the cost of a country neglecting the larger structural aspects of the digital phenomenon, as discussed. A good understanding of these aspects would help developing countries take the necessary policy and regulatory decisions, balancing immediate requirements with long-term economic and political imperatives. This

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19 *As it is more commonly known in these forums, which is Information and Communication Technologies.*
20 *Sustainable Development Goals*

will also shift the nature of their engagements at global political forums.

There exists a significant mismatch between the most important geo-economic and geopolitical implications of the digital phenomenon and the way developing countries have been viewing it at the global level. This has resulted in developing countries getting trapped in new extractive global economic relationships, and also excluded from processes shaping the global digital norms and policies.

Current state of digital diplomacy

It may appear paradoxical but the fact is that more than a decade ago, at the World Summit on the Information Society (WSIS), developing countries seemed clearer in their positions and better organised on their digital or Internet-related agenda than they are today. The WSIS outcome documents, especially the Tunis Agenda, bears good testimony to this. They demanded a more just global allocation of Internet's technical resources, and that all countries should have an equal role in international Internet governance. This was a clear reference to the US government's unilateral control over ICANN. They also called for a new mechanism to develop international Internet-related public policies. This was something quite prescient to do in 2005 when there were not many such public policy issues, of which we witness a virtual deluge today.

Compare this to the current situation. ***The WSIS +10 review in New York, in 2015, was largely a non-event.*** Developing countries had almost no strategy, and little coordination. ***The unimagined evolution of the digital society since the WSIS had almost no impact on what was supposed to be the decade's most important global political event for this sector. It produced a weak outcome document that pushes back political issues of Internet governance by shifting the accent towards implementation of the SDGs.*** The only demand that developing countries stuck to was a continued discussion on Internet-related institutional issues in the form of Commission on Science and Technology for Development's Working Group on Enhanced Cooperation (for international public policies pertaining to the Internet) or the WGEC .

However, when the WGEC did meet in September 2016, as per developing countries' demand, these countries had little to offer, argue or seek in any concrete terms. This first meeting of WGEC decided on a questionnaire which (1) sought clarification on the concept of "enhanced cooperation", and, more importantly, (2) asked for suggestions on the kind of recommendations that WGEC could make. It is odd that very few developing countries responded to this questionnaire having so strongly defended the Tunis Agenda's mandate of "enhanced cooperation" in the post-WSIS years, and fought hard for creating the WGEC (and later its continuation at the WSIS +10 review). Almost all developing countries who did respond to the WGEC questionnaire[21] asked for a new institutional mechanism for "enhanced cooperation", but they too did not provide the required details.

In their written input[22] into the preparatory process of the WSIS+10 review, G77 and China articulated a clear demand:

> The outcome document should consider establishing an intergovernmental forum on enhanced cooperation and its modalities to, as per Paragraph 69 of the Tunis Agenda,

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21 *All responses can be found at http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=1215 .*
22 *http://workspace.unpan.org/sites/Internet/Documents/UNPAN95036.pdf*

> "enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues".

The same input stated that "the G77 and China would submit detailed modalities for the operationalization of this at a later stage".

WGEC is the appropriate place to formally seek such a platform, making clear proposals with detailed modalities as were promised in the mentioned input paper. But there has been no such effort. When developed countries had insisted that WSIS +10 review takes place in New York instead of Geneva, the traditional home to Internet-related discussions in the UN, it was a deliberate attempt to weaken the WSIS follow up. The strategy seems to have been successful. First, during the WSIS review in New York, developing countries were unable to build adequately upon the WSIS follow up discussions happening in Geneva for years. And now, as matters return to Geneva, the positions articulated in G77 plus China's statements at WSIS+10 are not being appropriately taken forward at the WGEC.

A similar situation exists at ICANN[23], another important geopolitical venue of the digital sector. The key issue here has been about ICANN's political oversight. During the WSIS, almost all countries insisted that technical governance of Internet should not remain under the oversight of one country, the US. The Tunis Agenda observed;

> "We recognize that all governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet."

US's oversight over ICANN consisted of two elements. One was its direct administrative oversight over ICANN's decisions on changes to the Internet's root file[24]. Following the public relations disaster caused by Snowden revelations, the US has now ceded this administrative oversight. However, ***ICANN remains a US non profit organisation, wholly under the jurisdiction of US courts, legislature and executive agencies. In pursuance of US national interests, any of these can at any time "legitimately" interfere with ICANN's technical governance of the Internet. Such a situation should be unacceptable to non-US governments, including those of developing countries.*** But one would not suspect so from the level and nature of participation of these countries in the ICANN Working Group (WG)[25], which is right now looking into the jurisdiction issue. Most developing countries are present at ICANN, through its Governmental Advisory Committee, but have shown little interest in the all important matter of US jurisdiction over ICANN.

US jurisdiction over ICANN results in many problems, which will only worsen as thousands of new top level domain names (.book, .apps, .apple, etc) are now being released. This exercise involves businesses from across the world, and whole sectors/industries like health and hotels, which can get entangled with US laws and regulatory/executive agencies.[26] Entities located in

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23 *Internet Corporation for Assigned Names and Numbers*
24 *This is a digital file with the Internet Protocol numbers of all top level domain names. It forms the root of the global Internet directories that help route Internet traffic. Control over it can be employed to disrupt traffic to and from a country's or a business's top level domain.*
25 *It is called the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability), with a sub-group focussed specifically on the jurisdiction issue.*
26 *Recently, 8 Indian civil society organisations, and two global networks, issued a statement on problems with ICANN remaining subject to US jurisdiction. They also suggested some institutional alternatives. The statement can*

countries under various US sanctions have often experienced difficulties with smooth functioning of their domain names[27]. Ensuring that a country's critical infrastructure is not subject to foreign rule can be considered an elementary constitutional duty of the government of any sovereign state. It is therefore strange that there is no stand taken by governments at ICANN on the jurisdiction issue even when a WG is formally considering it.

Let us briefly explore the likely reasons for the current state of apparent apathy among developing countries regarding global Internet governance. First of all, there simply is despondency about taking up anything new at a time when even the existing UN institutions seem to be collapsing or are greatly weakened. Such a sentiment may be well-founded, but digital society issues are not going to do away. They represent the design of a whole new social order, and demand nothing short of a complete political response. Engaging with them sooner than later would ensure much more space for bringing in developing country interests.

The second reason is that the digital society arena is just too wide, fast moving and complex for easy political comprehension. Digital issues also seem relatively future oriented compared to traditional geopolitical issues. Developing countries have limited resources, human and otherwise, to jump into complex new issues with already enough on their plate. A typical developing country diplomat knows, like the back of her hand, the key issues and divisions in most other geopolitical areas – whether trade, intellectual property, climate change or security. However*, there mostly is a lack of even an elementary articulation of the geopolitics of the Internet and digital society. This is owing to the absence of any credible effort anywhere to develop a basic template of geopolitics of digital issues from a Southern standpoint.* That would be the first step towards building the required understanding and orientation among developing countries with regard to this area. The fast-moving powerful digital phenomenon is prone to throw up deep policy crises. A huge and unending number of them can be expected; even a cursory look at daily newspapers would point to the many storms that are gathering. Instead of trying to understand and deal with them in a piecemeal and *ad hoc* manner, it will be infinitely more fruitful to be prepared for the inevitable.

The next complication is that the digital phenomenon is disruptive even with regard to how it should and can be governed, challenging traditional governance forms. Formal issues like political oversight of technical governance and multistakeholderism routinely overwhelm Internet governance discussions. A further difficulty is to map the contours of digital sector governance, as separate from its impact on specific sectors, with their existing governance mechanisms. This document has earlier briefly discussed generic digital developments that cut across all sectors[28]. These cannot be fully understood from within the impacted sectors, nor can key social and policy issues around them be so addressed. *The digital sector is in a meta relationship with almost all other sectors, but requires its own distinctive understanding, norms, policy principles and governance mechanisms.* What this means is that new kinds of knowledge and competencies are required for this sector, which

be found at https://www.itforchange.net/sites/default/files/Jurisdiction%20of%20ICANN.pdf .

27 Some but not all issues arising from sanctions by the US Office of Foreign Assets Control have been discussed at http://www.internetgovernance.org/2017/01/13/icanns-jurisdiction-sanctions-and-domain-names/ . Also see at the following link a statement by the Russian government on disruption of domain names services in Crimea due to US sanctions, http://atlarge-lists.icann.org/pipermail/na-discuss_atlarge-lists.icann.org/2015-March/008611.html .

28 We refer here to artefacts like big data, platforms and "digital intelligence" that were discussed earlier. There are many more of such new transversal digital realities. These are transforming all sectors, but their nature, action, value and impact cut across them and are not fully accessible nor influence-able from sector-centric approaches.

developing countries must muster.

Lastly, the geopolitics of the digital sector may not appear to nicely cut along traditional North-South lines. Some developing countries tend to see digital geopolitics exclusively through the narrow frames of their own positions in global digital value chains – whether actual or aspired. Such vantages are normal, and to be expected. The mercurial digital phenomenon can offer hugely rewarding national opportunities. But, digital ambitions apart, being a developing country implies certain structural features of society and economy. These do not get obliterated just from being viewed through a digital lens. As argued earlier, the digital phenomenon must be recognised as being much more than a key industry sector. In the long run, this may not even remain its most important aspect, both nationally and geopolitically. As digital society takes shape, digital issues will be as much about health, education, agriculture, transportation, manufacturing and public services as about media, entertainment and information, or about data and software. Recognising this is likely to shift the geopolitical perception of the global digital phenomenon, making it easier to employ a North-South framework.

The first task for developing countries is to appropriately frame the larger context and principles of geo-economics and geopolitics of the digital phenomenon. This should then be translated into the required action at the global level.

North driven global digital norms

Even as developing countries remain absent in policy spaces, it is not that development of global norms and policy in the digital area is not taking place. Politics, as is said, abhors a vacuum. At WSIS related forums and at WGEC meetings, OCED countries have argued vigorously that there are no special international Internet-related public policy issues, and certainly no need for specific bodies or agencies devoted to address them. Interestingly enough, ***the OECD itself has a committed mechanism for Internet policies called the Committee on Digital Economy Policy. It has developed a policy framework called the "OECD Principles for Internet Policy Making"[29].*** This committee has a loaded annual calendar for discussing ever new Internet/ digital policy issues. It has issued recommendations and guidelines on policy issues ranging from online security and spam, to privacy and cross-border data flows, to e-commerce and the role of Internet intermediaries. It is working on issues like big data, Internet of Things, labour displacement by automation, and online consumer protection. It seems hypocritical, therefore, for OECD members to question at UN-based forums the very existence of significant international Internet-related public policy issues, and the need for a committed mechanism to address them at the global level.

In 2011, at the UN General Assembly, India proposed the creation of a Committee for Internet Related Policies[30], with a mandate and structure very similar to that of the cited OECD committee. OECD members rejected the proposal, calling it an effort towards governmental control of the Internet. The proposed UN committee was to be just as inter-governmental as the OECD committee on digital issues, and with the same multistakeholder participation mechanisms. (Significantly, the OECD calls the processes of its own committee as multistakeholder.[31]) The only *real* difference between this OECD committee and the proposed

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29 *https://www.oecd.org/sti/ieconomy/oecd-principles-for-internet-policy-making.pdf*
30 *http://itforchange.net/sites/default/files/ITfC/india_un_cirp_proposal_20111026.pdf*
31 *http://webnet.oecd.org/OECDGROUPS/Bodies/ShowBodyView.aspx?BodyID=1837&Lang=en&Book=True*

UN committee on Internet policies was that the former exclusively comprises governments of rich countries while the latter had proposed inclusion of all countries.[32]

Global meetings on Internet governance nowadays take place with breathtaking frequency across the world. Almost all of them ***are dominated by Northern governments and/ or global digital corporations. In addition, these actors regularly contribute various kinds of reports, policy briefs, etc. All this constitutes a very intense process of development of new concepts, norms, principles and policy frameworks for the digital society. Developing countries stand almost completely excluded from these processes.***

With most global digital corporations (as also ICANN) being US based, the latter's laws and policies are by default at the centre of the global digital regime. Some policy and norms development happens in interactions between the US and the EU. The US government has sought to mitigate EU's misgivings about US-centred global digital networks by offering special legal protections for data originating from the EU through the "privacy shield" arrangement[33]. Global digital corporations too are especially mindful of EU politics and markets. For instance, Google devised region-specific arrangements to accommodate EU laws on the "right to be forgotten"[34], as Facebook did more recently to placate the strong German concerns on the issue of fake news[35]. Such flexibilities from either the US government or the digital behemoths are highly unlikely for developing countries.

Some developing countries perhaps keep hoping that, with time, similar accommodations will also get extended to them. In the global digital order, with no democratic international norms or rules, power speaks to power. ***Bilateral digital diplomacy – with powerful governments or corporations – will always be loaded against the weaker party. The weaker a party is, the worse is the deal that it will get. Developing countries have long known the pitfalls of such an approach in other areas of global governance. The digital area is no different. Furthermore, developing countries cannot afford to just seek one-off favours or accommodations from countries/ corporations that control the global digital networks, which is the typical focus of bilateral negotiations. At stake is the very structural design of a new kind of global society, which cannot be addressed through the 'deal-making' approach of bilaterals.***

Unlike their current stand, the US and other developed countries are not expected to forever remain opposed to globally-inclusive digital regimes. As the North-developed *ad hoc* or plurilateral norms and policy frameworks get globally entrenched, and become practically irreversible due to various kinds of sunk costs, their strategy will shift. They will then seek robust global regimes which are inclusive of all countries, but based on their own defaults frameworks, with the aim of their effective worldwide enforcement. Such a time may yet be a decade or more down the line.

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32 *One mandate of the proposed UN committee however was different, and also the most criticized one; that of oversight of the Internet's technical governance system. Within a year, India made statements accepting removal of this particular mandate and discussing a separate mechanism for it. But the opposition to the UN committee proposal remained unchanged.*

33 *http://europa.eu/rapid/press-release_IP-16-2461_en.htm*

34 *https://www.theguardian.com/technology/2016/feb/11/google-extend-right-to-be-forgotten-googlecom*

35 *http://www.reuters.com/article/us-germany-facebook-idUSKBN14Z0OH*

Currently, the Northern governments favour global digital rule making through plurilateral trade treaties like the TPP[36] and the TiSA[37]. Some such proposals have recently also surfaced at the WTO. The thrust of all these is to ensure seamless functioning of "global digital networks", principally as commercial systems and unhindered by national laws. Some key features of these proposals are; no custom duties on digital products; free cross-border data flows; promoting a free and open Internet for all commercial purposes; no localisation requirements; no technology transfers, no local technology requirements and no source code disclosures, and; open access to networks in other countries.[38] Guarantees are also sought that no future services will be regulated – which would include most yet-emerging digitally-enabled services in all sectors. It is evident that the global digital phenomenon is cast as primarily commercial, to be insulated as far as possible from all kinds of social influence and political oversight.

Framing the digital phenomenon primarily as a trade issue promotes globally the dominant US-created commercial and big-business- centric (or neoliberal) view of it. This is detrimental to larger public interest, more so for developing countries. Digital trade must be negotiated within a prior, holistic social framework for the emerging digital society, like WHO provides for health, UNESCO for education and cultural artefacts, UNEP for climate change, and FAO for food and agriculture.[39] It is as problematic to exclusively employ the trade lens for global digital issues as it would be to globally consider health, education, culture, environment, food and livelihoods issues as nothing more than subjects of trade and commerce.

If they are to avoid a digital future whose norms are exclusively written by Northern players, developing countries must act now, while there is still time as the design of new digital social structures is being formed.

Way forward for developing countries

In the long and arduous journey towards a fair, rule-based global digital order, the first and the most important step for developing countries is to ***seek a new UN based venue for Internet/ digital policy making.*** The ITU views digital issues from a technology angle, the First Committee of UNGA from a geo-security perspective, the WTO from a global trade vantage, and the UN HRC from a human rights standpoint.[40] Such divided and partial views of the complex society-wide changes that are underway are very sub-optimal, apart from leaving huge gaps of uncovered areas. ***What is required is a holistic treatment of the powerful transversal elements of the digital phenomenon in their impact on all aspects of the society.*** Earlier in this document, we have discussed some such elements as also the rationale for their distinct policy treatment. This should be the mandate of this new UN based body, which must sit at the centre of a public ecology that helps shape the design of the emerging global digital society, from a public interest perspective. This new Internet

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36 *See the digital elements of TPP, also known as the "Digital Two Dozen" at*
     https://ustr.gov/sites/default/files/Digital-2-Dozen-Final.pdf .
37 *Respectively, the Trans Pacific Partnership and the Trade in Services Agreement.*
38 *See the Analytical Note by South Centre titled "The WTO's Discussions on Electronic Commerce",*
     https://www.southcentre.int/wp-content/uploads/2017/01/AN_TDP_2017_2_The-WTO%E2%80%99s-Discussions-on-Electronic-Commerce_EN.pdf .
39 *Abbreviations used are for the World Health Organisation, UN Educational, Scientific and Cultural Organisation, UN Environment Programme and Food and Agricultural Organisation of the UN.*
40 *The abbreviations in this sentence relate respectively to International Telecommunication Union, United Nations General Assembly, the World Trade Organisation and the UN Human Rights Council.*

governance body would work closely with UN-based and other bodies governing different sectors that get digitally impacted – for instance, with the WHO on health- related big data and "platforms".

This new UN based agency should help develop Internet/digital-related norms, principles and policy frameworks, and, as needed, also treaties and other forms of international law.[41] ***Strong mechanisms for stakeholder participation will be built into its design***, ***including maintaining an organic linkage with the UN Internet Governance Forum.*** Since this is a fast changing sector, with challenging knowledge needs, this body should have a strong complement for undertaking cutting-edge research and analysis.

The WGEC is the appropriate place to propose such a new agency, considering that it is expressly mandated to explore institutional developments in this area. As the developing countries stated during the WSIS +10 process, they should now make a collective proposal to the WGEC containing all the needed details of a new institutional mechanism.

As the only existing opportunity to seek such a new institution for global digital/Internet governance, the WGEC has just a year left to submit its final report. Northern governments will obviously not accede easily – although such a new institution is in everyone's interest.[42] Appropriate coalition-building and negotiation strategies/ tactics with alternative options are therefore required. Back-up action must be planned if the demands of the developing countries are not entertained. ***It will be useful to consider creating a digital forum of developing countries, for shaping norms and policy frameworks, and for practical cooperation in this area.*** Only such strong stances and actions can produce results in this hotly contested geopolitical arena.

Developing countries must come up with a joint position and strategy on the issue of US's jurisdiction over ICANN for the concerned ICANN WG, which also has only a few months left before it winds up. This position should also be presented to the WGEC. ***ICANN must become a truly international organisation incorporated under international law*** on the lines of other international organisations. This can be done without at all changing the existing multistakeholder model of ICANN's working and governance. Only the jurisdictional layer needs to be changed, from US to international, without touching any other part of ICANN's structure. ***In the interim, the US government must provide jurisdictional immunity to ICANN under its International Organisations Immunities Act.*** Precedents exist for US non-profits to receive such immunity.[43]

If there is no positive response from ICANN, developing countries must begin working on a back-up Internet root system, based on an agreement among the countries ready to come on board. This system can be kept as a redundant back-up for any eventuality of an inappropriate

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41 *One useful early activity of this body should be to craft and negotiate a "Framework Convention on the Internet", which would be an hold-all framework for supporting and legitimising the global Internet governance ecology. It would also provide the enabling framework for development of Internet-related international public policies. Such a proposal was mooted by some developing countries and civil society groups during the WSIS. For instance, see* http://igf.wgig.org/Substantive_1st_IGF/igp-fc.pdf

42 *European countries have especially been very concerned about the almost unipolar concentration of global digital power in the US, and the corresponding lack of any global norms or policies. However, they seem to develop cold-feet whenever any real possibilities are mooted in this regard, unsure of appearing to challenge their traditional geo-economic partner.*

43 *An ICANN mandated study had presented this option. See* https://archive.icann.org/en/psc/corell-24aug06.html *.*

US interference in ICANN's working, at which point it can immediately kick-in. As it will mirror the existing ICANN root, minus any inappropriate changes, there will be no disruption to the global working of the Internet. Proposing or setting up such a system will enable developing countries to act from a position of strength in seeking a fair and equitable management of Internet's technical resources, without it being subject to unilateral jurisdiction of the US. The European Union's Galileo global positioning system is an example of developing a redundant system to avoid being overly dependent on a US-controlled system.

Developing countries must also connect their new understanding of digital issues to geopolitics at traditional venues, for instance concerning issues of e-commerce at WTO, Technology Protection Measures[44] for intellectual property at WIPO, global corporate tax avoidance and global micro-payments for digital services at finance-related forums, human rights abuses by global digital corporations at UNHRC, structural digital issues that impact a country's right to development at development-related forums, and so on.

Cooperation among developing countries must be strengthened in this vital area by exploring a new South-South forum on digital society issues, as proposed earlier. Digital society issues and politics represent a long-haul; a new kind of society is just beginning to take shape. These issues are only going to become more and more important as well as complex. Such a new forum should have a strong knowledge development component, which can be handled by a body like the South Centre. Although the knowledge needs for this sector are so intense and dynamic, and the absence of expertise in developing countries so stark, that a separate fully-resourced organisation may be required just for this purpose. One of the larger developing countries can take the initiative to fund and host it. It could be affiliated to the South Centre.

An immediately needed first step is to take up informal work **_to develop geopolitical understanding, norms, principles and policy frameworks for the digital society, from a Southern standpoint._** This should be encouraged and supported at academic centres, policy think tanks, and through workshops and conferences. To begin with, it would be most useful to organise a large workshop, over 2-3 days, on framing the developing countries' location in the global digital order. It can try to develop a template of basic issues and possible positions on the geopolitics of the digital society. The South Centre may want to consider organising it.

To reiterate, calling for developing countries to understand and focus on their national and collective interests does not mean advocating digital de-globalisation. What is sought is a global digital order that is just and fair for everyone, including developing countries. Such an order has to be based on rules that are developed in a public and democratic manner. It cannot be a patchwork of opportunistic arrangements among powerful economic and political actors, done in opaque and underhand ways, which is the dominant mode today. These arrangements get justified through novel political terms spun by Northern think tanks, like equal-footing multistakeholderism, issue-based networks, and flexible and distributed governance. Developing countries have had no response so far to this ideological barrage. They need to urgently shape new discursive tools as well as undertake strategic actions in order to defend their geopolitical interests.

In the long run, a global digital order based on fair rules will be best for everyone –

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44 _Technology Protection Measures are means that are coded into digital artefacts to prevent copyright violation. They mostly exert a maximalist copyright enforcement, including making legitimate fair use impossible._

rich and poor, developed and developing countries. The current crucial formative period of a new kind of society, with digitally-mediated social structures, calls for a new global social compact. Short term and narrow self-interests must be set aside at such historic moments for the larger common good. If a level playing-field with fair rules is developed, it can ensure a fruitful game for everyone. In default, we will remain stuck with a fundamentally defective social design that will serve no one in the longer run. By taking the lead towards a fair, rule-based global digital society, developing countries would be doing everyone a favour, not just themselves.

Towards a just and fair global digital order

– A short- to mid-term course of action for developing countries summarised

1. Develop a joint proposal for a new UN based mechanism for international Internet-related public policies, as per the Tunis Agenda, and as proposed in the G77 plus China's statement to the WSIS +10 process. This proposal should be submitted at the earliest to the UN Working Group on Enhanced Cooperation.

2. Make a proposal to the concerned ICANN WG to shift ICANN from US jurisdiction to incorporation under international law, without changing other aspects of ICANN's structure. Initiate the process for the necessary inter-governmental agreement on this. This too is in keeping with the word and spirit of the Tunis Agenda. In the interim, seek jurisdictional immunity for ICANN under the US's International Organisations Immunities Act.

3. Begin shaping a South-South forum for cooperation on digital public policies and other digital issues among developing countries.

4. In case of non responsiveness of the ICANN WG on jurisdictional shift, begin developing a redundant Internet root system which acts as a back-up against US jurisdiction's interference in ICANN's work.

5. Set up a resource centre on digital society issues from a Southern perspective. Begin working on developing resources at Southern think tanks and academic centres, and hold conferences and workshops in this regard.

6. As an immediate first step, organise a large workshop over 2-3 days to locate the developing countries' position and interests in the emerging global digital order. The workshop should seek to come out with a basic template of geopolitical issues and necessary positions for developing countries.

It is very unlikely that all this can be achieved right away. But it would be very useful for developing countries to have some kind of a roadmap, with clearly articulated positions and demands, and a basic set of common directions to work towards. This will help sustain a coordinated joint effort by them at different global forums, which can be expected to achieve concrete results in the mid- to long-term .