

CSTD Session on Enhanced Cooperation on Public Policy Issues Pertaining to the Internet

May 22, Geneva

Comments at the opening panel by Parminder Jeet Singh, Executive Director, IT for Change

I must first of all thank the chair for a very balanced report on the special meeting on 'enhanced cooperation on public policy issues pertaining to the Internet' held on May 18th. I think that the meeting was an important and a positive step forward. We got a lot of good ideas which can serve as the basis for moving forward on this very important but long neglected mandate from the WSIS.

What I heard from the meeting, and also note from the chair's report, is that many governments as well as other stakeholders have deep concerns both regarding the fact that there continues to be very substantial gaps in global public policy making, and in democratizing its processes, as well as the fact that an important and express mandate from the WSIS remains completely unaddressed. Others in the room were of the view that this may be an exaggerated view. However, at this stage, it is enough that many governments and other stakeholders do have deep concerns and they must be provided a formal space to express and discuss them.

In this regard, the idea of a CSTD working group was proposed by many participants. I think it is a very good proposition. We heard in the last session how the CSTD working group on improvements to the IGF worked so well, and was able to produce such good results. There is no reason why a similar process should not be tried out for resolving the issue of 'enhanced cooperation'.

At the same time as we agree to the next step for a formal space for dialogue on 'enhanced cooperation', we must also start discussing the most contested issues and area which have caused such deep political divisions. We should earnestly listen to and address the concerns of different parties. At the May 18th meeting, I heard views that could roughly be polarized into camps – those who were more or less satisfied with the status quo, and those who wanted a new mechanism to deal with public policy issues pertaining to the Internet. The latter view, perhaps, has been most concretely captured by India's proposal of a UN Committee on Internet-Related Policies (CIRP). I will very briefly try to – just in an illustrative way - touch upon what concerns and what fears inform these two somewhat opposing positions, and how we could perhaps address them, and move forward taking all such concerns and fears into account.

Need for institutional developments on the technical governance side

Before we start discussing the very complex area of global Internet governance, it is important to develop some overall sections and categories. Global Internet governance can be seen in two relatively distinct though related parts – technical governance and, what may be called as, larger public policy issues of a social, economic, cultural and political nature. These two areas of IG are rather different in the nature of the 'problem', the ecology of actors and, thus, the appropriate responses to the problem, including, very significantly, in the present context, the role of different stakeholders. However, one often sees that discussions about IG, especially when done in a politically surcharged atmosphere, often gets confused about what part of the global Internet governance system (or the absence of it) was being spoken about. Concerns coming from one side of this two-way division of IG space – technical and

non-technical — are answered by views and facts about the other side. India's CIRP proposal also got caught in this very unfortunate somewhat misguided cross-fire. While CIRP is mostly about larger public policy issues – the kind of work done by OECD's Committee for Information, Computer and Communication Policies (ICCP) – almost all the responses to it came from the side of, and concerning, Internet's technical governance. More about it later.

Technical governance – or perhaps, 'technical management' is a better term here – of the Internet can be said to include the management of Internet's name and number resources, and the processes of development of technical standards, the kind of work which, respectively, ICANN and IETF does. Internet's technical governance is uniquely a very distributed system, which is relatively open and transparent, and also includes innovative bottom up processes. Such a distributed technical management of the Internet's core systems and standards has helped develop the Internet in a kind of creative tension with the nationally bound, hierarchical social order of the industrial age. This creative tension has an important role in the kind of social, economic, cultural and political impact that the Internet makes, the details of which I will not be able to go here. As one could would judge, I strongly support retention and strengthening of the current distributed model of technical governance in its general and essential characteristics. Although one must add here, that, it needs considerable improvements, which can be done in an evolutionary manner. It has not adapted itself enough with the Internet related developments of the past decade, and is often very prone to capture by big business. I also do not see opposition from too many quarters to this distributed system of technical governance, as such. In fact, Tunis Agenda too has some approving language about how this disturbed system has been managed.

The real problem with technical governance of the Internet relates to its unilateral oversight by one government, the US, which is quite untenable and unacceptable to almost all non-US governments and many other stakeholders. It is this *key problem* on the technical governance side that we must address. In fact, those most interested in safeguarding the current distributed architecture of technical governance of the Internet must be most pro-active in addressing this 'oversight issue'. Only by making a satisfactory resolution of the key oversight issue can we protect this distributed architecture. Otherwise, those unhappy with the status quo – for very valid reasons – will seek the solution in a manner that shifts the very architecture of the technical governance of the Internet, towards a top-down, cumbersome bureaucratic processes based governance, which we know is just not suitable for the Internet. This is one of the most important points to understand and appreciate by defendants of the distributed model – including the technical community.

ICANN just cannot remain a US Non-profit, subject to all kinds of US law, small and big, as any US based entity is. ICANN controls too important and critical a global infrastructure for such an arrangement to be acceptable to the global community. The best intentions of the US Department of Commerce, the oversight body for the ICANN, cannot shield ICANN from the application of the US law. Till now, it is simply good luck, and perhaps some careful management by the executive part of the US government, that nothing has happened to expose this very deep inconsistency between ICANN's role and its legal structure and obligations, but one can be sure that something will happen, perhaps sooner than later. It would of little use to be very surprised when such a thing happens, and then look for ways around it. ICANN instituted the .xxx domain space over the objections of many governments. Here, I am not commenting on the merits of that decision or the processes followed for it. However, what is interesting is that ICANN has been taken to the court (of course, US court) by some US companies on grounds of anti-competitive behavior in setting up .xxx domain space. The very fact that a US court has accepted this case makes it at least possible that the ICANN decision on .xxx will be struck down, in which case ICANN will have no option other than to withdraw this domain space.

Such a step would of course make a mockery of the global governance body status of ICANN.

Non US governments have very valid security and other public policy concerns vis a vis US oversight of the critical Internet resources (CIRs), and these must be addressed. These cannot be taken lightly, or dismissed as efforts for taking control of the Internet. US has asserted its security concerns vis a vis the root of the Internet, by ensuring that ICANN's security staff is selected only with US government's permission. In this light, how can the security concerns of other governments vis a vis the root of the Internet be misplaced! It is quite ironical that when US exercises oversight, it is considered not a significant issue at all, but when exactly the same oversight – with exactly the same role and powers – is sought to be put under an international body, the alarm of governmental control is raised!

At the same, we must also address the concerns of those who are wary of internationalising the oversight of CIRs. They are most afraid of a very bureaucratic process exercising excessive and undue control over technical governance system, which many claim the US has refrained from doing till now. It may not be the right arrangement to have 50 or 100 governments use the typical UN processes to try to do oversight of CIRs. In this regard, India's CIRP proposal may therefore need to be re-worked by removing the CIR oversight function of the proposed CIRP. Other more innovative methods for internationalizing CIR oversight can be found. I will not be able to go into the details here, but if we earmark this as *the key problem*, and list the various concerns around it, I am sure a mutually satisfactory solution can be found.

At the very least, ICANN has to become an international body, subject to international law, with a host country agreement (shielding it from local laws vis a vis its global role and operation) has to be put into place. Next, we need to agree to a very light international oversight body, which may consist of such members as best represent global public interest, and which has a very minimal, and circumscribed, role with a clearly laid of process and procedure for exercising it. The members may have to be county-based representatives, with some clear relationship with governments, but perhaps coming from technical-academic side, with a broader national process of their selection (just an idea!). (Membership of some global technical bodies may provide some good leads in this regard.) Again, I will leave out the details, and different sets of possibilities, but I am very positive that something can be worked out in this direction.

Mechanism for enhanced cooperation on social and economic policy issues

The other side of global governance is what may be called as the larger public policy issues concerning social, economic, cultural and political matters vis a vis the global Internet. These issues are in fact much much more important than those related to technical governance of the Internet, but get almost completely neglected in global discussions. There are three ways such social policy issues get decided today. First is the manner in which global Internet monopoly companies like Google and Facebook just decide important policy matters and the world gets subject to them. Second, and related, is the way these global monopolies incorporate the law and policy preferences of the country where they are registered – mostly the US – in their architecture and practices and once again the rest of world is the hapless consumer of such policies, without taking any part in making them. Thirdly, are the various plurilateral initiatives which are very active in making Internet policies that have default global application. One of the main sites of such policy making is the OECD's Committee on Computer, Information and Communication Policy (CCICP) referred to earlier, which is OECD's Internet policy making mechanism. Council of Europe (CoE) is also very active in this area. OECD recently came up with 'Principles for Internet Policy Making', which OECD now wants non OECD countries also to accept. One can see no reason why all countries should not be a part of developing such principles in the first place. This is a simple and straight-forward demand for democratic global governance of the

Internet, and we are sure everyone will be better off for it. OECD has also developed guidelines for Internet intermediaries, and CoE has been working on guidelines for search engines and social network sites.

It is somewhat surprising that many stakeholders of the very same countries that are involved with OECD's and CoE's cross-border Internet policy mechanisms are found raising the question; whether there are at all any significant global public policy issues pertaining to the Internet that needs to be addressed globally, and are not being so addressed at present. To anyone asking me this question, I simply refer them to the very busy and full calendar of events, and their agenda, of these plurilateral Internet policy making bodies. India's proposed UN CIRP should principally be doing this kind of policy work, and perhaps leave out the CIR oversight function to a different, more innovative, international body or mechanism.

The above few points on the possible ways forward are only illustrative to show that there are real concerns as well as real fears of different stakeholders, and that these can indeed be addressed. Progress on shaping new institutions that are adequate to the task and mandate of 'enhanced cooperation on public policy issues pertaining the Internet' may not be as difficult as it may appear at first sight. Internet is now a central force shaping the social dynamics, architecture and structures of the emerging information society. If we have to ensure and maximize the democratic and egalitarian potential of the Internet, we must take charge of shaping the architecture and processes of the Internet in global public interest. In this regard, I refer to the press release issued by the UN Special Rapporteur on Cultural rights, Farida Shaheed, and Special Rapporteur on Freedom of Expression, Frank La Rue, which was issued in the context of the May 18 meeting on 'enhanced cooperation'. It observes that "it is crucial to address who and what shapes the Internet today" and goes on to highlight the "urgency to arrive at a global consensus on Internet governance and architecture". That is the real task of 'enhanced cooperation'.

Thank you, Chairman.