

**Exploring a Framework Convention on Internet Governance
Workshop at Internet Governance Forum
30th November 2006**

Organizers: IT for Change, Bangalore; Hivos, Netherlands; Panos Institute , West Africa - CIPACO Project; Third World Institute (ITeM), Uruguay; Foundation for Media Alternatives, Phillipines.

Moderator: Parminder Jeet Singh (IT for Change); Panelists John Mathiason (Internet Governance Project, University of Syracuse); William Drake (Graduate Institute of International Studies in Geneva); Pankaj Agrawala (Joint Secretary, Ministry of IT, Government of India); Erick Iriarte Ahon (Alfa-Redi) ; Bertrand de la Chappelle (French Government's Special Envoy for the Information Society)

Presentations

The Moderator, Parminder Singh, introduced the Panel and requested all Speakers to focus on the two questions which the Workshop was designed to address. First, is there a public policy crisis in Internet Governance? If so, is a Framework Convention a possible response to this crisis and what kinds of institutional innovation would be necessary to accommodate the multi-stakeholder principle adopted at WSIS.

John Mathiason:

Internet Governance debates began with the ICANN White Paper 1998 which outlined the problems that the borderless character of the internet posed to traditional forms of regulation. It was also suggested that the international law system which conventionally deals with nation states was felt to be inappropriate in the context of the internet as the market could provide suitable solutions.

Both these responses have failed as presently we have several narrowly focused institutions dealing with areas of expertise but no institutional framework to cover some of the most important topics. If one attempts to deal with all the issues that internet governance raises through a single institution then we come up against several overlapping institutions.

So the best way forward is by approaching internet governance like we would approach environmental regulation. We must adopt a step by step iterative process where we first state some general principles and the basic institutions necessary to implement these principles. This is the best prospect for making real progress.

Moderator:

The moderator developed on the analogy between the internet and the environment and suggested that there were many parallels between the UN Framework on Climate Change and the proposed Internet Governance Convention. Two notable ones include the, scientific and technological unpredictability about the future direction of the Internet and the need to evolve a statement of general principles where agreement on specific methods of regulations was not feasible at this point in time.

Will Drake:

Agreed with the first speakers basic intuition about the need for a Framework Convention but did not agree that there was a need for meta regime of regulation. The arguments against such a meta regime include:

First, that the internet was to heterogeneous and distributed to state specific rules and design concrete institutional mechanisms that is envisaged in a Framework Convention. We are likely to find only general principles stated very abstractly and unlikely to have any significant effect.

Secondly, even a soft law regime was undesirable as it may misunderstand or stifle technological development of the web.

Thirdly, a framework convention was not politically feasible as there were several cross cutting interests in the field of internet governance which makes it difficult to reach agreement and powerful opposition to the adoption of particular principles of governance. Moreover there is no appropriate forum where this negotiation may take place.

For these reasons a better approach may be to develop a Procedural Law Framework that governs the range of existing and still to be created internet governance institutions. Such a meta regime will incorporate the WSIS principles of multi-stakeholder / multi-lateral participative institutions which adopt transparent and accountable mechanisms which ensure good governance.

It will be difficult to develop even such a procedural convention given the absence of shared standards across existing institutions and the political constraints on such a process. The formation of Dynamic Coalition on this issue would be a first step and we should attempt to bring out a paper on this subject for the Rio conference of the IGF.

Eric Iriarte:

Debates about internet regulation by government tend to move between two extremes. While some proponents suggest no regulation at all others suggest regulation of the entire internet. The need for regulation often emerges from civil society and other stakeholder concerns about varied issues like security, pornography and connectivity. So there is a need for a statement of principles which articulate a vision for the information society.

The Declaration of Lima 2003 on International Cyberspace attempts to do this. It proposes that the internet be regulated much like the high seas are regulated by the UN Convention on the Law of the Sea. Under this convention the existing civil laws of the country are applied to the sea trade and conflict of law rules settle any disagreements on the law which should apply to a particular case.

More recently Free Trade Agreements between the US and Central America have clauses regulating the internet. In a sense these FTAs bilaterally create an internet law and a multilateral agreement can integrate all such bilaterals to consolidate the law relating to the internet.

Pankaj Agrawala

While governments tend to proceed slowly and adopt a conservative approach to policy making the pace of technological development is rapid leaving a large gap between the law and technology. In the case of the internet there is a need for a Framework Convention which approaches the internet as network of networks to be regulated through a network of agreements by a network of coalitions.

We must begin with the existing conventions which regulate various parts of the internet and after careful study and analysis move towards a framework convention. The development of

public policy must proceed by developing strong public policy connections between existing actors and institutions so that a multi-stakeholder process is followed.

Willie Currie

The problem that a Framework Convention responds to is the public arguments between the EU, USA and Developing Countries over the principles which govern critical internet resources. In the Tunis Agenda there was a call for enhanced co-operation to resolve these problems while protecting free expression norms on the internet and ensuring that governance of the internet was not only for governments but adopted the multi-stakeholder approach.

As these concerns were not fully resolved through the WSIS process there is a need to restate the norms and principles for the future of internet governance through a multi-stakeholder convention. Like the Aarhus Convention on Greening IT such a Framework Convention must restate some general principles like Open Architecture of the Internet, Unity of the Internet and Net Neutrality and Enhanced Access to the Internet and Participatory Development of the Internet.

Bertrand de la Chappelle

The first clarification I must make is that this speech is not the official position of the French government. Secondly, I am interested in the need for a 'Framework' and not the 'Convention'. Convention suggests an inter-governmental legal instrument which is a hasty conclusion to the internet governance debate.

The IGF should explore the complex ways and means of organizing a viable medium of communication which may lead to such a framework of principles. Governance is the elaboration and application of norms and rules and the identification of a fair decision making procedure. In the case of the internet we must find a mode of making norms and rules and allow the diverse institutional framework which governs the internet to elaborate the rules in their chosen fashion rather than by creating a new institution to implement these rules.

For example, we need a framework of governance principles for the internet which is like a Constitution which provides for the making of law. Such a framework should provide for a manner in which matters are placed on the agenda, elaborating and deliberating such agenda matters, deciding on the matter and then implementing.

Article 72 (i) of the Tunis Agenda requires us to verify if the WSIS principles are applied in Internet Governance Processes. So this is the task which devolves to the IGF which must:

1. Develop frameworks of governance not a framework convention: these are layered principles on the substance and process of internet governance.
2. Focus on internationalization and not unification: so existing multiple/heterogeneous frameworks need protocols of interoperability so that different governance frameworks may be reconciled. For example, government and private sectors rule making should be reconciled.
3. Balance Social and Economic Value Creation: we need to find ways of reconciling market imperatives with other public policy concerns which relate to the internet.

Discussion

A. *Richard Hill* of the ITU pointed out that the discussion on Framework Convention should not proceed on the assumption that this is the first such convention proposed to regulate an

international communications medium. Previous examples include attempts to regulate content of communication through the Dresden Convention 1859 and the ITU Convention. Non-content based regulation includes Radio regulation and the ITU Constitution.

As several ITU related conventions are up for renegotiation in the near future the discussion on the Framework Convention for the internet can be connected up with it.

Response: Eric Iriarte – The problem with merging discussions on the Framework Convention for the Internet with ITU negotiations would be that telecom regulators invariably focus only on connectivity and ignore rights based issues and other social agendas.

B. *Wolfgang Kleinwachter* suggested that there was no need for a Framework Convention as the Tunis Agenda is itself a Framework Convention which needs no further elaboration. The IGF should focus on these principles and how they may be integrated into the day to day practices of internet governance.

Secondly, while regulation creates stability early stage regulation of the internet may freeze the technology. So at this stage, a statement of abstract principle may be sufficient for internet regulation. The Tunis Agenda does this and the IGF is the governance protocol which allows for new forms of dialogue on internet governance and creates a culture of multi-stakeholder discussion and dispute resolution.

Response: Ken Lohinto – There is a need for a Convention which is binding on all actors in the internet governance space. The Tunis Agenda is not binding and hence the need for a new Framework Convention.

C. *Jean Jacques*: In the complex environment of internet governance we may be able to identify a set of meta-principles which may be shared. Taking a lawyerly view of existing internet governance there is sufficient scope for integrating existing law and eliminating redundancy between existing regulatory frameworks.

Secondly, we must apply the principle of subsidiarity whereby we always delegate responsibility for decision making downwards thereby allowing for local decision making to resolve local problems.

The responsibility of IGF is to promote global governance evolution by allowing for new transparent and efficient processes of governance.

D. *Milton Mueller*: There is a fundamental contradiction between those opposed to a framework convention for the internet as they insist that any statement will freeze the technological development of the internet and simultaneously claim that a framework of principles exist which adequately govern the internet. Both these claims cannot be true at the same time.

Secondly, while the distinction between procedural and substantive principles may be useful it is impossible to apply this distinction in practice as these overlap with each other.

While every effort to sustain a democratic decision making process involving multi-stakeholders is useful, the WSIS documents are not adequate to be considered a framework of governance. Hence there is a need for a Framework Convention

E. *Lawyer from Pakistan*: As Mr Nitin Desai has pointed out the IGF is not a body where decisions can be taken but only deliberations may take place. All decisions must take place in the appropriate inter-governmental processes.

F. *J Mathiason*: Regulation of the internet is already taking place. So the only issue is the appropriateness. There are existing institutions in internet governance but they do not resolve the problems of governance. So we must first identify the problems of internet governance and then resolve them fully.

G. *Pankaj Agrawala*: The argument that there is only need for regulation at the edge of network and not the core is flawed as one of the central disagreements about internet governance is the International Domain Name regulation which lies at the core of the network.

H. *Willie Currie*: Suggested that the Internet Rights Charter published by the APC in 2006 is a viable document which may form the basis for future discussions on the Framework Convention.

I. *Bertrand de la Chappelle*: First, it must be noted that WSIS is not the Framework Convention we are discussing. Secondly, IGF is a protocol for further discussions but what we need is a process document like that adopted by the IETF in its decision making processes. This process paper must formulate the process of deliberation and decision making. An earlier published paper by Geiger analyses the WSIS process from this perspective

The problems of enforceability pointed out by Ken Lohinto may be resolved in new ways. This could be done by modes of community control like naming and shaming actors.

As Ambassador Jean Jacques pointed out, a subsidiarity principle combined with a spillover rule where any unresolved dispute comes back to the higher level may be useful in internet governance.

We should not make the mistake of assuming that IGF is multi-stakeholder in its process but other nodes and institutions of internet governance are not. All internet governance institutions should adopt the multi-stakeholder principle.

K. *Parminder*: First, it must be recognized that the IGF does not exhaust the range of public policy concerns raised around the internet. There is a need for all other forums and some new ones to address public policy concerns.

Treaties may be powerful agents of progressive change even when they are not backed up by powerful enforcement mechanisms. For example, the UN Human Rights treaties and CEDAW are used successfully in legal disputes before local courts and policy debates to bring about real change in India. So a statement of general principles on internet governance may have a profound impact.

To discuss the matters raised in this workshop and to explore further the scope and content of a Framework of Principles for the Internet a Dynamic Coalition will be formed at the end of IGF at Athens to develop these concerns before the next meeting in Rio.