A note on
CSTD Working Group on Enhanced Cooperation
(on Internet-related public policy issues)
and the stakes for developing countries [1]

The CSTD Working Group on Enhanced Cooperation may perhaps be the final opportunity for developing countries to present the changes that they want to see in the manner in which the global Internet is governed today. The real power at present lies with the US government, plurilateral bodies of the rich countries like the OCED, and, of course, the global Internet businesses, which are mostly based in the US. The time has come to put forward real institutional options for democratising global governance of the Internet. Developing countries should seek to undertake the 'enhanced cooperation' discussion along two distinct tracks (1) oversight over critical Internet resources administration (the ICANN system) and (2) developing larger, social, economic, political and cultural issues related Internet policies. In the first track, shifting of root zone administration from US government to an international body should be sought, along with transforming ICANN into a genuinely international body. ICANN should be allowed to largely continue working as per its current multi-stakeholder model. In the second track, a new UN-based body needs to be set up to deal with general Internet-related global public policies, harmonizing national level Internet policies, and developing global principles for Internet policy making. More specific global institutional means for emergency response and dispute resolution are also required to be set up.

In 2005, the World Summit on Information Society mandated a process of 'enhanced cooperation' "to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet". Since this mandate remains completely unaddressed, during its annual sitting in December, 2012, the UN General Assembly decided to set up a Commission on Science and Technology for Development's Working Group on Enhanced Cooperation (on Internet related public policy issues). This Working Group will "examine the mandate of the World Summit on the Information Society regarding enhanced cooperation as contained in the Tunis Agenda, through seeking, compiling and reviewing inputs from all Member States and all other stakeholders, and to make recommendations on how to fully implement this mandate ".

Background

Internet is one of the main determinants of the future shape of our societies – often represented as a paradigmatic shift to an 'information society' from an industrial society. What is implicated in this shift

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is not only the dominant modes and factors of production but also almost all other sectors and aspects of the society – governance, education, health, livelihood, media, entertainment, cultural diversity and so on. Governance of the Internet is therefore a key public policy concern of all governments. Much about the Internet – how it evolves and how it interacts with and shapes other social phenomenon – is very new, and rapidly changing. The governance challenges that this fact throws up are further exacerbated by the inherent globalness of the Internet, which is emerging as a partly borderless world. *Appropriate global governance of the Internet therefore becomes a very big and urgent imperative, especially for developing countries who do not have the kind of economic and other forms of 'incumbent' presences on the Internet to be able to command such levers of influence on its emerging shape.*

There are a very few social phenomenon as inherently global as the Internet, whereby it is rather untenable that there is currently almost no globally democratic forum or institution for its governance in global as well as respective national public interests. Almost a decade ago, this was the single most hotly contested subject at the World Summit on the Information Society. The [Tunis Agenda](#) expressed the "the need for enhanced cooperation in the future, to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet".

What is 'enhanced cooperation'

It is evident from the Tunis Agenda that 'enhanced cooperation' is that mechanism that can enable all governments on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet. There however still remains a lot of confusion at present about what exactly is meant by 'enhanced cooperation', part of which unfortunately is deliberate with a view to defend the global Internet governance status quo. It is therefore important for developing countries to begun the enhanced cooperation debate by being absolutely clear about *what is 'enhanced cooperation' and what, on the other hand, cannot be called as 'enhanced cooperation'*.

It is but obvious that some improvements in global IG mechanisms, and some greater collaborations among different actors, is something that may always be taking place. However, and this is an important question that members of the Working Group will face, can these few sundry improvements be construed to mean that 'enhanced cooperation' is already taking place? This question is likely to represent the stand of most who will defend the status quo in the Working Group.

As mentioned, Tunis Agenda is clear on what is the *purpose of 'enhanced cooperation'*. Accordingly, the test of whether 'enhanced cooperation' is already taking place or not is relatively straightforward; is there, or not, any institutional development since the WSIS that now enables 'governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet'. The obvious answer is, no, there isn't. There is no such institutional development since the WSIS, and thus the WSIS mandate of 'enhanced cooperation' remains completely unaddressed. The mandate of 'enhanced cooperation' represents the need for a qualitative shift in the global IG institutional landscape toward genuine democratic multilateralism from the existing situation of

unilateral and plurilateral forms of 'global' IG (along with acute policy and governance gaps that are exploited by the powerful). *'Enhanced cooperation' is not about quantitative small improvements.*

Developing countries should therefore avoid getting into the trap of accepting that 'enhanced cooperation' is indeed taking place but more of it is perhaps required'. This is just the position that status quo defenders want them to accept as the key point of departure for any 'enhanced cooperation' discussion. Because once it is accepted that some 'enhanced cooperation' is already taking place, the proposition which gets presented is; 'we just need to have more of the same'. What developing countries are looking for, and what was clearly meant by Tunis Agenda, is a specific shift to genuinely equal role for all governments in global IG, which would require specific new institutional developments, recommending which should be main outcome of the Working Group.

Another proposition currently being advanced is that the main task at this stage should be to map what kind of global IG currently takes place in which forums, and what policy and institutional gaps exist. As to what happens where at present, it is a rather well known fact, and even for a new comer to the debate it may take perhaps half a day to get fully introduced to the picture. Global governance discussions should get out of ' we need to build developing countries' capacities' mode and begin to tackle real issues of governance. As for policy gaps in the current global IG space, they are equally obvious, and the number is ever-growing (more on the subject later). These issues pertain to preparations for a 'enhanced cooperation' dialogue, they cannot be taken as *the* 'enhanced cooperation' dialogue.

It is therefore important that developing countries come up with clear positions on how would they like the global governance of the Internet to be conducted – what new institutional mechanism are needed, and what evolution and improvement in the existing ones should take place. Almost a decade after the WSIS, the time for generic statements of the kind 'we want equal footing for all counties' is well past. *At the Working Group meeting, developing countries will have to present clear institutional options that they seek, in relative detail, and also anticipate counter questions about their proposals.*

The imperative and the urgency

The meetings of the Working Group is likely to the last chance in many years, if not decades, for developing countries to clearly state what do they want global IG to look like, and what real institutional proposal do they have. It took eight years after the WSIS just to set up a Working Group to even begin discussing the mandate which was in fact sought by Tunis Agenda to be operationalized in 2006 itself. It is a long haul ahead, whereas the architecture of the Internet, still in formative stages, in getting set right now. Obviously, its emerging architecture represents the interests of the powerful nations, who control Internet governance at present. It may already be getting too late for developing countries. *Meanwhile, it should be obvious that if, at the Working Group meetings, developing countries do not express in clearest terms their vision and actual institutional options for democratic global governance of the Internet, there may not be another opportunity for a very long time to do so. It will be taken as a stamp of approval for the status quo.*

It can be expected that some very cosmetic changes to the status quo may be offered to deviate developing countries from making more substantial demands. It were the developing countries who insisted on setting up this Working Group, against considerable resistance from developed countries. In the circumstance, it is the developing countries who should take the lead in framing the main issues that the WG must address. In doing so, developing countries must be clear about what they want, and why, with full justification in hand. The initiative should not be lost to those who are expected to largely bat for the status quo; the power, resources, reach, diversity and networking of which actors cannot be underestimated. The recent World Conference on International Telecommunication gives a good idea about all this.

Framing the issues for a constructive 'enhanced cooperation' discussion

A few issues are important at the framing level. Firstly, as said, it is important to understand and present **'enhanced cooperation' as a qualitative institutional shift and not simply as an increase in the number of events or even activities where different actors may participate together**. Secondly, developing countries need to be clear about what exactly they seek to change, why, and what their concrete proposals are. They also must be equally clear where they do not seek any substantial changes or make over, because **the discussions of 'enhanced cooperation' is also beset with many kinds of bogeys, 'attempts at ICANN takeover' being the prime one**. Framing should also be clear in what will be the role of non-governmental stakeholders in different proposed mechanisms, because another significant bogey that is used is that a multistakeholder system is sought to be replaced by an inter-governmental system, while the fact is that most proposals from developing countries simply aim to provide an equal role for all countries in mechanisms where at present the control is exercised by just one country or a select group of them. Most existing multistakheolder mechanisms are left largely untouched by these proposals.

A very significant framing issue is to separate two distinct tracks over which the 'enhanced cooperation' discussions should take place – one track concerning the oversight of critical Internet resources (CIR) management, and the other of larger (non CIR) Internet related public policy issues, in various areas like privacy and personal information, trans-border flow of data, e-commerce, consumer protection, transnational interconnection regimes, net neutrality, security, regulating global Internet businesses, cloud computing and so on. The first track can be called as **'oversight of CIR management'** and the second track as **'larger Internet-related public policy issues'**. Tunis Agenda also clearly distinguishes between these two sides or tracks of 'enhanced cooperation' (especially paragraphs 69 and 70).

Discussions on one track should not be allowed to upstage that on the other track, both separately being very important to developing countries. Much of 'enhanced cooperation' discussion involves very confusing cross-talks across these two relatively distinct tracks, which should be avoided at any cost if any worthwhile progress is to be made. To a considerable extend, both the institutional requirements and institutional histories for global IG with respect to these two tracks is very different.

Track 1 of enhanced cooperation -'CIR oversight'

CIR management requires considerable day-to-day technical level work, and some amount of technical policies best dealt with by experts and stakeholders closely involved with the process. However, at some degree of remove, public interest oversight is also needed in terms of larger principles, and other kinds of specific interventions in areas where clear important public policy implications of technical functions are evident. The institutional history of CIR management is also unique, and the system has evolved with a certain trans-national character employing experts-based and multistakeholder processes. However, rather problematically, the system has stayed under the unilateral 'public policy' oversight of one government.

ICANN is at the apex of the current CIR management system, and does the allocation of names resources (domain names) employing an elaborate system of private registries and registrars. Number resources (numeric addresses that basically direct Internet traffic) allocation is dealt by regional Internet registries, under the supervision of ICANN. ***ICANN obtains its mandate from a perpetual contract with the US government, a contract that can be nullified any time by the US government.*** Both ICANN and RIRs have an elaborate multistakeholder system of internal governance. This system has largely worked, especially to the extent that the issues remain relatively of a technical nature. However, lately, some domain names related decisions like allocation of new strings of TLDs employing generic names has raised strong public policy concerns, which ICANN's internal multistakeholder processes, with a core technical focus, seem not to have been able to address adequately.. ICANN's Governmental Advisory Board (GAC), which as the name suggest only has an advisory capacity, has been taking up some of these issues. Most governments continue to feel uncomfortable with the existing role and authority of the GAC concerning ICANN affairs that impinge upon important public policy issues.

Once the ICANN approves a new Top Level Domain name, it has to be cleared by the US government before it can be inserted into the root zone file of the Internet, contained in the authoritative root name server managed by the ICANN and operated by a private company, on behalf of the US government. Any other changes in the root file of the Internet has similarly to be authorized by the US government. ***This unilateral oversight over the root file of the Internet is one of the major points of contention between US government and most other governments.*** This legacy arrangement from the time when the Internet was an experimental infrastructure in the US provides the US government a single point of control over what is today truly a global infrastructure, underpinning so many important and critical social, economic, political and cultural activities. It is a major global demand that the oversight over the root file of the Internet be democratized.

While the single authoritative root zone server is operated by a private company for the the US government, there are 12 other root server operators that republish the root zone file from the authoritative server. Out of the 13 root servers, 10 are located in the US, and one each in UK, Sweden and Japan. ***Not a single root server is operated from a developing country.*** Although, some of the 12 additional root zone operators deploy mirror images of their servers in many locations across the world, complete control of these mirror servers remain with the root server operators. Therefore, while the

availability of root file information is indeed being distributed more widely through the Anycast architecture, the root zone operators retain full control of the mirror servers, with a super control at the authoritative root server under UN government's authority.

Additionally, ICANN as a non-profit incorporated in the State of California in the US, is subject to US laws in terms of all its operations. For instance, the ICANN's decision of delegating .xxx domain name has been challenged in a US court on grounds of competition law. Were a US court to come up with a ruling that this TLD, or for that matter any other TLD, contravenes any provision of the US law, ICANN would have no option but to cancel the TLD contract. This makes a mockery of ICANN's claimed status of a global Internet governance institution. Any institution undertaking governance functions for such an important global infrastructure as the Internet, in terms of its work that has global implication, must only be subject to the concerned international law, and should be made immune from the laws of the country where it may be located.

Most basic standards for the Internet are developed by the Internet Engineering Task Force (IETF), which is a kind of a relatively open group of technologist. However there is an increasing presence of paid professionals of big Internet businesses in the IETF, which some allege can create undue narrow commercial influence on the standards development process. The external liaison work for IETF is done by the Internet Architecture Board and ISOC (Internet Society). ***While the open standards development process dependent on voluntary adoption works well for the Internet, it may be required that there are better interfaces of these processes with public policy actor***s, so that public interest can be protected and enhanced in standards development processes, without compromising the current open architecture of doing so.

Track 2 of enhanced cooperation - Larger Internet-related public polices

Unlike technical management of the Internet and its oversight, larger Internet-related global public policies, a few areas of which have been mentioned above, admit to a treatment more in line with the typical inter-governmental system tradition. It would not be very different from the manner in which, for instance, issues of climate change, trade and intellectual property are best dealt with. What is special in the case of global Internet governance, however, is that while there indeed are some policy issues completely unique to the Internet, many issues otherwise dealt by different bodies may also need special treatment as Internet-related public policy issues, often in a cross-sectoral manner. For example, security issues may need to be dealt in simultaneous consideration with issues related to privacy, human rights, trans-border data flow, inter-connections regimes, trade agreements, regulation of global Internet businesses, cloud computing specifications, and so on. Such a need for cross-sectoral consideration is true for most Internet-related public policy issues. ***In some areas, it may be sufficient to conduct some studies and issue general guidelines, in others larger degree of harmonization of national regimes may be needed, and still other may call for specific international treaties and agreements.***

The institutional history in terms of dealing with larger Internet-related public policies is important to understand. Mostly, there are just outright global policy vacuums in most of these areas, whereby the

law and practices of countries where the most important nodes of the global Internet lie – headquarters of major application and content companies, international data transit points, data servers, domain name servers, digital payment gateways, digital advertisement services etc – are located, become the default law and policies for the entire global Internet. The whole world witnessed in the Wikileaks case how command over these key nodes of the global Internet were employed for extra- territorial and extra-legal coercive action that completely wrecked Wikileaks. Less famous instances of such extra-territorial application of US law are rather routine now-a-days.

There are also well-developed pluri-lateral initiatives of rich countries, like the OECD, to develop policy frameworks as well as treaty level agreements on various 'larger Internet-related public policy issues' indicated above. Such treaties, policies and policy frameworks are then offered post hoc to developing countries to accede to. Council of Europe's Budapest Convention on Cyber Crime is a good example of one such instrument, which many developing countries refused to sign because they were not at the table when the Convention was negotiated. The proposed Anti- Counterfoil Trade Agreement of OECD, with important Internet-related provisions, seems to have similar intentions of post hoc canvassing with non-OECD countries for accession. ***This clearly is an inappropriate model of global governance of the Internet, and developing countries must seek a UN based platform where all countries can enter discussions on these larger Internet-related public policy issues on an equal footing from the start itself.***

The [Committee on Information, Communication and Computer Policies](#) (CICCP) of OECD is its main Internet policy organ. CICCP has been very active working on areas ranging from 'role of Internet intermediaries' to 'economy of personal data', spam and mobile Internet. Recently the Committee helped the OECD negotiate a set of [Principles for Internet Policy Making](#) that are now sought to be 'internationalized' through seeking their uptake by non-OECD countries. These Principles are expected to be presented as the main framework or set of guidelines for global IG. It is important to note that these principles are very intellectual property heavy, and introduce very controversial notions of employing private intermediaries for (what could be extra-territorial) IP enforcement. Note the congruence of such enabling frameworks with the earlier mentioned point on how key Internet nodes located in a few rich countries (mostly the US) are being used for global control over and through the Internet.

Two arguments often get presented to resist the demand for a new UN based forum for dealing with global Internet-related public policies. One, questioning whether there are at all any significant issues and areas that need to be addressed. As mentioned above, an easy response to such an argument is to list out the very comprehensive agenda of dealing with Internet-related public policies that OECD's CICCP has taken up. Secondly, it gets said, even if there indeed exist some such global issues, why can they not be dealt with at existing sectoral global governance spaces like WTO, WIPO, etc, whereby there may be no need for an exclusive and cross-cutting space to deal with Internet-related public policy issues. Here again, it is easy to point out that OECD's CICCP has been doing very useful work even while there are more than 40 other OECD committees dealing with all kinds of other issues, as such issues are dealt by many different multilateral forums. There manifestly are many new kinds of Internet-related public policy issues that need to be be urgently addressed, and even issues that may

otherwise seem to have an existing institutional home often require a cross-sectoral, Internet-centric treatment in the new context of an emerging information society.

Most developing country governments still remain complacent about the far-reaching importance of global Internet governance for the very future of their countries and societies. Along with almost all aspects of our societies going digital, including governance, crime, warfare, media, and so on, there is also a decisive shift towards the 'cloud computing' paradigm. ***Everything will be digital, and the digital space will be seamlessly global. National polities will have little control over what happens, and the policy authority of governments, especially of the less powerful developing countries, will be severely undermined.*** The big global companies that will run the 'cloud' will make selective agreements with the more powerful, while consolidating their global domination. Two recent news within a few weeks of each other give us a good idea of both the enormity of the issue and the pace at which change is taking place. Google made a country specific agreement in France about how news clips can be shown on its search engine, and, soon after, reportedly made another agreement with EU regulators on how 'vertical searches' involving Google competitors will be dealt with by Google search pages. These changes will take place only in the concerned jurisdictions. It is very unlikely that Google will make similar 'compromises' with most developing countries. This is the new paradigm of power-based agreements and arrangements, where global corporates are often more 'powerful' than the involved governments, that the global Internet would mostly follows. ***It greatly serves developing countries to have some forum where they can undertake, so as to say, some level of 'collective bargaining', and develop some basic global principles for Internet and Internet businesses that have to applied everywhere.***

Seeking a new institutional architecture for global IG – CIR oversight

In presenting their positions and demands vis a vis 'enhanced cooperation', or the desired institutional architecture for global Internet governance, developing countries need to be very clear and specific at this stage. ***As discussed, it is best to present these positions separately for the CIR oversight track and the 'larger Internet related public policies' track.***

On the 'CIR oversight' track the imperative and possible positions/ institutional options are as follows. (This note deals with the possible institutional options at a relatively high level, leaving the details to be worked out later. The present Working Group is unlikely to be able to go into such detail, and therefore higher principles and basic structure level recommendations only may currently be sought from the Working Group's work.)

Firstly, the root zone administration function needs to be internationalized replacing the current role of the US government's National Telecommunications and Information Administration (NTIA) with an appropriate multi-national body. This body could be an sub-committee of a new UN based forum for dealing with Internet-related public policies as proposed later in this note, or a more specialized multi-national 'Internet Board' (tentative name) with a new/ innovative regional based process of selecting its members. In either case, the mandate and functions of this body/ board must be very clearly defined and rather narrow in scope, more or less mirroring the role played at present by

NTIA in root zone administration. Such a mandate and role will have to be fixed by an appropriate international agreement.

T*his international agreement/ treaty should also develop and contain "globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resources"* as required by section 70 of Tunis Agenda. These principles will direct and constrain the role of the new CIR oversight body.

The same international agreement should establish ICANN as an international organization, and ensure *a host country agreement for ICANN with the US government.* Thereupon, ICANN will be subject only to relevant international law and will be immune from US laws as far as its global governance functions are concerned.

ICANN can continue to function as it does at present, while evolutionary improvements to it should be discussed. A separate process to suggest and accomplish such changes can be explored. It will also continue to maintain its existing relationships with RIRs, root server operators and IETF/ IAB.

Root server operators should be more democratically distributed. Each Regional Internet Registry should be allocated a root zone server, and asked to operate Anycast mirrors across its region.

Seeking a new institutional architecture for global IG – larger Internet policies

On the second track of 'larger Internet-related public policies', a new UN based forum is required to
   (1) *pick, analyse and present key emerging Internet-related public policy challenges,*
   (2) *provide recommendations on them,*
   (3) *seek harmonization of national policies to the extent that they have global ramifications,*
   (4) *develop global principles for Internet policy making, and,*
   (5) *as and when required, facilitate appropriate international agreements and treaties on various Internet related issues.*

Some models provided by the report of the Working Group on Internet Governance (WGIG) during the WSIS, especially models 1, 3 and 4 provide models of Global Internet Policy Council (or similar bodies) that can be used as a good starting point for a discussing a new institutional design. Another model is the proposal India made to the 2011 annual session of UN General Assembly for a UN Committee on Internet Related Policies (CIRP), which incorporate functions that are largely taken from the WGIG models.

OECD's referred CICCP is also a good model to look at. CICCP is a committee of the OECD council. A similar committee can be attached to the UN General Assembly, with largely similar functions.

As mentioned earlier, the narrowly proscribed CIR oversight function can be considered to be given to such a UN based body, or to a functional sub-committee of it. India's recent proposal included oversight function in the remit of the CIRP. Alternatively, the oversight function can be dealt through a

completely separate structure, as proposed in an earlier section.

Two other operational requirement that must be specifically addressed are; (1) an emergency response system (since the global infrastructure of the Internet, as it becomes more and more crucial to most aspects of our lives, will often call for an urgent 'here and now' response), and (2) a dispute resolution system (since cross-border disputes will be numerous in the operation of a global Internet). The CIRP proposal takes up both of these functions as belonging to the CIRP. However, these functions may have very specialized requirements and accordingly may need to be dealt by appropriately specialized bodies. At present, an in-principle agreement should be reached to set up these systems at the global level, in some kind of institutional arrangement with the proposed new body on Internet-related public policies.

The ITU must continue to be strengthened for a central role in the infrastructural and interconnection level issues pertaining to the Internet. It should also continue to do technical standards role in these and allied areas, and for this purpose its relationship with other technical standards and coordination bodies like the ICANN, IEF, IAB and W3C should be further strengthened. However, it may not be appropriate to burden the ITU with the role of dealing with such global Internet-related public policy issues that lie in various economic, social, political and cultural realms, which are not the core competence of the ITU as mainly a technical body. It may be best to seek a new UN based body for dealing with the host of such different socio-economic (along with political and security) issues and continue to develop ITU as a specialized technical body. It is however obvious that this new body and the ITU will develop a close working relationship.

Post Script

The Working Group on Enhanced Cooperation represents a historic crossroads, which may never come again. The question before all of us is simple and direct – how do we think should the global Internet be governed? What are the principles and main structural features that we will like to see in the global governance of the Internet? ***Recognizing the urgency that the architecture of the Internet, and with it perhaps the future of our societies, is being set right now, if by default, what real institutional options for global governance of the Internet can we put forward?***

The Working Group has less than one year to present its report. It is quite likely that it may only be able to do some some initial preparatory work and the real scene of action may shift to the high level WSIS plus 10 event in 2015. It is as likely that most issues will remain hotly contested and unresolved even beyond the WSIS plus 10 review. However, this historic juncture should be used by developing countries to fully articulate their vision and demands in this areas, and present them clearly and with the force of togetherness. Today, it is generally said that the developing countries are not themselves clear about what they want, much less, united in their positions and demands. This is largely true, not because there isnt enough basis for clear united positions. It is so because most developing countries, very unlike the developed ones, have still not understood and internalized the extra-ordinary importance that global Internet governance is going to have on their economic, social, political and cultural futures. While a vague sense of importance of this area of global governance may have begun

to be formed, the real challenges, as well as opportunities, for a host of public policy areas, are still not fully grasped. There is even less clarity on what actual institutional demands should be made at the global level. It is high time for the developing countries to close these gaps.

The Working Group on Enhanced Cooperation is an appropriate context to get together and develop common positions to pose a real challenge to the very problematic status quo in global IG. Those in favour of perpetuating the status quo have exploited the current indifference, as well as difference of views, among developing countries. This challenge needs to met in the right earnest. ***No doubt there are indeed some differences among developing countries as well, but there is enough common stake for them to develop basic common positions and demands for democratic global governance of the Internet.*** The time now is to see what can be sought together before we get into the differences. These demands should come in the form of concrete institutional options underpinning a new architecture of global governance of the Internet. This note is an humble attempt to present some such options, and the justifications for them.