The Role of Governments in Internet Governance

Jeremy Malcolm

Consumers International

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Outline

1 Recent developments
   - World Telecommunication/ICT Policy Forum (WTPF)
   - Congress bill to affirm US policy on Internet governance
   - ICANN GAC’s Beijing Communiqué

2 The role of governments
   - The role of governments in Internet governance
   - Defining their role
   - Redefining their role

3 What lessons can be learned?
   - Operationalising the role of governments
   - Institutional reform
   - Conclusion
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Recent developments
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What lessons can be learned?

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WCIT 2012 and the amendment of the ITRs
World Conference on International Telecommunications, November 2012

- Unprecedented hype over a “UN takeover of the Internet”
- Proposals to amend International Telecoms Regulations:
  - Making ITU rules binding on non-members
  - Gaining control of Internet resource allocation
  - Revenue sharing between content hosts and telcos
- Internet proposals shuffled into a non-binding resolution
- WCIT ended in failure: only 89 countries signed so far
  - Spam and security provisions seen as an incursion
- Loss of useful provisions on telecommunications
  - Mobile roaming rules, global emergency number, accessibility
Unlike WCIT, the WTPF outputs were non-binding opinions:

1. Promoting Internet Exchange Points (IXPs) as a long-term solution to advance connectivity
2. Fostering an enabling environment for the greater growth and development of broadband connectivity
3. Supporting Capacity Building for the deployment of IPv6
4. In Support of IPv6 Adoption and Transition from IPv4
5. Supporting Multi-stakeholderism in Internet Governance
6. On supporting operationalizing the Enhanced Cooperation Process

Drafts were prepared by a new Informal Experts Group (IEG) in a new and initially unclear process

All six were cleared quickly and with few amendments
Opinion 7
Operationalizing the role of Government in the multi-stakeholder framework for IG

Brazil reintroduced a seventh opinion with contentious preambles (later removed), but uncontentious substance:

- Calls on the ITU to provide capacity building for developing country governments to more effectively participate in multistakeholder Internet governance institutions
- Encourages states to participate in those institutions, in addition to their discussion of relevant issues at the ITU and in the WSIS+10 process

Chair proposed the opinion could go to the Council Working Group on Internet policy (CWG-Internet)

Best Bits civil society network and others counter-proposed the IGF devise a process to work on the text
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My observations

- A more conciliatory United States
- No dissent from the multi-stakeholder approach (even Iran a strong supporter)
- But views on what this *actually means* differ
- Restatement of the unique role of states (most firmly by Russia)
- No signs of the ITU establishing a significant role for itself in Internet policy
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As introduced in April 2013:

It is the policy of the United States to promote a global Internet free from government control and to preserve and advance the successful multistakeholder model that governs the Internet.

As passed:

It is the policy of the United States to preserve and advance the successful multistakeholder model that governs the Internet.
Bill HR 1580
Bill to affirm the policy of the United States regarding Internet governance

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Problems with the original bill

- No distinction stated between domestic and foreign policy
- No definition of “government control”, but on any reasonable definition it could include domestic regulation like
  - The IANA contract and DOC control of the DNS root
  - FCC regulations on network neutrality, spam, privacy
  - The Digital Millennium Copyright Act (DMCA)
  - Extrajudicial domain seizures affecting aliens
  - Regulation of trade in online gambling services
  - Laws requiring surveillance and intercept capability
- And intergovernmental policies over the Internet that the US supports like the WIPO Internet Treaties and the TPP
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Problems with the amended bill

- It remains a case of politics as theatre
- Rather than \textit{delete} the reference to government control, why not \textit{fix it} by specifying parameters for when it is justified
- No definition of “the successful multistakeholder model that governs the Internet”
  - Is it limited to technical community bodies like ICANN?
  - What about reforms to implement enhanced cooperation?
- The words \textit{preserve and advance} implies that there is no need to \textit{enhance} the model
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Background

- ICANN GAC
  - Originated in 1998 to provide non-binding public policy advice to the ICANN board
  - More detailed relationship prescribed in the 2002 reforms
  - The board must respond to GAC advice

- New gTLD programme
  - Policy development commenced in 2005 building upon pilots in 2000 and 2003
  - Applicant guidebook approved in June 2011
  - 1912 applications (including 116 IDNs)
GAC Communiqué

- Developed in private and issued on 11 April 2013
- Demands many changes to the new gTLD process developed through ICANN’s multi-stakeholder processes
  - Reject .shenzhen, .persiangulf, .guangzhou, .amazon, .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin
  - New safeguards for all gTLDs on privacy, security, cybercrime
  - Special safeguards and limited access to certain categories of gTLDs including children, environment, health, finance, IP
  - No exclusive access to gTLDs named for generic terms like .cars, .book, .music
  - Special rights for the Red Cross and IOC
  - Not allow singular and plurals of the same gTLD
- Chair suggests governments may pull out if advice not taken

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Substance

- There are some good points in the GAC advice
  - There *may* be an expectation that domains relating to regulated industries have been vetted
  - In any case, it is good to have (some) such domains
- But imposing limits on the use of .gripe, .fail, .sucks, .wtf?

Process

- Advice should have come much earlier in the policy development process
- A separate process was defined for the filing of objections
- Public comments on the communiqué remain open until 4 June
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Many government interventions already happen at the national level and with civil society’s support:

- Network neutrality rules to stop operators from discriminating
- Providing incentives to promote migration to IPv6
- Enforceable standards for the protection of personal data
- Extending universal service policies to include Internet access

Conclusion

Government intervention isn’t always good, but it sometimes is

When it fails, we look to governance through another mechanism (norms, code) or at another level (local, global)
Is there a role for governments at the national level?

- Many government interventions *already happen* at the national level and with *civil society’s support*:
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Government intervention isn’t *always* good, but it *sometimes* is

- When it fails, we look to governance through another mechanism (norms, code) or at another level (local, global)
Is there a role for governments at the global level?

- Other global mechanisms – norms, code, markets – may fail:
  - Norms are only enforceable through mob justice (Anonymous)
  - Code is not legitimate and does not promote positive rights
  - Markets are imperfect due to network effects and externalities

- Governments must be involved at the global level in two cases:
  - Where their interventions at the national level cause spillovers
  - To hold others to account for infringing universal human rights

Example

United States global seizure or takedown of content (under DMCA) or domains (eg. rojedirecta.com/.org legal under Spanish law)
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Respective roles of stakeholders

1. **Policy authority for Internet-related public policy issues is the sovereign right of States.** They have rights and responsibilities for international Internet-related public policy issues.

2. The private sector has had, and should continue to have, an important role in the development of the Internet, both in the technical and economic fields.

3. Civil society has also played an important role on Internet matters, especially at community level, and should continue to play such a role.

4. Intergovernmental organizations have had, and should continue to have, a facilitating role in the coordination of Internet-related public policy issues.

5. International organizations have also had and should continue to have an important role in the development of Internet-related technical standards and relevant policies.
What does this mean in practice?

Bad examples of governments in multi-stakeholder environments
ITU, the GAC Communiqué, US surveillance and takedowns, IP and free flow provisions of the TPP, WTO, APEC…

A mixed example – OECD CSISAC
Communiqué on Principles for Internet Policy-Making rejected by CSISAC but quietly came back to life as Internet Policy-Making Principles and now being promoted as a global framework

Good examples
Article 10 Kenyan constitution, Brazilian Internet Steering Committee (CGI.br), Aarhus Convention
How do government approaches differ?

Despite lip service paid, the OECD governments are the least supportive of multi-stakeholderism.

- Excluding certain topics
  1. Security
     - Wikileaks financial blockade and prosecutions
     - Surveillance (PATRIOT Act, Wiretap Act, CISPA, CALEA)
  2. Intellectual property
     - Public (France) or private (US) graduated response
     - Opposing non-binding policy recommendations for the IGF
     - Opposing UN funding for the IGF and limiting their support
     - Shifting policy discussions to less inclusive fora
       - G8, ACTA, Trans-Pacific Partnership (TPP)
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<tbody>
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<tr>
<td>What lessons can be learned?</td>
<td>Redefining their role</td>
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**Should the respective roles of stakeholders be redefined?**

- Yes

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Will they be?

No
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Operationalise

1. *(verb)* put into operation or use.

- **Operationalising** doesn’t just involve capacity building around participation in existing institutions.

- Also requires:
  - Mapping how multi-stakeholder principles are institutionalised
  - Making appropriate institutional reforms
  - Providing the means of funding

- We should also operationalise the participation of *not just governments* but *all stakeholders* in a multi-stakeholder framework
The IGF’s forgotten role

Tunis Agenda 72

(c) Interface with appropriate intergovernmental organizations and other institutions on matters under their purview.
(g) Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations.
(i) Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet governance processes.
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Our mandate to make this happen is *enhanced cooperation*

Defined in the Tunis Agenda as a

> process towards enhanced cooperation involving all stakeholders, proceeding as quickly as possible and responsive to innovation ... [which would] enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet

- WGIG came up with four options, none were taken up at WSIS
- India came up with the CIRP – similar format to the OECD
- This week, a multi-stakeholder CSTD working group examines the mandate anew
Enhanced cooperation

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Some suggestions – at macro level

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Some suggestions – at macro level
Some suggestions – at micro level

Recommendation of the IGF

Multistakeholder Internet Policy Council

Stakeholder caucuses

IGF

Open forum

Dynamic coalition

Working group

Council of Europe

OECD

Online communities
Other options

- US revives the proposal from Sweden to open up the Council Working Group on Internet Policy (CWG-Internet)
- Committee on Internet Related Policies redux
- Multi-stakeholder opinions or messages from the IGF

_________________________ your ideas go here
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Summary

- The run-down of recent developments:
  - WTPF suggests **ITU is not the future** for Internet Governance
  - Bill HR 1580 shows the US acknowledges a role for government(s?)
  - The Beijing Communiqué shows governments don’t yet have a good fit into the multi-stakeholder model

- The way forward:
  - Operationalising the role of governments involving mapping, capacity building, institutional reform and funding
  - The CSTD Working Group on Enhanced Cooperation and the IGF have the opportunity to pave the way
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Links and contacts

- My email
  - jeremy@ciroap.org

- My IGF blog
  - http://igfwatch.org

- Best Bits – A civil society network on Internet governance and Internet rights
  - http://bestbits.net

- A2Knetwork.org – a smaller network for consumers in the digital age
  - http://A2Knetwork.org