Agree to Disagree: The Birth of the Working Group on Internet Governance (WGIG)

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The first phase of the World Summit on the Information Society (WSIS) in Geneva saw a clash of visions in the debate on Internet governance. There were two clearly distinct perspectives.

The first school of thought argued that the present system worked well and if there were any perceived problems it would first be necessary to define them before trying to find solutions. Delegations holding this view insisted on the primacy of the private sector. They argued that the current, private sector-driven governance mechanisms were well-adapted to the particular character of the Internet. In particular, they highly valued the multi-stakeholder character of present arrangements. They emphasized that the Internet functioned well, and their message was "if it ain't broke, don't fix it".

The second school of thought, however, questioned the legitimacy of the present arrangements. Its proponents held a more traditional view as far as Government involvement is concerned. In general, they wanted to give Governments more say and wanted the international governance mechanisms to be more in line with traditional forms of intergovernmental cooperation. While at a national level Governments played a role and had a platform for dialogue with the various stakeholders, they regretted that at an international level there was no such forum for interaction. Consequently, they stressed the need for establishing a multilateral mechanism, preferably with the legitimacy of the United Nations system, which would not replace any current arrangement, nor infringe on the work of any existing organization, but would be complementary and deal with policy issues. Ultimately, these delegations felt that Internet governance related to national sovereignty.

The debate was very polarized and, to a large extent, also very abstract. There were misunderstandings on both sides. The debate focused on "public policy issues" and the extent to which governments had a role to play with regard to determining public policy. However, nobody was able – or willing – to spell out what was meant by "public policy". In short, there was no real debate on issues, but a confrontation of two schools of thought, and in Geneva, it proved impossible to bridge the gap between these two camps. The negotiations were tough, and the two sides were firmly entrenched in their positions and not ready to compromise. One salient feature of the negotiations was that the Governments remained among themselves, and the Internet professionals in charge of running and managing the Internet were locked out. It was not surprising, therefore, that the summit failed to produce what might be termed "a solution". Before providing a solution, there would have to be a common understanding that there was a problem out there that needed to be resolved. On the face of it, therefore, it would have been overly optimistic to hope that the final documents would go much further than being an agreement to disagree on these fundamental positions.

In the end, negotiators did agree to continue the dialogue beyond the first phase of the WSIS and to prepare the ground for the second phase in Tunis. Negotiations focused on process rather than substance. They reflected the two basic visions: private sector leadership versus intergovernmental cooperation. Those who insisted on the importance of private sector leadership wanted to prevent a repetition of the final phase of the WSIS I negotiations during which the Internet professionals were locked out. Their main aim was to make sure that the private sector and all the other stakeholders would be part of the process. The issue of stakeholder participation was one of the reasons why an original proposal – that is to set up a working group as part of the WSIS process – was not accepted. It was felt by a significant number of key players that the WSIS process had not proved satisfactory with regard to the inclusion of private sector and civil society.

Those who wanted more intergovernmental cooperation insisted on some form of United Nations involvement. The compromise that was finally reached consisted of requesting the Secretary-General of the United Nations to set up a Working Group "to investigate and make proposals for action, as appropriate, on the governance of Internet". It was hoped that the formula finally agreed on would give the flexibility required to be inclusive. All stakeholders and all relevant international organizations would be given equal access to the work of the group.

The final documents leave the two basic positions unchanged, but an analysis of the Declaration of Principles and the Plan of Action reveals that the result goes beyond what might have been expected. Both sides implicitly admitted that there was some merit in the

other's position and recognized that Governments indeed do have a role to play: but that Internet governance should also involve private sector and civil society. Furthermore, by recognizing some important principles, the Geneva Declaration laid the conceptual groundwork for any future form of Internet governance and set some valid benchmarks for any future discussion. These are based on some traditional principles of international cooperation, such as transparency and democracy. They also introduce some Internet-specific aspects, such as the recognition that the Internet is, by now, a global facility. Last but not least, they recognize the multi-stakeholder character of the Internet.

The wording of the final documents addresses the needs of both groups: it takes care of those governments trying to find their role in this new policy environment, and it respects the views of those who emphasize the importance of private sector and civil society. The Working Group on Internet Governance (or "the WGIG" as it has since become known by its acronym) was given the task of preparing a report "on the results of this activity to be presented for consideration and appropriate action for the second phase of WSS in Tunis in 2005". The WGIG therefore is not a negotiating body, but a working group, which has been given the task of paving the way for future negotiations.

This background determined the modalities of the WGIG process. It explains the rationale underpinning the WGIG's process-related priorities, the most important among them being the open, transparent and inclusive character of the group. These qualifiers, "open, transparent and inclusive" have several aspects. They include participation of all stakeholders, also using enabling technologies such as webcasting and an interactive website to allow interested parties to follow and participate in the process from wherever they are. In particular, the full and meaningful participation of developing countries is a concern that needs to be taken seriously. This is not just a question of travelling costs, but also of capacity-building, to allow them to defend their interests effectively.

Like any negotiated text, the Geneva documents are open to interpretation. Much has already been interpreted into the meaning of "open and inclusive" or "multilateral, transparent and democratic". These terms are not always that clear and need to be examined in the context of every specific situation. An intergovernmental organization by definition is "multilateral", but not necessarily "open" in the same way as an Internet or civil society organization and vice versa. These terms should also be seen for what they are: ideals to be striven for, and not prescriptive remedies to rectify failings of present arrangements, as some have since claimed. Whatever the interpretation, however, the agreed texts point towards an open concept which does not prejudge any outcome. The wording ("develop a common understanding") gives the WGIG a role of consensus building in the United Nations tradition.

The WGIG's task is first and foremost a fact-finding mission. It is about looking into how the Internet works, taking stock of who does what and looking into ways of improving the coordination among and between the different actors. It makes sense to gather the facts first and then assess the adequacy of existing governance mechanisms before proposing any possible decision on the future of the Internet. By carrying out its task conscientiously the WGIG should be able to create a space for an issue-oriented policy dialogue on Internet governance in a climate of trust and confidence among all parties concerned. This will be the main benchmark to assess whether the WGIG has accomplished its mission.

The first phase of the WSIS placed a new issue on the agenda of multilateral cooperation. The result was a compromise and compromises by their very nature rarely go beyond the lowest common denominator. In this case all parties to the negotiations seemed to have found what they were looking for: a role for the United Nations on the one hand, and the confirmation of a multi-stakeholder approach on the other.

The creation of the WGIG also needs to be seen in the context of discussions on global governance. While in other areas Governments have been confronted with other stakeholders requesting to be allowed to participate in global decision-making arrangements, the debate on Internet governance is following a different pattern. Here, Governments wanted to obtain a say in the running of the Internet, which has developed outside a classical intergovernmental framework. By asking the United Nations Secretary-General to set up the WGIG, the Summit agreed on no less than the need to adapt traditional models of governance to the needs of the 21st century and find new forms of cooperation which allow for the full and active participation of all stakeholders. The WGIG has taken up this challenge and tries to be innovative in this regard. It has developed a process that allows all stakeholders to participate on an equal footing in open consultations it holds in conjunction with its meetings. This works because Governments recognized that the other stakeholders involved in the discussions on Internet governance have a valid contribution to make in this process; they have gained legitimacy through their competence. This may well be one of the WGIG's main legacies, insofar as it has proved a successful experiment in multi-stakeholder cooperation.