

Encouraging Implementation of the WSIS Principles on Internet Governance Procedures

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At the first World Summit on the Information Society (WSIS) held in Geneva in December 2003, governments adopted a Declaration of Principles that was said to reflect a global consensus on a range of global policy issues. During the extended preparatory negotiations, among the most hotly contested of these issues was Internet governance, which was dealt with in paragraphs 48-50 of the declaration. Paragraph 48 establishes guiding principles on the conduct of governance processes, namely that, they “should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations.” The latter point is amplified by Paragraph 49’s statement that Internet governance, “should involve all stakeholders and relevant intergovernmental and international organizations.” Going further, Paragraph 50 holds that Internet governance issues “should be addressed in a coordinated manner.” While this point is raised as a preface to the call for the UN Secretary-General to convene a Working Group on Internet Governance (WGIG) to study the issues, the need for coordination was invoked often enough in the course of the WSIS process to suggest that it stands as a generalizable principle as well. Taken together, these prescriptions constitute what could be called the procedural component of what came to be known as the “WSIS Principles on Internet governance.” In addition, Paragraphs 48-50 set out a substantive component, i.e. that Internet governance “should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism.”

This brief chapter is concerned with the former, procedural component of the WSIS Principles. Concerns about the conduct of Internet governance processes occupied governments from early in the WSIS process. The Latin American Caribbean Regional Conference held in Bávaro in January 2003 adopted a declaration calling, *inter alia*, for, “multilateral, transparent and democratic Internet governance” that would “take into account” the needs of governments, industry, and civil society. This language was incorporated into the declarations of subsequent regional meetings, repeated during the Preparatory Committee negotiations, and improved along the way (by replacing “take into account” with the “full involvement” of all stakeholders). After the above formulation was adopted in Geneva, it was routinely reiterated in the documents and work of the Preparatory Committee meetings of the second, Tunis phase of WSIS. Finally, the Tunis Agenda for the Information Society agreed at the November 2005 summit reaffirmed the centrality of the “WSIS principles” in the first paragraph of the Internet governance section, and mandated the new Internet Governance Forum (IGF) to, “Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet Governance processes.”

The fact that the procedural principles were routinely reiterated for three years and then positioned as a guide to follow-on activity would seem to suggest that governments believed they were important and should influence Internet governance in the years to follow. Nevertheless, there has been little real effort in the post-WSIS era to assert such influence. The Internet Corporation for Assigned Names and Numbers (ICANN) and the International Telecommunication Union (ITU) have both referred to the WSIS principles in their respective internal reform discussions, but have not attempted to systematically assess and enhance their conformity with these prescriptions. Nor has the matter received serious attention in the wide array of other intergovernmental, private sector, and multi-stakeholder organizations and networks involved in the distributed architecture of Internet governance. And most strikingly of all, the IGF has yet to even discuss its specific mandate to promote

and assess the principles' embodiment in Internet governance processes. Indeed, some key stakeholders have seemed to regard the principles, and the WSIS outcome documents more generally, as artifacts from a difficult past that should not receive any further public attention.

Given stakeholders' varying interests and perspectives on the merits of the WSIS agreements, the desire of some to not look back is understandable. Nevertheless, to so swiftly bury the results of a three-year UN summit process would be somewhat unusual, and is hardly the best way to foster international dialogue on critically important issues that require greater cooperation. It would also be unfair to the many diverse stakeholders that spent an enormous amount of time, money and effort laboring through the WSIS process in the belief that it mattered and would have some configurative influence going forward. But more to the point here, even if parts of the agreements raise difficult issues on which some parties would prefer not to re-engage, the procedural component of the WSIS principles should not be one of them. After all, if one sets aside memories of the WSIS' political dynamics and focuses just on the text itself, what the Geneva summit agreed on was the outlines of what in other contexts would be called principles of "good governance." In recent years, good governance has become a major concern both at the national level and within a variety of international institutions because it can enhance the functional effectiveness and political legitimacy of decision-making. If good governance is worth promoting in other national and international arenas, why should this not be true for Internet governance as well? The procedural component of the WSIS principles provides, for the first time, a baseline set of tools the international community could use to promote holistic collective learning about and improvements in Internet governance as it was broadly defined in the Tunis Agenda. Allowing these tools to drift off our collective radar would therefore constitute a significant missed opportunity. With this in mind, in the following I will briefly offer some suggestions on how the procedural component of the WSIS principles could be usefully refined, applied, and carried forward.

CLARIFYING THE PRINCIPLES

It can be stipulated at the outset that the WSIS Principles are not a model of clarity and textual perfection. Clearly, they suffer from shortcomings that are fairly common to negotiated texts on divisive topics, three of which are particularly noteworthy. First, the core terms are left undefined. The meanings of “multilateral,” “transparent,” and “coordinated” may seem intuitively straightforward, but consequential differences in interpretation remain possible. Devising conceptual and operational definitions that are both sufficient and consensual would present some challenges, but these should be tractable. In contrast, agreeing on the precise meaning of the “full involvement” of all stakeholders could engender greater controversy since the concept is somewhat unconventional and revisits all the unresolved WSIS-era battles concerning multi-stakeholderism. And “democratic” is unquestionably the most problematic of the principles, since the notion rests on conditions that do not apply at the global level, e.g. an identifiable public and a polity in which there is a strongly shared understanding of what makes decisions legitimate.

Second, depending on their interpretation, two of the terms may be contradictory with one another. “Multilateral” is generally construed as referring to intergovernmental cooperation among three or more states (although this overlooks the integral role of substantive ordering principles, like the diffuse reciprocity of such states). If multilateral is taken to mean cooperation only among states, at least with respect to final decision-making, then it would be incompatible with at least some understandings of the “full involvement” of all stakeholders. And third, the principles’ scope of application to Internet governance processes is unclear. On the one hand, save for perhaps the most sensitive aspects of security, it seems reasonable to suggest that all Internet governance processes should be transparent, or should at least meet some baseline standards of transparency. But on the other hand, it would be nonsensical to suggest that all Internet governance should be multilateral, since much of it occurs in private sector and multi-stakeholder environments that states could not take over or manage effectively.

Conversely, other arenas of Internet governance involve public policymaking processes in which states do not and would not accept the truly “full” involvement of all stakeholders.¹

All this suggests not that the principles are irretrievably unworkable, but rather that some clarifications are needed to make them workable. The core terms should be defined and operationalized in terms of baseline sets of illustrative measures or actions, and their interrelationships and scope of application should be clarified. Tackling these tasks would be facilitated by drawing on the relevant and substantial bodies of scholarly and policy literature, and on the dialogues and actual experiences within both Internet governance arenas and other realms of global governance like the Bretton Woods institutions. Absent such antecedent clarifications, any effort to promote and assess the WSIS principles’ embodiment in Internet governance processes would be fraught with controversy and would probably fail.

The experience of the WGIG is instructive in this regard. During its second meeting in February 2005, the WGIG conducted a preliminary assessment of the WSIS principles’ applicability to a few key governance environments, most notably ICANN and the ITU. The discussion usefully illustrated that these organizations varied in their degrees of conformity with each principle, and led to the consequential conclusion that any “oversight” of the governance of core resources could not be conducted within the ITU because, *inter alia*, it is not sufficiently multi-stakeholder. But the discussion also revealed that it was impossible to carry the exercise beyond such generalities absent

¹ In addition to these problems with the procedural component, other aspects of the WSIS Principles and related text also raise issues. For example, paragraphs 48-50 of the Geneva declaration include the problematic assertion that the Internet is a “global facility available to the public,” which seems like a telephony-inspired way to conceptualize a vast agglomeration of public and private networks that employ a common set of technical protocols; attempt, through rather artificial differentiations, to specify the respective roles of the different stakeholders in Internet governance processes; and, in the substantive component, and call for, “an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism,” without defining these terms or saying to which domains of Internet governance they are supposed to be applicable.

share definitions and understandings of the terms' interrelationships and scopes of application. These issues could not be resolved in the context of a single short meeting; clearly any effort to tackle them now would require more time, preparation, and dialogue.

It would be well beyond the scope of this brief chapter to attempt a first cut at clarifying the outstanding issues, each of which would require some elaboration. My view is that the essence of the procedural principles could be distilled down to three definable and operationalizable guidelines, namely that Internet governance should be characterized by transparency, inclusive participation, and coordination, to the extent practicable given the specific properties of the issues and institutions involved in a particular instance. "Inclusive participation" would capture both the multilateral and multi-stakeholder ideas, with the precise balance between state and non-state actors varying as merited by the case at hand. And given the inherent problems with the notion of "democratic" and the fact that other principles capture some of its elements, it arguably would be sensible to simply set aside this ill-chosen term. This seems like a sufficiently manageable starting point, although obviously any collaborative assessment might come to a different conclusion.

APPLYING THE PRINCIPLES

Once the terms and their interrelationships and scope of application have been specified, the procedural principles could be utilized to two important ends. First, they could be used to stimulate the gathering, aggregation, and presentation of information on how the various organizations and collaborative networks involved in Internet governance address common operational challenges, e.g. promoting transparency, inclusive participation, and coordination. The side-by-side arrayal of information on the approaches taken to these matters in different institutional settings would allow us to draw comparisons and contrasts, detect patterns and variations across cases, and identify general lessons learned and good practices. Making such information available in a readily digestible format is a pressing challenge because the

architecture of Internet governance is highly distributed, with a wide array of governmental, private sector, and multi-stakeholder organizations and collaborations playing diverse roles on a wide variety of issues. This makes it very difficult to get a sense of the whole, which in turn reinforces the tendency to focus attention on a few bodies, most notably ICANN, at the expense of other arenas requiring greater awareness and engagement. Horizontally organized information on what is happening across the governance landscape and its component parts would help to promote a holistic understanding of Internet governance and to facilitate collective learning within and across governance mechanisms. Second, the procedural principles could be used to encourage Internet governance mechanisms to assess their practices and undertake reforms as merited. Such encouragement could come from both internal and external sources and take a number of forms. For example, if the participants in a given governance mechanism could readily see how peer mechanisms address the same challenges they face, they might be moved, of their own accord, to ratchet up their levels of conformity with good governance standards. Preferably they would do this due to a real conviction that reforms would improve their functional effectiveness and political legitimacy, but even a more grudging response based on beauty contest considerations might be a useful first step upon which to build. Conversely, external actors – academics and research institutions, civil society organizations, the technical and administrative community, industry associations, and so on – could individually or collaboratively produce analyses that outline current practices and patterns and point to operational measures worth considering.

Of course, it is possible that the parties to some governance mechanisms would not initially welcome outside scrutiny and suggestions. Indeed, the prospect of eliciting turf-oriented reactions has already given rise to concerns in some quarters that it would be too sensitive to try implementing the IGF's mandate to, "promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet Governance processes;" to, "interface with appropriate intergovernmental organizations and other institutions on matters under their purview;" or to,

“facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet and discuss issues that do not fall within the scope of any existing body.” But on the other hand, one might note that the international community did, after all, agree that the IGF should do these things; that governance mechanisms do have public interest obligations that are not best advanced by operating like moat-protected castles; that vibrant, learning organizations can and do benefit from external viewpoints; and that the need for external reviews might be obviated by proactively undertaking their own internal reviews and inviting public inputs.

THE ROLE OF THE IGF

The early arguments for what became the IGF tended to concentrate on the need for a global, multi-stakeholder space for dialogue and analysis without delving much into speculation about its precise institutional form. Nevertheless, if one goes back and looks at some of the early statements from its academic and civil society proponents in particular, they suggested functions that would require a lean but sufficiently resourced secretariat with the institutional capacity to undertake or at least coordinate analytical work, as merited. For example, the civil society declaration to the Geneva summit called for the establishment of a multi-stakeholder observatory committee that would track and map the most pressing developments in governance decision-making, and assess and solicit stakeholder input on their conformity with the stated objectives of the WSIS agenda. Similarly, the Internet Governance Caucus and some of its individual members variously argued for an IGF that would be able to undertake, *inter alia*, the systematic monitoring of trends; the comparative, cross-sectoral analysis of governance mechanisms, with an eye toward lessons learned and best practices that could inform individual and collective institutional improvements; and the assessment of horizontal issues applicable to all arrangements, e.g. the promotion of transparency and inclusive participation. Some of this thinking was carried forward into the WGIG Report and ultimately into the Tunis Agenda’s mandate.

Things have evolved a bit differently since then, and it is difficult to imagine how a series of broadly-framed annual conferences alone could fully realize the mandate's objectives with respect to the WSIS principles. However, the IGF could still provide a facilitated environment within which interested parties could assess and encourage their implementation. Three options suggest themselves.

First, a multi-stakeholder dynamic coalition could be established to coordinate the ongoing monitoring and analysis of the procedural principles' implementation within Internet governance mechanisms. Dynamic coalitions being informal creatures without any authority, there would be no reason for the organizations involved to be particularly alarmed by the prospect of one of them assembling information, highlighting good practices, and so on with regard to repeatedly agreed objectives like transparency and inclusion. Participation in such a coalition would of course be open and voluntary, and representatives of the governance mechanisms themselves could join in the effort if they were interested. Moreover, synergies could be exploited between the coalition's work and any internal evaluations and initiatives these organizations and collaborations might wish to undertake.

Second, and in parallel, the governance mechanisms could use the opportunity of the annual IGF meetings to report on their embodiment of the procedural principles. The IGF's Advisory Group has created a space in the program that would be well suited to this purpose. At the 2007 meeting in Rio de Janeiro, all major organizations dealing with Internet governance issues will be given a slot, at their request, to hold an Open Forum at which they can present and discuss their activities. In future years, a portion of these forums could be set aside, on a voluntary basis, to address how they address questions like transparency, inclusion, and coordination. They could do this either alone or in conjunction with the dynamic coalition, as they prefer.

Third, at future meetings, a single two-hour session in the main hall could be set aside for discussion of the issues. If the existing topography of sessions on openness, security, access,

diversity, and critical Internet resources is maintained and space in the program is thereby limited, such sessions could be held in an off-peak period, i.e. the early morning, lunch time, or after 6pm. In this setting, the dynamic coalition could provide some highlights from its work program and prior meeting; interested Internet governance bodies could offer their own views; and the issues could be vetted in an interactive manner with a larger audience. To help identify good practices and potential problem areas, relevant experiences of international institutions involved in other global issue-areas could be brought into the discussion as well.

CONCLUSION

Transparency, inclusive participation, and coordination, to the extent practicable, ought to be regarded as comparatively anodyne principles on which the international community can readily agree. In fact, it already has. All that is needed now is to put in place a process to assess and promote their implementation. Such a process could be entirely positive in tone and concentrate on highlighting the good practices adopted by relevant bodies, leaving it up to others whether they wish to follow suit or find other, more locally optimal paths to the same ends. The IGF, with its specific mandate to address cross-cutting issues, would be the most appropriate context in which to take up this challenge.