# Use [and Abuse] of Multistakeholderism in the Internet<sup>1</sup> **Bv Avri Doria**

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#### The Setting

Multistakeholderism has become the Internet governance regime choice of many. While it is certain that everyone does not have the same modalities in mind when they utter the term, it is apparent that for many the multistakeholder model show the way forward. Though popular as the idea it, is worth pointing out at the beginning of this chapter that this is not universally shared, "the model is actively being challenged on a routine basis." (Alexander 2011)

Thus, the term multistakeholderism is being used in many contexts in Internet Governance. It has been used, and perhaps abused, to explain why one organization has greater legitimacy than another. It has been used in cases where most of the participants believe the term is being used properly. And it has been used by single stakeholder groups who exclude other stakeholders in an attempt to mask the organization's single stakeholder nature. A first step in exploring the use, and possible abuse, of the term, and to find a way forward for Internet governance, is to briefly review the term itself, its origins, its related practices and its current state of development. In order to move forward, it helps to know how the model has developed and is developing.

#### Definition

Multistakeholderism in Internet governance refers most directly to the words found in Paragraph 34 of the Tunis Agenda for the Information Society (Tunis Agenda 2005 para.

> 34. A working definition of Internet governance is the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.

It is a definition that allows for many interpretations, including:

This definition does not propose a "central Internet authority" or a "onestakeholder leadership model" as some governments suggested during WSIS I. Instead it proposes a decentralized but inclusive and participatory concept which gives all stakeholders a place by referring to their "respective roles". It links them together in a network of shared rights, duties and responsibilities and encourages everybody to participate in transparent, open and bottom-up policy development and decision-making processes. (Kleinwächter 2011 Page 07)

As more and more organizations claim to be multistakeholder, though, it is becoming obvious that there may be other definitions for this word. While some may be using the word cynically and just trying to jump on a popular bandwagon, most are using the word genuinely. It has become clear that there are at least two basic categories of definition:

- Those that uphold the belief in a structure with equivalent stakeholders who participate on an equal footing.
- Those that uphold the belief that one stakeholder is more equal than the other stakeholders and that the primary stakeholder discharges their duty by consulting the other stakeholders before making decisions.

<sup>&</sup>lt;sup>1</sup> With apologies to Fredrick Nietzsche. In looking at the history of the term Multistakeholderism, while looking forward I am aware that: "life is in need of the services of history, however, must be grasped as firmly as must the proposition ... that an excess of history is harmful" (Nietzsche 2013). The words [and Abuse], are placed in brackets in the style of the diplomatic negotiation in the realization that anything this chapter calls an abuse, would not be regarded as such by those making the utterance.

The first definition lends itself toward a notion of multistakeholder effort to create full democratic participation. The second sense lends itself toward continuation of a hierarchical model where decisions are determined by a single dominant stakeholder group. In this chapter, the primary frame of reference will be the first interpretation that reads the working definition of Internet governance as a call for participatory democracy in Internet governance.

The community has termed institutional processes that meet, or attempt to meet the requirements of the working definition, as multistakeholderism. Other terms that refer to governance models that implement paragraph 34 are multistakeholder models or multistakeholder governance. The primary requirement of multistakeholder models is the inclusion of all stakeholders in decision making processes.

Is Multistakeholderism the right term?

What is an *-ism*? We often speak of *-isms*, for example, absolutism, bullionism, capitalism, deism and many other *-isms*. The Phrontistery (Phrontistery 2013) lists 2343-*isms* representing "philosophical, political or moral doctrine or a belief system(s)"<sup>2</sup>.

The Oxford English Dictionary (OED 2002) defines -ism as:

"A form of doctrine, theory or practice having, or claiming to have a distinctive character or relation"

The Mirriam-Webster dictionary (Mirriam Webster 2013) defines *-ism* as:

- "1. a distinctive doctrine, cause, or theory
- 2. an oppressive and especially discriminatory attitude or belief"

The suffix *-ism* has had the following uses (Thorne 2013) that pertain to Internet governance:

- the practice of ...
- the condition of ...
- · the belief in ...

At some point in time, the suffix became a term in itself. I first encountered the term *-ism* as a concept in "Today's ISMS: Socialism, Capitalism, Fascism, Communism and Liberalism" (Ebenstein et all 2000)<sup>3</sup>. In all of the -isms discussed in "Today's ISMS", there is both a theoretical framework and an active political component.

Calling something an *-ism* is a way to categorize a concept and to criticize it and, sometimes, to condemn it. Any reader looking at the global political dialogue will notice that if an author wishes to condemn an idea, it is called Socialism or Liberalism, depending on the speaker's political alignment. According to Anriette Esterhuysen, some of us "use of the term "multistakeholderism" as if it is an established philosophical approach, based on commonly understood principles,". (Esterhuysen 2011, page 58).

Is multistakeholderism an -ism? Markus Kummer (Kummer 2013) speaks of the concept of multistakeholder cooperation having been "elevated to an -ism by some." In the literature, one finds references to multistakeholder models, multistakeholder processes, multistakeholder structures and a multistakeholder architecture. Additionally, the question remains as to whether there are theoretical frameworks and political movements for multistakeholderism. It seems that the theoretical frameworks are just being created; and that it may be fair to consider the multiple coordinated and uncoordinated actions meant to further the multistakeholder model in Internet governance, as a nascent political movement.

I personally have long resisted the impulse to use the term 'multistakeholderism'. In speech and in writing, I refer mostly to the multistakeholder model or to multistakeholder

<sup>&</sup>lt;sup>2</sup> Multistakeholderism is not on the list

<sup>&</sup>lt;sup>3</sup> Liberalism was added to the title in the Eleventh Edition in 1985. This was not in the version of the book I read in 1967.

structures. Not only do I believe that political *-isms* have a bad reputation, I believed that *-isms* are concepts that have become fixed in their definitions. As the multistakeholder framework is still evolving, I find it difficult to accept the term multistakeholderism. Others have also written of their discomfort with the term.

"I do not believe multistakeholder participation, as outlined in the WSIS principles, has reached that stage. Nor do I think we should strive for such a stage. (Esterhuysen 2011, page 58)

Briefly, but for completeness sake, looking at the prefix of the word, "multi" one may also have questions about a working definition that only includes "by governments, the private sector and civil society". Previous work on global public goods as early as 1999 had defined another term – tripartism.

"Since effective solutions to pressing global problems are unlikely to emerge from forums that exclude these important actors, a new tripartism is recommended, involving government, business and civil society" (Kaul 1999 page XXX)

Some of the current tussles in the area of Multistakeholderism concern this part of the definition. Are there only three stakeholder groups? Various groups, e.g. the academic and technical community have long been advocating for their role as stakeholders. The Tunis Agenda, and subsequent diplomatic based documents, excludes this community:

36. We recognize the valuable contribution by the academic and technical communities within those stakeholder groups mentioned in paragraph 35 to the evolution, functioning and development of the Internet. (Tunis Agenda 2005)

That which some see as a stakeholder group is relegated by the dominant stakeholder, governments, as being a sub group within other stakeholder groups.

So far, only the suffix and the prefix of the term have been described, leaving the core of term 'stakeholder' for last. The UN system defines three stakeholder groups, with one above all the others. Other models define the breakdown differently, e.g. ICANN defines many type of stakeholder split: governments and users, technologists and policy wonks, commercial users and non commercial users, policy makers and implementers, and contracted parties and non contracted parties; each of which is considered equal, at least for some definition of equality. The Internet Engineering Task Force (IETF) does not divide its participants into stakeholder groups at all, yet I include it among the multistakeholder organizations. In the IETF's case all of the participants from all of the political stakeholder groups are welcome to participate as equals regardless of their stakeholder group.

There are many issues around the use of the term multistakeholderism. Nonetheless, it is the term that is commonly used and thus must be discussed and understood., In this chapter 'multistakeholderism' will be used in addition to 'multistakeholder model' and 'multistakeholder framework'— in the sense of "the belief in, and the practice of, and the condition of". An attempt will also be made to distinguish between the uses and the abuses of the term.

### Multistakeholder models

Internet governance was not the first field to explore multistakeholder models of governance. The earliest work on various models of participatory democracy that lead the way for multistakeholderism can be found in the work of Elinor Ostrom (Olstrom 1990) of economic governance models. Some of this century's references were in the field of sustainable development (Weiner 2000). This paper focuses on the use of multistakeholder terminology in the field of Internet governance.

"While there is no one single multistakeholder model, it is a form of participatory democracy that allows all of those who have a stake in a policy to take part in crafting that policy. There are many variants of the model and the theoretical underpinningsof the model are still an active discussion topic. While the composition of the stakeholder groups may vary, when used in reference to Internet governance, the stakeholders generally include governments acting in behalf of their citizens, civil society and non governmental organizations that are self selected

advocates of the interests of the global public good<sup>4</sup> as they understand it, the private sector commercial organizations that reflect the businesses that affect and are affected by the Internet, the Internet technical community that is responsible for the development and maintenance of the network itself, and academics" (Liddicoat and Doria 2012)

### Multistakeholderism in Internet governance

Multistakeholderism in Internet governance finds its origin in the work of the Working Group on Internet Governance (WGIG). During the first part of the World Summit on the Information Society (WSIS), governments came to an impasse over the issue of "who should govern the Internet"

The origin of the term's usage in Internet governance is described as:

"It was WGIG that consolidated the use of the term "multi-stakeholder". The WGIG Report itself uses the term 11 times and, among other things, identifies the need for a "global multi-stakeholder forum to address Internet-related public policy issues". Also the WGIG Background Report uses the term 11 times. Finally, it was via WGIG that the term found its way into the Tunis Agenda. The Tunis Agenda has 18 references to "multi-stakeholder", four of them related to the Internet Governance Forum (IGF)." (Kummer 2013)

#### The question of bottom-up processes

While sometimes used as a synonym or a requirement for the multistakeholder model, bottom-up processes, also known as grassroots processes, are neither necessary nor sufficient to define a multistakeholder process. Bottom-up processes are defined as processes where all decisions come from cooperation of the communities affected by the decisions. In Internet governance, the bottom-up process means that no decision can be made that does not find its origins in the affected stakeholder group(s). It should be noted that the true degree to which a processes adhere to a bottom-up model depends on the degree to which all relevant interests are represented among the stakeholders and the degree to which the organizations respect their own bottom-up processes.

Bottom-up participation of all stakeholders is not the same as full participation of all stakeholders. In this chapter it isn't assumed that a bottom-up process is necessary in order to implement a multistakeholder process. In the examples given later in this paper, one can argue that none of them adequately meet the strict definition of bottom-up processes. And even ICANN, which has the most well formed model of bottom-up processes, may follow it more in the breech than in practice.

#### Relation to democracy

To misquote Winston Churchill's quote on democracy (Drake 2011)5:

Multistakeholderism is the worst form of governance, except all the others that have been tried.

This is not as disrespectful as it sounds, the essence of the multistakeholder framework is

defining a public good is no easy task. Nor is identifying one: areas treated as public goods in some contexts may elsewhere be treated as private; public goods may be converted back into privately delivered services; and even the clearest examples of public goods can also be conceived of as bundles containing both public and private attributes. Yet even within this ambiguity, the Internet undeniably has the makings of a public good. ((Spar 1999 page 348)

<sup>&</sup>lt;sup>4</sup> While discussion of Global Public Goods is beyond the scope of this chapter, the reference to the Internet as a Global Public Good recognizes that:

<sup>!4</sup> years later, the discussion on whether the Internet is or is not a Global Public Good is still being discussed. At the risk of being called an Internet exceptionalist, I believe that it might be in a class of its own and hence difficult to pigeon hole.

<sup>&</sup>lt;sup>5</sup> "It has been said that democracy is the worst form of government except all the others that have been tried."

a form of democratic governance. More specifically, it is a form of participatory democracy that attempts to go beyond the limitations of representative democracy while building on, and including, representative democracy.

"Democracy is defined in different ways in a multilateral context and by different stakeholders according to their particular perspectives. Governments generally hold to a view based on national sovereignty with equal say for all countries and decisions reached through consensus. Each citizen is held to be represented and to be able to influence decisions through national consultation and decision-making mechanisms. Some are of the view that most governments include members of their civil society in their delegations to the extent practical and in any case they take into account the interests of their civil societies when establishing agreements at multilateral bodies. Civil society advocates on the other hand would argue that the term goes beyond this, requiring direct full participation in decision making by many nongovernmental groups from the private sector and civil society. Furthermore, they have expressed the view that governments are not actively or consistently consulting with other sectors of society prior to establishing agreements within multilateral bodies." (WGIG Background Report Page239 Paragraph 58)

Often an undercurrent issue is the degree of representativeness of a participant in the Internet governance process. Governments assume they are the representatives of the people, even when they come from states that have a limited democratic practice or tradition. And given the assumption of their own status as representatives, they often deprecate other stakeholders by asking questions of "who do you represent and how did they select you?" The presumption of this question is always that the Westphalian government is the only representative that the people need, and that the other stakeholders are, at best, self-selected pretenders to representativeness. The question "who do you represent" is one that misunderstands the multistakeholder process, where it is the interests of the people, and not the people themselves, that are represented.<sup>6</sup>

Beyond that, most government representatives are not close to the people represented in the country, as they are often bureaucratic appointees that are not subject to the vagaries of the democratic process. It is not unusual for the same national representative to hold the job for a lifetime, allowing them to become very experienced at diplomatic processes, but also leaving them guite distant from the population they purport to represent.

Granting, however, that to some degree, these diplomatic representatives do represent a country with a democratic tradition and that there is a link to the population whose interests they represent, the question is often asked: why isn't this enough? The answer comes from understanding that to represent the complex of interests of any individual, it takes more than a government representative. A government only represents an individual as a citizen situated geographically within the confines of a single state. In a world with transnational culture, global relationships and an Internet that transcends geographical borders, the representation of an individual as citizen, while necessary, is not sufficient. Each individual is situated in a complex world of affinities, capabilities and needs. Each individual belongs to many stakeholder groups, and needs the voices of all of these groups to cover his or her myriad of interests. I am a citizen, a researcher, a consumer, a parent, an Internet user, an employee of several companies and have interests that need to be recognized and served in all of these aspects of my person and life. No single type of stakeholder group can serve all of the aspects of the world's population. Additionally, there are many interests that are cross-border in nature, that cannot be served by a single country's representatives. It is often Non Governmental Organizations that serve these cross-border interests without discrimination based on geography, nationality or other circumstance.

Nongovernmental organizations (NGOs) and epistemic (or expert) communities provide various kinds of information that are relevant to the pursuit of collective goals. NGOs also have important effects on agenda setting and the evolution of public attention to global goals

<sup>&</sup>lt;sup>6</sup> Some have argued that the stakeholder model is flawed in that it does not allow for the direct representation of the people in its workings. Pivotal to this discussion is the perceived inability to scale such a process of direct democracy, instead relying on democratic processes within each stakeholder group to reach the grass roots.

(Martin 1999).

For humanity's interests to be truly represented, we must have a multistakeholder form of framework.

Whether it is NGOs that represent the needs and interests of the people they serve, the technical community in their role as the creators and maintainers of the technology, or the academics who attempt to understand the dynamics of the social systems within which we live in this highly interconnected world, all of the stakeholder groups have a place at the table where they can discuss the issues and decide on solutions for Internet governance on an equal footing. Anything else leaves some interests without representation, and thus leaves the populations who feel and express these interests unrepresented, at least in that respect. Full representation requires multistakeholder representation.

### **Equal footing**

Equal footing does not mean that in all cases all stakeholders have the same role; capacities and needs vary from circumstance to circumstance. What it does mean is that stakeholders have equivalent status and an equal access to the deliberations and to the decision-making processes. This can be challenging given the inequality in power experienced in the world.

The world, of which the internet is a part, is not an equal place. There are vast differences in access to resources and power, between countries, and within countries. Governance bodies and processes need to recognise these differences, and try to redress them to achieve legitimacy over time (Esterhuysen 2011, page 56)

One of the great challenges for those who advocate the multistakeholder model is how to not only be inclusive, but in finding ways to overcome the structural differences in the status of the various stakeholders so that they can all participate on a equal footing. Whether the disparity is based on the Global North-South split or the wealth differential between Industrial actors and NGO advocates, this is a challenge for all of the Internet governance institutions. It is a challenge that has not yet been met adequately by any organization as of this writing.

The notion of equal footing is closely allied to the notion of "respective roles".

### **Respective Roles**

This subject is often referred to as "respective roles and responsibilities" in current discussions, though in the earliest discussions, as in the working definition of Internet governance, the reference was to respective roles<sup>7</sup>.

"...the wording "in their respective roles" was a perfect example of what diplomats usually describe as constructive ambiguity: agreements on terms that conceal a disagreement of substance." (de La Chapelle 2011)

This constructive ambiguity has become one of the great impediments to the success of the multistakeholder model. The definitions of roles and responsibilities first put forward by the Governments in the Geneva Plan of Action, were included unchanged in the WGIG work and ultimately were preserved in the Tunis Agenda.

From the Geneva Declarations of Principles (Geneva Declaration 2003 para. 49):

- "49. The management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organizations. In this respect, it is recognized that:
- a) Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights<sup>8</sup> and responsibilities for

<sup>&</sup>lt;sup>7</sup> It was in the Geneva Plan of Action in the definition of the WGIG charter that 'roles and responsibilities' was referenced.

<sup>&</sup>lt;sup>8</sup> This paragraph also introduces a concept of States as having Rights. This is a novel concept that needs further discussion.

international Internet related public policy issues.

- b) 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.
- c) Civil society has also played an important role on Internet matters, especially at the community level, and should continue to play such a role.
- d) Intergovernmental organizations have had, and should continue to have, a facilitating role in the coordination of Internet-related public policy issues.
- e) International organizations have also had, and should continue to have, an important role in the development of Internet-related technical standards and relevant policies."

In the Geneva Declaration, governments, while attempting to find their own role in the administration of Internet policy, a field that most States had not been involved in or been interested in up until that time, presumed to involve themselves by putting themselves in charge. They did not consult the other stakeholders when they made this decision. They did not include the other stakeholders in the discussions when they developed this list of roles and responsibilities. Rather they unilaterally relegated all other stakeholders to subordinate roles.

While a multistakeholder model was eventually recognized in the WSIS, it did not emerge from a multistakeholder process.

"When the WSIS started, civil society was not allowed in the conference room, except for five minutes before start and five minutes before the end of the session to give comments. How were they supposed to be able to comment without having been present in the room? Although the importance of multistakeholder participation was emphasized, UN rule had to apply (something that many developing countries were keen to underline). (Dufborg 2005 page 17)

Ironically, it wasn't until the Tunis Agenda that the role of the Technical and Academic community, the very people that created the Internet, were specifically recognized in:

"36. We recognize the valuable contribution by the academic and technical communities within those stakeholder groups mentioned in paragraph 35 to the evolution, functioning and development of the Internet."

The Tunis Agenda did not, however, recognize them as stakeholders among the other stakeholders, but rather identified 'academic and technical' as attributes belonging to the stakeholders from the tripartite model. This has changed somewhat in practice today, but has still not been recognized formally by governments.

The WGIG was chartered with refining these roles and responsibilities in the Geneva Plan of Action: (Geneva Plan 2003 para. 13)

"13 b) We ask the Secretary-General of the United Nations to set up a working group on Internet governance, in an open and inclusive process that ensures a mechanism for the full and active participation of governments, the private sector and civil society from both developing and developed countries, involving relevant intergovernmental and international organizations and forums, to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005. The group should, inter alia:

iii. develop a common understanding of the respective roles and responsibilities of governments, existing intergovernmental and international organizations and other forums as well as the private sector and civil society from both developing and developed countries;"

The WGIG, however, never reworked the definitions of respective roles and responsibilities, despite civil society's insistence that we needed to, and despite discussion in the Background Report.

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"The decentralized and collaborative process of underlying technological development and core resource management: the technological development and administration of the Internet, allowing participation by all interested parties and rejecting centralized advance validation of content, services and technologies, helps ensure that the network is interoperable, functional, stable, secure, efficient as well as scalable in the long run." (WGIG Background Report page 24 paragraph 5)

Instead, the respective roles and responsibilities from the Geneva Declaration of Principles were carried forward as agreed language<sup>9</sup> and discussion in the WGIG of respective roles and responsibilities was discouraged.

The definition of respective roles and responsibilities provided by the Governments in the Geneva Plan have been a great impediment to furthering the multistakeholder model. Whenever a serious discussion begins on respective roles, there is likely to be at least one country that quotes the governments' ideal view of respective roles as agreed language and argues that, thus, it is not a topic to be reopened..

To this day, including at the ITU World Telecommunications Policy Forum (WTPF) in May 2013, some governments were still attempting to force the stakeholders into roles that are inappropriate given their actual roles in Internet governance and in society in general. By using a definition of the "respective roles and responsibilities" as outlined in Tunis Agenda paragraph 35, Governments and Inter-Governmental Organizations (IGO), such as the ITU, deprecate the participation of their necessary partners in a dialogue that must be a dialogue among equals. "This is counterproductive and will not lead to the enhanced cooperation that is one of the ultimate goals of the Tunis Agenda. The definitions of "Roles and Responsibilities in Tunis Agenda paragraph 35 will instead, lead to a continuing impasse and prevent progress in multistakeholder Internet governance." (CS-IEG 2013)

While it may be agreed language among governments, it was never agreed upon by the other stakeholders. One of the great myths perpetrated in current Internet governance discussion is that the Roles and Responsibilities as defined in the Tunis Agenda were the work of experts in the WGIG. As the document history shows, this is not the case – these are definitions put forward by governments at the beginning of the process, before they were even able to define the Internet or Internet governance. These definitions were decided on at a time when non governmental actors were being excluded the discussion except for five minutes at the beginning and end of each meeting as described above

Defining respective roles is a complex task. A helpful set of definitions would take into account the various capabilities and needs of the stakeholders. A reasonable set of definitions would also recognize that the respective roles differ at different times in the process of governance. Bertrand de La Chappelle has produced an analysis (de La Chapelle 2013) that breaks the process of Internet governance into a set of stages: Framing, Drafting, Validation, Implementation and Disputes. In each of these stages, the roles and responsibilities of the various stakeholders will vary depending on their respective capacities and needs. This form of analysis is at the very early stages, but is a necessary next step in defining an appropriate meaning for respective roles.

This remains one of the unfinished tasks of Internet governance, it remains to be seen when, if ever these definition get revised to match the realities of stakeholders real roles and responsibilities. For so long as governments insist on operating as if these descriptions were correct, true multistakeholder cooperation, a necessity for enhanced cooperation, will remain difficult. Respective roles cannot be defined by one stakeholder for the other stakeholders, rather the understanding must evolve during the multistakeholder cooperative processes. Having the wrong definitions of respective roles and responsibilities interferes with the development of a well formed multistakeholder process.

The WGIG recognized that "full involvement of all stakeholders" would not necessarily mean that every stakeholder group should have the same role in the development of policies, the preparation of decisions, the actual decisions and then the implementation of decisions. (WGIG Background Document Page 20 paragraph 4) It recognized "that any of

<sup>&</sup>lt;sup>9</sup> 'Agree language is a phenomenon in diplomacy, where once a set of countries agree to a linguistic formulation, of as part of a compromise, that language is used unchanged in future documents in order to avoid reopening the discussion.

the three societal sectors may play a role, depending on the particular case at hand."(WGIG Background Document page 45 paragraph 11) That Background Report went on to note that:

What is less clear, and subject to discussion, is the precise nature of the balance that will be most beneficial to all stakeholders. (WGIG Background Document page 178 paragraph 42)

### And recommended

participatory governance processes that enable all stakeholders to fulfil their roles and responsibilities effectively and in a coordinated manner should result in better outcomes. (WGIG Background Document page 221 paragraph 54)

It is one of the failures of the WSIS, WGIG, and the IGF process that the discussion of respective roles has never been engaged in as a serious multistakeholder topic. It is to be hoped that the CSTD Working Group on Enhanced Cooperation (WGEC) will allow for a proper multistakeholder discussion on this topic. Two of the questions in the questionnaire (WGEC 2013) the WGEC sent out include the option for that subject to be discussed:

- 5. What are the roles and responsibilities of the different stakeholders, including governments, in implementation of the various aspects of enhanced cooperation?
- 6. How should enhanced cooperation be implemented to enable governments, on an equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the Internet?

As of this writing, those answers have not yet been analysed.

#### The Models and the Crucibles

The Multistakeholder model in Internet governance is more than just theory, if still less than reality. While the spread of the model is still very fragmentary, there are several organizations that describe themselves as multistakeholder organization. There are several varieties of organization that describe themselves as multistakeholder, though not every organization that self identifies as being multistakeholder will be identified as such by others. The organizations that are serious about implementing multistakeholder processes have become crucibles for a framework that is still rather young and for which there is not yet much supporting organizational theory.

I define crucible as environments that take the multistakeholder model seriously and put energy in developing processes that allow all stakeholders to participate according to their capacities and needs. While this is in contrast to the substantive actual work of an organization, the process issues are tied to the substantive issues, for the various stakeholder views on any issue, define the substantive framing of an issue. While it is our habit to try to divide the process from the substance of Internet governance, they are too firmly linked to ever be strictly dirempted

This section will briefly describe 3 variants of the multistakeholder model in Internet governance:

- ICANN the Internet Corporation for Assigned Names and Numbers.
- IETF The Internet Engineering Task Force
- IGF The Internet Governance Forum.

These three organizations have different but critical functions within the Internet:

 ICANN – the policies involved in the technical and operational management on assigned named and numbers, i.e., IP addresses, Autonomous System Numbers and Domain names.

- IETF The development of technical standards for a stable, secure and interoperable Internet.
- IGF A forum where all stakeholders can discuss the complex policy issues involved the broader Internet issues and possibly contribute inputs to other organizations involved in managing and governing the Internet.

The ITU is not discussed as an example of the multistakeholder model, even though it is currently claiming to be a multistakeholder organization. The reason it is not considered a multistakeholder organization in this chapter is because there is only one group, governments, entitled to participate in making decisions. It is difficult not to see ITU usage of the term multistakeholder as aspirational at best, and abuse at worst. There was a moment of hope after the World Telecommunication Policy Forum (WTPF) meeting in Geneva in 2013, that there would be a genuine attempt to open ITU substantive discussion to the non-governmental stakeholders. An appeal by stakeholders endorsed by Poland and the United States was made to the ITU Council requesting that it open participation in the Council Working Group on International Internet-Related Public Policy Issues (CWG-Internet) to non-governmental stakeholders. At its June 2013 session, the ITU Council rejected the proposals for open participation in CWG-Internet. In other words it decided to remain a single stakeholder organization that had no intention of transforming into a genuinely multistakeholder organization. While the nations of the ITU may on occasion permit non-governmental actors to offer comments and may even let them sit at the same table from time to time, there is no manner in which non-governmental actors are allowed to participate on anything resembling equal-footing.

Sometimes the members and secretariat of the ITU argue that they are multistakeholder because governments appoint the representatives and governments serve all the stakeholders of their respective countries. Even if this were the case, and it so rarely is, this is not the same as allowing all stakeholders to come to the table. While it is advisable that all stakeholder groups consider allowing all the sub groups within the stakeholder group to participate on an equal footing, this does not make a group, e.g. the ITU, that is composed of just one stakeholder group, the governments, an example of the multistakeholder model. The discussion is, however, purely academic, as for very few ITU delegations are multistakeholder – at the World Conference in Information Technology (WCIT 2012), very few national delegations included non-governmental actors. In fact if multistakeholder is defined as having an equivalent role in decision-making process, there are almost no multistakeholder government delegations, despite there being some that included non-governmental advisers.

There are issues, however, with the degrees of representation even in the three examples picked for further discussion:

First, the scope of stakeholder participation remains too narrow. While there has been much debate in recent years about the "democratic deficit" in multilateral institutions, multistakeholderism unquestionably faces its own challenges with respect to participation and accountability. Many of us make jokes about the "traveling circus" of "usual suspects" flying around the world to meetings, or some similar formulation, but the awkward humor reflects an awareness of the implications. The on-site presence of only those who have the financial support, expertise, and interest required raises normative and operational issues that cannot be offset fully by even the excellent remote participation facilitation in the IGF and ICANN. It goes without saying that the overwhelming majority of the world's two billion users remain uninvolved, as do the many more non-users who may be affected by patterns of Internet usage in the political, economic, and social spheres. But participation is also very limited among those who one might have expected and hoped to engage, e. g. technology entrepreneurs, small and medium sized businesses, civil society advocacy or service provision organizations, and so on. While these problems are common to most global governance arrangements, and the IGF and ICANN have worked to promote outreach within their respective constraints, inadequate participation does impact on both the character of debate and the external acceptance of the processes. (Drake 2011 page 69)

To fully describe any of the three organizations that are being described as crucibles for

multistakeholder models, would take a chapter each, if not an entire book each. In this chapter, each will be described very briefly, with a reference to some of its relevant multistakeholder structural aspects. No attempt will be made to provide an exhaustive description of the organizations or of their internal structures. It is also freely admitted that there are many more examples of multistakeholder based organization in Internet governance than could as reasonably have been discussed in this chapter, for example each of the five Regional Internet Registries, AFRINIC, ARIN, APNIC, LACNIC and RIPE has a multistakeholder process tuned to its region and its stakeholder groups.

### <u>ICANN – Internet Corporation for Assigned Names and Numbers</u>

ICANN is responsible for coordinating the following critical Internet resources including Top Level Domain names (TLD), the assignment of IP addresses, Autonomous System (AS) numbers and Protocol numbers. It has, since the end of WSIS, claimed that is a bottom-up multistakeholder organization. Before WSIS, ICANN called itself a private sector led technical coordination body.

ICANN has a matrix organizational architecture (Doria 2013) with two types of group:

- Supporting Organizations that are responsible for recommending policies in a specific subject area, that are reviewed and then approved, or not, by the Board after extensive community review and discussions.
- Advisory Groups that give advice to the Board on any issue that concerns ICANN, including the policy recommendations made by the Supporting Organizations.

As one of its activities, ICANN provides a regulatory function for generic Top Level domains (gTLD), though it is loathe admitting this. This regulatory function is provided through the use of contracts. One of the elements that is special about ICANN contracts with Registries and Registrars¹¹ is that certain contractual clauses can be changed while the contract is in force, by use of a consensus process that allows the entire community, in a bottom-up manner, to discuss and decide on necessary changes. Any changes approved by the community following this process become enforceable under these contracts. Until recently this community process was the only way to alter the contracts other than at renewal time. Recently ICANN has begun to add provisions to contracts allowing it to unilaterally change various aspects of the contracts without any intervening community process. This has received a mixed reception among the ICANN community organizations. Among the contracted parties this is seen as a betrayal of the ICANN compact with its community, whereas with others, it is seen as ICANN finally taking its role as a regulator seriously. Whichever perception one takes, this is a major change in the fabric of ICANN and it will take several years to understand the full effects on the organization's multistakeholder processes. According to the process model, however, there is a multistakeholder process that must be followed in order for new contract based regulatory conditions to be instituted..

## **Soft Oversight at ICANN**

One of the more important evolving structures in multistakeholder legitimacy has been instituted at ICANN. This mechanism provides a form of soft bottom-up oversight. In addition to its identity as a multistakeholder organization, ICANN has a unique relationship to the US Department of Commerce (DOC) and specifically to the National Telecommunications Information Agency (NTIA). Since its creation with a combination of contracts and MOUs, the US DOC has maintained oversight over ICANN. In 2009, due to many forces, including pressure from other governments, DOC and ICANN took action to lessen the direct oversight by the US government. The vehicle for doing this was the creation of a joint Affirmation of Commitments (AOC 2009) between the DOC and ICANN, consisting of a set of cyclical community reviews. The reviews are done by teams composed of people picked by the bottom-up processes of the ICANN constituent organizations appointed by a combination of the leaders of ICANN and of DOC. These review teams come from all ICANN stakeholder groups and are responsible for reviewing

Registries and Registrars are two of the main contracted parties in ICANN. Using the model of a supply chain, Registries are loosely equivalent to manufacturers, while Registrars would be loosely equivalent wholesalers and retailers. Other entities in the supply chain are the Resellers who are roughly equivalent to retailers and Registrants who are the consumers.

### different aspects of ICANN including:

- Transparency and Accountability
- Stability and Security of the Internet
- Information on domain name registrants (WHOIS)
- The new GTLD program <sup>11</sup>

ICANN has finished the first cycle of these reviews and has begun the second cycle. It remains to be seen whether this method works. Although it is a bold experiment, a lot of its success will rest on ICANN's willingness to be transparent and accountable and to accept the recommendations of the review panels. The first review of the second cycle, which includes a review of how well the process worked in the first cycle, is planned for release at the end of 2013.

## <u>IETF – Internet Engineering Task Force</u>

Of the three multistakeholder organizations being discussed in this chapter, the IETF is the oldest. While it currently has a defined existence as part of the Internet Society, for many years, it was just a collection of engineers who self-organized so as to cooperate on building and maintaining the interoperable Internet. While some would describe it as collection of individuals and not of stakeholders, I believe that it is indeed composed of stakeholders. In one way of looking at the organization, the participants come from all stakeholder groups and participate without any recognition of the fact, participating as technical contributors without conscious regard to their original stakeholder group, though the self selected affinity to those external stakeholder groups can never be completely avoided. In another sense they are members of a single stakeholder group, the technical community. Beyond that, for scalability and process issues, it divides participation according to the layer of the protocol stack one works on: Applications, Internet, Operations and Management, Real-time Applications and Infrastructure, Routing, Security and Transport. While participants may participate in more that one of the areas, generally each participant focuses their efforts in just one of these stakeholder groups by a different name 12... In a sense, the technical area one works in, is the definition of one's stakeholder groups within the IETF.

One important point about the IETF is the elaborate organizational structure that has been created in response to participant capacities and needs, and that continues to evolve to give all of the participants fair access to its processes. It has developed a well formed process for picking leadership from a very fluid population base: those who have participated recently. It has a selected leadership that has decision making abilities that have been granted by the community and has a multilayer appeals mechanism. As one of the crucibles of multistakeholder activity, it has created a stable but evolving structure. While being fully stakeholder driven, as there is not other way for work to get done, the organization has invested its leadership with great power, even giving a virtual veto to its Steering Group members, which they can use when necessary to protect the architectural and protocol stability of the Internet.

For most of its history, the IETF considered itself a purely technical organization with no policy responsibilities. While that is still largely the case, members of the community have begun to realize that while policy should not be instantiated in protocols, the protocols must enable various policy options and that policy issues might provide requirements for protocol design. A major effort, for example, has recently been completed in creating a set of guidelines for protocol designers on privacy considerations in their protocols (Cooper et al 2013).

Another policy aspect of the IETF in its recent development has been its activity in promoting its protocols such as IPv6 and DNSSEC. Originally, the IETF had focused on creating protocols and leaving it to the market to decide which ones would be used and which would get left behind. With the advent of IPv6, the IETF decided that it was such an important effort that it needed to become active in promoting the technology. It still

<sup>&</sup>lt;sup>11</sup> This was not doe as part of the first review cycle as the new gTLD had not been released yet.

<sup>&</sup>lt;sup>12</sup> This other form of stakeholder definition, in fact the entire subject of how stakeholder groups can be defined, involves a longer discussion and it not included in this chapter. It is included here just as an example of this added complexity.

remains to be seen whether this is an effective strategy for the Internet's future and how making such policy decisions, that is the importance of deploying a particular solution, affects its technical mission.

Another aspect of the future of the IETF relates to the community that participates in the IETF. It is a community consisting of the elite of the technical world. Recently the IETF has begun working on international diversity and on attracting a younger population.

### **IGF- Internet Governance Forum**

In the Tunis Agenda, in paragraphs 67-72, the Internet Governance Forum is defined as the place where all stakeholders can consult with each other on an equal footing with regards to Internet policy. This was the formula given for achieving enhanced cooperation, the Holy Grail of the Tunis Agenda.

Unfortunately the General Assembly undid the original assumption about the IGF being the location for Enhanced Cooperation (UNGA 2011). This produced two mandates in apparent opposition to each other: the Tunis agenda indicating that the IGF should work on a wide notion of Enhanced Cooperation among all stakeholders, and a General Assembly resolution indicating that another process was needed to work on Enhanced Cooperation among the governments only. This produced a tension in the IGF on whether it was a place to work on Enhanced Cooperation solutions or was just a talking shop not allowed to discuss enhanced cooperation. This is a bind that is only passing now with the latest General Assembly (UNGA 2012) decision to have the UN Commission on Science Technology for Development (CSTD) review the issue of Enhanced Cooperation. There is a nascent awareness that one can work toward both enhanced cooperation among all stakeholders while also working on greater enhanced cooperation among governments. One form of enhanced cooperation does not obviate another form of enhanced cooperation. And together they would produce the Enhanced Cooperation that currently is still an aspiration among those engaged in Internet governance

Organizationally, the IGF is quite simple. There is a Multistakeholder Advisory Group (MAG), appointed by the United Nations Secretary General (UNSG) or his deputies. The MAG is basically composed half from the 5 UN geographical regions, and half from the non-governmental stakeholder groups. While half government and half non-government is not the best example of equal footing, it represents the current extent of UN comfort with equal footing, at least the non-governmental MAG members are equal as a group to the governmental MAG members. The MAG is responsible for advising the UNSG on the programme and other aspects of the IGF; though the extent to which it is able and/or empowered to do anything beyond the programme is open to question. The IGF has a tiny secretariat that varies between one and four individuals. As a United Nations unfunded mandate, it relies on charity to function and is kept on a very short leash by the UN, requiring a renewal of its mandate every 5 five years.

Despite these limitations, the IGF has become a very influential body. While not quite endowed with the power of a bully pulpit, its musings affect the organizations responsible for Internet management and governance.

Over the last few years, the IGF has been teetering on the verge of change.

On 19 July 2010, the Economic and Social Council (ECOSOC) adopted by consensus resolution 2010/2 on the "Assessment of the progress made in the implementation of and follow-up to the outcomes of the World Summit on the Information Society". By this resolution, ECOSOC "invites the Chair of the Commission on Science and Technology for Development (CSTD) to establish, in an open and inclusive manner, a working group which would seek, compile and review inputs from all Member States and all other stakeholders on improvements to the Internet Governance Forum (IGF), in line with the mandate set out in the Tunis Agenda, (...)" (CSTD 2011)

The group met and to its credit adopted many of the working techniques of the Multistakeholder model for its own process, a significant achievement for the UN CSTD. In its final recommendations (WGIGF 2011) they recommended some of the goals for a more active IGF, specifically:

Develop more tangible outputs

To focus discussions, the preparation process of each IGF should formulate a set of policy questions to be considered at the IGF, as part of the overall discussion. The results of the debates on these questions, with special focus on public policy perspectives and aimed at capacity building, should be stated in the outcome documentation.

The outcome documentation should include messages that map out converging and diverging opinions on given questions.

Nearly two years after the report, few if any of the changes have been implemented. The IGF in 2013 may be the first to test some of the proposed changes.

#### Ways Forward for the Multistakeholderism

Several recommendations emerge from the discussion in this chapter.

- The first and most important is that all stakeholders need to recognize the
  dynamic nature of respective roles of the stakeholders in Internet
  governance. Whether it is in the WGEC or in the IGF or a combination of
  arenas, the stakeholders in cooperation need to discuss the notion of
  respective roles in terms of capabilities, responsibilities and needs.
- There is a need to remove the contradiction created by Tunis Agenda's paragraph 35 "Roles and Responsibilities" that subordinates other stakeholders to government control. All stakeholders need to accept that Internet governance only works when it is a situation where equivalent stakeholders all contribute on an equal footing based on their capabilities.
- Outreach must become a greater focus in order to increase inclusion. The multistakeholder model relies on ever increasing participation by those with interests, capacities and needs.
- Continued progression from simple representative democracy to participatory democracy that includes not only the representatives of representative democracy, but also the stakeholder groups that represent the multiplicity of interests and affinities on the global population.
- Groups must cease being afraid of the multistakeholder model. Every group, at times, realizes that in a fully multistakeholder model, things will be different and the circumstances under which groups operate within the governance environment will need to change. For example:
  - Governments will need to learn to sit at the table with other stakeholders on an equal footing. Some have already begun to learn this. Others have yet to begin.
  - Businesses will need to learn to be more transparent. Businesses will need to do less of their persuasion by lobbying legislators and more of it by presenting arguments in multistakeholder fora.
  - Civil society will need to become more flexible and to compromise on some of its ideological purity. It also needs to give up the victim mantra and needs to realize that its power to affect change lies in maintain both an inside and outside strategy. Much is to be achieved by working inside the system with those who have power, whether it is financial power or political power, yet sometimes, civil society must be ready to go outside the system to make sure it is not ignored.
  - Technologists need to give up the comfort of believing that science and technology are free of financial and political aspects. The mythology that finances and politics are layers 8 and 9 in the protocol stack and are irrelevant and irritating, hold technologists back in their participation as stakeholders on an equal footing. Technologists need to learn to communicate and cooperate with

policy concerns. Technologists also need to learn to balance an inside strategy with an outside strategy.

- Policy wonks have to learn to understand and cope with technological realities.
- All need to figure out how to enhance the cooperation among all the stakeholder groups.
- More groups need to commit themselves to the process of multistakeholder cooperation.
- ... belief in the multistakeholder model is however not universally shared.
  In fact, the model is actively being challenged on a routine basis. In the
  last year, there have been more and more instances of restrictions on the
  free flow of information online, disputes between various standards
  bodies and even appeals from incumbent carriers in Europe for
  government intervention on the terms and conditions for exchanging
  Internet traffic. There have also been statements by international
  organizations and even some governments calling for more direct Internet
  regulation. (Alexander 2011 page 28)
- Capacity building that explains the value of the multistakeholder models is just beginning. There needs to be more research, more education and more writing on the many crucial issues within multistakeholderism.
  - The ITU could live up to the promises made at the WTPF, and on many previous occasions. From the Secretary General's closing of the May 2013 meeting of the WTPF (WTPF 2013):

The dialogue will continue in ITU council group and other fora such as IGF and CSTD, not limited to those three. It could be any other. Depending on which of the membership and all the stakeholders.

But I would like to say to you as for the framework is concerned in the ITU, the ITU council Working Group that will be discussing this, I will propose to that council group to be open to all stakeholders in the same format and I will bring that proposal to the ITU council.

### Further development within the stakeholder groups themselves

The multistakeholder model is at a crossroads. It is a new movement and it is under attack from all sides. It is under attack from some governments that have opposed it from its beginnings in the WGIG. It is under attack from those who feel it has not met its promise quickly enough. It is under attack from those who did not manage to get appointed to the various leadership groups in the multistakeholder organizations. It is even, sometimes, under attack by those who champion the method but get frustrated by the slow progress being made.

Each stakeholder group should also apply the multistakeholder model to the extent that their subgroups constitute separate stakeholder sub-groups within the stakeholder group. The multistakeholder model is fractal in that each of the stakeholder groups, and in turn each of its sub-groups, faces the same challenge of inclusivity and participation that is broad enough to be worthy of the group's diversity. This is subject to each group's subsidiarity, and its ability to identify the sub groups within the stakeholder group.

Until the stakeholder groups are identified and are allowed to develop themselves according to their own subdivisions and resulting unities, multistakeholderism cannot really occur. Or at least it will always be stunted.

The future is uncertain. Multistakeholderism has become a buzzword, with every organization claiming itself to be multistakeholder. Continued theoretical, research and political work is needed on developing the multistakeholder framework.

### Conclusion

I have apprehension for the future of the word "Multistakeholderism", everyone uses it and everyone defines it differently, especially those who use it as a cloak for practices that bear little or no resemblance to forms of participatory democracy. I have high expectations, however, for evolution in multistakeholder models that enhance participatory democracy.

In a presentation given by Bertrand de La Chapelle at Meissen in 2013 (de La Chapelle 2013) on the multistakeholder model in Internet governance, he concluded one part of his talk with the following:

#### A Bold Bet

The right for anyone to participate in an appropriate manner in the governance processes dealing with their issues of concern.

I believe that this is a worthy multistakeholder goal that we should all work towards, no matter which stakeholder group(s) we might participate in.

Getting back to definitions, however, the word 'appropriate' is one of those special words in diplomacy that can mean everything or nothing.

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