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WSIS, ICANN AND THE FUTURE OF THE INTERNET

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Abstract: For the last four years, the World Summit on the Information Society (WSIS) process has been the locus of a contentious argument over the control of the name and number directories of the Internet, which are currently under the indirect control of the United States Department of Commerce. This dispute has been a diversion from the more important work of "bridging the Digital Divide," and has resulted in acrimony that may undermine future efforts towards the same goal. This article surveys the origin of the controversy, its evolution over time, and the probable impact of the compromise on Internet governance announced on the eve of the concluding WSIS Summit in Tunis, Tunisia, on November 16, 2005.

Introduction: For almost four years, there has been an ongoing global process that is intended to achieve great and meritorious goals, and bears an appropriately imposing title: the World Summit on the Information Society (WSIS). Launched by the United Nations and administered by the International Telecommunication Union (ITU), its goal is to bring to the third world all of the first world educational benefits and economic opportunities that can be delivered via the Internet. Or, as the U.N. speaks of it, to "bridge the Digital Divide" between the haves and the have-nots.

Following a lengthy planning process, the first phase of WSIS concluded with a plenary meeting at the close of 2003, and a grand (if vague) program was announced. Two years later, on November 16 – 18, 2005, the closing plenary session of the second phase of WSIS convened, bringing more than 19,000 people from 174 countries to Tunis, Tunisia to conclude the initial process, and to decide how next to proceed.

The original goals of the second phase, however, were almost completely overshadowed in the global press by two related, but tangential issues. The first was the (at best) ironic choice of Tunisia as the host country for the meeting, given that it is one of 15 countries that block access to Internet sites that the government finds objectionable, and because that same government has a record of imprisoning bloggers and journalists whose articles it finds to be unacceptable.

The second issue was the question of "who should govern the Internet," which in this context came to mean whether the Internet Corporation for Assigned Names and Numbers, more familiarly known as "ICANN," should continue to be subject to the ultimate control of the United States Department of Commerce. In point of fact, ICANN already has an international advisory group and an Australian as its President and CEO, and all agree that the ICANN's technical stewardship (at least) of the registries that it administers has been very successful. But the theoretical potential for the U.S. to actively exercise control at some future point in time to the disadvantage of a sovereign country (e.g., "switching off" its access to the Internet by delisting its national identifier) angered some countries, and the mere fact of one country controlling a key element of an increasingly essential global resource was inconsistent and objectionable to many others..

As the dust settles on the Tunisian desert where a tent city arose to house those that would build a brave new equalitarian world of universal internet access, the question hangs in the air: what, if anything, has the WSIS process accomplished to date?

The Dream: The progress of WSIS has been far from rapid from its start. It was first proposed by the Government of Tunisia at a Plenipotentiary Conference of the ITU held in Minneapolis, Minnesota in 1988. In due course, the ITU proposed a two-phase approach to the U.N., which approved that process, as well as the lead role of the ITU in convening it, on December 21, 2001.¹

A series of Preparatory Conferences (PrepCons) and Regional Meetings were held in 2002 and 2003, culminating in the gathering in December of 2003 of representatives from 175 nations in Geneva, Switzerland, in a Summit hosted by the Swiss government. The official output of the first phase was a Declaration of Principles and a related Plan of Action.² The first document is subtitled, "Building the Information Society: a global challenge in the new Millennium," and incorporates 67 articles, arranged into three sections outlining a common vision, principles for achieving that vision, and a closing commitment to act. The first article states, in the elaborate style of United Nations documents:

We, the representatives of the peoples of the world, assembled in Geneva from 10-12 December 2003 for the first phase of the World Summit on the Information Society, declare our common desire and commitment to build a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on the purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights.

The other 17 articles comprising the vision section acknowledge various core principles of the United Nations, such as the sovereignty of member states, but also commit to assist the poor, the marginalized, and the neglected, as well as various identified groups, from women in underdeveloped countries to nomadic peoples.

The operative principles recognize pragmatic needs (e.g., creation of infrastructure to enable universal connectivity and offering appropriate content, and the need of local government participation), identify the specific societal benefits that such an infrastructure could facilitate (better governmental action and sustainable development), and highlight the ethical and related dimensions of the enterprise (fostering free speech and honoring local diversity). The articles conclude with the following statement:

We are firmly convinced that we are collectively entering a new era of enormous potential, that of the Information Society and expanded human communication. In this emerging society, information and knowledge can be produced, exchanged, shared and communicated through all the networks of the world. All individuals can soon, if we take the necessary actions, together build a new Information Society based on shared knowledge and founded on global solidarity and a better mutual understanding between peoples and nations. We trust that these measures will open the way to the future development of a true knowledge society.

Even a cursory reading of the full text conveys the enormity of the undertaking that would be necessary to achieve these lofty goals.

The Plan of Action in turn quantifies the challenge, calling in Article 6 upon those committed to the WSIS process to provide everyone in the world with access to television and radio programming by 2015, and to bring the benefits of information and communications technology (ICT) "within the reach" of at least half of the world's inhabitants by the same date, among other goals.

¹ See Resolution 56/183, "World Summit on the Information Society," United Nations, <<http://www.itu.int/wsis/documents/index1.html>>

² The full text of all "Key Documents of the Geneva Phase," deriving from the regional and preparatory meetings as well as from the Geneva Summit itself, may be found at the ITU/WSIS Website: <<http://www.itu.int/wsis/documents/index1.html>>

But while the aspirations expressed are grand and clear, the path to implementation is not. The balance of the Plan is more general than specific, calling for national governments to set their own goals, and using words such as "encourage," "explore," and "promote" rather than setting firm goals. Where specifics are given they are modest, as in article 8.d: "Each country is encouraged to establish at least one functioning Public/Private Partnership (PPP) or Multi-Sector Partnership (MSP), by 2005 as a showcase for future action," and no proposal for dedicated new funding is included.

The Plan of Action closes with an article that looks towards the Summit to be held at the end of the second phase of the WSIS process, stating vaguely:

[T]he second phase of the WSIS should consider, *inter alia*:

- a. Elaboration of final appropriate documents based on the outcome of the Geneva phase of the WSIS with a view to consolidating the process of building a global Information Society, and reducing the Digital Divide and transforming it into digital opportunities.
- b. Follow-up and implementation of the Geneva Plan of Action at national, regional and international levels, including the United Nations system, as part of an integrated and coordinated approach, calling upon the participation of all relevant stakeholders. This should take place, *inter alia*, through partnerships among stakeholders.

The reality: Given such grand goals conjoined with so general a plan of action, it would perhaps not be fair to have expected dramatic progress to be made towards achieving WSIS goals in two short years. But questions relating to Internet "governance" arose even before the Geneva Summit, and quickly assumed a level of visibility and contentiousness that came to overshadow all other activities.

In a sense, this was hardly surprising, given that the fact that WSIS was all about the Internet . As recognized in article 48 of the Declaration of Principles, the Internet had:

...evolved into a global facility available to the public and its governance should constitute a core issue of the Information Society agenda. The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations....

Too, since WSIS had been convened under the auspices of the U.N. and one of its agencies (the ITU), it could only be expected that U.N. principles would be applied to all issues at hand.

Still, the next article in the Declaration acknowledged (in a nod to ICANN and the several standards consortia that provide the technical protocols upon which the Internet and the Web depend) that, "The management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organizations."

Having given everyone a seat at the table, Article 49 then makes an important, if not completely realistic, attempt to tell everyone where to sit. It does this by defining the roles that the various stakeholders should be entitled to play, and seeks to define the boundaries of their authority:

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

Article 50 calls upon the Secretary-General of the United Nations to create a "working group on Internet governance...to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005."

Article 13 of the Plan of Action provides the charter of the Working Group on Internet Governance (which inevitably became known as WGIG), reading in part as follows:

- b. [The WGIG]... should, inter alia:
 - i. develop a working definition of Internet governance;
 - ii. identify the public policy issues that are relevant to Internet governance;
 - iii. develop a common understanding of the respective roles and responsibilities of governments, existing intergovernmental and international organisations and other forums as well as the private sector and civil society from both developing and developed countries;
 - iv. prepare a report on the results of this activity to be presented for consideration and appropriate action for the second phase of WSIS in Tunis in 2005.

Obviously, a precondition to making any progress at all on items ii – iv would in large part require first agreeing upon the definition of what "Internet governance" should mean. Those familiar with international relations might have guessed that achieving consensus on such a definition in less than two years might prove to be an aggressive goal in itself.

But one thing that almost everyone seemed to agree on immediately was that whatever else Internet governance may or may not involve, control of the "root zone" of the Internet was part of the package. Not too surprisingly, the root zone has been under the control of the United States since DARPA funded the development of the Internet decades ago. Since 1998, it has been under the immediate administration of ICANN.

ICANN and the root zone: From the technical perspective, the duties that ICANN supervises represent trivial chores, rather than valuable privileges. ICANN itself is a non-profit corporation that is incorporated in California, and receives no compensation for its trouble. Moreover, what it manages is neither grand, nor even large: in fact, it is but two databases, one of modest size, and the other of trivial proportions.

The smaller of the two databases comprises the so-called top-level domain names (or TLDs), which collectively form the "root zone file." This is the file that holds the country-unique extensions seen in Internet addresses (.uk, .uk, etc.), as well as the handful of generic extensions such as .com, .gov and .edu. The technical art of creating such extensions goes no farther than avoiding duplicates, and the policy discussions relating to the creation of new generic extensions, while they can be tedious, are hardly complex in concept or execution. The second and larger data repository contains the addresses that are unique to individual computers.

The actual day-to-day administration of these databases is not carried out by ICANN, however. Those duties are performed under ICANN's supervision by another organization, called the Internet Assigned Numbers Authority.³ As a result, the number and name directories are sometimes referred to as the "IANA Databases." ICANN's contract to supervise the IANA was most recently renewed (for three years) by the Department of Commerce on January 28, 2003.

IANA does not itself, in fact, directly administer the individual numerical addresses assigned to individual computers. Instead, it assigns batches of addresses to five "Regional Internet Registries," each of which is responsible for assigning names within its individual territory to ISPs (in smaller batches), which in turn eventually assign individual addresses to individual computers.

³The technical, as compared to geopolitical, orientation of the IANA is immediately apparent from the look and feel of the its website: <<http://www.iana.org/>>.

The dramatic contrast between the attenuated role of ICANN over these simple name and number files and the level of controversy over its powers has been aptly summarized by one commentator as follows:

Conventional wisdom has it that these files could easily be managed by one person. IANA was, in fact, for many years, managed by one person. The key question, as wiser folk than us have pointed out before, is: "Who tells that guy what to do?"⁴

The answer to that question today is ICANN – unless the Department of Commerce decides to veto an ICANN decision and tell IANA what to do instead. And therein lies the rub.

The (perceived) sins of ICANN: If the root zone was all that was at stake, however, the situation might be less contentious. Instead, there is concern that ICANN might venture out in other directions, and that even within its narrow purview, that it (or the Department of Commerce) could discriminate among countries and regions. Technical issues can also have political overtones, particularly as respects setting priorities for the resolution of issues. For example, current names don't yet resolve well in Korean, and there has been controversy over whether ICANN has been too casual in forming consensus (e.g., concluding that if Japan is in favor of a decision, then all Asia has been satisfied).

There is other baggage as well, some of which ICANN is responsible for, and some of which it inherited. For example, in the days before address needs began to proliferate wildly (and before ICANN became responsible for the IANA Databases), IBM was assigned 33 *million* addresses, Stanford was awarded 17 million, and the entire Peoples Republic of China was magnanimously awarded just 9 million. The situation was later rectified on ICANN's watch, but the original decision continues to rankle.

And although it has always been conceded that the various U.S. stewards of the IANA Databases have capably managed the technical process with little interference by the U.S. Government⁵, the governing structures of ICANN have been roundly criticized for some time. This resulted in the decision on November 15, 2001 to form what was initially called the Committee on Restructuring, and later as the Committee on ICANN Evolution and Reform.⁶ The work of the Committee was strongly influenced during its deliberations by a report presented by ICANN's then President, Stuart Lynn, called "ICANN – The Case for Reform."

This Committee in due course delivered two documents, titled "Recommendations for the Evolution and Reform of ICANN," and "ICANN: A Blueprint for Reform."⁸ The Committee's reports are notable in a number of ways, one of which is that the issues that it struggled with in 2002 remain topics of contention today. As noted in the Blueprint:

The essence of the debate over ICANN's Mission lies in the nexus between ICANN's technical coordination role, its operational role, and its policy role. There are some who see ICANN as merely an agent to carry out technical, operational instructions. The ERC does not support this view because it leaves unanswered the question of responsibility for the policy-development work necessary to provide answers to precisely what instructions should be followed, that is, answering the question: "if not ICANN, then

⁴ Murphy, Kevin. "Who really runs the Internet?" Computer Business Review Online, October 14, 2005: <http://www.cbronline.com/blog.asp?show=cbr/2005/10/who_really_runs.html>.

⁵ There have been rare technical lapses, as when Libya's domain went inactive for a week, as well as at least one allegation of political pressure, as when Assistant Secretary of Commerce Michael Gallagher wrote a letter to ICANN "reminding it of its responsibilities to follow its own procedures" in deciding whether to approve a .xxx extension for pornography sites.

⁶ The Committee's Webpage includes background on the Committee, as well as links to an extensive library of proposals, reports and other materials. It may be found at: <<http://www.icann.org/committees/evol-reform/>>

⁷ The report may be found at: <<http://www.icann.org/general/lynn-reform-proposal-24feb02.htm>>.

⁸ The Recommendations were issued on May 31, 2002 and the Blueprint on June 20, 2002. They may be found at: <<http://www.icann.org/committees/evol-reform/recommendations-31may02.htm>> and <<http://www.icann.org/committees/evol-reform/blueprint-20jun02.htm>>, respectively.

who?." We have not found any credible answers to that question offered by those who favor a purely technical operational ICANN, other than transferring such responsibilities to some international treaty organization, a direction that is viewed with disfavor throughout most of the community (as judged by the comments we received), or to a constellation of organizations that would again beg the question of who will coordinate these organizations....

In the view of the ERC, there is not any more a legitimate debate over whether ICANN has a role in policy development and implementation. It does. We also believe that role should be limited to those policy areas that are reasonably related to ICANN's technical mission.⁹

ICANN has also been the subject of close external examination. For example, the Markle Foundation commissioned a report titled "Enhancing Legitimacy in the Internet Corporation for Assigned Names and Numbers" to coincide with the work of the ICANN reform committee. The report is critical of the ICANN Blueprint, and offers a variety of "guidelines, codes, approaches and practices which may be effective and appropriate for the governance structure of ICANN."¹⁰

Another example of the charges levied against ICANN can be found in an analysis prepared under the imprint of the Georgia Institute of Technology's Internet & Public Policy Project in preparation for the Tunis summit.¹¹ The analysis acknowledges that ICANN has incorporated a number of policies that are intended to ensure regular review of its structure, in order to keep step with technical and societal evolution. But it also concludes that ICANN must be viewed, and governed, as a regulatory body. It cites many areas of deficiency from this perspective, with the following lapses in "Internal Processes" being representative:

...ICANN's bylaws have been fluid and unpredictable. They have been frequently amended (approximately 20 times,) with the substance of the changes reflecting the distribution of power among various stakeholders. Presumably, the changes were made in consultation with political authorities, but such high-level political processes were closed to public scrutiny.

The rule of law does not prevail in ICANN's internal processes. In 2002 industry representatives to ICANN's board eliminated user representation on the board altogether. An expert on democratic process from the US-based Carter Center characterized this action as a "coup," i.e. a lawless seizure of power.¹²

The same author found evidence that ICANN had experienced multiple episodes of "regulatory capture" by interest groups, usually to the benefit of Corporate America. He cites the following "main episodes:"

- **Capture of International Forum on the White Paper (IFWP) (1998):** The process by which the Internet community was to design ICANN was captured by powerful industry and technical stakeholders. They boycotted public meetings and successfully proposed their own secretly-written bylaws for ICANN.
- **Capture of ICANN Board (2002):** The same industry and technical interests eliminated user representation on the board. (This remains the case today.)

⁹ Blueprint, pp. 2 and 3.

¹⁰ The report was prepared for the Markle Foundation by the Centre for Global Studies and the University of Victoria, British Columbia, Canada, and issued on September 18, 2005. It may be found at <http://www.markle.org/downloadable_assets/icann_enhancelegitimacy.pdf>.

¹¹ Klein, Hans, "ICANN Reform: Establishing the Rule of Law," Internet & Public Policy Project, Georgia Institute of Technology. See: <www.ip3.gatech.edu/images/ICANN-Reform_Establishing-the-Rule-of-Law.pdf>. The Project website has many other useful papers and materials about WSIS. See: <<http://www.ip3.gatech.edu/>>

¹² Klein, at p. 4.

- **Capture of the Internet Society (2002):** In 2002 ISOC revised its bylaws to ensure that the society would be governed by its largest corporate members. This has led to two derivative acts of capture:
 - **Capture of .ORG registry.** This registry is now managed by ISOC.
 - **Capture of ICANN's At Large Advisory Committee (ALAC).** Nearly 60% of certified user-related organizations in ICANN are chapters of ISOC.
- **Capture of .COM by Network Solutions.** This US corporation has extended its very profitable control of the most popular domain name.¹³

A detailed review of the various proposals that have been made over the years for the reform of ICANN and/or the transfer of its power to a multinational entity is beyond the scope of this article, and in any event is irrelevant to the point being made. The fact is that three and a half years after the issuance of the Recommendations and the Blueprint, ICANN has not succeeded in making sufficient changes to satisfy many in the world community, despite the incorporation of a number of significant changes.

Political forces: It may therefore hardly be surprising that most of the rest of the world found it clearly inequitable that a single country should control, in any way, a resource as essential as the Internet, however competent the ongoing technical management of the IANA Directories may have been. ICANN's control of the root zone, in particular, became increasingly problematic in the eyes of some as the standoff between the U.S. and the U.N. over Iraq deepened.

At the same time, it had not escaped the notice of conservatives in the U.S. that some of the strongest advocates for transferring control of the IANA Directories to international control included traditional U.S. *bête noires* Cuba, Iran and China, nor that WSIS was operating under the auspices of the United Nations – a body already reviled by many conservatives for (among other things) the level of bureaucracy that had grown up within it over the decades. Why, in their view, would the U.S. ever wish to relinquish something so important to the control of an organization that they already regarded to be terminally inefficient and ineffective?

While the Iraq war may have inflamed feelings on the part of the rest of the world, the "oil for food" scandal unfolding within the U.N. provided ample fodder to support the arguments of those in the U.S. that the control of the Internet was better left where it was. Further fuel for American fires came from the fact that some of the strongest advocates for international control also included nations with poor human rights and free speech records, such as Tunisia.

Nor were all political suspicions drawn along national boundaries. The fact that the ITU (itself an agency of the U.N.) had both proposed, and assumed the primary role in WSIS raised suspicions that it regarded itself as the proper steward of the Internet. After all, it already was the primary global arbiter of telecommunications regulation, with participation at the national level, in most cases by governmental entities. The IANA Directories had in fact ended up with ICANN more by default than design, and many thought that the ITU was still regretting its lack of interest in bidding on the business when it was arguably up for grabs.

The question of who would administer the IANA Directories was also timely, given that a Memorandum of Understanding between the Department of Commerce and ICANN looked towards a transfer of control of ICANN from the DoC to the international community by September of 2006. As recently as mid-June of 2005, ICANN CEO Paul Twomey had stated publicly that ICANN was on track and meeting all milestones to permit that transition to occur on schedule. It therefore came as a shock when at the end of June, 2005, Michael Gallagher, the Assistant Secretary of the National Telecommunications and Information Administration (the division of the Department of Commerce that directly supervises ICANN), announced during a speech on telecommunications topics that the U.S. was withdrawing its commitment to cede

¹³ Klein, at p. 5. It is worth noting in passing that this is the analysis of an American author. Critics abroad have often been less complimentary.

control of ICANN, citing business and national security concerns. In making the announcement, Gallagher stated in part:

Given the Internet's importance to the world's economy, it is essential that the underlying DNS of the Internet remain stable and secure. As such, the United States is committed to taking no action that would have the potential to adversely impact the effective and efficient operation of the DNS, and will therefore maintain its historic role in authorizing changes or modifications to the authoritative root zone file.¹⁴

It did not help that the chief U.S. negotiator at WSIS appeared to be cut from the same confrontational cloth as John Bolton, the controversial American Ambassador to the U.N. whose approval had been temporarily blocked in Congress not long before.¹⁵ That individual was David Gross, the U.S. coordinator for international communications and information policy at the State Department, who was wont to make statements such as this:

We will not agree to the U.N. taking over the management of the Internet. Some countries want that. We think that's unacceptable. We've been very, very clear throughout the process that there are certain things we can agree to and certain things we can't agree to. It's not a negotiating issue. This is a matter of national policy.¹⁶

The stage was therefore well-set for escalating emotions in the run up to the Tunis summit.

Technical concerns: At the same time, there was genuine concern on the part of the technical community that political forces would intrude into their domain, causing who knew what mischief to be wrought within the unprecedented global network that had grown up around a handful of protocols and standards. Would domain names need to be localized to assuage concerns over national languages? Could the Internet still operate at all if such changes were demanded? Would it become Balkanized as demands for political correctness trumped technical imperatives? And did anyone truly want the technical operations of the Internet to be subject to the famously glacial progress of treaty organizations?

The Result: Following the unexpected desertion by the EU from the American camp at PrepCon 3 only a few weeks prior to the Tunis Summit, it might have seemed as if the United States was in an impossibly isolated position, but for one fact: it still had actual control of the IANA Directories, and there was no effective way for other countries to alter that fact without doing more harm than good.

Until the eve of the Tunis conference, neither side was publicly blinking, despite the fact that a conversation on the topic was held not long before between President Bush and European Commission President Jose Manuel Barroso. For his part, Ambassador Gross stated the American position upon his arrival in Tunis as follows: "We would be sorely disappointed not to have a document at all, but that would be better than to have a bad document."¹⁷

The result was an urgent need for some sort of compromise, and ideally one that was as face-saving as possible for both sides. Such a compromise was reached in a private meeting on Sunday, November 13, 2005, and announced prior to the convening of the formal part of the Summit on November 16.

¹⁴ Morgenstern, David, "Feds Won't Let Go of Internet DNS," eWeek.com (July 1, 2005) <http://www.eweek.com/print_article2/0,1217,a=155242,00.asp>

¹⁵ President Bush confirmed Bolton's appointment as Ambassador to the U.N. without the blessing of Congress on August 1, 2005, utilizing a rule that permits Presidential appointments during recesses of Congress.

¹⁶ Interview in the Washington Post, as reproduced at RedHerring.com (September 30, 2005) <<http://www.redherring.com/Article.aspx?a=13808§or=Capital&subsector=EconomyAndPolicy?>>

¹⁷ Shannon, Victoria, "Tug of War Over Net Takes Center Stage," International Herald Tribune (November 14, 2005), at: <<http://www.ihf.com/articles/2005/11/13/business/net.php>>.

The substance of the agreement reached was one that both sides claimed validated its position. But it was clear that the United States had given up little, while its opponents had settled for the formation of a new forum which would explicitly have no powers over Internet governance.¹⁸

For all the *sturm und drang* of the preceding four years, the formal documents approved at the Tunis Summit were very muted on the topic of Internet governance. The Tunis Commitment¹⁹ that was approved has only this to say on the subject, in article 7:

We reaffirm the commitments made in Geneva and build on them in Tunis by focusing on financial mechanisms for bridging the digital divide, on Internet governance and related issues, as well as on follow-up and implementation of the Geneva and Tunis decisions, as referenced in the Tunis Agenda for the Information Society. The second document²⁰ deals with the topic in much greater detail, in articles 29 through 82. But many of these articles merely “reaffirm,” “acknowledge,” and “recognize” bland goals and verities, and/or restate articles without change from the Plan of Action adopted at Geneva two years before. The balance of the articles, however, cover a wide range of topics, such as the need for regional directories, initiatives to foster connectivity and e-commerce, and abuses demanding joint action, such as Spam, cybercrime, and terrorism.

The Agenda does include a set of statements touching on the IANA Directories and ICANN, albeit tangentially. Beginning with article 57, a series of principals are laid down, including the following:

57. The security and stability of the Internet must be maintained.
58. We recognize that Internet Governance includes more than Internet naming and addressing. It also includes other significant public policy issues such as, *inter alia*, critical Internet resources, the security and safety of the Internet, and developmental aspects and issues pertaining to the use of the Internet.
59. We recognize that Internet Governance includes social, economic and technical issues including affordability, reliability and quality of service.
60. We further recognize that there are many cross-cutting international public policy issues that require attention and are not adequately addressed by the current mechanisms.

The Agenda then responds to the calls for a multilateral venue for Internet policy debate:

72. We ask the UN Secretary-General, in an open and inclusive process, to convene, by the second quarter of 2006, a meeting of the new forum for multi-stakeholder policy dialogue—called the *Internet Governance Forum* (IGF). The mandate of the Forum is to:
 - a. Discuss public policy issues related to key elements of Internet Governance in order to foster the sustainability, robustness, security, stability and development of the Internet;
 - b. 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;
 - c. Interface with appropriate inter-governmental organizations and other institutions on matters under their purview;
 - d. Facilitate the exchange of information and best practices, and in this regard make full use of the expertise of the academic, scientific and technical communities;
 - e. Advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the Internet in the developing world;

¹⁸ For examples of the various slants offered, see Updegrove, Andrew, "Spin Sets in on Internet Governance Compromise," the Standards Blog, November 18, 2005, ConsortiumInfo.org, at: < <http://www.consortiuminfo.org/newsblog/blog.php?ID=1751>>.

¹⁹ See: Tunis Commitment, November 18, 2005, at: < <http://www.itu.int/wsis/docs2/tunis/off/7.html>>

²⁰ Tunis Agenda for the Information Society, November 15, 2005, at: < <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>>

- f. Strengthen and enhance the engagement of stakeholders in existing and/or future Internet Governance mechanisms, particularly those from developing countries;
- g. Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations;
- h. Contribute to capacity-building for Internet Governance in developing countries, drawing fully on local sources of knowledge and expertise;
- i. Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet Governance processes;
- j. Discuss, *inter alia*, issues relating to critical Internet resources;
- k. Help to find solutions to the issues arising from the use and misuse of the Internet, of particular concern to everyday users;
- l. Publish its proceedings.

Equally significant is what would be specifically excluded from the IGF's mandate:

- 77. The IGF would have no oversight function and would not replace existing arrangements, mechanisms, institutions or organizations, but would involve them and take advantage of their expertise. It would be constituted as a neutral, non-duplicative and non-binding process. It would have no involvement in day-to-day or technical operations of the Internet.
- 79. Diverse matters relating to Internet Governance would continue to be addressed in other relevant fora.

In short, a forum would be created where anyone could meet and discuss matters of policy, but the IGF would not have the power to tell anyone what to do.

And what of the central issue that had created so much controversy, and that had been styled as the question of "Who should govern the Internet?" The sole statement that bears directly on that question is found in a single article of the Agenda document, and reads in its entirety as follows:

- 63. Countries should not be involved in decisions regarding another country's country-code Top-Level Domain (ccTLD). Their legitimate interests, as expressed and defined by each country, in diverse ways, regarding decisions affecting their ccTLDs, need to be respected, upheld and addressed via a flexible and improved framework and mechanisms.

Pretty thin gruel after so much contention and posturing, especially since the United States had never disputed this principle to begin with, and no specific actions are mandated by the article.

While the EU tried to claim credit for brokering a compromise, and the U.S. tried to suggest that valuable progress had been made (while at the same time ensuring that no one could think that it had yielded an inch), there was little doubt that the peoples of the world, assembled in Tunis, had effectively been told to bugger off by the world's sole remaining superpower, and had found that they had little choice but to acquiesce.

For his part, UN Secretary Koffi Annan put the best face possible on the situation: "Let me be absolutely clear: the United Nations does not want to take over, police or otherwise control the Internet. Day-to-day running of the Internet must be left to technical institutions, not least to shield it from the heat of day to day politics."²¹

Conclusions: Was this a "good" outcome? Putting all political tactics and repercussions to one side, one could perhaps make a persuasive case that it was. In point of fact, the significance of the IANA Directories has always more symbolic than real, and more technically important than meaningful as a

²¹ Moore, Matt, "World Conference: Grumbling Continues Over Internet Control," Associated Press (November 17, 2005) at: <
<http://www.governmententerprise.com/showArticle.jhtml?articleId=174300723>>

vehicle for advancing social policy. At the same time, for lack of another appropriate forum for discussion of Internet policy and due to the ongoing debate over its role, ICANN had the potential to venture into other areas where its structure, authority and mandate might be problematic in practice, and certainly controversial.

By creating a new forum within which the many issues of true social significance could be addressed, ICANN's potential for adventuring would be reduced, and its role more conclusively established as being limited to the name and number directories – and no more.

Too, ICANN already has a parlous history and a much-criticized structure. The IGF will have a clean slate upon which to write, will be free to create whatever governance structure it wishes (within appropriate bounds), and may lead to a successor organization with real authority to cover real and serious issues that can only be addressed multilaterally, such as cybercrime.

Ten years from now, perhaps, the entire controversy over “who should control the IANA Directories may seem to have been just a strange obsession that led to a great deal of wasted time during the four years of the WSIS process.

Or, at least, so we can hope.

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