

# A PEOPLE'S INTERNET: DEMOCRATISING INTERNET GOVERNANCE

DIXIE HAWTIN

GLOBAL PARTNERS DIGITAL

The question of Internet governance is coming to a head. Over the last decade debates about how the Internet is governed have become increasingly heated and are now expected to play out in a range of international fora taking place over the next two years.

Two main, overlapping groups lead the calls for change. On the one hand, a number of authoritarian governments – reacting to growing evidence that the Internet is a remarkably effective tool for citizen mobilisation – are calling for new mechanisms for greater governmental control. On the other hand, there is a range of governments, as well as other stakeholders, who are dissatisfied with a regime where it is not clear where and how international Internet policy is made, where businesses can often act without restrictions and where more powerful countries set rules that are forced on everyone else. The perceived

lack of fora for addressing a whole array of issues – ranging from cybersecurity to Internet access and surveillance, which has become a driving concern since the Snowden revelations – means that some governments wish to return to a traditional multilateral governance framework.

Against these calls for change, the United States and some of its allies have been vigorously defending the status quo: an Internet with no centralised governmental oversight.<sup>1</sup> They argue that the current regime, lacking centralised governmental oversight, has contributed to the rapid spread of the Internet across the world and the strong Internet culture of freedom of expression and innovation. This is to some extent true, but the US has also benefitted disproportionately from the rapid spread of the Internet. As early adopters, most of the 'Internet winners' are US based and owned, so they pay their taxes there. And they are subject to US laws, which mean that the US government is able to exercise additional control over them, as became apparent with Edward Snowden's revelations of the arbitrary mass-surveillance conducted by the National Security Agency (NSA).<sup>2</sup> In light of these revelations, the status quo position has become untenable, and change seems inevitable.

What change will look like is far from clear, with few signs of willingness to compromise

on either side of the debate. This presents an enormous opportunity for civil society to step into the gap and make positive recommendations on the way forward – a role it played very effectively during the World Summit on the Information Society (WSIS) in 2003 and 2005.<sup>3</sup> Since then, however, civil society has been caught up in an important, but staid and resource-draining, debate about whether an ideal Internet governance regime is multilateral or multi-stakeholder.<sup>4</sup> Thankfully, in the last year and a half, there has been growing consensus among newer civil society voices on the need for a 'third way' – a more inclusive and effective regime than we have at present, but one that does not resort to centralisation and government control, with all the risks that would entail.

## A SHORT HISTORY OF INTERNET GOVERNANCE

As the Internet developed, specialised bodies emerged organically to manage and maintain its technical resources, such as domain names, engineering protocols and root servers. These bodies, such as the Internet Engineering Task Force, the World Wide Web Consortium and the Internet Corporation for Assigned Names and Numbers (ICANN) were non-profit, membership bodies where network engineers, companies and other interested parties came together voluntarily to develop technical solutions to problems. Decisions were made by rough consensus

and solutions were voluntary. To a large extent this remains the case, and there is substantial agreement that this dimension of Internet governance works well and is not in need of major reform.

However, the governing of public policy issues, such as harmful speech, cybercrime and taxation, has been, and continues to be, much more controversial. At WSIS, which took place in Geneva in 2003 and Tunis in 2005, governments, businesses, civil society and academics from across the world gathered for the first time to discuss these issues, among others. One of the most critical debates was whether a pre-existing, or even new, intergovernmental body should be given oversight of international Internet

policy. Governments such as Iran, Russia and Saudi Arabia argued that this was necessary. But other governments and the main civil society coalition at the time argued that the dispersed and multi-stakeholder model of governance that has proved so effective in governing the technical aspects of the Internet should be applied to the policy

challenges. They argued that traditional governance models did not suit the Internet's nature as a global and fast-changing network of information that is to a large extent in the hands of the private sector. In the end, multi-stakeholder approaches were hard-baked into the oft-quoted definition of Internet governance that was eventually agreed upon:

“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 of the Internet.”<sup>5</sup>

But while WSIS provided institutional support to a multi-stakeholder model of governance, it gave very little direction as

to the system, or combination of systems, needed to make Internet governance effective and sustainable. The WSIS process did however call for two mechanisms. The first was the establishment of an Internet Governance Forum (IGF), a global multi-stakeholder forum for dialogue on Internet policy matters. Secondly, the UN Secretary-General

was tasked with starting a process towards ‘enhanced cooperation’.

By most accounts this was a deliberately oblique demand that allowed some to believe it called for new governmental processes for Internet policy and others to believe it called for a process of continually improving the way that actors from all stakeholder groups work together to govern the online space, including at the IGF.

## IMPERFECT IMPLEMENTATION

The IGF has now met eight times (in Athens, Rio de Janeiro, Hyderabad, Sharm el-Sheikh, Vilnius, Nairobi, Baku and Bali) and has been further developed through national and regional IGFs in many parts of the world.<sup>6</sup> It has an open and inclusive process: anyone can attend; different stakeholders participate in workshops and plenaries as equals; live captioning and remote participation facilities ensure that those who aren't able to attend physically can follow and contribute to the discussions; and, importantly, even the agenda-setting process is collaborative and bottom-up. This open format has been conducive to the airing of those issues of most concern to civil society. In just eight years, for example, human rights online have gone from being largely absent from the agenda to one of the most dominant issues under discussion. The IGF has proved effective at bringing together diverse actors to focus

***“Attempts to make the IGF more effective and outcome-orientated have been continually hampered by a lack of political agreement or will.”***

attention on a wide range of issues on the Internet policy agenda and proved valuable for convening actors on different sides of a debate together for constructive public discussion. In Bali 2013, for example, there were numerous open and public discussions about surveillance where the US and other governments, business people and activists would sit around a table and debate the issue and the way forward.

However, the IGF is not a decision-making body, and dialogue at the forum is not structured, captured or communicated in a way that promotes accountability or facilitates the integration of the outcomes of the Forum in Internet policy-making processes. So, while it is possible that discussion at the IGF has some impact on the decisions participants make in other spaces – in national governments, in other international decision-making spaces, in the policy departments of major Internet businesses – there is no guarantee that this is the case. Attempts to make the IGF more effective and outcome-orientated have been continually hampered by a lack of political agreement or will.

While the existence of the IGF is held up by those defending the status quo as evidence for the existence of effective multi-stakeholder governance of the Internet, this is far from the case. The lack of clear influence of the IGF means that it is frequently side-lined. Indeed

in 2013, it was very nearly cancelled because of a lack of funding and was only saved at the eleventh hour, including through soliciting donations from civil society. But that's not to say that governance and policy decisions aren't being made. A growing matrix of institutions, particularly at the national level, has begun to deal with Internet issues, as the online and offline world become inseparable. This raises concerns about the consistency and effectiveness of the approaches adopted in different institutions and across different national legislations, as the Internet can best be understood as an ecosystem where changes in one jurisdiction can have consequences across the entire global space. It also raises concerns about the costs of understanding, following and engaging in policy developed across so many spaces, particularly given that no one has yet developed a comprehensive picture of what discussions are being had where.

Furthermore, none of these processes live up to the goals of multi-stakeholder and transparent governance. While some have taken steps to enable non-governmental participation, civil society is almost always marginalised. At the International Telecommunications Union (ITU), for example, businesses are able to gain sectoral membership, but the price is set at a level that is prohibitive to civil society groups, and as a result civil society is not able to access most of the documents under discussion, as they are not made

public. At the Organisation for Economic Cooperation and Development (OECD), a civil society advisory committee was created, but ultimately found its objections to the OECD's Internet Policy-Making Principles ignored. Even at ICANN, which has complex rules of procedure designed to enable all stakeholders to feed in to the policy-making process, civil society is very much a minority player.

At the same time, some of the most vocal government supporters of multi-stakeholder governance have also developed new ad hoc policy processes, outside existing forums, where they set the rules of engagement, including who gets to engage and on what basis. The Trans-Pacific Partnership (TPP), a secretive trade agreement being negotiated by 12 governments including the United States, is thought to call for significant changes to how copyright is protected online, but the only civil society engagement in this process has been from outside the room and in response to leaks. Another example is the London Process, a series of meetings initiated by the United Kingdom with the aim of developing international norms on cybersecurity. Again the process is by invitation only and largely restricted to governments and businesses.

## A TURNING POINT?

Widespread dissatisfaction in the Internet governance regime never really went

away, and in December 2012 it hit the headlines again, at the World Conference on International Telecommunications, when a number of countries fought hard for the ITU to be given more power over Internet issues. The media was full of stories about the UN trying to ‘take over the Internet’ and the start of a ‘digital cold war’.<sup>7</sup> In any event, the attempts were unsuccessful, but it became clear that a divide had developed between governments that wanted to maintain the status quo and those that wanted significant change. Something had to give. These intensely political frustrations are revealing themselves in a range of processes that have been recently instituted and that might result in significant change:

- **NETmundial:** in April 2014 the Brazilian government hosted a multi-stakeholder meeting on the future of Internet governance. The meeting was announced as a direct response to the Snowden revelations, with the aim of developing principles for Internet governance and a roadmap for evolving the Internet governance regime.
- **The WSIS+10 review:** an ongoing process instituted by the UN, which aims to revisit the original WSIS outcomes, assess to what extent they have been implemented and make plans for the future.
- **Working Group on Enhanced Cooperation:** a working group at the UN Commission on Science and Technology for Development,

which is tasked with revisiting the WSIS call for a process towards “enhanced cooperation” to determine to what extent, if any, it has been implemented and make recommendations for moving forward on this agenda.

## WHERE IS CIVIL SOCIETY?

Over ten years a relatively small group of civil society actors has followed debates about the Internet governance regime, and this group remains largely unchanged since the original WSIS process. In that time civil society has proved very effective at reacting to threats, for example, by advocating against a greater Internet policy-making role for the ITU or the (now failed) Anti-Counterfeiting Trade Agreement, a precursor to the TPP referred to above. Civil society has also succeeded in raising the profile of Internet issues on the agenda at the UN Human Rights Council, which has begun to pass an increasing number of resolutions on this topic, including a major resolution in 2012 stating that human rights online were the same as human rights offline,<sup>8</sup> and which has also begun to incorporate Internet issues into the Universal Periodic Review process.

But in the overarching debate about the future shape of Internet governance, civil society has been hindered because of infighting. Fierce rivalry has grown between factions

with different visions of the ideal Internet governance regime. On one side, a small group of cyber-libertarians argue that governments have no legitimate role in governing any part of the Internet and should keep their hands off. On the other side, a group calls for a new multilateral forum for Internet-related policy and argues that anything else would be inherently anti-democratic. Over the years, this debate has become increasingly heated and unconstructive, driven by concerns about ideological purity and egos, rather than with ways of working together to achieve common goals. For many years this has undermined the effectiveness of civil society and used up limited resources, and this continues to be a problem.

Thankfully, in the last couple of years a small group of newcomers has become active in the field and is beginning to find a way past the impasse. An emerging consensus is being formed, somewhere between the two extremes. While recognising that governments have a critical role to play – for example, in the protection of human rights – this group seeks to avoid empowering governments at the expense of other stakeholders. Many governments are already promoting laws and practices at the national and international levels that undermine human rights. There is therefore a danger that enabling national governments to control the Internet more effectively at the global level would help them to pursue a restrictive agenda glob-

ally. This new group, however, believes that involving a wider range of actors will result in better decisions being made and more success in policies being implemented. It is also often argued that even multilateral processes are already effectively multi-stakeholder, but the influence of the private sector and others is secret and unofficial; as such, the goal of pushing for multi-stakeholder participation is to bring those relationships out into the open and to ensure that civil society also has a place at the table.

This emerging consensus is also characterised by an attempt to avoid a single body being granted responsibility for all Internet-related policy issues. It is argued that such a role would be unfeasible, given the wide variety of governance institutions and bodies that have some mandate over the Internet as it becomes increasingly interlinked with a huge variety of issues; and partly because of fears that a single body would give rise to unchecked and concentrated political power.

Instead, these activists argue that governance should remain distributed among a variety of actors both nationally and internationally, providing much-needed checks and balances. But they believe that changes should be made to ensure that the distributed governance regime is more coordinated, understandable and transparent, and that no single actor is able to exercise undue power.

### NEXT STEPS

Multi-stakeholder governance is a young and still-developing system, and there are still many issues that need to be explored and addressed, including the questions of

what are the limits of multi-stakeholder participation, and when is it appropriate for governments to have authority over processes or issues? Further, how should the modalities of participation recognise the different political realities that justify the engagement of different stakeholder groups? What forms of accountability are applicable to different

stakeholders? Much work remains to be done, but many now argue that the starting point for negotiation should be support for multi-stakeholder processes, as this will give civil society the best position to call for open, inclusive and transparent processes. The newer advocates are also characterised by their focus on developing practical demands for making incremental improvements to the current regime, such as:

- **A new coordinating mechanism:** to improve the coherence and effectiveness of existing Internet-related policy-making mechanisms within a distributed model and facilitate a better understanding of how and where policies are made. The mechanism should include all stakeholders; construct and maintain a comprehensive and accessible map of the distributed discussions and venues; and recommend appropriate bodies to develop further policy as needed.
- **Open up all processes to civil society engagement:** beyond the IGF, all processes should be opened up to civil society engagement, with the model of participation depending on the issue and level of discussion. This also requires resources to enable civil society to participate effectively.
- **Ad hoc multi-stakeholder working groups:** where Internet-related issues are not covered, or not covered adequately, by an existing mechanism, new ad hoc processes

*“The next two years represent a narrow, fraught, window of opportunity for civil society to influence vital decisions about how the internet is governed.”*

should be developed within the framework of existing institutions. These working groups should be developed on a case-by-case basis, bringing together relevant actors from across stakeholder groups.

- **Strengthening the IGF:** the IGF is a hugely important platform, where ongoing policy processes and their outcomes are presented and can receive feedback from a wider audience. Its ability to perform this role should be facilitated through, among other measures, strengthening the IGF Secretariat, securing sustainable funding streams and increasing the links between dialogue at the IGF and policy-making in other spaces.

## THE WAY FORWARD

It is encouraging to see new faces and ideas for Internet governance among civil society, and this has come not a moment too soon. The next two years represent a narrow, fraught window of opportunity for civil society to influence vital decisions about how the Internet is governed. Civil society is caught between governments who would quite happily see civil society relegated to the sidelines and other governments that see little or nothing wrong with the regime as it currently functions. To ensure that change happens and that it supports the further development of the Internet in ways that are in the best public interest, it is essential to strengthen the informed and active layer

of civil society as fast as possible. For this to happen a much broader range of civil society actors need to be involved, including human rights and justice groups, those campaigning for the rights of women and groups that stand for minority rights and a better environment. The Internet serves us all, and we are all stakeholders in its future.

<sup>1</sup> Internet governance: mapping the battleground, Global Partners and Associates, 2013, available at: [http://www.gp-digital.org/wp-content/uploads/pubs/Internet-Governance-Mapping-the-Battleground.final\\_1.pdf](http://www.gp-digital.org/wp-content/uploads/pubs/Internet-Governance-Mapping-the-Battleground.final_1.pdf)

<sup>2</sup> For more information about Edward Snowden's revelations, please see: <http://www.theguardian.com/world/edward-snowden>.

<sup>3</sup> For more information on the World Summit on the Information Society, please see: <https://www.itu.int/wsis/index.html>.

<sup>4</sup> H Stuart, Internet copyright policy: Multistakeholder or Multilateral? Workshop # 166 Report, Internet Governance Forum 2013, available at: [http://www.intgovforum.org/cms/wks2013/report\\_view.php?xpsltipq\\_je=22](http://www.intgovforum.org/cms/wks2013/report_view.php?xpsltipq_je=22).

<sup>5</sup> Report of the Working Group on Internet Governance, June 2005, available at: <http://www.wgig.org/docs/WGIGREPORT.pdf>.

<sup>6</sup> For more information about the Internet Governance Forum, please see: <http://www.intgovforum.org/cms/>.

<sup>7</sup> L Downes, Why is the UN Trying to Take over the Internet? Forbes Magazine, 9 August 2012, available at: <http://www.forbes.com/sites/larrydownes/2012/08/09/why-the-un-is-trying-to-take-over-the-Internet>.

<sup>8</sup> The promotion, protection and enjoyment of human rights on the Internet, United Nations Human Rights Council, UN Resolution A/HRC/20/L.13, 9 June 2012, available at: [http://ap.ohchr.org/documents/E/HRC/d\\_res\\_dec/A\\_HRC\\_20\\_L13.doc](http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_20_L13.doc).