

**UNITED NATIONS COMMISSION ON SCIENCE AND TECHNOLOGY
FOR DEVELOPMENT**

Working Group on Enhanced Cooperation

Contribution to third meeting of the WGEC

Submitted by

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DISCLAIMER: The views presented here are the contributors' and do not necessarily reflect the views and position of the United Nations or the United Nations Conference on Trade and Development.

Comments on contributions submitted to the January meeting of WGEG

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Preliminary remark

There is general agreement that Brexit and the election of US President Trump were driven by dissatisfaction with the results of globalization, that is, unequal distribution of the benefits. Or, in other words, we strove to increase efficiency but forgot to maintain equity². As The Economist Intelligence Unit puts the matter³:

The parallels between the June 2016 Brexit vote and the outcome of the November 8th US election are manifold. In both cases, the electorate defied the political establishment. Both votes represented a rebellion from below against out-of-touch elites. Both were the culmination of a long-term trend of declining popular trust in government institutions, political parties and politicians. They showed that society's marginalised and forgotten voters, often working-class and blue-collar, do not share the same values as the dominant political elite and are demanding a voice of their own—and if the mainstream parties will not provide it, they will look elsewhere.

There are two solutions: stop globalizing, which is what Brexit and President Trump are about, or come up with globalized norms that ensure equity.

We, WGEG, have an opportunity to face this issue square on for what concerns Internet governance. Should we do nothing, and watch as the Internet becomes less global, or should we work towards international norms that will allow the Internet to remain global?

And it is an Internet issue, make no mistake about it. According to Oxfam⁴, eight men own as much wealth as the poorest 50% of the world's population. Of those eight⁵ men, five are in ICT industries: Gates, Slim, Bezos, Zuckerberg and Ellison.

Thus we urge serious consideration of the specific steps towards the second outcome – how to maintain and grow a global Internet – that are we are recommending.

We offer additional recommendations in this paper. These new recommendations are underlined in this paper.

¹ www.apig.ch

² <http://www.other-news.info/2017/02/our-collective-failure-to-reverse-inequality-is-at-the-heart-of-a-global-malaise-2/>

³ *Democracy Index 2016*, The Economist Business Intelligence Unit, page 14, at: http://pages.eiu.com/rs/783-XMC-194/images/Democracy_Index_2016.pdf

⁴ <https://www.oxfam.org/en/pressroom/pressreleases/2017-01-16/just-8-men-own-same-wealth-half-world>

⁵ <http://www.forbes.com/billionaires/list/#version:static>

Privacy

The President of the United States has promulgated an Executive Order titled Enhancing Public Safety in the Interior of the United States. Its section 14 reads: “Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.”⁶⁶

It appears to us that this decision and questions⁷ related to its impact highlight the need to reach international agreement on the protection of personal data.

The same holds for a recent public admission that the agencies of at least one state monitor the communications of at least some accredited diplomats, even when the communications are with a private person (“... intelligence and law enforcement agencies ... routinely monitor the communications of [certain] diplomats”⁸). Surely there is a need to agree at the international level on an appropriate level of privacy protection for communications.

Good faith

As a complement to our previous contribution on the topic of good faith as a characteristic of enhanced cooperation, we offer an addition example of bad faith.

Topic X is explicitly listed as being part of the mandate of Group Y. Topic Z is not explicitly part of that mandate, but is implicitly within the mandate. During a discussion of the next topic to be discussed in Group Y, some parties propose topic X, others propose topic Z. Each party gives arguments in favor and against its position that are contradictory, for example that the other proposed topic should not be discussed in Group Y because it is being discussed elsewhere, whereas in fact both topics are being discussed elsewhere; or that their proposed topic has been previously proposed and should now be accepted, whereas in fact both topics had been previously proposed. Further, one party did not accept a procedural argument in support of the other party’s proposal, while it had used that very same procedural argument previously when discussing a different item.

⁶⁶ <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>

⁷ See for example: <http://www.sophieintveld.eu/letter-to-eu-commission-what-impact-has-trump-decisions-on-privacy-shield-and-umbrella-agreement/>

⁸ https://www.washingtonpost.com/world/national-security/national-security-adviser-flynn-discussed-sanctions-with-russian-ambassador-despite-denials-officials-say/2017/02/09/f85b29d6-ee11-11e6-b4ff-ac2cf509efe5_story.html?utm_term=.63a87203f039

ICANN jurisdiction

As a complement to our previous contributions on the issue of ICANN jurisdiction, we note that US jurisdiction is significant for what concerns unilateral US sanctions, and that ICANN could envisage taking certain actions on its own to address this issue, see:

<http://www.internetgovernance.org/2017/01/13/icanns-jurisdiction-sanctions-and-domain-names/>

Consequently, we recommend that ICANN consider taking the following actions:

1. Request a general OFAC waiver from the U.S. Commerce Department
2. Contractually oblige registrars to investigate the possibility of receiving an OFAC license for providing services to sanctioned countries
3. Prohibit registrars from arbitrarily cancelling domain names without notice
4. Obtain a legal opinion regarding whether registrars based in other countries need to comply with OFAC and US laws in general
5. Take any other actions which may alleviate the problem

Security

As a complement to section 6 of our previous contribution on gaps, we propose an additional recommendation regarding security issues.

The President of a leading software company has stated that there is a need to adopt a binding treaty to protect civilians on the Internet, see:

<https://blogs.microsoft.com/on-the-issues/2017/02/14/need-digital-geneva-convention/#sm.00017arazqit2faipqq2lyngzmx4>

We cite below from that statement:

...

The time has come to call on the world's governments to come together, affirm international cybersecurity norms that have emerged in recent years, adopt new and binding rules and get to work implementing them.

In short, the time has come for governments to adopt a Digital Geneva Convention to protect civilians on the internet.

...

... governments around the world should pursue a broader multilateral agreement that affirms recent cybersecurity norms as global rules. Just as the world's governments came together in 1949 to adopt the Fourth Geneva Convention to protect civilians in times of war, we need a Digital Geneva Convention that will commit governments to implement the norms that have been developed to protect civilians on the internet in times of peace.

Such a convention should commit governments to avoiding cyber-attacks that target the private sector or critical infrastructure or the use of hacking to steal intellectual property. Similarly, it should require that governments assist private sector efforts to detect, contain, respond to and recover from these events, and should mandate that governments report vulnerabilities to vendors rather than stockpile, sell or exploit them.

In addition, a Digital Geneva Convention needs to create an independent organization that spans the public and private sectors. Specifically, the world needs an independent organization that can investigate and share publicly the evidence that attributes nation-state attacks to specific countries.

While there is no perfect analogy, the world needs an organization that can address cyber threats in a manner like the role played by the International Atomic Energy Agency in the field of nuclear non-proliferation. This organization should consist of technical experts from across governments, the private sector, academia and civil society with the capability to examine specific attacks and share the evidence showing that a given attack was by a specific nation-state. Only then will nation-states know that if they violate the rules, the world will learn about it.

Consequently, it is proposed to recommend that the UN General Assembly be invited to consider the appropriate ways and means to convene a treaty-making conference to develop and adopt a binding treaty on norms to protect civilians on the Internet in times of peace, and to consider whether to develop a new treaty, or whether to invite the ITU to integrate such norms into its own instruments, for example the International Telecommunication Regulations.

Contribution from Parminder Jeet Singh

We support this paper. An alternative to creating a new body could be to create a new sector within ITU.

Contribution from Anriette Esterhuisen

We support this paper, and wish to stress the following portions of the paper:

For a next phase we recommend looking at specific areas of policymaking and identifying where there are gaps in cooperation that need to be addressed, and proposing concrete ways forward rather than considering approaches to internet governance in the abstract.

Access to information.

We suggest that WGEC makes recommendations pertaining the social and economic issues as well as technical issues. We also recommend that WGEC makes recommendations to all stakeholders.

We note that the World Trade Organization (WTO), and the multi-party negotiations that take place within WTO, such as TPP, TIPP, and TISA⁹, do not provide access to information¹⁰.

Consequently, we recommend that Internet governance matters not be discussed in WTO and related multi-party trade negotiations.

Contribution from European Union

We support the criteria proposed for enhanced cooperation.

We note that the World Trade Organization (WTO), and the multi-party negotiations that take place within WTO, such as TPP, TIPP, and TISA, are not participatory and inclusive, nor are they transparent.

Consequently, we recommend that Internet governance matters not be discussed in WTO and related multi-party trade negotiations.

We note that not all entities that participate in Internet governance discussions are transparent with respect to their funding sources.

We recommend that all entities involved in Internet governance discussions, including civil society entities, be transparent with respect to their funding sources.

We note that basing decisions on evidence requires access to data. But, at present, much relevant data are protected by commercial confidentiality: in particular, international Internet interconnection rates are not easily available (in fact, much Internet interconnection takes place on a barter basis, so no price data are available).

We note that proposals for general provision on price transparency were presented to the 2012 World Conference on International Telecommunications (WCIT), but were not agreed.

We recommend that a general provision on price transparency be included in a future international instrument, for example in a future version of the International Telecommunication Regulations (ITRs).

We highlight this recommendation, which we support:

Consider how best to build cooperation on emerging topics, particularly new issues presented by newly emerging technology, in a way which allows all stakeholders to participate.

Contribution from UNESCWA

We support this paper.

⁹ For a discussion of TISA and its relation to TPP and TIPP, see : http://www.theecologist.org/News/news_analysis/2988629/tpp_and_ttip_are_not_dead_now_theyre_called_the_trade_in_services_agreement.html

¹⁰ For a discussion of the lack of transparency of TPP negotiations, see: <http://www.gp-digital.org/autopsy-or-blueprint-our-new-tpp-case-study-for-advocacy-bytes/> and <http://www.gp-digital.org/series/advocacy-bytes/the-trans-pacific-partnership-tpp/>

Contribution from Constance Bommelaer

We highlight this part of the paper:

The increase of data breaches, highlighted in ISOC's 2016 Global Internet Report, is one example of where the inactions of many organizations is putting users' data at risk, and in turn undermines the trust in the Internet as a whole.

Contribution from Nick Aston Hart

We agree that WGEC should not try to agree on what "enhanced cooperation" is. We are of the view that WGEC should compile various views regarding "enhanced cooperation", identifying aspects on which there is full agreement, broad agreement, or dissenting views.

We highlight the following parts of the paper:

- 1) We should prioritise spending time developing recommendations that will have a direct positive impact in the lives of others.
- 2) We could make clear that the Internet will work better for everyone if national legal frameworks in certain areas are interoperable with those of other countries.
- 3) Focus on recommendations that relate to what is communicated, and avoid those related to the network as a shared platform
- 4) The working group should agree that the publicly-accessible Internet is two separate things for the purposes of our work.

We comment on these points as follows:

- 1) Agreed.
- 2) Agreed. Consequently, we need more international instruments: soft laws, model laws, and treaties.
- 3) We disagree. In our view the distinction between governance "of the net" versus "on the net" is not useful. We prefer to consider specific recommendations without prejudging in what category they fall.
- 4) We disagree, see (3) above.

We do not agree with the Annex to this paper.

Contribution from India

We support this paper and cite the following specific portions:

... absence of a suitable forum or a body or a mechanism by which the stakeholders have the opportunity to sit together at the table, exchange views on various aspects of the use of

ICTs in a transparent and democratic manner and develop convergence of views on cyber issues.

With regard to the relevant international Public policy issues which may be considered by the WGEC, we propose that issues related to Internet Infrastructure and management of critical Internet resources, use of Internet including spam, network security and cybercrime, issues related to developmental aspects of Internet Governance, in particular capacity building in developing countries and issues relating to interconnection costs, meaningful participation in global policy development, data access and jurisdiction, trade and e commerce, cloud computing, big data mining and analytics, artificial intelligence and next generation networks may be included.

Contribution from Japan

We cite the following portions of this paper:

- 1) ... enhanced cooperation should have the characteristics of transparency, accountability and the engagement of all stakeholders.
- 2) We think enhanced cooperation has been implemented to a substantial extent.
- 3) As we know, IANA transition has been successfully accomplished at the end of this September. We support this progress as an ideal one, since it aims to enable governments, on an equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the Internet.

We comment on these statements as follows:

- 1) We agree. As noted above, this implies that Internet governance discussions should not take place in WTO or in related multi-party forums such as TPP, TIPP, and TISA.
- 2) We disagree. The issues that we face today are exactly the same as the issues identified in the Tunis Agenda. In our view no real progress has been made and in some areas, such as security and privacy, the situation is actually worse than it was in 2005.
- 3) We strongly disagree, for the reasons given in our paper "Enhanced Cooperation".

Contribution from Hungary

See our comments above on the contribution from the European Union.

Contribution from Mexico:

We cite the following portions of this paper:

- 1) IANA transition and IGF as examples of enhanced cooperation

2) Characteristics of Enhanced Cooperation: Consensus-based

We refer to our comments above on the contribution from the European Union and offer the following specific comments regarding the portions cited above:

1) We strongly disagree, for the reasons given in our paper “Enhanced Cooperation”.

2) Consensus¹¹ is NOT unanimity. There is a need for methods to make decisions absent full agreement. Consensus is not used for normative/regulatory decisions, whether at national level or international level. For example, national network neutrality and other laws/regulations are not adopted by consensus; and international norms such as the WIPO copyright treaties and key ICANN process and policies are not adopted by consensus. The typical process for developing norms is (1) consult all stakeholders (2) issue draft rule for public comment (3) publish final version. This is what national and international authorities do, including ICANN.

Contribution from Canada

We refer to our comments above regarding the contribution from the European Union.

In addition, we cite the following portions of the paper:

ensure that Internet users are able to have trust and confidence that they are safe online and not subject to malicious cyber activity.

The current model has led to enhanced productivity, innovation and inclusion, creating better quality of life and economic growth in the global digital economy

With respect to the second statement cited above, we note that the gains have been distributed unequally, so the statement must be qualified. We cite from the Delhi Declaration of the JustNet Coalition:

... we have seen mass surveillance, abusive use of personal data and their use as a means of social and political control; the monopolization, commodification and monetisation of information and knowledge; inequitable flows of finances between poor and rich countries; and erosion of cultural diversity. Many technical, and thus purportedly 'neutral', decisions have in reality led to social injustice as technology architectures, often developed to promote vested interests, increasingly determine social, economic, cultural and political relationships and processes. Opportunities for the many to participate in the very real benefits of the Internet, and to fully realize its enormous potential, are being thwarted by growing control of the Internet by those with power - large corporations and certain

¹¹ We reproduce the ISO definition of “consensus”, from ISO/IEC Directives, Part 1: “General agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the view of all parties concerned and to reconcile any conflicting arguments. Consensus need not imply unanimity.”

national governments. They use their central positions of influence to consolidate power and to establish a new global regime of control and exploitation; under the guise of favouring liberalization, they are in reality reinforcing the dominance and profitability of major corporations at the expense of the public interest, and the overarching position of certain national interests at the expense of global interests and well being. Existing governance arrangements for the global Internet are inadequate. They suffer from a lack of democracy; an absence of legitimacy, accountability and transparency; excessive corporate influence and regulatory capture; and too few opportunities for effective participation by people, especially from developing countries. The situation can be remedied only through fundamental changes to the current governance arrangements.

Contribution from Switzerland

We refer to our comments above on the contribution from the European Union.

Contribution from Turkey:

We refer to our comments above on the contributions from the European Union and from Mexico.

Contribution from UK

We refer to our comments above on the contribution from the European Union.

We cite the following portion of this paper:

we believe that the Working Group now has an opportunity to identify where there is common ground and develop consensus-based recommendations

As agreed at the first meeting, if there is no consensus the group's output will reflect the differing views. This is not open for discussion, it was already decided.

Contribution from USA

We refer to our comments above on the contributions from the European Union and the UK.

In addition, we cite the following portions of the paper:

- 1) Enhanced cooperation ... is not, in theory or practice, a platform for developing or debating Internet public policies.
- 2) WGEC should NOT consider ...
- 3) [No] recommendations that could undermine the voluntary, bottom-up nature of Internet governance
- 4) WGEF should consider: ... Recommendations that enhance and support the full involvement of all stakeholders in developing Internet public policy, including at the national and local levels.

We comment on these portions of the paper as follows:

- 1) We disagree. WGEG should identify gaps and recommend methods to address them.
- 2) We strongly disagree. We cannot place limits on WGEC recommendations.
- 3) It is not correct that, at present, Internet governance is entirely voluntary and bottom-up. As we know, offline law applies equally online, and this is true for both national and international law. If that were not the case, it would not be possible to call for respect of human rights online, enforcement of copyright, etc. Further, there would be no unilateral sanctions.

In a nutshell, it appears to us that the US contribution is calling for WGEG not to envisage any changes to the status quo. That has long been the position advocated by the US with respect to Internet governance. We disagree with that position and look forward to finding out whether the new US administration will take a different position.

- 4) We note a recent decision¹² of the US FCC to revoke, pending further consideration, the designations of certain companies as providers of subsidized broadband services to certain types of consumers. And its decision¹³ to close certain investigations regarding violation of network neutrality, and to rescind and retract certain policy reviews, including of zero-rating.

We would welcome information on the mechanisms that were used to consult all stakeholders prior to the decision to revoke the previously granted designations, to close the open investigations, and to rescind and retract the previous policy reviews.

And we would welcome information on the mechanisms that were used to consult all stakeholder prior to the promulgation of the US Executive Order¹⁴ mentioned above which appears to affect data privacy.

Alternatively, we would welcome an explanation of why transparent and inclusive multi-stakeholder consultations are not appropriate for such matters.

¹² <https://www.scribd.com/document/338345617/DA-17-128A1-2>
<https://www.fcc.gov/document/statement-commissioner-clyburn-reversing-lifeline-designations>
https://www.washingtonpost.com/news/the-switch/wp/2017/02/03/the-fcc-is-stopping-9-companies-from-providing-subsidized-broadband-to-the-poor/?utm_term=.b82875d2a50b

¹³ http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0203/DA-17-127A1.pdf ;
<https://arstechnica.com/tech-policy/2017/02/fcc-rescinds-claim-that-att-and-verizon-violated-net-neutrality/>
https://www.nytimes.com/2017/02/05/technology/trumps-fcc-quickly-targets-net-neutrality-rules.html?emc=edit_nn_20170207&nl=morning-briefing&nid=61119735&te=1&r=0

¹⁴ <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>

Contribution from Bill Graham

We fully support and endorse this contribution. We highlight the following portions of the contribution:

the Working Group can achieve the greatest benefit by turning its attention to finding concrete mechanisms to bring all stakeholders together in productive work to anticipate what public policy challenges are likely to arise in the field of Internet Governance.

The Commission [Global Commission on Internet Governance] envisions a world in which the Internet reaches its full economic and social potential, where fundamental human rights such as privacy and freedom of expression are protected online. This optimistic future can only be achieved if there is universal agreement to collectively develop a new social compact ensuring that the Internet continues on track to become more accessible, inclusive, secure and trustworthy. There must be a mutual understanding between citizens and their state that the state takes responsibility to keep its citizens safe and secure under the law while, in turn, citizens agree to empower the authorities to carry out that mission, under a clear, accessible legal framework that includes sufficient safeguards and checks and balances against abuses. Business must be assured that the state respects the confidentiality of its data and they must, in turn, provide their customers the assurance that their data is not misused. There is an urgent need to achieve consensus on a social compact for the digital age in all countries. Just how urgent is shown by current levels of concern over allegations of intrusive state-sponsored activities ranging from weakening of encryption to large-scale criminal activity to digital surveillance to misuse of personal data, and even to damaging cyber attacks and disruption.

The Commission's recommendations in this regard are of vital importance to the continuing evolution of the Internet, and of our economies and societies. The Working Group on Enhanced Cooperation is well placed to beneficially advance global efforts in the direction of achieving the necessary shared understanding and agreement on a new social compact. 2017 meeting of the WGEC provides an excellent opportunity to commence this work.

Contribution from Centre for Internet and Society (CIS)

We generally support this contribution, with some comments on specific portions. We cite specific portions below:

- 1) In other words, the real utility of the multi-stakeholder model is self-regulation by the private sector.
- 2) Besides the government, it is the private sector that has the greatest capacity for harm and therefore is in urgent need of regulation.
- 3) The multistakeholder model will best serve its purpose if the end result is that the private sector self-regulates.

We offer the following comments on the cited portions:

1) We disagree. While industry self-regulation can work in certain specific circumstances, it is not a viable general approach and we do not believe that it can work for most aspects of Internet governance.

2) We agree, to the extent that there are market failures and natural monopolies. We provide specific examples of where regulation may be needed in our paper titled "International Internet Public Policy Issues: Gaps Requiring Study".

3) We disagree. As noted above, we do not think that industry self-regulation will work for Internet governance.

Contribution from DENIC

We support part 1 of this paper. We disagree with the rest of the paper.