

Chapter 6

The IGF's report card

In managing, promoting and protecting [the Internet's] presence in our lives, we need to be no less creative than those who invented it. Clearly, there is a need for governance, but that does not necessarily mean that it has to be done in the traditional way, for something that is so very different.

Kofi Annan

The purpose of this final chapter is to recommend how the Internet Governance Forum may be reformed to improve its legitimacy and effectiveness as a governance network. Before commencing to do so, it will be useful to review how the chapters preceding this have helped to set the ground for that exercise.

The book began by developing a taxonomy of five available mechanisms of governance, and describing the object of their application, the Internet, in terms of seven persistent features of its technical and social architecture: decentralisation, interactivity, openness, egalitarianism, anonymity, cosmopolitanism and resilience. It was posited that the mechanism of governance by network, which brings together each of the other mechanisms and the stakeholders by whom they are used, may be the most legitimate and effective mechanism for the governance of that domain.

Chapter 2 illustrated that most existing institutions of Internet governance in the spheres of technical coordination and standards development were based upon the non-hierarchical forces of norms, markets, and architecture, whereas the bodies seeking to exercise public policy governance

tended to be governmental or intergovernmental and thus to rely upon the hierarchical power of rules; a mechanism much more at odds with many of the architectural features of the Internet that had earlier been identified.

As Chapter 3 described, this clash of cultures was indicative of a deeper deficiency of the international system, that was beginning to be recognised and addressed systemically through the increasing incorporation of civil society and private sector participation in the development of hard and soft international law, but also extra-systemically through the development of parallel transnational legal orders for public policy governance, such as international commercial arbitration and the ICANN regime.

However whilst this “new medieval” system addressed the exclusion of transnational non-state interests from the dominant international order by admitting of a more pluralistic conception of law, it offered in itself no greater assurance of the legitimacy and effectiveness of governance by such non-state actors and networks.

The challenge of Chapter 4 was therefore to examine possible structures and processes for a governance network that would be as legitimate and effective as possible across the contexts of both the international system and cyberspace. In particular, it should be more legitimate than alternative models of reform based around international law or private sector leadership, and more effective than the prevailing models of domestic law and decentralised collective action.

On both counts, the key was to be found in the facilitation of multi-stakeholder participation. This would enable the governance network to draw from the legitimacy of all stakeholder groups, and also improve its effectiveness over the two alternatives of an hierarchical international legal regime shoehorned into the decentralised and egalitarian architecture of cyberspace, or a private transnational legal regime seeking an autonomous role within an international system still shackled to its Westphalian past.

Although this still left many details unspecified, Chapter 4 drew elements from anarchistic, hierarchical, democratic and consensual organisational models in attempting to strike an appropriate balance between the pursuit of the democratic principle of consent (already well illustrated within “native” Internet governance institutions such as the IETF) and the stability and accountability of the liberal democratic model (better exemplified by institutions of the existing international system).

It was suggested that an appropriate balance could be found in an open and transparent multi-stakeholder forum whose members would deliberate upon public policy issues with the objective of reaching consensus, subject to the oversight of an executive council to which each group would appoint representatives using consensual and/or democratic means, and which would have the responsibility of ratifying any decisions of the larger group by consensus.

However as Chapter 5 revealed, this is by no means a description of the

Internet Governance Forum as it exists today. In tracing the progress of recent reforms to the Internet governance regime, that chapter accentuated the very real influence of political forces on the role, structure and working processes of the IGF, to the extent that it is yet unclear whether it will even be in a position to fulfil its mandate in the Tunis Agenda. Does this mean that the theoretical model of a legitimate and effective multi-stakeholder Internet governance network, that was settled upon in Chapter 4, may after all prove too idealistic to consummate in practice?

This chapter aims to address that question, drawing together the insights gained in the preceding chapters to examine the extent to which the Internet Governance Forum presently falls short of its ideal, and to propose how the gap between theory and practice might be bridged. This undertaking is to begin at the macroscopic and end at the microscopic level. That is, maintaining the method of Chapter 5, we will begin by looking at the roles in which the IGF legitimately acts, before moving on to discuss the effectiveness of its structure and its processes in the conduct of those roles.

6.1 Other organisations as models

It will be helpful to make reference back to the models and experiences of some of the other organisations discussed throughout this book, which will provide anecdotal evidence of prevailing best practices in Internet governance to corroborate the conclusions drawn from theory. The difficulty with this is that over two hundred organisations have been referenced in this book, making it impractical to refer to all or even a significant fraction of them in this concluding chapter.

To narrow the scope of the endeavour, but in a principled rather than an entirely arbitrary way, the following method will be used to highlight a small number of organisations most likely to provide useful lessons for the IGF:

- An initial shortlist of forty organisations will be nominated based upon the author's subjective perception of their likely relevance. This produces the following list: APNIC, the ASF, auDA, the CA/Browser Forum, CGI.br, CONGO, the CS-IGC, the CSB, the Debian project, ECOSOC, the EFF, the EU, the FSC, GAID, the GKP, the gTLD-MoU, the IAB, ICANN, the ICC, ICPEN, the IETF, the ILO, the IPC, the ISO, ISOC, the ISTF, the ITU, the LAP, the OECD, TRUSTe, the UN, UNCITRAL, UNICTTF, the Ubuntu project, the VGT, the W3C, WGIG, WIPO, the WTO and the Wikimedia Foundation.
- In order to narrow this shortlist of forty down further, we will specify some more objective criteria drawn from earlier chapters, relating to the macroscopic issues of the organisation's role and structure. Such a list of criteria relating to the role of the organisation is as follows: