

Report by the Panel on Global Internet Cooperation and Governance Mechanisms

An initial commentary

This report by the Panel Chaired by President Ilves and supported by the ICANN secretariat is a major achievement that opens the way for important questions to be debated and answered. The following commentary relates specifically to the text of the report which can be found [here](#).

The structure, content and recommendations of the Report depend to a very large degree on the Net Mundial Declaration. That is all to the good in the sense that 'one thing leads to another', but it does beg the hypothetical question as to what the Panel would have reported on had Net Mundial not meanwhile issued its Declaration.

Thus, the Panel's Report is in the mainstream of contemporary consensus regarding multistakeholder governance, but seems to have missed the opportunity to 'operationalize' the São Paulo Principles. Also, it is not always clear from the Report, where 'the buck stops' in any of the proposed DG/IG systems.

I would venture to suggest that a Panel which includes a wide cross section of high level leadership of global high technology, could have done better on behalf of the global Internet community at this critical point in time. But that is a personal reflection and be that as it may, the following discussion illustrates a few aspects of the Panel's Report which would have objectively merited greater attention and will in any event require further consideration.

1. The Decentralized Model and Distributed Governance (DG):

This concept is taken to some length in the Report. Whereas it is quite an understandable reading of existing entities (RIRs, ICANN, ASO, IANA, NRO, ISPs) (p.8)¹ one is not spontaneously convinced that an analogous model can be extended across all issues, globally. The other examples of 'distributed governance' entities are actually quite limited: Spam and the Conficker worm. That does not appear to be a very firm basis on which to build a global governance model, particularly - as the Report then recognises - there is a "sense of marginalization by some stakeholders" (p.10)

More generally, the model of Internet governance advocated by the Panel lacks an over-arching coordinating process. Indeed, it is highly 'decentralized'. Nor is it clear who would be responsible for taking the initiative, and with what mandate, to define issues and solutions (p.11). Including, how to ensure that "all DG groups adhere to the adopted NET mundial Principles" (p.25). Surely not the IGF, nor, *a fortiori* /1Net.

¹ . None of which, by the way, show any inclination to "fade away when their purpose is fulfilled", as implicitly suggested by the Report (p.8).

Also, as the Report later recognises, there is a need for existing Internet Governance mechanisms (*inter alia*) "to enable and improve cooperation and collaboration between relevant stakeholders and DG groups to ensure efficiencies and synchronization of solutions at the local, national, regional and global level." (p.25, point 2g.)

That is quite a tall order, across all potential issues, across all global regions. Particularly insofar as it affects the collaboration of governments.

2. The role of Governments:

Most governments now expect to be incorporated into multistakeholder processes as significant stakeholders in their own right. However the Panel's Report makes little reference to governmental interests in Internet Governance. The Report includes one reference to ITU-Development in the context of Spam (p.9), and two or three other references to 'governments' as stakeholders. However, how governments should exercise the role assigned to them in this context is not addressed. But that is a very large part of the overall IG problem. Even if we put to one side the 'unreconcilable' position of a significant minority of governments - some of whom expressed their opinion in São Paulo - there is a more general issue which one may illustrate in the case of the ICANN Governmental Advisory Committee (GAC).

Among the governments and other public authorities which endorse and support the multistakeholder principle, including their role own in the oversight of the ICANN processes (including IANA2), the GAC constitutes, at one and the same time, the minimum level of public oversight that is politically acceptable, together with the maximum effort that they are able to exercise from an administrative and budgetary point of view. As many observers would concur, that maximum is insufficient in view of the scope of the public policy issues which are at stake. Thus, GAC members are regularly criticised for attempting to exercise *ex-post* influence over PDP recommendations, whereas they did not participate effectively *ex-ante* in the policy development process itself.

The Panel's Report does not address this issue. On the contrary, it seems to blithely assume that, governments, together with other stakeholders will somehow 'coalesce and support multistakeholder alliances'. That is easier said than done, particularly as - as noted above - the IG model proposed lacks any supervisory or coordinating entity, which would be the natural locus for some governmental participation. National and Regional legislatures (vide HR 4342), and in due course the general public will expect nothing less.

3. Sustainable funding and resources:

There are three references in the Panel's Report to "Establish urgently needed sustainable funding and resource models to enable IG evolution and to operationalise the collaborative IG ecosystem." (verbatim). But no discussion or recommendations as to why? and how? In the light of the detailed discussion of other aspects of the Report (e.g. The Elements of the IG Process, (pp 11-15), this lacuna is surprising. Because it is indeed a key issue:

2 . This commentary does not address the IANA transition and the prospective ICANN reforms which will be the topic of a separate paper.

3.1. Net Mundial was clear that the funding for the IGF has to be urgently put on a sustainable basis. Thus the Panel is on track with its support for Net Mundial. The European Commission, among others, has also advocated this quite strongly.

3.2. There is little point in strengthening the multistakeholder process, incorporating otherwise marginalised stakeholders and opening up decentralized internet governance, if most of the stakeholders concerned are materially unable to participate in a balanced and equitable manner. Unless funding and other resources are made available systematically to underfunded, under represented and remote stakeholders, throughout the proposed DG system, then in practice the IG process will continue to be dominated by participants who are either predominately North American and European based and/or funded directly by corporations.

This will likely become an issue for many public authorities and unless resolved, will surely compromise the acceptability of multistakeholder governance. Bearing in mind that the role of governments and other stakeholders is not only to bring to the table their concerns as to the issues and the solutions, but also to take back home the result of internet governance and collaborate in its implementation.

4. Additional Questions:

The Panel makes no claim to have exhausted the issues. There is a list of a dozen unresolved questions (p.26). For present purposes let's say the list is admirable and non-exhaustive. But - yet again - it begs the question as to which bottom-up, multistakeholder entity or process is charged with initiating, supervising³ and implementing all this work.

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If the reader would allow another quibble: the Report introduces the idea of 'Enablers' (pp. 16-19). Who they are and what they do is not entirely clear. On the one hand "enablers do not directly affect or impact the decisions" (p.16), on the other hand, "an Enabler creates a sufficiently authoritative solution to be implemented by the stakeholders" (p.26). How one creates an authoritative solution without impacting the decision is, for present purposes, for others to consider.

Finally, and on a more positive note, the Panel's Report is a masterpiece of interactive editing and word processing. Indeed a beautiful job. Thankyou.

CW

3 . Memo: all of the above is to be compliant with the Net Mundial Principles.