FROM OVERSIGHT TO ENHANCED COOPERATION

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This short article describes from a personal perspective how some of the key issues explored in the WGIG were finally incorporated into the Tunis Agenda the night before the Summit commenced.

Background

In 2005 I was a senior civil servant in the UK Department of Trade & Industry, being the director responsible for all aspects of government policy regarding electronic communications. I had joined the WGIG partway through, replacing a colleague from the Netherlands, Mark Esseboom. This was because from late in 2003, inside the European Union (EU), senior policy officials from the EU member states used to meet every month or so under the chairmanship of Peter Zangl, then Deputy Director General for the Information Society in the European Commission, to develop the EU's emerging position on what was to most of us a new and esoteric subject: Internet governance.

It was clear from the first that it was hard to find a common EU position and in some ways the debate within the EU was a microcosm of the debate we later had at the world level in the run-up to the WSIS Tunis phase. When we became aware of the establishment of the WGIG, we decided to propose that the EU participation in the process should include a representative of the current and next EU presidencies (each of which lasted for six months) and a representative of the European Commission. When the WGIG first met, the Netherlands held the presidency of the EU and Luxembourg was next, followed by the UK. So quite by chance, amongst the many senior officials from EU governments who were engaged in the Internet governance debate, it fell to Peter Zangl from the European Commission, Jean-

Paul Zens from the Luxembourg government and myself to participate in the later work of the WGIG and the crucial process of drafting the final WGIG report.

PrepCom-3

On 1 July 2005 the United Kingdom assumed the Presidency of the EU. At the time it was the practice that the Presidency spoke for the EU in settings where the European Commission did not have legal competence. By common agreement, WSIS in general and Internet governance in particular was such a setting and so for the September PrepCom-3 in Geneva, and the resumed PrepCom-3 in Tunis, I found myself as the lead negotiator for the EU, engaged particularly in the still unresolved issues of Internet governance, informed by a wide range of different opinions from my European colleagues.

Prior to the September meeting of PrepCom-3, the EU Council of Ministers had adopted a position on the questions raised about Internet governance and it fell to me to present these to the meeting of PrepCom-3.[1] The key part of the EU position was that we wanted to see "a new cooperation model … based on bottom-up public-private partnership building on existing structures of Internet Governance, with special emphasis on the complementarity between all the actors involved in this process, including governments, the private sector, civil society and international organisations." This proposal already moved substantially away from oversight towards something which it was hoped might find favour amongst all UN member states. I presented this proposal to the PrepCom meeting. It was not well received by our US colleagues in particular and there was a certain amount of diplomatic activity in the ensuing weeks and a fair amount of press comment,[2] [3] [4] [5] both for and against the EU position. Some of the comment suggests that the EU was "shocked" by the letter that US Secretary of State Condoleezza Rice sent to UK Home Secretary Jack Straw complaining about the EU's intervention, but in practice it had no impact at all at the level of those of us doing the negotiating and no UK minister or senior official ever mentioned the letter to me. The change of EU opinion between PrepCom-2 and 3 reflected the development of the EU position by officials from the EU member states rather than a response to lobbying from one or another country outside the EU.

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1. Initial comments by the European Union and the acceding countries Romania and Bulgaria, on the report of the Working Group on Internet Governance, 1 August 2005. www.itu.int/wsis/docs2/pc3/contributions/co19.pdf

2. McCarthy, K. (2005, 6 October). Breaking America's grip on the net. *The Guardian*. www.theguardian.com/technology/2005/oct/06/guardianweeklytechnologysection.insideit

3. Wright, T. (2005, 30 September). EU Tries to Unblock Internet Impasse. *The New York Times*. www.nytimes.com/iht/2005/09/30/business/IHT-30net.html

4. McCarthy, K. (2005, 16 November). Internet battle ends in stalemate. *ExecReview*. www.execreview.com/2005/11/internet-battle-ends-in-stalemate

5. McCarthy, K. (2005, 2 December). Read the letter that won the internet governance battle. *The Register*. www.theregister.co.uk/2005/12/02/rice_eu_letter/

Tunis and the resumed PrepCom-3

The EU had still by no means a single view of the way forward, but by the time we all arrived in Tunis, the centre of gravity of the EU position was to prefer to leave the Internet to be run by commercial organizations not under government control, but to see good progress towards a means by which governments could pursue and protect their legitimate policy interests with those who were running key parts of the Internet, especially the Domain Name System (DNS). This was helpfully enshrined in conclusions of COREPER, the Committee of Permanent Representations of EU Member States which left the EU delegation to the final PrepCom with some latitude to find a good outcome to the deadlock. Some more idealistic members of the EU delegation held on to the desire to see the new cooperation model made real, preferably through an intergovernmental structure of some sort. There was also concern in the EU delegation that we needed to properly protect the means by which industry on the one hand and more especially civil society on the other could participate in discussions that might lead to changes in the way the Internet was governed. Both topics had been discussed extensively in the WGIG, but the PrepCom had yet to find a way to include them in the draft Tunis Agenda. As we took our seats in the vast, noisy and very hot resumed Sub-Committee A (Internet Governance) meeting in the temporary conference centre just outside Tunis, world opinion was still split between those who wanted to maintain a version of the status quo and those who saw an important opportunity for change and were not about to let it go.

The resumed PrepCom-3 met first on Sunday, 13 November 2005. The Summit was not due to commence until Wednesday and so the conference centre was still under construction, lending a somewhat surreal and distracting ambience to our discussions. Under Ambassador Masood Khan's excellent and patient chairmanship, the 500 or so members of Sub-Committee A grappled with reconciling the apparently irreconcilable, and although some progress was made, the essential issue remained of whether oversight of the IANA and the wider DNS should be left as it was or changed to be the responsibility of some sort of body of international governments. I held regular coordination meetings between EU delegates and during the lunch break on Monday I chaired a further and somewhat despairing EU coordination meeting. It was well attended but after half an hour or so of discussion, as chair of the meeting I concluded that we could see no way forward and we would need to start thinking harder about a fall-back plan. I was not looking forward to explaining to my minister, the Right Honourable Alun Michael MP, why I had asked him to fly to Tunis for a Summit that still had such a large hole in what he would be asked to sign. The meeting broke up and a few people gathered around me at the front of the room.

Then it suddenly occurred to me that the only chance to get agreement was to use language that no country currently owned and that was capable of being interpreted flexibly by different people. And perhaps if the Summit

were to signal a real start to a process of change which addressed the central issue of how all governments could influence the way that the DNS was run, the desire for formal oversight could be set aside for the time being. So I asked the people still in the room whether they would support me exploring this idea and there was general if not uniformly enthusiastic agreement – no doubt some of my colleagues were also thinking of what they would otherwise have to say to their ministers in a few hours' time.

I asked my UK colleague Martin Boyle to draft a short contribution containing three essential points. Firstly we needed to declare the importance of governments being able to influence matters that were their proper policy interest; then we needed to call upon the organizations responsible for running essential parts of the Internet to create the means for this to happen; and thirdly we could bring in the WGIG idea of the Internet Governance Forum as a multistakeholder environment which would allow private industry and civil society to debate the important issues as they arose with governments and those running the Internet. Quickly dictating ideas to Martin for him to draft properly, I devised the term "enhanced cooperation", which I did not remember anyone using in PrepCom recently and so it had the advantage of carrying no hidden baggage or favouring one or another previously expressed position.

Over the next hour Martin drafted half a page or so and cleared it with a few EU people who represented the different shades of opinion in the EU delegation. One or two clung onto the need for the "new cooperation model" to be delivered, but had no suggestions as to how that might now be achieved. Then Martin took it to the US delegation and they indicated that they could possibly agree to our approach. I needed to check with a country from the group who advocated bringing the Internet under control of an intergovernmental organization and I sought out Raúl Echeberría from Uruguay, whom I knew from the WGIG, and asked him to have a word with the Brazilian delegation who were acting as informal spokesman for the group of countries taking the opposite position to the US. He came back with the message that they also could possibly agree to such an approach. So I immediately sought out Ambassador Khan, and told him that the EU had a new text which both the US and Brazil had indicated they could possibly accept. He immediately asked me to present the text to the Sub-Committee A meeting after the coffee break.

Last minute negotiations, leading to agreement

Before presenting the text, a copy of which unfortunately eludes me now, I was waiting for it to be displayed on the large screen at the front of the room but the technicians were having some problems, so I said to the meeting that before I read out the text I wanted to warn them that it was a compromise and they should remember that the mark of a good compromise is that no one likes it. I said, "You are not going to like this compromise. I don't like this compromise. Even the computer doesn't like the compromise!" The

technicians gave up and I read the paper out twice, trying not to go too quickly, so the interpreters could keep up with me. Ambassador Khan immediately referred the text to an ad-hoc drafting group in an adjacent room.

Frederic Riehl of Switzerland chaired this drafting group, which was well attended by all the interested countries and for a couple of hours we debated the proposal. Many changes were made, not all of them fully supported and in the process the proposal became rather longer and clouded in complexity. When Ambassador Khan saw the result, he declared, "This is like a Christmas tree. Everyone has hung their favourite decoration on it!" By now it was well into Monday evening.

At the start of the next day, Tuesday, Ambassador Khan tabled a chairman's compromise[6] which was substantially the EU proposal but with some improvements from the drafting group and some from himself. It was discussed at length several times during the day, each time leading to a further revision of the document.[7] These discussions gradually showed that there was now a real willingness to move and to try to come to a common agreement, and it became clearer that we were very likely now to be able to conclude an agreement on Internet governance, acceptable to all those UN member states present at the Summit. Finally, late on Tuesday evening, the agreement was made. My memory is that the last country to withdraw their reservation was Iran. The ministers were already flying into Tunis for the Summit which started the next day and we now had something for them to adopt. It was a good moment and both sides of the debate predictably claimed they had won.[8]

Conclusion

Reflecting on this later it is clear that the WGIG exerted huge influence, because the debate which led to the WGIG report and discussion in capitals before, during and after the WGIG's work all laid the foundations for the WSIS PrepCom to come to a final agreement, just in time. The elements of legitimate government interests in Internet policy, enhanced cooperation (by whatever name) and the IGF all had their roots in the WGIG, and without the WGIG, it is hard to imagine that the Summit would have been judged a success. As it was we had created the mandate and the means for players besides governments to influence the future development of the Internet and to contribute to its future governance. Of course the discussion of what "enhanced cooperation" actually means in practice still goes on today, but that is another story.

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6. www.itu.int/wsis/docs2/pc3/working/dt10.doc

7. www.itu.int/wsis/docs2/pc3/working/dt10rev2.doc, www.itu.int/wsis/docs2/pc3/working/dt10rev3.doc, www.itu.int/wsis/docs2/pc3/working/dt10rev4.doc, www.itu.int/wsis/docs2/pc3/working/dt10rev5.doc

8. Shannon, V. (2005, 16 November). A Compromise of Sorts on Internet Control. *The New York Times.* www.nytimes.com/2005/11/16/technology/a-compromise-of-sorts-on-internet-control.html