Internet Governance: What? How? Who?

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Good afternoon, and thank you for the opportunity to participate on today's panel. My appreciation goes out to Robert Shaw and Richard Hill as well as others at the ITU. Also, my gratitude to many other experts here today who have helped me develop an understanding of Internet governance – first as a journalist, now as a researcher – over the past decade.

My role as a journalist has served me well in regards to Internet governance; it required me to approach issues as a neutral observer, not a partisan participant. It is with that impartiality that I speak here today.

In fact, I recall one previous occasion when I served on a panel on Internet governance in Geneva with many people on the panel and in the audience today. In July 1998, prior to ICANN, when Jon Postel was still alive and it was unclear what would succeed him, there was an Internet Society conference just up the road from where we are now. I was on a panel – seated to my left was Milton Mueller. On my right was Bob Shaw. Bill Drake moderated the session. Marc Holitscher was in the audience.

It is pleasing to be here again among so many friends. But I must add it is also quite discouraging that we're still here, debating the same issues!

I want to use my time today to make five very basic points:
1. New voices to Internet governance means a continual return to zero.
2. ICANN was intended as the first word, not the last word.
3. Some historic pitfalls and core principles of Internet governance.
4. A framework to understand the term "Internet governance" (by distinguishing between coordinating the technical infrastructure that makes the network work, as opposed to regulating the usage and content that rides over the network).
5. Considering the Internet akin to the global financial system (and Internet governance somewhat like the global financial system's institutional architecture).

At the peril of speaking extemporaneously, I wish to change my prepared remarks slightly. Many other speakers have already addressed the fourth point by noting the difference between infrastructure and content. Instead, I want to comment directly to something another panelist, Marc Holitscher raised about public-private sector partnerships and political control, which I believe deserves greater discussion. So my fourth point will be on the notion of stakeholders and control.

The issues facing Internet governance are vast. But taking into consideration these five points may be a useful step to help understand the "what" "how" and "who" in the rapport between governments and the Internet.

1. As we take on new voices in Internet governance, which is extremely necessary, we continually start back from zero.

There is very little policy evolution. One step forward and one step back and one step forward again; it's a lurching motion that needs to be broken. Imagine if every time the US wished to pass a law, a senator, or an interest group, or a citizen, got up and stalled the process, asking: "Should we really have a bicameral legislature?" Or, "Do we really need a two-thirds vote rather than a simple majority?!" Nothing would get done. We need policy evolution; we need to make progress. The introduction of the UN in this regard, if done thoughtfully and for the right reasons, can be a good first step. The UN working group offers a tangible way to break this impasse.

2. ICANN was meant to be the beginning of a dialogue, not the end.

It was the first word and not the last one. It was a temporary solution that itself contained the seeds of evolution. ICANN was a cease-fire, not a peace treaty.

It is useful to recall some history. (And I've been following this issue for nearly ten years, and I can say I see a lot of new faces here. Please realize that there is a lot of history to be learned in order to make reasoned decisions.) Remember the environment where ICANN emerged: The contract to manage the domain name system with a company, Network Solutions Inc., was about to expire -- what would have happened afterwards? The small company, which won the contract when domain names were few (and became a multi-billion dollar company in the dot-com bubble, so it was very powerful), was claiming the contract meant it owned all the intellectual property to the system. Think of the what that would have meant.

The US government wanted out. ICANN was part of a process to privatize and internationalize Internet governance, with governmental representation, albeit on a very lightweight basis.

(Actually, I chose my words poorly, as Daniel Karrenberg, who was the director of the European IP number registry RIPE NCC, points out. It wasn't "Internet governance" writ large but "the domain name system" narrowly. That's different, and it's useful to emphasize that point. The term "Internet governance" is misleading. In fact, its very ambiguity has led to a good degree of the problems we face; governments hear the term "governance" and believe it can't be done unless it's by them. If a different term had been used to describe the functions of coordinating the domain name system, then many – though certainly not all – of the concerns that bought us here today would probably be greatly eased. That said, the term "Internet governance" is also at times used to describe something far broader than managing the core infrastructure, and this "reflection

process," as Marcus Kummer referred to it in his remarks this morning, can serve a useful function if it takes time to carefully define what the term means, and doesn't mean.)

ICANN was meant as a dialogue for interests; a forum where decisions could be made; a platform for a mutli-stakeholder approach.

The ICANN structure is plastic, not concrete. It is fluid, not static. In fact, ICANN's own reform process in 2002 sought to bring governments in closer than the Governmental Advisory Committee at the time wanted to go.

This is not meant as a defense of ICANN but a description of the idea behind ICANN. The group handled many things so terribly that even those closest to it, who wished it success, felt deeply betrayed. Still, the UN working group can be a positive step if it recognizes the contribution that ICANN has made and not disregard it. ICANN's experience offers many lessons that should not be ignored.

On that, let me echo the point made by my co-panelist Michale Geist, that we need to avoid the myths that polarize the issue, between all-encompassing regulation on one side and absolutely no regulation on the other. Those are extreme positions and unrealistic. The contemporary thinking about Internet governance among those closest to it has evolved from that old debate and this needs to be acknowledged during this reflection process by all parties. If the issue is cleaved into a battle between sides favoring one approach or the other, I assure you both sides will fail.

3. Some pitfalls and core principles of Internet governance.

The first pitfall is lack of inclusiveness. The history of attempts to claim oversight of the domain name system is pocked by failures (such as by ISOC or the IAHC) because they were not sufficiently inclusive of broad interests. ICANN embraced the private sector but perhaps did not do enough with regard to governments – which is one reason we are all here today. Likewise, governments in this reflection process should not make a similar mistake and fail to embrace other stakeholders, such as from industry and civil society groups, among others. Balance is needed. And I want to amplify what Bill Drake said about not trying to compartmentalize issues as purely "technology" or "policy" matters. Instead, as Milton Mueller said from the audience earlier today, the two are inherently intertwined. I would add that for this reason, they probably require many stakeholders to be best addressed.

The second pitfall is timeframe. One problem in the creation of ICANN and in the history of Internet governance generally, is that the process has been rushed. In ICANN's case, there was only a summer to reach a conclusion, before the domain name system contract was to expire. Now, the UN has tasked its working group to define the issues and offer recommendations before the second phase of the WSIS summit in Tunisia in November 2005. This morning, we heard from Don MacLean, who stated that this timeframe seemed short relative to the magnitude of work that is before us. If the challenges are truly as large as we believe, why should they be placed on an external and artificial

calendar? I pose the question whether there will be sufficient time to fully understand all the dimensions to the issues, and if this reflection process may not end up repeating the mistake that bedeviled other attempts to work on Internet governance, thereby hobbling the results from the start?

There are many other pitfalls, but these two – inclusiveness and timeframe – seem to be central ones. From them, a number of a core principles of Internet governance can be derived:

- Be technology-neutral. Treat the issue in a way that is flexible and malleable to preserve innovation on the Internet. Try to keep it the least bureaucratic and the least politicized.

- Have a multi-stakeholder process. And this inclusiveness must be genuine, not just paying lip-service. If not, it will be a wasted opportunity to really make progress on these issues.

- Let the policy making framework mirror the technical characteristics of the Internet itself, and be as decentralized and bottom-up as possible.

- Preserve the end-to-end architecture of the Internet as much as possible, so that there are no intermediaries, and regulation take place at the end points, not in the cloud. (This concept is a deeper point than can be addressed in the short time today, so let me leave it at that, for now).

These principles are far from exhaustive. But they are a suitable place to start.

4. Some thoughts on the notion of stakeholders and control.

As I mentioned at the outset, instead of offering a framework to understand Internet governance based on two layers – what's above the Net in terms of content and what's below in terms of infrastructure, which other speakers have done better than I could – let me address something that my friend and co-panelist Marc Holitscher said in his remarks, that I believe warrants further discussion.

Marc described the role of "public/private-sector partnerships" and then mentioned that the US Dept. of Commerce still exercises "dormant authority" over ICANN; that it is, as he called it, "a public/private-sector partnership in the shadow of the US government." He concluded that a "retreat of the US government is a prerequisite for global Internet governance."

Let me pose a sensitive but realistic question: Can it? Can the US simply bow out? Who would the coordination functions go to? Is ICANN ready to assume that role? Many people are here today because they believe it is not. On the other hand, is the rest of the world able?

Well, consider that in this very room this morning, the first comment of the workshop was from a delegate of one country who said he wasn't sure that this is the appropriate forum for these issues to be discussed. Soon after, another national delegate spoke out and declared that he was certain that this was the only appropriate forum.

Isn't it interesting that as we open up dialogue on Internet governance, the first battle is over institutional power; intergovernmental politics. Well, ICANN was specifically created to avoid this. I urge you all to consider this during the reflection process, as we strive to do what's best for Internet users and the evolution of the network.

5. How can we organize something that is decentralized without jeopardizing the benefits that this loosely-regulated decentralization brings – and how can governments do that, so that the public interest is upheld? Perhaps we should view Internet governance akin to the global financial architecture.

Consider modern finance. The Bretton Woods Agreements during World War II were a way to order the post-war economies, by pegging exchange rates and weaning the world away from the gold standard, thereby establishing the groundwork for floating exchange rates. Importantly it wasn't called the Bretton Woods Agreement – when they met, there was no agreement yet, of course. Its formal title was the United Nations Monetary and Financial Conference (it was held in Bretton Woods, New Hampshire). I make the point, to note the role of the UN.

Today, somewhere between 2 and 3 trillion dollars are swished about the globe each day, by the decentralized actions of individual traders. Really think a moment about that amount, and what it means. It's often said that it is more than any government – perhaps all governments – can control. But that's not really true. Governments, working together, *could* change that. They've got laws. They've got armies. But they don't thwart it, or at least most don't, because the cost would be too great in terms of loss of the benefits that this financial system brings for economic wellbeing.

Keep in mind the loss of national power, national security and national sovereignty involved. For both big states and small. No country has enough reserves to fend off an attack on its currency by this decentralized system of currency traders – just as companies, to their dismay, have found out that they are vulnerable to viruses that attack their Web sites.

Instead, governments have learned to live with it – to react to it, to shape its rules. What is important is that national institutions, such as central banks, treasuries, economic ministries, market regulators, have wisely decided to treat the fundamental characteristic of the system – it's decentralized nature, its power, its threat and promise – not as a problem that needs to be remedied but as a reality that needs to be lived with.

That does not mean an abandonment of any role for pubic policy. On the contrary, leadership is more important than ever. But it does mean that it is particularly incumbent

on governments to be extremely cautious on where public policy has a role – and to act in partnership with other institutions, public and private, that can play a role.

What's more, as finance has gone global, a ganglion of transnational institutions have risen up to meet it. From Bretton Woods we have the World Bank and the International Monetary Fund. The developed world established the OECD for statistical measurements across economies. The Group of 7 – the number isn't arbitrary, it's based on economic size – that although very formal with relationships that stretch deep down into the working level of national administrations, nevertheless has no secretariat.

Even as business has gone global, the private sector has developed its own transnational institutions to organize multinational corporations. The International Chamber of Commerce's court of mediation and arbitration is one example, as is the ICC itself, of which we heard from Ayesha Hassan earlier today. There's the Global Business Dialogue, as well as the World Economic Forum, based here in Switzerland, to set the intellectual agenda of leaders in both the public and private sectors.

Just as the global financial system is managed in a careful and thoughtful manner to preserve its best features, so too, must be the Internet.

To be sure, some governments may impose capital controls just as some today control content. And just as there are offshore banking hubs, there are data-havens for sending spam. The point is that we actually govern the global financial system rather well – despite its utterly decentralized nature, and the interests of governments to have more control (although they recognize that they can't without setting back the larger benefits the system brings).

We need to approach Internet governance with the same degree of humility, to ensure that we don't threaten its fundamental openness and capacity for further innovation, which has made it so successful as a medium for communication and interconnectedness, and an engine of economic development and democratic values.

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To conclude, where Don MacLean this morning offered an analogy from physics of "Shrödinger's Cat" – that phenomena at the micro level doesn't always scale to the marco – let me offer another, from Einstein's general theory of relativity: That the observer is not independent of the phenomena being observed. Or, what you see depends on where you stand.

From the standpoint of some governments, Internet control is centralized, first with a single person overseeing everything, now with a single country having disproportionate power. But consider what it looks like from another angle.

From the perspective of the late Jon Postel, who coordinated the Internet's addressing system for almost 30 years, Internet power was decentralized – he delegated control to

subsidiary bodies such as regional IP address registries and country-code top-level domains. Likewise, from the perspective of the US government, ICANN was part of a process to privatize and internationalize the system – that is, take the US government out and bring in other stakeholders, including governments, from around the world. It is a process.

What my remarks today hopefully point towards is the value of patience and empathy – from all sides. With that, I believe this process initiated by the UN can go forward in a constructive spirit.

Thank you.

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