

Response to the Questionnaire of CSTD's Working Group on Enhanced Cooperation

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(1) What are the high level characteristics of enhanced cooperation?

Enhanced Cooperation is clearly defined by the para 69 of Tunis Agenda:

We further recognize the need for enhanced cooperation in the future, to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues.

This definition of enhanced cooperation amply clarifies what it is supposed to mean, and what its high level characteristics are.

1. It is about "public policies" pertaining to the Internet: Tunis Agenda (para 34) takes a broad view of Internet governance including in its remit many kinds and levels of "principles, norms, rules, decision-making procedures, and programmes" related to shaping of the Internet. Of this broad area of Internet governance, enhanced cooperation relates only and specifically to "public policies". Public policies are widely seen as directions for action laid out for an entire social-political unit by its legitimate political authorities, which may have the backing of coercive force of the state, or a combination of them (as at the international level).

2. Enhanced cooperation relates to "international" public policies, and not national ones: In an increasingly interconnected world, the world community agrees to some common international policies, and this area alone is what "enhanced cooperation" concerns itself with. We know of such policies as ranging from the human rights instruments to the global trade agreements. Some such policies exist in virtually every area/ sector, from health, education and agriculture to communication, trade and warfare. It is difficult to imagine our globalised world without such commonly agreed international public policies. More we get globalised, and Internet is a strong force towards that, more such international public policies are needed.

3. Technical and operational activities are excluded: Tunis Agenda specifically excludes Internet-related "day-to-day technical and operational matters, that do not impact on international public policy issues" from the rubric of enhanced cooperation. Therefore, the activities of ICANN and its associated technical organisation are not included here, but only in as far as they "do not impact on international public policy issues". However, Tunis Agenda is clear that enhanced cooperation does include 'the development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resource'. This clear separation of role of public policy from "day-to-day technical and operational matters" is very significant.

4. It is about "governments' role" in public policy making: Enhanced cooperation is specifically about government's role in international public policies. Other stakeholders too have roles in public policy development, but, as is well known, "public policies" are definitionally made by governments. Para 35 of Tunis Agenda reaffirms this fact. There may be other organisations that are focussed on role of other stakeholders in policy making, Internet Governance Forum being one such important body. But the call for enhanced cooperation is about means or mechanism for specifically enabling the central role of governments in making Internet-related international public policies.

5. All governments must be on an equal footing: All governments should be able to fulfil their role with respect to Internet-related international public policies "on an equal footing". As will be discussed later, there are many instances of Internet-related public policies that have a global impact but in their development all governments do not have an "equal footing" role. This goes against the idea and requirement of "enhanced cooperation".

We commend the current exercise of beginning with a focus on what are the high level fundamental characteristics of "enhanced cooperation" as defined by the Tunis Agenda. A discussion on how to operationalize "enhanced cooperation", as is the mandate of the Working Group on Enhanced Cooperation, cannot take place in any fruitful manner without first developing a basic agreement at this level.

We have seen previous discussions on the subject meander into areas which have nothing to do with "enhanced cooperation" as defined by the Tunis Agenda. This should be avoided at all cost, if we have to have any possibility of moving forward on the mandate of the Working Group on Enhanced Cooperation (WGEC).

Any specific recommendation of the group on means for enhanced cooperation must conform to all these five fundamental high level characteristics of enhanced cooperation.

(2) Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?

The WGEC is mandated to provide recommendations on means of enhanced cooperation as defined in paras 69 to 71 of Tunis Agenda. In the light of the above described high level characteristics of enhanced cooperation, such ***recommendations should aim at providing means or mechanisms for governments to be able to fruitfully fulfil their role and responsibility, on an equal footing, with regard to Internet-related international public policies.***

As for what kind of means or mechanisms will be appropriate to be recommended in this regard, the WGEC will need to inquire into three sequential questions. These are;

(a) Are there enough important international public policy issues pertaining to the Internet?

(b) If the response to (a) is yes, then are governments able to appropriately fulfil their roles and responsibilities, on an equal footing, with regard to these international

public policy issues?

(c) If the response to (b) is in the negative, then what means or mechanisms will be appropriate and adequate for enabling governments to fulfil their required role, especially looking at the nature and importance the existing and emergent Internet-related international public policies.

Let us briefly consider these questions in turn.

Whether there are enough important international public policy issues pertaining to the Internet?

Internet, and its associated digital technologies, constitute a paradigmatic social force and are fundamentally transforming practically every sector, from media and communication, to education, health and education, to business, transportation and tourism, to governance and warfare. The succession of powerful avatars or aspects of this paradigm, dotcoms, search engines, social media, Internet platforms, big data, algorithmic decision-making, Internet of Things, and now artificial intelligence, seem unending, and their impact has been far-reaching. Indeed, we have hardly seen it all yet. Even a cursory look at the newspapers, much less going through contemporary social analysis, gives one a good picture of the extent, potency and importance of the social changes that the Internet is causing. In the circumstances, it is but obvious that there are numerous immensely important public policy issues that are arising around these phenomena.

Let's choose at random just one issue to judge the importance and urgency of public policy action in this area. As widely reported, insecure IoT devices have recently been used to perpetrate massive denial of service attacks; in the future such attacks could be directed against critical infrastructures.¹ As one expert said²: "In a relatively short time we've taken a system built to resist destruction by nuclear weapons and made it vulnerable to toasters." Government actions may be required to address this issue.³ Such actions could be similar to the mandatory safety standards prevalent in many industries. Everyone seems to want to have something done about such monumental problems, and if public policy does not have a role here, one can't see what might have. We have deliberately chosen just one issue that is hot right now, in these weeks. The importance and urgency of this randomly picked issue shows how significant this overall field of Internet-related public policy is, and how crucial are the needed international public policy responses. This example of one issue being so important and urgent right now, in the narrow current window of time, shows both the vastness of the field of issues and their rapidly evolving nature.

The month before, it was artificial intelligence being discussed everywhere. An area

¹ See <http://hothardware.com/news/latest-iot-ddos-attack-dwarfs-krebs-takedown-at-nearly-1-terabyte-per-second>
<http://hothardware.com/news/your-iot-device-could-be-part-of-a-ddos-botnet-how-to-shut-it-down>
https://www.schneier.com/blog/archives/2016/09/someone_is_lear.html

² Jeff Jarmoc, head of security for global business service Salesforce, quoted in the excellent summary article at:
<http://www.bbc.com/news/technology-37738823>

³ https://www.schneier.com/blog/archives/2016/07/real-world_secu.html and
<https://www.scribd.com/document/328854049/DDoS-Letter-to-Chairman-Wheeler#download> and
<https://www.euractiv.com/section/innovation-industry/news/commission-plans-cybersecurity-rules-for-internet-connected-machines/> and
<http://www.dailydot.com/layer8/bruce-schneier-internet-of-things/>

which seems to have entered the general public vision just earlier this year is already seeing strong consumer-focussed applications around us; it is being employed in search engines, and the next version of top smart phones will carry artificially intelligent personal assistants (some already do). With artificial intelligence, even the coder cannot explain the basis of outcomes that the software provides, raising many ethical and practical questions of great social and political bearing. Over 2016, we have also witnessed many social commentaries and regulatory battles around Uberification of work, and AirBnB-ification of distributed private resources. While the phenomenon, and the strong actors behind it, are global, the regulatory bodies are city- or nation-based, finding themselves not well-equipped for the new situations. The manner in which global digital corporations are very easily able to move their legal offices, finances, and their key assets, software and data, across the globe, because of their peculiar nature of work, leaves most nationally-bound policy regimes frustrated.

It is therefore also equally evident that, perhaps like no other phenomenon before (other than climate change), Internet related issues are of a global nature. Internet was deliberately designed in a trans-national manner, and its key elements continue to carry this characteristic. It is therefore undeniable that the public policies associated with the Internet, existing or the required ones, have a strong international aspect or dimension. Ask any nation, especially from the South, how much policy control it feels it has over the globalised digital phenomenon, even as it deeply affects all sectors of its society!

One has, for instance, to just look at the very full agenda of the OECD's Committee on Digital Economy Policies, which is continually incorporating newer issues for consideration, to judge the nature, extent and importance of Internet-related international public policy issues.

The above clearly shows that there exist numerous very important international public policy issues pertaining to the Internet, and newer ones keep emerging as we sit on the cusp of an epochal social transformation ushering in a post-industrial digital society.

This leads us to consider the second question: are governments able to appropriately fulfil their roles and responsibilities, on an equal footing, with regard to these international public policy issues?

We have already indicated that most nations remain utterly confused and feel helpless in this regard. Mostly, there is not much that can be done at the national level, and no proper forum exists at the international level for Internet-related international public policy issues.

With regard to such a powerful social phenomenon as the Internet and its associated digital technologies, which are transforming all sectors, and whose nature is fundamentally global, it is an obvious anomaly, of epic proportions, that there exists no international public policy forum for Internet related policies. The danger it poses, and in fact the damage it is already doing, to global public interest should be self-evident.

Absence of a democratic ("equal footing") global public policy forum does not mean

that Internet/digital-related policies that are applied globally are not being formed. As they say 'politics abhor a vacuum'. It is important to understand what or who is driving these default global policy regimes. OECD's mentioned Committee on Digital Economy Policies has been developing many such policy frameworks. A few years ago, it developed "[Principles for Internet Policy Making](#)", about which there has been stated intent to make them applicable globally. In the circumstance, it is extremely strange that, at globally democratic forums, like the WGEC itself, it is the OECD countries that are most active to assert that there are no important Internet-related international public policy issues that need addressing. They presumably mean that that they themselves are doing it well enough for the whole world!

Meanwhile, with most key global digital corporations being US based, US policy regimes in any case apply to them (as they also apply to the ICANN). In the global operation of these corporations, these US's public policy priorities get applied over the whole world. EU recently held a consultation on public policy issues pertaining to Internet platforms. EU has also been active to stop digital corporations from avoiding taxes in the countries where they actually sell their services. Trans-border flows of data – that most vital of digital asset, as well as the bearer of key rights – is a constant pre-occupation of EU authorities. Strangely, however, these do not seem to them as international public policy issues pertaining to the Internet when participating in globally democratic forums like the UN bodies, including the WGEC.

Whether from the work of OECD's Committee on Digital Economy Policies, or other pluri-lateral activities of the developed countries, it seems evident that they would prefer to develop 'globally applicable' policy frameworks for the extremely important and powerful digital phenomenon, especially in this crucial formative stage, all by themselves, excluding the developing countries. These efforts clearly do not meet the "equal footing" criterion of the definition of enhanced cooperation.

Apart from rich countries dominated plurilateral bodies dealing with these important international public policy issues, the digital arena is also fast getting subject to private governance, dominated by global corporations. Lets again take the currently hot example of artificial intelligence. An October, 2016, news-story⁴ reports that a UK parliamentary committee has urged the government to act pro-actively — and to act now — to tackle "a host of social, ethical and legal questions" arising from growing usage of autonomous technologies such as artificial intelligence. Another US government report⁵ of the same month asserts: "As the technology of AI continues to develop, practitioners must ensure that AI -enabled systems are governable; that they are open, transparent, and understandable; that they can work effectively with people; and that their operation will remain consistent with human values and aspirations." Artificial Intelligence is obviously an immensely important new phenomenon, of global dimensions and importance, with extra-ordinary social policy significance. But in the absence of any democratic international platform for taking up Internet/ digital governance issues, the world is perhaps left to look up to a recently formed private sector platform called the "[Partnership on AI](#) – To Benefit People and

4 <https://techcrunch.com/2016/10/12/ai-accountability-needs-action-now-say-uk-mps/>

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https://www.whitehouse.gov/sites/default/files/whitehouse_files/microsites/ostp/NSTC/preparing_for_the_future_of_ai.pdf

Society” floated by the top six digital corporations. Its declared aim is “to study and formulate best practices on AI technologies, to advance the public’s understanding of AI, and to serve as an open platform for discussion and engagement about AI and its influences on people and society”. Aren't these appropriately an international public policy function to be addressed by democratic political mechanisms? Again, this is just one example, of a currently much discussed issue. (We can discuss dozens, if not more, of other similarly important Internet-related public policy issues but the space and context does not allow us to do that.)

The real meaning and purpose of enhanced cooperation therefore is to provide a democratic mechanism (meaning all “governments” are on an “equal footing”) for development of the very much needed international Internet-related public policies. Such a mechanism is urgently needed if global public interest has to be safeguarded with respect to this most powerful social force, Internet and its associated digital technologies, and the vast and deep social impact they are causing everywhere.

Every day that is being lost in not putting up the required institutional response, which is participative and democratic, means great damage to public interest, as, in default, powerful actors keep developing the new social paradigm in their interests. As the new structural designs become entrenched, it will be difficult to reverse their defects and harmful features, as too much economic, social and political capital would have got invested in them. This underlines a great urgency to this matter.

This brings us to the third, and the key, question; what means or mechanisms will be appropriate and adequate to enabling governments to fulfil their required role, especially looking at the nature and importance the existing and emergent Internet-related international public policies, and therefore should constitute the recommendations of this working group.

The mandate of this working group is to provide recommendations to implement enhanced cooperation as envisaged in Tunis Agenda, paras 69 to 71. In light of the above analysis, its recommendations must be in form of suggesting a mechanism(s) that can enable all governments, on an equal footing, to develop the much needed international public policies pertaining to the Internet, and its associated digital phenomenon.

For a phenomenon that is so powerful as well as pervasive, and which is strongly global, such an institutional mechanism can be only in form of a UN body dedicated to this subject. This would be similar to how there is WHO for health, UNESCO for education, FAO for food and agriculture, UNICEF for child issues, UNDP for development, UN Women for gender, and so on.

It can even be argued that the important issues addressed by the mentioned UN agencies are by themselves much less global, and more local, than the digital phenomenon. The needs for an independent global agency for Internet/ digital issues is therefore especially important. Further, to claim that creating a UN body on Internet/ digital issues means UN control over the Internet – whatever it means – is as far-fetched as to argue that because of existence of these various UN agencies the UN has taken control of education, health, food/ agriculture, child, development, and gender policies at national levels. These UN agencies provide research and analysis for

policy support to member countries, build normative frameworks both for national and international activities of countries, and, as and when required, helps develop soft or hard international law, including in form of required treaties, which requires consensus among all members. An UN body for Internet/ digital issues would also only do the same.

OECD's Committee on Digital Economy Policies provides a good model for a UN body for Internet/ digital issues. In this OECD Committee, decisions are taken in an inter-governmental manner, but with extensive inputs from and discussions with all stakeholders. Proposing a similar model at the UN level should make it harder for OECD countries to oppose it, since they themselves develop digital policies in this manner.

In 2011, [India had proposed a UN Committee On Internet-related Policies](#), which seems to be very similar in design to OECD's Committee on Digital Economy Policies. However, there was a lot of opposition to one proposed function of this committee, which was to coordinate and oversee Internet's technical bodies (read, ICANN et al). This function was read by many to contradict the requirement in Tunis Agenda for any means or mechanism of enhanced cooperation to stay out of day-to-day technical and operational issues. This proposal for a new UN agency can stand even if this one function is deleted. However, this committee will still have the task laid in the Tunis Agenda of 'the development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resource'.

It must be mentioned here that, such is the vastness and importance of Internet-related policy issues, and their fast changing nature, that an important function of this new mechanism or body will have to be of undertaking extensive research and providing support⁶, especially to the developing countries, on Internet related public policy issues. The kind of extensive work that is needed in this regard at the global level really requires a full-fledged UN body for the Internet/ digital technologies, and not just a UN committee, however well-resourced, as sought by the mentioned Indian proposal.

(ICANN earns a lot from what constitutes a global tax on domain name holders, a part of which can be employed to support this new agency.)

The importance and urgency for such a new UN based institutional mechanism can be judged by a simple consideration: ***If a developing country today finds difficulties with how data is being handled by global digital corporations in that country, and wants policy guidance, better policy harmonisation with other countries, especially with where the concerned company may be based, or real enforcement action to ensure the rights of its people, which global forum can it turn to today? Similar things can be said about Internet platforms, Internet of Things, social media, cross-border artificial intelligence applications, and so on.*** (We have deliberately excluded technical issues, focussing only on economic and social policy issues, since for the former there is ICANN and ITU, but there is none for the latter, which may increasingly be even the more important issues.)

If this does not constitute a severe global governance deficit, it is difficult to imagine

6 As UNCTAD provides research and other inputs for developing countries on the issue of international trade.

what will. Especially so in this age, when digital phenomenon is transforming practically every sector, and public policy is simply not able to keep up. If all countries get together, in the global public interest, there may just be a chance!

It is therefore most important for the WGEC to recommend a clear mechanism for governments to be able to develop international public policies pertaining to the Internet, in consultation with all stakeholders. We are unable to see what such mechanism can be, in any effective form, other than a new UN agency dedicated to Internet/ digital issues.

In the last part below, we briefly discuss three kinds of institutional mechanisms that are proposed by different actors for the task at hand, arguing why there are inappropriate and/or inadequate.

Some people advocate that the role proposed for the new UN Internet/ digital agency can simply be taken over by the ITU, which is already the UN body for telecommunication. It may be possible to sufficiently change the mandate, and equally importantly, the form, of the ITU for it to be up to this task, but we are sceptical. The ITU is organised for a technical mandate, and it should best stick to that. The key Internet/ digital issues we have discussed in this note are of social, economic, political and cultural kind, which require a very different kind of approach than ITU can take. It also needs a more open, participative social policy development process (focussing on non-technical or policy actors) than exists in the ITU. There will continue to be very important technical issues in the Internet/ digital area, which technical agencies like the ITU, ICANN etc should keep addressing. However, they are not appropriate for economic and social policy aspects of this new phenomenon, which is the focus of enhanced cooperation. The real governance deficit is with regard to such larger public policy issues, and not regarding technical policies. It is important to begin seeing the Internet/ digital sector as not just a technical field, but as an important and powerful social force and phenomenon.

Other actors propose that Internet Governance Forum (IGF) is already fulfilling the role of enhanced cooperation, and/ or it can be further shaped/ strengthened for such a role. The IGF mandate is to enable other stakeholders – the non governmental ones – to fulfil their very important, discursive and participatory, role in Internet related public policy making. It does not provide an avenue for governments to fulfil their role of actually making Internet related public policies. (Though it enables governments to fulfil their role of taking public inputs that are very essential part of policy development.) We must not conflate these different roles, and different structures needed for different roles. The IGF is by design an “equal footing” structure, to ensure free and open policy deliberations. Public policy making however can never be made with equal footing of government and non government actors – a global digital corporation, for instance, certainly cannot have an equal role in policy making on par with governments.

Lastly, some actors claim that since the Internet is a horizontal or meta phenomenon encompassing almost all sectors, which have their dedicated policy mechanisms, including at the UN level, it is best that Internet-related policies are developed within the respective sectors. Such a stance denies the uniqueness and power of the Internet and the digital phenomenon as a social force in its own right. This phenomenon has its

strong generic features even though its impacts is seen mostly in existing sectors, like media, transport, health and governance. Phenomena like social media, big data, Internet platforms, Internet of things, algorithmic decision making, and artificial intelligence, and the list is still unending, direct and underpin special kinds of social changes everywhere. They have also to be understood, assessed, and governed generically, beyond just seeing them from within different impacted sectors. This is important for effective governance in the digital age.

Almost all countries have a separate ministry or department dealing with Internet/digital issues. A similar structure is needed at the global level. Such an agency/ body however should work in close relationship with sectoral governance bodies, providing expertise and governance inputs/instruments for the generic features of the phenomenon, while keeping a close watch on its specific sectoral manifestations. In absence of an Internet/ digital issues specialist agency, that looks at the sector from an holistic social, economic and cultural standpoint, some of the most important digital governance issues are by default being decided in trade treaties. For instance, as the US and the EU spar over whether data has basically to be seen through a trade lens or a rights lens, and whether the yet evolving, and some yet unknown, digital services, which will form the digital age, can peremptorily be declared to remain unregulated, there is no democratic global agency specialising in this sector that can weigh in. This would be analogous to how the views and principles of WHO, UNESCO, ILO and UNEP respectively on health, education, labor and environment related issues provide the context within which the more narrowly immediate self-interest focussed trade treaties may deal with key issues of social policy.

The WGEC has the historic responsibility to recommend a global institutional framework that would adequately address the numerous extremely important public policy issues that arise as our societies undergo a digital transformation. This responsibility cannot be taken lightly. It must rise to the occasion and do all that is needed to be done to protect the public interest in these key times of flux – which contains both immense opportunity but also crippling challenges. Abdication at this crucial time will lead to long-term, and potentially irreversible, damage to the prospects of a prosperous, equitable and just digital society.