Internet Governance and Public International Law

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Internet Governance

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Agenda

• Public international law
• The roles of intergovernmental organizations
  – UN
  – ITU
  – Council of Europe
• Internet governance principles
• A new intergovernmental organ?
  – Committee for Internet-Related Policies, CIRP
• Human rights law
  – Domain names and human rights
  – A human right to Internet access?
PUBLIC INTERNATIONAL LAW
Public international law

• Subjects
  – Sovereign states and analogous entities (Holy See)
  – Intergovernmental organizations

• Limited role
  – Multinational corporations;
  – Individuals,
  – but only in certain contexts (e.g., international human rights law & international trade law)
Roles under public international law?

- Internet Corporation for Assigned Names and Numbers (ICANN);
- Regional Internet registries (RIRs);
- Internet Engineering Task Force (IETF);
- the Internet Society (ISOC);
- World Wide Web Consortium (W3C);
- Internet Governance Forum (IGF)?
Protected under international law

• International Red Cross/Red Crescent
  – Name and icon protected under international humanitarian law (Geneva Conventions)

• International Olympic Committee

• Protection under new gTLD program?
  – ICANN (GNSO) addresses this, following governmental pressure
INTERGOVERNMENTAL ORGANIZATIONS
The United Nations 2011

ECOSOC

- IGF improvements discussed in CSTD (see previous lecture on IGF)

Human Rights Council

- Report by Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue

General Assembly

- Proposed International code of conduct for information security (Proposal by China, the Russian Federation, Tajikistan and Uzbekistan, 12 September 2011)
- CIRP proposal
The International Telecommunications Union (ITU)

Plenipotentiary meeting 2010:

• “to explore ways and means for greater collaboration and coordination between ITU and relevant organizations* involved in the development of Ip-based networks and the future internet, through cooperation agreements, as appropriate, in order to increase the role of ITU in Internet governance so as to ensure maximum benefits to the global community;”

A footnote in history?

• * including, but not limited, to the Internet Corporation for Assigned Names and Numbers (ICANN), the regional Internet registries (RIRs), the Internet Engineering Task Force (IETF), the Internet Society (ISOC) and the World Wide Web Consortium (W3C), on the basis of reciprocity
Council of Europe

• Human rights
  – European Convention on Human Rights
  – Declaration on Internet Domain Names & HR

• Internet governance principles (draft 2011)
INTERNET GOVERNANCE
PRINCIPLES
Internet governance principles

- European Union Internet Compact
- Obama Strategy Paper
- NATO – Tallinn Cyber security Centre
- eG8, Deauville Declaration
- OECD Communiqué on Internet Policy Making
- Council of Europe Declaration on Internet Governance
Examples from OECD principles

Promote & protect global free flow of information

Promote open, distributed & interconnected nature

- Internet has achieved global interconnection **without** the development of any international **regulatory regime**.
- The development of such a formal regulatory regime **could risk undermining its growth**.
OECD cont’d.

• Encourage multi-stakeholder co-operation in policy development processes:
  – These multi-stakeholder processes should involve the participation of all interested stakeholders and occur in a transparent manner.
In particular, continued support is needed for the multi-stakeholder environment,

- which has underpinned the process of Internet governance and the management of critical Internet resources (such as naming and numbering resources) and these various stakeholders should continue to fully play a role in this framework.

Governments should also work in multi-stakeholder environments

- to achieve international public policy goals and strengthen international co-operation in Internet governance.
CoE: Responsibilities of states

3. States have rights, but also responsibilities, in Internet-related public policy.

- In the exercise of their national sovereignty rights, states should refrain from any action that would directly or indirectly harm persons or entities outside of their territorial jurisdiction.
Furthermore, any national decision or action amounting to a restriction to fundamental rights should *comply with international obligations* and, in particular,

- be *based on law*,
- *necessary in a democratic society*, and
- fully respect the principles of *proportionality* and
- right of *independent appeal*
- surrounded by *appropriate legal safeguards*. 
Comparison of principles

• All support the multi-stakeholder model
• All support the historically grown architectural principles of an open Internet (end-to-end, e2e)
• All identify three main areas where policy is needed: Human Rights, Security and Economy
• However, different political priorities

• See further
  – Wolfgang Kleinwächter, Internet principle hype: how softlaw is used to regulate the Internet
# Human rights

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## Governance

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## Technology and Architecture

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INTERGOVERNMENTAL REFORM OF INTERNET GOVERNANCE?
IBSA proposal

- India
- Brazil
- South Africa
- **Proposal** for intergovernmental body
- Critical discussions during IGF 2011
- UN General Assembly proposal
India proposes the establishment of a new institutional mechanism in the United Nations for global Internet-related policies, to be called the United Nations Committee for Internet-Related Policies (CIRP).
Proposed CIRP tasks

The CIRP shall be mandated to undertake the following tasks:

• Develop and establish international public policies with a view to ensuring coordination and coherence in cross-cutting Internet-related global issues;

• Coordinate and oversee the bodies responsible for technical and operational functioning of the Internet, including global standards setting;

• Facilitate negotiation of treaties, conventions and agreements on Internet-related public policies;

• Address developmental issues related to the Internet;

• Promote the promotion and protection of all human rights, namely, civil, political, social, economic and cultural rights, including the Right to Development;

• Undertake arbitration and dispute resolution, where necessary; and,

• Crisis management in relation to the Internet.
Multi-stakeholder language

Operationalizing the Tunis mandate

• should not be viewed as an attempt by governments to "take over" or "regulate and circumscribe" the Internet.

The intent behind proposing a multilateral and multi-stakeholder mechanism is not to "control the Internet" or allow Governments to have the last word in regulating the Internet, but

• to make sure that the Internet is governed not unilaterally, but in an open, democratic, inclusive and participatory manner, with the participation of all stakeholders,

• so as to evolve universally acceptable, and globally harmonized policies in important areas and pave the way for a credible, constantly evolving, stable and well-functioning Internet that plays its due role in improving the quality of peoples' lives everywhere.
Multi-stakeholder structure?

CIRP will comprise **50 Member States** chosen on the basis of equitable geographical representation, and will meet annually for two working weeks in Geneva.

It will ensure the participation of all relevant stakeholders by establishing **four Advisory Groups**, one each for

- civil society,
- the private sector,
- inter-governmental and international organizations, and
- the technical and academic community.

The Advisory Groups will provide their inputs and recommendations to the CIRP.

The **Internet Governance Forum** will provide inputs to CIRP in the spirit of complementarity between the two.
CIRP will report directly to the General Assembly and present recommendations for consideration, adoption and dissemination among all relevant inter-governmental bodies and international organizations.
Is this a good idea?
HUMAN RIGHTS LAW
Council of Europe

Human rights
• & domain names

Declaration by the Committee of Ministers
• on the protection of
  • freedom of expression and information
  • and freedom of assembly and association
• with regard to Internet domain names and name strings, 2011
CoE declaration: Internet access limitations

4. Action by a state that limits or forbids access to specific Internet content

- constitutes an interference with freedom of expression and the right to receive and impart information.

In Europe,

- such an interference can only be justified if it fulfils the conditions of Article 10, paragraph 2, of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights.
5. In particular, (...) states should not,

- through general blocking or filtering measures, exercise prior control of content made available on the Internet unless such measures are taken (...) in full respect for the strict conditions of Article 10, paragraph 2, of the European Convention on Human Rights.

These measures should

- concern clearly identifiable content and
- should be proportionate.

This should not prevent

- the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries.
CoE declaration: domain names

7. Expressions contained in the names of Internet websites,

- such as domain names and name strings, **should not, a priori, be excluded from** the scope of application of legal standards on freedom of expression and the right to receive and impart information and should, therefore, benefit from a presumption in their favour.

Functions

- The **addressing function of domain names** and name strings and the **forms of expressions that they comprise**, as well as the content that they relate to, are **inextricably intertwined**.
- More specifically, individuals or operators of websites may choose to use a particular domain name or name string to identify and describe content hosted in their websites, to **disseminate a particular point of view** or to create **spaces for communication**, interaction, assembly and association for various societal groups or communities.
CoE declaration: ccTLDs

8. The need to provide safeguards

- for freedom of expression in legal frameworks related to the management of domain names which identify a country in the Internet addressing system
- has been affirmed by constitutional oversight bodies of specific Council of Europe member states.
CoE declaration: ccTLDs prohibiting certain words

9. On the other hand, instances of measures proposed in other Council of Europe member states to prohibit the use of certain words or characters in domain names and name strings are a source of concern.

• They may raise issues under Articles 10 and 11 of the European Convention on Human Rights within their own jurisdiction.
• In a cross-border context they may have an impact on content accessible in other states’ territories.
• They may also set negative precedents which, if replicated and generalised, could thwart the vitality of Internet expression and have devastating effects on Internet freedom.
A future human right to Internet Access?

The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2011):

• “by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realisation of a range of other human rights”.