

# Internet Governance: Territorializing Cyberspace?

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*Internet governance evolved in an ad hoc manner and produced a decentralized, regulatory environment that has been shaped by a myriad of public and private organizations. The decentralized nature of this form of Internet governance is now being challenged. New technical, security, and privacy issues have raised political questions concerning whether such loose regulatory coordination can adapt quickly enough to twenty-first-century challenges. Such doubts go well beyond the technical; they reflect profound questions about who should control the Internet. This article examines the issue of Internet governance in light of recent challenges. Discussion is centered on assessing efforts to replace the current decentralized, multistakeholder governance model with a centralized, multilateral model. Trends are examined with reference to efforts by some member states of the International Telecommunication Union to strengthen the role of governments in Internet regulation, especially during negotiations at the 2012 World Conference on International Telecommunications.*

**Keywords:** Internet Governance, E-Government, Cyberspace, Territorialization, Global Governance, Internet Policy, Multistakeholder Governance, Multilateral Governance, World Conference on International Telecommunications, WCIT, International Telecommunication Union, Regulation Policy, Decentralization, Multistakeholderism, Security, Privacy, Social and Moral Political Issues, International Relations.

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*La gobernanza de la internet se desarrolló de manera específica y produjo un entorno regulatorio descentralizado que ha sido moldeado por una miríada de organizaciones públicas y privadas. La naturaleza descentralizada de esta forma de gobernanza está siendo cuestionada. Nuevos asuntos tanto técnicos como de seguridad y privacidad han provocado inquietud política sobre qué tanto el entorno regulatorio descentralizado podría adaptarse oportunamente a los desafíos del siglo 21. Las inquietudes van más allá de lo técnico; reflejan preguntas serias sobre quién debería controlar la internet. Este artículo examina el asunto de la gobernanza de la internet a la luz de desafíos recientes. La discusión se centra en la evaluación de los esfuerzos para remplazar el actual modelo de gobernanza descentralizado y de múltiples entidades involucradas en su regulación, a un modelo de gobernanza centralizada y multilateral. Tomo en cuenta las tendencias con referencia a los esfuerzos de estados miembros de la Unión Internacional de Telecomunicaciones de reforzar el papel de los gobiernos en la regulación de la internet, especialmente durante las negociaciones de la conferencia mundial de Telecomunicaciones Internacionales de 2012.*

Internet governance evolved in an *ad hoc* manner and produced a decentralized regulatory environment that has been shaped by a myriad of public and private organizations, as well as civil society. Governance by these multistakeholder networks has been so conducive to growth that the Internet is said to be the fastest growing resource ever known (Toure 2011). Nevertheless, the decentralized nature of this form of Internet governance is now being challenged. New technical, security, and privacy issues have raised political questions concerning whether such loose regulatory coordination can adapt quickly enough to twenty-first-century challenges. Such doubts go well beyond the technical; they reflect profound questions about who should control the Internet.

This debate also relates to a broader theoretical discussion concerning global governance. More than 20 years ago, Peter Haas (1992) argued that as

governance becomes increasingly technical, government leaders turn to experts to acquire information to help ameliorate uncertainties. The highly technical nature of some aspects of the Internet has increased the need for such nongovernmental experts, especially in the area of governance. The Internet enhances the power of nonstate actors, permitting them to network at an ever-increasing level of sophistication (Drezner 2004). Internet policy and regulation, probably more than any other area of international relations, has been shaped by nonstate actors. Recent events, however, suggest that this multistakeholder model of Internet governance is under threat. Challenges to existing Internet governance arrangements surfaced prominently before and during negotiations at the World Conference on International Telecommunications (WCIT), convened by the International Telecommunication Union (ITU), a specialized agency of the United Nations (UN), in December 2012. The ITU was established in 1865 as the main standard setting organization for international telecommunications, and before the 2012 WCIT had been largely noncontroversial. The organization is charged with such seemingly mundane but important tasks as allocating the global radio spectrum and satellite orbits, developing technical standards that ensure networks connect, and improving global access to information and communication technology (ICT). Although the ITU lists 700 private sector entities among its membership, it is only the 193 member states that participate and vote in the Plenipotentiary Conference, the key event at which member states decide on the future policies of the organization.<sup>1</sup> The ITU is, therefore, a typical multilateral organization; decision-making power is held by states that cooperate to develop international communications and telecommunication policies.

The last major treaty negotiated under the auspices of the ITU created the International Telecommunications Regulations (ITRs) in 1988. Ratified by 190 countries, these regulations outlined the principles underpinning international voice, data, and video traffic, and were successful in bringing a level of standardization to ICT. In the years that followed, however, a growing consensus emerged recognizing that the 1988 regulations needed to be updated to take account of the dramatic changes that had taken place in international telecommunications. The growth of the Internet as a telecommunications medium, therefore, placed the ITU at the center of the Internet governance debate, and also brought considerable controversy. The intergovernmental structure of the ITU prompted fears that the traditional multistakeholder model of Internet governance was about to be replaced by a multilateral approach that would give the ITU control over the Internet.<sup>2</sup>

<sup>1</sup> For more information concerning ITU responsibilities, visit <http://www.itu.int/en/Pages/default.aspx>

<sup>2</sup> For example, on December 5, 2012, the U.S. House of Representatives unanimously passed a resolution urging the U.S. government not to give the ITU control over the Internet.

The 2012 WCIT is particularly significant for the study and practice of Internet governance for it raises questions concerning the role of nation states in Internet governance, as well as the crucial issue of multistakeholder representation (Levinson 2012). The primary focus of this article is, therefore, on the techno-political controversies that surrounded the 2012 WCIT,<sup>3</sup> in particular efforts by some member states of the ITU to replace the current decentralized, multistakeholder Internet governance model with a centralized, intergovernmental, multilateral one. In doing so, the inherent conflict between two competing theoretical perspectives, multistakeholderism and multilateralism, is also addressed. To add context, the article begins by reviewing the theoretical underpinnings of Internet governance with an overview of the concept of global governance generally. The global governance literature is relevant because it highlights the increasingly influential role of nonstate actors in governance. I then assess the multifaceted nature of the current multistakeholder Internet regulatory framework, especially the central role afforded to the Internet Corporation for Assigned Names and Number (ICANN) within the system. The authority of ICANN was challenged before the WCIT meeting, and continues to be challenged today. The heart of the study analyzes the competing debates that emerged at the WCIT and introduces three new taxonomies to delineate competing policy positions of ITU member states before and during the conference. Two of these policy perspectives sought to challenge existing multistakeholder arrangements, while the third sought to maintain the *status quo*.

### Global Governance

The term *governance* has been used in international relations literature for many years, but not always with clear and consistent meaning. Finkelstein (1995, 368) described governance as a fuzzy term that we use “when we don’t really know what to call what is going on,” while others have noted that the “loose handling of the concept has contributed to blurring much of its content” (Dingwerth and Pattberg 2006, 188). By 2004, Van Kersbergen and Van Waarden commented that the governance literature had become a “veritable growth industry” characterized by theoretical and conceptual confusion (Van Kersbergen and Van Waarden 2004, 144). Even a cursory review of the governance literature confirms that the term has been used in a variety of ways. Governance describes a system of governing styles where the boundaries of public and private sectors have become blurred (Stoker 1998). It involves a dichotomous redefinition of the relationship between government and society, or between state and market Glasbergen (1998). It is the setting, application,

<sup>3</sup>Rasmussen (2007) discusses techno-political issues in relation to culture.

and enforcement of the rules of the game (Kjaer 2004, 12), and it refers to interorganizational networks characterized by interdependence and autonomy from the state (Rhodes 1997, 15).

At the international level, several authors have attempted to clarify the meaning of the term. Dingwerth (2008, 1) asserts that the “global governance thesis” can be disaggregated into four major claims: the internationalization of policy making, diffusion of authority beyond the state, changing procedural norms beyond the state, and the distribution of governing resources among an increasing range of actors. Bierstecker (2011) characterizes global governance as patterned regularity at the international level that has purposive goals, formal and informal rules, and authoritative self-regulation.

Much of this literature draws from, and builds upon, broader analyses of international relations that focus on the issue of global order. Rosenau (1992, 8) notes that governance and order are interactive phenomena: “there can be no order without governance and no governance without order.” He also warns that we should not conflate government and governance, they are not synonymous. While the former can exist in the presence of widespread opposition to its policies, the latter requires acceptance by the majority of those it affects. From this line of reasoning, Rosenau (1992) asserts that informal mechanisms of governance can exist without the presence of formal government authority. The state-centric world, where national actors dominate, is said to coexist with a multicentric world that includes a diverse range of relatively equal actors (Rosenau 1992). The idea that world order can be maintained in the absence of centralized government authority echoes regime theory. However, there are distinctions between these two concepts. Whereas regimes are “sets of implicit or explicit principles, norms, rules and decision-making procedures” in a given issue area of international relations (Krasner 1983, 2), governance is not confined to a single policy area. Regimes can therefore be characterized as a subcategory of global governance (Rosenau 1992).

The literature on governance and regimes highlights the emergence of nonstate actors on the global political stage, so too does the literature on networks. Like the concept of governance, networks have been defined in a number of different ways. In their transgovernmental form, they are described as peer-to-peer interactions between domestic officials and their foreign counterparts (Slaughter and Zaring 2006). These transnational regulatory networks (TRNs) bring together representatives from national regulatory agencies “to facilitate multilateral cooperation on issues of mutual interests” (Verdier 2009, 118). Such arrangements help solve some of the collective problems caused by globalization because they are able to address complex issues in a speedy and flexible manner, unhindered by partisan politics (Slaughter 2004). Another important idea related to networks and governance is the concept of epistemic communities. Like TRNs, epistemic communities comprised issue experts, but they also encompass professionals from outside of regulatory agencies. Moreover, epistemic communities also differ from

bureaucratic entities because their members exhibit a set of “shared normative and causal beliefs” that coalesce around a common set of policy goals (Haas 1992). A third form of governance network that is relevant to the present discussion concerns global public policy networks. These have been defined as “multisectoral partnerships linking different sectors and levels of governance and bringing together governments, international organizations, corporations and civil society” (Streck 2002, 123). This definition sees networks as actors who coordinate collective action in pursuit of policy goals at the international level. Networks are commonly distinguished from the hierarchical organization of states because of their decentralized decision making and their horizontal patterns of interaction (Zanini and Edwards 2001, 33).

A further evolution in the practice of global governance emerged at the beginning of the twenty-first century in the concept of multistakeholderism. A somewhat inelegant term, it refers to the “processes which aim to bring together all major stakeholders in a new form of communication, decision-finding (and possibly decision making) on a particular issue” (Hemmati 2002, 2). The multistakeholder concept has been championed by the UN as a way to democratize and legitimize decision making at the international level. As a 2004 UN report illustrates, the UN “should emphasize the inclusions of all constituents relevant to the issue . . . and foster multistakeholder partnerships to pioneer solutions and empower a range of global policy networks” (Cammaerts 2011, 133). Multistakeholderism has become increasingly visible across a broad range of issues, including global business regulation (Waz and Weiser 2012) and diplomacy (Hocking 2006). However, nowhere has multistakeholderism been more developed than in the area of Internet governance.

Global governance, regimes, networks, and multistakeholderism all point to a fundamental shift in the way that international relations function. Sovereign states have been joined by a myriad of other actors who now have important roles to play in shaping global policy agendas. Although the relative power of these new actors *vis-à-vis* the state can be debated (and it is certainly not equal), their presence illustrates that international relations is now about more than interstate relations. At their core, these theoretical models challenge perspectives that focus on intergovernmental cooperation to the exclusion of other actors. As such, they are more relevant to discussions of Internet governance than those based on state-centric assumptions. The practice of Internet governance incorporates numerous facets proposed in the global governance literature, including the internationalization of policy making, public-private partnerships, the growing importance of technical experts, peer-to-peer interactions, as well as diffused authority. With respect to Internet governance, Mueller (2010) describes the latter as distributed control, arguing that the sheer volume of Internet transactions often overwhelms traditional government processes, creating a disconnect between political authority and Internet control. “Decision-making authority over standards and critical Internet resources rests in the hands of transnational networks of actors that

emerged organically alongside the Internet, outside of the nation-state system” (Mueller 2010, 4).

### **Current Internet Regulatory Framework**

Internet governance is not without its challenges; the Internet has grown in a piecemeal, uncoordinated fashion, it has traditionally lacked centralized authority, and it extends across a multitude of diverse jurisdictions. This has led to a common perception that the Internet is ungovernable, a “benevolent anarchy” (Klein 2002, 193). However, the growing corpus of regulations contradicts this view. Not only is the Internet regulated, but multistakeholder participation in shaping that regulation is highly developed. Nonstate actors have played a prominent role from the earliest days of Internet regulation, none more so than the ICANN. This organization lies at the heart of Internet governance. Its significance for the present discussion is based on the fact that ICANN was founded as an alternative to existing intergovernmental organizations, such as the ITU (Mueller and Woo 2004).

ICANN was established in 1998 as a private, nonprofit organization, governed by California law and operating on the basis of a Memorandum of Understanding with the U.S. Department of Commerce. It is responsible for the Internet’s domain name system, which means that it allocates and controls Internet domain names and numeric IP addresses, and manages the “root,” the master file of top-level domain names. Although these functions appear to be largely technical in nature, they have very significant political implications. A domain name is required to exist on the Internet, without that name a computer will not be found by others. Whoever controls the allocation of domain names controls the Internet (Klein 2002, 195). This is a sizeable business; ICANN regulates a \$3 billion per year domain name registration industry, which gives it considerable power over technical standards (Mueller and Woo 2004, 7). The establishment of ICAAN was noteworthy not only because it represented the centralization and privatization of control over the Internet, but also because it was a “revolutionary departure from traditional approaches to global governance” (Mueller 2010, 60).

ICANN is governed by a 21-member Board of Directors, which is required to be responsive to the Internet community, through consultations, public meetings, and coordination. Indeed, ICANN’s founding document stipulated that this new body should be committed to “private, bottom-up coordination” and be open to “input from a broad and growing community of Internet users.”<sup>4</sup> On paper, ICAAN exemplifies a multistakeholder system where governments are relegated to an advisory role that takes place within the Government

<sup>4</sup>ICANN’s founding memorandum can be found here: <https://www.icann.org/resources/unthemed-pages/icann-mou-1998-11-25-en>

Advisory Committee. While ICANN is clearly not an intergovernmental body, some question the degree to which ICANN is truly accountable. Mueller (2010, 248) asserts that ICANN has “created a *mélange* of participatory mechanisms, none of which have any real power . . . [it] is a parody of bottom-up consensus building-governance.” Others point out that the ICANN Board of Directors has always been subject to a higher authority, that of the U.S. government. “The Internet was internationalized and privatized but only under the watchful oversight of the US government” (Klein 2002, 201).

Multistakeholder participation has also grown as result of purposeful UN action. The two UN-sponsored World Summits on the Information Society (WSIS) held in Geneva in 2003 and in Tunis in 2005 proved to be particularly important. Both were designed to promote bottom-up multistakeholder participation, and each attracted representatives from governments and civil society across the globe. Although the main focus of these summits was intended to be the global digital divide, they nevertheless offered an authoritative definition of Internet governance that is founded on the multistakeholder principle.

Internet governance is the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules and decision-making procedures, and programmes that shape the evolution and use of the Internet. (Working Group on Internet Governance 2005, 11)

The application of multistakeholderism is also evidenced in the Internet Governance Forum (IGF). Established in 2006, the IGF brings together all interested stakeholders in the Internet governance debate, including representatives of governments, civil society, business, and academia. Its mandate includes requirements to strengthen the engagement of stakeholders and make recommendations regarding emerging governance issues. The barriers for participation in IGF meetings are low, so participation is high. One analysis showed that the participation by governments (26 percent), civil society (24 percent), and the private sector (20 percent) are relatively even, with slightly lower participation from the technical and academic community (15 percent) (Maciel and Pereira de Souza 2011).

Tangible collaborative innovations that emerged from the first IGF meeting in Athens 2006, and continued thereafter, are known as dynamic coalitions. These informal issue-specific groups comprise members from a variety of stakeholder groups organized on a functional basis. They are quintessential epistemic communities because they comprised experts who have competence in a particular domain and who have shared normative beliefs. A review of their membership reveals that they include representatives from academic institutions, government agencies, international organizations, and nongovernment organizations, as well as private telecommunications and media



companies. At the time of writing, there were one dozen dynamic coalitions,<sup>5</sup> but the Dynamic Coalition on Core Internet Values is the most relevant to the present discussion. As its name suggests, the stated aim of this coalition is to create and define a core list of values designed to inform and shape discussions as the Internet continues to evolve. Coalition objectives are clearly normative, as the following excerpt from their 2009 workshop indicates:

The Internet model is open, transparent, and collaborative and relies on processes and products that are local, bottom-up, and accessible to users around the world. These principles and values are threatened when policy makers propose to regulate and control the Internet, with inadequate understanding of the core values. (Intergovernmental Forum 2009)

It is the perceived attack on core Internet values that created the firestorm that surrounded the 2012 WCIT, especially with regard to Internet regulations and governance.

### **World Conference on International Telecommunications: Competing Visions of Internet Governance**

Opposing visions of Internet governance emerged in difficult and contentious negotiations during the 2012 WCIT. During the 12-day conference, more than 1,275 proposals were discussed by more than 1,600 delegates, but in the end the treaty that was produced fell far short of unanimous support. The main point of contention was again Internet governance. It is easy to depict the controversies surrounding the WCIT as signaling a new Cold War over Internet governance, and many have done so.<sup>6</sup> These divisions have been most frequently portrayed as a split between governments that strive to protect and promote freedom of expression, and those that seek to use the Internet to censor and control their populations. While this narrative may be applicable in some, or even many, cases, it does not tell the full story. An analysis of policy positions prior to and during the WCIT reveals that there were three, not two, competing policy visions. These are delineated here as the following archetypes: (1) the open multistakeholder model, (2) the repressive multilateral model, and (3) the open multilateral model, outlined in Table 1.

The first of these, the open multistakeholder model, in its purest form refers to openness in terms of limited regulation, freedom of expression, and free market interests. This position is consistent with the historical development of Internet norms. While the Internet grew out of research conducted by the U.S.

<sup>5</sup> For a list of dynamic coalitions and a description of their goals, see <http://www.intgovforum.org/cms/dynamiccoalitions/90-dynamic-coalitions/dc-meetings-2009#weblog>

<sup>6</sup> The following article headline from *The Economist* is one example, "A Digital Cold War." December 14, 2012. <http://www.economist.com/blogs/babbage/2012/12/internet-regulation>

**Table 1. Three Models of Internet Governance**

Model	Actors	Institutions	Concerns/Objectives
Open multistakeholderism	NGOs, civil society, business, and government agencies	ICANN, IGF	Open Internet, net neutrality, maintenance of existing Internet governance arrangement
Repressive multilateral	Governments	WCIT and ITU	Multilateral Internet policy decision making, domestic control, and security
Open multilateral	Governments	WCIT and ITU	Multilateral Internet policy decision making, equal access, and greater accountability

*Notes:* ICANN, Internet Corporation for Assigned Names and Number; IGF, Internet Governance Forum; ITU, International Telecommunication Union; NGOs, nongovernment organizations; WCIT, World Conference on International Telecommunications.

Department of Defense, it was nevertheless promoted as a vehicle for unrestricted academic research and communication from its earliest days. The establishment of the Internet as an “open commons” was a deliberate policy choice to promote innovation and free expression. The core architectural guideline of the Internet is the end-to-end-principle. It is based on the idea that, in a distributed computing network, functionality should be provided by end hosts rather than by the network itself, using a common protocol known as TCP/IP. It was first proposed by Saltzer, Reed, and Clark (1981), and the design led to a number of technological advances, including most significantly, the creation of the World Wide Web.

The end-to-end principle is based on the idea of smart terminals and a dumb network, as well as the assumption of “net neutrality.” The term was coined by Tim Wu, when he described net neutrality as “an Internet that does not favor one application over others” (Wu 2003). Essentially, net neutrality is a nondiscrimination principle that affirms that all Internet content should be treated in the same way. In other words, all Internet data should be transmitted equally, regardless of content; any computer can send an information packet to any other computer without interference in the transmission of that information. There should be no separate “fast lanes,” no selectivity by carriers over content, and no blocking of access to some websites. The “dumb” network does not examine the constituent parts of the communication. This architecture has been credited with the rapid growth of the Internet. As Vinton Cerf (2005), coinventor of the Word Wide Web noted in a letter to Congress, the success of the Internet can be directly attributed to the fact that it was designed without

“gatekeepers.” The open multistakeholder approach favors the maintenance of this basic architectural design for political as well as technical reasons. The end-to-end principle and net neutrality provide a safeguard against government, as well as commercial, interference in Internet content.

The open multistakeholder model best describes the approach adopted by the United States, and many of its allies at the WCIT. The first U.S. proposals were published in August 2012, and called for only limited changes to the ITRs, largely aimed at promoting market-based solutions instead of global regulations. The proposals noted that the telecommunications market has transformed significantly since 1988, when most traffic was exchanged between monopoly carriers in the form of fixed telephony, fixed data, and telegraph. By contrast, in today’s market, most traffic is exchanged between commercial carriers operating in competitive environments. The United States, therefore, proposed to include provisions in the revised treaty that would promote further market liberalization and private sector investment. With regard to Internet governance, the U.S. position was made clear.

[T]he United States will not support proposals that would increase the exercise of control over Internet governance or content. The United States will oppose efforts to broaden the scope of the ITRs to empower any censorship of content or impede the free flow of information and ideas. It believes that the existing multi-stakeholder institutions, incorporating industry and civil society, have functioned effectively. (USA Proposals for the Work of the Conference Document #E, 1-2)

The United States, therefore, sought to maintain the *status quo* with respect to Internet governance, namely a decentralized, free-market approach with the public-private partnership of ICANN at its center. The U.S. position is consistent with long-held political values concerning freedom of expression and a limited role of government in the economy, but it is also conveniently self-serving. Despite ICANN’s global influence, it clearly remains a U.S. construct.

The open multistakeholder model also applies, to some extent, to the membership composition of the U.S. delegation to the WCIT. The 95-member U.S. delegation included representatives from government (e.g., State Department, Department of Defense, and the Federal Communications Commission), industry (e.g., Google, Facebook, Cisco, Amazon, AT&T, and Verizon), and consumer advocacy groups (e.g., Public Knowledge).<sup>7</sup> Although civil society groups played advisory roles, since only member states can vote, their influence was brought to bear in terms of their expertise and as a result of a global media campaign that raised awareness of Internet governance issues.

<sup>7</sup> For a full list of the U.S. delegation, see U.S. Department of State (2012).

For instance, prior to the start of the WCIT, Google launched a “Take Action” online petition in support of a “free and open Internet,” which urged users to oppose new Internet regulations; it received more than three million signatures.<sup>8</sup> Yet the number of nongovernmental participants in the U.S. delegation appears to be heavily weighted toward corporate interests, whose concerns clearly do not always coincide with those of broader civil society groups.

The repressive multilateral model with respect to the WCIT applies to those governments that seek both to use the Internet to enhance domestic security and to internationalize Internet governance. This type of increased Internet control has been on the rise in recent years, as a 2009 report by Freedom House makes clear.

Even as new information sources become more prevalent and influential governments and in some cases private actors, [*sic*] have begun to push back through the development of techniques designed to control what people read, view and discuss. (Karlecker and Cook 2009, 1)

The report goes on to say that for the most repressive regimes, “torture and imprisonment await those who cross ‘red lines’ separating acceptable and unacceptable behavior” (Karlecker and Cook 2009, 1). The most technically sophisticated method of control, known as deep packet inspection, directly challenges the end-to-end principle since it allows for third-party examination and manipulation of information as it travels over networks. Every digitized packet of online data can be deconstructed, examined for key words, and reconstructed within milliseconds. It is conceivable that governments could, and perhaps do, use deep packet inspection as a subtle form of censorship. Removing criticism or rewriting news stories as the information passes through the networks is a more cost-effective and subtle form of censorship simply than blocking web access (Wagner 2009).

It is clear from these examples that sovereign states can, and do, exercise considerable control over some parts of the Internet. However, they cannot disconnect from the wider Internet entirely if they are to reap the economic rewards that it brings. This has forced some countries into “imperfect compromises” that try to balance information security with economic benefits (Nye 2014). While authoritarian regimes might prefer to act unilaterally, the interconnectivity of the Internet and the need for global regulation and standardization prevents them from doing so. The best that they can hope for is to try to replicate domestic policy at the international level. This requires cooperation with like-minded governments; it also requires placing Internet governance firmly in the hands of intergovernmental institutions where they have the most influence.

<sup>8</sup> Google’s “Take Action” website is <https://www.google.com/takeaction/>

The repressive multilateral model focuses attention on governments that not only seek to strengthen their own security, but also shift responsibilities for Internet governance to a multilateral intergovernmental body, such as the ITU. A proposal at the WCIT, known as Contribution 27, submitted by Russia, China, Saudi Arabia, Algeria, Sudan, and Egypt, fits that classification. Explicit within the document were statements that directly challenged the existing Internet governance framework. It called for greater national controls over Internet routing and content. Article A.2 notes: “Member States shall have equal rights to manage the Internet . . .” Article 3A.3 asserts: “Member states shall have the sovereign right to establish and implement public policy, including international policy, on matters of Internet governance . . .” The document also challenged ICANN’s monopoly control over domain names. Article 3B.1 declares: “Member states have the right to manage all naming, numbering, addressing and identification resources used for international telecommunications/ICT within their territories” (WCIT 12/27 2012).

Although Contribution 27 failed to gain enough support for these statements to be included in the final treaty, its proponents did succeed in adding language to the final document that has important implications for Internet governance. Three provisions, in particular, proved to be controversial. The first was Resolution Plen/3 entitled *To foster an enabling environment for the greater growth of the Internet*, which declares that as “the Internet is a central element of the information society . . . all government should have an equal role and responsibility for international Internet governance” (WCIT Final Acts 2012, 20). This provision was opposed by dozens of countries, since they regarded it as a step toward intergovernmental control of the Internet and a challenge to the existing multistakeholder framework. As a result, it was included only in the nonbinding appendix of the final document. Perhaps of greater significance was the inclusion of security-related sections in the treaty, in Article 5A *Security and Robustness of Networks* and Article 5B *Unsolicited Bulk Electronic Communications* (WCIT Final Acts 2012). While these articles do not deal with Internet governance specifically, they contain provisions that would require greater coordination and government oversight of Internet practices, including network security, fraud, and spam. Such obligations are distinct from the existing 1988 ITRs because they clearly go beyond technical standardization to deal with content.

In addition to content-related issues, several countries were concerned that references to security in the treaty could be used by some regimes to reinforce control of telecommunications. The inclusion of security-related issues in Article 5 is illustrative of an ongoing effort to transform the prevalent norms on which Internet governance has been based, from openness and freedom to security and control. Such efforts represent the culmination of several earlier attempts. For instance, in September 2011, China, Russia, Tajikistan, and Uzbekistan, proposed an international code of conduct for Internet security to the General Assembly of the UN. The document asserted that policy authority

for the Internet is the sovereign right of all states, and called for global cooperation with regard to “curbing dissemination of information which incites terrorism, secessionism, extremism or undermines other countries’ political, economic and social stability, as well as their spiritual and cultural environment” (Code of Conduct A/66/359 (C) 2011, 4). This resolution offers a succinct overview of the policy positions that several countries promoted at the WCIT. Such positions are consistent with the repressive multilateral model because, if implemented, they would allow governments to “legitimately” obstruct communications with which they disagree, including “spiritual” and “cultural” content.

The final approach, the open multilateral model, applies to those governments that seek to internationalize Internet governance, but are not primarily motivated by issues of domestic control. In this model, multilateralism is viewed as having value in its own right. The open multilateral model applies to countries that are lower on the global power hierarchy and view multilateralism as a way to increase their influence. For powerful states, the downside of multilateralism is some loss of policy control, but for weaker countries participation in multilateral institutions can provide additional venues in which to exercise authority. Multilateralism is “the most egalitarian form of cooperation and decision making” because developing countries can potentially have an equal voice (Powell 2003, 7). Even if those countries are underrepresented in multilateral institutions, this is preferable to the complete absence of representation that they might face in traditional state-centric arrangements. Multilateral institutions also have the potential to provide greater external accountability than state-centric forms of decision making. As Keohane (2002) notes, even when governments are internally accountable, as is the case in democracies, it is often difficult to hold them externally accountable. Multilateral institutions can effectively do so, at least on some issues, because “intergovernmental institutions are among the most accountable entities in world politics” (Keohane 2002).

The open multilateral model applies to those WCIT participants who were primarily concerned with accountability in Internet governance, as well as nondiscriminatory access to Internet resources. The target of much of their concerns was the perceived lack of accountability in ICANN. For instance, during the 2005 WSIS, India, Brazil, and South Africa (a group known as IBSA) challenged ICANN’s dominance directly when they identified an “urgent need” for the establishment of an Internet oversight entity that would be part of the UN system. Attempts were also made to link the issue of the global digital divide to Internet governance. One Brazilian delegate, for example, argued that the digital divide is not simply about financial inequalities and access to computers, it is also concerned with “political inequalities, arising from the inability of developing countries to influence Internet decision-making” (Capdevila 2005, 16). Such criticism of ICANN is not limited to developing countries. In 2010, the U.S. Department of Commerce accused ICANN of falling short in its

response to an accountability review, and that its efforts to strengthen transparency and accountability “are incomplete.”<sup>9</sup>

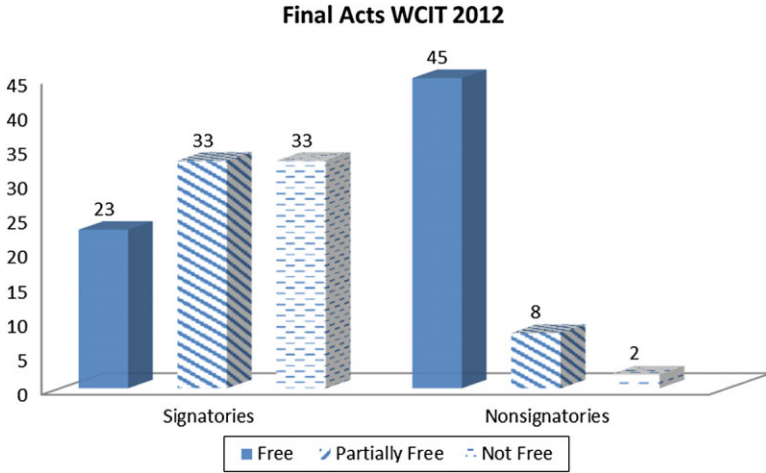
During the 2012 WCIT, proposals that emanated from developing country blocs fit most closely with the open multilateral model. These countries sought to internationalize Internet governance, and they challenged the dominant role of ICANN in a way that is similar to the repressive multilateral model. However, in addition, they pressed for provisions to be included in the treaty that would guarantee nondiscriminatory access. This proposal proved to be unexpectedly controversial and ultimately brought to an end any possibility of unanimity. The problem emerged during final discussions when the African block proposed adding text in the preamble that raised the issue of human rights and recognized “the right of access of Member States to international telecommunications services” (ITU 2012, 1). Equal access is an important issue for developing countries, several of which have complained that the current multistakeholder model of Internet governance is not as open and inclusive as has been claimed. Under the existing framework, governing bodies such as ICANN are dominated by the Global North, which means that often developing world perspectives and problems are not fully represented nor addressed. Even as the Internet becomes more important in the developing world, non-Westerners are not entering the leadership of multistakeholder organizations. Mueller and Woo (2004, 10) note that developing countries are disadvantaged in ICANN as a result of a number of structural issues, including language, funding, and cultural factors that hamper communication and understanding. For these countries, the ITU holds at least the promise of greater representation because as an intergovernmental organization, it is based on the principle of one country one vote.

The idea of including a reference to human rights in the treaty was immediately rejected by the United States, Canada, and several European states, and they refused to sign the revised treaty.<sup>10</sup> The amendment nevertheless passed with 77 votes in favor, 33 against, and eight abstentions. The African bloc was joined by several Middle Eastern countries, as well as China and Cuba. So ironically, pro-Internet freedom democracies argued against declaring Internet access as a human right, while nondemocracies argued in favor of that

<sup>9</sup> On the other hand, despite such criticism, it is clear that the U.S. government regards ICANN as the most appropriate body to oversee global Internet governance; it should be restructured but not abolished.

<sup>10</sup> The U.S. government listed five reasons for rejecting the treaty: (1) terminology: expanding the definition with regard to which entities will be covered by the treaty; (2) spam: seen as a form of content, the regulation of spam opens the door to regulating other forms of content, including political and cultural speech; (3) security: granting that authority to deal with cybercrime could lead to an abuse of power if governments use this as a pretext to review and control content; (4) Internet governance: the United States will not support any UN-sanctioned Internet control or mandates; (5) Internet resolution: the WCIT is not the appropriate venue to discuss Internet issues, so Resolution 3 should be removed (Popescu 2012).

**Figure 1.**  
**Signatories and Nonsignatories of the 2012 World Conference on International Telecommunications (WCIT) Final Acts**



right. This incongruity can be explained by the type of human rights that were being discussed. Since the amendment argues for the establishment of a right of access for countries, not a right of access for people, it is not surprising that countries like China and Cuba supported its inclusion. Moreover, such regimes would naturally favor an amendment that guarantees access as insurance against possible Internet sanctions imposed by the U.S. government. At the same time, none of this self-interested maneuvering changes the basic proposition that the current multistakeholder model does not serve the developing world well. Ultimately, the dispute over access proved to be the barrier that brought the WCIT to a close without consensus. Of the 144 countries present, 89 signed the new treaty, while 55 did not.

Although most of the countries that refused to sign the treaty are advanced democracies and most of the nonsignatories are not, it would be overly simplistic to explain the outcome of the conference solely in these terms. With respect to Internet governance, three broad perspectives were evident before and during the WCIT: first, those who sought to protect the *status quo*, represented by the open multistakeholder model; second, those who sought to strengthen domestic Internet controls and internationalize Internet governance, represented by the repressive multilateral model; and finally a third group, characterized by the open multilateral model, was primarily motivated by access and representation issues. Figure 1 confirms that nonsignatory countries were a heterogeneous group in terms of their political makeup. Using Freedom House data from 2012, signatory countries are relatively evenly divided across “free,” “partially free,” and “not free” classifications. Since more than one-quarter of



signatory countries are designated as free, it is difficult to assert that support for the WCIT treaty was predicated entirely upon a desire to adopt repressive Internet controls. Similarly, although a majority of nonsignatory countries are “free,” almost one-fifth are classified as “partially free” or “not free.” This contradicts a common perception that depicts disputes at the WCIT as primarily disagreements between freedom-loving democracies and security-obsessed dictatorships.

### Conclusion

While the dire predictions made prior to the WCIT that the UN was about to take over the Internet were clearly overblown, the December 2012 conference nevertheless represented a significant challenge to the current multistakeholder model of Internet governance. That challenge is part of a longer term trend that sees some governments attempting to territorialize cyberspace, increasingly placing domestic controls on the Internet, and demanding sovereign rights over the technology. Attempts to transfer responsibility for Internet governance from bodies such as ICANN to the ITU is part of this trend because the latter is an intergovernmental multilateral body where only countries have the right to vote, to the exclusion of civil society. During the WCIT, it was clear that many governments prefer a multilateral state-centric form of Internet governance to a distributed multistakeholder one. While this idea was not universally accepted, references in the treaty to Internet security in particular indicate that the state is trying to reassert control over the “global commons.”

In the period following the 2012 WCIT, tensions between proponents of intergovernmentalism and multistakeholderism continued. These were heightened by revelations by Edward Snowden of electronic eavesdropping by the U.S. National Security Agency (NSA). At the 24th session of the Human Rights Council in September 2013, Pakistan, speaking on behalf of Ecuador, Venezuela, Cuba, Zimbabwe, Uganda, Russia, Indonesia, Bolivia, Iran, and China, expressed concerns regarding the use of advanced surveillance technologies. They declared that the Internet should not be operated by “a few who have misused it without any international legislation and monitoring of these abuses.” The statement went on to demand an “international intergovernmental mechanism of Internet governance” (Joint Statement 2013).

In March 2014, the Obama Administration unexpectedly announced that it would cede control over ICANN when the organization’s current contract with the U.S. Commerce Department expires in September 2015. Although this move was criticized by many as “giving the Internet away,” it can also be viewed as an attempt to forestall pressures for greater intergovernmental control in light of the NSA scandal. The Obama Administration has made it clear that specific conditions need to be satisfied before the transfer of authority can occur. The new system of oversight should incorporate four principles: (1) support and enhance the multistakeholder model; (2) maintain the security, stability, and

resiliency of the Internet domain name system; (3) ensure transparency, accountability, and auditability; and (4) maintain the openness of the Internet. The Obama Administration has also explicitly stated that it would not accept a proposal that replaces the Commerce Department's role with a government-led or an intergovernmental solution.<sup>11</sup>

The future of ICANN remains to be seen, as does the future of Internet governance more generally. This study is necessarily exploratory, but it does point to an important emerging trend, namely that Internet governance is entering a new phase in its development. Although the multistakeholder tradition has been robust for some time, the current analysis suggests that the role of nongovernmental actors in governance can be quickly marginalized with the reassertion of state power. The literature on global governance promotes the idea that the relative influence of states is declining in relation to a multiplicity of nonstate actors. With respect to Internet governance, there is no doubt that the impact of such actors has been great. However, if the state can reassert authority over this arena, a policy area where nonstate actors have been prominent, then it is clearly too early to assert the triumph of multistakeholderism over multilateralism.

### About the Author

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<sup>11</sup> Testimony of Lawrence E. Strickling, Assistant Secretary for Communications and Information National Telecommunications and Information Administration United States Department of Commerce, before the Subcommittee on Communications and Technology Committee on Energy and Commerce United States House of Representative, April 2, 2014.

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