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Global Internet Governance: India's Search for a New Paradigm

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Introduction

There is an ongoing 'global war' for internet governance¹—and it has heated up considerably during the current year. As the battles rage, the entire debate has become even more confusing as it has got mired in complicated jargon being tossed about by various stakeholders. The stakeholders are many, and so are their turf wars: between the technical community, the users, and government officials. Other issues compounding the discussions are: the wide net of decentralised platforms; the absence of a common set of rules agreed upon by all countries; and an alphabet soup of organisations, including the ITU, ICANN, OECD, Council of Europe and EU, IGF—which all serve as platforms for debating internet governance issues throughout the year. It also does not help that the approach to the internet governance discourse—multistakeholder, multilateral or bilateral—is as contested as the idea that the internet should be treated as a 'global commons', much like the oceans, atmosphere and outer space, despite it being a manmade entity owned by both private corporations and governments. Adding to this already complicated scenario is the role of so-called 'swing states' such as India, countries who have not yet been involved in either governing the internet or reaping its considerable economic rewards, but are in the coming years going to have large chunks of their populations using the internet. These countries will, therefore, have to invest significant resources to influence global internet debates to their advantage.

The question, thus, arises: What should be India's approach towards the international internet governance discourse? This Issue Brief attempts to answer this question by examining the Indian

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government's engagement with the global community, using the recently concluded NETmundial conference on internet governance as a case study. It also provides policy recommendations for the way forward.

By taking the lead and holding NETmundial, Brazil has become a prominent player in global internet governance. India, too, needs to introduce new and cutting-edge ideas to become a significant player. This could mean spearheading global conversations on, among other issues, the complex problems of cross-border jurisdiction and digital taxation. India could also help to deconstruct and redefine multistakeholderism to achieve international consensus. Another area where New Delhi can take the lead is in the privatisation of the global internet commons; for example, the management of ICANN or introduction of competition in critical internet infrastructure. The path has already been paved with the Indian Prime Minister announcing at the BRICS summit in Brazil that India should “take the lead in preserving cyberspace as a global common good”. India has, of course, been actively engaged in defining norms for responsible state behaviour in cyberspace at the meetings of the Group of Governmental Experts (GGE). These gains should be streamlined and further worked upon. However, this approach should go hand-in-hand with active engagement in internet governance platforms.

Global Governance and National Interest

A few factors have to be kept in mind when discussing internet governance and its evolution on a global scale. The first is that the internet governance discourse is not conducted on a single common platform where all nations meet to deliberate over issues and, thereafter, arrive at a consensus. In fact, the US and many other countries are fighting hard to ensure that such a scenario does not arise; they would rather prefer the current status where a number of different organisations deal with specific aspects of the internet. For example, the ICANN (Internet Corporation for Assigned Names and Numbers) coordinates the Internet's IANA (Internet Assigned Numbers Authority) function that includes: Domain Name System, IP Addresses and Protocol Assignments. Currently, ICANN is going through a transition with the aim to move away from the stewardship of the US government and become a self-regulating independent body that does not answer to any single or multiple governments.

At the other end of the spectrum, many countries including France have condemned the decision-making process of ICANN and suggested that such a body is incapable of governing the internet. Then, there is the ITU (International Telecommunications Union), a UN body that currently regulates information and communications technologies (ICTs) such as global radio spectrum and technical standards for telecommunications operators in order to interconnect the world. Some countries feel that the ITU could take on certain areas of internet governance, while others are

adamantly against such a move. There are also regional and national internet registries that are globally dispersed extensions of IANA, private and civil society platforms and specialised bodies like WIPO (World Intellectual Property Organization) that can be used to examine certain aspects of the internet economy; for example, intellectual property concerns. These organisations are completely independent of the other internet governance bodies.

Given the prevailing scenario, what is instructive is for countries to have a strategy to best represent their interests at each of these forums by politicians, bureaucrats, technocrats, academics, service providers, the user community, civil society, and others. Perhaps a cue can be taken from established players like the US. When it comes to the global internet, the United States, in line with its national interests, works to keep the internet 'global, open and secure.'² In a report of the Council on Foreign Relations, these principles were declared as a means to ensure that the internet remains decentralised, its infrastructure – not content – securitised and it translates into a global free trade zone to benefit US companies in the long run. This position has been put forward by US officials at various internet governance forums organised around the world.

Of course, to get international consensus on these terms is not an easy task, even for the country that invented the internet. For example, China continues to have an open internet within its borders but has put up a 'great firewall' to disconnect its people from the global internet. Similarly, it censors content: to the regime, this is one way of securing the internet. Therefore, any negotiations over the future of the internet can take place only if national policy objectives are made clear. This is also the reason why swing states are so crucial to the future of internet governance.

Past vs Future

The evolution of the internet has been directed by the US and other Western economies. However, there is a growing acceptance that the future of the internet, in many ways, will be in the hands of highly populated swing states like India, Brazil, South Africa, Peru, Turkey, Argentina, Kenya and Malaysia. Swing states have been identified by the Centre for International Governance Innovation based on their voting behaviour at the World Conference on International Telecommunications (WCIT) hosted by the ITU, various memberships and other relevant factors.³ Specifically, a swing state is defined as 'a state whose mixed political orientation gives it a greater impact than its population or economic output might warrant and that has the resources which enable it to decisively influence the trajectory of an international process.' How these states shape their views is crucial to the West, which has so far reaped the rewards of the internet.

Currently, the US and Europe function more as the "producers of goods" over the internet, with much of the Global South being the consumer. The biggest companies that have near

monopoly—Google, Microsoft, Cisco, Amazon and Facebook—are American. Therefore, there is an underlying suspicion that the global mechanisms favoured by the US and European countries are designed to maintain the status quo. Unless concerns of the South on this matter are bridged, it will be difficult to find consensus on internet governance issues.

Currently, the decentralised nature of internet-governance platforms often fails to take into account the concerns of the Global South, resulting in some of these States asserting themselves. Some of the governments have blamed social media for political turmoil in their countries and imposed temporary bans on platforms such as Facebook, Twitter and Youtube which are, technically, Western imports. This has been witnessed in countries like Iran, Turkey, Egypt, Pakistan and Syria. At the same time, any talk of a singular body or UN-led body to govern the internet leads to apprehensions about 'the end of the free internet' as the world knows it today. Western countries feel that authoritarian regimes (whose numbers may very well outweigh those of the democratic bloc) might vote together to end certain facets of global internet freedom in order to pursue their narrow political agendas.

India's Dilemma

India, though very much a vibrant democracy, has confused the international community by its posturings over the years. At different times, India has specified its desire to back a UN-led internet-governance body but, subsequently, backed away from such a proposal. India has also flummoxed many in the West by not favouring a multistakeholder (MSM) approach towards internet governance, but instead repeatedly called for a government-led multilateral mechanism, within or outside the purview of the United Nations. MSM essentially means that all stakeholders – government, business, academia, civil society, and the technical community – can have an equal say in the outcome of most governance issues. (Even those who back MSM agree that certain decisions related to national security and public policy should remain under the purview of sovereign governments.)

There has been uneven participation by the Government of India in internet-governance platforms over the years; not exactly in keeping with the behaviour of a global heavyweight. Even if India is not enthused by the current decentralised nature of internet-governance platforms, the reality is that these are the very same platforms where decisions are being made and, therefore, Indian views need to be represented. There needs to be an even representation from India across the board. Moreover, the Government of India's message at these forums must be made clear and consistently articulated to the global community. Unfortunately, India's motivations and goals remain largely a mystery despite the occasional statement coming out of New Delhi.

For instance, at the Internet Governance Forum 2012 held in Baku, Azerbaijan, India was represented by the Minister of State for Telecom, who signalled that India was open to working with ICANN; it was a reversal from an earlier proposal of setting up a UN body for internet governance. That same year India also signalled that it wanted to work with the larger international community to develop an appropriate model for international internet governance.

However, at the Internet Governance Forum 2013 held in Bali, Indonesia, India did not send any ministerial representation but a number of bureaucrats who reportedly did not make any significant policy contributions during the event. Similarly, ICANN meetings have seen representation from various ministries, many of which are technical in nature, such as the Department of Telecommunications, and the Department of Electronics and Information Technology from the Ministry of Communications and Information Technology, without a major push from the diplomatic arm of the Indian government. This approach changed during Netmundial, held in April 2014.

India at NETmundial

With this backdrop, it would be useful to examine India's experiences at NETmundial which was organised by the Brazilian government with the aim to develop a “bottom-up, open and participatory” roadmap for the evolution of the internet. India, along with Cuba and Russia, made headlines for not signing the meeting's outcome statement. NETmundial – the so-called “Internet World Cup” – brought together various stakeholders from government, academia, civil society, business and the technical community to discuss the future of the internet, in a post-Snowden world.⁴ The meeting was called by Brazilian President Dilma Rousseff in the wake of the outrage caused by the revelation that the United States had used the long arm of its National Security Agency (NSA) to spy on not just its own citizens, but those around the world. In a rousing speech in September last year to the UN General Assembly, President Rousseff had said, “Personal data of citizens was intercepted indiscriminately. Corporate information – often of high economic and even strategic value – was at the centre of espionage activity...” She called the actions a “breach of international law.”⁵

In a quick succession of events, Rousseff met Fadi Chehade, head of the Internet Corporation for Assigned Names and Numbers (ICANN), the Los Angeles-based organisation responsible for the coordination of global internet systems, and announced 'NETmundial' in October 2013, to be held in April 2014. A few months later, in March 2014, the US Commerce Department's National Telecommunications and Information Administration (NTIA) announced plans to transfer key internet domain name functions to the global multistakeholder community. The announcement made the international community more eager to debate the future of internet governance in Sao Paulo.

The ICANN announcement slightly changed the expectations from Netmundial. The focus was now on the form that internet governance needs to take in the future. In the past, the US and other countries had batted for a multistakeholder approach – one in which all stakeholders vote at the decision-making table – while countries like India favoured a multilateral approach to future negotiations. With the future of ICANN now under the scanner, both sides readied to meet at NETmundial.

The Indian Concept of 'Equinet'

NETmundial invited contributions for 'Set of Internet Governance Principles' and/or on the 'Roadmap for the Further Evolution of the Internet Governance Ecosystem'. Over 180 input documents and 1300 comments from over 47 countries were submitted, including one from the Government of India.⁶ On its part, the Indian government deemed the internet a shared resource and global commons, and looked forward to a transformation of the internet into an 'equinet' through universal access and affordable devices. For this, the government recommended shaping a 'globally acceptable legal regime' to govern the internet. It further added: "The Internet Governance should be multilateral, transparent, democratic, and representative, with the participation of governments, private sector, civil society, and international organisations, in their respective roles. This should be one of the foundational principles of Internet Governance."

This is an idea that goes against the dominant narrative of an international multistakeholder mechanism to govern the internet, one that is also keenly espoused by the US. The Indian government also suggested that "a mechanism for accountability should be put in place in respect of crimes committed in cyberspace, such that the Internet is a free and secure space for universal benefaction. A 'new cyber jurisprudence' needs to be evolved to deal with cybercrime, without being limited by political boundaries [so that] cyber-justice can be delivered in near real time." The document also talked about the importance of ICTs in pushing governance reforms and multi-lingualisation of the internet.

However, at the conference, the speech of the Indian representative, an officer from the Ministry of External Affairs, reflected some amount of frustration at not having these principles included in the draft outcome statement. He stated,⁷ "We would have liked to (have) some of the important principles and ideas, highlighted by us and many other countries, reflected in the draft outcome document." He went on to suggest that the outcome paper should be treated as a discussion paper instead.

The draft outcome document,⁸ released after collating comments, was released on April 14th, 2014. The document stressed on the importance of protecting human rights in an online world, and

cultural and linguistic diversity, which India had mentioned in its submission as well. With regard to internet governance itself, the document put its weight behind a multistakeholder system, stating that it should be "with the full participation of governments, the private sector, civil society, the technical community, academia and the users in their respective roles and responsibilities."

It added, "Internet governance institutions and processes should be inclusive and open to all interested stakeholders. Processes should be bottom-up, enabling the full involvement of all stakeholders, in a way that does not disadvantage any category of stakeholder." On cyber jurisdiction, the document was categorical, stating; "The experience accumulated by several (stakeholders) demonstrates that, in order to be effective, any cybersecurity initiative depends on cooperation among different stakeholders, and it cannot be achieved via a single organization or structure."

As the deliberations started in Brazil, the Indian government was seemingly miffed as its suggestions were excluded from the multistakeholder draft that was eventually produced. Back in India, not everyone agreed. The *Indian Express* carried an article that suggested that India was 'stalling' Internet reforms.⁹ It highlighted the fact that 'India objected to the draft document's goal to preserve an "unfragmented internet", signalling that it had not ruled out the "balkanisation" of the internet along geographical lines.

In the aftermath of the Snowden revelations, the Brazilian government had threatened to route all regional internet traffic through servers that would be located in the country. In fact, during the election campaign, the BJP indicated that it would follow a similar path—both to encourage industry in India and to counter jurisdictional issues that arise due to data servers located mostly in the US and under US law. A piece by the UK's *Wired* magazine addressed the issue, saying, "Balkanisation' is a loaded term and requires a more nuanced probe. Alternative infrastructure is not necessarily antithetical to the free flow of information. In fact, it may be necessary. Advances in technology have enhanced localism as much as globalisation. Expanded domestic infrastructure is a good strategy for the Brazilians, Germans, and other contenders. By creating more fibre, access points, and data centres, there will be more opportunities to compete on the provision of services — the real pathway to diversifying and rebalancing the future of the internet."¹⁰

As NETmundial drew to a close, an official outcome statement was released. This drew upon two days of deliberations from over 900 participants. In some ways, this gigantic process was a test of the multistakeholder process. A report released by the Center for Internet and Society in India¹¹ put the participant count as follows: Academia, 20; Governments, 28; Private Sector, 48; Civil Society, 61; Technical Community, 16; and Others (such as the EU, UNESCO), 19. The report also revealed that written contributions to the outcome document were from North America, Europe, South America,

and South and East Asia. However, little or no contributions were made from large parts of Africa and South East Asia, Central and West Asia, Eastern Europe and Western South America.

The NETmundial outcome document,¹² while putting its weight behind the multistakeholder system, stated: "The respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion." Moreover, it called for the "full and balanced participation of all stakeholders from around the globe, and made by consensus, to the extent possible." In the section on the 'Roadmap for the Future Evolution of the Internet Governance' the document, referring to the successor to ICANN, stated: "This transition should be conducted thoughtfully with a focus on maintaining the security and stability of the Internet, empowering the principle of equal participation among all stakeholder groups and striving towards a completed transition by September 2015." Jurisdiction was addressed as well: "It is necessary to strengthen international cooperation on topics such as jurisdiction and law enforcement assistance to promote cybersecurity and prevent cybercrime. Discussions about those frameworks should be held in a multistakeholder manner."

Winning themes at NETmundial

A few key themes emerged from the conference. Certain concerns that civil society was keen to tackle such as mass surveillance conducted by governments with the help of relevant business actors were not taken up. The document stated, "More dialogue is needed on this topic at the international level using forums like the Human Rights Council and Internet Governance Forum (aiming to develop a common understanding on all the related aspects)." At the same time, other important topics central to the shape of the internet, such as net neutrality and cyber jurisdiction, were also left to be discussed in future forums. Consensus, to a larger extent, was reached on human rights issues, privacy, development and access to the internet.

Different actors have viewed the success of the initiative from their vantage points. Some analysts felt that big business won the debate in Brazil. Julia Powles of *Wired* magazine, for example, wrote, "The big lesson of NETmundial is that diplomacy by multistakeholderism (i.e. a room full of voices— governments, corporations, individuals) has all the disadvantages of multilateralism (i.e. a room full of government voices): it is incremental, modest, guided by a few well-resourced players, and only mildly effective. But in addition, multistakeholderism has one major kicker: instead of big business exerting disproportionate influence from the shadows, in multistakeholder discourse, corporate giants are welcomed with open arms and given a massive stake."¹³

Others, such as internet governance expert Professor Milton Mueller, comparing the NETmundial outcome document with the previous international document on internet governance, called the

Tunis Agenda (drafted in 2003), concluded: “The Tunis Agenda defines distinct, separate roles for sovereign states, the private sector, civil society, and intergovernmental organizations. In these definitions, states are pre-eminent and exclusive authorities over the making of international public policy... Overall, this is a huge win for the so-called 'multistakeholder model.’”¹⁴

Not all governments, however, agreed with the conclusion. The governments of Russia, Cuba and India did not sign the outcome document which, to be fair, has not reflected their point of view on internet governance. A Chinese delegate had offered the following view: “National sovereignty should rule Internet policy and governance, and that each government should build its own infrastructure, undertake its own governance and enforce its own laws.” The representative of Saudi Arabia had called for international public policy, in regard to the Internet, to be developed by all governments, on an equal footing as it is essentially public policy. A submission by the civil society organisation, Global Geneva, stated that three levels of understanding were needed to further articulate governance related to the Internet: the first, at the intergovernmental level: binding agreements; national and international public regulation; and international law. The second, at the global citizens level: Internet principles; consensus; best practices; empowerment; fair competition; innovation; and capacity building. Finally, at the arbitration and justice level: unlocking deadlocks; dispute settlement; and court decision.

From India's point of view, while official suggestions were not satisfactorily accommodated into the outcome statement, there was active participation from both the State and a small number of civil society players. An official delegation attended NETmundial. An Indian academic was even selected to serve as co-chair of the Civil Society organisation. While India's civil society does not unanimously agree with the State's governance structure ideas, there is some symmetry in the view that access to the internet and building equal opportunities for unconnected Indians must be a national and international priority. India also had four remote participation hubs set up for those who could not physically travel to Brazil – in Gurgaon, Chennai, Bengaluru and Bhimavaram. Indian participation was thus quite visible at NETmundial.

It is expected that the findings and outcomes from NETmundial will feed onto other processes and forums, such as the post-2015 development agenda process, WSIS+10, IGF, and other Internet governance discussions being put together by different organisations and bodies at various levels.

Life after NETmundial

Many from the global community were unable to understand why India did not sign an outcome document that, for the most part, enshrined principles of an open internet. While the Indian government is yet to explain what happened at NETmundial, there are a few things that are clear. India was represented by an official from the Ministry of External Affairs, which some took as an

indication that perhaps internet governance will be added to the nation's foreign policy bouquet. However, a few months later, in June 2014, at ICANN 50 in London, UK, the government of India was not represented by any diplomats and, reportedly, none of the other official participants (from the National Internet Exchange of India and Department of Electronics and Information Technology) made any notable policy interventions during the six-day event. In contrast, China sent its Minister for Cyberspace Affairs Administration, who spoke at the opening ceremony of ICANN 50, despite the country not seeing eye-to-eye with the demand for a multistakeholder system.

The way ahead for the Indian government may be bumpy. Civil society is not unanimously behind the official stance India has taken, and a representative civil society on internet issues is yet to emerge. It is also commonly understood that the Indian government has historically been more comfortable with UN platforms, such as the ITU mode of functioning, than with the decentralised and multistakeholder processes of bodies like ICANN. This stance is in sharp contrast to that of the civil society and industry which favour the multistakeholder way. A consensus around national policy objectives in internet governance needs to be arrived at by reaching out to all stakeholders in business, civil society, technical communities, academia, industry, user groups, and the various arms of government. Legitimate trade goals, freedom of expression issues, national security and private industry priorities, journalism, privacy and end-user rights need to be developed. One such platform that could bring different actors together is the Indian Internet Governance Forum, to be held in late 2014.

India has taken a firm stand on internet security issues and moved forward with bilateral discussions with countries like the US, UK, and Japan. It has also participated in three Groups of Governmental Experts (GGE) meetings under the purview of the UN that have examined the existing and potential threats from the cyber-sphere and possible cooperative measures to address them.

At the same time, India must proceed within the ambit of current international internet governance platforms available to it, which include multistakeholder platforms. This must be done not just through mere attendance, but by notable policy interventions by government officials from various departments that represent different Indian concerns relating to the internet. Of course, this can only be possible once national policy objectives concerning global internet governance are developed. This is crucial as India, which aims to have its billion-plus population online in the coming decade, does not want to merely sign treaties and agreements which have been drafted by—and favour—the current dominant stakeholders of the internet. While formulating national policy, the government of India and its official policy divisions could circulate working papers for closed consideration and test out new ideas in global governance. Either way, the country must sustain its engagement in this important sector; and by introducing new ideas into the internet governance debate, assume the mantle of a leader in this sphere.

Although treated as a global commons, the internet is an economic reality and, as such, countries are putting their weight behind the governance structures which they feel will favour their own national objectives. For India, too, the order of the day is to frame clearly defined internet policies, along with the creation of a team of diplomats and technocrats, with the aim to influence international debates. These views can then be reflected at the ITU, at IGF (Internet Governance Forum), ICANN, and perhaps even at the 2015 meeting on internet governance to be held in the Netherlands.

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