

# Governing the Internet

Edited by Matthew Gatt & Ranier Fsadni



Academy for the Development  
of a Democratic Environment



CENTRE FOR EUROPEAN STUDIES

## Foreword

Today the internet is part of our daily lives. But it is also part and parcel of our politics, from e-government straight through to e-revolutions.

This book visits the major questions of Internet governance today bringing to the fore the role of the Internet in, and its impact on, politics and policy-making.

This book was compiled by Ranier Fsadni and Matthew Gatt on behalf of our academy, AZAD, the Academy for the Development of a Democratic Environment (AZAD). Founded in 1976 by Censu Tabone who later became President of the Republic of Malta, AZAD has played an active role in democracy-building in Malta and in the wider Mediterranean region.

Today, the political context surrounding AZAD's foundation may have changed. But its intrinsic mission to contribute to a better democratic environment certainly has not. AZAD is now increasingly engaged in understanding and working with other contemporary democracies and reaching out to nascent democracies. With the scent of the Jasmine revolution still in the air, this is a very exciting time for democracy indeed.

This publication does not in itself aim to be an exhaustive text on the topic. Rather, the authors open small windows onto vast themes. Hopefully, this will entice readers to engage further with a relatively

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new area of academic research and perhaps - why not? – instigate them also to contribute to future research in this fascinating area.

AZAD wants to acknowledge with thanks first of all the authors for contributing the articles which are being published as chapters of this book. Thanks also go to Ranier Fsadni and Matthew Gatt for their editorial role in putting this book together as well as Tomi Huhtanen from CES for his unstinting encouragement and support. Finally I must also thank the AZAD team whose work and dedication also made this possible.

*Simon Busuttil*  
*AZAD Chairman*  
*May 2011*

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## PREFACE

# Governing the Internet

Matthew Gatt

From Facebook Democracy to Wikileaks, this is an exciting time for the Internet.

As the virtual sphere becomes a major channel for drivers of socio-political change, policymakers are being increasingly compelled to focus more attention to Internet governance. The international institutional framework governing the Internet arguably has many gaps which are yet to be filled whereas policy approaches towards several day-to-day Internet-related issues are yet to be refined.

The object of this publication is to present core issues relating to Internet policy and its role in politics. By adopting a multi-disciplinary approach it seeks to string together a set of ideas equally relevant for policymakers, academics as well as engaged citizens.

The book is divided into two sections; the first focusing on Internet diplomacy and the second on policy and politics involving the Internet.

In the first chapter Kurbalija traces the development of communications diplomacy from the time Lord Palmerston received the first telegraph message, up until the introduction and adoption of the Internet, as we know it today. Kurbalija draws interesting historic parallels between the impact of the telegraph on 19th Century diplomats and the Internet as we experience it today. The Internet has enhanced the globalisation of identities previously monopolized by the nation state, and has brought into the world of diplomacy a host

of new actors at various hierarchic levels. This, in Kurbalija's view, has led to a transition for diplomacy from statecraft to a management tool.

The second and third chapters deal with the World Summit on Information Society (WSIS). The second chapter provides a brief analysis of the legal concepts relevant to the WSIS, while the third chapter looks into the dynamics and evolution of the WSIS process. The author, Kurbalija, questions whether specific cyberlaws are needed to regulate the Internet, or whether the current international legal architecture provides an adequate channel for the regulation of the Internet. Kurbalija analyses the WSIS process and its contribution to Internet governance but also its impacts on a new kind of diplomacy which Kurbalija dubs the 'Internet diplomacy'.

In the fourth chapter Kurbalija maps out the international institutional structure currently governing the Internet. The main focus of Kurbalija's analysis is the evolution and functioning of the Internet Corporation for Assigned Names and Numbers (ICANN). Kurbalija's assessment leads him to propose that a change in the status of ICANN could be the way forward for future governance of the Internet.

A fifth chapter tackles the issue of cybercrime. By referring to the case of Luxembourg, François Thill presents a number of policy approaches to be used in the prevention of cybercrime. An interesting consideration emerging from Thill's work is that national and international policies must be coordinated. In this respect each state must work within its own international institutional context to shape international law and share best practices and experiences.

Chapter Six adopts a reverse take on the bi-directional relationship between governance and the Internet. By deviating for a second from the topic of control over the Internet, the authors look at the control which the Internet exudes on political campaigns. The backdrop of this analysis is a comparative study between Maltese and French national elections.

The final chapter deals with children and the influence the Internet has on them and on their interactions. The author highlights the

importance of policy in countering the diffusion and legitimization of certain negative behaviours which ecommerce might tend to promote.

Through this publication AZAD seeks to engage a wider audience with a highly relevant and emergent field; Internet policy and governance. As the Internet continues to permeate our lives, questions on Internet governance become increasingly important for further development of democratic societies.

## INTRODUCTION

# Diplomacy in the Digital Age

Jovan Kurbalija

Understanding the relationship between the Internet and diplomacy - broadly and in detail - has been, one might say, at the core of my mission as an academic researcher. This mission, however, does not come with sermonizing - certainly no preaching of techno-optimism, or techno-solutions for the modern world. As a matter of fact, after all these years involved in IT, I am increasingly becoming a techno-pessimist. The motivation stems, instead, from a simple recognition; that communications and information lie at the heart of diplomacy and international relations. On this basis any profound change in the relations and modalities of communication and information systems, is bound to have serious implications on diplomacy.

What will be sketched out in this chapter is a summary of some of the research, together with possible future developments in diplomacy; particularly with respect to the Internet and ICT. This summary will also serve to frame some of the issues discussed in detail in the following chapters.

The chapter is organized into three main parts. The first part will focus on methodology, the way we conceptualise research on the interplay between the Internet and diplomacy. It will be followed by the second part, which will discuss the way technology and diplomacy have interacted throughout history; particularly how the telegraph, radio and other technological devices have influenced diplomacy.

The third part returns to the present and the way in which the Internet and computers have been changing modern diplomacy.

### **1. Diplomacy and Technology: Continuity and Change**

Probably the best starting point is the famous quote which says: “My God, this is the end of diplomacy”. This is reported to have been the reaction of Lord Palmerston when he received his first telegraph message in the 1850s, with a report from his negotiators at the Paris conference discussing the peace settlement of the Crimean war. As is well known, diplomacy survived the telegraph. Diplomacy also survived the emergence of the radio, the telephone, and, so far, the Internet. There is a certain robustness in diplomacy which can explain the reasons why it has been managing to bypass all of these challenges and not disappear.

So, despite his distinguished reputation, one can be sceptical about Zbigniew Brzezinski’s suggestion that the Internet will bring about the end of diplomacy. Diplomacy is here to stay. But there are many open-ended questions. By whom will diplomacy be performed in the future? At what level? How and to what ends? In trying to address aspects of these large questions the particular focus will be on the interplay between continuity and change in the evolution of diplomacy.

#### **1.1 Communication and Information**

In our research, when we try to analyze the interplay between diplomacy and the Internet we start from the two elements they have in common: communication and information. Let us start with diplomacy. Diplomats communicate; diplomacy without communication is like the human body without blood. The core of diplomacy is communication. Once communication is cut, diplomacy ceases to exist. Information is another core element of diplomacy. Diplomats collect information, interpret information, and base policy on available information. Therefore, these two elements – communication and information – are two conceptual building-blocks of diplomacy.

The Internet and ICT are bringing about the fast digitalization of these two elements. Nowadays *Skype*, mobile telephones and the Internet are just a few examples how we communicate. One can recall (especially those of my generation and older) how it was twenty or thirty years ago with typewriters and faxes. In comparison to the past, there has been a massive revolution in the way we communicate.

The second element - information - has been revolutionized even more. Today, the biggest phenomenon is Google, as a point where one can start searching for information and accessing huge amounts of data, including very soon all the books that have ever been printed. Apparently - and with great sadness for those of us who love losing themselves in libraries and bookshops - our generation may witness the beginning of the end of printed books and the Gutenberg era.

#### **1.2 Impact of Technology on Diplomacy: Environment, Agendas and Technologies**

In the interplay between diplomacy and technology, three main research areas attract special attention. The first is the so-called new environment for diplomatic activities: changes in the socio-economic distribution of power in society, the geographical distribution of power in society, and overall changes in political, social and economic relations. The second research area relates to new topics on diplomatic agendas. All new technologies have historically initiated social, economic, and political changes and become part of the international diplomatic agenda – the telegraph in the nineteenth century, then the radio and now the Internet. The third research area is the impact of the Internet and other new technologies on diplomatic activities.

#### **1.3 History: Avoiding Chrono-Narcissism**

At this stage a historical digression is needed in order to anchor our discussion in a few historical examples and processes and thus avoid what I call chrono-narcissism: a historical shallowness that severely underestimates the degree to which some contemporary developments

or dilemmas may display continuity with the past. Even with technologies that seem, and indeed are, unprecedented, such historical understanding, together with an anchor in our intellectual tradition, may be illuminating.

There are many examples from the past, from ancient Greece, Rome, the Middle Ages as well as the nineteenth century, which we can bring forward and capitalize on. My favourite impetus comes from Churchill, who once said, "The further backward you can look, the further forward you can see". The history of diplomacy could be probably traced back to the moment when our ancestors discovered that it was better to hear the message than to eat the messenger - it was a better deal to hear the message and to make some sort of a deal. This probably makes qualified diplomacy one of the oldest professions, if not the oldest one.

## **2. From the Vienna Congress till the First World War**

The most relevant period for our discussion on the impact of technology on diplomacy falls between the Congress of Vienna (1815) and the First World War. In this period, there were two major developments. On the technological side, the telegraph was invented; a major technical invention in the field of communication. On the diplomatic side, the Congress of Vienna marked the start of the golden age of diplomacy which kept some sort of peace till 1914.

### **2.1 Telegraph and the Changing Environment for Diplomatic Activities**

What were the major structural changes introduced by the telegraph? First, it was splitting communication and transportation. For the first time you did not need a car or a courier to bring the message. It could be brought by electronic means. For the very name of the telegraph itself, there were two options: 'tachygraph', focusing on time; and 'telegraph', focusing on space. In the end they decided to call it telegraph. The telegraph 'shrank' the world and influenced

#### **Box 1**

##### ***Historical Parallels Between the Telegraph and the Internet***

The mechanical telegraph was invented in 1794 by the French inventor Chappel. Although the telegraph was a French conceptual invention, it received its full use as a communication system in Britain and the United States. There was a similar development two centuries later with the Minitel in France and the Internet. As you may recall, the Minitel was used in the 1980s in France as the innovative online system. It was possible to pay bills online, order goods and reserve tickets. Minitel had some rudimentary Internet-functions. But the French did not manage to export it on a global level or to do what the US did with the Internet.

##### ***A Diplomat Among the Inventors of Telegraph***

It is frequently said that the telegraph had many fathers. After Chappel's invention of the mechanical telegraph, many scientists worked on the development of the electrical telegraph. Among them there featured prominently a Russian diplomat, Baron Pavel Schilling. While serving in Prussia, he had had time to play with technology and conducted the first successful trial of the electronic telegraph.

successive historical developments. Firstly, the telegraph facilitated the first real globalization of the economy which happened at the end of the nineteenth century. Secondly, with the increasing importance of telegraphic cables, Britain and other players started developing the so-called cable geo-strategy. As can be seen from Table 1, Britain controlled, by the end of the century, 66 per cent of all telegraphic cables around the world. Together with the United States, it was almost 80 per cent. Germany controlled 1.9 per cent (1892), later increasing this to 7.2 per



**Table 1**  
**Cable Geo-Strategy**

	1892		1908		1923	
	km	%	km	%	km	%
<b>Britain</b>	163,619	66.3	265,971	56.2	297,802	50.5
<b>USA</b>	38,986	15.8	92,434	19.5	142,621	24.2
<b>France</b>	21,859	8.9	44,543	9.4	64,933	11.0
<b>Denmark</b>	13,201	5.3	17,768	3.8	15,590	2.6
<b>Germany</b>	4,583	1.9	33,984	7.2		
<b>Others</b>	4,628	1.9	18,408	3.9	53,819	9.2
<b>TOTAL</b>	246,876	100	473,108	100	589,228	100

cent (1908). This was the initial critical infrastructure for the globalised economy and brought with it considerable political and strategic importance. For example, Britain controlled all cables connecting France and its overseas territories, including Martinique, Madagascar, Tunisia, Morocco, and Tonkin. After the Fashoda crisis, the French government received the proverbial ‘wake-up call’. In Fashoda, nowadays Sudan, two colonial expeditionary forces clashed. The French one was moving from the West to the East and the British expeditionary force was moving from the North to South. In Fashoda there was a stalemate, with French expeditionary force having the stronger position. But communication was controlled by Britain. French forces in Fashoda had to communicate to Paris via British cables. Some historians argue that the British control of communication was decisive for the French decision to withdraw from Fashoda, which enabled Britain to establish a North-South colonial axis in Africa.

## 2.2 The Telegraph and New Topics on Diplomatic Agendas

The telegraph brought new topics to diplomatic agendas. In order to deal with various regulatory issues related to it, the International Telegraph Union (ITU) was established in the mid-nineteenth century. Later on it was renamed the International Telecommunication Union, with the mandate to deal with global aspects of development of other telecommunication systems, including radio and telephony.

One of the issues which existed in the early days of the telegraph, and nowadays with the Internet, is the neutrality of telecommunications systems. The ITU negotiated a proposal to introduce the neutrality of the telegraph cable in case of war. The question of the general neutrality of the Internet telecommunication infrastructure is discussed nowadays too.

Another issue that is common to both eras is the delicate balance between freedom of communication and the right of national states to control communication, especially in situations relevant to national security. This discussion is still on diplomatic agendas. The growing practice of Internet censorship has stirred up the debate whether such censorship may constitute a breach of basic human rights.

## 2.3 The Telegraph as a Tool of Diplomacy

The telegraph has significantly influenced the practice of diplomacy. In the history of the US State Department there is a vivid example of how fashionable technology can lead to a terrible waste of money. In 1866, the State Department sent a cable telegraph to the US mission in France for the price of \$20,000. The annual budget of the State department was \$150,000 at the time. After this incident the policy was changed. However, the high cost of telegram messages influenced the way diplomats wrote - they now had to write very concise messages. This is one good example of how a medium (i.e. the expensive telegraph) influenced message-writing (i.e. diplomatic language).

The telegraph was not welcomed among diplomats in the nineteenth century. The British ambassador to Vienna, Sir Horace Rumbold, said

that there was a “telegraphic demoralization” of those who formerly had to act for themselves, but now had to content themselves with being at the end of the wire. Diplomats were losing their independence; at least, that was their main complaint against the telegraph.

#### 2.4 Telegrams that Influenced Diplomatic History

There are three important telegrams that are an important part of study of diplomatic history: the Ems telegram, which basically initiated the unification of Germany; the Kruger telegram, which reshaped the German policy in South Africa; and the Zimmermann telegram, sent by the German foreign minister, Zimmermann, to his embassy in Mexico and which was intercepted by the British and was revealed to the American public at a time when the American public was still neutral and not ready to join the First World War. The Zimmermann telegram revealed that Germany was offering Mexico the American States of New Mexico, Utah and California if Mexico entered the war on the side of the Germany. The revelation made front page news. It was at that moment that the United States joined the war.

The best case study of the negative influence of the telegraph on diplomacy was the July crisis that led to the start of the First World War. Telegraphic messages were going between St. Petersburg, Berlin, Belgrade, Vienna, Paris and other countries involved in the conflict. The main problem was that its users had little awareness of how to use the telegraph properly. The typical telegraph-driven misunderstanding was witnessed when the Russian Tsar sent a conciliatory note to Germany - even though the German Kaiser had already sent an unconciliatory note to the Tsar. This created a game of broken telephones with very serious consequences. The July crisis was an example of a real failure in technology. Although the technology existed it had not served its desired purpose.

### 3. Diplomacy in the Internet Era

Let us return to the Internet era and analyse the impact of the Internet on diplomacy by focusing on three research areas defined previously: (1) the changing environment for diplomatic activities, (2) new topics on diplomatic agendas and (3) new tools for diplomatic activities.

#### 3.1 Changing Environment for Diplomatic Activities

The Internet facilitates the distribution of power in modern society on various levels: national, inter-regional and global. The medium has generated huge personal fortunes for some entrepreneurs, rivalling those made in earlier eras by, say, innovators in the banking system and pioneers in the automobile and the petroleum industries. This important development has its salience for diplomats. For example, any diplomat in charge of economic relations posted to the United States has to frequently cover developments in Silicon Valley, since its dynamism is intimately related to its status as an emerging economic power-structure.

Another important development for diplomats is the breakdown in the distinction between foreign and domestic policy. Nowadays, much diplomacy needs to be conducted with domestic constituencies in mind. This is because communication between domestic and foreign constituencies has become extremely easy. Therefore, in delivering speeches and making important statements, two audiences need to be kept in mind rather than one; the foreign interlocutor and the domestic audience. This signifies an enormous change in diplomacy in the last thirty to forty years. In earlier times, statements for foreign consumption need not have been identical to those meant for domestic consumption. This change is not trivial because the problems in diplomacy are often compounded by complex backdrop of national emotions, mythology and prejudice. It can be tricky to articulate an effective message that has to address the concerns of two separate audiences.

To illustrate, let us consider the historical episode when Dutch diplomat and statesman, Jan Pronk (previously the UN-envoy to

Darfur) wrote a blog after one of his visits to Darfur and Sudan. In this blog, which was hosted at a local server in the Netherlands, he strongly criticized Sudanese politicians and included some descriptions that are, shall we say, not typical of diplomatic communication. The blog was read by the Sudanese and they sent a message to the UN saying that they did not want Pronk as mediator. Pronk had lost his credibility.

Similar examples abound. The proper use of blogs and other *Web 2.0* platforms continue to be one of the major challenges in diplomatic communications. Diplomats cannot ignore what is happening with new media. In Serbia the question of visa regimes with the European Union is highly sensitive and emotional. Many people consider visa restrictions as a punishment and an unjust restriction of movement. Stories highlighting cases of unfair treatment and incidents at EU embassies are very frequent at the *B92 Blog*, which is highly influential in shaping public opinion. Recently I met a few EU ambassadors who were not at all aware of the importance of blog communication and of some of the negative comments on consular officials of their respective countries. They were still following official newspapers and TV as the main indicators of public opinion. They failed to recognise that blogs can be very revealing of what intellectuals, policymakers and other opinion leaders are saying about one's country. The main challenge for diplomatic services is to see how to participate in this new form of communication - often informal and spontaneous; i.e. highly 'undiplomatic'.

Another aspect of the changing environment is reducing the need for intermediaries. Today, buying an airline ticket can be done without the assistance of a travel agent. In many professions and activities, the intermediary is disappearing. Can this process also affect diplomacy? Some argue that diplomacy as an intermediate layer in interstate relations may disappear as nations and international organisations communicate directly.

I think this is an oversimplification of the reality, because it is not only technical communication that is at stake, but also the much

broader political and social communication. Diplomats are, or should be, masters at understanding specific social and cultural contexts.

### 3.2 New Topics on Diplomatic Agendas

What are the new topics on diplomatic agendas brought forward by the Internet? The first is the question: 'Who governs the Internet?' To this there is no simple answer. Officially, the organization that governs the Internet is ICANN, the Internet Company for Assigned Numbers and Names, based in the United States. However, over the last five or six years, many governments, especially those of China, Russia, Brazil, and India, have started questioning ICANN's predominant role. These governments argue that ICANN should be replaced by some intergovernmental organization. As the number of Internet users outside the United States continues to increase, so will the pressure towards the internationalization of Internet governance.

Cyber-security is yet another increasingly relevant issue. One of the key points here relates to jurisdiction. Where does one institute legal action? Where does one locate an Internet transaction? For instance, if you are based in Sofia and you purchase an item from a company based in Sweden, and the Swedish company has a server in China, and this server is maintained by a British company - then where do we say the transaction happened? Or is the question no longer meaningful? The issue has so far only been resolved in ad hoc ways. But diplomats will eventually have to address it. Equally, they will have to address a host of other issues, such as cybercrime, privacy and the digital divide.

Finally, a third area of increasing relevance is the impact of the new media on the way diplomats conduct their own professional lives. One cannot idealise the world for which Harold Nicolson wrote his primer on diplomacy: this was a world shadowed by chaos and war. However this was also a very different world in terms of the texture of everyday life. For better or for worse, in the new communications environment, with its new tools and agendas, a new way of being a diplomat has to be invented.

Four particular implications should be highlighted with regard to conducting diplomacy in this new environment. The first concerns a diplomat's relationship to his or her sources, and how to arrive at appraisals. A new habit of research is crystallising, whereby the first port of call for the researcher is anything from *Google* to Wikipedia. Search engines and open-source encyclopaedias have greater reliability than was first thought.

This being said, such sources still have blind spots. Firstly is their tendency to only cover a limited amount of the available knowledge, or even a limited number of the available types of knowledge. Another limitation concerns the surplus of information one receives – my own experience is that of receiving some ten or fifteen links per day on certain subjects. In practice, this problem is enhanced by yet another feature of these communications; the pressing deadlines of communications in a hyper-connected world make it more difficult to find the space to think and reflect on problems, and thus intellectually to arrive at judgments that give some kind of closure, however provisional.

A second implication on diplomacy concerns the diplomat's communication with others. What has been called *Web 2.0* – the world of wiki, blogs, social networking – introduces a radically different way of communicating. On one level, of course, there is a surprising continuity through the persistence of text in the multimedia world; the Internet and mobile communication are still primarily text-based forms of communication. On another level, however, there is an important difference. *Web 2.0* usually calls for an informal form of communication, but what does this spell out for diplomats who need to accept the terms of new media while balancing the requirements of diplomatic representation?

A subsidiary implication here concerns the impact of new media on diplomatic training. For instance, The Diplomacy Institute of the University of Malta has found it important to prepare a specific course for diplomats - precisely to address the questions raised so far. Again, the issues dealt with do not constitute, as such, a complete break with

the past. Informal exchanges have formed part of the life of diplomats for a very long time, if we take social engagements – receptions, dinner parties, etc. – as a necessary part of a diplomat's work. The core issue is that social networking on the Internet combines informality with the implications of written text. Jotting down – in black on white – one's views and statements gives the diplomat's message a significance that outlives the social context in which the message was born. Socialising through text is different from oral socialisation; one's words have a different weight. Moreover, one can actually engage activists and volunteers, not just policy makers. The result is a need for diplomatic services, in their training, to provide diplomats with an understanding of the dynamics of the main media tools, such as *Facebook* and *My Web*.

The third implication concerns virtual reality, or, as it has sometimes been called, *Web 3.0*. It is still premature to discuss what these implications are in detail, since it is still in its early stages. In some of our experiments and research at the Diplomacy Institute we set up a virtual embassy in *Second Life* with virtual negotiations between avatars using a currency, a market, requests for visas, etc. In two or three years we expect to have a better picture of the practical spinoffs - not just for diplomatic education, but also in other fields.

The final implication concerns ministries of foreign affairs and their need for their reorganisation in light of the implications highlighted thus far. In view of the drastic changes in the world in general - but particularly in the world of diplomats - ministries will need to institutionalise continuous education to keep up with the changes. Ministries will also need to take measures to preserve institutional memory to make sure that the rapidity of change does not erase the experience accumulated over time. In-house think-tanks as well as diplomatic networks will need to consider not just the relations between states, but also the relations with non-state actors such as business corporations and NGOs, in order to address the problems and conflicts of an increasingly fragmented society.

# Internet Governance and International Law

Jovan Kurbalija

The rapid turnover of knowledge and information is contributing to a more unstable world. This development marks a break with the twentieth century, when conflicts, especially during the Cold War, were very organised and controlled. This break signals a new development, but also a return to an earlier era; that of the nineteenth century - when conflicts were less predictable and controllable. This also means that in the future diplomacy will not only be conducted just by official diplomatic services, but also new actors whose emergence is empowered by new technologies. These new actors will be present at all levels - local, national, regional and global - and will communicate via a mix of channels, ranging from face-to-face to online approaches.

The political implications of such developments are important. The emergence of these new actors will break the marriage between *raison d'état* and national interest. Some actions, even on the international level, may now be construed as being in the national interest because they are wedded to some broader notion of social interest or common good.

Such a political undercurrent must not go unnoticed as diplomacy affects a transition from statecraft to a management tool - from the management of order to the management of change. In diplomatic services around the world - not least that of the United States - stability and predictability were for a long time the key terms. Now it is the need to manage change in a scenario where change is the permanent future - change has become the new imperative. As such, this is an exciting time in which to be a diplomat. All the more exciting if one keeps in mind that patterns from the past are still relevant for understanding the future.

The aim of this chapter is to contribute to a conceptual mapping of the legal aspects of Internet Governance. It will reflect on the legal issues discussed so far during the WGIG/WSIS process, especially those resulting from the WSIS in Tunisia in 2005.

The WGIG's multidisciplinary approach allowed it to address Internet Governance issues from technical, policy, economic, institutional, and legal perspectives. Although legal considerations were not the priority of the WGIG, the WGIG process confirmed that all Internet Governance issues include important legal aspects. Legal discussions within the WGIG focussed on:

- legal issues *per se*, including cybercrime, intellectual property rights, data protection, privacy rights and consumer rights;
- legal mechanisms for addressing Internet Governance issues, including self-regulation, international treaties and jurisdiction.

Since the presentation of the WGIG Report, the WSIS negotiations have mainly dealt with potential Internet Governance mechanisms, including potential institutionalisation. Legal considerations are becoming crucial in exploring the various ways and means of fitting proposed institutional designs for Internet Governance into existing national and international legal frameworks. Some of the questions under discussion, not only in the WSIS Preparatory Meetings, but

also in the corridors of the Palais des Nations and on online forums include: 'How to facilitate the participation of various stakeholders within the state-centred international legal system?'; 'What would be the most suitable international legal instrument for addressing Internet Governance issues?'; and 'What the relationship between international public and private law is currently in the field of Internet Governance?'

### **1. Cyber-law vs. Real Law**

The WSIS/WGIG Internet Governance process was instigated almost two years after the Dot-Com Bubble burst in 2000. A more mature and realistic discussion of the various effects of the Internet on society gradually replaced the early Internet hype of the 1990s. Currently, two paradigms, generally described as 'techno-optimism' and 'techno-realism', create the underlying conceptual basis for Internet Governance discussions. In the legal field, proponents of 'techno-optimism' argue for the development of 'cyber-law', while the 'techno-realists' argue that the solution for the Internet lies within the usage of 'real law'.

A 'cyber-law' approach presumes that the Internet has brought about new types of social interaction that are taking place in cyberspace. Consequently, new 'cyber-laws' need to be developed for cyberspace. In the early days, the proponents of this approach argued that the Internet de-links our social and political interaction from the current territorial organisation of the world, which rests on the notion of the sovereign state. This argument is best epitomised by John Barlow's famous message to the governments of the world: "You are not welcome among us. You have no sovereignty where we gather. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear. Cyberspace does not lie within your borders" (Barlow (1996)).

Presently, this particular argument is mainly of historical relevance. The current proponents of the 'cyber-law' approach argue that the sheer speed and volume of Internet communication hinder the enforcement of existing legal rules and require the development of new 'cyber-laws'

(Post (2003)). A 'real law' approach is based on the assumption that the Internet is not conceptually different from previous telecommunication technologies; from smoke signals to the telephone. Though faster and more far-reaching, the Internet still involves communication over distances between individuals. Consequently, existing legal rules can be applied to the Internet.

Although both approaches contain valid elements, the real law approach is becoming predominant in theoretical analyses and policy-making. Notably, the WSIS/WGIG discussions on Internet Governance emphasised the need to use existing national and international legal mechanisms for regulating the Internet. For some issues, however, such as trademark protection, real law rules would need to be adapted in order to apply to the Internet. Newly designed rules must also regulate other issues, such as spam. It is difficult to envisage any existing rule that might be applied to spam. The closest real world analogy to spam - junk mail - is not illegal.

### **2. Does the Internet Require Global Regulation?**

One frequently expressed view about Internet Governance is that the global nature of the Internet requires global Internet regulation. Proponents of this view support the need for global regulation with examples, such as the lack of effective national measures to combat spam or cybercrime. The typical line of thinking goes like this: any country outside global regulation could become a 'safe haven' for those intending to defy globally adopted Internet rules. One of the early examples supporting this argument is the case of the 'I Love You' virus. The hacker, who created this virus, resident in the Philippines, could not be prosecuted for the worldwide damage caused by his virus because no such crime existed in Filipino legislation.

While global regulation may be desirable in many respects, national and regional regulations are assuming greater relevance. The Internet increasingly becomes anchored by geography. New technological developments, such as geo-location software, make it simpler to locate

the geographical location of Internet users. Together with geo-location software, powerful filtering tools can limit Internet access based on the user's country of origin. Besides technological devices, increasing legislative pressure in many countries requires ISPs to identify their users and, if requested, to provide necessary information about them to the authorities. With such developments, the Internet will become a less anonymous medium. For many governments, the combination of technology and legislation is sufficient to ensure an acceptable level of enforcement of national legislation<sup>1</sup>.

The more the Internet is anchored in geography, the less particular its governance will need to be.

### 3. The Use of the Variable Geometry Approach in Internet Governance

The 'variable geometry' approach has been widely used in international legal practice. Among the proponents of the variable geometry approach one should mention Judge Tanaka of the International Court of Justice, who stated the following in the South West Africa Case: "To treat unequal matters differently according to their inequality is not only permitted but required" (ICJ (1966)). Professor Abi Saab finds a conceptual framework for variable geometry in differentiating between the international law of coexistence, based on the principle of sovereign equality, and the international law of co-operation, which includes the equality of participation but the differentiation of tasks and obligations (Abi-Saab (1998)).

The need to accommodate states with different capacities and interests within the same international framework gradually triggered various forms of variable geometry. One of the well-known examples is the veto power of the five permanent members of the UN Security

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1. Enforcement does not mean that prohibited behaviour will become impossible. People with technical skills will still be able to bypass various technological barriers. However, for many governments it is important that the majority of ordinary users remain within parameters specified by legislation.

Council. Many international organisations, such as the International Monetary Fund and the World Bank, rely on variable geometry. Other examples include commodity organisations, such as the International Tropical Timber Agreement, which distinguishes between consumer and producer member states. Voting power is allocated according to a member state's relevant share of tropical forest resources. International environmental law has developed the principle of common but differentiated responsibility, which contains two main elements: (a) common responsibility of countries for the protection of the environment on local, regional, and global levels; and (b) differentiated contributions to reducing environmental harm based on criteria such as a particular country's historical contribution to environmental damage and its capacity to prevent and reduce further environmental damage<sup>2</sup>. The principle of common but differentiated responsibility could apply to treatment of 'Internet pollution', such as spam and viruses<sup>3</sup>.

Internet Governance requires the involvement of a variety of stakeholders who differ in many aspects, including international legal capacity, interest in specific Internet Governance issues, and available expertise. Such a variety of issues could be accommodated within a single Internet Governance framework through the use of the variable geometry approach. This approach, which reflects stakeholder interests, priorities, and capacities to tackle Internet Governance issues, is implied in Article 49 of the WSIS declaration, which specifies the following roles for the main stakeholders (WSIS (2003)):

- States: "a policy authority for Internet-related public policy issues" (including international aspects);

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2. The principle of Common but Differentiated Responsibility was used in the Rio Declaration (1992) and the Framework Convention on Climate Change (1992). The principle of differentiated responsibility is used in various international legal instruments, including the Barcelona Convention (1976:Article 11(3)) and the Preamble of the UN Convention on the Law of the Sea (1982).

3. 'Polluter Pays' is another principle that could be borrowed from environmental law and used in dealing with 'Internet Pollution'.



- The private sector: “the development of the Internet, both in the technical and economic fields”;
- Civil society: “an important role on Internet matters, especially at community level”;
- Intergovernmental organisations: “the coordination of Internet-related public policy issues”;
- International organisations: “the development of Internet-related technical standards and relevant policies”.

Variable geometry can be implemented through mechanisms that include different core responsibilities for tackling particular Internet Governance issues and a carefully weighted decision-making process, including the necessary checks and balances. One possible criticism of the use of variable geometry in Internet Governance is that the creation of such a system would require lengthy and detailed negotiations, especially in the grey zones, where various stakeholders may have competing and conflicting interests (e.g. the management of the core Internet resources). In negotiating grey zone issues, the win-win potential of variable geometry could be limited by the zero-sum approach to negotiations.

#### 4. International Public Law and International Private Law

The need for the use of international law is frequently raised in Internet Governance discussions. The context within which such references are made very often leads to conceptual and terminological confusion. The term ‘international law’ is mainly used as a synonym for ‘international public law’, established by nation-states and international organisations, usually through the adoption of treaties and conventions<sup>4</sup>. However, most international legal cases regarding the Internet include a strong private law feature, involving such issues

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4. Other sources, according to the Statute of International Court of Justice, include customary law and general principles of law (see: Article 38 of the Statute of the International Court of Justice, UNCIO, Vol. 15, 355).

as contracts and torts. In dealing with such issues, there is need to use international private law, which creates an additional element of terminological confusion. The term ‘international private law’ is, to a large extent, a misnomer. ‘Conflict of laws’, the term used in the United States, is more precise. The rules of international private law are stipulated in national legislation, not in international treaties<sup>5</sup>. The rules of international private law specify the criteria for establishing applicable jurisdiction and law in legal cases with foreign elements (e.g. legal relations involving two or more entities from different countries). The criteria for identifying the applicable jurisdiction and law include the link between an individual and national jurisdiction (e.g. nationality or domicile) and the link between a specific transaction and national jurisdiction (e.g. where the contract was concluded or where the exchange took place).

#### 4.1 International Private Law

Given the global nature of the Internet, legal disputes involving individuals and institutions from different national jurisdictions are very frequent. However, only rarely has international private law been used for settling Internet-based issues - possibly because its procedures are usually complex, slow, and expensive. The main mechanisms of international private law developed at a time when cross-border interaction was less frequent and intensive and proportionally fewer cases involved individuals and entities from different jurisdictions.

International private law requires modernisation in order to meet the needs of the Internet-based world, characterised by fast, simple and pragmatic *modus operandi*. Possible modernisation might include simplified procedures for identifying appropriate jurisdictions and laws, the option of online deliberation, and flexible arrangements for legal counselling.

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5. A few international attempts have been made to harmonise international private law. The main global forum is the Hague Conference on International Private Law, which has adopted numerous conventions in this field.



#### 4.2 The Harmonisation of National Laws

If we were to move towards global regulation, the most efficient option would be the harmonisation of national laws, resulting in the establishment of one set of equivalent rules at the global level. With identical rules in place the question of applicable jurisdiction should become less relevant. If the same rules are applied, it becomes less relevant whether the court case is adjudicated, for example, in the USA or in France. The harmonisation of national laws can be achieved in areas where a high level of global consensus already exists, for example, regarding child pornography, piracy, and slavery. Views are converging on other issues too, such as spam and Internet security. In fields such as content policy, however, it is not likely that a global consensus on the basic rules will be reached.

#### 4.3 International Public Law

International public law regulates relations between nation-states. Some international public law instruments already deal with areas of relevance to Internet Governance (e.g. telecommunication regulations, human rights, international trade). It remains to be seen if international public law will be used more intensively in the field of Internet Governance. In this part, the analysis will focus on the elements of international public law that could be used in the field of Internet Governance, including treaties and conventions, customs, 'soft law', and *jus cogens*.

#### 4.4 Treaties and Conventions<sup>6</sup>

Currently, the only convention that deals directly with Internet-related issues is the Council of Europe Cybercrime Convention.

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6. The designations 'treaty' and 'convention' are used interchangeably in order to describe international legal instruments. The term 'treaty' is used in the Vienna Convention on the Law of Treaties (1969). The term 'convention' is used in Article 38(1)(a) of the Statute of the International Court of Justice. Other names are used as well: 'charter', 'covenant', 'agreement', 'protocol', and 'exchange of notes'. The legal status of international legal instruments is not conditioned by name or by the form in which they are adopted.

However, many other international legal instruments address broader aspects of Internet Governance. For example, in the field of telecommunications, ITU regulations (Radio Regulations and International Telecommunication Regulations) govern issues related to telecommunication infrastructure<sup>7</sup>. Another set of Internet-related instruments deals with human rights. Freedom of expression is protected by Article 19 of the Covenant on Political Rights. Global and regional human rights instruments regulate other Internet-related rights, such as privacy and the right to information. In the field of dispute resolution, one of the main instruments is the 1958 New York Convention on Arbitrations.

One of the Internet Governance Project's contributions to the WGIG discussions was its proposal for the adoption of the UN Framework Convention on Internet Governance (Mathiason (2004)). The 'framework-protocol' approach consists of the framework convention, which provides general principles, and subsequent protocols that provide more specific regulation<sup>8</sup>. The proposal of the Internet Governance Project rests on the analogy with the UN Framework Convention on Climate Change (1992). The following similarities between climate change and the Internet were underlined: (1) involvement of a broad range of actors, including non-governmental organisations; (2) broad agreement on principles and norms; and (3) the need to establish procedures for dealing with future issues. Possibly, the major difference between climate change in 1992 and Internet Governance in 2005 was whether the issue was 'ripe' enough at that point to be regulated by international convention. The WSIS/WGIG

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7. Although ITU regulations do not have the usual designation of convention or treaty, they are international, legally binding instruments.

8. Examples of the framework convention supported by protocols are the 1985 Vienna Convention on the Ozone Layer and its 1987 Montreal Protocol with its subsequent amendments; the 1992 UN Framework Convention on Climate Change with its 1997 Kyoto Protocol; and the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes with its 1999 Protocol on Water and Health and its 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters.

debate clearly indicated differences among main players, including disagreement about core Internet governance principles and norms. Although the 'framework-protocol' approach would be an appropriate mechanism for regulating such a broad field as Internet Governance, the introduction of this mechanism would require more time in order to develop wider support for the main Internet Governance principles and norms.

#### 4.5 Customary Law

Development of customary rules includes two elements: general practice (*consuetudo*) and recognition that such practice is legally binding (*opinio iuris*). It usually requires a lengthy time-span for the crystallisation of general practice into customary law. This was possible in the past. However, technological progress after the Second World War required the introduction of international regulatory frameworks, given the profound economic and political consequences it brought about (and in a very short time-span). The Internet is a good illustration of this process.

One possible solution for overcoming the dichotomy between, on the one hand, an increasingly fast modern life and, on the other hand, the slow process of development of customary law, was proposed by Roberto Ago who introduced the concept of *diritto spontaneo* or 'instant customary international law' (Ago (1956:932)). This concept emphasises *opinio iuris* and gives lower significance to general practice. The view has been criticised since it underestimates the importance of practice, which is the core element of customary law.

In current international law, only one possible reference of instant customary international law exists in the International Court. This is the case of the *North Sea Continental Shelf*, that opens the possibility of developing customary law in a relatively short passage of time: "an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and uniform" (ICJ (1969:43)).

Some elements of emerging custom appear in the way the US government exercises oversight over the Internet root. The US government has observed a general practice of non-intervention when it comes to administering the Internet root zone file. This practice is the first element in identifying customary law. It remains to be seen if such a general practice originated with the awareness that it would become legally binding (*opinio iuris*). If that is the case, there is the possibility of identifying international customary law in the management of those parts of the Internet root server system that deal with the country domains of other countries. It would be difficult to extend such reasoning to the legal status of gTLDs (.com, .org, .edu, .net), which do not involve other countries. Customary law may also be developed for regulating security-related Internet Governance issues (e.g. spam, protection of critical infrastructure, virus protection).

#### 4.6 Soft Law

'Soft law' has become a frequently used term in the Internet Governance debate. Most definitions of soft law focus on what it is not: a legally binding instrument. Since it is not legally binding it cannot be enforced through international courts or other dispute resolution mechanisms.

The linguistic criterion for identifying soft law is the frequent use of the word 'should' in contrast to the use of the word 'shall'. The latter is usually associated with a legally-binding approach as in 'hard' law (treaties). Soft law instruments contain principles and norms rather than specific rules. It is usually found in international documents such as declarations, guidelines, and model laws.

Why are some international documents considered to be soft law while others are not? For example, the Rio Declaration (1992) is soft law, but hundreds of other declarations adopted by the UN are not. The legal status of soft law instruments is manifested in the fact that the norms contained therein are usually observed by many countries. In this context, soft law could easily be described by Louis Henkin's statement that "Almost all nations observe almost all of their

obligations almost all of the time.” When countries adopt a particular document, even if it is not legally binding, they express a certain commitment and moral obligation to observe it. The more energy is put into negotiations to draft a particular instrument and reach a consensus, the more nation-states are ready to support and observe such an instrument. This is one of the main elements that leads to the categorisation of particular international documents as soft law. What is clear, however, is that there is no binary divide between hard and soft law<sup>9</sup>. Moreover, some situations are *prima facie* paradoxical, where hard law conventions contain soft law rules and *vice versa*<sup>10</sup>.

Some soft law arrangements have had considerable political importance such as the Helsinki Act from 1975, which established the framework for East-West relations and marked the beginning of the end of the Cold War. Other soft law instruments such as the Stockholm Declaration (1972) and the Rio Declaration (1992) have had a major impact and influence on the conduct of states in the field of environmental protection. More recently, the OECD Financial Action Task Force (FATF) adopted 40 recommendations on money laundering. Although the recommendations are soft law the FATF established a very strict monitoring, reporting and enforcement process, that includes some very hard measures, including the possible expulsion of a party from the FATF.

Soft law is used by states for various reasons, such as mutual confidence-building, stimulating development in progress, and introducing new legal and governmental mechanisms. Soft law has increasing importance, especially in situations where states agree on specific issues, but are not ready to bind themselves legally. Soft law

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9. There are also examples when soft law, such as the minutes of a meeting, receive the status of hard law. See: Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, 1994, International Court of Justice Report, At. 112.

10. For example the Framework Climate Change Convention contains numerous ‘shoulds’ in Article 3 (soft law formulations) while some soft law instruments, such as the CSCE Helsinki Final Act from 1975, contain numerous ‘shall’s’ (hard law formulations).

is also sometimes preferred to hard law in order to avoid the potential complexity of the domestic ratification process. Another use for soft law instruments is in the process of gradually developing norms that may eventually lead towards international legal instruments<sup>11</sup>.

The main body of existing instruments in the field of Internet Governance is non-binding and includes the OECD Guidelines related to ICT and the Internet, the UNCITRAL Model Laws in E-Commerce, and resolutions and declarations of the UN and other international organisations dealing with Internet Governance issues (e.g. the UN General Assembly Resolutions on Internet Security).

The main WSIS documents, including the Final Declaration, Plan of Action, and Regional Declarations have the potential to develop certain soft law norms. They are not legally binding, but they are usually the result of prolonged negotiations and acceptance by all countries. The commitment that nation-states and other stakeholders put into negotiating these instruments and in reaching a necessary consensus is the first clue that such documents are more than simple political declarations<sup>12</sup>.

Soft law provides certain advantages in addressing Internet Governance issues. First, it has a less formal approach, not requiring the official commitment of states and, thereby reducing potential policy risks. Second, it is flexible enough to facilitate the testing of new approaches and adjust to developments in the field of Internet Governance, which is characterised by many uncertainties. Third, soft law provides greater opportunity for a multistakeholder approach than does an international legal approach restricted to states and international organisations.

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11. There are many examples of this evolution from the past. For example, the IAE Guidelines were the basis for the adoption of the Convention on Early Notification of a Nuclear Accident (1986). The UNEP Guidelines on Environmental Impact Assessment were further developed in the ECE Convention on Environmental Impact Assessment in a Transboundary Context.

12. There is a high frequency of the use of the word ‘should’ in the WSIS documents (DiploFoundation (2003)).

#### 4.7 Jus Cogens

*Jus cogens* is described by the Vienna Convention on the Law of Treaties as: “a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character” (Vienna Convention (1969:Article 53)). One of the main characteristics of *jus cogens* rules is that they are inalienable. Professor Brownlie lists the following examples of *jus cogens* rules: the prohibition of the use of force, the law of genocide, the principle of racial non-discrimination, crimes against humanity, the rules prohibiting trade in slaves and piracy. More conditionally, he also indicates the principle of permanent sovereignty over national resources and the principle of self-determination (Brownlie (1999:513)). Can *jus cogens* be applied to the Internet? Some of the above-mentioned behaviours prohibited by *jus cogens*, such as piracy, slavery, and genocide cannot be performed via the Internet. Nevertheless, *jus cogens* covers behaviour that leads to such violations. Thus, *jus cogens* could be applied in such situations when the Internet is used for promotion or organisation of prohibited acts, such as piracy, slavery, and genocide.

#### 5. Conclusions

The WGIG Report and other documents produced in the WSIS/WGIG process are a solid basis for reflection on the main issues of Internet Governance.

The nature and intensity of future international legalisation in the field of Internet Governance continues to depend on the outcomes of the WSIS. If the parties agree to introduce an inter-governmental regime, it would require harder international instruments such as treaties. Other institutionalisation options based on a multistakeholder approach and a *sui generis* form of international organisation would favour soft law legalisation. However, any compromise solution to yet

be reached in the future will most likely require considerable creativity in designing the institutional framework for Internet Governance.

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## CHAPTER TWO

# World summit on Information Society and the Development of Internet Diplomacy

Jovan Kurbalija

The World Summit on Information Society (WSIS), ending in 2005, was the most recent in the series of global United Nations summits that started with the 1992 Rio Earth Summit<sup>13</sup>. The main objective of the WSIS was to discuss the effects of information and communication technologies (ICT) on modern society<sup>14</sup>. The unique feature of the WSIS was its two-phase organisation, including two main summit events: one in Geneva in 2003 and the other in Tunis in 2005. The Geneva summit aimed at identifying the main issues, principles, and lines of action. The Tunis summit, often described as a “Summit of Solutions”, focused on implementing the broad framework agreed upon at the Geneva summit<sup>15</sup>.

The Tunis summit also finalised the WSIS negotiations on Internet governance and financial mechanisms, two issues that had remained

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13. Kremenjuk and Lang stated the following criteria for classifying a UN event as a summit: (1) the event is global in nature and open to all governments; (2) it covers global issues with multidisciplinary aspects; and (3) new actors, in addition to nation-states, are involved in various capacities. The WSIS fulfilled all of these criteria (Kremenjuk and Lang (1993)).

14. The WSIS was the first comprehensive (in issues) and global (in participation) attempt to address the effects of ICT/Internet on society. Previous attempts to address some international aspects of ICT have occurred. One of the first was the G7 Ministerial Conference on Global Information Society held in 1995 in Brussels, followed by other meetings held in the framework of the G7 (later G8). In the UN framework, besides the ‘ritual’ UN General Assembly Resolution on Information Society, more concrete action was stimulated by the Y2K or Millennium bug. At that time, the UN General Assembly adopted Resolution 52/233, “Global Implications of the Year 2000 Data Conversion Problems”, suggesting numerous concrete actions and promoting a multistakeholder approach.

15. The reference to a ‘Summit of Solutions’ was frequently made by Yosio Utsumi, Secretary General of the ITU and Secretary General of the WSIS (Stauffacher and Kleinwächter (2005)).

unresolved after the Geneva phase. The overall WSIS process lasted between May 2002 (the first African Regional WSIS Conference) and November 2005 (the Tunis summit).

Internet governance emerged as the chief issue at the WSIS agenda. Given its specificity, Internet governance required the introduction of a new policy structure in the WSIS process. Participants in the Geneva WSIS Summit in 2003 decided to establish the Working Group on Internet Governance (WGIG) as a specific diplomatic mechanism, based on the equal participation of governments, civil society, and the business sector. After producing the Report on Internet Governance, the WGIG ceased to exist in June 2005. The WGIG was an innovation in the existing, mainly inter-governmental, diplomatic system.

**Table 1: Major WSIS and WGIG Official Events**

	Date	Event
<b>GENEVA PHASE</b>	May 2002	African Regional WSIS Ministerial Conference in Bamako
	June 2002	Prepcom 1 in Geneva
	January 2003	Asian Regional WSIS Ministerial Conference in Tokyo
	January 2003	Latin American and Caribbean WSIS Ministerial Conference in Bavaro
	February 2003	Western Asia Regional WSIS Ministerial Conference in Beirut
	February 2003	4th Meeting of the UNICTTF in Geneva
	February 2003	Prepcom 2 in Geneva
	July 2003	WSIS Intersessional in Paris
	September 2003	Prepcom 3 in Geneva
	November 2003	Prepcom 3bis in Geneva
	December 2003	Prepcom 3bis+ in Geneva
	December 2003	Geneva WSIS Summit

<b>TUNIS PHASE</b>	June 2004	Prepcom 1 in Hammamet
	November 2004	Establishment of the WGIG
	November 2004	1st WGIG meeting in Geneva
	November 2004	West Asia Regional WSIS meeting in Damascus
	January 2005	African Regional WSIS conference in Accra
	February 2005	2nd WGIG meeting in Geneva
	February 2005	Prepcom 2 in Geneva
	April 2005	3rd WGIG meeting in Geneva
	May 2005	Arab Regional WSIS conference in Cairo
	May 2005	Asian Regional WSIS conference in Tokyo
	June 2005	Asian Pacific Regional WSIS conference in Teheran
	June 2005	Latin American Regional WSIS meeting in Rio de Janeiro
	June 2005	4th WGIG meeting in Geneva
	July 2005	Final Report of the WGIG
September 2005	Prepcom 3 in Geneva	
November 2005	Tunis WSIS summit	

The purpose of this chapter is to identify new developments and innovations in diplomatic practice resulting from the WSIS and WGIG. First, I describe the overall WSIS framework and specific aspects of the WGIG. Second, I identify the new developments and innovations in diplomatic practice that I think are of lasting importance. I will do so through comparing WSIS diplomatic practice to the practices developed during other major UN summits held since the Rio Earth Summit in 1992. Finally, I discuss whether a new type of diplomacy dealing with ICT/Internet issues, usually described as Internet Diplomacy, has emerged from the WSIS and WGIG processes.



## 1. Context and Evolution of the WSIS/WGIG Process

The WSIS originated in the 1990s, a period of optimism initiated by the end of the Cold War. The 1990s were also a time of rapid development of the ICT and the Internet. In 1998, through Resolution 73, participants of the Minnesota Conference of the International Telecommunications Union (ITU) decided to start preparations for the WSIS. Only two years later, however, the global scene for the organisation of the WSIS had changed substantially due to two major developments.

The first important development was the burst of the so-called dot-com bubble in 2000. The dot-com bubble developed in the period 1995-2000 with the rapid growth in the value of stock in the ICT/Internet field. However, the sudden deflation in value of much of this stock in 2000 led many Internet companies into bankruptcy. By 2001, the rhetoric of unlimited possibilities in the development of the Internet that had dominated the 1990s was replaced with techno-scepticism and the level of investment in the ICT/Internet area sharply decreased.

The second significant development influencing the organisation of the WSIS was the terrorist attacks of 11 September 2001, which affected the WSIS process just as it did many other aspects of global policy. The post-Cold War era of the 1990s, characterised by an attempt to introduce new forms of diplomatic cooperation, was replaced by the post-9/11 period. The centrality of security concerns re-established the dominant position of states in international relations and substantially reduced enthusiasm for novelty in managing global affairs.

Only a few months after the 9/11 attacks, through its Resolution 56/183 of 21 December 2001, the UN General Assembly made an official decision to hold the WSIS. Although the optimism of the late 1990s shaped the language of the UN resolution, the policy reality - influenced by the dot-com crash and the events of 11 September - had changed dramatically. Both the agenda setting process and the participation in the WSIS reflected this new policy reality.

## 1.1 The Agenda

The setting of a diplomatic agenda is a highly important part of any multilateral diplomatic process that can substantially influence the outcome of negotiations (Plott and Levine (1977), (1978)). By setting the agenda, negotiators decide on the scope of negotiations and the priority of issues. In the WSIS process, four main challenges characterised the agenda setting process: the agenda delimitation, the multi-disciplinary nature of WSIS issues, uncertainty, and prioritisation.

### 1.1.1 The Agenda Delimitation

With the pervasive use of ICT and the Internet in modern society, it is difficult to find any aspect of human existence outside its influence. Such pervasiveness led toward the risk that almost any issue might be included in the WSIS agenda (Kurbalija and Gelbstein (2005)). To accommodate this possibility, the WSIS chose a very broad approach by including a long list of issues in the Geneva summit documents, the Documentation of Principles and the Action Plan. One of the main purposes of the Geneva phase was to map the field, so most issues were merely mentioned and described. The Tunis phase streamlined the agenda into main action lines dealing with Internet governance: e-government; e-business; e-learning; e-health; e-employment; e-environment; e-agriculture; e-science; public governance; and ICT for development, information and communication infrastructure; access to information and knowledge; capacity building; the enabling environment; building confidence and security in the use of ICT; cultural diversity and identity; linguistic diversity and local content; media; and the ethical dimensions of the information society<sup>16</sup>.

### 1.1.2 The Multi-Disciplinary Nature of WSIS Issues

The multidisciplinary nature of the WSIS-related issues added to the

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16. Consult the following WSIS webpage for implementation by action line: <http://www.itu.int/wsis/implementation/index.html>.

complexity of the agenda setting. Most issues had a variety of technical, socio-economic, developmental, legal, and political aspects. One of the underlying dilemmas in setting the agenda was whether the WSIS concerned technology itself or the effects of technology on society. This confusion of technical and social approaches was noticeable in all aspects of the WSIS process, not only in setting the agenda, but also in the composition of delegations and the focus of discussions.

### **1.2.3 Uncertainty**

The WSIS operated in the context of much uncertainty regarding the future development of the Internet, and this uncertainty affected the agenda of the WSIS. For example, in 2002 when the WSIS process started, Google was just one of many search engines. At the end of the process in November 2005, Google was established as the primary Internet company shaping the use of the Internet. In 2002, the use of blogs was in its infancy. Presently, bloggers sway governments, push the limits of freedom of expression, and have considerable influence on social and economic life. The list could continue with mentions of Skype, YouTube and iPod.

Due to a lack of consensus and understanding of some technical developments, the WSIS followed the least common denominator approach, resulting in vague provisions. The real problem will emerge in the future when some important issues will require policy choices and operative decisions (e.g. spam and Internet security). One possible approach, increasingly used in the European Union, is that of technology-neutral regulations, which contain provisions applicable to various technologies. In this way some provisions become applicable, for instance, to the Internet, broadcasting, and telephony. With the increasing convergence of digital technologies, such as web-streamed TV and Internet telephony, technology-neutral regulation is the only possible solution for preserving a coherent policy framework.

### **1.2.4 Prioritisation of Agenda Issues**

Although it did not figure initially in the WSIS agenda, Internet governance emerged as the prime issue taken up by the WSIS. Its importance was reflected in the time spent negotiating Internet governance issues, both in the main WSIS process and in the specially designed WGIG. In fact, one of the main criticisms of the WSIS is that the Internet governance debate 'hijacked' the principal WSIS negotiations and took the focus away from the developmental issues that were supposed to be the main issues on the WSIS agenda. As indicated in the main preparatory documents, the WSIS was designed to provide some solutions for narrowing the digital divide that separates rich countries from poor ones by increasing the use of the Internet and ICT in the developing world. The WSIS was also supposed to provide a stronger link with the Millennium Development Goals. It is widely perceived that the WSIS did not provide a major breakthrough on closing the digital divide.

## **2. Participation**

It is not surprising that multistakeholder participation was one of the catch phrases of the WSIS process. Prior to the WSIS, the United Nations had expended considerable effort to involve business and civil society in its activities<sup>17</sup>. In addition to this general policy trend in UN Summits, multistakeholder participation was expected in discussions about information society and the Internet, since non-state actors had taken predominant roles in the development and maintenance of the Internet. The business community had developed the technological infrastructure, including computers, networks, and software. Civil society, academia, and the Internet community were vital players in various aspects of the Internet field, including the development of

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17. In relations between the United Nations and the business sector, the main initiative is the UN Global Compact, launched in 2000 to involve the business sector in global affairs. In relations with civil society, the main development was the Cardoso Report on the UN-Civil Society Relations. The report proposes numerous measures for more intensive involvement of civil society in UN activities.



Internet protocols, the creation of content and the development of online communities. Governments, on the other hand, were latecomers in the field. Many expected that the specific positions of stakeholders in the development of the Internet would result in the creation of new forms of global multistakeholder diplomacy. These expectations were partially met, especially through the establishment of the WGIG and the Internet Governance Forum.

The UN General Assembly Resolution 56/183 - the formal basis for convening the WSIS - invited "intergovernmental organisations, including international and regional institutions, non-governmental organisations, civil society and the private sector to contribute to, and actively participate in the intergovernmental preparatory process of the Summit and the Summit itself". Although it invited other stakeholders to participate, the resolution clearly emphasised the inter-governmental nature of the WSIS.

The expectation that non-state actors would participate equally and the formal stipulation about the inter-governmental nature of the WSIS collided at the first WSIS preparatory meeting (Geneva, June 2002), which drafted rules of procedures. This conflict was unavoidable - governments refused to grant non-governmental actors equal footing in the WSIS process. Instead civil society and the business sector received the status of observer which they had previously held during major UN conferences.

After a difficult start, a multistakeholder perspective gradually developed during the WSIS process. While the WSIS remained formally an inter-governmental process, governments informally opened many channels for the participation of non-state actors. The most successful multistakeholder participation occurred in the WGIG process with equal and full participation of all stakeholders.

The multistakeholder work of the WGIG was expected, given the specificities of the field of Internet governance. In Internet governance, a regime already functioned around the Internet Corporation for Assigned Names and Numbers (ICANN), the Internet Engineering

Task Force (IETF), and other organisations. With the exception of the US government, participation of governments in this regime had been low. The major difference between negotiations regarding Internet governance and other global negotiations - such as environmental negotiations - is that while in other negotiations inter-governmental regimes gradually opened to non-governmental players, in Internet governance negotiations, governments had to enter an already existing non-governmental ICANN-based regime.

## 2.1 Governments

With the exception of a few developed countries, most countries were newcomers to the field of Internet policy and governance. Even for advanced ICT/Internet countries, the WSIS posed numerous challenges. The main challenge was to handle the multidisciplinary nature of WSIS issues involving technological, social, economic, and legal aspects.

### 2.1.1 National Coordination

Governments had to organise national participation in the WSIS. They had to make decisions regarding the ministry in charge and how to engage the technical community, the business sector, civil society, and the many other actors who were often more involved in Internet policy than the governments themselves. Most countries started planning their participation in the WSIS through 'technical' ministries, usually those that had been responsible for relations with the ITU. Gradually, by realising that the information society is 'more than wires and cables', governments involved officials from other, mainly non-technical ministries, such as those of culture, media, and defence. The principal challenge was to harness support from non-state actors such as local universities, private companies, and NGOs that had the necessary expertise to deal with the issues on the WSIS agenda. Canada and Switzerland, for example, involved non-state actors in national delegations for the WSIS summit.

The whole process of setting national WSIS structures and deciding on national positions on various WSIS issues was a learning experience for most governments. A clear evolution of levels of expertise and quality of contributions occurred during the WSIS process. A feedback process also took place in which many governments shaped their national policy on the Internet under the influence of the global WSIS negotiations.

### 2.1.2 'Diplomatisation' of Internet Policy Issues

Also relevant to the positions of governments at the WSIS was that the WSIS put the Internet on the global diplomatic agenda. Prior to the WSIS, the Internet had been discussed primarily in non-governmental circles or at the national level. 'Diplomatisation' of Internet policy issues stimulated different reactions. As Kenneth Neil Cukier, technology correspondent for *The Economist*, stressed:

"By elevating the issue to a formal United Nations summit, this by nature escalates the importance of the topic inside governments. As a result, issues about the Information Society, that were treated by less political and less visible parts of the government—as science and technology and policy or as a media and cultural matter—were shifted to foreign ministries and long-standing diplomats, who are more accustomed to power politics and less knowledgeable of technology issues and the Internet's inherent requirement for cooperation and interdependence" (Cukier (2005:176)).

The diplomatisation process had certain positive effects on the discussions at the WSIS. For example, diplomats provided non-partisan contributions to long-standing debates on ICANN-related issues (domain names, Internet numbers, and root servers). They had the advantage of being latecomers in an arena of already deeply entrenched positions in the Internet governance debate (e.g. the ICANN vs. ITU debate). The contributions of diplomats were

particularly noticeable in the WGIG debate. The diplomatic leadership of the WGIG (Chairperson Nitin Desai and Executive Director Markus Kummer) created an inclusive atmosphere where differences among representatives, including those of the technical community, did not block the process. The WGIG resulted in the WGIG Final Report<sup>18</sup> that voiced differences, but also provided process-related solutions to the future discussion by establishing the Internet Governance Forum.

### 2.1.3 Importance of Geneva-Based Permanent Missions

For many governments, their permanent missions in Geneva were important - if not vital - players in the WSIS process. Most WSIS activities occurred in Geneva, the base of the ITU, which played the main role in the WSIS process. The first WSIS summit in 2003 took place in Geneva and all but one of the preparatory meetings were held in Geneva, making permanent missions based in Geneva directly involved in the WSIS process.

For large and developed countries, the permanent missions were only a part of the broad network of institutions and individuals that dealt with the WSIS. For small and developing countries, permanent missions were the primary - and in some cases the only - players in the WSIS process. The WSIS portfolio added to the agenda of usually small and over-stretched missions of developing countries. In many cases, the same diplomat had to undertake tasks associated with the WSIS along with other issues such as human rights, health, trade, and labour. Additional pressure on small missions arose because the WSIS process usually involved parallel meetings and workshops. The complexity of the WSIS issues and the dynamics of activities made it almost impossible for many small and, in particular, small developing countries, to follow developments, let alone have any substantive effect. As a result, some small states supported a 'one stop shop'

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18. The WGIG report is available at the following url: <http://www.wgig.org>.

structure for Internet governance issues<sup>19</sup>. The sheer size of the WSIS agenda and the limited policy capacity of developing countries in both capitals and diplomatic missions remained one of the main obstacles for their full participation in the WSIS process. The need for capacity building in the field of Internet governance and policy was recognised as one of the priorities of the WSIS Tunis Agenda for the Information Society<sup>20</sup>.

## 2.2 Business Sector

The business sector had a low profile in the WSIS process. As one of the representatives of the sector indicated, business was involved in 'damage control'. At the WSIS, the main concern of the business sector was the possibility of opening discussions on intellectual property rights on the Internet. After the WSIS decided to leave the Internet intellectual property issues for the World Intellectual Property Organisation (WIPO) and the World Trade Organization (WTO), the business sector's interest in participating in the WSIS process further diminished.

The biggest ICT/Internet companies such as *Microsoft*, *Adobe*, *Oracle*, *Google* and *Yahoo* did not follow the WSIS process actively. No powerful software lobbying associations attended. Even the Business Software Association (representing software companies in dealing with international policy issues) had no active representation. Instead, the International Chamber of Commerce (ICC), well known as the main association representing small- and medium-sized enterprises, represented the business sector. The ICC rarely represents the software industry in dealing with delicate policy issues in the context of the WIPO or the WTO. Although the ICC made active, substantive input to the WSIS and WGIG, many thought that the representation of the

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19. The convenience of 'one stop shops' was one of the arguments for establishing the ITU as the central Internet governance player.

20. Capacity building for Internet governance and policy is mentioned in paragraphs 23, 51 and 71(h) of the Tunis Agenda for the Information Society (WSIS (2005b)).

global business sector by the ICC was a signal of the lack of interest on the part of the business sector in the WSIS.

## 2.3 Civil Society

Civil society was the most vocal and active promoter of a multistakeholder perspective at the WSIS. The usual criticism of civil society participation in other multilateral fora had been a lack of proper coordination and the presence of too many, often dissonant voices. In the WSIS, however, civil society representation managed to harness the inherent complexity and diversity through a few organisational forms, including a Civil Society Bureau, the Civil Society Plenary and the Content and Themes Group. Faced with limited possibilities to influence the WSIS through the formal process, civil society groups developed a two-track approach. They continued their presence in the formal process by using available opportunities to intervene and to lobby governments. In parallel, they prepared a Civil Society Declaration as an alternative vision to the main WSIS declaration adopted at the Geneva summit.

At the WGIG, due to its multistakeholder nature, civil society attained a high level of involvement. Civil society groups proposed eight candidates for the WGIG meetings, all of whom were subsequently appointed by the UN Secretary General. In the Tunis phase, the main policy thrust of civil society organisations shifted to the WGIG, where they influenced many conclusions as well as the decision to establish the Internet Governance Forum as a multistakeholder space for discussing Internet governance issues.

## 2.4 International Organisations

The ITU was the central international organisation in the WSIS process. The ITU hosted the WSIS secretariat and provided policy input on the main issues. For the ITU, the WSIS was important for a number of reasons. The ITU was not the main protagonist of Internet policy developments, and it was losing its traditional policy domain

due to the WTO-led liberalisation of the global telecommunications market. The latest trend of moving telephone traffic from traditional telecommunications to the Internet (through Voice over IP) added to the erosion of the traditional telecommunication policy domain regulated by the ITU. Many observers viewed the leading role of the ITU in the WSIS as an attempt to re-establish itself as the most important player in global telecommunications policy, now increasingly influenced by the Internet. The possibility that the ITU might emerge from the WSIS process as the most important global Internet organisation caused concern in the United States and other developed countries, while creating support in many developing countries. Throughout the WSIS process, this possibility created underlying policy tensions. It was particularly clear in the field of Internet governance, where tension between ICANN and ITU had existed even before the WSIS - since the establishment of ICANN in 1998.

Another issue concerned the problem of how to anchor the multidisciplinary WSIS agenda within the family of UN specialised agencies. It was felt that a predominant role of the ITU was risky, as it could lead towards a techno-centred approach to the WSIS agenda. Non-technical aspects of the ICT/Internet, such as social, economic, and cultural features, are part of the mandate of other UN organisations. The most prominent player in this context is UNESCO, which addresses issues such as multilingualism, cultural diversity, knowledge societies, and information sharing. The balance between the ITU and other UN organisations was carefully managed. This balance is also reflected in the WSIS follow-up process, with the main players including ITU, UNESCO, and the United Nations Development Programme.

## 2.5 Other Participants

Beside the formal stakeholders recognised by the WSIS, other players who were not officially recognised as stakeholders, such as Internet communities, had considerable influence on both the way the Internet runs and how it was developed. They participated in the WSIS process

through the presence of the four main stakeholders, primarily through civil society and the business sector.

### 2.5.1 Internet Communities

Internet communities consisted of institutions and individuals who had developed and promoted the Internet since its inception. Many were based in US universities where they primarily functioned to set up technical standards and to establish the basic functionality of the Internet. Internet communities also created the initial spirit of the Internet, based on the principles of sharing resources, open access, and opposition to government involvement in Internet regulation. From the beginning, they protected the initial concept of the Internet from intensive commercialisation and extensive government influence. The early management of the Internet by online communities was challenged in the mid 1990s after the Internet became part of global social and economic life. Internet growth introduced a group of new stakeholders, such as the business sector, that came with different professional cultures and understandings of the Internet and its governance, which led to increasing tension. For example, in the 1990s, Internet communities and *Network Solutions* were involved in a so-called DNS war, a conflict over the control of the root server and domain name system.

Today, the main organisational forms that accommodate Internet communities are the Internet Society and IETF. In times of increasing commercialisation of the Internet, it is difficult to preserve the early spirit of Internet communities and the treatment of these communities as a special policy group has been criticised (Jansen (2005)). During the WSIS/WGIG process a criticism was that the Internet communities should no longer have a leading role in Internet governance. With more than one billion users the Internet has grown out of its initial policy framework. Any Internet governance regime must reflect this growing Internet population and the Internet's influence on social and economic life. In this line of argument, as the boundary between citizens

and Internet users blurs, more involvement of parliaments and other structures representing citizens is required, rather than those solely representing Internet users, as in the case of Internet communities. In the WSIS, this criticism came particularly from those who argued for more involvement of government in Internet governance.

### **2.5.2 Internet Corporation for Assigned Names and Numbers**

The Internet Corporation for Assigned Names and Numbers is the 1998 compromise solution for the DNS war. Formally speaking, ICANN is a private entity established under California law. It received functional authority to manage Internet names and numbers from the US Department of Commerce via a special contract. In the WSIS process ICANN was frequently criticised for its position in the existing Internet governance regime, and for having special ties with the US government. Through an almost continuous process of reform, ICANN had become increasingly international. It had an international board of directors, meetings were held in different regions, and the ICANN staff was international. However the 'umbilical cord' linking ICANN with the US government remained the main source of concern. In the WGIG debate, various options regarding the reorganisation of ICANN were discussed, including that of developing ICANN as a sui generis international organisation that should accommodate a multistakeholder approach while becoming anchored in the international legal framework. Formally speaking, the WGIG Report only presented the various options without opting for any in particular.

### **3. Organisational Structure**

The WSIS followed the typical organisational structure for UN summits with an 'organisation trinity' including a presiding officer or chairperson, a bureau, and a secretariat. In UN summits, the presiding officer is usually a prominent political figure, while the bureau is frequently formed of ambassadors resident in the host city of the conference. The secretariat provides structural support and is the only

full-time segment of a summit organisational structure. The secretariat very often involves people whose careers relate to the subject discussed at the conference. United Nations summits also include other organisational forms such as the Group of Friends of the Chair, subcommittees and subgroups, The High Level Summit Organisation Committee, and host country secretariats.

### **3.1 The Presiding Officer (Chairperson)**

The function of the chairperson is essential for the success of any negotiation. Although the formal authority is limited, the chair usually has enough room to have an effect, depending on his or her political position and individual skills. One of the main requirements for successful chairing is impartiality. Beside the main task of steering negotiations towards a successful outcome, the chair also has an important role in building and maintaining the structure of the negotiation process. Through election as chairperson, diplomats take ownership of the process. The success of the negotiation is a matter of personal reputation and that of the country the chair represents. Regional distribution of the chair builds links with various regions as well as increases transparency and legitimacy of the negotiation process.

The chairing structure of the WSIS process included the chairperson of the overall WSIS process and other chairpersons leading numerous sub-committees, groups, and working groups<sup>21</sup>. At the very beginning of the WSIS there was the dilemma whether the chairperson will be elected for each preparatory meeting. It was decided to have one chairperson for the whole process leading towards the WSIS-Geneva. The WSIS exemplified the positive effect that the selection of chairperson may have on the negotiation process. The WSIS involved various styles and types of chairing. The former Minister of Education of Mali, Adama Samassékou, whose main aim was to map the overall

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21. A list of the WSIS chairs is available at: <http://www.itu.int/ws/wsis/basic/chairpersons.html>.

arena, chaired the Geneva phase. His election as the chair contributed in three ways. First, his professional and academic background in culture and languages helped in counter-balancing the potential techno-centric tendency of the WSIS. Second, his African origin helped in bringing development issues to the agenda. Third, his position as a senior African statesman brought wisdom and authority to increasingly 'hype-driven' ICT/Internet discussions.

In the Tunis phase, the main emphasis was on the implementation of the principles agreed on in Geneva. The appointment of Latvian Ambassador, Janis Karklins, as the Chairperson of the WSIS reflected this change. His engineering background was an asset in managing the negotiation process and a grasp of the diplomatic process and the UN *modus operandi* acquired during his posting as the Latvian ambassador to the UN in Geneva, complemented his managerial skills. A businesslike approach helped in driving an extremely complex and diverse agenda towards a successful conclusion.

The most delicate negotiation was required of the chair in sub-bodies dealing with open issues such as Internet governance. Nitin Desai, the chair of the WGIG, faced the challenge of managing highly complex issues and a wide diversity of actors. His understanding of UN procedures and processes, acquired through leadership in previous UN summits, helped him to depart from the rules whenever necessary. He managed to involve non-state actors, primarily from the Internet governance community, and to keep the level of innovation in diplomatic practice acceptable to diplomats.

### 3.2 The Bureau

The bureau usually has the task of assisting the presiding officer. The WSIS bureau followed the UN practice of selecting members from UN regional groups (Asia, Latin America and the Caribbean, Africa, Western Europe and Other States, Eastern Europe). It also included representatives of the two host countries, Tunisia and Switzerland. In the Geneva phase, the bureau had 17 members (three per region

and one from each host country). In the Tunis phase, the number of members of the bureau grew to 32 (six per region and two from the host countries).

### 3.3 The Secretariat

The WSIS secretariat followed standard UN practice with regard to its functions and organisation. The secretariat was hosted by the ITU, with the Secretary-General of the ITU also fulfilling the role of Secretary-General of the WSIS. Both the WSIS and WGIG secretariats performed the usual tasks of UN secretariats including logistics, procedural management, providing expertise, drafting texts, and facilitating informal discussion. However, besides these regular tasks, the secretariats of both the WSIS and the WGIG had the additional tasks of organising various forms of online interaction. For example, all WGIG meetings were transcribed online and broadcast via the Internet. The secretariat had also arranged for Wi-Fi connection. Apparently, one of the major problems for *in situ* meetings was to supply a sufficient number of power point extensions for notebook power supplies. Sometimes – as happened during the final drafting meeting at the Chateau de Bossy – the WGIG secretariat had to remove Wi-Fi support in the meeting room since Internet access could have distracted the group members from the main task of finalising the report.

In traditional conferences, the secretariat provides support to the presiding officer who is directly involved in procedural management. In the WGIG negotiations, the secretariat had complete leadership in the online phase, while the chairperson, Nitin Desai, remained in charge of traditional meetings. The Head of the WGIG secretariat, Markus Kummer, followed the online discussion and provided input whenever needed. It was a particularly challenging task since online communication does not provide sufficient signals to detect the mood of the room as done in a traditional negotiating setting. In some cases, he intervened in emerging controversies - online controversies tend to escalate faster than face-to-face controversies - while, in other cases,



he provided input when online exchange slowed. The secretariat, led by Kummer, managed to provide organisational energy to online interaction conducted between meetings. The online dynamism blended properly with the traditional WGIG meetings.

One of the main functions of the secretariat is to draft negotiation documents. The WSIS secretariat had the particularly arduous task of transforming numerous inputs into basic negotiation documents. In the Tunis phase, the secretariat was assisted by the Group of Friends of the Chair, who prepared the first negotiating draft. The WSIS secretariat also provided drafting support for the chairs of the WSIS sub-committees. Given the high level of expertise among WGIG members, the WGIG secretariat had the slightly different task of providing the right balance between academic and policy input. It had more of a coordinating than a drafting role.

### 3.4 The Group of Friends of the Chair

In UN meetings, the typical reason for establishing the Group of Friends of the Chair is to enhance the efficiency of the negotiation process by limiting the number of players in negotiations. Work in smaller groups is usually simpler and more efficient. The usual challenge for the establishment of the Group of Friends of the Chair is how to make it large enough to truly represent the primary players, but small enough to be efficient. In the WSIS, the Group of Friends of the Chair was functional and efficient. In the first phase, leading to Geneva, it had a somewhat passive role, assisting the Chairperson in drafting the introduction of the concluding document. In the second phase, leading to Tunis, the Group of Friends of the Chair received a more prominent role in drafting the first version of the negotiating text.

### 3.5 Sub-committees and sub-groups

Sub-committees addressed substantive issues. In the preparation for the 2003 Geneva summit, sub-committees drafted the Plan of Action and Declaration of Principles. The sub-committee on the Plan of Action

included sub-groups on media, security, capacity building, enabling the environment, access to information, ICT applications, infrastructure, and cultural diversity. Each sub-group was chaired by a representative of a different country to broaden the number of negotiators and to introduce stronger ownership in the process.

### 3.6 Other Organisational Structures

The High Level Summit Organisation Committee had the task of coordinating WSIS-related activities of the UN organisations. Two host countries, Switzerland and Tunisia, established host country secretariats. Those secretariats were involved in various WSIS coordination bodies. However, their main task was to deal with organisational issues. Switzerland transferred to Tunisia knowledge and organisational expertise gathered in the preparations for the Tunisia summit.

## 4. Procedures and Processes of Negotiations

Procedures are essential for the smooth running of negotiations. Although some perceive them as an unnecessary formality, they have an essential function in any negotiation. The rules of procedure provide an anchor for potentially chaotic developments in negotiations. They also ensure equity and transparency in the process. To ensure equity and transparency, many small and developing countries favour 'formalisms', which involve a strict adherence to procedural rules. Alternative forms of participation very often require additional human resources, which could lead to *de facto* inequality in negotiations.

The WSIS followed typical UN summit rules of procedure established during previous UN Summits<sup>22</sup>. The UN summit rules of procedure are close to the UN General Assembly rules of procedure. The WSIS also developed informal practices in conducting negotiations, often referred to at the WSIS, as 'WSIS practice'.

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22. According to the WSIS Secretariat, the WSIS Rules of Procedure followed the template of the World Summit on Sustainable Development (Johannesburg, 2002) and the Finance for Development Summit (Monterrey, 2002). For more information consult: <http://www.itu.int/wsis/basic/multistakeholder.html>.

#### 4.1 Informal Practice

Many elements shape an informal practice, including participant readiness to interpret rules of procedure in a flexible way, the need to reduce the process transaction costs and specific professional cultures of communities involved in negotiations. At the very beginning of the WSIS process, in an effort to avoid establishing a precedent that could be used in other multilateral negotiations, many countries refused to allow the full participation of non-state actors. However, these countries were aware of the specificities of WSIS and WGIG processes and allowed participation of other stakeholders far beyond the formal framework. Most informal practices related to the opening up of the negotiation process to other stakeholders, primarily to civil society and business sector groups. Informal practices were particularly noticeable in observer participation in the meetings, making interventions and effecting the negotiations.

#### 4.2 Observer Participation

No restrictions were placed on the participation of observers in meetings. Observers participated in plenary and subcommittee meetings. In the phase leading towards the Tunis summit, observers also attended meetings of the Group of Friends of the Chair, which played a vital role in drafting the basic negotiating document. Observers intervened in the WSIS by delivering statements in official meetings. During Prepcom meetings prior to the Geneva summit, the observers had in total a minimum of 45 minutes every day reserved for interventions. Each main stakeholder - including, international organisations, business groups, and civil society representatives - had 15 minutes for interventions. The minimum 45-minute intervention time was established as a WSIS practice. In many cases, observers were granted additional time for their interventions. Observers were also involved in preparing and running round tables and panels at both Geneva and Tunis.

#### 4.3 Observer Participation in Negotiations

Although observers did not have decision-making rights, WSIS informal practices helped them to influence negotiations through various techniques. First, observers' written contributions were included in the compilations of the inputs alongside those of governments. Accordingly, observer proposals became visible to negotiators and, thus, more likely to be integrated in the negotiating text. Second, observers intervened in negotiating sessions by using a 'stop-and-go' approach (Kleinwächter (2004)). The chairperson periodically stopped official negotiations, allowing observers to make an intervention. Although it was a discretionary right of the chairperson, the stop-and-go approach gradually became part of WSIS informal practice.

The WSIS leadership clearly intended to increase the inclusiveness and transparency of the process. However, in some cases, inclusiveness and transparency were not impeded by political decisions, but by organisational requirements. Many actors in attendance had various cultural, professional, and cultural commitments. An already complex group of over 180 governments had to make room for additional non-state entities that, very often, had limited experience in multilateral diplomacy. Organisational forms established by civil society<sup>23</sup> and the business sector<sup>24</sup> reduced the complexity, but they did not solve the problem of managing the large number of contributions to the negotiating process. Moreover, in critical junctures, the negotiations required deal brokerage with a limited number of participants. It was simply impossible to negotiate deal brokerage with more than 10 or 20 players. For example, the brokerage of the final deal on Internet governance at the Tunis summit involved primarily the EU, the US, China, Brazil, Russia, Canada, and Australia. The WSIS leadership constantly had to keep the balance between transparency and

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23. Civil Society's organisational infrastructure included a Civil Society Bureau, the Civil Society Plenary, and the Content and Themes Group.

24. The business sector established the Coordinating Committee of Business Interlocutors (CCBI).



efficiency. Keeping the right balance was often more an organisational than a policy issue.

#### 4.4 The WGIG Process

In understanding the way the WGIG operated, it is important to emphasise that the WGIG was not, in a formal sense, a negotiating body. The main function of the WGIG was to exchange information and to provide expert input on Internet governance to the main WSIS negotiating process. This specific mandate helped in developing a full multistakeholder practice. The WGIG did not have written and official rules of procedure. Rather, business was conducted according to certain rules that were either articulated explicitly or accepted tacitly by participants. The important element in developing this practice was the considerable experience that Chairperson Nitin Desai had gained in organising previous UN Summits<sup>25</sup>. His in-depth knowledge of the UN rules of procedure helped him to distil the best and avoid those that could have led to controversy. The main developments in the WGIG process included changes in rules regarding multistakeholder participation and representation; inclusiveness and legitimacy; time-management; and inductive and deductive approaches.

##### 4.4.1 Full Multistakeholder Participation and Representation

The WGIG included representatives from the main WSIS stakeholders: governments, the business sector, civil society, and international organisations. Other experts and technologists participated, particularly those who attended as part of the civil society contingency, but also as part of government and business sector representation. All participants had equal rights to participate and intervene in WGIG activities.

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25. Nitin Desai was the organiser of the Johannesburg Summit on Sustainable Development (2002), the Monterrey Conference on Finance for Development (2002), the Copenhagen Summit on Social Development (1995), and the Rio Conference on Environment and Development (1992).

##### 4.4.2 Inclusiveness and Legitimacy

Although the WGIG included wide representation, in order to expand it even further the WGIG leadership introduced the practice of open meetings before the WGIG regular meetings held at the UN in Geneva. Open meetings attracted many actors who were thus able to intervene directly. The WGIG also facilitated online participation through an Internet broadcast of real-time transcripts, audio-casts, and video-casts of meetings. In this way, the WGIG increased its legitimacy in the Internet community, which was very cautious about the overall WSIS-process.

##### 4.4.3 Time-Management

The WGIG operated under considerable time constraints. In only nine months (between October 2004 and June 2005) it had to provide an authoritative report on Internet governance for the final negotiations prior to the Tunis summit. In this short time-span, the WGIG also had to develop trust among participants who came from different and sometimes opposite positions regarding Internet governance. The WGIG leadership used a blend of various traditional and online approaches in order to complete its task in the limited period.

The online phases harnessed various views. Prior to each session, the secretariat summarised the main developments in the online phase and proposed a list of a limited number of issues for face-to-face meetings. For highly controversial issues, the secretariat proposed that a few members who represented different views prepare background material. The WGIG was also ready to alter any approaches that would lead to an impasse (e.g. premature discussion on the definition of Internet governance).

##### 4.4.3 Inductive and Deductive Approaches

In early meetings, the issue of a definition of Internet governance took precedence. At the meeting in February 2005, the group entertained a prolonged discussion regarding normative versus descriptive

definitions of Internet governance. The WGIG leadership decided to change this top-down approach requiring a definition first and a subsequent discussion of concrete issues. The group selected an inductive approach to matters by analysing concrete issues and gradually building a broader framework, including a definition of Internet governance. For highly controversial issues, such as control of the root server, the WGIG leadership decided to go into 'issue dissection' to identify sub-aspects. This helped to move from rhetoric to a substantive discussion. Ultimately, such dissection of the issues reduced suspicion, identified common points, and substantially improved the level of discussion.

## 5. Texts and Drafting

A text is the backbone of diplomatic negotiations. Ultimately, any negotiating activity, from formal to informal, results in the adoption of a final text. The WSIS was a text-intensive exercise. The number of contributions grew due to the submission of contributions through the web. This option led to greater expectations regarding the inclusion of ideas and concepts in the final text. In the Geneva phase, the secretariat and Chair had to analyse almost 3,000 pages of participant contributions to produce the nine pages of the Declaration of Principles and the 13 pages of the Plan of Action. It made the drafting process both a policy and technical challenge.

### 5.1 Types and Forms of WSIS Documents

The selection of the type and form of a diplomatic document is part of the negotiation itself<sup>26</sup>. For example, the most frequent use of a Chair's text was to propose the next version of the text after tidying up various amendments and inputs. Sometimes a Chair's text serves to provide

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26. Sometimes, the choice of a particular type of document is a diplomatic signal, particularly in bilateral relations. For more details on the use of types of documents in diplomatic negotiations consult: Berridge (1995).

face-saving for parties who have to make potentially embarrassing concessions.

Another form of WSIS documents, non-papers, have specific functions in multilateral negotiations. Non-papers are usually 'trial balloons' aimed at exploring new ideas and options: they are informal and unofficial documents, often produced on paper without logo or any other official sign. In the WSIS, the anonymity of non-papers disappeared. Clear signs indicated the country that proposed a non-paper. For example, Switzerland used non-papers to introduce new ideas for the Tunis phase. Although having higher official relevance in the WSIS-process, the document's description as a non-paper indicated its informal character<sup>27</sup>. The WSIS extended the traditional use of non-papers by using them as Chair texts. In November 2003, the WSIS Chairperson, Adama Samassékou, used a non-paper to introduce a new version of the negotiating text (WSIS (2003)). The text was the result of consultations and negotiations and was produced on a summit letterhead. Essentially, it was a Chair text, but the indication that it was a non-paper strengthened the exploratory and informal nature of the proposed text.

The final documents of the WSIS were legally non-binding documents, similar to general UN declarations. They have different names, distinguishing them and reflecting their content. The Geneva Summit adopted the titles: Geneva Declaration of Principles and Geneva Plan of Action. The Tunis Summit adopted: Tunis Commitment and Tunis Agenda for the Information Society.

### 5.2 The Drafting Process

Careful steering of the drafting process is essential for successful negotiation. Specific textual development can keep the momentum of negotiations. It may also reinvigorate negotiations. As the conductor

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27. The Dutch government used a non-paper in a similar way in the UN Security Council discussion on a professional, rapidly-deployable UN force (Kaufmann (1996)).

of negotiations, the chairperson (supported by the secretariat) has to detect the mood in the room and use the appropriate drafting process, usually by introducing new versions of the text.

At the WSIS, the drafting process followed a typical UN textual development sequence. It started with contributions submitted by various actors on the main themes of the conference. The secretariat compiled these raw texts into a precursor text in UN language. The compilation introduced the structure of future documents with its main headings. It also reduced duplication of texts and suggested points of convergence and divergence among participants. The compilation was not yet a negotiating text, but it was the first hint of the shape of the future document.

**Table 2: Excerpt from the Reading Guide<sup>28</sup>**

Par	Convergent views	Divergent views	New items
12	The Information Society must serve the interests of all nations.	Different proposals concerning the list of countries and groups to be specifically addressed (e.g., LDC, Africa, SIDS, Landlocked etc...)	<p><b>Government</b></p> <ul style="list-style-type: none"> <li>• Empowerment of developing countries</li> <li>• Pay attention to groups that are socially exploited</li> </ul> <p><b>Observers</b></p> <ul style="list-style-type: none"> <li>• ICT to support sustainable development</li> <li>• Mention human rights, gender equity, and freedom of expression</li> <li>• ICT to be used across the economy</li> <li>• Knowledge as heritage of humanity and basis for citizen choice</li> <li>• Traditional media are still majors providers of information</li> <li>• Media have a central role in the Information Society</li> </ul>

28. The Reading Guide (Document WSIS03/PCIP/DT/6, 2nd July 2003) is available at the following url: [http://www.itu.int/dms\\_pub/itu-s/md/03/wsispcip/td/030721/S03-WSISPCIP-030721-TD-GEN-0006!!PDF-E.pdf](http://www.itu.int/dms_pub/itu-s/md/03/wsispcip/td/030721/S03-WSISPCIP-030721-TD-GEN-0006!!PDF-E.pdf).

The WSIS secretariat chose various approaches in the preparation of compilations to include all contributions and to make them easily available to participants. First, the secretariat prepared a Reading Guide to inputs with four columns: the number of an article or paragraph, convergent views, divergent views, and new items (see Table 2). Later, the secretariat chose the simplified form of compilation in three columns (see Table 3).

**Table 3: Excerpt from WSIS Compilation of Comments (WSIS (2005a))**

Existing text	Sources of Proposed text	Proposed Text
1. We recognise that it is now time to move from principles to action, by encouraging stakeholders to take the Plan of Action one step further, identifying those areas in which progress has been made in implementing the commitments undertaken in Geneva, and by defining those areas where further effort and resources are required.	Informal Coalition on Financing and Gender Caucus (joint submission)	<i>[replace with]</i> 1. We recognise that it is now time to move from principles to action, while considering the work already being done for implementing the Plan of Action and identifying the areas of such progress, all stakeholders must define those areas where further effort and resources are required, and jointly develop appropriate strategies and implementation mechanisms at global, national and local levels. In particular, we need to identify peoples and groups that are still marginalized in their access to and utilization of ICT.
	Togo	1. ... those areas in which progress <b>has been made, or is being made, in implementing ...</b>

A critical phase in the drafting process is the transition from the compilation to a negotiating text. Often at this transition an informal and collegial atmosphere evolves into a very formal one. Conference leadership must select the right time and the right approach for the introduction of a negotiating text. One of the differences between a compilation and a negotiating text is in the format. Unlike the compilation, a negotiating text does not make any attribution to contributors. All individual contributions merge into a common negotiating text, where different proposals for the same text are introduced, distinguished by square brackets. Another important difference between the compilation and a negotiating text is a change of language style, which becomes more formal or official with careful selection of the words 'shall', 'should', 'must', 'may', and 'will'. A Chair text often introduces the first negotiating text and subsequent versions of the negotiating text. The negotiating text is revised through numerous iterations until different possibilities and, perhaps, disagreements disappear (and all square brackets have been removed) and the final conference text is adopted.

### 5.3 Drafting Techniques

In the process of drafting documents, the WSIS negotiators utilized a few drafting techniques. One of the key negotiators in the Geneva phase of the WSIS, the Finnish ambassador, Asko Numminen, clustered drafting techniques into five main groups (Numminen (2005:68)):

1. *If a problem is a matter of language: the Chair will draft a proposal.* The WSIS secretariat edited and tidied texts and formally introduced them through Chair's papers.
2. *If the problem is not a new one in the UN: let us seek a precedent.* Some issues, such as the status of occupied territories, appear almost in any major international negotiation. For those issues, the WSIS borrowed the formulation already used in other international documents.

3. *If the problem is one where ICT expertise is needed: let us ask for advice and language from the ITU.* In the WSIS, the main expert input came from the ITU. However, for issues such as Internet governance, where expert input could have influenced policy outcome, the WGIG was established. The delicacy of Internet governance negotiation can be illustrated by the fact that the UN Secretary General convened the WGIG, not the ITU.
4. *If the problem is a matter of balanced substance: let us form a small group to strike a balance.* For issues that required careful balancing and compromise, the WSIS passed drafting activities to sub-groups. In preparation for the Geneva Summit, sub-groups were frequently established. This distributed drafting tasks to a wider group and made the drafting process more efficient. It also increased ownership of the process by including more countries in the sub-groups. A number of issues required careful balancing acts: freedom of expression versus protection of public order, security versus protection of privacy and other human rights, and proprietary software versus free and open source software.
5. *If the problem is impossible to resolve at this stage: let us leave it for the final stage.* The two-leg nature of the WSIS allowed negotiators in Geneva to postpone or extend discussion on controversial topics to the Tunis phase. This occurred with two major issues: Internet governance and financial mechanisms. For both, new bodies analysed the issues and proposed solutions. However, the two bodies established for the purpose differed in their approaches, which reflected the difference in the nature of the issues. In line with typical UN practice the financial task force consisted of a low-profile group. The financial task force completed its report in February 2005. Internet governance however was a much more complex issue. The WGIG had four meetings and concluded its work in June 2005 by producing its report.

## 6. Reference Framework: Language and Cognition

The WSIS and WGIG were important steps in the development of a global Internet policy and an Internet governance regime. Experience from other international regimes (e.g. environment, air transport, and arms control) has shown that such regimes tend to develop a common reference framework, including values, perception of cause-and-effect relationships, modes of reasoning, terminology, vocabulary, and jargon. The reference framework is highly relevant in the international political arena as it shapes how actors see particular issues and what actions they take.

In the WSIS and WGIG processes, the involvement of diverse professional cultures, including that of diplomats, technologists, media specialists, and human rights activists complicated the development of a common reference framework. These groups entered the WSIS/WGIG processes with specific languages and different understandings of important concepts. Negotiating parties tried to affect the WSIS by influencing the development of the reference framework. In particular, three elements contributed to the shaping of the WSIS/WGIG reference framework: (1) the use and interpretation of important terms and concepts; (2) approaches and patterns; and (3) use of analogy.

### 6.1 Use and Interpretation of Important Terms and Concepts

Different professional and national cultures assign different interpretations to different terms. Reducing interpretational differences was a significant challenge to normal communication at the WSIS/WGIG. Considerable progress was made between the first preparatory meetings in 2002 and the Tunis summit in 2005.

#### 6.1.1 Internet

One of underlying issues of the WSIS process was Internet governance. The ITU and many developing countries wanted this issue on the WSIS agenda. Others, such as the US and other developed countries, did not want Internet governance on the agenda. Consequently, in the early

meetings of the WSIS the Internet did not figure in the WSIS documents and discussions: for example, the 2002 Pan-European Bucharest Declaration does not refer to the Internet at all (DiploFoundation (2003)). The Internet emerged as a topic for discussion at the WSIS regional West Asia meeting in February 2003 and Internet governance appeared on the WSIS agenda only after that meeting. At the next WSIS Prepcom, held in February 2003, the question of Internet governance was introduced. Subsequently, Internet governance gradually became the central issue on the WSIS agenda.

Diplomatic signalling using the term 'Internet' continued after the WSIS. In November 2006, at the ITU conference, the term appeared in the ITU resolution on Internet governance with lower-case 'i' instead of the usual, upper case 'I'. The US ambassador in charge of Internet governance expressed concern that the ITU spelling of the word without a capital letter might signal an intention to treat the Internet like other telecommunication systems internationally governed by the ITU (Shannon (2006)).

#### 6.1.2 Prefixes: 'e-' – 'virtual' – 'cyber' – 'digital'

The prefixes 'e-', 'cyber', 'virtual', and 'digital' are used to describe various ICT/Internet developments. Their use originated in the 1990s and implied different social, economic, and political influences on the development of the Internet. For example, academics and Internet pioneers used both 'cyber-' and 'virtual' to highlight the novelty of the Internet and the emergence of a brave, new world. The prefix 'e-' is usually associated with e-commerce and the commercialisation of the Internet in the late 1990s. 'Digital' came into use primarily in technical fields and received prominence in the context of the 'digital divide' discussion.

In the international arena, the prefix 'cyber-' is rarely used, with the exception of cyber-crime found in the title of the Council of Europe's: Convention on Cyber-Crime (Council of Europe (2001)). The word 'virtual' also rarely appears in international documents.

The prefix 'e-' has garnered particular favour in the EU, where it describes various policies related to e-science and e-health. In the WSIS 'e-' was introduced at the Pan-European Bucharest Regional Meeting and became predominant in all WSIS texts, including the final documents.

### 6.1.3 Governance

In the 2003 WSIS debate on Internet governance, a controversy arose over the term 'governance'<sup>29</sup> and its various meanings. According to one meaning, governance is synonymous with government. Many national delegations had this initial understanding, leading to the interpretation that Internet governance should be the business of governments. This interpretation clashed immediately with a broader meaning that includes governance of affairs of any institution, including non-governmental institutions. This was the meaning accepted by Internet communities, since it describes the way in which the Internet was initially governed.

An additional source of confusion was the translation of the term governance into other languages. In Spanish, the term refers primarily to public activities or the functions of government (*gestión pública, gestión del sector público, and función de gobierno*). The reference to public activities or government also appears in French (*gestion des affaires publiques, efficacité de l'administration, qualité de l'administration, and mode de gouvernement*). Portuguese follows a similar pattern by referring to the public sector and government (*gestão pública and administração pública*).

The early confusion about the term was clarified through the work of the WGIG. The broader definition was adopted, which includes management functions in governments, the business sector, civil society, and international organisations. The broader understanding of the term also inspired the creation of the Internet Governance Forum

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29. Governance comes from the Latin word *gubernare* meaning to steer a ship.

(IGF), which became the main WSIS follow-up body in the field of Internet governance. The IGF includes equal participation of all main stakeholders.

## 6.2 Approaches and Patterns

Other elements that contributed to the shaping of the WSIS/WGIG reference framework were the approaches and patterns of negotiations. During the WSIS and WGIG, some clear approaches and patterns in negotiations emerged. They shaped discussions and aided in the alignment of different interests and perceptions in debate. Different attitudes could be found as to how to approach technical and policy aspects, with the 'old-real' versus 'new-cyber' approaches to Internet policy, or the "if it ain't broke, don't fix it!" attitude.

### 6.2.1 Technical vs. Policy Aspects

The relation between technology and policy was one of the significant and underlying challenges of the WSIS process and one frequently mentioned in policy statements. At the opening session of the WSIS-Geneva in December 2003, then UN Secretary General, Kofi Annan, stressed that in the WSIS: "we are embarked on an endeavour that transcends technology. Building an open, empowering information society is a social, economic and ultimately, political challenge" (United Nations (2003)). The question of the relation between technical and policy aspects of the Internet turned out to be highly complex and it became difficult to draw a clear distinction between them. Technical solutions are not neutral. Ultimately, each technical solution or option promotes certain interests, empowers certain groups and, to a certain extent, affects social, political, and economic life.

With the Internet, the early online community was the original arbiter of technical and policy issues. With the growth of the Internet and the emergence of new stakeholders in the 1990s - mainly the business sector and government - the unity between technology and policy was broken. The Internet community no longer had



predominant policy control and control devolved to business entities such as *Network Solutions*. The reform of Internet governance, including the creation of ICANN in 1998, was an attempt to re-establish the lost balance between technical and policy aspects.

### 6.2.2 'Old-Real' vs. 'New-Cyber' Approaches

Two distinct approaches to many WSIS and WGIG issues have become apparent: 'old-real' and 'new-cyber'. Groups using the 'old-real' approach argued that the Internet had not introduced anything new to the field of governance. In this perspective, the Internet is just another new device, no different from its predecessors, the telegraph, the telephone or the radio. For example, in legal discussions, proponents with this approach argued that existing laws could apply to the Internet with only minor adjustments. As long as it involves communication between people, the Internet is subject to the same regulation as other telecommunication devices (Goldsmith (1998:1199))<sup>30</sup>. In the economic field, those with this approach argued that no difference exists between regular and e-commerce. Consequently, society needs no special legal treatment of e-commerce. Proponents of the old-real approach were also against e-tax moratoriums. In the WSIS negotiations, those with an 'old-real' approach influenced the decisions to exclude a discussion of intellectual property issues in the context of the WSIS. According to this approach, no reasons sufficed to treat intellectual property rights on the Internet differently than their treatment in the WTO and WIPO.

Proponents of the 'new-cyber' approach argued that the Internet was a fundamentally different device from all previous ones. Thus, it requires fundamentally different governance. This perspective was particularly popular during the early days of the Internet and individuals even hoped that the innovative, early method of governing

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30. Here Goldsmith (1998) argues that the Internet is not functionally different from other communication media (e.g. telephone, mail). Hence existing legal rules and procedures based on the conflict of law can be applied to Internet-related cases. New cyberspace law is not required.

the Internet, utilising a 'rough consensus and running code', might become the model for regulating other areas of human activities. The main premise of the new-cyber approach was that the Internet managed to de-link our social and political reality from the world of sovereign states. Cyberspace is different from real space and it requires a different form of governance. However, despite its early popularity, the new-cyber approach did not have a decisive influence in WSIS debates.

### 6.2.3 "If it ain't broke, don't fix it!"

As soon as the Internet governance debate started in the WSIS, supporters of the ICANN-based system launched the slogan, "if it ain't broke, don't fix it!" The slogan represented the opinion that the ICANN-run Internet infrastructure was robust and highly functional. It also reflected the professional concern of many technologists about the alteration of a system that worked well. During a WGIG discussion, the debate became more sophisticated. While consensus existed regarding the achievements of ICANN in running the Internet infrastructure, many governments pointed to the problem of the link between ICANN and the US Department of Commerce. They argued that the "if it ain't broke, don't fix it!" approach could provide blanket immunity from any changes to current Internet governance, including changes not necessarily related to technical issues. One approach that the WGIG adopted was to dissect problems and analyse specific aspects of the Internet governance system. Detailed analysis of problems and issues shone a light onto the real advantages and disadvantages of possible solutions and avoided simplification and potential tension.

### 6.3 Use of Analogy

Since the WSIS was a new field, it stimulated an intensive use of analogy. Analogy helped participants to understand a new concept by comparing it to what they already knew. In the initial phase of the WSIS, the Internet community used analogy primarily to explain

basic concepts to diplomats and other newcomers to the field. With increasingly informed discussion, all main stakeholders involved in the process used analogy as a rhetorical tool.

### **6.3.1 Internet – Telephony**

During the early days of the Internet, the use of the telephone for dial-up access strengthened the validity of an analogy between the Internet and the telephone. A functional analogy holds between the telephone and the Internet, since both facilitate direct and personal communication. At the WSIS, those who opposed the regulation of Internet content used this analogy to support their position. If the Internet were analogous to the telephone, the content of Internet communication would not be subject to control, since the telephone is not subject to content regulation. A more recent analogy between the telephone and the Internet appeared in discussions on managing Internet numbers and names. Volker Kitz argued that Internet names and numbers could be managed in the way that telephone numbers are managed internationally (by national operators and the ITU as international coordinator)<sup>31</sup>.

### **6.3.2 Internet – Mail/Post**

The analogy between the Internet and mail is based on their common function: namely, the delivery of messages. The name itself, ‘email’, highlights this similarity. In the WSIS process, Paul Twomey, the Chairperson of ICANN, drew up an analogy between the postal system and the function of ICANN:

“If you think of the Internet as a post office or a postal system, domain name and IP addressing are essentially ensuring that the addresses on the front of an envelope work. They are not about what you put inside the envelope, who sends the envelope,

who’s allowed to read the envelope, how long it takes for the envelope to get there, what is the price of the envelope. None of those issues are important for ICANN’s functions. The function is focusing on just ensuring that the address works” (BBC News (2005)).

Through this analogy, Twomey highlights the limited technical role that ICANN plays in overall Internet governance. This analogy also answers frequent misinterpretations of the role of ICANN as the ‘global Internet government’ in charge of all aspects of the Internet, including the content.

Other analogies appeared in Internet-related discussions, but were not particularly apparent in the WSIS debate. These include analogies between the Internet and television, the Internet and libraries, the Internet and VCRs or photocopiers, and the Internet and a highway.

## **7. Use of Internet-Based Diplomatic Tools**

The summit dealing with the Internet was intended to use the Internet in its operations. Participants were supposed to ‘walk the talk’. Accordingly, numerous ICT/Internet-based tools and techniques were introduced during the WSIS process.

### **7.1 Use of Notebooks and the Internet in Conference Rooms**

An important innovation occurred with the introduction of wireless technology (Wi-Fi)<sup>32</sup>. At the beginning of the WSIS process in 2002, Wi-Fi was a relatively new technological innovation used by participants from technically advanced countries, and even then only in specially designated areas. At the end of the WSIS process, in 2005, Wi-Fi had become a mainstream tool for many participants.

Wi-Fi access introduced many developments to traditional

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31. Volker Kitz (2004) provides an argument for the analogy between administration of telephony systems and Internet names and numbers.

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32. ‘Wi-Fi’ is the underlying standard used for wireless communication by computers, cameras, TV sets and other digital devices.



conference diplomacy. It facilitated the participation of an increased number of civil society and business sector representatives at the WSIS meetings. For most of them, the WSIS activities ran parallel to their day-to-day work. However, participation in WSIS meetings required prolonged absence from work. Through Wi-Fi, they managed to be present at WSIS meetings and to continue their regular work through the Internet. This facility allowed more people to participate in WSIS meetings.

For diplomats, a Wi-Fi connection provided constant contact with their ministries of foreign affairs and other government departments dealing with WSIS issues. In some cases, a Wi-Fi network of notebooks enabled the co-ordination of initiatives among representatives physically present in the conference room. Computer exchange complemented and sometimes replaced the traditional ambiance of diplomatic meetings involving short chats, *tête-à-tête* exchanges, and corridor diplomacy. In person physical movements can reveal the dynamics of negotiations or even be part of diplomatic signalling. This aspect of *in situ* diplomatic negotiations will change with the use of Wi-Fi.

Some small states created virtual Wi-Fi based networks in the conference room and were able to react quickly to proposals, amendments, and other interventions proposed at meetings, all without leaving their seats or computers. It was an effective way of coordinating national positions in multilateral negotiations. Wi-Fi connections also provided real time reporting from diplomatic meetings. Participants, especially those from civil society, commented on developments in the conference room via blog, chat, and other Internet-based facilities. Wi-Fi facilitated real time consultation via the Internet.

## 7.2 E-drafting of Diplomatic Documents

The WSIS was an exercise in complex text management. As noted above, the final text was the result of many inputs, amendments, and comments. ICT/Internet provided numerous tools for group drafting,

starting from the simple use of the 'track changes' tool in *Word* for *Windows* and WIKI-based tools, to more sophisticated drafting platforms.

Most WSIS text drafting utilised an LCD projector displaying the negotiated text on a large screen with an operator inputting changes in the main text as proposed by delegates. The room could immediately see the amended version of the text. This tool was particularly effective with the track changes option, which showed deletions and insertions in the text. The WSIS frequently relied on such e-drafting. It subsequently became a methodology adopted by all stakeholders involved in the WSIS deliberations, introducing a faster negotiation process, a simpler control of changes and avoidance of mistakes in the text, and the preservation of a log of proposals and amendments.

## 7.3 Mailing lists

Mailing lists are often used for communication in international circles. They can be helpful in testing new ideas and in diplomatic signalling. They were particularly important during the WSIS process. Some mailing lists, such as the Internet governance list, became focal points for shaping views on Internet governance issues<sup>33</sup>. Although civil society made the majority of postings, all stakeholders, including diplomats and governments, followed the public lists.

A mailing list was also the official exchange tool of the WGIG. During and between the four meetings of the WGIG, the 40 members relied on a mailing list for ongoing discussions. These members exchanged thousands of messages between regular meetings. The multistakeholder composition of the Working Group (diplomats, business people, NGO representatives, academics) was also reflected in the utilisation of the mailing list; non-governmental representatives (civil society, academics, and the business community) posted the

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33. The governance mailing list was hosted by the Computer Professionals for Social Responsibility (CPSR). See: <http://cpsr.org/>.

majority of messages. Diplomats, by contrast, were very reluctant to use the mailing list as a medium of communication, confirming the in-built professional caution to put matters in writing that might eventually create an official commitment.

#### 7.4 e-Transcripts and Diplomatic Reporting

The role of diplomatic reporting, at least in multilateral diplomacy, may change with the introduction of real-time e-transcripts. This innovation was introduced in public meetings of the WGIG in April 2005. All interventions were transcribed simultaneously by special stenographers and displayed on the big screen in the conference room. While delegates were speaking, transcriptions of their speeches appeared on the screen. Given the centrality of text in diplomatic activities, the e-transcription innovation had an important effect on the diplomatic *modus operandi*. A verbatim, written record made many delegates choose carefully the level and length of their verbal interventions<sup>34</sup>. This development considerably increases the transparency of diplomatic meetings and will inevitably have an effect on diplomatic reporting summarising the findings of the event.

#### 7.5 Websites

Both the WSIS and WGIG made use of websites as official communication tools<sup>35</sup>. The WSIS website was particularly important in providing an overall map of the highly complex negotiation process. Websites provided announcements and updates about the process and had an important management function in planning WSIS activities.

In three distinct ways, websites were an important tool in the management of documents in the WSIS/WGIG processes. First, they

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34. One can find an example of a transcript from the WGIG meeting at the following url: <http://www.wgig.org/June-scriptmorning.html>.

35. Institutional affiliation appeared in the addresses of the WSIS and WGIG websites. The WSIS website had the address: <http://www.itu.int/wsis/>, which indicated an ITU ownership of the WSIS process. The hosting of the WGIG was controversial at the negotiations. After the refusal to have the ITU host it, the WGIG was assigned an 'independent' address: <http://www.wgig.org>.

served as a repository for all documents and materials, including all official documents, lists of participants and contributions by various stakeholders. Second, through the websites all stakeholders were in a position to submit their contributions in preparations for meetings. Even those stakeholders who could not physically attend meetings could provide input. Third, the possibility of posting contributions online helped bypass organisational controversies about the rights of stakeholders to distribute documents at the official negotiation venues. For example, while at the first WSIS preparatory meetings, complaints arose concerning non-governmental organisations distributing documents at the official WSIS venue, postings to websites circumvented this issue at later meetings.

#### 8. Conclusions

In general, the WSIS/WGIG did not create substantive or, as some have argued, revolutionary changes in diplomatic processes, at least from a short-term perspective. However, from a long-term perspective, some WSIS/WGIG innovations, especially in the field of Internet governance, could lead towards more substantive changes in diplomatic practice.

The main yardstick to use in this assessment is the practice developed during previous UN summits. In many respects, no major differences from previous summits are notable; the formal process of the WSIS was inter-governmental and states were not willing to alter the formal rules of procedure. As in previous summits, innovation happened in informal practice. States were more open to innovative diplomatic practice through flexible interpretation and implementation of rules of procedure. The innovations introduced through informal practice aimed, for the most part, at increasing the participation of non-state actors in the WSIS proceedings.

Straying from the UN model, however, the WGIG introduced a few unique changes in diplomatic practice, with the potential for further development in the future. The WGIG was more than an expert, advisory group, but less than a decision-making body. It did not

produce official UN documents, but it substantially influenced WSIS conclusions on Internet governance. The WGIG was a compromise in which pro-ICANN governments let Internet governance issues officially emerge and be placed on the multilateral agenda and in which other governments, mainly from developing countries, accepted multistakeholder participation. This compromise resulted in the success of the WGIG. Internet governance will remain on the global agenda through the Internet Governance Forum, established as a follow-up to the WSIS. In this context, the WGIG will be a useful example for the future development of multistakeholder partnerships at the international level.

### 8.1 Use of ICT/Internet-Based Tools in Multilateral Diplomacy

The WSIS and WGIG made a major advance in the use of ICT and the Internet in multilateral diplomacy. Firstly, during the WSIS process wireless technology matured and became both functional and affordable. It enabled participants to access the Internet using their computers in the conference room. Parallel to the development of wireless technology, a boom in Internet applications, including blogs and WIKI, substantially increased the participation of Internet users in the development of the content and interaction of the WGIG. Secondly, many summit participants were ICT-informed people and technologists. They introduced a new diplomatic playing field by intensive use of online tools. Others had to follow.

Perhaps the most important impact of WSIS/WGIG on diplomatic practice was the novel use of online tools, influencing various aspects of diplomatic practice and bringing higher transparency, broader participation via the Internet, e-reporting, and higher efficiency of the drafting process.

### 8.2 Emergence of Internet Diplomacy

It remains to be seen if the WSIS/WGIG contributed to the development of a new Internet diplomacy for dealing with ICT/Internet issues.

The WSIS/WGIG clearly showed that it is very difficult to develop one international regime that will deal with all ICT/Internet issues. Numerous regimes already focus on specific areas such as Internet governance (ICANN), intellectual property, standardisation, and privacy protection. Each of these regimes has its specific forms of practice.

Given the focus of the WSIS/WGIG discussion, the most relevant is the ICANN-led regime for Internet governance. ICANN was developed by non-state actors with limited governmental participation (with the exception of the role of the US government). Some attempts at the WSIS to create a new global Internet governance regime were questioned by those who pointed out the existing, fully functional, and robust Internet governance regime found in ICANN. The prevailing view was that instead of creating a new Internet governance regime, it would be better to fix the deficiencies of the current ICANN-based system.

The WSIS/WGIG dynamics that pushed the internationalisation process of ICANN could as well lead to the creation of a new type of international mechanism combining the best elements of ICANN practice (a multistakeholder perspective, transparency, flexibility) and those of international organisations (legitimacy, accountability, due process). These developments could lead to some qualitative changes in diplomatic practice, including the emergence of a new type of diplomacy - Internet diplomacy.

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## CHAPTER THREE

# The Internet and the Politics of its Institutional Management

Jovan Kurbalija

The Internet Corporation on Assigned Names and Numbers (ICANN) is the main Internet governance institution. Its responsibility is to manage the Domain Name System (DNS), the core Internet infrastructure, which consists of Internet protocol (IP) addresses, domain names, and root servers. Growing interest in a role for ICANN developed in parallel with the rapid growth of the Internet in the early 2000s and ICANN came to the attention of global policy circles during the World Summit on Information Society (WSIS) held between 2002 and 2005.

While ICANN is the main actor in the Internet governance field, it does not govern all aspects of the Internet. It is sometimes erroneously described as the 'Internet government'. This institution manages the Internet infrastructure, but it does not have any authority over other aspects of Internet governance such as the regulation of spam, content control, copyright protection, protection of privacy, maintenance of cultural diversity, or amelioration of the digital divide.

Formally speaking, ICANN is a non-profit corporation registered in California. Its function rests on a Memorandum of Understanding signed between the US Department of Commerce and ICANN in 1998 and extended twice, the second time from September 2006 to September 2009.

In many respects, ICANN is an experiment in multi-stakeholder

global governance. The institution has some characteristics of an international regime in that it governs the Internet infrastructure, which is considered to be a global public resource. However, it is not established – like other international regimes – by national governments through multilateral negotiations. Unlike other international regimes – such as those relating to the environment – that were gradually opened up by governments to non-governmental players, in Internet governance governments had to enter an already existing non-governmental, ICANN-based regime.

This chapter addresses these and other governance aspects of ICANN. It will start with a summary of the evolution of Internet governance that led to the establishment of ICANN and will then analyse various aspects of ICANN including its main functions, structure, organisation, decision-making processes, and the position of its main stakeholders. The chapter concludes with a survey of the main policy challenges and some possible scenarios for the future development of ICANN.

## 1. Evolution of ICANN

The evolution of Internet governance has resulted in ICANN. The origins of the Internet lie in the late 1960s, when the US government sponsored the development of a resilient communication facility designed to survive a nuclear attack. The government assigned this task to the Defence Advanced Research Projects Agency, which in turn sub-contracted leading US universities to develop the new computer network. The particular libertarian ethos of university campuses in the 60s influenced the early development of the Internet and laid the foundations for future social relations on the Internet. One of the main characteristics of this liberal ethos was a strong suspicion of any form of control, particularly by government. This anti-governmental attitude has influenced the development of Internet governance and ICANN up to the present day.

In its early period, a group of like-minded enthusiasts that we will call the ‘Internet community’ managed the Internet. Governance was very informal, as illustrated by an excerpt from one of the first ‘official’ instructions for managing core Internet resources:

“The assignment of numbers is also handled by Jon. If you are developing a protocol or application that will require the use of a link, socket, port, protocol, or network number, please contact Jon to receive a number assignment” (Postel (1981)).

A few tacit rules and one formal procedure, the Request for Comments, regulated early Internet use. All of the Internet’s main and basic standards were described through Requests for Comments. While they did not have any strict regulation and formal structure, strong customary rules and peer-to-peer pressure governed early Internet communities. They shared similar values, appreciation systems, and attitudes.

The early management of the Internet, centred around its founders, started to receive challenges in the mid-90s after the Internet became an important part of global social and economic life. Internet growth introduced new players – including the business sector and governments – who had different professional cultures and different understandings of the Internet and how to govern it. The initial decision-making structure used by the Internet founders became too narrow to accommodate this wider community of players and broader set of issues.

The first challenge to the Internet founders came in 1992 when the US National Science Foundation outsourced domain name registration and top-level domain management to a private company – *Network Solutions Inc.* The Internet founders opposed this move as “a commercial beachhead in the heart of Internet administration” (Mueller (1999:500)). The conflict between the Internet founders and *Network Solutions* launched the so-called ‘domain war’ which lasted until the establishment of ICANN in 1998. The domain war involved

a wide variety of actors. The Internet founders wanted to preserve the Internet as it was, governed mainly by themselves and other non-commercial actors. The business sector had a strong interest in developing a robust and predictable governance structure.

Initially, the US government was neutral in this debate. This changed in 1997, after the Internet founders tried to move the Internet root server and overall Internet governance to an international Council of Registrars (CORE) in Geneva, a newly created organisation under the auspices of the International Telecommunications Union. After blocking this initiative, the US government accelerated the process of settling the domain war and only a few months later issued a Green Paper<sup>36</sup> as the basis for public consultations on how to organise Internet governance.

The results of this debate – which involved mainly academics and the Internet community – became integrated into the next paper, the White Paper that became the founding document of ICANN. One of the central decisions made in the White Paper was to transfer Internet governance to the private sphere, in this case ICANN. The White Paper highlights a number of basic principles, later incorporated in the structure of ICANN:

- **Stability:** the function of the Internet should not be disrupted, especially in the operation of the major structures including ‘root domains’.
- **Competition:** it is important to encourage creativity and flexibility, which should result in further development of the Internet.
- **Decision-making:** The new system should accommodate some of the early Internet rules and principles including a grassroots style of organisation and openness.

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36. The official title of the Green Paper was “Improvement of technical management of Internet names and addresses”, 63 Fed. Reg. 8826, 8827 (1998).

- **Representation:** The new framework should accommodate the main geographic and professional stakeholders.

The preparatory work leading to the establishment of ICANN is important in understanding its current organisation, including some of its built-in contradictions relating to the participation of the various stakeholders (business, civil society, governments). Like most compromises, ICANN has deficiencies and contradictions, which have been the focus of much criticism.

## 2. The Function of ICANN

The main function of ICANN is to manage the DNS, which is the basis of the Internet’s infrastructure. ICANN has provided the following description of the DNS:

“DNS helps users to find their way around the Internet. Every computer on the Internet has a unique address – just like a telephone number – which is a rather complicated string of numbers. It is called its ‘IP address’ (IP stands for ‘Internet Protocol’). IP addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the ‘domain name’) to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type `www.internic.net`. It is a ‘mnemonic’ device that makes addresses easier to remember.”

How does the DNS function? When we type `www.internic.net`, our computer has to find the IP addresses that identifies this server on the Internet (in this case 207.151.159.3). Our computer has to check with a local DNS server, which is usually hosted by an Internet service provider (ISP) (e.g. a commercial provider or university server). The local DNS server keeps in its memory the numeric addresses of all frequently accessed websites. If the requested address is not available, the local DNS server will consult other DNS servers and, ultimately,



through the DNS hierarchy, arrive at the root server. The root server provides the address of the top-level domain name server for - in the case of 'www.internic.net' - the .net domain. The top-level .net domain server provides the exact numeric address of the *Internic* website, which the user's computer can then access. Obviously, this whole process happens in a matter of a few seconds.

The DNS has three elements that are of particular relevance for Internet governance and the function of ICANN: Internet protocol numbers, root servers, and domain names.

### 2.1 Internet Protocol Numbers

Each device connected to the Internet, whether computer, mobile phone, or game console, has an IP number. In the late 1990s, with the prospect of the fast development of Internet-connected devices, the question of the availability and distribution of IP numbers came into sharp focus. It was thought that the stock of four billion IP numbers available under Internet Protocol version 4 (IPv4) would be rapidly depleted and eventually inhibit the further development of the Internet. The Internet community took two major preventative actions. The first was the rationalisation of the existing pool of IP numbers<sup>37</sup>. The second was the introduction of IPv6 (a new version of the Internet Protocol) that provided a much larger pool of IP numbers (430,000,000,000,000,000)<sup>38</sup>. These two actions provided a solution to the potential scarcity of IP numbers and they are often cited as an example of how technical means and technical people can solve technical problems.

Following this technical solution to the potential scarcity of IP numbers, no further major controversies have occurred regarding their

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37. This was achieved through the introduction of network address translation, capable of connecting a private network (e.g. a company or university) through just one IP. Without network address translation, every computer on a private network would need its own IP number.

38. For a detailed discussion on IPv6 see: Kissangou (2005).

distribution. The system functions well, with ICANN as coordinator of the global distribution of IP numbers and five regional Internet registries (RIRs) directly managing the distribution<sup>39</sup>. These RIRs distribute IP numbers to the main ISPs and national Internet registries<sup>40</sup>. Further down the ladder, smaller ISPs, companies, and individuals receive numbers from the national registries. Although there is an ongoing policy debate over how to distribute IP numbers, this issue has not raised any major policy concerns.

### 2.2 Root Servers

At the top of the hierarchically-organised DNS, thirteen root servers contain identical root-zone files with name-number transaction tables for general top-level domains (e.g. .com, .edu, .org) and country domains (e.g. .uk, .ch, .it). The role of the root servers in Internet governance attracts considerable attention. The main controversy involves the authority of the US government over root servers. One of the arguments frequently used by those who want to change the current root-zone system is that the US, through the ICANN-managed system, can remove any country from the Internet (by deletion of the country domain in the root-zone file). This theoretical possibility has stimulated considerable concern and motivated many countries to insist on making control of changes in root-zone files fully international.

The question of the power of the US government over the root zone file needs closer analysis to illustrate the paradox of power. The possibility of removing a country from the Internet in itself can hardly be described as a power, since effectively it cannot be used. The central element of power is to force another side to act in the way the holder of that power wants. However, the use of this power by the US could

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39. The five RIRs are: ARIN (Americas), APNIC (Asia-Pacific), LACNIC (Latin America and the Caribbean), RIPE NCC (Europe and the Middle East), and AFRINIC (sub-Saharan Africa).

40. IP numbers are not distributed to nation-states. They are distributed to network operators who may cover more than one state. However, in some countries, such as China, IP numbers are distributed by national Internet registries.

create a different outcome – that countries and regions establish their own internets<sup>41</sup>. The US would then be a bigger loser than the other players in this possible disintegration of the Internet: it would face the loss of a medium for the global promotion of US-supported values (e.g. democracy, human rights). The potential disintegration of the Internet could challenge the position of English as the Internet *lingua franca* and it would shrink the e-commerce market currently dominated by the US companies such as *Google*, *eBay*, and *Yahoo*.

This analysis of the paradoxical nature of US power over the Internet root servers is supported by reality. So far, the US government has never exercised its power to remove a country from the Internet. On the contrary, the tendency has been for the opposite to occur. For example, throughout the Yugoslav Wars in the 1990s, cutting the Internet connection would have been justified as part of the economic sanctions regime (the UN Charter specifies the severance of “means of communication” as one possible economic sanction). Yet the US did not use this legal possibility<sup>42</sup>.

### 2.3 Domain Names

Down from the highest level in the DNS pyramid – root servers – the next layer includes top-level domain servers. Top-level domains contain name-number tables for specific domains. For example, the top-level domain for .net contains the information that the number for *www.internic.net* is 207.151.159.3. Two types of top-level domains

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41. Technically speaking it would be very simple to establish a new ICANN-independent domain name system for a particular country or region.

42. This question was particularly relevant during the Kosovo War (1999). Even at that time, no discussion took place regarding the removal of the domain .yu from the Internet. The main concern was whether the Clinton administration would cut the Internet connection to Belgrade because of a few denial of service attacks on NATO websites. It was technically possible to cut the Internet connection, since Serbia was linked to the Internet through one link in the Netherlands, but this did not occur for a few reasons. First, the primary users of the Internet in Serbia were strong opponents of Milošević (although not supporters of NATO). For them, it was a lifeline to the outside world. Second, Internet traffic from Serbia was an excellent source of intelligence for NATO, from very concrete information about the precision of its bombing, to general evaluations of the spirit of the population. In sum, the Kosovo War demonstrated the interdependence of the Internet. All players had an interest in keeping the Internet open: Milošević as a propaganda tool; NATO as an intelligence source.

have been devised: generic (e.g. .com, .edu)<sup>43</sup> and country (e.g. .uk, .ch, .cn). Most policy controversies in ICANN activities relate to top-level domains, including disputes over domain names and protection of trademarks, management of country domains, and introduction of new generic domain names.

#### 2.3.1 Domain Names and Protection of Trademarks

In the early days of the Internet, the registration of domain names rested on the principle of ‘first come, first served’, where anyone could register any name<sup>44</sup>. It led to ‘cyber-squatting’, the practice of registering domain names for later resale. This problem was particularly relevant to the registration of famous trademarks (e.g. Microsoft, Nike, Toyota, and Rolex). One of the first activities of ICANN was to deal with cyber-squatting. ICANN introduced the Uniform Dispute Resolution Policy (UDRP), which provides a fast and efficient procedure for protecting rights on a name, mainly based on the trademark. By using this procedure, many businesses regained control of domain names based on their trademarks without going through lengthy and expensive juridical procedures<sup>45</sup>. The fast action of ICANN in the field of cyber-squatting and trademarks is an illustration of the strong influence of the trademark lobby on ICANN.

#### 2.3.2 The Management of Country Domains

The management of country domains involves two important issues. The first concerns the (very often) politically controversial decision regarding which country codes should be registered when dealing with countries and entities with unclear or contested legal status (e.g. newly-

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43. The list of generic top-level domains includes: .com, .edu, .gov, and .mil (up to 1984); .net and .int (added in 1985); .biz, .info, .name, .pro, .museum, .aero, and .coop (added in 2000); .cat, .jobs, and .mobi (added in 2005).

44. For a brief and useful survey on the differences between domain names and trademarks see: [http://www.inta.org/info/basics\\_domnvtm.html](http://www.inta.org/info/basics_domnvtm.html).

45. Traditional juridical processes would also face the problem of deciding on national jurisdiction.

independent countries or resistance movements). Jon Postel, one of the Internet founders, advocated the allocation of national domain names in accordance with the International Standardisation Organisation (ISO) classification, which contains two-letter abbreviations for countries and other entities<sup>46</sup>. One recent controversial issue was the allocation of a Palestinian Authority domain name. In justifying its decision to assign the .ps top-level domain, the Internet Assigned Numbers Authority reiterated Postel's principle of following ISO policy<sup>47</sup>.

The second issue concerns who should manage country codes. In the early days, management of country domains fell to the people who first expressed an interest in doing so. Among managers of country domains, one could find a wide variety of individuals and institutions, including computer engineers, non-governmental organisations, universities, and private companies. In the 1980s, when most country domains were allocated, no one could have predicted the rapid growth of the Internet and the future importance of country domain names. Today, when the Internet is part of the national critical infrastructure, most national governments would like to have control over or – at least – a voice in the management of the country domain.

In order to achieve this, national governments have chosen a wide variety of policy approaches. For example, South Africa used its sovereign rights as an argument in winning back control of its country domain name. A newly enacted law specifies that the use of the country domain name outside the parameters prescribed by the South African government is illegal. The Brazilian model of the management of its country domain name is usually taken as a successful example of a multi-stakeholder approach. The national body in charge of Brazilian domains is open to all users, including government authorities, the business sector, and civil society (Alfonso (2004)). Cambodia's

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46. Two-letter country codes are contained in the ISO 3166 list.

47. The Internet Assigned Numbers Authority report on the country code top-level domain for Palestine is available at: <http://www.iana.org/reports/ps-report-22mar00.htm>.

transfer of country domain management from non-governmental to governmental control is an example of an unsuccessful transition. The government reduced the quality of services and introduced higher fees, which have made the registration of Cambodian domains much more difficult (Klein (2004)). In order to avoid involvement in internal national disputes over control of domains, ICANN has left it to national actors to decide about the management of a country's top-level domain.

### *2.3.3 The Creation of New Generic Domains*

Another ICANN policy issue is deciding on the creation of new domains, which could involve linking domain names to content. The latest example was the proposal to introduce the .xxx domain for pornographic websites. The board of ICANN rejected this proposal in March 2007. The main criticism of this decision was that ICANN made it under pressure of the US government, which strongly opposed the introduction of the .xxx domain<sup>48</sup>. Interestingly, many other governments supported the US government, including those who are usually against US positions, such as Brazil and China.

Regarding the merits of the .xxx domain, some argued that it was a good idea to create a 'sex zone' on the Internet, which would filter access to and reduce the risk of children accessing this type of material. Others were against the introduction of the .xxx domain based on various religious and cultural grounds. Sceptical voices also stated that .xxx would not be attractive to the Internet 'sex business' because once grouped in one domain, access is easily controlled.

Other than the .xxx case, controversy was limited to the involvement of ICANN in deciding policy issues such as content-related domain names. The controversy over the .xxx domain is an example of decisions that go beyond the role of ICANN as a technical organisation.

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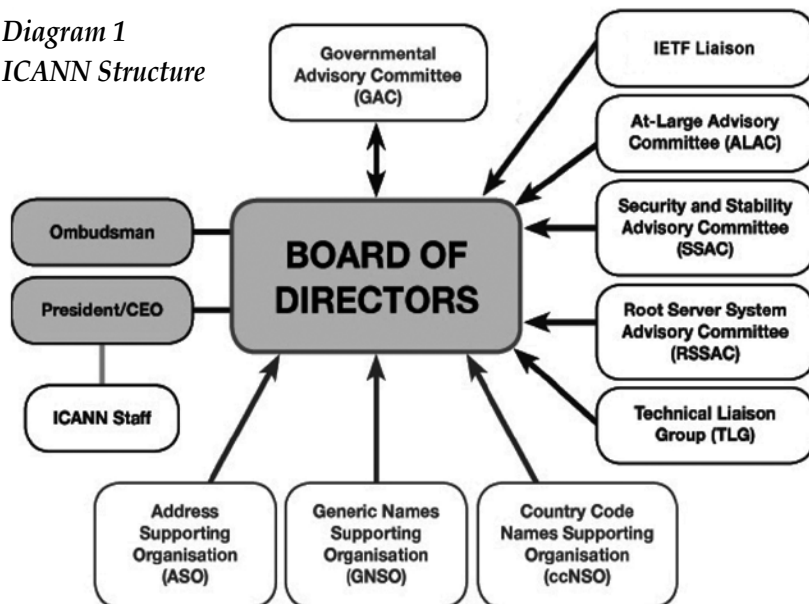
48. The US government did not follow the ICANN decision-making procedures during discussions on the .xxx domain. US opposition was voiced through a letter sent by the US Department of Commerce to the Chairman of ICANN.

### 3. ICANN Structure and Organisation

The structure and organisation of ICANN is a 'work in progress'. Revised several times since the establishment of ICANN in 1998, a 2002 reform set the basis for the current decision-making structure. After the 2002 reform, the organisation has typically been described as ICANN 2.0.

The main components of the ICANN structure are the Board of Directors, the Address Supporting Organisation (ASO), the Generic Names Supporting Organisation (GNSO), and the Country Code Name Supporting Organisation (ccNSO). The organisation also has a number of advisory committees: for the governance discussion, the most relevant are the Government Advisory Committee (GAC) and the At Large Advisory Committee. The latter is supposed to represent Internet users. The organisation is led by a President/CEO and has close to 60 staff members located in its headquarters (Marina del Rey, United States), the European office (Brussels), and other regional centres.

Diagram 1  
ICANN Structure



The governing board of ICANN is a central policy body consisting of a President and 14 voting members. The board composition represents geographical diversity by having representatives from the five main regions: Europe, Asia and the Pacific, Latin America and the Caribbean, Africa, and North America. Two directors are also appointed by each supporting organisation.

Considerable controversy arose over the direct election of the members of the ICANN board who should represent Internet users, usually described as the Internet community. Initially the Internet community directly elected eight members through elections and a direct vote. However, the direct elections were considered a failure because they did not attract the interest of the global Internet community. This led to the risk of the process being 'hijacked' by a few individuals. In 2002, ICANN abandoned direct elections and empowered a Nominating Committee to propose eight members of the governing board. Critics of the Nominating Committee's approach argue that it endangers the democratic aspect of the ICANN decision-making process and gives unchecked power to a very limited number of people.

After the board, the next most important components of the ICANN structure are the three supporting organisations (ASO<sup>49</sup>, GNSO<sup>50</sup>, and ccNSO) each focusing on a specific issue. The ASO focuses on IP numbers; the GNSO on generic top-level domains; and the ccNSO on country domain names. They advise the board on policy in the areas they cover.

The next segment in the ICANN structure consists of the advisory bodies such as the Root Server System Advisory Committee, the At-Large Advisory Committee, the Security and Stability Advisory

49. ASO consists of regional Internet registries.

50. GNSO focuses on the management of generic domains such as .com (used by business entities), .net (used by network infrastructure entities), .org (used by national and international organisations, including non-governmental organisations), and .edu (used by academic institutions). The GNSO is mainly influenced by the .com community. The particular concern of the business community is the management of trademark-related issues.

Committee and the Governmental Advisory Committee. The latter has been the most prominent advisory committee in ICANN activities. ICANN also has an Ombudsman to deal with complaints.

#### 4. Main Stakeholders in ICANN

ICANN is a multi-stakeholder institution involving a wide variety of actors in different capacities and roles. They form three main groups. The first group consists of actors that have been involved since the days when ICANN was established. It includes the Internet community, the business community, and the US government. The second group consists of international organisations, with the most prominent role played by the International Telecommunication Union (ITU) and the World Intellectual Property Organisation (WIPO). The third group of ICANN actors consists of national governments: these have been showing an increasing interest in having a bigger role in ICANN since 2003 with the WSIS process.

##### 4.1 The Internet Community

Originally, the Internet community consisted of institutions and individuals who developed and promoted the Internet. The term 'Internet community' is not completely precise and could be subject to confusion, with other terms such as 'Internet founders', 'Internet fathers', and 'technologists'. We will use the term 'Internet community' to signify the existence of a set of shared values among its members.

Historically, members of the Internet community were linked to US universities, where they worked primarily to develop technical standards and establish the basic functionality of the Internet. The Internet community also created the initial spirit of the Internet, based on the principles of sharing resources, open access, and opposition to government involvement in Internet regulation. From the beginning, its members protected the initial concept of the Internet from intensive commercialisation and extensive government influence. In the context

of international relations, the Internet community is an epistemic community<sup>51</sup>.

Today, the Internet community is represented through the Internet Society and Internet Engineering Task Force. The Internet community has been one of the important actors in the process of both establishing and running ICANN. One of the founders of the Internet, Vint Cerf, is the Chair of the ICANN Board. Members of the Internet community hold prominent positions in various ICANN decision-making bodies.

The prominent role of the Internet community in ICANN has been increasingly criticised. One of the frequent criticisms is that the Internet community itself has changed due to rapid commercialisation of the Internet. It is difficult to preserve the early non-profit spirit of the Internet community based on openness and knowledge sharing. The Internet community is increasingly becoming just another, though highly important, segment of the emerging Internet governance policy mosaic (Jansen (2005)).

Another criticism focuses on the fact that with one billion users the Internet has outgrown the ICANN-based policy framework based on the Internet community as the main constituency. Following this argument, as the line between citizens and Internet users is blurred, greater involvement of governments and other structures representing citizens is required. A structure representing only Internet users no longer remains sufficient. This approach focusing on the representation of citizens, rather than Internet users or Internet communities, was adopted by those arguing for more government involvement in Internet governance.

The Internet community usually justifies its special position in Internet governance on the basis of its technical expertise. It argues that ICANN is a mainly technical organisation and, should therefore

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51. The Internet community fulfils all the criteria in Peter Haas's definition of an epistemic community as a "professional group that believes in the same cause and effect relationships, truth test to accept them, and shares common values; its members share a common understanding of the problem and its solutions" (Haas (1990:55)).

be run by technical people using technical knowledge. With the growing difficulty of maintaining ICANN as an exclusively technical organisation, the justification for this special role of the Internet community is being increasingly challenged.

One can envisage the diminishing importance of the Internet community in the future work of ICANN. The business sector, governments, and civil society will increasingly integrate members of this community into their own activities.

#### 4.2 The Business Community

One of the underlying principles behind the creation of ICANN was to foster e-commerce. Its mandate to promote e-commerce is also one of the reasons why ICANN was conceptualised as a private organisation. The most important concern of the business community was the protection of trademarks. Many companies were concerned with cyber-squatting and misuse of their trademarks by individuals who were fast enough to register them first. In the process of creating ICANN, business circles clearly prioritised dealing with the protection of trademarks and, accordingly, the protection of trademarks based on UDRP was quickly introduced after the creation of ICANN.

The second important business issue was the regulation of the fast-growing domain name market. ICANN regulates the global domain name markets, where its main objective is to prevent monopolies and to ensure certain price controls. The main challenge for ICANN was to regulate the position of *VeriSign*, the successor to *Network Solutions*, which had a monopoly in the sale of .com domain names, the most lucrative part of the domain name market. It was only recently that ICANN settled relations with *VeriSign* and provided the basis for a properly-functioning .com domain market.

#### 4.3 United States Government

The Internet was developed as part of a US government-sponsored project aimed at creating a robust communication network that could survive a nuclear attack. From the origin of the Internet to this very day, the US government has been involved in Internet governance through various departments and agencies; initially through the Department of Defence, later through the National Science Foundation, and most recently through the Department of Commerce. The Federal Communication Commission has also played an important role in creating a regulatory framework for the deployment of the Internet.

One constant feature of US government involvement in Internet governance has been its hands-off approach, usually described as 'distant custodian'. It sets the framework while leaving daily the governance of the Internet to those directly working with it, mainly the Internet community. Nevertheless, the US government has intervened directly when its main interests were endangered, as was the case in the mid-1990s when the CORE project could have moved the root server and management of the core Internet infrastructure from the United States to Geneva. This process was stopped by a not-so-very diplomatic note sent by US Secretary of State Madeleine Albright to the Secretary General of the ITU<sup>52</sup>.

Since the creation of ICANN, the US government has been stating its intention to withdraw from Internet governance once ICANN achieves institutional and functional robustness. However, the cutting of this 'umbilical cord' between the US Government and ICANN has been postponed on several occasions.

On the global scene, during the WSIS process the US opposed the internationalisation of ICANN as well as more intensive involvement of the ITU.

On the other hand, in the WSIS process the US government made

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52. In the telegram, the US government criticised ITU involvement in the establishment of CORE.



the first steps towards internationalisation by recognising the rights of national governments over their respective domain names and accepting the continuation of international discussions through the establishment of the Internet Governance Forum.

#### 4.4 Other National Governments

With the exception of a few developed countries, most countries are newcomers to the field of Internet governance<sup>53</sup>. Most countries started forming their national policies on Internet governance in general and ICANN in particular during the WSIS process. The WSIS was a learning process through which many governments established their policies towards ICANN and trained diplomats and specialists who could deal with ICANN-related issues.

National governments expressed a wide range of views about Internet governance and ICANN. On one side of the spectrum, some governments argued that ICANN should be replaced by the ITU. This was the initial position of many developing countries. The most prominent in advocating a prominent role for the ITU were China, Iran, Russia, and Brazil. Some developing countries argued for a new international organisation to replace the ITU. Some argued that it should be a new treaty-based organisation, such as the International Organisation on the Internet. Others argued that a new type of multi-stakeholder organisation should govern the Internet. In the centre of the policy spectrum were governments arguing that ICANN should retain its technical functions while a new international public body should have the policy oversight function. This is the position gradually taken by the European Union. On the other side of the spectrum, the US argued that nothing in the current ICANN-based regime needed to be changed. Canada, Australia, and New Zealand upheld similar views, additionally arguing for a greater internationalisation of ICANN.

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53. The European Union and Australia were involved in the creation of ICANN.

The WSIS did not resolve the question of the position of ICANN and the future of Internet governance. For many governments the main resolution was that ICANN-related issues became part of the diplomatic agenda and that discussions would continue through the Internet Governance Forum.

Outside the WSIS negotiations, national governments started being more intensively involved throughout the ICANN structure. The 1998 starting point for governmental involvement in ICANN was not promising. The White Paper that founded ICANN stated that: “neither national governments acting as sovereigns nor intergovernmental organizations acting as representatives of governments should participate in management of Internet names and addresses.” However, within a few years, it became obvious that one of the main deficiencies of ICANN was a lack of proper involvement by national governments. The 2002 reform of ICANN strengthened the role of the Government Advisory Committee (GAC) as the main channel of communication between national governments and ICANN. While the GAC formally serves only in an advisory role to the board of directors, in practice, it carries more influence. This was particularly noticeable during the .xxx debate, where the GAC’s advice bore considerable weight in the final decision to refuse the introduction of an .xxx domain. Based on this experience, it is very likely that in the future the GAC will have a more prominent role in ICANN decision-making, especially in decisions with public policy relevance.

#### 4.5 International Organisations

Among international organisations, the main participant in Internet governance has been the ITU. The ITU has had tense relations with ICANN since ICANN was established. This was particularly clear during the WSIS process. Many observers viewed the leading role of the ITU in the WSIS as an attempt to re-establish itself as the most important actor in global telecommunications policy, now increasingly



influenced by the Internet. The possibility that the ITU might emerge from the WSIS process as the most important global Internet organisation caused concern in the US and other developed countries. At the other end, this was supported by many developing countries.

The WSIS did not result in any major advancement in the ITU position within the global Internet governance system. On the contrary, the ITU retreated from previously established positions due to its inappropriate approach during the WSIS process. Since the WSIS, the ITU has changed its approach. Three main features dominate this new approach: first, the ITU approach now deals with a broad Internet governance agenda, including issues such as cybersecurity and access, second the ITU now involves other actors and builds multistakeholder understanding and momentum, third the ITU has strengthened its focus on development assistance.

WIPO has been involved in the activities of ICANN in relation to trademarks. In its White Paper, the US government invited WIPO to propose solutions for protecting trademarks in the Internet domain system. Consequently, WIPO consulted with Internet and business communities worldwide and proposed the UDRP<sup>54</sup>. ICANN adopted the UDRP and it has become a functional dispute resolution mechanism. By 10 May 2007, 12,211 successful proceedings had been completed<sup>55</sup>. The UDRP is considered a model in both its preparation (extensive international consultations coordinated by WIPO) and its implementation (efficiency in solving international trademark disputes in the field of the Internet).

## 5. ICANN's Decision-Making Process

Early Internet governance relied on bottom-up policy processes and consensus decision-making, characterised by transparent, open, and

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54. See: <http://www.icann.org/udrp/udrp.htm> [Accessed on 30th November 2004].

55. For statistics about UDRP mechanisms see: <http://www.icann.org/udrp/proceedings-stat.htm> [Accessed on 13th September 2004].

inclusive processes. Some Internet governance bodies, such as the Internet Engineering Task Force have introduced innovative decision-making techniques such as 'rough consensus'<sup>56</sup>. The practicalities of early Internet governance have had a significant bearing on the ICANN decision-making processes. However, it was clear from the beginning that it would be a challenging task to preserve the early forms of Internet decision-making in new and different circumstances where many diverse players and interests competed.

In the "President's Report: ICANN – The Case for Reform", M. Stuart Lynn stressed that "the original concept of a purely private sector body, based on consensus and consent, has been shown to be impractical" and "experience has shown that the influence, authority and close cooperation of governments is essential to accomplish ICANN's mission"<sup>57</sup>.

One main difference between the early Internet community of the 1980s and the current ICANN decision-making context is the level of 'social capital'. In the past, the Internet community had high levels of mutual trust and solidarity that made decision-making and dispute resolution much simpler than it is now. The growth of the Internet has brought in several other stakeholders and, consequently, has made it difficult to identify any social capital among current users of the Internet. In this context, the request of Internet communities to keep some of the early Internet decision-making procedures is, to a large extent, utopian. Without social capital, the only way to ensure smoothness is to formalise decision-making procedures.

Some corrections to decision-making procedures have already been made to reflect this changing reality. The most important was the 2002 reform of ICANN, which included strengthening the GAC and abandoning the direct voting system. The clarification of some

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56. Rough consensus is described as: "more than a simple majority but not unanimity, often displayed by affirmative humming" (The Economist (2000)).

57. Comments on the role of ICANN from the ITU. See: <http://www.itu.int/ITU-T/tsb-director/itut-icann/ICANNreform.html>.

ambiguities, such as the role of governments, would help in making decision-making procedures more transparent and efficient.

## 6. Upcoming Challenges for ICANN

Having delved into the ICANN organisational structure and core functions, this section will touch upon three of ICANN's upcoming challenges in the near future: the technical-political dichotomy; technological development of the Internet; and the international status of ICANN.

### 6.1 The Technical-Policy Dichotomy

The dichotomy between ICANN's technical- and policy-oriented functions has created continuous tension in its activities. ICANN has endeavoured to portray itself as a 'technical coordination body for the Internet' that deals only with technical issues and stays away from the public policy aspects of the Internet. ICANN officials considered its specific technical nature as the main conceptual argument for defending the institution's unique status and organisational structure. The first chair of ICANN, Esther Dyson, stressed that:

"ICANN does not "aspire to address" any Internet governance issues; in effect, it governs the plumbing, not the people. It has a very limited mandate to administer certain (largely technical) aspects of the Internet infrastructure in general and the DNS in particular".<sup>58</sup>

The current chair of ICANN, Paul Twomey, used an analogy in order to highlight the pure technical function of ICANN:

"If you think of the Internet as a post office or a postal system, domain name and IP addressing are essentially ensuring that the addresses on the front of an envelope work. They are not about what you put inside the envelope, who sends

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58. See: [http://cyber.law.harvard.edu/is99/governance/introduction.html#\\_ftn10](http://cyber.law.harvard.edu/is99/governance/introduction.html#_ftn10).

the envelope, who's allowed to read the envelope, how long it takes for the envelope to get there, what is the price of the envelope. None of those issues are important for ICANN's functions. The function is focussing on just ensuring that the address works".

Critics of this assertion usually point to the fact that no technically neutral solutions exist. Ultimately, each technical solution or decision promotes certain interests, empowers certain groups, and affects social, political, and economic life. However, the idea of techno-neutral management has reoccurred constantly in ICANN-related debate. It also inspired *The Economist*, to argue that ICANN "should rethink its mission and cut down as much as possible to the technical aspects of running the DNS, leaving more political issues to other organisations. ICANN would then stand a much better chance of becoming a model for consensus-based self-regulation" (*The Economist* (2002)).

The debate over whether the .xxx (pornographic) domain should be introduced clearly indicated that ICANN will continue to face policy as well as purely technical issues in the future. Instead of resting on its desire to remain a purely technical organisation, ICANN should be reformed in order to handle policy aspects, as with the .xxx case. Without clearly specified processes to deal with policy issues, policy decisions could be influenced through informal lobbying and pressure on ICANN. Dealing with policy aspects will demand further changes in its organisational structure, including a stronger role for governments and a broader base for its legitimacy.

### 6.2 Technological Developments

The future role of ICANN is closely linked to the technological development of the Internet. Some of the policy dilemmas that ICANN currently faces might be overcome by technological developments. However, in some cases implementation of technological solutions will depend on economic and policy considerations. The technological

solutions for the improvement of the DNS have often been evaluated in the context of their influence on the current distribution of economic power in DNS business, which is valued at close to US\$5 billion<sup>59</sup>. Therefore, the implementation of technological solutions will not be automatic and straightforward, but will rather be part of a complex economic and policy interplay.

Technological convergence is another development that may influence the future position of ICANN. Through the convergence of telecommunications, multimedia, and entertainment systems it is today possible to use the Internet to make telephone calls, listen to the radio, watch TV, and share music. Technological convergence is followed by economic convergence (new business model, mergers of companies). The next step will be regulatory convergence. Each of these converging segments, the Internet, telecommunications, media, and entertainment has its own regulatory frameworks. Most regulatory frameworks are managed by public authorities (e.g. broadcasting, telecommunications) while others are more self-regulatory or private (e.g. ICANN for the Internet). Regulatory convergence is largely uncharted territory. Malaysia, Switzerland, and the European Union have made some proactive moves on regulatory convergence. It remains to be seen how regulatory convergence will affect the position and role of ICANN in the future.

### 6.3 International Status of ICANN

The special ties between ICANN and the US government have been the major focus of criticism. One such criticism stresses the sense of injustice that the vital element of the global Internet infrastructure, which could affect all nations, is controlled by one alone. This criticism

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59. Although currently the number of domain names is limited, it is possible to create an almost unlimited number of domain names. The current technical infrastructure of the DNS can – with some improvements – facilitate it. However, such technological solutions could have policy and economic side effects. On the policy side, it may complicate possible conflict resolution and protection of trademarks systems. On the economic side, the introduction of unlimited numbers of domain names could undermine current domain name business. The more domain names, the less valuable they will be.

was apparent during the WSIS process and was compounded by general suspicion of US foreign policy after the military intervention in Iraq. The standard counter-argument to this is that the Internet was created in the US with the government's financial support. This gives the US government moral grounds to decide on the form and tempo of the internationalisation of Internet governance. This argument is particularly powerful in the US Congress, which has strongly opposed any internationalisation of Internet governance.

A second criticism rests on practical and legal considerations. Some critics argue that if the US judiciary exercises its role and properly implements the sanctions regime against Iran and Cuba, it can force ICANN – as a US private entity – to remove the country domains for those two countries from the Internet. According to this argument, by retaining the Iranian and Cuban domain names ICANN is breaching the US sanctions law. While removal of country domain names has never happened, it remains a possibility given the current legal status of ICANN. It is also one of the strongest arguments for granting an international status to ICANN, giving immunity from US juridical processes to the organisation.

Despite its clear link with the US, ICANN is in many respects an international organisation. Its staff and decision-making bodies contain members from all continents. Most of its activities take place internationally, including three annual meetings held on a rotating basis in different regions.

### 7. Conclusions

Any summation of ICANN's influence on Internet governance should start with a recognition of its successes. First, ICANN has preserved the stability of the Internet and facilitated its growth. Second, ICANN has organised the domain name market through its decentralisation and anti-monopolist measures. Ultimately, this has resulted in the dropping of prices for the registration of domain names. Third, ICANN has solved the problem of cyber-squatting. These successes are often

used as an argument against change of ICANN status.

However, a more nuanced evaluation of ICANN governance yields mixed conclusions. In many respects, ICANN is an experiment in multi-stakeholder global governance. As discussed previously, it is subject to numerous paradoxes. ICANN is a private entity managing the Internet which is now part of the global critical infrastructure. It is a national institution, registered in the US, but dealing with international issues. It deals with technical issues, but is increasingly involved with matters of public policy. It seeks to be democratic and transparent, which inherently means longer processes, but at the same time it seeks to respond to rapid developments in the realm of the Internet. It has to be flexible, but also must also ensure the stability of the Internet.

Most of these problems can be settled by changing the status of ICANN, which would reduce the ambiguities in and improve the clarity of its mission. The future development of ICANN will require innovative solutions. A possible compromise solution could be to transform ICANN into a *sui generis* international organisation, which would preserve all the advantages of the current ICANN structure as well as address some shortcomings, particularly the problem of its international legitimacy.

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## CHAPTER FOUR

# Policy Approaches to Cybercrime in Luxembourg

François Thill

The Internet connects more than one billion people via a large interconnected network made up of several hundreds of millions of computers, servers and routers, and has become a crucial part of modern society. This network connects people, companies and administrative organisations by offering a multifunctional communication channel. With its rise in popularity, we have seen the rapid development of e-business and online services with a huge share of the market. These activities not only attract the interest of tradesmen and service providers, but also that of criminals, often referred to as cybercriminals.

The turnover related to cybercrime activities in 2008 exceeded that of the drug market (Amoroso (2009)) and is growing annually. People involved in terrorism and governmental espionage use the Internet to launch online attacks, as demonstrated by the example of Estonia (Evron and Aarelaid (2009)). According to the SANS institute, the growing popularity of Internet-based social networks, such as *Facebook* and *Hi5*, can help facilitate espionage (SANS Institute (2009)).

These figures and estimates raise certain questions: What is cybercrime really? How do cybercriminals commit their crimes? Who are the people behind cybercrime? What is their motivation? What political strategies might be employed to fight cybercrime? How do countries begin to prepare to cope with it?

## 1. What is Cybercrime?

The term 'cybercrime' refers to Information and Communication Technology (ICT) being used as a tool to commit a criminal act. Information Technology (IT) can be used as a tool for obtaining an advantage via illicit means, just like crimes committed by traditional, conventional methods;. The criminal's aim is the same, namely, to exploit his victims. Specifically crafted web pages can be used to extract private information together with inconspicuous e-mails, apparently from friends and colleagues, which may harbour destructive software. Among the offences associated with these types of attacks are credit-card fraud, diverse forms of abuse of trust, and child. The motivation is usually greed, paedophilia, prostitution, racism or political radicalism (Council of Europe (2001)).

There are multiple circumstances where IT itself may be the subject of criminal acts: clandestine installation of espionage software, illicit access to Web pages or defacement of them, theft of data, propagation of malwares or usurpation of identity. The motivation behind these attacks is often cupidity, ideology, revenge, terrorism or simply a challenge, or a combination of these. These attacks target mainly the availability, confidentiality and integrity of ICT systems.

### 1.1 Conducting Cybercrime

#### Step 1: Collection of information

Before carrying out an attack, cybercriminals collect information on their victim, whether a company or an individual. Users and companies often reveal large amounts of data on the Internet, unaware of the value of this information and unaware that criminals are ready to exploit it. Search engines can enable criminals to find valuable information on users and companies in seconds.

#### Step 2: Scanning networks

Cybercriminals probe systems and networks, searching for their weak points (exploiting technical vulnerabilities). Criminals have access to numerous free tools; some are even offered online support from the creators of these tools.

#### Step 3: Inventory

After the collection of information and the detection of weak points, the cybercriminal tries to identify user accounts or joint resources which are poorly protected. If the cybercriminal manages to determine the name of a user or a resource, nothing will prevent him from trying to illicitly access the system. The time between the determination of a username and the discovery of the corresponding password is generally very short, as people often choose very bad passwords. The process is similar for the detection of a resource and the identification of its weak points. One reason for this is that many companies still lack patch management (a bug-fixing procedure).

#### Step 4: Use of spying tools

Once the collection of information about a victim is complete, for example an administrative employee or a secretary (usually a strategic member of staff with access to lots of information), the cybercriminal tries to place a spying tool (Trojan Horse) on their computer to collect as much information as possible about the company. To do this, he sends an e-mail from a credible e-mail address, recognisable to that person, containing a Trojan horse specific to that person. Information the cybercriminal has obtained at the preliminary stage about the person makes it much easier to write this e-mail in a way that raises the interest of the potential victim, thus ensuring that it will soon be opened. If the victim activates the malware (harmful software) by opening the e-mail or clicking on the enclosed file,



the cybercriminal may obtain control of the computer. The cybercriminal is now able to spy on the company. The targeted collection of personal data is often easily accessed because many people reveal personal information on social networking tools such as *Facebook*, oblivious to the possible hazards, unaware that this information can be used to prepare social-engineering attacks.

#### Step 5: Manipulation by social engineering

In this case, cybercriminals do not have to stretch their technical capabilities, but use much more subtle means: for example psychological pressure or exploitation of the need for self-explanation of others. Here the victim may be directly confronted by the cybercriminal. During a 'chance meeting' or 'interview', names, passwords and other important information are passed on to the criminal, to be used for the 'attack'. To achieve this, the criminal can, for example, pretend to be a member of the IT department of the company. He then contacts a user of this same company and tells them that their access rights must be updated in order to use a particular application, which will not be possible without their password (CASES (2008c)).

#### 1.2 Who conducts Cybercrime?

Cybercriminals can be classified in two types: 'crackers' and 'script kiddies' (Humbert (2007)). A common, well-mediatised mistake is to use the term 'hacker' to denote a cybercriminal. This misuse of the term can easily be corrected by the following definition: a hacker is a highly motivated individual in the field of his choice, e.g. IT security. A hacker improves the security of IT systems by finding and exploiting system errors on his own equipment and, upon successful exploitation, publishing a detailed report to the relevant vendors and subsequently

to the public at large. They are not motivated by illegal activities and highly ethical about their status in society.

Hackers see themselves as beneficial workers for companies, organisations or people, because their attacks make it possible to detect vulnerabilities early on and thus improve the security of the systems concerned. The hacker community gathers experienced programmers, network specialists, as well as passionate information technology and communication experts. This community shares the ideology that intellectual property should belong to the general public.

Hackers have existed since the development of the very first computers. The hacker community mainly works in the background and is considered quite small. Their actions are focused on the intrusion into highly protected and widely deployed systems.

'Crackers' are a group of fully-fledged criminals. This community is often organised into networks and groups, similar to the hierarchic structures of organised crime. The crackers have, like hackers, excellent technical training but work for their own benefit or for the profit of a third party. The goal of their attacks is financial gain: grow rich at the expense of their victims. Contrary to hackers, these individuals do not have any particular ethical direction and their network includes many members. The majority of cybercrimes reported by the media may be attributed to crackers. This group represents a real threat to citizens, organisations and companies.

'Script kiddies' are a cybercriminal subclass. They do not have significant technical training, and are generally teenagers or even children who use ready-made 'scripts' (mostly freely available on Internet) created by crackers. Script kiddies often do not understand the operating processes behind the ready-made malware programs which they utilise. Many are not even fully conscious of the impact of their illegal actions. Their acts are irresponsible, often motivated by the need to displaying technical competence amongst their peers.

This group, from the multitude of its members, causes a great deal of damage. Their victims are mainly citizens and small companies that have inadequate protection. Well known and easy-to-use protection measures are generally sufficient to thwart them. Thus, e-mails of unknown origin should not be opened and their attached files should not be run. The operating system, anti-virus software and other programs should regularly be updated and the firewall correctly configured. Analyses of the systems by anti-spyware programs should be conducted regularly.

### 1.3 How easy is it to attack?

The slogans of IT security software suppliers often promise 100% protection through use of their programs. Whilst this is desirable, it is an impossible notion due to the residual attack risk. Cybercriminals' attacks are often successful. Armed with excellent technical training, they are able to successfully penetrate a protection system without even being caught. This kind of targeted attack is on the rise worldwide, reaching a new level each year, with each new protective system being undermined by the next attack.

## 2. Tendencies of cyber attacks

Attacks, performed by both adults and children, target devices such as mobile phones and smart phones with specific functions activated, such as Bluetooth. This technology allows the transfer of data over short distances without initiating a phone call and is free. Children as young as the age of 10 use mobile malware (freely available on the Internet) to take control of their peers (and parents) mobile phones. This enables them to make free calls using their new 'host'. The victims only notice the attack upon receipt of their telephone bill (CASES (2008b)).

When attacking functions such as Bluetooth, cybercriminals also have the possibility of obtaining important confidential information on individuals, because after a successful breach they have access to their victim's address book. During a one hour test carried out at one

of the main business streets in Luxembourg-City, a security specialist located more than 200 devices whose Bluetooth function was activated. It would have been easy pickings for a criminal wanting to get hold of business contacts' names and telephone numbers. If the targeted device was a smart phone with an Internet function, even e-mails could have been intercepted using the appropriate malware.

Malware in the form of Trojan horses makes it possible to take control of a computer with inadequate protection. This malware is very easy to work with and criminals make it available for everybody on the Internet. The 'attacker' installs the malware on the victim's computer and can survey all the operations carried out, whether this consists of handling banking data, drafting documents, or any other tasks executed on the computer (OECD (2008)). For instance, children and teenagers may use these malwares to activate a classmate's webcam or to play silly tricks on their victim's computer or mobile phone. Moreover, they often succeed, because many people still do not have anti-virus software installed or work with outdated protection programs. It should be noted that, today, even children of primary school age are learning to use and manipulate this sort of malware.

Cybercrime is increasing in severity and frequency. It is well organised, with specific target groups or target individuals belonging to organisations. Secretaries or engineers, for instance, are ideal victims for social-engineering attacks as they often have access to confidential information. With the increasing technical knowledge of cybercriminals, scientists and IT security experts have to stay up-to-date and develop adequate countermeasures.

## 3. Typical Vulnerabilities

Internet navigation programs (Internet Browsers) are in part to blame for a large number of vulnerabilities and the target of new attacks currently launched by cybercriminals against individuals and companies. Publicly available information about companies found via search engines is used to profile the victim and is integrated into social-

engineering attacks. Using special applications, they are able to collect and correlate data, making it easier for them to establish profiles of people or even of whole organisations, and enabling them to fine tune their attacks (Provos, McNamee, Mavrommatis, Wang and Modadugu (2007)).

As long as identifying vulnerable systems continues to be this easy and people continue to be careless about their 'cyber-hygiene', cybercrime will keep spreading and rising. This is illustrated by statistics published on incidents or by analysing the number of worms (self-replicating programs) trying to exploit specific technical vulnerabilities.

Although it is not very difficult to exploit technical weaknesses, it is generally easier to exploit human vulnerabilities by applying social-engineering techniques. Understanding and recognising the dangers of social engineering and the need for proper IT Security, the Luxembourg Ministry of the Economy and foreign trade, in collaboration with the University of Luxembourg's research unit INSIDE, initiated an empirical study to find out how willing people are to communicate their current password and other personal data under specific circumstances. The results of this survey, conducted in October 2008, show that additional measures need to be taken to improve users' security awareness with new information and communication technologies and teach the most important IT security principles.

The survey interviewed 1,040 people who were not aware that the study itself was conducted as a social-engineering attack. Approached by an interviewer in the street or a public place, people were asked if they would participate in an anonymous security survey. The interview was composed of 11 psychologically crafted questions in a precise order and took 2-3 minutes per interviewed person (Steffgen and Melzer (2008)).

To analyse how many people would be willing to cooperate with the offer, 25% of the participants were given an immediate reward as an incentive (chocolate bar before participation), 25% were offered

a delayed reward (chocolate bar after participation) and 50% of participants were not offered any reward, irrespective of gender. A statistical analysis of the results revealed that 23.4% of the people questioned were willing to communicate their password to a third party, in this case a stranger, straight away. During questioning, an additional 9.6% disclosed extensive information about themselves, making themselves vulnerable to having their password revealed through an educated guess. With 15.8% of the people questioned, a small amount of Internet research would have been largely sufficient to determine the password. Even though the survey was presented as being anonymous, nearly four out of five revealed additional private data such as their address, name, telephone number and birthday.

Attacks, whether they have an innocent, criminal or terrorist goal, always exploit human, organisational and technical vulnerabilities. The impacts of these attacks are not only limited to financial damages. They can result in the loss of confidence in the Internet or the loss of vital services for an organisation or country.

#### **4. The Luxembourg approach to cybercrime**

In January 2009, 185 million Internet sites were online, in comparison to 101 million in 2006 (Netcraft (2009)). The Internet has become 'the' worldwide communication platform, still evolving at high speed. The World Wide Web both influences and follows the practices and preferences of its users.

Today, information available on the Internet is mainly user generated content or comes from companies that offer online services. As Internet content is regarded as the 'responsibility' of every single contributor, organisation or provider, the safety of the information may be limited. Individual users are responsible for determining the level of protection they need on their own computer systems.

In Luxembourg, the development of e-business and the growth of e-government, e-health and e-education services are regarded as one of the priorities of the Luxembourg government. The main objective of

Luxembourg's action plan is to enable citizens, together with private and public sector organisations, to fully utilise the potential offered by the Internet, whilst having the reassurance that their data and computer systems are safe.

Today, in 2009, 80% of Luxembourg households have access to the Internet, 75% with a broadband connection. 96% of Internet users connect at least once per week to send or receive emails (92%), seek information on goods and services (86%), consult the Internet with the aim of learning or planning a trip (62%), or carry out bank transactions online (60%)<sup>60</sup>.

Further statistics show that more than half of Internet users (52%) use instant messaging to communicate in real time with other people by written text, 34% read Internet blogs and 12% create and manage their own blog. One third of the users chat or participate in discussion forums. 45% of all users listen to radio or download online music and one in three Internet users views or downloads films online<sup>60</sup>.

Despite the increasing attention and associated costs to the European legislators and public authorities of preventing computer crime, computer systems and networks are increasingly coming under attack by cyber criminals (European Commission (2000), (2001), (2006)). Cybercrime, in comparison to other forms of crime, has no international borders. Victim and offender are often in different parts of the globe. Offences can be perpetrated over long distances complicating the police and/or legal action procedures.

Effective action against cybercrime is essential, and ideally based on education and prevention rather than on repressive and highly regulatory measures. Although certain vulnerabilities might be inevitable, it is advisable to increase preventative measures and offer assistance when IT incidents do arise.

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60. Statistics obtained from Les Portails Des Statistiques, Luxembourg. See: <http://www.statistiques.public.lu/fr/index.html>.

The objective of the Luxembourg ICT security strategy is to encourage and to enable all stakeholders to set up policies, procedures and effective security tools to counter these threats. The strategy envisages the close cooperation of all parties on a national and international level in order to create a culture of security, as proposed by the Organisation for Economic Co-operation and Development (OECD (2004)), and foresees actions in the four fields of 'prevention', 'incident response', 'investigation' and 'legislation'.

The strategy calls upon citizens, the private and public sector, the financial sector, the telecommunications sector, the health sector and professional and employers' offices to collaborate in the establishment of national structures capable of responding to the expressed needs. All parties are being called together with the priority of establishing a culture of safety and security. A common, structured and vigilant approach by all parties is the only guarantee for the development of quality online services. In this respect, the Luxembourg strategy takes into account the recent reports and standpoint of the OECD and the Council of Europe which encourage the international community to work in a coordinated way in the fields of ICT.

The OECD approach, which strongly inspired the Luxembourg strategy, is based upon very democratic and modern principles. It promotes raising awareness, a sense of responsibility and the capability to react to incidents in an ethical and democratic way. It promotes the use of methodologies such as risk assessments and the implementation of IT security management systems.

As long as systems connected to the Internet are poorly protected it is easy to exploit vulnerabilities and take personal advantage with virtually no risk of being caught. The problem can only be solved through a common approach. Every member - be they a citizen, an SME (small or medium size enterprise), a public body or a bank - must understand their role and responsibility in the overall plan. Everybody connected to the Internet must make a personal effort to secure the system.

In Luxembourg, the responsibility for the development and implementation of an information security strategy was handed over to the Ministry of the Economy and Foreign Trade. This decision was taken because the Ministry of the Economy and Foreign Trade is a neutral partner and an independent organisation with a solid reputation, trusted by all stakeholders.

Through its neutral position, the ministry was able to develop and coordinate programs and projects incorporating many partners. It could develop methodological approaches based upon best practice and internationally recognised standards. Through its approach based on the responsibility and involvement of all Luxembourg participants, it succeeded in bringing together many public and private partners.

#### **4.1 Luxembourg's response regarding cybercrime prevention**

In 2003, the Ministry of the Economy and Foreign trade set up a Cyberworld Awareness and Security Enhancement Structure (CASES), in order to develop and implement the national strategy with regards to awareness and prevention aspects. Since then, CASES has acquired many capacities in the field of training, education and awareness-raising for citizens, administrations and SMEs. Large-scale projects have been launched together with the Ministry of Education and the Ministry of the Family in order to train children, teenagers, educational staff and parents in IT security. Security policies have been outlined, defining the technical responsibilities, tools and the organisational steps for creating secure IT environments in youth centres, primary schools and after-school accommodation.

Guidelines for citizens, SMEs and administrative departments have been established and are easily accessible on the CASES website. The guidelines raise awareness and offer advice on the use of security policies based on the ISO/IEC 27001 standard, within governmental bodies. The Ministry of the Economy and Foreign trade leads by example. Always maintaining an emphasis on quality assurance, the use of methodologies and the development of generic approaches

guarantee the optimal effectiveness of all departments involved. Additionally, a project is being organised in collaboration with the central IT department of local governments to offer security services within the communes.

CASES coordinates large public campaigns on raising awareness about computer and information security. For several years, CASES has invested in research and is active in the field of standardisation. Clear definition of objectives, measurement of its own impact, and fostering the involvement of Luxembourg's key players and their representatives are important pillars of its work. Its 'neutral position', 'expertise in information security', 'user-friendly language' and 'quality work' have helped CASES to acquire many public and private partners.

In Luxembourg today, CASES is the main reference point for education and awareness-raising in the field of IT security. It enjoys an international reputation and was invited to collaborate in setting up the French information-security and awareness-raising structure. CASES also has regular contact with its counterparts in Switzerland and in England.

Thanks to its many projects and contacts, CASES has a very good idea of the situation in the field of IT security. CASES notes that, from a technical point of view, the situation today is not so bad, although, from an organizational and behavioural point of view, the situation is still serious.

#### **4.2 Luxembourg's answer with regard to incidence response**

As a small country, Luxembourg's initial focus in 2003 was the setup of a prevention structure - CASES; later a second phase saw the setup of a computer emergency response structure (CERT).

In 2008 the CIRCL structure (the Luxembourg government's CERT) was created by the Ministry of the Economy and Foreign trade in collaboration with the Central IT department of the government and the State Ministry and coordinated by CASES staff.

CIRCL answers the need for being able to react in a fast and coordinated manner to IT incidents. It is intended to fulfil the tasks described in the second phase of the national IT security strategy. CIRCL implements remedial, as well as preventive measures. The target communities of CIRCL are central and local government, and operators of critical infrastructures on whose services the Luxembourg government depends.

CIRCL meets a particular international obligation requiring the setup of national contact points for response to incidents of an international nature. The European governmental CERTs were able to help Estonia put an end to attacks coming from all over Europe. CIRCL has already tried and tested its international contacts, which is essential for good performance. In today's expanding Luxembourg network, experts are able to react promptly and effectively. CIRCL also invests in research, in particular in the detection of automated attack mechanisms such as worms and malicious software that, when hidden in web pages, are able to exploit the technical vulnerabilities of targeted computers. In collaboration with the University of Luxembourg and the local ISPs, a network of sensors and search engines for infected web sites has been installed.

### 4.3 Information security skills

#### 4.3.1 Skills among adults and children

Experience shows that most children use the Internet independently of their parents and on unsecure computers. They lack the knowledge and judgement often required when exploring and following hyperlinks which seem to 'promise the earth'. The development of skills among children as well as among parents and educational staff is therefore of the highest priority. For three years CASES has run a training program for children in collaboration with many partners such as the Ministry for Education, the Ministry of the Family as well as many private partners. All these partners have been running special campaigns with

the goal of informing and educating children and young teenagers about the risks connected with using the Internet.

Training sessions involve defining the benefits of information security such as confidentiality and integrity, together with raising awareness of potential dangers such as viruses, phishing and harassment. The training looks at security measures, such as antivirus software, patch management and firewalls. It draws attention to the illegal use of the Internet such as the use of cracking software and 'cyber-bullying'. More advanced training programs are planned for the further usage of *Web 2.0*.

#### 4.3.2 Problems that Children Face in Cyberspace

Training 40,000 children between 9 and 14 years of age revealed to CASES a lot of problems that children face in cyberspace. Children seem to think that the fundamental European rights and social norms do not count in cyberspace. They can be exposed and expose others to victimisation, abuse, criminalisation, the breaching of social norms and the violation of fundamental rights. These factors do not form a reliable background for the future generations of a European knowledge-based society and need to be confronted (CASES (2009)).

Children use cyberspace differently to adults. They use the Internet mainly to communicate with one another (30% using webcams and microphones), for self-expression and the creation of personal websites. Young children are usually unaware that more than 1 billion people use the Internet. For them, only their schoolmate or neighbour uses the Internet and sees their messages. At an early age, they rarely comprehend that somebody might be able to track their conversation.

Some children as young as ten download crack software (code breaking software). Between 2-3% of children even know how to change their IP address to avoid being caught doing illegal things. Trojan horses are used by children to gain control over their schoolmates' webcams or to spy on them intentionally. The majority, although happy to capitalise on its advantages, are not aware of the dangers of



the Internet and least of all familiar with necessary security measures. Admittedly, the financial impact of successful attacks for them may be low but, as opposed to adults, they risk a lot as they construct and manage their social identity partly over the Internet. As children, they are also much more physically and psychologically vulnerable than grown-ups. Their behaviour and naivety makes them much more vulnerable to attacks from the dark side of the digital world. More and more criminals focus on children as victims, for example to gain access to the family computer and therefore to the bank accounts and passwords of the parents.

Correct handling of passwords is a very big problem for children. They often use one password for several applications or even share passwords with their friends and schoolmates as a sign of trust, unaware of potential threats such as manipulation of their websites, loss of privacy of their e-mail, or loss of reputation.

Viruses are a living fact for children, but they have no clue about the concept of malware. They rarely worry about the consequences of losing their privacy, reputation or identity, only considering the possible loss of downloaded music, pictures and software to be a major catastrophe. Infections with viruses are thought to be an unavoidable by-product of the Internet, and children are oblivious to the fact that their favourite download websites are the perfect environment for contracting viruses or other kinds of malware.

Online chatting is very popular amongst young people. While they frequently use the MSN service with the advantage of having a limited number of participating parties, they may find themselves confronted with problems such as password theft, insults, slander, sexual abuse, suggestive or gross language, not being aware that their very pseudonyms (Lolita13, lover12, bunny14, etc.) might be one of the keys to the problem.

Even though youths are generally aware of taking basic precautions when joining chat rooms by not giving out personal data such as their real names, phone numbers or addresses, some children meet with

Internet acquaintances in real life. When asked 'why?' the answers vary from 'being infatuated' to 'being curious'. The youngest example is of a child of nine who wanted to sell toys via the Internet to acquire a mobile phone or game. Lacking a bank account, he decided to meet up with the purchaser to close the deal. Luckily, the event turned out not to be dangerous.

Another major problem is the sexual harassment of children of all ages. Pornographic images are sent and requests are made to take suggestive pictures of themselves or have virtual sex or physical contact with strangers. Strangers approach children via Internet sites, MSN, e-mail, online games, blogs and chat-rooms, pretending to be friends of a similar age. Children giving a hint of their gender find their accounts swamped with unrequested mails of a sexual nature. Parents often react incorrectly when being approached by their children, cutting off their lines of communication, thus facing children with double victimization. Most children, hearing of adults' reactions, refuse to talk to them about these sorts of problems anymore. Children naively stumbling onto pornographic websites can cause real problems; they may not only receive spam mail but may also receive severe punishment from their parents.

Unaware of the potential risks, inquisitive children visit websites where downloads are possible, only to find themselves committed to paying fees to shady providers. Children are perfect victims for fraud as they may be taken advantage of due to their naivety. Children's suffering can be exacerbated if their family is short of money.

Some youths use the Internet to get access to otherwise restricted or censored games and videos. Even children in primary school have been known to watch extremely violent videos, a kind of a test of courage.

Gaming is another big problem. Even children in primary school can spend hours a week in front of the computer playing games that are not appropriate for their age. Frequently, children of just nine years old admit during information security sessions that they play games such as *World of Warcraft*.

An estimated 25% of children of primary-school age launch their first personal website, using it as a means of self-promotion. Their websites are often overflowing with personal data, photos of themselves, their family and friends, downloaded mp3 files and trademarks, while often being unaware of the implications of copyright. Some adolescents use platforms such as Hi5 or *Facebook* to portray themselves, sometimes publishing quite private information or displaying themselves on suggestive pictures. A lot of them do not understand that anyone can copy and manipulate such data with malicious intent.

Often, 8-10 year old children in Luxembourg have a mobile phone usually equipped with all the latest functions and devices such as a camera, a colour screen, Internet access, Bluetooth, a large memory for pictures, mp3, videos, etc. Children use them to stay in touch with their pals and plan their leisure time. Unfortunately, quite a few children use their phones for all kinds of illegal things such as harassing other children through 'cyber-bullying'. They often send extremely violent movies (happy slapping, snuff, executions, etc.) to innocent recipients who are forced to watch these scenes. They use software cracks such as, for example, 'Super Bluetooth' with the intention of gaining control over other children's and adults' mobile phones that have their Bluetooth device enabled.

Finally, more and more children are faced with spam e-mails in the form of chain letters. The content of these e-mails states that somebody in the family will get hurt, have a deadly accident or the child recipient will be killed on a certain calendar date if they do not forward the e-mail to at least ten or more other children. Some threatening e-mails are accompanied by pictures showing a dead child. Children often forward these e-mails driven by fear, contributing to the collection of e-mail addresses and the spread of viruses.

Information security requires the development of information security skills. Experience shows that training has to start as early as possible, preferably in primary school. Raising awareness amongst

children helps to protect and educate them to become young responsible cyber citizens and may prevent them from becoming cybercriminals themselves (CASES (2008a)).

## 5. Conclusions

Building a culture of information security involves the efforts of everyone. Industry, governments, public authorities, banks, SMEs, grown-ups, parents, teachers, and even children must contribute to establishing a safer Internet. Every participant must try to make his or her ICT system less vulnerable to cybercrime and adopt the appropriate security response. However, this can only be achieved by coaching and teaching, by assisting victims, and by investigating every single criminal act, all within a framework of trust. The coordination of these efforts must be effected nationally and internationally, without spreading fear or imposing undemocratic rules.

Luxembourg established its national IT security strategy in 2003 and continues to work hard on its implementation. Additionally Luxembourg also contributes to and takes advantages of the international security effort. It actively contributes to ENISA, the European Network and Information Security Agency, the OECD, and other bodies coordinating international efforts to make the Internet a safer place and not a safe haven for cybercrime.

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## CHAPTER FIVE

# The Internet and Domestic Politics

Andrew Caruana Galizia & Paul Caruana Galizia

### 1. Introduction

Communication networks, before the Internet, were limited by their nature to only allow information transfer between nodes of that same network. The transfer and distribution of information was, therefore, restricted: it relied on people accessing those particular nodes, and forming part of those particular networks. The Internet is still a network. People must be connected to it to access information on it. What makes the Internet different, however, is its ubiquity. Advanced Micro Devices (AMD), a California based technology company, estimates that the population of Internet users is somewhere around 1.5 billion people as of January 2009, which is a 342.4 per cent increase since 2000 (AMD (2009)).

The far-reaching nodes and networks that the Internet provides have made it an attractive choice for political campaigners. Never before have they been able to reach such a wide audience at such a nominal expense. Additionally, the Internet can be used as a multifaceted campaigning tool: to encourage people to vote, to raise funds for political causes and parties, to organise rallies, and to integrate communications with administrative staff, donors, party workers, and potential voters.

This chapter will survey the use of the Internet in campaigning in domestic politics. It is divided into a further five sections. The next

section is concerned with political campaigning before the advent of the Internet, and outlines the main characteristics of campaigns and marketing techniques. This provides a historical backdrop for the subsequent section, which gives an overview of Internet use in campaigns, with a particular focus on the United States presidential election of 2008. The fourth section, the chapter's locus, introduces two case studies, Malta and France, to allow for a comparative discussion. A concluding section, which looks at changes in domestic politics caused by the Internet, ends the chapter.

## **2. Political campaigns and transnational techniques**

For the past decade, it has been difficult to think of political campaigning and marketing without the Internet. Of course, the principles and aims of campaigning - to generate support for a political party or candidate - have not changed, but the channels through which campaigns occur definitely have. Before the Internet, these channels were much more contextually specific. This subsection will look at how campaigns were conducted and how political movements were marketed before the advent of the Internet.

### **2.1 Political campaigns and marketing techniques until the advent of the Internet**

Political events, such as rallies or mass meetings, are perhaps the more spectacular side of campaigning. Up until the 1950s, mass meetings were voters' primary sources of political information. Sanders and Kaid, after surveying audiences of four presidential candidates during the 1976 Illinois primary, found that participants underwent behaviour and attitude changes (Sanders and Kaid (1981)). According to their research, the strongest political attitudes were drawn from the cognitive-orientation nature of the rally, and the event excitement that came with it. These factors, they argue, make political messages effective. However, Johnston and Pattie note that we are in "an age when attendance at political rallies was much higher than it is now,

this inevitably limited the ability of party leaders to appeal directly to the majority of voters" (Johnston and Pattie (2006)).

Interpersonal contact in political marketing and campaigning is about what Thorson calls 'persuasive conversation.' This form of direct contact between politicians, campaigners, and potential voters has always been "a mode of participation and an opportunity for both parties to be exposed to new political viewpoints and information" (Thorson (2009:1). Because interpersonal contact is effective, it is one form of political outreach that has maintained its importance. The most common, almost stereotypical, forms of this contact would be a politician shaking hands with, or kissing babies of, potential voters. Additionally, such contact requires social resources more than it does the economic resources needed for donations or advertising. Thorson argues that interpersonal, persuasive contact is both a "channel through which political knowledge and opinions are transmitted from the more engaged to the less engaged and a catalyst for exposing partisans to opposing viewpoints" (2009:i). Put simply, interpersonal contact involves grassroots political participation and activism, which means that it does not only occur on politician-voter level, but also on a voter-voter level - this widens the base of potential voters and supporters.

Political events and interpersonal contact are, by their nature, spatially and temporally specific. They require direct, personal attendance - unless the event is broadcasted.

Radio allows for a more nuanced targeting of audiences - what Overby and Bath (2005) call 'narrowcasting'. Still, like television campaigning, exposure to talk radio contributes to greater levels of political involvement and activity among listeners (Hofstetter et al. (1994)). That radio increases public involvement in politics, but attracts narrower audiences has been attributed by some researchers to the idea that radio audiences are angrier. Kolbert quotes a United States democratic political consultant, Carter Askew, on this point: "People listen to the radio in an angry mood, sitting in traffic, as opposed to the

escapist mood when watching TV" (Kolbert (1992)). It is for this reason, Kolbert goes on to argue, that radio is the communication channel of choice for the most aggressive and misleading campaign adverts. According to Overby and Bath, radio is used more than television in political campaigning.

Television was a major feature, more so than it is now, in political campaigning and marketing. Televised broadcasts were first used in the 1952 United States presidential elections between Eisenhower and Stevenson. Both candidates made use of this channel to such an extent that it contributed to the growth of public interest. According to Trent and Friedenberd, "Turnout jumped from less than five million primary voters in 1948 to almost thirteen million in 1952" (Trent and Friedenberd (2007:53)). Television brought a new dimension to political campaigns. It dramatised suspense, debate, and tensions, and projected moving, visual images of candidates that were, up to this point, impossible. Eisenhower's television adverts were more effective, since they were easier to remember, and played more often. Stevenson, on the other hand, used 30 minute long speeches to capitalise on the television market. Eisenhower won the election. The use of television for politics in the United States continued to increase until the 2004 campaign. That time, the three major networks - ABC, CBS, and NBC - only showed three hours of coverage for both the Democratic and Republican conventions.

While there are spatial constraints linked to television and radio broadcasting (one must be next to a television to watch it, and next to a radio to listen to it), they still provide a channel through which political information can reach wider, more distant audiences. They are, however, limited by temporal constraints. Radio and television programming requires audiences to tune in at specific times for specific programmes.

Printed media is not limited by such constraints. It includes all forms of written communication: newspapers, pamphlets, books, and so on. This gives it a flexibility, which Garrison (1980) had argued,

has a number of advantages. He wrote that it is the best channel for mass-communication; it can target specific audiences, and has a high believability quotient. The first two points are, in this day and age doubtful, since those functions can be efficaciously done through the Internet. Garrison's last point on believability, however, still rings true. Printed media has a certain legitimacy that, say television, does not. Garrison puts this down to the notion that "printed media are proposed as primarily in-depth information sources, while television, in contrast is a surveillance medium" (1980:6). Weaver and Buddenbaum reviewed more than one hundred uses and effects research reports, and determined that exposure to printed media during political campaigns will: reinforce pre-existing political attitudes, and to a lesser extent contribute to the formation of new attitudes; increase political knowledge, and effectively set political agendas; and affect political behaviour, as people find, for example, newspaper endorsements associated with victory in elections (Weaver and Buddenbaum (1978)).

However, there are other temporal constraints that come with printed media. It is an inescapable fact that, once something is printed, it only begins to age. Because political news and information changes rapidly, this poses a problem: political information printed today may quickly become outdated tomorrow.

Nevertheless, the use of these channels for campaigning and marketing carried on intensely until not long ago, as can be seen in *Election Time: the European Yearbook of Political Campaigning 2003* (EAPC (2004)). Published by the European Association of Political Consultants (EAPC), it features detailed analyses of 18 European political campaigns that took place in 2003. Essentially, it is an exercise in data sharing - one that highlights similarities and differences in political contexts across Europe. Particularly significant to this chapter, the publication features a section on Malta, which is used as a case study and discussed in detail later on.

## 2.2 Election Time: the European Yearbook of Political Campaigning 2003. Campaigning and Marketing without the Internet in Europe – Differences, Similarities, and Trends

2003 was an important year for European voters. 18 elections took place: six were referendums to decide on EU accession, another seven were parliamentary elections, one was a referendum on entry into NATO, and four were regional elections. The campaigns showed widely differing approaches to political communication. More interestingly, comparing the form and outcomes of the election campaigns in the different European countries revealed differences between the mature democracies and the younger democracies.

Finland, for example, is one of the older democracies. It has been a presidential republic since 1919. In 2003, the Finnish people were voting in parliamentary elections. Kivi (2003:46) writes that these elections were “prime ministerial elections” since they were more like a personality contest than an ideological battle. This ‘personality strategy’ was successful. The media, television channels in particular, followed the personality battle with what Kivi called “unusual steadfastness” (pp. 46). The reason for the personality shift, Kivi speculates, is that the larger political parties have come closer together in terms of ideologies. Citizens showed a democratic togetherness in that they were concerned with universal issues such as EU membership. Another point highlights “the Finnish political idyll” (pp. 50): the four largest parties have commissioned opinion polls together since the early 1970s, which demonstrates a high level trust the parties have in each other. The Centre Party, a member of Liberal International, won the election with 24.7 percent of votes cast.

Malta, by contrast, is a younger democracy. It has been a parliamentary republic since it gained independence from Britain in 1964. Saliba writes that, “excluding a few years of political and democratic turmoil during the eighties, Malta has always had a strong democratic system” (2004:102). In 2003, the Maltese people were voting in an EU accession referendum, and a general (parliamentary) election.

Unlike the Finnish elections, these elections were more ideological. There were two major political parties involved: the Nationalist Party (PN) was campaigning for EU accession, while the Malta Labour Party (MLP) was campaigning against it. The PN, used aggressive campaigning in television, on billboards, printed media, and radio to promote EU accession and neutralise the MLP’s campaign. Personality did come into play during the campaign when the PN began targeting the MLP leader Alfred Sant’s credibility. 54 percent of votes cast were in favour of EU accession: The PN’s strategy was successful. However, a new scenario emerged when the result was announced. Alfred Sant refused to acknowledge the outcome of the referendum, which, unlike the case of Finland, shows what little trust Maltese political parties have in each other, and how bipolar the Maltese political situation is. The PN responded by associating the successful EU accession campaign with their general election campaign. An important addition to this new campaign was using the Maltese flag, showing that the PN’s cause was a national, and not partisan, one. The PN won the general election.

The cases of Malta and Finland are two examples the publication provides, which highlight contextual particularities, and the effects these have on political campaigning. In Malta, Saliba writes that one of the PN’s biggest challenges was “to overcome political emotions and traditions” (pp. 112). This meant that their strategy was veering away from party politics, and focused more on themes like ‘children and their future’. This is something that did not occur in Finland since the political parties there do not have such loyal, traditional voter bases. One thing that did transcend national and cultural boundaries in the 2003 elections, however, is the increasing move away from content towards personalities in campaigns and strategies. In Finland, it was an outright ‘personality battle.’ In Malta, one of the main political leaders was continually discredited. The EAPC concludes that this happens where “the voters and citizens are not able to make sense of complex political connections and arguments, [and] they place their trust in personalities instead” (pp. 6).



### 3. The Internet: general issues

In an article on the 2000 United States presidential elections, James Carey, a spokesman for PC Data Online, which tracks Web use, commented that, "The Bridge hasn't yet been made between politics and the Internet...There's not a lot of traffic to these sites. It just isn't working yet." This is not the view shared by many other researchers. Bimber (1998:134), writing two years earlier, claimed that, "the Internet has already acquired political significance". Herold (2006:1) argues that, "despite its youth, the Internet has already had tremendous impact on political campaigns". She writes that in 2000, for example, the same year in which James Carey's comment was published, presidential candidate John McCain raised \$1 million dollars in 48 hours over the Internet. But as Herold says, the Internet is still in its youth.

#### 3.1 Internet use in political campaigns

Until the Mosaic browser was developed in 1993, and the Netscape browser was developed a year after that, the Internet could not be used as a mass medium (Klotz 2001). In addition to this, there simply have not been many elections since those developments. The United States, which was the first country to exploit the Internet for political reasons, has only seen four presidential elections in the twelve years since 1993. The Internet as a campaign tool still contains a lot of unfulfilled potential.

Disseminating information directly to the public is the Internet's principal effect. This has considerable implications. It is a high-return, low-cost mass medium. Political campaigns can construct an Internet presence for a small cost, compared to cost associated with television or billboard advertising. As a result of this, poorly funded campaigns stand better chances at gaining support. Trippi (2004) shows how Howard Dean, a relatively unknown governor (Vermont) turned Democratic presidential nominee for 2004, capitalized on Internet campaigning. His campaign was run by six people, and had about 9,000 supporters. When a website was set up to promote his candidature,

Dean's campaign leaped from 432 online supporters to some 170,000 supporters in less than a year.

Trent and Friedenbergl list ten functions the Internet provides to political campaigners:

1. Provide candidate information to voters.
2. Raise funds for campaign.
3. Provide information and candidate views on policy issues.
4. Provide political information and news about the campaign.
5. Communicate with supporters and endorsing groups.
6. Provide election information to voters, such as polling place and voting times.
7. Recruit interns and campaign volunteers.
8. Provide information and news about the constituency.
9. Seek voter opinion on issues.
10. Criticise the opposition.

The functions can all be interpreted as a modernized form of interpersonal contact. The Internet is a medium that facilitates a feeling of interpersonal contact between political candidates and voters. Websites, newsletters, and emails offer voters an opportunity to interact directly with candidates or, rather, the candidates' strategists. Constructing a sense of familiarity is an important part of this process. For example, online visitors to Senator Hilary Clinton's campaign website in 2000 could sign up to receive her email newsletters. According to Trent and Friedenbergl, they read:

"I'm so pleased to know you are keeping up with our committee by email. As I travel through New York listening to New Yorkers, I will also use this email network to stay in touch and bring you news of our activities" (pp. 332-333).

Interactivity such as that found on Hilary Clinton's website was not previously available in media. Television is a passive experience, as is reading printed media, and listening to the radio. Puopolo (2001)



credited her win in the 2000 New York Senatorial race, in part, to her highly interactive website.

The benefits of online campaigning quickly became apparent to other politicians. The Bivings Group, a Washington DC based Internet consultancy, found that 97 percent of Senate candidates had active websites in 2006, up from 55 percent in 2002 (Bivings Group (2006)). The political Internet revolution had begun. As Jose` Antonio Vargas, a Washington Post staff writer, wrote, "Like it or not, we now belong to a clickocracy - one nation under *Google*, with video and e-mail for all" (Vargas (2008a)).

Vargas' clickocracy claim may seem, at first glance, exaggerated. The Internet as a political campaigning tool has immediately apparent limitations. Firstly, only if individuals are *looking* for campaign websites, and know *where* to look for them, will they find those websites. Since online campaigning is an interactive process, dependent on a feeling of interpersonal contact, there must be a desire from the individual to initiate that process. Traditional campaigns, by contrast, seek the voter out in a seemingly intrusive way. Secondly, using the Internet requires a certain amount level of technical knowledge and skill in order to access websites, and to send and receive emails or newsletters. This poses a particular problem for campaigning among older generations, since they are typically unfamiliar with the Internet. Thirdly, there are impossibly large volumes of online political information. Finding what you really want may take some time and patience. An online search for 'George W. Bush' conducted by Herold in 2006, for example, would provide links to 17,300,000 pages on *Google*, 67,500,000 on *Yahoo*, and 64,800,000 on *Altavista*. Lastly, and perhaps most importantly, accessing online political information requires an Internet connection. While there are 1.5 billion Internet users to date, there are still more people who do not use the Internet: some 5.2 billion people more. In spite of the Internet's political campaigning limitations, however, there is still value in Vargas' notion of clickocracy. This is best illustrated by Barack Obama's 2008 United States presidential campaign.

### 3.2 Barack Obama and clickocracy

Arriana Huffington, The Huffington Post's editor-in-chief, claimed that the Internet is the reason why Obama – who was relatively unknown until his presidential nomination – was able to win the election (Okun (2008)). Obama's Internet campaign, which has been compared to John F. Kennedy's intense television campaign, used a multitude of online tool like *YouTube* and *Facebook* to connect and interact with millions of potential voters. His was the most Internet-based political campaign yet.

In the 21-month presidential campaign, the Obama team raised \$500 million online, in 6.5 million donations, by three million donors. Some two million profiles were created on *www.MyBarackObama.com*, Obama's own social networking website. Obama strategists wrote over 400,000 blog posts. By 2008, Obama had five million supporters in other social networking websites, who organized tens of thousands of rallies and activities (Vargas (2008b)). Senator John McCain, the rival candidate, found himself unable to keep up with Obama's hyper-exploitation of the Internet: what commentators like Okun have called 'The Obama Effect'.

It is unlikely that Obama's popularity and support would have reached such heights without the use of the Internet. What he was doing through the Internet was stimulating public interest in politics in an anti-political age. This made him somewhat of an idol; a change (which, incidentally, was the Obama campaign key-word) from the uninspiring politics that many grew accustomed to during George W. Bush's term. This is a trend also identified by the EAPC, which claimed that political campaigning in Europe is moving away from ideology and towards personalities. A big part of this public stimulation was exploiting the market of young voters. This was an exercise in micro-targeting that would have not been possible without social networking websites, which are so popular among the young. Raising so much money would have also been impossible without the Internet, which made it so much easier for people to donate, and Obama to receive. Nor

would it have been possible for Obama to mobilize so many grassroots activists, who organized so many rallies, without the use of the Internet. McCain, on the other hand, did not use the Internet effectively, and paid the price. His website, for example, was an extension of the television broadcast, send-receive model. Most information on it was about McCain himself, and not about how supporters or potential voters can get involved – there was no interpersonal contact, which, as we have seen in the Hilary Clinton example earlier, is what makes Internet-based campaigning effective.

‘The Obama Effect’ marks a new way of campaigning. It is leading the decentralization of power away from political centres, like Washington, and away from big donors, towards the grassroots. The Internet has given people a sense of empowerment; through blogs, online comment boards, reading newsletters, and browsing websites, they have become campaigners in their own right. The challenge for political strategists nowadays is to stay on top of the rapidly changing Internet landscape, to be able to exploit it in the manifold channels (emails, websites, social networks) it offers.

#### **4. Two case studies: France and Malta**

##### **4.1 Background**

###### **4.1.1 Background Literature**

Scholarly work on Internet campaigns in European elections began to appear a decade ago, in the wake of pioneering American studies, with Hague and Loader’s writing of an “emergent electronic democracy” in *Digital Democracy* (Hague and Loader (1999)). Many of these studies concerned northern European countries with high Internet usage per capita, such as Carlson and Djupsund’s 2001 study on the use of Internet in Finland’s 1999 parliamentary elections. From the outset, contemporary analysts viewed positively the introduction of the Internet as a tool for political campaigning (Carlson and Djupsund (2001)).

The empowerment of mass constituencies with the unprecedented access to information that the Internet would supply led some to predict a radical shift in the way campaigns would be conducted – shifting political campaigning from a one-sided exercise conducted by political elites to a multi-directional, interactive process incorporating the electorate into the campaign itself.

Such views soon gave way to more pessimistic musings as further research pointed to a widening ‘digital divide’ where Internet access, rather than levelling the playing field, only served to further empower the politically inclined. This in turn subsided into scepticism, summed up in the title of Carlson and Djupsund’s *Old Wine in New Bottles?* Here, the view that the Internet could be anything more than a useful and cost-effective tool for conducting political campaigns was found to rest on a framework wrought either from premature optimism or an unnecessarily pessimistic outlook. No evidence existed that Internet would provide more than a new medium for old campaign strategies.

Yet, more recent studies offer a more nuanced appraisal of Internet in political campaigns and the sort of impact its use may have on civic engagement with the democratic process. Norris, for example, finds that the impact of the Internet depends on both the *supply* of information and messages from political agencies as well as the *demand* for it (Norris (2001)). Unlike traditional media, the Internet to a far greater extent depends less on supply than on the demand for information – the need to log on to websites or search for specific pages implies that Internet users would have actively sought out the information or forums that they then view or interact with.

This of course reinforces the theory that only those with a predisposition for civic engagement will shape, and in turn be influenced by, Internet campaigns. However, Norris speculates that while hopes of mass participation will most likely be dashed, “cause-oriented and civic-oriented activism should strengthen”, presenting new possibilities but also challenges for large political parties.

Still, the interaction between Internet campaigns and the political contexts of a society is not convincingly conceived as mono-directional. Norris offers a cogent exposition of the changes that Internet campaigns may effect on political participation, but what of the reverse interaction? How would a polity's cultural and political context contribute to the form an Internet campaign eventually assumes? The following comparison between the 2007 French presidential campaign and the Maltese general election campaign of 2008 seeks to make some headway in this direction.

#### *4.1.2 French presidential campaign 2007 and Maltese general elections 2008*

The two national contexts present certain immediately striking differences as well as similarities. So as to provide a broader context for the chosen comparison this section will dwell briefly on both the unique and common characteristics of the two national contexts.

France is the older, more highly centralised nation-state. National identity rests on a staunchly secular society, a history of empire, a language spoken throughout the world, and a strong French state governed by a president with broad executive powers. The strong sense of state, shared national identity, and an arguably strong sense of social justice mean that political divisions do not run deep. In the French national context, only under exceptional circumstances could one expect talk of a political campaign dividing the nation.

The French riots of 2005 may have been such an instance, highlighting the rifts between France and its ethnic and religious minorities. The crisis provided Sarkozy, as Minister for the Interior, with a powerful image – of one able to restore law and order – from which, arguably, he subsequently launched his 2007 presidential campaign.

While the Foreign Minister of the French state industriously set about laying the foundations for a system of pooled national sovereignty - the European Coal and Steel Community - Malta's political class were busily hacking a path towards Maltese statehood.

Malta gained independence from Britain in 1964 and became a republic exactly a decade later. The new republic's small size and population presented economic difficulties of a structural nature, compounded by a policy of economic autarky through import substitution in the 1970s and 1980s. This period was marked by growing political tensions and deepening political divisions - particularly in the run up to the 1987 general elections - which have yet to be reconciled. Still, the tourism industry flourished. In the late 1980s economic liberalisation and growing foreign investment followed a change of government and the seeds of financial services and high-technology manufacturing sectors were sown.

These latent political divisions, which are thrown into sharp relief at election time, run along a single rift with the Partit Nazzjonalista (PN) on one side and the Partit Laburista (PL) on the other (the name was changed from Malta Labour Party (MLP) in 2009)<sup>61</sup>. Elections are closely fought with the outcome decided by a handful of floating voters representing between two and five percent of the electorate. In the face of such deep political divisions, which predate Maltese statehood, the state – commonly undifferentiated from the political party in power – is an arguably weak source of national identity. While the Maltese hold a shared history and language, for the most part, discussions over what constitutes Maltese national identity, or whether one even exists in the face of such deep political rifts, are invariably heated.

This masked insecurity may account for the important role of the Catholic faith as a unifying factor and source of identity in Maltese society – to the extent that Malta is often described to outsiders as a 'Catholic country'. With the historical influence of the Church in Maltese society and politics this may not be a poor representation of reality.

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61. A third political party emerged in the late 1980s, Alternattiva Demokratika, which has styled itself as 'the Green Party'. However, it has failed to attain more than two percent of the popular in any general election since, or even elect a single candidate to parliament, due in part to a relatively high parliamentary threshold.

Despite such fundamental differences between the two national contexts it is at first surprising that there should be any similarity in the way the two election campaigns were contested. Yet, with the worldwide attention that Sarkozy's campaign attracted, it would be more surprising if any political campaigns conducted in its wake, particularly within Europe, did not borrow from the Union for a Popular Movement (UMP) campaign.

At this stage it would be instructive to describe the key aspects of the French presidential campaign and the major issues. Unemployment, reaching 50 percent among certain sectors of the population<sup>62</sup>, has long been a concern in France. While Sarkozy advocated liberal reforms and public sector cuts to boost France's competitiveness Socialist Party candidate Segolene Royal spoke of increased social spending and the expansion of certain government departments, such as doubling the budget of the Ministry of Justice. Here the contrast between the two major candidates is striking: Sarkozy styled himself as the candidate who could effect economic take-off while Royal appeared to take as given a growth rate of 2.5 percent, which she depended on to finance her promises of increased public expenditure (Anon (2007a)). On the other major electoral issue, immigration and law and order, Sarkozy was also stronger. Here the uncompromising image he developed as Minister for the Interior during the 2005 riots served him well enough that his proposed reforms concerning harsher sentences for juvenile offenders and a crackdown on illegal immigration and a cut in legal immigration were convincing and fed into his image as a reformer able to take the necessary decisions, however difficult.

After Jacques Chirac's two terms in government, where little was perceived to have changed, great emphasis was placed on youthful vigour and drive. Sarkozy, as a candidate from the incumbent party, perceived this to be an especially important factor in styling his politics as a break with the past. His energy and dynamism soon earned him

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62. Half of the youth in certain Paris suburbs are unemployed.

the nickname "Supersarko" which – though not wholly void of irony – decreased Royal's ability to come across convincingly on this aspect, despite her age and youthful appearance.

Lastly, while both candidates made use of the Internet in their political campaigns Royal's campaign only used it to the extent that it served as an alternative and innovative medium to present the electorate with pre-designed material. Sarkozy campaigners in contrast grasped that the innovative value of the Internet is in that it allows greater interactivity and exploited this, to a greater extent, in their campaign.

As Sarkozy took office in May 2007, at the southern fringes of Europe, Maltese political campaigners were readying themselves for the 2008 Maltese general elections. Here, the major issues were strikingly similar as was the factor of age, youthful vigour, and the need to attract first time voters, who represented over ten percent of the electorate (32,000). The Nationalist Party (PN) had been in office since 1987 with the exception of a short spell in opposition between 1996 and 1998. Edward Fenech Adami had been at the helm of the party since the late 1970s when he stepped down to Lawrence Gonzi after successfully contesting the 2004 general election and securing Malta's entry into the European Union that same year.

The understanding that the electorate was reluctant to vote into office a party which had won four out of the five previous elections led the PN to adopt a strategy that mimicked Sarkozy's presidential campaign<sup>63</sup>, where emphasis was placed on the personal attributes of the candidate to a greater extent than the policies of the party<sup>64</sup>. Thus, despite the formal difference in the electoral systems of the two national contexts, Malta's general elections were contested by the PN with similar strategies used in presidential elections.

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63. Sarkozy was also eager to come across as a break with the past although he was Chirac's direct successor as leader of the UMP, a party that had won the last two presidential elections.

64. The Nationalist Party's (PN) electoral campaign was in fact branded 'GonziPN', marking the first time the party leader's name was affixed, with great symbolic value, to the name of the party itself in Maltese electoral history.

Apart from the importance of youthfulness, other commonalities existed. The economy, as in France, was a major issue. This centred on the need to attract increased foreign direct investment, improve national competitiveness, and generate employment. As Minister for Finance and then Prime Minister, Gonzi oversaw huge growth in foreign investment figures giving him a proven track record on this aspect, an advantage that was exploited with much success during the campaign. Yet the manufacturing sector was growing increasing uncompetitive and unemployment among the unskilled workforce was rising. Price inflation was also a concern. The Malta Labour Party (MLP) opposition had little track record in attracting foreign investment and its policy portfolio in the previous election included reactionary economic tools such as a currency devaluation and arguably unsustainable tax cuts. With the same leader still at the helm of the party, Alfred Sant, after losing the previous two elections, the MLP did not enjoy the public's trust to engineer greater economic growth.

Law and order, with particular weight attached to curbing the flow of illegal immigrants, as in France was a decisive issue. Yet neither party took a clear stance on the issue, allowing for the growth, albeit minimal, of the right wing party Azzjoni Nazzjonali (AN).

## 4.2 The case of France

### 4.2.1 Basic Issues

The 2007 French presidential election was held to elect Jacques Chirac's successor. France's president is a sovereign, elected for a five-year term. The president is elected by direct universal suffrage as opposed to, for example, the United States Electoral College system. The president has legal immunity throughout the duration of the five-year term, and being able to dictate foreign policy, and act as the head of the armed forces and the police, has significant power.

The right-leaning Nicolas Sarkozy (Union for a Popular Movement) won the election. Sarkozy's rival was the left-leaning Segolene Royal (Socialist Party). The election was a close one. Neither candidate

obtained a majority in the first round of voting. A second round of voting was held on the 6th of May, where Sarkozy got 53 percent of the votes cast, and Royal got 46.9 percent.

Despite their ideological differences, Sarkozy and Royal shared important similarities. They are the first presidential candidates born after World War II, and the first presidential candidates not to have been active in politics under Charles de Gaulle. They both represented a generational change: it was up to either candidate to harness this representation of change.

A number of central issues dominated the election campaign.

- Unemployment has always been an issue in France. The unemployment rate usually hovers somewhere around ten percent. In 2007, it stood at 9 percent. As such, it is a perpetual concern for the French.
- Euroscepticism came to the forefront in 2005, when the French electorate rejected the European Union's constitution. With France, being a founder member of the European Union, concerns were raised about the Union's unity and future.
- Law and order in France came under the international lens when unruly youths from poor suburbs began rioting in 2005. Extensive damage to property was caused in Paris and its suburbs as a result of these riots. People grew sceptical over the government's ability to control the situation.
- Immigration, as is the case in Malta, has been a divisive issue in France. Illegal immigrants, who arrive in France without any documents, are unable to get work permits and contribute significantly and legally to the economy. As Minister for the Interior from 2002 to 2007, Sarkozy more than doubled the number of deported migrants (Anon (2007b)).
- Political scandals were another important issue. Most surrounded the 2007 incumbent president, Jacques Chirac. In 2000, the newspaper *Le Monde* had published a story revealing details of

how French businessman Jean-Claude Mery bribed, at the cost of FRF 5 million, Michel Roussin, the chief of staff of the then prime minister, Jacques Chirac. In 2004, it also emerged that some people were being paid as employees of Chirac's Paris government, while holding full time jobs with the Rally for the Republic political party (Davet and Lhomme (2004)).

#### 4.2.2 Proposals

The central theme running through all the issues was order. The electorate demanded economic order in the pursuit of more employment; social order in the pursuit of discipline rioting youths and the need to integrate or deport immigrants; and political order in the pursuit of ending domestic political scandals, and the need for reasserting France's place within the European Union. Political success depended on the candidates' abilities to provide such order.

On economic order, Royal proposed a minimum wage of €1,500, along with 90 percent of one's previous salary for a year after losing one's job. She was against the public funding of offshore companies, and companies that are downsizing. Royal also declared that under her government no young person will be unemployed for more than six months without receiving publicly-funded training or support. Sarkozy wanted to keep the 35-hour workweek, but encourage overtime work at the same time. He was against providing public funds for those who reject work (Anon (2006)).

On social order, Sarkozy proposed minimum terms for repeat-offenders, and tougher sentences for juvenile offenders. He also promised to cut immigration by filtering out unqualified workers through implementing 'qualified immigration policies'. Royal said she would send juvenile offenders to boot camps, along with doubling the Minister of Justice's budget, legislate against domestic violence, and set up an independent watchdog for state prisons. She was in favour of giving residency papers to immigrants as long as they had work permits, and lived in France for a sufficient time.

On political order, Royal proposed holding another referendum on a new European Union treaty in 2009. She said she would lead negotiations for a 'Euro-zone government', which would promote economic growth and standardise tax levels. Sarkozy saw no need for a referendum on a European Union treaty, and proposed having a simplified treaty ratified by the French parliament. He wanted to re-value the Euro, increase the European defence budget, and create the post of a European foreign affairs minister. Another one of his proposals was to set up a 'Mediterranean Union', but prevent Turkey from joining the European Union. It is interesting to note that neither candidate came out explicitly with statements or policies to end domestic political scandals. Instead, both Sarkozy and Royal leant on the idea that they represented a generational change in French politics.

#### 4.2.3 Campaign Slogans

Due to restrictions of space and impossibly large volumes of information, the manifold ways in which Sarkozy and Royal communicated their policies and ideals cannot be reproduced here. Instead, a comparative look at some of the most representative slogans will be included here. These campaigning slogans give a sense of the entire candidate's campaign.

One of Royal's main slogans was "*L'ordre juste*", or 'A Just Order'. The slogan is succinct and emphatic on the need for the central theme of order. The word 'just' carries important connotations. It alludes to justice (a kind of fair order that is typical of left-leaning politics), decisiveness (in dealing with the major issues), and constraint (in terms of regulation and legislation). A more critical look at the slogan, however, shows it to be too abstract (it sounds good, but there is little grounding in reality) and static (there is no verb or action word in the slogan). Another one of her slogans was "*La France Présidente*", or 'France for President.' This second slogan was a pun: it emphasises the femininity of Royal, as the first French president, and alludes to giving power back to the people. The pun, as can be seen, is quite

shallow and lacks real legitimacy. More importantly, it does not invite the involvement of potential voters - there is no sense of interpersonal contact.

Sarkozy's main slogan was "*Ensemble tout devient possible*", or 'Together, anything becomes possible'. In contrast to Royal's slogan, this was a slogan that gave a sense of grassroots activism and a spirit of rallying. It is also dynamic, which fits in well the youthful and vigorous image Sarkozy was creating for himself, and calls potential voters to rise to the challenge. Despite being an abstract statement, the slogan is an effective attempt at interpersonal contact: It allows readers to invest whatever they feel into it - what the Marxist philosopher Althusser called 'interpellation' (Bell and Criddle (2002)).

#### **4.2.4 Internet Campaigning**

The 2007 French presidential election was France's first Internet based campaign. According to Veronique Kleck, VECAM's general secretary, only 1 percent of the candidates in the 2001 local elections maintained websites. A year later, in the 2002 presidential elections, all candidates had websites. Some were simple electronic, online posters, and others were sophisticated, animated websites. In 2004, around 7 percent of the French electorate had used the Internet for election information. Compared to the United States, where 30 percent of the electorate had used the Internet for election information, the figure is unimpressive. By 2007, however, the figure more than doubled - around 15 to 20 percent of the French electorate used the Internet for the same purposes (Kleck (2007)).

Each presidential candidate is not allowed to spend more than €13.7 million in the first ballot, and €18.3 million in the second ballot. Sarkozy spent around €4 million of this budget on his Internet campaign. Royal spent around €2 million (French Embassy in the UK (2007)). The Internet was clearly an important feature of both campaigns. Vincent Fektesse, one of the Socialist Party's Internet strategists, reported Royal to have said that "50 percent of the campaign would play out on the

Internet". Thierry Solere, one of the Union for a Popular Movement's strategists, was entrusted to encourage as many party supporters as possible to start their own free blogs and websites. He said: "I think the Internet is a source of saving rather than spending" (Boucq (2007)).

Thierry Solere was onto something. He realized the low-cost, high-return possibilities the Internet could offer Sarkozy's campaign. What journalists have called the 'Sarko-Spam Campaign' is a good example of this. The Union for a Popular Movement had, over the course of the campaign, sent out three million promotional emails. Some 13 to 18 percent of email recipients visited the Party's website, and of those persons, 23 percent became party members. The entire process cost the Party no more than €100,000. But there was a backlash. Citizens complained about this spamming and demanded legislation, which required parties to get authorization before sending political emails, to be passed. A similar case occurred in 2005 when Sarkozy's party was buying up key words related to the election from Internet search engines. This process was quickly outlawed.

Solere's call to get party supporters to start their own online campaigns was also heeded. Throughout the presidential campaign, there was an explosion of websites created by private citizens, like the popular iPol website that featured weekly video reports on the campaign. Another important factor was the emergence of 'influential bloggers'. Like Arthur Goldhammer, a writer at Harvard's Center for European Studies who maintains a blog on French politics, these were usually private citizens who, through their blogging, gathered a following and became spokespersons of all the other Internet campaigners (Goldhammer (2009)). In a circular fashion, their online popularity was then boosted when they appeared in the traditional media, explaining to the non-Internet users what is happening online.

While there are official websites and online newsletters, the success of an Internet campaign clearly depends on the success of online interpersonal contact. Potential voters and supporters must be empowered and invited to get involved with the cause. This can be



seen in the case of the Sarkozy supporters' website - [www.sarkozy.fr](http://www.sarkozy.fr) - which had set itself the objective of reaching 500,000 registered online supporters across France. They got 270,000 in the end. Royal's strategists initiated a programme of 'online militating'. They started out by recruiting 60,000 online 'militants' in January of 2007; by the end of the presidential campaign there were some 500,000 online 'militants'. Royal's socialist party also had a very dense network of political blogs: more than 1,500 blogs (Anon (2007c)).

The proliferation of online political information is certainly impressive. Its effectiveness, however, has been contested. Kleck's research found that, "Most people who use the Internet to seek or discuss information regarding the elections are relatively wealthy, urban males", which is a very limited demographic segment of France. The AT Internet Institute, which conducts research on Internet traffic, noted that many of the people going online in search of political information were searching for not-explicitly-political material. For example, 14.1 percent of people who searched for 'Segolene Royal' were looking for information on her private life, while a fractionally larger 15.2 percent were looking for her policies (AT Internet Institute (2007)). Kleck concludes that most French people do not consider the Internet to be a serious source of information: only 12 percent of electors believe what they read on the Internet, while 65 percent believed what they heard on television during the campaign.

#### 4.3 The case of Malta

On March 8th, 2008, the Maltese general elections were held for the renewal of Malta's unicameral legislature. Four main political parties contested: the Christian democratic PN, the social democratic MLP, the Green Party Alternattiva Demokratika (AD), and the right wing Azzjoni Nazzjonali (AN). Neither of the latter two parties successfully fielded any candidates and they accrued less than two percent of the vote between them. As a result, they will therefore feature only minimally in this description. The PN won the election with 1,580

votes or 0.5 percent of the electorate, the closest electoral victory in Malta's history, with 49.33 percent of the vote to the MLP's 48.9 percent (DOI (2008)). Though the PN won only 31 seats to the MLP's 34, the party with the majority of votes is automatically awarded the majority of seats in parliament through a constitutional mechanism put in place after the 'perverse' electoral result of 1981<sup>65</sup>.

##### 4.3.1 Basic Issues

From the outset the major challenge facing the PN was the fact that the party had enjoyed such unprecedented electoral success: it won the 1987, 1992, 1998, and 2003 elections. In the two decades since they were ousted from government in 1987, the MLP ran successfully only once – in 1996 – but was voted out within two years after the Prime Minister, Alfred Sant, called a snap election in 1998 in a failed attempt to strengthen his parliamentary majority.

By 2008 the view prevailed that change was needed - even inevitable. Rather than the 'power of incumbency', which MLP leader Alfred Sant would later mark out as the main cause of his electoral defeat, it may have been more appropriate to speak of the 'challenge' of incumbency. These unique circumstances translated into one of the central issues of the election: the need for change.<sup>66</sup>

Running alongside the need for change were other issues tied to the dominance of the PN in Maltese politics since the late 1980s such as perceived corruption among government ministers, alleged political scandals, and the growing perception of so-called 'PN arrogance', two themes that formed the greater part of the MLP's political campaign.

Second was the fact of EU membership. The MLP had campaigned against membership in the 2003 referendum and 2004 general elections and by 2008 the fact that the party leadership remained unchanged

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65. Here the PN won the majority of votes but a minority of seats, allowing the MLP to form the government without even a relative majority of votes.

66. As a key figure in the 2008 PN campaign observed: no European party ever won an election after introducing the euro or gaining EU membership, both of which had been implemented by the PN administration at the time.

for the most part left many traditionally MLP-inclined Europhiles regarding their party's attitude to the EU with ambivalence.

Third were economic concerns. By 2008 Malta had reached an unprecedented level of affluence but worries were mounting over lack of economic competitiveness, particularly in the manufacturing sector, but also in the country's vital tourism industry. The government's role in attracting foreign investment and maintaining a business friendly environment grew in importance. The party which could come across as being better suited to this task became a central issue. Popular concerns also rested on the growing cost of living. Price inflation of basic commodities such as fuel was perceived as important. The same applied to the cost of basic services such as electricity and water. Property prices were another key concern, especially so among first time buyers.

Fourth was illegal immigration. Between 2003 and 2007 the number of illegal immigrants arriving in Malta more than tripled from around 500 to over 1,700. Worries that Malta would soon be engulfed by the growing flow of migrants became pervasive. In 2007 arsonists targeted the property of journalists who spoke out against mounting xenophobia as well as the cars of priests and a lawyer working with the Jesuit Refugee Service (JRS).

Fifth was the environment. Air pollution, energy dependence on fossil fuels, and over-development – tied to the issue of malleable planning restrictions – became major issues for the first time.

#### 4.3.2 Proposals

The central theme running through the PN campaign, similar in many ways to Sarkozy's campaign, was stability and the need to impose order where required: a stable business environment, stability in Malta's relations with the EU, and the curtailing of illegal development. Both major political parties ignored the issue of immigration.

The MLP campaign, in contrast, rested to a large extent on the growing desire among the electorate for change – presenting the party

itself as the only realistic alternative government. For this reason, the MLP's policy portfolio was comparatively weak on many of the other central issues.

The PN addressed the need for change by putting itself forward not as a party, but in the form of its main candidate, and incumbent Prime Minister, Lawrence Gonzi. This strategy served to deflate the entire MLP campaign, centred on the need for change, as many in the MLP leadership including Alfred Sant himself had been in politics a good deal longer than the Prime Minister. The focus of the PN campaign on a single person, Gonzi, which took the form of a presidential campaign, also helped deflect accusations of corruption directed at other members of the cabinet. In addition, the ten-year age gap between Gonzi and Sant was touched upon throughout the campaign, emphasising Gonzi's energy and drive.

The economy, already a central issue, was successfully transformed into the overriding issue of the entire campaign by the PN. With a successful track record of attracting substantial foreign direct investment (FDI), such as a €221m technology hub (*Smart City*) and a major *Lufthansa* development, Malta's economic performance was a major strength of the PN administration. MLP claims that it would more than match this failed to convince, in part due to the party leader's past failed experiments with economic and tax reform between 1996 and 1998. This fed into Gonzi's image as a stabilising force in the economy and the perception of Sant as a destabilising factor. On the cost of living both parties offered subsidised loans for first-time homebuyers.

On Europe, the PN played upon its role in securing EU membership for Malta, outlining the manifold benefits accrued from Malta's status as an EU Member State, such as funds for agriculture and infrastructural projects. Importance was placed on maintaining things as they were – on keeping relations stable. The MLP, again in contrast, fed into its image as a destabilising factor with claims that it would attempt to renegotiate a better deal for Malta with the EU if elected to government. This also served to exclude the possibility of winning

back part of the traditional voter base it had lost in the 2004 elections, contested mainly over EU membership.

Illegal immigration remained a moot point, with both parties steering clear of the heated debate going on in Internet forums and newspaper commentary boards throughout the political campaigning.

Environmental issues had grown in importance since the last elections and the PN successfully snatched part of the Green Party's (AD) potential voters by dedicating the last weeks of the campaign to policy related to investment in renewable energy and reform of the Malta Environmental Planning Authority (MEPA). The latter reform concerned the need to bring to order murky practices within MEPA and to curb urban sprawl. The MLP chose to ignore the issue itself, instead focusing on the separate issue of corruption within MEPA.

#### 4.3.3 Campaign Slogans

The MLP's main slogan was "*bidu gdid*", which translates as 'a new beginning'. What is striking is that the same flaws that were identified in Segolene Royal's slogan ("*La France Presidente*") emerge when analysing the MLP slogan. The MLP slogan does little to appeal to the individual or invite popular input into the proposed 'new beginning'. Similarly, it is static: there is no active verb. Furthermore, in the MLP campaign the slogan was not used to caption images of Sant for the major reason that Sant did not represent a new beginning. Instead it was affixed to an image of, for example, a ballerina in one instance and a couple gazing out onto a bleak, open landscape in another, leaving many wondering what form this *bidu gdid* would assume.

The PN's main slogan was "*Flimkien kollox possibbli*" which, mirroring Sarkozy's main slogan, "*Ensemble tout devient possible*", translates as 'Together, everything is possible'. Again, as in the case of Sarkozy's slogan, this gave the perception of popular ownership of the campaign and a spirit of civic-oriented activism. It is abstract yet active – it speaks of work that requires completion, with the help of the electorate – and it is sufficiently vague to allow voters to fit their own

views into the message, as would be said of the Obama campaign six months later. However, the rebranding of PN as "GonziPN" picked up on a trend that was noted five years earlier in the publication *Election Time 2003*: that political campaigns were gradually moving away from ideology and policy to the personal attributes of the candidates. Another slogan, "*par idejn sodi*" - roughly translated as 'a steady pair of hands' - by making reference to Gonzi's perceived personal attribute of reliability and trustworthiness fed into the campaign's general theme of stability, as opposed to change and the implied instability such change would bring. Surveys at the time showed that Gonzi had a much higher approval rating among the Maltese electorate than the party he led. Focusing the campaign on the singular personality of Gonzi helped translate this discrepancy into electoral victory (Sansone (2009)).

#### 4.3.4 Internet Campaigning

As early as 2006, Maltese blogger Robert Micallef offered the prediction that:

"The next General Election campaign will still resemble electoral campaigns of the past but with the addition of online campaigning on a far greater scale than the Maltese Islands[sic] have experienced to date" (Micallef (2006)).

His prediction proved less than an understatement. In the prelude to the 2008 elections a journalist writing in the Sunday edition of the daily print newspaper *Malta Today* announced Malta's "first Internet elections" (Vella (2008a)). The PN were the first to exploit the Internet's full potential, setting up groups on *Facebook* and an interactive official campaign website through which Gonzi would answer questions directly every evening. With less than a week to go before Election Day the same journalist, Matthew Vella, could confidently state, "There is no doubt it's the Gonzi camp that has made the most extensive use of the Internet". And the extent to which it was used is well-summed

up in Vella's description of the multiple functions available on the PN campaign website:

"A live animation of Gonzi welcomes web users to his website, with the latest news and the latest billboard (this week: Gonzi brings jobs) on the front page. Gonzi has an online forum where you can ask him questions directly in the evening. A series of Q&A videos feature actors asking Gonzi the most pressing questions. Thanks to editing, Gonzi cuts in right at the end of the answer with a focused but rehearsed answer with lots of 'decisive' finger pointing. You can see the PM's latest interview on TV, his latest press conferences, his day-in-the-life of an incumbent, his life biography – it's a frontal attack of digitised Gonzi [...]"

Certain statistics allow for a rough comparison of the two parties use of the Internet. On *Facebook*, for example, the Lawrence Gonzi supporters' group had 1,646 supporters, the PN *Facebook* group had a 1,021-strong membership, and 219 members added the 'I Support PN' application<sup>67</sup>. In contrast, the MLP *Facebook* presence amounted to a single group of just 174 members. Here, the use of *Facebook* was highly symbolic. Most *Facebook* users fall within the 18-25 age group and most are university students – a demographic which proved vital to the PN electoral victory.

Official websites and the symbolic use of *Facebook* were one aspect of the use of Internet in the 2008 campaigns. Another altogether different aspect was the mushrooming 'Internet activism' that pervaded the blogosphere. From the minor blogs of party-loyalists to the major blogs of print journalists who crossed the media divide, this was arguably the preferred forum for the few thousand floating voters, decisive to the outcome of each election, who gathered to thrash out their views on

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67. These figures are correct for 2nd March 2008, taken from Malta Today.

campaign highlights. On polling day, one such blog received 120,000 unique hits and 1,000 comments<sup>68</sup>. Print media reference to the content of these blogs served to reinforce their popularity and strengthen their status as a source of information, while keeping those without access to Internet up to date. Many of these blogs, particularly the more influential ones, were, if not pro-PN, then decidedly anti-MLP. The mantra was 'anything but Sant' – recalling the 'Anything but Sarkozy' campaign led by the left in France's presidential elections.

Another factor distinguishing the 2008 campaign from earlier campaigning was a number of *YouTube* videos providing humorously doctored campaign footage and amateur political documentaries. One such video reached almost 100,000 views, or one third of the electorate (Anon (2009)). Again, PN volunteer-activists were spearheading the *YouTube* campaign by posting videos that, in the words of a seasoned PN campaigner, "took on a life of their own" – online activists soon posted newly-edited versions of these videos. This helped create a "virtual community" which went beyond the PN's traditional voter base. MLP activists only hit back much later on and with less impact<sup>69</sup>.

The Internet was also used by families and networks of friends to share articles, comments and other material related to the campaigning via email: the simple 'share' function under each *YouTube* video may account for the huge amount of viewers these videos attracted.

#### 4.4 Comparison

Limitations of space mean that this comparison will include only the two successful campaigns – Sarkozy's 2007 presidential campaign and Gonzi's 2008 general elections campaign. From the outset, the single most visible aspect shared by the two campaigns was the manner in which the leaders were projected. Here, rather than the political party

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68. These figures refer to Malta Independent journalist Daphne Caruana Galizia's blog at: <http://www.daphnecaruagalizia.com>.

69. The MLP-leaning video with the most views peaked at 27,000, not much more than a quarter of the views ratcheted up by the highest rated PN-inclined video.

platforms or the individual policies, the message was the leader. The two successful campaigns hinged on the personal attributes of their candidates: on their perceived ability to effect much-needed reform, on their strength of character, their reliability, and their general ability to fit their personality, as well as the campaign – an extension of their personality – to the particular political climate.

To do this, both leaders made extensive use of the Internet. This medium not only allows for greater interactivity, much exploited by the Gonzi campaign, but, as the most versatile communications technology available, offers enormous scope for creativity and a platform from which a diverse mix of media can be deployed – including videos. Through their personal websites both leaders successfully brought across their personalities to the electorate, establishing ‘digital’ interpersonal contact.

In more traditional media it was also the personality that dominated. Billboards in both campaigns featured a portrait of the leader in the foreground wearing an expression of serenity, with rolling hills in the background and with the almost identical slogans, “Together anything becomes possible/Together everything is possible”, captioning the images.

After weeks of hearing and reading the slogan “par idejn sodi” (a steady pair of hands), the Maltese electorate connected Gonzi’s announcement that he would take personal control of the allegedly corrupt and inefficient Malta Environmental Planning Authority with the assumption that MEPA would undergo a structural overhaul, quashing the aspirations of Malta’s disliked developers. Similarly, Sarkozy’s claims that immigration would be curbed, and that order in the banlieues would be restored, though perhaps criticised by liberals, were undisputed claims thanks to Sarkozy’s image as a ‘doer’.

Both candidates were obliged to deal with perceived party legacies of corruption, government arrogance, and high profile political scandals. The Internet here proved a singularly useful tool. Such negative popular perceptions were best addressed by engendering

an image of accessibility and transparency. With Gonzi spending his evenings in responding to voters’ questions, and the First Lady busy blogging, the opposition’s accusations of arrogance quickly began to lack the little credibility they may have originally held.

In the French national context public consultation was deemed less important. For the most part, voters were less interested in proposing policy themselves than having a strong decision-maker in government to do that for them, and to lead France out of the social, economic, and political impasse it had found itself in after a decade under Chirac’s ineffectual leadership. In contrast, the Maltese electorate sought a role for itself in important policy decisions – it expected broad public consultation and for its proposals to have some sort of influence over government/party policy. While a strong leader was needed to implement reforms, government responsiveness was also key. Both these desires were to a large extent satisfied by the Gonzi campaign, and this was only made possible through the use of online consultations and interactive web pages<sup>70</sup>.

The role of so-called influential bloggers in the success of each campaign also had its place. Energetic, opinionated, and highly readable, these bloggers attracted an enormous readership in proportion to the electorate. The frequency of the posts and the interactivity of the sites gave them a distinct advantage over online newspapers and official party blogs. They grew to become major features of each campaign. This also served to consolidate parties’ traditional voter bases by creating a strong group dynamic surrounding a handful of blogs, where readers with similar views would ‘congregate’.

The use of *YouTube* was conspicuous in both campaigns and success here depended on grassroots activism, in turn feeding into the perception of public ownership of the campaign. The party most

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70. It is interesting to see that Joseph Muscat, the MLP’s new leader, has adopted as his slogan, “Stagun politiku gdid għall pajizna”, or ‘a new political season for our country.’ Reactions to this have ranged from skepticism to derision, as the leader has yet to provide any evidence of this new season. The lack of any agreement between the MLP and PN on parliamentary pairing serves as a good example of this.

successful at encouraging its supporters to blog, comment under newspaper articles, post homemade videos on *YouTube* and spam family and friends with links to all of these tools was best able to dominate the Internet, at little additional cost, and thus better able to get its message across to potential voters.

Lastly, the symbolic use of the Internet featured in both campaigns. The Gonzi campaign's use of *Facebook* was still innovative at the time and contributed to the image of a leader in tune with the electorate and more in touch with the times. It is worth pointing out again that there were six times as many members in the PN's official *Facebook* group than there were in the MLP's. The lack of MLP presence on *Facebook* meant that it missed out on a market of some 18,000, mostly young, potential voters (Vella (2008b)). Sarkozy was equally skilful in his exploitation of *Facebook*. As of the 3<sup>rd</sup> May 2009, he had 95,283 supporters on his official profile page, a number enlarging at the rate of +0.07 percent (or 70 people) per day (PageData (2009)).

Wittingly or otherwise, the candidates' use of online networks such as *Facebook* helped to bolster the youthful, '*au courant*' image that proved so integral to their campaigns' success. This was not only about micro-targeting and tapping the market of potential young voters; it was also about breaking with their past. Sarkozy belongs to the same party (UMP) as the scandal-prone Chirac. Additionally, it was a party that appeared stuffy by nature (being conservative and right-leaning), and one that had already been in power for two terms. Similarly, Gonzi came from the same perceptibly conservative party that had been in power for four terms, with the exception of a two-year interlude, which in time developed an image of disconnectedness and arrogance. By associating themselves so effectively with the Internet (which is by its very nature a new phenomenon), the candidates' personalities came to symbolise a new and attractive way of doing politics<sup>71</sup> (Orth (2008)).

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71. It is instructive to once again point out that Sarkozy's well-implemented youthful, energetic image earned him the nickname 'Super-Sarko'. His high-profile, glamorous wife, Carla Bruni-Sarkozy, gave an interview to *Vanity Fair* in which she said of Sarkozy: "I was really surprised by him, by his youth, his energy, his

## 5. Conclusions

Immediately observable in each campaign was the symbolic use of Internet. As has been described in previous sections, both candidates had the need, for similar reasons, to focus public attention on their youth and vigour; their youth in relation to previous incumbents, political opponents, or their party's stuffy image. In the Maltese case, a hugely important aspect of the national context was the large amount of young, first time voters and the consequent need to appeal to them with both a well-targeted message and a correspondingly appropriate medium – the Internet<sup>72</sup>. One of the 'external benefits' of Internet use, that is, apart from its value as a communications technology, is the symbolism attached to its use. To a great extent, characteristics attributable to the Internet as a medium – its dynamism, flexibility and, above all, its innovativeness – are associated with its users. Furthermore, the Internet's association with images of grassroots activism fed into the similar imagery that the political campaign slogans ("Together everything is possible") managed to capture.

Noteworthy is that, as has been observed of the Obama, campaign (see section "Barack Obama and Clickocracy") the use of the Internet made politicians appear young and, in a circular fashion, made politics look young and appealing; all the while in an arguably anti-political age. Both France and the United States experienced electoral turnouts unprecedented since the 1960s and 1970s, respectively. In Malta, at 93 percent, turnout was relatively low (in fact, the lowest since 1971) but still high compared to predictions.

Still, of more far-reaching significance is the effect Internet use in campaigns has had on accessibility. Information hosted online is accessible without the spatial and temporal constraints restricting the use of more traditional media. Citizens can log on wherever they are and whenever it is most convenient, catching up with speeches, discussion

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physical charm—which you could not actually see so much on television—his charisma. I was surprised by everything—his poise, and what he said, and the way he said it".

72. Out of 32,000 young voters almost 20,000, or 60 percent, voted for the PN.

programmes, and the latest news that they may have missed on the radio or television and share the links with friends, family, or their entire email contact list. And, most importantly, they can share their views with the online community viewing the same videos or interacting with the same web pages. Without the accessibility and interactivity afforded by the radical changes in communications technology and the Internet in particular, slogans like “*Ensemble tout devient possible*” and “*fimkien kollox possibbli*”, as well as calls to contribute to the political campaigns, would have been stripped of their meaning.

The Internet has thus triggered the decentralization of power and influence away from political centres, like Paris, and away from big donors, towards the grassroots. It has empowered people through blogs, online comment boards, reading newsletters, and browsing websites, making them campaigners in their own right.

Lastly, the proliferation of Internet campaigning, concurrent with a convergence of campaigning techniques in general (observable in case studies’ slogans), indicates the influence of the Internet on the messenger (political candidate) as well as the message (slogans and manifestos). This can be reduced to the following model, in which all three components circularly symbolize youth, vigour, change, and ‘new politics’: Message = Messenger = Internet.

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## CHAPTER SIX

# Online Childhood and Play

Sharon Attard

### 1. A room with a view

At an earlier period in Western cultural history, the scene of a young woman reading a novel on her own was an icon of a certain kind of excitement and danger. On the one hand, the relatively new genre of the novel stood for new horizons for the imagination, while the young woman's literacy was itself a sign of privilege as well as an indication of the increasing spread of literacy. However, the imagination – especially the female imagination – could not be trusted entirely to handle the thrills of romantic fiction without succumbing to the dangers of eroticism.

In our age, the analogous icon of new horizons and danger might be captured by the picture of a child – whether under ten years of age or possibly a teenager – alone in her bedroom. Posters and paraphernalia that individualise and personalize the room are all around. But the child is staring, half-mesmerised, half-blankly, at a computer screen.

The exciting horizons that the computer screen offers cannot be denied. The Internet's potential for education is undoubted. The skills in surfing and in using any other of the media associated, if separate from, the Internet are also undoubted, and often mark a generational digital divide in technological literacy. That, however, is part of the danger that is also felt. It is a double-edged danger. For, on the one hand, the idea of a child playing alone for hours seems to deny the

enchantment and sociability of childhood. The solitary child here seems to be blending with a machine. On the other hand, the possibility that the child might be using technology to venture beyond the home, unsupervised, is also a source of anxiety, since it conjures up the real possibility that the child may be interacting with adults, malicious adults, on its own and without sufficient protection.

The point of juxtaposing the earlier icon of dangerous female reading with dangerous juvenile cyber-surfing is the following: while for several years the earlier icon went without saying – at least to a certain sector of 18<sup>th</sup> century society – today, we can see that buried in this icon were certain assumptions that beg to be questioned. Might there be certain assumptions in the icon of the solitary child in her bedroom also begging to be questioned?

It is not the intention of this chapter to challenge the idea that the Internet and the new media pose new, important, difficult challenges for childhood, parents and policy-makers. In understanding these challenges, however, we may need to clear up some potential misconceptions about children. The earlier icon underestimated the agency of women, among other things. It would be a mistake to underestimate the agency of children.

Hence, before an assessment of the implications of the age of the Internet for childhood is made, it is appropriate to examine more closely what kind of social beings children are, what part play constitutes in their lives and the nature of their social relationships. This prior examination will make what is continuous with the past and what is new about the new media easier to discern.

## **2. Children as social agents: “Children must be seen and heard”**

Children, as a social category, have been subjected to the above idiom for generations. The idiom perpetuates the notion of children as a category of people who are aesthetically pleasing and enjoyable, but who should not contribute to conversation and dialogue, insofar as this is taking place with other adults. Thus, the idea of children being

seen and not heard, through this popular English idiom, serves as a means of limiting the voice of children to social spheres where it is considered the most appropriate. It follows along the same lines as ‘children should only speak when spoken to’, and is mainly used in attempting to teach children not to interrupt when adults are speaking amongst themselves. The regeneration of such phrases tend to serve as an attempt towards the social regulation of the time and extent of children’s dialogue with adults, rendering the two groups of participants as conceptually distinct from one another in terms of the value and importance to be derived from their dialogue. The conversation of children is often seen as a departure and distraction from useful adult conversation, rather than an addition to it.

As a general principle, it is widely accepted that parents should attempt to exercise control over the social experiences of their children, and guide them towards certain types of behaviour whilst steering them away from others. This is a widely accepted characteristic of both childhood and parenthood, and the responsibilities which accompany the latter. Such practices do not only shape the social behaviour of children, but also the very nature of childhood in providing the structure in which their childhood experiences may be lived out.

Of course, many a parent would know and agree that children tend to have a mind of their own, and are not always ‘co-operative’ in such disciplinary measures. Instructing a child not to interrupt when adults are speaking amongst themselves does not necessarily guarantee that a child will do so. This, as James and James (2004) note, would be an occasion where children choose to do otherwise, and exercise their agency as individuals. Adults tend to provide the structure in which children play out their childhood experience, through restricting and designating their social spaces and practices. This is done through practices such as choosing the school which their children will attend, regulating their after-school timetable and time to be spent with their friends, and designating the social spaces where they can and cannot go, amongst other means.

Despite this, adults cannot control the sense which children shall make of these social experiences, even though such experiences are lived within a structure which is largely provided by adults. Children, as social agents in their own right, will make what they will of their social experiences and interactions, even those structured by others in some way, shape or form. The sense which they make of these experiences and interactions will never entirely match that of adults, given that every individual assigns meaning to social experiences in very distinct ways (Toren (1999)). This very process is a function of being human, and is the means by which we are ascribed social agency as individuals. This is not a process which is exclusive to adults, but is one which begins and continues from the moment we are born.

The above is intended to highlight the social agency of children, and to underline the fact that children are individuals in their own right. A common and predominant understanding in society is that children are the property of their parents, and their childhood experiences must be forcibly restricted to what parents deem as acceptable or appropriate. Whilst not wishing to detract from the important duties and responsibilities which accompany parenthood, I find it important to stress here that the undertaking of parental responsibilities should not impinge upon the level of respect for the child as an individual social agent, with ideas and sense that are uniquely his or her own. There is often a tendency of adults to focus upon the person that the child will be in the future, and who he or she will *eventually* become, rather than consider the individual that he or she currently *is*. It is important to foster the recognition of children as human beings (rather than human 'becomings'), and to do away with the notion of children as being unable to contribute ideas of value now, in the present. This is the premise which I hope shall underpin the rest of this article. Contrary to the idea of children as needing to be seen and not heard, I hope to perpetuate and reinforce the idea that not only are children social agents in their own right, but that their ideas and thoughts have significant weight and value inasmuch as those of adults do,

and should be accorded an appropriate level of respect accordingly. Such agency should also warrant a level of participation in policy-making in ensuring that children's voices are heard, particularly in the formulation of policies which either target or affect children in some way. This is the underlying principle with which I approach the rest of this chapter, and I hope that this can be the basis for future work to be achieved in this area.

This chapter will proceed to tackle childhood and play, and more specifically, how recent technology impacts upon predominant considerations of play. I aim to present issues which might not usually be confronted in policy-making, but which may add a new and useful insight to discussions of children and play.

The so-called age of technology in itself has transformed the face of social interaction, and in this respect it is essential to take stock of the way in which such technology has found its way within the structure that shapes the social experiences and behaviour of children and young people. These may be argued as giving rise to what may be called a 'contemporary childhood', illustrated through a changing social and cultural character (Prout (2005)).

### **3. What is play?**

Play and childhood are often considered as concepts which are complementary to one another. Play is conceptually and practically linked with children as just one of the things that children do, and a class of action which is central to their identity as children. Children play. In portraying a happy child, many will conjure an image of a carefree child in play. In this respect, it is seen as a central aspect of childhood culture, in making children who they are. Yet what exactly is play, and how can specific actions which children perform be considered play, whilst others are not?

The phenomenon of play in itself is one which is not clearly defined. Numerous studies on play have been generated in the fields of developmental psychology and sociology. In considering what play

is, Helen Schwartzmann (1978) has explained that “perceptions of play are intimately related to one’s culture. In the West, our understanding of play has been most significantly influenced by shared attitudes about what play is *not*. Play is not *work*; play is not *real*; play is not *serious*; play is not *productive*; and so forth”. This, Schwartzmann argues, has made it very difficult for us to see that work can be playful, while play can sometimes be experienced as work.

Despite this common underlying presumption of what constitutes play, there remain no clear criteria which allow us to define certain activities as ‘play’ and others as ‘not play’, Play has been regarded as distinctive and separate from other forms of behaviour in terms of its ‘make-believe’ element, with no aim other than being voluntarily pursued for its own pleasure (Norbeck (1974)), and has been delineated by means of a consideration of what play is not, as in, play is ‘not serious’ (Bateson (1971)). In this respect, play is often considered as being outside of the realm of what is real, and is at times portrayed as an activity which has no particular purpose aside from being enjoyable for children to partake in.

Other ideas of play stress the formative value of play, in shaping the adults that the children will eventually become. Karl Groos referred to the playgroup as “the social school for children” (Groos (1901:396)), where children formed habits which would later transcend the playgroup and facilitate social cohesion in terms of the values and ideals which play would generate. These values were put across as being necessary for social development, bringing the individual into contact with the external world and freeing him or herself from any form of social confinement or detachment (such as in the case of daydreaming) which may ultimately prove to be detrimental. Jean Briggs (1979) also leans towards stressing the formative value of play and the socialization value of play and states how, by means of its non-serious (and yet simultaneously serious) nature, play is utilized as the primary vehicle for the internalization of values. Allison James (1998) on the other hand stresses the agency of children as well as the need

for play to be regarded as “just one aspect of the shared repertoire of cultural practices through which children themselves find ways of making some sense of their social encounters with others” (James (1998:106)).

David F. Lancy describes there as being a certain “developmental progression in game play” (Lancy (1977:73)), whereby games are transmitted from generation to generation. Lancy attempted to prove that play was the equivalent of an educational system amongst Kpelle children. In this respect, Lancy attempted to prove that what was learnt during play was directly linked to the eventual profession the child would later assume as an adult, and that the future work of the child would simply follow through from the play situation in making use of the same type of information which child play would have generated. Lancy was unable to demonstrate that the skills required of adult work were learnt exclusively in play, although his findings concluded that the two aspects were indeed ‘integrated’ to some degree. Lancy is led to conclude that “it seems most reasonable to assign games a practice rule” (Lancy (1977:75)), in that knowledge of the particular skill becomes concretized with every given occasion that one is exposed to and practices the skill, this including occasions in child play. He thus stresses the performative aspect of learning, whereby practice (by means of play or otherwise) is essential for knowledge of a skill to grow, and to be subsequently carried through the life course, gaining momentum with each repetition of the act and with each opportunity to take on more responsibility of the task at hand. In such a view, children take in the surrounding social world (and thus certain skills being practiced in that world), being selective and creatively unique in doing so, and making meaning of what they encounter in this directly experienced world. They eventually come to embody selective knowledge of that world, eventually becoming more proficient in some skills over others.

Brian Sutton-Smith’s argument of ‘play as adaptive potentiation’ stresses that play “potentiates responses, rather than prepares them”

(Sutton-Smith (1977:236)), thus moving away from the idea of play as a determining factor of future adult roles, and yet still acknowledging the potential of play to contribute towards the ever-growing and individual 'history' of the child. Sutton-Smith therefore gives importance to the agency of the children in portraying play as social action, giving them a context in which to bring together their social experiences. Raum (1940) demonstrates how children 'anticipate' adult life through their play, in that play is utilized as a medium through which the children address their matters and concerns with one another in terms of what they take to be the salient features of their social environment, itself contextualizing their own experiences. Play here provides the children with an opportunity in which to make sense of their encounters in this environment, thus making their lived experience of the world as they know it meaningful to them.

Schwartzman (1977), in considering children's play and make believe, illustrates four major perspectives for such a study of play. The first is the 'upward' perspective, already outlined earlier in this article, in which play is viewed as an imitation of, and preparation for, adult activity. This regards play as the opportunity for adult role practice, afforded through the play experience. According to such a view, this would be applicable in childhood games such as 'mummies and daddies', 'doctors and nurses', and the like. The second perspective which Schwartzmann illustrates is the 'inward-outward' view, in which play is interpreted as a psychological projection or as expressive behaviour allowing children to work out or act out inner frustrations, anxieties and hostilities. The 'backward' view is one which children do not reflect or imitate adult roles or behaviour, but rather challenge, mock, or invert appropriate adult behaviour. Lastly, Schwartzmann proposes a 'sideways' perspective of the child in play. In this view, "in the creation of specific make-believe play events the players, as *subjects* of these events, are able to *interpret* and comment on their relationships to each other as the *object* of their play", This view considers the social context of the children in play, as well the history of their relationships

with one another and their own interpretation of the play situation.

A number of the ideas put forward consider the perspective of the child in the study of play, and consider this view in interpreting what exactly is going on in the play situation. As already emphasized previously in this article, there is much to be learnt from the view of the child, in interpreting aspects of their social world and using such interpretations as a possible basis for future work in this sector. In the midst of numerous studies and ideas of play, amongst the most valuable to date have been those which are jointly interpreted with the children who participate in such play, and which incorporate this insight into play from the point of view of the play participants themselves. These insights may be successfully utilized by professionals, particularly policy-makers, in mapping out possible ways forward in related fields incorporating matters of concern and relevance to children. Such an approach, though not without its problems, offers much in terms of insight, and may be valuable if undertaken and utilized wisely.

In considering the perspective of the child as a participant in play, it has been possible to look into the significance of play amongst children themselves, and the value which play holds for them. This approach often results in looking toward play as a form of social action amongst children, and departs from the idea of play as an activity pursued simply for its own sake and with nothing to be gained from it other than the pleasure of the activity itself. It becomes evident that when children play, they are often utilizing play as a means for social action and as a vehicle through which their affairs and relationships with one another are conducted.

#### **4. Conducting social relationships through play**

Rather than being an activity which exists for its own sake, through recent research it becomes increasingly clear that play exists as a serious social medium for children, whereby their encounters with one another in this context provide a means for social action in a predominantly child-based setting. The meanings which are attributed

to play remain localized within their socio-cultural contexts, and are more or less specific to the conditions of the cultural spaces in which they are generated. James (1998) makes this argument in her consideration of the ways in which play facilitates and legitimates the execution of power relations amongst children, stressing the need for play to be analyzed within the particular social contexts in which it is practiced. James' ethnographic study, drawing from her fieldwork material within an English primary school, views the playground as a locus for the construction and negotiation of social identity amongst children. The school system in Britain is seen to be the primary site for the contextualization of childhood as it were, outlining a predominantly child-populated space in which children conduct their affairs and address the concerns which are of most importance to them.

In looking towards children's games such as 'Mummies and Daddies', James (1998) looks beyond the notion of play as a 'socializing function', in preparing children for their future parental roles. She suggests that in enacting their understandings of gender roles, there is as much of a chance of a contradiction or denial to arise within the enactment as there was a chance for the more traditional and conformist ideas of gender to be played out. What appeared to be of interest in playing these particular games was how these games were used as a medium of negotiating power amongst the children, whereby they strategically engaged with other children in considering their own strengths and weaknesses in relation to one another. These daily interactions with one another on the playground inform children of how their skill at particular games weighs up against that of other children, thereby allowing the children to draw on their own experiences in engaging in integral communication and to read and understand their own individual selves in relation to their world. Markers of social identity are thus derived from these encounters, and playground games and opportunities for play are consequently used as a medium through which children constitute their childhoods and conceptions of the self. The knowledge of how to play a particular

game is likely to be a coveted skill, and being given access to that skill by learning it or by being allowed to play it within a particular group allows for a certain amount of prestige to be awarded, whether permanent or temporary. The playground is thus a primary site for the construction of social identity amongst children, where the fluctuating symbols pertaining to 'insider' or 'outsider' status are conferred through a form of social action embedded in the cultural practices of childhood. Cultural knowledge of childhood, made meaningful in its local form and acquired through the engagement of children with one another through the performance of play and games (amongst other means), is thus unique in children's appropriation of it, also serving to inform children's sense of self and others in relation to the possibilities and potentialities of their social world.

Through physical play with one another, children also come to understand their bodies as the site of their experience which shapes and is shaped by broader socio-cultural processes. In play, children are often seen to adopt certain bodily strategies in presenting their bodies in a particular way to one another, thus utilizing their bodies in play as a site for social action. Through utilizing such strategies in physical play, children may be seen as altering the perceptions of their body in actively utilizing it as a tool in informing others of their inner selves. According to James (2000), body shape and size are often understood by children to be indicative of inner moral attributes, thus the equation of being overweight to being lazy and greedy and not being in control of one's own body. These understandings were not simply accepted unquestioningly as the overriding cultural stereotypes, but are rather drawn from personal encounters with and between bodies, often in play with one another. These bodily interactions in play inform children on the boundaries by which a person is considered to be too skinny or too fat; and allow the children to draw on their own bodies in engaging them in an integral communication with the ever-present social world, whereby they read and understand their own bodies in relation to their world. The way in which their own bodies are read by



others is subsequently open to interpretation as children (particularly those falling mid-way between the bodily extremes) consciously manipulate their bodies in a process of “negotiation” (Jones (2000: 32)).

In speaking of bodily negotiation, James (2000) speaks of the process whereby a child constructs his or her body in order to resemble another kind of body, thus portraying the child as holding inner personal qualities associated with the desired body image. In modifying behaviour and adopting associative actions which correspond to particular stereotypes, children succeed in moving past the stereotypical categories they find themselves in and control their bodies in such a way that their inner selves undergo a transformation in the way that they are represented. James provides a few examples, one of which involves a girl who moves beyond gender stereotypes in adopting assertive and tough behaviour most commonly associated with the male gender. In doing so, she is utilizing her body in manipulating the female category (and its implications) and constructing her body as that of a male body, strong and resilient. In this evident exercise of social agency, ever-changing bodies are explored in a direct relationship with the world and with other social bodies. The self is constantly negotiated in this childhood “embodiment of change”, allowing the possibility of a compromise for the desired self, which may thus be carried into present and future relationships.

Body encounters are thus seen to provide information to children which is consequently interpreted in a consideration of their own and other bodies. Their conceptions of the body are thus affected and at times acted upon in negotiating tactics between the body and the world in the way that the body is experienced and utilized. This allows children to be further thought of as social actors, constructing their social world in a constant communication with it and with the bodies within it.

Children’s experiences are necessarily constricted to some extent by the decisions which adults make on their behalf. Adults choose the schools their children will attend, and often are in control of the school

and after-school timetable of the child, as well as the spaces that the child is allowed to frequent. Adults often supervise children, or place boundaries on where the child may go unsupervised and the length of time spent at such places. Yet, it is important to realize that childhood experience extends far beyond the spatial dimensions we conceptually constrict it to, penetrating all aspects of the world of which it is a part, and drawing from this experience in formulating an understanding of the world which is essentially unique. Play is just one of these experiences and, as previously emphasized, is best conceptualized as social action, making use of the contextualized concepts of childhood in allowing children to bring together their experiences and understandings of the world, enacting the most striking features of their lived experience of the social world in an attempt to explore the possibilities available to them within the conditions of their existence.

Thus far, what has been discussed in terms of bodily encounters and social action through play has referred to the personal experience of own and other bodies, without much focus on broader cultural images of the self via media images which seem to pervade much of childhood experience. It is this that I shall now turn to. Gilbert (1998) shows how the media serves to contextualize lived experience, allowing children to acquire further knowledge on the nature of the lived world. Gilbert considers the implications and effects of this external element on the understandings of the child as to the way that the world is, and also problematizes it in looking at the way children regard skewed representations of the body as in the case of cartoons and animations. Based on his study, it becomes evident that a significantly high portion of leisure time in childhood is taken up with media-related activities, namely with watching television and playing video games, thus meaning that these cultural images of the body eventually come to hold much weight in the way in which children conceive of the body and the self. The environing world in a sense becomes communicated through the medium of the television and computer, providing an outlet for conveying social norms as they are created by popular

culture. Gilbert suggests that the gendering of the body ties up with this, and is further articulated through children's personal encounters of the body in social arenas such as schools and in play.

### 5. A new dimension of play

Let us now return to the scene with which we started: the child's bedroom. Studies of 'room culture' of children, especially older ones, have identified this personal space as one where children often 'play' with their identity. The room is a site for identity formation. It may be crowded with posters, littered with magazines, vibrating with music; it is the place where homework is done, but films, music videos and TV are also watched and favourite heroes studied for their looks and gestures; and the place where mobile phone calls can be made and instant messages and emails may be exchanged, chat engaged in and blogs written up, and thus the place where the events of the day are considered, analysed and shared.

The room is therefore a site of identity formation. It is the place where a child may begin to differentiate herself from the rest of the family. The use of the various media also serves to create a certain collage of experience – whether it is only by the way in which a sequence of downloaded songs are played, or in the more complex manipulation of a variety of audio-visual media; a manipulation that may serve to manage or exacerbate moods like exhilaration, depression or loneliness.

While it is a solitary place in one sense, therefore, the room, thanks to the new media and their tools, also offers an unprecedented variety of possibilities for communication, expression and interaction (Montgomery (2007:110)). The heavy use of the media by children has long been established. Montgomery cites a 1998 US study that found that 86 per cent of children aged 6-17 had access to a video recorder, and almost a quarter of them in their own rooms. Seventy per cent had a video game system (and a third in their own room). Half had a TV in their own room, 40 per cent a portable cassette/CD player and 35 per

cent their own stereo system. By the beginning of the new millennium, the fast growing segment of households with Internet access was that of families with children (Montgomery (2007:23)).

Since that time, the relevance of all these media to each other has grown more salient, as technologies as well as providers have become far more convergent. What have not yet converged neatly, however, are the technological abilities of parents, generally resulting in anxieties. For example, many parents would like to be able to control what TV programming the child is able to watch, but do not make best use of the available technology. Similarly, they often register a feeling of helplessness in trying to keep track of the child's other activities on the web. The generational digital divide is captured by the term coined by Idit Harel, founder of *MaMaMedia*: she has called the most digital of children "clickerati".

It is of course correct to regard the new media as providing a new kind of 'space' for play. But it would not exhaust their significance. Equally important are three processes worth noting. First, there is the formation of the self, already noted. It is important to highlight that this process is not adequately captured by thinking of it as either the child passively imbibing all that it beholds. We have already seen that the media are, at least in one sense, skilfully managed. However, neither must one make the mistake of thinking that this process of self-formation involves a detached self reflecting on all that it beholds. Rather, it must be considered as a dialectical process involving both conscious control and matters lying beyond the individual will.

What has happened is that the very interaction has served to create new sub-categories of childhood. The plethora of products aimed at segments of the children's market – the deliberate age-branding of dress, school paraphernalia, music, mushrooming of TV channels especially for children – has led to the identification of a 'new' category of children: the 'tweens', that is, those aged between 8-12. The various products combine to create a sense of group identity, so the solitary impulse buying, for example, or even the playing of a popular video

game, involves participating in a kind of community. With video games, the possibility of playing games with multiple players over the Internet sometimes makes the participation a direct experience.

Second, even while childhood is being separated further from the world of adults by the creation of what may be called a subculture, in another sense, children are also being drawn into the world of adults in a new and largely unprecedented way. The most obvious example would be the possibility of adults masquerading as children and interacting with the latter in chat-rooms, trying to draw them into a meeting in the world 'out there'. But sexual perversions or the availability of Internet porn are not the only way in which the mingling with the adult world happens.

Such mingling can, in fact, happen as part of the same process that serves to differentiate children from the world of adults. Since the manner in which such differentiation happens often includes consumption of specially branded goods, one cannot miss out the fact that this is a way in which children are drawn into the adult economy. With many children often having a higher disposable income than previous generations, they are a desirable commercial target.

Finally, the lack of sufficient communication that this creates between parents and children has also been the basis for a different kind of interaction between parents' or consumer organizations, on the one hand, and governments, on the other. In the US, it has been argued that the 'culture wars' permeated even this sphere, with more liberal organizations driving the agenda during the Clinton presidency, to be displaced by more conservative organizations under that of George W. Bush. As Montgomery (2007) shrewdly points out, the novelty of the technology and the new concerns enabled Bill Clinton, ever in search of new electoral alliances, to be able to connect with 'family values' while divorcing it from the traditional conservative concerns with which that term was usually loaded.

## **6. Implications of new technology upon social relationships**

It is no secret in studies of technology that it affects not just the relationship between people and things, but also relationships between people. So how do the social processes traced out here affect the relationships that children have with one another and with the rest of the world? Only two implications will be spelt out here. The first relates to the assumptions that such processes encourage children to make about the world.

The world of the new media is a highly branded environment. One could, for example, request for a specific recorded message by Britney Spears to be sent to one's mobile phone, in which the singer shared her excitement about the new perfume she was about to launch. The message had been advertised on five websites. Some 300,000 girls saw it and ordered the message, which they then shared with their friends. This was no exceptional event (it was just an innovative stunt for the launch of a new fragrance). Another example: Virgin Mobile offers an array of products and payment arrangements to cater for the very young. The phone, for example, can be made 'hip' thanks to the download of the latest ringing tones (based on popular songs). Games can also be downloaded, providing an additional source of revenue for the company.

The virtual and the real may also blend together in other ways. One major pizza franchise teamed up with the designers of a video game to make it possible for a pizza to be ordered in the middle of a game. In another case, some films were promoted by creating MySpace pages for their lead characters, as if they were real users. The success of this ploy can be gauged by the fact that some 11,000 users asked to befriend this character (Montgomery (2007:135)).

One evident issue that is raised by these few examples concerns the targeting of minors by advertisers. Advertising involves not just the exploitation of children's undeveloped judgment and immaturity. Nor does the involvement stop at marketing undesirable products, like fast food. Internet surfing by children is often tracked closely so that

children's interaction actually constitutes, at the same time, market research for major firms. Advertising then becomes highly targeted – and therefore more powerful.

The highly branded environment does not just infuse websites. Commercial interests structure the world of social networking. The Barbie doll was associated, for example, with a “Barbie community” of young girls; that is, it was the product that served to bring the girls together to interact online and share news and information. Sites like MySpace and Facebook enable users to create and style personal pages, answering personal quizzes and sharing gossip and the events of the day. Blogs are one of the most fertile sources of market intelligence: not so much because young boys and girls talk about what they've bought, but because they talk about their lives.

Once more, the fact that children are not passive beings is salient to how most of the shaping of their world occurs: in interaction with them. Since, as they skilfully learn how to filter out advertisements and messages that they are not interested in, the content of the advertising that does get through becomes more relevant to them and therefore the engagement with these commercials is more intense. Their ability to customize and personalize their world is striking, but it also comes with the assumption that the creation of cultural value is to be expected to be intertwined with commerce.

A second implication of the new technology on social relationships concerns the cultural impact of video games (Bogost (2007) and Consalvo (2007)). Games, Ian Bogost argues, have an expressive rhetoric. That is, the narrative that unfolds as one advances along the various stages of excellence and scoring, tends to express and reinforce a certain attitude towards the world. The most powerful of these effects are with those attitudes which go without saying. For example, a game based on robbing as many banks as possible while keeping oneself nourished, may include fast food as the source of nourishment. In a more complex manner, an attitude may be imparted by the very rules of the game. Bogost (2007:30, 36) cites the example of *Molleindustria's*

*The McDonald's Game* where ‘players must use questionable business practices to raise profits’. There Bogost is referring to what must be done to run a successful fast-food empire in the game. However, such games have what Bogost calls ‘procedural rhetorics’, in that the very mode getting along in the game constitutes ‘the message’. Games of violence (or pacifism) are identified by Bogost as being structured by the rhetoric of identifiable political ideologies.

Mia Consalvo (2007) studies how different individuals (of various ages) actually play video games. Among gaming traits, the makers’ of such games have established a tendency to cheat, through a history of rewarding ‘cheats’. Cheating began as something that was seen as not having anything to do with the game itself, but was made possible to make up for the arcane knowledge of the game that dedicated players had. Eventually, however, a market for cheating emerged: cheating was institutionalized and normalized by aficionado magazines that gave tips to its readers for how to win, for example, at Nintendo. Cheating became ‘an expected and profitable part of gaming for the player and the industry’ (2007:10). From printed strategy guides to mod chips that one could illegally install, the market for cheating grew. With some players, cheating even had a personal style.

One should be careful about the conclusions to be drawn from such activities and procedures. On the one hand, like all play, they serve to ‘naturalise’ and legitimize certain activities. But, on the other hand, does electronic gaming become second nature? Consalvo (2007) argues that part of the attraction may precisely lie in the fact that the distinction between games and the real world is clear. Games are relished, when one can cheat, because they are an arena where one can do so safely. The argument might seem less persuasive to victims of online piracy, however, when illegal music downloads and infringements of intellectual copyright are routine. Consalvo recognizes that the issue raises important questions for ethics and education.

## 7. Outstanding questions for policy-makers

To sum up, among the many questions raised by the digital age with respect to children, there are three issues that need to be especially highlighted for policy-makers, since they are usually not given their due importance.

First, there is the matter of the digital divide. This chapter has not investigated the extent of the digital divide between children of different families, or across different social groups or countries. Of course this is important. If this divide is not bridged, there would be little hope of fully realizing the democratic potential of these new technologies. But in this chapter it was considered preferable to focus on the digital divide between generations. Precisely because children are so capable of acting as agents in the world, and contributing or creating cultural value, they need to be able to do this, in the current environment, under the loving supervision of parents who can actually keep up with what is going on. Therefore, parenting skills courses should include the possibility of refresher courses in e-literacy; in developing communication technologies and possibilities.

Second, the twin focus on how children manage relationships, and how play figures in this, served to establish a certain understanding of the relationship between the virtual and the 'real' worlds. They are not opposites. They are connected. Indeed, it may not often be easy to determine what is 'virtual' when seeing the real impact of chatting and social networking on children's lives. The governing criterion over whether 'virtual' constitutes 'fantasy' and whether it is fantasy that should be encouraged or rather discouraged, should be the degree of control that the child actually exercises over her relationships. Of course, a child is always part of an adult world, but of course there is a difference between adults who are the child's tutors, and act as such, and others whose actions make them out to be targeting the child as a customer. It is also important to realize why the child may find it difficult to believe that she is being manipulated, sometimes: the consciousness of her active role in the process may be acute and may

lead her to dismiss those who do not give it its due recognition.

Finally, the salience of new technologies for personal identity was also noted. The child as agent, as active shaper of her relationships, is very much engaged when, for example, setting up a personal page on *Facebook*. But this agency also needs to be educated, in the proper sense. One would urge, therefore, that school curricula develop methods of teaching children, in an age-appropriate way, how to reflect on identity and decisions involved in setting up a homepage, or even in toying with the assumed identities of videogames.

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