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An Assessment of the WSIS-2/Tunis '05 Outcomes¹

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The outcomes of the Tunis World Summit on the Information Society (WSIS) are significant -- and rather surprising. ICANN emerges from the summit both unchanged and significantly different. After WSIS it has a stronger claim to legitimacy.

ICANN emerged unchanged, in that its institutional structures -- most notably its mechanisms for political oversight -- were not amended. ICANN continues to operate under the formal authority of a single government, the US. Such a unilateral globalization model is a novel arrangement, quite unlike what is used in other global sectors (e.g. telephony or communication satellites.) The US continues to exercise a kind of unipolar authority it does not have in physical space.

But ICANN also emerges from WSIS radically different: it is now endowed with a greater degree of legitimacy. Over a period of four years the UN family of nations intensely scrutinized ICANN, Internet governance, and unilateral US oversight, and they came to a decision: they declined to change ICANN's structures. Whereas US control was previously the product of a unilateral assertion, it is now the outcome of a lengthy process of scrutiny by all nations.

Thus ICANN's greatest weakness -- its lack of legitimacy and its related lack of support from governments around the world -- is less after WSIS. From now on, governments that criticize ICANN are criticizing an arrangement that they themselves reviewed and left unchanged.

The WSIS decision cannot really be called an endorsement of ICANN. The text nowhere mentions ICANN by name, and there is no real declaration of support. Still, the UN has decided not to act against the organization, and this collective inaction is the final word after years of debate.

The Internet Governance Forum

Another important WSIS outcome is the launch of the Internet Governance Forum (IGF). Two features characterize the IGF. First, it is a multi-stakeholder forum. Although a creation of the UN, the forum membership will include more than just UN member states; participating equally will be entities from the private

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sector and from civil society. Second, the forum has no concrete power. It is an advisory body. Its member will discuss and formulate collective recommendations, but those recommendations will not carry the weight of policy.

Still, the forum could become powerful. A forum is a prerequisite for collective action at the global level, making possible communication, interest aggregation, bargaining, and decision. WSIS was itself a forum, and it made possible certain collective decisions of great political import. (For more on the functionality of forums see the article "Understanding WSIS" in the journal *Information Technology and International Development*.) If the new forum makes continued collective decision-making possible, it could be a powerful entity. Its recommendations could be formalized by national governments.

Still one might ask, what is new about this forum? ICANN already has advisory committees for governments and for civil society members, and the private sector controls its board outright. Why create another mechanism for formulating advice? The answer is that this new forum will primarily have a policy focus. Whereas ICANN's bodies ostensibly focus on technical coordination, the IGF will focus on all issues of Internet governance.

This dual arrangement formalizes the questionable division of Internet governance into two domains: ICANN's domain of technical coordination and the IGF's domain of public policy. It risks validating the inaccurate claim that ICANN is a purely technical body without policy-making content.

Implications: ICANN and IGF

In an earlier analysis entitled "ICANN Reform: Establishing the Rule of Law" I argued that ICANN needed a legislative mandate. It now has some of that. The Tunis documents are a major step in that direction.

The locus of policy making will now shift. Fundamental disputes about ICANN's structures of policy-making have been settled (at least for now.) The next step is to work within those structures.

WSIS defined two forums for policy making: ICANN, for matters of technical coordination, and the IGF, for everything else. In the short term, most Internet governance activity will switch to ICANN, where debates will occur within the ICANN structures. They will focus more on substantive issues relating to technical coordination.

Of particular note is ICANN's Governmental Advisory Committee (GAC). The GAC is the forum where governments have the opportunity to look in on ICANN decision-making and offer their advice. It will likely become a much more important body – perhaps the most important body – in ICANN. At WSIS governments made it clear that they want a greater voice in ICANN decisions, and the GAC will be the vehicle for that. Thanks to WSIS governments now

know a lot more about ICANN issues, so their participation should be more informed and effective.

Civil society does not have a strong base within ICANN. The Non-Commercial Users Constituency (NCUC) operates at a disadvantage vis-à-vis the multiple commercial constituencies. Even weaker is ICANN's At Large Advisory Committee (ALAC), which is a pale shadow of the earlier user representation on the board. Ever since business and technical interests eliminated elections, civil society participation has been constrained. Outside of ICANN, the Internet Society (ISOC) is not a reliable home for civil society. Since 2002 business interests control ISOC by virtue of having rewritten its bylaws in a manner similar to ICANN. ISOC, however, still claims to be a civil society organization. What user organizations are in ALAC are mostly sub-units of ISOC. In summary, the situation for civil society in the post-WSIS ICANN is a major source of concern.

A top priority for civil society should be reforming ALAC. With ICANN confirmed as the one operational institution for global Internet governance, civil society should develop a more effective voice there. Investing in ALAC and NCUC is one way to achieve that.

The second forum emerging from WSIS is the Internet Governance Forum. The IGF can be thought of as a continuation of the WSIS, since it provides a place for multistakeholder discussion of a very large number of issues. The key question here is whether governments embrace it. With GAC already established and offering a rich agenda, some governments may question the utility of a second advisory forum. Industry interests are likely to be cool to the IGF, since they have so much more influence in ICANN. Civil society, with its weak base in ICANN, may have the most at stake in the IGF, but they may not be able to make it succeed without the commitment of those other stakeholders.

Conclusion

Before WSIS ICANN was a sort of Frankenstein organization created in the basement of the US Department of Commerce. No formal delegation of authority from the US Congress authorized its exercise of public powers. Nor did its global elections give it legitimacy, since they were canceled before full implementation.

Now ICANN can claim some degree of public authority. Many people may regret the UN's implicit endorsement of ICANN, but no one can easily dismiss the validity of the process. ICANN is the same but different. The next step in the policy process will be to work within its structures.

There is one additional possibility, not mentioned above, that looms over Internet governance: technology re-design. With WSIS leaving ICANN in place, those dissatisfied with ICANN are likely to move away from a political strategy. Instead, they may see more promise in trying to eliminate the single root. One

example in this trend is the Open Root Server Network (orsn.org), which is creating a parallel network of servers that are autonomous of ICANN. With such innovations in place, the power in controlling the authoritative root server is reduced. In the near future, it will be interesting to see how many groups propose technical innovations that effectively decentralize the root.

References

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