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EXPLORATORY REPORT ON THE CONCEPT AND POSSIBLE SCOPE OF A

CODE OF GOOD PRACTICE ON PARTICIPATION, ACCESS TO INFORMATION AND TRANSPARENCY IN INTERNET GOVERNANCE

Written on behalf of UNECE, the Council of Europe and APC by

Professor David Souter

for discussion at a workshop to be held in Geneva on 23 May 2008

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145 Lower Camden, Chislehurst, Kent BR7 5JD, United Kingdom
Telephone: +44 (0)208 467 1148 or +44 (0)7764 819974

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INTRODUCTION

This paper addresses the scope for developing a code of practice on information, participation and transparency in internet governance, drawing on the "WSIS principles" (agreed as part of the text of the World Summit on the Information Society's Geneva Declaration of Principles) and the experience of the UN Economic Commission for Europe (UNECE) Aarhus Convention (which has established enforceable mechanisms for information and participation on environmental issues within Europe, the Caucasus and Central Asia). The paper has been written at the request of UNECE, the Council of Europe and the Association for Progressive Communications (APC) as a contribution to debate on ways of enabling internet governance to meet the changing needs of diverse stakeholders in a rapidly changing internet environment.

UNECE, the Council of Europe (CoE) and APC have been concerned about issues of information and participation in internet governance since the World Summit and the Working Group on Internet Governance which informed it during 2005. They initiated discussions and held workshops around this theme at both Athens (2006) and Rio de Janeiro (2007) meetings of the Internet Governance Forum (IGF); in both cases drawing particular attention to the Aarhus Convention as a potential starting point for thinking about the principles and instruments that might apply. A "Best Practice Forum" on *Public participation in Internet governance: emerging issues, good practices and proposed solutions*, held during the Rio IGF, enabled participants to explore the possibility of a mechanism that would enable internet governance institutions to "commit themselves in their activities to transparency, public participation … and access to information."

These initiatives have been welcomed by many within the internet governance debate. Support for the objectives of the initiative was expressed by a number of speakers during the Rio IGF and there was considerable informal interest in the relevance of the Aarhus Convention both within the Best Practice Forum and beyond. More recently, during the February 2008 IGF consultation meeting in Geneva, the desirability of further work on this theme was emphasised by, among others, UNDESA and the Government of Switzerland. The latter urged that "in every forum and organisation [in internet governance], there should be structures that allow the people, the citizens, the users to make them[selves] heard," recommended further consideration of the application of the WSIS principles, and explicitly welcomed the UNECE/CoE/APC initiative.

A number of other organisations have been exploring issues around this theme in different ways. UNECE has undertaken a review of experience with promoting the Aarhus Convention in other environmental contexts, including a survey of information and participation processes in other environmental agencies. The OECD is "taking stock of the changes affecting our economies and societies" as a result of the internet, with a view to articulating "a collective vision, one that is shared by all stakeholders, of a desirable future economy and society supported by the Internet." Stakeholder participation is important in this review. Many internet governance bodies are scrutinising their own processes, one way or another, to ensure that they garner the participation that they need to make them most effective. Initiatives like the IGF Bill of Rights Dynamic Coalition, the Ford Foundation-sponsored Freedom of Expression Project and APC's Internet Rights Charter consider whether and how a rights-based framework might be applied to internet inclusiveness. Much discussion at the IGF also hovers around these questions.

In light of these discussions, UNECE, the CoE and APC aim to develop more substantive ideas about information and participation arrangements for discussion at the Hyderabad meeting of the IGF, to be held in December 2008. To facilitate this, they have commissioned the present exploratory report, which will be discussed at an open stakeholder workshop to he held in Geneva on 23 May 2008. The outcomes of this workshop are expected to inform subsequent work towards a more substantive report and recommendations for the Hyderabad IGF.

This paper has been written explicitly to stimulate debate at the May 2008 workshop in Geneva. It is based on the author's own assessment and experience, desk research and interviews with selected personnel involved in internet governance. Inputs were also sought from members of professional and civil society associations of individuals working in internet governance arenas.

The report is not intended, and does not attempt, to give a comprehensive picture of the information and communication arrangements which are currently in place in fora/entities that have internet governance responsibilities. It does, however, assess the current position in general and seek to raise issues which need to be considered by all who are concerned to achieve more inclusive and better-informed internet governance that can meet the needs of an increasingly diverse and continuously innovative internet environment.

It is divided into three parts:

- Part 1 describes the WSIS principles and the Aarhus Convention, and considers similarities and differences between the environmental and internet governance domains.

- Part 2 explores some of the challenges involved in developing what might become an agreed information and participation approach in internet governance.

- Part 3 suggests a process for developing these ideas ahead of the Hyderabad meeting of the Internet Governance Forum in December 2008.

PART 1 : ESTABLISHING THE CONTEXT

The proposition put forward by UNECE, the Council of Europe and APC is essentially threefold:

- that the quality and inclusiveness of internet governance would be improved by steps to make information about decision-making processes and practice more open and more widely available, and to facilitate more effective participation by more stakeholders;
- that ways of achieving this might be encapsulated in a "code of practice" concerned with information, participation and transparency;
- that this "code of practice" should be based on the WSIS principles and might draw on the experience of developing and implementing the Aarhus Convention.

This first part of the study defines the key terms used for purposes of this discussion. It also summarises the WSIS principles and those embedded in the Aarhus Convention. Finally, it considers similarities and differences between the environmental and internet governance domains which affect the subsequent discussion in Part 2.

A "code of practice" for information, participation and transparency

The proposition concerns a possible "code of practice". Like most terms of its kind, this can be interpreted in different ways. It is important, therefore, to be clear about how it is understood within this paper.

A "code of practice" is understood here to mean a set of principles or guidelines, drawn up on the basis of relevant experience (particularly experience of what has proved successful), which can help to provide:

a) a standard or benchmark against which existing practice may be measured; and
b) a frame of reference which organisations may find useful in adjusting or developing their own arrangements.

It is not intended to be prescriptive, but can provide a basis for sharing "good practice" and may, in time, establish a common denominator which helps define what is understood by that term. Some interviewees for this study felt that it would be preferable, and less apparently prescriptive, to use a term such as "set of guidelines" rather than "code of practice", and this term is also sometimes used within this paper.

A voluntary code of this kind will only prove useful if it has value to its stakeholders – in this context, therefore, both to those entities that enact or manage elements of internet governance (internet governance fora/institutions) and to consumers of internet governance outcomes (internet users, those engaged in other policy domains impacted by the internet).

Two source documents are suggested in the proposition from UNECE, the CoE and APC to help establish the meanings of "information", "participation" and "transparency", and these are discussed below. Before looking at these, however, we should be clear about what is meant in this report by the term "internet governance".

Internet governance (IG)

The meaning of "internet governance" has been, and continues to be, contested. The principal distinction in discussions has lain between "narrow" and "broad" interpretations, *i.e.* between:

- "narrow" interpretations which focus on the management of the internet, in particular on technical issues such as the domain name system, IP and WWW standards;
- and "broad" interpretations which include technical and public policy areas in which the internet relates to other domains of social, economic, cultural and political decision-making (such as telecommunications policy, intellectual property, freedom of expression and crime).

"Narrow" issues are mostly (but not entirely) dealt with by entities that focus entirely on the internet (*e.g.* the Internet Corporation for Assigned Names and Numbers (ICANN), the Internet Engineering Task Force (IETF), the World Wide Web Consortium (W3C), the Internet Assigned Numbers Authority (IANA), Regional Internet Registries (RIRs) *etc.*), or by entities that substantially do so (International Telecommunication Union Telecommunication Standardisation Sector (ITU-T)). "Broad" IG issues also include entities which are exclusively concerned with the internet, but reach deeply into areas in which governance is mostly led by entities that are not primarily focused on the internet (*e.g.* ITU, World Trade Organisation (WTO), World Intellectual Property Organisation (WIPO) and national and international policing).

WSIS adopted the following working definition of internet governance:

> *Internet governance is the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.*[1]

This working definition draws clear attention to two important aspects of internet governance, which distinguish it from most other governance domains:

- that internet governance is undertaken by diverse organisations, including many which have a private sector or civil society structure, as well as (and often rather than) by governments and intergovernmental organisations;
- and that the instruments of internet governance reach well beyond formal legal instruments such as laws and standards, to include (for example) behavioural norms and even programme code.

This WSIS working definition is the basic definition of internet governance used within this paper. It is, however, interpreted broadly, to include issues of public policy which are affected by the internet (such as intellectual property, cybercrime and freedom of expression) as well as narrower issues which more clearly "shape the evolution and use of the Internet." This broad interpretation is consistent with that taken by the IGF.

The distinction between "narrow" and "broad" interpretations remains important, particularly when considering issues of inclusiveness (information and participation). It is especially significant when considering differences between internet governance agencies which lie entirely within the internet space (such as ICANN) and governance agencies which have an impact on the internet but which also have wider responsibilities (such as the ITU and WIPO).

[1] *Tunis Agenda for the Information Society*, para. 34.

There have been important differences in the development of governance between the internet governance and other policy domains. Four of these are particularly significant for present purposes.

- Firstly, as noted above, at least within the "narrow" interpretation, internet governance has evolved to a great degree without significant involvement of governments or intergovernmental organisations. The authority and expertise of government agencies within the internet is therefore weak compared with their authority and expertise in other policy domains. Most entities concerned with internet governance have emerged from experience within the internet community. Many governments are uncomfortable with this.

- Secondly, and largely as a result, the architecture of internet governance is much more highly distributed than governance in other social and economic policy domains. Many entities have varying and often overlapping levels of formal and informal authority and influence. Their structures are diverse and many are highly flexible, responding to the dramatic changes in technology and markets which have characterised the internet since its inception. And governance as such is not always present: whole areas of internet practice have evolved in the spaces between governance rather than in areas that are recognisably governed.

- Thirdly, the boundaries between national and international governance are blurred in internet governance. It is difficult to locate many internet-enabled activities within national jurisdictions, and the rules and laws established by both national and international authorities can be bypassed relatively easily in "cyberspace". This is as true of rules concerning internet governance itself as it is with those concerning copyright or censorship.

- Fourthly, the ethos of internet governance has been significantly different from that in other policy domains. In particular, internet governance entities have been less concerned to establish strict or formal rules (except where this is essential, as with IP addresses or the definition of routing protocols) and much more willing to accommodate experimental modes of technical and behavioural development (well summarised in the use of the phrase "rough consensus and running code" to characterise practice in the Internet Engineering Task Force (IETF)). As will be discussed later, the difference in ethos may be particularly marked between internet and environmental experience.

All of these issues have made and may continue to make it more difficult to establish common norms or codes of practice in the internet space than in other policy domains.

The WSIS principles

The WSIS principles concerning internet governance are summarised in the *Geneva Declaration of Principles*, which the World Summit on the Information Society agreed in 2003. This reads as follows:

> *The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organisations. It should ensure an equitable distribution of resources,*

facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism.[2]

The Declaration of Principles goes on to consider the roles of different stakeholder groups in managing the internet. In doing so, it identifies "policy authority for Internet-related public policy issues" as "the sovereign right of States", which have "rights and responsibilities for international Internet-related public policy issues." However, it also accords roles based on their expertise to the private sector, civil society, intergovernmental and international organisations, as follows:

The private sector has had, and should continue to have, an important role in the development of the Internet, both in the technical and economic fields.

Civil society has also played an important role on Internet matters, especially at the community level, and should continue to play such a role.

Intergovernmental organisations have had, and should continue to have, a facilitating role in the coordination of Internet-related public policy issues.

International organisations have also had, and should continue to have, an important role in the development of Internet-related technical standards and relevant policies.[3]

The wording of these consequential statements of role and responsibility was highly contested. However, the principle of multistakeholder participation in internet governance was strongly emphasised in later WSIS discussions and was made a founding principle of the IGF. The Tunis Agenda for the Information Society also clarified the allocation of responsibilities agreed in Geneva as follows:

… the management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organisations.[4]

The WSIS principles themselves are vague and words such as "transparent", "democratic" and "multistakeholder" are open to different interpretations. This reflects the fact that reaching agreement on them in the first place was to some extent an exercise in creative ambiguity. Some have suggested that they are so vague that the effort of seeking to develop a common understanding of them is not worthwhile. The proposition examined in this paper takes a different view: that it is both possible and worthwhile to build at least a more common understanding of them around existing principles and practice within the internet community, and that the separate experience of the Aarhus Convention may be helpful in doing so.

Inclusiveness and multistakeholder participation

The critical issue where participation is concerned might be defined to be "inclusiveness", *i.e.* that internet governance ("the international management of the Internet") should be:

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[2] *Geneva Declaration of Principles*, para. 48. This text is reiterated in the *Tunis Agenda for the Information Society*, para. 29.

[3] *Geneva Declaration of Principles*, para. 49.

[4] *Tunis Agenda for the Information Society*, para. 35.

- inclusive of all who wish to participate – both multilateral (all countries) and multistakeholder (all stakeholder communities); and
- inclusive in enabling their effective participation (through access, information and transparency).

"Multistakeholderism" has become a defining characteristic of WSIS and post-WSIS discourse on inclusiveness. Most internet entities and participants in internet governance now accept the desirability of multistakeholder participation, or at least the requirement to be perceived as being open to it. In broad terms, this is taken to mean openness to participation (not necessarily on equal terms) by governments, the private sector and civil society – with international/intergovernmental organisations sometimes being considered as a fourth stakeholder group, and the internet technical community sometimes considered as a fifth.

Although multistakeholderism has been widely adopted as a principle within internet governance, there remain significant issues concerning its extensiveness and character. Different actors have different interpretations of multistakeholder participation in practice. Some see it primarily in representational terms (for example, allocating certain rights and representation to different stakeholder groups); while others seek to achieve multistakeholderism by treating stakeholder status as irrelevant to participants' engagement. These differences of interpretation predate WSIS in some internet governance bodies (for example, debates about individual and government representation in ICANN, the membership structure of IETF, *etc*.).

The Aarhus Convention

The Aarhus Convention is an agreement of the UN Economic Commission for Europe, which was signed in 1998. It is concerned specifically with policy matters directly concerning or indirectly affecting the environment. It covers both:

- general statements of, frameworks for and legislation concerned with environmental policy (or policy in other areas which has environmental impact); and
- specific policy decisions of environmental significance within a broad list of policy areas which are included in an annex (covering the energy, metal, chemical, waste management, timber, transport and water industries, gas and oil, mining and quarrying, electricity and other activities).

The Convention is a rights-based instrument which establishes rights (largely for individual and legal persons, including NGOs and private sector businesses) and concomitant responsibilities (largely for implementing agencies, both governmental and private sector) in three areas:

- the right of access to information;
- the right of public participation in decision-making; and
- the right of access to justice.

The right of access to information here includes an expectation that governments and implementing agencies shall collect appropriate information as well as a requirement that they shall make it available.

The Aarhus Convention is not the only international governance instrument to establish rights to information and participation in formal decision-making processes for citizens and other non-official stakeholders. It is, however, widely considered to be the most inclusive instrument of its kind in extending rights to non-official parties, and is therefore regarded by proponents of information and participation rights as the frontier of best practice. It therefore provides an appropriate benchmark against which existing practice and proposals for information and participation in other sectors can be measured.

For the purpose of this study, it is useful to distinguish between the principles set out in the Aarhus Convention, which may be felt to have general relevance to information and participation in other policy domains, and the mechanisms which it deploys, which are more likely to be specific to environmental issues and governance.

The core principles of the Aarhus Convention might be summarised as follows (quotations from the Convention in italics):

- that citizens and others should have *rights of access to information, public participation in decision-making, and access to justice* in respect of environmental issues (article 1);
- that the governments of states party to the Convention should legislate and regulate *to establish and maintain a clear, transparent and consistent framework to implement the provisions of* the Convention, including appropriate means of enforcement, and should *assist and provide guidance to the public* in making use of these provisions (article 3);
- that they should also *promote environmental education and environmental awareness among the public*, including Convention entitlements (article 3);
- that they should *provide for appropriate recognition of and support to associations, organisations or groups promoting environmental protection* (*i.e.* to relevant civil society organisations) (article 3);
- that they should ensure that adequate information is collected by public authorities about *proposed and existing activities which may significantly affect the environment* , and should *publish a national report on the state of the environment* at regular intervals (article 5);
- that public authorities should make information covered by the Convention freely available to the public, on request and as soon as practicably possible, unless disclosure is deemed appropriate for certain specified reasons (which must be stated publicly) (article 4);
- that the public should be informed, *early in an environmental decision-making procedure and in an adequate, timely and effective manner* about any specific environmental matter than affects them, afforded the necessary information about it to understand and analyse its impact, and provided with means to express their views and otherwise participate in the decision-making process (article 6);
- that the public should have the right *to participate during the preparation of plans and programmes relating to the environment* (*i.e.* to general environmental policymaking) and *during the preparation … of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment* (articles 7 and 8);
- that there should be rights of appeal for parties who feel that their rights to information and participation have been infringed (article 9);
- and that these rights should be exercisable by both individuals and groups/organisations (including civil society organisations), whether located within or without the national territory.

The Convention suggests a number of instruments that may be used by governments to implement these provisions, but expects implementation to vary according to national legal frameworks, rather in the manner of a European Union directive.[5]

A further document, the Almaty Guidelines, agreed in 2005, encourages the adoption of the Aarhus Convention principles in other international fora concerned with the environment.

Analysis

This final section of Part 1 of the report addresses two main questions:

- that of consistency between the WSIS principles and those set out in the Aarhus Convention;
- and that of similarities and differences between the environmental and internet governance domains.

Principles of information and participation

The basic principles set out in the Aarhus Convention have been summarised above. Although their implementation is obviously, in some respects, specific to the environmental sector, the Convention's core principles themselves are consistent with the WSIS principles of multilateralism, transparency, democracy and multistakeholderism, which were adopted in Geneva. While certainly not the only way in which the WSIS principles can be interpreted, they offer an approach for adding substance to them by suggesting how principles of inclusiveness might apply in practice. They are therefore, *prima facie*, worth looking at as a possible model for interpreting the WSIS principles in internet governance.

The Aarhus principles are also consistent with the objectives of inclusiveness which can be found in current internet governance discourse and in the stated aims of many internet governance bodies.

All existing internet governance bodies have their own established ways of handling information, participation and transparency, which are considered further in Part 2. Their approaches are highly diverse. In the case of internet-only bodies (such as ICANN or the RIRs), they have been developed by established participants to suit the particular roles and stakeholder communities they serve. In many instances, the resulting rules and norms are much more open than those in comparable governance bodies outside the internet. In the case of governance agencies which work primarily outside the internet, information and participation rules and norms have been developed to meet the requirements of those organisations' wider roles, responsibilities and stakeholder groups rather than of internet governance alone.

This instrumental diversity is often celebrated in the internet community, and clearly has great value in making particular organisations' rules and norms fit for purpose. However, this does not exclude or reduce the potential value of agreeing common principles – which would enable

[5] An exception to this approach is found in the European Community's implementation of the Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention which, having adopted a regulation having direct effect in its Member States, aims to ensure uniformity of implementation of national PRTRs within the European Union.

organisations to gain from one another's experience, facilitate input from stakeholders who are "outside the club", and help to avoid conflicting decisions being adopted by different agencies.

If such benefits are considered worthwhile in the internet space – which will be discussed further in Part 2 – then the Aarhus Convention offers a set of principles on information and participation which has been relatively well-tested in practice and which has gained widespread stakeholder consent, including that of governments. This suggests that it has potential value as a starting point for considering how information and participation might be facilitated in internet governance.

Environment and internet governance

If this applies to Aarhus principles, does it also apply to Aarhus instruments? Different areas of governance take different forms, derived, *inter alia*, from their historic development, the character of the interrelationships between different stakeholders that are concerned with them, and the attitudes and behavioural experience of participants. There are a number of substantial differences between the characters of environmental and internet governance, which may affect the transferability of the Aarhus instruments. Three of these appear to be especially important.

The first of these is concerned with the **type of governance instrument** available.

The Aarhus Convention is an intergovernmental agreement which imposes mandatory information and participation requirements on governments and government agencies. These requirements can be enforced through national law, supported by "justice" instruments which are set out in the Convention itself. This is a highly rules-based environment which relies on enforcement rather than (or at least as well as) consent for application.

Internet governance is very different. Its instruments are rarely intergovernmental or even governmental, and are unlikely to be enforceable through national law or other traditional judicial instruments. Standardised instruments cannot readily be superimposed on an underlying layer of established law and precedent. Adherence to internet governance norms and instruments is, therefore, essentially voluntary rather than enforceable.

The second issue is concerned with the **scope and purpose of governance**.

The Aarhus Convention seeks to enable stakeholders to raise issues of environmental significance in relevant areas of decision-making, principally because environmental factors are felt to have cross-cutting importance and so need to be incorporated before decisions are made (for example, through *ex ante* impact assessment). This raises the profile of environmental factors in decision-making, but does not necessarily make them the prime determinants of outcomes.

Again, internet governance is very different. In areas which are largely contained within the internet space, internet factors are almost invariably primary. In internet-related policy areas such as intellectual property, where internet governance interacts with governance in other policy domains, the key issues are more to do with ensuring consistency of practice across domains. The complexities of the relationships between internet and other governance bodies are discussed further in Part 2 below.

The third issue is concerned with the **ethos of governance**.

Environmental policy-making is substantially imbued with the "precautionary principle", *i.e.* the proposition that, "if one is embarking on something new, one should think very carefully about whether it is safe or not, and should not go ahead until reasonably convinced it is."[6] It is the precautionary principle that has underpinned the demand for information and participation rights for those affected by or interested in environmental decisions, which finds expression in the Aarhus Convention.

Internet governance, by contrast, has been built around a culture of "permissiveness", of experimentalism and innovation, of "rough consensus and running code". The WSIS principles' endorsement of "stable and secure functioning of the internet" is generally interpreted to include facilitation of innovation and creativity – setting standards on the basis of what works in practice (recognising that they can and will be adapted and developed over time), allowing services to be introduced without *ex ante* assessment of the impact they might have on society or economic and political behaviour. The internet would not be what it is today with the precautionary principle in place.

Conclusions

The first part of this study has sought to define the key issues under consideration and to review the viability of the WSIS principles and the Aarhus Convention as potential sources for a code of practice on information, participation and transparency in internet governance.

The WSIS principles affirm aspirations for inclusiveness which are generally endorsed within the internet space, but offer little in the way of practical approaches to implementation. The principles set out in the Aarhus Convention are consistent with the WSIS principles, and have the advantage of being tested in an established, if different, area of national and international governance. They therefore offer a potentially worthwhile starting point for considering how the WSIS principles might be more effectively addressed. However, the governance instruments of the Aarhus Convention are more context-specific to environmental issues, and likely to have less direct relevance for the internet.

PART 2 : EXPLORING THE CHALLENGE

This second part of the report looks at issues concerned with the possible application of an information and participation code of practice along these lines. It considers:

- whether such a code of practice would be useful (and what would make it so);
- what it might contain;
- and how it might effectively be introduced.

To place these questions into context, this Part begins by reviewing the shape of internet governance, and considering the diversity of stakeholders that are involved.

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[6] P. Saunders, *Use and Abuse of the Precautionary Principle*, cited in Wikipedia.

Mapping internet governance

As indicated in Part 1, internet governance is complex and highly distributed. Many different entities (formal and informal) have governance authority or power in different contexts, and their characteristics can be broken down in many different ways. For example:

- Some are exclusively concerned with the internet; some largely concerned with the interface between the internet and other technical or policy domains; some primarily concerned with other policy domains but with an interest in ensuring that conduct on the internet is consistent with conduct in their primary domains.
- Some are primarily or exclusively technical; others largely concerned with policy issues or with particular stakeholder interests.
- Some are international or intergovernmental, with responsibilities to maintain global consistency; some regional (such as UNECE and the Council of Europe themselves); some national; some essentially stateless.
- Some are led by governments or international agencies; some by the private sector; some by groupings within the internet community which cannot be defined in terms of traditional stakeholder groups.
- Some make significant use of traditional governance instruments such as legislation; some are based around technical standards and programme code; others rely much more on behavioural norms.

There have been a number of attempts to list and/or to map the entities concerned, although all would acknowledge that the task is a difficult one, not least because the number of agencies with some internet governance roles is very large indeed.

A comprehensive exercise to list and classify agencies which are concerned with internet governance is beyond the scope of the present study. One would, however, be extremely valuable, not only for present purposes but for improving understanding of internet governance overall. This will be difficult to achieve not just because of the number of organisations involved, but also because of the fluidity within IG. New aspects of internet governance arise continually as a result of changes in technology, market extensiveness and service deployment, while the continued widening of the internet's reach into other social and economic domains makes aspects of internet governance more and more relevant to other established governance fora.

A number of mapping approaches have been developed using existing lists and classifications. The aim of these is to provide a framework which helps to identify and understand relationships between different actors within governance, according to specific classification systems.

One useful approach, for example, which was originally developed for international ICT decision-making in general but redesigned for IG purposes during the WGIG process, juxtaposes the scope of decision-making (*i.e.* the range of issues covered within a particular decision-making process or in a particular institution) against the type of governance instrument primarily used (the extent to which governance relies on "hard" instruments like laws and standards, or "soft" instruments like norms and policy agreements). This is

illustrated in the following diagram (adapted slightly from the original), which can be used as a frame for mapping either issues or governance entities.[7]

Cooperation				
Policy Coordination				
Standards				
Laws and Regulations				
	Trade	Common resources	Technology development	Applications

In practice, there can be no perfect map of internet governance. Mapping exercises of this kind are inherently two-dimensional, and require taxonomic choices which are more relevant for some purposes than others. A practical understanding of internet governance needs to be multi-dimensional, involving a number of such mapping tools. It also needs to comprehend factors such as the relative importance (influence and decision-making power) of different entities on different issues, the relationships between different stakeholders and IG entities, and variations between and within national internet environments. This is not to belittle the importance of such mapping exercises – like geographic maps, they are very useful in clarifying understanding, and more and better maps would be even more useful. We will return briefly to this point in Part 3.

Two issues which arise from the discussion here are especially important for the present discussion of information and participation rights.

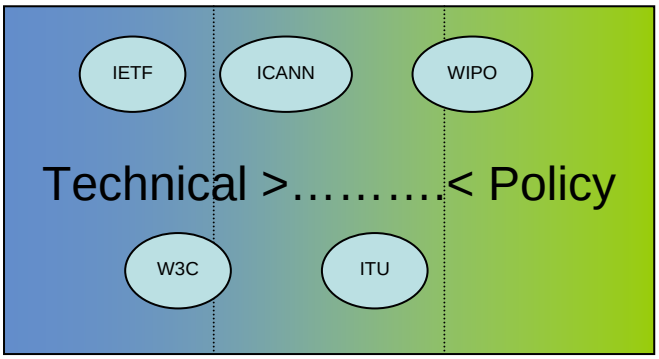
The first concerns the relationship between issues and decision-making agencies. The decision-making outcomes which interest stakeholders are usually concerned with issues – spam or cybercrime, for example – many of which are or need to be addressed by a number of different agencies together. Information and participation rights, however, apply to individual agencies, each of which has its own established practice. A common approach to information and participation rights could therefore have value in facilitating cooperation between agencies at an issue level, and would almost certainly help stakeholders to coordinate their own input into complex issue-based decision-making.

[7] This diagram is derived from Don MacLean, 'Herding Schrödinger's Cats', in MacLean, ed., *Internet Governance: a Grand Collaboration* (UN ICT Task Force, 2004). The model was originally developed with wider context in the report *Louder Voices*, written by D. MacLean, D. Souter, J. Deane and S. Lilley for the G8 DOT Force in 2002.

The second concerns the boundary between "technical" and "policy" issues (and, by extrapolation, agencies). This has been much discussed and is related to, but not identical with, the debate about "narrow" and "broad" definitions of internet governance. To simplify, one might distinguish as follows between three main types of internet governance issue, on the basis of the relationship within them between the internet and other policy domains:

1. Issues which are inherent to and encompassed within the internet itself – for example, the development of a new engineering standard.
2. Issues which are primarily contained within the internet itself, but which have substantial policy (and sometimes technical) impacts on other policy domains – for example, spam; or the proposal to establish a new generic top-level domain (gTLD).
3. Issues which are primarily external to the internet but which have substantial implications for it – for example, intellectual property.

The range of issues might be illustrated, simply enough, as follows:



This suggests another way of looking at the institutional topography of internet governance. Some internet governance agencies – particularly the "narrow" technical agencies such as IETF, W3C and the RIRs – are located very much within the internet-only space. Some agencies of importance to internet governance – for example, WIPO – are located very much in the external-domain-led ("policy" or "internet-related") area of the diagram. As noted earlier, processes, including information and participation processes, can be determined for the former within and by the internet community, but those in agencies which are predominantly outside the internet domain cannot be so determined because these organisations are led by actors rooted in other constituencies, issues and paradigms.

In practice, of course, it is true that all technical issues (such as standards) have policy dimensions and implications; and that all policy issues likewise have technical dimensions and implications. Most informants for this study recognised that what matters here is the extent to which one or other dimension predominates; that information and participation arrangements can be and are structured differently in different cases; and that this diversity is probably essential in order to optimise the quality of decision-making outcomes for all stakeholders.

In practice, it is evident that governance in some areas, which are primarily technical, needs to be led by technical expertise, and that the ability to participate in these will naturally depend on technical competence. The value of external (policy-oriented) participation in such areas is not concerned with second-guessing technical solutions, but with ensuring that technical developers and managers are aware of and take into account the social, economic and political

implications of the technical choices that they make. In other words, it is about ensuring that technically optimal solutions do not result in social, economic or other policy outcomes that are sub-optimal or negative.[8] This way of looking at the relationship is similar to the way in which the Aarhus Convention introduces environmental policy concerns into the technical decision-making processes with which it is concerned, and again suggests the potential relevance of Aarhus principles.

Mapping stakeholders

Mapping stakeholder communities may seem more straightforward. Within internet governance debate, up to five broad stakeholder communities are usually identified – governments, intergovernmental organisations, the private sector and civil society, plus the "internet community" or "internet technical community". Although the allocation of seats at the table and speaking rights may be contested, the word "multistakeholderism" is usually taken to include all these groups in internet governance discourse, and discussion about information and participation rights is usually concerned with ways to include all of them, perhaps to differing degrees.

However, this does not close the discussion about multistakeholderism. As noted earlier, the term can be interpreted in different ways – in particular, as a mechanism for representation ("so many seats at the table for civil society") or as a device for universal inclusiveness ("anyone can sit at the table, regardless of who they are"). There has also been discussion about the compatibility of multistakeholderism and multilateralism (the equal representation of all countries, traditionally through their governments), and in particular about the importance of ensuring proportional representation from developing countries (a particular challenge in technical areas of internet governance, where expertise is overwhelmingly located in the global North). The relationship between international and national levels of stakeholder participation is also relevant: if different countries have different degrees of stakeholder participation at a national level (and in many there is very little), this obviously affects the nature and value of multistakeholder participation at an international level.

These debates are largely conducted on a grand scale, seeking to classify stakeholders in internet governance as a whole. This is relevant to broad policy issues and debates, and is comparable to participation in overall environmental policymaking in terms of the Aarhus Convention. When it comes to specific instances of decision-making, however, the identification of relevant stakeholders depends not so much on their overall socio-economic or political character (government, private sector, civil society) but on their relationship with the specific decision concerned. In specific instances – the development of a *particular* nuclear power station, for example, or the management of a *particular* country-code top-level domain (ccTLD) – different private sector companies are likely to have different, rather than common, views; and different local civil society organisations are likely to be similarly disparate in outlook. It is also usually agreed that more attention should be paid to those who are directly affected by a specific decision than to those who hold views of general principle that might apply to it.

[8] Some internet technologists deny the relevance of policy implications to technical decisions, although accepting that the maintenance and security of the internet itself should be considered relevant. The boundary between these and social, economic or political impacts is increasingly blurred. The prevalence of spam, for example, has both technical and non-technical impacts. Most people outside the internet would find it odd if internet engineers addressed only technical factors when seeking to address it.

The Aarhus Convention defines "the public concerned" within a specific environmental issue as being "the public affected or likely to be affected by, or having an interest in, the environmental decision-making, a definition which is understood to include "non-governmental oranisations promoting environmental protection and meeting any requirements under national law."[9]

An information and participation code of practice needs to capture ways of engaging stakeholders *both* at the broad strategic level, which has been that largely discussed in the context of internet governance, *and* at the specific instance level, which is addressed in this extract from the Aarhus Convention. Broad principles of information and participation need to cover both sets of circumstances and accommodate necessary differences between them.

Existing information and participation arrangements

Existing internet governance institutions have a wide range of information and participation arrangements. Their diversity reflects the institutions' different histories, experience, professional and technical cultures. To take three examples:

- ICANN has long discussed and tested different options to balance the real and perceived requirements of its various stakeholders, from individual internet users to sovereign nation-states, North and South. "At Large" and "Government Advisory Committee" structures have their supporters and detractors within debates that reflect different views about the legitimacy of ICANN's foundation documents and legal status. Nevertheless, ICANN processes are generally regarded as more open than those of intergovernmental agencies.

- The IETF operates as an open association which develops standards and other technical instruments in a process of open debate and testing of ideas, through what is generally called "rough consensus and running code", rather than through formal time-bound decision-making processes. Participation is (in principle) open to anyone, but meaningful participation depends on technical expertise and peer group acceptance.

- The ITU is an intergovernmental association which makes decisions through multilateral negotiation (and ultimately voting) by representatives of Member States. Decision-making processes can be quite highly formalised, particularly where international competition is concerned. However, some areas of ITU decision-making have become more open, for example through the acknowledged importance of private "sector members", especially in standardisation.

In practice, those internet governance bodies which have grown up in the internet space tend to have much more open information and participation arrangements than those which are rooted outside the internet, particularly intergovernmental agencies (which are often bound by United Nations multilateralism, based on governmental roles). The culture of the internet community during its development has placed emphasis on inclusiveness and on sharing of information and knowledge, and internet development has been led by non-governmental rather than governmental stakeholders.

[9] Aarhus Convention, article 2, point 5.

As a result, most even of their critics would agree, IG bodies such as ICANN, the IETF and the RIRs have much more open and inclusive processes than those in telecommunications (such as the ITU or private sector-led standardisation fora) or in other social and economic domains (such as the WTO, WIPO or World Bank) which now also concern themselves with internet issues.

On the other hand, most would acknowledge that the multilateralism inherent in intergovernmental agencies has made it easier for them to guarantee participation from all countries, including developing countries. IG bodies which have open rather than representational participation structures have found it more difficult to ensure proportional participation from "outside the club", *i.e.* from those who lack established expertise or technical capacity.

These observations have two significant implications for present purposes.

The first is that any approach to developing common principles for information and participation will be highly sensitive. Each internet governance body has its own processes, which have developed out of its own experience; with which its constituents are familiar and (often) comfortable; and which have (in its terms and to its constituents) delivered outcomes that meet the organisation's (and the internet's) requirements. In looking towards a common approach, there is much that can and should be learnt from these experiences. Anything which is seen by those within an existing process as seeking to impose external values on it without learning from its own experience risks being received with hostility rather than engagement.

The second observation is that any consideration of multistakeholder participation also needs to take account of multilateral engagement. Approaches to multistakeholder participation which had the effect of enabling greater participation from all stakeholders in certain regions, at the expense of global proportionality, would not meet the desired standards of inclusiveness. This means that increased information and participation rights almost certainly need to be accompanied by measures to increase the ability of disadvantaged stakeholders to participate. New thinking is therefore also needed in areas such as capacity-building, participation resources and ease of participation. We shall return to this point later.

The case for a common approach

At an instrumental level, informants for this study are agreed, there is clearly no single right approach for information and participation in internet governance. Different agencies have developed different processes in order to deal with different kinds of decision because these differences have proved useful in enabling them to make the decisions that they need to make.

As already noted, many of these processes are more inclusive than is commonly found in other areas of international governance. Again, this is a result of historic experience. Participants in existing internet governance agencies are likely to be strongly committed to the processes they have and may well be reluctant to change them in line with outside preferences.

Concerns about the inclusiveness of internet governance bodies are nevertheless widely expressed in fora like the IGF. Many developing country stakeholders consider ICANN, for

example, to be dominated by particular geographical and vested interest groups. Non-technicians, and developing countries again, find it hard to engage within a highly technical membership-based forum like the IETF. The language in which issues are discussed (usually English) is also a barrier to many would-be participants. At national level, non-governmental stakeholders in many countries have little opportunity for involvement in national decision-making, including that which concerns the adoption of national positions in international discourse.

In many cases, the distinction here seems to lie between the (relatively open) scope of information and participation frameworks in internet governance bodies (which enables mass participation) and the (relatively closed) requirement for expertise (which favours a knowledgeable or "insider" élite). The opportunity to make input into the process, in other words, is not matched for most would-be participants by the opportunity to have influence. For many, especially in civil society, this is frustrating. The call, from them, is for more inclusiveness.

Inclusiveness

Inclusiveness, here, might be taken to mean the opportunity and means for all who have an interest in a particular general policy or specific circumstance to offer their opinion, have the opportunity to argue for it and expect it to be considered on its merits alongside those of other stakeholders.[10] In considering how the call for greater inclusiveness might be handled, it is worth looking first at the case for inclusiveness as it is seen by different actors.

Two main objectives are put forward for inclusiveness (both multilateral and multistakeholder). These are, in brief:

- that it has normative value in itself, *i.e.* that it is "right and just" that all who are affected by a decision should have the opportunity to express their view and (at very least) expect attention to be paid to it;
- and that is has practical value in improving the quality of decisions made – because it engages more and wider expertise and experience, improves understanding of and attention paid to context, and facilitates consent and compliance among those affected by decisions made.

The former of these objectives is most attractive (and of most value) to those who are currently or normally outside the formal decision-making process (*e.g.* citizens, NGOs, local community organisations). It lies at the heart of the Aarhus Convention. The latter is most attractive to those who currently participate and have influence within the formal process (national and local governments, property developers, internet engineers *etc*). Information and participation arrangements that deliver *both* objectives are most likely to be successful and sustainable, because they will seem to all stakeholders to add value for them.

[10] As an aside, it is worth noting that discussion about this sometimes confuses two meanings of the word "interest" in British English. Historically, the word's primary meaning was of a right, claim or share in an asset or resource, or (by extension) the possibility that the outcome of a particular decision would have a material impact on the individual or legal person concerned. This is how the word is used, for example, in the term "having an interest in a business". It differs from the more general contemporary meaning of informed curiosity ("being interested in internet governance"). It is important to be clear, when considering information and participation rights, whether these are being accorded to anyone who is curious about a decision or specifically (and perhaps exclusively) to those that are affected by it.

Two points arise from this which are important when considering information and participation arrangements.

The first is that the opportunity to participate does not necessarily lead those who will be affected by a decision to do so, particularly if they lack expertise or confidence within the decision-making context (or the necessary language skills). Decision-making bodies need to put resources into enabling participation by providing useful and usable information about process and issues, by making decision-making meetings accessible at low cost, and by mitigating their perceived social exclusiveness. Even so, it can be difficult – not least in specific, local circumstances – to ensure that the views of those most affected (such as local citizens) are heard as clearly as external groups with vested interests (including private sector firms and advocacy groups).

The second point is that those at the centre of decision-making processes are often concerned that greater inclusiveness may reduce the quality of decisions made or delay the process of decision-making. Expertise is obviously important where technical decisions are concerned: what policymakers or local people want may not be technically feasible or only achievable at cost to others. Technical expertise needs to be accorded its due weight. Timeliness is also particularly important in a fast-moving sector such as internet. Decisions that take too long to make will be overtaken by events; searching for the best way to manage something can lead to it being implemented in practice without any management at all. Information and participation arrangements that facilitate inclusiveness need to mitigate these risks and to enhance the quality of decision-making in order to secure support.

Principles and practice

The proposition examined in this paper is essentially concerned with process, *i.e.* with the means of engagement between stakeholders and decision-making fora. It is not concerned directly with substantive issues, *i.e.* with the particular policy choices that are being made. The case for inclusiveness, as outlined above, is that more inclusive participation has more legitimacy and credibility, and that it should contribute positively to the quality of decision-making.

It is, of course, difficult entirely to separate substance from process issues. The outcomes of policy debates are always likely to be influenced by who participates within them; indeed, that is part of what makes inclusiveness contribute positively to legitimacy. In considering process issues, however, it is important to separate the value of inclusiveness *per se* from its possible outcomes. We should not be concerned here, in other words, with achieving particular substantive outcomes, but with improving the quality of process.

It is important, however, to consider the *types* of substantive decision-making which are concerned. Three distinctions are particularly important here.

Firstly, as indicated earlier, substantive decision-making can be represented in a continuum ranging from:

- purely (or almost purely) technical issues, such as the functionality of routing protocols;
- to purely (or almost purely) policy issues, such as the regulation of child pornography on the internet.

Between these ends of the continuum lies a wide range of hybrid decision-making, some of which is more technical than policy-oriented, some more policy-oriented than technical.

Secondly, as already noted, decision-making can be divided into:

- strategic policy-making, which is concerned with the overall direction of policy (for example, whether energy policy should focus on renewable, nuclear or carbon sources; whether there should be more gTLDs);
- and specific decisions, which are concerned with particular instances of policy application (for example, whether a particular nuclear power station should be build, whether there should be a .xxx gTLD).

Modes of policy-making are often very different for general/strategic and particular/specific decisions. The Aarhus Convention establishes information and participation rights in both contexts, but recognises that their application differs in practice. This is particularly important where the identification of "interested" stakeholders is concerned (see footnote 9 above). Strategic policy-making can take a broad, general view of stakeholders when considering inclusiveness (governments, the private sector, civil society), whereas specific decisions need to pay much more (and more nuanced) attention to disaggregated interest groups (those living close to a nuclear power station; potential employees; local farm producers; *etc*.)

Thirdly, decision-making can be divided into:

- international or global decision-making, which is concerned with establishing rules or norms that apply across the board;
- and national decision-making, which is concerned with the application of those rules or norms within the legal, social, cultural, economic and political context of individual nation-states.

International decision-making in most policy domains (but not internet governance) is mostly conducted through intergovernmental organisations. National decision-making is mostly conducted through national and local government bodies. In *both* cases, there are very different experiences of the depth and scope of information and participation rights.

The structure and instruments of policy-making, and of inclusiveness, vary considerably between institutions. They vary partly because different institutions take different views of the value of inclusiveness, but also because different approaches to inclusiveness suit different types of decision-making.

The first challenge in developing guidelines or a code of practice is, therefore, to do so in a way that is applicable across this broad range of decision-making forms and fora. This suggests that guidelines or codes of practice need to be expressed in broad and general terms – sufficient to give substance to the WSIS principles but not to exclude particular decision-making areas. An example, consistent with the Aarhus Convention, might be a presumption in favour of accessibility of relevant documentation, *e.g.* a principle that "information used in decision-making should be accessible to all who are interested (or who have an interest), unless there are strong grounds (on the basis, for example, of national security or personal privacy) that override this principle in a particular case."

Process and participatory rights also vary substantially between countries, in whose national governance the degree of democratic practice and public involvement is highly diverse. Common principles in international institutions will not lead to consistent engagement in them across the spectrum of participating nation-states because of the very different rights to participate which people and organisations have within these different nation states.

A second challenge in developing guidelines or a code of practice is, therefore, concerned with achieving consistency of practice between countries. This is, obviously, much easier to achieve within a geographical region that shares many other governance practices and arrangements (such as that covered by the Council of Europe or UNECE) than it is within the entire global community (*e.g.* Member States of the United Nations). However, the possibility of testing at a national level within a region (such as that covered by the Council of Europe or UNECE) offers valuable potential scope for piloting guidelines or a code of practice at a regional level and for demonstrating its potential value.

Developing consent

As noted above, internet governance is highly complex and distributed. Many different entities establish rules and norms which have the effect of managing (or which seek to manage) internet resources and behaviour. These different entities have grown up separately, without a common understanding of governance roles and responsibilities. Each has its own established ways of doing things, which are rooted in history, in experience, and in (professional and national) cultural norms. Examples of these are briefly described above.

Shared experience in problem-solving – and the requirements for consensus and compromise that go along with this - have played an important part in developing an ethos of informally shared values and approaches to governance in this complex and distributed environment, as well as the agreement and formal adoption of written texts or code. Summarising IETF's practice as "rough consensus and running code" encapsulates this well (though it should be noted that the establishment of "rough consensus" is a managed process of assimilating ideas and experience, not the "wild west" scenario that many seem to envision). A key difference between the style of this kind of decision-making within the internet environment and the intergovernmental style more common in other policy domains might be described as that between "informal consensus-building" and "formal negotiation" (though each in fact has characteristics of both).

The development of decision-making processes in collective governance needs to be built around consent. Changes are only likely to be agreed if they reflect a desire for change on the part of those involved. This is true even where (as through the Aarhus Convention) governments can enforce change by legal instruments. It is even more so in voluntarist agencies with a strong culture of agreement and consensus; even more so again where existing principles and practice are highly valued.

Those involved in internet governance entities recognise that they are in general more inclusive in their approach to information and participation than other governance agencies. Those involved in particular internet governance bodies are generally strongly committed to the processes which they already have in place. Most informants for this study felt that it was important for any approach towards guidelines or a set of guidelines or a code of practice to recognise and build on the substance of inclusiveness that already exists within internet

entities. They felt that any approach which seemed to promote principles and practice from outside the internet space, without also rooting itself in dialogue with existing principles and practice, would meet with strong resistance.

This is surely right, and can in fact provide a solid basis for exploring the relevance of external experience like the Aarhus Convention. Although different internet bodies have different principles and practice concerning information and participation, these generally reflect an underlying ethos in favour of inclusiveness. It should be possible to distil principles from diverse practice which reflect that common ethos, and to relate those principles to those which have developed in other governance domains (such as Aarhus).

The decision-making needs of internet agencies also change over time as internet technology, markets and diffusion change. Having a set of guidelines or a code of practice could help internet agencies to manage the evolution of their processes over time in ways that better reflect their ethos of inclusiveness and maximise the value that can be derived from it.

A separate problem arises where entities are not exclusively concerned with the internet, particularly UN and other intergovernmental agencies like the ITU and WIPO, but here too a set of guidelines or code of practice may be helpful. In practice, the processes of agencies which are not primarily concerned with the internet will not be determined by those who are primarily concerned with internet, but by the wider constituencies which are served by those agencies (telecommunications ministries and businesses, for example, in the case of ITU). UN agencies are also bound by the multilateral, intergovernmental framework that applies to decision-making in the UN family.

However, even here, internet experience has led to adaptations. ITU-T, for example, works with the IETF to develop standards which cross the traditional boundaries of telecoms and internet engineering. Some suggest that it has softened its own standard-setting processes as a result, moving towards a more consensus-based approach. WIPO has worked with ICANN on the development and implementation of the Uniform Domain Name Dispute Resolution Policy (UDRP). The more instances of joint working like this that arise across institutional boundaries, the more the styles of decision-making in internet and traditional intergovernmental entities are likely to influence one another. A set of guidelines or code of practice, which sets out basic principles and draws attention to positive experience and potential models, could be very helpful in this process of assimilation.[11]

Developing resources and capabilities

Arrangements for more open provision of information and for more inclusive participation – of the kind included in the Aarhus Convention – provide means by which stakeholders can participate more effectively in governance. They are not, however, sufficient in themselves. The right to information does not mean that information can or will be used. The right to participate does not convey expertise or influence. Where agencies extend information and communication rights, they also incur responsibilities to enable would-be participants to

[11] It is important, however, to avoid the risk that an internet governance-focused set of guidelines or code of practice is seen as a "Trojan horse", intended to try and bring about changes in process in non-internet areas of work undertaken by agencies which are primarily beyond the internet space. While the same principles of inclusiveness may be desirable in these other areas, it would be unlikely to advance inclusiveness in internet governance if the debate were broadened to general principles of inclusiveness in international governance as a whole.

understand the issues with which they are dealing, the implications for their own constituencies, and the processes in which they hope to engage. Only if this happens is greater inclusiveness likely to improve the quality of decision-making.

These issues were addressed in the 2002 *Louder Voices* report, written for the G8 DOT Force, which commented as follows:

> *Lack of easy, affordable and timely access to information about ICT-related issues, decision-making fora and processes was consistently mentioned* [by informants] *as an important barrier to developing country participation by government and other stakeholders. The rapid increase that has taken place both in the range of issues on the international ICT policy agenda and in the number of organisations involved in ICT policy-making has made it very difficult for developing countries to keep track of what is going on, to anticipate key events, and to plan strategies for successful outcomes.*[12]

What is true of ICT policy in general here is true of internet governance in particular; and what is said here about developing countries is equally true of other stakeholders that have historically been marginal to governance processes or that lack the substantial participation resources of major players.

Some discussions have been held since the first IGF about ways in which internet governance institutions could address these practical participation issues. It is clear, for example, that the availability of all documentation does not provide a solution to the problems of inclusiveness: for many would-be participants, the availability of all documentation is simply overwhelming. What they need instead (or in addition) is reliable information which accurately and objectively explains the issues under consideration, the options under discussion, the current state of play in discussions or negotiations, and the process by which would-be participants can make their voices heard. The availability of such material in different languages is also important for enabling participation.

Detailed consideration of the means for effectively implementing information rights is not included the scope of the present paper. However, it should play a part in the further development of thinking around inclusiveness as work goes forward ahead of the Hyderabad meeting of the IGF.

PART 3 : RECOMMENDATIONS

This report was commissioned to review the potential for developing a code of practice on information and participation in internet governance, drawing on the WSIS Principles and the Aarhus Convention. Its principal purpose is to provide a basis for initial discussion amongst interested parties in a workshop to be held in Geneva on 23 May 2008.

The central proposition put forward by UNECE, the Council of Europe and APC for this work was summarised earlier in this paper as follows:

[12] The report is available at http://www.panos.org.uk/?lid=324.

- that the quality and inclusiveness of internet governance would be improved by steps to make information about decision-making processes and practice more open and more widely available, and to facilitate more effective participation by more stakeholders;
- that ways of achieving this might be encapsulated in a "code of practice" concerned with information, participation and transparency;
- that this "code of practice" should be based on the WSIS principles and might draw on the experience of developing and implementing the Aarhus Convention.

The aim of the workshop in May 2008 is to identify productive ways of moving this proposition forward in the six months prior to the Hyderabad meeting of the Internet Governance Forum. It is intended to hold a workshop on this subsequent work during that meeting of the IGF.

This third part of the report reviews the proposition for a code of practice in the light of the circumstances and analysis in Parts 1 and 2. It has three main purposes:

1. to make an initial assessment of the appropriateness of the proposition for internet governance;
2. to identify factors which are likely to advance or restrict its viability; and
3. to suggest a way forward for considering the proposition between the May workshop and the IGF meeting in December 2008.

Appropriateness of the proposition

Assessment of the appropriateness of the proposition in this case rests on three key points:

a) Internet governance is of significant and increasing importance. Many different agencies/institutions are involved, some of which are encompassed within the internet space while others have responsibilities reaching far beyond it. These agencies/institutions have very diverse ownership, management and participation structures, which offer varying degrees of inclusiveness – some of which go well beyond the norms in intergovernmental organisations.

b) There is nevertheless concern among many stakeholders about the quality of inclusiveness in internet governance. A commitment to greater inclusiveness was made in the WSIS principles on internet governance, adopted in 2003. The WSIS principles are, however, broad, ambiguous and open to different interpretations. They do not provide benchmarks against which information and participation practice can be measured.

c) Although it stems from experience in a different policy domain, the Aarhus Convention offers a set of principles and practices for information and participation which have gained the consent of all stakeholder groups (governments, private sector and civil society actors) in that domain. These principles and practices might provide a framework for developing benchmarks and/or common principles and practices for internet governance.

The first of these points is essentially a statement of fact. The second and third frame questions for consideration which are, essentially, as follows:

1. Is it desirable (appropriate) and feasible (viable) to move beyond the WSIS principles to more formal benchmarks or codes of practice?

2. Does the Aarhus Convention provide an appropriate basis or framework for doing so?

Whether it is desirable to move beyond the WSIS principles – to put more flesh on their bones – is a matter of opinion, which divides actors in and observers of internet governance. The wording of the principles was, after all, for many involved in WSIS, an act of creative ambiguity. Many now regard existing inclusiveness arrangements in particular IG fora as sufficient in practice, and regard their diversity as a reflection not just of history and culture but also of their fitness for contemporary purpose.

The case for giving the WSIS principles greater solidity and/or establishing a code of practice for inclusiveness rests on three main propositions:

- that it would give internet governance processes and decisions more credibility and legitimacy in the eyes of important stakeholder groups (notably, but not exclusively, civil society);
- that it would help different internet governance bodies to coordinate their work and make decision-making more consistent;
- and that it could improve the quality of decision-making by ensuring that a fuller range of views and a wider range of experience is brought to bear (notably at the interface between technical and policy concerns).

The principal arguments raised against building on the WSIS principles can be summarised as being:

- that it is unnecessary and may introduce new areas of conflict into governance;
- that it may jeopardise the innovativeness, creativity and responsiveness of internet governance;
- and that it may adversely affect the quality of decision-making, in particular by lowering the general level of expertise and/or requiring longer time-frames for decisions to be made.

This paper takes the view that the potential advantages of seeking to give more substance to the WSIS principles are significant, and that it would be worthwhile exploring further the possibility of developing a set of principles or code of practice that could secure wide acceptance within the internet governance community. The risks identified are genuine but can and should be addressed in the design of any more substantive set of principles. In any event, the way in which the internet evolves means that any instruments which tend to inhibit innovation or delay decision-making are unlikely to prove sustainable.

The Aarhus Convention is, in some respects, highly specific to its context – official decision-making on issues affecting the environment within its signatory countries in Europe. This context is very different from the distributed architecture and largely non-governmental character of internet governance. Provisions of the Convention that are concerned with the incorporation of mandatory rules into governmental practice, with enforcement, and with judicial and quasi-judicial powers are therefore irrelevant to this analysis.

Where the Convention does have potential relevance is in:

a) establishing broad principles that (its signatories agree) should underpin inclusiveness (information and participation); and

b) identifying ways in which these principles might be operationalised by governance agencies.

The Aarhus principles were summarised earlier in this paper as follows:

- that citizens and others should have *rights of access to information, public participation in decision-making, and access to justice* in respect of environmental issues (article 1);
- that the governments of states party to the Convention should legislate and regulate *to establish and maintain a clear, transparent and consistent framework to implement the provisions of* the Convention, including appropriate means of enforcement, and should *assist and provide guidance to the public* in making use of these provisions (article 3);
- that they should also *promote environmental education and environmental awareness among the public*, including Convention entitlements (article 3);
- that they should *provide for appropriate recognition of and support to associations, organisations or groups promoting environmental protection* (*i.e.* to relevant civil society organisations) (article 3);
- that they should ensure that adequate information is collected by public authorities about *proposed and existing activities which may significantly affect the environment* , and should *publish a national report on the state of the environment* at regular intervals (article 5);
- that public authorities should make information covered by the Convention freely available to the public, on request and as soon as practicably possible, unless disclosure is deemed appropriate for certain specified reasons (which must be stated publicly) (article 4);
- that the public should be informed, *early in an environmental decision-making procedure and in an adequate, timely and effective manner* about any specific environmental matter than affects them, afforded the necessary information about it to understand and analyse its impact, and provided with means to express their views and otherwise participate in the decision-making process (article 6);
- that the public should have the right *to participate during the preparation of plans and programmes relating to the environment* (*i.e.* to general environmental policymaking) and *during the preparation … of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment* (articles 7 and 8);
- that there should be rights of appeal for parties who feel that their rights to information and participation have been infringed (article 9);
- and that these rights should be exercisable by both individuals and groups/organisations (including civil society organisations), whether located within or without the national territory.

Although the expression of these principles is sector-specific, the broad underpinning principles are not sector-specific and can be considered relevant in other sectors. They also lie at the frontier, the cutting edge, of inclusiveness practice within traditional areas of governance. For this reason in particular, they offer a useful frame of reference for comparison with their own principles and practice by actors in other spheres, including internet governance.

Viability of the proposition

The viability of any proposition of the kind discussed here depends on the extent to which significant actors in the decision-making space are prepared to consider it and ultimately join together in adopting common principles. Consent, in other words, is crucial to the viability of

any code of practice. It is particularly crucial in the internet space because of the nature of its current governance arrangements.

There is no scope in internet governance as it stands today for imposing codes of practice in the way that the Aarhus Convention imposes obligations on governments, international agencies and other stakeholders. Nor would any imposed set of rules be considered desirable or viable by most actors. The enforcement provisions of the Aarhus Convention are therefore irrelevant to this analysis; as stated above, only its principles and some of its information and participation practices are relevant for present purposes.

Again as noted earlier, all internet governance agencies have existing provisions for inclusiveness. These provisions are often more inclusive than those in other policy domains, at least where non-governmental entities are concerned (*e.g.* ICANN, IETF, RIRs). Any proposal for a common set of principles or guidelines in this area depends on securing buy-in from those internet governance agencies to which it might apply. To achieve this, any initiative must:

- represent an exercise in mutual learning, which draws on experience within and outside the internet domain, and which genuinely seeks to build on good practice across the board;
- offer significant added value in terms of quality of decision-making as well as inclusiveness;
- and address concerns among internet governance stakeholders about risks to organisational ethos and the effectiveness and functionality of decision-making process.

In this context, it would seem essential to move forward with some caution – testing the options first with those agencies and in those national internet governance environments where there is most interest in exploring the desirability and potential development of a common approach – building a "coalition of the willing", one might say. If common principles develop traction among such stakeholders, then they are likely to be able to reach beyond them to the wider internet governance community. The recommendations in the final section of this paper are therefore based on gradual and exploratory development of the proposition for a code of practice.

What principles? What practice?

The framing of the terms to be considered in an exploratory process is obviously important. The first stage recommended for moving forward (see below) is one of dialogue with key internet governance entities and some national stakeholders. The following paragraphs look at three ways in which this dialogue might be initiated. These are intended for discussion during the Geneva workshop.

One approach would be to avoid suggesting any draft statements of principle from the outset, but to organise assessment of experience in IG agencies and with the Aarhus Convention around different dimensions and stages of inclusiveness, for example:

- collation of information
- access to information about issues and processes
- participation rights and responsibilities in broad policy-making
- participation rights and responsibilities in decision-making about specific issues

- transparency of outcomes
- supporting information and resources to would-be participants
- stakeholder engagement in implementation; and
- monitoring and evaluation of inclusiveness.

This approach would emphasise the comparative aspects of the work.

An alternative would be to suggest clear and specific propositions which could be explored as a starting point in dialogue with internet governance agencies. Such propositions would need to be understood as initial suggestions rather than attempts at final wording, and would need to be expressed in very general terms. Otherwise, they might easily have the effect of constraining rather than stimulating exploratory dialogue. The following examples of possible propositions of this kind are put forward with some diffidence and reluctance, for this reason. They are intended to be purely illustrative and only to initiate discussion at the May workshop.

1. *All those who consider themselves to be concerned about internet governance issues – whether in general or specific – should be able to express their views within policy processes.*

2. *Information which is used in internet governance should be made publicly available and readily accessible.*

3. *Internet governance agencies should actively facilitate access to information and foster knowledge within the wider community about the issues with which they are concerned and the decisions which are being made.*

4. *Internet governance processes should enable and encourage those who are concerned about internet issues to contribute to policy debate, with the expectation that their views will be properly considered.*

5. *Opportunities to participate in internet governance processes should be widely publicised.*

6. *Participation in internet governance processes should be monitored and evaluated, with a view to improving inclusiveness, the quality and timeliness of decision-making and the cohesiveness of internet development..*

7. *These principles are intended and should be used to improve the quality of internet governance and should not be used to delay timely decisions from being taken.*

8. *These are default principles. Any exceptions to them which are required should be subject to open discussion and public explanation.*

A third approach would be to construct a dialogue around the Aarhus Convention principles themselves. This would involve comparing principles and practice in existing IG agencies with Aarhus principles and practice, in order to identify:

- where differences exist between them;
- why these differences have arisen;
- whether established IG practices offer more or less inclusiveness than the Aarhus provisions;

- and whether there might be merit in adjusting principles and practice as a result of this consideration.

A choice needs to be made between these approaches or for an alternative approach.

Stakeholders in the process

Internet governance involves a wide range of stakeholders. If an initiative such as that proposed here is to have influence, it needs to draw engagement from across the range of stakeholders involved and develop ideas which are attractive in diverse stakeholder groups. It will therefore be important for it to include engagement from internet governance entities themselves and support from actors within all of the main stakeholder communities, *i.e.* intergovernmental agencies, governments, the private sector and civil society.

Given the sensitivity and complexity of the issues involved, it would seem most productive at this stage to build on the potential engagement of a relatively small group of interested parties rather than to seek comprehensive engagement across the whole range of internet governance entities and stakeholders. Guidelines developed by such a "coalition of the willing" could then be presented for wider discussion in the wider internet community, beginning at the Hyderabad IGF. Subsequent agreement on common principles by some entities and stakeholders might also lead to their subsequent endorsement by others (rather in the way that the Aarhus Convention anticipates other environmental agencies adhering to its principles in time).

The existing partnership proposing this initiative includes two intergovernmental organisations (UNECE and the Council of Europe) and a leading international civil society association (APC). The participation of UNECE and the Council of Europe should facilitate engagement by governments within their region, but it will be important to reach beyond Europe in dialogue with governments and other stakeholders, and so to engage with other regional actors. The involvement of a substantial business partnership would also be valuable, particularly one which represents businesses that are substantially concerned with the internet and ICTs.

The most important stakeholders are, of course, internet governance entities themselves. The discussion above has recognised the sensitivities involved in discussing changes to governance practice. For the initiative to develop traction, however, it is essential that it engages directly with a number of key internet governance agencies. The following paragraphs suggest a process of dialogue which seeks to build on mutual exploration of existing and potential practice with the aim of enhancing implementation of the WSIS principles.

A suggested process

This final section of the paper considers how the proposition discussed here might be taken forward towards the Hyderabad meeting of the IGF in December 2008. A four-stage process is suggested.

The **first stage** proposed is one of dialogue with key internet governance entities and other stakeholders. The aim of this dialogue would be to consider existing information and participation practice – to learn from the approaches and experience which internet

governance entities have in using different models in this area; to compare their experiences with the principles, process and effectiveness of more traditional governance practice; to compare them also with one another; and to identify possible broad principles which might be considered applicable across the internet governance domain.

This review would consider the *capacity* of different stakeholders to participate, as well as information and participation *rights*.

The Aarhus Convention provides a useful starting point here because it can be taken to represent "best practice" in traditional governance circles – the frontier of existing information and participation rights in such domains. Comparisons could be made both with Aarhus principles, as set out above, and Aarhus practice, likewise. This should be a genuine exercise in mutual learning.

For the present paper, it has been possible only to discuss these issues with selected key informants, not to undertake a systematic review. What is suggested here is a more substantial research exercise. This could be undertaken as an independent research project for UNECE, the Council of Europe and APC, but (as indicated above) it would be more revealing and have greater credibility if it were jointly sponsored by them and the internet governance agencies concerned.

To be manageable within the time available, work along these lines will have to be selective and should ideally focus on the most strategic IG entities. Because the key aim is to compare experience in internet and traditional governance models, it would make sense to concentrate on entities whose roles lie predominantly within the internet space. Subject to discussion, these might include (for example) the IETF, ICANN, W3C, RIPE (because of its European locus) and one or two others chosen to reflect geographical and functional diversity. It would be useful, however, also to look at the approach and experience of an agency which is important to internet governance but which was established before the internet and which is bound by more traditional approaches to participation – most obviously, ITU-T.

As well as doing this research at an institutional level, it would be valuable to look at experience within a small number of national internet governance environments, particularly those where governments and internet agencies have sought to innovate in information and partnership arrangements. It would be natural here to include one or two Council of Europe/UNECE countries (the Government of Switzerland has expressed interest in the initiative, while the United Kingdom has interesting experience around best practice and the notion of a national IGF). However, it would be essential also to include countries from other (different) continents in this work. Again, while research could be undertaken independently by UNECE, the Council of Europe and APC, but it would be more useful and have more credibility if conducted in partnership with a key internet governance entity in the country concerned, perhaps its domain name registry. (Discussions at a national level within Europe might also help to elucidate where the Aarhus provisions have proved particularly successful, and where/why problems have arisen with them.)

As well as these substantive dialogues, it would be valuable for the work to seek views from a wider range of participants in internet governance debates, through fora such as the IGF Multistakeholder Advisory Group, the private sector International Chamber of Commerce Business Action to Support the Information Society (ICC/BASIS) partnership, the civil society Internet Governance Caucus and the academic community Giganet (this list is illustrative only.)

The **second stage** proposed would build on this review by seeking to identify what aspects of the experience of the fora/countries reviewed, and of best practice in more traditional governance as represented by the Aarhus Convention, might have general applicability within the internet governance. In other words, it would seek:

a) to establish whether a clear, common set of principles could be put forward which could help internet governance agencies fulfil their commitments to inclusiveness, and what those principles might be; and
b) to identify any approaches or instruments which have proved especially successful for particular internet governance entities or within Aarhus implementation, which might be considered by internet governance agencies in general.

The output from this stage would be a draft outline framework for a set of guidelines or code of practice – probably no more than a page in length – which would be used as a basis for further discussion with key actors, particularly internet governance entities, before being finalised for stage 4 (below).

A **third stage**, which might be conducted alongside this second stage, would look specifically at the capacity requirements of those seeking to participate more effectively in internet governance. This would build on some of the participation challenges raised in the 2002 *Louder Voices* report to the G8 DOT Force, such as the need for ICT decision-making bodies (and perhaps others) to provide information to would-be participants in forms that facilitate participation (synopses, identification of key issues, translation of core documents, *etc*.). This could build on earlier work by the *Louder Voices* authors and by APC and others following the Athens IGF.

The **fourth stage** would be the presentation of the second stage output – adjusted following discussion with partners and key informants – at a workshop to be held during the Hyderabad meeting of the IGF. The purpose of this workshop, which has already been proposed through the IGF workshop process, would be to discuss the proposition as it stands; to establish what wider support there might be for agreement on a set of guidelines or code of practice; to identify how the proposition might be taken further in light of this after the IGF; and to identify which actors within the internet governance community would be interested in furthering the proposition by exploring possible adaptations to the ways in which they work.

The following timeline is suggested for these four stages.

May	Workshop in Geneva (23 May)
June	Agreement on programme of work
July August September	Stage 1 - dialogue with selected IG entities Stage 1 - dialogue with selected national IG regimes
October	Stage 2 - discussion and finalisation of proposition
November	Stage 3 - assessment of capacity requirements
December	Stage 4 - workshop at IGF (3-6 December)

It is beyond the remit of this study to consider the resources (financial and otherwise) needed for this work, and these will obviously need to be considered carefully before proceeding. If further work were to be undertaken after the Hyderabad IGF, however, it is suggested that this

should include – or be associated with – an effort to make a comprehensive list and map of agencies engaged in internet governance and their responsibilities, of their relationship with issues, and of their participation arrangements. It might be useful if this also included key documents and agreements in each area of governance. While the present proposition is best explored through partnership with selected internet governance fora and stakeholders, if the long term aim is to achieve greater consistency across internet governance as a whole, it will be vital to build a comprehensive resource of this kind.

CONCLUSION

This paper has reviewed the proposition, put forward by UNECE, the Council of Europe and the Association for Progressive Communications, to develop "a code of practice on participation, access to information and transparency in internet governance," drawing on the experience of the Aarhus Convention in an effort to fulfil the WSIS principles for internet governance which were agreed in Geneva in 2003.

At present, there is a wide range of diverse experience with information and participation principles in internet governance. There is a good case for investigating whether it might be possible to develop common principles by drawing on this experience and on best practice in governance in other policy domains. The Aarhus Convention can readily be considered best practice outside internet governance for this purpose.

The report suggests a framework for continuing work on this theme ahead of the Hyderabad meeting of the IGF in December 2008, which would seek to build a constituency of support around consensus principles that would put flesh on the bones of the WSIS principles, and might provide a basis for gradual deployment within the wide range of fora concerned with internet governance today and in the future.