

Instability in Cyberspace is as Dangerous as Climate Change: Towards a New Deal for Digital Cooperation

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1. Instability in Cyberspace is as dangerous as Climate Change. To stabilize cyberspace, there is a need for enhanced digital cooperation and the development of a political legal environment, which guarantees and promotes cyberstability. Such regulatory mechanisms and frameworks have to be embedded into the existing international legal system as, inter alia, the UN Charter and the Universal Declaration of Human Rights. There is no need for a new international law. What is needed, however, is an enhanced understanding, how the existing law should be implemented in the digital age. Digital cooperation needs both stability and flexibility. With other words, stable Internet Governance frameworks have to be designed in a way, that they do not hamper innovation and allow creativity. To find **the right balance between stability and flexibility**, an ongoing iterative discussion and negotiation process among all stakeholders is needed. Such a process can get some inspiration from the development of technical Internet protocols - as the RFC series under the IETF - where open standards allow further adjustments and improvements.
2. 15 years ago, when the **WSIS Tunis Agenda** was negotiated, there was a global consensus, that the use of the opportunities of the information age – bridging the digital divide, development of infrastructure, digital education, new business opportunities - should get first priority. Kofi Annan, the former UN Secretary General, called the WSIS Summit a „Summit of Opportunities“ and a „Summit of the Future“.
 - a. Proposal for strong regulation were seen as pre-mature and as a risk, to create barriers for innovation and creativity. „If it isn't broken, don't fix it“ argued one of the fathers of the Internet, Vint Cerf, and he got a lot of support. More or less the WSIS Tunis Agenda took a „wait and see“ approach with regard to Internet regulation.
 - b. The Internet Governance definition, a part of the Tunis Agenda, allowed a flexible response to new emerging problems by differentiating between the layer of the „evolution“ and the layer of the „use“ of the Internet, making clear, that there are differences between the „Governance OF the Internet“ and the „Governance ON the Internet“.
 - c. Since 2005, there had been numerous efforts to bring new elements to the Tunis Agenda, as the OECD Principles for Internet Policy Making (2011), the Council of Europe Ministerial Declaration on Internet Governance Principles (2011), the NetMundial Sao Paulo Declaration and Roadmap (2014) and the recent Paris Call for Trust and Security in Cyberspace (2018).
 - d. After 15 years of „waiting“, the „Future“, Kofi Annan was referring to, is today's reality. We see now clearer not only the opportunities, but also the risks and threats of the Digital Age. And we have to recognize, that some parts of cyberspace, mainly related to the „use of the Internet“ needs a „fixing“.
3. Intergovernmental arrangements will remain an important element in settling international conflicts, also in the digital age. However, the classical multilateralism of the 20th century needs to be enhanced towards an „**innovative multilateralism**“ to meet the new challenges of the 21st century. In the Internet Governance Ecosystem – which can be compared with the complexity and broad variety of the rainforest – there are next to states and governments also numerous non-state players who manage, control and develop elements of the global Internet on different layers. Those players from business, civil society, academia and the technical community has to be pulled together with governments into

new multistakeholder and decentralized mechanisms for policy development and decision making which allow – on a case by case basis – innovative solutions for new emerging problems.

4. There is a need for a **holistic approach**. Like in the Internet Architecture, where every computer is linked to every other computer, in the Internet Governance Ecosystem any Internet related public policy issue is interconnected with any other Internet related public policy issue. And its solution is dependent from the functioning of the technical basis and the public core of the Internet (Domain Name System, IP Adresses, Routing etc.). Decisions makers have to be aware that every single political decision with regard to the Internet has consequences for other Internet policy issues. Just to take the recent case of the European GDPR, a legal instrument to protect the individual human right of privacy. This regional regulation has global policy implications (inter alia for cybersecurity) and business consequences (for social media, digital trade and the domain name market). Legal arrangements on cybersecurity will affect the digital economy and touch on human rights. Sustainable solutions for digital cooperation will be found only, if all aspects, including unintended sideeffects, are considered.
5. The emergence of a **neo-nationalistic unilateralism** approach to Internet Governance and digital cooperation in recent years risks to diminish the opportunities of the digital age. It can lead to the introduction of new barriers for the free flow of data, ideas and information regardless of frontiers, stifle innovation and reduce creativity and can undermine one of the most important pre-condition for digital cooperation: Mutual trust. National legislation, which ignores the open nature of the global Internet, could become counterproductive and risks to fragment the Internet into “national segments” or „walled gardens“.
6. The new Internet Governance complexity calls for innovative approaches to Internet related global negotiations. Time is ripe to move towards a „**New Deal for Digital Cooperation**“. To achieve such a deal, there is no need - and it would not be realistic – to create a new universal global negotiations mechanism for the Internet, similar to models which were used for the making of the Law of the Sea Convention or the Paris Pact on Climate Change. A „New Deal on Digital Cooperation“ should be the outcome of an open and decentralized process of enhanced communication, coordination and collaboration among all stakeholders in their respective roles and on equal footing, using the existing institutional mechanisms.
 - a. Deal making starts with discussion. The IGF is a great place to enhance communication among all involved players. With the introduction of „IGF Messages“ as a concrete output (since the 12th IGF in Geneva 2017) there are new opportunities to move from the discussion to the decision making level. The IGF itself has no negotiating capacity. Its role is to enable decision makers. However, there is no mechanism so far how to bring the outcome of the IGF discussions to the decision makers. There are many intergovernmental organisations and non-governmental institutions, within and outside the UN system, which have a decision making capacity for Internet related issues: WTO for digital trade, WIPO for Copyright and intellectual property, UNESCO for education and science, ITU for telecommunication infrastructure development, the 1st Committee of the UN General Assembly for cybersecurity and peace, ICANN for the DNS, RIRs for IP addresses, IETF for Internet protocols etc.
 - b. What is missing in the Internet Governance Ecosystem is a link between the „discussion layer“ and the „decision layer“. One option to close this gap could be the launch of a „distribution mechanism“ which sends the annual IGF messages to the relevant intergovernmental or non-governmental organisations for consideration and inviting them to report back. Why not to use the existing but not very active UNGIS, a group of nearly 30 UN bodies and to move it into a multistakeholder network by including relevant non-governmental bodies to form such a „distribution mechanism“? Ideas discussed in the IGF context could enrich intergovernmental negotiations, problems in those negotiations could be discussed in the IGF.
 - c. Additionally, one could enhance the informal or formal connections among various related institutions on a bilateral basis by introducing „liaisons“ or a „mutual reporting“ on issues of common interests. Such an „connecting mechanisms“ would bring relevant players into a more

deep exchange of experiences, best practices and innovative ideas. The various connections would not need a centralized coordination body. The connections would be formed bottom up and where needed. Such a web of connections could constitute a rather flexible collection of links which would look as a whole like a „Spaghetti Ball“, based on the end-to-end principle and hold together via joint protocols and procedures, described in the Tunis Agenda.

7. Elements of such a „New Deal for Digital Cooperation“ could be discussed in **four general streams for cybersecurity, digital economy, digital rights and technology development**. It could lead to four Outcome Documents, which would be negotiated independently by different bodies. Such decentralized and multistakeholder negotiations could become part of the preparation of the WSIS+20 conference, scheduled for 2025.
 - a. **A Global Cyberpeace Agenda** (norms for good behaviour in cyberspace for states and non-state actors);
 - b. **A Global Digital Marshal Plan** (an Action Plan to „digitalize“ the UN Sustainable Development Goals);
 - c. **A Universal Framework of Interpretation for the Protection of Human Rights in the Digital Age** (in particular for privacy and freedom of expression)
 - d. **Global Guidelines for the Technical Development** (in particular for the Internet of Things, Artificial Intelligence, 5G and other Internet related innovations).

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