Europe, WSIS and Negotiating Global Communication Power

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Abstract

The paper examines the exercise of power in negotiating new policies and institutional frameworks for global communication governance, especially the European Union’s initiatives to renegotiate Internet governance arrangements at the World Summit on the Information Society (WSIS, Geneva 2003 and Tunis 2005). The new forum for discussing Internet governance arrangements created in the process, the Internet Governance Forum (IGF), was hailed as a great accomplishment by the EU and a testimony to its successful efforts at creating consensus. According to its own analysis, the EU continues to play a leading role in promoting open and inclusive Internet governance against unilateral and government-led visions. However, EU’s efforts are still far from accomplished. The paper discusses the limits of Europe’s normative or ethical power in creating new global institutional frameworks for information and communication. The paper first analyzes approaches to global communication governance and their relationship to current debates about the nature of power in the global context. Third, the attempts of the EU to internationalize Internet governance are analyzed against EU’s other WSIS activities and against Europe’s previous record in global attempts to re-negotiate power in the area of communications.

1. Introduction

Facilitating and shaping the progress of communication beyond national borders is the area of activity where states first discovered the need for multilateral agreements. The International Telecommunication Union (ITU), founded in 1865 by 20 European states as the International Telegraph Union, the ITU remained the primary institutional site for multilateral global communication governance negotiations for well over a century. The ITU was also the first specialized agency in the newly created United Nations after World War II, trusted to administer spectrum space and international communication standardization.

At the end of the 1990s, the information and communication revolution and the emergence of the Internet destabilized this order. The complexity of information and communications networks, the importance of trade in information technology products as well as the significance of information and communications technology for the global financial system has challenged prevailing systems and structures of governance. The structures that were previously based on mutually exclusive territorial monopolies of force have now given way to an increasingly complex system involving not only governments and international organizations,
but also corporations, supranational bodies, hybrid organizations, non-governmental organizations and temporary networks.

The establishment of a new hybrid organization, the Internet Corporation for the Assignment of Names and Numbers (ICANN), for the administration of the Internet is regarded as a milestone in this transformation of the global communication order. The creation of ICANN as a non-profit multistakeholder corporation under the de-facto authority of the US government has shifted the balance of power towards a global unilateral regime over which other states or their consortiums have little influence. The European Union (EU) has attempted to come to terms with this transformation with varying success.

The EU has steadily maintained the position that governments should have a greater role in deciding global Internet governance arrangements. However, at the same time the EU has been internally divided concerning the scope and extent of such involvement. The aim of this paper is to assess the ways in which the EU has sought to influence the institutionalization of global Internet governance. The focus is on the EU’s attempts to negotiate between the developing and emerging countries’ demands for a global intergovernmental settlement and the United State’s insistence on continuing with a multilevel hybrid arrangement. This paper claims that the EU has been modestly successful in introducing change by developing a normative standpoint based on ‘European’ values of democracy, transparency and openness. This activity reached a culmination point at the at the World Summit of the Information Society (WSIS), the two-phase United Nations summit arranged in Geneva 2005 and in Tunis 2006.

The WSIS was the first formal gathering to elevate the question of Internet governance to the status of a global affair. The paper analyzes the EU’s Internet governance policies before, during and after WSIS in the context of the EU’s overall aims in the Summit1. In what follows, I will trace the evolution of the EU’s position towards Internet governance issues through a series of international negotiations peaking at the WSIS. Prior to the Geneva Summit, the EU found itself in a difficult position when the inability to agree even on the definition of Internet governance threatened to bring the entire Summit process to a halt. However, the standstill in Geneva provided the EU the window of opportunity to modify its earlier confrontational and interest-based claim for a more prominent role in Internet governance in favour of “enhanced cooperation” emphasizing multistakeholder consensus and dialogue based “European” values. A compromise negotiated by the EU was instrumental in paving the way for the Internet Governance Forum (IGF) initiative in Tunis the following year. The paper examines whether the EU’s WSIS activities qualify as a manifestation of Manner’s ‘normative power Europe’ in global communication governance.

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2. The rise of the Information Society and Normative Power Europe

Conceptions of the EU as a normative power (Manners 2002; 2006; 2008, Whitman 2011) are today commonly evoked in research seeking to define the EU’s international role. While related concepts such as ethical power (Zielonka 2008, ) emphasize the dimension of responsibility and morality in the EU’s policies, normative power Europe refers to the ideational impact in defining the room for maneuver in different areas of policy and regulation, especially in creating norms and values and shaping conceptions of the normal (Manners 2002; 2008).

Researchers have applied the concept of normative power Europe to a wide range of topics from EU enlargement (Barbé & Johanson-Nogués 2008) to the EU’s global environmental policies (Kelemen 2010, Lightfoot & Burchell 2005). Information and communication, however, is a field that international relations and EU scholarship has more generally eschewed. Until lately communications policy was primarily a matter of state sovereignty and with the exception of occasional disputes over the dissemination of propaganda during the Cold War, not the stuff of diplomacy and high profile negotiations on the international arena (Price 2001). For much the same reason in the broader context of European integration, communication has not been a priority. Prior to digital convergence, communication was not a topic of European cooperation, other than in a very specific and narrow technical, operational and commercial cross-border sense limited to the intergovernmental structure of the Council of Europe or between national monopolist administrations working within their professional associations (Michalis 2007). Even since, the EU’s Information Society strategies and global position as developer, producer and market for advance information and communication technology has defined European influence in the area as use of economic power. The ICT industry-based conception of ‘communications’ has overwhelmed thinking about the normative basis of the EU’s communication policies. The EU’s self-declared emphasis on productivity and promotion of the competitiveness of European firms in the international information and communications market helps to strengthen the view that European activities in the area are more fruitfully approached from the standpoint of interests rather than ideas.

Global communication, however, is redefining power in world politics in ways that traditional theories of international relations have failed to capture (Tehranian 1997). The Internet has developed and grown into a global communication network for billions of users largely under the radar of governmental actors – including the EU. Today, communication is a more important global domain than even ten years ago. Consequently, the increasingly visible but arguably unclear role of the EU in the governance of global communication remains overlooked as a potential domain of the EU’s normative influence. The concept of normative power Europe offers a base to examine the EU’s activities to carve a role in the Internet governance.

The aim of this paper is to show that even here the EU has promoted and defended multilateralism in the relatively short history of its active involvement. In the following chapters, I will trace the EU’s efforts to argue for the establishment of a multilateral governance structure for the control and regulation of the Internet on a normative basis. As ‘the devil is in the details’ I will mainly concentrate on the negotiations preceding to the WSIS in Geneva,
which according to many observers marked an important turning point regarding not only Internet governance issues but global communication governance more generally speaking.

3. The World Summit on the Information Society and the Internet governance dispute

At its inception, the World Summit on the Information Society (WSIS) was not about Internet governance but the digital divide that threatened to widen the gap between the wealthy North and the global South. The Summit, organized under the auspices of ITU reform, purportedly convened to address global issues raised by the development of information and communication technologies (ICTs) and in particular, the challenges met by developing countries.


For observers, who had anticipated advances in the areas of global information rights, development, and the involvement of civil society in IS policy development, WSIS was a disappointment. The WSIS promoted a neoliberal economic ideology (Lee 2008), representing a technological determinism of the crudest sense (Hamelink 2003) and marginalizing civil society actors (Hintz 2009; Franklin 2007). The negotiations were ‘hijacked’ by the debate on Internet governance, (Pickard 2007, Kurbalija 2007).

Those researchers who see the WSIS in a more generous light point out that the two main areas where WSIS produced actual results are Internet governance, and the introduction of multi-stakeholderism (Klein 2004). Although not invented at WSIS – organizations such as ITU and ICANN already incorporated industry partners in their administrative activities – the WSIS established a precedent within the UN for the actual involvement of non-state actors, especially the so-called civil society (primarily NGOs) and businesses (Raboy 2004; Cogburn 2009). As such, the WSIS was the first event where multistakeholderism was put to practice on the global political level. The question of Internet governance was also the area where the participation of civil society finally made a difference. Although the Summit failed to reach a final solution to the institutional problems of Internet governance, it succeeded in establishing a new format for multistakeholder dialogue, the Internet Governance Forum (IGF).

On a world political level, the World Summit on the Information Society has also been analysed as a struggle to re-institute the nation-state as the prime source of power in global communication (see, e.g., Benrath et al. 2007; Mueller 2010). It serves to say that the Summit was shaped by the interests, interaction and organization of different actors performing in a specific historical setting. Placing the question of the EU’s influence in this context requires an understanding of the WSIS as a political process and the EU’s efforts to make sense of the multiple levels of activity and institutional frameworks involved in this process.
Although the EU’s present role in global Internet governance affairs emerged during the WSIS, its foundations were laid out in earlier Internet governance debates concerning US unilateralism. In the next chapter I will briefly outline the background to the EU’s involvement in Internet governance affairs at WSIS.

4. Background: The EU vs. ICANN

Today, the European Commission claims that the EU plays “a leading role in promoting open and inclusive internet governance” (EC 2010). However, this role is open to question, and any case, short-lived. Even by its own admission, the EU Commission considers The Internet Corporation for Assigned Names and Numbers (ICANN) to be “the main decision-maker concerning the management and future of the Internet” by virtue of its management of the Domain Name System (DNS) of the Internet.

The EU Commission has an uneasy relationship with ICANN going back to its founding years. ICANN was created in 1998 under a Memorandum of Understanding with the US Department of Commerce as a private non-profit corporation to administer the global coordination of unique Internet names and numbers and to manage the Internet’s critical resources (Mueller 2010, 61).

The EU’s activity in ICANN has focused on two key areas, the Governmental Advisory Committee (GAC) and the naming of top-level domains (TLDs). Preceding the establishment of the corporation, the Commission was initially mainly concerned that the European private sector was under-represented in the Internet’s new self-governing mechanism. Worries over a permanent US jurisdiction over the global Internet, however, surpassed this concern (Leib 2002). The limited role for governments in ICANN was and is an arrangement that early all developing countries are greatly dissatisfied with. For these countries, US oversight of ICANN was an expression of U.S. unilateralism and hegemony in world affairs. Some European member states showed a preference for this position, advocating for the transfer of global Internet governance affairs and management of the DNS to the ITU.

The US made it clear that governments would only be able to participate in an advisory role. This standpoint forced the EU to accept a system of self-regulatory governance that it was both unfamiliar and uneasy with (Christou & Simpson 2007). In terms of securing that the interests of its member states and those of the common market are represented in ICANN, however, the EU achieved limited success. This it was done so by resorting to ‘strategic norm manipulation’; by employing rhetorical action while working within the standards of legitimacy of the Corporation (Christou & Simpson 2007). The Commission came to terms with the de-facto authority of the US government in ICANN and the Internet’s infrastructure. Instead of advocating the transfer of the management of the DNS system to ITU, the Commission pushed for a comprehensive multilateral process within ICANN to ensure the representation of public entities, including its own, in the new organization. The EU actively supported the establishment of the GAC by contributing to its operating principles. However, an certain easiness concerning a private transnational administration over what the EU considered a public good and by this definition a matter for states to preside over. ICANN’s approval of the creation of European Union’s own TLD .eu in 2007, the first regional TLD, was an im-
important symbolic step in dispelling some of the EU’s doubts about ICANN’s authority over Internet governance matters.

For the European Union and its member states, the involvement of the Commission in the establishment of the ICANN paved the ground for the EU to become a major player in the emerging Internet regime (Leib 2002, 169). According to Christou and Simpson (2007, 161-162) “the importance of rationalist, inter-state negotiation in the creation of governance arrangements for strategically crucial international assets” highlighted by the EU’s involvement in the process leading to the creation of ICANN was reaffirmed in the political process surrounding the WSIS. While there is no reason to deny the importance of rationalist negotiation, a closer look at the WSIS negotiations reveals that the institutionalization of global governance arrangements regarding the Internet requires a reconciliation of different normative outlooks held by a much wider group of actors than just states.

The WSIS provided the EU a window of opportunity for reintroducing and refining its normative arguments for the increased representation of governments and multilateralism in Internet governance. At the Geneva Summit, however, the EU was forced to reconsider some of its earlier standpoints in the face of the challenges to the shaping order posed by authoritarian regimes. The EU also took on an active role at the second part of the Summit in Tunis in negotiating a compromise to pave way for the internationalization of Internet governance.

As the ‘devil is in the details’ the following chapter will trace and analyze the WSIS process, paying attention to various twists and turns of the Internet governance debate and the EU’s role in acting as an intermediate between the US and emerging powers. In the following chapter, I will trace the WSIS process and in particular the EU’s attempts to influence the negotiations on Internet governance. The submissions and background material to the Summit (to be found on the ITU/WSIS website2) as well as the articles in the Summit publications (e.g., Stauffacher & Kleinwächter 2005) shed light to the process from the viewpoint of the two other stakeholder groups, states and business. These accounts are, however, the product of careful selection, providing insights only to the official, formal aspects of the process. This paper also makes use of original documents generated by Finnish diplomats who participated in the process. These documents archived at the Finnish Ministry of Foreign Affairs, also include unofficial material such as e-mails and confidential reports in addition to official reports written “for the record” by Finnish WSIS delegates.3

In contrast to many other EU member states, Finland assigned high priority to WSIS from the start. Finland has a long history of commitment to the UN and the prominence of Information society issues in both Finnish domestic and EU policy played a role. At the time of the Summit Finland’s reputation as a leading European information society was at its peak, boosted also by the success of the mobile phone corporation Nokia. In addition, the Information Society Commissioner at the time was a Finn, Erkki Liikanen. Finnish diplomats came to hold important positions during the Geneva negotiations, often acting as coordinator for the

2 http://www.itu.int/wsis/index.html

3 The author wishes to thank the Ministry of Foreign Affairs Archive for access to the records.
EU’s response to the Summit proceedings. The Permanent Mission of Finland in Geneva held
the main responsibility for representing Finland in the Summit preparation. Minister Counse-
lor Anneli Vuorinen, appointed to the negotiations on a full time basis, was a central figure
from the start, acting as chair for Western and Others Group (WEOG), and participating in
the EU coordination group from which meetings she reported regularly to Helsinki.

Finland’s Ambassador Asko Numminen was appointed as the EU’s other representative
along with France to the Bureau. The ambassador served as the chair for the subcommittee
in charge of producing the drafts of the Plan of Action for negotiation. Through their tho-
rough knowledge of the UN system, Finnish diplomats were able to play an influential role
during in the Geneva Summit (Kleinwächter & Stauffacher 2005). At Tunis, Finland with-
drew to a close observer of the process. However, it was at Geneva where Internet gover-
nance issues were first elevated to the highest international political level, and where the
guidelines on debating the matter further at Tunis were formulated.

These documents produced by the Finnish negotiators as well as interviews with the
principle authors of the documents in order to fill gaps and to clarify some details in the arc-
hival material, are used to examine the EU’s position in it during the Geneva summit.

5. Placing Internet governance on the WSIS agenda

The WSIS Geneva Summit produced a starting point for a new global Internet gover-
nance regime, unleashing a dynamic for change in the existing Internet governance mechan-
isms (Dutton & Peltu 2009). According to Klein (2004), the Geneva Summit offered re-
sources that provided an “excellent fit” for advocating Internet governance. Nevertheless,
Internet governance surfaced as an important topic on the WSIS agenda only a few months
prior to the actual Summit where the heads of state were to gather for the signing of the DE-
calction and Plan of Action.

As in any summit, the most intensive phase at the WSIS was the preparation stage. Deci-
sions pertaining to form; negotiating procedure and language for the political documents and
coming to a consensus is often more important in Summits than the actual outcomes (Klein
2004; Kurbalija 2007). The dynamics of WSIS were defined by the organizational setting and
mandates of the ITU and the UN and their location in Geneva. The UN General Assembly in
(Resolution 56/183, 21 December 2001) while according the lead role to ITU, recommended
that preparations for the Summit take place through an open-ended intergovernmental5 Prepa-
ratory Committee. The PrepCom would define the agenda of the Summit, decide on the mod-

4 The Bureau’s other members were drawn from Brazil, Brunei Darussalam, Dominican Republic, France,
Japan, Latvia, Libya, Mali, Mexico, Pakistan, Romania, Russia, South Africa, and USA and the host countries
Switzerland and Tunisia.

5 In drafting the resolution, the EU had favored the formulation proposed by the ITU which read “open-
ended Preparatory Committee led by states” instead of a “intergovernmental ” Preparatory Committee posed by
the G77 (YKE0009-40 26/11/01).
alities of the participation of other stakeholders, and finalize the drafts for the Declaration of Principles and Plan of Action. Three Preparatory Committee sessions (PrepComs, 1-3) took place in the first phase as well as a series of Regional conferences and thematic workshops.

The preparation of the Geneva Phase aimed at a political summit, where the participants would be the highest level representatives of governments. The agenda, which the Geneva Summit was to consider, flowed from and was ultimately defined by this goal. As a Finnish foreign office memo also acknowledged, “The preparation process is as important as the outcome”, underlining that the outcome of the Summit anticipated was not be an agreement but ‘only’ a declaration. There was some puzzlement among the EU representatives at Geneva over what would be left for the Tunis Summit and why it was in fact needed at all.

The first planning stage was dominated by a perception that the Summit was first and foremost about ICTs and development. This is reflected in the way that the European Commission outlined its position in a Communication to the Council and the European Parliament in December 2001. For the Commission information society was not to be considered in isolation but as part of an overall policy approach: numerous fields are directly or indirectly involved, e.g., telecommunications, development, social affairs, education and culture, employment, security, consumer and fiscal affairs. There was still a need to clarify the Commission’s role, but it was deemed important that the EU was to “take a proactive lead” in the process (EC 2001). The Commission acknowledged that “while ICTs are not to be seen as a priority sector as such for Community development cooperation, they do provide an important tool for more efficient and effective aid delivery and need to be recognized as an increasingly important element in the economic and social fabric of countries world-wide” (European Commission 2001, 1). The Commission emphasized that therefore, “Both in the context of the international policy debate on ICTs and as regards the provision of operational support the EU institutions have played a very active and sometimes leading role”(5). The Commission also stressed that the EC and its member states have been active participants in various international policy initiatives promoting the development and use of ICTs, such those connected to the G7, OECD, the World Bank, the World Economic Forum, the G8 and various UN organizations, including UNESCO, WHO, UNDP and ITU.

Accordingly, the EU adopted an approach to WSIS preparation based on synergy both in procedure and substance. The procedural efforts of the EU overlapped or took place within the UN framework of regional divisions, in this case the organization based on the Economic Commission for Europe (UNECE), and the Pan European regional group including former ‘East European’ countries such as Russia, but also ascending EU-member-states such as Romania and Latvia which also took an active part in the preparations.

A joint EU Commission/ OFCOM (The Federal Office of Communication of Switzerland)/ ITU workshop report summarized that the main elements of the Summit. Among the these were: 1) a political summit which would produce a declaration of a “Common Understanding of the Information Society”, and an action plan which would set the terms of a “Global Deal in Access to Knowledge” 2) provide an investment marketplace for potential donors, 3) assemble “thoughts” for the future by bringing together academics and visionaries and 4) discuss how issues for society (e.g., cultural diversity, local content & knowledge, health and youth, the elderly) can be resolved by improved access to information and knowledge.
The synergy approach had a downside to it. Because the remit of the Summit was so wide, it was very difficult to set priorities. Commenting on a WSIS meeting held in Brussels, a Finnish participant noted that broadly defined themes attracted the interest of many working groups, concluding that this “will make the preparatory process a difficult one”.

In early 2002, the preparation process was well under way, but the practicalities and substance issues were still completely open. New suggestions for Summit themes emerged on a monthly basis, reflecting the novelty of Information Society issues in the UN context. The actual content of the WSIS process as a whole remained vague until the final few months preceding first phase of the Summit.

Partly as a consequence, WSIS was permeated with procedural issues to the point that form took precedence over content. PrepCom 1 was dominated by a twist around procedural matters, and the PrepCom Bureau’s composition and mandate. The most difficult problem was the issue of the role and participation of civil society and the private sector in the preparatory process, to which several states objected to. The EU again invoked principles of transparency and openness in favor of the full participation of civil society and private sector in all summit events. This question dominated the sessions and substantive issues received very little attention.

Thematic issues were discussed in the Bureau’s Sub Committee 2, which convened for one day to discuss themes. The WSIS secretariat had prepared a list of possible themes for the conference consisting of three main clusters (Vision, Access, Applications) to which proposals from various countries were added. Broader themes were discussed such as infrastructure, the digital divide, access, education, diversity and local content. Especially participants from the private sector emphasized the need for competition and a supportive regulatory environment, paving way for a discussion of governance issues. The Finnish Bureau member complained that there were so many items that the agenda resembled an “incoherent shopping list”. Internet governance, however, was mentioned among the potential Summit themes.

The term ‘Internet governance’ did not surface in a WSIS document until the Bavaro Declaration of the Latin America Ministerial Conference in the Dominican Republic in January 2003. The Bavaro Declaration concluded that “Multilateral, transparent, and democratic Internet Governance should form” a part of the effort to “establish appropriate national legislative frameworks that safeguard the public and general interest and intellectual property and that foster electronic communications and transactions” and “Establishing appropriate national legislative frameworks that safeguard the public and general interest and intellectual property and that foster electronic communications and transactions. Protection from civil and criminal offences (‘cybercrime’), settlement and clearance issues, network security and assurance of the confidentiality of personal information are essential in order to build trust in information networks. Multilateral, transparent and democratic Internet governance should form part of this effort, taking into account the needs of the public and private sectors, as well as those of civil society” (WSIS 2003).
The declaration of the Pan-European Regional Preparatory Conference\(^6\) convened earlier in Bucharest, Romania 7-9 November 2002 briefly mentioned the DNS system without further discussion of Internet governance. At the Bucharest conference, the EU’s position was voiced in a statement by the Danish Minister for Science, Technology and Innovation. The statement laid out the principles and themes for both the Bucharest conference and the Summit according to the eEurope Action Plan (2000). The main principles which would serve as a sound basis for policies, rules and other measures according to the EU, were:

- the freedom to seek, receive and impart information and ideas;
- promoting universal access to basic service at affordable cost;
- securing linguistic and cultural diversity as a common heritage;
- promotion of human capacity through education, training and skills;
- setting up an enhanced enabling environment, including legal, regulatory and policy framework;
- bridging the digital divide between the less developed regions and our part of the World, as well as our own societies.

Themes to be included in drawing up a plan of action “to realize this vision” were:
- A global e-Government initiative,
- A global e-Security initiative
- Fight against illegal and harmful content
- Innovative partnerships between the public and private sectors.
- Programs for scaling up locally successful projects, including e-health, e-learning, e-content and e-entrepreneurship
- Research and development of ICT focused on the World’s low-income markets and opening up ICT markets in developing countries.

The EU was strongly opposed to the interpretation that the digital divide was primarily a North-South issue, insisting that there were major divides also within Europe and within individual countries that need to be acknowledged. The Declaration of the Bucharest Pan-European Conference largely followed the vision and language of European initiatives in stating that themes such E-Government, E-Business and E-Society as would be given priority status\(^7\).

Procedural difficulties dominated also PrepCom 2 (Geneva, 17-28 February 2003) This time the source of dissatisfaction was the nontransparent way in which the first drafts for the Declaration and Plan of Action were prepared by a group of anonymous “wise men” who were appointed by Chairman Samassekou. Developing countries in particular were mistrust-

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\(^6\) The participants were the UNECE countries and other Western Countries, including the United States, Canada and Australia.

\(^7\) Document WSIS/PC-2/DOC/5-E, 15 January 2003. Note by the WSIS Executive Secretariat Report Of The Pan-European Regional Conference For WSIS (Bucharest, 7-9 November 2002)
ful of the entire purpose of the Summit and insisted that the entire process remain an intergovernmental affair.

The EU negotiators concentrated their efforts in saving the process. The EU insisted that the preparation of the DOP and POA entails an actual negotiation and drafting process, not just a compilation of the declarations of Regional Conferences. The EU also demanded a credible conclusion about the continuing of the working procedure and the involvement of other stakeholders.

An Intersessional Meeting between PrepCom-2 and PrepCom-3 was proposed and held in Paris (15-18 July 2003) in order to bring the Summit preparations again on track. None of the items discussed until PrepCom 2 had caused serious differences within the EU. In preparing for the EU drafts to be discussed at the Intersessional Meeting was the first instance where a more significant disagreement over the themes of the Summit opened between the EU member states. The disagreement concerned Internet governance.

The EU coordination meeting in Geneva in May could not come to an agreement about the wording of the “internationalization of Internet management” was to be dealt with in the Declaration of Principles. After the issue was raised at the Bavaro conference, it was foreseeable that WSIS would repeat the EU vs. USA controversy as regarding ICANN, where the EU was in favor of a more intergovernmental approach (Leib 2007). The EU was still internally divided on the issue as to whether Internet governance should remain in the hands of the private sector or if states should play a more prominent role. According to France, the version of the draft discussed omitted the mention of a specific multilateral organization for Internet governance. Other representatives, Finland among them, were specifically against an international (intergovernmental) organization for the management of the Internet.

The matter was agreed to be resolved by Coreper, partly because sufficient expertise on the matter was not available in Geneva, but also as a means of reviving “Brussel’s” attention to the matter. After first assigning high priority to WSIS, the Council and the Commission became more preoccupied with other more pressing matters, such as preparing the Treaty establishing a Constitution for Europe. The final wording for Internet governance that the EU suggested for the draft declaration was: The international management of the Internet should be democratic, multilateral and transparent. It should secure a fair distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet. It should respect geographical diversity and ensure representativeness through the participation of all interested States (footnote: including public authorities with competence in this field), of civil society and the private sector, with due respect to their legitimate interests.”

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8 HEL0246-10, 7.3.2003

9 The Permanent Representatives Committee responsible for preparing the work of the Council of the European Union. It consists of the Member States’ ambassadors to the European Union, chaired by the Member State which holds the Council Presidency.
6. The Geneva Internet governance compromise

Originally PrepCom 3 was intended to be the last session where content issues were to be discussed. However, the session was “the first formal Preparatory Committee to focus really on substance” (Numminen 2005, 65). PrepCom 3 met in Geneva for several sessions (15-26 September 2003; 10-14 November 2003; 5-6 December 2003; and 9 December 2003). The Bavaro Conference had laid out the trenches of the Internet governance dispute (Kleinwächter 2004, 241). The first session of PrepCom3 in September was, however, in fact the first WSIS session to grapple finally with Internet governance, the contentious issues surrounding it: open source software, freedom of expression, the media, financing, and intellectual property rights (IPR). It is telling that the only agreement reached at this stage was a consensus that WSIS did not have a mandate to take issue with IPR as the WIPO was the existing and only appropriate forum for such debates.

In order to complete negotiations on these critical issues, PrepCom 3 resumed in November 2003. Finding agreement on Internet governance was extremely difficult. Once the subject was on the table, governments were deeply divided as to how to define Internet governance and how to put it into practice on a global level (Peake 2004). The very term ‘governance’ in Internet governance caused a serious difficulty, as it is difficult to translate in many languages. For some representatives the very word governance implied that governments should decide (Kurbalija 2007), while some feared that the term was so vague as to allow promoting any possible cause, including moves to restrict the freedom of speech.

In Geneva the technical and institutional role of ICANN was not so much at stake as was the more fundamental question of whether Internet governance should be steered primarily by governments or remain private (Kleinwächter 2004). Latin American countries supported the establishment of a new intergovernmental body for Internet governance. “Brazil, Cuba, Syria, Lebanon and Egypt demanded that Internet governance should be arranged through a multilateral, intergovernmental organization. China sided with these countries, suggesting that ITU play a large role in the reform of Internet governance. At the other end was the United States, for which the current Internet governance arrangement with ICANN and the private sector in the lead and governments only in an advisory position, was non-negotiable.

Internet governance was not the only outstanding issue left on the agenda, but clearly one of the most difficult ones. While governments could agree on the main principles of multilateralism, transparency and democracy as the basis from which Internet governance should emerge in the Declaration, no consensus could be reached on the institutional basis of Internet governance in the Plan of Action (Numminen 2005). The EU also remained divided on the issue in spite of the previous compromise reached during the summer.

An intense negotiating process took place right before the Summit to resolve the remaining issues in the face of the complete collapse of the Summit. After the failure of Cancun, this was not an option, especially for the Swiss hosts. The EU, concerned with potential undesirable compromises, took a decisive tactical step in the negotiations by letting it be known that the inclusion of human rights based on the Universal Declaration of Human Rights (UDHR) was non-negotiable but in other areas, a compromise could perhaps be reached. According to personal communication, placing “freedom of opinion and expression” with reference UDHR Article 19, high on the WSIS Declaration of Principles “as an essential foundation of Infor-
mation Society” was the most important achievement of the Summit but also the most trying single item in the negotiations. China insisted on wording based on UDHR Article 29 emphasizing duties and meeting the requirements of morality and public order. The WSIS Declaration of Principles Article 4 reads:

“We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers”.

The EU was successful in using its normative power when freedom was placed before order (Article 5, WSIS Declaration of Principles). Regarding Internet governance, the EU was prepared to accepting or not objecting to phrases which would include words such as “intergovernmental”, and affirm that policy authority for domestic questions of the Internet should be the sovereign right of States as demanded by some countries, China in particular. This would be balanced by the acknowledgment that “the private sector has had and should continue to have an important role in the development of the Internet”, as a nod to the United States. The Finnish delegation was determined to broker a deal facilitated by the decision not aim for a high national profile in Internet governance. “We had a clear understanding about what kind of a result would be possible and realistic to achieve in Geneva concerning Internet governance, because during the negotiations we came to know the positions of the counterparts very well. Of course, during the negotiations itself, the Finnish delegations stood behind the official European Union standpoint to which we had contributed during internal negotiations”. (Personal communication 15.3.2011)

The decisive step on Internet governance was in the end taken by the U.S, which agreed to a compromise and to continue discussions on the role of governments within the UN framework. The overarching principles of Internet governance in the WSIS Declaration of Principles followed the lines of the draft produced by the EU at PrepCom 2 (see above) and reads as follows:

“48. The Internet has evolved into a global facility available to the public and its governance should constitute a core issue of the Information Society agenda. 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 organizations. 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.

49. The management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organizations. In this respect it is recognized that:

a) Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues;
b) 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;

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

d) Intergovernmental organizations have had and should continue to have a facilitating role in the coordination of Internet-related public policy issues;

e) International organizations have also had and should continue to have an important role in the development of Internet-related technical standards and relevant policies.

50. International Internet governance issues should be addressed in a coordinated manner. We ask the Secretary-General of the United Nations to set up a working group on Internet governance, in an open and inclusive process that ensures a mechanism for the full and active participation of governments, the private sector and civil society from both developing and developed countries, involving relevant intergovernmental and international organizations and forums, to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005.” (WSIS Declaration of Principles 2005)

Governments were so satisfied with the formulation of article 50 that it was replicated in the Plan of Action (Article 13), followed by more detailed provisions for the working group’s mandate, where it is stated that the group should, inter alia:

“i) develop a working definition of Internet governance;

ii) identify the public policy issues that are relevant to Internet governance;

iii) develop a common understanding of the respective roles and responsibilities of governments, existing intergovernmental and international organisations and other forums as well as the private sector and civil society from both developing and developed countries;

iv) prepare a report on the results of this activity to be presented for consideration and appropriate action for the second phase of WSIS in Tunis in 2005.”

States thus achieved a consensus to “agree to disagree” in the matter of Internet governance. According to a Finnish diplomat, achieving a consensus to place the matter on the UN agenda was an important step in itself (Personal communication 15.3.2011). Internet governance was an entirely new issue in the UN context, containing several elements that were unforeseen when the initiative to arrange WSIS. In addition to the North-South division traditionally characterizing UN Summits, a rift opened between open and authoritarian societies, which turned Internet governance into a matter of state sovereignty:

“It became clear at a very early stage that Internet governance was not going to be resolved in Geneva, partly because of the complexity of the issue and partly because of the UN negotiation practice. The latter means that within the UN process, all difficult negotiations are resolved in the latest stage possible, and when it was known that after Geneva there would be the Tunis phase, it was apparent that the matter would be transferred there” (personal communication 15.3.2011).
For the EU, the Geneva Summit vindicated both the multilateral approach that the EU advocated on all international platforms as well as its efforts towards ‘regulated globalisation’ pursued in the WTO and other appropriate global forums (EC 2004). The Commission had a reason to be satisfied with the compromises contained in the Declaration of Principles and the Plan of Action adopted at the Summit. Both documents were in alignment with Europe’s policies, containing large segments of language drafted by the EU’s negotiators, including the Finnish delegation.

7. The Tunis Summit

Despite the fact that the debate was effectively postponed to the second phase of the Summit in Tunis, important advances were made in Geneva. The Geneva Summit placed Internet governance on the global political agenda, unleashing ‘a dynamic for change in the existing Internet governance mechanisms’, culminating in the debates in Tunis (Klein 2004; Dutton & Peltu 2009).

Finding solutions and reaching an agreement on Internet governance became the main objective of the second Tunis Phase. Again, the preparation stage was crucial. The Working Group on Internet Governance (WGIG) founded according to the Geneva compromise brought together states, business and civil society in an attempt to resolve the governance conflict. Its activity epitomized the key areas of the debate: the respective roles of national governments and international organizations, civil society and business, in global Internet governance, the balance to be struck between different forms of coordination and accountability and notably between hierarchical, market and network forms of governance (Mueller 2010).

The WGIG followed a transparent process including open consultations for each of its meetings. The consultations to which all stakeholders could send in their comments in advance were necessary to meet the concerns of those countries that did not want a small group process, but rather a full intergovernmental meeting, but they also helped to maintain the interest of the Internet community and media outside the PrepCom (Drake 2005).

The WGIG succeeded in coming up with a definition of Internet governance that embraced both ‘technical and administrative matters’ and ‘public policy issues’. The WGIG advanced a broad and holistic definition of Internet governance that was included in the Summit Declaration, “‘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.’” (WSIS, Tunis Agenda Information Society 2005)

Before the international community adopted WGIG’s definition, the intergovernmental conflict over who should preside over the Internet was revisited. At the Tunis summit, the EU was again caught in a difficult position between the US and developing countries. Under the presidency of United Kingdom, the EU broke ranks with the US to call for a change in the ICANN regime. The EU proposed a new model based on existing Internet governance arrangements (in other words the private sector basis of ICANN) for the technical management
and day-to-day operations of the Internet, supplemented with an arrangement where governments would rule over principle issues or “public policy making”. This as such did not differ in essence from the EU’s standpoint in Geneva. What was unique for the EU’s initiative was that it proposed delegating Internet naming and numbering policy-making to a new international body that would be mandated to adhere to the fundamental principles and values of the Internet community in setting policies, namely interoperability, openness and the end-to-end principle (Mayer-Schönberger & Ziewitz 2007). The US firmly rejected the proposal. The main argument for continuing the status quo within ICANN was that greater UN involvement would bring about greater bureaucratization of the Internet, stifle innovation and impede business operations (Pickard 2007). Authoritarian governments, however, warmly embraced the EU’s proposal as a model for the introduction of state hierarchical governance – much to the EU’s discomfort (Mueller 2010, 74).

A compromise based on the WGIG’s ‘holistic’ approach was finally reached. The acceptance of the WGIG’s definition of Internet governance partly helped to defuse the battle over what Internet governance was and who should do it (Drake 2008). The WGIG also presented an operational recommendation to create a new UN Internet Governance Forum (IGF) for multi-stakeholder policy dialogue. The WGIG proposed a mandate for the IGF which was incorporated to the text of the Tunis Agenda: to

a) Discuss public policy issues related to key elements of Internet Governance in order to foster the sustainability, robustness, security, stability and development of the Internet;

b) Facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet and discuss issues that do not fall within the scope of any existing body;

c) Interface with appropriate inter-governmental organisations and other institutions on matters under their purview;

d) Facilitate the exchange of information and best practices, and in this regard make full use of the expertise of the academic, scientific and technical communities;

e) Advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the Internet in the developing world;

f) Strengthen and enhance the engagement of stakeholders in existing and/or future Internet Governance mechanisms, particularly those from developing countries;

g) Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations;

h) Contribute to capacity-building for Internet Governance in developing countries, drawing fully on local sources of knowledge and expertise;

i) Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet Governance processes;

j) Discuss, inter alia, issues relating to critical Internet resources;

k) Help to find solutions to the issues arising from the use and misuse of the Internet, of particular concern to everyday users;

l) Publish its proceedings (WSIS, Tunis Agenda 2005).
Although the Tunis summit failed to establish a set of legitimate norms and principles, it was not without meaning for the global debate on the governance of the Internet. Apart from the creation of the IGF, it consolidated the ‘existing arrangements for Internet governance,’ in other words the lead of the private sector in the day-to-day operating of the global Internet, giving a “qualified delegation of public authority” to ICANN, and paving way for long-terms changes in ICANN for a more authoritative role for governments (Mueller 2010, 77). For the EU, the Tunis Agenda provided a claim for victory in calling for the development of globally-applicable principles on public policy issues associated with the coordination and management of critical Internet resources, and an “enhanced cooperation” to set this in motion (Mueller 2010, 77). As the head of the Finnish delegation remarked, there was no agreement even within the EU what ‘enhanced cooperation’ meant, but the term was vague enough to act as a basis for compromise.

Debates on Internet governance came to dominate the agenda in Tunis whilst the concerns about development and creating a global “Knowledge Society” faded to the background. According to Pickard (2007, 125) “the initial focus on important social problems such as the global digital divide gradually morphed into a technical dispute over Internet governance is telling in itself”. The continued use of the Cold War language of ‘free flow of information’ in the US government statements on Internet governance (Nordenstreng 2011) suggests that the EU has not succeeded in establishing its preferred values anywhere near to ‘normal’.

8. Europe’s post-WSIS Internet governance policies

Finding an ‘appropriate’ role for states in the multi-stakeholder global governance of communication remains an important question after WSIS. The continuing struggles over the Internet’s critical resources, security and ‘cyberwar’ alone ensures this (DeNardis 2009, Mueller 2010). ‘Internet diplomats’ continue the work in the IGF and other forums (Kurbalija 2007), however, according to critics such as Castells (2009, 115), the regulation of the Internet has shifted its focus from the Internet itself to specific instances of censorship and repression by government bureaucracies, and to the privatization of the global communication infrastructure that supports Internet traffic. In some respects, European member states’ approaches to Internet regulation reflect these tendencies, for instance regarding the question of net neutrality but the EU’s stance on these issues is constantly evolving.

Officially, regarding the Internet as a global infrastructure, the European Union remains committed to the WSIS legacy. Apart from direct references to the WSIS process, the Commission’s latest Information Society strategy, Digital Agenda for Europe10 makes use of the

10 http://ec.europa.eu/information_society/digital-agenda/index_en.htm
normative language adopted during the Summit. Key words are international cooperation, multistakeholder processes and dialogue:

“Given the strategic importance of the internet, international cooperation is crucial. Internet is a formidable instrument for freedom of speech worldwide. For many of the policy issues in the Digital Agenda, progress can only be made on an international level”.

The commission reaffirms its commitment to safeguarding “the internet” as a global infrastructure, with phrases like “Europe must continue to play a leading role in promoting an open and inclusive internet governance”, and “Promote European regulatory solutions based on equality of opportunity, transparent government and governance and markets that are open to competition” (EC, 2010).

At the same time the Commission acknowledges, that apart from being global, the Internet is “becoming a political issue, with many questions being raised about its neutrality and with many conflicts looming in the future:

“The European Union considers the Internet as an important vector of democracy and freedom. The Internet should be open to all, neutral and compatible with all devices and technologies (interoperable). The EU therefore supports the democratic and transparent control of the DNS and ONS” (EC 2010).

In areas such as in Intellectual Property Rights (IPR) protection, multilateral negotiations are still deemed important along with bilateral and plurilateral negotiations. However, for political reasons, the Commission has taken a step back from advocating multilateralism in all areas of Internet governance affairs. The European Commission at present sees eye-to eye with the U.S. on many aspects of Internet governance. Action 97 of the Digital Agenda, Promoting the internationalization of Internet governance, acknowledges the need for participating in bilateral talks with the US. The US government has largely been receptive to the Commission’s suggestions concerning the DNS system and the introduction of new gTLD (EC 2011). The EU’s alignment with the US on other international communication network issues on multilateral platforms, such as regarding the privatization of national telecommunications operators and networks at the WTO (Drake 2008, 41) complicates the picture of the EU as a primarily normative actor in the governance of communications.

The matter over ICANN remains a sensitive issue, which both the Commission and the US seek to keep on an uncontroversial level, if possible. As a non-decision making body, the IGF has an important function in this respect, which is why the Commission supports IGF’s reform, “looking into the respective roles, shared principles, rules, decision-making procedures and programmes that shape the evolution and use of the Internet” (EC 2010). The Commission is also keen to raise the profile of the IGF as the main forum for the normative debate on the «who should be in charge of the DNS» (EC 2010).

9. Conclusion and discussion

This paper has analyzed the EU’s efforts to establish a viable position in the new power structure of communication governance created by the emergence of the Internet. The EU has sought to accomplish this by establishing itself as the key arbitrator between the United States and the G77 states, especially emerging powers such as China, Russia, Brazil and India
on multilateral UN platforms, especially WSIS. According to its own analysis, the EU has succeeded in advocating new forms of Internet governance against unilateral or purely transnational governmental control. The EU seeks to establish itself as a normative power in supporting the values of openness and inclusiveness, and promoting European regulatory solutions based on equality of opportunity, transparent government and governance, and markets that are open to competition.

However, the EU’s efforts are still far from accomplished. The research confirms that at the WSIS, the European Union faced a dilemma familiar from other global multilateral gatherings. As with the case of sustainable development, while one is able to identify a level of broad agreement as to which norms are worth striving for, it is much more difficult to identify a similar level of consensus within the European Union regarding what these norms actually entail (Lightfoot & Burchell 2005, 91). Solving this dilemma, as the example of sustainable development indicates, has important implications for the EU’s ability to continue to act normatively in Internet governance negotiations. Despite its declared preference for multilateral solutions, the Commission’s satisfaction with the results of bilateral talks with the US suggests that in matters concerning ICANN, advocating multilateralism is only one of many options for a course of action in Internet governance affairs.

The main dilemma for those who want ICANN to become more accountable, like the European Union, remains that that taking action requires going through the apparatus of unilateral US control (Mueller 2010, 249). On the other hand, advocating the institutionalization of the IGF faces the difficult task of bringing together the values of multistakeholderism and state-led multilateralism. The EU hails the founding of the IGF as one of the main accomplishments by the EU at WSIS and a testimony to its success in creating consensus regarding Internet governance affairs (EC 2010). However, the IGF remains a non-decision making body and its mandate to be the most important international forum for the Internet government debate affairs is in question.

There are also other limits to the EU’s normative power in the domain of communication. The debates on Internet governance at the WSIS, in ICANN and the IGF have meant little progress toward an international agreement on the norms and principles of Internet governance (Mueller, Mathiason & Klein 2007). As the Internet is increasing in danger of being usurped in the global struggle for power, reaching an agreement of its normative basis is becoming more difficult to achieve through any form of multilateralism. Castells’ (2009), “Communication power” challenges the notion of power relationships existing only in specific social structures constituted by spatiotemporal formations located on the national level. This includes the EU. Even if the forms of power relationships themselves persist, the terrain where they operate has changed: it is primarily constructed around the articulation between the global and the local; and it is primarily organized around networks (Castells 2009, 50).

There are signs of the erosion of the idea of Europe as a normative actor even within Europe. The war on terrorism and cybercrime and the overall securitization of digital communication issues has led citizens to place the ethical basis of European information society and communications policies in question. Internet freedom and communication rights advocacy networks have successfully mobilized resistance to important Commission initiatives such as the Data Retention directive. Moreover, European firms such as NokiaSiemens and Ericsson benefitting from bilateral and EU-negotiated trade agreements have recently been exposed of
selling communications network technology that has been used by authoritarian regimes to track down and capture dissidents. For European Internet rights organizations, such as the Pirate Parties established in several member states, the European Digital Rights Initiative (EDRI) and the Electronic Frontier (EFF), La Quadrature du Net and many others see that the greatest threat to a free, global Internet comes not from authoritarian regime. According to them the main danger comes from the war on copyright piracy declared by the U.S. content industry, and the willingness of the EU and its member states to participate in this by policing their own citizens. Especially here the EU seems to have traded off democratic control and transparency in favor of trade, competition and advancement of narrow business interests.

As exposed by WikiLeaks, the US has pressured individual EU member states, for instance Spain and Sweden, to heavily prosecute copyright and trademark offenders (Burkhart & Andersson 2012). It has been up to civil society groups and the European parliament to point out the potential threats of international trade-agreements, such as the Anti-counterfeiting Trade Agreement (ACTA), to privacy and confidentially of communication and freedom of expression. The attempt at policy laundering shows that the Commission has largely submitted under US trade unilateralism, glossing over potential problem areas. Formally, the EU embraces the language and procedure of multistakeholderism in Internet governance and policy. For activists, the way the ACTA negotiations were carried out for years behind closed doors in secret from the public and their democratically elected political representatives represents “the worst in the EU”: the lack of transparency and the infiltration of lobbyists for private economic interests in the policy process (Expressen, 2012).

Against such accusations, the Commission’s demands for increased transparency and democratic representation in ICANN’s organization have a certain hollow ring to them. Likewise, the Commissions avowal to defend IGF’s multistakeholder approach (EC, 2010) is relatively low-risk as IGF has no authority over Internet regulation and the organization is virtually unknown outside Internet professional and policy circles.

The conflicts over ICANN and IGF as well as the budding manifestations of a politicization of communications policy and governance in Europe reintroduce the question of ethics: does normative power Europe behave in a normative way (Manners 2008, 45)? It is questionable if the Commission can hold on to a compartmentalization strategy of assigning one set of values for ensuring the continuity of the Internet as a global infrastructure and applying an entirely different approach to other areas of Internet policy and regulation such as Internet content and user rights. As the Internet has become a major infrastructure, there is no longer a way to separate policy from technical and operational matters (Mueller 2010, 241). There is also no way to separate policy from politics. All Internet-related matters are Internet-user issues, and it is becoming unacceptable to deal with them behind closed doors. The European Union thus faces a dual challenge in continuing to play a relevant role in the emerging global communication governance domain and maintaining its internal normative integrity in Internet policy and regulation.
References


