



A follow-up note concerning the Internet Governance Forum process.

**A Civil Society contribution to the
Internet Governance Forum (IGF) consultation meeting**
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Foreword : In consideration of time constraints, this short note is contribution of EUROLINC and WTIS, but it has been drafted after informal consultation with stakeholders who were present on May 23 in Geneva, and that wish that a clear distinction be made between Civil Society and the Internet Community. These stakeholders regret that the high moral standing and perception of Civil Society has been used to defend special interests. This note is going to constitute the basis of a more formal and larger contribution to the IGF process. This document is a continuation of the legal analysis of the IGF process (document contributed on the IGF web site [[pdf](#)][[odt](#)]). This note is focusing on legal points,

From the Tunis Agenda, it is our understanding that according to the first paragraph of article 72 and the first paragraph article 78 the UN Secretary General was to bootstrap the IGF process, by convening the first IGF meeting. After the inaugural meeting, the IGF process should be managed by a multi-stakeholder bureau according to article 78 b). The only direct involvement of the UN Secretary General occurs, five years later, in article 76 in order to examine the desirability of the continuation of the IGF. In the meantime, the involvement of the Secretary General is, according to article 75, is limited to report to the UN membership on the operation of the forum. Therefore, after the first convening of the IGF meeting, the UN Secretary General, his representatives have no legal basis to convene nor organize the subsequent IGF meetings. It follows that after the inaugural meeting, the only task that can be assigned to an advisory group to the UN Secretary General would be to help him, or his representative, to draft the report to the UN membership. The advisory group, by nature, cannot be entitled to a wider mandate than the one that has been given to the Secretary General. **The UN Secretary General has no legal basis to create an advisory group towards the goal of convening and organizing the subsequent IGF meetings.**

The problem is that the former UN Secretary General, his representatives, or the group that has been formed to advise the Secretary General on the convening of the

IGF inaugural meeting, have not facilitated the creation of structures according to articles 78 a) and b), to ensure a proper convening and organization of the second IGF meeting. At the moment no one appears to be legally in charge of the process. We are in a situation of a legal crisis endangering the legitimacy of the IGF process.

This raises the question of determining **who is in charge** concerning the preparation of the second IGF meeting. The only stakeholder that has any legal ground to take a leading managerial role, to solve the current crisis, is the host country of the second IGF meeting, through its host country agreement with the United Nations. Conversely if the host country does not take the appropriate steps to facilitate a resolution of the crisis, then this country is engaging its responsibility. In this regards, it has been taken due notice that Brazil proposed the formation of a multi-stakeholder bureau and thus appears quite suitable to take a leading managerial role in the preparation of the second IGF meeting.

Therefore, in matter of procedures, we kindly request the UN secretary general to encourage, in this specific situation, the host country to act as expeditiously as possible, and to take the lead in the process of convening and organizing the second IGF meeting, while putting on as the most pressing issue on the IGF agenda, the creation of the multi-stakeholder bureau according to article 78 b).

Concerning matters of content of the agenda of the Rio meeting, we should rely on UN best practices as mentioned by chairman Desai : (17 Feb 06 PM) *I incidentally here mention that the very normal practice in the United Nations when you have a host country which is taking on the responsibility of organizing a meeting which the United Nations has been asked to convene, it's fairly normal practice to request the host country to provide the chair for the process. That has been the case with all the summits that we have run.* The host country could therefore chair an international program committee constituted in consultation with all stakeholders.

It appears that there has been regrettable lapses of procedures on May 24 and May 25 that compromised the inclusion and fairness of the consultation process. Many stakeholders made travel plans only to attend the May 23 meeting. According to what appears to be a widely held and plausible hypothesis, some stakeholders were pushing for a renewal of the MAG, with the same composition, before May 23. A closed two-day meeting of the renewed MAG was planned on May 24 and 25. In agreement with our legal findings, such renewal could not be made and indeed was not made, despite the hopes of some stakeholders until the very last moment. Since the MAG has not been renewed, there was no legal ground to hold any closed MAG meeting. Therefore, without prior announcement, the planned MAG closed meeting was turned, into a very informal *ad hoc* consultation meeting that was open only at the very last moment, resulting for all practical purposes into a closed meeting for many civil society stakeholders (to be distinguished from Internet Community stakeholders).

As a provisional conclusion, the IGF process constitutes a unique opportunity to achieve a new level of multi-stakeholder mutual recognition through a new enlarged legal framework. We firmly believe that, under the leading managerial role of Brazil, a truly inclusive and transparent multi-stakeholder process can be ensured and that the IGF process may in Rio fulfill its mandate and produce tangible outcomes towards solving the very urgent problems of the Information Society.

Reference

TUNIS AGENDA

72. We ask the UN Secretary-General, in an open and inclusive process, to convene, by the second quarter of 2006, a meeting of the new forum for multi-stakeholder policy dialogue—called the *Internet Governance Forum* (IGF).The mandate of the Forum is 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.

73. The Internet Governance Forum, in its working and function, will be multilateral, multi-stakeholder, democratic and transparent. To that end, the proposed IGF could:

- a) Build on the existing structures of Internet Governance, with special emphasis on the complementarity between all stakeholders involved in this process - governments, business entities, civil society and inter-governmental organisations;
- b) Have a lightweight and decentralised structure that would be subject to periodic review;
- c) Meet periodically, as required. IGF meetings, in principle, may be held in parallel with major relevant UN conferences, *inter alia*, to use logistical support.

74. We encourage the UN Secretary-General to examine a range of options for the convening of the Forum, taking into consideration the proven competencies of all stakeholders in Internet governance and the need to ensure their full involvement.

75. The UN Secretary-General would report to UN Member States periodically on the operation of the Forum.

76. We ask the UN Secretary-General to examine the desirability of the continuation of the Forum, in formal consultation with Forum participants, within five years of its creation, and to make recommendations to the UN Membership in this regard.

77. The IGF would have no oversight function and would not replace existing arrangements, mechanisms, institutions or organizations, but would involve them and take advantage of their expertise. It would be constituted as a neutral, non-duplicative and non-binding process. It would have no involvement in day-to-day or technical operations of the Internet.

78. The UN Secretary-General should extend invitations to all stakeholders and relevant parties to participate at the inaugural meeting of the IGF, taking into consideration balanced geographical representation. The UN Secretary-General should also:

- a) draw upon any appropriate resources from all interested stakeholders, including the proven expertise of ITU, as demonstrated during the WSIS process; and
- b) establish an effective and cost-efficient bureau to support the IGF, ensuring multi-stakeholder participation.