ON “ENHANCED COOPERATION” AND THE OPPORTUNITY OF A WORKING GROUP

Contribution for the discussions in the CSTD

*(comments made in a personal capacity, based on the May 18 intervention)*

**Benefits and limits of wording ambiguity**

The formulations around “Enhanced Cooperation” in the Tunis Agenda were purposefully ambiguous enough to enable diverging interpretations. It was a traditional diplomatic situation enabling closure in Tunis in the absence of real consensus.

The same ambiguity was present at the end of the first phase of WSIS in 2003, around the term “Internet Governance” (IG). Two main questions divided participants:

* is “Internet Governance” limited to infrastructure and critical Internet resources (naming and addressing) or does it also cover issues like freedom of expression, privacy, cybercrime, etc ?
* should IG remain the province of the technical/business community, or should it become the exclusive responsibility of governments, given the importance the network now plays in all domains of human activity?

The creation of the Working Group on Internet Governance (WGIG) helped address these issues and the definition of IG that it produced clarified that:

* Internet Governance does cover both Governance OF the Internet and Governance ON the Internet (as the Tunis definition addresses “the evolution and use of the Internet”
* Internet Governance is neither purely private nor purely intergovernmental, but “multi-stakeholder”, involving all categories of stakeholders, with the important caveat of the now famous “in their respective roles”

**Key underlying questions**

On “Enhanced Cooperation”, parties to the discussion can continue to reaffirm their divergent interpretations as they have done for the last seven years. But peremptory arguments are disingenuous at best. Fundamentally, the debate about “Enhanced Cooperation” is nothing else than exploring how to operationalize the definition of Internet Governance, and in particular clarify the question of the “respective roles” of the different stakeholders.

Time has come to dig deeper and have the courage to address head on some of the key questions:

* what is the scope of Enhanced Cooperation: all of Internet Governance or only some of it?
* are we talking of Enhanced Cooperation as a single process or structure or rather thinking of Enhanced Cooperation**s** in the plural, to address a diversity of issues with different mechanisms?
* are the respective roles of the different stakeholders set once and for all, or do they vary, for instance according to the issue, the venue and the stage of the discussion?

**Moving forward**

Such questions – and other – could contribute to a useful framing of the debate, but how to move forward? Some actors have proposed the creation of a working group, worried that annual sessions such as this year merely produce a succession of repetitive statements and no real interaction. Others have deep concern that a working group will be a waste of time and resources if it is not set up in an appropriate manner and with a clear willingness of all parties to move forward.

**Two preliminary conditions**

Without taking sides, I would like to highlight two elements to feed into the CSTD discussions this week on the possible formation of a working group:

* experience teaches us that working groups are not efficient without the participation of all actors and article 71 of the Tunis Agenda requires it for legitimacy on the EC issue; to build on the successful precedent of the WSIS, the format of the WGIG should be the reference here, with its balanced composition and equal footing of the participants
* secondly, it is essential that appropriate funding is available, without which the involvement of participants from developing countries cannot be ensured; but the same funders cannot be always called to task: the proponents of setting up a group should therefore be able to lead by example and put their money where their mouth is; it would be ironic otherwise to expect such funding only from countries or actors who do not particularly want the setting up of such an effort.

These two elements – a WGIG format and appropriate funding – are likely to be prerequisites for any discussion on setting up a Working Group on Enhanced Cooperation (WGEC ?).

**Further points to address**

Should those conditions be agreed upon and the CSTD willing to go in the direction of setting up such a group, other questions to be explored include:

* what should be the scope/mandate of such a group? useful suggestions heard in the open consultation on May 18 included:
  + elaborating a better shared understanding of the concept of Enhanced Cooperation and the issues it covers
  + a mapping exercise of existing instances of Enhanced Cooperation
  + an identification of possible principles guiding the setting up of Enhanced Cooperation Frameworks
* how open such a WG will be and in particular how it will solicit inputs from non-members and inform them of its process?
* where such a working group would be attached (proposals include: the Chair of the CSTD, the IGF, the UN SG) and who would chair it?
* how such an exercise should leverage/interact with the IGF?
* how and to whom it should report to, and in what form?

To avoid future misunderstanding, any draft resolution discussed in Geneva this week needs to address these issues as clearly as possible.

**About good faith**

If an agreement is reached on the creation of a working group and its modus operandi, an essential trust-building element is that the governments participating in preparing the draft resolution abide later on, in ECOSOC and the UNGA, by whatever compromise will have been reached in Geneva. Previous instances of reopening painfully agreed upon terms have sapped confidence: the word of one government in Geneva should not be different from its word in New York.

Switzerland remarks during the open consultations also need to be kept in mind. The price we have all paid for not moving beyond the ambiguous formulations of Tunis is that discussion on a process to discuss process (!) has prevented actually addressing pressing issues. It is now time to move from parallel statements to actual interaction. But the setting up of a working group on this topic will only be useful if its modalities are right and the participants engage in good faith, fully assuming their responsibilities.