



ICF
Internet
Governance
Forum
RIYADH
2024

giganet / GLOBAL INTERNET
GOVERNANCE
ACADEMIC NETWORK

GigaNet Annual Symposium

Round table: Multistakeholderism in Internet Governance

Alisa Heaver, Dutch Ministry of Economic Affairs and Climate Policy
Wolfgang Kleinwachter, Aarhus University
Milton Mueller, Georgia Institute of Technology

December 15, 2024

Global Internet Governance Academic Network (Giganet) Annual Symposium - December 15, 2024 – Riyadh

Round table: Multistakeholderism in Internet Governance

Milton Mueller, Georgia Institute of Technology: Greetings everybody. This is kind of an open debate. I am Milton Mueller. I'm a professor at the Georgia Institute of Technology in the U. S. We have here Alisa Heaver. Are you still with the Dutch Ministry of Foreign Affairs? The Economic Affairs, the Dutch Ministry of Economic Affairs. And we have someone who almost needs no introduction, the famous Wolfgang Kleinwächter, who is an emeritus professor now, but has been an active participant in Internet governance circles from the very beginning.

So, what we want to discuss today is the concepts and controversies around the concept of multistakeholderism. I think I sort of started this debate by issuing a challenge to the notion.

And, I have to say that from the very beginning when we were in the World Summit on the Information Society together, Wolfgang and I have not been happy with multistakeholder as a word. That describes the form of governance that we thought we were trying to defend in the period of the late 90s and early 2000s.

And, what was my critique of multistakeholderism? It was, number one, it does not really describe a governance model. It describes sort of lots of people participating, but it doesn't tell you what is being governed, and it doesn't tell you what is the governance structure. And it doesn't tell you what the authority is.

And so, I represented multistakeholderism as kind of a rhetorical solution to the problem of the clash of governmental and non-governmental forms of governance that occurred at the World Summit, back in the early 2000s, and this concept of multistakeholderism made it easier for the established sovereign system of international governance to accept innovations like ICANN, the Regional Internet Registries, and other forms of governance that were emerging for the Internet at that time.

So, in my view, the key differentiating characteristic of what people want to call multistakeholderism was not the multiple stakeholders, it was that it was governance by non-state actors, that we were going outside the sovereign system and turning over governance authority to the Internet community itself.

And so, I prefer the term Internet self-governance, but when we did the IANA transition in 2016, I think the word that was frequently used was, yeah, people said, Who are you transferring authority to? And the answer was, to the global Internet community, that we were creating our own system of governance for our own community.

Now, many people have interpreted this as me being against multistakeholderism, and this is a kind of a level of confusion of the debate that I think Alex Klimberg has introduced. It's like he's presenting me as if I'm against these Internet institutions. Everybody who knows me knows that I'm a big supporter of those Internet institutions and their model. I just want us to understand what they really are, and not have this vague label.

And one of the reasons I think we need to have a better label is that we can see the term multistakeholder being adopted by almost anybody now. . So, the UNESCO says it's a multistakeholder organization, but it's an intergovernmental organization. It is fully embedded in the sovereign system. It does not share authority with non-state actors. The ITU sometimes likes to call itself a multistakeholder institution. And, in fact, anybody really can sort of adopt that term and say, Oh, we're inviting you to participate, but they may not actually be sharing authority, and they may not be actually giving you any power.

So that's why I think we need to re-brand.

Now, I think one of the things that makes people uncomfortable about my position...

[4 minute audio drop]

Wolfgang Kleinwächter, Aarhus University: ...the emergence of ICANN and the and the World Summit on the Information Society. So that means. ICANN, when it was established in 1998, countered a proposal by the ITU, which was, by the way, triggered by John Postel, which was the so called ITU Ad Hoc Committee on New ccTLDs. And this

was a memorandum of understanding, which was signed both by two in the governmental organizations, ITU and WIPO, by two technical organization, it was IANA and the IETF, and by a business organization, the IATA.

So, when they assigned the, the ITU memorandum, the Secretary General of the ITU said, okay, this is a turning point in international law in history. For the first time we see a collaboration between intergovernmental organizations and non-governmental organizations.

But, the US was not satisfied with that and said, we need private sector leadership. And they pushed for a purely private organization, which later became ICANN. The US government understood that the governments have to play a role, and they did put governments in a Governmental Advisory Committee.

So, and with this, we came to the World Summit on the Information Society where we had two different approaches. One was pushed by the U. S. government, which said, you know, private sector leadership is the best thing for the governance for the Internet, and the Chinese government, which argued, okay, private sector leadership was good for one million Internet users, but for one billion Internet users, we need now governmental leadership.

So, it was private sector leadership versus governmental leadership. This conflict could not be settled. That's why Kofi Annan, at this time the Secretary General of the United Nations, established a working group, the so called WGIG, Working Group on Internet Governance, where I was a member, and we had two years time to settle this conflict between private sector leadership and governmental leadership.

The compromise we proposed to the Tunis Summit was, the Internet does not need leaders. The Internet is such a complex system, and we see a growing complexity, it needs a collaboration of all stakeholders, where all stakeholders have to collaborate hand-in-hand in their respective roles, the best thing is on equal footing. But, equal footing did not appear in the final text.

This was the moment when the multistakeholder approach was presented as an alternative to a one stakeholder approach. Because, government leadership was one stakeholder approach, private sector leadership also. One stakeholder approach. And we argued in the WGIG, there are even more than private sector and governments, we have also civil society, we have the academic and technical community, there are other stakeholders, and what we need if we want to come to solutions in the Internet governance ecosystem, we need the engagement of all stakeholders.

So, and this was more or less the implementation of what Kofi Annan has called upon the Working Group on Internet Governance when we had the first meeting.

And he said, okay, the Internet is an innovation in technology, what we need now is innovation in policy making. And so, the multistakeholder approach was seen as such an innovation for policy making.

So, this was the source. I always was against the ism, multistakeholderism, because I've grown up in an Eastern country, so we had a battle between socialism and capitalism, and all these isms are misleading.

The multistakeholder concept is an approach how to settle problems, and the answer is, if we want to settle problems in this Internet governance system, we need the involvement of all stakeholders in their respective roles.

The best thing, as I said, on equal footing, but it depends from the issue. The involvement of the stakeholders will be different in the field of cyber security, or in the management of the domain name system, will be different in the field of digital trade than if we talk about human rights. And so, it's a very complex system. It's not an ism. It's not just a religion, it's an approach.

Thank you, and sorry for being too long.

Alisa Heaver. Dutch Ministry of Economic Affairs and Climate Policy: Thank you for letting the government be part of this conversation as well.

Milton Mueller, Georgia Institute of Technology: Right, so, anyway if I would summarize the difference so far between his perspective and mine it is that he thinks that the multistakeholder describes a kind of indeterminate blend of private sector and public sector or state-led governance. And I'm saying, you know, what really distinguishes the Internet institutions is that they are on the private sector side.

Alisa Heaver. Dutch Ministry of Economic Affairs and Climate Policy: I don't think that all the Internet institutions are on the private side. I think that most of the institutions are. Well, if we take ICANN for example, it's not only private sector that is active there, it's also governments, it's also academia, it is also the business community.

So, I think it's all different types of stakeholders, different types of views that are there, and they, so to say, come together in the [?] and decide upon the different issues that are ahead of them. So, I wouldn't put it binary that the Internet either should be governed by the private sector or governed by governments.

It's much broader than that, obviously,

Milton Mueller, Georgia Institute of Technology: I'm not talking about the participation, I'm talking about the authority. The authority to make policy decisions for the domain name system is entirely in the hands of a private California non-profit public

benefit corporation. Of course, governments participate through the GAC and that's fine with me. Of course, private sector? When I say private sector, I also mean civil society, basically any non-state actor. But fundamentally, the governance authority is held by a non-profit private corporation.

Alisa Heaver. Dutch Ministry of Economic Affairs and Climate Policy: Yeah, but I do think that we, saying governments, have agreed upon this model, or the way that ICANN is structured, to a certain extent... give up some rights as governments to fully regulate the domain name system. We have seen that governments aren't the entity that should be unilaterally governing domain names or the whole DNS. We need the other stakeholders. We need the registries to be part of the discussion. We need the registrars to be part of the discussion.

And, if we come to something that happens in ICANN that we really do not like as government, we can give GAC advice, and, well, we will really keep on pushing on that advice, if the board intends to take a decision that really doesn't appeal to the GAC.

Wolfgang Kleinwächter, Aarhus University: I think Milton raises the question, who has the final decision making capacity? Who is authority upon a certain resource or a certain field? But, I have argued for years, we have a new complexity in the Internet world, and that's why I prefer not only to speak about the multistakeholder approach, but also about the holistic approach, because, in the Internet, everything is linked to everything.

So, it means if you have a purely technical approach, then you should understand that this technical issue has a political, an economic, a social implication. If you have a purely political approach, you should also understand that this political approach has an economic, a social, and a technical implication.

So, that means it's not only that you need all stakeholders involved, you have to also to broaden your view and to see, if you manage one problem, what are the side effects, the independent side effects, which you have to take into consideration? And insofar, decision making is only the final element in a longer process, which we have called in ICANN, the policy development process or the PDP, and sometimes the PDP is more important than the final decision making.

My home discipline is international law, and certainly making international law is a monopoly for subjects of international law, and only states are subjects of international law, but the intergovernmental system which makes Internet law today is embedded in a multistakeholder environment.

That means, in the ideal case, the policy is made in a multistakeholder process and then rubber stamped by governments who have the final authority to make a decision in a field which is relevant for governments. Also in the ICANN, which is a private sector

corporation, where the PDP is more important than the final decision making capacity of the board.

I was a member of the board, and certainly we were waiting for the PDP coming from the GNSO, or the ccNSO, and then more or less rubber stamped what came out from the PDP, which is a multistakeholder process.

Governments, the Governmental Advisory Committee is involved in the PDP, and governmental advice is not legally binding for the board, but, if the government's given advice to the board, and the board disagrees, it can disagree, then we have meanwhile a procedure for consultation, then we have to just sit together and to negotiate, you know, what could be the final thing? Sometimes the board wins, sometimes the GAC wins.

But, this is a structure for the management of one piece of the whole Internet governance ecosystem, and there are many other pieces where you have a different model.

So, that's why I avoid the ism, because all this together is certainly, you could call it multistakeholderism, but you have also multilateralism, and I, from the very early day, say it's a stupid idea to have multilateralism against multistakeholderism. These are two sides of a coin. We all are sitting in one boat and we have to find a way to settle the problems in a bottom up, open, transparent way, and these principles, openness, bottom up, transparencies, are key elements of the multistakeholder approach.

Alisa Heaver. Dutch Ministry of Economic Affairs and Climate Policy: I do not agree that multilateralism and multistakeholderism are two sides of the same coin. I do think there is a real big difference between multilateral institutions and multistakeholder institutions, to be honest, Wolfgang, because the participation possibilities for stakeholders in a multilateral institution are much more limited than in multistakeholder, as ICANN is. Anyone can register to an ICANN meeting and show up either online, offline on site.

Wolfgang Kleinwächter, Aarhus University: Here they rule the world, but this is an illusion, and the risk is, what you say, is that the governments will overtake the technical layer and will separate it.

But the challenge is, and the multistakeholder approach is an instrument which can avoid either/or development, neither governmental nor private sector leadership, so that you make arrangements in between where the technical layer and the public policy layer application layer comes together.

I think this is the challenge, and insofar the Sao Paulo multistakeholder guidelines are very helpful, because they offer criteria where you can say, okay, that you can measure

what is the specific role of stakeholders in certain concrete fields, so that means we have to move forward, to stumble forward, and not to say, okay, we go back to the 19th, 20th century, where we have either the rule of the sovereign state, or we overtake it by the technical community, and crap some of the elements.

Milton Mueller, Georgia Institute of Technology: If you have read my book on fragmentation, Wolfgang, you would know that I argue that there will never be technical fragmentation. That there's very little risk of technical fragmentation, in the sense that the Internet protocols and the addressing and naming system of the Internet will continue to be globally governed.

The problem is, as I said, jurisdictional fragmentation, which is governments imposing different laws, different rules, on a territorial basis, as an overlay on the global Internet.

But we can't get into that. I'd like to get some questions from the audience. I think we have Mr. Kato as a question, and there's an online question, I've been told.

Participant 1: Thank you again, for a very interesting debate. I have one particular question to Milton. When you say authority, I just want to understand your definition of authority, or the government sovereignty, and so on, simply because I'm curious about that distinction.

For instance, if you talk about the parliament of the government, national, you know well if, under the constitution, if they have the authority, final authority, to make laws or to make decisions. The representatives are selected, elected by voters, and if there's a law who says multistakeholder should select those representatives?

There are some in organization like that, or in even institutions, where they need some different stakeholder as a part of the board member, which is ICANN, but representation on that kind of decision making unit of the organization can be the authority, in your definition, and that's one place.

And also, in some case, in some country, even if law says, or constitution says, that parliament has a final decision, or the Supreme Court has a final decision, but if there is some dictator who has real hidden power, what happens? And we see many interesting examples of what we call a democracy, of decision making.

And that's why this concept of multistakeholderism may have more complex aspects, I think.

Just a question for you, for this interesting debate.

Thank you. Good morning everybody.

Participant 2: Yes. My name is Honorable Dr. [name]. I'm a president of the Economic and Sustainable Development Commission Committee in Guinean Parliamentary.

Guinea is very happy to participate in this workshop. Like other countries, the Guinean Parliamentary has also adopted laws on establishment the Personal Data Protection Authority, and the law on cyber security.

What is my question now? For all the tech orders, the major problem today, it is the application of the law, because Internet criminals are often ahead of the state.

What is the experience of your country for this problem now? Thank you. Thank you so much.

Milton Mueller, Georgia Institute of Technology: All right, so question about cyber criminals and whether they're ahead of the law.

Alex: First of all, great to see this symposium to come together. I'm sorry. I couldn't be there in person. I need to pick up on the comment that was made on the stage last, about arguing about labels might not be the best use of our time, and I especially agree with that, since the multistakeholder term has kind of been the bulwark of the non-state-led Internet governance model since 2004, and definitely 2005.

I don't really understand Milton's eagerness to abandon something that's worked very well for the non-state Internet. Since Milton also went on a record with a complete misquotation and misinterpretation of what I actually said, let me reassure everyone, including Milton, I don't think he's against Internet institutions.

So, I think you care deeply about them, which is great. So do I. The difference may be is that I don't think, for instance, ICANN and other institutions represent a private sector run Internet governance system, and I don't think that putting the private sector and the civil society in a technical community and academia in the same bucket really helps our cause, which gets me to the point of why these definitions, these arguments about definitions, are kind of important in a way as well.

Arguing that way, Milton, basically also suggests that there is a private sector domain out there in the world governance system, that is only run by the private sector, and I have no knowledge of that. There is no such thing as a private-sector-only governance model at the moment, where national sovereignty doesn't apply in any state or form.

What does exist is a civil society or non-profit led governance model, and that, for instance, is the case of international humanitarian law. Even though they don't manage resources in a practical context, the International Committee of the Red Cross does have a special state in the international system.

So, that is something that is only possible if you are a non-private-sector. If you are a private sector, you have no hope in hell in removing yourself from national sovereignty, which is one of the reasons why I think we should think very carefully about this rush to abandon multistakeholder and talk about a private-sector-led Internet.

Thank you.

Milton Mueller, Georgia Institute of Technology: Okay. I get to respond to that because it was directed to me.

So, first of all, notice that said at the beginning...

He described the multistakeholder system as non-state- led. If you understand that what we're calling multistakeholder is non-state-led, then we don't have much of an argument. All I'm saying is you have to feature that as one of the main factor description of this institution.

Then you get into the question of whether we should abandon the multistakeholder, and I do think it does create confusion because it does not highlight the differentiation point.

Again, on the question of privacy], In my use of the term and in actually in most theories of civil society, non-profits are considered part of the private sector. They are non-state actors. So, that would be something that we would want to avoid, that confusion, and not

create private actors. With private for profit businesses, that's fine. But civil society, non-profits, academics, technical are all non-state actors, and I think we can agree that that is the transference of authority from the state to non-state actors, what we're fundamentally talking about.

Wolfgang Kleinwächter, Aarhus University: I want to make a final comment on what Alisa had said, when she disagreed that I said multistakeholder approach and multilateral approach are two sides of one coin. I should be a little bit more precise. My argument is that the multilateral system is embedded in a multistakeholder environment.

So, that means governments have a certain final decision making capacity in intergovernmental processes. I think this is clear. They are subject of international law. But they will fail if they ignore this multistakeholder environment, and here comes my challenge for the future because this is an ongoing process.

That means governments or intergovernmental organizations will achieve better results if they open their doors to non-state actors. So, this is a the real challenge, and then

what Pekka Tarjanne said 30 years ago, let's say a new quality or revolution in international law. I think this is the challenge for the future, to change the policy development processes in intergovernmental organizations, and here we need procedures, so that means how non-state actors can participate reasonably in intergovernmental processes.

Unfortunately, we all have seen in the Global Digital Compact, there were a lot of multistakeholder consultations, but, at the end of the day, most of them was more or less ignored.

We have the debate in the Open Ended Working Group, in the First Committee of the United Nations General Assembly, where they negotiate cybersecurity, where non-state actors make comments, but they are ignored. We have this in the Cybercrime Conventions, where civil society, business made proposals. They were ignored.

Why? Because there are no procedures in place how governments have to handle Input from non-state actors.

In ICANN, we have a procedure. If governments give advice, then we have a procedure how this advice is handled. And this is my call for the future. We have to develop procedures how intergovernmental organizations deal with input from non-state actors, business, private sector, civil society, technical academic community, and then we can reach better results because, it's not a question between ism, it's not a battle between religions, it's a search for solutions for the people.

And, I think this is the key driver, and, insofar we should not fight senseless battles because the challenges are too big and we have to collaborate. This is a compromise, this is complicated, but we have to do this. Thank you.

Alisa Heaver. Dutch Ministry of Economic Affairs and Climate Policy: I'll take the question from the person from Guinea.

Obviously, coming from the Netherlands, we also have dealt with with cyber crime issues, and them also sometimes being, so one could say, ahead of law, or not being caught immediately. And yeah, we also have the GDPR, the data protection law, and many different cyber security laws.

Most recently we have the network inform Network Information Security, the NIS2 regulation, which intends to stop cyber criminals. We have very short time, so I can't really explain it in depth.

So, what is our experience to catch them? I think it's also really working together within government and with non-state actors. We have different foundations that try to find

the criminals as well, besides us from government, and look into who are trusted notifiers to inform you as a government on DNS abuse, for example.

We work closely together with our community partners, Country Code, Top Level Domain Registry, SIDN, and they inform all the different registrars if something bad happens regarding DNS abuse, and have different policies to ensure that the registrars and the registrants are informed that there is, for example, a compromised domain name, or a maliciously registered domain name, to take it offline.

But it's a whole sector approach, and, as a government, you will never ever be able, solistically, to fight cybercriminals. You need to work together with the whole chain, or supply chain, to ensure that you can catch the cyber criminals. And, also internationally work together with your neighboring countries, or with the whole African Union, and internationally work together with other countries to exchange information.

I think It's something you will never be able to do by yourself as a government. You will always be two steps, five steps, maybe 100 steps behind of the cyber criminals.

Milton Mueller, Georgia Institute of Technology: I think we're going to have to bring this to a close. I appreciate your participation. I think it was great. I think we had a very multistakeholder approach here.

And, I look forward to continuing this debate, in terms of...

I do think it's relevant. I think it is something that we have to face, particularly with the tendency to question the role of the state and the private sector and non-state actors in governance. I think we have to be very clear about what side of that divide we're on, and what are those roles.

So, with that, we'll bring it to a close and, I'll turn it back over to Jamal.