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MULTILATERALISM, THE EU AND THE EVOLVING GLOBAL GOVERNANCE
OF THE INTERNET

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DRAFT

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Abstract

Whilst the global governance architecture for the Internet has evolved at pace in the last ten years the EU's role and influence in its formation and development has been relatively understudied. This paper contributes to closing this gap in the literature through an investigation of how the EU has sought to shape the emerging environment for Internet governance in the context of its quest for 'effective multilateralism'. The empirical focus is related to two international governance bodies for the Internet, each at different stages of institutionalisation: the Internet Corporation for Assigned Names and Numbers and the Internet Governance Forum. The emphasis in the paper is, first, to identify the type of multilateral governance that the EU has sought to project for the Internet globally and, second, to analyse how the EU has sought to project its preferred type of multilateral governance through its interaction with ICANN and the IGF. In pursuing these lines of enquiry we provide evidence of contradictions and constraints existing alongside opportunities for the EU in its efforts to develop and sustain its multilateral ambitions in two significant global fora for Internet governance. Beyond this, the paper contributes to knowledge of the role the EU can play in relatively new and emerging global governance institutions.

INTRODUCTION

The Internet is now one of the most important means of electronic network communication in the global political economy with an approximate usership of 1.5 billion (European Commission 2009a: 1). Internet governance is a topic of such increasing international political significance that a ‘growing number of political observers expect that in the second decade of the 21st century...[it] will probably become as important for global diplomacy as climate change is today’ (Kleinwachter 2008: 29). The European Union (EU) has, since the early 1990s, begun to develop a portfolio of policies related to the governance of the Internet. A key, considerably under-researched, element of this is the steps taken by the EU to position itself as an influential actor in the still evolving global governance arrangements for the Internet. That the Internet did not originate - and was not therefore originally governed in any way - within the EU has presented the latter with particular challenges but also the obvious possibility of acting as the political representative of its Member States. Developments in the Internet sector in this respect have chimed with a more broadly recognised interest on the EU’s part to cultivate its political profile regarding a wide range of global policies and their commensurate institutional homes. This has often emerged as the promotion and pursuit of ‘effective multilateralism’. In a number of cases, not least that of the Internet, such policy-making and institution building is at a relatively embryonic stage, creating heightened opportunity but also uncertainty for the EU. A key problem for those wishing to govern the Internet is that ‘there is no natural institutional home for all of the issues that are involved’ (Mathiason 2009: 133).

Utilising an analytical framework based on academic work on multilateral governance and the EU *in* international regimes, this paper focuses on the kinds, and degree, of influence which the EU has been able to exert in global Internet governance through a focus on two relatively new institutional contexts: the Internet Corporation for Assigned Names and Numbers (ICANN) and the Internet Governance Forum (IGF). It shows how, through its amenability to new forms of governance, not least those accommodating and relying upon the operational activity of private interests, the EU has been able to create a space for itself in order to influence the global Internet policy-making context.

More specifically, the paper explores the extent to which, and how, the EU has been able to exert its own specific preferences for governance forms in ICANN and the IGF. Whilst the EU has consistently called for a ‘new cooperation model’ for Internet governance in the evolving process of its construction, a core assertion in this paper is that, more recently, the EU has utilised the ‘new’ context of the global financial crisis and the looming expiration of the US-ICANN Joint Project Agreement (JPA) (30 September 2009), in order to define and project a multilateral governance model that brings the state ‘back in’; that is, it has sought to redefine its conception of the ‘normal’ in Internet governance. This is not to argue that the EU’s preference is for the traditional state-centric mode of multilateral governance, but rather, that it is projecting a nuanced form of multilateralism, whereby governments participate with other (private) actors within the global decision-making bodies that construct and implement public policy rules for the Internet. In this sense, it could be argued that the EU is promoting multilateral governance at the global level reflective of established and successful models such as that of its own Internet Top Level Domain (TLD), dot eu, where private agencification is

operationally dominant, but within a clearly defined public policy framework constructed by governments which sets out the principles for its operation (see Christou and Simpson 2006).

In terms of the EU's influence within ICANN and the IGF, preliminary evidence suggests that the EU considers both as important governance platforms; their degree of institutionalisation and perceived function, however, clearly have an impact on how the EU interacts in these arenas and how it pursues the diffusion of its own preferred form of multilateral governance. In this sense, institutional context is important. The IGF is an arena that exhibits a medium level of institutionalisation (with no decision-making power) and within which, through deliberation and informal interaction, new ideas can be generated for approaching critical issues in Internet governance. The EU has embraced this forum as one of learning and idea generation that cannot be achieved through the negotiation mode found within more traditional (state-centred) multilateral fora. ICANN, on the other hand, exhibits a high level of institutionalisation with firmly established governance bodies with decision-making powers in crucial areas of Internet governance (including public policy). Here, the EU has operated with a strategic normative mode in order to try to achieve an outcome (through consensus) that is reflective of its own 'regional' governance practice. Beyond, and to a significant degree consistent with this, the paper finds that the EU has used the extra-institutional context to attempt to increase its influence and standing in the areas covered by both ICANN and the IGF. The specific example of this cited in the paper is the World Summit on the Information Society (WSIS), which was a *process* in which the EU was able to project normatively its 'new cooperation' model, albeit without securing its desired optimal outcome because of the strategic context within which negotiation was undertaken.

Overall, activity of the kind suggested above shows that the EU has become an important and increasingly sophisticated global actor in the Internet policy domain. Moreover, the preliminary evidence suggests that the EU approach to different global Internet fora is accommodating, nuanced and flexible, in recognising that there is room for multiple institutions that complement each other in the Internet governance network, in terms of function, at least. It also demonstrates, however, the contradictions and constraints that arise from the EU's promotion of its variant of multilateral governance compared with that operational in ICANN, in particular. This in turn, has had considerable impact on the EU's ability to achieve its aims (i.e. of being an effective multilateral actor) in shaping the process of Internet governance and securing policy change within ICANN on issues that it perceives as critical. To provide a deeper understanding and explanation of both what the EU has been promoting and how it has attempted to influence proceedings within our chosen institutional contexts, the paper is structured as follows: section I unpacks the notion of multilateral governance and discusses how we can conceptualise the EU's role in international fora. Sections II and III analyse the EU's interaction and influence within ICANN, WSIS and the IGF. The final section draws out the implications of the main findings for understanding and explaining the role of the EU in the multilateral fora of Internet governance.

THEORETICAL FRAMEWORK

The conceptual task of this paper is twofold. First, it aims to provide some guidance on how we can understand the EU's projected normative model for governing the Internet. Second, it is to outline the most relevant literature for explaining how the EU can influence processes within global Internet fora. These dual conceptual aims will then allow us to provide a deeper understanding of what the EU is promoting and its role in shaping Internet governance, as well making some judgement on how far it has achieved its desired goals (i.e. how far it has been effective) on an issue that has thus far, been understudied in relation to the EU's international actorness.

Multilateral Governance

Whilst in recent years the EU's commitment to be an effective international actor through 'multilateralism' (see European Council 2003) has been associated more with its security activities, it has actually been an enduring part of its international existence for some time (Smith and Elgstrøm, 2008). Indeed, the EU's engagement with multilateral structures and its commitment to multilateralism has been the subject of much academic investigation across a variety of themes – the most prominent including trade (Young 2002; Meunier and Nicolaidis 1999; Mortensen 2009) and security (Graham 2006; Wouters et al 2006; van Ham 2009; Varwick and Koops 2009), environment (Falkner 2007; Bretherton and Vogler 2006) human rights (Smith 2006; Laitikainen and Smith 2006; Manners 2002, 2006) and communications (Christou and Simpson 2007a, 2007b; Puppis 2008; Young 2002). Such studies have revealed the problematic nature of the EU's commitment to multilateralism through its actions – highlighting contradictions and constraints to its effective pursuit. However, despite the emergence of much literature on the EU and 'multilateralism' the conceptualisation and application of the latter remains rather rudimentary in nature, with its predominantly traditional state-centric definition often dominating academic discussion. It is the intention here, therefore, to try to unpack multilateralism and its relationship to governance, in order to allow us to create a deeper understanding of the EU's projection in the evolving Internet governance process.

Important contextually is that within the EU the meaning and function of multilateralism differs according to its 'variable identity' as an international actor. In the case of Internet governance the dominant mode of EU engagement is clearly normative and civilian in nature, which also has implications for how the EU can influence proceedings within ICANN, WSIS and the IGF. As a civilian power, EU preference is for normative multilateralism whereby the multilateral option in its external relations is not simply a policy (functional) choice, but rather part of the EU's normative make-up and it is seen as the most legitimate mode of engagement for resolving regional and global problems (Kienzle, 2008: 12). In this sense, multilateralism as a method is perceived (in theory, at least) to hold advantages for fostering cooperation and change – in particular in addressing complex policy dynamics – as it is much more likely to produce more effective outcomes through the creation of collaborative networks at different levels of governance. Moreover, it is seen as a mode that can imbue legitimacy and credibility - in particular in its global organisation variant. Equally, there are many constraints to achieving an effective form of multilateralism in practice.

The suggestion here is that multilateralism and governance can be understood as complementary processes – that is, multilateralism as global governance (see Biscop

2005). The EU has clearly stated that its ‘commitment to multilateralism is a defining feature of its external policy. Taking international cooperation as a precondition for meeting...global challenges, the EU has a clear interest in supporting the continuous evolution and improvement of the tools of global governance’ (European Council 2003: 3). The question then, is how we can understand what the EU believes to be effective in the multilateral global governance of the Internet.

Traditional forms of multilateralism emphasise a strong state-centric form and define multilateralism as ‘coordination of national policies in groups of three or more states, through ad hoc arrangements or by means of institutions’. Ruggie (1993) defines it as the coordination of relations among three or more states ‘on the basis of generalized principles of conduct’. However, such notions have been questioned by Keohane (2006) more recently on the grounds of the assumed legitimacy of such multilateral organisations, which he argues is based (problematically) on a deeply statist normative theory. Important here is that multilateralism is not simply about state interaction. Indeed, he argues that the ‘old’ multilateralism ‘is one of limited cooperation – mutual adjustment of policy – rather than of governance’ (Ibid: 7). He also points to a fundamental contradiction in the multilateralism of the 20th century, which is its ‘profoundly undemocratic nature’. Indeed, he goes on to argue that ‘new’ multilateralism can only be legitimate if it meets the three fundamental standards of *inclusiveness*, *decisiveness* and *epistemic reliability*. Inclusiveness refers to the effective representation of all valid interests (that is, through indirect means); decisiveness refers to the ability to take effective action; and epistemic reliability, ultimately, on the ability of a multilateral organisation to ‘revise’ the rules of the game on the basis of internal and external criticism.

An important idea permeating the governance literature is the shift from ‘government to governance’ and its implications for the role of the state in globalising sectors. The term governance has been used to refer to and conceptualise a wide variety of structural forms, institutions, actors and practices in relation to the role of the state in the global political economy. ‘New’ governance, therefore, suggests systems, or ‘regulatory regimes’ (Eberlein and Grande 2005) that can possess different degrees of hierarchy, can involve non-state public and private actors as well as the state; and often exist as ‘different types of networks and public-private partnerships’ (Kohler-Koch and Rittberger 2006: 29).

We can contrast, and to some extent conflate, ‘new’ multilateralism and governance in order to provide an analytical reference point for assessing the EU’s promotion a model for Internet governance. Multilateral governance, in this sense, can be defined as a mode of cooperation and interaction that provides guiding principles on how policy can be constructed in terms of context, actors and processes. It provides a map of those actors involved in cooperation, whilst also adding a dynamic element in defining the types of processes within which policy is constructed and implemented. What we can derive from this is that global multilateral governance is a concept that can capture the complexity of the actors involved in Internet governance as well as the methods through which policy is executed. It moves away from a state-centric form traditionally found in the UN, towards ‘a new form of multilateral cooperation ...which emphasises the importance of networks between state and private actors...global partnerships, multi-stakeholder initiatives, global public policy networks and governance concepts of variable geometry’ (Martens 2007). Furthermore, it is suggestive of the involvement of a broader set of actors and

multilateral governance arrangements, but also of processes that move beyond simple top-down multilateralism and implementation of policy constructed by states at global level through a *bargaining* mode of engagement. Indeed, it is conducive to policy construction through bottom-up multilateralism, policy development through *process, deliberation, learning* and *consensus*, and policy implementation through practice and socialisation. Conceptually then, new multilateral governance can help us to understand the relationship between the public and the private sphere, and indeed, the role that each has to play in the formation and implementation of policy at the global level.

| State-centric (old) multilateralism | (new) Multilateral governance |
|---|---|
| States cooperating | States and non-state actors cooperating |
| Top-down multilateralism/hierarchical processes | Bottom-up multilateralism/vertical and horizontal processes |
| Bargaining as main mode of policy making | Learning as mode of policy making |
| Exclusive | Inclusive |
| Undemocratic | Democratic |

To elaborate further, if a legitimate form of multilateral governance is to emerge that is inclusive, decisive and reflexive, then we must understand how the public and private can interact, and what the implications are of the different forms of arrangement that are possible. Here, more nuanced understandings of the public-private relationship can be helpful for illuminating the analysis of the EU in Internet governance. At the polar extremes we have private or public arrangements: in the former, private actors set the rules of the game through networks, partnerships and other private arrangements, and implementation occurs through codes of conduct/procedural regulation and persuasion, learning and practice; in the latter, states dominate the formal rule-making environment, the actors involved are from the public realm, and implementation occurs through a rigid legal framework, material regulation and sanctions. In between these polar extremes sit various middle-ground arrangements that allow a role for both the public and private. The first is subcontracting, whereby states can be involved in setting the conditions for rule making with private actors shaping the content. Within this schema there is a clear separation of rule shaping within which the state is involved and management of the policy process, which is delegated to private actors. In addition, policy can be constructed and implemented in different public-private environments (across and between different dimensions of governance) through both material and procedural regulation. Finally, there is market-based multilateral governance, where private actors are responsible for setting and implementing the rules, but whereby states have the right of intervention if this is seen to be failing. In this sense, this resembles the pure ‘private’ schema, but with

the possibility that states can create a legal environment and material regulation *if required* (for details, see Christou and Simpson 2009).

Each of the above ideal-types of multilateral governance bring with them risks, problems and consequences in terms of decisiveness, efficiency, democracy, legitimacy and accountability. Private arrangements are perceived, in theory at least, to be more decisive, flexible and effective (but see Martens, 2007; Graz and Nölke 2008 for a critique), whereas purely intergovernmental arrangements are seen as cumbersome, lacking in political will and capacity, and inflexible (with the main advantages being accountability, 'public' legal protection, and legitimacy). Those types within the middle ground are seen to be a practical answer to addressing the concerns associated with purely private or public arrangements in the search for effective multilateral governance arrangements. However, the extent to which these arrangements work is still relatively under-researched and thus an open question empirically. The promotion of each type is also very much context-based, with calls for 'new' multilateral governance (beyond the state) often associated with the inability of the state to deal effectively or adequately with global problems. Conversely, the global financial crisis has led to the reassertion of the role of governments in global multilateral governance; the EU has certainly seized on this for the Internet in asserting a greater *regulatory* (defining public policy rules) rather than operational (day-to-day management) role for the state in the relevant decision-making fora (that is, ICANN; see European Commission 2009).

In sum, our task here is not to assess the effectiveness of Internet governance per se, but to locate and understand what the EU is promoting in the global Internet governance fora that we are studying. The above schema is a starting point for allowing us to do this and our central question in this regard is: which model (s) has the EU projected for Internet governance in the global fora we are investigating?

Explaining the EU Pursuit of Effective Multilateral Governance

Beyond identifying the type of multilateral governance the EU promotes in Internet governance fora, we also need to explain *how* the EU pursues its objective of 'effective multilateralism'. Scholars have analysed the EU's role and interaction with international organisations and regimes in various ways. Jørgensen (2009), for example, identifies five major approaches to the topic, which include: legal-institutional studies; interorganizational network approaches; the EU as an international actor; a policy-oriented approach; and a global governance approach. He then sets out a broad framework for analysis which *inter alia*, focuses on internal, external and constitutive factors for explaining the EU's relationship with, and activity within, international organizations. Others have analysed the broad links between the EU and international regimes, as well as the more direct engagement of the EU with specific regimes through various theoretical lenses (Smith and Elgstrøm, 2008). For our purpose, we focus on the internal and constitutive, and draw in particular and predominantly on Smith and Elgstrøm (2008), as it provides a broad, theoretically informed discussion and agenda for exploring the EU in international fora in its pursuit of effective multilateralism.

As has already been asserted above, global Internet governance lends itself to EU normative or civilian projection (that is, soft power). Although within ICANN's Board of Directors decisions are taken by vote, there is no government/EU representation. Within ICANN's Governmental Advisory Committee (GAC), where the EU and its Member

States can influence proceedings, recommendations to the Board are achieved by consensus (Mathiason, 2009: 71). In addition the function of the IGF is not to make decisions, but to discuss and deliberate in order to find solutions to Internet governance issues. Conceptually, whilst this does not exclude rationalist frames for preference formation, it does rather relegate their relevance in this case. Note here, that we are not arguing the EU cannot act strategically (see Christou and Simpson 2007b), but that in order to do this within ICANN (GAC) or the IGF, it is most likely to use its soft power, employing deliberation and manipulation of existing norms through putting forth alternative, credible (best) arguments (as decisions are made by consensus). Most relevant to us, then, are norm-based and negotiative (that is, problem-solving, not bargaining) approaches to understanding EU action, which at one level overlap, but at another, also provide interesting and qualitatively different questions.

Within the rationalist school of thought's attempt to understand the EU's role in international for a, emphasis is on preference formation through cost-benefit analysis and negotiation based on the power dynamics of the institution. Such an approach is focused on enhancing actor information, reducing uncertainty and mediating preferences. Rules are then established through negotiation, which members are expected to adhere to, with 'the possibility of defection if the calculus shifts or if conditions in the broader global arena make this apparently profitable' (Smith and Elgstrøm, 2008: 6). Much work on principal-agent dynamics in international organizations has been underpinned by the rationalist logic, with a focus in particular on the control and cooperative aspects within this relationship; and especially the extent and conditions under which 'agents', such as the European Commission, can act as policy entrepreneurs.

Essentially, rational institutionalism focuses on preference and rule formation through a 'logic of consequences' rather than a 'logic of appropriateness' (Pollack 2005). Norm-based approaches, on the hand, focus on the latter, and help to fill a gap in terms of emphasising not just the material aspects (power, coercion, economic cost) of interaction and change, but also the cultural and informal, through different understandings of the norms within international fora, how they are formed and interpreted, and how they are potentially redefined by those actors within them. This takes the focus away from the simple projection of preferences by actors and how such preferences can be secured through rational calculus, to ask questions of 'the terms on which actors enter into regimes, the ways in which they construct them or construct themselves within them, and the ways in which regimes may lose their strength because of an erosion of underlying principles such as trust, legitimacy and shared expectations among their members (Smith and Elgstrøm, 2008: 10). Also significant is the transformative effect of institutions – again neglected by rationalist approaches with a focus on institutions as management or regulatory devices and where preferences remain fixed. Here, much work has focused on how actors can use international fora and other arenas to advocate, legitimise and diffuse alternative norms through communicative rather than coercive action (Keck and Sikkink 1998). Finally, the work on the EU as a normative power (Manners 2002, 2006; Lucarelli and Manners 2006) has also served to shed light on how the EU can shape practices within and across different fora and varying issue areas. Central to this approach is how the EU's core norms form the basis of the EU's approach externally and its attempt to shape the world outside.

According to Smith and Elgstrøm (2008: 12) the norm-based approach raises several interesting ‘inside-out’ and ‘outside-in’ questions. In terms of the former, those most salient for the purpose of this paper are: a) To what extent has the EU accepted Internet governance fora because they sit well with EU governance principles (e.g. multilateralism)? b) Are Internet governance fora seen as arenas through which the EU can establish its identity, legitimacy, and ‘voice’ and essentially, project what it perceives normatively to be a more suitable model for Internet Governance? c) What is the EU reaction when the fora/forum within which it interacts runs counter to the EU’s own normative understanding of governance or policy formation? From an outside-in perspective, the most important question is how Internet governance fora and the ideas and understandings generated therein, impact on the EU in terms of the creation and diffusion of new ideas, discourses and understandings in the EU Internet policy process. That is, it is important to understand how EU actors interact in international fora and in turn how this re-configures EU action in policy formation and implementation (Ibid: 13). Investigating how the EU interacts with and influences international fora also brings to the fore questions of the EU’s mode of engagement within these fora.

In this sense, similar issues arise as to whether it engages through a logic of consequences i.e. a bargaining mode linked to hard power (see Singh 2008 in relation to the global information economy), or whether it engages through a logic of appropriateness i.e. in problem-solving mode related to soft power. A secondary aspect of this is the role the EU plays: whether it is a leader or mediator/broker; whether it is reactive or proactive. We have already suggested above that the EU’s role is best understood as normative in Internet governance given the institutional context of ICANN and the IGF. This involves achieving aims through soft power, based on the resource of information, expertise and convincing ideas/argumentation, and on reaching consensus on solutions that are ‘good for all’ and address a common interest, rather than simply maximizing self-interest. This does not imply that argumentation cannot be used in bargaining mode to achieve goals. Indeed, Schimmelfennig has shown convincingly how states can use rhetoric strategically in a normative institutional setting; that is, ‘the instrumental use of arguments to persuade others of one’s claims’ (Schimmelfennig 2000: 129; see also Schimmelfennig 2001, 2003; Schimmelfennig and Sedelmeier 2005; on Internet governance see Christou and Simpson 2007a). However, this mode does not follow a logic of appropriateness, nor does it prioritise the ‘persuasive force of normative appeals’ (Smith and Elgstrøm 2008: 14; Kotzian 2007: 81), or the most logical (best) argument (Risse 2000). A key question here then, is within what sort of mode has the EU engaged in global Internet fora and processes? To what extent has the EU been effective in its chosen engagement mode (s)? In terms of the EU’s role, much research has focused on the potential of the EU as a leader in international fora. A leadership role can be defined as the ability of an actor to shape and direct others towards its desired goal over a period of time (Underdal 1994: 178).

Important in terms of leadership traits is the leader’s vision and ability to persuade others (followers) of that vision in the appropriate institutional context. This latter point is significant as the role the EU plays, as already stated, is contextually determined with actors ‘behaving in the way they think is appropriate in the particular context at hand’ (Smith and Elgstrøm 2008: 17). Work in this area has suggested that the EU has a mixed leadership record across different issue areas in global fora, with findings suggesting it

has been, variously, reactive (Taylor 2006), perceived as a great power (Elgstrøm 2006), but not necessarily a leader. The central reasons identified for this touch upon the EU's internal incoherence and inconsistency. The EU can also play the role of mediator or bridge-builder in international fora, the main traits of which are an ability to build trust and consensus in order to arrive at solutions that cannot be found if other actors are left to their own devices. In this sense, the EU does not necessarily have to be a leader to be effective; it can also be successful as an actor that can offer alternatives on which others can compromise (Smith and Elgstrøm 2008: 18-19; Elgstrøm 2003). Interesting questions raised by this literature in the context of this paper are: to what extent has the EU thought it appropriate to exert a leadership or mediation role within the Internet governance fora under investigation? What have been the main constraints and opportunities for succeeding in the leadership or mediation role within these fora? How far has the EU been reactive rather than a proactive agenda-setter in these fora? In sum, whilst the discussion in the sections below cannot possibly give comprehensive coverage to all the questions posed above, it will address the following three central questions: what sort of model has the EU promoted for Internet governance in ICANN, WSIS and the IGF? Within what mode has the EU engaged in these fora? What sort of role has the EU played in the fora and what has been the impact in terms of its effectiveness?

THE EU AND ICANN: PURSUING MULTILATERAL GOVERNANCE THROUGH NORM PROJECTION

ICANN was established in September 1998 as an international, not-for-profit, private institution under California law, with the aim of resolving problems that had arisen with 'intellectual property combined with issues of domestic monopoly power and fears of incursion by the international public sector' (Matthiason 2009: 49). More practically, its main function was to manage IP address space allocation and protocol parameter assignment, as well as the domain name and root server system. The negotiations and context that led to the establishment of ICANN (see Mueller 2002) resulted in multilateral governance that excluded states as decision-makers, despite ICANN being responsible for important public policy issues. Indeed, somewhat controversially, and to the disappointment of the European Commission (1998, 2000), the US government, through its Department of Commerce, maintained unilateral policy oversight and authority of ICANN. It was also obvious too that the relegation of the role of governments to *advisors*, did not sit comfortably with the EU's preference for coordinated or 'regulated' self-regulation, manifest as a subcontracting model rather than that of pure private interest (self-regulatory) governance (see Christou and Simpson 2006 on the EU's governance of its dot eu Internet Top Level Domain). Whilst the European Commission supported the US initiative to establish ICANN in terms of the private management and coordination of key resources for the Internet, this was on the condition that it would be 'ultimately accountable to the international community as a whole [read all governments] in the broader public interest [read through public policy rules] for the benefit of Internet users world-wide' (European Commission 2009: 6). As Mueller (2007: 3) notes, 'ICANN was a unilateral US initiative. The Europeans went along after getting some minor concessions, but they really had no choice and the regime only marginally

reflected their preferences...the influence of the EU was relegated to a status that was, at best, about the same as key private sector actors’.

Right from ICANN’s inception then, it was quite obvious that there was a conflict, or at least, a major tension, between the EU’s vision of how the Internet should be governed globally, and that of the US, and indeed, other private actors, academics and technicians initially responsible for the emergence of the Internet. There have been two major sources of this tension. First, the Government Advisory Committee (GAC), which was set up to provide a forum for reaching consensus between governments on recommendations and advice to the ICANN Board ‘as they relate to governments, multinational governmental organisations and treaty organisation’ (ICANN 1999: 2), especially but not exclusively, in matters of public policy. Second, the Joint Project Agreement (JPA - 2006) between the US and ICANN¹, which designated ICANN to carry out its main responsibilities but critically and controversially gave the US government a unilateral oversight role. The context within which ICANN has evolved, alongside its governance structure, has meant the EU has had to engage strategically, but in *normative* problem-solving mode in order to influence the evolving process of Internet governance in ICANN. Moreover, the EU whilst being mainly *reactive* at the inception of ICANN, has gradually projected itself as a leader² in seeking to shape ICANN governance in an era where the JPA is due to expire (30 September 2009) and ‘public attitudes have changes towards the concept of self-regulation in the wake of the financial crisis...’ (European Commission 2009: 4; authors’ interview, European Commission, July 2009).

In the original bylaws constructed at ICANN’s inception the role of governments was limited. Whilst the EU was able to secure the GAC as a concession from the US government, arguing the importance of governmental interests and representation in Internet naming and addressing, the GAC was established with governments simply as ‘advisors’ to the Board of Directors. It was clear, however, that the European Commission’s intention from the outset, was to participate and establish a voice in the GAC for the purpose of projecting its own alternative arguments for what it saw as a more legitimate form of multilateral governance, with a ‘self-regulatory structure buttressed by active policy oversight...through the Government Advisory committee’ (European Commission 2000: 9). This demonstrated that the advisory function set for the GAC in the original ICANN bylaws, were domesticated by the EU and given a different interpretation, despite its lack of decision-making or voting rights.

The EU argued that this oversight should be exercised on a multilateral rather than unilateral (US) basis, and made it clear that ‘should ICANN extend its influence...to other policy areas where governments found that the interests of their general public were being affected...then the current relationship would probably have to be revisited (European Commission 2000: 8). In its attempts to put forth its argument for a different normative model resting on the notion of oversight underpinned by ideas of subcontracting rather than private interest self-regulation, the European Commission representative in ICANN took the lead by putting forth in public documents the idea of the GAC-ICANN relationship as the ‘first example of public-private partnership...where the scope of industry self-regulation is guided and constrained by similar input from the public authorities’ (Wilkinson 2000: 6). This argument was underpinned normatively by calls for a more representative and thus legitimate way of regulating Internet issues that were considered of national and global significance, and found resonance with those

active within the GAC as well as those affiliated, and outside³. Whilst the EU continued to press its normative case within the GAC and elsewhere through the promotion of greater interaction and deliberation between the GAC and other ICANN constituencies, including the Board of Directors, there were several constraints on the EU being able to meet its objective of transforming, or at the very least, manipulating ICANN's governance structure through the GAC.

The first was the approach of the US as well as its ownership of the critical resources for the governance of naming and addressing (the key A root server computer and the IANA function). The second was the technical and commercial interests involved in the early establishment and management of domain names which took a 'decentralist' view of governance where there was 'no role for the state' (Paré 2003: 47). Any suggestion of anything but private interest self-regulation was considered not just as unnecessary, but intolerable. It was considered a move that would only introduce bureaucracy to a process that needed flexibility and efficiency if the Internet was going to grow as an accessible tool socially and economically. Because of this strategic context, the EU's opportunity to change and transform was reliant on the incremental *manipulation* of ICANN's private, ultimately legalistic, and US-oriented self-regulatory governance norm and the gradual socialisation of the GAC into the working practices of ICANN, so that those that were sceptical could eventually see the benefit of 'governmental' involvement in a co-regulatory environment. However, there was also a third and familiar constraint – and that was of EU coherence within the GAC. After many initial problems and criticisms of ICANN in its formative years, a reform process was initiated in 2002, which led to a re-consideration of the role of governments, and a proposal by the GAC, supported by the European Commission, that the Chair of the GAC should sit on the ICANN Board in an ex-officio capacity. However, whilst the Commission represented the EU, other EU Member States were also participants in ICANN, and their views have often been different to that of the Commission. In this instance, both France and Germany dissociated themselves from this GAC proposal in favour of a more radical stance and declaration calling for the possibility of a more legally embedded right for government involvement and intervention in the future (Christou and Simpson 2007a: 139).

The changes to the GAC's role reflected a compromise in relation to the different proposals put forth, in that governments were given a 'de facto 'political veto right' for ICANN decisions touching on public policy issues' (Kleinwächter 2008: 17). Moreover, new ICANN bylaws meant that the Board could not simply ignore or reject GAC advice, and if it did, justification had to be given as to why this was the case. Whilst the change cannot be accredited to the EU alone through its leadership and advocacy of a greater role for the GAC, there is certainly evidence to suggest that the Commission was an important and influential player in this process (European Commission 2009). Important here, is that since the modification to ICANN's core values in 2002, which declared that public policy matters should be reserved for governments; the 'norm' has become one that assumes 'public policy matters are a domain reserved to governments' In fact, it has been claimed that 'since 2002 it has been practically mandatory for ICANN to follow GAC's "policy advice"' (Mueller 2009: 3). This is a clear movement towards the 'subcontracting' multilateral model favoured by the EU and which it had consistently argued for within the GAC (see Christou and Simpson 2007a: 134-40).

However, although this model is much more amenable to the EU and whilst its critics argue that governments ‘should participate in the policy development process in the same way, in the same processes and with the same status as all others’ (Mueller 2009: 4), the European Commission has actually recently argued that the existing model should be transformed further since ‘the GAC...does not yet comprise the full community of states’ and ‘concern has been expressed about the due consideration given by the ICANN board to GAC advice’ (European Commission 2009: 7). Their argument for movement towards even further governmental involvement in terms of both representation and defining public policy rules, was projected in the context of the financial crisis and the expiration of the JPA (discussed below) where, ‘there is now a higher and understandable expectation that governments will be more proactive than may have been the case in the past in defending public interest’ and where ‘continuing to pursue an exclusively ‘back-seat’ approach to the development of Internet governance was not an option’ (European Commission 2009: 4). Moreover, they argued that Internet users ‘have a legitimate expectation that their governments will guarantee any current or future governance arrangements will reflect the public interest of society as a whole’ (Ibid: 4). The Commission, in its continuation of the pursuit of a normative model that sits better with their own understanding of governance and policy formation, has called for a ‘strong public policy framework [which] can also help create a predictable environment conducive to investment by identifying public policy targets that will be supported and ‘red lines’ that must not be crossed’ (Ibid: 4). The EU then, in its argumentation, has clearly appealed to the ‘common interest’ of all, rather than a select few, in order to convince others that the time is right for further ICANN reform in order to meet one of its main objectives; the ‘balanced and equal oversight of some of ICANN’s activities by public authorities’ (Ibid: 4).

It is important to note here that although the ICANN private interest model did not sit well with the EU, it was not the day-to-day private operations that it objected to, but rather, that the regulatory backdrop did not involve ‘public’ guidelines and parameters on how private interests should operate. In other words, the EU, had diffused and incorporated the private *operational* global norm on Internet governance, and recognised its efficacy through the success of its own dot eu model. Indeed, the EU has stated quite explicitly in relation to ICANN that ‘private-sector leadership of day-to-day management needs to be maintained...the role of governments should be mainly focused on principle issues of public policy, excluding any involvement in the day-to-day operations’ (Ibid: 5). In this context, it has called specifically for ‘internal ICANN reform leading to full accountability and transparency’ as well as external accountability whereby ‘current arrangements for unilateral oversight in regard to ICANN and IANA need to be replaced with an alternative mechanism to ensure that ICANN has *multilateral accountability*’ (Ibid: 8, original emphasis).

It is too early to analyse how this argument will play out in ICANN and any reform process that is undertaken in the prevailing context. It is clear from the EU’s current projections, however, that it aims to seize the opportunity to lead and catalyse changes within ICANN and other fora, in order to achieve the objectives it originally set out for itself in Internet governance (Commission Communication 2000; Council Resolution 2000). It has engaged within ICANN in what can be termed a *strategic* normative mode – to persuade others that an alternative model for Internet governance is required that is

more legitimate, accountable and effective. However, whilst it has asserted a leadership role, and changes within ICANN have certainly moved in a direction advocated by the European Commission, it is not clear that this was due solely to EU influence. Moreover, in terms of measuring effectiveness, the EU has not achieved its objectives in Internet governance (European Commission 2009: 4). In the case of ICANN and the GAC, strategic, institutional and deliberative constraints (i.e. arguments made have not been convincingly enough for all actors) can account for this.

The issue of the US agreement with ICANN – the JPA – has been one that has been discussed and negotiated in the extra-institutional context rather than within ICANN alone. In this sense the EU has engaged in both bargaining and normative modes in order to secure its objective of moving from unilateral oversight and accountability of ICANN by the US government to *multilateral* oversight by many governments. The core problem from a EU perspective was that unilateral oversight of the global naming and address resource (the IANA function and the root zone file) by one government was not seen as credible or legitimate given its significance for the stability and security of the Internet as a whole. When the US government decided to replace the original Memorandum of Understanding signed with ICANN in 1998 to manage the IANA function, with the JPA, the EU whilst expressing its concern and disappointment (Reding 2005), interpreted this, as creating new arrangements that were intended to end definitely by 2009.

It is within this context that the EU called for the transfer of the management of the root server from the US government to ‘appropriate international supervision by public authorities’ (European Commission 2009: 5). The negotiations over this were played out most prominently during the WSIS process (discussed below), but the issue has re-emerged once again given that the JPA is due to expire on the 30 September 2009. Here, the EU has been proactive in suggesting an alternative model of ‘multilateral intergovernmental supervision’, but with the recognition that many constraints exist to achieving this within existing global fora given that ‘there is no international consensus on the creation of a new intergovernmental organisation to exercise such oversight or on the delegation of such responsibilities to any existing organisation’ (Ibid: 8). Moreover, assuming that the new US administration honours its commitment and allows the expiration of the JPA, it is not clear what the EU is advocating to replace it, only that it seeks to engage in discussions with international partners in order to reach a solution. Where such discussions lead is important – principles for governing the Internet were agreed during the WSIS process, including those of multi-stakeholderism and multilateralism. The EU wants to extend beyond this in terms of the action lines defined at WSIS – but its position needs to be made much clearer – in particular on how it will attempt to reconcile its calls for extending and encouraging multi-stakeholder provision whilst also creating a process of ‘multilateral intergovernmental cooperation’ for public policy issues. There are certainly contradictions within this that need to be addressed if Internet governance is to be more inclusive, accountable and transparent when (and if) the JPA expires.

THE EU AND WSIS: BROKERAGE AND NEGOTIATION IN INTERNET GOVERNANCE

The EU's engagement with WSIS provides important evidence of how it has attempted, through principally the activities of the European Commission, to place itself in a leading role in negotiations on global Internet governance arrangements. It also highlights how the EU projected a normative and practical alternative to the then status quo, albeit a far from radical one. However, WSIS also shows how the EU's efforts were only partially successful given the strategic use of its material power by the US government to determine the key outcomes of WSIS. Importantly, however, WSIS did not witness the end of the debate on global Internet governance and the EU has continued to use the ground it gained in WSIS to press for the evolution of a model of Internet governance reflective of its preferences.

Whilst ICANN evolved controversially through its first decade of existence, the increasingly high profile matter of Internet governance became manifest in a broader policy initiative which emerged from the UN, through the International Telecommunication Union, in the late 1990s. The World Summit on the Information Society (WSIS), first articulated in outline at the ITU's 1998 Plenipotentiary conference, received the assent of the UN in 2001 and was conducted in two phases, each culminating in meetings in Geneva (Phase 1, December 2003) and Tunis (Phase 2, November 2005). The aim of WSIS was to bring together a wide range of parties from government, the private sector and civil society from across the world to discuss a range of issues related to the creation and development of the so-called Information Society globally. Its desired eclecticism notwithstanding, a key dimension was the role played by states in the WSIS process since it was intended that a series of agreements would be made as a result of the deliberations held in the lead up to each summit. Thus, the Geneva phase of WSIS resulted in a broad Declaration of Principles and Action Plan. Importantly, the former proclaimed that Internet governance should be 'multilateral, transparent, democratic, and with the full involvement of governments, the private sector, civil society, and international organisations' (WSIS 2003: 7).

Aspirations to see the growth of the Information Society aside, WSIS also provided evidence of the global institutional politics of information and communications technologies at work which eventually yielded the Internet Governance Forum. The ITU had through the 1990s been attempting to re-assert itself in the global communications governance landscape. Though the longest standing international organisation of communications governance, it was not at the helm of the sweeping neo-liberal reform process of telecommunication which had gathered pace internationally through the 1990s and was even viewed as an organisational impediment to it in some quarters, not least the EU and USA. WSIS also provided an initially unintended, though perhaps inevitable, vehicle for the rumbling discontentment about the governance of the Internet - specifically the roles played by ICANN and the US government - to be aired. A lack of agreement at WSIS I did, nevertheless, result in the creation of the Working Group on Internet Governance (WGIG), key tasks of which were to provide a definition of Internet governance, as well as to develop insight into the roles and responsibilities of a range governmental, private sector and civil society actors in the global Internet governance process. Importantly, WGIG reaffirmed the WSIS Declaration's preference for broad

multilateralism in Internet governance. The corollary would be a global Internet governance arrangement of multi-stakeholder and multi-participatory character, a position, however, open to interpretation in terms of its implementation. In a less than veiled reference to the US's relationship with ICANN, WGIG also agreed that no single government should have a pre-eminent role in Internet governance (Mathiason 2009: 122). However, political decisions taken in the lead up to, and at, WSIS II, meant that this form of governance would emerge in only a limited and highly particular fashion. The EU played an important role in this period, though was only partially successful in securing these preferences essentially due to its inability to persuade the US of the desirability of its preferences and the latter's ultimate determinative exercising of its material power.

The EU proved keen to portray itself as a key international actor in the WSIS process, even going as far as to assert that it had coined the Information Society term and that other regions of the world had sought its advice on the development of their own Information Societies (European Commission 2003). As early as 2000, it had argued for multilateral Internet governance to be developed, specifically at the time in respect of ICANN (European Commission 2000). The EU was also able to secure a common agreement among its Member States for both phases of WSIS. It took significant pains to promote its own agenda around this time, arguing in the early stages for the expansion of the WTO's IT Accord and Agreement on Basic Telecommunications, as well as urging the creation of global e-commerce regulatory frameworks (European Commission 2003). After WSIS I, the EU continued to promote itself as an international leader of the initiative arguing that the WSIS agreement was 'largely inspired by the EU approach' (European Commission 2004: 153). Very importantly, in the lead up to the second phase of WSIS, the EU put forward 'a new cooperation model' which it argued would be operated on 'a more solid democratic, transparent and multilateral basis with stronger emphasis on the public policy interests of all governments' (European Council of Ministers 2005: 1). Specifically, this was articulated by the European Commission as a 'public-private cooperation model' – reflective of 'subcontracting' in our terms (European Commission 2005).

In June 2005, the EU's ambitions for its multilateral Internet governance model were dealt a major blow with the US government's declaration that it would continue to maintain its contractual supervisory authority over ICANN, a position which it held throughout negotiations leading to WSIS II. The EU's response to the June 2005 Declaration by the US government was significant in two key respects in terms of its growing position as an international actor. On the one hand, the EU, through Viviane Reding, Commissioner for Information Society and Media, was bold enough to describe the US action as 'a recipe for stalemate...very disappointing to Europe and others who have worked towards a cooperative global approach since 1998' (Reding 2005: 4). However, secondly, in a more conciliatory manner the EU used the controversy to position itself as a high profile political broker between the US and those states many of whom were deeply opposed to its position. In a succinct and sophisticated encapsulation of these two goals, Reding argued that the EU's (clearly in this case self-appointed) 'position of deal broker cannot work unless the US recommits to its historic compromise to internationalise the Internet governance regime' (ibid.). She also took pains to point

out at the same time, however, that the EU's approach was for the most part in line with and 'often identical' to the US perspective.

In the negotiations leading to WSIS II, the EU put forward what it described as a 'new model for international cooperation' which would result in globally applicable public policy principles related the Internet and not least its naming and addressing system' (European Union 2005: www.itu.int/wsis/docs2/pc3/working/dt21.pdf). The proposal advocated the establishment of a global deliberation forum which would be complementary to existing Internet governance bodies. The EU also endorsed the leadership role played by private interests. After the creation of the IGF at WSIS II, the EU was quick to claim that the compromise reached was 'based largely on EU proposals' (European Commission 2005c: 1) though the agreement was 'more akin to an interface than a compromise' (Christou and Simpson 2007: 156). It did make reference to the pursuit of the EU's proposed cooperation model (Malcolm 2008: 347), though the US veto remained and other elements of what was an essentially inter-state deal (Masango 2008: 63) were loosely specified. The new cooperation model did not provide for any explicit model of intergovernmental negotiation to place (Kleinwaechter 2008).

THE IGF AND EU ENGAGEMENT: NORM 'MAKER' AND 'TAKER'?

The IGF emerged as a new novel forum to engage with issues of global Internet governance. Whilst the EU was unable to secure all its preferences for Internet governance from the WSIS process, the IGF was viewed as a positive development. However, current evidence suggests that whilst very supportive, the EU's vision of global Internet governance differs significantly from the underpinning governance principles and current modus operandi of the IGF (see European Commission 2009; also authors' interviews 2009).

The IGF was created as a multi-stakeholder governance forum which could address all issues of Internet governance but only in a deliberative manner. It could produce recommendations but would not be able to take any binding decisions on the future evolution of the governance of the Internet. In this respect, the creation of the IGF as the main outcome of WSIS was far from the desired outcome held by the EU. Nonetheless, the specified remit of the IGF is wide and arguably open-ended, giving significant scope for action. Aside from its discussion based remit, it is mandated to 'facilitate discourse between bodies dealing with different cross-cutting international policies'; 'interface with appropriate intergovernmental organisations and other institutions on matters under their purview', 'advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the Internet in the developing world'; 'strengthen and enhance the engagement of stakeholders in existing and/or future Internet governance mechanisms'; 'contribute to capacity building for Internet governance in developing countries'; 'promote and assess...the embodiment of WSIS principles in Internet governance processes'; and 'help find solutions to the issues arising from misuse of the Internet' (WSIS 2005, Tunis Agenda: para 72). It is important to note that the IGF model for reaching international agreement breaks with the long-standing Westphalian model – or traditional global multilateralism. For example, the IGF does not discuss recommendations though its workshops, fora and plenaries produce messages which are summarised by the IGF chair at the end of the meetings (Kleinwaechter 2008).

The IGF has since WSIS II met three times⁴. Although under the umbrella of the UN, it does not follow UN procedures. Nonetheless, the decision to let the UN Secretary General convene the forum was a way of ensuring formal equal status for all participants Mathiason (2009). It contains a small Secretariat funded through voluntary donations and a Multi-stakeholder Advisory Group of 40 people, half of whom are governmental representatives (Malcolm 2008: 364). The latter were proposed from five regional WSIS groups, one of which is the Western European and Others Group (Masango 2008: 66). It is clear from the outset, that the EU viewed the IGF with some degree of caution and arguably as an undermining factor in its pursuit of its own model of enhanced cooperation. At the IGF's inaugural meeting, the EU Information Society and Media Commissioner, Viviane Reding, noted rather pointedly that 'The IGF does not replace negotiation between governments or the enhanced cooperation model' (Reding 2006). The inaugural Athens meeting of the IGF involved a series of 36 workshops and plenary sessions. The looseness of the IGF format is emphasised by the emergence of subject based dynamic coalitions which collaborate to varying degrees from coordination of independently carried out work, to a joint programme of work to facilitation of open discussion fora. These coalitions, with no formal affiliation to the IGF, were expressly supported by the EU after the Athens inaugural IGF meeting (Malcolm 2008).

A key feature of the brief institutional history of the IGF is the split which has been discerned between those who wish it to become decision-taking and others who wish it to adhere to a discussion only *modus operandi*. The IGF has been a venue in which strong criticism of ICANN and the governance of Internet critical resources has been articulated. As Masango (2008: 77) argues, 'the unique position of the IGF stems from the fact that governments explicitly gave a mandate to bring in other stakeholders as equals...'. This has clearly set new challenges for the EU despite its openness to newer forms of governance. It has even been argued that the IGF may signal evidence of dissolution of barriers between processes of norm production and application with actors 'starting to acknowledge that these activities are both parts of a continuous and dialectic, mutually transforming process' (Marzouki 2008: 134).

However, its performance has also been criticised. Issues have been dealt with in an *ad hoc*, isolated manner often outside the IGF process. The IGF's plenary meetings have not been as interactive and deliberative as could be the case. Malcolm argues that 'to reduce the IGF to an impotent annual conference is to unacceptably subordinate the autonomy of those actors who lack formal authority' (Malcolm 2008b: 7). He goes on to note how power is skewed towards governmental interests in the IGF. Its Secretariat and MAG are appointed by the UN; around half of the MAG is made up of governmental interests; and developed states in particular have succeeded in constraining the capacity of the IGF to develop recommendations, even though this is within its mandate (p13). Recent evidence suggests that there is a growing disquiet among participants at the IGF's lack of progress on taking decisions (Hofmann 2009).

Wilkinson (2009) has argued that the EU has in fact been a *policy leader* in developing the idea of multistakeholderism in Internet governance. Specifically, the creation of the European Panel of Participants (EC-PoP) in 1998 by the Commission resulted in a group of Internet experts which subsequently advised the Commission on Internet policy matters. However, it is important to note that this body was mostly made up of business interests and the model of its relationship was much more akin to the well established

preference of the Commission to seek advice from the private sector to facilitate its decision-making than the kind of deliberative governance pursued by the IGF.

In January 2008, the European Parliament produced what may turn out to be a significant resolution on Internet governance. Here, the European Commission and European Council of Ministers were urged to ensure that the IGF is treated as an issue of high priority and the Parliament went as far as to call for the creation of a European IGF (European Parliament 2008). In a recent important communication, the European Commission set out its vision for future action to be developed on Internet governance. Essentially reaffirming the position articulated around the time of WSIS, the Commission endorsed private sector leadership as a way of delivering public policy objectives but argued, tellingly, that ‘users will also inevitably turn to their governments if there is any major national disruption to their Internet service, and not to the various Internet governance bodies’ (European Commission, 2009: 2; authors’ interview, July 2009). Using as a pretext the perceived public reaction to the recent global financial crisis and subsequent economic recession, the Commission argued that there was a much greater expectation that governments would be more proactive than previously in respect of public interest issues. It went on to state quite candidly, and perhaps somewhat contradictorily, that ‘continuing to pursue an exclusively ‘back-seat’ approach to the development of international Internet governance practices is therefore not an option’ (European Commission 2009: 4).

Turning specifically to its own role, the Commission portrayed itself as a leading player in the key developments that have defined the emerging global governance of the Internet over the last decade, something which it argued should continue in the future. Importantly, the Commission also made its position clear on the multistakeholder approach to Internet governance epitomised by the IGF. Arguing, on the one hand, that it promoted inclusiveness and cooperation with which governments should engage fully, on the other, it noted firmly that non-governmental stakeholders needed to accept ‘that it is governments alone who are ultimately responsible for the definition and implementation of public policies’ (European Commission 2009: 6). This provides clear evidence that the EU’s vision for Internet governance contains within it a significantly more limited role for non-governmental actors than would be envisaged by many of the private sector and civil society participants in the IGF.

The Commission’s espoused approach appeared to be intergovernmental cooperation with encouragement of multi-stakeholderism merely ‘wherever possible’. The EU’s vision for global Internet resources governance was unequivocally asserted as ‘multilateral intergovernmental cooperation’ (European Commission 2009: 8). The Commission’s move may well have been motivated by the realisation that ‘visible progress with regard to ‘enhanced cooperation’ remains low’ (Kleinwaechter 2008: 26).

The core challenge that the multi-stakeholder governance modus operandi of the IGF presents to the EU is neatly summed up by Hoffman (2009: 2) who argues that ‘governments face the options of either restricting their role to intergovernmental treaty-related and thus legitimate actions or to adopt the multi-stakeholder approach and explore the somewhat messy role of a “primus inter pares”’. Masango (2008: 76) argues that the IGF means that governments ‘have to adapt as it is not “diplomacy as usual”’.

In a recent speech, the EU Commissioner for the Information Society and Media, Viviane Reding, in a speech went as far as to call for a multilateral discussion forum limited to governments only, which she termed ‘a “G-12 for Internet Governance”’. This would be made up of two members each from Europe, North America, South America and Africa and three representatives from Australasia, with relevant international organisations granted observer status (Reding 2009). It gives a clear indication of how the EU’s perspective on multilateralism in Internet governance may differ from that intended for development in the IGF if it becomes manifest as a concrete proposal. In this respect, these developments may support Malcolm’s (2008b: 12) view that whilst government ‘may have agreed for strategic reasons to allow other stakeholders to sit with them in a non-binding forum for Internet public policy dialogue, it is something else again to expect them to uphold the fruits of that dialogue in the absence of exogenous compulsion’.

Arguably, the emergence and performance of the IGF has done little concrete to advance the development of a global Internet governance framework. The EU, with the review of the IGF due for 2010 may sense that the time is ripe for a renewed promotion of its preferred normative model for Internet governance, whereby governments are at the fore of constructing public policy rules with private actors managing the process and implementation. Christopher Wilkinson, a former member of the Commission who played a lead role in EU negotiations on Internet governance in the late 1990s, recently commented that there was no ‘overall view as to where matters stand today, notably between the EU, the Member States and the UN, and between the EU and our other international interlocuteurs’ (Wilkinson 2009: 1).

CONCLUSION

The Internet has been vaunted as a fertile ground for new types of global governance where a ‘new transnational order will be established characterized by increased international networking of persons, private international organizations, commercial enterprises and various entities of government’ (Schweighofer 2008: 81). This paper has set out to investigate what the EU has promoted as a model for Internet governance and *how* it has done this in three global fora.

The preliminary evidence on the first question, that is, the normative model preferred and projected by the EU has been consistent across all three fora investigated, with an element of continuity in terms of promoting a subcontracting ‘partnership’ model, whereby governments have a shared role with private interests in defining public policy rules for the Internet – that is, the legal backdrop within which actors within Internet governance operate. The more recent intervention by the European Commission (2009), it could be argued, goes further than this. Although not advocating a day-to-day management role for governments, it does put forth the idea of a multilateral governance mode of cooperation that prioritises governments over and above other stakeholders, but that also works in parallel to global multi-stakeholder fora such as the IGF. In this sense, the EU is justifying a normative model based on ‘partnership’ that draws on the traditional arguments relating to the advantages of public governance; that the ‘public’ is most important for ensuring the protection of citizens and the accountability, legitimacy and transparency of any process or institution. The financial crisis and actor perceptions of private interests have provided additional credibility to the EU’s arguments, as have

the more specific and significant changes imminent in Internet governance (expiration of the JPA in 2009 and the review of the IGF in 2010). It is also clear here that the EU has attempted to promote and diffuse its own regional model of governance to the global level, against the backdrop of decentralist notions of governance that evolved from and among commercial and technical interests with the growth and expansion of the Internet. What the EU has not yet done, it seems, is resolve the tension or potential contradiction between the multilateral intergovernmental cooperation it promotes for public policy issues, and the multi-stakeholderism it promotes in the IGF.

On the second question of *how*, it is clear that *context* has mattered and that precisely because of this, the EU has faced considerable constraint in securing immediate change through bargaining or normative modes of engagement or in terms of playing an effective leadership role. Within ICANN, the underlying strategic context, which effectively determined the private self-regulatory institutional governance model, made it difficult for the EU through the GAC, to advocate an alternative model that was acceptable to all ICANN constituents. Indeed, precisely how the EU will achieve its desired goal of greater internal and in particular external accountability for ICANN is an interesting case for further empirical research – both in terms of its mode and role – and in terms of how others perceive it once the JPA expires. Within WSIS, the EU's leadership role promptly melded into the role of mediator – through which, although securing many followers from developing countries through criticism of US unilateral oversight of ICANN, was ultimately constrained by the bargaining engagement mode adopted by the US government. The IGF has been perceived as a qualitatively different forum by the EU which sits comfortably with its broad support for multi-stakeholder involvement, but not necessarily with its projection for 'multilateral intergovernmental cooperation' in Internet governance. Nevertheless, the EU has not called for the dissolution of the IGF, but rather supports the continuation of this forum, precisely because it does not make decisions and the EU does not have to engage within the IGF in bargaining mode. In this sense, it perceives the IGF to be a 'unique frame...and a learning forum ...to take ideas back and include in the EU policy process' (authors interviews, July 2009). Indeed the advantage of the IGF for the EU is that 'members of governments...could speak openly with each other and other stakeholders without an eye to drafting resolutions or treaties' (Masango, 2008: 75; authors' interview: 2009).

On a broader note, however, this still begs the questions of how, and in what direction, the EU can influence the evolution of the IGF in the context of the review of its mandate in 2010. The presence of intergovernmental bodies like the ITU and UNESCO within ICANN may suggest that the EU's enhanced cooperation model could develop within the IGF or a modified form of it and may account for the EU Commission's recent overtures towards the IGF. However, the UN Secretary-General having initiated the process in 2006, his Special Adviser, Nitin Desai, reported that the first round of negotiations resulted in governments not being able to agree on a future direction of travel (Kleinwaechter 2008: 27). It is interesting that China, Russia, India and countries from Latin America used the 2007 UN Commission on Science Technology and Development to remind the UN Secretary-General that he should continuously report on the progress reached towards enhanced cooperation. This would ironically lend support to the EU in this context, yet the EU has been regarded as reticent about increasing the remit of the IGF as propounded by most of the aforementioned governments. It has been argued that a

multistakeholder approach has emerged inevitably since the complexity of Internet governance issues is such that they concern many with no one actor possessing the power to control their course (Mathiason 2009). This is something however that states and governmental bodies like the EU despite their rhetoric have found difficult to embrace. If the IGF can function whereby ‘consensus reached in the Forum should be considered an indicator of how issues can be resolved in other forums (Mueller and Mathiason 2006: 3) then this is a model which may well suit the EU’s preferred multilateral governance model in this part of Internet governance. *How* the EU will achieve this given the lack of consensus on the way forward is an interesting question for further empirical investigation.

As Kettemann and Bauer (2008: 171) point out, ‘in an ideal Internet governance world only the “power of ideas” would count’. What we have demonstrated here is that in the real world whilst ideas matter within Internet governance fora, so too does the strategic normative context within which the processes within and around them evolve. Thus, whilst the EU has asserted its own normative self-importance as a leader and repeatedly espoused that it has always been at the forefront of international discussions on Internet governance (European Commission 2009), this has not resulted in it being effective in terms of achieving its own objectives. Indeed, this paper has highlighted the many constraints and contradictions that exist in the EU doing this, as well as the tensions in its vision for Internet governance. The dynamic nature of Internet governance leaves much work still to be done on the EU as an international actor in this much understudied area. This paper has only touched upon certain key issues in relation to the most important, but not the only fora for Internet governance and policy and has only addressed a fraction of the important questions for our understanding of EU interaction, influence and effectiveness in Internet governance. Further research needs to focus on the perceptions of others on the EU’s role and influence, the EU’s internal construction of positions for Internet governance, the impact of global Internet fora and actors on EU policy-making, and finally, the extent to which the normative tensions that have been highlighted in this paper can be resolved or are exacerbated by the EU’s internal deliberation and its external interaction.

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¹ This replaced the original Memorandum of Understanding between the US Department of Commerce and ICANN in 1998 which provided for final unilateral oversight of the root server and IANA function, and which, although due to expire after two years, was extended on an annual basis until October 2006.

² The second phase of the research will attempt to ascertain how other actors perceived the EU.

³ In fact, certain GAC participants (notably, Canada) did not think the EU position went far enough and wanted to see a more intergovernmentalist (interventionist) role for governments in ICANN.

⁴ Athens 2006; Rio 2007; Hyderabad 2008. The fourth IGF meeting will take place in Sharm-El-Sheik in October 2009.