

INDIA'S CONTRIBUTION TO INTERNET GOVERNANCE DEBATES

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India is the leader that championed 'access to knowledge' and 'access to medicine'. However, India holds seemingly conflicting views on the future of the Internet, and how it will be governed. India's stance is evolving and is distinct from that of authoritarian states who do not care for equal footing and multi-stakeholderism.

I. INTRODUCTION

Despite John Perry Barlow's defiant and idealistic Declaration of Independence of Cyberspace¹ in 1996, debates about governing the Internet have been alive since the late 1990s. The tug-of-war over its governance continues to bubble among states, businesses, techies, civil society and users. These stakeholders have wondered who should govern the Internet or parts of it: Should it be the Internet Corporation for Assigned Names and Numbers (ICANN)? The International Telecommunications Union (ITU)? The offspring of the World Summit on Information Society (WSIS) - the Internet Governance Forum (IGF) or Enhanced Cooperation (EC) under the UN? Underlying this debate has been the role and power of each stakeholder at the decision-making table.

States in both the global North and South have taken various positions on this issue.

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¹ John Perry Barlow, 'A Declaration of the Independence of Cyberspace' (*Electric Frontier Foundation*, 8 February 1996) <<https://projects.eff.org/~barlow/Declaration-Final.html>> accessed 11 June 2018.

Whether all stakeholders ought to have an equal say in governing the unique structure of the Internet or do states have sovereign public policy authority?² India has, in the past, subscribed to the latter view. For instance, at WSIS in 2003, through Arun Shourie, then India's Minister for Information Technology, India supported the move 'requesting the Secretary General to set up a Working Group to think through issues concerning Internet Governance,' offering him 'considerable experience in this regard... [and] contribute in whatever way the Secretary General deems appropriate'.³ The United States (US), United Kingdom (UK) and New Zealand have expressed their support for 'equal footing multi-stakeholderism' and Australia subscribes to the status quo.⁴

India's position has been much followed, discussed and criticised. In this article, we trace and summarise India's participation in the IGF, UN General Assembly ('UNGA'), ITU and the NETmundial conference (April 2014) as a representative sample of Internet governance fora. In these fora, India has been represented by one of three arms of its government: the Department of Electronics and Information Technology (DeitY), the Department of Telecommunications (DoT) and the Ministry of External Affairs (MEA). The DeitY was converted to a full-fledged ministry in 2016 known as the Ministry of Electronics and Information Technology (MeitY). DeitY and DoT were part of the Ministry of Communications and Information Technology (MCIT) until 2016 when it was bifurcated into the Ministry of Communications and MeitY.

DeitY used to be and DoT still is, within the Ministry of Communications and Information Technology (MCIT) in India. Though India has been acknowledged globally for championing 'access to knowledge' and 'access to medicine' at the World Intellectual Property Organization (WIPO) and World Trade Organization (WTO), global civil society and other stakeholders have criticised India's behaviour in Internet governance for reasons such as lack of continuity and coherence and for holding policy positions overlapping with those of authoritarian states.

We argue that even though confusion about the Indian position arises from a multiplicity of views held within the Indian government, India's position, in totality, is distinct from those of authoritarian states. Since criticism of the Indian government became more strident in 2011, after India introduced a proposal at the UNGA for a UN Committee on Internet-related Policies (CIRP) comprising states as members, we will begin to trace

2 Throughout this article, we will use the terms 'multi-stakeholder' or 'multi-stakeholderism' as umbrella terms. We would urge readers to remember the various iterations of multi-stakeholder models for Internet governance as context to this article. See Laura DeNardis and Mark Raymond, 'Thinking Clearly about Multistakeholder Internet Governance' (SSRN, 17 July 2016) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2354377> accessed 5 June 2018.

3 'India's Submission at 'World Summit on Information Society: From Geneva to Tunis', Geneva' (11 December 2003) <www.itu.int/wsis/geneva/coverage/statements/india/in.doc> accessed 11 June 2017.

4 Statements of representatives of these States at the Ad-hoc Working Group on Internet-related Resolutions, the ITU Plenipotentiary Conference, 2014 (Busan, South Korea).

India's positions chronologically from that point onwards.

II. THE GENESIS OF CIRP AND THE 6TH INTERNET GOVERNANCE FORUM (NAIROBI), 2011

India proposed the constitution of the CIRP at the 68th UN General Assembly meeting (October 2011). The CIRP sought only state membership with consultative/advisory roles for the private sector and civil society. Due to its multilateral nature, CIRP was criticised and believed to be authoritarian.⁵

A. India Brazil South Africa (IBSA) Forum (Brasilia), 2006

The origins of the CIRP can be traced back to the first collaboration on Internet governance at the India Brazil South Africa (IBSA) Forum, i.e., the MoU on Information Society published in Brasilia on 13 September 2006 where India was represented by MEA. Article 2 of the MoU, 'Fields of Cooperation',⁶ envisaged trilateral cooperation and capacity building in a list of project areas, which included the WSIS.⁷ Although there was a lack of substantive agreement, the MoU signalled the beginning of policy cooperation among the IBSA countries on Internet governance. Interestingly, Article 4 of the IBSA MoU promoted 'multi-stakeholder partnerships... with the participation of the private sector and civil society'. When IBSA met again in 2011, it included businesses and civil society participants.

B. India Brazil South Africa (IBSA) Forum (Rio de Janeiro), 2011

Despite giving support to the two phases of WSIS, India had been increasingly frustrated with the lack of progress at IGFs. On 14 December 2010, Ambassador Manjeev Singh Puri spoke for India at the UN Secretary General's Consultation on Enhanced Cooperation on Internet Public Policy Issues pertaining to the Internet,⁸ identifying enhanced cooperation as a process 'to fill the institutional vacuum in the decision-making process on international public policy issues pertaining to the Internet'.⁹ In this regard, he called for an 'inter-governmental working group to be established under the UN CSTD'.¹⁰

5 Milton Mueller, 'A United Nations Committee for Internet-Related Policies? A fair assessment' (*Internet Governance Project*, 2011) <<http://www.internetgovernance.org/2011/10/29/a-united-nations-committee-for-internet-related-policies-a-fair-assessment/>> accessed 27 August 2017.

6 Framework for Cooperation on the Information Society between the governments of the Republic of India, the Federative Republic of Brazil and the Republic of South Africa (adopted 13 September 2006), art 2 (Framework for Cooperation).

7 *ibid.*

8 Statement by Ambassador Manjeev Singh Puri, Deputy Permanent Representative During The UN Secretary General's Consultations on 'Enhanced Cooperations on International Public Policy Issues Pertaining to the Internet', Permanent Mission of India to the United Nations, (14 December 2010) <<http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan043561.pdf>> accessed 13 June 2018.

9 *ibid.*

10 *ibid.*

At the IBSA Forum in Rio (2011) too, India voiced the need for a UN body for global Internet policy. Nandini K. of the MEA, then Counsellor (Economic) at the Permanent Mission to the UN in Geneva, led Indian participation at the IBSA Multi-stakeholder Meeting on Global Internet Governance in Rio de Janeiro, Brazil (September 2011). The recommendations emerging from the meeting in question said, ‘an appropriate body is urgently required in the UN system to co-ordinate and evolve coherent and integrated global public policies pertaining to the Internet.’¹¹ The CIRP was born out of this understanding among states at the Rio Forum, and at the time, support for a UN body came from Brazil, South Africa, India, Honduras, Saudi Arabia, Venezuela, Iran and Cuba. The MEA was, thus, in favour of a UN multilateral body for Internet-related global public policy with states as the exclusive or primary members.

C. 2nd Meeting of Working Group on Improvements to the Internet Governance Forum (Geneva), 24-25 March, 2011

Meanwhile, the MEA represented India at the second meeting of the Working Group on Improvements to the Internet Governance Forum (‘WG-IGF’). Some of India’s proposed improvements to the IGF pertain to the Multi-stakeholder Advisory Group (MAG), which has members from governments, industries and the civil society. They were as follows:

- a) The MAG should identify key policy questions;
- b) MAG should establish Working Groups around the key questions;
- c) The Working Groups should develop background material on the theme;
- d) Feeder Workshops should be followed by ‘Round Table’ discussions;
- e) Inter-Sessional Thematic meetings and
- f) IGF Plenary.

These recommendations were aimed at making the IGF a more outcome-oriented forum. India’s suggested modalities would help the IGF produce two types of outputs:¹²

- a) IGF Reports on key policy questions which provide a concrete set of policy options;
- b) Vast amount of information and the wide array of views that may have been generated around the yearlong process of focusing on a specific policy question can be captured in a background paper or a set of background documents.

Clearly, India was keen that the IGF do more than focus on ‘learning’ outputs and outcomes. India wanted the IGF to contribute more directly to the development of international law and norms, as well as the harmonisation of substantive and procedural laws pertaining to the Internet. At the WG-IGF (March 2011), the MEA proposed that IGF Reports be ‘sent to the CSTD, ECOSOC, and the UN General Assembly’, which

11 Framework for Cooperation (n 6).

12 Indian Proposal to IGF Outcomes, India’s Permanent Mission to the United Nations <<http://igfwatch.org/2011/04/02/>> accessed 10 July 2018.

could forward them, 'to the concerned global/international and other institutions'.¹³ In the interests of time and efficiency, India also proposed that the IGF or ECOSOC bypass the UNGA, fast forward reports directly to the concerned institutions. Towards greater accountability, it also proposed that institutions receiving the IGF Reports report back at the next IGF on the relevant Internet governance issues.¹⁴

India's WG-IGF proposal was discussed at the workshop 'Reflection on the Indian Proposal Towards an IGF 2.0'¹⁵ during the 6th IGF (Nairobi, 2011) with inputs from India's DoT. In his introduction, Jeremy Malcolm, then coordinator of the Internet Governance Civil Society Caucus (IG-Caucus), characterised the proposal as incorporating many suggestions proposed by other stakeholders over the past five years.¹⁶ It would thus seem that by seeking to make the IGF more outcome-oriented, the MEA in India was not pushing an unpopular agenda. Mr. N. Ravi Shanker confirmed that India 'would like the IGF to have an outcome orientation'.¹⁷

III. THE 68TH UNITED NATIONS GENERAL ASSEMBLY (NEW YORK), 2011

At the 6th IGF in Nairobi (2011), India, Brazil, and South Africa came under serious attack by proponents of an equal-footing multi-stakeholder model for the 2011 IBSA proposal.¹⁸ The proposal itself, however, was not discussed during the formal agenda. As the IBSA proposal was demonised as an anti-multistakeholder move, Brazil and South Africa were forced to reconsider their support for it.¹⁹ *Ad hominem* attacks from supporters of 'equal footing' multi-stakeholder models, such as those against the MEA officers and civil society members involved in the negotiations for the IBSA proposal and forum, were abrasive and many.

So, India was without allies when the MEA introduced, through Mr. Dushyant Singh (Member of Parliament), the proposal for a UN Committee on Internet-related Policies

13 ibid.

14 ibid.

15 'TS Workshop 10: Reflection on the Indian Proposal Towards an IGF 2.0' (*The Internet Governance Forum*, 29 September 2011) <<http://www.intgovforum.org/multilingual/content/ts-workshop-10-reflection-on-the-indian-proposal-towards-an-igf-20>> accessed 3 May 2018.

16 ibid.

17 ibid.

18 For summaries and commentaries of the proposal see Monica Emert, 'Proposal For New Internet Governance Body Meets Resistance' (*Intellectual Property Watch*, 2011) <<http://www.ip-watch.org/2011/10/03/proposal-for-new-un-internet-governance-body-meets-resistance/>> accessed 5 September 2014; Milton Mueller, 'India, Brazil and South Africa call for creation of new global body to control Internet' (*Internet Governance Project*, 2011) <<http://www.internetgovernance.org/2011/09/17/india-brazil-and-south-africa-call-for-creation-of-new-global-body-to-control-the-internet/>> accessed 29 May 2017.

19 For an analysis see Milton Mueller, 'A UN Committee on Internet-related Policies? A Fair Assessment' (*Internet Governance Project*, 2011) <<http://www.internetgovernance.org/2011/10/29/a-united-nations-committee-for-internet-related-policies-a-fair-assessment/>> accessed 27 August 2017.

(CIRP)²⁰ on the floor of the UNGA on 26 October 2011. Calling it ‘urgent and imperative that a multilateral, democratic, participative and transparent global policy making mechanism be urgently instituted’, India relied on the language of ‘enhanced cooperation’ in the Tunis Agenda²¹ (§ 69) to state the need to enable governments, on an equal footing, to carry out their roles and responsibilities in international public policy issues pertaining to the Internet. Specifically, India, at the UNGA, stated that the intent behind proposing ‘a multilateral and multi-stakeholder mechanism’ was not to ‘control the Internet’ or to permit governments to have the last word in regulating the Internet.²² However, the CIRP’s tasks were, *inter alia*, to develop and establish international public policies, coordinate and oversee the bodies responsible for technical and operational functioning, negotiation of treaties, conventions and agreements on Internet-related public policies, promotion and protection of all human rights and arbitration and dispute resolution functions.²³

Even though the CIRP proposal is both multilateral and multi-stakeholder in letter, it is not multilateral in spirit. Membership to the CIRP is open only to member states of the UN (see Annexure to the CIRP proposal), though private sector and civil society have participative roles in policy-making. Although the CIRP does not eschew multi-stakeholder participation, the choice of the UN as a forum automatically limits other stakeholders from being freely involved. This may be considered to reflect §35 of the Tunis Agenda, which sets out delineated roles and responsibilities for governments, the private sector and civil society.

Interestingly, in the CIRP proposal, India uses the phrase ‘equal footing’ to mean equal roles for *governments* in Internet governance, possibly indicating a discomfort with disproportionate control exercised by some states in Internet governance. This is a far cry from the most-used meaning of ‘equal footing’ by which multi-stakeholderism advocates mean that governments will have no special role or responsibility in comparison with other stakeholders.²⁴

IV. THE 7TH INTERNET GOVERNANCE FORUM (BAKU), 2012

At the 7th IGF, Mr. Kapil Sibal, then Minister for Communications and Information Technology, supported multi-stakeholderism expressly. This stance was an apparent turnaround from the MEA’s advocacy for CIRP at the UNGA in 2011. Mr. Sibal acknowledged that the Internet, due to its very nature, cannot co-exist with the concept of

20 ‘India’s Statement Proposing UN Committee for Internet-Related Policy’ (*The Centre for Internet Society*, 26 October 2011) <<https://cis-india.org/internet-governance/blog/india-statement-un-cirp>> accessed 25 March 2018 (India’s Statement Proposing UN Committee).

21 World Summit on the Information Society, ‘Tunis Agenda for the Information Society’ (18 November 2005) WSIS-05/TUNIS/DOC/6 (Rev. 1)-E.

22 India’s Statement Proposing UN Committee (n 20).

23 *ibid*.

24 Avri Doria, ‘Use [and Abuse] of Multistakeholderism in the Internet’ (PSG 2013) <<https://psg.com/~avri/papers/Use%20and%20Abuse%20of%20MSism-130902.pdf>> accessed 19 April 2015.

'governance', which relates to a system designed for dealing with the issues of the physical world. Rather radically, he stated that the 'term 'governance', immediately invokes concepts of those who govern and those who are governed, which have no relevance in cyberspace',²⁵ echoing strains of John Perry Barlow's call for the independence of cyberspace.²⁶ Being the Minister for both DoT and DeitY, it is unclear which department's views Mr. Sibal expressed.

It is clear, then, that the MEA and MCIT hold distinct positions on Internet governance. In 2010-2011, the MEA leaned towards multilateralism, spearheading the IBSA and CIRP proposals, expressing frustration with the outcome non-orientation of the IGF through its WG-IGF proposals. The MCIT, on the other hand, is more accepting of multi-stakeholderism, but also inconsistent. At Nairobi, the DoT supported the MEA's WG-IGF proposals, while at Baku, the Minister for CIT spoke out in favour of 'adopting a multi-stakeholder, democratic and transparent approach',²⁷ in the spirit of the vision outlined in the Tunis agenda.

Dr. Anja Kovacs of the Internet Democracy Project, Delhi, offers an explanation. She observes that MCIT leans in favour of multi-stakeholderism perhaps because it 'interacts with a wide group of stakeholders on a regular basis' and the MEA towards multilateralism because it is 'informed by a far more narrow range of domestic concerns, broader geopolitical interests are an important influence on the positions it takes as well'.²⁸

V. WORLD CONFERENCE ON INTERNATIONAL TELECOMMUNICATIONS (DUBAI), 2012

ITU's World Conference on International Telecommunications, 2012 (WCIT) was organised to amend the outdated 1988 International Telecommunications Regulations (ITRs). Mr. R.N. Jha of the DoT led the Indian delegation for WCIT. Certain proposals for amendment such as the controversial Resolution 3 proposed by Russia, led to conclusions among multi-stakeholderism advocates that this was a UN takeover of the Internet, since theoretically, the ITU could expand its regulatory scope from telecommunications to include the Internet. But this threat was, in many eyes, a hyperbole.²⁹

In continuity with Mr. Sibal's statements in Baku, the DoT's submissions to WCIT appeared to support the Tunis paradigm. In particular, the DoT recognised the 'multi-

²⁵ Aditi Phadnis, 'The term internet governance is an oxymoron: Kapil Sibal', *Business Standard* (21 January 2013) <https://www.business-standard.com/article/opinion/the-term-internet-governance-is-an-oxymoron-kapil-sibal-11211110032_1.html> accessed 10 July 2018.

²⁶ John Perry Barlow (n 1).

²⁷ *ibid.*

²⁸ Email interview with Anja Kovacs by authors.

²⁹ Pranesh Prakash, 'The Worldwide Web of Concerns' (*The Centre for Internet Society*, 2012) <<http://cis-india.org/internet-governance/blog/asian-age-column-december-10-2012-pranesh-prakash-the-worldwide-web-of-concerns>> accessed 21 October 2017.

stakeholder nature of the Internet³⁰ and made statements supporting the view that governments have no regulatory monopoly over the Internet. For instance, it did not allow national security to become an excuse to deploy an Internet kill switch, and in its proposal, specifically said that member states should ‘endeavour to take the necessary measures to prevent interruptions of services’.³¹

But DoT’s submission also appeared to advocate for greater regulation of telecom companies (‘Operating Agencies’ in ITU parlance). It advocated the inclusion of Article 5A on ‘Confidence and security of telecommunications/ICTs’, with the following language:

Member-States should endeavour to oversee that Operating Agencies in their territory do not engage in activities that impinge on the security and integrity of ICT network such as denial of service attack, unsolicited electronic communication (spam), unsolicited access to network elements and devices etc., to enable effective functioning of ICTs in secure and trustworthy conditions.³²

The DoT also called for harmonisation of substantive law to increase the likelihood that a foreign law enforcement agency would implement orders from Indian courts claiming extraterritorial jurisdiction for laws like the Information Technology Act, 2000. This follows from complaints of law enforcement agencies in India that requests under Mutual Legal Assistance Treaties often take two years to process, by which time it is far too late to deliver justice. So DoT called on member states to ‘endeavour to cooperate to harmonise national laws, jurisdictions, and practices in the relevant areas.’³³ These amendments were based on the Draft of the Future ITRs³⁴ prepared by the ITU Working Group to prepare for the WCIT 2012.

However, in contrast to MEA’s multilateral approach and despite DoT’s call for greater regulation of telecom companies, India opposed the ITRs at the final voting at WCIT. While India’s stated reason was that it needed time to consider implications of the amended ITRs, it must surely be seen in light of the underlying tension at WCIT. This concerned the proposal introduced by Russia and its allies, which sought to make the ITU a forum for discussions on Internet governance. Hysterically called an ‘ITU takeover of the Internet’,³⁵

30 ‘India’s Submission to the WCIT, Department of Telecom’ (*Press Information Bureau*, 14 December 2012) <<http://pib.nic.in/newsite/erelease.aspx?relid=90748>> accessed 6 September 2017.

31 ‘Indian Government’s Submission to the International Telecommunications Union’, (*The Centre for Internet Society*, 2012) <<http://cis-india.org/internet-governance/blog/indian-govts-submission-to-itu>> accessed 21 October 2017.

32 *ibid*.

33 *ibid*.

34 World Conference on International Telecommunications (WCIT-12), Draft of the Future ITRs (*International Telecommunications Union*, December 2012) <<https://www.itu.int/en/wcit-12/Documents/draft-future-itrs-public.pdf>> accessed 24 May 2018.

35 Elise Ackerman, ‘The UN Fought The Internet -- And The Internet Won; WCIT Summit In Dubai

this led many states to vote against the amended ITRs,³⁶ and has resulted in the sense that certain states may ‘swing’ the Internet governance debate by their unpredictable voting, India being one such ‘swing state’.³⁷

VI. THE 8TH INTERNET GOVERNANCE FORUM (BALI), 2013

Unsurprisingly, the MCIT again represented India at Bali. It is, by now, possible to discern a pattern in India’s participation at Internet governance forums. The MCIT attends the IGFs and ITU forums, primarily through DeitY at the IGF, and DoT at the ITU. The MEA represents India at the UN forums, such as the UNGA and consultations on Enhanced Cooperation, as well as the IBSA forums and raises calls for a more multilateral approach to Internet governance. The MCIT is more amenable to multi-stakeholderism, though it is unclear at this point in time whether DoT or DeitY is the prime advocate.

At the 8th IGF, Mr. Rakesh M. Agarwal, then Deputy Director General of Networks and Technologies at the DoT, sought to establish India’s claims to multi-stakeholderism at the Indian Ministry of Communication and Information Technology Open Forum.³⁸ He gave examples of domestic policy making such as the National Telecom Policy 2012, which held ‘12 meetings with the multi-stakeholders (sic) group’ and sought queries from the public for over 6 months,³⁹ to show India’s commitment to multi-stakeholderism at the national level. He also expressed, surprisingly openly, a desire to ‘work with society, with the companies and countries who want to cooperate with India’.⁴⁰

VII. PHASE I - 2ND MEETING OF WORKING GROUP ON ENHANCED COOPERATION (GENEVA), 2013

In 2012, the UNGA passed a resolution inviting the Chairman of the ECOSOC Committee on Science, Technology and Development (CSTD) to create a working group

Ends’ (*Forbes*, 14 December 2012) <<https://www.forbes.com/sites/eliseackerman/2012/12/14/the-u-n-fought-the-internet-and-the-internet-won-wcit-summit-in-dubai-ends/#562a8d8237c>> accessed 10 September 2017.

36 For a more balanced analysis see Milton Mueller, ‘ITU Phobia: Why WCIT Was Derailed’ (*Internet Governance Project*, 2012) <<http://www.internetgovernance.org/2012/12/18/itu-phobia-why-wcit-was-derailed/>> accessed 2 March 2018.

37 Tim Maurer and Robert Morgus ‘Tipping the Scale: An Analysis of Global Swing States in the Internet Governance Debate’ (*Centre for International Governance Innovation*, 5 May 2014) <<https://www.cigionline.org/publications/tipping-scale-analysis-global-swing-states-internet-governance-debate>> accessed 27 January 2018.

38 Indian Ministry of Communication Open Forum Connecting a Billion Online- Learning’s and Opportunities for the World’s Largest Democracy (*Internet Governance Forum*, 24 October 2013) <<http://www.intgovforum.org/cms/2013-bali/igf-2013-transcripts/121-igf-2013-preparatory-process-42721/1485-indian-ministry-of-communication-open-forum-connecting-a-billion-online-learnings-and-opportunities-for-the-worlds-largest-democracy>> accessed 13 April 2016.

39 *ibid.*

40 *ibid.*

in relation to enhanced cooperation and to examine the mandate of WSIS under the Tunis Agenda.⁴¹ The MEA has represented India at all WGEC meetings. It may be argued that the MEA has held to its favour of multilateralism in global Internet governance.

For instance, at the 2nd WGEC meeting, Mr. B.N. Reddy, then Deputy Permanent Representative of Permanent Mission of India to Geneva, echoed the CIRP proposal stating that it was a recognition for the governments to act on an equal footing with each other. This may indicate that the MEA's primary concern for India at inter-governmental forums is the United States government's dominance in the Internet governance ecosystem.⁴² But at this meeting, the MEA also supported the IGF and multi-stakeholderism as a way to enhance 'dialogue among the various stakeholders',⁴³ at the same time emphasising assigned relative roles for stakeholders as far as decision-making was concerned. In other words, while the MEA saw IGF as a valuable forum for discussion and dialogue, it considered global Internet public policy and decision-making to be a governmental task.

Responding to a questionnaire circulated after the 1st WGEC meeting in May 2013, the MEA had continued to define Enhanced Cooperation as a multilateral mechanism. It considered the WGEC mandate to include

International public policy issues pertaining to the Internet, as well as the development of globally applicable principles on public policy issues pertaining to the coordination and management of critical internet resources, *but not the day-to-day technical and operational matters, that do not impact on international public policy issues.*⁴⁴ (emphasis supplied)

The MEA further elucidated its multilateral stance by delineating certain Internet-related issues and public policy areas as the 'sovereign right of States',⁴⁵ but excluding operational matters from exclusive governmental authority. In its response, the MEA also advocated the creation of a 'suitable multilateral, transparent and democratic mechanism' where, in consultation with all other stakeholders, 'governments, on an equal footing, may carry out their roles and responsibilities' in areas within their authority.⁴⁶ You may notice that this repeats the MEA's concern of disproportionate governmental control, earlier

41 UNGA Information and Communication Technologies for Development, A/RES/67/195 (2013).

42 Samir Saran, 'The ITU and Unbundling Internet Governance - The Indian Perspective' (*Council on Foreign Relations*, 2014) <<http://www.cfr.org/internet-policy/itu-unbundling-internet-governance/p33656>> accessed 15 February 2017.

43 'Transcript Second Meeting Working Group on Enhanced Cooperation', India's Submissions at the Working Group on Enhanced Cooperation, Geneva (UNCTAD, 2013), <http://unctad.org/meetings/en/SessionalDocuments/WGEC_2013-11-06_Transcript_en.pdf> accessed 3 March 2015.

44 'Government of India's response to WGEC Questionnaire', Permanent Mission of India to the United Nations Office (UNCTAD, 2013) <http://unctad.org/Sections/un_cstd/docs/WGEC_IndiaMission.pdf> accessed 10 November 2016.

45 *ibid.*

46 *ibid.*

expressed in the CIRP proposal.

Though India acknowledged the relevance of multi-stakeholder approaches, it insisted that Enhanced Cooperation and IGF were distinct but complementary processes. While the IGF enhanced stakeholder dialogues, Enhanced Cooperation was seen as addressing the ‘need to have active role of governments, of course with the involvement through various processes of all other stakeholders’.⁴⁷ For the first time, the MEA identified nuances for primary government involvement in Internet governance, setting out, for example, issues such as cyber-security, consumer rights, child online protection as requiring international and cross-border enforcement cooperation.⁴⁸

India’s interventions at the WGEC continued to be peppered with the word ‘international’, indicating a preference for multilateralism over multi-stakeholderism, and this aligned them with positions of Saudi Arabia and Iran. The authoritarian nature of these regimes placed India on the blacklist of multi-stakeholderism advocates, and international civil society also continued to demonise India by tweeting pictures of Indian government representatives lunching with representatives of authoritarian states.⁴⁹

VIII. PHASE I - 3RD MEETING OF WORKING GROUP ON ENHANCED COOPERATION (GENEVA), 2014

For the MEA at the WGEC, the central question was the role of governments and how EC could ‘enable the governments to carry out their responsibilities on an equal footing in international public policy issues pertaining to the Internet’.⁵⁰ In its evaluation of the progress of Enhanced Cooperation through a ‘series of attempts... in 2006, 2008, 2010, and 2012’, the MEA considered this to be an ‘unfinished task’.

The MEA attempted to clarify governmental roles in Internet-related public policy and its co-existence with multi-stakeholder models. Reflecting India’s views at the 2nd WGEC meeting, Mr. B.N. Reddy argued that ‘equal footing’ ought to be considered at various levels of policy preparation, but finally, policy-making was the realm of governments. In India’s eyes, it was important that other stakeholders be accountable. “Will all of the sectors be accountable for their decisions? I’m afraid not”, said Mr. Reddy.⁵¹

Thus, the MEA clarified two things: *first*, that multi-stakeholder models were useful in public policy formulation but not in their implementation and enforcement, and *secondly*, that governments have sovereign public policy function over Internet-related public policy

47 ibid.

48 ibid.

49 <<https://twitter.com/search?q=%40patrikhson%20%23wgec&src=typd>>.

50 ‘Transcript Third Meeting Working Group on Enhanced Cooperation’, India’s Submissions at the Working Group on Enhanced Cooperation, Geneva (UNCTAD, February 2014) <http://unctad.org/meetings/en/SessionalDocuments/cstd2014_WGECd13_en.pdf> accessed 18 October 2016.

51 ibid.

issues relating to coordination and management of critical Internet resources as well as specific issues such as cyber-security and child online protection.

IX. NETMUNDIAL (SAO PAULO), 2014

India was represented at NETmundial by the MEA, where the Indian delegation was led by Mr. Vinay Kwatra, then Joint Secretary (Americas). India's initial written contribution to NETmundial echoed Mr. Sibal's speech at Baku, calling for a 'transformational shift from the Internet of today to the 'Equinet' of tomorrow'.⁵² Unfortunately, 'Equinet' has remained a vague and undefined concept from Baku to Sao Paulo and beyond. While acknowledging that governments do not have untrammelled policy monopoly, India's contribution nevertheless echoed the Tunis Agenda in that 'policy authority for Internet-related public policy issues is the sovereign right of states'.⁵³

While India's contribution did not use the word 'multi-stakeholder' except while describing the IGF, it said that Internet governance should be 'multilateral, transparent, democratic, and representative, with the participation of governments, private sector, civil society, and international organizations, in their respective roles'.⁵⁴ It is interesting to note that the language is very similar to that of the CIRP proposal.

Moreover, the MEA called for internationalisation of structures that manage and regulate core Internet resources and the need for them to be made 'representative and democratic'.⁵⁵ It also clarified that existing international law and norms relevant to the use of ICTs by states is an essential measure to reduce risks to international peace, security and stability,⁵⁶ clearly calling for an extension of current international law to handle Internet-related public policy challenges. But India accepted that 'the same rights that people have offline must also be protected online, in particular the freedom of expression which is applicable regardless of frontiers and through any media of one's choice'.⁵⁷

India's stance is thought provoking, given its insistence on multilateralism for implementation and acceptance, in principle, of human rights online. Throughout Internet governance debates, multi-stakeholder dogmatists insist that proponents of multilateralism want to dilute human rights online. But perhaps the opposite is true. For instance, NETmundial has been lauded by civil society and governments alike (especially the US, the UK and other European governments, Australia and New Zealand) as an exemplar of

52 'Government of India's initial submission to Global Multistakeholder Meeting on the Future of the Internet Governance, Sao Paulo, Brazil, April 23-24, 2014' (NETmundial, 24 April 2014) <<http://content.netmundial.br/contribution/government-of-india-s-initial-submission-to-global-multistakeholder-meeting-on-the-future-of-internet-governance-sao-paulo-brazil-april-23-24-2014/138>> accessed 21 October 2016.

53 *ibid.*

54 *ibid.*

55 *ibid.*

56 *ibid.*

57 *ibid.*

multi-stakeholderism. But leading privacy and access to knowledge activists were deeply disappointed with the NETmundial Outcome Document⁵⁸ as it was a serious dilution of the right to privacy and access to knowledge.⁵⁹

X. PHASE I- 4TH MEETING OF WORKING GROUP ON ENHANCED COOPERATION (GENEVA), 2014

At the 4th WGEC meeting in May 2014, Mr. B.N. Reddy of the MEA expressed India's support for Internet governance discussions at the national and the regional level.⁶⁰ However, regarding multi-stakeholderism, he repeated his earlier concern about the lack of stakeholder accountability for decisions, adding that creating or eliciting parameters 'enhances the overall global approach towards multi-stakeholderism'.⁶¹ Importantly, he stated that India was not opposed to multi-stakeholderism, but needed greater clarity. Until, Mr. Reddy stated, 'we reach that particular level of confidence to use this particular phrase with greater appreciation and greater acceptance',⁶² more work was needed. Particularly, the MEA felt that there needed to be 'critical discussion' in UN fora.⁶³

Again, the MEA made clear its support for the delineation of roles and responsibilities in §35 of the Tunis Agenda. The term 'multi-stakeholder' brought with it a sense of stakeholder roles so that, 'whichever stakeholder is engaged in a certain process, certain practice, certain activity, then they have certain laws that have been at least defined in the Tunis Agenda'.⁶⁴ Most interestingly, Mr. Reddy accepted that the Tunis enumeration of roles and responsibilities was not cast in stone but could be altered by a summit akin to WSIS. While this may seem a concession, it may be remembered that a UN summit is, by definition, multilateral. So, the MEA's statement may be interpreted as accepting changes in stakeholder roles *only if and when* governments are willing to permit such change; this is in opposition to the view of multi-stakeholder advocates.

XI. 9TH INTERNET GOVERNANCE FORUM (ISTANBUL), 2014

As before, the MCIT led India's delegation to the IGF. Mr. R.S. Sharma, Secretary of DeitY, spoke at one of the main sessions, Evolution of the Internet Governance Ecosystem

58 'NETmundial Multistakeholder Statement' (NETmundial, 24 April 2014) <<http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf>> accessed 21 June 2018.

59 Sunil Abraham, 'Net Freedom Campaign Loses its Way' (*Business Line*, 10 May 2014) <<https://www.thehindubusinessline.com/todays-paper/tp-opinion/Net-freedom-campaign-loses-its-way/article20768939.ece>> accessed 22 May 2018.

60 'India's Submission to the WGEC' (30 April, 2014) <http://unctad.org/meetings/en/SessionalDocuments/cstd2014_WGEC4th_Transcript_Day_1_en.pdf> accessed 5 June 2018.

61 *ibid.*

62 *ibid.*

63 *ibid.*

64 *ibid.*

and the Future of the IGF,⁶⁵ recognising the inherent policy implications of technology and the need for understanding technical issues of underlying infrastructure to frame Internet policies.⁶⁶ This may be considered an unequivocal acknowledgement of the plurality of governance regimes required for the Internet.

At the same time, Mr. Sharma referred to the MEA's WG-IGF proposal, identifying the IGF as a 'clearinghouse for public policy issues related to the Internet'.⁶⁷ While this harks back to Mr. N. Ravi Shanker's defence of the WG-IGF proposal at Nairobi, this may be seen as a shift in DeitY's stance. Previously, representatives of DeitY at Bali and Baku had openly spoken in favour of multi-stakeholderism. At Istanbul, however, DeitY's stance moves in favour of a more nuanced and narrowed support for multi-stakeholderism. For instance, on the issue of 'equal footing', Mr. Sharma identified cyber-security as an 'arena where every stakeholder will certainly need to be consulted', but ultimately, action and implementation lies with governments.⁶⁸ This is reminiscent of the MEA's enumeration of areas where governments have sovereign public policy authority at the WGEC meetings.

So is DeitY becoming more accepting of the MEA's tiered, issue-enumerated support for multi-stakeholderism? At the same time, is the MEA softening its hardline stance on multilateralism by narrowing governmental authority to enumerated public policy areas? The latter should, in our view, be a more cautious conclusion. For the MEA has consistently stated, since 2011, that in global Internet-related public policy, the implementation, enforcement and final authority in decision-making lies with governments, though other stakeholders may be consulted.

XII. THE ITU PLENIPOTENTIARY CONFERENCE (BUSAN), 2014

At the Plenipotentiary Conference, 2014 (PP-14), India's delegation, led by Mr. Ram Narain of the DoT, tabled a new resolution titled 'ITU's Role in Realising Secure Information Society'. The resolution raised security concerns about the flow of Internet traffic and equity concerns about the allocation of names and numbers. It proposed that the ITU undertake studies, in collaboration with relevant organisations, to explore the development of a 'systematic, equitable, fair, just, democratic and transparent' naming and numbering system, which would also permit the identification and geo-location of all IP addresses at all times. DoT also openly expressed a desire to pursue studies at the ITU for localisation of Internet traffic originating and terminating within the country.

65 'Evolution of the Internet Governance Ecosystem and the Role of the IGF' (*Internet Governance Forum*, 4 September 2014) <<https://www.intgovforum.org/multilingual/content/evolution-of-the-internet-governance-ecosystem-and-the-role-of-the-igf>> accessed 1 April 2016.

66 'Finished – 2014 09 04 – Main Session – Evolution of the Internet Governance Ecosystem and the Future of the IGF – Main Room', India's Submission at the 9th Internet Governance Forum Istanbul (*Internet Governance Forum*, 4 September 2014) <<http://www.intgovforum.org/cms/174-igf-2014/transcripts/1977-2014-09-04-ms-evolution-of-the-ig-main-room>> accessed 14 May 2016.

67 *ibid.*

68 *ibid.*

In short, DoT wants the ITU to have a more active and effective role in Internet governance. What is interesting is that this is a turnaround from DoT's opposition of the ITRs at WCIT. While a conclusion on DoT's change of heart would be precipitate (for DoT's reasons for opposing the ITRs are murky), there is a definite vocalisation of its support for multilateralism. The DoT had, of course, previously defended the MEA's WG-IGF proposals at Nairobi (IGF 2011), but it also expressed support for multi-stakeholderism at Baku (IGF 2012) and Bali (IGF 2013). By opposing the ITRs at WCIT, DoT also effectively voted *against* enhancing ITU's role in Internet governance. Seen from this lens, its proposal at PP-14 (Busan 2014) indicates increasing solidarity with MEA's position.

XIII. WORKING GROUP ON INTERNATIONAL INTERNET-RELATED PUBLIC POLICY

Under the aegis of the ITU, a council Working Group on International Internet-Related Public Policy issues was constituted based on resolutions taken in the 2010 Plenipotentiary Conference. The mandate of the body is to 'identify study and develop matters related to international Internet-related public policy issues'.⁶⁹ The membership of the group is limited to Member States, India being one of them while an open consultation exists for all stakeholders.⁷⁰ Access to the documents detailing the workings of the group is restricted. However, we were able to find India's only two written contributions to the group.

In 2014, the Government, through the DoT, provided their inputs on Internet-related Public Policy in response to a questionnaire circulated in the group.⁷¹ Their belief consistently expressed the idea that governments need to be at the forefront of policy making when it comes to Internet Governance. They should do so by engaging their respective stakeholders such as the technical community, academia and civil society through a consultation process while, at the global level, nations should do the same - create a policy framework through mutual negotiation and consultation. The role of governments is highlighted keeping in mind the current state of many developing and least developed countries that do not have the sophisticated institutions to lead the process. India reiterated that the management of the Internet should be 'multilateral, transparent, and democratic' with the key institutions regulating the Internet needing to be internationalised, again a reference to the US control over ICANN.

Four years later, Kishore Babu from the DoT made India's second written contribution during the 11th meeting of the group in the second last week of January 2018. They were clear in their support for the multi-stakeholder form of internet governance stating that India was in favor of governments having 'equal footing in IG with involvement of stakeholders'

69 'Council Working Group on International Internet-related Public Policy Issues' (*International Telecommunications Union*, 18 January 2-18) <<https://www.itu.int/en/council/cwg-internet/Pages/default.aspx>> accessed 4 February 2018.

70 *ibid*.

71 'Response from India ITU-SG RCLINTPOL4 Document 37' (*International Telecommunications Union*, 18 February 2014) <<https://www.itu.int/md/S14-RCLINTPOL4-INF-0037/en>> accessed 4 February 2018.

in their natural role as laid down in the Tunis Agenda.⁷² This is in order to ensure that public interests are sufficiently represented and protected in the administration of the Internet. Further, they acknowledged the difference in opinions among member states on the same and supported the significance attached to this divergence. They called for avoidance of duplication of work on IG matters since there are different activities relating to such being conducted on various platforms. Creating a mechanism within the UN structure to assimilate all the work conducted so far would aid in the above and progress in enhanced cooperation.

They referred to the suggestions made by the Working Group on Enhanced Cooperation, some of which were underway at ITU and asked for the ITU to clarify for the Member States and public the gamut of work and activities that fall within their domain so as to clearly identify their responsibilities. This would flow from the basic legislation of the ITU and the range of activities in the WSIS outcome documents in which the ITU has a part to play.

XIV. 10th INTERNET GOVERNANCE FORUM (JOÃO PESSOA), 2015

At the 10th IGF held at João Pessoa in Brazil, India was once again represented by the MCIT through the DeitY. Rahul Gosain, Director of E-Governance and Data, DeitY, addressed one of the main sessions, Enhancing Cybersecurity and Building Digital Trust,⁷³ where he re-emphasised the importance of multi-stakeholder cooperation in the area of cybersecurity.⁷⁴ However, he went on to underscore the central role of the Government in the area of cybersecurity while stating that ‘governments are ultimately held responsible by the public and are indeed accountable to the public for all security related issues’. This appears to reflect the MCIT’s changing approach towards tailoring nuanced areas where multi-stakeholderism can take place while ensuring that the central importance in decision-making lies with the Government. The same was also underlined in Mr. Gosain’s statement when he said that ‘...one cannot but help underscore the central role of governments in this area (of cybersecurity). That is the constituency from which I come from, I come from the Government of India. That is why I speak from that perspective’.

This seems to carry forward the shifting stance of the MCIT towards multi-stakeholderism from the previous IGF in Istanbul. One of the reasons for its position seems to be the legal challenges to cybersecurity like territorial jurisdiction, where only the Government can exercise a claim. In the WSIS+10 Consultations at the IGF, Mr. Gosain, while citing the success of the Tunis Agenda in increasing access of the Internet to developing countries, encouraged developing countries to begin engaging in policy-development

72 ‘Council Working Group on International Internet-related Public Policy Issues’ (n 69).

73 ‘2015 11 12 Enhancing Cybersecurity and Building Digital Trust Main Meeting Hall Finished’ (*Internet Governance Forum*, 12 November 2015) <<http://www.intgovforum.org/cms/187-igf-2015/transcripts-igf-2015/2884-2015-11-12-enhancing-cybersecurity-and-building-digital-trust-main-meeting-hall-finished>> accessed 5 December 2016.

74 *ibid.*

processes regarding Internet Governance.⁷⁵ He argued for the substantive inclusion of developing countries in Internet Governance processes. The reference made here gives an impression that the MCIT wants to reinforce governmental participation in Internet Governance. Although this alone cannot be taken to mean that multi-stakeholderism is not encouraged, the position of the Government in the previously mentioned session regarding cyber-security seems to indicate otherwise. Seen together, this is an underpinning of the changing position of the MCIT to a point where its position has, to a significant extent, limited multi-stakeholder involvement to areas of reference and discussion.

XV. 11TH AND 12TH INTERNET GOVERNANCE FORUM (2016, 2017)

In 2016, the Department of Electronics and Information Technology was made into the Ministry of Electronics and Information Technology headed by Ravi Shankar Prasad.⁷⁶ Rahul Gosain who became a Director at the new Ministry represented India at the IGF in 2016 held in Mexico along with Aruna Sundararajan, India's Telecom Secretary. Mr. Gosain was the sole representative of the country at the 12th IGF in Geneva, 2017. In both these years, the Indian government gradually reduced the significance of their participation in the IGF with the delegates taking a passive role. They attended the event but did not make any statements. This is in contrast to their vocal contributions in the past where positions were expressly stated and advocated. In fact, the only acknowledgment of the IGF by the Government in their statements was by the Ministry of External Affairs in 2016 with regard to the United States- India partnership. In it, they committed to continue their 'dialogue and engagement' in various internet governance fora such as the IGF.⁷⁷ This should not be surprising given their continuous frustration with the perceived lack of progress at various IGFs.

XVI. 1ST MEETING OF WORKING GROUP ON ENHANCED COOPERATION 2.0, 2016

The second phase of the WGEC had a two year mandate commencing from 2016 and its first meeting took place on the 30th September of 2016. India was at the forefront of the formation of the first phase of the WGEC and consequently, in the first meeting of the second phase, they were keen on the work of the previous WGEC being the ground for further work by this working group. The group upheld the mode it used in the previous phase, the multi-stakeholder model approach with 5 representatives from each of the non-

75 'Response from India ITU-SG RCLINTPOL4 Document 37' (n 71).

76 Aman Sharma, 'DeITY becomes a new ministry, leg-up for Ravi Shankar Prasad' (The Economic Times, 2016) <<https://economictimes.indiatimes.com/news/economy/policy/deity-becomes-a-new-ministry-leg-up-for-ravi-shankar-prasad/articleshow/53285683.cms>> accessed 26 February 2018.

77 'India-US Joint Statement during the visit of Prime Minister to USA (The United States and India: Enduring Global Partners in the 21st Century)' (Ministry of External Affairs, 7 June 2016) <<http://mea.gov.in/bilateral-documents.htm?dtl/26879/indiaus+joint+statement+during+the+visit+of+prime+minister+to+usa+the+united+states+and+india+enduring+global+partners+in+the+21st+century>> accessed 17 February 2018.

governmental stakeholders; civil society, business, academia and technical community, and international organisations apart from 20 governmental representatives.⁷⁸

The MEA stated they were open to including the new developments arising in the time between the last WGEC and the present one such as the Sustainable Developments Goals (SDGs) set by the United Nations. However it was insisted that the primary material driving the group's discussions should be those concepts already recognised in the previous phase, even if no consensus was reached on some of those. It was suggested that the recommendations could still be helpful in formulating the working methodology of the current working group. Essentially, India retained its opinion of being in favor of a multilateral approach, as the specifics of multi-stakeholderism starting with its definition have not yet been defined precisely.

Recognising that 'consensus building is a dynamic process', India was hopeful that this time the various countries will be able to come to a compromise and bridge their position gaps on the issues facing the group.⁷⁹

XVII. 2nd MEETING OF WORKING GROUP ON ENHANCED COOPERATION 2.0

At the 2nd meeting on 26th and 27th January of 2017, India's submission endorsed the softer, nuanced multi-lateral model. It was rooted in the idea of developing a common perspective, which inculcated the 'roles of different stakeholders in various aspects of internet governance'⁸⁰ while acknowledging the supremacy of Governments in determining policies in tandem with their national laws and especially on issues of cyber security. Consequently, it was noted that stakeholders need to work with the Government on security matters. Increased cooperation between private sector and other multi-stakeholder communities was said to be essential and it was observed that the main barrier to this was the lack of an appropriate mechanism currently where stakeholders can exchange views and further homogeneity on cyber issues. In their opinion, this should be addressed by 'enhanced co-operation at a regional, national and international level.'⁸¹ India would also like to see the process of selection of participants who represent these stakeholders to be conducted in a more transparent and inclusive manner.

The insistence for governments to have dominance in the decision making process was also repeated for 'international public policy issues particularly with regard to management of critical Internet resources.'⁸² This is proposed by further empowerment of the Government Advisory Committee of ICANN and improving their accountability by having them report

⁷⁸ 'Unedited Transcript – First Meeting Working Group on Enhanced Cooperation 30 September 2016, 9:30, Geneva, Switzerland' <http://unctad.org/meetings/en/SessionalDocuments/WGEC_2016-09-30_Transcript_en.pdf> (UNCTAD, 2016) accessed 17 February 2018.

⁷⁹ *ibid.*

⁸⁰ 'Unedited Transcript – First Meeting Working Group on Enhanced Cooperation 30 September 2016, 9:30, Geneva, Switzerland' (n 78).

⁸¹ *ibid.*

⁸² *ibid.*

to the ECOSOC through the CSTD working group annually. Stating that with regard to national security since states have a higher obligation, all policy formulations on the same should solely be within the power of Governments.⁸³

It is relevant to note that India also talked of the need to support different stakeholders to have equal opportunities by emphasising that 'Cooperation is essential... so that the Internet remains open, accessible and affordable to all stakeholders who have played a role in its evolution'.⁸⁴ This once again points to potential concerns of unequal power dynamics diluting access to the internet and to human rights online, similar to the statement made at NetMundial 2014, which once again raises the issue of there not yet being a clearly recognising best practice model for ensuring access to knowledge, right to privacy, and other online human rights.⁸⁵

XVIII. 3RD MEETING OF WORKING GROUP ON ENHANCED COOPERATION 2.0

The Indian delegation at the third meeting of the WGEC from 3rd to 5th May 2017 included Mr. Pradeep Verma from MeitY. Members started their discussion on the recommendations that by and large have consensus but might need minor edits. One such recommendation by India was debated in the forum, which said, 'WGEC should encourage all stakeholders to come forward, participate, and make their voices be heard in the formulation of public policies pertaining to the Internet'.⁸⁶ This was found too general by a few states, however, received positive responses as to the spirit of the text which was agreed to be imbibed somewhere in the WGEC outcome document after modifying the language. India envisioned the WGEC as giving a signal to the world that there exists a group who 'wants all stakeholders to come forward, make their voice be heard'.⁸⁷ At the same time, calling stakeholders to make their voices be 'heard' is arguably still taking the position that governments will take the leading role with inputs from different stakeholders.

Support for the creation of a centralised body under the ambit of the UN was expressed by the delegation in order for stakeholders to exchange opinions on ICT strengthening the cause of enhanced cooperation. It was elaborated as a mechanism serving as a focal point for coordination of all the other UN organisations discussing these concepts. India is of the strong opinion that the level of coordination needed is plausible solely for a centralised body under the UN, which would again mean it would only be open to country representatives since other stakeholder groups are not represented in the UN.

The recommendation given by India on capacity building also ties into their view of

83 ibid.

84 'United Nations Commission on Science and Technology for Development – Working Group on Enhanced Cooperation' (UNCTAD) <http://unctad.org/meetings/en/Contribution/WGEC2016_m2_c26_en.pdf> accessed 23 February 2018.

85 'India's submission to the WGEC' (n 60).

86 ibid.

87 ibid.

engaging all kinds of stakeholders because it was aimed at building and improving facilities such as remote participation in order for a wider pool of people to be involved in these internet policy matters. The importance of it as per them is that 'end users can ultimately participate in public policy discussion' if processes focusing on Internet Governance are implemented in educational institutions at the very beginning.⁸⁸

XIX. 4TH MEETING OF WORKING GROUP ON ENHANCED COOPERATION 2.0, 2017

WGEC 2.0, held between the 25th and 27th September 2017 saw Ms. Bhavna Saxena who is the Director of Cyber Diplomacy attend the group on behalf of the MEA.

While debating a proposal regarding policy making at local and national levels, India made it clear that they did not support the same. They believe it is in the best interests of everyone to 'confine ourselves to the international platforms on Internet policy making'.⁸⁹ This would seem like they are reluctant to incorporate stakeholders from the grassroots levels in their policy making or would like them to have a limited role at the very least, contrary to the spirit of multi-stakeholderism.

Further, India was appreciative and showed further interest in Peru's recommendation of developing an international law of the Internet, which could potentially be the 'starting point or fundamental reference for Internet international-related policies.' Ad hoc workshops or the International Law Commission of the UN could execute these.⁹⁰

XX. 5TH MEETING OF WORKING GROUP ON ENHANCED COOPERATION 2.0

The conclusion of the second phase of the WGEC in the meeting from 29th to 31st January resulted in inaction on new Internet policy recommendations as none could be agreed upon. Mr. Rahul Gosain from MeitY and Ms Bhavna Saxena from the MEA attended the meeting. There was no consensus on how to further enhance cooperation given the extreme contradiction in viewpoints. Commenting on the same, India called for a distilled report that laid down the options now available to the members. Reflecting on the work accomplished over the past two years, India thanked the group hoping for some guidelines or steps on how the United Nations General Assembly Members can proceed further. They were keen in putting forward that the work of the WGEC despite its eventual lack of progress should not go to waste with the deliberations fostering a discussion in some other forum such as the UNGA.⁹¹

88 'Third Meeting Working Group on Enhanced Cooperation' (UNCTAD, 2017) <http://unctad.org/meetings/en/SessionalDocuments/WGEC2016_m3_Transcript_d2_3-5May17.pdf> accessed 25 February 2018.

89 'Fourth Meeting Working Group on Enhanced Cooperation' (UNCTAD, 2017) <http://unctad.org/meetings/en/SessionalDocuments/WGEC2017_m4_Transcript_d3_25-27Sept17.pdf> accessed 28 February 2018.

90 *ibid.*

91 'Fifth Meeting Working Group on Enhanced Cooperation' (UNCTAD, 2017) <http://unctad.org/meetings/en/SessionalDocuments/WGEC2017_m5_Transcript_d3_29-31Jan2018.pdf>

XXI. CONCLUSION

India has been vocal in Internet governance debates at the international level, but its stances on multi-stakeholderism have been perplexing, to say the least. While there is a popular conception that India follows authoritarian regimes and their desire for control in supporting multilateralism, we have shown that the reality is far from simple.

At UN forums such as the General Assembly and WGEC, India has been represented by the MEA. Since 2011 and the IBSA Forums, the MEA has been a consistent advocate of multilateral modes of Internet governance. Echoing §35 of the Tunis Agenda, the MEA has considered implementation, enforcement and decision-making in global Internet-related public policy to be the 'sovereign right of states'. For them, a lack of accountability for decisions on the part of other stakeholders is a prime concern, as is a lack of definition of multi-stakeholderism, which it expressed at NETmundial. So while the MEA has supported a more outcome-oriented IGF through its WG-IGF proposals, its support for multi-stakeholderism and the IGF remains, till date, limited to the value of enhanced dialogue/discussion. A less spoken about aspect of multi-stakeholderism is the power differential existing within various stakeholders such as between large corporations and civil society. For example, even the ability to show up at the various fora is one that is often financially unviable for civil society to consistently undertake, where as it would be much easier for large corporations to continue finding a place at the table, while also gaining expertise over multiple fora events. This could potentially be a weakness in the system that more nuanced multilateralism does not suffer from. India's call for equal footing acknowledges and further, is a step towards negating the power differences that currently exist between countries.

The MCIT has represented India at the IGF and ITU, through the DeitY and DoT. The positions of these two arms of government are, in our view, more difficult to ascertain. At the IGF in Nairobi (2011), DoT expressed its support for MEA's WG-IGF proposal to make the IGF more outcome-oriented. However, at both Baku (IGF 2012) and Bali (IGF 2013), the MCIT openly expressed its support for multi-stakeholderism. The DoT's opposition of the amended ITRs may be seen, cautiously, as an extension of this.

However, in 2014, both DeitY and DoT seem to have adopted a subtler stance on multi-stakeholderism. At Istanbul (IGF 2014), DeitY recognised the importance of multi-stakeholderism, given the unique nature of the Internet, but at the same time, stated that in certain policy areas like cyber-security, the final call lay with governments. At ITU PP-14 (Busan 2014), DoT tabled a resolution that sought to increase ITU's role in Internet governance by undertaking collaborative studies and a recommendatory role in allocation of names and numbers and traffic localisation.

It would seem, then, that DeitY and DoT have shifted their open support for multi-

stakeholderism to more nuanced stances, where they enumerate certain policy areas for exclusive governmental authority, but at the same time, acknowledge the need for multi-stakeholder discussions and dialogue. Security seems to have been the underlying concern for both DoT and DeitY's public stances at IGF, Istanbul and PP-14, Busan. This trend continues in their stance at the Working Group on Enhanced Cooperation wherein they are in favor and suggest many ways to incorporate stakeholders but want cyber security and other critical policy making decisions within the power of Governments solely. Sources have claimed that India did not assume a strong role in the WGEC 2.0 proceedings because B.N. Reddy who had taken an active role in the previous phase had been transferred. More changes within the Government in terms of personnel at the MEA also contributed to a decline in continuity of the Indian vigour. Mr. Reddy who was a skilled negotiator and senior diplomat had been one to drive things and this was missing from the subsequent delegation.⁹²

What we see, now, then is an approach that lies somewhere between multilateralism and multi-stakeholderism, what we term as nuanced multilateralism. India has supported this model where a multitude of stakeholders are consulted in policy formulation but not involved in its implementation and enforcement. Particular issues such as cyber-security, protection of children online and management of key Internet resources are looked after by the Governments. Thus, this hybrid form of Internet governance places a strong emphasis on involvement of stakeholders and their diversity, but retaining the core decision-making powers for the higher echelon.

92 Interview with an anonymous source.

India's Position on Multi-stakeholderism vs Multilateralism

2011

- 6th Internet Governance Forum (IGF), Nairobi/
UN General Assembly Meeting (UNGA),
New York City
ATTENDED BY Dushyant Singh, Ministry of
External Affairs (MEA) - proposed Committee
on Internet-related Policies (CIRP)

MULTILATERAL

2012

- 7th IGF, Baku
ATTENDED BY Kapil Sibal, Minister for
Communications and Information
Technology (MCIT)*

Department of
Telecommunications (DoT)
Department of Electronics and
Information Technology (DeitY)

MULTI-STAKEHOLDER

*As Sibal was minister for both, DoT and DeitY, it
cannot be confirmed which department within the
Ministry he was speaking on behalf of

UNGA resolution creates a
Working Group on Enhanced
Cooperation (WGEC)

- World Conference on International
Telecommunications, Dubai

ATTENDED BY R.N. Jha, DoT

MULTI-STAKEHOLDER

They did not allow national security to
become an excuse to deploy an Internet kill
switch.

2013

- 8th IGF, Bali
ATTENDED BY Rakesh M. Agarwal, DoT

MULTI-STAKEHOLDER

WGEC PHASE I

- 2nd WGEC Meeting, Geneva
ATTENDED BY B.N. Reddy, MEA

NUANCED MULTILATERALISM

Stated that Enhanced Cooperation is a multilateral
mechanism but called for a MS approach solely to
enhance dialogue and discussion with policy making
upto Governments only.

2014

- NETmundial, Sao Paulo
ATTENDED BY Vinay Kwatra, MEA

MULTILATERAL

Internet governance should be *"multilateral with the participation of governments, private sector, civil society, and international organizations, in their respective roles"*.
Language similar to the CIRP proposal.

Called for internationalisation of structures
that manage and regulate core Internet
resources

India's contribution did not use the word
'multi-stakeholder' in its approach apart from
describing the IGF.

- 3rd WGEC Meeting, Geneva
ATTENDED BY B.N. Reddy, MEA

NUANCED MULTILATERALISM

Multi-stakeholder models were useful in public policy
formulation but not in their implementation and
enforcement. Governments have sovereign public
policy function over Internet-related public policy issues
relating to coordination and management of critical
Internet resources, as well as specific issues such as
cyber-security and child online protection.

→ **9th IGF, Istanbul**

ATTENDED BY R.S. Sharma, DeitY

NUANCED MULTILATERALISM

DeitY's stance moves in favour of a more nuanced and narrowed support for multi-stakeholderism.

→ **International Telecommunication Union (ITU) Plenipotentiary Conference, Busan**

ATTENDED BY Ram Narain, DoT

MULTILATERAL→ **4th WGEC Meeting, Geneva**

ATTENDED BY B.N. Reddy, MEA

MULTILATERAL

"India was not opposed to multi-stakeholderism, but needed greater clarity"

MEA's statements at the meeting may be interpreted as accepting changes in stakeholder roles *only if and when* governments are willing to permit such change; this is in opposition to the view of multi-stakeholder advocates.

2015→ **10th IGF, João Pessoa**

ATTENDED BY Rahul Gosain, DeitY

NUANCED MULTILATERALISM**2016**

DeitY and DoT were part of the Ministry of Communications and Information Technology (MCIT). In 2016, these both were subsumed within the newly created Ministry of Communications and Ministry of Electronics and Information Technology (MeitY).

→ **11th IGF, Mexico**

ATTENDED BY Aruna Sundararajan, DoT
Rahul Gosain, MeitY

No relevant comments were given

2017→ **12th IGF, Geneva**

ATTENDED BY Rahul Gosain, MeitY

No relevant comments were given

This should not be surprising given their continuous frustration with the perceived lack of progress at various IGFs.

WGEC PHASE II

→ **2nd WGEC 2.0 Meeting, Geneva****NUANCED MULTILATERALISM****2018**→ **Working Group on International Internet-Related Public Policy, Geneva**

ATTENDED BY Kishore Babu, DoT

MULTI-STAKEHOLDER

Clear in their support for the multi-stakeholder form of internet governance stating that India was in favor of governments having "*equal footing in IG with involvement of stakeholders*".

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- **3rd WGEC 2.0 Meeting, Geneva**
ATTENDED BY Pradeep Verma, MeitY

NUANCED MULTILATERALISM

"WGEC should encourage all stakeholders to come forward, participate, and make their voices be heard in the formulation of public policies pertaining to the Internet."

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- **4th WGEC 2.0 Meeting, Geneva**
ATTENDED BY Bhavna Saxena, MEA

NUANCED MULTILATERALISM

While debating a proposal regarding policy making at local and national levels, India made it clear that they do not support this. They believe it is in the best interests of everyone to *"confine ourselves to the international platforms on Internet policy making"*.

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- **5th WGEC 2.0 Meeting, Geneva**
ATTENDED BY Rahul Gosain, MeitY
Bhavna Saxena, MEA

No relevant comments were given