

Belli, Luca

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A heterostakeholder cooperation for sustainable internet policymaking

Luca Belli

Center for Technology and Society, Fundação Getulio Vargas Law School, Rio de Janeiro, Brazil

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Abstract: The article discusses the rise of a multistakeholder approach to internet policymaking and takes a critical stance with regard to the sole reliance on the multiplicity of stakeholders rather than focusing on the heterogeneity of stakeholders' interests. The article analyses the evolution of the multistakeholder discourse from the Tunis Agenda for the Information Society to the NETmundial Multistakeholder Statement. Secondly, it presents a selection of examples of stakeholder inclusion within policy-development processes at national and international level. Thirdly, it argues that the focus on the diversity of stakeholders' interests, rather than the mere affiliation with different stakeholder groups, may provide a more suitable conceptual framework for the elaboration of sustainable policies. As a conclusion, an embryonic model of heterostakeholder approach is put forward. Such an approach may be used to assess the diversity of interests represented within internet governance processes and strengthen pluralism of ideas and interests.

Keywords: Heterostakeholder, Multistakeholder, Internet policymaking, Internet governance

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Modern democracies have been characterised by the attribution of the decision-making and law-making monopoly to the executive and legislative organs of the state, where citizens' representatives are supposed to operate in the public interest, thus promoting the well-being of the general public. Indeed, within representative democracies, elected officials remain accountable to the electorate for their decisions and policies while the executive and legislative organs are entitled to define rules precisely because they have secured legitimacy by means of free and fair elections.

Legitimacy is essential to define policies within a democratic system and representation is the

main vector of democratic legitimacy. However, the growing complexity and technical sophistication of various sectors of economic and social life have increasingly highlighted the need for experts' advice, stakeholder-inclusion and democratic participation in order to support policymakers with diverse expertise and empirical data. Indeed, when considering complex and multifaceted issues, such as Information and Communications Technologies (ICTs) or environmental matters, policymakers are not only required to act legitimately and in the public interest but also to carefully analyse the economic, social and juridical consequences that their decisions may deploy on the society at large.

On the one hand, all individuals and entities potentially affected by specific policies should have the right to provide their inputs and manifest their potential concerns. Individuals' participation may be considered as the normative core of democracy, allowing all interested^[1] persons to freely express themselves, providing contributions aimed at shaping those policies that have a bearing on their everyday lives. Such participatory governance has the potential to legitimise policymaking efforts, allowing all interested stakeholders to discuss policy proposals and convey diverse information to policymakers,ⁱⁱ in order to elaborate sustainable and evidence-based policies. Hence, it may be argued that, in order to foster a sustainable approach, policymaking should be grounded on the possibility for all interested stakeholders to express their concerns and provide their expertise through transparent and participatory processes. Such openness and inclusiveness would allow decision-makers to consider the entire spectrum of externalities that their choices may determine and consequently elaborate legitimate and effective policies. (Belli, 2014)

On the other hand, the increasing complexification of policy subjects makes laws and policies increasingly technical and, therefore, less and less the expression of political ideals and more and more justified on the basis of scientific – and, particularly, economic – arguments. As a consequence, the need to scientifically justify policies and to accurately assess and manage their potential risks triggers the necessity of “experts' advice.” (European Commission, 2001) Such advice is generally gathered in the context of collaborative governance processes (Hardy & Phillips, 1998; Supiot, 2005; Belli, 2014) where participation is justified by discursive legitimacy and resource-based power.ⁱⁱⁱ These sources of legitimacy become therefore instrumental to support policymakers in “preparing and monitoring decisions”. (European Commission, 2001)

Expert assistance and stakeholder inputs may be particularly beneficial to enhance the quality of policies pertaining to complex and transnational issues that require particular expertise in order to be properly analysed. The participation of a wide number of stakeholders may be useful to identify the various facets of a common problem and the different interests at stake, thus diversifying the range of potential solutions and ultimately increasing “the practical likelihood that the proposed actions and plans will be accepted, implemented and effective.” (UNDP, 2012) For this reason, (inter)governmental and legislative bodies have lowered their institutional barriers, opening their processes to the contributions of non-state actors. Simultaneously, the growing interest for stakeholders' opinions has triggered the multiplication of think-tanks, Non-Governmental Organisations (NGOs) and advisory organs that concur to the formation of public opinion and have the potential to orientate policymakers' decisions, through the elaboration of studies and policy suggestions. (Stone, 2000) However, it seems important to note that stakeholder participation should be seen as a way of supplementing and enhancing democratic processes rather than substituting them. Indeed, the potential paradox of stakeholder involvement is that “the claims of expertise, seniority, experience, and special talents may override the claims of democracy as a way of constituting authority”^{iv} and stakeholderism may become a shortcut to avoid the “excess of democracy [which] means a deficit in governability.”^v

Both benefits and risks linked to multistakeholder processes seem particularly tangible with regard to internet governance. (Kleinwächter, 2007; Hill, 2015) This paper will provide an overview of the rise of the “multi-stakeholder philosophy”^[5] as regards internet policymaking (Section I). Subsequently, a selection of multistakeholder internet governance mechanisms will be briefly analysed, providing concrete examples of stakeholder inclusion within traditional policymaking processes (Section II). Lastly, it will be argued that the focus on the diversity of interests of the involved stakeholders, rather than solely considering their affiliation to different stakeholder categories, may provide a more suitable conceptual framework for the elaboration of sustainable policies. As a conclusion, an embryonic model of heterostakeholder approach will be put forward (Section III). Such approach may be used to assess the diversity of interests represented within existing internet governance processes as well as to strengthen pluralism within future ones.

THE EMERGENCE OF MULTISTAKEHOLDER INTERNET POLICYMAKING

At the international level, the benefits of a multistakeholder participation have been stressed starting from the United Nations Conference on Environment and Development (so-called Earth Summit, 1992) and multistakeholder approaches have been put in place by a number of UN-related initiatives and summits. (Hemmati, 2002; Vallejo & Hauselmann, 2004; UNDP 2012) Particularly, the advantages triggered by multistakeholder cooperation have been highlighted by the Cardoso Report^[6] whilst the ennoblement of the “multi-stakeholder approach”^[7] to internet policymaking has been consecrated by the World Summit on the Information Society (WSIS), the biphasic conference held in 2003 and 2005 and meant to be a ‘constitutional moment’ for the Information Society.

The main contribution of WSIS to the rise of multistakeholderism with regard to internet policymaking will be briefly analysed in subsection A. Successively, subsection B will highlight the evolution of the multistakeholder approach that may be remarked in the NETmundial Multistakeholder Statement, main outcome of the Global Multistakeholder Meeting on the Future of Internet Governance, hosted by Brazil in April 2014.

THE TUNIS CONSENSUS

It is reasonable to argue that the ICT environment, in general, and the internet ecosystem,^[8] in particular, quintessentially exemplifies both the need and the importance of non-state actors’ contributions to policymaking processes. On the one hand, both the internet technology and the internet standards that allow the Network of networks to globally operate have been developed – and keep on being developed – by non-state actors. On the other hand, it is increasingly evident that the internet is a highly intermediated environment in which private entities have gained the role of cyberspace regulators, due to their capability to unilaterally define private orderings in order to frame the portion of cyberspace under their direct control.^[9] Hence, governments cannot afford the luxury of disregarding these actors in order to understand and – if needed – regulate specific sectors, such as data protection, copyright or internet traffic management. These are some of the reasons why WSIS participants explicitly advocated for the adoption of a “multi-stakeholder approach” in order to ensure the “legitimacy of [Internet] governance” and to “improve the coordination of the activities of international and intergovernmental organizations and other institutions concerned with Internet governance [...] at all levels.” (Tunis Agenda, 2005, paras. 31 and 37)

The Tunis Agenda for the Information Society was the main outcome document of the second phase of WSIS. After having been consensually adopted by the WSIS plenary, this statement was subsequently endorsed by the UN General Assembly through its resolution 60/252, adopted in April 2006. It is important to note that, in spite of the intergovernmental nature of UN Summits, the Tunis Agenda resulted from the inputs of a variety of stakeholders. Indeed, despite having been convened by the International Telecommunications Union (ITU) – which is a UN intergovernmental agency – WSIS opened its doors to multistakeholderism, allowing the participation of civil society, private sector representatives and other international organizations.^[3] In addition, although the Tunis Agenda was formally adopted by the WSIS voting participants, *i.e.* government delegations, it reflects the joint efforts of a variety of stakeholders that cooperated within the Working Group on Internet Governance in order to provide the background material to set the stage of the Tunis meeting. (WGIG, 2005a; WGIG 2005b)

Hence, WSIS should be considered in the context of an “accelerating increase in cross-border flows and global integration” (Heintz, 2007) triggering the necessity for global governance mechanisms involving ‘traditional’ international actors as well as non-state actors. As highlighted by several scholars, global governance relies on the participation of non-state actors, particularly from business and civil society; the re-distribution of spaces and policy layers between local and global; the need to establish new synergies and cooperation between ‘traditional’ and new actors in order to “govern without a government.”^[4] (Heintz, 2007; Jacquet, 2002) Indeed, the Tunis Agenda considered the meaningful participation of different stakeholders as “essential to the successful building of a people-centred, inclusive and development-oriented Information Society” (para. 97), whilst internet governance was famously defined as the “development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.” (para. 34)

WSIS may therefore be seen as a turning-point for international policymaking, consensually recognising the value of multistakeholder participation as instrumental to the delineation of new international regimes, *i.e.* sets of “principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area.” (Krasner 1983) Furthermore, the Tunis Agenda explicitly considered as “essential” for WSIS implementation activities the utilisation of “a multi-stakeholder approach” implying the participation of “the private sector, civil society, and the United Nations and other international organizations.” (Tunis Agenda, 2005, para 101) Lastly, one of the main outcomes of WSIS has been the establishment of the UN-convened Internet Governance Forum (IGF) whose goal is to foster multistakeholder policy dialogue (para. 72) and whose “working and function, [are] multilateral, multi-stakeholder, democratic and transparent”. (para. 73) Although the IGF cannot be analysed in detail here, it is important to note that this “ecumenical forge of ideas” (Belli, 2013) has been instrumental to promote multistakeholderism through multistakeholderism, providing a venue for all interested stakeholders to meet and speak their minds freely, debating some of the most relevant internet-related policy issues, over the past ten years.

FROM WSIS TO NETMUNDIAL

Since the Tunis phase of WSIS the idea of bringing together governments, private sector, civil society and international organisations to jointly analyse and shape internet policies has gained significant momentum. Over the past decade, a growing number of policymaking entities have started considering the inclusion of non-state actors as beneficial to the definition and implementation of internet governance processes. (Council of Europe, 2005; G8, 2011; OECD,

2011) Importantly, multistakeholder processes have offered civil society, the private sector and the academic and technical community the possibility to provide their expertise, contribute to the development of scalable solutions^[43] and express their critiques regarding various policy issues, thus increasing the openness of policymaking and the accountability of policymakers.

However, although the multistakeholder formula and the need for “unremitting multistakeholder efforts” (Tunis Agenda, para 83; ITU 2014) have been increasingly debated since the agenda’s adoption, it is important to note that “multistakeholderism” has not found a clear and consensual definition, so far. Moreover, in spite of the fact that such multistakeholder participatory governance has been officially endorsed by several intergovernmental organisations (*e.g.* Council of Europe, 2005 & 2011; ITU, 2010 & 2014; OECD, 2008 & 2011), it should be stressed that WSIS failed to forge an comprehensive internet governance regime based on the participation of different stakeholders. Indeed, although WSIS fostered the establishment of the IGF, which has played a pivotal role in fostering multistakeholder policy-debate, it must be noted that, to date, the question of how multistakeholder cooperation should be structured in order to produce concrete outcomes has found no definitive answer. To this extent, several authors have stressed that every entity concretely implementing multistakeholderism seems to utilise different models. (Gasser *et al.*, 2015; Souter, 2009)

What seems to be universally agreed is that multistakeholderism relies on the participation of a broad range of entities to multi-player and multi-layer governance processes. With particular regard to internet governance, stakeholder involvement does not necessary mean that every stakeholder-group should have the same role in the development of policies, the preparation of decisions, the actual decisions and then the implementation of decisions. (WGIG, 2005a) In this respect the Tunis Agenda affirms that “all stakeholders” should be involved while stressing, for instance, that “[p]olicy authority for internet-related public policy issues is the sovereign right of States”. (para. 35) Thus, different entities have been developing different approaches to stakeholder participation and while (inter)governmental entities are keener on a stricter interpretation of para 35 – in order to limit non-state actors’ influence on policy-decisions – non-state organisations, such as the Internet Corporation for Assigned Names and Numbers (ICANN), are eager to involve stakeholders into their policy development processes,^[44] because stakeholder participation represents their main source of legitimacy. (Mueller *et al.*, 2009)

A noteworthy step towards further consensus on multistakeholderism has been marked by the NETmundial meeting, convened by the Brazilian president, Dilma Rousseff, and ICANN, in October 2013,^[45] as a reaction to the computer analyst and whistleblower Edward Snowden’s revelations on the U.S. National Security Agency’s surveillance practices, which were labelled by the Brazilian President as “grave violation of human rights and civil liberties.”^[46] The NETmundial meeting was a multistakeholder summit that produced a nonbinding “Multistakeholder Statement,” specifying principles and a roadmap for the future of multistakeholder internet governance.^[47] This quintessentially multistakeholder gathering produced a statement stressing that internet governance “processes, including decision making, should be bottom-up, enabling the full involvement of all stakeholders, in a way that does not disadvantage any category of stakeholder.” (NETmundial, 2014)

It should be noted that, despite the importance of NETmundial’s call for “democratic, multistakeholder processes, ensuring the meaningful and accountable participation of all stakeholders, including governments, the private sector, civil society, the technical community, the academic community and users,” (NETmundial 2014) doubts can emerge with regard to the usefulness of listing categories of stakeholders without mentioning the necessity to scrutinise the interests that such stakeholders may have in the outcomes of a given process. To be clearer,

stakeholder taxonomies may be very useful to identify the source of legitimacy to participate to a governance process where policies are negotiated. (Hardy & Phillips, 1998) However, excessive focus on stakeholder categorisation rather than on the interests that those stakeholders actually have in the process' outcomes risks being counterproductive or even misrepresentative. The ultimate goal of a multistakeholder approach should be indeed to support and strengthen policy-preparation and decision-making processes, by supplying a wide range of pluralistic information and expertise. Hence, to achieve such pluralism it seems essential that inputs be provided by individuals and entities having different standpoints and interests. This is further corroborated by the use of the term "democratic" to qualify multistakeholder process. In fact, some of the essential conditions that are inherent to any truly democratic structure are freedom of expression and freedom to form one's own opinion having access to pluralistic information. The participation of individuals and entities belonging to the aforementioned stakeholder groups may foster diversity of standpoints but does not guarantee diversity of interests and does not impede double representation of the same interest.

This is particularly important with regard to decision-making procedures, where stakeholders should be represented without being unduly "disadvantaged" but, obviously, also without being unduly advantaged. The use of the NETmundial stakeholder taxonomy,^[9] as an instance, may not guarantee the highest level of diversity of interests amongst the involved stakeholders. As a preliminary remark it is important to highlight that the NETmundial Statement adopts two slightly different stakeholder taxonomies. Initially, the preamble affirms that the Statement "is the non-binding outcome of a bottom-up, open, and participatory process involving thousands of people from **governments, private sector, civil society, technical community, and academia** from around the world" and the introduction confirms that "contributions have been received from **all** stakeholders around the globe." (emphasis added) Hence the reading of the preamble in conjunction with introduction would lead the reader to assume that the abovementioned stakeholder-list is exhaustive, for it encompasses "**all** stakeholders around the globe." However, while defining the "Multistakeholder" principle, the Statement evokes "all stakeholders, **including** governments, the private sector, civil society, the technical community, the academic community **and users**" (emphasis added), leading the reader to assume that multistakeholder processes should be based on an open taxonomy, including "users," rather than on an exhaustive list.

An open taxonomy seems indeed more inclusive. However, two considerations may spontaneously emerge as regards the stakeholder groups specified by the Statements. First, who represents the stakeholder category of "users"? Aren't civil society advocates supposed to represent users' interests? If the answer is positive, should users be represented twice? If the answer is negative – and such an answer would be plausible, assuming that civil society advocates may speak on behalf of specific values and ideals rather than represent internet users – the question is who represents internet users' interests in general? One may also argue that internet users are represented by their elected governments. However, should one argue that both civil society advocates and elected governments represent internet users' interests, then the NETmundial taxonomy would suggest that users are represented not only twice, but thrice *i.e.* by 'governments,' by 'civil society' and, obviously, by 'users.' *Au contraire*, should one decide to adopt the opposite interpretation, suggesting that neither governments nor civil society are necessarily representative of internet users, than the question is – again – who are the users' representatives within internet governance processes?

Second, a similar overlapping situation and consequent risk of double/triple representation, emerges with regard to the "technical community" stakeholder group. A quick look to the list of

participants of one of the meetings of the Internet Engineering Task Force (IETF), which is one of the most relevant technical community gatherings, reveals that it is far from uncommon to encounter “techies”, who work for private sector entities or for academic institutes. At the IETF 91 meeting, as an instance, 80.8% of participants were affiliated to private sector entities; 6.4% affiliated to the academic community; 12.4 did not provide affiliation; and less than 1% declared to be affiliated to a (inter)governmental entities.^[5] Hence, although the technical community plays an indubitably pivotal role as regards internet governance and internet well-functioning, it seems palpable that this category frequently overlaps with private sector and academia, thus generating the possibility of double – or triple – representation of the same interest. Indeed, with the exception of the so called “I* organisations”^[6] and few independent professionals, it is hard to imagine a member of the technical community who is not employed by a private corporation or an academic institute. Indeed, IETF participants have usually a high degree of technical knowledge, which is dear to academic institutions and even dearer to the private corporations that are the direct beneficiaries and users of efficient internet standards.

It stands to reason that, while the discussion and elaboration of policy-proposals should be open to the widest number of contributions, decision-making demands to avoid the aforementioned duplications in order to adequately represent the entire spectrum of interests at stake. Furthermore, different fora may utilise different stakeholder categorisations, thus producing additional complexity.^[7] Lastly, it is important to remark that different stakeholder groups, as well as member of the same stakeholder group, may rely on very dissimilar financial capabilities, thus highlighting the need to consider other parameters than the sole stakeholder affiliation to a predefined category in order to guarantee that different interests are not “unduly disadvantaged.”

Perhaps, the qualifying “**heterostakeholder**” would have been more appropriate than the “multistakeholder” one, in order to imply the essential need for diversity of opinions, interests – which should be transparently declared – as well as geographical origin, rather than merely rely on a “quantitative approach” based on potentially ambiguous super-categories. Indeed, the added value of a multi/hetero-stakeholder approach should be to nurture discussion with the widest number of diverse standpoints and possible sustainable solutions to common problems, rather than merely multiply the heads around the table. The next section will briefly scrutinise a selection of internet-related multistakeholder processes. The elements of a “heterostakeholder approach” will be explored by way of conclusion, in Section III.

STAKEHOLDER INCLUSION WITHIN INTERNET GOVERNANCE PROCESSES

Over the past 20 years, multistakeholder participation has been exported from the technical environment to the policymaking arena. (Belli, 2014) Some key features of various multistakeholder internet governance models are briefly discussed below. Subsection A will briefly analyse how multistakeholderism is implemented by technical organisations. Subsection B will remark the migration of the “multistakeholder philosophy” towards traditional (inter)governmental policymaking organisations.

A TECHNICAL GENESIS

Internet technical coordination is based on a decentralised voluntary implementation of soft-law instruments (*i.e.* standards and protocols) whose consensus-based development-process aims at achieving technical efficacy.^[8] Such voluntary and consensus based mechanism characterises the

elaboration of internet standards^[59] as well as Web standards^[60] that are forged through essentially participatory processes, within multistakeholder bodies, such as the Internet Engineering Task Force (IETF) and the World Wide Web Consortium (W3C). Conspicuously, the IETF standardisation process reflects a truly Habermassian approach, according to which all the individuals that might be affected by the future norm can freely contribute, on an equal-footing, to the elaboration process through a “cooperative search for truth, where nothing coerces anyone except the force of the [most persuasive] argument.” (Habermas, 1998)

The IETF goal is to achieve the best technical standards, though a collaborative process orchestrated by customary procedures and rules of engagement. Internet standardisation is traditionally based on “rough consensus and running code.” (Hoffman, 2012) This means that an internet standard may be issued – and eventually adopted – only when it is demonstrated that it can empirically “run” whilst the standard’s content is defined through a “rough consensus” process. As the IETF describes, rough consensus

“does not require that all participants agree although this is, of course, preferred. In general, the dominant view of the working group shall prevail. (However, it must be noted that “dominance” is not to be determined on the basis of volume or persistence, but rather a more general sense of agreement.) Consensus can be determined by a show of hands, humming, or any other means on which the WG agrees (by rough consensus, of course). Note that 51% of the working group does not qualify as “rough consensus” and 99% is better than rough. It is up to the Chair to determine if rough consensus has been reached.” (Bradner, 1998)

The IETF approach may be deemed as essentially democratic, as long as one understands the particular composition of the IETF “*demos*,” *i.e.* a rather homogeneous technical community which, although been open to anyone, is made up primarily of people who are concerned with – and able to understand – the technical structure of the internet. In practice, anyone can be heard as long as he – or, rarely, she – is able to demonstrate that is knowledgeable person. Hence, in spite of the Habermassian features of the internet standardisation process, it is important to stress that the members of this technical community are generally well-educated and essentially affiliated to private corporations and academic institutes. Hence, the IETF *demos* is fundamentally “bi-stakeholder” and private-sector driven. Indeed, as noted above, IETF participants are principally employed by private corporations that have a direct benefit from the elaboration of efficient internet standards.

A similar participatory process is supposed to drive the elaboration of the private-ordering mechanism defined by the Internet Corporation for Assigned Names and Numbers (ICANN), whose original aim is to set a “contractually based self-regulatory regime that deals with potential conflicts between domain name usage and trademark laws on a global basis.” (Clinton & Gore, 1997) ICANN’s structure and policymaking role are particularly complex and cannot be analysed in detail here.^[61] Yet, it seems important to mention some key aspects of the ICANN multistakeholder process, in order to stress the possibility to build non-technical policies thanks to the joint efforts of a variety of stakeholders.

The ICANN approach essentially relies on the participation of the widest number of entities and individuals to its policy formation, through a bottom-up and consensus-driven process. Such inclusive approach is indeed essential for ICANN’s very legitimacy, which is based on the maximisation of “public participation and the degree to which the participants are

“representative” of the general population.” (Mueller *et al.* 2009) Notably, the generic Top Level Domains (gTLDs) Policy Development Process (PDP), taking place within ICANN’s Generic Names Supporting Organisation (GNSO)^[54] is a telling example of how multistakeholder participation is organised in order to convey the maximum number of stakeholder^[55] inputs into the policies that define ICANN’s private ordering. Such policies are directly shaped by a variety of ICANN stakeholders^[56] amongst which the so-called contracted parties *i.e.* the gTLD registries and registrars that are contractually linked to ICANN and that voluntarily adopt ICANN policies in order to be admitted within the ICANN system. Indeed, if registries want their data bases to be linked to the authoritative Domain Name System (DNS) root zone and if registrars want to be accredited by ICANN in order to do business, they have to adopt ICANN policies.

Although the ICANN model may be criticised, is it surely one of the most perfected multi-stakeholder policymaking mechanisms, allowing an ample range of stakeholders to actively contribute to the elaboration of the rules to which they will be subject.^[57] It is not incongruous to think that a similar multistakeholder process may be transposed to national or international policymaking. However, in the lack of a global internet governance regime prescribing the inclusion of the various stakeholders – at least within the policy-preparation phase – the participation of non-state-actors to policymaking and harmonisation efforts is left to the openness and adaptability of the (inter)governmental actors. In this respect, it should be noted that some governments and intergovernmental organisations have been pioneering the inclusion of non-state actors with the aim of nurturing their internet-related policymaking. Subsection B will explore some example in this regard, highlighting how stakeholder inputs may be exploited to enrich traditional policymaking processes.

AND AN (INTER)GOVERNMENTAL IMPLEMENTATION

At the international level, the utilisation of multistakeholder approaches is finding increasing application with the aim of nurturing harmonisation efforts. Harmonisation allows to foster coherence amongst national juridical system, by adopting common policies or setting common standards, but this exercise is usually undertaken through multilateral (*i.e.* merely involving state-actors) negotiations. However, several international actors have already revealed growing appetite for non-state actors’ contributions. Particular attentiveness regarding the benefits of stakeholder inclusion has been demonstrated by the OECD, with the institution of its Internet Technical Advisory Committee and Civil Society Information Society Advisory Council, or by the Council of Europe, explicitly foreseeing a multistakeholder composition for its Steering Committee on Media and Information Society (CDMSI).

The choice of creating advisory organs dedicated to specific stakeholder categories or to admit some non-state stakeholders to traditionally intergovernmental bodies is instrumental to provide advice and information to existing intergovernmental institutions. To this extent, stakeholder inclusion aims at reinforcing policy-preparation processes with scientific argumentation that might be corroborated with empirical evidence. Although no intergovernmental organisation allows non-state actors to participate into decision-making procedures, it is nonetheless commendable that policy-preparation processes are increasingly opened to stakeholder inputs and international organisations even “invite” to increase “multi-stakeholder co-operation.” (OECD, 2008)

Such cooperation has the potential to be beneficial for traditional international organisations that may strengthen their policy-development processes exploiting the inputs conveyed by permanent advisory bodies or through *ad hoc* synergies with multistakeholder bodies. This latter case may be remarked in respect of the elaboration of a Model Framework on Network Neutrality,^[58] originally suggested by the Council of Europe (CoE)^[59] and, subsequently, developed

by the IGF Dynamic Coalition on Network Neutrality (DCNN).^[32] The elaboration of the Model Framework aimed at reproducing the participatory process utilised by the IETF working groups, in order to craft a net-neutrality regulatory standards. After having been presented at the DCNN meeting held at the 8th Internet Governance Forum,^[33] this open “net neutrality policy-blueprint” (Belli & De Filippi, 2013) has been offered to the CoE CDMSI,^[34] in order to be used as a working document for the elaboration of a draft recommendation on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality.^[35] Such an experiment has shown that multistakeholder cooperation through an open and transparent process can be exploited not only to elaborate open technical-standards but also to craft open policy-standards that may provide guidance to policymakers.

Lastly, it should be mentioned that several national experiences with regard to stakeholder inclusion may be remarked. A notable example of stakeholder organisation and inclusion at the domestic level is provided by Brazil with its nearly 20-year-old multistakeholder Brazilian Internet Steering Committee (CGI)^[36], which plays an essential role in stimulating effective participation of the Brazilian society in decisions involving network implementation, management and use. Particularly, CGI played a pivotal role in the elaboration of the Marco Civil da Internet (CGI, 2013), the Civil Rights Framework for the Internet in Brazil that was approved by the Brazilian National Congress, in April 2014. The development of the Marco Civil has clearly demonstrated that a participatory process, open to the contributions of all interested stakeholders may be successfully used to enrich national law-making. The Marco Civil project was jointly launched by the Brazilian Ministry of Justice and the Center for Technology and Society at the Fundação Getulio Vargas Law School and its development was incessantly nurtured by CGI, which ensured the involvement of the greatest number of stakeholders through several consultations. (CGI, 2013) This participatory process is currently considered as a worldwide example, allowing individuals to be active citizens, having a real impact on their democratic life, while strengthening the legitimacy of the resulting legislation.

At the EU level, several attempts of stakeholder involvement with national internet-related policy making already exist. Some examples of EU multistakeholderism are worth mentioning. Firstly, France has been increasingly exploring multistakeholderism through the creation – and progressive enlargement of the composition of – its French Digital Council,^[37] which provides inputs and policy recommendations to the national government with regard to internet-related matters. The French Digital Council offers an interesting example of stakeholder inclusion, not only because of the multistakeholder configuration but also because of the incisive use of the open consultation^[38] instruments, in order to enlarge the spectrum of opinions and expertise to be included in its policy recommendations. Secondly, the Italian Chamber of Deputies has also manifested an increasing interest for the experimentation of stakeholder inclusion, establishing a multistakeholder Commission on the Rights and Duties Related to the Internet, whose main task was to elaborate a draft Internet Bill of Rights, which every interested stakeholder had the possibility to comment through an open consultation.^[39] It is interesting to note that this Commission associates members of Chamber of Deputies with a variety of other stakeholders in an effort to merge multistakeholderism and democratic representation.^[40] Lastly, a sectorial effort to implement stakeholder inclusion may be remarked at the UK level, where the government enjoys advice from the Broadband Stakeholder Group (BSG), with regard to broadband policy, regulatory and commercial issues. Yet, it is important to stress that the BSG aims at exclusively gathering inputs from ICT, telecommunications and electronics industry stakeholders. These stakeholders may be all included within the “private sector” category, thus making the BSG a mono-stakeholder body, rather than a multistakeholder one, according to both NETmundial and Tunis-Agenda stakeholder taxonomies.

CONCLUSION: TOWARDS A HETEROSTAKEHOLDER POLICYMAKING?

As noted in the previous section, several examples of multistakeholder inclusion within policy-development efforts already exist at both national and international level. Although it does not seem likely that governmental decision-making processes will open themselves to non-state actors' participation, it is important to stress that stakeholder participation is already a reality as regards policy-development. Indeed, the aforementioned examples highlight that multistakeholder cooperation is not a mere slogan and can be utilised to propose concrete solutions, which can be adopted or exploited by national policymakers as well as international organisations.

However, it is interesting to note that the existing examples of multistakeholderism primarily focus on the participation of stakeholders that may be associated to predefined categories and often neglect to analyse the interests^[41] that may push such stakeholders to participate in a given process. The underlying assumption seems to be that the participation of predefined stakeholder-groups to a given internet governance process may not only provide inputs from different standpoints but also guarantee the representation of heterogeneous interests. Such an assumption may be overconfident for two main reasons. First of all, it is possible that members of different stakeholder groups may have almost-identical interests or may even financially support each other. Hence, an internet governance process may be deemed as multistakeholder by reason of the participation of different stakeholders, in spite of the fact that the involved stakeholders may have intimately-related interests and may fail to consider a potentially wide range of interests. Indeed, differently from representative systems where individuals elect other individuals to represent their interests, multistakeholder processes are based on voluntary participation rather than representation. This leads to the second type of concern, according to which entities affiliated to the same stakeholder group may have very different – and, frequently, divergent – interests but only few members of a given stakeholder group may have the resources necessary to participate to a multistakeholder process. Barriers to participation are primarily financial and do not only concern the ability to take part to physical meetings in various geographical locations. A financial effort is indeed also required to invest at least part of one's working-time to provide contributions to time-consuming interactions through online consultations as well as to regularly processing information and updates regarding ongoing initiatives. It is indeed important to highlight that few participants to voluntary multistakeholder efforts do actually participate to such processes on a pure voluntary basis, for such participation may often be part of their work duties.

The above consideration does not imply that stakeholders whose working activity encompasses the participation to internet governance process should be limited in their contributions. On the contrary, the central concern is rather to highlight that an ample spectrum of individuals and entities may be *de facto* excluded and unable to contribute to multistakeholder processes solely because of their lack of economic resources that are necessary to physically or remotely participate to such processes or because of their unawareness of the very existence of such processes. This is indeed the reason why participatory democracy and representative democracy are complementary. It would be unreasonable to assume that all individuals or entities having a stake in the decision-making process of a given social organisation may have at their disposal the information and knowledge as well as the economic and time resources necessary to contribute to such process. This is why liberal democracies combine citizen representation and

direct participation – *e.g.* through open consultations and referenda – in order to guarantee the full enjoyment of the individuals’ fundamental right “to take part in the conduct of public affairs, directly or through freely chosen representatives.” (ICCPR, art 25.a)

As noted in the previous sections, several bodies already encourage stakeholder inclusion and multistakeholder cooperation and the outcomes of the existing efforts look promising. However, in order to foster “democratic multistakeholder processes” (NETmundial, 2014), the focus should not merely be on the affiliation of the involved stakeholders to predefined categories but also – and most importantly – on heterogeneity of interests that are *in concreto* represented within a given process. Indeed, the participation of stakeholders that may be representative of different voices, perspectives and values seems instrumental in order to elaborate sustainable policies that may be both efficient and accepted. As highlighted in the introduction, the double rationale that underpins stakeholder involvement is to widen the range of scientific arguments that should be taken into consideration in order to properly frame specific policy issues, while letting potentially-affected individuals and entities provide their inputs and manifest their concerns with regard to such policy issues. However, such rationale may be severely jeopardised when stakeholders involved in a given process represent only a narrow set of economic and political interests or, even more compromised, when some of the stakeholders involved in a specific process are directly or indirectly financed by other participants. To this extent, it is not anodyne that the NETmundial Statement explicitly adds the qualification “democratic” to characterise the “multistakeholder processes,” stressing that “[s]takeholder representatives appointed to multistakeholder Internet governance processes should be selected through open, democratic, and transparent processes.” (NETmundial, 2014) In fact, the mere affiliation to different (stakeholder) groups may be instrumental to highlight the various facets of a common problem but seems insufficient to guarantee pluralism, which underpins any democratic processes – be them multistakeholder or not – fostering the competition of heterogeneous ideas, values and interests. This is the reason why democratic processes usually rely on institutional arrangements aimed at guaranteeing the representation of the widest range of views, interests and values, as well as ensuring that members of the *demos* enjoy equal conditions under which freely express and associate themselves.

However, in light of the abovementioned financial barriers the suggested heterostakeholder approach would require that funding opportunities be made available in order to guarantee the representation of heterogeneous interests under equal conditions, thus avoiding that non-wealthy stakeholders be *de facto* filtered out due to their lack of resources. Furthermore, such an approach would demand that all stakeholders transparently state their source of funding and the nature of their interests with regard to the policy process to which they decide to participate, as well as the type of legitimacy by virtue of which their participation is justified.

The transparent indication of these elements would allow any interested individual to assess the effective heterogeneity of the involved interests and, ultimately, the degree of democracy of a given process. Indeed, it might be overoptimistic to assume that stakeholders’ participation to policy processes can be entirely justified by their benevolent desire to collaboratively elaborate common (technical or regulatory) solutions. In this regard, it should be considered that stakeholder participation to policy-development processes might be motivated by the perspective of achieving an outcome that may maximise its own utility, *i.e.* by self-interest, or by the intention to lobby for an outcome that may maximise its funder’s interest. As eminently stated by Adam Smith, “it is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest.” (Smith, 1776)

The participation of a variety of stakeholders may cater policymakers with valuable inputs, but stakeholder inclusion must be guided by openness, transparency and accountability in order to avoid that policy-development might be captured by particular interests. The publicity of basic elements pertaining to one's funding and interests seems therefore instrumental to guarantee the transparency of the policymaking process and the accountability of the involved stakeholders. Indeed, although the interests of some stakeholders might be manifest – for instance, business entities' natural inclination to maximise their own profit – it is important to highlight that the interests of civil society, technical or academic stakeholders may not be apparent. For instance, in the context of a network neutrality policymaking process, a think-tank may want to lobby for non-regulation of internet traffic management or may suggest the adoption of net-neutrality legislation whilst, in the context of copyright-related policy making, an academic may want to advocate for the efficiency of Digital Rights Management systems or criticise them. Think-tanks and academics may well enjoy discursive legitimacy but their simple affiliation to “civil society” or “academia” does not allow an observer to identify what interests are truly stimulating them to contribute to a given process. On the contrary, the transparent statement of stakeholders' interests in conjunction with the source of their funding would be instrumental to appreciate the degree of benevolence of such stakeholders' participation to policy processes and assess the spectrum of ideas and interests effectively represented in the process' outcome.

The transparent declaration of the aforementioned elements is already mandatory in several policymaking bodies^[5] and there is no reason why a basic declaration of interest may not be filled by stakeholders willing to participate to a heterostakeholder internet governance process. The table below may be considered as a model “stakeholder sheet” to be filled by any individuals willing to participate in an internet governance process, fostering transparency and allowing external assessment of the effective interests represented within the process.

Table: Stakeholder Sheet

Stakeholder affiliation	(Inter)governmental entity	Legislative body	Private sector	Civil society	Technical community	Academic community	Users
Type of legitimacy	democratic and/or institutional	democratic	resource control	discursive	resource control and/or discursive	discursive	democratic
Interest in the process							
Source of funding							

Firstly, stakeholders should declare their affiliation to one of seven stakeholder groups encompassing the NETmundial taxonomy to which the “legislative body” category has been added.^[5] It seems indeed incorrect to categorise elected representatives within legislative bodies as “government” while it seems beneficial to include such elected representatives into any internet governance process in order to enhance the transparency and accountability of the process, while increasing the likelihood that the process outcomes will be known, debated and concretely utilised by policymakers. Moreover, it should be noted that heterostakeholder internet policymaking, based on the effective representation of the widest spectrum of interests, would greatly benefit from the inclusion of internet users' associations and platform users' unions. Such entities would complement individuals' representation through national governments by representing individuals in their quality of users that, in spite of their nationality, are affected by private policies, which unilaterally regulate specific services. Secondly, the stakeholder sheet would require stakeholders to state the interest that they have in

a specific process *i.e.* the reason(s) why they are taking part to the process and, possibly, their desired outcomes. Thirdly, stakeholders should state their source of funding, for instance providing a pointer to a funding-disclosure web page. Particularly, such statement should specify whether a stakeholder is financed by another entity involved within the process. Lastly, some stakeholders may need to clarify the source of legitimacy by reason of which they participate to the process^[4]. This may be the case of (inter)governmental stakeholders that may either be elected as members of a government or enjoy institutional legitimacy, such as independent regulators or international civil servants.

A transparent and participatory process based on the inclusion and representation of heterogeneous interests and diverse opinions is more likely to be democratic, thus allowing the development of sustainable internet policies. A heterostakeholder approach based on the aforementioned elements seems therefore instrumental to foster the elaboration of sustainable solutions, by clearly recognising – and ideally widening – the spectrum of interests effectively considered within policy discussions and policy-development processes. Indeed, in order to preserve the internet’s world-wide dimension and maximise its socio-economic potential it is essential not only to ensure technical interoperability but, equally, to guarantee policy sustainability.

Democratic processes are the “primary vehicle for the fulfilment of individual aspirations, the articulation of interests and the nurturing of civil society.”^[5] Internet policymaking and policy-development processes should reflect the widest and most diversified range of individual aspirations and interests, in order to be truly democratic and produce sustainable solutions. To this end, it seems essential to consider that stakeholderism may be seen as an “essentially contested concept” (Gallie, 1956 & 1968) that needs to be further specified in order to be properly implemented. Indeed, although general consensus may be crystallising with regard to the benefits of stakeholder inclusion and cooperation within internet governance processes, the implementation of such processes is the true Gordian knot. Just like political systems may not be deemed as democratic exclusively by reason of the existence of multiple political parties, multistakeholder processes cannot be considered as democratic exclusively by reason of the involvement of multiple stakeholder groups. The hope of the proposed framework is therefore to foster democratic processes able to produce sustainable policies thanks to the adoption of a heterostakeholder approach.

DISCLAIMER

The author of this paper has been directly involved in the elaboration the Model Framework on Network Neutrality and has proposed the establishment of the IGF Dynamic Coalition on Network Neutrality during the Council of Europe Multi-Stakeholder Dialogue on Network Neutrality and Human Rights, held in Strasbourg on 29-30 May 2013. Funding for the elaboration of the model framework and the participation to various net-neutrality-related conferences has been provided to the author by the Council of Europe as well as by the Centre d’Etudes et de Recherches de Sciences Administrative et Politiques at Panthéon-Assas University, Paris 2, at that moment part of PRES Sorbonne University.

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FOOTNOTES

[1] Here, the term “interest’ may be considered as the economic or political motivation or the moral value that arouses the attention of an individual or an organisation with regard to a given process, thus leading to the investment of specific resources in order to influence the process’ outcome.

⁶¹⁾ A telling example in this direction may be observed with regard to environmental decision-making framework established by the Aarhus Convention, which ascribes to any individuals and associations the rights to access environmental information held by public authorities; to participate in environmental decision-making; and to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general. See United Nations Economic Commission for Europe (UNECE), **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters**

⁶²⁾ Stakeholders are believed to have discursive legitimacy when they represent – and act on behalf of – a certain set of societal values or norms. For instance, an academic having extensively

worked on a specific topic or a non-governmental organisation continuously lobbying for a certain ideal or value may be considered to have discursive legitimacy in their respective fields. Conversely, stakeholder hold resource-based power when they are effectively able to wield influence on other subjects by reason of their financial and technological resources or because of their capabilities and knowledge. This is the case, for instance, of multinational corporations. See Hardy & Phillips, 1998. For further analyses of the discursive legitimacy concept see Huxam & Vangen, 2000; Purdy, 2012.

^[4] See Crozier *et al.*, 1975, p. 173.

^[5] *Idem*, p. 175.

^[6] See Kroes, 2011; Touré, 2014.

^[7] See: Cardoso Report, 2004

^[8] See : Tunis Agenda, 2005

^[9] See *e.g.* ISOC, 2010

^[10] Particularly, private intermediaries have the possibility to unilaterally define the Terms of Service (ToS) that must be respected by their users. Hence, through ToS, intermediaries (i) can delineate the rules that must be respected within a given network or platform; (ii) can define the alternative dispute resolution mechanisms that users can utilise in order to seek redress; (iii) and have the possibility to autonomously enforce national legislation and regulation as well as the rules contained within their ToS and the results of their own ADR systems. See *e.g.* OECD, 2011.

^[11] See WSIS Participation <http://www.itu.int/wsis/participation/index.html>

^[12] See Rhodes, 1996.

^[13] To this extent the OECD Council has explicitly stated that “[t]he Internet’s complexity, global reach, and constant evolution require timely, scalable, and innovation-enabling policies” and “multi-stakeholder processes have been shown to provide the flexibility and global scalability required to address Internet policy challenges”. See OECD, 2011.

^[14] See *e.g.* Bylaws for the Internet Corporation for Assigned Names and Numbers, Annex A & B.

^[15] See **Brazil to host global internet summit in ongoing fight against NSA surveillance, 10 October 2013**

^[16] See Statement by H. E. Dilma Rousseff, President of the Federative Republic of Brazil, at the 68th Session of the United Nations General Assembly, September 24, 2013

^[17] For further information on the multistakeholder organisation of this meeting, see Maciel *et al.*, 2015.

^[18] *I.e.* governments, the private sector, civil society, the technical community, the academic community and users.

^[19] See <https://www.ietf.org/proceedings/91/attendee.html>

^[20] This group encompasses the technical organisations that guarantee the well-functioning of the internet *i.e.* the Internet Engineering Task Force (IETF), the Internet Architecture Board (IAB), Internet Corporation for Assigned Names and Numbers (ICANN), the World Wide Web

Consortium (W3C), the Internet Society (ISOC), and the five regional Internet address registries (African Network Information Center, American Registry for Internet Numbers, Asia-Pacific Network Information Centre, Latin America and Caribbean Internet Addresses Registry, and Réseaux IP Européens Network Coordination Centre).

^[21] The Tunis Agenda taxonomy, for instance, explicitly mentions governments, private sector, civil society, intergovernmental organizations and international organizations, and merely considers that academic and technical communities for the “contributions” that they provide “within those stakeholder groups.” See Tunis Agenda, 2005, para. 34 and 35.

^[22] It is worth noting that, in spite of their voluntary adoption, the overriding requirement of interoperability as well as potential path dependency dynamics ascribes to these voluntary standards the de facto status of binding technical standards.

^[23] For an overview of the internet standardisation process see Bradner, 1996.

^[24] For an overview of the internet standardisation process see <http://www.w3.org/standards/>

^[25] Relevant information pertaining to the ICANN structure may found at <https://www.icann.org/resources/pages/governance/governance-en>

^[26] For an overview of the GNSO’s PDP see <http://gns0.icann.org/en/basics/consensus-policy/pdp>

^[27] Particularly, the GNSO stakeholders are divided in two super-categories: the contracted parties, including registries and registrars ; and the non-contracted parties, including a Commercial Stakeholder Group, representing the interests of the Business, Intellectual Property, Internet Service Provider constituencies, and a Non-Commercial Stakeholder Group, representing the interests of Non-Commercial Users and Not-for-Profit Operational Concerns Constituency.

^[28] The multistakeholder structure of the GNSO is reflected in the composition of its Council, available at <http://gns0.icann.org/en/about/gns0-council.htm>

^[29] It must be noted, however, that ICANN policies can only be adopted once approved by the ICANN decision-making body, *i.e.* its multistakeholder Board of Directors. The structure and governance model of the ICANN Board can be consulted at <https://www.icann.org/resources/pages/chart-2012-02-11-en>

^[30] See <http://www.networkneutrality.info/sources.html>

^[31] Particularly, the CoE 2010 Declaration on network neutrality stressed the interest of “a Council of Europe framework with a view to providing guidance to member states and/or to facilitating the elaboration of guidelines with and for private sector actors in order to define more precisely acceptable management measures” whilst the participants to the CoE Multi-Stakeholder dialogue on Network Neutrality and Human Rights pointed out that “[t]he Council of Europe must therefore be proactive and promote the preservation of an open and neutral online environment offering a specific NN model-framework to its Members.” See Council of Europe, 2010; CDMSI, 2013.

^[32] See <http://www.networkneutrality.info/members.html>

^[33] For an overview of the model framework and a series of analyses of the context that led to its elaboration see Belli & De Filippi, 2013.

^[34] See Belli & Van Bergen, 2013.

^[35] See CDMSI, 2014.

^[36] See <http://www.cgi.br/about/>

^[37] See <http://www.cnumerique.fr/membres/>

^[38] See <http://contribuez.cnumerique.fr/consultations>

^[39] See http://camera.civi.ci/discussion/proposals/partecipa_alla_consultazione_pubblica_bill_of_rights

^[40] See <http://www.camera.it/leg17/1177>

[41] The concept of interest is particularly multifaceted and cannot be analysed in detail here. Particularly, the analysis of stakeholders' interests within internet governance processes may deserve in-depth scrutiny and should be dealt with through specific research. For an overview of the concept of interest and its relevance with regard to human behaviours see *e.g.* Smith, 1776; Hirschman, 1997; Force, 2003.

^[42] See *e.g.* <http://www.europarl.europa.eu/meps/en/search.html>

^[43] Such supplement is indeed compatible with the open nature of the NETmundial taxonomy.

^[44] This item is inserted in the second row of the stakeholder sheet for organisational purposes.

^[45] See Inoguchi *et al.*, 1998