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# The European Union, multilateralism and the global governance of the Internet

George Christou and Seamus Simpson

**ABSTRACT** Whilst the global governance architecture of the Internet has evolved at pace in the last 10 years, the European Union's (EU) role and influence in its development has been relatively understudied. This article contributes to closing this gap in the literature through an exposition of how the EU has sought to shape the emerging environment for Internet governance in the context of its quest for 'effective multilateralism'. It identifies the type of multilateral governance that the EU has projected for the Internet globally and analyses how it has sought to do this through its interaction with key global Internet fora. It argues that the EU's own self-defined role as a leader with a clear, preferred model for Internet governance contrasts with several constraints and contradictions faced in becoming an effective multilateral actor in this area.

**KEY WORDS** EU; governance; international actor; Internet; multilateralism.

## INTRODUCTION

Whilst in recent years the European Union's (EU) commitment to be an effective international actor through 'multilateralism' has been associated with its policy activity in the area of security, it has actually been an enduring part of its international existence for some time. Indeed, the EU's engagement with multilateral structures and its commitment to multilateralism has been the subject of much academic investigation across a variety of themes, most prominent including trade, security, environment, human rights (Jørgensen 2009; Smith and Elgström 2008) and communications (Christou and Simpson 2007a, 2007b; Puppis 2008). Such studies have revealed the problematic nature of the EU's commitment to multilateralism through its actions, highlighting contradictions in and constraints to its effective pursuit. It is our intention in this article to contribute to this literature through investigating Internet governance, an area that has increased in international political significance to such an extent that a 'growing number of political observers expect that in the second decade of the 21st century . . . [it] will probably become as important for global diplomacy as climate change is today' (Kleinwachter 2008: 29).

Despite the EU having, since the early 1990s, generated a portfolio of policies related to the Internet, the way in which it has attempted to influence the Internet's evolution has been considerably under-researched in relation to the EU's role in global Internet fora. Utilizing an analytical framework on multilateral governance and the EU *in* international regimes, this article focuses on the type of model the EU has projected, and the specific ways in which it has acted to achieve such a model in global Internet governance. Although there is a plethora of global Internet agencies and institutions within the global dimension, we focus on two of the more significant and relatively new institutional contexts: the Internet Corporation for Assigned Names and Numbers (ICANN), established in 1998, with responsibility for Top Level Domains (e.g., 'dot com', 'dot org') and for providing a stable platform for the functioning of the Internet's critical technical resources; and the Internet Governance Forum (IGF), established in 2005, as a multi-stakeholder organizational space within which to deliberate on key aspects of Internet governance.

We contend that whilst the EU has consistently called for a 'new co-operation model' for Internet governance in the international policy domain, in the evolving process of its construction, more recently the European Commission has exploited the context of the global financial crisis and the expiration of the United States–ICANN Joint Project Agreement (JPA) (30 September 2009) to define and project a multilateral governance model that brings the state back in. However, it is important to note that, consequently, the EU's normative preference is not for a traditional state-centric mode of multilateral governance. Rather, it has projected a nuanced form wherein governments participate on a par with other (mostly private) actors within the global decision-making bodies that construct public policy rules for the Internet. In this sense, the article finds that the EU is promoting multilateral governance at the global level reflective of established and successful models, such as that of its own Internet Top Level Domain (TLD), 'dot eu', where private agencification is *operationally* dominant, but within a clearly defined public policy framework constructed by governments which sets out the principles for its operation (Christou and Simpson 2006). Nonetheless, the article also illustrates that despite the EU's own self-defined and projected role as a leader in Internet governance, it faces several constraints and contradictions in achieving its own preferred governance model and becoming an effective multilateral actor within the global Internet institutions under scrutiny.

## MULTILATERAL GOVERNANCE

Our starting point for understanding what the EU is projecting in Internet governance fora aims to move beyond traditional state-centric definitions and assumptions (Keohane 2006; Ruggie 1993). Germane to this task is the suggestion that multilateralism and governance (Kohler-Koch and Rittberger 2006: 29) can be understood as complementary processes – specifically, multilateralism as global governance (Biscop 2005). The EU has clearly stated that its

‘commitment to multilateralism is a defining feature of its external policy. Taking international co-operation as a precondition for meeting . . . global challenges, the EU has a clear interest in supporting the continuous evolution and improvement of the tools of global governance’ (European Council 2003: 3). We thus define *multilateral governance* as a mode of co-operation and interaction that provides guiding principles on how policy can be constructed in terms of context, actors and processes. Analysing it provides a map of those actors involved in co-operation, whilst also adding a dynamic element through defining the types of processes within which policy is constructed and implemented.

What can be derived from this is that global multilateral governance is a concept well equipped to capture the complexity of the actors involved in Internet governance, as well as the methods through which policy is executed. It thus moves analysis away from a state-centric form of governance traditionally found in the UN, towards ‘a new form of multilateral co-operation . . . which emphasizes the importance of networks between state and private actors . . . global partnerships, multi-stakeholder initiatives, global public policy networks and governance concepts of variable geometry’ (Martens 2007: 3). Furthermore, it is suggestive of the involvement of a broader set of actors and multilateral governance arrangements, but also of processes that move beyond simple top-down multilateralism and the implementation of policy constructed by states at the global level through a *bargaining* mode of engagement. Rather, it is amenable to policy construction through bottom-up multilateralism, policy development through *process, deliberation, learning and consensus*, and policy implementation through practice and socialization (see Table 1). Conceptually, then, multilateral governance can assist the understanding of the relationship between the public and the private sphere, and the role that each has to play in the formation and implementation of policy at the global level.

To elaborate further, if a legitimate form of multilateral governance is to emerge that is to prove inclusive, decisive and reflexive, then it is vital to understand how the public and private can interact and what the implications are of the different kinds of arrangement that are possible. In the case of global Internet governance, more nuanced understandings of the public–private relationship are helpful in illuminating the analysis of the EU and the model it

Table 1 Conceptualising global governance

<i>State-centric governance</i>	<i>Multilateral governance</i>
States co-operating	States and non-state actors co-operating
Top-down multilateralism/ hierarchical processes	Bottom-up multilateralism/vertical and horizontal processes
Bargaining as main mode of policy making	Learning as mode of policy-making
Exclusive	Inclusive
Undemocratic	Democratic

promotes for Internet governance. At polar extremes of analysis exist wholly *public* (as indicated in Table 1) or *private* arrangements. In the latter, private actors set the rules of the game in networks, partnerships and other private arrangements, and implementation occurs through codes of conduct/procedural regulation and persuasion, learning and practice. In between the poles, sit various possible ‘middle-ground’ arrangements that allow a role for both the public and the private. One is *subcontracting*, whereby states can be involved in setting the conditions for rule-making with private actors shaping the content. Within this schema, there is a clear separation of rule-shaping, in which the state is involved, and management of the policy process, which is delegated to private actors. In addition, policy can be constructed and implemented in different public–private environments (across and between different dimensions of governance) through both material and procedural regulation. Another possible arrangement is *market-based* multilateral governance, where private actors are responsible for setting and implementing the rules, but where states have the right of intervention if this is seen to be failing. Though resembling the pure ‘private’ schema, an important distinction from it is the possibility that states can create a legal environment and material regulation *if required* (Christou and Simpson 2009).

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

## EXPLAINING THE EU’S PURSUIT OF EFFECTIVE MULTILATERAL GOVERNANCE

*How*, then, does the EU pursue its objective of ‘effective multilateral governance’? Scholars have analysed the EU’s role in, and interaction with,

international organizations and regimes in various ways (Jørgensen 2009). We draw specifically on the work of Smith and Elgström (2008) as they provide a broad, theoretically informed discussion and agenda for exploring the EU in international fora in its pursuit of effective multilateralism.

Investigating how the EU interacts with, and influences, international fora brings to the fore questions of the EU's *mode of engagement* within these fora. In this sense, issues arise as to whether it engages through a logic of consequences i.e., a bargaining mode linked to hard power, or a logic of appropriateness, i.e., in problem-solving mode related to soft (normative) power. A secondary aspect of this is the *role* the EU plays: whether it is a leader or mediator/broker; whether it is reactive or proactive. Global Internet governance, we suggest, lends itself to EU engagement through problem-solving modes. Although, within ICANN's Board of Directors, decisions are taken by vote, there is no governmental/EU representation. Within ICANN's Governmental Advisory Committee (GAC), where the European Commission and EU member states can influence proceedings, recommendations to the Board are achieved by consensus (Mathiason 2009: 71). By contrast, the function of the Internet Governance Forum is not to take decisions or even to agree policy positions, but to discuss and deliberate in order to contribute to finding solutions to Internet governance matters.

Given these contexts, we might expect the EU to endeavour to achieve its aims through soft power, based on the resources of information, expertise and convincing ideas/argumentation, and through reaching consensus on solutions that are 'good for all' and address a common interest, rather than simply being based on the maximization of self-interest. This does not imply that argumentation cannot be used in bargaining mode to achieve goals. Indeed, Schimmelfennig has shown convincingly how states can use rhetoric strategically in a normative institutional setting; that is, 'the instrumental use of arguments to persuade others of one's claims' (Schimmelfennig 2000: 129; see Christou and Simpson 2007b). The latter mode does not follow a 'logic of appropriateness', nor does it prioritize the 'persuasive force of normative appeals' (Smith and Elgström 2008: 14) or the most logical (best) argument (Risse 2000). Overall, how the EU engages is very much related to the overarching strategic (power) and normative context.

In terms of the EU's *role*, much research has focused on the potential of the EU as a leader in international fora. A leadership role can be defined as the ability of an actor to shape and direct others towards its desired goal over a period of time (Underdal 1994: 178). Important in terms of leadership traits is the leader's vision and ability to persuade others (followers) of that vision in the appropriate institutional context. This is significant as the role the EU plays is contextually determined with actors 'behaving in the way they think is appropriate in the particular context at hand' (Smith and Elgström 2008: 17). Research suggests that the EU has a mixed leadership record across different issue areas in global fora, being, variously, reactive (Taylor 2006), perceived as a great power (Elgström 2006), but not necessarily a leader. The central reasons

identified for this variety touch upon the EU's internal incoherence and inconsistency. The EU can also play the role of mediator or bridge-builder in international fora, the main traits of which are an ability to build trust and consensus in order to arrive at solutions that cannot be found if other actors are left to their own devices. In this sense, the EU does not necessarily have to be a leader to be effective; it can also be successful as an actor that can offer alternatives on which others can compromise (Smith and Elgström 2008: 18–19; Elgström 2003).

### THE EU AND ICANN: PURSUING MULTILATERAL GOVERNANCE THROUGH 'STRATEGIC' NORM PROJECTION

ICANN was established in September 1998 as an international, not-for-profit, private institution under California law, with the aim of resolving problems that had arisen with 'intellectual property combined with issues of domestic monopoly power and fears of incursion by the international public sector' (Mathiason 2009: 49) in the developing Internet. More practically, its main function was to manage Internet Protocol address space allocation and protocol parameter assignment, as well as the domain name and root server system. The negotiations and context that led to the establishment of ICANN (Mueller 2002) resulted in multilateral governance that excluded states as decision-makers, despite ICANN being responsible for important public policy issues. Indeed, somewhat controversially, and to the disappointment of the European Commission (1998, 2000), the United States (US) government, through its Department of Commerce, maintained unilateral policy oversight and authority over ICANN. It was also obvious too that the relegation of the role of governments to *advisors*, did not sit comfortably with the EU's preference for co-ordinated or 'regulated' self-regulation, manifest as a subcontracting model rather than that of pure private interest (self-regulatory) multilateral governance (Christou and Simpson 2006). Whilst the European Commission supported the US initiative to establish ICANN in terms of the private management and co-ordination of key resources for the Internet, this was on the condition that it would be 'ultimately accountable to the international community as a whole [read all governments] in the broader public interest [read through public policy rules] for the benefit of Internet users world-wide' (European Commission 2009: 6). As Mueller (2007: 3) notes:

ICANN was a unilateral US initiative. The Europeans went along after getting some minor concessions, but they really had no choice and the regime only marginally reflected their preferences . . . the influence of the EU was relegated to a status that was, at best, about the same as key private sector actors.

Right from ICANN's inception, then, there existed a tension between the EU's vision of how the Internet should be governed globally, and that of the US, and other private actors, academics and technicians initially responsible for its emergence. There have been two major sources of this tension. First, the Government Advisory Committee (GAC), which was set up to provide a forum for reaching

consensus between governments on recommendations and advice to the ICANN Board 'as they relate to governments, multinational governmental organisations and treaty organisations' (ICANN 1999: 2), especially but not exclusively, in matters of public policy. Second, the Joint Project Agreement (JPA – 2006) between the US and ICANN,<sup>1</sup> which designated ICANN to carry out its main responsibilities but, critically and controversially, gave the US government a unilateral oversight role. Thus, the context within which ICANN has evolved, alongside its governance structure, has meant the EU has had to engage strategically, but in problem-solving mode in order to influence the evolving process of Internet governance in ICANN. Moreover, the EU, whilst being mainly *reactive* at the inception of ICANN, has gradually projected itself as a leader in seeking to shape ICANN governance in an era where the unilateral JPA was eventually replaced (after 30 September 2009) by a 'new' multilateral governance form through the 'Affirmation of Commitments', and where 'public attitudes have changed towards the concept of self-regulation in the wake of the financial crisis ...' (European Commission 2009: 4; authors' interview 2009).

In the original bylaws constructed at ICANN's inception, the role of governments was limited. Whilst the EU was able to secure the GAC as a concession from the US government, arguing the importance of governmental interests and representation in Internet naming and addressing, the GAC was established with governments simply as 'advisors' to the Board of Directors. It was clear, however, that the European Commission's intention from the outset,<sup>2</sup> was to participate and establish a voice in the GAC for the purpose of projecting its own alternative arguments for what it saw as a more legitimate form of multilateral governance, with a 'self-regulatory structure buttressed by active policy oversight ... through the Government Advisory committee' (European Commission 2000: 9; authors' interview 2004). This demonstrated that the advisory function set for the GAC in the original ICANN bylaws, was domesticated strategically by the EU and given a different interpretation, despite its lack of decision-making or voting rights.

The EU argued that this oversight should be exercised on a multilateral rather than unilateral (US) basis, and made it clear that 'should ICANN extend its influence ... to other policy areas where governments found that the interests of their general public were being affected ... then the current relationship would probably have to be revisited' (European Commission 2000: 8). In its attempts to put forth its argument for a different normative model resting on the notion of oversight, underpinned by ideas of subcontracting rather than private interest self-regulation, the European Commission representative in ICANN took the lead by extolling in public documents the idea of the GAC–ICANN relationship as the 'first example of public–private partnership ... where the scope of industry self-regulation is guided and constrained by similar input from the public authorities' (Wilkinson 2000: 6; authors' interview 2004). This argument was underpinned normatively by calls for a more representative and thus legitimate way of regulating Internet issues that were considered



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

The first was the approach of the US as well as its ownership of the critical technical resources for the governance of naming and addressing (in particular, the key 'A' root server computer and the Internet Assigned Numbers Authority (IANA) function of adding new names to the root). The second was the technical and commercial interests involved in the early establishment and management of domain names which took a 'decentralist' view of governance where there was 'no role for the state' (Paré 2003: 47). A suggestion of anything but private interest self-regulation was considered not just as unnecessary, but unpalatable. It was considered a move that would only introduce bureaucracy to a process that needed flexibility and efficiency if the Internet was going to grow as an accessible tool socially and economically. Because of this strategic context, the EU's opportunity to effect change was reliant on the incremental *manipulation* of ICANN's private, ultimately legalistic, and US-oriented self-regulatory governance norm and the gradual socialization of the GAC into the working practices of ICANN, so that those sceptical could eventually see the benefit of 'governmental' involvement in a co-regulatory environment (authors' interview 2004). However, there was also a third and familiar constraint: EU (in) coherence within the GAC, which manifested itself, in particular, in contrasting positions put forward by the Commission and individual member states (Christou and Simpson 2007a: 139).

Despite this, eventual changes to the GAC's role gave governments a '*de facto* "political veto right" over ICANN decisions touching on public policy issues' (Kleinwächter 2008: 17). Moreover, new ICANN bylaws meant that the Board could not simply ignore or reject GAC advice, and if it did justification had to be given as to why this was the case. Whilst this change cannot be accredited to EU action alone, through its advocacy of a greater role for the GAC<sup>3</sup> and the practice of public–private co-regulation, the European Commission was an influential player in this process. The modification to ICANN's core values in 2002 enshrined the practice and associated normative expectation that 'public policy matters are a domain reserved to governments'. It has even been claimed that 'since 2002 it has been practically mandatory for ICANN to follow the GAC's "policy advice"' (Mueller 2008: 3). This is a clear movement towards the 'subcontracting' multilateral governance model favoured by the EU and which it had consistently argued for within the GAC (Christou and Simpson 2007a: 134–40).

Although this model is much more amenable to the EU and despite critics arguing that governments 'should participate in the policy development process in the same way, in the same processes and with the same status as all others' (Mueller 2008: 4), the European Commission has recently argued

that the current model should be transformed further since ‘the GAC . . . does not yet comprise the full community of states’ and ‘concern has been expressed about the due consideration given by the ICANN Board to GAC advice’ (European Commission 2009: 7). It has been claimed that it is necessary to ensure that ‘what governments say is respected by the Board of Directors and that the Board justifies any decision not to follow GAC advice’ (authors’ interview 2010). The Commission has also argued in the light of the recent global financial crisis that ‘there is now a higher and understandable expectation that governments will be more proactive than may have been the case in the past in defending public interest’ where ‘continuing to pursue an exclusively “back-seat” approach to the development of Internet governance was not an option’ (European Commission 2009: 4). The Commission also contended that Internet users ‘have a legitimate expectation that their governments will guarantee any current or future governance arrangements will reflect the public interest of society as a whole’ (ibid.). The Commission’s argumentation thus clearly appealed to the ‘common interest’ of all, rather than a select few, in order to convince others that the time is right for further ICANN reform in order to meet one of its main objectives: the ‘balanced and equal oversight of some of ICANN’s activities by public authorities’ (ibid.).

It is important to note here that although the ICANN private interest model did not sit well with the Commission, it was not the day-to-day private operations that it objected to but, rather, that the regulatory backdrop did not constitute ‘public’ guidelines and parameters on how private interests should operate. Indeed, the Commission has stated quite explicitly in relation to ICANN that ‘private-sector leadership of day-to-day management needs to be maintained . . . the role of governments should be mainly focused on principle issues of public policy, excluding any involvement in the day-to-day operations’ (European Commission 2009: 5). In this context, it has specifically called for ‘internal ICANN reform leading to full accountability and transparency’ as well as external accountability whereby ‘current arrangements for unilateral oversight in regard to ICANN and IANA need to be replaced with an alternative mechanism to ensure that ICANN has *multilateral accountability*’ (European Commission 2009: 8, emphasis in the original).

It is clear from the EU’s projections that it aims to seize the opportunity to lead and catalyse changes within ICANN and other fora in order to achieve the objectives it originally set out for itself in Internet governance (European Commission 2000; European Council of Ministers 2000). The expiration of the JPA and its replacement with the joint ‘Affirmation of Commitments’ between the US and ICANN ‘indicates that the US shares many of these [the EU’s] objectives’ (EUROPA 2009).<sup>4</sup> Indeed, important reforms have been instigated providing for greater independence from regular periodic reviews by a single government and greater external accountability in the form of independent review panels to evaluate ICANN’s performance (ibid.). In this sense, the EU’s engagement within ICANN in what can be termed a *strategic* problem-solving mode could be interpreted as *effective* in achieving incremental change.

However, whilst it has asserted a leadership role, and changes within ICANN have certainly moved in a direction generally favoured by EU actors involved in formulating policy on the Internet,<sup>5</sup> it is not clear that this was due solely to EU influence. Moreover, in terms of measuring effectiveness, the EU has not, as yet, achieved its overall objectives in Internet governance, as outlined by the Commission (European Commission 2009: 4). In the case of ICANN and the GAC, whilst one of the major strategic constraints (US unilateral control of ICANN) has at least now been alleviated,<sup>6</sup> institutional (identity) and deliberative constraints still hinder a conversion to comprehensive 'subcontracting', where governments are on a par completely with other constituents in determining public policy rules.

### **THE IGF AND EU ENGAGEMENT: LEADING AND CREATING NORMS?**

The Internet Governance Forum as a new multilateral governance context to engage with issues of global Internet governance<sup>7</sup> emerged from the deliberations and negotiations at the World Summit on Information Society (WSIS), conducted in two phases, each culminating in meetings in Geneva (Phase 1, December 2003) and Tunis (Phase 2, November 2005). Within the WSIS process (WSIS 2003, 2005), and, in particular, its second phase, the EU was not successful in achieving its normative preferences. The EU vaunted at the time its 'new co-operation model' which would have introduced a very loosely specified multilateral intergovernmental 'backdrop' character to global Internet governance ('subcontracting' in our terms), which the EU claimed would thus function on 'a more solid democratic, transparent and multilateral basis with stronger emphasis on the public policy interests of all governments' (European Council of Ministers 2005: 1). However, in the negotiations, the US employed a clear bargaining mode of engagement which determined an outcome maintaining the status quo at the time. Indeed, although the EU initially portrayed itself a leader in this process, it soon turned its attention to developing its role of mediator between the US and the many, especially developing, countries that opposed its unilateral control of ICANN. A senior Commission official noted on the WSIS process that 'we were able to build a relationship of trust with many actors in the process and we were therefore also able to bridge a digital governance divide where there was a strong opposition to the unilateral oversight of the US in ICANN' (authors' interview 2009). The US, however, was not willing to listen to alternative arguments on Internet governance over what it perceived as such a critical resource, with the EU subsequently concluding that such US action was 'a recipe for stalemate ... and very disappointing to Europe and others who have worked towards a co-operative global approach since 1998' (Reding 2005: 4).

However, although the EU was unable to secure its new co-operation model with globally applicable public policy principles related to the Internet from the WSIS process (European Union 2005), the creation of the IGF from WSIS was

viewed as a positive development, in that it achieved part of what the EU advocated: the establishment of a global deliberation forum which would complement existing Internet governance institutions. This led the EU to claim, unrealistically, that the IGF was a compromise 'based largely on EU proposals'.

The expiration and replacement of the JPA with the 'Affirmation of Commitments' between the US and ICANN, and the review of the IGF commencing in 2010, provided additional space and timing for EU normative intervention. At the IGF meeting on the 15 November 2009, EU Commissioner for the Information Society and Media Commissioner, Viviane Reding, continued to praise the value of the IGF as a 'unique forum where the global Internet Community can engage in open, non-binding, multi-stakeholder dialogue in order to examine the ... many issues that arise from our use of the Internet' (Reding 2009a). Other Commission officials have also expressed their satisfaction with the IGF precisely because they do not have to engage in discussions through a bargaining mode. Countering ideas that the IGF should become a negotiating and decision-making – rather than simply deliberating – forum, the Commission has clearly asserted that if this were to happen it would lose its value in terms of 'informal contact and learning through discussion ... we would go to UN mode' (authors' interview 2009). In January 2008, the European Parliament also produced a significant resolution on Internet governance, urging the European Commission and the Council of Ministers to ensure that the IGF was treated as an issue of high priority and which went as far as to call for the creation of a European IGF (European Parliament 2008). The overall EU position projected by the Commission and the EU Presidency is that the IGF must continue and its life must be prolonged beyond its original expiration date at its fifth meeting in 2010.

On the one hand, then, the Commission's support for the IGF rests on the notion that it would be valuable as a 'learning forum, to take ideas back and include them in the EU policy process' (authors' interview 2009). On the other, however, there exists a clear tension between the EU's advocacy of a 'learning forum' and its consistently projected and broader strategic normative model for Internet governance, where 'The IGF does not replace negotiation between governments' (Reding 2005). Indeed, in the context of the financial crisis and the backlash against self-regulation, the Commission has publicly taken the lead in advocating multilateral governance for the Internet where governments play a more prominent role, arguing that 'it is quite clear that we have a [public policy] responsibility that we have to take seriously at all levels. We cannot replace governments with private actors – we need private actors – but we need accountability – governments must work with partners and private actors to ensure that this happens' (authors' interview 2009).

Thus, although the Commission values the IGF as a space where governments, public administrations and all other actors can participate in discussions on Internet governance, stressing the virtues of 'a bottom-up, private sector approach ... to the day-to-day management of Internet domain names' (Reding 2009a), it also continued to press at every opportunity, though

without much specific detail, its case for governance where ‘governments can and must play a role in public policy Internet issues where the general public’s interest must be protected’ (*ibid.*). The then Information Society and Media Commissioner, Viviane Reding, stressed at the fourth IGF meeting in Sharm El Sheikh on 15 November 2009, that ‘we should not overlook the key role governments have to play in keeping the Internet free and open’, going as far as to argue that ‘if users want an open and neutral Internet, they must actually engage their governments to protect it’ (*ibid.*).

Therefore, although the EU has projected itself as a policy leader in promoting the idea of deliberative multi-stakeholder Internet governance (Wilkinson 2009; European Commission 2009) through the IGF, with an equal role for all actors, it has also continued to promote a governance model, principally through the policy positions taken by the Commission that *prioritizes* governments over other actors. Indeed, the latter has argued that non-governmental stakeholders need to accept ‘that it is governments alone who are ultimately responsible for the definition and implementation of public policies’ (European Commission 2009: 6). Moreover, whilst endorsing private sector leadership as a way of delivering (managing) public policy objectives, it has argued that ‘users will also inevitably turn to their governments if there is any major national disruption to their Internet service, and not to the various Internet governance bodies’ (European Commission 2009: 2; authors’ interview 2009). Thus, the Commission’s vision for global Internet resources governance has recently been projected as ‘multilateral intergovernmental co-operation’ (European Commission 2009: 8), motivated by a new global context, much closer to the EU’s own ‘subcontracting’ model of multilateral governance for ‘dot eu’ and reflective of the ‘new co-operation’ model vaunted by the EU during the WSIS process.

Whilst this multilateral vision *does* include the multi-stakeholder IGF as a parallel forum for discussion of ideas, it is also problematic in the IGF context, not least because, first, such a notion contains within it a significantly more limited role for non-governmental actors in rule-making and decision-taking than would be envisaged by many of the private sector and civil society participants in the IGF. Second, although the EU, US and Japan, as well as prominent academics and private actors, support the IGF as an institution strictly delimited to discussion, there are also alternative arguments (from China, Russia, India and Latin America) within the IGF calling for major reform that would confer upon it hard decision-making power (similar to a traditional UN body). Thus, the EU has not yet resolved the challenge of reconciling two seemingly contradictory multilateral governance philosophies: multi-stakeholderism and the principle of the state as ‘*primus inter pares*’ and, by contrast, more traditional global intergovernmentalism (Hoffman 2009: 2). It argues the IGF is a valuable multi-stakeholder institution producing ‘ideas’ ‘that float down into the policy process’ (authors’ interview 2009). However, whilst valuable, the European Commission view appears to be that the IGF should not be given decision-making powers because

governments should be the primary actors in the construction of public policy rules, with private actors managing the process of their implementation.

## CONCLUSION

This article has aimed to shed light on the kind of ‘multilateral’ approach that the EU has promoted for global Internet governance with specific reference to two important, but rather different, global Internet fora. The normative model preferred and projected by the EU has been largely consistent for both ICANN and the IGF. In both cases, a subcontracting ‘partnership’ model, whereby governments have a shared role with private interests in defining public policy rules for the Internet underpins the EU’s approach. A more recent intervention by the European Commission (2009), however, appears to go further than this, highlighting the issue of possible inconsistency between the Commission’s and member states’ positions. Whilst not advocating a day-to-day management role for government, the Commission has articulated the idea of a multilateral governance mode of co-operation that prioritizes governments over other actors operating in parallel to deliberative global multi-stakeholder fora such as the IGF. Here, the Commission is propounding a normative model based on ‘partnership’ that draws on the traditional arguments relating to the advantages of public governance in terms of protection of citizens and the accountability, legitimacy and transparency of any process or institution.

The EU has operated in ICANN and the IGF through both bargaining and problem-solving modes of engagement and through attempting to play an effective leadership role. Within ICANN, the underlying strategic context which effectively determined the private self-regulatory institutional governance model made it difficult for the Commission, through the GAC, to advocate an alternative model that was acceptable to all ICANN constituents. Through WSIS, the EU’s leadership role promptly melded into the role of mediator. Although securing many followers from developing countries through criticism of US unilateral oversight of ICANN, this strategy was ultimately constrained by the bargaining engagement mode adopted by the US government.

The IGF has been perceived as a qualitatively different forum by the EU, which sits comfortably with its broad support for multi-stakeholder involvement, though this activity is supported within a perspective emphasizing the overarching presence of the state as protector and promoter of the public interest. Paradoxically, the EU has not called for the dissolution of the IGF precisely because it does not take global Internet policy decisions and the EU does not have to engage within the IGF in bargaining mode. The advantage of the IGF for the EU is that ‘members of governments . . . could speak openly with each other and other stakeholders without an eye to drafting resolutions or treaties’ (Massango 2008: 75; confirmed by authors’ interview 2009). The EU has yet to resolve the tension between its own core bargaining practices elsewhere and the multi-stakeholderism it promotes in the IGF. It could be argued

that, ironically, there will be little pressure to do this whilst the IGF remains the way it is, a position also faced by non-EU states.

This article has shown that whilst the EU has asserted its own normative self-importance as a leader in international discussions on Internet governance (European Commission 2009), this has not resulted in it being effective in terms of achieving all of its objectives. Nevertheless, the EU has developed into an important global political actor in the evolving system of global Internet governance.<sup>8</sup> Further research should focus on the perceptions of others on the EU's role and influence in Internet governance, the processes behind, and possible conflicts in, the EU's internal construction of positions on Internet governance and, beyond this, the impact of global Internet fora and actors on EU policy-making.

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## NOTES

- 1 This replaced the original Memorandum of Understanding between the US Department of Commerce and ICANN in 1998 which provided for final unilateral oversight of the root server and IANA function.
- 2 Note here that the European Commission only had a seat in the GAC because of its role as principal in governing the 'dot eu' top level domain name (confirmed in authors' interviews 2010).
- 3 Much of it came about through a general review of ICANN following criticism of its governance and operations.
- 4 In other words, the US Affirmation of Commitments introduces many reforms that will ensure the multilateral accountability and transparency for which the EU has called.
- 5 The main EU actors involved in policy formulation are the High Level Group on Internet Governance and Commission officials in DG Information Society (Unit A3). Those actors involved in representing the EU position on Internet Governance in global fora are the EU Presidency and the European Commission (see Christou and Simpson [2010] for details).
- 6 That is, not completely removed, as the 'Affirmation of Commitments' does not say anything about US government control through the IANA contract, or how such an

Agreement affects the legal status of ICANN (in terms of US law) as an 'independent' organization.

- 7 For the remit of the IGF, see <http://www.intgovforum.org/> (accessed 11 December 2010).
- 8 This does not necessarily mean it has been cohesive or consistent (see Christou and Simpson [2010] for details of the EU's internal construction and projection of positions on Internet governance).

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