RISING TOWARD APOTHEOSIS: THE DECONSTRUCTION OF THE WSIS TUNIS AGENDA FOR THE INFORMATION SOCIETY

By Roy Balleste[*]

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"The Internet lives where anyone can access it."
~Vinton Cerf [1]

ABSTRACT

The Tunis Agenda for the Information Society belongs in the realm of the few, but very important documents, that promote human reason, human rights and international law.[2] Human rights concepts may be identified within the document as a social achievement of progression toward a common good. This progression toward an apotheosis represents a reminder that the world community must apply human rights standards to any accepted model for the management of the Internet, and yet, as we examine the entire "social process" and potential obstacles to the realization of the goals enshrined in the Tunis Agenda, we uncover the root of its message.[3] These obstacles, within the Tunis Agenda, must be tackled within the context of a "geographical, political, religious, or intellectual" divide, and must be addressed as challenges, that impede the "path of human interaction" toward the effective "imagination of alternatives" and the potential for the arrangement of a workable road map that aims at approximating "a public order of human dignity, maximizing access to all things humans value."[4]

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[1] Karen Kaplan, *Internet's at Home Almost Everywhere*, L. A. Times, May 31, 1999, http://articles.latimes.com/1999/may/31/business/fi-42765 (explaining that Vinton G. Cerf, former senior vice president for Internet architecture and technology for MCI WorldCom in Reston, noted several cities, including Palo Alto, Cambridge and Arlington, Virginia, as instrumental in the evolution of the global computer network. Cerf noted that the Internet had no single hometown).

[2] Tunis Agenda for the Information Society, WSIS-05/TUNIS/DOC/6(Rev. 1)-E (Nov. 18, 2005) *available at* http://www.itu.int/wsis/docs2/tunis/off/6rev1.html.

[3] *See* Siegfried Wiessner, The Movement Toward Federalism in Italy: A Policy-Oriented Perspective, 15 St. Thomas L. Rev. 301 (2002).

[4] *Id.* at 319.

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I. Introduction

The matters of identifying alternatives and the values surrounding the achievement of human dignity bring the discussion back to the original consideration. Apotheosis, or rising to the level of the divine, remind us that technology in our society is tied to an institutional standard that serves to clarify community goals, recognizing all individuals as persons with the right to be part of an effective process of governance and free from external coercion.[5] Apotheosis is a derivate from *Natural Law*. The famous theologian St. Thomas Aquinas explained that natural law is how the human reason participates of *Divine Law*.[6] Natural Law, then, is the participation of the human being in the Divine law.[7] The famous legal scholar Hugo Grotius noted that natural law is the foundation of a characteristic human trait that gives international law its direct connection to the well-being of the human person.[8] In the light of the foregoing, we are able to recognize that the Tunis Agenda follows this concept in order to promote and discover global internet governance standards for the benefit of all humanity. The Tunis Agenda encompasses authoritative decision-making standards involving global governance that require closeness with

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[5] MYERS S. MCDOUGAL ET AL.,, HUMAN RIGHTS AND THE WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY 383-84 (1980). *See*, DANIEL A. DOMBROWSKI, A PLATONIC PHILOSOPHY OF RELIGION: A PROCESS PERSPECTIVE 98 (2005). *See also*, GEORGE MATHESON, NATURAL ELEMENTS OF REVEALED THEOLOGY: BEING THE BAIRD LECTURE FOR 1881 229 (2010).

[6] THOMAS AQUINAS, THE SUMMA THEOLOGICA OF ST. THOMAS AQUINAS, FIRST PART OF THE SECOND PART, Question 91, the various kinds of law, Articles 2 -5 (1980).

[7] *Id.*

[8] *See generally* HUGO GROTIUS, THE FREEDOM OF THE SEAS OR THE RIGHT WHICH BELONGS TO THE DUTCH TO TAKE PART IN THE EAST INDIAN TRADE 53 (James Brown Scott ed., 1916).

the principles enshrined in the Universal Declaration of Human Rights.[9] The ultimate validity of the governance process presented by the document rests on its capacity to increase the well-being of people around the world by supporting the enjoyment of the benefits of the accessibility of technology and information.

The human existence is directly tied to its dignity. It is the dignity of the human person that must be protected above all other considerations in our high-technology society. This is the true ideal that supports a world at peace. It was just sixty years ago that the entire world was at war. The suffering of millions will forever be immeasurable. The abuses against the dignity of human beings were catastrophic. We have come a long way since the devastations of World War I and World War II. Yet, other conflicts over the years have extended the agony of suffering and despair.

The desire to protect freedom and protect peace was enhanced after World War II when Eleanor Roosevelt, widow of U.S. President Franklin Delano Roosevelt, was appointed by President Truman on December 21, 1945 to the United States Delegation of the United Nations General Assembly.[12] The following year, Eleanor was selected as chairman of the Human Rights Commission, where she was charged with drafting the Universal Declaration of Human Rights, later adopted by the General Assembly on December 10, 1948.[13]

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[9] *See* Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (Dec. 10, 1948).

[12] "I am pleased to inform you that I have appointed you one of the representatives of the United States to the first part of the first session of the General Assembly of the United Nations to be held in London early in January 1946." See, Eleanor and Harry, The Correspondence of Eleanor Roosevelt and Harry S. Truman, "HARRY S. TRUMAN TO ELEANOR ROOSEVELT, DECEMBER 21, 1945," Harry S. Truman Library and Museum, available at http://www.trumanlibrary.org/eleanor/1945.html. *See also*, Celebrating 60 Years of Human Rights, U.S. Department of State, Bureau of International Information Programs, 8, Volume 13, Number 11, November 2008, available at http://www.america.gov/publications/ejournalusa/1108.html.

[13] Chairpersons of the United Nations Commission on Human Rights, Commission on Human Rights, http://www2.ohchr.org/english/bodies/chr/chairperson.htm. *See Anna Eleanor Roosevelt Biography*, THE FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBRARY AND MUSEUM, http://www.fdrlibrary.marist.edu/education/resources/bio_er.html. See also, Digital record of the UDHR

In a world of ever-increasing transnational interactions, and even with the high level discussions considering the importance of human rights, it took the world another eighteen years before the Universal Declaration was codified into two treaties, enshrining civil rights in the International Covenant on Civil and Political Rights (ICCPR), and centering the rights to education within the International Covenant on Economic Social and Cultural Rights (ICESCR).[14] It is thus, of critical importance, how the concept of human dignity is protected and enshrined by all nations in cyberspace. The earlier creative role of Eleanor Roosevelt was masterfully summarized by her words in 1958, while pondering about humanity with a question: "where, after all, do universal human rights begin? In small places, close to home… the school or college… the factory, farm, or office... Unless these rights have meaning there, they have little meaning anywhere…"[15] While assessing these words, another consideration arises: the reconciliation of human rights with the rules that govern the Internet.

This article is the first ever attempt to analyze the entirety of the Tunis Agenda and its impact in the future of internet governance and international human rights law. The analysis proceeds with the document's articles in order, and organized in the following categories: Introduction (articles 1 and 2), Financial Mechanisms (articles 3-28), Internet Governance (articles 29-71), Internet Governance Forum (articles 72-89), Substantive Obligations: Implementation (articles 6-15), Monitoring Activities (articles 16-25), and ending with the International Norms and ECOSOC: Progress Report (articles 113-122). Understanding the Tunis

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http://www.ohchr.org/EN/NewsEvents/Pages/DigitalrecordoftheUDHR.aspx. (Eleanor Roosevelt served in her capacity as chair of the Commission from 1946 to 1950.)

[14] International Covenant on Civil and Political Rights, article 19(2), GA res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967); *See also* International Covenant on Economic, Social and Cultural Rights, GA res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966); 993 UNTS 3; 6 ILM 368 (1967).

[15] Eleanor Roosevelt, *In Your Hands: A Guide for Community Action for the Tenth Anniversary of the Universal Declaration of Human Rights,* (Mar. 27, 1958), Address Before the United Nations, (transcript available at http://www.udhr.org/history/inyour.htm).

Agenda is the key to discovering a somewhat forgotten summit and yet still relevant, where the four most important internet governance documents of the World Summit on the Information Society (WSIS) took form.[16] The *Declaration of Principles* and *Action Plan* were the outcomes brought forward by the first phase of the WSIS of 2003.[17] The documents set forth the initial road map for discussions, while promoting the essential action steps reflected by the needs of the Information Society.[18] The second and most important phase of the WSIS in 2005 dealt with the transition towards a knowledge society.[19] A knowledge society would no longer consider relevant how much information a nation possessed.[20] Rather, the power behind a knowledge society would be centered on how a particular society enhanced that knowledge acquired via shared mechanisms and acquisition of new information.[21] Societies' knowledge would now be an asset that required shared mechanisms that would connect the forms of information that our world civilizations already possessed, while creating new avenues of development that would serve as a catalyst to spread that knowledge.[22] Today, the concept of building "knowledge societies" encompasses much broader social, ethical and political dimensions, and requires delving into technological breakthroughs influenced by scientific progress.[23] A knowledge society must foster knowledge-sharing as public good, available to each and every individual in

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[16] *See* ELENA PAVAN, FRAMES AND CONNECTIONS IN THE GOVERNANCE OF GLOBAL COMMUNICATIONS: A NETWORK STUDY OF THE INTERNET GOVERNANCE FORUM 19-24 (2012).

[17] *See* World Summit on the Information Society, Declaration of Principles, art. A1, Dec. 12, 2003, WSIS-03/GENEVA/DOC/0004, (Geneva).

[18] *See* World Summit on the Information Society, Plan of Action, Dec. 12, 2003, WSIS-03/GENEVA/DOC/0005, (Geneva).

[19] *Id.*

[20] *See* U.N. Educ., Scientific and Cultural Org., *Towards Knowledge Societies*, UNESCO World Report, 17-18 (2005).

[21] *Id.*

[22] *Id.*

[23] *Id.*

the group, while integrating its members and promoting new forms of solidarity.[24] The WSIS organizers had ambitious goals for the constitutive meetings that seemed to evoke this concept of a knowledge society, by adopting in the second phase two documents: the *Tunis Commitment*, and a memorable instrument called the *Tunis Agenda for the Information Society*, setting forth regional and international action plans.[25]

II. The Tunis Agenda for the Information Society

The *Tunis Agenda for the Information Society* is a product of a much larger discussion. It is a document that represents the evolution of a world in transition. The document was a creation born out of the internet governance debate and shaped by the creation of a new model of multistakeholder international relations. The Tunis Agenda is a unique document. From the stand point of international law, it is a consensus statement.[26] Thus, the Tunis Agenda, from a procedural point of view, was adopted without proceeding to a formal vote.[27] National governments were note required to manifest positively its agreement with the document, but instead the only requirement was not voicing a formal objection.[28] Indeed, the document was unanimously adopted at the Summit during its 8th Plenary meeting on 18 November 2005.[29]

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[24] *Id.*

[25] *See* Tunis Commitment, WSIS-05/TUNIS/DOC/7-E(Nov. 16, 2005); *See also* Tunis Agenda for the Information Society, WSIS-05/TUNIS/DOC/6(Rev. 1)-E(Nov. 16, 2005).

[26] *See*, What was the overall outcome of the World Summit on the Information Society? Internet governance and the Commission's follow up to the World Summit on the Information Society: Frequently Asked Questions, European Union@United Nations, Brussels, 27 April 2007, *available at* http://www.europa-eu-un.org/articles/en/article_5934_en.htm.

[27] Rüdiger Wolfrum &Jakob Pichon, *Consensus*, The Max Plank Encyclopedia of Public International Law (Oct. 2010),*available at* http://www.mpepil.com/subscriber_article?script=yes&id=/epil/entries/law-9780199231690-e1387&recno=1&author=Pichon Jakob

[28] *Id.* at 1 ("Consensus can mean a decision that is taken by a specific procedure whereby the decisions, although not formally accepted by everybody, met the expectations of all participants in the negotiation process to such a degree that it did not meet any objections. Hence, a consensus decision reflects a higher degree of compromise than a decision taken by majority.").

[29] World Summit on the Information Society, Sixtieth session, Agenda item 49*, Information and Communication Technologies for Development*, Chapter VIII, ¶ 2, WSIS-05/TUNIS/DOC/9(Rev.1)-E, A/60/687 (Mar. 15, 2006),

Later, the General Assembly endorsed the Tunis Agenda for the Information Society in its resolution 60/252, titled World Summit on the Information Society.[30]

A. Origins

The public order established by a global governance process on internet governance was redefined by the discussions achieved and by the process established at the WSIS and brought forward into the conscience of international law. The Working Group on Internet Governance provided the world with the first official definition:

"Internet governance is 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."[31] This is a complex goal and a difficult concept. A participant of the process recognizes that Internet governance is an exceptionally complex and rapidly changing field of norms and rules. With its history and conflicts intersecting a range of disciplines, it contains the contributions of a wide range of stakeholders. At its academic core, internet governance can be said to overlap with that aspect of the international human rights law that engages notions of sovereignty, the advancement of human dignity, social justice, and ultimately the improvement of the human condition.

A new trend has emerged in the global legal corpus, as our society finds itself in its own constitutive process seeking out effective control over the governance of the Internet. While Internet governance had been in the discussion of many experts for years, the General Assembly

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http://portal.unesco.org/ci/en/files/21742/11442346419UN_Resolution_A_60_687.pdf/UN_Resolution_A_60_687.pdf.

[30] World Summit on the Information Society, G.A. Res. 60/252, U.N. Doc. A/RES/60/252(April 27, 2006) *available at* http://www.itu.int/wisd/2006/res-60-252.html.

[31] *See*, Report of the Working Group on Internet Governance, ¶ 10, Château de Bossey, June 2005, *available at* http://www.wgig.org/docs/WGIGREPORT.pdf.

elevated the discussion to the global level with Resolution 56/183, entitled "World Summit on the Information Society."[34] The resolution, which originated with the Secretary-General of the International Telecommunication Union, proposed a summit to be divided in two phases.[35]

The first phase of the World Summit took place in Geneva (2003), and it is unlikely that at that time, most nations had the necessary knowledge to understand the significance of the new process of multistakeholder participation taking shape at that time. The second phase in Tunis (2005) was a beginning rather than an end. The World Summit on the Information Society elevated this discussion of the Internet, and internet governance to the global stage. The summit gave way to the strong emergence of legal non-state actors in internet governance discussions.[36] The multistakeholder approach that would begin to grow at the summit redefined international relations and acquired a new definition under the Tunis Agenda. The discussions that began with the WSIS would eventually evolve into the meetings of the Internet Governance Forums and would redefine multistakeholder actors at the international stage into an Internet governance community that now includes the categories of governments, civil society, the private sector, NGOs, the United Nations, Internet registrars and registry operators.[37]

The discussion of the management of the Internet was originally assigned to the Working Group on Internet Governance (WGIG), under assignment by the Secretary General.[38] The Working Group met in Château de Bossey near Geneva, and its make-up included members from

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[34] World Summit on the Information Society, G.A. Res. 56/183, U.N. Doc. A/RES/5/183(January 31, 2002).

[35] *Id.*

[36] WSIS Final List of Participants, http://www.itu.int/wsis/docs/geneva/summit_participants.pdf.

[37] These categories are based on information gathered at the IGF official Web site and personal observations based on research and participation at the meetings in IGF Brazil and IFG Vilnius.

[38] *See* United Nations Establishes Working Group on Internet Governance, Press Release, PI/1620, 11 November 2004, *available at* http://www.un.org/News/Press/docs/2004/pi1620.doc.htm.

all stakeholder groups, including non-state actors such as academics and members of the private sector. [39]

Mr. Nitin Desai of India, who was the Special Adviser to the Secretary-General for the World Summit of the Information Society, served as chair of this important working group.[41]

The WGIG was the first successful experiment into multistakeholderism in internet governance, and its mandate served as basis for the recognition that the Internet had become the central element of an emerging Information Society.[42] The most encouraging development with respect to authority in our modern information society became the realization that Internet governance, as a positive by-product, had created an upward trend toward increasing participation for non-state actors with the authority required to contribute into the process. The political equilibrium innate to the development of our civilization continued to be directly related to its human rights, which were reflected throughout the Tunis Agenda. The legal foundation has been aimed at the development of an Internet governance that required governments to maintain access to information for all their citizens in light of a "world public order of human dignity;" one that continues to seek the maximum access by all and for all for the enjoyment of all things valued by human beings.[43]

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[39] WGIG Background Report, June 2005, paragraph 2, available at http://www.wgig.org/WGIG-Report.html.

[41] Mr. Nitin Desai was appointed Under-Secretary-General for economic and social affairs on 4 December 1992. Before serving as special adviser, Mr. Desai served as Deputy Secretary-General of the 1992 United Nations Conference on Environment and Development (UNCED), *available at* http://www.un.org/News/ossg/sg/stories/desai_bio.html. *See*, Asia Pacific Network Information Centre (APNIC), Working Group on Internet Governance Formed, *available at* http://www.apnic.net/news/2004/1125.html. See also, Secretary-General Appoints Nitin Desai as Special Adviser for World Summit on Information Society, Press Release, 21/07/2003, SG/SM/8788 , SG/A/851, *available at* http://www.un.org/News/Press/docs/2003/sgsm8788.doc.htm.

[42] WGIG Background Report, *supra* note 34, at para. 4.

[43] *See* W. Michael Reisman, Siegfried Wiessner & Andrew R. Willard, *The New Haven School: A Brief Introduction*, 32 Yale J. Int'l L. 575, 576 (Summer 2007).

The work of WGIG, and their Final Report opened new doors in multistakeholderism and prepared the stage for the Tunis phase of the WSIS. The Tunis Phase produced two documents that reflected a multistakeholder purpose to move forward and assess the impact of the Internet in society.[44] The the *Tunis Commitment* was the shorted of the two and emphasized the common goals of participants.[45] Yet, it was the *Tunis Agenda for the Information Society* that would elevate Internet governance to its future position of global importance.[46] The *Tunis Commitment* recognized the original goals incorporated into the documents of the first phase of the summit, the Declaration of Principles and Plan of Action, which enshrined the benefits recognized within the information and communication technologies (ICTs).[48] The Tunis Agenda represented a significant examination of the Internet governance system, and it recognized the power of sharing information.[49] In Tunis, the Internet governance discussion began to take a new definition and new meaning in the form of the Tunis Agenda.

B. Introduction (Articles 1 and 2)

The *Tunis Agenda for the Information Society* tackled directly the issue of Internet governance and presented for the first time the blueprint of the Internet Governance Forum.[50] The document epitomized the sentiments accumulated on both phases of the WSIS. Article one

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[44] Tunis Commitment, *supra* note 22; Tunis Agenda for the Information Society, *supra* note 2.

[45] *Id.*

[46] *Id.*

[48] Tunis Commitment, *supra* note 22; *See* Ambassador Janis Karklins, President of the Preparatory Committee of the Tunis phase of WSIS at the opening ceremony of the Summit, Statement from the Preparatory Committee, Second Phase of the WSIS, (Nov. 16, 2005), *available at* http://www.itu.int/wsis/tunis/statements/docs/prepcom-opening/1.doc; *See* Tunis Commitment, supra note 22, at para. 10.

[49] *See* Tunis Commitment, *supra* note 22, at para. 10.

[50] Tunis Agenda for the Information Society, *supra* note 2, at paras. 29-82.

of the Tunis Agenda begins with a call for action to move forward beyond the process that created the Geneva Plan of Action during the first phase of the WSIS.[51]

The Agenda reaffirmed the commitments made within the Geneva Declaration of Principles of 2003 on "building the information society" by beginning the process of identifying an acceptable model of governance.[52] In doing so, the Agenda contributed to the efforts of the stakeholders that formed the Working Group on Internet Governance, by emphasizing the need to search for a better solution in the administration of the Internet, and one in the best interest of the world community.[53]

C. Meeting the Financial Challenges (Articles 3-28, 50, 54, 95-96)

Technology has the potential to impact human civilization by increasing access to information, services, and economic opportunities. While information technology may promote and strengthen humanity, it is worthy of notice that the rapid evolution of technology across the globe has been fueled not just by scientific developments necessarily, but by the economic and political forces that flow from these developments. These economic concerns were acknowledged in the Agenda, noting the hard work of the UN Secretary General in establishing the Task Force on Financial Mechanisms (TFFM).[55] The TFFM would be faced with the political and financial dimensions contained within the management of the Internet. The Agenda recognized the existence of the digital divide: one that noticed the inequality of internet services

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[51] *Id.* at para. 1; WSIS Executive Secretariat, Report of the Tunis phase of the World Summit on the Information Society, WSIS-05/TUNIS/DOC/9(Rev.1)-E(February 15, 2006).

[52] The WSIS Declaration of Principles main theme is Building the Information Society: a global challenge in the new Millennium. This is also noted in the second half of the Tunis Agenda, being one for the "Information Society." Tunis Agenda for the Information Society, *supra* note 2

[53] Tunis Agenda for the Information Society, *supra* note 2, ¶ 2.

[55] *Id*. at paras. 3-6. "The TFFM report laid out the complexity of existing private and public mechanisms for identifying areas for improvement…"

and infrastructure around the world. Indeed, the Agenda noted the challenge to many countries, including developing countries.[56] A good model of Internet Governance, may be inferred from the Agenda. would be one that would enhance the sharing of wealth.[57] While we may look at the Internet as an agent of development, the true value of this technology resides in its capacity to allow the creation of new resources for use in the common interest of the world community.[58] The Agenda recognized the goals and objectives of the Millennium Development Goals, one in which human civilization would develop, but not losing sight of the financial needs required for the development of technologies to bridge communication and exchange global information.[59]

It is relevant to note that while global stakeholders may see an opportunity for educational and economic development in the Internet, the lack of needed infrastructure in some regions of the world could hardly be blamed on technology, but rather as a consequence of pre-existing economical resources. For this reason, the Agenda called for "governments to support an enabling and competitive environment for the necessary development of new services," including broadcast radio and television and empowered by technology.[60] Wealth via information, as a concept, required of the Tunis Agenda a recognition of the needs of the world community, including required agreements for investment to properly manage the Internet and to

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[56] *Id*. at paras. 7- 9.

[57] W. Michael Reisman, *supra* note 48 at 576.

[58] MYERS S. MCDOUGAL, HAROLD D. LASSWELL AND LUNG-CHU CHEN, HUMAN RIGHTS AND THE WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY 154, 394. (1980). The Tunis Agenda in paragraph noted the advances in technology which increased the possibilities for countries with economies in transition to participate in the global market.[58]

[59] See Millennium Development Goals, background, http://www.un.org/millenniumgoals/bkgd.shtml. *Id*. at paras. 10 - 13 ("The Monterrey Consensus on Financing for Development is the basis for the pursuit of adequate and appropriate financial mechanisms to promote ICT for development, in accordance with the Digital Solidarity Agenda of the Geneva Plan of Action").

[60] *Id*. at paras. 14 -15, 20 - 21. The Agenda "encouraged governments to give appropriate priority to ICTs…while also considering the provision of more financial support for regional and large-scale national ICT infrastructure projects, [and recognizing] that public finance played a crucial role in providing ICT access and services to rural areas and disadvantaged populations."

allow humanity to enjoy the "maximum resources produced and distributed" by this new technology.[61]

Insofar as the concern for "areas in need of greater financial resources," the Agenda recognized a number of challenge categories, and issues, arranged in twelve categories and divided in two subgroups: "areas of need" and "issues," which generally addressed ICT capacity-building tools and training, communications access, backbone infrastructure, broadband capacity, coordinated assistance for specified countries, poverty eradication strategies, maintenance of ICT infrastructure, funding, manufacturing of technologies by developing countries, legal and regulatory framework, organizational structures for the effectiveness of ICT projects, and, local government initiatives.[62]

Understanding all the dynamism involved within these financial challenges would lead to recognize the complex pattern of policies and debates within Internet governance. Certainly the process required of the governance of this technology takes the observer to an encounter with wealth as a human value within the accessibility of technology and its availability around the world.[65] The support for human rights is noticeable within this concept and strengthened by the words of the Tunis Agenda. Indeed, it placed the central responsibility for coordination of public financing programs with governments.[66] It also called on banks and institutions to adapt mechanisms to cope with national and regional demands for technology.[67]

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[61] MYERS S. MCDOUGAL, HAROLD D. LASSWELL, AND JAMES C. MILLER, THE INTERPRETATION OF AGREEMENTS AND WORLD PUBLIC ORDER: PRINCIPLES OF CONTENT AND PROCEDURE 3 (1967). *See also* Tunis Agenda at paras. 16-19. "It recognized that attracting investment toward ICTs depended crucially upon an enabling environment, including good governance at all levels…"

[62] Tunis Agenda for the Information Society, *supra* note 2, at para 23. Paragraph 23 presented in greater details these twelve categories.

[65] W. Michael Reisman, *supra* note 48 at 576.

[66] Tunis Agenda for the Information Society, *supra* note 2, at para 24.

[67] *Id.* at para. 25.

The control of technology, intricately tied to state sovereignty, placed greater responsibility on all nation-states as stewards, to achieve advances in communication technology, and to improve the quality of life of the people they sought to protect.[68] The question of who would pay for financial operations, although answered with the participation of nations-states, the answer to affordability about the benefits of electronic technologies or ICTs, also considered the "enhancement of regional cooperation and multi-stakeholder partnerships" via the Geneva Plan of Action. [69] The needs of developing countries was emphasized in this section, recognizing their necessary financial resources, while noting the potential benefits of a system that recognized a multistakeholder model with the participation of the private sector and civil society, and the potential seen in these actors to play a key role in the resolution of the question of a governance model.[70] The section concluded with a call to international and intergovernmental organizations to develop their policies and programs based on their experiences with technologies, and to promote growth and development to reduce poverty.[71]

III. Internet Governance

The history of Internet governance has continued to evolve in that tapestry that we call world history, along with its participants, the stakeholder groups. These stakeholders had sought to attain greater influence in this new area of cross-cutting subjects. It is in this theme of national and international significance that we learn to appreciate the issues surrounding Internet governance and wrestle with the nature of ICTs and the political challenges attached to them. The increasing importance of ICTs underscores the extent of the power that cooperation affords to the strengthening of conciliatory consensus found on the divisive subjects, while at the same

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[68] *Id*. at para. 26-27.
[69] *Id*..
[70] *Id*. at paras. 51, 54.
[71] *Id*. at paras. 95-96.

time building up on a true multistakeholder process. It is beyond doubt that while new technologies bring new challenges to national societies; the road that seeks out solutions should not be hampered by decisions that may interfere with the rights that human hold dear.[91] The cross-cutting issues found in the Agenda and other activities of internet governance relevance are inherently related to those rights.[92] The message found within this next section is not illusory or devoid of understanding regarding the local traditions of every nation. The message of this section takes in consideration that there is an intercultural element to every society in our planet. Yet, it also highlights the shared goals of an interconnected world.

A. Defining the Governance Process (Articles 29-30, 55-56, 58-59, 63-66)

The Agenda, to my great delight, introduces the concept of the multistakeholder process as the future of Internet governance. It is in this process that human rights concepts may flourish as a cultural achievement of progression toward global cooperation. To that end, the subject of internet governance has become the most important aspect delineated in the Tunis Agenda. This document followed in the footsteps of other relevant documents, such as the Universal Declaration of Human Rights, and became a new road map for Internet global governance. Internet governance recognizes that the Internet has evolved into a global tool available to the public, and one that should be managed in manner that reflects a "multilateral, transparent and democratic" process, with the full involvement of all stakeholders.[93] In essence, it calls for a multistakeholder process, and one previously experienced thru the creation of the Working

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[91] Worlfgang Benedek, *Internet Governance and Human Rights, in* Internet Governance and the Information Society: Global Perspectives and European Dimensions 47 (Worlfgang Benedek, Veronika Bauer and Matthias C. Kettemann, eds., 2008).
[92] *Id*.
[93] Tunis Agenda for the Information Society, *supra* note 2, at paras. 29-30.

Group on Internet Governance (WGIG).[94] As previously observed, the consultative process of

the WGIG produced a working definition of Internet governance, and enhanced our

understanding of the respective roles and responsibilities of all stakeholders.[95]

Thus, internet governance discussions and debates have concentrated on the policies,

laws, and regulations related to content control, the use of the Internet for commerce, the

combating of cybercrime, the protection of privacy, and intellectual property.[97] Even of greater

importance for internet governance are three subjects that involve the management of the

Internet: the Domain Name System (DNS), including all Top Level Domains (TLDs), IP address

allocations, and the Internet's root zone. These three electronic resources form part of a

controversial topic known as the *critical internet resources* of the Internet. Critical internet

resources rose to the level of the global stage when they were formally presented for the first

time during the 2007 Internet Governance Forum at the meeting in Rio de Janeiro.[99]

These subjects have underlined the "soul" of the Tunis Agenda and presented the

blueprint of the Internet Governance Forum.[100] The Agenda represented the sentiments

accumulated on all prior WSIS preparatory committee meetings. In particular, the Tunis Agenda

highlighted the notion of "existing arrangements for Internet governance" that would work

effectively to make the Internet a valuable and highly dynamic medium.[101] Again, this notion of

existing arrangements for governance alluded to these subjects of technical significance, and

recognized them as a source of great debate by the nature of their control by the U.S. government

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[94] *Id.* at para. 32.
[95] *Id.* at para. 33-34. See also WGIG Report, supra note 27.
[97] These subjects became a matter of discussion within the meetings that followed in the Internet Governance Forum.
[99] IGF Secretariat, Synthesis Paper, paragraph 4, Internet Governance Forum (IGF), Second Meeting, Rio de Janeiro 12-15 November 2007.
[100] *About the Internet Governance Forum,* INTERNET GOVERNANCE FORUM, http://www.intgovforum.org/cms/about-the-igf (last updated Jan. 16, 2012).
[101] Tunis Agenda for the Information Society, *supra* note 2, at para. 55.

via the legal authority given in three documents: the new ICAAN Affirmation of Commitments,[102] the IANA function contract,[103] and the root management agreement with VeriSign.[104] Because of its power and potential, controlling the Internet became very significant. A product of the U.S. government, the Internet has now been shared with the world, thus opening the gates of conflicts associated with governance such as national security, intellectual property and local customs, among others.

The drafters of the Agenda understood that any framework and mechanisms designed to deal with Internet governance would have to be inclusive and responsive to its exponential growth, observing that Internet governance included more than naming and addressing, but also required these critical internet resources, security concerns, as well as social and economic issues.[105] Even though many aspects related to internet global governance remain uncertain, there continues to be, as it was back in 2005, a "widespread awareness that the Internet should be seen as an important driver for a wide range of social, political and other transformations."[106] The Agenda defined sovereignty concerns by establishing that a nation-state would not interfere with other nations' country-code Top-Level Domain (ccTLDs).[107] Under the Agenda, the drafters recognized the increased interest that national governments had in their own ccTLDs.

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[102] The *Contract Between ICANN and the United States Government for Performance of the IANA Function*, 9 February 2000, *available at* http://www.icann.org/en/general/iana-contract-09feb00.htm.

[103] See also, Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers, *available at* http://www.icann.org/en/announcements/announcement-30sep09-en.htm.

[104] Special Award Conditions, NCR-9218742, Amendment No. 11, October 7: 1998, *available at* http://www.ntia.doc.gov/ntiahome/domainname/nsi.htm.

[105] Tunis Agenda for the Information Society, *supra* note 2, at 56-59.

[106] MIKKEL FLYVERBOM, THE POWER OF NETWORKS: ORGANIZING THE GLOBAL POLITICS OF THE INTERNET 35 (2011).

[107] Tunis Agenda for the Information Society, *supra* note 2, at para. 63.

The Agenda was also very specific when it noted that public policy matters regarding generic Top-Level Domain names (gTLDs) required a multistakeholder approach.[108]

As can be detected by the language of the Agenda, it is through a proper, participatory process that an accurate balance may be achieved in the governance of the Internet, and one that is fair for developing countries, and ultimately, all stakeholders.[109] Any other approach toward any governance model based solely on "control" would be incompatible with human dignity. The answer lies in finding a democratic solution to the governance of the Internet free of politics and power grabs, while maintaining a realistic outlook of the future. This is why the management of the Internet technical aspects needed to be transformed into a meaningful participatory process having the potential to offer a governance process made by and for the world community.

B. Recognition of Multistakeholders (Articles 35-38, 52)

The Tunis Agenda considered the roles of nation-states and recognized that the management of the Internet required the involvement of all stakeholders, including the academic and technical communities.[110] While it recognized that internet-related public policy issues were the sovereign right of nation-states, it also recognized that nation-states also had responsibilities to the world community.[111]

The Agenda broaden the basis of the decision-making process within Internet governance to all relevant stakeholders according to their responsibilities within the formation of the

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[108] *Id*. at paras. 63-64.
[109] *Id*. at paras. 60-61; 65-66.
[110] *Id*. at para. 35.
[111] *Id*.

Information Society.[112] The control of technology, necessarily tied to state sovereignty, placed greater responsibility on nation-states as stewards of the people they were representing, and encouraged the recognition of a new legal order of the Internet, seeking to contribute toward the Millennium Development Goals.[113] The test offered by the Agenda sprung from the realities of possible limits to the effective participation in the governance process at the national and regional levels.[114] The objective to be achieved demanded that stakeholders, as non-state actors, be given strong positions because only then may these groups would have the legal standard to achieve a wider participation in the WSIS process - the multistakeholder process.[115]

The challenge presented by the Tunis Agenda was one shared by the entire world community, and at its core was the requirement for an effective participation in the governance of the Internet. The management of electronic goods and services would require a governance process with the capacity to foster full participation in wealth shaping, sharing and protecting the employment of resources.[119] Thus, sharing in these resources would demand a management process with all benefits within reach and in the common interest of the world community.[120]

C. Matters of Security (Articles 39-41; 44-45; 57)

The Internet continues to be a vast frontier of information.   For this reason, the drafters of the Tunis Agenda included language that noted the "stability and security" of the Internet.[126] This section on security is not at all surprising, because concerns about the future security of the Internet reminded of issues such as information sharing, content regulation, intellectual property,

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[112] *Id*. at paras. 97-98. (Encouraging the "strengthening and continuing cooperation between and among stakeholders to ensure effective implementation of the Geneva and Tunis outcomes around the world.)

[113] Tunis Agenda for the Information Society, *supra* note 2, at paras. 100-101.

[114] Id.

[115] *Id*. at para. 52.

[119] MCDOUGAL ET AL, *supra* note 5, at 154-55.

[120] *Id*. at 394.

[126] Tunis Agenda for the Information Society, *supra* note 2, at para. 31.

electronic commerce, cybercrime, and privacy protection, among others.[127] Above all, the Agenda tackled matters of national cyber-security that provoked the idea of action by governments to counter terrorism and to instill confidence in the people they sought to represent.[128] Fortunately, this section of the Agenda warned against the numerous unintended legal consequences of online activities associated with countering cyberterrorrism, including the weakening of human rights, such as censorship and loss of privacy rights.[129] In other words, it also inferred that any policy of national security would need to subscribe to an international law standard for the achievement of its global legitimacy, and one empowered by human dignity as the foundation of a characteristic trait that would legitimize the nation-state as protector of the well-being of the human person.[130]

D. Human Rights (Articles 42-43, 46, 89-92, 93-94)

The Internet has become a center of knowledge for humanity, allowing access to affordable education while connecting the entire world. Indeed, access to information promises to educate the world society. Yet, governmental actions intended to curve cybercrimes may interfere with basic human rights. To broaden the basis of the decision-making process within Internet governance, the Agenda required a multistakeholder approach for the management of technical and public policy issues.[131] It is not surprising then, that the Agenda's legitimacy would be inextricably linked to human rights, and in particular, the Universal Declaration of Human Rights and the Geneva Declaration of Principles.[132] This section of the Agenda carried a message that sought out a goodwill approach with a realistic view of an imperfect world. The

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[127] *Id*. at paras. 39-41, 57.

[128] *Id*. at paras. 46-47.

[129] *Id*.

[130] *See generally*, GROTIUS, *supra* note 11, at 53.

[131] Tunis Agenda for the Information Society, *supra* note 2 at para. 35.

[132] *Id*. at para. 42.

objective to be achieved demanded the conception of a legal order of the Internet, and one that delivered legal standards to achieve human right protections for the well-being of the community. The all-encompassing Tunis Agenda took into consideration the threats to freedom of access to information and openness as protected by the Universal Declaration of Human Rights and the Geneva Declaration of Principles.[133] In particular, the Agenda here reminded the world community that management of the Internet's root, the DNS, allocation of IP addresses, and network interconnection, presented risks to the free access of information.[134] While these technical matters touched on affairs of national sovereignty, the Agenda seemed to warn that disturbing the technical aspects of the Internet's management would be a true violation of international human rights law.

Today, international human rights law is considered necessary for the development of humanity.[135] Consequently, human rights law continues to serve our civilization in the protection of human dignity.[136] The Agenda observed that any perceived conflicts between preventive measures of security and access to information would not be interpreted as against nation-states' interests, but rather would be seen as a warning against totalitarianism and abuses of the human person.[137] Indeed, greater than the threat to Internet security, would be the threat against human dignity. Undeniably, there is no greater need in our world than the need for the protection of humanity.

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[133] *Id.*

[134] *Id.*

[135] *See* Diana Ayton-Shenker, The Challenge of Human Rights and Cultural Diversity, U.N. DEP'T OF PUB. INFO. http://www.un.org/rights/dpi1627e.htm (last visited Aug. 31, 2008).

[136] *Id.*

[137] Tunis Agenda for the Information Society, *supra* note 2 at paras. 43-44.

On May 16, 2011, Frank La Rue, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, submitted his report on the Internet to the UN Human Rights Council.[139] The report delineated the benefits and issues to resolve within cyberspace, some of which intersected matters that affected the exercise of freedom of opinion and expression.[140]

The Rapporteur noted that the right to freedom of opinion and expression was an "enabler" of other rights, including the right to education, of great necessity for the enjoyment of the benefits of scientific progress.[141] Although the Rapporteur recognized the criminal activity on the Internet, he also noted that nation-states, in many instances restricted, manipulated and censored content without any legal basis, under the guises of national security or to combat terrorism.[142] La Rue noted that some governments had presented these "emergencies" utilizing ambiguous laws, while often creating a "chilling effect" on the right to freedom of opinion and expression.[143] In particular, he noted cases involving the arbitrary imprisonment of bloggers around the world, and the surveillance for political, rather than security reasons, including tracking the activities of human rights defenders.[144] He also noted that some governments had adopted the practice of "filtering systems" that blocked websites containing key terms such as

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[139] Special Rapporteur on key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development,* Human Rights Council, ¶ 20, U.N. Doc. A/HRC/17/27 (May 16, 2011) (by Frank La Rue), http://www.genderit.org/sites/default/upload/A.HRC_.17.27_en.pdf.

[140] *Id*. (The free exercise of opinion and expression, he noted, were guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.)

[141] *Id*. at para. 22.

[142] *Id*. at paras. 25-26, 35.

[143] *Id*.

[144] *Id*.

"human rights," and the practice known as "timed blocking," which prevented users from accessing or disseminating information at key political moments.[145]

Accordingly, the Agenda reveals a message about the adequacy of accessing information, and how this accessibility becomes a prerequisite for the enjoyment of the human rights inherent in the future Information Society.[146] It is here that the Agenda singles out governments, as the protectors of great financial resources, to ensure effective information management for all, and a management that would propel humanity into new levels of civilization.[147]

E. Digital Divide (paragraphs 47-49, 51, 53, 62, 89-92)

The digital divide became relevant and revealing during the World Summit. The digital divide was in the overall program of the WSIS before the Tunis Agenda materialized. One of those initiatives took form under the auspices of the Government of the Republic of Azerbaijan, which hosted a conference on November of 2004 under the theme of "Digital Divide and Knowledge Economy: Problems and Solutions," to discuss some of the subjects that would later be listed in the Tunis Agenda, such as the role of governments.[152] The Tunis Agenda later showed support for the elimination of the digital divide. If the Internet had the capacity to connect the world, then first, an infrastructure was needed. Because of this, any nation lacking the financial resources to build a network backbone would be left behind.[153] This digital divide

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[145] *Id*. at paras, 29, 30, 35 and 54.

[146] *Id*. at para. 93.

[147] *Id*. at para. 94.

[152] *See*, CT Conference "Digital Divide and Knowledge Economy: Problems and Solutions," available at http://www.un-az.org/undp/doc/ICT_conf_A3.pdf. *See also*, Baku Declaration on Digital Divide and Knowledge Economy-Baku, Global ICT Conference 2004, November 25-28, 2004.

[153] See Case Study: Joining forces to bridge the digital divide in Africa, Emerging Economies/Education, NComputing, available at http://www.dsf-fsn.org/cms/documents/en/pdf/Case%20Study_EDU_ASF_DSF_US_EN_REV4_052908_WEB.pdf.

became first and foremost a duty that by default, governments needed to embrace.[154] It is through Government initiatives that knowledge would be increased, in cooperation with all other stakeholders, to make the Internet linguistically diverse and a center of education.[155] If the Internet was to be considered and utilized as a tool for human development and innovation, then two problems needed to be addressed before the message of the Tunis Agenda could be realized for the benefit of humanity.[156] First, the world community needed to identify the nations (or geographical areas) in need of technological connectivity.[157] Second, once identified, it needed to be determined how the required financial resources would be allocated to assist those areas.[158] The Agenda also took in consideration methods that would promote activities to fight indigence and lack of technical resources, recognizing obstacles such as "disaster reduction" initiatives, "regional and international cooperation," and education for children as a way to encourage "sustainable development."[159]

IV. The Internet Governance Forum

Looking at what would become the first Internet Governance Forum (IGF) of 2006; the essence of that meeting is traceable back to the consultations regarding the drafting of the Tunis Agenda.[166] From the beginning, the process required the cooperation and full participation of all stakeholders.[167] This process brought about the living and positive outcome of the WSIS two

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[154] *Id*. at paras. 47-48.

[155] *Id*. at paras. 49, 51, 53.

[156] *Id*. at paras. 62, 90.

[157157] *Id*. at para. 89.

[158] See, Reducing the Digital Divide, the Global Digital Solidarity Fund, available at http://www.dsf-fsn.org/cms/content/view/14/48/lang,en/.

[159] Tunis Agenda for the Information Society, *supra* note 2 at paras. 91-92.

[166] Prime Minister opens inaugural IGF conference in Athens, October 31, 2006, http://www.greekembassy.org/embassy/Content/en/Article.aspx?folder=19&office=1&article=18802.

[167] Tunis Agenda for the Information Society, *supra* note 2 at para. 73(a)

phases: the succession of IGF meetings.[168] Any participant of the Internet Governance Forum

would quickly explain that the present reality is one of shared consultation among stakeholders,

where nongovernmental governance activities actually help to shape and steer the policies that

affect the Internet day by day.[169] In fact, it seems that the future now belongs to all stakeholders

willing to work in the Internet governance debate. The Tunis Agenda tackled directly the

creation of the Forum in paragraph 72, and presented the blueprint of this important mechanism.

A. The Forum is Born (paragraphs 67-89)

The Tunis Agenda was much more than a goal setting document. Indeed, it was much more than

a document that stated the obvious need of our new information society. The spirit of the a new

Forum, to be organized by the UN Secretary-General, would be designed to operate through the

mechanism of a democratic multi-stakeholder system in which all stakeholders would be

represented and free to discuss and make recommendations.[170] Thus, the Agenda aimed at

recognizing the technical pool of the community, including the specialized services performed

for the management of the critical internet resources.[171] The necessary steps associated with the

world community's capacity to forge and disseminate new information reminded that the Internet

would require the appropriate governance model necessary to contribute, but not to interfere with

the "day-to-day technical and operational matters."[172] The fundamentally strategy of the

organization of the Forum would be "multilateral, multi-stakeholder, democratic and

transparent," although, it would not create a new system of government for the management of

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[168] The multistakeholder activities of the IGF are recorded in the transcripts of every preparatory meeting and in the open session meetings hosted by Greece, Brazil, India, Egypt, Lithuania and Kenya. See the IFG website and select the appropriate country tab in the toolbar for more information, which is a available at http://www.intgovforum.org/cms/.

[169] *Id*.

[170] Tunis Agenda for the Information Society, *supra* note 2 at paras. 67-68,74.

[171] *Id*. at paras. 69-71.

[172] *Id*.

the activities of the Internet.[173]   It cannot, however, be forgotten that there would be a greater

purpose behind this new Forum presented by the Agenda.   The discussions related to the

management of the Internet reflected the asymmetrical, but relevant dialogue of governance, as it

highlighted the concerns of the world as they existed on November of 2005. The Forum, which

would begin "by the second quarter of 2006," became the touchstone of human self-realization

within this successful process.[174]

The mandate of the Forum required that the process include the following:

a. Discuss public policy issues related to key elements of Internet governance in order to foster the sustainability, robustness, security, stability and development of the Internet.
b. Facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet and discuss issues that do not fall within the scope of any existing body.
c. Interface with appropriate intergovernmental organizations and other institutions on matters under their purview.
d. Facilitate the exchange of information and best practices, and in this regard make full use of the expertise of the academic, scientific and technical communities.
e. Advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the Internet in the developing world.
f. Strengthen and enhance the engagement of stakeholders in existing and/or future Internet governance mechanisms, particularly those from developing countries.
g. Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations.
h. Contribute to capacity building for Internet governance in developing countries, drawing fully on local sources of knowledge and expertise.
i. Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet governance processes.
j. Discuss, *inter alia*, issues relating to critical Internet resources.
k. Help to find solutions to the issues arising from the use and misuse of the Internet, of particular concern to everyday users.
l. Publish its proceedings.[185]

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[173] *Id.* at para. 73, 77.
[174] *Id.* at paras. 72.
[185] *Id.*

Accordingly, the Forum would become a facilitator for discussions where all relevant subjects would be examined openly in the common interest of the world community.[186] The new Forum would acknowledge the needs of the world community requiring a new approach to protect the ideals necessary to allow human beings to participate in such relevant discussion.[187]

B. Implementation (paragraphs 75-82, 107-109)

The implementation section served as a reminder that as a subject, Internet governance, would be discussed in a "Forum" that would represent a positive step for the development of a comprehensive of plan of action, including those steps to be taken by the UN Secretary-General around the world.[189] These steps of a reporting nature, would involve the activities of qualified stakeholders working together to share in the future solution of the management of the Internet.[190] The Agenda conferred to the proposed Forum included an expiration date of five years, followed by of an evaluation process that would determine if its continuation deserved another term.[191] Even though the Agenda was not seeking to create a new governance mechanism within the Forum, seeking a new intergovernmental body, or granting any oversight over the Internet, the Forum would ask for the participation and contributions of all stakeholder groups.[192] This implementation of the multistakeholder processes, born out of the awareness of the realistic role played by all interested groups for democratic values, opened a door for human dignity, granting legitimacy to the process and respecting the goals of the Geneva Principles.[193]

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[186] *See* Kofi A. Annan, Message from the United Nations Secretary-General, http://www.intgovforum.org/sg-letter-en.html.
[187] *Id*.
[189] *Id.* at paras. 75-76.
[190] *Id.* at para. 78.
[191] *Id.* at para. 76.
[192] *Id.* at paras. 77- 79,107-09.
[193] *Id.* at paras. 80-82.

The IGF section wrapped up with the accepted proposal from the Government of Greece to host the first meeting of the Forum (IGF) in Athens on 2006.[194] For that reason alone, it could be said, that the end of the World Summit in Tunis represented a triumph. Yet, this triumph was temporary because important technical and political matters of Internet governance, raised by the Summit, remained open and unresolved, and left to be considered later during the discussions and outcomes of the Internet Governance Forum.[195] These matters were reflected within the subjects discussed at the first IGF meeting on October 30, 2006 in Athens.[196] The meeting would discuss the following:

> Openness - Freedom of expression, free flow of information, ideas and knowledge;
> Security - Creating trust and confidence through collaboration;
> Diversity - Promoting multilingualism and local content;
> Access - Internet Connectivity: Policy and Cost;
> Capacity-building as a cross-cutting priority.[198]

C. Follow-Up via ECOSOC (Articles 83-88, 99, 102-106, 110-114, 116-122)

The IGF benefited from a preparatory process that would begin with the appointment by the Secretary-General of an Advisory Group, later to be named the Multistakeholder Advisory Group (MAG) to assist in the convening of the first meeting in Athens.[206] The mandate of the MAG was renewed six times from 2006 to 2011. Mr. Nitin Desai, Secretary-General's Special

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[194] *Id.* at paras. 74-76. *See also* Kofi A. Annan, *Message from the United Nations Secretary-General*, INTERNET GOVERNANCE FORUM, *available at* http://www.intgovforum.org/sg-letter-en.html.

[195] *See* David Souter, Whose Information Society? Developing Country and Civil Society Voices in The World Summit on The Information Society, 4-7,11, Association for Progressive Communications, *available at* http://www.apc.org/en/system/files/ENGLISH.pdf.

[196] (The overall theme of this meeting was "Internet Governance for Development.") IGF Secretariat, The Internet Governance Forum (IGF) Inaugural Meeting, Background Report (Documentation), para. 12 (2006), *available at* http://www.intgovforum.org/cms/athensmeeting.

[198] *Id*.

[206] Press Release, Secretary-General, Secretary-General Establishes Advisory Group to Assist Him in Convening Internet Governance Forum, UN Press Release SG/A/1006 (May 17, 2006), *available at* http://www.un.org/News/Press/docs//2006/sga1006.doc.htm.

Adviser for the World Summit on the Information Society, was appointed Chairman of this group, which included originally forty six members from all stakeholder groups.[207] The recommendations of the MAG continue to be organized and published as reports under the "preparatory process" for each meeting on a yearly basis.[208] The MAG composition would include stakeholders representing all groups: governments, international organizations, the private sector, and civil society.[209] Undeniably, the entire Tunis Agenda was populated with references to the multistakeholder concept, as it was clearly noted in articles 27, 37, 41, 67, 78, 80, 83, 97, 98, 101, 102, 105, 108, and 110.[210]

The follow-up process began during the fourth year as the IGF prepared to conclude the meeting in Egypt.[211] After the meeting, the IGF requested comments to evaluate the renewal of the Forum as it prepared for its fifth and final meeting in Vilnius, Lithuania, as established in the Tunis Agenda's original mandate.[212] The Agenda recognized the vital role of communication technologies for our human civilization, and noted their need for achieving the Millennium Development Goals.[213] The eight Millennium Development Goals represented a blueprint in which all nations agreed to improve the human condition by taking steps by 2015, including the

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[207] *See* The Multistakeholder Advisory Group, *available at* http://www.intgovforum.org/cms/magabout . (By 2009 MAG counted with fifty members, and meets three times a year in February, May and September at the Palais des Nations in Geneva.)

[208] *See generally*, Preparatory Process page for the fourth IGF meeting at Sharm El Sheikh, Egypt, http://www.intgovforum.org/cms/2009-igf-sharm-el-sheikh/preparatory-process.

[209] See the IGF site at http://www.intgovforum.org/cms/magabout/58-members. (A good example is the list of MAG Members from 2008).

[210] Tunis Agenda for the Information Society, *supra* note 2.

[211] Preparatory Process page for the fourth IGF meeting at Sharm El Sheikh, *supra* note

[212] *See* Contribution of Professor Roy Balleste, Comment on the Agenda and Format of the IGF Vilnius meeting, 12 January 2010, Substantive Contributions for the IGF, *available at* http://www.intgovforum.org/cms/contributionsigf. (I had the honor to contribute my impressions and outlook of the process.) *See also* Synthesis Paper, Internet Governance Forum, Open Consultations, Geneva, February 9, 2010, *available at* http://www.intgovforum.org/cms/2010/SynthesisPaper.12.02.2010.pdf.

[213] Tunis Agenda for the Information Society, *supra* note 2 at paras. 83-88. See also Millennium Development Goals, background, http://www.un.org/millenniumgoals/bkgd.shtml.

eradication of extreme poverty and making available new technologies for humanity's benefit, among others.[214] This connection with technologies emphasized the importance of sharing the Internet with the world community.[215] During the Vilnius meeting, the UN Commission on Science and Technology for Development (CSTD), began organizing the Agenda for the Forum's five year review.[216] The attendees from all stakeholder groups had the opportunity to be part of the first IGF review in Vilnius.[217] The two-hour "informal" session met Wednesday, September 15, 2010 at 12:30PM in the LITEXPO main session room.[218] The meeting discussed the future of the Forum and in this context, the work of the UN CSTD, took form.[219] A new working group would be organized to assess the five-year work of the IGF: the Working Group on Improvements to the Internet Governance Forum under the CSTD.[220] The mandate of the new working group was delineated in resolution 2010/2 of the Economic and Social Council (ECOSOC).[221] This resolution states in part:

> "On 19 July 2010, the Economic and Social Council adopted by consensus resolution 2010/2 on the "Assessment of the progress made in the implementation of and follow-up to the outcomes of the World Summit on the Information Society". By this resolution, the Economic and Social Council "invites the Chair

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[214] *Id.* at paras. 110-114, 116-119. Millennium Development Goals, Goal 8: Develop a Global Partnership for Development, http://www.un.org/millenniumgoals/global.shtml. See also, General Assembly Resolution 55/2: United Nations Millennium Declaration, 8th plenary meeting, 8 September 2000. http://www.un.org/millennium/declaration/ares552e.htm.

[215] *Id.* at paras. 120-122.

[216] *Id.* at paras. 99, 102 & 105.

[217] This article's author was present at the meeting in the Lithuanian Exhibition and Congress Centre (LITEXPO), http://www.litexpo.lt/en/main/about. (As I sat to observe the activities in the meeting, I realized that the room was full of government officials from many nations. Probably many of them were in attendance as this discussion was the key to the IGF's future and the overall management of the Internet.)

[218] *Id*.

[219] This is based on my personal observations. Transcript records were not produced for this meeting. However, two reports were produced after the meeting and made available by United Nations Conference on Trade and Development.

[220] *See* Working Group on Improvements to the Internet Governance Forum, *available at* http://www.unctad.info/en/cstdwg.

[221] *Id*.

of the Commission on Science and Technology for Development to establish, in an open and inclusive manner, a working group which would seek, compile and review inputs from all Member States and all other stakeholders on improvements to the Internet Governance Forum (IGF), in line with the mandate set out in the Tunis Agenda, and would make recommendations, as appropriate, to the Commission at its fourteenth session in 2011, in a report that would constitute an input from the Commission to the General Assembly, through the Economic and Social Council, should the mandate of the Internet Governance Forum be extended".[222]

After several months, the United Nations General Assembly renewed the Internet Governance Forum from 2011 to 2015 on December 20, 2010.[223] The sixth meeting met in Nairobi, Kenya on September 27, 2011.[224]

IV. Past and Future Trends: A Matter of Human Dignity

The goals and aspirations of humanity to make the world better continues to be a noticeable challenge marked by the conflicts that overtime have spilled the blood of millions of innocents. The journey has been long and tiring for so many heroes along the way of the history of our planet. In the year 133 BC, the young Tiberius Sempronius Gracchus fought for the poor of Rome in his capacity as tribune of the people.[241] Tiberius was a veteran of the Third Punic War (146BC), which has been known for the account of the final fall of the great city of Carthage.[242] On his return we was appointed tribune of the people and as a reformer began to advocate for Romans citizens in need, some of them less fortunate army veterans, via his

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[222] *See* Working Group on Improvements to the Internet Governance Forum, General Assembly Economic and Social Council, A/66/67–E/2011/79, 14 April 2011, http://www.unctad.org/en/docs/a66d67_en.pdf.

[223] *See* Opening Remarks by Mr. Sha Zukang, Under-Secretary-General for Economic and Social Affairs, Secretary-General of the 2012 UN Conference on Sustainable Development, UN Department of Economic and Social Affairs, September 27, 2011, Nairobi, Kenya, *available at* http://www.un.org/en/development/desa/usg/statements/internet-governance-forum-2.html.

[224] *See* Chair's Summary, Sixth Meeting of the Internet Governance Forum, Nairobi, Kenya, September 27-30, 2011, *available at* http://www.intgovforum.org/cms/2011/summaries/2011.IGF.Nairobi.Chairs.summary.v.F1.pdf.

[241] H. H. SCULLARD, FROM THE GRACCHI TO NERO: A HISTORY OF ROME FROM 133 B.C. TO A.D. 68, PART 68 23-25 (2007).

[242] *Id*.

proposed *lex agrarian* to make land available for distribution in allotments.[243] The law

introduced by Gracchus placed him in disfavor with several members of the Senate, and his

appeal to the people garnered him and his followers the distrust of powerful enemies, some of

which were themselves rich land owners.[244] His policies and actions escalated into personal

tragedy, and he was unfortunately killed during a brawl by some of these adversaries during an

assembly meeting.[245] This is but one example of our history. It is a history that always searches

for the better part of the human person. Tiberius saw a Roman world in need of reform. He saw

the need to fight for the less fortunate, and in his efforts he began a process that continues to this

day. Thus, who stands for the people in the online world? In our new modern age, the Internet

has become too valuable to be dismissed simply as a tool for entertainment and communication.

How this cyber-world is regulated is directly related to how we live. Who has the duty in our

present day and age to perform the function of tribune of the people? The idea of a universal

benefit for humanity strikes a chord with our present discussion of Internet governance. The

International Telecommunication Union reported that the total number of Internet users

worldwide is now over 2 billion.[246] While the Internet continues to shape the world that we live

in, humanity has been empowered to create the methods of governance necessary for this

technology. The values that empowered our information society were prominent in the Tunis

Agenda for the Information Society. For this reason, in order to identify the people's tribune in

international law and Internet governance, the scholar in this field must approach any present

conflict within the subject assuming the "role of observer," considering all angles and all

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[243] *Id*. at 25-28.

[244] *Id*. at 26-28.

[245] *Id*.

[246] *Increased Competition Has Helped Bring ICT Access to Billions*, ITU STATSHOT (Jan. 2011), http://www.itu.int/net/pressoffice/stats/2011/01/index.aspx.

stakeholders, while determining how to devise the future decisions necessary for the new enlightenment for the benefit of the peoples of the world.[247]

The Tunis Agenda is tied directly to governance, and the discussions and reports produced on its related activities have observed deficiencies that influence the world community and its decisions.[249]

The Tunis Agenda continues to serve in a manner that reminds the world community of an institutional procedure for the clarification of community goals, and one that recognizes human beings with the right to be part of an effective process of governance "free from external coercion" that would interfere with their human rights.[250] The power inherent in governance requires authority to be effectively recognized as law.[251] This authority can be inferred from the Tunis Agenda. The document represented the outcome of many events, and some, while perhaps forgotten by many, taken in their totality, provided insights to understand and make sense of Internet governance and how it has affected our lives. The Agenda described the process that the UN Secretary-General would follow toexamine the options available for the convening of the Forum; a process that would require a review after five years to determine it eligibility for renewal.[252] . It would be fair to say that all stakeholders triumphed, since the initial WGIG's efforts reflected in the Agenda paved the process that created the new Multistakeholder Advisory Group and the IGF.[254] There are no longer any doubts associated with the fact that the governance of the Internet has required the protection of access to information. As the Agenda demonstrated, any authoritative decision-making process involving governance requires

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[247] *See* HAROLD D. LASSWELL & MYERS S. MCDOUGAL, JURISPRUDENCE FOR A FREE SOCIETY 23 (1992).

[249] *Id.* at 1133.

[250] MCDOUGAL ET AL., *supra* note 5, at 383-84 (1980).

[251] LASSWELL & MCDOUGAL, *supra* 150,at 400.

[252] Tunis Agenda for the Information Society, *supra* note 2, at paras. 74-76

[254] Secretary-General Establishes Advisory Group, *supra* note 139.

closeness with the principles enshrined in the Universal Declaration of Human Rights. The governance process has the capacity to increase the well-being of people around the world by supporting the enjoyment of the benefits of that accessibility to technology, thus increasing greater participation within the governance process. This process requires the enhancement of information dissemination in order to improve the quality of life, social justice, economic growth, and the protection of the human person.[255] As stated earlier, the legal foundation must be aimed at the development of Internet governance that requires governments to maintain access to information for all their citizens in light of a "world public order of human dignity" for the betterment of all human beings.[256] Discussions pertaining to personal privacy, equality of access, openness, and computer crimes, are tempered by considerations of human rights law. The final goal is about freedom and democracy; the one that some governments so quickly externally embrace, while not recognizing the extent of their hypocrisy within their own borders. If the Internet is to function properly, then repressive governments must be made accountable within the participatory process of governance. This is why the management of the Internet needs to be transformed into a meaningful participatory process; a process that gains legitimacy by becoming more inclusive.[258] There is no doubt that the human person requires freedom and democracy to achieve its dignified life, and it must be noted that attaining the common good of peoples has been the sole reason for the existence of governments.[259] The steps suggested by the Tunis Agenda to address issues of internet governance and the outcomes of its deliberations, first by the WSIS and later at the IGF, largely pointed the way toward a process vested with human rights. The overall process has proven highly beneficial, and despite what critics may have said,

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[255] MCDOUGAL ET AL., *supra* note 5, at 131.

[256] Reisman, ET. AL., *supra* note 48 at 576.

[258] Milton Mueller, *ICANN, Inc.: Accountability and participation in the governance of critical Internet resources*, INTERNET GOVERNANCE PROJECT (Nov. 16, 2009), http://internetgovernance.org/pdf/ICANNInc.pdf.

[259] Encyclical of Pope John XXIII, PEACE ON EARTH, at para. 54 (PACEM IN TERRIS 1963).

it has been a positive step forward. From Tunis to Vilnius, the discussion of the multistakeholder process began to take a new definition and new meaning in the stage of world history.[260]

V. Conclusion

The message of this article is one of a society moving forward, where nation-states have begun to acknowledge that as a global society we can no longer afford the mistakes of the past. The messages found in the multistakeholder process of the Tunis Agenda are a positive step forward, because each stakeholder group has enriched the discussion, and each one of their collective voices has strengthened the resolve of a civilization that seeks to promote human dignity. All these stakeholders have continued to participate in a changing arena made of past decisions, while shaping a new process of future decisions.[261] One the most significant facts to recognize is the realization that nation-states are no longer the only existing subjects within international law.[262] The Tunis Agenda recognizes, and many other scholars also agree, that individuals and corporations are objects of international law with legal personality and authority in the realm of human rights to invoke the responsibility of other subjects of international law.[263] The World Summit for the Information Society prepared the global stage for the process that would "build a people-centered, inclusive and development-oriented Information Society, where

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[260] *See* WSIS Summit Newsroom – Tunis Phase, WORLD SUMMIT ON THE INFORMATION SOCIETY, http://www.itu.int/wsis/tunis/newsroom/index.html (last visited 1/23/12). *See also*, Rod Beckstrom, ICANN's President and CEO, Opening Ceremony, Transcript of Session, IGF 2010, Vilnius, Lithuania (Sept. 14, 2010), *available at* http://www.intgovforum.org/cms/component/content/article/96-vilnius-2010-meeting-events/628-opening-cereminy.

[261] S*ee* W. MICHAEL REISMAN, *The Democratization of Contemporary International Law – Making Process and the Differentiation of Their Application, in* DEVELOPMENT OF INTERNATIONAL LAW IN TREATY MAKING 15-19 (Rüdiguer Wolfrum &Volker Röben, eds., 2005).

[262] *See* James Crawford, *The System of International Responsibility, in* THE LAW OF INTERNATIONAL RESPONSIBILITY 5-7 (James Crawford, Alain Pellet, & Simon Olleson eds., 2010).

[263] *Id*.

everyone… share information and knowledge..."[264] Indeed, conflicts over internet governance may exist because our society depends on technology. No dictator, no oligarchy may hold its population isolated by force forever. The human rights message of the Tunis Agenda can be understood as a journey in search of solutions, even if they seem unachievable immediately. The Agenda opened up a new chapter of Internet governance.

To its critics, the participatory process by non-state stakeholders is controversial, but only because it is not yet seen as the required but necessary model. It is now that humanity has a chance to grow new immovable nobility and live with dignity.   The Tunis Agenda should be seen as a one of the steps in the process, not to end, but to provide a beginning. The Tunis Agenda has left a legacy of lasting cooperation. It is up to you, the stakeholder of cyberspace, to go now and seek out that cooperation that will enrich the Information Society.

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[264] World Summit on the Information Society, *Declaration of Principles Building the Information Society: a global challenge in the new Millennium*, 1 (Dec. 12, 2003), http://www.itu.int/dms_pub/itu-s/md/03/wsis/doc/S03-WSIS-DOC-0004!!PDF-E.pdf.