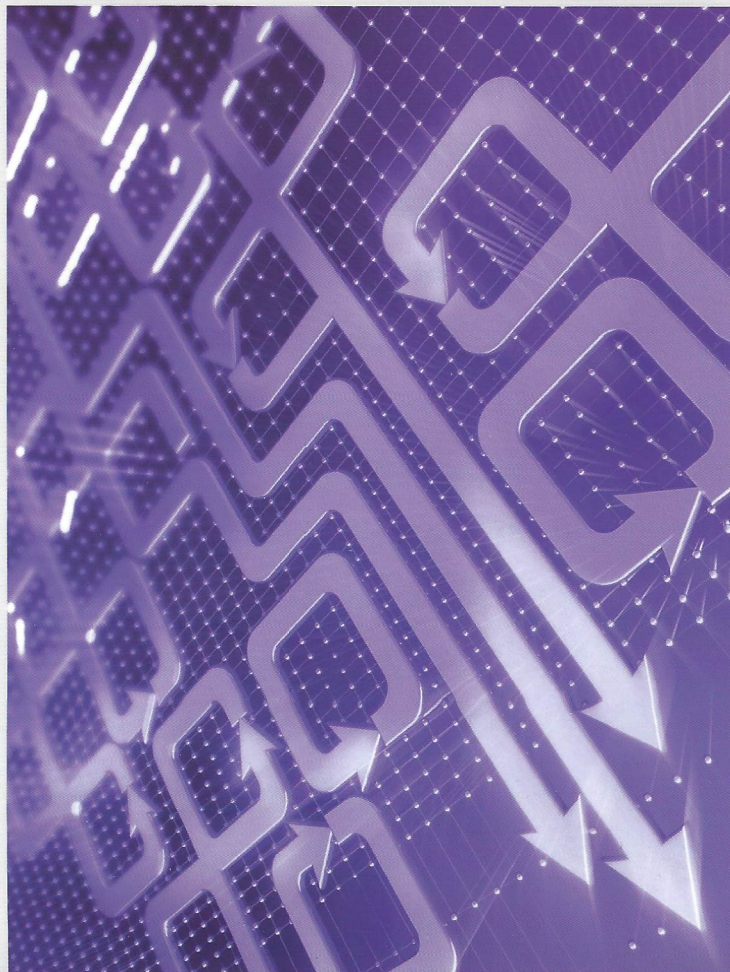


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# Internet Governance and Switzerland's Particular Role in its Processes

in collaboration with  
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of Europe made material contributions towards the Internet governance process by publishing a wealth of binding and non-binding standards on Internet governance issues. These include but are not limited to: fighting cybercrime, promoting freedom of expression, privacy and other fundamental rights, empowering and protecting children and young people in the online environment, the use of filtering measures, the roles and responsibilities of key private actors with regard to the governance of the Internet.

In addition, the Council of Europe was, together with the Swiss Federal Office of Communications (OFCOM), one of the key drivers in developing and organizing the Pan-European Dialogue on Internet Governance (EuroDIG.org). Since 2008 EuroDIG has been designed in an even more open format and with fewer hierarchies than the global IGF. EuroDIG is not owned by one or a group of institutions, but the whole process of developing the format as well as the content of the discussions is managed by an open-ended and consensus-based programme network: every interested European stakeholder is free to participate and contribute to the process. After two EuroDIG meetings (the first hosted by the Council of Europe in Strasbourg in October 2008 and the second co-organized by the Swiss OFCOM and the European Broadcasting Union with the support of the Council of Europe in Geneva in September 2009), the EuroDIG is now considered to be the European IGF and has the full support of all relevant European institutions including those of the European Union. The openness and interactivity of debate – some of the EuroDIG sessions were held without panel speakers but involving the whole audience in the discussion from the beginning – as well as the involvement of representatives of national and supranational parliaments from all over Europe as well as of representatives of the younger generation were considered crucial to the success of EuroDIG. The formulation of “messages from EuroDIG”, which are not negotiated outcomes, but formulations by the organizing network based on what they perceived as key European messages from the discussions, might also inspire the global IGF in producing a more tangible outcome while avoiding lengthy negotiations.

#### **Switzerland's contribution to the WSIS and IGF processes**

Switzerland has been deeply committed to the Internet governance process since its beginning, amongst other reasons, by defending fundamental principles of participation and legitimacy in Internet governance. Hosting the first phase of the World Summit on the Information Society (WSIS), the government of Switzerland, led by OFCOM, was the driving force behind the entire WSIS process, e.g. by mobilizing important partners such as international organizations and by making available substantial resources and commitments to hold the WSIS in Geneva in December 2003 (ensuring responsibility for the logistic and operational preparation). Acting as the main facilitator in the last phase of the difficult negotiations before the Geneva Summit, Switzerland also played a key role with regard to the successful adoption of the Geneva Declaration of Principles and the Geneva Plan of Action in December 2003.

As a further contribution to the ongoing discussions, Switzerland has been an active partner in the working groups preparing the second phase of WSIS in November 2005 in Tunis, not only

by hosting the second and third meeting of the Preparatory Committee in Geneva, but also by contributing substantively to the development of the Tunis outcome. Furthermore, the Swiss diplomat Markus Kummer – who had been the facilitator in the negotiations about the paragraphs on Internet governance prior to the Geneva Summit – was asked in 2004 by the UN Secretary General to chair the UN Working Group in Internet Governance (WGIG) that prepared the ground for the agreements on Internet Governance at the WSIS 2005 in Tunis. Subsequently, in early 2006, Markus Kummer was appointed as the head of the Executive Secretariat of the IGF. It may also be worth mentioning that Switzerland is among the main contributors to the voluntary trust fund set up by the UN to finance the activities of the IGF Secretariat.

As already outlined, the Swiss OFCOM has also been, together with the Council of Europe and other partners, one of the key initiators and supporters of the European Dialogue on Internet Governance (EuroDIG). In addition to its contribution to EuroDIG, the Swiss foundation SWITCH, being responsible for the allocation of the .ch domain names, has been very active in the policy meetings of the Internet Corporation for Assigned Names and Numbers (ICANN).

### **Switzerland's long-lived experience with consensus-based and participatory governance in a multi-stakeholder environment**

Having a long history developing and using consensus-based, inclusive and participatory governance mechanisms, of balancing individual rights with societal duties, of integrating different cultures, minorities and disadvantaged populations, and in developing models that allow these groups to participate in agenda setting, policy shaping, making and implementation, Switzerland has proven evidence that such models – although they seem to be more complicated, expensive and tiresome – are effective and able to produce sustainable solutions which are based on a common view and a willingness to respect and implement decisions that are developed on such models.

Having one of the oldest democracies in the world, Switzerland is considered successful because of the way it has reconciled the divisions among Cantons, cultures, languages, parties and regions. In particular, Switzerland has realized the notion of a far-reaching participatory democratic principle, of the federalistic subsidiarity principle, of the “Rechtsstaat” principle and of the neutrality principle.

### **Participatory direct democracy: a powerful tool to enhance transparency, legitimacy and accountability of governance mechanisms**

Democracy describes a form of government, in which all State power is based on the will of people, typically through elected representatives; in addition, Switzerland knows the participation of the citizens in a direct-democratic way. Democracy guarantees that the people's approved constitution secures basic personal and political rights, fair and free elections, and independent courts of law. Participatory direct democracy gives the citizens the opportunity to

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amend government or parliament decisions when they believe the decisions taken do not follow their will or needs. These characteristics are also important in respect of the governance of the Internet: Participation and involvement of civil society has a legitimizing effect insofar as it allows for better credibility of actions taken by the competent institutions. The involvement of civil society in decision-shaping and decision-making processes strengthens public awareness of the issues at stake as well as public confidence in the decisions taken the public knows what reasons led to respective "results". In addition, direct public participation helps to increase transparency and accountability of the governing bodies. And, last but not least, it leads to the inclusion of all relevant stakeholders in the governing body and the adoption of a consensus-based governance approach, since every stakeholder that does not feel adequately represented in the governance structure and its decisions can challenge the system through direct democratic initiatives. On account of its democratic credentials, Switzerland is well-placed to feed its experience into the greater European contributions towards the development of Internet governance processes. As a democratic country in which the representative system is permeated with elements of direct popular participation in decision-shaping and decision-making, Switzerland demonstrates how participation of all through democratic mechanisms leads to a stable government of relatively satisfied citizens.

**The principle of federalistic subsidiarity: give the power to the lowest level possible**

The subsidiarity principle states that all matters should be handled by the smallest, lowest or least centralized competent authority possible and that the centre should only have the power where absolutely necessary. The term federalism describes a system of the government in which sovereignty is constitutionally divided between a central governing authority and constituent political units (like Cantons). Federalism can be defined on the basis of three main principles, namely autonomy, superposition and participation that express the balance between the maximum of diversity wanted and the minimum of unity needed. In this context, the respective units of a federal state possess more than just some delegated competences by having their own institutions, laws and constitutions. Since Switzerland maintains a culturally diverse society and provides politically legitimate institutions and procedures to facilitate peaceful coexistence, it can set a successful example of the efficiency of subsidiarity and federalism through trying to keep the decision-making mechanisms closest to the control of the people confronted with the effects of the decision. Correspondingly, Internet governance concerns stakeholders from a plethora of countries, cultures, languages and religions. Adapting the federalistic subsidiarity principle, and thus avoiding the concentration of power by dividing sovereignty, is a further crucial factor to include all different stakeholders in the whole Internet governance process. In this context, the previously mentioned principles of autonomy, superposition and participation have to be implemented within the Internet governance process as the Internet's international management should be with the full support by all stakeholders and not under the control of one single organization. Federalism signifies the delegation of duties that would be centralized only inconclusively to decentralized institutions, e.g. assignment of duties to regional institutions such as EuroDIG.

**The “Rechtsstaat” principle: separation of powers and rule of law**

The “Rechtsstaat” principle which encompasses more aspects than just the “rule of law” is characterized by the principle of separation of powers, the legality principle limiting agency action as well as constitutional and administrative review. The “Rechtsstaat” principle should also apply within the ongoing Internet governance process in order to guarantee the certainty of the law to everyone who acts within the Internet. The “Rechtsstaat” principle requires the existence of open policies and accountable decision-making procedures. To enable all participants to complain against certain decrees, the creation of a body to provide judicial review is essential. Internet governance requires the creation of different entities, each with separate and independent powers and areas of responsibility. Clear rules need to be introduced in order to strengthen the public confidence in the Internet; hence, the Internet’s legislature has to enact laws regarding all Internet matters, therewith everyone acting within the Internet can anticipate the consequences of his/her actions.

**The neutrality principle: preserve independence from foreign political powers**

The neutrality principle describes the non-involvement in other States’ wars. This approach should avoid dependence from other countries or powers. Due to the international acknowledgment of the neutrality principle, many international institutions established their headquarters in Switzerland. Similar considerations also apply to a governance of the Internet: It is of utmost importance for the whole Internet governance process to preserve independence from political powers and develop independent organizational structures. In particular, a stronger independence from one single country should be realized. An important step into this direction was the replacement of the US Department of Commerce’s Joint Project Agreement (JPA) with ICANN by the joint “Affirmation of Commitments” between the two parties as of October 1, 2009. In consequence of the commitment expressed in this document that ICANN is accountable to the global community, ICANN should no longer be subject to unilateral oversight by the US Department of Commerce, but should be reviewed constantly by independent panels representing the public interest of the global community. In this context, Switzerland could bring in its experience with the neutrality principle into the discourses held on the international level.

**Access to broadband Internet as part of a universal service obligation, including for people with disabilities**

As mentioned, the joint involvement of all stakeholders is required to advance the dialogue on Internet governance; technically, participation in the Internet depends on Internet access. In this sense, the promotion of affordable broadband access to the Internet for all, i.e. including persons with disabilities, the elderly, those with low incomes and the poorly educated persons, would be a substantive step in the right direction. In 2008, the Swiss legislator introduced a legal provision entitling the entire Swiss population to broadband access (equipped with a guaranteed minimum transmission rate), in order to comply with this public service request. The provision regulating basic supplies describes a kind of safety net to guarantee every Swiss

resident access to the respective telecommunications services at an affordable price. The introduction of price ceilings reinstates the principle of cost constraints related to the access to the Internet. Considering access to the Internet as being an integral part of quality life and thus an indispensable requirement for human interaction, the removal of entry barriers to the benefit of disadvantaged people is of particular importance. Since electronic media must also be accessible to people with disabilities, it will be important to make accommodations to compensate for their limited mobility. By enabling disabled people access to information and social life, as well as to political involvement, they are rightly granted a high level of autonomy. Switzerland has introduced a quite extensive regulatory framework in this context and could feed the international community with the respective experiences.

#### **Use of ICTs for good and transparent governance**

The new technical possibilities invite a re-thinking of the way the organization of information in bureaucratic governmental entities or regulatory agencies should be established. Information and communication technologies in conjunction with legal norms should help to build trust as part of good governance; relations based on trust between governments and citizens improve engagement and motivation. Therefore, governments should pursue policies to improve access to the online services. Many advantages of online government information and services are not replicable offline, meaning that information which cannot be accessed will be excluded from consideration, and action taken without that information will not be optimal. Digital opportunities and social inclusion through information can enhance the capacity building, empowerment, and social participation of individuals.

#### **Use of ICTs for enhancing democratic participation**

The collection of information, the independent search capacity, and interactive policy consultation would increase the level of interaction with governments. A particular topic that could improve e-participation is e-voting. It is distinguishable into two categories, namely the remote electronic voting, understood as the transmission of a secure and secret official ballot to electoral officials via various electronic information and communication technologies, and on-site electronic voting technologies. As far as e-voting is concerned, Switzerland has gained experience since the first pilot projects were introduced on the Cantonal level in 2003. The prerequisites for the implementation of e-voting systems are (i) the identification of the voting person and (ii) the guarantee of anonymity of the voting person, established by functional security measures and a technical distinction between the identification of the voting person and the counting of the votes. Since the Swiss Cantons have gained the respective experience in the past, the conclusions from the pilot project could be channelled into the European process for improving e-participation.



## Conclusions

The Swiss experience with policy development and policy making in a heterogeneous, multi-cultural and multi-stakeholder environment shows the effectiveness of participatory, people-centred, decentralized and inclusive governance models. These are based on a strong consensus on fundamental values of transparency, accountability and legitimacy, and the methods used to implement these values. Consequently, as stability (important for business investments as well as individual planning) increases, the need for expensive, repressive measures decreases. By feeding in this experience into the international Internet governance process, Switzerland can make a valuable contribution on the way to realizing an adequate regulatory framework for the future governing Internet.