MICHELLE DESMYTER: Welcome. Good morning, good afternoon, good evening to everyone. Welcome to the AFRALO capacity building webinar, ICANN multi-stakeholder model and the increase in national legislations and regulations, on Wednesday the 24th of February 2021 at 18:30 UTC.

Our guest speakers today are Tijani Ben Jemaa and Olivier CrépinLeblond.

In the interest of time, we will not do a roll call, but all attendees’ names will be noted on the Wiki agenda page after today’s meeting. We will have English and French interpretation on today’s call.

A friendly reminder to please speak clearly to allow for accurate interpretation and also to state your names every time you speak, not only for transcription purposes but also for our interpreters to identify you on the other language channel.

Thank you so much, and I will hand the meeting back over to Bram Fudzulani.

BRAM FUDZULANI: Thank you, Michelle. I would like to welcome all the participants to this inaugural of our webinar series, and I'm excited to kickstart this initial one. Just for the sake of those that did not get the communication or the memo from the leadership, this is one of the series that leadership of AFRALO thought of putting together due to the limitations of face-to-face meetings imposed by the health crisis right now. So the leadership decided that the best way to engage the communication is definitely to look into something that can bring us together online in a way that will promote the outreach and engagement efforts.

And so I would like to, in a special way, thank the AFRALO leadership but also thank our presenters today, Olivier but also Tijani who is my colleague that we’re working with on this initiative. Without much ado, I once again welcome everyone and I would also like to thank Hadia for agreeing to moderate the first session. I will pass it on to Hadia to walk us through what’ll be the order of the day. Thank you.

HADIA ELMINIAWI: Thank you so much, Bram. Welcome to the first AFRALO capacity building webinar. As Bram just said, we start with this series of webinars with ICANN multi-stakeholder model and increase in national legislations and regulations. I'll be moderating the session.

We will start with two presentations, the first from Tijani Ben Jemaa which will set the stage for us, and the following one will be from Olivier Crépin-Leblond. After that, we will have 18 minutes for Q&A, and then Bram will close the session.

So let’s go ahead and start our webinar. Tijani, please, you have the floor. Thank you.

TIJANI BEN JEMAA: Thank you so much, Hadia, and thank you, everyone. Welcome to all. Today, as Hadia said, we will have our first webinar about the ICANN multi-stakeholder model and the increase of the regulation and legislation locally or nationally.

I will start by giving an introduction about the multi-stakeholder model and from where it came. So this is the plan, I will not be ... So, history. You'll remember the time where the governmental representative meet in comfortable room for G7, G8, G20, etc., and the civil society activists demonstrate outside, and the policemen try to prevent them to approach the building, with confrontations and injuries, and one time, there was a death.

This was as problem, and the heads of states and governments and the Millennium Summit addressed this issue and said, “Why we don't include them in the room? Better than having them outside, they are very noisy.” So they decided to invite these noisy activists in the meeting rooms and make them participate inside the room. So this is the beginning of the notion of the multi-stakeholder model in the UN system. The first experience was the World Summit on Information Society. Next slide, please.

Okay, so the World Summit on Information Society is a summit of the heads of states and the governments, so by definition it’s a governmental gathering. The civil society was admitted as observers together with the private sector and the international organizations.

We were permitted to give written contributions, speak for five minutes at the end of the session, but not more, and we didn’t have a decision making right. That means that when they negotiate, they cannot participate in this negotiation. It is not a full multi-stakeholder model, but it permitted the civil society to impact the final outputs of the summit. Next slide, please.

So the civil society got organized, since it was the first time the civil society and the other observers participate inside the rooms of the meeting. And the civil society constituted first civil society bureau composed of 22 members representing 22 families, and these families are, for example, academia, science and technology, NGOs, media, etc. Next slide, please.

The civil society bureau was in charge of the organizational aspects, meaning to negotiate with the executive secretariat of the summit the form of contribution that civil society can give. The civil society bureau made lobbying with governments so that the government can carry our point of view and present it since we are not permitted to negotiate, to participate in the decision. And also, the civil society bureau was in charge of organizing the meetings and the gatherings during the summit. The civil society bureau holds a daily plenary during the face-to-face PreCons and summits. The summit was in two phases, that’s why I say summits. So two summits. Next slide, please.

So there was the civil society bureau, and we constituted another group, which is the content and themes group, which is in charge of preparing the substantial contributions of the civil society. So this group worked through a mailing list. It builds consensus on the civil society contributions, and it was very difficult, because you know civil society is very diverse, and very often, people are opposite, each one to the other. but we managed to build consensus and to have outputs. Contents and themes group also holds daily plenary during the face-to-face gathering. This permitted us to impact the final outputs of the summit. Next slide, please.

So, the civil society—the summit, when it was conceived, it was conceived as a technical summit, but the civil society brought the social and the human dimensions. It influenced the official declarations of the summit. There were two declarations. Each phase had a declaration, and the civil society influenced these declarations. And at the end, when the declarations were ready, we found that it is not enough and we issued our own declarations. The civil society fully participated in the inter-summit work. There were two phases, and between the two phases, there was a decision to constitute two groups, one for the Internet governance and one for the financial mechanisms to reduce the digital divide. And those two groups were fully multi-stakeholder, so the civil society participated really in these groups, and they impacted really the result of these groups. Next slide, please.

So, as I said, the summit was in two phases. The second phase was in Tunis, and one of the outputs of the summit in Tunis was the Tunis Agenda, and Article 72 of the Tunis Agenda said that the heads of states and governments ask the UN secretary general to convene a meeting of the new forum for multi-stakeholder policy dialog called the Internet Governance Forum. Please note the multi-stakeholder dialog. Next slide, please.

So the Internet Governance Forum is natively multi-stakeholder. Since the Tunis Agenda, it is said that it must be multi-stakeholder. It was a full multi-stakeholder model. The substance was decided by the multi-stakeholder advisory group, and all the official session are multi-stakeholder. In the evaluation of the proposed workshops, there was a criterion that these workshops must be multi-stakeholder. If they are not multi-stakeholder, they are not accepted. The forum is not a decision making forum, so no multi-stakeholder decision making- process in the IGF. Next slide, please.

So now, coming to ICANN that we know very well. So ICANN is composed of the Board of directors, staff, and community, and in the community, there is governments, end users, domain name actors, IP address actors, and protocol parameter developers. Next slide, please.

So the community is composed of supporting organizations and advisory committees. I will not—Next slide, please—you know all these components. So the policy development in ICANN, these are the main phases of the policy development at ICANN. Supporting organization develop a policy, the policy is put for public comment, and then the supporting organization, after including the comments or after compiling these comments and make a new proposal, they recommend to the Board this new, this updated policy, and this policy is put also for public comment by the Board and the advisory committees give their advices—if any—to the Board. And the Board decides. So you see that the process of the policy development is multi-stakeholder. Next slide, please.

So, after the transition of the unique identifier stewardship from the NTIA, US government, to the community, there was a new accountability mechanisms giving new powers to the community, such as rejecting the budget, removal of a Board director, removal of the whole Board, etc. So the decision making process in ICANN became more multi-stakeholder. Next slide, please.

So the multi-stakeholder approach is applied in different environment, as you have seen. I gave three examples. There is not a unique multi-stakeholder model, and not always the same stakeholders, as you have seen in the summit, for example, and the IGF, the stakeholders are governments, civil society, and private sector and international organizations, and ICANN is not that. It’s end users, it’s governments, it’s the G names industry, the CC operators, etc. So they are different, because we are not in the same environment. So it is essentially about active participation and contribution from all, and working together with less hierarchy. Next slide, please.

So, thank you very much. This is the end of my presentation. Back to you, Hadia.

HADIA ELMINIAWI: Thank you so much, Tijani, for this informative presentation and for this history. But if you allow me, I would argue that the multi-stakeholder model of ICANN is quite different than the IGF multi-stakeholder model in relation to its effectiveness and its influence.

So through ICANN’s multi-stakeholder model, policies in relation to domain names, IP addresses and Internet protocol parameters are actually developed, and actually, this is how policies in relation to, if you wish, this logical layer of the Internet is determined.

As for the IGF multi-stakeholder model, I'm not sure about it is, actually.

TIJANI BEN JEMAA: Let me tell you, Hadia.

HADIA ELMINIAWI: Please go ahead. Thank you.

TIJANI BEN JEMAA: Yes, you're right, it’s absolutely different, because there is not a multi-stakeholder decision making process in the IGF, since the IGF, there is no decision making. This is the difference. While in ICANN, the policy is decision making and the policy is developed by the community and then approved by the Board. This is absolutely different. I said that from the beginning.

HADIA ELMINIAWI: Thank you so much. So, let ‘s see if we have any questions to you. I don’t see any hands up, but we can take the questions at the end, because we have about 18 minutes for that. So let’s go ahead to Olivier. Olivier, you have the floor.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Hadia. I hope that we’ll have 18 minutes. I've got so many slides. I've got 50 slides. It’s going to be a little hard. But a lot of the stuff that I'm going to talk about was already covered, both by Tijani and by Hadia.

So, hello everyone, I'm Olivier Crépin-Leblond, and I'm going to talk to you about a little bit of the ICANN multi-stakeholder model and then the concern that we’re having an increasing number of national legislations. So that's our plan for today, and a lot of it is just visual, so hopefully, you're not going to have trouble following, I'm going to be able to zoom through things fast.

For example, the working group on Internet governance, the Tunis Declaration, what happened back in 2005, Tijani has just spoken to you about this, from Tunisia, so he is way better than me on this stuff, and so you already know what the definition of Internet governance is. And if you can see in there, you’ve got the application by governments, the private sector, and civil society. So they recognize three types of stakeholders. And when you compare this to the ICANN model, you'll find out there are more types of stakeholders in the ICANN model.

Internet governance is one of these kinds of things. You must have seen this diagram, this nice drawing from Diplo. That was back in 2003. That’s how they saw Internet governance. And the ICANN model in itself, what ICANN does, is really very little. If you look at it carefully, you'll find ICANN on the Board on one side, and you'll find this person here, right there, with ICANN on it. Looks like a hippy for some reason, protecting a wall with a DNS and IPv6 just at the base of the whole Internet. So effectively, we’re saving something. I don't know what it is, but ICANN is there. I'm not sure if you agree with this depiction of ICANN, but in effect, it’s little different from the others.

The reality of ICANN is that it’s got a part of ICANN that deals with operations of the unique identifier system, the coordination of the DNS, the contractual compliance with the contracts that it has with the providers that are the registrars and the registries, the people that sell domain names. These are all not multi-stakeholder in scope. They are paid employees that will work in this. ICANN Org, as one sees it.

And then you’ve got the policy corner, which is what is multi-stakeholder, and that Tijani has started touching onto. So ‘re going to focus, of course, on the multi-stakeholder component part. We’re going to focus on the policy and on how ICANN is structured.

You know, At-Large, we’re the end users. Now, are the end users civil society, private sector, governments? Well, they're probably not governments, because in ICANN, there's a special place for governments. But the end users are a mix in our part of the ICANN space, a mix of commercial and noncommercial users. We’re end users. All of us are there. And we don’t quite fit, therefore, in this civil society or private sector box that in general you would find at an Internet Governance Forum.

You’ve got other parts of ICANN that are somehow multi-stakeholder in scope. You’ve got the Address Supporting Organization that has Internet registries for IP addresses. In general, these are not multi-stakeholder. The Country Code Name Supporting Organization is to do with all the country codes. Some country codes are run by civil society organizations or by—I know of at least one or two that are run by Internet Society chapters. They're not all commercial. Some of them are not-for-profit, some of them are commercial. So you could say that there's a mix of commercial and noncommercial in that. and some country top-level domains are run by governments, so there's even governments that are involved in this.

If you look on the other side of the screen, the Internet Engineering Task Force, that’s all the techniques. Security and Stability Advisory Committee, the root server system, this is mostly just technical work, and then you’ve got the Government Advisory Committee, just government. So that’s not multi-stakeholder as such, even though you could argue that the technical community is a vital component part of the multi-stakeholder model.

The Nominating Committee, however, is completely multi-stakeholder. It has people from every part of ICANN, including the governments, including the private sector, and of course, including five people from At-Large in there, and they select a significant number of people to be on the ICANN Board of directors. You could say that because you'll see various component parts of ICANN that select people to go on the Board of directors, and the Nominating Committee selecting more people, you have a very multi-stakeholder Board of directors. The only thing is it doesn’t have a voting Government Advisory Committee person, but it’s generally the chair of the Government Advisory Committee that sits on that committee. So that’s quite multi-stakeholder. And of course, the Generic Names Supporting Organization is where the policy takes place, and that’s quite multi-stakeholder in scope. It’s in two parts. There's a Contracted Party House, as I mentioned earlier, the registrars and registries that contract with ICANN, and there's a Noncontracted Party House that has both commercial constituencies—so that would be effectively the private sector—and noncommercial constituencies which are civil society in general.

And you'll see also some of these NCA people, these are the people that are selected by the Nominating Committee. So it’s a variety of people that sit on the council on there. the policy development process that the GNSO also requests quite a number of public consultations. We’re not going to go completely on this. This is not a webinar about how the GNSO makes policy. But you can see that at various parts of its policy development process, there is a public consultation, and that means everybody and anybody—not only just people in ICANN, but people outside of ICANN are able to comment on first gathering the public comments on the publication of the preliminary issue report, on the working group initial report, and also, when there's a recommendation to the ICANN Board on what the ICANN Board should be doing. That’s all before implementation. So there's plenty of time when you can consult the population and you can have a multi-stakeholder input. And that’s the special thing about the ICANN multi-stakeholder process.

Now, I'm going to be blatant. I've stolen a few slides from parts of other webinars. One of them was a webinar that took place during virtual ICANN 69, and that was the Board working group on Internet governance, and that was how the Board was engaging in Internet governance outside of ICANN. And the way that it was doing it—and that was told to us—is that it was engaging in three ways: through leadership, collaborative participation, and selective engagement.

Leadership is when ICANN needs to take a lead role because the issue is so closely impacting ICANN and ICANN’s mission and its technical remit that it would be a good thing for ICANN to take a leadership role here amongst all the Internet institutions that are out there. The collaborative engagement is when there are some issues that might be affecting ICANN but not directly, and that includes the collaboration with what they call the iSTAR organizations, so the likes of the Internet Society, but of course, also the World Wide Web Foundation and other organizations that deal with component parts of the multi-stakeholder system that we have out there. This whole building that you saw in one of my earlier slides. And that includes also the evolution of the Internet Governance Forum.

And then there's the selective engagement issues, such as for example the General Data Protection Regulation, which was not something for ICANN but that finally ended up impacting ICANN. And there's quite a few of these that are now coming up on the horizon. And certainly, regulation—and regulation about all sorts of things—is one of these things.

The question, of course, the technical Internet governance engagement is to what extent does ICANN get engaged, does it discuss policy in those outside fora, or does it just go as an advisor with regards to technology and to the systems, the Internet identifier system? And here, there's always as question as in, does the effort touch the technical underpinnings of the Internet’s unique identifiers? The domain names, the IP addresses.

The ITU is perhaps what one could see as maybe one of those places where work takes place that could affect ICANN. the ITU of course predates pretty much anybody around, telecommunication world. It was created in 1865, it’s based in Geneva, it’s a huge organization, it’s very useful, and the allocation of radio frequency spectrum, it was key to the development of telecommunications over the years. It somehow missed the Internet turn, but it is still involved in many, what they call, ICT technology development and also in promoting ICTs so Internet and communication technologies, to the developing world, and worldwide, actually. It’s got all these conferences—we’re not going to go through all of them, but you can see there are a lot of different groups that are working both in the ITU-T, the technical field, and ITU-D, development field.

There is a plenipotentiary conference that takes place every four years. There was one in 2014. The next one after that was in 2018 in Dubai, and for all of that, they keep on taking all the input from their different working groups and trying to address issues, some of which are Internet governance issues. And so ICANN closely had to follow some of the work that was taking place there.

And then there's also this whole process called the International Telecommunication Regulation, the ITRs. It was a 1988 treaty established to deal with the general principles of the provision and operation of international telecommunications. That was before the Internet became big.

And so in 2012 in Dubai, there was a little clash, let’s say, a little update, a debate that took place to try and see if those international telecommunication regulations should be updated. Some of the points there were made about, oh, the Internet now has to be included in this. And of course, it was a pretty heavy process and they did not reach consensus. The whole meeting took place over a few weeks, did not reach consensus at the end. Many countries voted for the document, many countries did not vote for the document, so we ended up with not very much of these regulations impacting the Internet as we know it today.

And so in the meantime, a number of other UN cyber-related discussion started springing up, the open ended working group, the committee of experts, a group of government experts, lots of different UN, United Nations updates. So there's a multiplication of these UN processes taking place.

There's also a multiplication of these intergovernmental organization engagements, the WSIS forum, so many different of these going on. And so far, what looks to happen is that none of these have reached any kind of consensus with regards to uniform regulation of the Internet out there. And some might say, yes, good, it’s good that it doesn’t reach consensus because the Internet works very well as it currently does.

But yet, there are some limitations to this, and we’re going to see this next. And this is where we’re now seeing national regulations starting to spring up. For example, let’s start with the European Union. There are key initiatives going on at the moment, Digital Services Act, the ePrivacy Act, the eEvidence, tons of different processes that are in the pipeline now to provide some kind of regulation of the Internet in Europe or as used by European users.

The European Commission has come up, and this is very new stuff and I've, again, stolen some slides from Alan Greenberg. He presented this last week on the Consolidated Policy Working Group. The directive on security of networks and information systems. It’s a proposal on measures for a high level, common level on cybersecurity measures across the European Union. It’s an update, an earlier thing, but it has plenty of recommendations that affect top-level domains directly, it affects top-level domain registries, registrars, the way that the DNS is running, and it’s a problem because it’s something that comes completely from outside of ICANN, and that might affect ICANN very seriously. In fact, you can see the act is just one thing, but there are a lot of other points there, the Digital Markets Act and the whole proposal on—so there's the NIS2 directive, etc.

All these are linked. So if you have access to the PowerPoint presentation, you can click on these. But each one of these is something that ICANN is going to have to deal with. So when you look at it, because it’s starting to look at the DNS and the Internet as being a critical resource deemed essential such as hospitals, public transport systems, telecom networks, regulation and legislation is slowly coming in to regulate these services in specific ways.

The DNS here applies to all provider of DNS services. I think what's important to note is that there's no differentiation between a small registrar or registry, a small provider of these services and a large provider of these services, and so we might end up with having the trouble of only the largest registrars and registries will survive and the smaller ones are going to have a real hard time dealing with this. This is one of the big concerns that are found here. Regulation, fine, but how is this going to impact everyone?

Main responsibilities here are reporting obligations. Large companies can do that. They have enough staff, they have enough lawyers to deal with all this paperwork, but small corporations cannot really follow through.

We've also got another example, the Australian example. This one is about content regulation. The concerns that were expressed were about newspapers, the newspaper articles that were picked up by the likes of Facebook and Google and published worldwide and published for free on the Internet without paying the newspapers anything.

So you end up with this death spiral, as they call it. And here, by the way, I've stolen these slides from Holly Raiche, a colleague from Australia. If you want to have good quality content that provides a newspaper with credibility and that of course then has a societal impact and good circulation, you need to have a system that provides profit for the newspaper to be able to be invested in having quality content. So it’s like a circle. The moment you take the profitability away and start giving the news out for free, people stop buying the newspaper and you end up with bad content because they don’t have the money to be able to produce good content. Uncredible content. And this is the big problem that the press has.

So this is one thing that they've had, and what they've done is to ask the providers of those services online, like Facebook and Google, to register to do a deal with those newspapers and pay for things. And of course, the latest thing that happened was that Facebook said, well, if that’s the case, we’re not going to cover Australia, goodbye. And they went.

Now, it’s been a few weeks, I think, and there's talk that Facebook will come back and will start being able to provide these news services in Australia, but it’s still a discussion. This is another clash that is taking place.

There's lots of other types of regulation happening. There's the General Data Protection Regulation in Europe as we've mentioned, there's the California Consumer Privacy Act, which I am told, this is one that is not really heard of yet. I am told this is like the GDPR but on steroids. It’s like an excited version of the GDPR. There's Japan’s Act on the Protection of Personal Information, all in Japanese. Great. Brazil’s Internet Content Regulations Regarding Fake News have been really strong recently. And they're strong regulations. It’s kind of nearly censorship when you think of it.

There's the Chinese Internet, which we know is not really the Internet, it’s kind of a closed off network behind a firewall with the outside world. There's the Russian Internet which is able to function on its own even if it was completely cut out from the rest of the world.

So we really have many different examples of regulation that are taking place, and most of these unfortunately seem to have a concept of extraterritoriality, which means that they don’t only affect the people in the country but also outside the country, and this is where there's a real problem.

Now, when you speak of regulation, I thought I’d take you to this because it’s a fundamental part that people forget, is, what part of the Internet is already regulated and what part are we talking about when we now are worried about further regulation.

This is a very technical document. This is the OSI basic reference model stack on the left-hand side. It’s like a layer cake. At the bottom, you’ve got the bottom layers and on the left-hand side of your screen, you're going to find the OSI part, Open Systems Interconnection—that predates the Internet, very geeky stuff—and then the TCP/IP model is on the right-hand side. TCP/IP is of course the protocol that the Internet is using for transporting things across.

So at the bottom of it, you’ve got these two layers, the physical and the data link layer. This is actually the fibers, the copper lines under the street, this is the satellite connections, it’s all of the stuff that one could call the Internet’s plumbing, and this is regulation. It‘s already regulated. It’s been regulated for years. You need licenses and things to be able to send satellites up in space. You need to have the authorization to dig the ground. All this stuff is regulated already, so we’re not talking about this part of regulation.

Then there is this part. This is a transport and the network layer, and this is not really regulated, but it’s the common part that makes the Internet what it is, because that’s where—TCP/IP, the basic link between the bottom layer, which his all the cables and all that, and the upper layer, which is all the applications. So this is not the part that we’re asking regarding any kind of regulation, it’s this part, the data layer, the session presentation and application, which has got several component parts in there that governments today are saying, “We need to regulate.”

One of them, compression and encryption protocols. Now, encryption, of course, makes a message, when you encrypt it, a third party is not able to read it, and that’s of course a problem for many security agencies because they say that terrorist content and pedophiles and criminals are all using encryption to evade the law and we need to ban encryption or we need to do something, we need to have backdoors to it. This is the sort of discussion that is taking place. It’s right in the middle of this layer.

The other big discussion is all about data. So are really, we’re talking about the applications, the data at the top, the content that we were speaking about when it came down to the websites, when it came down to the Googles and the Facebooks with news and so on. That’s where there's a big discussion going on.

Today, when there is blocking going on at network level, this is the sort of thing you get. Very annoying. It happens. It happens more than you think. More and more places are getting blocked like this, for various reasons.

There's another one which is even more annoying, and it’s this, where it checks out what your IP address is—so that’s the address of your computer—and if you're in the wrong region, it does not allow you to see the website. So there you are, wanting to read the latest news on one of these sites, and it tells you, “We’re sorry, unfortunately, blah-blah.” And that’s of course because the European countries came up with regulation saying, “Wait a minute, we want to have exactly the same sort of thing as Australia. We would like to regulate the press, regulate the access to content from newspapers in Europe onto the Internet,” and I guess that these guys are saying, “If we have to conform by European rules, it’s too complicated for us so we might as well not actually provide you with a service.”

And this is the problem, this is why—we've got a conclusion here. It’s totally undeniable that today, there will be more regulation on the Internet. The age of self regulation has really reached its limits, unfortunately, because self-regulation has not always worked very well and it has sometimes not been fair, let’s say it. It was not fair.

It’s also undeniable to say that there's a battle—and I will say dialog between governments and the private sector directly is more of a battle, actually, that takes place, and also that sometimes you have a lot of multilateral deals happening in the background between the big players in the government, which leaves the small players in a really terrible state, and the end users sometimes are not the ones that benefit from this at all.

So I leave you with a few questions. What impact could this have on the end user? Where is the space for multi-stakeholder dialog to find solutions? We found earlier—we used to run on multi-stakeholder dialogs. Why don’t we use these to try and fix some of these regulation problems that we’re faced with today? And I'll just give you an example. We had yesterday EURALO conference, a roundtable, and Bertrand de la Chapelle from the Internet & Jurisdiction project came and spoke to us about what they're doing, and they're doing a multistakeholder dialog for some of the problems that are there. the trouble is getting the right people at the table and getting them engaged.

And that’s it. I hope it’s been a bit helpful. I'm happy to answer questions.

HADIA ELMINIAWI: Thank you so much, Olivier. That’s a very interesting presentation, and especially the part where you point out the Internet layers and which part are we talking about. But it seems now that even those logical layers could actually be affected.

So I don’t see any hands up. Chokri, please go ahead.

CHOKRI BEN ROMDHANE: Hi, Hadia.

HADIA ELMINIAWI: Hi, Chokri.

CHOKRI BEN ROMDHANE: How are you? Thank you for giving me this opportunity. I have [inaudible] question to our friend, Olivier, about he said in the conclusion that there is a battle between government and private sector. Somehow, yes. If I look—I agree, [inaudible].

I think that it’s valuable for [little firm or the startup firm,] but for the big [firm,] if we look at the impact of GDPR for example, and the difficulty to implement the GDPR regulation terms and obligation for startup and little [firm,] and the complexity of such regulation for the little firm, it’s somehow giving prime for big firms, Facebook, Google and all these which have all the interest and the mechanism to implement such difficult and complex regulation.

So it’s really a battle between government and some private sector, but it’s not available for all private sector. It’s somehow privileging or making the business of some big firms and unfortunately, it’s a great disadvantage for the startup and little firms. Thank you.

OLIVIER CRÉPIN-LEBLOND: Yeah. Thank you, Chokri. I completely agree with you, and maybe I didn't emphasize this enough, but the battle is out there. you can see the number of fines that the European Union is now sending towards Google and Facebook and Amazon is also going to be fined for all sorts of things. But for them, it’s just like a little game in some way. They have a fine for a few hundred million, it’s less than what they thought it was going to cost them. For a small firm to be fined with this type of fine, they would probably go bust.

And as you mentioned, as I said, the big firms have hundreds of lawyers they can put on these things and they can take a whole department to comply with all of these different regulations. The small firms are going to have the real problem. If there is a multiplication of regulations from every single country around the world, we will end up with a fragmentation that will take place not because the Internet will break apart but because it will be impossible for many of the players out there to be able to conform to all of the regulations that are out there. They won't have the resources to do this, to track it, to implement it, and therefore, they will prefer to not even serve that region. That’s the message which I hope to be putting across. It’s a real danger.

HADIA ELMINIAWI: Thank you, Olivier. We have two questions, one from Bukola, and he says, “Is the IGF multi-stakeholder model the same with ICANN?” And so I don't know if Tijani or Olivier, you would like to respond.

TIJANI BEN JEMAA: I can take this, if you want.

HADIA ELMINIAWI: Okay. Please go ahead.

TIJANI BEN JEMAA: Thank you. As I said in the presentation, they are not the same. The stakeholders are not the same, and the system is not the same, because the IGF doesn’t have any decision making power. The IGF is only a forum for dialog. That’s all. ICANN is different. ICANN is taking decisions and very important decisions. So there is a multi-stakeholder decision making process in ICANN. there is not such process in the IGF.

And second, as I said, the stakeholders are not the same. The stakeholders for the IGF are government, private sector, and international organization, and civil society, while in ICANN, it is different. It is, as I said, end users, it is the contracted parties, it is the IETF, etc.

So this is two different multi-stakeholder models, but the most important thing is that the multi-stakeholder model is there to bring people who have different interests at the same table, make them discuss it and take consensus decision. This is the multi-stakeholder model. Thank you.

HADIA ELMINIAWI: Thank you, Tijani. I hope this answered Bukola’s question. It was very clear to me. We have another question from Remmy, and it’s for you, again, Tijani. He says, “There seems to be too much politics within the multi-stakeholder. What is the best way to manage the politics of multi-stakeholders?”

TIJANI BEN JEMAA: I will let Olivier answer this question, it’s better.

OLIVIER CRÉPIN-LEBLOND: Thank you, Tijani. I was going to say I would let Tijani answer this question. Yeah, I'm laughing. Multi-stakeholder process is—any decision process is going to become political anyway, and it’s interesting because you find that the multi-stakeholder process, by the fact that it’s got all the different people around the table, the private sector, civil society, and the governments and the technical community and a few others, I would say it’s less political than what happens at the United Nations where what you have is nation states that might need to make a decision on a technical thing and end up making decisions and voting on it politically through the political alliances they have on some topics that are completely different to this, which is very unfortunate.

To me, one of the reasons why the world conference on international telecommunications in 2012 collapsed is because many countries ended up doing things politically rather than looking at saying, “Look, let’s just take the regulation that we can agree on, let’s proceed with them positively,” but instead they went, “You know what? Let’s get the whole thing to crash and let’s just say no, let’s stick to our guns, let’s make some very strong statements, let’s look as though we are outraged about what's been said.” Well, anyway, if you want to see some action, you can see the last few hours of that conference. It was quite interesting.

The multi-stakeholder model has one advantage in that it actually runs on consensus, and consensus is a system whereas everyone tries to meet in the middle and find some compromise for something that they are okay with.

Once that consensus is found, the adoption of the consensus during the implementation phase is much less political than if you do things by a simple vote like this. So I would say there's less politics in the multi-stakeholder system.

TIJANI BEN JEMAA: Yes. I can continue if you want and say that, as Olivier said, there is less politics in the multi-stakeholder model than in a multilateral model since a multilateral model is fully politics, while the multi-stakeholder is interests. So, all stakeholders have to bring their interests with them and try to dialog with the other stakeholders, the other interests, and find consensus to take the right decision that will consider the interest of all stakeholders.

But the multi-stakeholder model can become not very good if one stakeholder dominates the other stakeholders. I will give you an example. When you have a stakeholder who have money to come to the meeting, to discuss, to spend hours, to spend months, working on something and discussing and arguing, they're paid for because it is part of their job, they are more powerful than an end user who come to the meeting. He or she doesn’t have always money to go to the meeting, first, and when they go there, they have their day job also, so they are not fully for this, and they do it because they are interested in. It is, if you want, a moral interest, it’s not material interest. There is a difference here, and here, the multi-stakeholder may become not very fair. But in general, in any case, the multi-stakeholder is much better than multilateral model. Thank you.

HADIA ELMINIAWI: Thank you, Tijani. And we have Olivier saying in the cha, “The multi-stakeholder model is criticized as being controlled by the rich stakeholders. I would say also and the capable stakeholders.” This is why we need to be very alert to this.

And so we have one minute available, and I don't know if, Chokri, this is an old hand.

CHOKRI BEN ROMDHANE: It is new.

HADIA ELMINIAWI: Okay, so go ahead, please.

CHOKRI BEN ROMDHANE: Thank you, Hadia. I have a question for both of our speakers. It’s about the link between regulation and sovereignty protection. You know that in our region, a lot of government says that have to protect their sovereignty using this regulation or law. What do we think? Thank you.

HADIA ELMINIAWI: Tijani, and then Olivier.

TIJANI BEN JEMAA: Okay. So, nobody ignore the sovereignty of any government on its country, on its things, on its interest. But the Internet is not a local or national good, it’s a global good. And being a global good—and there is not one party who is managing the Internet. Internet is distributed. So I don’t think that we can speak about sovereignty when we speak about the Internet.

Of course, some aspects may be relevant, such as for example I remember someone told me for example Uber is the most important taxi company, they don’t have any car and they are gathering all the money and they don’t pay tax in our country while they are serving in our country.

This is an aspect that can be understood and can be dealt with, but this is not an issue of sovereignty, it’s an issue of fairness. And this is something that we can discuss. But speaking about sovereignty when you speak about Internet, it is, I think—since the Internet doesn’t have borders, how can you speak about sovereignty on something that is not in your country or for your country only? Thank you.

OLIVIER CRÉPIN-LEBLOND: I would add something. Tijani made a good point about the nonpaying of taxes and so on. It’s not really an Internet problem as such. This is the Internet being used as a tool for multinational companies to do tax optimization, as they call it. So it really is more of a trade issue, and you're very right, the countries are sovereign, they should be able—and they are able—to set the rules on their national land, in their nation.

The difficulty with the Internet is when a country does that for a specific type of service, then a provider of that service that provides the service on the Internet needs to comply by this. Now, do they then make the service worldwide, follow and comply this requirement, or do they just do it for this country? And then what if another country wants something else? If you have 20 countries wanting 20 different things, does it mean the provider needs to provide 20 different types of service? It makes it a lot more difficult, and as I said, sometimes the companies will look at a market and say this market is not important enough for us, so rather than having to comply with a regulation that we find difficult to comply with because it’s costly, we have to change systems, we have to invest in systems or something, we’ll just drop the country. And this is where the regulation might backfire as such.

And I'm going to answer maybe—I noticed there's also a question on the WCIT and any consensus-based decisions that have been made over time. Well, the WCIT was a multilateral vote of nations, so it was not a consensus-based process. But ICANN all works just on consensus. Voting is only done to ratify discussions. So the Board votes to ratify work that was done by the Generic Names Supporting Organization, the ALAC writes comments and then it just gets ratified by a vote of the ALAC. Before it’s put in front of the Board of the ALAC or in front of the ICANN Board, the community comes together to find a just middle where—there's a joke which basically says you know that you’ve reached consensus when everyone around the table is upset. And it might be that, because that means that everyone around the table did not have exactly what they want, but they got something. And Hadia knows a lot about that.

HADIA ELMINIAWI: Thank you, Olivier. I don’t see any more questions in the chat., and we don’t have any hands up. So I thank you both, Tijani and Olivier, for this presentation and for this discussion, and I think we need to have more of these discussions and we look forward to that.

So I give the floor back to Bram.

BRAM FUDZULANI: Thank you so much, Hadia, for the wonderful moderation of our first webinar, and not to forget our speakers, Olivier, as well a Tijani for accepting on a very short notice when we came to you to help us with the first session of our webinar.

But also, I would like to thank in a special way the staff for putting this together and making sure that the coordination was done with all the community members.

The interpreters as well who have been helping us, doing a wonderful job. Thank you so much for putting this together as well.

We will be announcing—I think staff will be putting out the dates for April webinar series. There was an e-mail that was circulated as well from staff on the survey. Please, for those of you who have not checked your mailbox, please check and respond to the survey that was put out. Otherwise, thank you so much. Wishing you a good evening, good morning, good afternoon. Thank you.

TIJANI BEN JEMAA: Thank you all. Bye.

SILVIA VIVANCO: Thank you, Bram, and thank you, Tijani. Bye now.

HEIDI ULLRICH: Thank you, everyone.

MICHELLE DESMYTER: Thank you so much, everyone. The meeting has been adjourned.

**[END OF TRANSCRIPT]**