THE PRACTICE AND CRAFT OF MULTISTAKEHOLDER GOVERNANCE:
The case of global internet policymaking

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Before joining NYU full time, Verhulst spent more than a decade as Chief of Research for the Markle Foundation, where he continues to serve as Senior Advisor. In addition, Verhulst was Co-Founder and Co-Director of PCMLP at Oxford University, the UNESCO Chairholder in Communications Law and Policy for the UK, the socio-legal fellow at Wolfson College (Oxford), Co-Founder and Co-Director of the International Media and Info-Comms Policy and Law Studies at the University of Glasgow School of Law. He regularly advises and consults for international organizations like the United Nations, the World Bank, and the European Commission and has received grants from Omidyar Network, Ford Foundation, Gates Foundation, MacArthur Foundation, and Knight Foundation, among others.

Verhulst has written and co-authored several books on a variety of topics, including: The Routledge Handbook of Media Law (2013), Legal Responses to the Changing Media (OUP, 1998); and Broadcasting Reform in India (OUP, 1998).

INTRODUCTION[1]

In recent years, multistakeholderism has become something of a catchphrase in discussions of Internet governance. This follows decades of attempts to identify a system of governance that would be sufficiently flexible, yet at the same time effective enough to manage the decentralized, non-hierarchical global network that is today used by more than 3 billion people.

In the early years of the Internet, the prevailing view was that government should stay out of governance; market forces and self-regulation, it was believed, would suffice to create order and enforce standards of behavior. This view was memorably captured by John Perry Barlow's 1996 "A Declaration of the Independence of Cyberspace," which dramatically announced:

"Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather".[2]

However, the shortcomings of this view have become apparent as the Internet has grown in scale and complexity, and as it has increasingly entered the course of everyday life. There is now a growing sense—perhaps even an emerging consensus—that markets and self-policing cannot address some of the important challenges confronting the Internet, including the need to protect privacy, ensure security, and limit fragmentation on a diverse and multi-faceted network. As the number of users has grown, so have calls for the protection of important public and consumer interests.[3]

Out of such realizations and imperatives has emerged a growing interest in multistakeholderism as a model of Internet governance. There is now an ongoing discussion, both theoretical and practical, about the nature, advantages, and disadvantages of such a model. For instance, the Global Commission on Internet Governance stated in their final report "One Internet" issued in June 2016:

"…today's Internet governance landscape is complex and challenging to those who wish to participate. It encompasses debates in the technical, economic, political, social, military, law enforcement and intelligence spheres, and those debates take place in forums that are by turns national, regional and international. If that was not complex enough, there is broad recognition that if it is to be effective and accepted as legitimate, Internet governance should be multi-stakeholder, involving and taking into account the views and needs of governments, the private sector, civil society and technical actors. The term "multi-stakeholder" is overused in the realm of Internet governance, but if used accurately, it can tell us a great deal. The term is used here to mean a model in which affected stakeholders who want to

1. This paper was initially commissioned by the Stanley Foundation as a discussion paper for their Cooperative Multistakeholder Action in Global Governance project.

2. Barlow, John Perry. "A Declaration of the Independence of Cyberspace." (1996). Available at http://wac.colostate.edu/rhetnet/barlow/barlow_declaration.html.

3. See Sivasubraminian Muthusamy, "Building Suitable Frameworks for Internet Governance" in Collaboratory Discussion Paper: Internet Policymaking, Multistakeholder Internet Dialog (2013), 81. Available at http://www.collaboratory.de/w/Building_Suitable_Frameworks_for_Internet_Governance_The_Interplay_between_Technology_and_Policy

participate in decision making can, yet where no single interest can unilaterally capture control".[4]

In this paper, we contribute to this ongoing discussion by examining current and actual instances of governance and governance bodies that at least approximate the ideal of multistakeholderism. Part I, below, examines seven institutions and fora that serve as real-world examples of multistakeholder governance on the Internet. In Part II, we assess these examples to present a number of lessons learned and more general reflections that can help us better understand the state of—and prospects for—multistakeholder governance of the Internet today.

4. Global Commission on Internet Governance, "One Internet," Centre for International Governance Innovation and The Royal Institute for International Affairs, (2016) https://www.ourinternet.org/report

Part 1

MULTISTAKEHOLDER INITIATIVES

For all the interest in multistakeholder governance, there has been relatively little actual examination of what the notion means. Like many terms related to Internet governance (and to the Internet in general), the discussion on multistakeholderism is marked by a certain conceptual looseness and lack of clear definition.[1] This is at least in part because the discussion is often held at a fairly abstract and theoretical level, without much attention to real-world examples.

In this section, we attempt to address these lacunae by considering seven evolving models of multistakeholder governance[2] - recognizing, of course, that no institution or forum is likely to match precisely with a conceptual ideal.

1. G8, THE DIGITAL OPPORTUNITY TASK-FORCE (DOT FORCE) AND MULTI-SECTORAL GOVERNANCE

Established by G8 leaders in 2000 and active until 2002, the DOT Force's approach to governance included 43 teams from governments, non-profit organizations, the private sector and international organizations. These teams worked together to "identify ways in which the digital revolution can benefit all the world's people, especially the poorest and most marginalized groups."[3] This multistakeholder approach was developed in part as a response to earlier criticisms made by civil society groups regarding the G8, the World Bank and the IMF, which they accused of restricting access to decision making processes and only taking into account the views and priorities of government leaders.[4] In its first report, *Digital Opportunities for All*, the DOT Force made the bold claim to be the first G8 initiative to take multistakeholderism seriously; "the multi-stakeholder approach of the DOT Force now serves as the model for other global 'ICT for development' initiatives,"[5] stated the report.

Such claims were at least in part borne out by subsequent developments and initiatives, notably the multistakeholder World Summit on Information Society (WSIS), which took place in 2003 and was inspired by the DOT Force approach to Internet governance. The collaborative approach adopted by DOT Force resulted in a number of other original and well-considered projects,[6] including ADEN (or *Appui au Désenclavement Numérique*), a French-government sponsored project that attempted to create a public network of Internet access points in Africa by partnering with local community associations. Such initiatives suggest not only that multistakeholderism can be a viable model for practical, implementable solutions, but also the extent to which the principles and concepts embedded in one organization or institution can influence others.

1. See Malcolm, Jeremy, "Introduction," Multi-Stakeholder Governance and the Internet Governance Forum. Wembley: Terminus Press, (2008).

2. See also Waz, Joe and Phil Weiser. "Internet Governance: The Role of Multistakeholder Organizations," Journal of Telecommunications and High Technology Law, Vol. 10, No. 2. (2013).

3. Digital Opportunities for All: Meeting the Challenge, Report of the Digital Opportunity Task Force (DOT Force) including a proposal for a Genoa Plan of Action, May 11, 2001.

4. Hart, Jeffrey. "The Digital Opportunities Task Force: The G8's Effort to Bridge the Global Digital Divide." (2002).

5. Ibid.,2.

6. Fratianni, Michele, ed. New perspectives on global governance: Why America needs the G8. Vol. 6. Ashgate Publishing, Ltd., (2005).

2. INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

ICANN works through a similar multistakeholder model, though its approach emphasizes a greater involvement from non-governmental stakeholders. In addition, ICANN has in place a fairly sophisticated governance process to ensure that decisions are made in an inclusive manner; various stakeholder groups exist not only to work toward technical decision making processes, but also to create the very policies by which the organization is run. These stakeholder groups broadly fall into two categories: *Supporting Organizations* (SOs) and *Advisory Committees* (ACs). SOs, almost exclusively comprised of non-state actors, develop policies through bottom-up formal Policy Development Processes. These policies are then adopted by the ICANN Board, comprised of 16 international voting directors, and implemented by ICANN staff. ACs develop policy-advice and non-binding policies, but their guidance may be accepted or rejected by the ICANN Board. Importantly, however, the ICANN Board on its own has no authority to make unilateral policy decisions.

ICANN's goal, as then-Chairperson Esther Dyson explained in 1999, is to model its governance structure on the Internet itself: a public sphere of diverse individuals and organizations that can be gathered to create "a statement of the consensus of the participants".[7] Because the organization's decisions can have broad, international ramifications, ICANN extends this model to the globe, for example by holding meetings around the world (thus encouraging broad international participation); conducting capacity development programs in different regions and countries; and creating regional partnerships to deepen ICANN's engagement and inclusivity.[8]

Despite such efforts, some have criticized ICANN for operating as an "oligarchy," and for diverging widely from its stated multistakeholder, consensus-driven ideal.[9] ICANN has also been criticized for its ties to the US department of Commerce who subsequently announced its intention in 2014 to transition the stewardship of the IANA Functions to the 'global multistakeholder community'. This lead to the adoption by the ICANN Board in March 2016 of a Resolution and plan to embrace what it calls "a true demonstration of the strength and triumph of the multi-stakeholder model."[10]

3. WORLD WIDE WEB CONSORTIUM (W3C)

Founded in 1994, the W3C is facilitated by professional staff, and guided by member organizations that establish the consortium's agenda. Commercial, governmental or educational organizations are all eligible for membership, as are individuals (though, as stated on its website, W3C has limited resources to support individuals, and primarily directs its outreach toward organizations). All members, currently numbered at over 400, contribute to the consortium's agenda, and the wider public is also solicited for specifications reviews, use cases, and feedback.

W3C differs from other multistakeholder governance groups in several ways. For example, in an effort to avoid bureaucracy, the group has significantly fewer official procedures and guidelines, and operates rather as a fluid and "loosely linked networks of individuals and institutions"[11] brought together under a common structure. Its members participate in working groups voluntarily, and aim to reach consensus on W3C recommendations. Only when consensus fails do decisions proceed to a vote.

In addition, W3C is also different in that its members are required to pay membership fees, which can range from 2,250 USD for non-profit organizations to 77,000 USD for large, for-profit enterprises. Though these fees vary depending on size and location of the organization, such a structure differs from the multi stakeholder model of others which often emphasize individual and open

7. Dyson, Esther. "Prepared Testimony of Esther Dyson Interim Chairman of the Board of Directors." Internet Corporation for Assigned Names and Numbers (1999) https://www.icann.org/resources/unthemed-pages/dyson-testimony-1999-07-22-en

8. Memorandum of Understanding between the Korea Internet & Security Agency and the Internet Corporation for Assigned Names and Numbers. ICANN.org. November 18, 2013. Retrieved from: https://www.icann.org/en/system/files/files/kisa-mou-18nov13-en.pdf.

9. Malcolm, Jeremy. Multi-stakeholder governance and the Internet Governance Forum. Terminus Press (2008).

10. See https://features.icann.org/proposal-ccwg-enhancing-icann-accountability

11. Dutton, William H., "Multistakeholder Internet Governance?" (June 7, 2015). Available at SSRN:http://ssrn.com/abstract=2615596 or http://dx.doi.org/10.2139/ssrn.2615596

participation.[12] This is due partly to the fact that many of the companies involved in W3C are those who will in-turn benefit from implementation of its standards and policies, so their needs are prioritized.

4. INTERNET ENGINEERING TASK FORCE (IETF)

Created in 1986, the IETF is a private sector platform responsible for the evolution of the Internet's architecture, and convenes a community of network designers, operators, vendors, and researchers. Unlike other multistakeholder bodies (e.g., the W3C) that work with large organizations, IETF members are individuals who participate voluntarily in all its activities (though many are sponsored by companies or organizations). Its decision making structure combines both consensual, "ground-up" strategies with more hierarchical governance structures in which decisions are executed by a governing board (usually when the wider community fails to reach a consensus).[13] The IETF therefore represents a form of multistakeholderism that is based on both consensus building and more traditional hierarchical decision-making. In both cases, however, the goal is to include as wide a variety of actors as possible in order to achieve something like multisectoral and multistakeholder governance.

Like the W3C, the IETF claims it is only concerned with creating Internet standards[14] rather than public policy, and consequently suggests that its multistakeholder agenda exists more to convene a variety of technical experts rather than to establish consensus between government, the private sector and civil society.

5. UN-ICT TASK FORCE AND THE WORLD SUMMIT ON THE INFORMATION SOCIETY

Inspired by the G8 DOT Force and set up by UN Secretary-General Kofi Annan in November 2001, the ICT Task Force had an initial mandate of three years (though this was extended for a further year in 2005) to create broad-based partnerships to ensure that the benefits of the digital revolution reached the global population. The Task Force aimed to build upon the work of the DOT Force, and in particular aimed aimed to bridge the global digital divide and put in place ICTs to achieve the Millennium Development Goals. The Task Force brought together leaders from the computer industry (including Cisco Systems, Hewlett Packard, IBM, Nokia, SAP, Siemens, and Sun Microsystems) with global NGOs, governments, and foundations.

During its existence, the Task Force met ten times, and formed the Global E-Schools and Communities Initiative (GESCI), the Global ePolicy Resource Network (ePol-Net) and the Global Center for ICT in Parliament, each of which have adopted aspects of multistakeholderism in the way they operate. In 2006, the Global Alliance for Information and Communication Technologies and Development (GAID) was formed as a continuation of the UN ICT. Its aim was similarly to build a multistakeholder model of governance through a 60-person Strategy Council composed of 30 governments and 30 representatives from the private sector, civil society and international organizations.[15]

6. INTERNET GOVERNANCE FORUM (IGF)

First announced by the UN in 2006, the multistakeholder IGF seeks to bring together a variety of representatives from academia, civil society, the state and private sector groups to discuss and shape Internet governance policy. It was formed in large part to overcome growing unease with the US' control over ICANN and the Internet,[16] and allowed for multistakeholder discussions on the future of Internet governance.

Since its inception, the IGF has held annual meetings, bringing together state, civil society and private sector representatives. Though it does not have a selective

12. DeNardis, Laura. The global war for internet governance. Yale University Press (2014).

13. Resnick, Pete. RFC 7282: On Consensus and Humming in the IETF. Internet Engineering Task Force. June, 2014

14. Van, Schewick Barbara. Internet Architecture and Innovation. Cambridge, MA: MIT Press, 2010

15. GAID, GAID Progress Report 2006. Retrieved from: http://pfdc.pgr.mpf.mp.br/atuacao-e-conteudos-de-apoio/publicacoes/comunicacao/gaid_2006_progress_report.pdf

16. Dutton, William H., "Multistakeholder Internet Governance?" (June 7, 2015).

membership structure, it aims to function as an open space for discussion and collaboration across sectors. In addition, it has tried to become more effective in how it operates while increasing and broadening multistakeholder participation. For instance, it has sought to strengthen means for remote participation and created a "Dynamic Coalition" model that allows multistakeholder groups to self-organize, meet and discuss issues of concern, albeit with little impact on how policies ultimately get shaped.[17] We have also seen the (uncoordinated) proliferation of local and regional IGFs that seek to promote multistakeholderism on regional or domestic specific issues.

7. NETMUNDIAL INITIATIVE

Established in 2014 to address ongoing Internet governance challenges, the Netmundial Initiative was formed in partnership with ICANN, the Brazilian Internet Steering Committee, and the World Economic Forum. In April 2014, a NETmundial–Global Multistakeholder Meeting on the Future of Internet Governance was held in Sao Paulo; it convened 1,480 people from 97 countries—including members of government, the private sector, civil society, and the technical and academic community from around the world. The Multistakeholder Statement[18] issued at the first meeting of its inaugural coordinating council reinforced principles of bottom-up, decentralized decision making, along with a vision to protect the rights of individuals online by establishing a distributed architecture of Internet governance.

Overall, the initiative sought to support the cooperation and commitment of global stakeholders to further the NETmundial Principles and address Internet issues collaboratively, thus representing one more instance of multistakeholderism on the network. Among other things, the principles aim to reinforce a diverse and participatory system of Internet governance and access, emphasizing that "Internet governance should be built on democratic multi-stakeholder processes, ensuring the meaningful and accountable participation of all stakeholders, including governments, the private sector, civil society, the technical community, the academic community and users."[19] The Coordinating Council and Initiative ceased to exist as originally envisaged in July 2016.[20]

17. Malcolm, Jeremy. Multi-stakeholder governance and the Internet Governance Forum. Terminus Press, 2008.

18. NETMundial, "NETMundial MultiStakeholder Statement" (2014). Retrieved from: http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf

19. NETMundial, "NET Mundial Initiative Principles". Retrieved from: https://www.netmundial.org/principles

20. See NETMundial, "NETMundial Initiative Declaration" NETMundial, (2016) https://www.netmundial.org/blog/secretariat/netmundial-initiative-declaration

Part 2

LESSONS LEARNED AND REFLECTIONS

What can we learn from the above summary of current and recent efforts at multistakeholderism on the Internet? This section aims to build on the experience of the seven groups and institutions discussed to provide seven broader premises about multistakeholder governance—its current status, its opportunities, and also its limitations.

LEGITIMACY VS. EFFECTIVENESS

Many if not all of the groups examined above seek to adopt multistakeholderism in order to address the legitimacy deficit surrounding existing governance approaches. They attempt to do so through more direct participation by those affected, and through efforts to include wider representation (especially, beyond governments) in the decision-making process. In addition, they aim at greater legitimacy by seeking to increase accountability and transparency—for example, by opening up all board meetings, as ICANN does. Another, often competing, goal of these groups has been to increase the effectiveness of governance, for instance by engaging a wider range of expertise (for instance, technical knowledge) in decision-making and policy implementation or by developing processes that encourage agility in policy development.

One key lesson that has emerged from ongoing efforts at multistakeholderism is that these two goals—legitimacy and effectiveness—are sometimes in tension. Wider and more open participation can lead to less efficient decision-making; on the other hand, the most efficient and clinical decision-making processes can be exclusionary, often leaving out voices and burdening organizations with a perceived democratic deficit (which can, in turn, reduce the legitimacy of decision-making). There are no easy answers here. These are tradeoffs that are still being worked out, and tensions that are likely to always be present, to some extent or another, in multistakeholder processes.

FRAMING OF ISSUES IS CRITICAL

Perceptions about who should "sit at the table" and the subsequent need for multistakeholderism when decisions are made are in many respects a function of how an issue is framed. For example, when domain management became a public policy issue instead of simply a technical issue it became clear that ICANN would need to broaden its representation and engage more widely with various stakeholders. Similarly, when the Internet is framed through the broad prism of freedom of expression, democracy, development and human rights it greatly changes public (and government) understandings of the importance of multistakeholderism, and which stakeholders' involvement is key to legitimize the effort. The broader point, perhaps, is that there inevitably exists a certain

degree of subjectivity and interpretation built into our understandings of when multistakeholderism is necessary, and indeed what it means.

POLICY CYCLE STAGES MATTER

Focusing simplistically on the word "multistakeholderism" often ignores the reality: that policy-making involves various steps, and that at each step the participation of different stakeholders may be more important or relevant. For instance, different degrees of technical knowledge may be required at different stages.[1] Far wider public participation may be needed at the agenda-setting stage than, for example, at the monitoring stage, where the independence and expertise of actors at the table can be as (if not more) important than their breadth. This is not to discount the importance of wide representation at each stage of the policy cycle, but simply to emphasize that we may need a more nuanced and layered understanding of what we mean by multistakeholderism.

UNDERSTANDING EVERY ACTOR'S ROLE

For multistakeholdership to be effective, and especially for all actors to be committed to its success, it is essential to understand and articulate what every actor brings to the table—their value proposition and expertise. Why should different groups or particular actors actually be included? This question is often implicit but rarely articulated, and this can lead to misunderstandings and resentment during the policymaking process. Articulating the critical role played by civil society—as mediator between industry and government; as a trusted neutral and unaffiliated party—is especially important, as civil society groups often encounter resistance to their participation.

CURATION VS. EXCLUSION

Anyone who has participated in multistakeholder forum would be familiar with an inconvenient truth: the outcomes of the process depend heavily on who takes part. Curation of actors is a key, yet under examined, variable of multistakeholderism. This, in a sense, is a restatement of the efficiency vs. effectiveness debate (see above), except that truly disruptive actors (e.g., those who participate primarily to seek to dominate the deliberations) can not only reduce the efficiency of decision-making but actually bring it to a halt. Certain groups have experimented with forms of curation to address such issues—for example, the Netmundial Initiative that carefully sought to select the inaugural coordination council. Needless to say, such efforts should be undertaken with great caution so as not to undermine the overriding principle of multistakeholderism, but equally, it needs to be acknowledged that curation has a role, and that it is not necessarily equivalent to exclusion. A key tool toward improved curation and collaboration involves mapping of who knows what; what solutions already exist and what resources can be leveraged (among other key insights).

RESOURCES AND CAPACITY

The idealized version of multistakeholderism—various actors sitting together to evolve broadly representative policies and guidelines—is undermined by the reality that different actors bring different capacities and resources to the table. Some actors whose voices may be critical to a discussion may lack the technical expertise to participate meaningfully. Others, especially those from developing countries and civil society, may lack the financial resources to participate in meetings and fora around the world. Some multistakeholder groups (notably ICANN) have worked to address these imbalances through capacity-building initiatives and, in some cases, financial support. Such efforts are critical to enhancing the representativeness of multistakeholder efforts, but could also be overcome by a more innovative approach to multistakeholderism which leverages

1. See also de La Chapelle, Bertrand "Multistakeholder Governance." In Collaboratory Discussion Paper: Internet Policymaking, Multistakeholder Internet Dialog (2013), 22-23

advances in technology.

INNOVATION IN GOVERNANCE LEVERAGING TECHNOLOGY

Multistakeholderism has been described as innovation in governance, but equally, the use of innovative governance tools and methods can play an important role in enhancing multistakeholderism itself.[2] The Open Governance movement has made great progress in how to redesign governance institutions and processes through co-creation and crowdsourcing (e.g. of impact statements and expertise), open and big data (e.g., to develop more evidence based policymaking), and a host or remote participation tools (including participatory budgeting) that can in particular mitigate some of the resource and capacity gaps discussed above. Surprisingly most of the current Internet Governance multistakeholder efforts have largely ignored[3] the advances made by certain policy and governance innovations that are leveraging the very technologies Internet Governance is supposed to promote and oversee and are introducing more legitimate and effective governance approaches (ranging from crowdlaw to data-driven decision-making).[4]

2. See Verhulst, Stefaan. "Toward WSIS 3.0: Adopting Next-Gen Governance Solutions for Tomorrow's Information Society", The GovLab. (2016) http://thegovlab. org/toward-wsis-3-0-adopting-next-gen-governance-solutions-for-tomorrows-information-society-2/

3. The GovLab. The Quest for a 21st Century ICANN. A Report by the ICANN Strategy Panel on Multistakeholder Innovation. May, 2014.

4. Verhulst, Stefaan, Beth Simone Noveck, Jillian M. Raines, and Antony Declerq. "Innovations in Global Governance: Toward a Distributed Internet Governance Ecosystem." Global Commission on Internet Governance Working Paper 5 (2014).

# CONCLUSION: THE NEED FOR A DIAGNOSTIC TOOL

Given the distributed and open nature of the Internet, it is reasonable to assume that a distributed and open approach to governance may prove most effective. The multistakeholder efforts examined in this paper have sought to respond to this reality by creating institutions and processes that aim to be more inclusive, participatory and transparent.

However, one of the main challenges they have confronted is a lack of systematic analysis or evidence regarding what works, and what doesn't. Despite over two decades of efforts to develop a new model of governance—despite all the models that have been tried, with varying degrees of success—the field of Internet Governance lacks an evidentiary basis upon which it could continue to innovate.

Efforts like the Stanley Foundation's exploration of the concept of multistakeholderism (and, to a lesser extent, papers such as this one) can help address such information shortcomings. Our above discussion of the seven bodies is a very initial step in the direction of building an evidentiary foundation, one that would include structured, searchable information about successes, failures, and lessons learned. In conclusion, we offer a number of questions that can serve as a diagnostic tool for analyzing and designing multi stakeholder initiatives. In asking, and most importantly answering, such questions, interested parties and researchers can begin assembling the information foundations for any institutions, organization or individual seeking to better understand or build new models of Internet governance.

A preliminary list of questions to analyze and design multistakeholder initiatives might include:

- How to balance the sometimes competing demands of legitimacy and effectiveness across policy life cycles?

- What are the roles of the different stakeholders involved in the Internet governance process?

- How to curate participation that can ensure meaningful engagement and constructive discussion without being exclusive?

- How to co-create approaches and solutions at different governance stages by identifying and engaging expertise differently?

- How to identify and address capacity or resource imbalances among stakeholders?

- How to leverage new technologies and methods to enhance and innovate multistakeholder approaches?
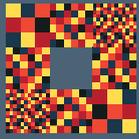
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Human rights in a connected world