THE TRANSFORMATION OF GLOBAL GOVERNANCE PROJECT

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THE GOVERNANCE OF DIGITAL NETWORKS: CONVERGENCE OR FRAGMENTATION?

Seminar insights from the organisers

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1. **The governance of digital networks has unique characteristics.** The relationship between global governance rules and actual interconnectedness in different fields is not straightforward. From an initial state of near-autarchy, for flows to develop between islands, or in some cases as flows developed, rules were put in place to govern them. Rules were defined early on in the case of trade and the global financial safety nets, more or less in real time for competition and banking, later for taxation and climate change mitigation, and almost not at all for migrations. In the case of digital networks, things developed differently; interconnectedness came before state-sponsored international governance rules. The network was the brainchild of a transnational community (the scientists). It was born global, and nations caught up belatedly.

2. **The pendulum is swinging and the demand for governance rules is growing.** Across many policy areas we observe today a move away from traditional rules-based multilateralism towards variable geometry approaches to global governance, reflecting a more polarised and fragmented international environment. In digital networks the reverse has happened. Initially, their governance was meant to be light, open, participative. The US supported this approach as it promoted its geopolitical outlook and buttressed the predominance of its companies. Developing countries fought against it in the early 2000s and lost. But today the pendulum is swinging in the opposite direction. The multi-stakeholder model is still dominant, but states (in developed and developing countries) are now attempting to reassert some control.

3. **The different layers of the internet complicate its global governance.** The internet is elusive because it consists of several successive layers that cannot be considered separately: physical and logical architecture, services and data. The physical architecture is basically made up of telecom infrastructure. Its evolution involves an economic question (whether telcos and other players have sufficient incentives to maintain and develop it as volumes and costs grow exponentially) but also involves a strong security dimension (this is the core of the whole discussion about Huawei). The logical architecture - the core feature of the internet - was born resilient for security reasons and has retained this property, but its evolution involves an issue of its control and utilisation in conflict situations. The dedicated services layer is increasingly cartelised and dominated by the response to the particular business models of these cartels. The further level is that of the data dimension and covers the whole economy, from cars to insurance and finance. In addition, there are important spillovers across levels, e.g. from dedicated services to infrastructure and to general provisions regarding data exchange for all sectors.

4. **Security, privacy and competition concerns are driving the debate**. As the internet developed and became the backbone of information exchange, several things happened. First, its use as a conduit for malicious initiatives by criminals or foreign powers grew. Security dimensions became major and led states to reassert their sovereignty. Second, long-standing differences in national preferences as regards privacy and free speech emerged as strong forces of fragmentation along national lines. Third, tech firms fragmented the internet further by developing specific semi-open or closed networks. States in turn started to attempt to regulate these networks. Competition

now is between these alternative forms of fragmentation. Accordingly, and following these changes, the debate about governance has been driven by different perspectives: a security one, focusing on infrastructure; a perspective of human rights, focusing on privacy; and an economic one, centred around competition and regulation. These often converge, but have fundamentally different starting points and characteristics.

5. **Cooperation on infrastructure governance is not up to the challenges at hand**. Digital networks are vulnerable and the potential for malicious security breaches (or unintentional failure) ranges from a localised problem to a global catastrophic system break-down. Nevertheless, and perhaps because a major disruption has not yet occurred, few rules have been agreed upon as regards security in cyberspace, beyond a vague commitment to preserve the core architecture of the internet (which is probably in everyone's interest, except North Korea and a few other rogue states). The persistent engagement doctrine followed by the US is in itself an obstacle to further codification. Current private and state engagement and commitments fall far short of what is required in the emerging mixed polycentric model of infrastructure control. They need to be developed further in both infrastructure and services, combining both technical and legal safeguards.

6. **Fragmented preferences and the dominant business models hinder tackling privacy concerns**. Differing attitudes and preferences are a factor in the governance of many policy areas. In digital networks, US-style "surveillance capitalism" built on the business model of the tech companies has combined with sophisticated Chinese state control of networks and data to squeeze out concerns about privacy. While self-regulation has proved woefully ineffective, some initiatives have broken new ground: the European GDPR has proven successful legally beyond EU borders, even though its effectiveness has not been fully tested yet. It is based on a legalistic model rather than on a supervision model, and initiatives of this type are bound to trail technical developments. There is a need to move to a supervision model that relies more on principle-based regulation, transparency and accountability. This may be the best that can be done, short of an outright ban of the business model of providing services in exchange for users' data that the networks rely on.

7. **Competition conditions in digital companies and platforms need to be strengthened**. Abuse of dominant position, creating barriers to entry, and capturing a disproportionate part of the value generated by users characterise US tech giants and increasingly their Chinese counterparts. Making digital markets that enjoy large network effects and economies of scale and scope contestable and contested in practice through competition policy and regulation is difficult. This is due to fragmentation of preferences as well as the characteristics and sheer complexity of the digital sector (scale without mass, complex value chain and products/services), obscuring the relevant market for competition policy. Notwithstanding the difficulties, strengthening competition conditions is increasingly a matter not just of efficiency but also of democracy. It should be based on principles of non-discrimination, separation and access, build on the experience of telecoms, while not excluding separation of activities.

8. **A way forward through principles, rules and bold initiatives**. The multi-stakeholder model that has nurtured digital networks has run its course; to be saved, it needs to be reformed. This involves principles, rules, and some bold initiatives. The momentum towards legal pluralism and fragmentation is probably irresistible, but some commonalities ought to be preserved. They should consist in a series of "don't do", mostly regarding security, coupled with broad common principles that could play an equivalent role to that of the WTO basic rules. They should essentially address issues related to extraterritoriality and help determine the legitimate reach of the various jurisdictions. It could also include an IPCC for the data-driven world where scientists share knowledge and formulate joint recommendations, and a stronger role for fora based on multi-stakeholder culture. Finally, competition policy should include a re-examination of the business model of digital platforms as well as of the scope of activities of dominant tech giants.