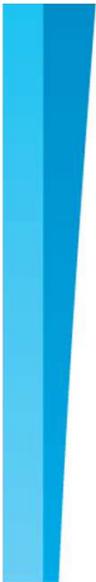


How shall jurisdiction immunity and inviolability apply in the Internet Era?

by **Dr Jovan Kurbalija**

Geneva

18 June 2015



Geneva Internet Platform



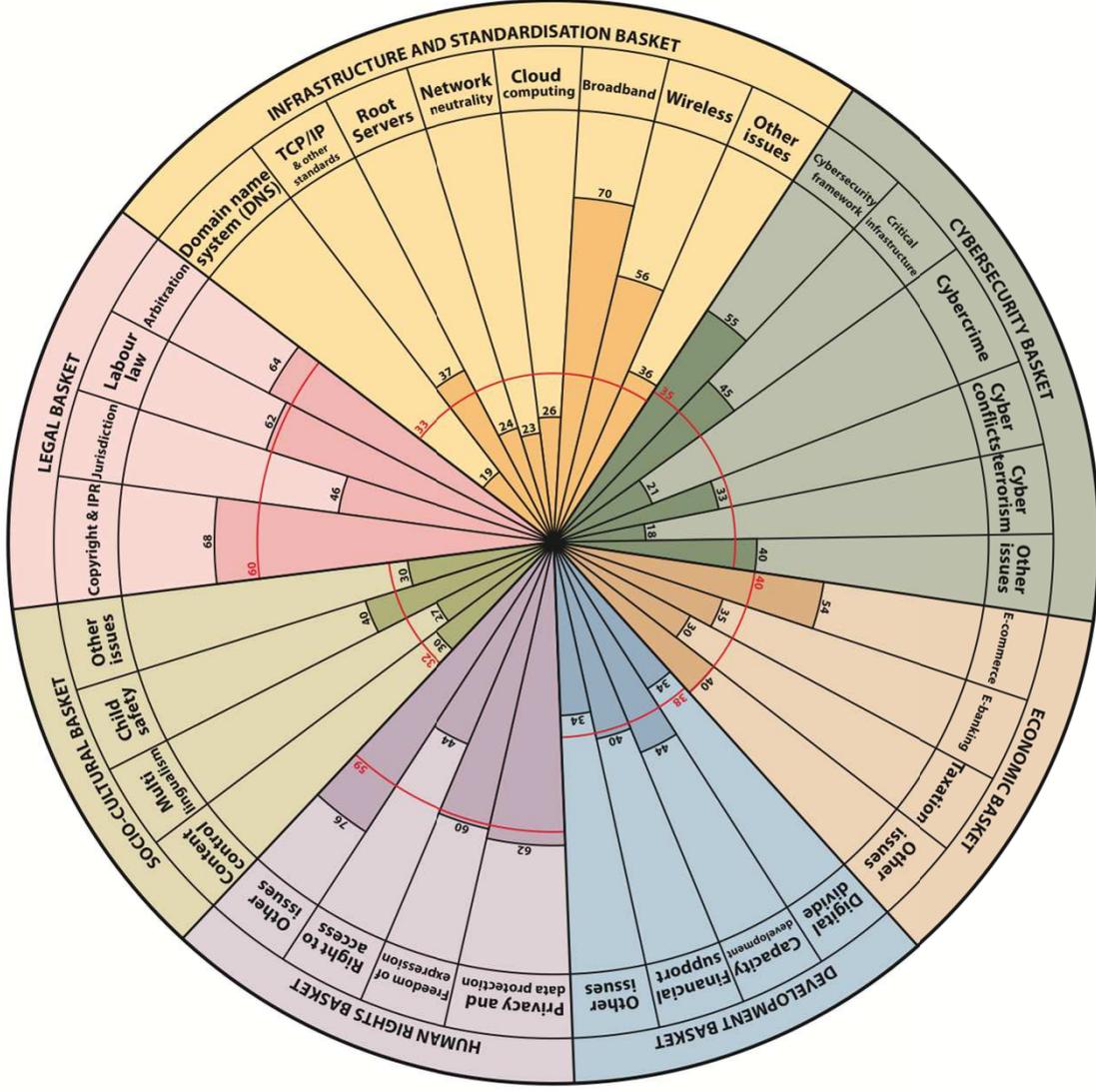
Engaging > digital actors

Fostering > digital governance

Monitoring > digital policies

The Geneva Internet Platform is an initiative
of the Swiss authorities operated by DiploFoundation





More than 50% of Internet governance is addressed in Geneva

Activities in the field of Jurisdiction and Dispute Resolution

6th November 2014

Jurisdiction in the Internet Era

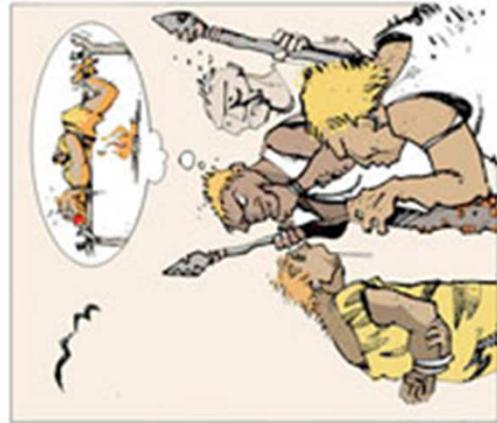
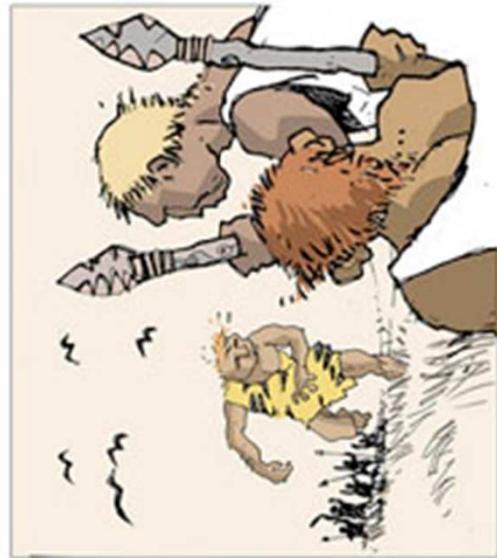


17th – 18th November 2014

The Geneva Internet Conference



The beginnings of diplomacy occurred when the first human societies decided that it was better to hear a message than to eat the messenger.
Keith Hamilton and Richard T.B. Landthorne



Context:

- State Immunity
- Immunity of Heads of State and Governments
- Diplomatic Immunity

Specific:

Inviolability and immunity of root zone file

Immunity of Heads of State and Governments

The Congo Case
(Arrest Warrant) of
the ICJ 2002: 'in
international law it is
firmly established that
.... Certain holders of
high-ranking offices,
such as the head of
State, head of
government and
minister of foreign
affairs, enjoy
immunities from
jurisdiction in other
states, both civil and
criminal.'



Diplomatic immunities

**Do e-mail and e-
documents have
diplomatic protection?**

Diplomatic immunities

Yes

According to the Vienna
Convention Diplomatic
Relations (1961)

Diplomatic immunities

Article 27 of the Vienna Convention says

‘The receiving State shall permit and protect **free communication** on the part of the mission for all official purposes’

Diplomatic immunities

Article 24 protect archive and documents.

Article 30 confers inviolability on correspondence and papers
(including private ones).

Diplomatic immunities

Article 30

1. The private residence of a diplomatic agent shall enjoy **the same inviolability and protection as the premises of the mission.**
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

Diplomatic immunities

Article 24:

‘The archives and documents of the mission shall be inviolable at **any time** and **wherever they may be.**’

Diplomatic immunities

Article 29

Host governments must take **all appropriate steps** to ensure the protection of diplomats.

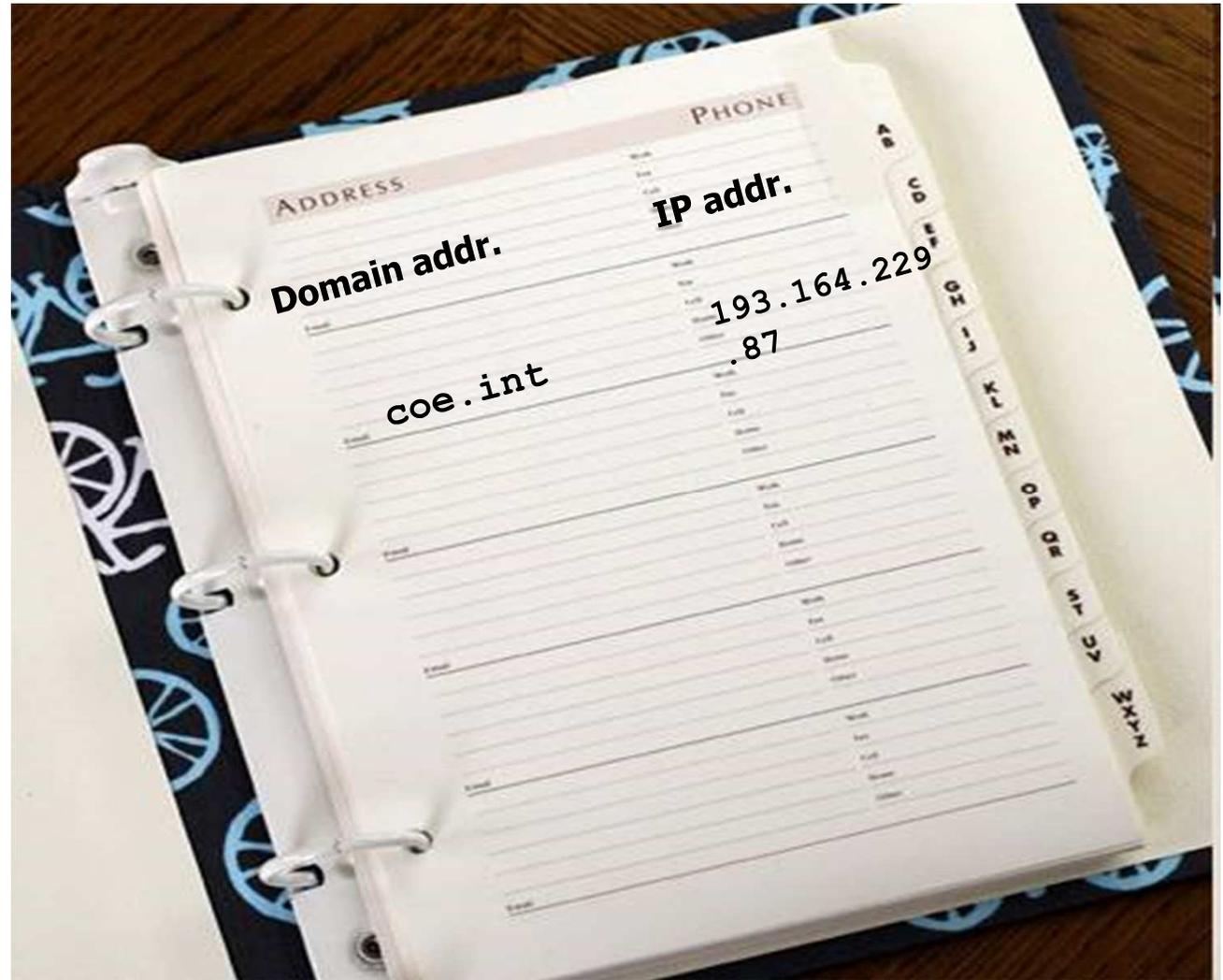
Diplomatic immunities

Do e-mail and e-documents
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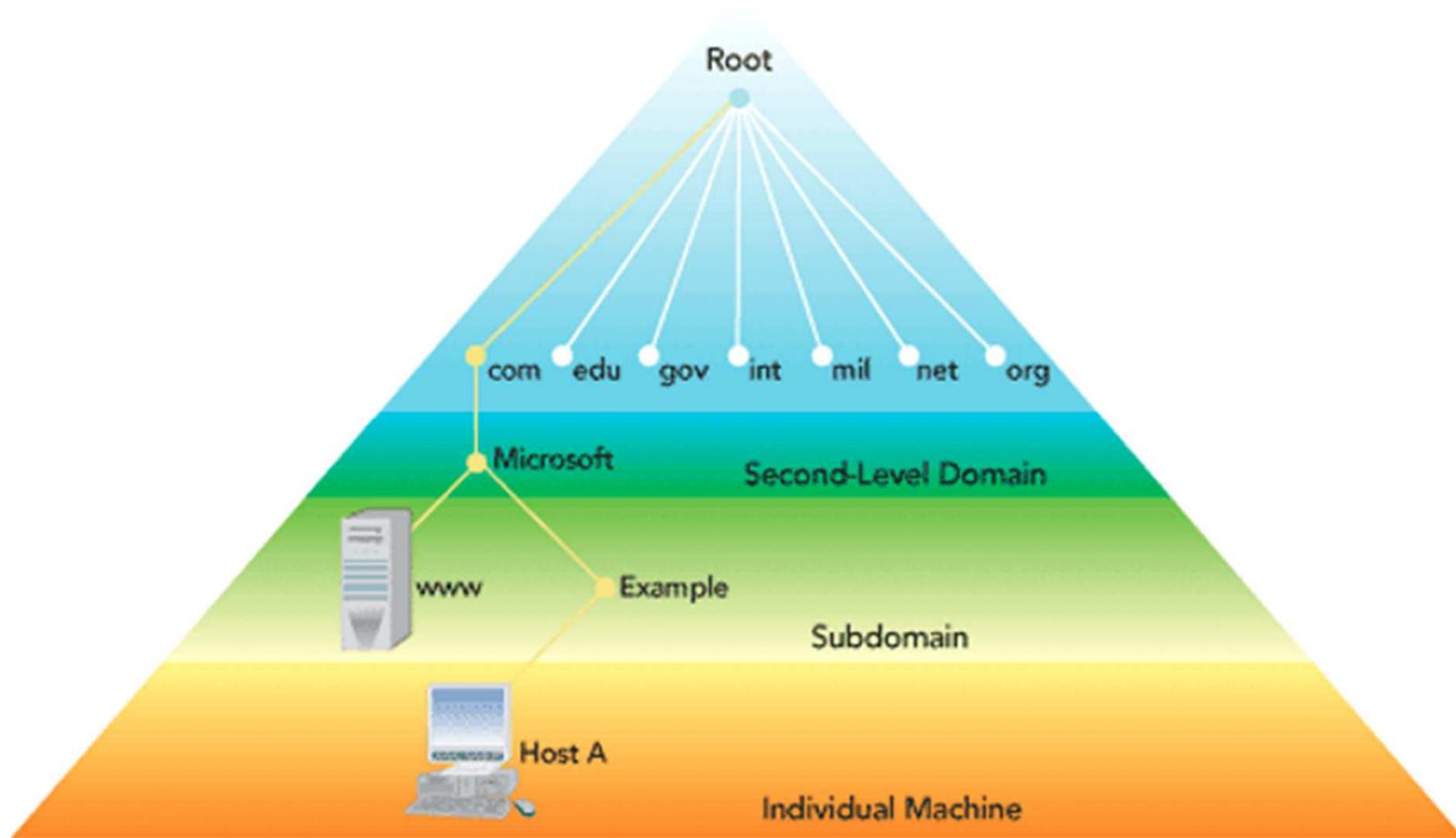
YES

**Immunity and
inviolability of
the Internet root zone**

What is root zone?



What is root zone?



What is root zone?



Highly symbolic relevance

On the US side, the Internet is considered an important part of the country's national creative history.

Most other countries argue that the Internet as a global infrastructure should not be under the jurisdiction of any single country.

14th of March 2014 – **NTIA** **Announcement**

ICANN transition must address the following four principles:

Support and enhance the multistakeholder model

Maintain the security, stability, and resiliency of the Internet DNS

Meet the needs and expectation of the global customers and partners of the IANA services;
and,

Maintain the openness of the Internet

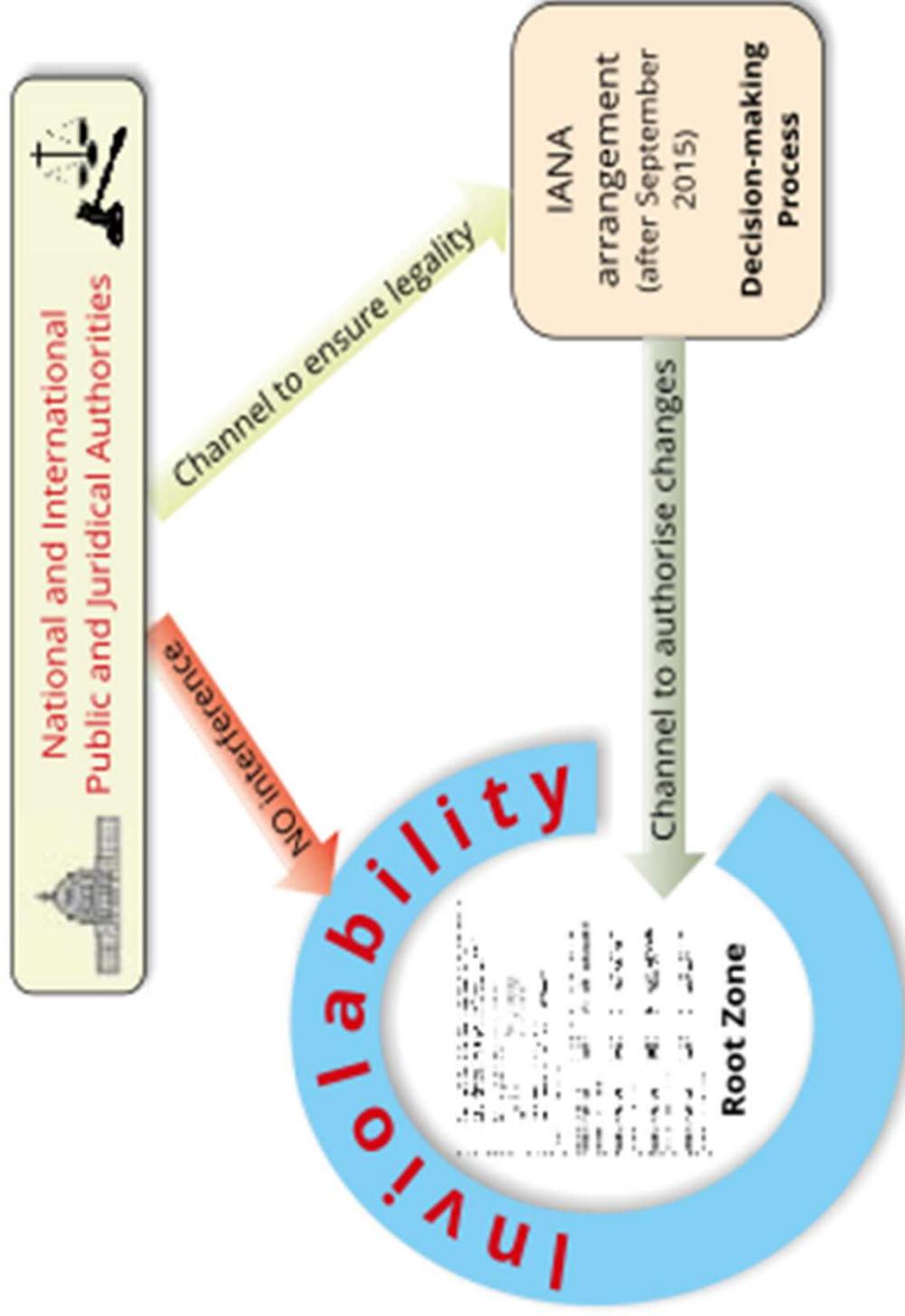
Possible solution – 4 Principles

The Internet root zone should be inviolable at any time, wherever it may be located.

No state should have the jurisdiction to prescribe, adjudicate, or enforce policy over the Internet root zone.

The Internet root zone may only be modified through existing procedures or new ones that might be introduced in September 2015.

The inviolability of the Internet root zone should be based on customary law that recognises the consistent practice of no unilateral interference by the US authorities in the content of the Internet root zone.



Building blocks for legal solution

Customary Law

Diplomatic Law on inviolability

Common heritage of mankind

Two types

‘Hardware’ inviolability

‘Software’ inviolability

How to achieve root zone international inviolability?

- An Internet root convention
- An advisory opinion of the International Court of Justice
- A declaration of the UN General Assembly
- A unilateral declaration by the US Government

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