

“Regulating for a Digital Economy”

Discussant's Remarks by
Ambassador Asoke Kumar
Mukerji, former Permanent
Representative of India to
the United Nations

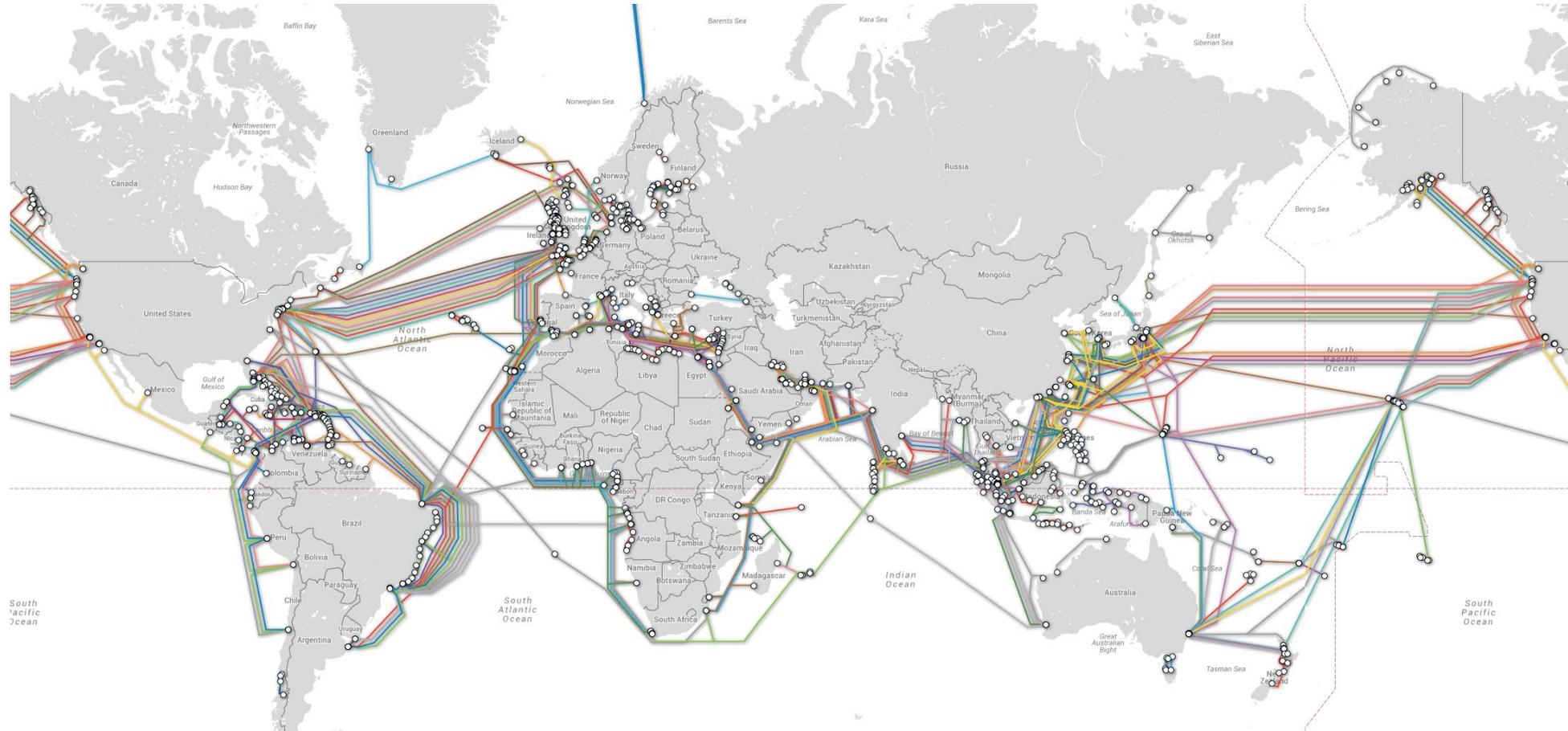
At Brookings India, New
Delhi

20 April 2018

3 Issues for Discussion

1. Digital Divide/s, Connectivity and Data Flows
2. Big Data/Cloud Computing/Privacy and Data Flows
3. International Cooperation

The Global Underwater Cables that Carry Data Flows



1. Digital Divide/s, Connectivity and Data Flows

The focus of the paper is on the flow of data, including cross-border data, from the perspective of market economics, in which the dominant relationship is between the state as regulator and the market.

However, in addition to maximizing the impact of data/flows for economic growth, India also needs to look at data/flows in terms of its socio-economic sustainable development goals, anchored in its inclusive “*sabka saath, sabka vikas*” policy. The focus of data and data flows is as much on the citizen as it is on the market in India.

Connectivity and Data Flows

*“Because of limitations in the data, each of these pictures are still incomplete and, in almost all cases, represent rough estimates of the impact of data flows on growth and jobs”
(see page 9)*

462,124,989 Internet Users in India (2016*)

Share of India Population: **34.8 %** (penetration)

Total Population : **1,326,801,576**

Share of World Internet Users: **13.5 %**

Internet Users in the World: **3,424,971,237**

(Source: Internet Live Stats, based on ITU, World Bank, UN)*

Digital Divides, Connectivity and Data Flows

“there is a digital divide as internet penetration in the developing world averages around 41 percent compared with 81 percent in the developed world” (see page 1).

Digital India is designed to bridge India’s digital divides (within country and between genders) in three directions which are all citizen-centric:

1. Infrastructure as a utility for every citizen
2. Governance and Services on demand
3. Digital Empowerment of citizens

Affordability of devices as well as ICT services is directly linked to the standards and interoperability, including of data, with the citizen as its focus

5 Priorities for Digital India

1. **Connectivity**: India has been ranked 132nd in the world for fixed broadband penetration, out of 187 countries ranked, and 156th in the wireless broadband penetration, out of 179 countries ranked. (State of the Broadband (ITU) report, 2016)
2. **Free Data**: for all content and ISPs, and available to the maximum addressable consumer market.
3. **Access**: Internet remains to be unaffordable for a vast majority of rural population; and basic Internet infrastructure continues to remain inadequate in most rural and remote areas of the country.
4. **Empowerment**: Ending extreme poverty is a central challenge that requires internet access as a tool of empowerment.
5. **Agenda 2030** objective to “significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020”.

Big Data/Cloud Computing/Privacy and Data Flows: Stanford University's Infographic on Data and Trust



2. Big Data/Cloud Computing, Privacy and Data Flows

First is the issue of privacy and security of data, including the storage/use of data. Data generated by enterprises has to be differentiated from citizen-based data generated by governance programmes in India. Using governance data for market access is an issue which requires oversight.

Second is the issue of data flows for trade/economic activity by Indian enterprises, including SMEs. This throws up larger trade-policy issues of control and storage of data, including in the Cloud. In this context, the principle of equitable use of such data for development become relevant.

India and Digital Privacy

1. August 2017 – Indian Supreme Court rules Right to Privacy is part of the fundamental rights of Indian citizens under Article 21 of the Constitution, as it is intrinsic to life and liberty.
2. 2018 multi-stakeholder Study Group recommendation that global flows and exchange of data must be encouraged and enabled, while protecting personal and collective ownerships over data, including applicable intellectual property rights, and ensuring that regulatory and other kinds of legal access is available to authorities of the country of origin.
3. UN General Assembly resolutions 68/167 and 69/166 supported by India on the right to privacy in the digital age

Big Data/Cloud Computing and Data Flows

“Computing in the cloud from sophisticated cloud providers such as Amazon, Google, and Microsoft is often much safer than relying on in-house IT.” (see page 4)

“a growing reliance on cloud computing and data is prompting fears over security, privacy, movement and ownership of user data. It can also give the companies that control the data considerable market power, causing concerns about potential market dominance” (UNCTAD, 2017)

Following multi-stakeholder consultations on the impact of cloud computing in India, the approach is for a “light touch” on oversight of cloud service provisioning, taking into account the scope, nature, security requirements, and creation of transparent networks beyond national boundaries.

TRAI recommended on 16 August 2017 that a government body called the Cloud Service Advisory Group (CSAG) should be tasked to periodically review the progress of Cloud services and advise the Government regarding various actions required to be taken.

3. International Cooperation: Existing and Future

There is need to look at cross-border data flows as a constructive ingredient of an inter-dependent world, and regulate the free flow of data on the basis of agreed principles (as we regulate the free flow of navigation in the maritime domain)

There is need to modernize the existing systems of international cooperation on data flows, taking into account the emergence of new technologies, global discussions on cyberspace and a new normative framework

Existing attempts for international cooperation in data flows taking place within bilateral frameworks may have to give way to an international architecture for data in cyberspace to provide predictability, stability and security due to the global nature of cyberspace

The case for international cooperation on cross-border data flows: Mutual Legal Assistance Treaties (MLATs)

“The globalization of the internet and increasing use of cloud computing means that a person’s data is often held in a separate jurisdiction. In most cases, this happens to be in the United States, as U.S.-based companies provide the majority of digital services, including cloud computing, and host that data within the United States.” (see page 21)

There is need to review the procedural basis for MLATs, which are anchored in non-digital age legal provisions, to incorporate the application of new technologies and new cyber realities. This will enable an appropriate MLAT platform for addressing cyber issues, including cross-border data flows.

What Next?

- ✓ The vibrant debate on cross-border data flows is part of a larger discussion globally on the need for an international framework to provide predictability, security and stability of cyberspace.
- ✓ Such an international framework would apply to all the stakeholders of cyberspace.
- ✓ It is time to converge the different discussions on this issue (the UN Governmental Group of Experts and Cyber Norms, the Tunis Agenda implementation as part of Agenda 2030 on Sustainable Development, the Global Conferences on Cyber Space and the World Trade Organization) into a single platform to begin negotiating an International Convention on Cyberspace, along the lines of the United Nations Convention on the Law of the Sea (UNCLOS).



Thank You