Creating a Global Internet Public Policy Space: Is There a Way Forward?

Marilia Maciel

The Historical Context

Why is there such a pressing effort to find alternative modes, globally, to fashion internet policy? One must start with a simple observation: states have been considered the main political actors in international politics. Their borders gave origin to the internal/external binomial and to the division between domestic and foreign policy. The domestic playing field would be the space where history, identity and a community of destiny could flourish, allowing individuals to engage in a public sphere as equal citizens to work to define common goals and the best way to pursue them. This space was separated from the external arena, traditionally characterized by anarchy, potential conflict and insecurity.

As a consequence, the state has been regarded as the ideal space in which public policies should be developed. On the one hand, public policies relate to issues that go beyond the private sphere; they pertain to a domain that should be held in common. On the other hand, public policies embody an assessment that a society makes about itself and about what should be changed or upheld. They are social constructions, shaped within a cultural context that influences how public problems are interpreted and addressed. State bureaucracy would work to solve issues framed as public problems.

By the end of the twentieth century, the acceleration of a multi-dimensional process of globalization emphasized some of the cracks in the foundation of this theoretical building. On the state level, economy, politics and socio-cultural practices are being transformed. The flow of capital became faster and insensitive to borders while, in parallel, the process of production was de-territorialized and fragmented worldwide. Identity and inclusion are increasingly defined through consumption, and this affects the way citizens perceive the public interest and the role of politics. It becomes harder to maintain the boundaries that are necessary

for the efficient "packing" of public or collective goods and to measure what is the preferred state of affairs.[1]

Traditional institutions involved in policy development, such as states and international organizations, have lacked the capacity to deal with many public problems. This is partially related to the fact that, while the state is considered the primary space for policy-making and the juridical cornerstone of existing international institutions, there are a variety of other actors that currently play a role in the development and implementation of policies. Denser interdependence among states takes place in parallel to the growth of networks, where policies are shaped by a diverse group of players who act not only below, but also above and cutting across states' boundaries. Traditional concepts of public policy seem outdated and disconnected with this complex reality. [2]

Internet governance arrangements emerged in this historical context and were influenced by it. Activities carried out by non-governmental actors on a day-to-day basis have a direct or indirect impact on policy development. The key role of non-governmental actors in internet governance is a reflection of the integral role these actors played in the development of the internet. This distinguishing characteristic engendered flexible and distributed governance arrangements, based on a "web of relationships."[3] Multistakeholder networks have been perceived as an efficient model for internet governance because they could identify softer and speedier approaches to policy-making and regulation. As recognized by the Brazilian government, "the importance of the multistakeholder dimension in the

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1 Philip G. Cerny, *Rethinking World Politics: A Theory of Transnational Pluralism* (Oxford University Press, 2010), 98.
2 According to Thoening, for instance, public policy is "the intervention of an authority that has public power to do it and governmental legitimacy over a specific domain of society or of the territory". Jean-Claude Thoening, "Politique Publique". In Laurie Boussaguet et al., *Dictionnaire des politiques publiques*, (Presses de Sciences Po, 2004), p. 326.
3 Vinton Cerf et al. "ICANN's role in the Internet Governance Ecosystem", report of the ICANN Strategy Panel, (ICANN, 2014), https://www.icann.org/en/system/files/files/report-23feb14-en.pdf

development of public policies cannot be overstated as in some cases, actions taken by other stakeholders may prove to be more effective to achieve goals set in public policies than the mere issuance of regulation by governments."[4]

Nevertheless, as the internet grows and becomes the primary environment for all forms of human interaction, contradictory policy options naturally emerge, reflecting the diversity of interests in society. The lack of clear procedure for coordinating policy choices and making decisions among a diversity of global actors puts pressure on distributed governance arrangements and gives strength to calls for institutional improvement.

Moreover, there is a widening gap between territorially anchored democratic processes and cross-border networks[5] where policies are shaped in a way that evades traditional democratic control. Certain frequently used terms, such as *networks*, *governance* and *regime,* have disguised relations of authority and power asymmetry among actors, de-politicizing the topic. Internet governance is structured around a managerial lexicon, in which efficiency is the key word.

This democratic deficit takes place in parallel to a separation between a segment of the world population that is increasingly bound to the territory and those whose freedom of movement and information have been strengthened by globalization.[6] In such a context, it is possible that those who harness the benefits of globalization will be the ones populating cross-border policy networks.

Combining the advantages, expertise and flexibility of existing networks with democratic practices is one of the major challenges of cross-border policy development. This tension is present in the discussion about institutional arrangements for internet governance.

Internet-related Policies and the Future of the WSIS

The initial discussions about institutional arrangements for internet policy-making took place at the World Summit on the Information Society (WSIS). Policy-making is one of the themes encompassed by the Tunis Agenda, adopted in 2005 at the second phase of WSIS.[7] The document asks for the creation of the Internet Governance Forum (IGF), an institutional space for the discussion of global public policies related to the internet (paragraph 72). It also deals with decision-making, mentioning the need "for enhanced cooperation in the future to enable governments, on an equal footing to carry out their roles and responsibilities in international public policy issues pertaining to the Internet (…)" (paragraph 69).

The IGF was created in 2006, but controversy remains on the meaning of enhanced cooperation. Opinions were polarized between actors who argue that enhanced cooperation would mean improved communication within the network of actors and institutions dealing with internet governance and those who believe it would entail the creation of a centralized mechanism that would allow governments to make policy decisions in consultation with other stakeholders.

The Tunis Agenda seems to confer to governments a differentiated responsibility in the field of policy development, when it mentions that "policy authority for Internet-related public policy issues is the sovereign right of States (paragraph 35, a)." This right is not unbridled; it is limited by the commitment to involve all relevant organizations and all stakeholders in their respective roles (paragraph 71). However, the definition of the roles and responsibilities of non-governmental actors is vague and falls short of their actual involvement in policy development (paragraph 35, b to e). The Tunis Agenda provides little guidance on concrete ways to put in place an institutional architecture for internet governance.

The fact that there is no single space for decision-making on internet-related policy issues does not mean, however, that regulation, policy development and harmonization are not being carried out. On the level of infrastructure, cables are operated by private companies with a few giants setting the rules for interconnection through agreements for transit or peering. These agreements have great impact on the cost of international connectivity and on policies aiming to provide access to the Internet.

4   Brazil, Ministry of External Relations, Division for the Infor-mation Society, *Contribution to the WGEC questionnaire on enhanced cooperation*, 2013, http://unctad.org/Sections/un_cstd/docs/WGEC_Brazil_Gov1.pdf

5   Policy networks could be understood as a set of stable relation-ships which are of non-hierarchical and interdependent nature linking a variety of actors, who share common interests with regard to a policy and who exchange resources to pursue these shared interests acknowledging that cooperation is the best way to achieve common goals. Tanja A. Börzel, "Organizing Babylon – on the different conceptions of policy networks", *Public Admin-istration,* 1998, 76: 233–73.

6   Zygmunt Bauman, *Globalization: The Human Consequences*, (Polity Press, 1998), p. 3.

7   *Tunis Agenda for the Information Society*, (ITU, 2005), http://www.itu.int/wsis/docs2/tunis/off/6rev1.html

In the field of technical standards, "private institutions made up primarily by individuals working for private industry make most Internet governance decisions, including designing protocol."[8] The importance of standards to policy development should not be downplayed. Different choices of standards may uphold or undermine certain values and rights, such as the right to privacy, for example. In the field of applications, online platforms and social networks create policies that impact the lives of consumers by means of their terms of service. Fundamental rights, such as freedom of expression and privacy, are affected by pre-formulated and non-negotiable private contracts that extend across jurisdictions.

In addition to these levels of influence, there is an increasing association between governments and the private sector to carry out policy implementation and online enforcement, not always conducted with due transparency. Among other examples, governments request information from ISPs and applications to ascertain someone's identity, to ask them to remove potentially unlawful content and on occasion to request ISPs to examine the content of packets to look for infringing content or to block specific users.

Governments have privatized online enforcement because they usually lack the means to carry out this activity without private collaboration. All states, however, do not have the same capacity to put pressure on private actors to act as proxies for policy implementation and enforcement. This ability is deeply related to a state's power to exert jurisdiction over these actors. Most of the telecommunication companies, domain name registries or social networks that operate globally are subject to a few jurisdictions. Because these countries can force private actors to comply with national regulation, their capacity to influence regulatory trends and to carry out enforcement expands across borders. The cooperation of major companies, such as Facebook, Google and Microsoft with the NSA data mining program is an example of that. For the other countries of the world, lack of jurisdiction creates barriers for enforcement of internal law and court orders. The Mutual Legal Assistance Treaties (MLATs) have proven to be an outdated mechanism to address these concerns.

Demands for increased transparency, openness and participation in internet policy have mostly targeted international organizations. These demands should also be expanded to other areas of policy development that are kept outside wider scrutiny, under the justification

that they are purely technical; that they are part of business decisions that should be made by private companies alone; or that they are national security issues, a label that is being applied indiscriminately by many governments, without the possibility of discussing its underlying criteria.

Policy development in the field of internet governance is conducted without clear procedures for coordination and for providing accountability and democratic control. This happens not only because of the cross-border nature of the internet and of policy networks, but also because of the way issues of public interest are framed as private ones.

Current proposals for institutional improvement that aim to create a centralized space for policy decision-making should be understood against this backdrop. Firstly, they can be seen as an attempt to place internet policy development under democratic control that would be anchored on the traditional and still widely accepted idea that states' representatives can legitimately voice the concerns of their people. Secondly, they aim to place all countries on an equal footing in policy development, mitigating the disproportionate influence that some states have on private actors, mostly because of their capacity to exert jurisdiction.

This understanding is consistent with positions adopted by many developing countries that have been asking for a "multilateral, transparent and democratic governance of the Internet." This expression emerged for the first time during the Regional Ministerial Preparatory Conference of Latin America and the Caribbean for the WSIS, as part of the Bávaro Declaration[9]. It was adopted by the Arab countries, the Like Minded Group (LMG) and by IBSA (India, Brazil, South Africa). The Brazilian representative at WSIS explained that "by democratic we mean the fullest practicable participation of all stakeholders, particularly governments, in the present system of Internet governance (…) By multilateral, we mean a forum that allows for the representation of sovereign states on an equal footing (…) Finally, transparency implies an accountable decision-making process open to the participation of all stakeholders and subject to the control of society at large."[10]

Since the implementation of enhanced cooperation remains stalled, many countries that are not

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8   Laura DeNardis, *Protocol Politics: the globalization of Internet Governance,* (The MIT Press, 2009), pos. 1079.

9   *Bávaro Declaration*, (Conferencia Ministerial Regional preparatoria de América Latina y el Caribe para la Cumbre Mundial sobre la Sociedad de la Información, 2003), http://www.cepal.org/prensa/noticias/noticias/9/11719/Bavarofinalesp.pdf.

10   Brazilian statement on the occasion of the meeting that constituted WGIG, http://lac.derechos.apc.org/wsis/cdocs.shtml?x=26796.

satisfied with the *status quo* of internet governance arrangements started to introduce the discussion of policy issues under existing international organizations, notably in the International Telecommunications Union (ITU). Substantive topics, such as security issues, have been frequently introduced in the ITU's agenda. During the World Conference on International Telecommunications (WCIT) in 2012, a non-binding resolution about the internet has been included in the annexes of the International Telecommunication Regulations (ITRs), further blurring the lines between telecommunications and the internet. In the ITU's World Telecommunication Policy Forum (WTPF) in 2013, Brazil raised the discussion about "the role of Governments in the multistakeholder framework for Internet Governance."

There was a missed opportunity to reach agreement on the implementation of enhanced cooperation in a multistakeholder way. Nine years after WSIS there was the creation of a Working Group on Enhanced Cooperation (WGEC) under the UN Commission on Science and Technology for Development, which aimed to make recommendations on how to proceed.[11] However, the working group did not manage to bridge diverging views.[12] The next significant opportunity to discuss internet governance institutional architecture and policy development will be the process towards the WSIS +10 in 2015.

In the face of persisting deadlocks, the usefulness of the Tunis Agenda is being contested. Actors involved in the internet governance debate will need to make a choice. In general terms, they could decide that the Tunis Agenda should be superseded by another text, decide that the text should be abandoned or discuss how to implement the Tunis Agenda.

Good arguments can be presented to support the launching of a full scale WSIS review. Firstly, WSIS outcome documents did not fully meet the expectations of developing countries with regards to substance, and some actors believe more could have been achieved regarding communication rights at WSIS. Most importantly, the controversy about internet governance frameworks has consumed resources without major breakthroughs. The fact that WGEC fell short on its mandate strengthened the proposals calling for a new

summit, such as the resolution presented by Russia in CSTD and the resolution delivered by Fiji on behalf of the G77 plus China in the General Assembly.[13]

In July 2014, a UN resolution about the goals and modalities for participation at WSIS +10 was approved.[14] In June 2015, an intergovernmental negotiation process will be started in informal consultation with other relevant stakeholders. It will lead to an intergovernmental outcome document for adoption at a high-level meeting of the General Assembly in December 2015. These negotiations are unlikely to be easy. In addition to the historic divergences that have characterized internet governance discussions, international cooperation is currently facing a downturn, if compared to the context in which WSIS took place ten years ago. Many countries are still suffering the effects of the economic crisis. There are budgetary constraints and many international negotiations are stalled or showing little signs of progress. There is no clear indication that a new summit could produce a better text. Maybe the opposite is even more plausible.

An example of the current difficulties to cooperate was the WSIS+10 High-Level Event, held in June 2014, which aimed to review the WSIS outcomes and develop new targets beyond 2015. The event produced extensive but vague outcome documents.[15] In spite of the existence of a Multistakeholder Preparatory Platform (MPP) that held six preparatory meetings before the High-Level Event, compromise was achieved in last minute intergovernmental negotiations. Moreover, the most controversial points related to the Tunis phase of WSIS were agreed to be left out of the document, including issues related to internet governance. It remains to be seen if the 2015 outcome document will achieve more substantive progress.

The option to abandon, either explicitly or tacitly the Tunis Agenda – by selectively implementing some paragraphs and leaving others in a limbo, for instance – does not look promising either, as it could create political rifts that would become very difficult to bridge. Moreover, in a challenging moment for global

11 *Information and Communications Technologies for Development*, resolution A/RES/67/195, (General Assembly, 2012), paragraph 20, http://unctad.org/en/PublicationsLibrary/ares67d195_en.pdf

12 *Analysis of the Responses to the Questionnaire of the UN Commission on Science and Technology for Development* (WGEC, 2014), http://unctad.org/meetings/en/SessionalDocuments/WGEC_Summary_of_Responses.pdf

13 *Information and communications technologies for development*, resolution A/C.2/68/L.40, (General Assembly, 2013), http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N13/552/87/PDF/N1355287.pdf?OpenElement

14 *Modalities for the overall review by the General Assembly of the implementation of the outcomes of the World Summit on the Information Society* (General Assembly, 2014), http://www.un.org/ga/search/view_doc.asp?symbol=A%2F68%2FL.54&referer=%2Fenglish%2F&Lang=E

15 *WSIS+10 Statement on Implementation of WSIS Outcomes*; *WSIS+10 Vision for WSIS Beyond 2015*, (ITU, 2015), http://www.itu.int/wsis/implementation/2014/forum/inc/doc/outcome/362828V2E.pdf

cooperation and multilateralism, undermining support to one of the key international texts that deals with the information society would be a reckless move. Although some topics could have advanced more, the WSIS outcome documents are people-centered, place great importance on development and uphold freedom in its largest sense. It is a good foundation document to advance agendas that are important to countries all across the political spectrum.

The third option to be considered is how to implement the Tunis Agenda. *Pacta sunt servanda* is a basic principle that guides not only international relations but also private law. Agreements must be kept. This principle is fundamental for stability, legal predictability and trust. Nevertheless, all agreements are celebrated based on context and facts known at the time of the negotiation. This implies that they should be implemented *rebus sic stantibus*, i.e. in the absence of substantial, fundamental change. But much has changed and has been learnt in the past ten years. The most reasonable solution is to revisit the Tunis Agenda and discuss its implementation by making the necessary adjustments and compromises to update it to present challenges.

Centralized and Distributed Proposals for Institutional Arrangements

Different views about the meaning of enhanced cooperation gave birth to concrete proposals of institutional mechanisms for decision-making on internet policy issues. One of the strengths of centralized models is the procedural clarity they could provide. The usefulness of a one-stop-shop that could serve as a point of entry to internet policy-making has been pointed out since WSIS. Particularly for developing countries, "fragmentation of policy spaces, among other factors, greatly undermines the ability of under resourced groups to engage with global Internet governance, because they are unable to be present in all places."[16]

One example of a centralized proposal was put forward by the government of India for the creation of a United Nations Committee for Internet-Related Policies (CIRP).[17] The CIRP proposal was tabled at the 66th UNGA. It would mainly develop and establish international public policies, facilitate the development of treaties and would coordinate and oversee the bodies responsible for technical and operational functioning of the internet, including global standards setting. The Committee would be composed of 50 Member States chosen on the basis of equitable geographical representation. The participation of other stakeholder groups would be advisory in nature and be channeled through four advisory groups, one each for civil society, the private sector, inter-governmental and international organizations, and the technical and academic community. CIRP seems to fall under the category of a traditional intergovernmental body.

The Brazilian government supports a less well-defined centralized model embodied in the creation of a "single convergent space or platform (…) for dealing with the diverse kinds of international public policy issues pertaining to the Internet in general." Nevertheless, the country emphasizes that "this platform should be respectful of the multistakeholder model, with the full involvement of governments, the private sector, civil society and international organizations."

Unlike what India did with CIRP, Brazil does not go as far as suggesting a concrete institutional design. It just mentions that "the structure of such new platform itself should emerge from the multistakeholder debate." Brazil is moving forward very carefully and justifies its decision not to propose any concrete mechanism in the following manner: "the discussion of any suitable framework or mechanisms should be guided by the purpose of addressing perceived needs or filling gaps and should only be undertaken when there is some comfortable margin of support for these ideas. In other words, Brazil proposes first to deepen discussion on WHAT we want before discussing HOW to achieve what we want."[18] The country seems to be adopting the principle that "form follows function."

In parallel to the centralized models, there are others that show different degrees of decentralization. Some of them try to combine elements of intergovernmental legitimacy with the flexibility of networks. During WSIS, Wolfgang Kleinwächter proposed a multilayer and multiplayer mechanism of consultation, coordination and cooperation (M3C3). The point of departure of this proposal was the need to foster both intergovernmental harmonization and non-governmental self-regulation through networks. One should not be superseded by the other, but achieve complementarity by means of a co-regulatory model.[19]

16 Brazil, Ministry of External Relations, Division for the Information Society, *Contribution to the WGEC questionnaire on enhanced cooperation*, 2013, http://unctad.org/Sections/un_cstd/docs/WGEC_Brazil_Gov1.pdf

17 India, *Proposal for a United Nations Committee for Internet-Related Policies,* (UN General Assembly, 2011), http://itforchange.net/sites/default/files/ITfC/india_un_cirp_proposal_20111026.pdf

18 Brazil, Ministry of External Relations, op. cit.

19 Wolfgang Kleinwächter, "Internet Co-governance: towards a

More recently, Kleinwächter revisited his proposal. He suggested that a "Multistakeholder Internet Policy Council" (MIPOC), linked to the IGF, could function as a policy clearing house. The Council would discuss how to proceed with IGF outcomes and recommend that existing intergovernmental or non-governmental organizations include the issues in their agendas. For new and emerging issues that do not find a home in existing organizations, MIPOC could also start a bottom up policy development process.[20]

This proposal has some similarities with the one put forth by Anja Kovacs on behalf of the Internet Democracy Project. She suggested the creation of a global body that could function as a non-decision making clearing house. Its role would be to identify policy issues and send them to multistakeholder networks of actors with expertise to deal with them.[21] If the issue identified happens to fall under the scope of a WSIS action line, the international organizations that are action line facilitators could convene the multistakeholder network to address it. The networks would, therefore, take advantage from the knowledge already produced in the WSIS process. In general, these networks could adopt two approaches: to tackle the policy issue themselves or to delegate it to other body. For example, if an international treaty is needed, the issue would be delegated to the international organization with mandate to deal with it.

Moreover, involving international organizations as key facilitators of the multistakeholder networks may enhance governmental involvement, increase the legitimacy of the process and strengthen the commitment of international organizations with the outcome of network discussions. Therefore, if the issue is eventually taken to a multilateral body, chances are that the discussions carried out in the networks will percolate and have a larger impact on intergovernmental discussions.

Up to the present moment, the decentralized proposal presented by Kovacs seems to be the one that best tries to reconcile intergovernmental and multistakeholder

spaces. Nevertheless, there are still points that need to be enhanced for this proposal to address the concerns that underlie the calls for improving institutional aspects of internet governance, particularly those that relate to transparency and democratization.

First of all, Kovac's proposal does not address the possibility of political capture in distributed arrangements, which usually lack clear rules of engagement. It would be necessary to ensure that participants of the networks represent the diversity of views in their own stakeholder group. So far, bottom-up selection and self-organization have mostly translated into larger participation of men from developed countries. Civil society, business companies and technical actors from developing countries, as well as cross-cutting groups, such as women, still remain less involved in governance arrangements.

Secondly, the proposal does not address the concerns of developing countries related to the fragmentation of policy spaces; it in fact leads to an increase of the points of entry to the internet governance debate. Regarding this point, Kovacs expresses the opinion that it is currently hard to have a clear perception of how participation in internet governance would benefit developing countries "because existing processes tend to address a hotchpotch of issues." Her argument is that "a distributed structure of Internet governance with well-defined aims and purposes will resolve this problem as it will make it much more obvious to developing country actors (as well as others) which processes are worth their time."

The danger with this reasoning is that it departs from the idea that it is acceptable that actors are forced to choose, due to their scarce human and financial resources, to follow-up policy discussions about issues as different as access to infrastructure and privacy, for example. If developing countries remain discussing only a few topics, most important decisions will already be made for them when they start to have resources to follow the other issues.

Lastly, Kovac's proposal mentions that the decision-making power among stakeholder groups that are part of the networks would be distributed: no group alone could make decisions. Nevertheless, it is not clear if a single stakeholder group could block decisions. Considering the high degree of divergence on some issues, such as privacy, conversations could become stalled, undermining the alleged efficiency of the model. It should be remembered that lack of action is not a neutral position: ultimately, inaction can be characterized as action because it has public

multilayer multiplayer mechanism of consultation, coordination and cooperation (M3C3)," (XXX, 2006), http://www.wwwords.co.uk/pdf/freetoview.asp?j=elea&vol=3&issue=3&year=2006&article=18_Kleinwachter_ELEA_3_3_web.

20 Wolfgang Kleinwächter. *Internet Governance Outlook 2014: Good News, Bad News, No News?* (CircleID, 2013), http://www.circleid.com/posts/20131231_internet_governance_outlook_2014_good_news_bad_news_no_news/

21 Anja Kovacs, *A Third Way? Proposal for a Decentralized, Multistakeholder Internet Governance Model*, (Internet Democracy project, 2013), http://internetdemocracy.in/reports/a-third-way-proposal-for-a-decentralised-democratic-internet-governance-involving-all-stakeholders/

consequences, reinforcing the *status quo* and the wave of events already in motion.[22]

Another important point to consider is that the main distributed proposals that have been tabled do not address the need to increase the accountability of private actors who already perform internet governance functions. CIRP mentions the need for oversight of standard-setting organizations. The European Commission recently stressed the need to create or strengthen mechanisms "to allow regular, early and truly inclusive upstream participation, review and comment in technical decisions."[23] Nevertheless, the most innovative and detailed proposals that emerged from civil society leave areas such as standards-setting untouched.

NETmundial: A Game Changer?

The Global Multistakeholder Meeting on the Future of Internet Governance (NETmundial) was held on April 23rd and 24th 2014 in São Paulo, Brazil.[24] The event was organized by means of a partnership between the Brazilian Internet Steering Committee (CGI.br) and 1 Net, a coalition that gathers actors from the stakeholder groups involved in internet governance discussions. Revelations of mass surveillance of communications were a catalyst to the decision of convening NETmundial, although the issue was not prominently included in the scope of the meeting. In September 2013, President Dilma Rousseff gave a speech at the opening of the 68th Session of the United Nations General Assembly, in which she criticized policies of mass surveillance. The President also mentioned the need to develop a framework for the governance and use of the internet and to create mechanisms to ensure basic principles are guaranteed, such as privacy, freedom of speech and net neutrality. In the following month she received the visit of Fadi Chehadé, Chief Executive Officer of ICANN. After their conversation the global meeting was jointly announced.

NETmundial aimed to address two problems, which directly inspired its agenda items: the need to identify a set of universally acceptable internet governance principles and the need to propose a way forward for the evolution of the internet governance ecosystem. In addition to these explicit goals, the convening of

NETmundial – a new event in an already consolidated agenda of internet governance meetings and fora – attests to the existence of a gap. There is currently no multistakeholder global space where actual decision-making could be carried out. From the outset, the meeting was convened under the expectation that it should present conclusions and a concrete outcome. Some steps forward were made in discussions about the evolution of the ecosystem in the NETmundial outcome document. The direct and indirect references to the Tunis Agenda corroborate the relevance and legitimacy that the document still garners. This should be taken into account in the negotiations towards WSIS+10 in 2015. The outcome document reinforces that actors have different roles and responsibilities in policy development, but it also rightly adopts the understanding that "the respective roles and responsibilities of stakeholders should be interpreted in a flexible manner with reference to the issue under discussion". [25] To achieve a compromise with actors who would like to override the idea of different roles and responsibilities encompassed in the Tunis Agenda, the outcome document acknowledges that further discussion is still needed on "different roles and responsibilities of stakeholders in Internet governance, including the meaning and application of equal footing."

NETmundial also demonstrated wide support for strengthening the IGF by implementing the recommendations of the CTSD working group on IGF improvements, paying special attention to improving the outcomes of the meeting, ensuring stable and predictable funding, adopting mechanisms that would allow inter-sessional work and extending IGF's mandate beyond five years.

No breakthrough was made regarding enhanced cooperation. The document only mentions that it must be implemented on a priority and consensual basis. Reaching consensus on the topic has proven to be particularly difficult. Nevertheless, the NETmundial outcome document innovates when it expresses preference for a distributed model for internet governance, elevating it to the status of a principle. It mentions that "Internet Governance should be carried out through a distributed, decentralized and multistakeholder ecosystem." Nevertheless,

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22 Benjamin Barber, *Strong democracy. Participatory politics for a new age.* (University of California Press, 1984), p. 123-4.

23 European Commission, *Internet Policy and Governance Europe's role in shaping the future of Internet Governance*, COM (2014) 72 final, (European Commission, 2014), p. 9.

24 NETmundial, http://www.netmundial.br/

25 DeNardis and Raymond have called attention to the dangers of seeing multistakeholderism as a teleological goal or as a value in itself, when it should rather be one possible approach to meeting public interest objectives such as preserving interoperability, stability, security and openness. Moreover, for different issues, there can be different governance settings that can more efficiently preserve those core values. Laura DeNardis; Mark Raymond. *Thinking Clearly About Multistakeholder Internet Governance*, (SSRN, 2013), http://ssrn.com/abstract=2354377

the organizations that are part of this ecosystem need to enhance communication and coordination. Actors should consider the option of creating internet governance coordination tools to perform monitoring, analysis, and information-sharing functions.

The document admits the possibility that new mechanisms should be created to take into account emerging topics and issues that are not currently being adequately addressed by existing internet governance arrangements. A detailed mapping of internet governance issues has been started by a group of volunteers assisting WGEC and it is important that this work is meticulously reviewed and concluded.

Finally, the outcome document seems to recognize that there is a deficit of democracy and accountability in current governance arrangements. It acknowledges the importance of improving multistakeholder decision-making and policy formulation, and presents several calls to reinforce transparency, accountability and participation in governance networks. It suggests, for instance, that all of the organizations with responsibilities in the internet governance ecosystem should develop and implement principles for transparency, accountability and inclusiveness, prepare periodic reports and make them publicly available.

An interesting development after NETmundial was the announcement by ICANN of a "NETmundial Alliance," later called "NETmundial Initiative." In general terms, the aim of the initiative would be to develop concrete ways to apply the principles of NETmundial and to enable a distributed approach to internet cooperation and governance through innovative and legitimate mechanisms.

The initiative will be based of the outcome document of NETmundial and on the Report "Towards a Collaborative, Decentralized Internet Governance Ecosystem"[26] produced by the High Level Panel (HLP) chaired by president Toomas Ilves of Estonia and supported by ICANN and the World Economic Forum (WEF). On the level of promoting dialogue, the initiative aims: to foster exchanges about policy-issues by a network of interdisciplinary decision-makers and constituents; to encourage the creation and cross-level synchronization of governance arrangements on the national, regional and global level and to support discussions through the IGF. On the level of concrete action, it aims to map internet governance issues and link them to their respective solution; to make actors

coalesce around distributed groups (section II, A of the report) and to provide capacity development.

The Ilves report raises some interesting concrete suggestions of how a distributed model could function. It follows a similar direction of other distributed mechanisms that have already been proposed (see section 3) and suffers from similar shortcomings when it comes to transparency, accountability and inclusion.

So far, there is little clarity about the initiative and about the actors who are expected to be the main driving forces behind it. Invitations to join the initiative have been made on a case-by-case basis. It seems that, for the moment, the main goal is to galvanize the support of key governments and of a selective group of non-governmental actors.

The NETmundial Initiative should be understood in the broader context presented so far. It seems an attempt to counter-balance tendencies of creating a centralized model for internet governance or to further develop structures that would work under the United Nations. There is no sign that the members of the HLP took into account the large amount of information produced by WGEC, for example. If this assessment is correct, it is curious that developing countries such as Brazil and China have agreed to take part in this effort.

If successful, this could mean a decisive move away from intergovernmental forms of legitimizing policy-making towards a model that promises efficiency and speedy decisions. Issues of legitimacy and democratic procedures are still unclear and being undervalued. In the Ilves report these issues have been listed as open questions to be discussed in a later stage. As it is gaining shape right now, the proposal would not address many of the concerns related to the democratic deficiencies of cross-border policy networks.

Conclusion

There is a widening gap between territorially anchored democratic processes and cross-border networks, where many internet policies are being developed. Institutional arrangements that place policy decision-making under the sole responsibility of states may be an attempt to address a real and important democratic deficit, but they ignore the interdependence among actors and the complexity of the internet governance ecosystem.

In the United Nations, discussions about the implementation of enhanced cooperation have made little progress. The next significant opportunity to discuss internet governance and policy development

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26 "Towards a Collaborative, Decentralized Internet Governance Ecosystem." Panel on Global Internet Cooperation and Governance Mechanisms, 2014.

will be the process towards the WSIS +10 in 2015. Good arguments can be presented to support the launching of a full scale WSIS review, but recent meetings have shown that major breakthroughs are unlikely. During the stalemate of the last ten years, proposals for centralized and distributed governance arrangements have been put forth. In the present moment it could be useful to revisit them.

To counterbalance discussions in the UN, private actors have created panels and commissions to discuss internet governance institutional arrangements. The NETmundial initiative promises to build upon advancements made in the NETmundial outcome document. Nevertheless, the initial discussions seem far less inclusive than the NETmundial meeting and do not seem inclined to address democratic deficits of cross-border policy networks.

Marília Maciel is a researcher and coordinator of the Center for Technology and Society of the Getulio Vargas Foundation (CTS/FGV) in Rio de Janeiro. She is also a fellow at DiploFoundation. She serves as a Member of ICANN Non-commercial Users Constituency (NCUC) and representative of NCUC in NCSG Policy Committee. Marília was a member of the Executive Multistakeholder Committee, which took part on the organization of NETmundial and she is a former member of the Working Group on IGF improvements (2011-2012), created under the auspices of the Commission on Science and Technology for Development (UN CSTD). Currently she is a member of the Advisory Board on Internet security, created under the Brazilian Internet Steering Committee (CGI.br). She is also a member of the editorial board of PoliTICs Magazine. Marilia is a PhD candidate on International Relations at the Pontifical Catholic University (PUC – Rio de Janeiro) developing a thesis on internet governance, cyber security and defense. She holds a MA in Latin American Integration from the Federal University of Santa Maria (2008), and a BA in Law from the Federal University of Pernambuco (2005).