Academic Foresights

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Internet Governance

How do you analyze the present status of the Internet governance?

It is common to hear that no one is in charge of the internet and that the internet is an area without rules and rights. However, like any other technology, the use and evolution of the internet is regulated at the national and global levels. Internet governance includes issues related to the infrastructure of the network and its standardization; legal issues – in particular intellectual property rights and the question of jurisdictions; economic issues related to e-commerce and taxation; human rights such as freedom of expression and the right to privacy; cybersecurity; and internet-related development issues (Kurbalija, 2012). Internet governance is tackled by a large number of public and private organizations. This governance model is often referred to as 'multistakeholderism', meaning that governments, the private sector and civil society participate in the elaboration of internet governance norms and rules "in their respective roles" (WSIS, 2005).

The current model of internet governance emerged from the transformation of a relatively small computer network connecting universities in the second half of the 20th century into the most important telecommunication network and a major vehicle of the current globalization process. The transformation primarily took place in the 1990s, when the network was commercialized in order to foster e-commerce and as part of a wave of privatization and liberalization in the telecommunication sector. A consensus was found between the dominant actors of internet governance of the time – including self-organized computer scientists, telecommunication carriers, hardware manufacturers, large trademark holders, the US and Australian governments, and the European Commission – around the creation of the Internet Corporation for Assigned Names and Numbers (ICANN) in 1998. The ICANN became responsible of one of the most important issues of the time: managing the Domain Names System and root servers that determine who gets which domain name. The task was not only necessary for the interconnectivity and the functioning of the network at a technical level, it implied legal, economic and political decisions of redistribution of a given resource. Particularly, it implied that the ICANN decided who was the legitimate owner of a given website and who was entitled to use a given trademark as a website address.

Because of the growing importance of the internet and e-commerce, the power of the

ICANN increased and its legitimacy became an issue in global politics. The fact that the US Department of Commerce maintained an oversight over the organization fueled critiques. Moreover, the creation of the ICANN left most issues related to internet governance unanswered. For example, the digital divide between developed and developing countries was not addressed. Cybersecurity issues were also outside the mandate of the ICANN. This is why the ICANN system has constantly been questioned since the end of the 1990s.

One of the milestones of the history of internet governance is the World Summit on the Information Society that took place between 2002 and 2005 in Geneva and Tunis under the leadership of the historical regulator of international telecommunication: the International Telecommunication Union (ITU). During the Summit, developing countries and civil society organizations called for a deep reform of internet governance. One of the most vocal proposal was the idea to put the ITU in charge of internet governance. Dominant actors of internet governance were able to safeguard the ICANN system and to prevent an increased role of the ITU in internet governance. Multistakeholderism was presented as a new governance model that could accommodate the needs of governments and civil society while being flexible enough to foster innovation and the emergence of new markets. A new institution, the Internet Governance Forum, was created within the UN system as a multistakeholder discussion forum without the power to make decisions nor recommendations but with the mandate to promote dialogue on all policy-related issues. The internationalization of the ICANN and the end of the US oversight on the organization were also announced.

Now, almost ten years after the WSIS, the existing internet governance system is in crisis. The endorsement of the multistakeholder model by the WSIS has been undermined by the relative stagnation of the situation as well as by recent developments in internet governance. First, while the Internet Governance Forum has played an important role in raising awareness about Internet governance issues and in establishing dialogue between different types of actors, the lack of decision-making power leaves important decisions in the hands of the dominant actors in the field. The internationalization of the ICANN has been limited so far to an increased role of powerful governments within the institution with no internationalization of the US oversight. As a result, the current model of internet governance has not fulfilled the commitments of the Tunis Agenda towards a "multilateral transparent and democratic" internet governance (WSIS, 2005, §29). Second, the need for reform has become more pressing over the last two years. The demands of emerging powers of a reform of internet governance led to the failure of the ITU World Conference on International Telecommunication in December 2012. The struggle between supporters of the status-quo and advocates of change seemed to reach a pre-WSIS level. Finally, last year, the Snowden revelations raised awareness of the crucial limitations of the existing system. While technical issues are tackled by technical organizations, there is no venue to discuss and take action on issues such as US hegemony on the internet or the power of

discuss and take action on issues such as US hegemony on the internet or the power of private firms that collect personal data, or even to discuss guidelines on surveillance. Current internet governance institutions are too limited in their mandate and membership to tackle the important issues related to the use and evolution of the internet in societies increasingly relying on the network. Internet governance institutions were designed to foster e-commerce and now face issues of sovereignty, development and human rights without the tools and legitimacy to address them.

The Netmundial summit held in Sao Paulo in April 2014 epitomizes the crisis and the impossibility of endogenous reform of the system. Convened in the aftermath of the Snowden revelations by Brazilian President Dilma Roussef, the conference could have adopted the critical tone of President Roussef's speech before the UN General Assembly a few months earlier. However, the ICANN was able to become co-organizer of the meeting. The multistakeholder character of the meeting ensured the leadership of dominant players. Despite strong declarations before Netmundial, the final declaration reiterates consensual statements from the WSIS and does not strongly blame mass surveillance and does not make strong statements about privacy. It does not criticize the fundamental elements of the existing governance system but suggests some marginal improvements such as a strengthened IGF (see below).

In your opinion, how will the situation likely evolve over the next five years?

Just like during the WSIS, the internet governance system is currently in a transition period. The advocates of change were given an opportunity to demand reforms in the post-Snowden context. However, current developments indicate that changes will be marginal. The ICANN system seems in a good position to maintain its position since it is supported both by dominant actors and by emerging powers. New institutions are unlikely to emerge in the coming years although existing institutions are being reformed. Two elements are currently discussed that might bring some legitimacy to the current system without questioning its core principles.

First, the US government has started a process of transition of the IANA stewardship and the ICANN has launched an "enhancing accountability" process. The Internet Assigned Numbers Authority (IANA) stewardship is at the heart of the US oversight on the ICANN. It is through the IANA stewardship that the US government is able to confirm or reject any modification to the list of internet domain names. In March 2014, the US National Telecommunications and Information Administration announced the transition that had been promised since the WSIS. A group was formed to prepare the transition and first met in July 2014. It is expected to design a new stewardship mechanism before the expiration of the IANA functions contract in October 2015. The ICANN enhancing accountability process, in turn, is a broader attempt to address the accountability issue of the ICANN that has been repeatedly denounced since its creation. Both processes aim to make the ICANN more legitimate to the internet users

on a worldwide basis.

The other major process is the strengthening of the Internet Governance Forum before its mandate expires in 2015. There is a consensus on the necessity to strengthen the IGF. The future IGF will probably be able to make recommendations and establish guidelines or best practices. This evolution results form the growing criticism against the IGF for being a navel-gazing forum, where the same arguments have been exchanged since the WSIS. Endless discussions about the nature of multistakeholder governance and the "respective roles" of the various stakeholder groups cannot continue for ever without any action. The future mandate of the IGF will give some space to the advocates of change in internet governance, without endangering the existing system. Critical participants to the IGF are likely to try to push forward a reformist agenda within the IGF in the coming years. In parallel to its new mandate, the IGF is going to gain financial autonomy through a fund of "friends of the IGF". The formerly understaffed and marginal secretariat of the IGF based in Geneva is likely to become more visible within the UN system and in internet governance discussions in the coming years because of the new financial resources.

These two major developments might be sufficient to prevent any fundamental questioning of the internet governance system in the other forums that might discuss internet governance in the coming years such as the ITU plenipotentiary conference in Busan in November 2014 and the WSIS+10 process next year or possibly the UN post-2015 development agenda.

What are the structural long-term perspectives?

While the current process of reform both in the ICANN and in the IGF might ensure some years of relative stability to the existing system, structural shortcomings in the way internet governance is currently addressed are likely to trigger further crisis and change in the longer term. Internet governance was a relatively technical issue in the 1990s that attracted limited interest. If the network continues to take an increasingly important place in our life, internet governance will inevitably attract more attention and become a major issue of global politics. Indeed, the internet cannot be viewed as just a policy-domain or as a market but as an essential infrastructure of capitalism in the 21st century. Two elements have structured internet governance debates so far and are likely to remain important in the long-term: the issue of exclusion and the sovereignty dilemna.

Exclusion: the current system excludes a great number of actors. Completely marginalized actors such as the the two third of the world population with no internet access are barely taken into account in the debates. Other types of actors are also excluded although they fit the definition of 'stakeholders'. For example, hackers and

web developers do not participate in the ICANN or in the IGF. Generalist civil society organization that are not specializing in internet governance but rather in development or human rights are marginalized in internet governance. A number of issues is also excluded from the agenda. The rapid development of cyberdefence capacities in not discussed in internet governance forums. Development appears from time to time (e.g. during the WSIS), without concrete steps being taken. Finally, the relationship between Information and Communication Technologies and climate change are not at the top of the agenda despite the increasing use of energy-consuming servers and hardware. The limited participation and agenda leave a number of actors and issues aside and undermine the sustainability of existing insitutions. The distinction that remains from the early debates between techncial vs. political issues will not be relevant in the future. As the internet becomes an essential infrastructure of digital capitalism, important groups and broad issues of political economy cannot be ignored.

Sovereignty vs. global connectivity dilemma: Like many global policy issues, internet governance is structured by the issue of sovereignty in a globalizing world, illustrated by taxation and jurisdiction issues and geopolitical competition. On the one hand, the sovereignty principle might endanger the interconnectivity of the network and creates a risk of balkanization of the internet – its division into national internets. On the other hand, the global interconnectivity under the leadership of a handful of dominant actors creates the condition of the emergence of a cyber-empire or the expansion of an oligopolistic global market in formerly non-market zones such as personal data and personal communication. As a result, future internet governance will need to address the following questions. First, states will require to be able to get income through taxes from internet-related markets. The idea of a cyber-market place free from taxes and tariffs is not sustainable in the long term. The recent debates in countries in Europe about transnational firms such as Amazon and Google evading taxes is likely to spread and gain importance on the longer term. Market institutions will be needed to create and reproduce viable markets beyond the oligopoly of a handful of internet firms. In other terms, more mature internet-related markets will necessarily be regulated by stronger and more durable institutions such as competition laws and a re-definition of intellectual property in a digital era. Finally, mechanisms will be required to enforce human rights online, which will require to strike a balance between freedom of expression and national laws and between privacy and data collection.

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