Multi-stakeholder participation on internet governance:

An analysis from a developing country, civil society perspective

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Abstract

This article presents an analysis of the multi-stakeholder participation in internet governance processes, focusing on the obstacles and opportunities for the engagement of civil society. The article analyses how the processes of the Internet Governance Forum (IGF) and the Commission on Science and Technology for Development (CSTD) of the United Nations (UN) can offer insightful examples of the controversy over multi-sectorialism and multi-stakeholderism -principles presented in the Tunis Agenda- as well as the debate over a differentiation between openness and inclusion on political processes. The mechanism for enhanced cooperation on issues pertaining to internet governance is also addressed, concluding with some experiences in the national level, focusing on the Brazilian Civil Rights Framework Initiative, a bill of law on the internet that resulted from an open and collaborative online environment.

Introduction

The issue of multi-stakeholder participation in internet governance processes requires a brief overview of the concept of governance itself, which offers a theoretical framework for the changes that have occurred in recent decades, such as the plurality of actors involved in political processes and the increasing importance of soft power in the international scene.

Governance could be understood as the establishment and operation of shared "rules of the game", which define the actors and their responsibilities, both in cooperation toward common goals and in resolving any arising disputes.[3] This concept corroborates the understanding of James Rosenau (1992), who calls attention to the important distinction between government and governance: "…government suggests activities that are backed by formal authority, by police powers to ensure the implementation of duly constituted policies, whereas governance refers to activities backed by shared goals that may or may not derive from legal and formally prescribed responsibilities (...) Governance, in other words, is a more encompassing phenomenon than government."

Governance arrangements often translate into partnerships between state and non-state actors. The legitimacy of these arrangements lies in the expertise and capacity of its participants to contribute to the solution of common problems. Therefore, this enlarged participation is not only justified by moral arguments based on the "correctness" and "fairness" to promote the involvement of those who will be affected by decisions (Kuyama and Fowler, 2009); it is also based on utilitarian reasons because a diverse body of participants contribute to better decisions, and their involvement contributes to the successful implementation of policies on the ground (Khana, 2011).

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[3] Report of the Working Group Strengthening Europe´s Contribution to World Governance. White paper on Governance. Working Group 5. May, 2001, p. 7

During the discussions of the World Summit on the Information Society (WSIS) it was necessary to develop a concept of governance that would apply specifically to the internet. According to the Tunis Agenda for the Information Society, "Internet governance is the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the internet".[4]

Although brief, this definition provides some important elements that set the parameters for the participation of actors in internet governance. The aforementioned stakeholders should be involved in the formulation of all aspects of the development of the internet governance regime, from principles to decision-making procedures. This means that participation of non-state actors should not take place on an ad hoc basis, depending upon invitation or depending on the subject, as commonly happens in the discussion of other international issues. All stakeholders are placed side by side, equaling the importance of their involvement in internet governance.

Another conclusion that can be drawn is that the definition adopted by the Tunis Agenda functionally differentiates the way in which stakeholders would participate, when it mentions that they should act according to their "respective roles". An initial proposal for the clarification of the competences of each stakeholder group can be found in the report of the Working Group on Internet Governance (WGIG).[5] Nevertheless, the final documents produced in both phases of the WSIS did not specify which are their roles and responsibilities in internet governance.

On the one hand, the flexibility on the definition of the roles of stakeholders was positive to the development of the regime, as it gave room for the creation of several organisational models, as different as the Internet Corporation for Assigned Names and Numbers (ICANN), a private-led entity responsible for the management of operational stability of the internet, and the Internet Governance Forum (IGF), a multi-stakeholder body created as a result of the discussions in the WSIS, under the auspices of the UN, for the discussion of global public policy issues and with the mission to be more development-oriented. It also gave room for non-governmental actors to proactively seek wider participation in the regime.

On the other hand, the lack of an agreed parameter that would guide the roles and

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[4] WSIS. Tunis Agenda for the Information Society. Paragraph 34. Available at <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html> Access 5 May 2011. This definition was initially proposed by the Working Group on Internet Governance (WGIG), established by UN Secretary General. United Nations. Report of the Working Group on Internet Governance. June, 2005. Available at <http://www.wgig.org/docs/WGIGREPORT.pdf> Access 5 May 2011.

[5] Paragraphs 30 to 32 mention that governments would be responsible for public policymaking and implementation, for creating an enabling environment for ICT development and for treaty making, among other responsibilities. Civil society would have the role of promoting public interest objectives, of engaging on public policy making, of awareness raising and capacity building, of advocating for the development of social projects and activities that are critical but may not be "fashionable" or profitable, among others. The business sector would make policy proposals, guidelines and tools for policy makers and other stakeholders, would promote industry self-regulation, innovation, and research and development of technologies, standards and processes. United Nations. Report of the Working Group on Internet Governance. June, 2005. Available at <http://www.wgig.org/docs/WGIGREPORT.pdf> Access 5 May 2011.

responsibilities of actors has been one of main reasons why public interest and private interest have been mixed and given similar weight on the discussions about internet governance. It is also one of the reasons why stakeholders have not been able to agree on institutional aspects of the regime, such as the mechanism for "enhanced cooperation" on issues pertaining to the internet, as will be discussed later.

One additional remark that could be made regarding the definition advanced by the Tunis Agenda is that the technical community and the academic community were not identified as separate stakeholders, even though the document recognises the importance of their inputs. A possible explanation for this can be found in the WGIG report, which mentions that these groups were usually part of other constituencies as well. Over the years the technical and academic community have been grouped together and given the same status of other stakeholders on the internet governance regime.

So far we have appointed some stakeholders that take part in internet governance, but we have not mentioned how they interact with one another. There are general rules and principles that guide participation which have been set forth on agreed documents -such as the principles embodied on the Tunis Agenda or ICANN´s bylaws- or developed from bottom-up, from the actual dynamics of interaction among participants.

We will focus on the agreed principles that guide participation in internet governance in the UN realm, particularly those advanced by the Tunis Agenda. There are several reasons for this choice: a) these principles set a precedent in the UN and have been approved by the heads of states of more than 150 governments; b) they attempt to balance the trade-off between private-led and government-led governance and set the basis for a multi-stakeholder model; c) the IGF, one of the main outcomes of the WSIS, is undergoing a process of improvement, and it is important to evaluate how multi-stakeholder participation has been put in practice so far.

After going through an analysis of such processes in the UN environment, a brief analysis of the so-called Civil Rights Framework Initiative, a bill of law proposed by the Brazilian government after an online collaborative consultation process, will be addressed as an experience that has tried to apply the principles of multi-stakeholder participation on the national level.

Principles set forth by the Tunis Agenda

The Tunis Agenda for the Information Society presents a set of procedural and substantive principles that should serve as guidelines for internet governance, including multilateralism and multi-stakeholder involvement, transparency and democracy.

The first difficulty to interpret this set of principles comes from the enumeration of two apparently contradictory principles: multilateralism and multi-stakeholderism.

The perception that these terms would carry an intrinsic opposition is probably related to the text of the Charter that created the UN. While the organisation aims to represent "the peoples of the United Nations", it is statist in design. In this sense it is important to

highlight that states are "partially representative of their people – this is especially the case with liberal democracies. The problem is that states qua states, weather democratic or autocratic, have short-term and geographically circumscribed interests that often conflict with long term, more globalised social goods" (Wapner, 2007).

The limitations that statism has imposed on the UN is one of the reasons why the organisation has turned to civil society, and it has done so in a remarkable manner. Although the UN remain multilateral in nature -in the sense that only states are members of most of its formal bodies and civil society participates in consultative status-, accredited civil society organisations have performed important roles such as mobilizing support for UN policies, gathering information, offering advice and drafting treaties. In the case of the UN convention on rights of people with disabilities, for instance, NGOs not only offered expert advice but also drafted treaty language. This example is not unique. Since the 1990s, accredited NGOs have signed almost all significant UN policy making (Wapner, 2007).

Of course, the importance and impact of civil society involvement in policy making depends on political pressure and negotiation. Each thematic area seems to have evolved in its own way, and it is very important that global civil society acts promptly, in the early years of the internet governance regime, in order to influence the shaping of rules of procedure so as to strengthen their impact on policy making.

It is possible that a multi-stakeholder involvement in policy-making takes place in a multilateral institutional framework, as the UN. It will depend on the rules of procedure and customs followed within each body. In the internet governance regime, however, multilateralism and multi-stakeholder participation have been understood as two mutually excluding concepts, although both appear as guiding principles at the Tunis Agenda. This probably happened because the IGF has become an archetypal model of multi-stakeholder participation. But multi-stakeholder interaction may take different shapes and take place in decision-making bodies, as pointed out before. The relation between multilateralism and multi-stakeholderism needs to be clarified in order to clear the ground for any institutional improvement or reform.

Regarding the participation of other non-governmental stakeholders there is certainly abundant precedent within the UN, and it should be noted that many bodies do not make any difference between non-governmental actors with economic interests and those we traditionally call "civil society", despite that the political reasons that support their participation are intrinsically different. Overlooking the differences under the multi-stakeholder flag weakens civil society, as it dilutes one of its main distinguishing features: its connection with the public interest, or with "the peoples of the world".

Another important principle set forth by the Tunis Agenda was transparency. It is often associated with freedom of information- which includes the right to inform and be informed- and could be defined as the free flow of timely and reliable information, accessible to all interested parties (Kaufmann; Bellver, 2005). Transparency and openness

are interrelated concepts, since the availability of information is necessary for discussion to be truly open to all who wish to intervene.[6] These two principles are, therefore, preconditions for effective multi-stakeholder participation.

When it comes to transparency in the IGF, some relevant steps have been taken during the past years, such as the publication of the chairman's summary, the request for the workshop organisers to present reports of those sessions, the publication of an annual IGF book, the webcast of all sessions, the live captioning and the availability of options for remote participation. Nevertheless, there is room for improvement. The website does not provide a powerful search tool that would help users to navigate the huge amount of information accumulated, and reports from workshop organisers are usually produced to meet a formal requirement, but they are not used as an input to policy development or to promote an incremental evolution of the discussions.[7]

It is also necessary to improve financial transparency since no information is available about the amount of voluntary donations that currently support the IGF or about the expenditure of funds. According to the IGF Secretariat this information was only available to donors, the reason why a balance sheet was not presented to the members of the working group on IGF improvements- created under the auspices of the UN Commission for Science and Technology for Development (CSTD)- as requested during its May 2011 meeting. Since most of the donors are governments from developed countries and private companies[8] there is currently an asymmetry in relation to managerial e-financial accountability provided to stakeholder groups.

When it comes to an evaluation of the openness of the IGF process it is possible to say that this has been one of the main achievements of the forum. At the IGF the process of setting the agenda has been collaborative and bottom-up. Stakeholders have the opportunity to propose and organise workshops, which have turned out to be the most important and valued spaces for discussion during the event. Open consultations are also periodically organised in Geneva to plan and evaluate each IGF.

The barriers for participation at the IGF meeting itself are also very low. Anyone can register online without the need for accreditation. When it comes to the meeting dynamics, important changes were introduced regarding the traditional ways of interaction between governmental and non-governmental actors. All participants attend the meeting on equal footing and have equal time and opportunity to express themselves. There are no symbolic differentiations, which are very common in international fora, such as to set apart reserved seats for government representatives, for example. This contributed to the establishment

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[6] In this context information can be understood as: a) background information which enables decision-making processes and materials to be understood by participants and potential participants in decision-making, by other stakeholders and by the wider public; and b) materials (agendas, background documentation, information about decision-making processes, minutes, resolutions etc.) which themselves form part of a decision-making process. (APC; CoE; UNECE, 2001)

[7] Many actors raised these points in their responses to the questionnaire on IGF improvement. See particularly the contributions from the Internet Governance Caucus (IGC) and APC. Available at < http://www.unctad.info/en/CstdWG/WGIGF_Contributions/> Access 21 July 2011.

[8] The list of donors can be found at <http://www.intgovforum.org/cms/funding> Access on 10 June 2011.

of an informal dialogue, to the emergence of a common language, to the relativisation of silos and to the recognition that all stakeholders are important and interdependent.

The openness of the IGF process is a necessary condition for multi-stakeholder participation, but it reveals nothing about the actual involvement of actors. In other words, "the participation of multiple stakeholder groups in a governance institution does not determine how power is distributed among these groups or how much weight they are given in decision-making processes" (Mueller, 2010). Meaningful multi-stakeholder participation can only take place when there are conditions for effective inclusion as well as balance in terms of numeric representation and political influence, among the stakeholder groups and between actors from developed and developing countries.

The dynamics of regional and multi-stakeholder participationin the IGF

An analysis of regional participation in the IGF over the past five years (2006-2010) shows that European involvement has been high and steady. In contrast, average individual participation from developing regions, such as Africa and Latin America, has been considerably lower. The regional rotation of the IGF contributes to reduce this unbalance, especially when a developing region hosts the meeting. But figures show that these stakeholders do not continue to attend the IGF in subsequent years.
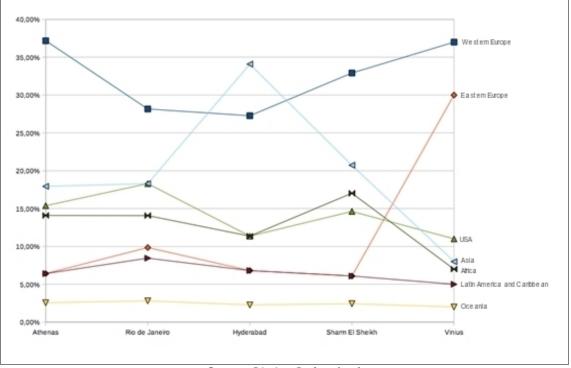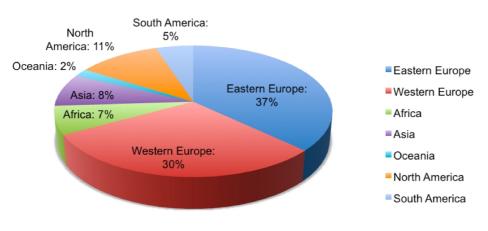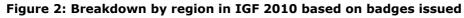
Figure 1: Participation in the IGF per region excluding the host country

Source: Direito, D. (no date)

Undoubtedly, the lack of awareness about internet governance contributes to the low participation of individuals from developing countries. However, there is an indication that lack of resources is an even more significant obstacle to involvement in the IGF. In 2010, 81% of all remote participants were from developing countries, showing a high level of interest of actors from developing regions and the importance of fostering alternative channels for participation.

Figure 2: Breakdown by region in IGF 2010 based on badges issued
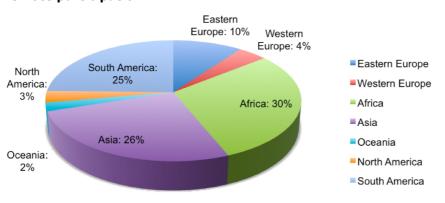

Source: IGF website

Figure 3: Breakdown by region in IGF 2010 based on badges issued and on remote participation

Source: IGF website

Nevertheless, although remote participation has the merit of including people who would otherwise be completely excluded from the process, it is not a substitute for actual physical presence in the IGF. So far, remote participation does not provide equal opportunity to influence effectively and decisively the course of discussions, compared to physical attendance. It is still true to say that "whilst seeking to become a key institution of internet governance, [the IGF] was conceived from its genesis as an annual meeting held in person, with online tools as a mere adjunct" (Malcolm, 2008).

When it comes to the participation of stakeholder groups in the IGF a four-year analysis shows that the participation of governments accounted for an average of 26% of the total number of participants, civil society for 24%, the private sector for 20% and the technical and academic community for 15%. However, the figures also show a tendency of decrease in civil society participation (even though there was a slight recovery in 2010) and of increase in technical and academic community participation. It is possible that these numbers reflect the blurry lines that separate stakeholder groups, especially civil society and academia, but this trend needs further research and analysis.

These figures of participation are illustrative, but the actual conditions for more constant political intervention of the stakeholder groups are even more important. The main spaces for political involvement are currently the Open Consultations and the meetings of the Multi-stakeholder Advisory Group (MAG), which take place periodically in Geneva. The location of the meetings creates a financial barrier to the participation of non-Europeans, especially those from developing countries. While some stakeholder groups are able to self-finance their participation, the same cannot be said about civil society representatives, who rely heavily on external support for their attendance. Consequently, there is usually a deficit in the number of participants from developing countries, especially from civil society, in crucial moments when the IGF agenda is decided and political decisions are made.

This deficit in civil society representation is aggravated by an overlap between the technical and academic community with other stakeholder groups, especially with civil society. For instance, whenever civil society is called to nominate representatives it has become a habit to save slots for actors with academic- but not necessarily technical-backgrounds who have not been embraced as part of the technical and academic community. This ultimately reduces the number of slots for representatives of NGOs and interest groups within civil society.[9] This impacts not only on MAG representation, but also in other fora, such as the Working Group on improvements to the IGF: two out of five civil society representatives were from academic institutions. This overlap is an issue that needs to be addressed, as it impacts on the balance among stakeholders and on political representation.

Some positive suggestions, such as alternative ways for MAG composition, mechanisms for financing developing country participants and the regional rotation of MAG meetings and open consultations were raised in the responses given to the MAG questionnaire[10] and during the consultations on IGF improvement[11]. The latter consultation is being conducted

[9] The separation between civil society and the technical community was requested by civil society representatives when the MAG was firstly created, since most of civil society slots were being assigned to members of the technical and academic community (Malcolm, 2008). Apparently, separating the constituencies was not enough to fully solve the problem.
[10] Available from <http://www.intgovforum.org/cms/contributionsigf> Access 22 July 2011.
[11] Available from <http://www.unctad.info/en/CstdWG/WGIGF_Contributions/>. The government of India has presented particularly detailed suggestions about the composition and role of the MAG. One possible alternative for the composition of the MAG would be to stipulate clear criteria for the entities that would be entitled to represent each stakeholder group. For instance, the business sector members would not be representatives from specific private companies, but would represent different business associations, telecommunication providers, access and content providers, etc. Likewise, civil

under the scope of the Commission on Science and Technology for Development (CSTD) of the United Nations.[12]

Multi-stakeholder participation at the UN Commission on Science and Technology for Development (CSTD)

Not only the improvement of the IGF but also other important aspects of the internet governance regime are going to be revisited by the CSTD. The Commission is expected to carry out a five-year review of the progress made on the implementation of WSIS outcomes and, possibly, to discuss the implementation of a mechanism of enhanced cooperation on issues related to internet governance.

Enhanced cooperation was one of the results of the WSIS discussions. According to paragraph 69 of the Tunis Agenda, it would be a mechanism to "enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues".

The vague definition of enhanced cooperation adopted by the Tunis Agenda has generated disagreements about the mechanism's implementation. Nevertheless, the multi-stakeholder group of experts that took part in the WGIG had proposed four institutional models. Three of them encompassed the creation of a new body that would be responsible for policy making, oversight of resource management- such as additions or deletions to the root zone file, management of IP addresses and introduction of gTLDs- and would assist in dispute resolution.

The implementation of enhanced cooperation has been a contradictory topic. Some actors believe that it should translate into a closer coordination between organisations and stakeholders, and argue that any attempt to create a more centralised body would lead to an anti-democratic control of the internet. Other actors, mostly governments from developing countries and part of civil society, argue that the current political vacuum in global policy making is being filled by policies and standards being developed by plurilateral arrangements, such as OECD and the Council of Europe, in a way that is excluding the participation of developing countries. As it already happens in other international regimes, such as intellectual property, standards and regulation would be shaped by actors from developed countries and then exported to the developing world.

society would be represented by NGOs with a stake in internet governance issues. This model is close to the one adopted by the Brazilian Internet Steering Committee to choose its Council members. For more details see: Governments of India. India's Inputs to the Questionnaire circulated by the Chair of the CSTD Working Group on Improvements to Internet Governance, 2011. Available at <http://www.unctad.info/upload/CSTD-IGF/Contributions/M1/India.pdf> Access 10 June 2011

[12] Resolution 2006/46 of the Economic and Social Council (ECOSOC) decided that the Commission on Science and Technology for Development (CSTD) should assist ECOSOC in the review and assessment of progress made in implementing WSIS outcomes. ECOSOC resolution 2010/2 invited the CSTD Chair to establish, in an open and inclusive manner, a working group which would seek, compile and review inputs from all member states and all other stakeholders on improvements to the Internet Governance Forum (IGF), in line with the renewal of the IGF mandate. The Working Group composition can be found in the chairman's summary of the first meeting, available at <http://www.unctad.org/sections/un_cstd/docs/UN_WGIGF2011d04_en.pdf> Access 22 July 2011.

The importance of the themes to be discussed by the CSTD makes it relevant to evaluate how the principle of multi-stakeholder participation has impacted on its work.

The participation of non-governmental actors in the CSTD is guided by the rules of procedure of the UN Economic and Social Council (ECOSOC) and based on ad hoc arrangements. Both alternatives raise problems: the first may bring about lack of flexibility; the second, lack of clarity and too much precariousness. Two examples illustrate this situation.

In 2006, the CSTD held a panel discussion about its role in the follow up of the WSIS. This panel pointed out that one of the reasons why the CSTD should be mandated to undertake the follow-up of the WSIS was that "the Commission could adopt a multi-stakeholder approach in its work, which has proved to be successful in the WSIS" (Chapter II, item 7 d)[13]. ECOSOC clarified that "while using the multi-stakeholder approach effectively, the intergovernmental nature of the CSTD should be preserved" (resolution 2006/46). This wording actually does not bring a new element into the picture, it only re-affirms the membership of the Commission, which was made clear since its creation. Nevertheless, this observation made by ECOSOC has been interpreted in a narrow way by governments.

From September to December 2010, consultations about the composition, modalities and methods of work of the Working Group on IGF improvements, created within the purview of the CSTD, revealed a near-consensus support for a multi-stakeholder membership. Nevertheless, an intergovernmental meeting decided that the Working Group would be composed only by governmental representatives.[14] After protests and negotiations, non-governmental actors were allowed to join the group with a different status. While governments were full members of the working group, non-government actors would be invited to "participate interactively" in the discussions.[15] The justification for this double standard was the applicability of ECOSOC rules of procedures on the composition of the working group, overlooking the fact that the body was not a working group of the CSTD, but an advisory working group for the CSTD convened by the chair "in an open and inclusive manner".

This decision was a backlash if one considers that the 2005 WGIG, created on a similar context, showed a multi-stakeholder composition. It is possible to counterargument that the formal decision to give non-governmental actors a different status was not reflected on the actual dynamics of the CSTD Working Group, since non-governmental actors could

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[13] CSTD. Report on the 9th session. Available at <http://www.unctad.org/en/docs/ecn162006d4_en.pdf> Access 01 July 2011
[14] Among the participants of the meeting were Argentina, China, Egypt, France, Greece, India, Iran, South Africa, Portugal and the United States. The latter two countries were in favour of multi-stakeholder participation, on equal footing. The summary of the meeting and the list of participants is available at <http://www.unctad.org/sections/un_cstd/docs/cstd2010d08_en.pdf> Accessed 10 July 2011.
[15] The Working Group was composed of 22 states. Twenty actors were invited to "participate interactively" in the discussions, as follows: five representatives from international organisations, five from the private sector, five from civil society and five from the technical and academic community. The minutes of the meeting are available at <http://www.unctad.org/sections/un_cstd/docs/cstd2010d19_report-wsis_en.pdf> Access 10 July 2011.

participate fully in all discussions on an equal footing with governments, but this imbroglio shows how multi-stakeholder participation in internet governance regime is still a moot point for governments.

Another example illustrates the problems inherent to ad hoc arrangements for participation. Usually, non-governmental organisations need to be accredited to ECOSOC to be able to participate in the regular meetings of UN bodies, including those of the CSTD. But due to the multi-stakeholder nature of discussions about internet governance, an exception was created for the participation of non-governmental actors in CSTD, on the following basis:

- Civil society organisations with WSIS accreditation were authorised to participate in the CSTD, with the understanding that, in the meantime, these organisations would apply for consultative status with the ECOSOC. Initially the arrangement would be valid only for two years, but it was extended until 2011. (ECOSOC Decision 2007/215 and 2008/217)

- Business sector entities could take part in the work of the CSTD in more flexible conditions. They should preferably, but not mandatorily, have WSIS accreditation. This arrangement was reviewed in 2010, and was extended until 2011 (ECOSOC Decision 2007/216 and ECOSOC Decision 2010/227);

- Academic entities, including academies of science and engineering, could take part in CSTD meetings without the need for WSIS accreditation, if they express the wish to participate. This arrangement was reviewed in 2010 and extended until 2011 (ECOSOC Decision 2008/218 and ECOSOC Decision 2010/227).

This case allows us to draw some conclusions. First, the participation of non-governmental actors is currently based on temporary decisions that may or may not be renewed after their expiration date. This precarious situation shows the fragility of multi-stakeholder participation in the CSTD. Secondly, there has been a discrepancy on the requirements for the participation of each stakeholder group, and the barriers for the participation of civil society are comparatively higher: while the private sector and technical and academic communities need only to express their interest to participate, civil society needs to have ECOSOC accreditation or have participated in the WSIS in 2003 or 2005.

This arrangement brings several difficulties. Some organisations were created or started their involvement with internet governance after 2005- especially in developing countries, where internet access is more recent-, but they have been formally unable to participate in discussions at CSTD. The only alternative for a new civil society organisation would be to seek accreditation with ECOSOC and undergo a complex bureaucratic procedure. If this organisation passes the evaluation procedure within the UN it will be allowed to participate on an equal footing with the private sector and the technical community groups, which do not have to undergo the same scrutiny.

Certainly, civil society organisations without ECOSOC or WSIS accreditation have found

ways to bypass this restrictive regime by registering under the name of an accredited organisation, for instance. Nevertheless, these kinds of solutions are precarious and do not contribute to overcome the underlying inequalities that this ad hoc regime of non-governmental participation has engendered in the CSTD. This regime is quite symbolic and shows a worrisome inversion of values: the voices of actors who represent private interests had an easier access to the political process, compared to those who "would have the role of promoting public interest objectives", according to the definition of roles and responsibilities proposed by the WGIG.

In the CSTD meeting of May 2011 the Brazilian government proposed a draft decision[16] that would extend the aforementioned arrangements for non-governmental participation until 2015, and asked the CSTD Secretariat to make "lists of non-governmental organisations and civil society entities not accredited to the World Summit on the Information Society that have expressed the wish to participate in the work of the Commission, for consideration and approval by the Council in a timely manner". In its July 2011 meeting ECOSOC adopted without vote all the decisions from the CSTD. Despite being a short-term solution- with deadline in 2015- this decision could be a way to redress the unbalance among stakeholders. It is important to make political pressure for the timely implementation of this decision and to mobilise civil society organisations to engage with the work of the CSTD in the near future.

Multi-stakeholder participation on the national level: The Brazilian experience with Civil Rights Framework for the Internet

The global discussion about internet governance issues, particularly after the emergence of the IGF, served as a catalyst for articulation among stakeholders. This fostered the emergence of bottom-up initiatives, such as the creation of regional and national IGFs. Simultaneously, global awareness has been raised about successful experiences on the national level. Best practice sessions were organised by every IGF and many of them were summarised at the Report on Good Practices in Internet Governance[17].

One of the best practice sessions organised in the 2010 IGF, in Vilnius, aimed at discussing the process of online public consultations promoted by the Brazilian Ministry of Justice, in partnership with the Centre for Technology and Society of the Getulio Vargas Foundation (CTS/FGV). The goal of the consultation was to develop a collaborative process in which all the actors from Brazilian society could jointly identify the rights and responsibilities that should guide the use of the internet in Brazil. The process is an example of the importance and great potential of multi-stakeholder involvement in policy-making.

The draft bill was officially named Marco Civil ("Civil [Regulatory] framework", as opposed

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[16] CSTD. Report on the fourteenth session. E/2011/31-E/CN.16/2011/5, p. 13. Available at <http://www.unctad.org/en/docs/ecn162011d5_en.pdf> Access 05 August 2011
[17] IGF Secretariat. Report on Good Practices in Internet Governance from the IGF 2006 – 2009. Available at < http://www.ifap.ru/library/book479.pdf> Access 10 July 2011.

to a "Criminal framework"), placing internet access among relevant civil rights. The consultation with Brazilian society was divided into two periods, each of them spanning roughly 45 days. The first period involved a debate about general principles, which then served as reference to write the text of draft bill. These principles were divided into three groups: (1) individual and collective rights (privacy, freedom of speech and access rights); (2) principles related to intermediaries (net neutrality and civil liability); and (3) governmental directives (openness, infrastructure and capacity building). The draft text for the bill, reflecting the comments received on its first phase, was then put under consultation for the second period.

Contributions were received through a website (http://culturadigital.br/marcocivil) hosted by Cultura Digital, an online platform developed by the Ministry of Culture, to encourage the emergence of online communities for the discussion of public policies for the digital environment. During both periods of the consultation users were allowed to comment on the consultation texts, paragraph by paragraph, directly at the website. Nonetheless, blog posts, tweets, articles published in mainstream media, and institutional and individual contributions sent by email (i.e. not through the official consultation platform) were also taken into consideration.

The final text of the bill was recently presented to Brazilian Congress. It contains 25 articles divided into 5 chapters, concerning: (1) Preliminary Provisions; (2) User Rights and Guarantees; (3) Provision of Connection Services and Internet Services; (4) The Role of Public Authorities; and (5) Final Provisions. The bill begins by advancing users' rights and some general principles for the regulation of the internet, before dealing with the issues of the preservation of connection logs, secondary liability for ISPs, and net neutrality, and then wraps with directives aimed at the public sector.

Predictably, debates that involved the balance between conflicting rights and interests, freedom of speech, anonymity, privacy and access rights were the topics of heated and often rich debates during both stages of the consultation process. Over 2,000 contributions from individual users, governmental and non-governmental entities were received.

NGOs, universities, internet service providers (collectively through associations, as well as individually), business companies, law firms, law enforcement agencies, individuals, Brazilian embassies from all over the world, and many other participants have joined the online public hearing. The participation of several stakeholder groups has promoted a diversity of opinions and the availability of high quality information and expert advice, which have helped the government to draft a balanced bill. The openness and transparency of the process, entirely conducted online, in the public eye, has improved the legitimacy of the bill. Marco Civil was introduced in Congress with the political weight and legitimacy that a bill would be expected to have after a complex multi-stakeholder discussion.

Article 2 of the bill, as it stands, bases the regulation of internet usage in Brazil on a number of fundaments such as "(…) II – human rights and the enjoyment of citizenship in

digital environments; III – plurality and diversity; IV – openness and collaboration (…)."[18]

Also, among the regulation principles of internet usage in Brazil, Article 3, VII, of the bill, states the "preservation of the participatory nature of the Internet". Such an unusual principle to be cast into legislative wording is a key example to understand how internet regulation processes are to be governed in Brazil and how the decade-long debate over openness and participation in the global fora created the necessary conditions for national levels to build upon them.

If approved by the National Congress as it stands, the Marco Civil would be a federal law, applicable to public and private entities, as well as to individuals. Its provisions would be enforceable and one could resort to courts as a means to have such principles complied in further national internet regulation processes.

The Brazilian Internet Steering Committee (CGI.br) also addressed the importance of collaborative internet governance practices in its Charter of Principles for the Governance and Use of Internet. Article 2 states: "Internet governance must be exercised in a transparent, multilateral and democratic manner, with the participation of the various sectors of society, thereby preserving and encouraging its character as a collective creation."[19]

After the example offered by the Marco Civil experience, the Brazilian government has engaged in other processes of online consultation to draft new legislation. Worthwhile mentioning are the consultation for the reform of the Copyright Law, lead by the Ministry of Culture and the reforms of the Age Rating System, of the Privacy and Data Protection Law and of the Civil Procedures' Code, all proposed by the Ministry of Justice.

Such examples illustrate a very special moment in which open public consultations start to be more frequently conducted with stakeholders, and in which technology is the key factor behind a democratic change in legislative process. Closed hearings or consultations in the country's capital are being complemented or even substituted by a more open and transparent online process.

Conclusion

The lessons learned from the process of the IGF and the CSTD shed some light on the importance of multi-stakeholder participation in internet governance. The maintenance of an open and transparent process that encourages participation from a diverse range of actors is paramount for democratic governance, as that envisaged in the Tunis Agenda for the Information Society. However, openness and transparency must come together with means to effectively include those interested in engaging in discussion and policy making, especially those facing more participation constraints, such as civil society and developing countries. The challenge of bridging the gap that separates those who are well informed

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[18] Marco Civil Bill of Law (as sent to the National Congress on August 25th, 2011). Available at <http://bit.ly/p3bHF1> Access 01 September 2011
[19] Brazilian Internet Steering Committee. Charter of Principles for the Governance and Use of Internet. Available at <http://www.cgi.br/english/regulations/resolution2009-003.htm> Access 01 September 2011

and have the resources to participate in internet governance fora on one side, and those who have neither the resources nor the awareness (but may have the expertise in related areas of activism), can only be met if coordinated efforts are conducted.

First, it is important that governments from developing countries take internet governance as a relevant matter. For them, access to infrastructure (and therefore to knowledge) is still a great challenge, which calls for a concerted effort to elaborate a development agenda for internet governance in order to guide policy options. It also calls for open, multilateral and multi-stakeholder institutional frameworks. For developing countries, the perils of tagging along to a developed country agenda or to focus on infrastructure and critical resources, overlooking other emerging topics, is a recurrent problem.

Civil society, as mentioned in the examples analysed both in the IGF and in the CSTD processes, finds itself in a redefining moment. There are concrete opportunities to enlarge its role in internet governance, but this will only be secured with concerted political mobilisation and with outreach efforts. In procedural terms, the openness of the internet governance regime needs to be combined with the means for effective inclusion and for politically influencing the process. On a more substantive note, it is important for civil society to be aware, on the one hand, of the distinguishing features that justifies its participation and define it as a separate stakeholder group, and, on the other, of the shared goals and responsibilities that unites it with all other stakeholders.

In the end, if international structures sometimes hinder the speed that would be required to implement changes, national experiences should step in to allow a creative switch in the way relationships among governments, civil society, the business sector and academic/technical community is developed. We hope that initiatives such as the Marco Civil can contribute to enrich the debate over participation in internet governance and highlight the importance of having an open, transparent and inclusive process for debate and decision-making in internet governance fora.

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