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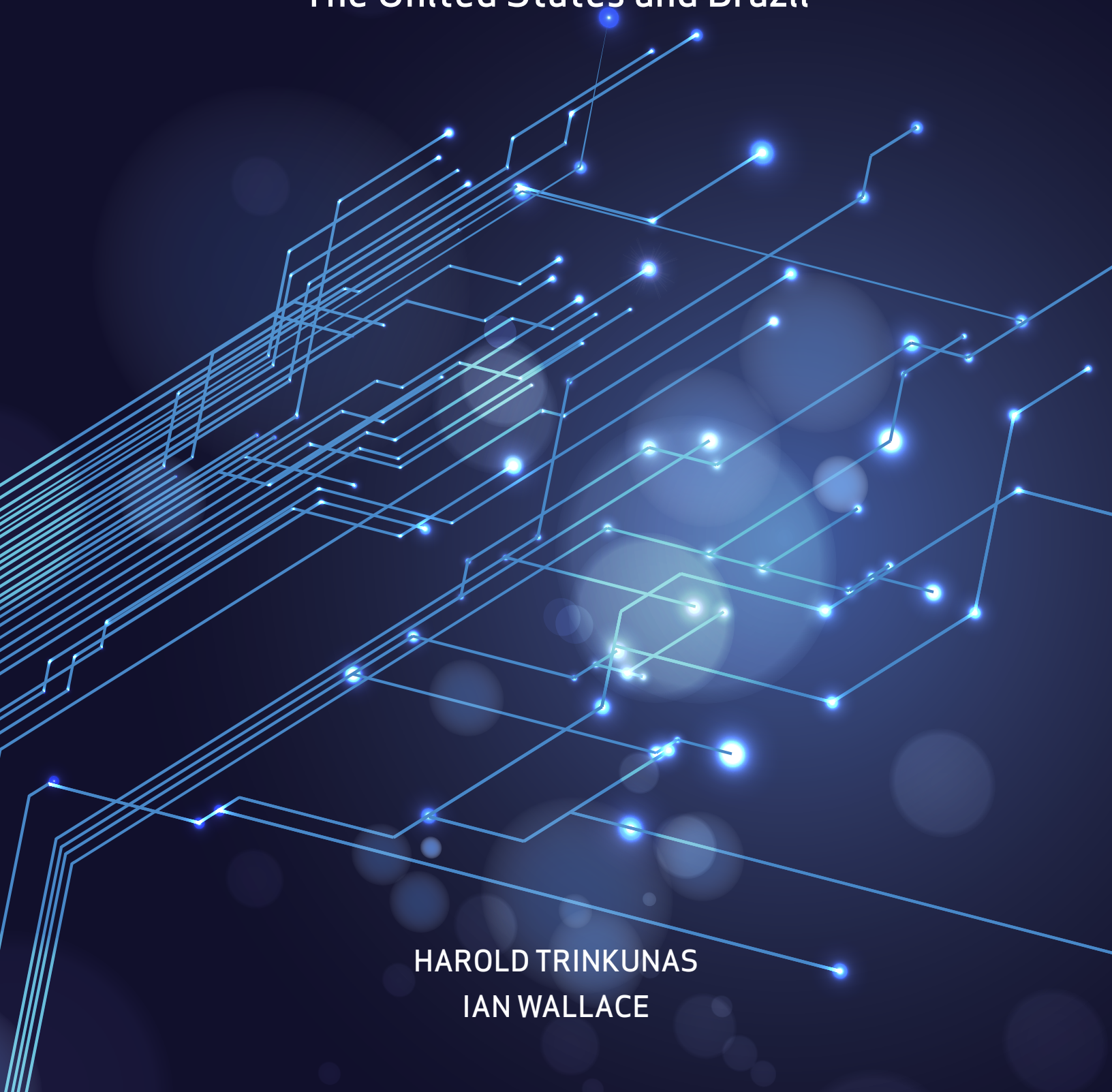
Converging on the Future of Global Internet Governance

The United States and Brazil



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The crisis in U.S.-Brazilian relations provoked by Edward Snowden's 2013 revelations of U.S. espionage via the global internet, and Brazil's initial threat to respond in ways that were detrimental to the integrity of the internet, serve to highlight the increasing intersection of foreign policy and internet governance.

U.S. preeminence in the global internet governance regime, which rests on its pioneering role and status as host of the Internet Corporation for Assigned Names and Numbers (ICANN), has drawn criticism from other major powers. Critics—including Brazil, India, Russia, and China —have traditionally advocated for multilateral governance through existing international institutions such as the International Telecommunications Union and processes such as the World Summit on the Information Society (WSIS). This approach allows all states to participate on an equal basis, but privileges the role of governments over other important stakeholders such as civil society and the private sector.

Brazil's decision to host the NETmundial conference in April 2014, which produced an agenda focused on furthering a free, diverse, neutral, and universal internet, signaled a change in course on internet governance. That the NETmundial conference, organized by Brazil's domestic internet steering committee, the Comitê Gestor da Internet no Brasil (CGI.br), included government, private sector, and civil society actors on an equal footing (often referred to as the multi-stakeholder model), was a second notable departure from Brazil's traditional internet diplomacy.

The apparent shift in Brazil's emphasis on global internet governance revealed at NETmundial is rooted in domestic politics. Brazil was an early and highly successful adopter of the internet, able to consider and incorporate lessons learned from other countries' experiences in developing its own domestic multi-stakeholder model for addressing technical operations (the CGI.br) and domestic legislation for addressing internet public policy (the Marco Civil da Internet). The process of developing successful domestic internet governance fostered an active and engaged civil society and private sector in Brazil that preferred the NETmundial agenda for the global internet over the Rousseff administration's initial top-down state-centered response.

The subsequent NETmundial Initiative, which builds on the success of the conference, has the potential to reframe the global internet governance debate. Instead of supporting the actions of authoritarian powers such as China and Russia post-Snowden, Brazil's actions around the Initiative have opened up space for other emerging global powers, such as India, to someday move toward supporting a public policy agenda that preserves internet freedom and innovation, even while they remain critical of Western dominance of the internet's technical infrastructure.

The NETmundial Initiative, which is intended to build internet governance capacity around the world, could provide a further avenue for developing countries to access advice and assistance in solving difficult internet public policy issues and advance the international internet freedom agenda. However, the Initiative has become contentious, in part due to the involvement of the CGI.br's partners: ICANN and the World Economic Forum. How Brazil plays its hand going forward could therefore have an important impact on the course of internet governance discussions in the months and years ahead, with significant implications for the United States and the rest of the world.

Policy Recommendations

United States

- The Obama administration should stand firm on its current policy toward the transition of the Internet Assigned Numbers Authority (IANA), and it should not give in to congressional voices that want the U.S. government to retain oversight of the IANA function.
- Embedding the multi-stakeholder governance approach preferred by the United States in international institutions offers the best prospects for preserving an innovative and flexible internet.
- The United States should discourage the convening of a new WSIS in the near future. The WSIS process has been useful in so far as it has outlined (repeatedly) the fractures among states on the issue of global internet governance, but it is time to move beyond the present stalemate.
- The United States should do what it can to support and encourage the success of the NETmundial Initiative or a similar multi-stakeholder mechanism to build capacity around solving global internet public policy issues that have not yet been successfully addressed by existing institutions or the WSIS process.

Brazil

- Brazil should support the completion of the IANA transition by which ICANN can assume these duties independently from any contractual relationship with the United States government.
- Brazil should continue to support the multi-stakeholder model as embodied in the NETmundial conference and the subsequent Initiative rather than revert back to its traditional preference for multilateralism. Not only does the concept behind the NETmundial Initiative embody the preferred Brazilian approach to internet governance as it is practiced at home, but it also offers a concrete example to other countries struggling with internet governance issues—whether technical or public policy.
- Brazil should ensure that the WSIS+10 review process complements rather than contradicts the successes that Brazil has already achieved with the NETmundial conference and Initiative. This does not mean abandoning Brazil's traditional commitment to multilateralism in general, but recognizing that Brazil is more likely to achieve its objectives by other means in the global internet governance arena.

Global Internet Community

- We recommend supporting the completion of the IANA transition and the internationalization of this function as soon as possible as this offers the best opportunity to sustain the legitimacy of the present multi-stakeholder model for governing technical operations. If it is not possible to complete the transition by the end of the year, ICANN should make its proposal for the transition before the conclusion of the WSIS+10 review in December 2015.
- We also recommend that the stakeholders in the global internet community consider the NETmundial Initiative as a constructive addition to the organizations and institutions addressing internet public policy issues. Changes may be required, however, in particular to encourage greater transparency and bottom-up participation.
- If the NETmundial Initiative does not succeed, there remains a need for an organic multi-stakeholder process, led by civil society and the private sector together with government representatives, to assist developing countries in resolving salient internet public policy issues.

Acronyms and Abbreviations

ANATEL	National Telecommunications Agency (Brazil)
ARPANET	Advanced Research Projects Agency Network
CCITT	International Telegraph and Telephone Consultative Committee
ccTLD	Country code top-level domain
CGI.br	Comitê Gestor da Internet no Brasil
DNS	Domain name system
gTLD	Generic top-level domain
FCC	Federal Communications Commission
GAC	Governmental Advisory Committee
IANA	Internet Assigned Numbers Authority
ICANN	Internet Corporation for Assigned Names and Numbers
IETF	Internet Engineering Task Force
IGF	Internet Governance Forum
ISOC	Internet Society
ITR	International Telecommunications Regulation
ITU	International Telecommunication Union
Marco Civil	Marco Civil da Internet (Brazilian Civil Rights Framework for the Internet)
NCSA	National Center for Supercomputing Applications
NSA	National Security Agency
NSFNET	National Science Foundation Network
NSI	Network Solutions, Inc.
NTIA	National Telecommunications and Information Administration
NWG	Network Working Group
OSI	Open Systems Interconnection
RFC	Request for Comments
TCP/IP	Transmission Control Protocol/Internet Protocol
UCLA	University of California, Los Angeles
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
W3C	World Wide Web Consortium
WCIT	World Conference on International Telecommunications
WEF	World Economic Forum
WGIG	Working Group on Internet Governance
WSIS	World Summit on the Information Society

Introduction

In the summer of 2013, National Security Agency (NSA) contractor Edward Snowden revealed details of efforts by U.S. intelligence to conduct mass electronic surveillance on a global scale, including intercepting the communications of foreign leaders such as Angela Merkel of Germany and Dilma Rousseff of Brazil. The true impact of the Snowden revelations from mid-2013 on will be debated for years. One point on which both Snowden's detractors and supporters can agree is that his actions served to highlight a major new strand in international relations: the increasing convergence of foreign policy and internet governance.

The purpose of this report is to look at the past and present of internet governance as a foreign policy issue with a view to informing future policy. To better understand where we have come from, where we are now, and where we might be heading post-Snowden, we have chosen to highlight the improbable convergence among two countries that have been central to internet governance: the United States and Brazil.

The choice of the United States is obvious and no discussion of internet governance would be possible without it. The emergence of a "multi-stakeholder" governance model that includes government, private sector, and civil society actors in decision-making processes on an equal footing is rooted in the U.S. experience as an internet pioneer. That said, the U.S. role in internet governance is often misunderstood. With the globalization of the internet, the United States' preeminent position has come under suspicion, both by those who want to challenge the United States commercially, and also by those who want to challenge the United States politically. More widely, U.S. preeminence provides opportunities for those who want to challenge the assumptions and values on which the current internet governance regime rests. Some of these critics have instead advocated for "multilateral" governance of the global internet through existing international institutions such as the United Nations (UN), which they believe allows for all states to participate on an equal and democratic basis. As a result of the debate between these two positions—multi-stakeholder and multilateral—foreign policy and technology policy have become increasingly intertwined in the United States and around the world.

The choice of Brazil is less obvious, but it is very deliberate. While other nations have and will have major roles to play in the evolution of the internet, Brazil will be a critical player for four reasons:

First, Brazil has long been a vocal participant in international internet governance debates, beginning with its outspoken participation in the process leading to the World Summit on the Information Society (WSIS) in 2003. In addition, Brazil has played a particularly important and unique role in course of events post-Snowden. By hosting the NETmundial conference in April 2014 and then taking a leading role in the subsequent NETmundial Initiative, Brazil staked out new ground in

the global debate on developing standards and best practices to address public policy issues raised by the internet. At the same time, Brazil has remained active in more traditional UN multilateral discussions. On the whole, Brazilians have played central roles in both the multilateral and multi-stakeholder arenas on internet governance in ways that illuminate real choices for the global community.

Second, while some Brazilians oppose the tag (and indeed claim it to be insulting), Brazil is often held up as a swing state on internet governance issues. Unlike more authoritarian states like China and Russia—who show greater concern over the implications of the internet for regime stability than for freedom—and the liberal democracies of the United States and the European Union—who fear increased state control—Brazil is broadly supportive of a universal free internet while being critical of the international governance structures that guide it. Thus, countries such as Brazil whose policies do not obviously fall into either camp can expect to be wooed by both sides of the ideological divide.[1]

Third, the path of Brazilian foreign policy as an emerging power—particularly as a champion of multilateralism, in part in opposition to perceived U.S. "hegemony"—is also an important element in this story. That Brazil was a leading voice critical of U.S. actions post-Snowden reflects its traditional approach to global diplomacy, favoring universal institutions governed by international law in which all states have an equal and sovereign voice.[2]

And fourth, Brazil's own domestic experience with the internet illuminates a potential middle ground in the polarized debate between multi-stakeholder and multilateral approaches to internet governance.[3] Brazil's path to the establishment of a domestic internet led to the development in 1995 of a truly multi-stakeholder governance body, the Comitê Gestor da Internet no Brasil (CGI.br), as well as the passage in 2014 of the Marco Civil da Internet (Brazilian Civil Rights Framework for the Internet, hereafter Marco Civil),[4] a far-reaching internet rights law. Both the CGI.br and the Marco Civil are now being held up as a model for others by organizations such as the Internet Corporation for Assigned Names and Numbers (ICANN) and the World Economic Forum (WEF) through the new NETmundial Initiative, providing a path forward for developing countries seeking to address the public policy questions raised by the internet.

By anchoring our story in the history of U.S. and Brazilian politics and foreign policy, we aim to show the choices available for policymakers addressing the future of internet governance. As the country in which the internet originated, the United States developed governance policies and practices in an organic, piecemeal, and even ad hoc approach as technical and public policy issues arose. Some of these have been successful and broadly emulated, such as the multi-stakeholder model. Others reflect U.S. cultural and legal idiosyncrasies and, in the area of cybersecurity and electronic surveillance, the role of the United States as a global superpower. Brazil was an early and highly successful adopter of the internet, but it was able to consider and incorporate lessons learned from the U.S. experience in developing its own domestic multi-stakeholder model for addressing technical operations, the CGI.br, and domestic internet

[1] Tim Maurer and Robert Morgus, "Tipping the Scale: An Analysis of Global Swing States in the Internet Governance Debate," Internet Governance Paper No. 7 (Waterloo, Canada: Centre for International Governance Innovation, 2014), https://www.cigionline.org/sites/default/files/no7_2.pdf.

[2] For a discussion of Brazil's traditional foreign policy, see Text Box 1 on page 18.

[3] For initial discussion of a possible third way, see Wolfgang Kleinwachter, "NETmundial: Watershed in Internet Policy Making?" in *Beyond NETmundial: The Roadmap for Institutional Improvements to the Global Internet Governance Ecosystem*, ed. William J. Drake and Monroe Price (Philadelphia, PA: Internet Policy Observatory, University of Pennsylvania, 2014), 117, http://www.global.asc.upenn.edu/app/uploads/2014/08/BeyondNETmundial_FINAL.pdf.

[4] Lei 12.965, April 23, 2014, https://www.publicknowledge.org/documents/marco-civil-english-version. English translation provided by Carolina Rossini.

legislation, the Marco Civil; together they are a model for protecting individual freedom online in a democratic society. While both the U.S. and Brazilian models of domestic internet governance are appropriate for democracies, the Brazilian approach provides a coherent approach to addressing internet technical and public policy issues that may be more applicable to the many states and societies that are latecomers to the global internet.

We share the view that multi-stakeholder processes that give a strong voice to those who own and use the internet's infrastructure—mostly non-state actors, civil society, and private corporations—are preferable to other modes of governance. This governance approach to the technical operations of the internet, which deals *inter alia* with issues such as the allocation of internet addresses, domain names, and autonomous systems numbers, is what historically enabled the success and integrity of a truly global internet.[5]

The push by authoritarian countries such as Russia and China to impose state-centric models through multilateral institutions reflects their fears of the effects of widely accessible information on citizen engagement in their own countries. However, Russia and China have been able to gather a broad base of support from developing countries that lack the experience or the resources to address the thorny policy issues raised by a global internet. The deadlock between the advocates of multi-stakeholder and multilateral approaches has slowed progress on developing common solutions and best practices to address serious issues such as privacy, anonymity, censorship, social inclusion, net neutrality, spam, and cybercrime. Instead of moving forward on internet public policy, the contenders repeatedly circle back to argue about the model developed to govern technical operations.

In the wake of the Snowden revelations, Brazil's actions around NETmundial and the subsequent Initiative have opened up space for other major internet powers, such as India, to someday move toward supporting an agenda that preserves internet freedom and innovation, even while they remain critical of Western dominance of the internet's infrastructure. Brazil's new agenda on global internet governance, should it become consolidated, would be a positive outcome for the United States because it embeds multi-stakeholder governance in international non-governmental organizations. This is now preferable to a U.S.-centric governance model whose global legitimacy has been eroded by NSA surveillance practices and remains under pressure from China and Russia.

The CGI.br's leadership in the new NETmundial Initiative seems to offer the hope that the multi-stakeholder model, first developed to address the technical operations of the internet, could be further extended to provide standards and best practices on a wider range of internet policy issues. Many of these policy issues fall outside the mandate of existing technical organizations, such as ICANN, and have proven too contentious to address multilaterally within the UN. Though the implementation of the NETmundial Initiative has drawn substantial criticism from the internet community,[6] the critique should not obscure the need for an entity or entities based around promoting the principles—a universal, free, diverse, neutral, and accessible internet—that emerged from the NETmundial conference in 2014. The NETmundial Initiative, as an international multi-stakeholder organization, could very well provide a model for an alternative site to help developing countries build the capacity and institutions to address difficult and contentious internet policy issues.

[5] Laura DeNardis, *The Global War for Internet Governance* (New Haven: Yale University Press, 2014), 25.
[6] Kieren McCarthy, "International Effort to Wrangle T'Internet From NSA Fizzles Out in Chaos," *The Register (UK)*, March 4, 2015, http://www.theregister.co.uk/2015/03/04/NETmundial_council_meeting_cancelled_again/.

Structure of the Report

This first section of this report, therefore, looks at how we have gotten to where we are in global internet governance. What the relatively short, but often badly understood, history of the internet shows is that its development arguably owes more to circumstance than design—that Transmission Control Protocol/Internet Protocol (TCP/IP) would become a global standard was not a foreordained outcome given the number of competing, often proprietary, standards that were available in the 1970s. However, the evolution of internet governance has tracked the wider arc of global politics as U.S. leadership of the global order has become increasingly contested in the twenty-first century.

The second section of the report turns to the history of the internet in Brazil and explains how this country developed model internet governance institutions at home and became a leading critic internationally of the U.S.-centric internet governance system.

The third part of this report examines how the fallout from the Snowden surveillance revelations, with both the United States and Brazil in pivotal roles, has reshaped the global internet governance discussion. For while Snowden's leaks could be considered only peripherally connected to the more "traditional" technical internet governance issues, the reaction to the them inspired a chain of events that led to President Rousseff personally placing Brazil in a new role as the champion of the global internet community, and using that position to challenge the U.S. dominance of the internet in a new, and arguably more effective, way.

The fourth and final part of the report projects how events might unfold in the future, and makes recommendations aimed at ensuring the best possible outcome. This depends on the extent to which the NETmundial Initiative or a similar international approach to internet public policy issues takes root and helps build support for multi-stakeholder governance separate from the United States, but in ways that preserve the highly successful approach it first pioneered. As we will show, there is still much to play for, and we will offer recommendations as to how the United States, Brazil, and others who engage with them can ensure the continued success of the internet.

PART ONE

The Emergence of a "U.S.-Centric" Internet and the Origins of the Global Internet Governance Debate

The internet has undoubtedly evolved beyond the wildest expectations of its early pioneers. Given how central it has become to global economic development, innovation, and communications, it is hardly surprising that it attracts the attention of governments all over the world. To gain insight into how the internet has affected international relations, it is necessary to understand the United States' unique relationship with the internet and the ways in which others have reacted to it. The depth and breadth of the international attention is a product of how the United States, through its private sector, universities, and civil society, has leveraged its foundational role in the internet's development to shape the institutions that affect its governance. Moreover, it has been building for over three decades, setting the stage for the particularly conflictive response to the Snowden revelations in the summer of 2013.

The widespread adoption of TCP/IP in the 1980s in preference to alternative protocols meant that the global internet inherited its technical operations governance DNA from the United States, where a multi-stakeholder approach prevailed. The conflation of "multi-stakeholderism" with "U.S.-centric" affected future debates on global internet governance, and led to the emergence of a countervailing position, championed by Brazil, India, China, and Russia, in favor of multilateralism at the UN-convened WSIS in 2003 and 2005. The debate between multi-stakeholderism and multilateralism that has predominated in global internet governance for the past decade obscures the fact that mechanisms and institutions for promoting good technical operations standards have worked, but they have far outstripped global progress on developing internet policy standards and best practices to deal with issues such as spam, cybercrime, privacy, digital inclusion, e-commerce, and cybersecurity.

The Development of Internet Technologies and the "Triumph" of TCP/IP

In retrospect, the path from a network designed to facilitate collaboration among university researchers in the United States to a global internet connecting over a third of the planet's population seems inevitable, yet its early development belies that manifest destiny. It is now commonplace to date the beginning of the internet to October 1969 when researchers at University of California, Los Angeles (UCLA) and Stanford Research Institute made the first connection to the ARPANET (Advanced Research Projects Agency Network), a U.S. Department of Defense funded project. But the ARPANET was not the internet. Prior to the advent of the first "killer app"—email—the network remained quite small, consisting of 23 universities and government agencies as of 1973.[7]

[7] David C. Mowery and Timothy Simcoe, "Is the Internet a US Invention?—An Economic and Technological History of Computer Networking," *Research Policy* 31, no. 8 (2002): 1369–87, doi: 10.1016/S0048-7333(02)00069-0.

The ARPANET played an important role in blazing the trail and encouraging the establishment of more networks, including outside the United States, as well as bringing together key personnel that would influence the internet's development for decades. Encouraged by the success of the ARPANET, networks proliferated around the developed world in the 1970s and 1980s, generally centered on academic institutions and big businesses. In the United States, this included Usenet, BITNET, and Fidonet while overseas, academic networks developed in the UK (JANET) and Japan (JUNET).[8] Yet few could talk across networks. This soon led to a further requirement to find a good way for networks to communicate, i.e., the "inter" in internet. An early response to this came from ARPANET pioneers, including Bob Kahn and Vint Cerf, who in 1973 developed a new suite of protocols which, after several years of iterative development, became known as the Transmission Control Protocol and Internet Protocol, commonly referred to as TCP/IP.[9]

It was by no means a given that TCP/IP would emerge as the global standard. Some—especially in Europe—did not necessarily see TCP/IP as the answer. In the late 1970s, a joint initiative by the International Organization for Standardization and the International Telegraph and Telephone Consultative Committee (CCITT), among others, was established to develop a set of protocols; however, these were mainly envisioned as an alternative to proprietary protocols then being developed by commercial companies like IBM. The CCITT was part of the International Telecommunication Union (ITU), an early multilateral coordination body subsumed within the UN in 1947, which allocated use of the radio spectrum and set standards for interstate communications. In the late 1970s and early 1980s, it was seen as an obvious organization to lead work on what many governments saw as an extension of national telecommunications networks.[10] The result was the Open Systems Interconnection (OSI) suite of standards.[11] As OSI was being developed, it became clear that TCP/IP was the main rival protocol; in part because the project offered an alternative to what was perceived as the U.S.-centric TCP/IP approach, OSI was heavily backed by European governments.

But by the mid-1990s TCP/IP had comprehensively trumped OSI. Essentially, TCP/IP was on the scene earlier, and it worked. In contrast, OSI was designed by committee and often had a complexity which reflected that. Second, in 1983, with carefully directed funding from the Defense Advanced Research Projects Agency, a project at University of California, Berkeley wrote TCP/IP into a version of UNIX. This in turn quickly became the operating system for many university computing networks in the United States, and through a process of emulation, UNIX and TCP/IP were incorporated into other countries' university networks. Third, the U.S. government, this time through the National Science Foundation, deployed a new network called NSFNET (National Science Foundation Network) to connect additional universities in 1986. This went on to replace ARPANET as the "backbone" of the emerging internet, and it mandated the use of TCP/IP. And finally, TCP/IP was free—both financially (OSI in contrast came with a hefty copyright fee payable to the International Organization for Standardization) and philosophically, meaning that the results of ARPANET research were made available to all.[12]

[8] Douglas Comer, *The Internet Book: Everything You Need to Know About Computer Networking and How the Internet Works*, 4th ed. (New York: Addison-Wesley, 2006).
[9] Barry M. Leiner et al., "The Past and Future History of the Internet," *Communications of the ACM* 40, no. 2 (1997): 102–8.
[10] Daniel W. Drezner, "The Global Governance of the Internet: Bringing the State Back In," *Political Science Quarterly* 119, no. 3 (2004): 491–492.
[11] Ivo Maathuis and Wim A. Smit, "The Battle Between Standards: TCP/IP vs. OSI Victory Through Path Dependency or by Quality?" in *Proceedings of the 3rd IEEE Conference on Standardization and Innovation in Information Technology (SIIT 2003)* (Delft, The Netherlands: IEEE, 2003), 161–76; and Andrew L. Russell, "'Rough Consensus and Running Code' and the Internet-OSI Standards War," *IEEE Annals of the History of Computing* 28, no. 3 (2006): 48–61, doi: 10.1109/MAHC.2006.42.
[12] Katie Hafner, *Where Wizards Stay up Late: The Origins of the Internet* (New York: Simon and Schuster, 1998).

The predominance of TCP/IP produced a major "network effect," meaning the benefit of being attached to a large number of other nodes and users in the network of networks using TCP/IP far outweighed the benefits of less popular alternatives such as OSI. It also meant that other governments (especially in Europe) and the ITU, along with intergovernmental "control" in general, were marginalized in the international "internetworking" of computers.[13]

As a corollary of TCP/IP becoming the global standard, the designs, protocols, and decision-making procedures established by academics and graduate students for ARPANET became the foundation for global internet governance.[14] ARPANET pioneers initially established the Network Working Group (NWG) in 1968 under Steve Crocker from UCLA to address design issues and develop protocols. The NWG used an open decision-making structure that operated by near-consensus, albeit after vigorous debate. Even the name of the process, Request for Comments (RFC), reflected inclusiveness. In 1969, another UCLA researcher named Jon Postel took on the task of editing the RFCs. RFCs are still the basis for the production of standards and best practices in the Internet Engineering Task Force (IETF), the dominant entity in this space.[15]

For ARPANET to function, every device that connected to it needed a unique identifier shared by no other. As such, there needed to be a central and authoritative allocation of internet addresses. Responsibility for allocating addresses also fell to Postel. After moving to the Information Sciences Institute at the University of Southern California, Postel initially maintained operational control of the centralized list of internet addresses. Once the scope became too large, Postel's role shifted to overseeing the policy for the address assignment function (subsequently known at the Internet Assigned Numbers Authority or IANA function), a task he performed up until just before his death in 1998. Delegating these functions to registrars removed a potential barrier to the increasingly rapid growth of the internet.[16]

After Postel co-authored the RFC that proposed the creation of the domain name system (DNS), he effectively became the custodian for policy relating to the administration of a limited selection of so-called generic top-level domains (gTLDs) such as .com, .org, and .edu. This set up a hierarchical structure which delegated responsibility to internet registrars for maintaining a list of assigned names and numerical addresses, but linked back to an authoritative "root zone file" under Postel's oversight. After other countries expressed strong preferences for geographical delegation, so-called country code top-level domains (ccTLDs) such as .uk for the United Kingdom and .br for Brazil, Postel also became the person responsible for their allocation.[17]

The triumph of TCP/IP and consequent dominance of ARPANET-derived standards and procedures created a system centered on the United States, but one that gave preference to non-state actors over governments. In the crucial early years of the internet, there was a single root file with an authoritative list located in California. This ensured that the internet remained a single whole.[18] The importance of this was demonstrated as non-U.S. operators began to look for more authority to register users. When the first regional IP address registry, the Réseaux IP Européens (European IP Networks), was established in 1989, it did so

[13] Drezner, "The Global Governance of the Internet: Bringing the State Back In," 493.
[14] Lawrence Lessig, "Open Code and Open Societies: Values of Internet Governance," *Chicago-Kent Law Review* 74, no. 3 (1999): 1405, http://scholarship.kentlaw.iit.edu/cklawreview/vol74/iss3/17.
[15] Walter Isaacson, *The Innovators: How a Group of Inventors, Hackers, Geniuses and Geeks Created the Digital Revolution* (New York: Simon and Schuster, 2014).
[16] DeNardis, *The Global War for Internet Governance*, 47–55.
[17] Peter K. Yu, "The Origins of CCTLD Policymaking," *Cardozo Journal of International and Comparative Law* 12, no. 2 (2004): 387.
[18] Milton Mueller, *Ruling the Root: Internet Governance and the Taming of Cyberspace* (Cambridge, MA: MIT Press, 2002).

through the delegation of address space allocated by Postel and with reference back to the single root file, despite the preference of European governments for the OSI protocols which afford more authority to governments. This in turn became the model for other such regional registries, including the Latin America and Caribbean Network Information Center established in 1999.[19]

In addition, the subversion of the "old order" where governments took a leading role in international telecommunications was reinforced by Postel's use of personal judgment in the allocation of ccTLDs, the first of which was created in 1983 and with others subsequently added at a steady rate of about 10 a year. In practice, the "ownership" of ccTLDs was often allocated to the first person who asked for it as long as they met a couple of criteria: they were "responsible persons" who were also located in the actual territory of the ccTLD that they were claiming. This often led to ownership by an academic institution, such as a computer science department, bypassing government telecommunications authorities that were used to having control over such matters within their territories. This later added to the perception in countries such as Russia and China that the internet represented unwarranted foreign interference.[20]

Whereas the ccTLDs did eventually end up under government authority, gTLDs were allocated more liberally. This easy availability of gTLDs was largely accidental at first, but it was increasingly driven by business considerations once the volume of requests rose and there was payment associated for their use. Lower access requirements made gTLDs (.org or .com) more popular than the carefully controlled ccTLDs. France, for example, restricted access to .fr domain names; as a result, as late as 1999 more organizations in France were registered under .com and other gTLDs than under .fr. Governments were therefore unable to use control over their own ccTLD as leverage over their domestic internet because of the readily available alternative of gTLDs.[21]

By the early 1990s then, the United States dominated global internet governance both through key personalities and through the culture the ARPANET pioneers had created. This was not particularly a result of a grand design on the part of the U.S. government, although it did owe much to the choices of successive administrations. Indeed, it could be argued that it was the government's hands-off approach that allowed the culture of the ARPANET to evolve into the global internet governance regime as we know it today.

While Tim Berners-Lee invented the next step in the global internet, the World Wide Web, at the European Organization for Nuclear Research in Switzerland in 1989, again it was in the United States that the right combination of factors existed to tap its potential. This included the academic expertise at the National Center for Supercomputing Applications (NCSA) at the University of Illinois where Marc Andreessen and his colleagues built Mosaic, the first user friendly web browser. Government support through the High Performance Computing Act of 1991 generously funded NCSA. Venture capitalists in Silicon Valley invested in Andreessen's spin out company Netscape. And the United States was the epicenter of the enabling infrastructure provided by the parallel emergence of the personal computer and software industries.

The First Contest Over Internet Governance and the Birth of ICANN

The United States' early, unrivalled leadership in developing internet technologies also meant it was the first to deal with the governance challenges

[19] Will A. Foster, Anthony M. Ruthkowski, and Seymour E. Goodman, "Who Governs the Internet?" *Communications of the ACM* 40, no. 8 (1997): 15–20, doi: 10.1145/257874.257877.
[20] Yu, "The Origins of CCTLD Policymaking."
[21] Matthew A. Zook, "Old Hierarchies or New Networks of Centrality? The Global Geography of the Internet Content Market," *American Behavioral Scientist* 44, no. 10 (2001): 1679-1696, doi: 10.1177/00027640121958113.

the new technology created. Eventually, issues of cybercrime and national security, privacy and surveillance, and online freedom became subject to international discussion, and in some cases international agreement (such as the Council of Europe's Convention on Cybercrime, which entered into force in July 2004). However, in international relations the dominant issue has been the "control" of the DNS and the allocation of names and numbers through the IANA function, both of which are coordinated by U.S. private sector actors. This link to the United States has been viewed by some countries as a source of U.S. domination over the internet and an unwillingness to allow other international actors to have influence over its governance.

During the 1980s, there also emerged a new consciousness of a non-governmental or civil society "internet community" with the authority or even responsibility to preserve the openness and freedom of what they had created. This was evidenced in 1986 with the establishment of the IETF to discuss technical management issues. David Clark famously summarized the IETF's approach in 1992, by which time over 600 people were attending meetings, saying: "We reject kings, presidents and voting; we believe in rough consensus and running code."[22] Nor were such thoughts restricted to the technical community. 1990 saw the founding of the Electronic Frontier Foundation to defend internet freedom, one of whose founders, John Perry Barlow, was soon to issue a "Declaration of Independence of Cyberspace."[23] In 1992, Cerf and others established the Internet Society (ISOC), and while ISOC's main role was to fund the development of standards by the IETF, it also provided some institutional grounding to this new "movement."

Despite its U.S. origins, the emerging community was self-consciously internationalist in its outlook. Foreign connections to NSFNET grew from eight countries in 1988, to 39 countries by the end of 1991, and 87 countries by May 1995, mainly through personal relationships among researchers.[24] The IETF, which developed the critical common standards and protocols, first met outside the United States in 1993; this was also the first time in which attendance was evenly split between U.S. and non-U.S. participants.[25]

One consequence of the increasing self-awareness of the "internet community" was a growing question of who had authority over the IANA function and the root file. Postel and others in the community often acted as if they had that authority. However, by 1990, this was not the view of everyone in the U.S. government, particularly at the Federal Networking Council, which was the ultimate source of Postel's funding.

Such ambiguity could not go on forever. In 1991, the U.S. government decided to transfer the contract for many of the administrative functions for maintaining the DNS to Network Solutions, Inc. (NSI), a private contractor, albeit with the Information Sciences Institute at the University of Southern California (where Postel worked) later becoming a subcontractor to NSI and Postel taking the title "IANA manager."[26]

[22] Lessig, "Open Code and Open Societies," 1413. Rough consensus has been taken to mean agreement by 80 to 90 percent of participants in a discussion. Running code refers to having workable technical solutions for the subject under consideration. Participation in the Internet Engineering Task Force (IETF) is famously unrestricted, although in practice, both technical expertise and the resources to attend key meetings are prerequisites for effective participation.

[23] John Perry Barlow, "A Declaration of the Independence of Cyberspace," February 8, 1996, https://projects.eff.org/~barlow/Declaration-Final.html.

[24] Comer, *The Internet Book*.

[25] Paul Hoffman, ed., "The Tao of IETF: A Novice's Guide to the Internet Engineering Task Force," IETF, November 2, 2012, http://www.ietf.org/tao.html.

[26] Milton Mueller, "ICANN and Internet Governance: Sorting Through the Debris of 'Self-regulation,'" *info* 1, no. 6 (1999): 497-520, http://www.icannwatch.org/archive/mueller_icann_and_internet_governance.pdf.

Meanwhile, the internet community and the U.S. government were increasingly at odds over governance issues. By 1995, ISOC was already floating the idea that it had authority over the domain space, building their argument partly on the international nature of the internet. That was followed by a bold plan developed by a "blue ribbon panel" that included members from across the internet community along with a representative from the ITU. They proposed a new non-profit Internet Council of Registrars to be incorporated in Geneva, Switzerland. The plan was heralded by the secretary general of the ITU as a new form of cooperation, which he called "voluntary multilateralism" and he offered institutional support. But, the plan lacked the support of two key constituencies, the U.S. government and the U.S. business community, not to mention NSI who physically held the root file and was not eager to give up what had become a very lucrative contract.[27]

Finally energized, in March 1997 the White House established an Interagency Working Group which quickly rejected the idea of a role for the ITU. Later that year, with the U.S. Department of Commerce now in the lead, oversight of the IANA function was taken "in-house," although day-to-day operations continued to be managed by the contractor, NSI. Meanwhile, an alternative arrangement was brokered with the help of key players in the U.S. business community. This arrangement would conform to the requirements of a June 1998 White Paper that garnered international support because it proposed the establishment of an international organization and the opening up of gTLDs to foreign registrars. It also drew support from the internet community because its structure was built around the existing IANA function. It was clear that the new entity should be internationally representative and should not have government officials on its board, but it would nonetheless have to be based in the United States. Eventually almost all parties, including NSI which would have to work under the new body, were reconciled to the new arrangement.[28]

As part of this initiative, the Department of Commerce selected ICANN—a nonprofit corporation established in the state of California—to administer relevant parts of the IANA function under contract beginning on February 26, 1999. Members of the U.S. government, and all others, were required to work through a Governmental Advisory Committee (GAC) in their involvement with ICANN. The Department of Commerce would have a separate agreement with NSI ensuring that no changes to the root file were made without Commerce's approval.[29] And while the long-term goal was to transition oversight of IANA to ICANN, the U.S. government deferred that to a future date—the announcement of which eventually took more than 15 years to arrive.

The outcome of the first contest over internet governance produced three effects:

1. The U.S. government's use of its authority to preserve the multi-stakeholder model through creating ICANN contributed to the perception that this approach is designed solely to support U.S. interests.
2. The U.S. government's retention of "backstop authority" over the IANA function, despite a promise to transfer this authority to ICANN, became an easy target for international criticism and affected ICANN's credibility.
3. Civil society proponents (and in some cases originators) of the multi-stakeholder model found it more difficult to argue that their preferred governance model was not a proxy for U.S. interests.

[27] Wolfgang Kleinwächter, "De-Mystification of the Internet Root: Do We Need Governmental Oversight?" in *Reforming Internet Governance: Perspectives from the Working Group on Internet Governance*, ed. William J. Drake (New York: United Nations Information and Communication Technologies Task Force, 2005), 209–25.
[28] Drezner, "The Global Governance of the Internet: Bringing the State Back In," 494–497.
[29] Mueller, "ICANN and Internet Governance."

The Emerging Internet Public Policy Deficit

Even as the creation of ICANN settled the debate over governance of technical operations (for now), there was an emerging array of public policy issues that the spread of the internet made salient. Particularly, once the commercialization of the internet and the development of the World Wide Web took place in the 1990s, millions of new people joined the user base. The decision by the Federal Communications Commission (FCC) to treat internet provision as a "value added" service not subject to regulation resulted in an explosion of private sector activities in this space.[30] The internet allowed problematic behavior, such as fraud or crime, to transfer to a virtual domain, and it enabled entirely new categories of undesirable behavior. Questions arose around vulnerabilities created by phenomena such as spam, anonymity, hacking, identity theft, and the erosion of privacy. It also raised issues about what rights internet users have regarding access to networks, freedom from censorship, and regulation of data collected on customers by private companies. It also raised a host of legal issues around cybercrime, intellectual property, and jurisdiction. And as e-commerce and business use of the internet became a significant factor at the end of the 1990s, the issues of taxation, consumer protection, equal treatment of all data traveling over private networks regardless of origin (an issue which later came to be known as net neutrality), and encryption became important.[31]

As a founder of the internet, the United States encountered many of these issues for the first time. A vigorous network of technical bodies, civil society groups, scholars, activists, lobbyists, foundations, and private sector interest groups sprang up to debate policies around this set of issues. In response, legislative, judicial, and regulatory bodies began to produce an ad hoc collection of policies, standards, norms, and legislation that addressed some of these issues well, others badly, and some not at all, but nevertheless within a context of iterated improvement through democratic processes.[32] But as the internet became a global institution, it began to impact societies and territorial jurisdictions with very different norms, laws, rights, and systems of government, many with no established sources of expertise, with no civil society organizations or private enterprises to influence policy, and with no government policymakers familiar with internet public policy. This increasingly created a sense of unease among governments and led to a growing call to address this at the international level through existing multilateral institutions such as the UN.

WSIS: The UN Strikes Back

By 1998, every single populated country on the planet had an internet connection.[32] Among all the public policy issues facing the late-entrants to the internet revolution, the emerging "digital divide" first attracted serious governmental attention at multilateral institutions. The digital divide became shorthand for concerns over social inclusion and access to the advantages of the internet, not only by those less well-off in the developed world, but also those less developed countries that had newly connected to the internet. This contributed to calls at the ITU Plenipotentiary in Minneapolis in 1998 for a future WSIS, agreed upon as a resolution without much debate. By 2001 little had happened, but the UN had agreed for the ITU to take the lead for a Summit "to formulate a common vision and understanding of the global information society" and to "harness the potential

[30] Jason Oxman, "The FCC and the Unregulation of the Internet" (OPP Working Paper No. 31, Office of Plans and Policy, Federal Communications Commission, 1999), https://transition.fcc.gov/Bureaus/OPP/working_papers/oppwp31.pdf.
[31] Laura DeNardis, "The Emerging Field of Internet Governance" (working paper, Yale Information Society Project, Yale Law School, 2010), http://ssrn.com/abstract=1678343.
[32] Lessig, "Open Code and Open Societies."

of knowledge and technology to promote the development goals of the Millennium Declaration."[33] Competition on who would host WSIS resulted in a compromise where the event would take place in two parts: the first would occur in Geneva in December 2003 and the second in Tunis in 2005.

Despite the need to focus on addressing public policy issues raised by the emergence of a global internet, all too much of the discussions in multilateral forums centered on who had influence over the technical operations governance regime, i.e., ICANN. The WSIS process revealed the basic positions on global internet governance: the United States and its allies favoring a multi-stakeholder approach that preserved the flexible arrangement that had produced a successful global network, and the emerging powers—Russia, China, India, and Brazil—pushing for a multilateral approach that would provide them with greater influence. Prior to the second WSIS meeting, the Working Group on Internet Governance (WGIG) established in Geneva became the main vehicle for educating civil society, the private sector, and governments about the issues at stake. The WGIG process helped demonstrate the value of multi-stakeholderism by including non-governmental participation as part of its process. Nevertheless, while WGIG agreed that "no single government should have the preeminent role in relation to internet governance," it also recognized governments' responsibility for addressing internet public policy issues.[34] WGIG did not suggest a single alternative to the arrangements then in existence, and this partly reflected the unavoidable reality that the U.S. government had already signaled in an exchange with the European Union that it was not willing to give up its oversight of the IANA function. By 2005, international pressure was something the Bush administration had learned to withstand, and no one else was willing to press the point.[35]

As a result of the stalemate between proponents of multilateralism and multi-stakeholderism, the second WSIS meeting at Tunis was also unable to arrive at any agreement on alternative governance arrangements. The 2005 Tunis Agenda for the Information Society, the outcome of the second meeting, can therefore be described as a draw. It did not mention ICANN or ITU and praised the "existing arrangements." While debate about correct meaning of the term "enhanced cooperation"—a formulation included as a late night compromise—has plagued subsequent discussions of this issue,[36] the practical outcome has been to reinforce the idea of multi-stakeholder governance. For example, WSIS produced the Internet Governance Forum (IGF), paradoxically an institution that is famously multi-stakeholder in its approach, which has met annually since 2006 and has become one of the most visible outcomes of the WSIS process. So while the Agenda ran on for 122 paragraphs and called for 11 lines of action,[37] the main practical effect of WSIS on governance was to reinforce the status quo: the established U.S.-centric model for the governance of internet technical operations, and a stalemate on addressing internet public policy issues.

The Post-WSIS Decade: The Long Stalemate Over Global Internet Governance

In the years following the initial WSIS process, the international politics of internet governance took the form of a low-intensity sparring between

[33] Milton Mueller, *Networks and States: The Global Politics of Internet Governance*, *Information Revolution and Global Politics* (Cambridge, MA: MIT Press, 2010), 58.

[34] Working Group on Internet Governance, *Report of the Working Group on Internet Governance (Château de Bossey, June 2005)*, http://www.wgig.org/docs/WGIGREPORT.pdf.

[35] Mueller, *Networks and States*, 67-71.

[36] Samanthan Dickinson "A Journey Can be More Important than the Destination: Reflecting on the CSTD Working Group on Enhanced Cooperation" in *Beyond NETmundial: The Roadmap for Institutional Improvements to the Global Internet Governance Ecosystem*, ed. William J. Drake and Monroe Price (Philadelphia, PA: Internet Policy Observatory, University of Pennsylvania, 2014), 65, http://www.global.asc.upenn.edu/app/uploads/2014/08/BeyondNETmundial_FINAL.pdf.

[37] World Summit on the Information Society, "Tunis Agenda for the Information Society," WSIS-05/TUNIS/DOC/6(Rev.1)-E (November 18, 2005), http://www.itu.int/wsis/docs2/tunis/off/6rev1.html.

those who sought to defend the status quo and those who continued to push for a greater role for governments. Three main trends can be observed:

- Multi-stakeholderism, despite its detractors, remained the dominant paradigm in internet governance, reinforced through periodic meetings of the IGF.
- Notwithstanding, there remained a large constituency of discontent, much of it directed at ICANN. This criticism came in various forms. Some wanted a more multilateral approach. Some doubted ICANN's ability to avoid capture by governments, in particular through the GAC. And others, while basically supporting ICANN's multi-stakeholder approach, were critical of its performance and especially its management of the new ccTLD process.
- Growth in the internet user base took place disproportionately in the developing world since the market in the developed world was largely saturated. This started to change the dynamics of the internet governance discussion as new users began to seek solutions and capacity to address internet public policy issues.

The latent conflicts produced by these three trends came to a head at the 2012 World Conference on International Telecommunications (WCIT), where it became clear that Russia, India, China, and Brazil had the support of a large number of developing countries for their position.[38]

Multi-Stakeholderism and the IGF

The dominance of the multi-stakeholder model post-WSIS can be seen not only in the operation of ICANN, but also in the development of the IGF, where more activist constituencies have continued to promote their agendas. Russia and China have pushed for greater intergovernmental discussion, Brazil has emphasized development, and civil society groups have advocated for more bottom-up engagement. However, those who were broadly happy with the WSIS outcome, including the United States, have generally ensured that these events have remained primarily talking shops (albeit quite useful ones). Efforts to make the IGF more "effective," such as Brazil's push for an "agreed statement" at the 2007 IGF in Rio de Janeiro, have generally been rebuffed. Ironically, given the UN sponsorship of the event, the IGF has become the rallying point for support of a more open and participatory multi-stakeholder process, even more so than ICANN.[39] As one observer has argued, "It is the only institution that aggregates, openly and inclusively, the entire multi-stakeholder community. Or at least has the potential to do so."[40] But the IGF was not able to fulfill the role of developing best practices and internet public policy recommendations that many countries new to the internet sought.

ICANN and its Discontents

Following WSIS, ICANN's central challenge over the past decade has been to sufficiently establish its credibility as a viable custodian of the IANA function in its own right. To that end it sought to internationalize its presence, especially following the appointment of Fadi Chehadé as CEO in June 2012. A more challenging task, however, has been to manage governmental interest—striking the right balance between accommodating their views and avoiding capture by them.

[38] Tim Maurer and Robert Morgus, "Tipping the Scale: An Analysis of the Global Swing States in the Internet Governance Debate," (Internet Governance Papers No. 7, *Center for International Governance Innovation*, 2014) https://www.cigionline.org/publications/tipping-scale-analysis-of-global-swing-states-internet-governance-debate.

[39] Marcus Krummer, "The Ever Evolving Landscape of Internet Governance," in *The Stakes are High: Essays on Brazil and the Future of the Global Internet,* ed. Ellery Roberts Biddle, Ronaldo Lemos, and Monroe Price (Philadelphia, PA: Internet Policy Observatory, University of Pennsylvania, 2014), 10-17, http://globalnetpolicy.org/wp-content/uploads/2014/04/StakesAreHigh_BrazilNETmundial_final.pdf.

[40] Farzaneh Badii, "The UN and the Future of the Internet Governance Forum," *Internet Governance Project* (blog), September 28, 2014, http://www.internetgovernance.org/2014/09/28/the-un-and-the-future-of-the-internet-governance-forum/.

ICANN has been forced into the internet public policy debate, even though its remit is more properly the coordination of issues related to the technical operations of the global network. Since 2002, the ICANN by-laws have made clear that —in line with the WSIS outcome—governments were responsible for public policy. This distinction has been tested by ICANN's program to significantly open up the gTLDs. Various cases have complicated relations between the GAC and the ICANN Board, which is not bound to accept the GAC's views but does have to explain its reasoning if it does not. Examples include the .amazon case where the ICANN Board accepted the GAC's recommendation following an objection from Brazil and a collection of other South American countries;[41] and the .xxx case which was eventually approved by the ICANN Board in 2011, but only after a long process that included a politically-inspired intervention by the U.S. Department of Commerce through the GAC in 2005.[42]

Ultimately, the inability of governments to address global internet public policy challenges through the WSIS process is what set the stage for increasingly contentious multilateral meetings. Moreover, it raised questions about the ICANN model, and led the developing world to believe that the existing global governance processes were failing to provide them with workable solutions.

The ITU and WCIT

The UN remained engaged on internet issues across a wide range of agencies and committees during the past decade, but it is the ITU and its activities that nevertheless attracted the most attention because of a growing fear among some constituencies that it still aspired to take over the internet. In reality, the ITU lacks the authority or capacity to do that. Nevertheless, the ITU-sponsored WCIT held in Dubai in December 2012 demonstrated that there is still a powerful groundswell of opposition, particularly among states in the developing world, to current governance models.

WCIT was called to update the International Telecommunications Regulations (ITRs), the treaty through which global telecommunications are coordinated. While it was hard to argue with the rationale for such an update—the extant version had been agreed to in 1988—in the run up to the meeting there was concern in the United States and the wider internet community that some states would use the event as an excuse to insert the ITU into internet technical policy debates.[43]

The most aggressive attempts by multilateralists at WCIT to extend the role of the ITU were rebuffed and the Final Acts contained little to upset the post-WSIS status quo. Yet some of the debates were much more contentious than those to which seasoned ITU hands—used to working by consensus—were accustomed. It was clear that it was not just the most authoritarian states that supported positions that the United States and its supporters felt would undermine the global internet. Signaling the failure of a consensus-based approach to negotiations, the United States and 54 other nations (including those from the European Union and Japan) refused to sign on to the new ITR, in opposition to the 89 states, including many developing countries, that had agreed to the new document.[44]

[41] Patricia Adriana Vargas Leon and Andreas Kuehn, "Political Economy of Critical Internet Resources: South America vs. Amazon, Inc.: The Battle for Amazon (Economía política de los recursos críticos de Internet: América del Sur vs Amazon, Inc.: La Batalla por la Amazon)," *CPR LATAM - Communication Policy Research Conference 2014*, (July 16, 2014), doi: 10.2139/ssrn.2462585.

[42] Lennard G. Kruger, *Internet Governance and the Domain Name System: Issues for Congress,* Report No. R4251 (Washington, DC: Congressional Research Service, Library of Congress, 2013), https://www.fas.org/sgp/crs/misc/R42351.pdf.

[43] Those concerns were encouraged by comments such as those by Russia's (then) Prime Minister Putin who stated explicitly that the United Nations should have responsibility for the Internet. Concern was also exacerbated by the level of secrecy associated with the preparations for the event, leading scholars at George Mason University to establish a WCITLeaks website (wcitleaks.org) to give more visibility to the proposals under discussion.

[44] Milton Mueller, "ITU Phobia: Why WCIT was Derailed," *Internet Governance Project* (blog), December 18, 2012, http://www.internetgovernance.org/2012/12/18/itu-phobia-why-wcit-was-derailed/.

For the media, which for the most part had ignored the subject for a decade or more, the outcome of WCIT was simplistically deemed a victory of multi-stakeholderism over multilateralism. More nuanced observers outlined the reasons why states, particularly in the Global East and South, had voted as they had;[45] this included fear of their own ability to manage internet policy challenges such as spam, digital inclusion, privacy, intellectual property rights, and cybersecurity. The deficit in institutions, norms, and best practices to address key issues of internet public policy drove many developing countries to align with those pushing for a greater role for the ITU because they saw no other available source of technical assistance. Still, the divided vote was alarming, and with the ITU Plenipotentiary only two years away, discussions quickly turned to how to win over "swing states," such as Brazil, whose support was seen as crucial for constraining further attempts to pass power over the internet to multilateral institutions.

[45] Sally Shipman Wentworth, "WCIT Postmortem: The Lessons Learned" (speech, NANOG 57 conference, Orlando, FL, February 4, 2013), http://www.internetsociety.org/doc/wcit-postmortem-lessons-learned.

PART TWO

Contrasting Domestic and International Approaches to Internet Governance in Brazil

Brazil has long played a role as a critical (in all senses of the word) actor in global internet governance, including engaging with ICANN from its very founding, while also advocating for multilateral alternatives through the ITU as early as the first WSIS meeting in Geneva in 2003. Internet governance brings together three areas of concern for Brazilian state policy: achieving technological development, pursuing a prominent international role, and checking U.S. dominance in the global order. The internet is a major technological revolution with global implications for the relative power of states because of its impact on innovation, productivity, and international communication. Given its global aspirations toward major power status and history of playing scientific catch up with the great powers, Brazil is naturally keen to ensure that it fully participates in the internet revolution. In addition, Brazil has been concerned about the governance arrangements that manage the growth of the internet because they are heavily centered in the United States, particularly due to the role of ICANN. To Brazilians, this raises alarm bells about yet another instance in which a key international governance space is structured on an unequal basis among states.[46] As a result, Brazil has tended to align internationally with other critics of the present global internet governance structure, including Russia and China, and on occasion, Europe and India.[47] This means that its positions are in line with its conviction that global governance functions best when all states have an equal status and equal say in determining international outcomes.

By the time the Snowden revelations emerged in the summer of 2013, Brazil had become well-established as a significant internet player, although for very different reasons at home and abroad. Domestically, Brazil had a robust and growing internet user base, including the second largest number of Facebook accounts in the world. Brazil's domestic network incorporated the second largest number of internet exchange points in the world, second only to the United States. Its domestic internet steering committee, the CGI.br, was a model of multi-stakeholder management for internet technical operations. The CGI.br had a long-standing and close relationship with ICANN and the global civil society movement focused on internet governance. Brazil's domestic non-governmental organizations that focused on internet public policy issues were highly developed, in large part the product of national debates over how to address issues such as cybercrime, privacy, net neutrality, digital access, and spam. Internationally, Brazil's diplomats were leading proponents of a role for the UN in global internet governance, and

[46] Ambassador Benedicto Fonseca Filho (director, Department of Scientific and Technological Themes, Foreign Ministry, Federative Republic of Brazil), interview by authors, Brasilia, Brazil, August 26, 2014.

[47] Jeferson Fued Nacif (chief of International Affairs, ANATEL, Federative Republic of Brazil), interview by authors, Brasilia, Brazil, August 26, 2014.

TEXT BOX 1

Brazil's Global Aspirations

Brazil has long been a large country with the ambition to become a great power. By far the largest country in South America, Brazil differentiated itself historically from its neighbors by language, culture, and its relative political stability. In addition, Brazil benefitted from a history of peaceful relations with its neighbors, resolving its border disputes in the late nineteenth century and its long rivalry with Argentina in the 1980s.[48] However, translating a large territorial expanse and absence of external threats into global influence has proven to be difficult for Brazil. With great natural resource wealth, Brazil depended primarily on commodity exports; its development of technological and scientific capabilities therefore lagged behind those of the traditional great powers such as Great Britain and the United States. The combination of material weakness and peaceful history has led Brazil to de-emphasize the pursuit of hard power in favor of using diplomacy and soft power to advance its interests. It has also led to an overwhelming domestic focus on economic development as a means for national advancement, and today, Brazil is the seventh largest economy in the world, ranking on par with that of the United Kingdom in terms of gross domestic product.

But Brazil's aspirations for global influence differ from that of other rising powers. Secure in its geostrategic neighborhood, Brazil has long advocated for peace, sovereignty, non-intervention, and universally applied international law as the basis for relations among states. This has meant strong support for multilateral mechanisms such as the United Nations and the Bretton Woods institutions. Although it initially aligned with the United States during World War I and World War II, Brazil has become increasingly critical of the unilateral dimension of U.S. foreign policy. This has led Brazil's diplomats to push for multilateralism as the basis for addressing issues such as international trade, climate change, and development.[49] In contrast to those who participate in Brazil's domestic internet governance, its diplomats have a long-standing commitment to global internet governance based around multilateral institutions where all countries have an equal voice and vote.

longstanding critics of multi-stakeholderism. The divergence between Brazil's international and domestic approaches to internet governance proved relatively unproblematic until the Snowden revelations transformed Brazil's support for multilateralism in international forums into a threat for domestic internet actors.

The Internet in Brazil

The U.S. approach to the internet, and to internet governance through a multi-stakeholder approach, would prove to be highly influential in the development of Brazil's domestic internet institutions. Brazil's connection to the global internet was the culmination of a long trajectory of networked computing that began in the 1970s at its academic institutions, led to the development of a university-centered national network in the 1980s, and culminated with permanent access to the global internet in 1991.[50] That year, Brazilian universities supported a shift to TCP/IP-based networks and convinced the national telephone company to provide a permanent fixed line to connect to the U.S. network backbone. A 4,800 bps (bits per second) modem connection from the State of São Paulo Research Foundation to Fermilab in Chicago carried the first TCP/IP data packets in September 1991. That same year, two Brazilian computer scientists, Demi Getschko and Michael Stanton, traveled to the United States as representatives of Brazil's National Research Network, Brazil's internet backbone, to participate in IETF and the Federal Engineering Planning Group meetings and learn more about the multi-stakeholder approach to internet governance in the United States. They found a warm reception and interest from U.S. academic colleagues in sharing access to networks and information with Brazil.[51]

[48] Harold Trinkunas, *Brazil's Rise: Seeking Influence on Global Governance* (Washington, D.C.: Brookings Institution, 2014), http://www.brookings.edu/~/media/research/files/reports/2014/04/24-brazils-rise-trinkunas/trinkunas-brazils-rise.pdf.

[49] Ambassador Mauricio Carvalho Lyrio (Secretary for Diplomatic Planning, Foreign Ministry, Federative Republic of Brazil), interview by authors, September 4, 2014, Brasilia, Brazil.

[50] Marcelo Savio Revoredo Menezes de Carvalho, "A trajetoria da Internet no Brasil: do surgimento das redes de computadores a instituçao dos mecanismos de governança" (master's thesis, Universidade Federal do Rio de Janeiro, 2006).

[51] Peter Knight, *The Internet in Brazil: Origins, Strategy, Development and Governance* (Bloomington, IN: AuthorHouse, 2014).

In 1994, drawn by news of the success of private internet providers in the United States, Embratel, the long-distance arm of Brazil's national telecommunication company Telebras, began to study the possibility of providing commercial internet access. At the time, access to the internet in Brazil was available primarily through academic networks, although access for civil society had broadened slightly as a consequence of Brazil's role in hosting the Earth Summit in Rio de Janeiro in 1992. Embratel believed that it would be able to use its power as the national monopoly to reap higher fees from internet users. The company's efforts to monopolize commercial internet access in Brazil ran into fierce resistance from both consumers and President Fernando Henrique Cardoso's new administration. Consumers had long been highly critical of the ossified and inefficient service provided by Embratel, and they recoiled at the thought of what would happen if this approach were applied to internet service provision.[52]

The Cardoso administration, on the other hand, had come to power in 1995 with a strong privatization agenda, and Embratel's proposed new monopoly was a non-starter with this new team of policymakers. The Ministry of Communications issued a decree, called Norma 4/1995, defining internet access as a value-added service, not a telecommunications service subject to the national regulatory regime for that area. This prevented Embratel from controlling the market for internet access in Brazil, and paralleled decisions by the FCC in the United States to treat the internet as a value added service that was not subject to the same level of regulatory oversight as regular telecommunications.[53]

Instead of empowering Embratel, the Ministry of Communications set up a public-private partnership to manage internet governance in Brazil, the CGI.br. This entity also had the distinction of being the registrar for Brazil's top-level domain, .br. The CGI.br was designed to include features of U.S. internet governance, including the multi-stakeholder model that brought leading experts into the decision-making process; however, CGI.br also drew on Brazil's predilection for resolving disputes through dialogue and negotiation among organized sectors of society. Many of Brazil's internet pioneers formed part of the initial staff, and even though a government official chaired the steering committee, the day-to-day workings of the CGI.br were largely handled by private actors.[54]

The failure of Embratel to enter the internet market and the creation of the CGI.br effectively shielded Brazil's domestic internet from state dominance and spawned a vibrant private internet sector.[55] What followed was an explosion of new internet services in Brazil, much as had occurred in the United States. Over 9,000 internet service providers, a number many magnitudes greater than that found in most developed countries (the United States has a little over 100, by contrast), had entered the market place by 2013. Small and medium sized internet service providers, often serving very small communities in Brazil's interior, coexist alongside very large national operators that target urban consumers. Oversight efforts by ANATEL, Brazil's National Telecommunications Agency formed in the wake of the eventual breakup and privatization of Embratel and Telebras in 1998, remained hamstrung by the ban on regulating value-added services and its limited funding to engage with such a large number of domestic internet actors.[56]

[52] Ana Novaes, "The Privatization of the Brazilian Telecommunications Sector," in *Privatization in Brazil: The Case of Public Utilities*, ed. Armando Castelar Pinheiro and Kiichiro Fukasaku (Rio de Janeiro: BNDES / OECD, 1999), 111-141.
[53] Ibid.
[54] Cristiana Gonzalez (Ph.D. candidate, University of São Paulo), interview by authors, São Paulo, Brazil, August 22, 2014.
[55] Carvalho, "A trajetoria da Internet no Brasil," 135-142.
[56] Knight, *The Internet in Brazil*.

TEXT BOX 2

Contrasting Models of Multi-Stakeholder Governance: The United States and Brazil

For many in the internet community, particularly in civil society and in the United States, the multi-stakeholder decision-making mode is seen as superior to the state-centered process of multilateralism that is typically associated with the United Nations system.

However, multi-stakeholderism is often misunderstood to require that all such processes include the private sector and civil society in addition to governments in decision-making. Even scholars who generally support such a decision-making process for internet governance are quick to point out that not all of the many decisions involved in the operation of the internet merit the involvement of all stakeholders all of the time. As Laura DeNardis has observed, "It is important to view multistakeholderism not as a value itself applied universally… Certain areas of Internet governance should jurisdictionally be overseen by national governments or via international treaties. Other areas are effectively administered by the private sector on non-profit institutions… Still other areas require direct involvement of many stakeholders…"[57] It is those latter areas with which this report is most concerned.

Nor should multi-stakeholder governance mechanisms be seen as necessarily more democratic or egalitarian. Rather, supporters see them as superior because they bring the relevant experts to the table to make decisions that contribute to improving internet operations. The internet, which emerged from an academic environment and is largely operated by the private sector, is seen to be a governance space where non-state actors have accumulated the predominant technical expertise and should have a dominant voice in making decisions.[58]

Against that background, it should not be surprising that there are different flavors of the multi-stakeholder model around the world. And significantly for this study, the United States and Brazil exemplify contrasting approaches. Although the United States was the birthplace of multi-stakeholder internet governance, the U.S. government has had a schizophrenic attitude toward the multi-stakeholder model, at times explicitly handing off responsibility to private actors such as ICANN while also retaining (at least in theory) the power to make binding decisions, for example in approving changes to the root directory.

In Brazil, the multi-stakeholder model that CGI.br developed also brings multiple private and civil society actors to the table together with government, but the model is based on explicit representation of different sectors (private businesses, civil society, academia, and the scientific and technical community); non-governmental representatives are selected through elections. In fact, the literal translation of the Brazilian term for multi-stakeholder model (*multissetorial*) is "multi-sectoral" governance. This approach has its roots in Brazilian society's predilection for dialogue and negotiation among organized sectors of society to resolve governance problems.[59] And so while it accomplishes the essential task of bringing the relevant technical experts to the decision-making table, it does so in a way that ensures more structured representation of relevant social actors.[60]

Brazil's Domestic Approach to Governance of Internet Technical Operations

From its inception in 1995, the CGI.br has been a multi-stakeholder/multisectoral organization designed to focus on the governance of the technical operations of Brazil's internet. Since its founding, the CGI.br has transitioned from a government-appointed body of public and private experts to a more formally organized non-profit public-private partnership consisting of nine government representatives and 12 private sector and civil society representatives who are elected periodically by

[57] DeNardis, *The Global War for Internet Governance*, 222–243.
[58] Joe Waz and Phil Weiser, "Internet Governance: The Role of Multistakeholder Organizations," *Journal of Telecommunications and High Technology Law* 10, no. 2 (2012): 331–50, doi: 10.2139/ssrn.2195167.
[59] Philippe C. Schmitter, *Interest, Conflict and Political Change in Brazil* (Stanford, CA: Stanford University Press, 1971).
[60] Marília Maciel and Carlos Affonso Pereira de Souza, *Multi-Stakeholder Participation on Internet Governance: An Analysis from a Developing Country, Civil Society Perspective* (Association for Progressive Communications, 2011), http://gb1.apc.org/en/system/files/NoN_Multistakeholder_InternetGovernance.pdf.

their respective sectors. This body is chaired by a representative of the Ministry of Science and Technology.[61]

Unlike government agencies that are subject to the ups and down of the federal budget, the CGI.br has a stable source of funding.[62] A significant source of income derives from its role as the national registrar for internet domains, charging R$30 (between US$10 and US$15) per year for most domains ending in .br. By way of comparison, there were 3.6 million .br registered domain names in June 2015.[63] This allows it to support the national internet backbone, organize research on the Brazilian internet, fund Brazil's main Computer Emergency Response Team, encourage Brazilian efforts at and around the IGF, and conduct significant capacity building with civil society and the private sector.

Despite these advantages, the CGI.br's private sector and civil society leaders always were insecure about the organization's legal status, since it was both a non-profit and an entity created via government decree rather than by law.[64] To avoid drawing attention from the state, the CGI.br preferred to operate via consensus, keeping a low profile throughout much of its existence. The CGI.br also saw itself as an entirely domestically focused organization although its founders, such as Demi Getschko and Hartmut Richard Glaser, were well connected to the initial generation of internet pioneers in the United States.[65]

Brazilian Society and Internet Public Policy

Although the CGI.br played the leading role in overseeing the technical operation of Brazil's internet, the policy issues associated with the expansion of internet use, such as spam, digital privacy, digital inclusion, and cybersecurity, soon generated many of the same controversies—and similar responses—as had emerged years earlier in the United States. Given the large number of internet users in Brazil, it follows that both legislators and civil society took an active interest in internet policy. The political fault lines that emerged paralleled the debates that first occurred in the United States, such as the tension between internet freedom and security.

In Brazil, the intersection of crime and the internet captured the attention of both legislators and civil society activists in 1999 when a bill on cybercrime was proposed in the Brazilian Congress. After some initial controversy, the issue lingered unresolved for many years, until 2008 when Senator Eduardo Azeredo proposed greater state oversight of the domestic internet. He sponsored a bill that criminalized a broad range of activities if committed with a digital device (i.e., connected to the internet) and provided for greater punishment in such instances.[66] Among the strongest provisions was the mandatory identification of all internet users, hence a loss of the anonymity that had characterized the internet to date. This provoked a strong reaction in Brazilian civil society, including petitions and demonstrations, as the bill was compared with the most authoritarian decrees of Brazil's previous military dictatorship (1964-1985).[67]

[61] Virgilio Almeida (secretary for Information Technology Policy for the Ministry of Science, Technology and Innovation, Federative Republic of Brazil), interview by authors, São Paulo, Brazil, August 21, 2014. For additional background on the CGI.br, see Daniel Arnaudo, "Brazil's Emerging Road Map for Internet Governance" (master's thesis, University of Washington, 2014).

[62] Danilo Doneda (general coordinator, Studies and Market Monitoring, Ministry of Justice, Federative Republic of Brazil), interview by authors, Brasilia, Brazil, August 26, 2014.

[63] "Estatísticas," NIC.br, accessed June 1, 2015, http://registro.br/estatisticas.html.

[64] Gonzalez, interview.

[65] Carolina Rossini (vice president, International Policy, Public Knowledge), telephone communication with authors, December 2013.

[66] Renato Opice Blum (partner, Opice Blum [leading Brazilian law firm specializing in cyber law]), interview by authors, São Paulo, Brazil, August 21, 2014.

[67] Juliana Nolasco Ferreira, "Building the Marco Civil: A Brief Review of Brazil's Internet Regulation History," in *The Stakes are High: Essays on Brazil and the Future of the Global Internet,* ed. Ellery Roberts Biddle, Ronaldo Lemos, and Monroe Price (Philadelphia, PA: Internet Policy Observatory, University of Pennsylvania, 2014), 30-34, http://globalnetpolicy.org/wp-content/uploads/2014/04/StakesAreHigh_BrazilNETmundial_final.pdf.

Civil society mobilization around internet policy eventually produced a counter-movement in 2009 that sought to enshrine citizen internet rights in legislation that came to be known as the Marco Civil. Collaboration between the Ministry of Justice and the Fundaçao Getulio Vargas Law School produced an unusually open process for drafting the proposed bill, which included significant outreach to civil society across multiple platforms and culminated in two formal online consultation periods that attracted over 1,200 comments. The principles included in the Marco Civil were universality, diversity, freedom, privacy, democratic governance, and net neutrality. This bill was then submitted to the Brazilian Congress, where legislators tinkered with it in 2011 and 2012 to add copyright protection provisions and a controversial requirement for internet service providers to retain user metadata for six months. The legislation—which addresses a broad array of internet public policy issues—provoked a major political battle in the legislature, with civil society generating a good deal of public pressure on legislators, who were pressed from the other side by the concerns of copyright holders and telecommunications companies in Brazil. But it was the Snowden surveillance revelations that added urgency to the debate and turned the tide toward the approval of this landmark legislation.[68]

Relative to the United States, Brazil had the advantage of being able to consider the experiences of others countries when developing its own approach to internet public policy. Brazilian domestic actors worked for years to address the issues raised by copyright, digital publishing and media, and cybercrime, often against stiff political opposition from media and telecommunication companies. Such debates in Brazil over internet rights and cybercrime resulted in an active and engaged civil society that was able to use the democratic process to shape government policy.[69]

Brazil's Role in International Internet Governance

The contrast between Brazil's foreign policy on internet governance, its domestic governance arrangements, and the preferences of its internet activists could not be greater. On the one hand, the CGI.br had a long-standing and close relationship with ICANN, and good relations and engagement with both Brazilian and global civil society focused on internet governance. On the other hand, Brazil's diplomats and telecommunications regulators played a prominent role in global internet governance debates at forums such as the ITU and WSIS, where they sought multilateral approaches to addressing both the internet's technical operation and public policy dimensions.[70]

In 1997, Brazil's newly formed telecommunications regulator, ANATEL, became the central agency representing the Brazilian state in international telecommunications negotiations. It assumed this role just as the ITU inserted itself into the debate on global internet governance as a product of its 1998 Plenipotentiary Conference in Minneapolis, where the call was issued to convene WSIS.[71] Brazil was highly critical of the U.S.-led governance model for technical operations, including the centralization of the IANA function in a U.S.-based corporation, ICANN. But Brazil was also concerned with emerging internet public policy issues, such as digital access and social inclusion on the internet. In the run up to WSIS 2003, Brazil worked with India and South Africa, two other large emerging democracies, to formulate a position on internet governance that focused on narrowing the "digital divide."

[68] Doneda, interview.
[69] Arnaudo, "Brazil's Emerging Road Map for Internet Governance," 33–34.
[70] For a comprehensive overview of global internet governance debates and Brazil's positions on these issues, see Diego Canabarro, "Governança Global da Internet, Tecnologia, Poder e Desenvolvimento" (PhD diss., Universidade Federal do Rio Grande do Sul, 2014).
[71] Daniel Brandao Cavalcanti (advisor, Office of the Executive Presidency, ANATEL, Federative Republic of Brazil), interview by authors, Brasilia, Brazil, August 26, 2014.

At WSIS 2003, Brazil proposed multilateral approaches to both technical operations governance and internet public policy centered on UN institutions. Brazil specifically sought a Global Internet Governance Coordination Forum to replace ICANN in the governance of internet technical operations, modeled on its own domestic multi-stakeholder governance structure, the CGI.br. Although this proposal did not succeed, it was eventually modified to form the basis for a major multi-stakeholder institution in the global internet ecosystem, the previously mentioned IGF. The IGF meets annually to discuss issues related to internet public policy, but much to Brazil's frustration, does not produce agreed upon outcomes.[72] However, language on "enhanced cooperation" and government responsibility for internet public policy issues in the outcomes documents for WGIG and WSIS were welcomed by Brazilian diplomats as entry points for expanding the role of multilateral institutions in internet governance.

As a result of Brazil's diplomacy at WSIS, observers lumped Brazil in with other critics of the multi-stakeholder governance models, such as Russia and China. Brazil's basis for criticism is quite different from that of Russia and China, however. These authoritarian powers have pushed for a "sovereigntist" position that would give states top-down control over the internet.[73] Brazil, by contrast, has been more concerned about ICANN's ongoing link to the U.S. Department of Commerce, and in line with its traditional diplomacy, has favored a multilateral approach which it views as more democratic.[74] Brazil's preferences on global internet governance are captured in this 2008 quote by diplomat Everton Lucero: "We should work with the options of either having no governments at all, like the case of IETF, W3C [World Wide Web Consortium], NRO [Number Resource Organization], or we should have *all* governments on board, like the ITU or UNESCO. But … please, let's also avoid having models driven by one single government, like ICANN."[75]

Despite a difference in goals, Brazil continued to work with Russia and China at major internet governance forums, such as WSIS 2005 and the meetings of the ITU up through WCIT in 2012. It also re-engaged with India and South Africa in the IBSA framework.[76] Together, they generated a proposal in 2011 for a UN Committee on Internet-Related Policy in reaction to the perceived failure of countries to implement the WSIS 2005 recommendations, although this proposal was later abandoned by Brazil.[77] As the BRICS coalition became a more prominent part of Brazil's rise in the international system, it became harder to distinguish IBSA's position on global internet governance from the Russian and Chinese critiques of the present system. And at WCIT, Brazil was one of the leading actors, together with Russia and China, promoting a stronger role for the ITU in the internet policy arena, in clear conflict with the U.S. and European preferences.

The Calm Before the Storm

In comparison to many countries, Brazil was well ahead of the curve on internet governance in 2013. It had a long tradition of academic expertise on networks, and its internet pioneers were leading figures in the global internet community. Brazil's diplomats had long been at the forefront of internet governance debates in multilateral fora, and its domestic institution for technical operations governance was well-regarded and effective. Thanks to the deregulation and privatization of

[72] Ebert and Maurer, "Contested Cyberspace and Rising Powers," 1062–1063.
[73] Mueller, *Networks and States*, 69.
[74] Nacif, interview.
[75] Mueller, *Networks and States*, 246.
[76] Established in June 2003, IBSA is a coordinating mechanism among India, Brazil, and South Africa.
[77] Milton Mueller, "A United Nations Committee for Internet-Related Policies? A Fair Assessment," *Internet Governance Project* (blog), October 19, 2011, http://www.internetgovernance.org/2011/10/29/a-united-nations-committee-for-internet-related-policies-a-fair-assessment/.

its domestic telecommunications market, it had a vibrant private sector engaged in internet service provision. Brazil had a large user base for the internet, which meant internet public policy issues were familiar to Brazilians and the subject of debate by an active and engaged civil society. So when the Snowden revelations became public and President Rousseff began to react to the news that the NSA had spied on her personal communications, there were knowledgeable and active domestic actors ready to contest her policy choices and shape outcomes in favor of more internet freedom and greater inclusion of non-governmental actors rather than deepening state control over the internet.

PART THREE

From Edward Snowden to NETmundial: Brazil's Journey Toward Reconciling Multi-Stakeholderism and Multilateralism

During the summer of 2013, there was a steady drumbeat of U.S. espionage revelations from materials leaked by NSA contractor Edward Snowden prior to his flight to Russia. Working with Glenn Greenwald, a journalist at *The Guardian (UK)* newspaper, Snowden detailed the global scale of mass surveillance conducted by the NSA. The digitalization of communication and information, much of it conducted over the internet, facilitated the work of the agency. Specifically, Snowden and Greenwald revealed that the NSA had spied on President Rousseff's own communications and on Brazilians more broadly. This revelation caused outrage and disbelief in Brazil due to Brazilians self-perception as a peaceful state that is no threat to global peace; the violation of their sovereignty; and the association of surveillance with dark memories of the role of the intelligence services in Brazil during its military dictatorship (1964-1985).[78]

In the wake of the Snowden revelations, President Rousseff canceled a long-planned visit to the United States and announced a series of measures to strengthen Brazil's defenses against espionage, some of which portended important new conflicts on global internet governance.[79] Brazil was a particularly attractive target for the U.S. intelligence community not because it represented a high threat environment, but because so much of its digital communications were routed, for historical reasons, through U.S.-based networks before proceeding to the rest of the world.[80] President Rousseff further ordered the development of a domestically sourced system of encrypted email, pushed for the completion of new underwater communications cables that would route around the United States, and called for data nationalization, which meant Brazilian-generated data would be stored on Brazilian servers.[81]

But under pressure from domestic civil society and influenced by the CGI.br, President Rousseff decided instead to take up the cause of a free, open, and universal internet that had previously been championed by the United States. By working with ICANN to organize the international conference NETmundial in April 2014, the Rousseff administration adopted a multi-stakeholder international governance stance on internet policy issues. Using NETmundial as leverage, she was also able to convince Brazil's Congress to pass a long

[78] Harold Trinkunas, "U.S.-Brazil Relations and NSA Electronic Surveillance," *Brookings Up Front* (blog), September 18, 2013, http://www.brookings.edu/blogs/up-front/posts/2013/09/18-us-brazil-nsa-surveillance-trinkunas.

[79] Carolina Rossini, "Internet and Statecraft: Brazil and the Future of Internet Governance," *Global Voices*, October 14, 2013, https://advocacy.globalvoicesonline.org/2013/10/15/internet-and-statecraft-brazil-and-the-future-of-internet-governance/.

[80] Ryan Lizza, "What the NSA Wants in Brazil," *New Yorker*, July 24, 2013, http://www.newyorker.com/news/news-desk/what-the-n-s-a-wants-in-brazil.

[81] Sarah Myers West, "Globalizing Internet Governance: Negotiating Cyberspace Agreements in the Post-Snowden Era" (paper, TPRC 42: The 42nd Research Conference on Communication, Information and Internet Policy, University of Southern California / Annenberg School for Communication, 2014), 27, http://ssrn.com/abstract=2418762 or http://dx.doi.org/10.2139/ssrn.2418762.

delayed domestic internet rights law (the Marco Civil), that provided a home-grown example of how a multi-stakeholder process could produce solutions to internet public policy questions. The United States responded to these positive signals in finally committing to give up its oversight of the IANA function. By opening up an alternative for other "swing states" like India and some European states (particularly post-Snowden), Brazil's actions could significantly strengthen the overall goal of global multi-stakeholder governance of the internet, albeit by way of weakening more direct levers of U.S. "control."

Initial Shifts in Brazil's Position on Internet Governance

President Rousseff's initial responses to the Snowden revelations caused both the CGI.br and Fadi Chehadé, CEO of ICANN, to react with alarm. In particular, Rousseff's support for further multilateralism and state-centric controls on the internet, moving Brazil even closer to Russia and China's sovereigntist position, was seen as unworkable by the CGI.br and ICANN. The CGI.br took advantage of Rousseff's planned speech at the annual meeting of the UN General Assembly in 2013, where Brazil is customarily the first speaker, to meet with the president on September 16 to argue in favor of adopting an approach more in line with their views on internet governance.[82] The CGI.br had already spent years engaged in an open consultative process with civil society on a set of principles for internet governance. It had published the results in 2009 in Resolution CGI.br/RES/2009/003/P, which included 10 principles enshrining a democratic and universal internet that protected civil liberties, privacy, net neutrality, and innovation.[83] These principles were widely shared among the global civil society community that focused on internet issues, including ICANN and its leadership.

President Rousseff's speech to the UN on September 24, 2013 is mostly remembered for her full-throated denunciation of NSA surveillance and of the United States for breaking international law. Yet it also called for the adoption of five principles, which were in essence a simplified version of the CGI.br's approach to internet governance.[84] Rousseff advocated for:

1. Freedom of expression, privacy of the individual, and respect for human rights.
2. Open, multilateral and democratic governance, carried out with transparency by stimulating collective creativity and participation of society, governments, and the private sector.
3. Universality that ensures social and human development and the construction of inclusive and non-discriminatory societies.
4. Cultural diversity, without the imposition of beliefs, customs, and values.
5. Neutrality of the network, guided only by technical and ethical criteria, rendering inadmissible restrictions for political, commercial, religious or any other purposes.[85]

The continued reference to multilateralism in point two of President Rousseff's speech remained worrisome to civil society because it signaled a continued lean toward a state-centered solution to global internet governance. The CGI.br responded publicly and positively to Rousseff's speech, but pointed out that she was staking out a position on internet governance based on Brazil's own multi-stakeholder approach.[86]

[82] Knight, *The Internet in Brazil*, 103.
[83] Gonzalez, interview. For the CGI.br's principles for internet governance, see *Resolução CGI.br/RES/2009/003/P*, 2009.
[84] "Dilma Rousseff leva princípios de governança da Internet do CGI.br à ONU," *CGI.br*, September 24, 2013, http://www.cgi.br/noticia/dilma-rousseff-leva-principios-de-governanca-da-internet-do-cgi-br-a-onu/.
[85] Dilma Rousseff, "Statement by H. E. Dilma Rousseff, President of the Federative Republic of Brazil, at the Opening of the General Debate of the 68th Session of the United Nations General Assembly" (speech, New York, September 24, 2013), http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf.
[86] See Text Box 2 for additional information on differences between U.S. and Brazilian approaches to multi-stakeholder governance.

Fadi Chehadé met with the organizations responsible for global internet technical operations policy (IETF, ICANN, ISOC, W3C, and Regional Internet Registries) in Montevideo on October 7, 2013 to release a statement calling for the internationalization of the IANA function and the globalization of ICANN.[87] He took advantage of this trip to fly to Brasilia to meet with President Rousseff the following day. At this meeting, he advocated for the advantages of Brazil taking a global leadership position based on its own domestic multi-stakeholder governance model. Chehadé was able to convince Rousseff of two things: that she should call for a global conference on the future of internet governance based around the set of principles she had articulated at the UN, but that the conference should be organized around a multi-stakeholder approach to governance.[88] The result was the announcement of the NETmundial conference to be held in April 2014.[89] Essentially, Fadi Chehadé and the CGI.br offered President Rousseff a better option for both addressing her domestic political situation and for asserting Brazil's leadership on global internet freedom than what she had initially led with.

Brazil's Domestic Internet Public Policy Response to Snowden: The Marco Civil

In the aftermath of the Snowden revelations, President Rousseff remained on the hunt for concrete measures that she could take to show Brazilians that her administration was taking the threat seriously. She seized on the long delayed Marco Civil legislation, seeing it as a domestic example of the principles on global internet governance for which she had advocated at the UN.[90] Using her presidential powers, she made the passage of the legislation a matter of "constitutional urgency," which meant that the Brazilian Congress faced a 45-day deadline to vote on the legislation, or else it would halt all other legislative work until the bill either passed or failed. Even so, the Brazilian Congress delayed acting on the Marco Civil for six months until the eve of the NETmundial meeting. The delays were caused by disagreements on language over net neutrality, for which the CGI.br advocated and ANATEL opposed. It was also delayed by disagreements over Rousseff's request that the law mandate data nationalization—the provision that data produced and owned by Brazilians be stored on servers sited in Brazil.[91] Both impasses were resolved by last minute compromises: a decision about net neutrality would be postponed until the law's implementation phase under the proviso that both the CGI.br and ANATEL advise the president on the outcome; and the data nationalization provision was defeated, substituted by a claim for universal jurisdiction over all data produced by Brazilians. This meant that data might be subject to Brazilian law, regardless of where it was stored internationally.[92]

Sprinting Toward NETmundial

For a major international conference, NETmundial was organized in record time. Although initially supposed to be a joint effort by ANATEL and the CGI.br, the CGI.br eventually assumed the lead and organized the conference along

[87] "Montevideo Statement on the Future of Internet Cooperation," October 7, 2013. https://www.icann.org/news/announcement-2013-10-07-en.

[88] Ronaldo Lemos, "Enter Brazil: NETmundial and the Effort to Rethink Internet Governance," in *The Stakes are High: Essays on Brazil and the Future of the Global Internet*, ed. Ellery Roberts Biddle, Ronaldo Lemos, and Monroe Price (Philadelphia, PA: Internet Policy Observatory, University of Pennsylvania, 2014), 30-34, http://globalnetpolicy.org/wp-content/uploads/2014/04/StakesAreHigh_BrazilNETmundial_final.pdf.

[89] Joana Varon, "Conferencia Multisetorial Global sobre o Futuro da Governança da Internet: o que é? de onde veio? para onde vai?"*Mosaico – Observatorio da Internet no Brasil*, November 28, 2013, http://observatoriodainternet.br/post/conferencia-multissetorial-global-sobre-o-futuro-da-governanca-da-internet-o-que-e-de-onde-veio-para-onde-vai.

[90] Ferreira, "Building the Marco Civil."

[91] Tim Ridout, "Brazil's Internet Constitution: The Struggle Continues," *The Fletcher Forum of World Affairs*, March 25, 2014, http://www.fletcherforum.org/2014/03/25/ridout/.

[92] Jonah Force Hill, "The Growth of Data Localization Post-Snowden: Analysis and Recommendations for U.S. Policymakers and Industry Leaders," *Lawfare Research Paper Series* 2, no. 3 (2014), http://www.lawfareblog.com/wp-content/uploads/2014/07/Lawfare-Research-Paper-Series-Vol2No3.pdf.

explicitly multi-stakeholder lines, assigning equal roles and times to the private sector, the technical community, academia, and governments.[93] The meeting, which took place in São Paulo on April 23-24, 2014 and brought together 97 countries and 1,480 stakeholders, was notable for symbolism as much as substance. Brazil made a point of reaching out to invite the United States to co-host the event. The positive response from the United States was part of a small thaw in relations post-Snowden. Within the limited time frame available, the CGI.br also attempted to allow as much open commentary on the documents and policy recommendations produced before and during NETmundial. Nevertheless, the Brazilians did run into criticism, both from international civil society that questioned the selection process for representatives from the different sectors, and also from foreign governments that resented being placed as "mere equals" alongside non-state actors during the plenary sessions.[94]

NETmundial was most important because it marked a shift in the language Brazil used to describe its position on multilateralism and multi-stakeholderism. In her speech at NETmundial, President Rousseff clarified that Brazil's advocacy for multilateralism in global internet governance was strictly focused on the principle of equality among nations, but that it believed the domestic governance of the internet should be conducted based on a multi-stakeholder approach, much as Brazil did at home. Essentially, Rousseff distanced herself from the Russian and Chinese critique of the multi-stakeholder approach, which is based on sovereignty and maintaining state control. Instead, the speech makes clear that Brazil's main critique of the present global governance system for internet technical operations is the centralization of the IANA function in ICANN, a U.S.-based organization. Wisely, the United States had signaled only a month before NETmundial that it was ending the ICANN relationship with the Department of Commerce as early as its contract expiration date of September 2015. In fact, the National Telecommunications and Information Administration (NTIA), which oversees the relationship with ICANN and is housed within the U.S. Department of Commerce, explicitly asked ICANN to convene "global stakeholders" to develop a new international model for governing the IANA function.[95] This was interpreted in Brazil as a clear signal that the United States was willing to address one of Brazil's main concerns about the global technical operations governance regime.[96]

The non-binding NETmundial outcome document adopted on April 24, 2014 was much closer to the views of the CGI.br than to those of traditional Brazilian internet governance diplomacy. It is notable that the outcome document contains 16 references to multi-stakeholder governance and zero references to multilateralism.[97] This is in large part because an open consultative process to develop the outcome document allowed for inputs from a broad range of non-state actors around the world. The global civil society norm on internet governance stresses issues of internet freedom, multi-stakeholder participation, net neutrality, diversity, and an open architecture, so it is no surprise that the document is dominated by this perspective.

[93] Almeida, interview.

[94] Myers West, "Globalizing Internet Governance"; and Joana Varon, "The NETmundial: An Innovative First Step on a Long Road," in *Beyond NETmundial: The Roadmap for Institutional Improvements to the Global Internet Governance Ecosystem*, ed. William J. Drake and Monroe Price (Philadelphia, PA: Internet Policy Observatory, University of Pennsylvania, 2014), 117, http://www.global.asc.upenn.edu/app/uploads/2014/08/BeyondNETmundial_FINAL.pdf.

[95] National Telecommunications and Information Administration (NTIA), "NTIA Announces Intent to Transition Key Internet Domain Name Functions" press release, March 14, 2014, http://www.ntia.doc.gov/print/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions.

[96] Fonseca Filho, interview.

[97] Although to be clear, the NETmundial outcome document does reference in several instances decisions and principles ratified at previous international meetings and conferences such as WSIS that were organized along multilateral lines.

The outcome of NETmundial achieved what the Rousseff administration had hoped: to secure a leading role for Brazil in the global internet governance debate. From a diplomatic standpoint, Brazil was also happy that a global internet governance conference had produced a widely agreed upon outcome document, something for which Brazil had been pressing at least since the 2007 IGF meeting in Rio de Janeiro.[98] President Rousseff also sought to highlight (in an election year) a successful response to the Snowden revelations, both in the form of the conference and the signing of the Marco Civil at NETmundial.

Yet NETmundial highlighted the contradictions between Brazil's domestic and international internet governance actors. The CGI.br took on a prominent global role—a new, potentially uncomfortable direction for an enterprise that had always focused on domestic internet governance.[99] This was also a domain in which Brazil already had a vigorous presence from ANATEL and from the Ministry of Foreign Affairs, which had not yet abandoned their preference for multilateralism. NETmundial also did not make Brazil's traditional diplomatic partners happy, several of whom were surprised by the apparent shift in Brazil's position. Not only were Cuba and Russia predictably opposed to the outcome of NETmundial, but they were also joined by India in refusing to endorse the outcome document.[100] So there still remained the potential for contradictions and ambiguity in Brazil's stance on global internet governance as it looked toward the future.

Two Tracks for Global Internet Governance After NETmundial

In the wake of the successful NETmundial conference, the global internet governance agenda turned to two issues: (1) how to capitalize on what had been achieved at NETmundial; and (2) what would happen in the UN internet-related processes, particularly given a (potentially charged) ITU Plenipotentiary Conference in late 2014 and the WSIS+10 review process in 2015.

The NETmundial Initiative

Following the perceived success of the NETmundial conference, ICANN and the CGI.br saw an opportunity to capitalize on the Principles in the NETmundial outcomes document, but to what end and how? The solution ICANN proposed was to combine the good will and agreed upon outcomes of NETmundial with an initiative they had started the previous November at the World Economic Forum (WEF). This formed the basis for the initial follow-up to NETmundial: the Panel on Global Internet Cooperation and Governance Mechanisms under the chairmanship of Estonian President Toomas Ilves and vice-chairmanship of Vint Cerf. Its mandate was to "chart a roadmap for the future evolution of global internet cooperation and the governance ecosystem."[101]

In November 2014, ICANN, the CGI.br, and the WEF launched the NETmundial Initiative based on the work of the Panel and the NETmundial outcome document. It is intended to focus on complex internet public policy issues—such as freedom of expression, privacy, and cybercrime—and pursue the development and implementation of solutions in a clear parallel to those that already exist to address the technical operations of the internet, such as the IETF, the W3C, the Regional Internet Registries, the root servers operators, and ICANN. The CGI.br committed to leading a line of work on capacity building for national internet governance.

[98] Fonseca Filho, interview.
[99] Doneda, interview.
[100] Monika Ermert, "NETmundial Internet Governance Meeting Closes with Less Than 'Rough Consensus.'" *Intellectual Property Watch*, April 25, 2014, http://www.ip-watch.org/2014/04/25/netmundial-internet-governance-meeting-closes-with-less-than-rough-consensus/.
[101] Panel on Global Internet Cooperation and Governance Mechanisms, "High-Level Panel Organizes to Address Future of Internet Governance," news release, November 17, 2013, http://internetgovernancepanel.org/news/high-level-panel-organizes-address-future-internet-governance; and "About," Panel on Global Internet Cooperation and Governance Mechanisms, http://internetgovernancepanel.org/about.

While not officially acknowledged, there is clearly an underlying agenda to extend an explicitly multi-stakeholder approach to many of the issues that critics consider matters of public policy, and thus the domain of governments. When Fadi Chehadé stated at the NETmundial launch event, "We don't want people standing up again at major global forums and saying, how do I solve spam," he was alluding to a perceived failure of the internet governance community to address a technically fixable issue of major concern in the developing world.[102] As Chehadé knows, the absence of solutions from existing technically focused entities such as ICANN, the IETF, and the W3C to address these policy issues is what has led many developing countries to see the ITU as their only alternative for capacity building and solutions to internet public policy problems, beginning with the WSIS and WGIG process and up through the clash at WCIT. Chehadé may have also realized that this would allow ICANN to step back from the wider issues of internet governance in order to focus on the core issue of the IANA transition.

The UN and the ITU

Even as the world was distracted by Edward Snowden's leaks, the traditional multilateral process continued on its long-term trajectory toward the WSIS review process in 2015, also known as WSIS+10. The WSIS+10 review process included the Commission on Science and Technology for Development plenary in Geneva in May 2015 and culminates with the UN General Assembly discussion in December 2015.[103] Throughout this process, Brazil's diplomats had still been trying to set the internet governance agenda on the multilateral track even as the CGI.br had been conducting the multi-stakeholder NETmundial process. The ITU and the UN remained the institutions at the center of the multilateral agenda. Building on discussions in the ITU's ongoing Council Working Group on International Internet-Related Public Policy Issues since 2010, Brazil's diplomats hoped to push their long-held views by introducing a motion known as Opinion 7. This motion, titled "On the Role of Government in the Multi-Stakeholder Framework for Internet Governance," sought an expanded role for the ITU in assisting governments in developing internet policy. Opinion 7 failed, largely because of efforts by the United States and its allies. But it signaled that supporters of multilateral approaches within the Brazilian government (especially ANATEL) still hoped that they might get the "enhanced cooperation" they wanted through the UN.[104]

The major event of the 2014 UN-related agenda was supposed to be the ITU Plenipotentiary Conference held in Busan, South Korea in October and November. Observers and participants feared a reprise of the highly contentious debates that afflicted WCIT, but the event proved to be free of drama. Only minor and uncontroversial adjustments were made to internet-related resolutions, and attempts by countries such as India to make more extensive proposals on internet security were beaten back. Brazil mainly focused on data privacy, but made no notable advances. Brazil's diplomats, in line with their earlier efforts on Opinion 7, continued to press for multilateral approaches to global internet governance, although perhaps less vigorously than before.[105]

[102] Fadi Chehadé, statement at the Initial Scoping Meeting of the NETmundial Initiative, World Economic Forum, Geneva, Switzerland, August 28, 2014, https://www.youtube.com/watch?v=v7hLqYJkjTY.

[103] Deborah Brown and Lea Kaspar, "Everything You Need to Know About the WSIS+10 Review," *APCNews*, January 28, 2015, http://www.apc.org/en/news/everything-you-need-know-about-wsis10-review.

[104] Roxana Radu, Jean-Marie Chenou, and Rolf H. Weber, *The Evolution of Global Internet Governance: Principles and Policies in the Making* (Berlin: Springer, 2014), 42-3; and Samantha Dickinson, "The Journey Can be More Important than the Destination: Reflecting on the CSTD Working Group on Enhanced Cooperation," in *Beyond NETmundial: The Roadmap for Institutional Improvements to the Global Internet Governance Ecosystem*, ed. William J. Drake and Monroe Price (Philadelphia, PA: Internet Policy Observatory, University of Pennsylvania, 2014), 117, http://www.global.asc.upenn.edu/app/uploads/2014/08/BeyondNETmundial_FINAL.pdf.

[105] Danielle Kehl, "Final Dispatch From Busan: Closing the Books on the 2014 ITU Plenipotentiary Conference," Open Technology Institute, November 10, 2014, http://www.newamerica.org/oti/final-dispatch-from-busan-closing-the-books-on-the-2014-itu-plenipotentiary-conference/.

But with the WSIS+10 review process continuing throughout 2015, there is still much opportunity for drama in the multilateral forums debating internet governance. Brazil will still need to reconcile its positions of multilateral and multi-stakeholder governance, especially now that it speaks with two voices—the CGI.br and ANATEL—internationally. The United States faces the possibility of a messy IANA transition process. And global internet civil society will have to adjust to the presence of new actors and new initiatives that have arisen from the NETmundial conference.

PART FOUR

The Future: What is at Stake?

In looking ahead there are three main issues to consider: the outcome of the IANA transition, the WSIS+10 review process, and the future of the NETmundial Initiative. The United States and Brazil will play a critical role in addressing all three of these.

Completing the IANA Transition

The NTIA's announcement on March 14, 2014 was one of the most politically savvy elements of what had been a fairly ham-fisted handling of the international response to Snowden. By committing to handover IANA authority, something that had been the U.S. Department of Commerce's avowed intention when ICANN was originally proposed, the Obama administration prevented NETmundial from becoming a U.S.-bashing parade. The IANA transition also has the potential to restore confidence in U.S. commitment to a universal and open internet with the free flow of information, and repair trust in multi-stakeholder internet governance. This is particularly important after the legitimacy of existing U.S.-centric institutions was damaged by the revelations on the NSA's global internet-based surveillance.[106]

The Department of Commerce asked ICANN to design a multi-stakeholder process to work through the issues of how NTIA should transition out of its role as the contract administrator for the IANA function. Commerce also made clear that transition will not be automatic and will require a proposal that satisfies four specific principles. Specifically, the new arrangements would:

- Support and enhance the multi-stakeholder model;
- Maintain the security, stability, and resilience of the internet DNS;
- Meet the needs and expectations of the global customers and partners of the IANA services; and
- Maintain the openness of the internet.

It explicitly stated that they "will not accept a proposal that replaces the NTIA role with a government led or inter-governmental organization solution."[107]

With the current contract expiring in September 2015, ICANN quickly announced a very demanding timeline and an IANA Stewardship Transition Coordination Group, made up of 30 members nominated by 13 different "communities." Not surprisingly, the country with the largest contingent (eight members), including the chair and IETF nominee Alissa Cooper, is the United States.

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[106] Emma Llansó and Matthew Shears, "The IANA Transition in the Context of Global Internet Governance," in *Beyond NETmundial: The Roadmap for Institutional Improvements to the Global Internet Governance Ecosystem*, ed. William J. Drake and Monroe Price (Philadelphia, PA: Internet Policy Observatory, University of Pennsylvania, 2014), 117, http://www.global.asc.upenn.edu/app/uploads/2014/08/Beyond-NETmundial_FINAL.pdf.

[107] NTIA, "NTIA Announces Intent to Transition Key Internet Domain Name Functions," press release, March 14, 2014, http://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions.

Perhaps more remarkably, the next best represented country is Brazil with three members: diplomat Jandyr Santos Jr. representing the GAC, Hartmut Glaser representing the Address Supporting Organization, and Demi Getschko representing ISOC.[108]

Arguably one of the biggest threats to the IANA transition is not going to be an unimpeded full-frontal challenge from the ITU or other UN bodies, but rather a more incremental erosion, for example through the GAC and other avenues that might emerge for governments in the new model. The Chinese decision to send a representative (Lu Wei, now the head of China's Cyberspace Administration and a close ally of President Xi) to an ICANN meeting in London last year should be seen as a welcome sign of China's recognition of the importance of maintaining a single unified internet. It can also be seen as a realization by China that they will have a greater chance of influencing the system from the inside than by sniping from the outside.[109] This makes the position of states like Brazil even more important given the potential for disagreements following an IANA transition that less internet-freedom-friendly nations might seek to exploit.

Progress to date has not been smooth, which is the product of a self-consciously aggressive timeline and a desire to have, and to be seen as having, a bottom-up process. The proposal under discussion would involve some sort of ICANN oversight of a subsidiary organization fulfilling the IANA function. The success of that model is likely to depend on confidence in ICANN's accountability, and recent U.S. congressional hearings have shown that skepticism remains.[110] One witness, representing the app industry, pointed to ICANN's poor accountability by citing the ICANN Board resolution that sanctioned involvement in the NETmundial Initiative as a "secret [resolution] which allowed ICANN's CEO to pursue a partnership with the government of Brazil to create yet another framework for internet governance."[111]

But despite some dissenters in Congress who reject the IANA transition, the process continues.[112] A proposal was originally due to the ICANN Board in July 2015, after which it was supposed be presented to NTIA for a decision on whether or not to renew the current contract.[113] It is now widely expected that the Department of Commerce will extend the contract for a short period of time to facilitate a smooth transition.[114] Some see the transition as long overdue and believe it should happen as quickly as possible, if necessary with details worked out later.[115] One of the most compelling reasons to push ahead is that a

[108] "Meet the IANA Stewardship Transition Coordination Group," Internet Corporation for Assigned Names and Numbers (ICANN), https://www.icann.org/resources/pages/icg-members-2014-07-29-en.

[109] "GIG Summary Report ICANN 50," Geneva Internet Platform, http://giplatform.org/resources/gip-summary-report-icann-50.

[110] Daniel Castro, "In Congressional Hearing, Stakeholders Highlight ICANN's Failures and Need for Reform," *CircleID*, May 13, 2015, http://www.circleid.com/posts/20150513_in_congressional_hearing_stakeholders_highlight_icann_failures/.

[111] *Stakeholder Perspectives on ICANN: The .Sucks Domain and Essential Steps to Guarantee Trust and Accountability in the Internet's Operation: Hearing before the Committee on the Judiciary, Subcommittee on Courts, Intellectual Property and the Internet, May 13, 2015*, 114th Cong. (2015) (statement of Jonathan Zuck, President of ACT The App Association), http://judiciary.house.gov/_cache/files/64599415-a95d-40a9-bb4c-9d5db422470a/jonathan-zuck-icann-hearing-statement.pdf.

[112] Bob Goodlatte, "Ensuring Trust in Internet Governance," *CircleID*, February 11, 2015, http://www.circleid.com/posts/20150211_ensuring_trust_in_internet_governance/.

[113] Lawrence E. Strickling (assistant secretary for Communications and Information, U.S. Department of Commerce), *Response to Letter from U.S. Representative Darrell Issa (March 25, 2014)*, April 28, 2014, http://getliberty.org/wp-content/uploads/2015/01/NTIA_Letter_to_Rep-_Issa_4-28-14.pdf.

[114] Kieren McCarthy, "US government asks internet community how long it should extend IANA contract," *The Register (UK)*, May 8, 2015, http://www.theregister.co.uk/2015/05/08/us_government_asks_internet_community_how_long_it_should_extend_iana_contract/.

[115] *Stakeholder Perspectives on ICANN: The .Sucks Domain and Essential Steps to Guarantee Trust and Accountability in the Internet's Operation: Hearing before the Committee on the Judiciary, Subcommittee on Courts, intellectual Property and the Internet, May 13, 2015*, 114th Cong. (2015) (statement of Bill Woodcock, Executive Director, Packet Clearing House), http://democrats.judiciary.house.gov/sites/democrats.judiciary.house.gov/files/bill-woodcock-testimony.pdf; and Joseph Wright, "Stakeholders Slam ICANN on Accountability, .sucks, But Endorse IANA Transition Soon," *Bloomberg International Law Resource Center*, May 15, 2015, http://www.bna.com/stakeholders-slam-icann-n17179926540/.

delay risks the revival of a debate on multilateral governance of the IANA function. And with the WSIS+10 review process proceeding through the year, it is a factor that will have to be managed carefully.

Wrapping up the WSIS+10 Process

Ahead of a busy six months of internet governance meetings, and particularly with the outcome of the IANA transition process still in doubt (at the time of this writing), it is hard to know exactly which internet governance issue will become the main focus of the global multilateral discussion. Governments around the world are already gearing up to engage in this debate.[116] One clear concern is whether the IGF's mandate will be renewed, but a much more serious possibility is that the multilateral process will lead to another WSIS in 2016 or 2017, even though there are few hopes for a fruitful and productive discussion given the enduring battle lines over multilateralism and multi-stakeholderism.

If this process leads to a call for a new WSIS, this could reopen old wounds, but the United States will be very eager to avoid such an outcome. Fortunately, this time (unlike WCIT in 2012) the U.S. is likely to have its diplomatic A-team on the case. Russia and China are likely to press ahead with their proposals for a greater role for states in internet governance. "Swing states" like Brazil could thus still have real leverage in this process.

As the WSIS+10 review process advances, it is still unclear how widely and with how much conviction the Brazilian government will support the NETmundial Initiative. Nor is it clear that the government wholeheartedly backs the CGI.br's leadership of the Initiative. The Ministry of Science and Technology is pressing ahead with support for a multi-stakeholder approach through the NETmundial Initiative, yet statements by Brazil's diplomats and their actions in other forums suggest that they may view NETmundial primarily as a means to advance their goal of a multilateral governance structure. For example, Brazil's deputy permanent representative in a meeting of the UN General Assembly's Second Committee cited the example of NETmundial to argue that it "had reiterated the urgency to make ICANN more multilateral," that "harnessing the full potential of the Internet requires … responsible regulation, including through democratic decision-making at the international level," and that "the UN is the most adequate forum to carry out this task."[117] And while a charitable observer might concede that it is legitimate to ride both horses until it is clear that the Initiative has taken root, it will soon be time to get more solidly behind the Initiative.

The Future of the NETmundial Initiative

It is this combination of a possibly messy, or at least rushed, IANA transition and a conflictive WSIS+10 process that makes the idea behind the NETmundial Initiative so important. The NETmundial Initiative offers a framework for a multi-stakeholder approach to address the fundamental concerns of governments and citizens that go beyond the narrow IANA agenda, which is the focus of ICANN. In doing so, the NETmundial Initiative provides an opportunity to undercut efforts by some governments to use such issues as a way to revive the push for more intergovernmental management of the internet.

While the idea behind the Initiative is sound, the implementation has been less sure-footed. In attempting to establish something quickly to

[116] Francesca Musiani, "WSIS+10: The Self-Praising Feast of Multi-Stakeholderism in Internet Governance," *Internet Policy Review* 2, no. 2 (2013), doi: 10.14763/2013.2.121.

[117] Ambassador Guilherme de Aguiar Patriota, "Statement by the Deputy Permanent Representative," United Nations, General Assembly Second Committee, Item 16 – Information and Communications Technologies for Development (October 13, 2014), https://papersmart.unmeetings.org/media2/4654196/brazil-r1.pdf.

leverage the momentum of NETmundial, many in the international internet community believe that the organic nature of the traditional multi-stakeholder model has been sacrificed. In particular, some of the civil society groups who welcomed NETmundial itself have objected strongly to the role of the WEF, which is perceived as more representative of elite business interests. A rival Internet Social Forum, launched in January 2015 and spearheaded by the civil society group Just-Net Coalition, has sought to contrast its approach with that of the Initiative by arguing that it would "bring together and articulate bottom-up perspectives," much as the World Social Forum serves as a counterpoint to the WEF.[118]

More troubling for the future of the Initiative is the decision by the ISOC Board not to work with the Initiative. According to a statement in November 2014, "the Internet Society Board reiterates that the Internet Society's longstanding position is that there is no single, global platform that can serve to coordinate, organize or govern all the internet issues that may arise," and the Board criticized the Initiative for failing to live up to the "Internet Society's longstanding principles" of inter alia "bottom-up orientation," openness, and transparency. The Board's argument that the internet community's priority should be on the IANA transition does not address how perceived failures in other areas of internet governance affect the long-term viability of the multi-stakeholder model.[119]

The appointment in December 2014 of the Coordination Council for the NETmundial Initiative included 20 members from academia, civil society, government, and the private sector across five continents. That governments were represented by the U.S. secretary of commerce and the head of the Cyberspace Administration of China, among others, is indicative of the interest from the major powers in the Initiative. The group met for their inaugural council in São Paulo on June 30, 2015. However, the NETmundial Initiative ran into immediate criticism that the members were appointed in a "top-down" fashion rather than arising organically from a multi-stakeholder process. This reaction raises the prospect that the Initiative's biggest challenge will be to prove itself to the multi-stakeholder community that it seeks to defend, rather than to the governments whose ambition it arguably stands to contain.

A better way to think about the future of the NETmundial Initiative may be to focus on the underlying need for an international framework to develop multi-stakeholder solutions to internet policy issues over and above the narrow responsibilities of ICANN. Given recent criticism of the NETmundial Initiative, the role of Brazil—specifically through the actions of the CGI.br—may be critical. The CGI.br lends credibility, legitimacy, and experience to the NETmundial Initiative, beyond that provided by other (more controversial) partners such as the WEF and ICANN. In addition, the CGI.br's role in organizing the 2015 IGF meeting in João Pessoa counters the suggestion that it is seeking to replace the IGF. If successful, the Initiative has the potential to deliver more concrete results than the IGF (which has long been a Brazilian goal), and doing so in a multi-stakeholder setting.[120] Alternatively, if the NETmundial Initiative falters, the Brazilians would do well to ensure a soft landing while continuing to develop support for a more widely accepted way of meeting the laudable aim of the Initiative. At the very least, acting through the CGI.br, they are well placed to encourage the "bottom-up" processes that the Initiative needs to attain widespread credibility.

[118] Just Net Coalition, "Global Civil Society Launches the Internet Social Forum," press release, January 22, 2015, http://justnetcoalition.org/ISF.
[119] Internet Society, "Internet Society Statement of the NETmundial Initiative," news release, November 16, 2014, http://www.internetsociety.org/news/internet-society-statement-NETMundial-initiative.
[120] CGI.br, "Public Declaration on the NETmundial Initiative Issued by Members of the Board of CGI.br," news release, November 24, 2014, http://cgi.br/noticia/public-declaration-on-the-netmundial-initiative-issued-by-members-of-the-board-of-cgi-br/.

For the time being, however, the Initiative continues to develop and it should be supported. Its best chance will be to score a few early successes assisting particular states with solving their critical internet public policy issues. This will show that the Initiative is capable of fulfilling its potential. The Initiative should also be an opportunity to bring into a multi-stakeholder effort other countries that have potentially important roles to play in internet governance but have never felt fully comfortable with ICANN. India is the most obvious example, and in this area again, it is arguably Brazil who has the potential to make the greatest contribution in attracting additional support for the Initiative.

Policy Recommendations

Much work remains to be done to successfully move the global internet governance agenda forward, and doing so successfully will require action by the United States, Brazil, and the broader global internet community. The following recommendations are not meant to be comprehensive, but rather are intended to offer a path forward that defuses the long and contentious debate over governance of internet technical operations and a mechanism for addressing thorny internet public policy issues that are on the agenda for states and societies around the world.

The United States

The Obama administration should stand firm on its current policy toward the IANA transition, and it should not give in to congressional voices that want the U.S. government to retain oversight of the IANA function. In a post-Snowden environment, a U.S.-centric governance model is a vulnerability rather than a strength. It offers a convenient target around which China and Russia can rally other emerging powers such as Brazil, India, and the developing world. It also encourages those who want to build barriers within the global internet through the construction of firewalls and content controls along sovereign jurisdictional lines.

Embedding the multi-stakeholder governance approach preferred by the United States in international institutions offers the best prospects for preserving an innovative and flexible internet. It will undercut the arguments of those who criticize the present model as U.S.-centric, and it will offer an attractive alternative to those countries that sympathize with a free and open internet but are currently aligned with China and Russia in the multilateral forums on internet governance. In particular, such an approach would satisfy many Brazilian and Indian concerns about the present system while still preserving the U.S. interest in a model in which the private sector and civil society have an important voice.

The United States should also discourage the convening of a new WSIS in the near future. The WSIS process has been useful in so far as it has outlined (repeatedly) the fractures among states on the issue of global internet governance. In addition, it has demonstrated that multilateral forums are inadequate in producing best practices, norms, and recommendations on internet public policy that many countries still seek, particularly in the developing world. But there is little utility in continuing the WSIS process in the absence of significant progress in multilateral forums.

Finally, the United States should do what it can to support and encourage the success of the NETmundial Initiative or a similar multi-stakeholder mechanism for internet policy issues. If the Initiative can successfully pivot to addressing the concerns of at least its more influential civil society critics, it offers a process by which the multi-stakeholder model might be extended globally to develop internet public policy solutions. This does not mean playing a leading role in the Initiative, since it is precisely the credibility and example offered by Brazil and the CGI.br's leadership that will make it an attractive option for developing countries and emerging powers to access internet public policy best practices and standards. And should the NETmundial Initiative fail, the United States should—again with others—learn from the

experience and explore how best to encourage a genuinely multi-stakeholder set of arrangements to address some of the public policy challenges that would otherwise end up becoming the preserve of governments alone.

Brazil

Brazil would achieve many of its objectives on reforming global internet governance with the transition of the IANA function to an internationally-based body and the consolidation of the NETmundial Initiative. It should therefore support the completion of the IANA transition by which ICANN can assume these duties independently from any contractual relationship with the United States government.

Brazil is more likely to build upon its gains if its diplomats and government officials speak consistently in favor of the multi-stakeholder model as embodied in the NETmundial conference and Initiative. Not only does the concept behind the NETmundial Initiative embody the preferred Brazilian approach to internet governance as it is practiced at home, but it also offers a concrete example to other countries struggling with internet governance issues—whether technical or public policy. Providing examples of successful governance models is Brazil's preferred approach to capacity building with partner states. The CGI.br is well positioned to do so on the technical operations governance front, and the Marco Civil provides a model for the public policy front.

This also means ensuring that the WSIS+10 review process complements rather than contradicts the successes that Brazil has already achieved with the NETmundial conference and Initiative. Promoting these multi-stakeholder models means de-emphasizing the role of multilateral processes in global internet governance. This does not mean abandoning Brazil's traditional commitment to multilateralism in general, but recognizing that Brazil is more likely to achieve its objectives by other means in this specific arena.

Such an approach offers Brazil a major role in shaping global internet governance through multi-stakeholder institutions. Moreover, it establishes a middle path between the previous U.S.-centric governance models and the state-centric authoritarian approach promoted by China and Russia, which is incompatible with Brazil's own democratic values.

Global Internet Community

Although the global internet community includes a broad array of stakeholders, we recommend supporting the completion of the IANA transition and the internationalization of this function. This offers the best opportunity to boost the legitimacy of the present multi-stakeholder model for governing technical operations.

We also recommend considering the NETmundial Initiative as a constructive addition to the organizations and institutions addressing internet public policy issues. Changes may be required to the way the Initiative currently works, in particular to encourage greater transparency and bottom-up participation. The Initiative nevertheless offers the opportunity to develop a parallel multi-stakeholder process to address the policy issues to which many governments, especially in the developing world, lack answers. International affairs often hinge on timing, and as the pendulum appears to swing toward the assertion of greater governmental control over internet issues, working with an imperfect NETmundial Initiative now may be better than sitting at the sidelines of a governmental process in the future. Global internet civil society should take the bird in the hand, and channel its energies toward turning the Initiative into the bottom-up multi-stakeholder-based institution it demands.

However, if the NETmundial initiative does not succeed, there remains a need for an organic multi-stakeholder process, led by civil society and the private sector together with government representatives, to assist developing countries in

resolving salient internet public policy issues. Many developing countries may find it difficult to integrate culturally and politically into the multi-stakeholder model as it initially developed in the United States, and Brazil's approach, modeled on the role of the CGI.br in addressing technical policy issues and the Marco Civil in addressing internet public policy issues, provides an attractive alternative that advances a global internet that promotes freedom, inclusion, and diversity.

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