**NetMundial: Watershed in Internet Policy Making?**

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Was NetMundial a watershed in Internet policy making? History will tell us later whether the Sao Paulo conference in April 2014 was the start of a new beginning in the still unchartered territory of the borderless cyberspace. The whole idea of Net Mundial, the meeting as such and the design of its follow up have made a sharp difference to what we have seen during last ten years in Internet Governance discussions. Kick started in fall 2013, Net Mundial produced within less than six months reasonable results: A Universal Declaration on Internet Governance Principles and an Internet Governance Roadmap. Obviously it filled a gap in the global Internet Governance Ecosystem.[[1]](#footnote-1)

***No Real Progress in the last Decade***

Since the adoption of the Tunis Agenda in 2005 by the 2nd UN World Summit on the Information Society (WSIS)[[2]](#footnote-2), the Internet Governance discussion did not really move forward. Numerous meetings of numerous committees produced an endless chain of reports, summaries and papers with nice reflections but no actions. The United Nations Commission for Science and Technology Development (UNCSTD), responsible for the WSIS Follow Up, discussed annually Internet Governance issues and reported back to the ECOSOC and the 2nd Committee of the UN General Assembly (UNGA). The UNGA, in reverse, instructed the UNCSTD to look deeper into the two main outcomes of the Tunis Agenda: the Internet Governance Forum (IGF) and the process of enhanced cooperation. However, neither the ping-pong between UNCSTD and UNGA nor the WSIS 10+ process, which started in 2011[[3]](#footnote-3), produced concrete innovations or sustainable results.

The UNCSTD implemented the UNGA resolutions, inter alia, by the establishment of two working groups: the UNCSTD Working Group on IGF improvement (2010 - 2012)[[4]](#footnote-4) and the UNCSTD Working Group on Enhanced Cooperation/WGEC (2012 - 2014)[[5]](#footnote-5). The two groups had about ten meetings and drafted several hundred pages of reports and recommendations. This is useful material, but it lacks any practical decisions on projects. And the WGEC was even unable to reach a rough consensus about a set of non-binding recommendations.

The time and energy consuming discussion in the various committees got often lost in the interpretation of single words from WSIS documents as “enhanced cooperation”, “respective roles” or “equal footing”. The debate was occupied by more abstract questions whether governments are more equal than other stakeholders, whether multilateral treaties are more important than multistakeholder arrangements or whether a 3rd WSIS summit meeting would be better than a WSIS ministerial meeting in 2015. Wordsmithers played language from the 2003 WSIS Geneva Declaration against language of the 2005 WSIS Tunis Agenda to find arguments for the establishment of new intergovernmental Internet bodies which was rejected by the followers of the multistakeholder model. Technical issues became politisized, national sovereignty was “rediscovered” and the more scholastic “Ism-Controversy” (multilateralism vs. multistakeholderism) blocked any progress. The debate turned around itself and did not make a constructive contribution to find solutions for the new emerging Internet issues of the 2010s.

The good thing was that governments were not the only voice anymore in the multistakeholder UNCSTD Working Groups. But the non-governmental stakeholders in those groups did not have the power to act without governmental consent. And in UNCSTD, ECOSOC and UNGA only governments have a voting power. After ten years of Internet Governance discussions within those UN bodies one can conclude that there was and is only little political will among governments to bridge differences, to reach consensus and to move forward.

Regardless of the 56 recommendations of the UNCTSD Working Group on IGF Improvement, even the IGF is today more or less still the same as it was in 2006. The meetings of the Multistakeholder Advisory Group (MAG) are becoming routine work. The IGF Dynamic Coalitions are not as dynamic as anticipated. The secretariat is understaffed. The whole process is underfinanced. And it is always a miracle that regardless of the obvious difficulties and weaknesses of the IGF infrastructure the annual IGF meeting mobilizes generous hosts and engaged participants which is otherwise a strong argument for the ongoing attractiveness of the basic idea behind the multistakeholder IGF.

The call for more concrete IGF outputs was repeated year by year but nobody proposed so far a workable mechanism which would avoid that the IGF becomes a negotiation body but would allow that it agrees on practical projects. Even light weight ideas as to establish an Internet Governance Observatory or an Internet Governance Clearing House under the umbrella of the IGF remained unfulfilled.

This is no argument against the IGF. In contrary, the IGF has demonstrated its usefulness. It is good to have a multistakeholder IGF as an *Internet policy stimulating body.* It needs to be strengthened and its mandate has to be renewed. But ten years after Tunis, and against the background of a fast changing environment in the Internet Governance Ecosystem, it would not be bad to have (on top of or linked to the IGF) also a multistakeholder *Internet policy making mechanism* where stakeholders can find out how to deal with concrete political, economic, cultural, social and legal Internet issues.

With other words, in the decade since Tunis, no real innovative breakthrough in Internet Governance was achieved. In 2004 the former UN Secretary General Kofi Annan told the UN Working Group on Internet Governance (WGIG), that not only technology but also policy needs innovation. “In managing, promoting and protecting [the internet’s] presence in our lives, we need to be no less creative than those who invented it” said Kofi Annan and he added “Clearly, there is a need for governance, but that does not necessarily mean that it has to be done in the traditional way, for something that is so very different.”

Entering unchartered territory calls for new unusual solutions, it needs creativity and innovation. Two decades ago ICANN emerged as a policy innovation in the Internet world. Ten years ago, the policy innovation of the time was the IGF. But where is today´s Internet policy innovation? Is this NetMundial?

***A Changing Internet Governance Environment***

To find this out one have first to look into the new realities of the Internet Governance environment in the middle of the 2010s. Today´s challenges are rather different from the Internet policy problems we had 10 years ago:

1. The number of Internet users tripled since 2005 from 1.2 billion to nearly 4 billion and the majority of those newbies are coming from developing countries;
2. Underserved regions like South-East Asia, Sub-Saharian Africa, the Arab world or the Pacific Islands see a boom in Internet connections mainly linked to enhanced mobile communications;
3. In 2005, the Internet Governance debate was dominated by the US, the EU and China. Now new big Internet powers as Brazil, India, Russia, South Africa, Korea, Iran, United Arab Emirates, Saudi Arabia and others have entered the global Internet Governance policy making scene;
4. In 2005 policy issues related to social networks or search engines did not play a role in drafting the Tunis Agenda. Now they are of central importance and we have more problems related to the use of the I-Phone, of Cloud Computing and the Internet of Things.
5. In 2005 we had a re-birth of private start up Internet companies which suffered after the blast of the .com-bubble at the end of the 1990s. In 2015 those private sector players have grown into billion dollar businesses, they dominate global markets and affect public policy making worldwide. And the majority of the giants of this “new new economy” are coming from the US (Google, Facebook, Yahoo, Amazon, Apple, Microsoft, AT&T, Verizon, Cisco etc.) and from China (Baidu, Alibaba, Sina, Waibo, Lenovo, China Mobile, Huawei etc.);
6. It is now recognized that the Internet is deeply linked to human rights, in particular to the right to freedom of expression and the right to privacy. This has stimulated the adoption of a resolution by the UN Human Rights Council (2012) which states that individuals have the same human rights offline and online as well as court decisions, in particular by the European Court of Justice (Luxembourg) and the European Court on Human Rights (Strasbourg);
7. It is now recognized that the Internet is as place which is of strategic importance for national security. The fight against cybercrime, cyberterrorism and cyberwar becomes a crucial element in national and international policy making. This has triggered discussions around cybersurveillance, cyberspionage and cyberweapons which are partly reflected in negotiations within the 1st and 3rd Committee of the UN General Assembly as well as in bodies like NATO, OSCE, the Council of Europe, BRICS and the Shanghai Group.
8. The Internet becomes more important in international trade negotiations as we have seen in the failed ACTA project and as we will see in the ongoing Trans-Atlantic Trade and Investment Partnership (TTIP), Trans-Pacific Partnership (TPP) and the Trade in Service Agreement (TISA) negotiations where issues as the protection of intellectual property, personal data and cultural diversity in cyberspace will play a role;
9. In 2005 the risk for a fragmentation of the Internet was mainly language based. In 2015 efforts to fragment the internet are politically motivated. More and more countries try to re-nationalize the Internet by introducing specific legislation, erecting national firewalls and controlling the distribution of Internet content. This was reflected, inter alia, in the (failed) proposal, made by a group of countries (including China, Russia and Saudi Arabia) to introduce the concept of a “national Internet segment” into the International Telecommunication Regulations (ITR) during the ITU World Conference on International Telecommunication (WCIT) in Dubai (2012). ;
10. The management of critical Internet resources as root servers, Internet protocols, domain names and IP addresses – which dominated the Internet Governance discussion in the WSIS process 10 years ago – has proofed to be efficient. In the early 2000s there were no internationalized Domain Names (IDNs) and not more than a handful of generic Top Level Domains (gTLDs). The transition from IPv4 to IPv6 was slow. The Root Server System had only 13 members, 10 of them based in the US. And there were security holes in the system. In 2015 iDNs and nearly 1000 new gTLDs are available, the transition to IPv6 has speeded up, there are more than 380 Anycast Root Servers around the globe and DNSSec has enhanced substantially security in the Internet infrastructure;
11. When the WSIS process started in 2002 ICANN was under oversight of the US government via a Memorandum of Understanding (MoU) and the IANA contract. ICANNs GAC did have less than 50 members and no At Large Structures (ALSs) existed. Ten years later ICANN has demonstrated its maturity by launching programs as iDN, new gTLDs and DNSSEC. In 2009 it became partly independent from the US government by the Affirmation of Commitment (AoC). ICANN opened formal seats in Istanbul and Singapore and about ten offices around the globe. In March 2014 the US government announced its readiness to terminate also the IANA contract. The GAC has now 136 members and more than 200 ALSs are accredited, many of them participated in the 2nd Internet User Summit in June 2014 in London.
12. New players from all stakeholders have entered the Internet Governance Ecosystem as OECD, Council of Europe, OSCE, Shanghai Group, IBSA, BRICS, Global Network Initiative (GNI), World Economic Forum (WEF), International Chamber of Commerce/BASICS (ICC), Access, Human Rights Watch, Reporter without Frontiers and others.

Within the last ten years the Internet Governance Ecosystem has changed fundamentally. There are new problems, new priorities and new players. The management of critical Internet resources is still an issue, but the debate is dominated by Internet related public policy issues as international security, sustainable development, job creation, innovation and human rights with related problems as infrastructure, access, cybercrime, cyberwar, content control, mass surveillance, privacy, freedom of expression, intellectual property, e-commerce, network neutrality and others.

How to deal with all those issues and challenges? Is the UN system the right place to negotiate solutions? What are the alternatives?

***The Internet Governance Ecosystem: A Virtual Rainforest?***

One important conclusion from the last ten years is the recognition, that Internet Governance is and can´t be a hierarchical system with a sole (intergovernmental) decision maker at the top of a pyramid. What we have is an Internet Governance Ecosystem, where you have different specific governance models for specific issues and where different governmental and non-governmental stakeholders work hand in hand and are dependent from the work of others in a decentralized and layered system of shared responsibilities.

From a technical point of view, the whole system has worked in an incredible flexible way, allowing a growth from 4 million to 4 billion Internet users within 20 years, stimulating economic development and broadening individual freedoms. With IPv6 there are enough IP addresses for zillions of individuals, institutions and objects. With the iDN- and gTLD-programs there are enough domain names for everybody in any language. Root servers and Internet Exchange Points are distributed around the globe and DNSSec has made the domain name system much more secure for anybody sending an e-Mail or requesting access to a website. Those are strong arguments to agree with Vint Cerf, one of the fathers of the Internet, who always repeated the last ten years that “if it isn´t broken, don´t fix it”.

However this is only half of the truth. On top of this working infrastructure there are new risks, threats and growing opportunities for misuse, which call for enhanced responses. The problem here is that the management “of” the Internet and the management “on” the Internet are two different shoes but are heavily interwoven. The management of the technical Internet resources, mainly done by “codemakers” has political implications. And it is impossible to find political solutions, which are discussed by “lawmakers”, independent from the underlying technical infrastructure.

An important role will play how the numerous involved governmental and non-governmental actors understand the nature of this complexity of the Internet Governance Eco-System.

The Internet is not a “single issue” which needs to be regulated in one way or another as the Antarctica or the Outer Space. The Internet, as it has evolved over half of a century, has penetrated all areas of the political, economic, cultural and social life around the globe. It constitutes today´s environment in which individuals and institutions do live and learn, do their business, buy and sell, make love and fun and have all kind of individual or collective activities. Life without the Internet is meanwhile unthinkable, especially for the younger generation.

The Internet Governance Eco-System can be compared partly to the rainforest. In the “real rainforest” an uncountable number of diverse plants and animals live together in a very complex system. In the “virtual rainforest” we have also an endless and growing diversity of networks, services, applications, regimes and other properties which co-exist, communicate, collaborate, contradict and conflict.

One thing which can be learnt is that the rainforest as a whole is not managable. It can be neither governed nor controlled, but it can be damaged and destroyed. In the Internet Governance Eco-System many players with very different legal status operate on many different layers, on local, national, regional and international levels, driven by technical innovation, user needs, market opportunities and political interests. This has produced a broad variety of different regulatory, co-regulatory or self-regulatory regimes which complement or conflict each other. The system as a whole is decentralized, diversified, layered and has no central authority. However, within the various subsystems there is an incredible broad variety of different sub-mechanisms which range from hierarchical structures under single or inter-governmental control to non-hierarchical networks based on self-regulatory mechanisms by non-governmental groups with a wide range of co-regulatory arrangements in between where affected and concerned stakeholders from governments, private sector, civil society and technical community are working hand in hand.

There is neither a “silver bullet” nor a "one size fits all" solution. The specific form of each sub-system has to be designed according to the very specific needs and nature of the individual issue. In such a mechanism, traditional national legislation and intergovernmental agreements continue to play a role but have to be embedded into the broader multistakeholder environment while new emerging mechanisms have to take note and recognize existing frameworks and regulations on various levels. The “do-not-harm” principle becomes more important than ever. It means that whatever a governmental or non-governmental player will do in the Internet has to take into consideration its direct or indirect consequences for not involved third parties as well as the unintended side-effects for the system as a whole.

Such a competitive coexistence of rather different regimes and mechanisms creates opportunities but has also risks. There are incredible opportunities for new mechanisms, platforms and services to bring more dynamics into political strategies, social actions and market developments. This competitive coexistence can stimulate innovation, promote job creation, enlarge all kinds of cultural activities and broaden the use of individual freedoms by the public at large both in developed and developing nations. But there is also a risk that differences between regimes and systems create controversies and produce heavy conflicts which includes the threat to turn down innovation, hamper sustainable development, to reduce individual freedoms and to pollute the Internet Governance Eco-System in a way that parts of it will be damaged or destroyed.

The challenge is to find flexible mechanisms for enhanced communication, coordination as well as formal and informal collaboration among the various players at the different layers to allow that all stakeholders can play their respective role on an equal footing without discrimination in an open and transparent mechanism based on mutual respect and democratic checks and balances in a workable and recognized accountability system.

To keep this further growing Internet Governance Ecosystem safe, stable and unfragmented it needs efforts by all involved and affected stakeholders, something like a “rainbow coalition” where actors, regardless of their legal status, economic weight or political power are working hand in hand and share principles, programs, responsibilities and decision making capacities.

***The Limits of the UN Machinery in Internet Governance***

For the existing UN machinery with its fixed procedures it is nearly impossible to react adequately to such a growing complexity and changing environment. This does not mean that intergovernmental organizations and the multilateral treaty system are irrelevant for the Internet. They will continue to play a role as an important element in the broader Internet Governance Ecosystem. The traditional procedures and instruments have their merits, but they do have also their limits. The Internet diplomacy of the 21st century has to go beyond the 20th century mechanisms. What is needed is a political innovation which Kofi Annan called for ten years ago and which reflects this new Internet Governance complexity.

A demonstration of the limits of the existing mechanism was the Dubai WCIT conference (2012). In its 150 years of history the ITU has adopted all decisions by consensus among its member states. The plan to update the 1988 ITR treaty in 2012 failed to produce a consensus. The 193 member states of the ITU were unable to agree and only 89 governments signed the new ITR contract.

Another example is the Budapest Cybercrime Convention from 2001. Nearly all governments agree that efforts are needed to fight against criminals and terrorists in cyberspace. But only 53 states have signed the Budapest Convention. A substantial number of UN member states are looking for an alternative instrument in the UN General Assembly where a draft convention on cybersecurity, proposed by the government of the Russian Federation, is pending since more than ten years without any progress.

What are the consequences from this broken intergovernmental consensus? If governments are unable to agree among themselves in multilateral intergovernmental organizations as the UN, WIPO, WTO, ITU or even in ICANN´s Governmental Advisory Committee (GAC), they will consider unilateral actions or bilateral arrangements and the gaps among governments are widening.

This is in particular true for the governments of the two Internet superpowers, the United States of America and the People´s Republic of China. The US has ratified the Budapest Convention, China did not. China did sign the ITRs, the US did not. The US government has published several unilateral statements on Internet policy, from the Principles on the Internet's Domain Name and Addressing System in 2005 to the recent NTIA statement on the IANA transition in 2014. The Chinese government, which has recently established a new ministry on Cyberspace Affairs, has adopted a whole set of national Internet rules and procedures. Both governments have published unilateral national cybersecurity strategies and proposed their own set of principles. For the US a “free Internet” has first priority, for China it is the “clean Internet”.

Is there a possibility to build bridges between the two approaches? A comparison of the proposed principles and policy papers show how deep the gap is between the positions of the two governments. There are some communalities, but there are much more differences. There is a common interest to keep the Internet stable and safe, to ensure cybersecurity and to keep the door open for a flourishing global eCommerce. There is even a common interest in an unfragmented Internet. But all this is overshadowed by the conflicts, rooted in different value systems. If both sides speak about “national security in cyberspace” they have a rather different understanding what this means in reality and how to achieve it. This is a philosophical but very political “free vs. clean” or “individual human rights vs. collective social harmony” conflict which makes compromises among the two Internet superpowers difficult.

The good thing is that both sides talk to each other. There is a bilateral US-Chinese Cyberdialog. And the two presidents Obama and Xi have discussed cybersecurity issues at its summit meeting in June 2013 extensively. This can help to avoid a cold cyberwar. But there is a long way from talking the talk to walking the walk.

***NetMundial as a Third Way?***

Another consequence from the broken intergovernmental consensus is a push for new coalitions among like-minded governments and non-governmental stakeholders. The “rest of the world” is obviously only little excited to “multilateralize” the Internet policies of the two Internet superpowers. Chinas Internet policy never got a global support, even not among many members of the G 77. And after the Snowden revelations there was also a growing frustration about the role of the US government in Internet policy making, including the western allies in Europe, Canada, Australia and Japan which share the value of a human rights based Internet.

Insofar, the idea of NetMundial filled a growing niche. It offered something like a “third way”. It entered an unoccupied space in the landscape were growing frustration about bad behavior of individual governments met the need to stumble forward to keep the existing Internet Governance Ecosystem dynamic, open, free, safe and based on human rights. The idea of NetMundial allowed Internet stakeholders, including governments, to escape from making a choice between US surveillance and Chinese censorship. And it also allowed to escape from the time and energy consuming debates within the UN system.

NetMundial demonstrated that multistakeholder cooperation on equal footing is doable. NetMundial emerged in a bottom up, open and transparent process. NetMundial was outcome oriented. And NetMundial stimulated concrete actions: from the adoption of a universal set of Internet Governance Principles to the launch of an Internet Governance Roadmap which included the globalization of IANA and ICANN.

To understand the philosophy of NetMundial it is important to remember its history. It was triggered by the revelations of Edward Snowden in summer 2013 and started with two events in fall 2013: The speech by the president of Brazil, Djilma Roussef, before the 68th UN General Assembly in New York and the meeting of the so-called I\*Organizations in Montevideo in October.

In New York, the Brazilian president, who was the target of NSA surveillance, described this as a “grave violation of human rights and of civil liberties; of invasion and capture of confidential information concerning corporate activities, and especially of disrespect to national sovereignty.” She said “we expressed to the Government of the United States our disapproval, and demanded explanations, apologies and guarantees that such procedures will never be repeated. … Information and telecommunication technologies cannot become the new battlefield between States. Time is ripe to create the conditions required to prevent cyberspace from being used as a weapon of war, through espionage, sabotage, and attacks against systems and infrastructure of other countries.” And she proposed the establishment of “a civilian multilateral framework for the governance and use of the Internet and to ensure the effective protection of data that travels through the web.”[[6]](#footnote-6)

Just two weeks later the so-called I\*Organizations[[7]](#footnote-7) argued in Montevideo in a similar way as the Brazilian president did in New York: “Harnessing the full potential of the Internet requires, therefore, responsible regulation, which ensures at the same time freedom of expression, security and respect for human rights. … Internet and World Wide Web have brought major benefits in social and economic development worldwide. Both have been built and governed in the public interest through unique mechanisms for global multistakeholder Internet cooperation, which have been intrinsic to their success”. [[8]](#footnote-8)

Roussefss speech and the I\* document are pointing into the same direction. They stressed the need for a global regulatory framework which ensures human rights and security; to re-build trust and to keep the Internet open, free, stable and unfragmented. However there was also difference in the used language: President Roussef spoke about “multilateralism” and the United Nations, the I\*s about “multistakeholderism” and the Internet Governance Ecosystem.

One week after Montevideo the Brazilian president met with ICANNs president in Brasilia. Both sides did find out, that there is no contradiction in the two terminologies if they are put into the broader context. In the Internet Governance Ecosystem multilateral treaties among governments will continue to be important but they are embedded into a multistakeholder environment where next to governments also the private sector, the civil society, the technical and academic community will play a role. There is no single model for the governance of the Internet. The community has to learn to find the right answer to the many individual challenges of the Internet world case by case, in a bottom up, open, transparent and inclusive policy development process.

The outcome from this presidential conversation was the idea to convene a “Global Multistakeholder Meeting on the Future of Internet Governance” which soon became known as NetMundial. With other words, NetMundial bridged the artificial “Ism-Controversy” by looking forward into the complexity of the Internet related public policy issues.

The NetMundial preparatory process had two interrelated components: An institutionalized framework and an open, bottom up and transparent discussion process.

The discussion started during the 8th IGF in Bali in October 2013 with numerous consultations among all stakeholder groups from around the globe. In Bali, the general response was positive. The majority of the IGF participants shared the impression that there is a need to move from reflections to actions and that something has to be done after the revelation of Edward Snowden. There was no enthusiasm to recycle old plans for an “Intergovernmental Internet Council” as proposed by some governments during the Tunis WSIS Summit in 2005. The Bali spirit was not driven by the wish “to sail backwards”. The spirit of the day was “to stumble forward” and to explore further the still unchartered territory of the multistakeholder processes. And the idea of NetMundial was seen as an opportunity for the next “stumbling step”.

One key discussion point was how “equal” the stakeholders would be involved. In a meeting between ICANNs Fadi Chehade, the Brazilian organization committee and civil society representatives there was a strong support for NetMundial, but there was also a very clear message that civil society wants to be included on equal footing. Civil Society made clear that a NetMundial without a strong civil society would be a farce and they would reject any top down process or deals behind closed doors among governments and the private sector.

Within a rather short period of time, the various involved groups did form a NetMundial institutional framework which created a mechanism to bring the various stakeholders into a structured process of communication, coordination and collaboration. Four bodies were established:

* a High-Level Multistakeholder Committee, responsible for conducting the political articulation and fostering the involvement of the international community;
* an Executive Multistakeholder Committee, responsible for the meeting agenda, the design of the meeting format and the invitation of attendees, all equally balanced across the global multistakeholder community;
* a Logistics and Organizational Committee responsible for guiding all logistical aspects of the meeting including media outreach, international communications, website design and management, awareness raising, meeting venue, traveler funding strategy, security, and remote participation and
* the Council of Governmental Advisors which involved all government representatives who participated and contributed to the meeting.

The four main stakeholders groups (governments, private sector, civil society, technical community) were involved on equal footing but recognized it their specific roles. The committees were populated by the stakeholders groups themselves in open and transparent processes which gave the groups the needed legitimacy. The committees were instrumental to organize the input from their constituencies into the process of the preparation of the final document. NetMundial became like a carriage with four horses moving forward together in the same direction. It looked like a “Roman Quadriga”.

The “Internet Governance Quadriga” model worked for the discussion. In contrast to ICANN meeting where discussants queue behind a main microphone, the setting in the NetMundial conference room provided four microphones where speakers from the four stakeholders groups where queueing to make their two minute statement. And the chair of the session managed the balanced distribution of speaking time among the four queues.[[9]](#footnote-9)

This “Internet Governance Quadriga” model worked also quite well for the decision making. It stimulated 186 proposals from all over the world. It allowed an agreement on a conference agenda for a two day meeting and a draft document with 15 pages, structured into two main parts with a section for Internet Governance Principles and a section for an Internet Governance Roadmap. The draft of the final document was published before the conference and triggered another 1000 comments which enabled the High Level Multistakeholder Committee in an open and transparent drafting meeting to reach rough consensus. The document was finally adopted by acclamation by all stakeholders. Only four governments expressed reservations.

However, this does not mean that the whole process was perfect. Some parties did not find their original position adequately reflected in the final document. There was a last minute lobbying by some powerful private corporations and governments. There were efforts to settle some problems via the traditional diplomatic “horse-trading behind closed doors”. Civil society was not happy with the language related to net neutrality and surveillance. The Russian government was not happy with the text related to cybersecurity. The private sector was not happy with the paragraphs on privacy.

The fact that all consultations and the drafting of the full text took place in an open and transparent environment with the equal participation of representatives from all stakeholder groups created a rather balanced final outcome which made everybody equal unhappy. Insofar the Sao Paulo Multistakeholder Internet Governance Declaration represents the rough consensus of the time by keeping the process open for further improvements in the coming years.

***Internet Governance Principles***

A key part of the final NetMundial document was the section on Internet Governance Principles. The discussion on such principles goes back into the 1990s when the former EU Commissioner Martin Bangemann proposed a “Global Communication Charter”. Internet Governance principles were discussed again in the context of the WSIS although the Tunis Agenda did not introduce any specific Internet regulation. The Internet Governance Forum (IGF) became the place for a continuation of the debate, mainly via the IGF Dynamic Coalition on Internet Rights and Principles. In the early 2010s intergovernmental organizations as the G 8, the Council of Europe, the OECD, the Shanghai Group and non-governmental organizations as the Global Network Initiative (GNI) from the private sector, the Association for Progressive Communication (APC), a global civil society organization and the technical oriented I\*-organizations adopted declarations on Internet Governance principles.

Until 2013 more than 25 different documents with principles how to govern the Internet were flying around. This resulted in confusion and “principle shopping” where actors just picked the principles they liked to justify their behavior in cyberspace. The weakness of all those principles and documents was that they were supported either by only one stakeholder group or were limited in scope by geography and substance. None of the 25+ documents was universal and multistakeholder.

At the 8th IGF in Bali (2013) the main sponsors of the various declarations – OECD, Council of Europe, the governments of Russia, China and India, cgi.br, APC, I\* and GNI – were sitting on one table. However no agreement could be reached how to “globalize” and “multistakeholderize” the process of the making of principles for Internet Governance.

What the IGF could not achieve, was done by Net Mundial: a rough consensus across all stakeholder groups. The Sao Paulo Declaration summarizes - in eight principles with 17 subparagraphs - the essence of the previous 25+ documents. It “globalized” and “multistakeholderized” them.

The Preamble of the Sao Paulo Document states that the principles are legally not binding. It is worth to remember in this context, that the Universal Declaration of Human Rights from 1948 is a legally non-binding document. It became an important reference source because it got such a broad support from all corners of the political spectrum in the post-WWII years. The Sao Paulo document reflects a similar consensus in the Internet Age. Never before in the history of Internet Governance there was a document which had such a broad political support both from governments and non-governmental stakeholders. Regardless of its legal nature, this document constitutes a basis with criteria which allow an measurement and evaluation of Internet policies, of good or bad behavior in cyberspace. There is no mechanism to bring a wrongdoer to an International Internet court, but the NetMundial document allows “naming and shaming” if a government, a corporation or users conflicts with its principles.

If a government restricts access to Twitter or Facebook, it can be “named and shamed” by violating Principle 1.1 (freedom of expression). If governments negotiate treaties to regulate Internet issues behind closed doors they can be “named and shamed” because they violate the principle 7.3, transparency. If a corporation ignores data protection laws it can be “named and shamed” because it violates the right to privacy (principle 1.3). If somebody wants to change the open Internet architecture, it can be “named and shamed” to violate principle 4 (unified and unfragmented space) and principle 6 (open and distributed architecture) which states that the Internet should “upholds the end-to-end nature of the open Internet.”[[10]](#footnote-10)

***What next?***

Did NetMundial create a new multistakeholder model? Yes and no. No, because there is and will not be one single multistakeholder Internet Governance model. But the answer can be also yes, because NetMundial introduced some new elements which went beyond the previous experiences in bringing life to the multistakeholder approach.

The Tunis Agenda defined Internet Governance and recommended that all stakeholders should share principles, programs and decision making in the further evolution and the use of the Internet. Since then we have seen different forms of the mutistakeholder approach:

* In the WSIS Follow up (WSIS 10+, UNCSTD etc.) all governmental and non-governmental stakeholders are involved but at the end of the day the governments decide. This is a multistakeholder process under governmental leadership.
* In ICANN we see also the involvement of all stakeholders however governments participate in ICANN processes only in an advisory capacity. At the end of the day it is the ICANN Board - where governments are represented by one non-voting liaison - which decides. This is a multistakeholder process under private sector leadership.
* In the IGF all stakeholders are involved on equal footing, but the IGF has no decision making capacity.

Insofar NetMundial added an important component. It was mainly a discussion process – as the IGF – but produced tangible results. It involved all stakeholders - as WSIS and ICANN - but treated them in the decision making process as equals. This is an innovation.

The decision making process within NetMundial was different from the intergovernmental decision making within the UN machinery. But it was also different from ICANN processes. There was “language negotiations” as in an UN body. But the language was not negotiated among governments only, it was produced by a multistakeholder committee in an open environment. On the other hand, there was a bottom up and open policy development process (PDP) as in ICANN. But the decisions were made by a committee where governments were members on equal footing (and not only advisers). Decisions in Net Mundial were made not by voting as in a UN body or in the ICANN Board, but by rough consensus. Running code and rough consensus is the way how RFCs are emerging in the IETF. With other words, NetMundial combined in a certain way two different decision making cultures which shaped so far the rule making for the Internet.

Such an approach has obviously a potential to organize a broad commitment which goes beyond intergovernmental agreements and embraces also large Internet corporations, technical institutions and civil society organisations around legally non-binding guidelines for Internet related public policy issues. This is new and could become the starting point for a new journey into the unchartered territory.

At this stage it would be unrealistic to expect, that such an approach could produce legally binding agreements. But the NetMundial approach could help to find out what has to be done if there are issues which need more than general principles. And such an approach could help to clarify which existing body or which mechanism would be best suited to produce legally binding agreements, if needed.

To a certain degree such a process would be similar to a clearing house function. One could imagine situation where the IGF identifies and discusses issues and flags the need for further actions. The NetMundial process could take this as an invitation and to investigate - via its multistakeholder committees or a new NetMundial Initiative - what the best way would be to find a practical solution.

Insofar, NetMundial and IGF could complement each other. The weakness of one process could be compensated by the strength of the other one. Both IGF and NetMundial are based on the same principles. The (intergovernmental) Tunis Agenda has paved the way for the (multistakeholder) Sao Paulo Declaration. If NetMundial and IGF would combine its strengths they could create more opportunities to achieve concrete results in managing the growing number of Internet related public policy problems.

1. NetMundial Multistakeholder Statement, Sao Paulo, April 24, 2014, in: <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf> [↑](#footnote-ref-1)
2. Tunis Agenda for the Information Society, November, 18, 2005, in: <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html> [↑](#footnote-ref-2)
3. WSIS 10+ is managed by UNGIS (United Nations Group on the Information Society) which has only intergovernmental organizations of the UN system as members. See: <http://www.ungis.org/> [↑](#footnote-ref-3)
4. See: <http://www.unctad.info/en/CstdWG/> [↑](#footnote-ref-4)
5. See: http://unctad.org/en/Pages/CSTD/WGEC.aspx [↑](#footnote-ref-5)
6. Such a framework should be based, the president said, on principles such as: “1. Freedom of speech, privacy of the individual and respect for human rights; 2. Open, multilateral and democratic governance, carried out with transparency by stimulating collective creativity and the participation of society, Governments and the private sector; 3. Universality that ensures the 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, thus making unacceptable any restriction due to political, commercial, religious or any other purposes”. See: <http://gadebate.un.org/sites/default/files/gastatements/68/BR_en.pdf>, Statement by H.E. Dilma Rousseff, President of the Federative Republic of Brazil at the Opening Session of the 68th General Assembly of the United Nations, New York, September 24, 2013 [↑](#footnote-ref-6)
7. The so-called I\* Organizations include IETF, ICANN, RIRs, IAB, ISOC and other technical groups of the Internet Governance Ecosystem, [↑](#footnote-ref-7)
8. In four points they summarized their conclusions: They “1. reinforced the importance of globally coherent Internet operations, and warned against Internet fragmentation at a national level; 2. expressed strong concern over the undermining of the trust and confidence of Internet users globally due to recent revelations of pervasive monitoring and surveillance, 3. identified the need for ongoing effort to address Internet Governance challenges, and agreed to catalyze community-wide efforts towards the evolution of global multistakeholder Internet cooperation and 4. called for accelerating the globalization of ICANN and IANA functions, towards an environment in which all stakeholders, including all governments, participate on an equal footing.” See: Montevideo Statement on the Future of Internet Cooperation, October 7, 2013, see: <http://www.iab.org/documents/correspondence-reports-documents/2013-2/montevideo-statement-on-the-future-of-internet-cooperation/> [↑](#footnote-ref-8)
9. See the speech of the German Foreign Minister, Frank Walter Steinmeier at the opening of EURDIG, Berlin, June 12, 2014. “For the German Foreign Office, my colleague Dirk Brengelmann went to Sao Paolo. And when he came back, Ambassador Brengelmann told me a story about how this conference worked. He said: When we were putting together the different parts of the final document, everybody got an equal say. A truly equal say: Because all participants –software engineers, entrepreneurs, NGO people and government people – all of them had to line up at the microphone to deliver their statements. And each had the same time to talk – exactly two minutes. Now I ask you: Can you imagine a NATO Defence Summit, where a minister waits in line to speak after a human rights activist? Or a G20 Meeting, where a President queues at the microphone? Or, in fact, can you imagine any politician who speaks for only two minutes? Can you imagine that? I can’t. And if I could, I am sure my rotocol office would give me a very hard time… The internet is different. It is, and it should be, a free, safe and open space. That is why we use this rather technical term: the multi-stakeholder model.” http://www.auswaertiges-amt.de/DE/Infoservice/Presse/Reden/2014/140612-BM\_EuroDIG.html?nn=555306 [↑](#footnote-ref-9)
10. Over the years the legally non-binding Human Rights Declaration became a highly respected political instrument. If a government tortured prisoners, censored media or restricted freedom to travel, human rights groups around the globe referred to the relevant articles of the declaration. It is also interesting to remember that there was no full consensus, when the 3rd UN General Assembly adopted the Human Rights Declaration in December 1948. 48 UN member states voted with yes, but eight governments expressed their reservations and abstained, among them the Soviet Union, Ukraine, Yugoslavia, the racist South Africa and Saudi Arabia. [↑](#footnote-ref-10)