Brazil, China and Internet Governance: mapping divergence and convergence

Louise Marie Hurel and Maurício Santoro

(Draft paper, please do not cite)

Abstract
The Internet has continuously been drawing the attention of states. Governance became a central aspect to negotiating tensions between state and non-state actors involved in the Internet ecosystem. This paper draws a comparative analysis between China and Brazil in the negotiations on global Internet governance. The primary objective of this work is to identify similarities and/or differences both countries have in cyber-policies regarding security, privacy and surveillance, especially concerning how the two States deal with the role of the United States in the management of the Internet. The last section of the will be dedicated to mapping the challenges and opportunities that emerge from these processes, in particular in the BRICS group.

Key words: Internet governance, China, Brazil, BRICS, cyber-policies

Introduction

Brazil and China became important global players in the debates about Internet governance, assuming leadership roles among developing countries with an agenda critical of the current model. Two policies have oriented the participation of Brazil and China in the issue: (i) resistance to US dominance; (ii) defence of the UN system as an ideal space for Internet governance debates.

However, there are many disagreements between Brasília and Beijing, and most of them come from their different domestic political regimes, and how they influence their foreign policy towards the Net. This does not prevent them to cooperate, but it establishes obstacles and limitations to the scope of their dialogue.

In this paper, we start with an analysis of Brazil’s cyber-policies, discussing the creation of its landmark Internet Bill of Rights and how it was the base for the positions that the country presented at the UN after the revelations on NSA surveillance.

After that, we make an overview of the convergences and divergences of Brazil and China in the global discussions about Internet governance, in particular on the
“constitutional moments” that led to the creation of ICANN (1998) and to the World Summit on Information Society (2005).

The final section is a study on how Brazil and China area dealing with these issues in the BRICS, and the possibilities that the group created for a better cooperation between them, in spite of their many differences.

(2) Brazil’s two level game cyber-policy

In the decade of 2010, Brazil became a global reference in cyber-policy, due to the implementation of a comprehensive domestic legislation on the issue, the Brazilian Internet Bill of Rights (Marco Civil da Internet) and to the international actions that the country took in multilateral organizations, such as the General Assembly and the Human Rights Council of the United Nations. These measures and interconnected, part of a “two-level game” between domestic policy and diplomacy, in the classic definition of Putnam (1988).

Although Brazil is one of the world’s ten biggest economies and a rising power on many global issues, its leadership in Internet governance is surprising. More than 40% of Brazilians do not have access to the Net, and the country does not have a strong IT industry, in contrast, for example, with China or India. What explains the important role that Brazil is playing is a very specific set of domestic institutions that link government officials, civil society representatives and corporate executives (Santoro, 2015), a network with many positive consequences that began in the 2000s, with the movement for Open Source Software (Borges, 2010).

In 2003 Luiz Inácio Lula da Silva became president of Brazil, commanding a complex center-left coalition. His Minister of Culture was the singer and composer Gilberto Gil, a supporter of the Creative Commons and similar initiatives. Together with sympathetic officials at the Ministries of Science and Planning, Gil engaged the government in the Open Source movement and opened the doors for many activists and scholar concerned with digital rights, who established a partnership with the State that, in time, went far beyond the original issues.

In order to understand Marco Civil's importance for multistakeholder discussions and widespread notoriety in the national and international level, we must take into consideration its' development:
The growth of Internet use affected the legislative agenda, which began to focus on users’ rights, duties or behaviour during the late 1990s, when many bills proposed rules about Internet user behaviour. Most of them [...] set criminal conduct - prohibiting the use of the World Wide Web for criminal purposes, fighting pedophilia and child pornography, filtering inappropriate content and anonymity [...]. (Rossini, Brito Cruz and Doneda, 2015, 3)

One of the challenging factors was that while Internet access continued to grow in Brazil, the legal responses and the institutional mechanisms were unable to follow the changes provoked by social interaction online. As online crimes became more notorious, a pressing question of how to respond began to cling into the national panorama. In 2006, Senator Eduardo Azeredo proposed a cybercrime bill that focused in the criminalization of online activity and prescribed serious limitations for freedom of expression (Article 19, 2012). Fearful of the repercussions that such a bill could cause to digital rights, civil society groups and academics pronounced themselves against it (Magrani, 2014, Rossini, Brito Cruz, Doneda, 2015).

The Marco Civil quickly became an international reference because of its innovative content. The collaborative and participative process of elaborating the Brazilian Internet Bill of Rights also had significant impacts in policy-development processes in other countries. Internationally, the Marco Civil and Brazilian Internet Steering Committee’s (CGI.br) decalogue of principles served as an example and basis for the development of Italia's Dichiarazzione dei Diritti in Internet (Italian Declaration of Rights on the Internet) (Canabarro, 2015). Moreover, it translates into the digital realm the broad political and civil rights of the Brazilian democratic 1988 Constitution, such as freedom of expression and privacy, as well as further ensures new principles as Net neutrality and the protection of privacy in face of government intrusion (officials can only access data with a judicial warrant) or revenge porn (in these cases, sites have to take out the images).

In the years that followed, this coalition reacted to several conservative proposals of the Brazilian Congress about the regulation of the Internet with its own legislative initiative: the Marco Civil. The original draft was available on the Web and citizens could give their ideas and suggestions, in a very open process, unusual in Brazil. (O’Maley, 2016).

There are, of course, gaps and contradictions in the Marco Civil. For example, the law protects personal data, but does not define what it stands for - a task left to other
legislation, in a difficult context when the rise of Big Data and metadata put in question traditional definitions. There are also many discussions on how to deal with cyber-crime, something that is not a major concern of the Marco Civil. Some judges are applying the law in a controversial way, trying to block message services such as WhatsApp due to conflicts in criminal investigations regarding cryptography and request of information from the company (Arnaudo, 2017).

There was always strong opposition in Congress against the Marco Civil, specially from politicians backed up by telecommunications companies, which do not like Net neutrality - for them, it a loss of market opportunities.

Parliament waited two years to vote it - the law was approved just after Edward Snowden’s revelations about the American National Security Agency (NSA) surveillance on Brazil created a strong pressure in the Brazilian public opinion urging the government to do something about the protection of Internet. (Borges and Santoro, 2017).

President Dilma Rousseff went to the General Assembly of the United Nations and presented Marco Civil as the base of a future international treaty for the multilateral regulation of the Net:

“Time is ripe to create the conditions to prevent cyberspace from being used as a weapon of war, through espionage, sabotage, and attacks against systems and infrastructure of other countries. The United Nations must play a leading role in the effort to regulate the conduct of States with regard to these technologies. For this reason, Brazil will present proposals for 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.” (Rousseff 2013)

During 2013 and 2014, Brazil worked together with other countries, especially Germany – also a major target of NSA – and co-sponsored two resolutions at the UN General Assembly (69/166 and 68/167), both entitled “The right to privacy in the digital age”. Both resolutions call upon States to protect the right to privacy, take measures to preserve it and review its own actions to evaluate if they are not violating it. They were the first Brazilian attempts at the UN “to trigger a norms cascade” (Abdenur and Gama 2015) on the issue. General Assembly’s resolutions are tools of soft law and are not binding, but they could then be the first step to reach a formal agreement.
In early October, leaders of organizations responsible for the coordination of the Internet’s technical infrastructure released the ICANN’s Montevideo Statement. It called for the “need to continually strengthen and evoke” the “unique mechanisms” developed for global multistakeholder Internet cooperation, which included the “the globalization of ICANN and IANA functions, towards an environment in which all stakeholders, including all governments, participate on an equal footing” (ICANN, 2013). This was followed by Fadi Chehadé’s announcement that he had met with President Dilma and that the government had agreed to convene a global multistakeholder summit on Internet governance.

Civil society groups saw the summit as a potential way of assessing mass surveillance, privacy, other human rights violations, and the transition of the IANA functions (Malcom, 2013). On the other hand, the blurry definition of what this meeting would be and how it should be structured generated unrest among the different stakeholder groups. In this initial moment of negotiations, the Brazilian Minister of Communications, Paulo Bernando, argued that Dilma and Fadi met to discuss a multilateral project that would include the private sector and all of the actors involved in Internet governance, and that the initiative would be linked to the United Nations. In spite of the preceding controversies and competing interests, Brazil was regarded as a trustworthy country to leading the international efforts for an inclusive and multistakeholder process (Malcom, 2013).

The signing of the Marco Civil and the release of the Multistakeholder Statement during NETmundial portrays the encounter between the national and international dimension of Brazil's position in Internet governance. The country had previously hosted an IGF in 2007, however, the 2014 NETMundial and the 2015 Internet Governance Forum were particularly important to the consolidation of the country as a prominent player in the global Internet governance. Hosting these two conferences also adds to the recognition, by the global community, of the relevance of Brazil’s statements and the implementation of the Marco Civil. Both conferences discussed issues dear to the Brazilian agenda, such as privacy, endorsing the country’s proposals, although in a language that was not so strong.

These responses are not to be viewed as detached from a wider socio-technical (Canabarro, 2014) process of consolidating national Internet governance. They link directly to a historical analysis of policy-making processes – as we saw with the tension among a criminal-based and rights-based approach in the 1990s – and previous
multistakeholder experience with the institutional development of the Brazilian Internet Steering Committee (CGI.br).

Furthermore, one should not view the Brazilian case as a monocausal process, rather as a composition of (i) existing political processes, (ii) ongoing institutionalization of Internet governance-dedicated institutions – namely CGI.br –, and (iii) multidimensional governance (Hurel, 2016a) – a specific moment of domestic and foreign policy alignment.

(3) Crossroads: Tensions and Developments in Global Internet Governance

The 2005 UN World Summit on the Information Society was an important “constitutional moment” (Mueller, 2002) in the history of the global governance of the Internet, and an important occasion to look at the convergences and divergences in how China and Brazil perceive their interests on the issue.

The WSIS process marked the expansion of the understanding of Internet governance. Previous conceptualizations of the term often pinned it down to "technical aspects" (Aguerre and Galperín, 2015; Drake, 2004; Hoffman, 2015) and reflected the perspective of developed countries that had been involved in the Internet's early days. At that point in time, the now-called governance of the Internet mainly referred to bodies involved in the management of the infrastructure, mainly the Domain Names System, addressing space and technical standards (Hoffman, 2015). In this setting, the WSIS "openly questioned the institutional legitimacy of these early governance arrangements [...] and emphasized the political implications of the decisions being made through ICANN and other technical forums" (Aguerre and Galperín, 2015: 6).

While developing countries often lagged behind in the technical management and coordination of Internet governance, some of them shared the view that the WSIS process was a window of opportunity for advocating greater governmental representativeness. This was also the case of Brazil. During the preparatory meetings of the WSIS process, the country stressed the need for developing countries to have a say in decision-making bodies and processes related to the structure and function of cyberspace (Hoffman, 2015). However, in order to understand the positions taken by Brazil and China in the development of Internet governance, one has to take into account processes and organizations that preceded the establishment of the World Summit on Information Society.
The 1990s were a crucial decade to define the international regulation of an increasing global Internet, but still at the hegemonic influence of the American government and IT companies. The tense result of these negotiations was the creation of the ICANN and its unique regime based in a civil society corporation who signed a contract with the US Department of Commerce (NTIA) and was part of a multistakeholder system which put together officials and representatives of private companies, activists, technical community, engineers and scholars.

Brazil and China were not happy with this scenario. Both countries rejected the American primacy over Internet governance and supported a solution in which the United Nations would assume the management of the Net through the International Telecommunication Union (ITU). This position was popular among nations of the Global South and had a strong link to political mobilizations about a New World Information and Communication Order (NWICO) that started in the 1970s (Bhuiyan, 2014).

The NWICO was symbolized by the MacBride report and based upon the criticism of the concentration of economic power in the rich countries – most notably the US and the UK. Furthermore, Siochru (2004: 208) argues that this was the first time that "a full range of information, telecommunication, media and related issues were argued in a truly global way". The NWICO emerged as a response to the consolidation of a western-centered neoliberal model of development and a calling for the redistribution of international communication resources (Chakravartty, 2007). The initiative also proposed changes in the regulation of media and telecommunications to benefit developing nations.

However, global politics went to another direction. Changes within NWICO along with the conservative turn of the 1980s resulted in a policy agenda of privatization and deregulation concerning the information industry. This approach is embedded in the framework of ICANN’s multistakeholder model, with its openness to corporations in the decision-making process.

In the 2000s, Brazil and China were both among the key supporters for greater engagement of the United Nations in Internet Governance, and celebrated the proposal of a World Summit on the Information Society. They shared the opposition to the American hegemony in the global Internet regime, but had disagreements on other issues. China did not want a multistakeholder model that gave foreign companies and civil society a greater role. Together with countries such as Iran, Chinese authorities
claimed that States should be in charge of the Internet. In one tense occasion, these discussions even led to the expulsion of the president of ICANN from a UN meeting, under the claim that he was not an official from any government. (Bhuiyan, 2014: 51-58).

Brazil had a different position. The development of the Brazilian Internet Steering Committee was a fundamental piece to the consolidation of the country's own domestic multistakeholder experience with Internet governance. Even though CGI.br had been created in 1995, it was only in 2003 that the governance model was explicitly defined. The 2003 presidential decree was a milestone in the institutional development of the multistakeholder model in Brazil (Glaser and Canabarro, 2015); as it defined that CGI.br’s board would be composed by members from the government, civil society, private sector, one Internet expert and representatives from the technical community. Furthermore, civil society, technical community and academic researchers, were active players in building Internet infrastructure in the country, in partnership with the government. Brazilian diplomats were willing to engage in ICANN’s policy processes, even if they were not entirely comfortable with the regime. (Lucero, 2011).

Besides that, Brazil was a newly reestablished democracy, which cherished civil and political freedoms and was experiencing rising mobilization concerning digital rights. The process that would result in open source software policy and the Marco Civil was already going on. Brazilian leaders did not concur with the prospect of an international regime totally run by governments, including authoritarian States.

The debates at the UN were an attempt to compromise on the issues of the stakeholder model and the role of the United States. The Geneva Declaration of Principles, adopted in 2003, tries to link the discussions on Internet governance with other United Nations priorities, such as the Millennium Development Goals, acknowledging that greater focus should be given to developing countries. Point 48 highlights the conflicts:

The Internet has evolved into a global facility available to the public and its governance should constitute a core issue of the Information Society agenda. The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations. It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism.
There were also many compliments to democracy and transparency. The same tension was present in the UN Working Group on Internet Governance (WGIG), whose 2005 report stated:

> Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.

The report was very critical of the American role in the system, reflecting the widespread consensus among other nations that it was a problem. However, at the World Summit the US government was able to build a coalition around ICANN and the multistakeholder model. In great measure, exploring the fears of democratic countries such as Brazil that the model proposed by China would be an obstacle to the freedom of information on the Internet (Lucero, 2011, p. 110-111).

Brazil supported the final statements and decisions of the World Summit, such as the creation of the Internet Governance Forum as a voice for civil society. But the meeting also stated that public policy about the Net is “a sovereign right of States”.

The tensions between some developing countries and the setting of this international regime nonetheless resurfaced in different occasions. In 2009, the Internet Governance Forum approached a decisive moment of reviewing its mandate and stakeholders took different views on what was yet to be the future of the IGF. During the Sharm el Sheikh meeting in November, China, Brazil and other developing countries envisioned changes to global Internet governance that would aid in shifting US predominance and promoting greater governmental representativeness (Kurbalija, 2017).

In that same year, during the December meeting of the United Nations’ Second Committee, Brazil proactively called for building multilateral, transparent, inclusive and democratic regime for global Internet governance at the UN. In addition, the country expressed concerns over ICANN’s Affirmation of Commitments, that had signalled the intention of the organization becoming more independent. The Brazilian representative at the United Nations’ Second Committee highlighted that the document lacked a statue
that would grant ICANN international legal personality or “change the unilateral and exclusive nature of controls over the root directory of DNS”.

Broadly speaking, issues of voice and participation of Governments and multilateral organizations in matters relating to the Internet governance regime remained unresolved.

The G77 and China proposal at the 65th General Assembly meeting in early 2010 also suggested that the forum should be more anchored within the UN system and that it should delve more deeply into policy issues, to aid in shifting the unilateral control of critical Internet resources -- in other words, ICANN's umbilical relationship with the US. The Group also endorsed the need to maximize developing countries’ participation in Internet governance decisions – principles previously highlighted in the Tunis Agenda – as well as the IGF as a venue capable of resolving public policy issues such as “such as the unilateral control of the critical Internet resources and measures in enhancing access to the Internet” (G77, 2010).

Resisting US predominance in Internet governance has been a common political thread for both China and Brazil foreign policy. The review of the International Telecommunications Regulations (ITRs) during the World Conference on Telecommunications Meeting in 2012 highlighted important divergences. Scholars portray this particular moment as a landmark in opposing views and rising tensions regarding Internet governance. The WCIT-12 meeting ended in a “diplomatic éclat” after it became clear that debates were fragmented in two main perspectives. Maurer and Morgus take the view that this division was drawn between a bottom-up stakeholder inclusive model and a top-down approach that placed governments at the epicentre of the ITU (2014). In this “either/or” moment in Internet governance, China and Russia were the main proponents for the empowerment of the ITU and the increased role of states, while Brazil was considered to be a “swing state” in-between dichotomies (Maurer and Morgus, 2014).

(4) BRICS: Making Policies Converge

While we are able to identify important convergences and divergences between Brazil and China in the structuration of an international Internet governance regime, one

---

4 United Nations Second Committee A/C.2/64/SR.23
should be able to visualize it as a complex composition of different governance models, experiences, visions and arrangements (Hurel, 2016a).

As the Internet ascended as a global policy concern, it also became an ever-more central topic to the cooperation and agenda setting processes between stakeholders. This section focuses on the role of Brazil and China vis-à-vis the shifts in Internet governance as a "mutual concern" among the BRICS countries.

The year of 2014 was of great importance to the consolidation of Internet-related issues in the common agenda. The almost non-existent reference to ICT security in the 2013 eThekwini Declaration shifted from a marginal concern to a notorious piece of the Group’s international response for circumventing international surveillance and espionage. Among the strategies, was the re-emergence of the BRICS cable that had been first proposed in 2012 and finally gained traction in this context (Lee, 2016), the launch of China’s first World Internet Conference (WIC) – annual conference to discuss Internet policy –, the support for the NETmundial conference co-organized by Brazil and the emphatic reference to the “central role” of the UN in global Internet governance debates.

Building on previous developments, the 2015 meeting was perhaps the moment where Internet governance gained greater attention. The Ufa Declaration and Plan of Action reinforced the need for states to participate in equal footing and adopted somewhat similar definition of Internet governance as the one achieved by the WGIG. However, the declaration stressed that inclusion referred to involvement of “relevant” stakeholders in their respective roles and responsibilities (BRICS, 2015b). Moreover, the establishment of the Working Group of Experts on security in the use of ICTs made it clear that, within Internet governance, security had become a topic of upmost interest. Emphasis on promoting cooperation, universal access, privacy, ICT development also traced back to the adoption of multilateralism as a best choice for international cooperation for Internet governance:

Considering the necessity to ensure the secure, stable and continued operation and use of ICTs, including Internet, the Parties note the importance of the establishment of mechanism for the Internet governance based on the principles of multilateralism, democracy, transparency and mutual trust and involving relevant stakeholders in their respective roles and responsibilities (BRICS, 2015a).

While the BRICS attempted to establish common grounds, members often took different views in certain subjects. This was the case of India in 2015, when IT minister
Ravi Shankar Prasad presented an “Indian vision for the Internet” during ICANN 53 in Buenos Aires. Taking a turn in the political stand of the BRICS, the vision supported a multistakeholder approach and thus suggested the approximation between government, private sector and civil society in policy-making processes (Sukumar, 2015). Skepticism with regards to the effective capacity of the BRICS in promoting policy coordination was also followed by critiques related to the different views of Internet governance – Brazil, South Africa and India, on one hand and Russia and China on the other (Grigsby, 2015; Kleinwächter, 2017).

Developments within the BRICS are part of the multidimensional interplay among and within different networks (Hurel, 2016a). Policy strategies laid out by the BRICS are part of a cooperative process that overlaps with other international forums such as the G20, G77, IBSA and the Shanghai Cooperation Organization (SCO) in the case of China and Russia (Kleinwächter, 2017) – and should be understood as part of a wider landscape of interactions.

Previous to the formal introduction of Internet governance as part of the vocabulary in the agenda, the BRICS mainly focused in promoting cooperation for ICT development. However, under the narrative umbrella of developing countries, they found common ground within the principles outlined by both Geneva and Tunis agenda. Resistance to US dominance remained a shared concern as well as the role of the UN as a desirable venue for political articulation. Gradually, the Group became yet another space for forging harmonious views on foreign policy with regards to the future of the Internet – though the degree of endurance to political and contextual shifts are yet to tell, in the long run, if such attempts are to be interpreted as successful.

**Conclusion**

Brazil and China have been critical of the global governance of the Internet, mostly because of the US role in the model, but the differences among both countries are big. They disagree about how civil society should be a part of the system and on the proper distribution of responsibilities between ICANN and the United Nations.

When we look at Brazil there is a particular paradoxal relationship between domestic and foreign policy: domestically the country has adopted and developed institutions and multistakeholder mechanisms for national Internet governance
internationally, while most of the times advocating for a greater UN anchoring, foreign policy is more blurry, specially when we look to 2014 (e.g: swing states WCIT-12, NETmundial).

China, on the other hand has firmly and clearly stood by these two policy orientations. Domestically, the country has developed their own forums for discussing the matter – mainly coordinated and organized by the government (e.g World Internet Conference) – and advanced in promoting legal mechanisms and policy orientations that further consolidate these standings – e.g. International Strategy of Cooperation on Cyberspace (Hurel, 2016b).

Contingency and contestation commonly arose in moments where processes in global Internet governance were being reviewed // or when they were being strucutred – WCIT, IGF, WSIS.

However, Brazil and China have been cooperating concerning the Internet and IT, although in a limited manner. The BRICS, in particular, offer them a forum where both countries can search for convergence and common ground in issues that are important to them. It is different at the UN, with much more political actor, and a bigger agenda, which makes cooperation more difficult between Brasília and Beijing.

Bibliography


AGUERRE, Carolina and GALPERÍN, H. "Internet Policy Formation in Latin America: Understanding the Links Between the National, the Regional, and the Global". Internet Policy Observatory. 2015.


BHUIYAN, Abu. Internet governance and the Global South. New York: Palgrave
G77. "Statement on Behalf of the Group of 77 and China by H.E. Ambassador Abdullah M. Alsaidi, Permanent Representative of the Republic of Yemen to the United Nations, Chairman of the Group of 77, At the Briefing on ‘Matters Related to the Continuation of the Internet Governance Forum’". Available at: http://www.g77.org/statement/getstatement.php?id=100330
GRIGSBY, Alex. "India’s Internet Diplomacy: Reading Tea Leaves". Council on Foreign Relations. 2015. Available at: https://www.cfr.org/blog/indias-internet-diplomacy-reading-tea-leaves
ICANN. “Montevideo Statement on the Future of Internet Cooperation”. Available at: https://www.icann.org/newsannouncement-2013-10-07-en
KLEINWÄCHTER, Wolfgang. "Internet Governance Outlook 2017: Nationalistic Hierarchies vs. Multistakeholder Networks?" Circle ID. 2017. Available at:


