Report of the

(graphic: Internet Society)

6th Internet Governance Forum
Nairobi, Kenya,
September 27-30, 2011

Prepared by Monika Ermert
For the CENTR secretariat

Table of Contents

Governance Watchdog idea rejected

The issue possibly most discussed over the four days of the Internet Governance Forum 2011 was a proposal from the three governments of India, Brazil and South Africa (IBSA) to establish a new Internet governance body attached to the United Nations. The IBSA regional meeting on October, 18th in Durban will discuss a potential document to be tabled at the 66th General Assembly of the United Nationas later this year.

IBSA and more

The new internet governance body according to the preliminary text adopted at a seminar in Rio de Janeiro on September, 1-2 recommend shall

- – *be located within the UN system*
- – *be tasked to develop and establish international public policies with a view to ensuring coordination and coherence in cross-cutting Internet-related global issues*
- – *integrate and oversee teh bodies responsible for technical and operational functioning of the internet, including global standards setting*
- – *address development issues related to the interent*
- – *undertake arbitration and dsiptued resolution where necessary and*
- – *be responsible for crisis management.*

A UN-body to oversee existing self-governance bodies like ICANN, IANA, potentially the RIRs, the standard setting bodies – the IETF comes to mind here -? Naturally opposition formed even before the IGF in Nairobi. A first harsh blow against the IBSA proposal came from Lawrence Strickling, Assistant Secretary for Communications and Information at the US Department of Commerce and as such head of the National Telecommunications and Information Administration (NTIA).
Strickling warned „the future of the Internet is at risk. The multi-stakeholder model is being challenged." The US official while also pointing to „more and more instances of restrictions on the free flow of information", also named the IBSA proposal which he said he had already formally objected against, and a second proposal by a country quartett China, the Russian Federation, Tajikistan and Uzbekistan.
The four countries in a letter to recently re-elected UN Secretary General Ban Ki-Moon propose an international code of conduct for information security (see the attached document) including the establishment of a multilateral, transparent and democratic international Internet management system to ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet". Interestingly the Russian-Chinese proposal was not discussed further in Nairobi, and its proponents kept silent while the IBSA plans were discussed.

Tactical Move?

Brazil and India on the other hand came out big defending their proposal as „still multi-stakeholder" in any respect. Both Brazilian diplomat Romulo Neves and Tulika Pandey, Director at the Ministry of Communications and Information Technology of India, said a final IBSA proposal still had to be discussed with all stakeholders at home, including civil society. Obviously the proposal so far is mainly a government only initiative despite being labelled as „multi-stakeholder". Also both government representatives said contrary to the concerns (by Strickling and many others) the IBSA proposal was not about an intergovernmental (government only) UN oversight body.

One IGF participant said to this reporter during the discussion which took place during the main session on critical Internet resources the most astonishing statement made was the very acknowledgement that non-governmental stakeholders had to be asked first before the IBSA draft could be finalized.

As both the Brazilian and Indian representatives took these backward steps several long-time observers said the IBSA proposal to some extent had been a calculated tactical move by the three governments in order to keep the pressure on IGF, but also ICANN and IANA reform. Pandey pointed to the problem of developing countries to participate in the variety of different venues for Internet governance.

Neves said that participation in and legitimacy of internet governance mechanisms did need a lot of work still: „maybe capacity building training programs, maybe more clear outcomes of the IGF, maybe more accountability of bodies like ICANN" would help to amend the situation from a developing country perspective. It seems pretty clear from these statements that the unresolved issue of US uni-lateral oversight over ICANN is one of the main motives for the IBSA move.

With regard to the next steps, Neves told this reporter that after a possible final decision of the IBSA conference in October to go ahead with the IBSA proposal the stakeholders in the three countries still had the final say on the wording. Neves said, he did not expect a complete turnaround on the topic, still the Nairobi debate looked like a tough push-back at the IBSA-proposal.

Once more: the IANA contract

From an NTIA perspective changes have been made answering the never-ending questions about the US oversight role in the DNS.
Fiona Alexander, Associate Administrator at the Office of International Relations of the NTIA, said during the CIR discussion that the US had worked hard to ensure that the voice of governments (participating in the Government Advisory Committee, GAC) was heard for example in ICANN's discussion about introducing new generic TLDs. Of the 80 government proposals on the gTLD application procedure, 70 were reflected in the final guidebook, Alexander said.
"To the extent governments want to be involved and should be involved, there are ways for them to be involved in the system," Alexander underlined at the IGF. This involvement was "another way to actually internationalise the IANA functions contract," Alexander said, "because the contractor, whoever the contractor might be, follows the rules that are developed by ICANN in this regard and the GAC is a part of ICANN and gets to have a say in this process."
GAC Chair Heather Dryden assisted, saying that governments as other stakeholders could not expect to get 100 percent of what they wanted in a multi-stakeholder process.

With regard to the next IANA contract, Alexander announced that the plan was to have a open procurement process for it, meaning that anyone could put in a bid for the contract. The current IANA contract has been extended for one year recently to allow further analysis of a second round of comments on the future of the contract. Answers to the so-called "Further Notice of Inquiry" (requesting comments on a proposed change to a future IANA contract by the NTIA) including the CENTR answer can be found on the NTIA website. The NTIA in sum received 138 answers during the two rounds of written consultations and would continue to analyze these over the coming weeks. Alexander said given these steps she certainly did not fully understand what the problem was the IBSA proposal wanted to address.

EU position on IANA ≠ EC position on IANA

Yet it is not only Brazil, India or other developing countries that have issues with the US DNS oversight, Neelie Kroes, European Commissioner for the Digital Agenda, did mention ICANN's problems with regard to the legitimacy of ICANN. Kroes touched on the issue during her opening speech Kroes said involving different stakeholders in policy making and encouraging transparent and accountable self-regulation was a benefit for everyone. "However, we must e clear what multistakeholder means," the Commissioner said. "Ultimately, different actors have different fields of expertise and of responsibility, and that must be respected and due weight must be given accordingly." Kroes said she was convinced that:

"Public authorities have a particular role; indeed, a particular obligation to deal with public-policy matters off- and online, and this must be reflected in the decision-making process. Otherwise, the outcome of multistakeholderism is that lobbyists hijack decision-making that private-vested interest from the public interest and that some put themselves above the law. These are not things I will accept now or in the future. And in particular, the next IANA contractor must be protected from conflicts of interest and must interact efficiently Governmental Advisory Committee."

While Kroes rejected any characterization of her position as an „attempt to regulate the Internet, whatever that might mean", a series of papers of the Commission about conditions to be placed on ICANN for the future, seem to have resulted in some eyebrows raised at the NTIA – and in some EU member states, too. The EC was on their own with regard to their ICANN/IANA requests, several member state representatives said to this reporter. Obviously there is a lack of a joint European Commission. The European High Level Group on Internet Governance met in Nairobi, but there is no record on the results from that meeting.

A planned (and announced) open meeting between the EC and the NTIA to consult about the IANA contract in September in Brussels was cancelled, the EC and Strickling both confirmed to this reporter. EC officials said, the meeting had been cancelled by the US at the last minute. Strickling said, the NTIA had not seen a need for an additional meeting after the two consultations. Asked whether he would extend his general criticism about a questioning of the multi-stakeholder model to the European Commission, Strickling said, that governments had to be part in the multi-stakeholder process and the NTIA had „came down strongly on ICANN to ensure that it is inviting governments". The EC's comments, he said, came out of the same sort of tradition and he only had pointed out to the EC that with regard to timing ICANN had already a lot on its plate at the moment with implementing the ATRT recommendations.

Standardization

The work of Internet Standards bodies was also a topic of the IBSA discussion resulting in highly critical questions from long-time IETF-participants how standardization work should be dealt with by a UN or other intergovernmental body. Cisco engineer Patrik Fälström, chair of the ICANN Security and Stability Advisory Committee, Co-Chair of the RIPE cooperation working group and long-time IETF particpant said he did not know if governments really wanted to decide about TCP parameters, but if they did, they could call him and do his job.

Qualcomm engineer Pete Resnick who is Applications Area Director at the IETF reacted to questions by Indian government representative Tulika Pandey about participation by developing countries in the IETF by pointing to the considerable numbers of Indian engineers (55) involved in   IETF working groups (for statistics, see Yari Arkko's page). Brazilian diplomat Romulo Neves said there certainly

was no attempt by IBSA to have one single proposal covering all Internet goverance institutions like IGF, ICANN and IETF as the differences between them were acknowledged.

The IETF model of standards development was presented in a special ISOC panel on open standards. An ISOC India panel looking into proprietary influences in free and open source software compared the IETF standards development with more government driven processes. The long time IETF participants obviously are heavily concerned that a more government driven process is pushed forward, not the least by the International Telecommunication Union (ITU) which has governments finally voting on standards.

The broadly documented recent fight between the ITU and the IETF over the MPLS standard, according to experts is only a minor case, which in fact could be interpreted as one case of forum shopping by Huawei in order to push through an already deployed technology. While competing standards were no problem in general,

Faltstrom said, the overlap of standards derived from one specification, resulted in an additional requirement for these standards, namely the interoperability inside one network of both. This was only possible through hand-in-hand cooperation, impossible when working in standards bodies as different as the IETF and the ITU. High-bandwith communication seemed to not have worked well despite the liaising efforts of both organisations.

The MPLS issue according to some observers is only the tip of the iceberg. „We have an ongoing disagreement with the ITU", Fred Baker said in a personal statement to this reporter. With the start of the work on NGN, the next generation network, the ITU following its resolutions 101 of 1998 and 2006 had set out on work „to create a different technology and migrate the global Internet to it". While using the Internet protocol, the NGN was not Internet according to the ITU's understanding.

Scott Bradner, Trustee of ARIN and Harvard University's Technology Security Officer explained during the ISOC India standards session:

„One of the arguments that's made for somebody like the UN -- the UN through the ITU -, to be the Internet standards body and the Internet regulatory body is that that way the regulators in country can have a better handle over this Internet thing. A lot of regulators in a lot of countries are very frustrated by the Internet. It's the only major telecommunications scheme in history that is not heavily regulated everywhere."

The arguments in favour of pushing the Internet standardization into the ITU according to Bradner, was one in favour of regulation and in putting control back onto the telecommunication infrastructure that had escaped control by moving to the Internet. Bradner and others see a real threat and a move from the non-regulated Internet back to a classical, much more regulated environment. And with the smaller ISPs (who had implemented TCPIP when some governments banned it) vanishing and the remaining ISPs just being „what's left over of the telephone companies", there was a trend to accept regulations, because the telecommunication companies were just used to that regulation.

Government voting on standards at the same time also seemed to make it easy for big players to intervene in the process, Richard Stallmann from the Free Software Foundation pointed out, referencing the fight about Microsoft's document format OOXML at the ISO. Stallmann warned to accept the conflating of patent rights and copyrights and in general warned against the notion of „Intellectual Property".

The ongoing friction between the IETF and ITU much certainly caused the sharp reactions of IETF participants to the IBSA proposal. Interestingly the ITU did send few people to this IGF and obviously

seemed to be focussed on their two workshops on accessibility and disability, plus one about how to reach out to „media have-nots" .
See:
http://www.itu.int/themes/accessibility/dc/workshops/201109/137/index.html
http://www.itu.int/themes/accessibility/dc/workshops/201109/136/index.html
http://www.itu.int/themes/accessibility/dc/workshops/201109/136/index.html
For the ITUs accessibility work go to:
http://www.itu.int/en/ITU-T/focusgroups/ava/Pages/default.aspx

DNS Blocking

A full session organized by the ISOC was devoted to DNS blocking and its problems. Interpol-Agent Bjørn-Erik Ludvigsen – one of few if not the only police officer speaking at IGF 2011 - presented the position of law enforcement which he said thought of DNS blocking as useful, while not perfect method to prevent child pornography once identified from being further disseminated. Ludvigsen said Interpol had a list of 326 „worst of the worst"-sites they wanted to see blocked by ISP and DNS operators. Paul Brigner, Senior Vice President and Chief Technology Policy Officer at the Motion Picture Association of America (MPAA) who participated in the IGF for the first time, reiterated DNS blocking was necessary to fight copyright infringement: „As part of a reasoned approach, DNS filtering does make sense. It doesn't break the Internet if it's done in a reasonable way."
Brigners intervention supported the warning of several DNS experts on the panel that talking about a small number and „worst of the worst"-sites was „just not what is happening". The DNS technology experts warned not only against high costs spent for what they say is not even a very effective way to stop illegal content because of circumvention measures. Patrik Faltstrom, Chair of the ICANN Security and Stability Advisory Committee pointed to the effect that „lying" in the DNS with the currently deployed DNSSEC was considered by the system as a „hack", indistinguishable from an illegal hacking attack. The SSAC's report on DNS blocking therefore is rather critical.

Jason Weil from Time Warner Cable said while blocking might be effective in the short term, as a provider of broadband services he was concerned that in the long run he might become unable to provide effective DNS services for customers who circumvented the blocking. Kurt Lindqvist, CEO of root server operator and DNS provider NetNod confirmed that 300 illegal sites certainly could be blocked, but then complaints and requests to block a growing list of illegal content would pile up at the operators desk "and that is a much, much larger problem." Recent DNS seizures by Department of Justice and Immigrations and Customs Enforcement were justified with alleged copyright infringement in the US, despite a Spanish court deciding for the legality of one content owner according to Spanish law.

With regard to blocking child pornography, Constanze Buerger from the German Ministry of the Interior reported about an effort in Germany to take down child pornogaphy at the source before implementing a blocking law. The take-down effort according to Buerger resulted in 99,4 percent of the content taken down. While the German government representative thereby agreed that taking down illegal content at the source the method of choice, Shane Tews, Vice President for Global Public Policy and Government Relations for VeriSign said in one of the panels about privacy, security and openness she was looking forward to solutions based on IPv6 which would allow much more targeted filtering.

Civil society representatives of which many participated in a panel on dangers for freedom of expression by the Electronic Frontier Foundation at the same time requested to specify in the blocking debate, what people were talking about. Child pornography and copyright issues could not be conflated. Cynthia Wong, Director, Global Internet Freedom Project, Center for Democracy &

Technology, recommended cooperation with intermediaries (follow the money, etc) to fighting illegal content.

For the technical community Faltstrom said, law enforcement should stop to use painkillers instead of trying to cure the disease. The ever ongoing debate about the „painkiller" DNS blocking was a waste of time, law enforcement and technology experts should talk about more effective measures instead.

Looking forward: Rights and Principles

If one believes the IGF optimists there is one single issue that looks promising with regard to a possible compromise to be reached at the IGF until the end of its second five year mandate in 2015 is running out: „Internet Rights and Principles". As there now is a „tsunami" (Wolfgang Kleinwaechter), a „plethora" (IGF USA) or a „flowering" (Joy Liddicoat, APC) of documents about „Internet rights" and „Internet governance principles" there were a lot of calls for a joint document. According to the optimists' camp the various documents (from APC, Brazil, IGF Dynamic Coalition on Rights and Principles, Council of Europe, OECD and others), are convergent enough to be brought under a joint framework document.

EU Commissioner Neelie Kroes in her opening speech said that she would indeed „welcome a degree of convergence between the different visions emerging out there from the Council of Europe, the G8, the OECD, and so on. For our part, we are bringing our own compact to the table but also open to listening, and in the long term, we should remain open about means to achieve that goal, but we should not rule them out for the future."

Strong support also came from the Swedish Foreign Ministry which joined a request made earlier by APC and other civil society groups to make human rights the topic of the IGF 2012 (right in time to have a somewhat difficult topic on the agenda for 2012 IGF host Azerbaijan who has a bad track record with regard to freedom of expression in general). The Swedish government according to Johan Hallenborg not only supports the rights and principles discussion in the IGF, but just achieved to have an expert session on „Freedom of Expression on the Internet" at the March 2012 session of the UN Human Rights Council.

A joint IGF document on the rights and principles on the Internet according to long-time IGF observers like Wolfgang Kleinwaechter and Bertrand de La Chapelle would also help the IGF to focus and produce at least one tangible outcome before the UN assesses its Millenium Goals and the contribution of ICT and the World Summit of the Information Society (WSIS) including IGF to these overarching goals.

Some resistance to such a document came from US State Department representative John Tye in a session on the principles theme organized by the Council of Europe. Tye cautioned against a potential "opening up" of existing human rights treaties (like the UN Declaration of Human Rights and the UN Convenant on Political Rights and Civil Liberties), reiterating a long standing US statement on this issue.

In what way the announced UN Human Rights Council meeting on freedom of expression will influence this discussion is as open as the question if the IGF will really be able to produce an IGF Internet rights and principles document. UN DESA, supported by the Kenyan host, in one of their daily press conferences once more strongly underlined that the IGF would not take decisions and also refrains from making recommendations.

Wither IGF? Expectations and Reforms

Given the resistance to produce IGF recommendations it is very difficult to say what can be expcted from future IGFs. For the time being the IGF stays a forum for a lot of talk on Internet related topics (from mobile and cloud to child protection and privacy) and certainly bilateral meetings going on in the background. The forum idea brought an unexpected record number of over 2000 delegates from over 125 countries to Nairobi. There are certainly those who think the model is just working well the way it is, some like Nii Quaynor from Ghana, pointing to the highly fruitful regional and national events ("It helps me to bring my community together").

Contrary to many civil society groups which have pushed for recommendations since the IGF beginning the business sector, represented for example by the International Chamber of Commerce (and its BASIS initiative), is content with the model as it was helping to raise awareness for ICT policy from a business perspective according to Ayesha Hassan from ICC BASIS. US companies certainly were the dominating group from the Business community with several big players sending considerably large groups (for example Google, Microsoft, VeriSign, Cisco). Related to that perhaps, the technical community was very well represented at the Nairobi IGF, with considerable groups brought in by the Regional Internet Registries (NRO, RIPE, ARIN, APNIC, LACNIC and AFRINIC), ISOC and also several registry operators (Nominet). First-time IGF-participants from the technical community for example were Scott Bradner, Fred Baker, Pete Resnick, Steve Kent. For the technical community main targets certainly are to share information about their respective work in Internet governance – and also to prevent potential turns to more government- or somehow regulatory oriented governance concepts. The same might be somehow true for the US government which sent the largest government delegation to Nairobi.

Still as long as the IGF is not taking decisions or making recommendations there is not a lot to be afraid of from the gathering and this might be welcomed by many. On the other hand the strictly enforced dialogue-only format will continue to nurture attempts to go elsewhere to make an impact on perceived (existing or non-existing) gaps or injustices in the existing governance structures. So, while IGF participants came up with strong statements against the IBSA and Russia-China-proposals, these are just non-decisive statements which in the strict sense cannot be referenced as "official" IGF position. It will be especially interesting to watch where the China-Russia proposal goes after it was somehow eclipsed from discussions in Nairobi with the Chinese delegates sitting "silently in the face of direct questioning about that proposal", according to Jeremy Malcolm, from Consumers International.

Reform of the IGF meanwhile is proceeding very slowly as is the filling of the vacant positions of the IGF Chair (formerly Nitin Desai) and Executive Chair (formerly Markus Kummer). With regard to the two positions, Thomas Stelzer from UN DESA, the agency in charge of managing the IGF process, told this reporter DESA has received around 100 applications for the position of IGF Executive Secretary and will now produce a short list, invite around 10 people for interviews and then send a three-person proposal to the UN Secretary General to decide. The position of the IGF Chair (which will also become the SG's Special Advisor on Internet Governance) was a much more "political position", Stelzer said and was not vetted in the same way.
The Working Group on IGF reform set up by the Committee on Science and Technology for Development (CSTD) that has faltered and lost its Swiss Chair last spring now is scheduled to re-start with Hungarian diplomat Peter Major taking the helm to produce recommendations on IGF reform to ECOSOC and the UN General Assembly. The renewal of the reform WG had first been questioned by the US last May (on CSTD WG see http://www.unctad.info/en/CstdWG/).

The IGF has been called the poster-child of the multi-stakeholder way of governance by Jeremy Malcolm and as such it gets a lot of applause on stage, while its enemies are gathering back stage. Malcolm in a paper for the GIGANET academic preconference to the IGF pointed out that governments in Europe or the US have been more paying lip-service to the muli-stakeholder model than really implementing it. Also the idea to invite all stakeholders (and not only governments) to the UN to discuss issues from climate change to social development is on its way, according to Stelzer who pointed to the Rio +20 Conference on sustainable development next year. But, please, leave your recommendations at home.