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Democratising global Internet governance

Issues and challenges

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Editor's Note

WHILE the advent of every communication technology has raised hopes of far-reaching positive changes, few have been heralded with so much expectation as the Internet. When it emerged decades ago, it raised hopes that it would completely revolutionise our lives in terms of human freedom and social empowerment.

There is no denying the fact that the new technology has generated changes in our lifestyle which would have been inconceivable even a decade or two ago. Yet for all that, the truth is that it has failed to usher in the free and more equitable information and communication order which the media gurus promised. The question is what went wrong.

One factor was the change in the fundamental character of the Internet that occurred in the 1990s.When the Internet first emerged in the 1960s in the US, it was, despite its military origins, viewed as a research and educational tool connecting universities, federal agencies, public and private research laboratories and community networks. It had been constructed with public funds and was considered a public utility. The idea of privatising the Internet or opening it up for commercial use was anathema.

However, with the increasing dominance of neoliberal economic thinking in the last decade of the 20th century, this taboo was broken. According to Professor Robert W McChesney, the fateful decision to make the 'transition of the network from a government operation to a commercial service' was taken in 1990. While the rise of the World Wide Web in 1993-95 was a contributory factor, it was the decision of the Clinton administration to enact the 1996 Telecommunications Act – 'perhaps one of the most corrupt pieces of legislation in US history … written by and for business' – that set the seal on the process of commercialisation. The object of this Act was to deregulate and liberalise the telecommunications sector by lifting many of the restrictions which had been imposed to protect the public interest. The result was the growth, expansion and consolidation of the control of this sector (including the Internet) by the giant media companies.

Two years later the same administration handed management of the DNS – the Internet's global address book – from the US government to a new private-sector, non-profit body called ICANN (Internet Corporation for Assigned Names and Numbers).

The ideological justification for these moves was provided by the notion that a private-sector-led model of Internet governance as opposed to government control was better suited to fostering the continued growth of the Internet. Since governments were perceived by netizens as the principal threat to the open nature of the net, there was, initially at any rate, little or no concern over the danger posed by corporate domination. Subsequently, as domination by US companies started to become a concern, the ideological justification shifted to the notion that a 'multistakeholder' model was the best way to guarantee the free and open nature of the Internet. But, in fact, this notion is used to defend the status quo which benefits the US and its private companies. So it is not surprising that the concept of 'multistakeholderism' has now acquired such hegemony that the US government flogs it at every international conference on Internet governance.

For developing countries grappling with the digital divide, there are other concerns besides US corporate domination. The fact is that despite the privatisation of the Internet, the net can hardly be considered to be free. The US Department of Commerce still maintains tacit control over it through what is known as the IANA contract. IANA (Internet Assigned Numbers Authority) is a department of ICANN and it is contracted to perform some of the critical functions to keep the Internet running.

Naturally, such domination of the Internet by the US has engendered unease among countries in the rest of the world. Even a close ally like the European Union has long called for an end to such domination. This unease has now turned to alarm with the revelations by Edward Snowden of the extent of US surveillance of the Internet with the collaboration of US Internet service providers.

However, attempts by developing countries, including the BRICS bloc (Brazil, Russia, India, China and South Africa), to ensure that Internet governance is internationalised have long met with strong resistance from the US. This resistance has been particularly vigorous (with the West as a whole forming a united front) when attempts are made to bring such governance under the purview of intergovernmental bodies such as the International Telecommunication Union (ITU), the UN body that regulates global telecommunications. This hysterical response is somewhat puzzling since the ITU head had announced in 1998 that the agency would henceforth give business 'a stronger say in the policy-making process'. The justification for such resistance is a familiar one: the freedom of the Internet will be in peril if it comes under the purview of the UN or its agencies where states with a dubious human rights record command a brute majority!

More recently, the platforms of the World Summit on the Information Society (WSIS) have become the latest battlegrounds over Internet governance. Here too there has been a similar stonewalling by the US and its allies of all attempts to establish an alternative global governance system. Clearly, the US is intent on upholding the status quo as it views its domination of the Internet as vital to the maintenance of its global hegemony. The fight has to continue.

Our cover story for this issue explores the question of global Internet governance with specific focus on the developing countries. Particular attention is directed to analyses of the 'multistakeholder' model which has been touted by the West as the template for Internet governance. The issues of corporate dominance, cyber-surveillance and human rights are also taken up for discussion. Finally, we include an assessment of the recent NETmundial conference in Brazil.

– The Editors

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The Internet has become an essential part of the international information and communications infrastructure, but key issues like global Internet governance have yet to be satisfactorily resolved in a way that takes the interests of developing countries into due account. 11

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THIRD WORLD RESURGENCE is published by the Third World Network, an international network of groups and individuals involved in efforts to bring about a greater articulation of the needs and rights of peoples in the Third World; a fair distribution of world resources; and forms of development which are ecologically sustainable and fulfil human needs.

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China rivers on brink of collapse

With half the planet's large dams within its borders, China is the epicentre of global dam building. A new report warns that reckless dam construction has brought the country's river ecosystems to the point of collapse.

Peter Bosshard

The Chinese government has embarked on a relentless new dam-building effort that green groups fear will have serious environmental consequences.

SINCE the 1950s, China has dammed, straightened, diverted and polluted its rivers in a quest for rapid industrialisation. Many of the projects built under Mao Zedong and his successors had disastrous environmental, social and economic impacts.

In the new millennium, the Chinese government realised that its ruthless dam-building programme threatened to undermine the country's long-term prosperity and stability. In 2004, Prime Minister Wen Jiabao suspended dam construction on the Nu (Salween) and the Jinsha (upper Yangtze) rivers, including a project on the magnificent Tiger Leaping Gorge. The government created fisheries reserves and strengthened environmental guidelines.

The growing climate crisis ended the period of relative caution in building dams. In 2009, the Chinese government committed to reducing the carbon intensity of its economy by 40-45% by 2020. As a consequence, the government launched a relentless new dam-building effort under its 12th Five-Year Plan (2011-15).

The current plan commits to approving 160 gigawatts of new hydropower capacity by 2015 – more than any other country has built in its entire history. It prioritises 50 large hydropower plants on rivers including the Jinsha, Lancang (upper Mekong), Yarlung Tsangpo (Brahmaputra) and upper Yellow. The plan also authorises the construction of five of the 13 dams on the Nu River that the government had stopped in 2004.

Dam trouble

Alarmed by the pace of renewed dam building, experts from Chinese environmental organisations have recently published what they call the 'last report' on China's rivers. The report highlights four main problems with the current wave of hydropower development:

- Dams are seriously degrading China's freshwater ecosystems. They are drying up rivers and lakes, inundating fertile floodplains and compromising the capacity of rivers to clean themselves. As a result, the Three Gorges and other reservoirs have been turned into waste dumps. The Chinese river dolphin, which plied the waters of the Yangtze for 20 million years, is now extinct, and other freshwater species are under threat. Fish sanctuaries created to mitigate the impacts of dam building exist on paper only, or have been curtailed to allow space for more dams.
- Dams further impoverish poor communities. According to former Prime Minister Wen, dam building has displaced 23 million people in China. Displaced populations are frequently cheated and bullied by corrupt local officials, and the promised jobs or replacement lands often don't materialise. As dam building moves upstream into mountain areas, ethnic minorities are particularly affected by displacement.
- Reservoirs are destabilising geologically fragile river valleys, creating frequent landslides and compounding earthquake risks. Scientists suggest that the Zipingpu Dam in Sichuan may have triggered the Wenchuan earthquake, which killed at least 69,000 people in May 2008. Dam cascades in the seismically active valleys of southwest China are a particular concern for triggering earthquakes and being impacted by them.
- The decision-making process is in disarray, and government regulations are no match for the new dam-building rush. Integrated

river basin plans and environmental impact assessments are almost always carried out after dam construction starts. Large projects such as the Xiluodu and Xiangjiaba dams even began construction before they received final approval.

Even while energy-intensive industries continue to suffer from overcapacity, China uses energy less efficiently than other countries at a comparable level of development. A less energy-intensive development path will be required to reduce the pressure on China's ecosystems. In the meantime, the new report proposes a system of 'ecological redlines', similar to the protected Wild and Scenic Rivers in the US, which could save critical ecosystems from being dammed.

Since the report was published, activists have found new hope. In April, China's National People's Congress adopted a new Environmental Protection Law that for the first time foresees stiff penalties for violators and allows environmental organisations to file public-interest lawsuits. Around the same time, the new Prime Minister Li Keqiang expressed repeated concerns about the health of Chinese rivers.

Several destructive projects are currently hanging in the balance. Activists hope that the government will refuse to sanction the construction of the Xiaonanhai Dam, which would submerge part of the most important fish reserve on the Yangtze, and the Songta Dam on the Nu, which would impact the Three Parallel Rivers World Heritage Site. It may still be too early to write the epitaph for China's rivers. ◆

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The China rivers report is available at www.internationalrivers.org/node/8262. The China Environ-ment Forum has visualised China's new dam rush on an interactive map, which can be viewed at http://bit.ly/1jIQbB0.

The era of mega-arbitration: International court rules against Russia in $50 billion decision

Former shareholders of the Russian oil giant Yukos have been awarded $50 billion in damages against Russia in one of the biggest arbitration awards ever made against a sovereign state. *Kavaljit Singh* analyses the award and its significance.

ON 28 July, an international arbitration tribunal under the auspices of the Permanent Court of Arbitration in The Hague in the Netherlands announced that Russia must pay $50.02 billion in damages to former shareholders of the now defunct oil giant Yukos Oil Company. The three-member tribunal unanimously declared that Russia breached its obligations under Article 13(1) of the Energy Charter Treaty (ECT) when it 'took steps equivalent to expropriation of the claimants' investment in Yukos'.

In its award, the tribunal said, 'Yukos was the object of a series of politically motivated attacks by the Russian authorities that eventually led to its destruction … The primary objective of the Russian Federation was not to collect taxes but rather to bankrupt Yukos and appropriate its valuable assets.' The Russian authorities, on the other hand, maintain that their actions against Yukos were legitimate to tackle large-scale tax evasion and fraud committed by the company's owners and top management.

The arbitral tribunal consisted of Yves Fortier (Chairman), Charles Poncet (appointed by shareholders of Yukos) and Judge Stephen Schwebel (appointed by Russia). Incidentally, Fortier is Vodafone's arbitrator in the upcoming international arbitration related to its long-running $2.4 billion tax dispute with the Indian government.

The international arbitration on the Yukos case was initiated in 2005 by former majority shareholders of Yukos under the framework of the Energy Charter Treaty, a multilateral treaty dealing with cross-border investments and trade in the energy sector. Three separate lawsuits against Russia were filed by former shareholders of Yukos (Yukos Universal Limited v. The Russian Federation, Hulley Enterprises Limited v. The Russian Federation, and Veteran Petroleum Limited v. The Russian Federation) seeking a total claim of $114 billion. The arbitration was conducted under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL Rules).

The biggest award

The compensation amount of $50 billion is the largest international arbitration award to date. It is over 20 times bigger than the previous record of $2.4 billion won by Dow Chemical Company against the Petrochemical Industries Company of Kuwait in 2013.

In relative terms, the compensation award is equivalent to around 11% of Russia's foreign exchange reserves, 10% of its annual national budget and 2.5% of the country's GDP. Given the magnitude of compensation, the award could be more damaging to the Russian economy than all the economic sanctions imposed by the West against Russia over the developments in Ukraine.

What is most astonishing is that the arbitral tribunal has not provided any standard or credible rationale behind awarding $50 billion in compensation to the claimants. The calculations of total damages put forward by the claimants are based on assumptions and hard evidence is lacking. The tribunal found that the claimants contributed 25% 'to the prejudice they suffered at the hands of the Russian Federation'. Hence, the amount of damages to be paid by Russia was reduced by 25% to $50 billion from $67 billion. In its lengthy 615-page verdict, no explanation has been given by the tribunal on how it arrived at the 25% figure for the claimants' contributory fault. Why not 30% or 40% or 50%?

The tribunal gave 180 days, until 15 January 2015, to Russia to pay the $50 billion to the claimants. After that, interest would start accruing. The tribunal has also ordered Russia to pay $60 million in legal costs to the claimants.

The biggest beneficiaries

The single biggest beneficiary of the $50 billion award is Leonid Nevzlin, who currently owns more than 70% of GML, the Gibraltar-registered holding company through which Mikhail Khodorkovsky (Yukos's former owner) held his controlling stake in Yukos. After his arrest in 2003 (see box), Khodorkovsky handed over his dominant share to Nevzlin, a Russian national who fled to Israel in 2003 after facing criminal charges in Russia.

The other four major beneficiaries of the award are also Russian nationals (living abroad), who own the remaining stake of some 30% in GML.

The tribunal has awarded compensation of $39.97 billion to Hulley Enterprises, $1.84 billion to Yukos Universal and $8.2 billion to Veteran

Petroleum Limited. Hulley Enterprises and Yukos Universal are wholly-owned subsidiaries of GML. Veteran Petroleum Limited looks after the interest of former employees of Yukos.

In other words, just five non-resident Russians who own GML will together receive as much as $41.8 billion in compensation from the Russian government for the alleged violation of a multilateral treaty.

The rise of the Russian oligarchs

No discussion on this complicated matter with legal as well as political overtones would be complete without an understanding of the rise of Russian oligarchs and the investment protection provisions of the ECT (discussed later in this article).

It is a well-known fact that a handful of oligarchs have controlled a disproportionate portion of the Russian economy since the early 1990s. By seizing assets and property at throwaway prices through corrupt means, relatively unknown individuals became billionaire oligarchs almost overnight during Russia's transition to a market-based economy. Apart from generous support from corrupt, but elected, politicians, the empires of the Russian oligarchs were also built with the assistance of the International Monetary Fund (IMF) and Western powers which played an important role in the privatisation of assets and infrastructure built during the Soviet era.

Under the 'loans for shares' programme launched by President Boris Yeltsin, Mikhail Khodorkovsky's Bank Menatep acquired control over Yukos in 1995. The Russian authorities claim that Bank Menatep rigged the auction process by blocking rival bidders and bought a 78% stake in Yukos (estimated to be worth about $5 billion) at the astoundingly low price of $310 million.

The abuse of transfer pricing

After taking control of Yukos, Khodorkovsky (and his business associates) carried out massive financial engineering to reduce the oil company's tax liabilities. They used shell companies registered in offshore tax havens (such as Gibraltar, Cyprus, Isle of Man and Switzerland) to transfer highly profitable operations to such low-tax jurisdictions.

Under this arrangement, Yukos would sell crude oil to these offshore shell companies (with no assets or employees) at below-market rates and the shell companies would sell oil to domestic and foreign buyers at market rates. Through such manipulative transfer-pricing strategies, Yukos avoided paying taxes in Russia while the shell companies earned the bulk of profits. The shell companies were wholly owned by Khodorkovsky and his close business associates.

However, the rules of the game changed when Vladimir Putin was elected Russian President in 2000. One of his first steps was to crack down on tax evasion by big firms owned by oligarchs.

What is the Energy Charter Treaty?

The ECT is a unique multilateral treaty aimed at promoting intergovernmental cooperation in the energy sector. The Treaty was signed in December 1994 and entered into force in April 1998. This legally binding framework has been signed or ratified by 54 countries, the majority of them from Europe.

It needs to be emphasised here that Russia only accepted the provisional application of the ECT (pending ratification) in 1994, meaning that the country would only apply the Treaty 'to the extent that such provisional application is not inconsistent with its constitution, law or regulations'. This was also the approach adopted by Belarus, Iceland, Norway and Australia.

Russia never ratified the ECT and announced its decision to not become a Contracting Party on 20 August 2009. As per the procedures laid down

Timeline of the Yukos saga

October 2003: Mikhail Khodorkovsky is arrested on charges of massive tax evasion and fraud.

April 2004: Yukos is hit with a bill for $3.5 billion for tax allegedly unpaid in 2000. The Russian government freezes its assets.

November 2004: The Russian tax authorities examine the accounts of Yukos for the year 2002 and issue another multi-billion-dollar tax bill. All top executives of Yukos leave Russia, fearing imminent arrest.

December 2004: Russia auctions Yuganskneftegas, Yukos's main production unit, which is later sold for $9.3 billion.

May 2005: Khodorkovsky is convicted of fraud and sentenced to nine years in prison.

2006-07: Russia declares Yukos bankrupt and sells its remaining assets to Rosneft.

November 2009: An arbitral tribunal constituted under the auspices of the Permanent Court of Arbitration decides that Russia is bound by the ECT and the claims by majority shareholders are admissible under the Treaty.

October-November 2012: The arbitration case is tried over five weeks at the Permanent Court of Arbitration in The Hague.

December 2013: Khodorkovsky is pardoned by President Putin and released after a decade in custody.

July 2014: The arbitral tribunal gives a final award of $50 billion to the majority shareholders of Yukos. ◆

in the Treaty, Russia officially withdrew from the ECT with effect from 19 October 2009.

Nevertheless, Russia is bound by its commitments under the ECT till 19 October 2029 because of Article 45(3)(b) which states: 'In the event that a signatory terminates provisional application … any Investments made in its Area during such provisional application by Investors of other signatories shall nevertheless remain in effect with respect to those Investments for twenty years following the effective date of termination.'

The ECT and investment protection

The ECT provides comprehensive rules related to protection of foreign investments in the energy sector, including protection against unlawful expropriation, fair and equal treatment, most-favoured nation, national treatment and umbrella clauses.

As in the case of the North American Free Trade Agreement (NAFTA) and bilateral investment treaties (BITs), the ECT also contains investor-state dispute settlement provisions, in addition to state-to-state dispute resolution mechanisms. The ECT grants the right to foreign investors to take member states to international arbitration if they feel that the treaty provisions (except those related to competition and environment) have been breached by the member states.

Under the rules outlined in Article 26(4), a private investor can choose between three alternative arbitration institutions/rules to submit a dispute for resolution: the International Centre for Settlement of Investment Disputes (ICSID) or the ICSID Additional Facility; the UNCITRAL Rules; or the Arbitration Institute of the Stockholm Chamber of Commerce.

Till now, more than 30 cases have been brought by private investors to international arbitration under the ECT. Nils Eliasson, a legal expert, has analysed arbitration cases filed under the ECT during 2001-11. He found that investors prefer to initiate arbitration under the ECT rather than under bilateral investment treaties.

Expropriation under the ECT

The ECT provides protection against not merely outright nationalisation by member states but also against measures having effect equivalent to nationalisation or expropriation, which may also include regulatory and tax policies affecting the investment. Article 13(1) of the ECT clearly states:

'Investments of Investors of a Contracting Party in the Area of any other Contracting Party shall not be nationalised, expropriated or subjected to a measure or measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "Expropriation") except where such Expropriation is: (a) for a purpose which is in the public interest; (b) not discriminatory; (c) carried out under due process of law; and (d) accompanied by the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation or impending Expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as the "Valuation Date").'

'Such fair market value shall at the request of the Investor be expressed in a Freely Convertible Currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of Expropriation until the date of payment.'

Is the tribunal award final and binding?

As per the rules outlined in the Treaty, the awards of arbitration are final and binding on all parties related to the investment dispute. According to Article 26(8) of the ECT, 'The awards of arbitration, which may include an award of interest, shall be final and binding upon the parties to the dispute. An award of arbitration concerning a measure of a sub-national government or authority of the disputing Contracting Party shall provide that the Contracting Party may pay monetary damages in lieu of any other remedy granted. Each Contracting Party shall carry out without delay any such award and shall make provision for the effective enforcement in its Area of such awards.'

Although the tribunal ruling is final and cannot be appealed at the Permanent Court of Arbitration, the Russian authorities could contest the decision of the arbitral tribunal in other legal forums (such as Dutch courts).

Initially thrilled with the tribunal's decision, GML and other shareholders will soon find it extremely difficult to enforce the award as Russia has already decided to challenge it. The shareholders could seek to seize commercial assets of Russia (owned by the country's state-owned corporations and sovereign wealth funds) in 149 countries which are signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (popularly known as the New York Convention).

In any case, it is going to be a time-consuming and uphill process to enforce the tribunal award in 149 contracting parties of the New York Convention.

Balancing investors' rights with state regulatory actions in the public interest

Even though this award is related to the ECT, it provides important policy lessons to other countries which have already signed or are currently negotiating bilateral investment treaties [that allow investor-to-state arbitration (ISA)] without any consideration of consequences and potential costs.

At the global level, the growing proliferation of investor-state disputes highlights the lack of balance between public rights and private interests in the existing international investment treaty regime. There are currently more than 3,000 BITs in force. Private investors could seek compensation worth billions of dollars from states for breaches of treaty obligations. But, at the same time, states have the right to enact and enforce regulations related to taxation, financial stability, public health and environment as part of exercising their sovereign powers.

The growing proliferation of investor-state disputes highlights the lack of balance between public rights and private interests in the existing international investment treaty regime.

The existing investment protection agreements have failed to address the balance of rights and responsibilities of foreign investors as they offer numerous legal rights for investors without requiring corresponding responsibilities for them.

Some years back, Venezuela and Ecuador had denounced some of their BITs. Of late, many developing countries (including South Africa, India and Indonesia) have been rethinking the costs and benefits of BITs and are taking various policy measures to protect themselves from costly investor-state arbitration. Not surprisingly, the inclusion of investor-state arbitration in the ongoing negotiations over the Transatlantic Trade and Investment Partnership (TTIP) is hotly debated.

Apart from ISA, there are numerous problematic provisions of investment protection contained in existing bilateral and regional investment treaties that need a complete re-examination in the light of recent developments. ◆

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Farmland meets finance: Is land the new economic bubble?

Powerful investors are now embracing farmland as a financial asset, says *Madeleine Fairbairn*. If the process continues unchecked, it could have lasting effects on land ownership and farming worldwide.

The sudden enthusiasm for farmland as a portfolio investment is contributing to 'land grabs' in developing countries and roaring land prices in countries with more developed land markets.

Farmland, a safe investment in troubling financial times

AT the turn of the 21st century, farmland was still considered an investment backwater by most of the financial sector. Although some insurance companies have had farmland holdings for years, most financial investors found farmland, and agricultural investment in general, unappealing compared to the much higher returns to be made in financial markets. However, this began to shift around 2007 as the prices of agricultural commodities started to climb and land prices followed suit. The recession that began with the bursting of the US housing bubble in 2008 caused investor interest to suffer a momentary dip but also added fuel to the fire, as investors sought alternative, and more secure, places to put their money.

This article identifies broad trends in farmland investing with the potential to affect countries in the Global North and Global South.

Private investors are flocking to farmland both for the returns it delivers and for the role that farmland can play in an investment portfolio. Because farmland values tend to increase along with inflation but do not move with the stock market, farmland is touted as an inflation hedge and as an excellent way to reduce overall portfolio risk through diversification (HighQuest Partners 2010).

Financial investors are not the only actors buying up farmland – they are joined by national governments concerned about food security and farmers hoping to expand their plantings in response to high crop prices – but their participation is a significant new development. The sudden enthusiasm for farmland as a portfolio investment is contributing to both the large 'land grabs' taking place in developing countries and roaring land prices in countries with more developed land markets (Knight Frank 2011). In the US, skyrocketing land prices have raised concerns about a possible land price bubble (Abbott 2011).

Whether or not farmland markets are dangerously overheated, they are certainly hot. Farmland is drawing investment from 'high net worth individuals' as well as institutional investors such as pension funds, hedge funds, university endowments, private foundations and sovereign wealth funds. Celebrity investors like George Soros are investing in farmland (O'Keefe 2009) and agricultural investment conferences – which provide opportunities for fund managers and farmland operators to network with investors – have exploded in popularity. Asset management companies – which act as investment intermediaries – have responded to this sudden investor interest by creating a lavish buffet of new farmland funds (IIED 2012). Despite this rapid growth, the extent of capital markets' interest in farmland is still relatively minor; estimates of total institutional investment in farmland range between $30 and $40 billion globally (Wheaton and Kiernan 2012). However, it is undeniable that since 2007, global farmland real estate has undergone a makeover to become a desirable alternative investment.

In October of 2010, the financial blog Zero Hedge wrote about the giant pension fund TIAA-CREF's $2 billion investment in agricultural land. The many reader comments that follow the post capture the irony of financial markets' sudden interest in farms. One reader jokes that a farmland bubble is emerging that would make a great new reality TV show – 'Farm Flippers, Thursdays this fall on HGTV' – and even envisions some fake content: 'of course we put in all stainless steel and granite feed troughs and watering buckets. We project we'll make a 300% profit when we sell next month.' Another reader asks whether the turn to real assets is a 'Sign of Wall Street's fake paper going the way of the dodo? Or, more fake paper?' Slightly rephrased, the question might read: Does the turn to farmland, among other real assets, signal a shift away from financialisation? Or does it simply indicate that farmland itself is increasingly being treated as a financial asset?

The financialisation of farmland: 'like gold with yield'

'Financialisation' is a catch-all term for the growing power and prominence of finance since the 1970s. One aspect of this trend is 'the tendency for profit making in the economy to occur increasingly through financial channels rather than through productive activities' (Krippner 2011, 4). Essentially, investors are making more money by lending or investing their capital and waiting for it to grow by itself and less by using that capital to produce and sell commodities. The case of farmland is interesting because the distinction between 'productive' and 'financial' sources of profit is not always easy to discern.

Land plays two different economic roles: it is an essential means of production, but it also acts as a reserve of value and creates wealth through appreciation. In other words, it is a productive asset that moonlights as a financial asset. Though farmland's financial qualities have always held some appeal to speculators, the financialisation of the global economy since the 1970s opened up new possibilities for the incorporation of farmland into financial circuits. The current wave of farmland investment combines a renewed interest in productive, real assets with an underlying logic of financialisation.

In the 1970s and 80s, researchers began to notice that investors were increasingly drawn to land for its financial qualities. David Harvey (1982) argued that investors were treating land as 'fictitious capital' that brought in a stream of income just like their other investments in stocks or bonds. Massey and Catalano (1978) found that financial investors were buying British farmland and leasing

Farmland is drawing investment from institutional investors such as the giant pension fund TIAA-CREF.

it out to tenant farmers, motivated by the rental income and potential for property value appreciation. They contrasted this behaviour with that of farmers, who valued farmland for its productive qualities. They raised concerns that these investors were inflating land prices and outbidding 'owner-occupier' farmers. Whatmore (1986), meanwhile, pointed out that owner-occupiers can also be active participants in land price speculation. However, she observed that outside investors might have the effect of importing volatility into land markets. Because they treat land as fictitious capital, their decision to keep or sell it is influenced not just by the agricultural value of the land, but also by the wider financial environment, such as inflation and interest rates.

Today, many investors are drawn to farmland because of what it can do for them financially. Farmland's desirability as a store of value and source of capital gains from appreciation is perhaps best illustrated by the frequent comparisons between farmland and gold. Like gold, farmland is limited in quantity, appreciates over time, and provides a refuge for anxious investors during economic downturns. Unlike gold, however, farmland is also a means of production, a fact that sometimes gets lost. In media and investment publications, farmland is frequently referred to as 'black gold' (Cole 2012) or 'like gold with yield' (Koven 2012). At one investment conference, a South American agricultural fund manager took this analogy even further, arguing that if Brazilian and Argentine cropland is like gold, then Chilean vineyards are like diamonds, emeralds and rubies. Such expressions are telling because they imply that farmland's primary appeal is its ability to store and even increase in value, while the fact that it also comes 'with yield' from agricultural production is just the icing on the cake.

Due to land's dual nature as a productive and a financial asset, it is possible to use the land productively while simultaneously speculating on financial returns from its appreciation. Contrary to simplistic portrayals of recent large-scale farmland acquisitions (or land grabs) as *either* productive *or* speculative, this demonstrates that they can be, and frequently are, both at the same time.

Potential impacts of the financialisation of land

Separation of ownership and control

There are several implications of increasing interest in land as a financial asset that deserve special mention. First, when investors buy land and lease it to tenant farmers, they contribute to the separation of ownership and control in land markets. While investors can provide farmers with much-needed financing, they also transfer ownership away from the person farming the land. Aside from the obvious impact this has on the social structure of agriculture, it also reduces the farmer's incentive to use sustainable practices by removing his or her stake in future productivity.

Land concentration and reduced access to land

Some of the ways that investors 'add value' to farmland before reselling could also reduce access to land for smallholders. Many companies see consolidation of small properties as an integral part of their strategy of land transformation. Their reasoning is that larger plots will be more attractive to agribusinesses and other buyers. In addition, some companies add value by clarifying legal title where it was previously murky. In many parts of the Global South, an ironclad property title will come at the expense of local residents whose legally flimsy claim lies only in years or generations of life rooted in that place.

Unsustainable, short-term thinking

There is also a danger of importing the short-term thinking of finance into land markets. If capital gains are to be realised, then the land must eventually be sold. The idea of entering into land ownership with an 'exit strategy' in place – as private equity fund managers often do – would thoroughly confound most of the world's farmers, for whom hanging on to their land is a primary objective. For most financial investors, however, seven or 10 years is a long-term commitment. Although many private equity fund managers argue that their short tenure as landowner will involve soil quality or other property improvements as a means to increase profit on resale, it seems equally likely that such a short-term view could lead to careless treatment of soil and water resources.

Rising land prices

Some investors, including many pension funds, do plan to hold on to their farmland properties for many years to come. However, this type of investment could also contribute to changing land market dynamics. Global pension funds alone manage over $30 trillion in assets (Towers Watson 2013). If all allocated just 1% of their portfolios to farmland investments, there would be $300 billion in pension money competing in global land markets. This amount of capital could raise land prices, putting it out of reach of small farmers, especially if investments concentrated on a handful of attractive markets.

Conclusion

We may be seeing the emergence of a new type of financialisation for an era of growing resource scarcity – one in which farmland's role as a quasi-financial asset will be even more prominent. As McMichael (2012, 686) observes, the restructuring of the corporate food regime involves the opening of new investment opportunities for capital with the result that 'the so-called rational planning of planetary resources such as land (and water) is driven as much by financial goals as by material considerations.' Increasing financial interest in farmland may prove to be a passing phenomenon. The farmland bubble, if indeed one exists, may soon burst or simply deflate, particularly given that the appeal of land as a financial asset is highly dependent on interest rates. If, however, powerful institutional investors and financial companies continue to embrace farmland as a financial asset, it could have lasting effects on land ownership and farming worldwide. ◆

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The Internet: Challenges and discontents

While the critical importance of the Internet as both an economic and social utility is no longer in doubt, the fact remains that its promise of democratising communications and society has yet to be realised. Numerous pressing issues with the development, technical architecture and governance of the Internet threaten to stall or completely derail many of the benefits of the Internet, particularly to the developing world. *Rishab Bailey* highlights these.

IN today's world, the Internet is becoming not only an essential part of the global communications and information infrastructure, but also a major arena for contestation. This contestation concerns what ideas will prevail and who controls these ideas. Newer technologies and models of business are raising questions that are critical in determining how we harness and utilise these innovations: are we ensuring that the benefits of what should be a global commons are reaching every person in the world or merely ensuring that the already powerful are entrenched even further? Who is making money out of the Internet and how? How do you deal with the creation of a global panopticon (as demonstrated by Edward Snowden) or the militarisation of computer networks?

Despite the tremendous growth of the Internet, it has not been equally beneficial for all the world's peoples.

To begin with, it is important to understand what the term 'Internet' means. The term refers to a global system of interconnected networks that uses the standard Internet protocol suite (TCP/IP) to connect millions of users worldwide.[1]

The basic building blocks of the Internet could, in simple terms, be said to be:

(a) The telecommunications networks/infrastructure that enables the transmission of data packets/information (which range from land and undersea cables to modems and routers, wireless networks, etc.)

(b) End user terminals (that comprise the network and connect to each user, such as desktop computers, smartphones and tablets)

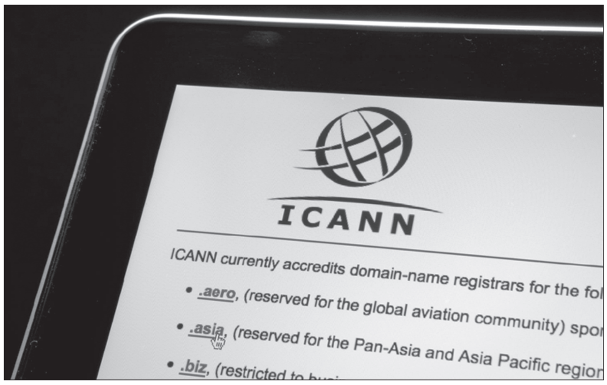
(c) The ability to assign a unique identifier to each end user terminal, thereby enabling the location of or addressing of information to a specific terminal.[2]

The growth of the Internet

The Internet as we know it was originally developed under the aegis of the US government for military and academic ends, and till the early 1980s was largely a restricted network. Usage of the Internet however exploded through the 1990s, with the commercialisation of the Internet, aided by the development of the World Wide Web (and the ease of use this enabled). The turn of the century saw the number of applications and services on the Internet multiply in a quite astonishing fashion (ranging from e-commerce to online voting) particularly with the development of Web 2.0 and the increasing ease of accessing Internet services.

The Internet has now become a place where people can turn to for news, entertainment and communication, to express their opinions, to access government and other services (including education, health and so on), and to carry out commerce. As of June 2012, more than 2.4 billion people – over a third of the world's population – had used the Internet.[3] Facebook, the world's leading social media website, has over a billion users, while the search giant Google carries out over a billion searches per day. E-commerce sales top $1 trillion[4] and Internet companies are some of the biggest and most influential in the world.[5] The digital revolution seen over the last three decades has meant that millions of citizens around the world have access to information and services that was unthinkable a generation ago.

It is not too big an exaggeration to say that the Internet has truly revolutionised the way human society interacts and accesses information. However, this factual description must not be understood to imply that all is well and that the revolution has been equally beneficial for all the world's peoples. On the contrary, despite Western rhetoric that suggests that the Internet's ability to quickly and cheaply distribute vast amounts of information and facilitate communication will lead to democratisation in communications and society generally, the reality is that the Internet has largely favoured developed-country interests, in particular the interests of major developed-country companies.



The Internet Corporation for Assigned Names and Numbers (ICANN) – the principal organisation that manages the operation of the Internet – falls under the *de facto* and *de jure* control of the US government's Department of Commerce.

Initially, through the early 1990s, academic discourse about the Internet tended to revel in the euphoria of the numerous potential benefits the Internet could bring – in particular, its potential to democratise (society, institutions, communications, etc.). However, the last two decades have seen the emergence of critical studies that outline how the Internet is effectively only mirroring or in many cases enhancing/amplifying structural inequalities found in society.

The critical importance of the Internet as both an economic and social utility has ensured that any attempts to democratise and align governance processes with the explosion of Internet use globally have been strongly resisted by incumbent interests (at the global and local levels).

What we have seen is that despite the tremendous growth of the Internet and the services provided on it, there remain numerous pressing issues surrounding the development, technical architecture and governance of the Internet which threaten to stall or completely derail many of the benefits the Internet was supposed to offer to humanity.

Indeed, the Internet is fast turning out to be the latest international battleground (much as the sea was the key to global socioeconomic and political control a few hundred years ago) as more and more people wake up to the tremendous power that the Internet (and allied advances in computing) brings as well as the imbalances of power in the relationships that currently define the Internet.

The list of issues presently besetting the online system is a long one. For instance:

• Two-thirds of the world's population are yet to get any kind of Internet access. Infrastructure and connectivity, particularly in the developing world, continue to remain extremely poor. This is not helped by the rather high cost of international Internet connectivity.[6] Infrastructure growth has stagnated in developing countries that often lack adequate resources to allocate to this sector. Present models of governance have also resulted in stagnation of infrastructure growth amongst developed economies as shown by the lack of competition between Internet service providers in countries such as the US (and the consequent low quality of service and high costs).

• That governments have been carrying out surveillance and espionage is no surprise to anyone, but the scale at which the Internet has enabled the developed economies to utilise their technological prowess for political and economic gain has only recently been exposed by Edward Snowden. The Snowden revelations have conclusively established how the Internet is being used as a tool of global surveillance by the 'Five Eyes' (the US, the UK, Canada, Australia and New Zealand) and their allies – and how the rest of the world is largely powerless to prevent these actions (due, among others, to the absence of appropriate legal and institutional mechanisms to deal with such issues and a lack of political will). The militarisation of cyberspace has continued unabated and cyber-security concerns abound.

• While the Internet was initially seen as a sureshot method of increasing plurality of media sources, the last 15-20 years have instead seen the emergence of huge global monopolies (generally US-based).[7] Even within the US, there are now just five media companies that control 90% of all content. With these giants dominating sources of revenue (such as advertising, which is the main revenue source for traditional media outlets), more and more small players are forced out of the market, leading to a loss of plurality of online voices – keep in mind that more and more media is shifting to the Internet today.[8] Further, the complicity of these corporations in the global surveillance carried out by the US government is now well established, as are their anti-competitive and unethical practices (such as tax avoidance, price fixing and unchecked monetisation of user data). The influence enjoyed by these companies in the present governance framework is excessive and limits the scope of public interest regulation possible.

• Not only is a high proportion of content on the Internet in English (thereby ensuring that proficiency in English becomes a precondition to accessing information), but a majority of technical and policy fora conduct proceedings in English, thereby limiting the impact that can be made by non-English-speaking people. Content creation on the Internet is overwhelmingly skewed towards the developed countries (which have the resources and knowhow), leading to very real fears of a rewriting of history including that of developing countries and marginal communities.[9]

• There is an ongoing effort to ensure that the entire knowledge of the world is privatised – preferably, of course, in the hands of the Global North. The imposition of restrictive intellectual property norms – for instance, through trade treaties such as the TRIPS Agreement and more recently the proposed Trans-Pacific Partnership – ensures that the Global North will continue to own the greatest source of value-added in today's knowledge-based economies. While manufacturing and other processes are outsourced to Global South countries, knowledge continues to be monopolised by the Global North, leading to a net flow of revenues away from the Global South and an increased pauperisation of Southern countries.[10]

The Internet is creating a smaller and more connected world, but all the possible benefits of this are not percolating down to those who most need them. What should have been a global commons is being privatised and fenced off. What is even more disturbing (including to those outside the world of the Internet) is that governance functions are also being increasingly privatised, including through the adoption and continued use of the 'multistakeholder' model advocated by the US and its allies.

Governing the Internet

Due to its global nature, how to formulate and enforce laws and regulations on the Internet remains a thorny issue. Given the development of the Internet largely as a US government-sponsored exercise and this country's complete control over Internet policy and infrastructure pre-1990s, existing governance structures have largely been arrived at as a result of this historical legacy, throwing up numerous questions of a democratic deficit in this space.

With increased global use of the Internet in the late 1980s and early 1990s grew calls for the governance of the Internet to be divorced from the unilateral control enjoyed by the US government. Early negotiations regarding Internet governance tended to focus on the issue of reducing the role of the US government and anchoring governing structures in non-US-based institutions.[11] However, these results were not acceptable to the US government as a multilateral approach would mean a reduction of US influence over the Internet. Therefore a unilateral solution was imposed[12] – *inter alia* through the creation of ICANN,[13] an entity bound by law and contract to the US government.[14]

This privatisation of governance functions ensured that the US could continue to retain control of the critical operational infrastructure of the Internet while maintaining a perception that it was abandoning control. Despite numerous announcements regarding a supposed gradual relinquishment of its central role as a 'steward' of the Internet, little has actually taken place in this regard.[15] In fact, even the small steps towards lessening the US dominance of Internet governance institutions are actually more illusory than real, as the preconditions set by the US government for the IANA transition process show. The US government has, *inter alia*, mandated that governance of the IANA functions (that enable addressing) must be carried out by a private sector body (rather than through a multilateral institution) and that any transition would only take place if the US agrees with the proposed model.

Quite obviously, most other countries in the world are not particularly happy with the central role played by the US with respect to Internet governance. While most countries are coming to increasingly depend on the Internet, they have no (or limited) say in how the Internet is developed and run.[16]

While traditionally, international law has tended to be the remit of nation states – which represent their citizens and therefore have the authority to make and enforce law – in the context of the Internet, we have seen a privatisation of governance functions under the multistakeholder model of governance currently in vogue. This model, which has been criticised in places as being nothing more than a neoliberal strategy to ensure continued Global North hegemony,[17] places all involved stakeholders – the business community, nation states, technical and academic organisations and civil society groups – at the same table in an attempt to forge consensus on issues (in a 'bottom-up' manner).

The problems with such a system are obvious. Completely unrepresentative organisations are given the same powers as nation states over public policy issues (which also leads to practical problems in that there remains a gap in international law and norm making due to the nature of such discussions). Further, the need for forging consensus before any progress can be made effectively means that no issue where there is a clear conflict of interest (such as where public interest regulation of corporates is concerned) will see any progress.[18] The imbalance in resources and consequently participation at Internet governance fora between the private sector (particularly from the Global North) and developing countries completely skews the results of any deliberations. Not coincidentally, the bulk of the organised political support for the multistakeholder model comes from countries whose companies and citizens participate intensively in the work of those bodies.[19]

The inability of the multistakeholder bodies to deal with some of the most pressing problems in the context of the Internet (to pick an obvious example, only states can guarantee and enforce human rights and therefore any international agreement to outlaw something like mass surveillance or cyber-warfare would have to take the form of an international treaty) and the continued maintenance of the status quo is in itself a public policy decision which has been foisted on the world by developed countries.

There is therefore clearly a need to revisit the governance and operational structures of the Internet to ensure that the Internet can actually be a global commons, a site for global knowledge and information exchange, and a channel to reach essential social and public services and new models of just economic exchange. ◆

Rishab Bailey is the Legal Director of the Society for Knowledge Commons, India, and is also associated with the Just Net Coalition.

Endnotes

1 http://en.wikipedia.org/wiki/Internet

2 In the context of the Internet, this is known as the DNS system. The DNS system is a hierarchical and distributed naming system that maps each domain name (such as www.google.com) to a particular set of numbers (known as an Internet Protocol or IP address – which, simply put, is a unique identifier much as a telephone number is on a telephony system) which represents the location of the content/the address of the content. This list of addresses is stored on what are known as master servers located across the globe (though almost exclusively in developed countries). Interestingly, the master server from which all other servers take direction is located in the US and under contractual control of the US government.

3 http://www.internetworldstats.com/stats.htm

4 http://en.wikipedia.org/wiki/E-commerce

5 For instance, the PricewaterhouseCoopers annual industry ratings of the Top 100 global companies have Apple at the top, Google at No. 3 (the two are split by ExxonMobil) and Microsoft at fourth (the rankings are based on market capitalisation). Interestingly, while financial companies had more entrants in the top 100 and greater cumulative market capitalisation, the growth and the market capitalisation per company for technology companies are far higher. See 'Global Top Hundred Companies by Market Capitalisation', PricewaterhouseCoopers, 31 March 2014, http://www.pwc.com/gx/en/audit-services/capital-market/publications/top100-market-capitalisation.jhtml. Companies such as Apple, Microsoft and Google also rank in the top 10 of the world's most valuable brands, with Apple and Microsoft even beating the likes of Coca-Cola and McDonald's. See 'The World's Most Valuable Brands', *Forbes*, November 2013, http://www.forbes.com/powerful-brands/list/

6 Richard Hill, 2013. 'Internet Governance: The Last Gasp of Colonialism, or Imperialism by Other Means?', in RH Weber, R Radu and J-M Chenou (eds.), *The Evolution of Global Internet Policy: New Principles and Forms of Governance in the Making?*, Schulthess/Springer.

7 See Prabir Purkayastha and Rishab Bailey, 'Evolving a New Internet Governance Paradigm', *Economic and Political Weekly*, Vol. XLIX, No. 2, 11 January 2014.

8 Rishab Bailey, Claudia Melo and Felicity Ruby, 'Digital colonialism and the Internet as a tool of cultural hegemony', Society for Knowledge Commons, Brazil, available at http://www.knowledgecommons.in/brasil/en/whats-wrong-with-current-internet-governance/digital-colonialism-the-internet-as-a-tool-of-cultural-hegemony/. The top 10 websites in the US had 31% of total page views in 2001, a share which increased to 40% in 2006 and all the way to 75% in 2010. See Robert McChesney, *The Digital Disconnect: How Capitalism Is Turning the Internet Against Democracy*, 2013.

9 Rishab Bailey, Claudia Melo and Felicity Ruby, 'Digital colonialism and the Internet as a tool of cultural hegemony', Society for Knowledge Commons, Brazil, available at http://www.knowledgecommons.in/brasil/en/whats-wrong-with-current-internet-governance/digital-colonialism-the-internet-as-a-tool-of-cultural-hegemony/.

10 Ibid.

11 Richard Hill, 2013. 'Internet Governance: The Last Gasp of Colonialism, or Imperialism by Other Means?', in RH Weber, R Radu and J-M Chenou (eds.), *The Evolution of Global Internet Policy: New Principles and Forms of Governance in the Making?*, Schulthess/Springer.

12 Ibid.

13 The Internet Corporation for Assigned Names and Numbers (ICANN) is a non-profit corporation registered in the State of California, USA which is primarily tasked (by the US government, under a contract signed with ICANN) with coordinating the allocation and assignment of the unique identifiers for the Internet. ICANN therefore is the principal organisation that governs/manages/administers the operation of the Internet, and falls under the *de facto* and *de jure* control of the US government's Department of Commerce. One of the key functions of ICANN is the distribution of naming resources on the Internet (or in simple terms, controlling the DNS system – though all changes to the main root zone file are carried out by a different entity known as VeriSign Inc.). This is a valuable power as it gives ICANN the ability to control the entire nature of the real estate of the Internet (including, for instance, deleting entire domains). In order to perform this function at a global level, ICANN contracts with or recognises various regional registrars who manage the allocation of numbering resources (IP addresses) on the Internet.

14 Richard Hill, 2013. 'Internet Governance: The Last Gasp of Colonialism, or Imperialism by Other Means?', in RH Weber, R Radu and J-M Chenou (eds.), *The Evolution of Global Internet Policy: New Principles and Forms of Governance in the Making?*, Schulthess/Springer.

15 Ibid.

16 Ibid.

17 Prabir Purkayastha and Rishab Bailey, 'US Control of the Internet: Problems Facing the Movement to International Governance', *Monthly Review*, Vol. 66, No. 3, July-August 2014.

18 Rishab Bailey, Prabir Purkayastha and Felicity Ruby, 'Multilateral and Multistakeholder: A False Dichotomy', The Society for Knowledge Commons, Brazil, http://www.knowledgecommons.in/brasil/en/multilateral-and-multistakeholder-responsibilities/.

19 Richard Hill, 2013. 'Internet Governance: The Last Gasp of Colonialism, or Imperialism by Other Means?', in RH Weber, R Radu and J-M Chenou (eds.), *The Evolution of Global Internet Policy: New Principles and Forms of Governance in the Making?*, Schulthess/Springer.

Global Internet governance: a developing-country perspective

In this review of global Internet governance from a developing-country viewpoint, *Parminder Jeet Singh* contends that the US and its corporate allies are wary of any challenge to the default Internet governance regime they are shaping and establishing. However, unlike with global trade and intellectual property frameworks which were developed largely unilaterally and foisted by the North upon the developing world, there is still time for the South to develop a proactive strategy to shape the emerging global regime on Internet governance. Such an alternative should, in his view, be broadly based on a new paradigm of the Internet as a global commons and a public utility.

THE subject of Internet governance (IG) first got imported into the consciousness of most developing countries during the negotiations for the outcome texts of the World Summit on the Information Society (WSIS).[1] The main issue at that time was the unilateral US oversight over the root of the Internet, which contains the names and numbers directory for the global Internet addressing system. This was considered unacceptable by almost all other countries. Expectedly, the interest in this subject was mostly of the foreign affairs ministries of developing countries, and came from a traditional geo-political standpoint.

On a different track, for some time since even before WSIS, the information technology (IT) ministries of developing countries had been engaging with the regional Internet registries and with ICANN[2] as the Internet was being set up in these countries. The Internet Society, or ISOC, also helped many countries with its expertise in setting up networks. This work was of a brass-tacks nature. This was also the time when the telecom sector was being opened up the world over for private companies, which triggered the mobile telephony revolution. The Internet service providers sought even greater independence from regulation than what telephony was subject to. Most developing countries saw in IT, including the Internet, a new growth opportunity and went all out to support their IT and Internet companies, viewing them fully as a part of global value chains. In the circumstances, the IT ministries or their equivalents largely took an apolitical view of global IG.

It was during negotiations to craft the outcome texts of the World Summit on the Information Society (WSIS) that most developing countries began to be more aware of the political aspects surrounding Internet governance.

It was rather common, until quite recently, to find somewhat discordant views coming from foreign ministries and IT ministries at global IG forums. Only very few countries, like Brazil and China, had begun early to shape a coherent foreign policy stance on global IG. A turf war was witnessed in many developing countries between IT and foreign ministries. This problem has only now started to be addressed, with more and more countries beginning to understand the nature of power and controls over the global Internet.

The US and other developed countries had initially envisioned WSIS as an instrument to take forward their global 'digital opportunities' vision which had been articulated at the turn of the century in G8 meetings.[3] These countries had resisted the claims of the UN Educational, Scientific and Cultural Organisation (UNESCO) to be the main entity for hosting WSIS, still mindful of the political tendencies of UNESCO in the informational arena, which had earlier precipitated the crisis around

The headquarters of the International Telecommunication Union in Geneva. ITU has been painted by liberal and neoliberal groups, supported by the US and its allies, as the organisation that 'plans to take over the Internet'.

the New World Information and Communication Order. They preferred the International Telecommunication Union (ITU)'s technocratic approach. All the current distancing from ITU's role in information society governance notwithstanding (see below), they were the ones who had pushed for ITU to take the lead in holding WSIS.

Midway through WSIS, when the US and its allies found that information society was becoming a highly geopoliticised issue, their enthusiasm for WSIS-type global forums subsided drastically. At the end of WSIS, developed countries did not agree to set up a new UN functional commission to look into the WSIS follow-up, as had been done previously for many similar global summits. And the rebound continues, as these countries have recently been blocking even a 10-yearly WSIS review summit which is very much the practice in most areas and is also mandated in WSIS outcome documents.

An increasing understanding in developing countries of Internet governance as a highly political subject was matched by a growing keenness among the developed countries to withdraw this issue from the UN's scope and mandate. However, such understanding among developing countries is still very incipient, and there exists no coherent developing-world vision of global IG. As mentioned, the line departments, IT and telecom ministries are yet to frame the global political implications of their domains in an appropriately holistic manner.

Apart from the US' unilateral oversight of the Internet's root, the main issue from developing countries' side at WSIS concerned the market-based inter-connectivity regime, where naked market power determined pricing. Since Internet content and services mostly resided in developed countries, chiefly the US, the Internet service providers in developing countries were forced to pay for both up- and down-connectivity to the backbone networks based in developed countries. Whereas developed countries subsidised developing countries' connectivity infrastructure in the ITU-run global telephony system, global Internet connectivity followed the exact opposite model: developing countries subsidise the networks in developed countries.

This paradigmatic shift from the erstwhile regulated global communication system to a completely unregulated communications and informational global market, which best serves the interests of the US-based information and communications companies, underlies much of global IG contestations today. Outwardly, however, these contestations are framed as a struggle for an unfragmented global Internet and the need to protect freedom of expression everywhere, whereby governments and regulations should be kept away from the Internet.

Post WSIS

The final days of negotiations for outcome documents of the second phase of WSIS were rather tense. Regarding the unilateral oversight of the US over the Internet's root, almost all countries stood as one against the US. As for general information society governance, the divisions were more along the traditional North-South lines. The compromise outcome assured national sovereignty over country top-level domains like .cn and .br.[4] Discussions for establishing mechanisms for global Internet policies were to remain ongoing over what was identified as the 'enhanced cooperation' process. Meanwhile, it was agreed to set up a multistakeholder policy dialogue forum for Internet policy issues, the Internet Governance Forum (IGF). The IGF was, *inter alia*, mandated to give recommendations where needed. The US and its allies strongly resisted even the setting up of an IGF, and it is the developing countries that pushed for such a forum and got it.

As happens with many global policy events, the political temperatures came down quickly as soon as WSIS came to an end. Even in the European Union, there was very little appreciation of the deep social and economic implications of global IG. Directions from the highest political quarters focused on staying closely on the US side of global geo-economic divisions meant that, occasional weak protests apart, the EU has been unwilling to upset the apple cart.

Brazil and China were the two developing countries most active in the immediate post-WSIS period. China brought a proposal for an international code of conduct in cyberspace to the early IGFs, and sought wider engagement. Brazil even informally broached the possibility of a 'framework convention on the Internet'. It also offered concrete alternatives for a truly global management of the Internet's root.

Meanwhile, as the very significant geo-political dimensions of the issue became apparent, a so-called 'global Internet governance community' began to take shape. It was very aggressively dominated by non-state actors, backed strongly by the US and some of its closest allies. ICANN, with its huge collection of monopoly fees – that can be called taxes – from global Internet users through domain name fees, was an important funder and provider of other resources for this group.

This group was soon able to largely capture the IGF. This 'community' showed no interest in moving forward on addressing rapidly accumulating serious public policy issues regarding the Internet at a global level. It mostly played an obstructionist role, propping up the status quo of continued US/ICANN management of the technological infrastructure and an unregulated market-based evolution of global Internet services. The promise of the IGF as a genuinely participatory institution for global governance of the Internet, the reason that developing countries had supported it at WSIS, was stemmed early by powerful status quo-ist forces.

With little possibility of any positive progress, China seems to have reduced its involvement on the global stage since around 2008, focusing on domestic policies to manage its Internet. At the international level, its interest shifted to developing regional alliances, chiefly the Shanghai Cooperation Organisation. These countries later came up with an 'international code of conduct for information security' and presented it to the UN for voluntary adoption by other countries. Around this time, Brazil too began to tone down its aggressive posture where it had been putting forward specific alternatives to the status quo global IG regime. It however kept up a high degree of engagement with post-WSIS forums of the IGF and the UN Commission on Science and Technology for Development (CSTD),[5] and for quite some time was the lone developing country with a coherent strategy of engagement on global IG.

After a lull of about 3-4 years, the threads from WSIS began to be picked up by some floor-level coordination among developing countries at the CSTD's annual consideration of progress on WSIS outcomes. Developing countries got together to assert that the WSIS mandate of enhanced cooperation, which was to have been operationalised in 2006, had shown no progress. They managed to get the UN Secretary-General to hold open consultations on 'enhanced cooperation'.

It was at these consultations, in December 2010, that the IBSA countries (India, Brazil and South Africa) got together for the first time to issue a joint statement.[6] This statement sought a formal intergovernmental platform under the UN that would take up Internet-related public policy issues. The statement said that this platform should complement 'the Internet Governance Forum, a multistakeholder forum for discussing, sharing experiences and networking on Internet governance'. Importantly, this statement also raised some key social and economic issues like net neutrality and access to knowledge, in addition to the traditional ones like freedom of expression, privacy and security.

From this point onwards, IBSA cooperation on the subject picked up steam. On the initiative of the Brazilian government and some civil society actors from Brazil and India, a meeting was held among IBSA governments and IBSA civil society representatives on 'Global Internet Governance' in Rio de Janeiro, Brazil, in 2011. At the end of this meeting, the government representatives from the three IBSA countries drafted a set of 'Rio Recommendations'. These recommendations specifically sought a new UN body for global Internet governance. The 2011 IBSA summit later took note of the Rio Recommendations and exhorted the three countries to keep working closely together on this key issue.

It had long been felt that although the developing countries had been asking for a new UN forum to take up Internet policy issues, there was no concrete proposal on the table. Building on the momentum from the Rio meeting and positive exhortations from the IBSA summit, India took the initiative to plug this gap. In late 2011, India made a proposal to the UN General Assembly to set up a Committee for Internet-Related Policies (CIRP) attached to the General Assembly.[7] The proposal presented a detailed plan on the mandate and membership of the proposed Committee. It was also to have stakeholder advisory committees, patterned on similar committees for the OECD's Internet policy body.[8]

WCIT and Snowden

Within six months of each other, two global events made a most decisive impact on the perception in developing countries about global Internet governance.

First was ITU's World Conference on International Telecommunications (WCIT) in Dubai in December 2012, which was to develop a new set of International Telecommunication Regulations (ITRs) to replace the existing set negotiated 25 years earlier. ITU has been the key target of liberal and neoliberal groups, supported by the US and its allies, for being the organisation that 'plans to take over the Internet'. The US played on this sentiment, quite prominent in the global North but also among developing-country middle classes, and promoted WCIT as a battle for or against 'controlling the Internet'.

The core contention at WCIT was whether or not the Internet should be recognised as a part of telecommunications and thus come under the ITRs and ITU's realm to regulate. Any such recognition, and its consequences, would clearly have come in the way of the fully unregulated market approach to the global Internet, of which we spoke earlier. (It must be noted that in almost all countries, including the US, telecom regulators do already regulate the Internet as well.) In the end, the ITR draft on the table had no mention of the Internet. The Internet was taken to an attached resolution which (1) clearly did not have the authority of the ITRs, and (2) just followed a well-established tradition at ITU in relation to its earlier resolutions dealing with Internet-related issues.

There was very little excuse for the US not to sign the ITRs. In fact, its European allies were mostly ready to sign on. It appears that the US, along with its multinational corporations, led by Google, and its civil society, became a victim of their own excessive propaganda. On the very flimsy ground that the ITRs gave member countries a right not to be thrown off the global Internet, they walked out of WCIT. The Europeans reluctantly followed, more to keep to the traditional geo-political alignments than anything else. The chimera of some kind of global consensus on the Internet was exposed.[9]

Most developing countries saw it as a betrayal by the US and its allies with regard to their long-professed rhetoric of a global Internet for development and a better world. Their self-interest was laid bare. It became evident that the US did not want democratic global governance of the Internet, not because it could thwart the innovative potential of the Internet but because the US and its companies wanted a free run on and control over the Internet as a means for global economic, social, political and cultural control and exploitation. Such control would be threatened if any global governance body like ITU included Internet-related issues in its mandate.

As the world was still coming to terms with the WCIT shock, Edward Snowden thoroughly exposed the manner in which the US employed the Internet for gaining intrusive social and personal access and controls across the world. In the global public's mind, the Internet had lost its innocence forever. The Internet is such a potent social force, largely seen as having a very positive potential, that winning the hearts and minds of the public is of key importance in framing effective political positions in this area. Understanding this fact, strategies of US-based actors for resisting any move towards democratic global IG have most effectively been targeted at the 'global public sphere'. And they were winning this game, till Snowden came along and changed the situation so dramatically.

How the Internet is governed today

After intellectual property rights, and linked to it, control over the Internet is the biggest factor in establishing and sustaining global economic hegemony in the emerging world order.[10] The Internet also enables a considerable level of political, social and cultural domination, and therefore its control and exploitation is seen as key by the US and its corporate allies. At this stage, their strategy is to fully keep at bay any possible global governance system that can interfere with the default global IG regime that they are shaping and establishing. It consists of the following four interrelated elements:

(1) Pursuing an unregulated market approach at the global level so that US corporations can shape and control the global digital architecture, establish huge monopolies and extract rents globally.

(2) In cases where the US finds it absolutely necessary to do so, getting US law to apply to the global Internet through the simple expedient that almost all the major Internet corporations are US-based and subject to US jurisdiction. Consequently, the main techno-legal paradigms of the emerging digital age are today set by 'negotiations' between the Internet's monopoly companies and US regulators like the Federal Communications Commission and Federal Trade Commission, and often directly with the executive or with the courts.

(3) Creating pro-developed-country global IG frameworks at plurilateral forums like the OECD and G8 and pushing them globally on the basis of sheer economic muscle.[11] Further, using plurilateral forums like the Trans-Pacific Partnership and Transatlantic Trade and Investment Partnership to establish the US' own vision as the default global regime.

(4) Relying on corporate-dominated/driven multistakeholder forums to shore up the rest, especially in the area of technical and logical infrastructure and standards, and of keeping a favourable global IG discourse going. The fact that even after the WCIT fiasco and Snowden revelations such a discourse continues to have a considerable number of followers can be considered a stupendous achievement.

The games status quo-ists play

As the US shapes the default regime for the global Internet, it may soon be too late to make any substantial changes to it, so deeply intertwined our economic and social structures will be with the Internet. The US-based actors understand this well, and have put in place very well-planned and well-resourced strategies to buy time. Apart from supporting its companies, working in selected plurilateral forums and propping up US corporates dominating multistakeholder governance structures, a good part of this strategy is focused directly on global public opinion.

Nice-sounding terms like 'Internet freedom' and 'multistakeholderism' have, more or less successfully till now, been backgrounded with the fear of 'a UN takeover of the Internet' and splintering of the globally seamless Internet into national Internets. Huge amounts of funds have been ploughed into this space, in the name of building capacities in the South. Seldom before has such a sudden influx of huge funds by donors been witnessed in any field. And this is being done not only by the developed countries and their donor agencies but also by corporations like Google. Their combined impact is indeed daunting.

The strategy is extremely sophisticated, which points to the dominant actors' keen understanding of the importance of this issue (and the corresponding non-understanding among most developing countries, both governments and civil society). Country-level strategies have been employed to push back even the slightest movement towards seeking democratisation of global IG. The best examples of this are with regard to the two countries – India and Brazil – which have been recognised as most 'dangerous' in being possibly able to take a legitimate leadership role globally towards shaping alternative visions for the global Internet.

When India, which had been rather subdued after WSIS, suddenly put forward the CIRP proposal in the UN in 2011, alarm bells rang for the status quo-ists. Almost immediately afterward, a strong IG initiative was launched in India by the representative of a US telecom company, employing the cover of an Indian industry association. This initiative gathered a ragtag coalition of corporate and civil society actors (also co-opting a few unsuspecting academics) to *inter alia* propose holding an India IGF under the management of the concerned industry association.[12] Such an assemblage was to develop 'community views' to challenge what were seen as undemocratic global stances of the Indian government (read: the CIRP proposal).

For quite some time, this strategy was extraordinarily successful and was able to make huge inroads into India's Internet policy establishment. It managed to make it appear that India was getting doubtful about its own CIRP proposal. It also had a strong role to play in India not signing the WCIT ITRs in Dubai and reserving its opinion on the matter, which came as a big surprise to many. However, the Snowden revelations – which showed that the particular US company whose Indian representative led the Indian IG initiative had been helping the US government in foreign espionage[13] – dealt a considerable setback to the initiative, which since then has seemed to be losing steam.

Even more successful was the strategy of the status quo-ists with regard to containing Brazil's outrage over the Snowden revelations on the bugging of the Brazilian President's telephone and snooping on commercially valuable information belonging to the state oil company, among many other things. Brazilians were so livid that President Dilma Rousseff cancelled a state visit to the US and went to the UN to seek a new initiative for democratising global Internet governance. Panic struck the relevant quarters in the US. It is to their credit, however, that they came up with an outstanding counter-strategy.

ICANN's CEO went to meet Rousseff and made all the right noises about how she had given voice to the whole world's concerns and about how things must now move on. He exhorted the President to hold a global meeting on Internet governance to chart the roadmap ahead. As could be expected, the President agreed and such a meeting was announced. But from that announcement onwards, it was one sordid tale of a creeping capture of the meeting – now called NETmundial – by the US status quo-ists, taking advantage of the diplomatic grace and politeness of the Brazilian hosts.

In the end, instead of addressing any of the concerns arising from the Snowden revelations, the NETmundial meeting actually came up with a set of principles and roadmap which provided new legitimacy to the corporate-dominated multistakeholder form of global governance. At the meeting, for instance, representatives of top multinational corporations (MNCs) like Cisco and Disney could be seen literally reading out texts to the drafting groups.

In order to sweeten his initial invitation, ICANN's CEO seems to have hinted to President Rousseff that the US/ICANN was ready to make some bold changes. It was then learnt that these changes involved the readiness of the US to give up its oversight over ICANN. However, once the NETmundial meeting got underway, any substantive discussion/consultation on this issue was withdrawn from the NETmundial process, or any such relatively representative global meeting. It has been taken to the narrow technical community around ICANN, whose views on this issue are rather well known. It is now evident that the US will not transfer its oversight role to a globally representative body but will simply abolish it. This will leave a very important global governance agency, ICANN, fully unsupervised, which is not at all what the non-US countries have been asking for. The US meanwhile knows that it still has enough legal, legislative and even executive levers of control over ICANN, since the latter is incorporated in its jurisdiction.

Even after Snowden had so thoroughly rattled public perceptions about the Internet, and there has been an intense desire to 'do something' about it, which is why the world initially rallied behind Brazil in its initiative, the status quo-ists were able to completely hijack the NETmundial event. It should *prima facie* be considered strange that a meeting called to address a global horror unveiled by Snowden regarding the practices of the US government and its corporations ended such that the meeting and its outcomes were most celebrated by these very actors. Through the practices at NETmundial and its outcome document, they were able to lay out a roadmap which points in exactly the opposite direction to where the developing countries need to go. It is little surprise then that the next stop is the World Economic Forum, where a new 'NETmundial Initiative' is now being cooked up (see box). Such processes and meetings are sought to supplant traditional, UN-based global governance fora.

Similar containment strategies are being employed in many other countries, including in Africa, often leveraging the presence of US-based MNCs or donor aid. The problem here is rather straightforward. The US-based status quo-ists understand how outstandingly important IG is to global economic, social, political and cultural domination. Developing countries mostly do not. They do keep getting a whiff or two of the enormity of the matter, mostly from the daily flow of news on Internet issues. However, they do not have a clear substantive understanding of the issues, much less an agenda that they could pursue in this important area of global governance.

A roadmap for developing countries

The default global trade and intellectual property frameworks were developed unilaterally by the North and then got inscribed into the respective global governance institutions, the World Trade Organisation (WTO) and World Intellectual Property Organisation (WIPO). Developing countries have always had to play catch-up. The paradigm for global governance of the Internet, however, is only now being formed. There is still time for the developing countries to work on a proactive strategy to shape it, rather than just accept what is dished out by developed countries. Below is a very brief layout of the areas in which developing countries should begin working together.

The first requirement is to develop deep substantive and strategic competence with regard to the subject of the global Internet and IG. The larger and more active developing countries must take the lead in this respect. The IBSA summit in 2011 had called for establishing an 'IG and development' observatory. The BRICS grouping (which comprises Brazil, Russia, India, China and South Africa) has think-tank initiatives in many areas and should also take up similar work in the IG space. The South Centre in Geneva has already begun some work in this area, and its capacities should be strengthened.

One significant complication is that IG encompasses too large a swathe of issues. Many of them do not admit of similar treatment. Some of them, for instance, can attract much more commonality of perspectives and interests than others. It is important therefore to distinguish at least two streams of issues and take them

From NETmundial to the World Economic Forum

Walking the tightrope of seeking as wide a global legitimacy as possible while still keeping things under full control, the protectors of the status quo Internet governance order now seem to be seeking the cover of the World Economic Forum (WEF). A NETmundial Initiative[1] has been announced to be launched at WEF headquarters in Geneva on 28 August 2014, 'to carry forward the cooperative spirit of Sao Paulo [where the NETmundial meeting was held] and work together to apply the NETmundial Principles...'. As can be expected, the list of invited participants is heavily dominated by Northern corporations. A select group of government leaders and a few civil society organisations are also invited.

In this context, it will be useful to look at the kind of views on global Internet governance that have been expressed in WEF reports over the last few years. This is what an analysis[2] of the WEF's Global Redesign Initiative (GRI) has to say about the initiative:

'One of GRI's major recommendations is that experiences with "multistakeholder consultations" on global matters should evolve into "multi-stakeholder governance" arrangements. This transformation means that *non-state actors would no longer just provide input to decision-makers* (e.g. governments or multinational corporations) *but would actually be responsible for making global policy decisions*...

'Their recommendations for multistakeholder governance include the introduction of parallel meetings with the governing bodies of the WHO, UNESCO, and FAO where non-state actors will hold independent sessions as a complement to the official government meetings. GRI also recommends a second new form of multi-stakeholder governance for conflict zones in developing countries. *They propose that the non-state actors, particularly the business community, join with the UN system to jointly administer these conflict zones*.

'*There are some sharp differences between "multistakeholder consultations" and "multistakeholder governance"*, some of which are often blurred by the loose use of the term "multistakeholder"' (emphases added).

Multistakeholderism apparently is a new, post-democratic form of governance which gives big business a major, institutionalised, political role and authority. Multistakeholderism in this form is the preferred neoliberal model of governance, whose application begins at the global level and with Internet governance but is certainly meant to be taken to national levels as well as to all sectors of governance. The plan is dead serious, with clear calls for setting up multistakeholder organisations that will do policy-making and governance. To quote the WEF's Global Agenda Council on the Future of the Internet from GRI's final report[3]:

'This means designing multistakeholder structures for the institutions that deal with global problems with an online dimension. Thus *the establishment of a multistakeholder institution to address such issues as Internet privacy, copyright, crime and dispute resolution is necessary.* The government voice would be one among many, without always being the final arbiter. And as ever more problems come to acquire an online dimension, *the multistakeholder institution would become the default in international cooperation*' (emphases added).

The continuing and inevitable digitalisation of our social systems appears to be the chosen path for their de-democratisation through multistakeholderisation (read: the rule of big business, with some crumbs thrown to other parties). – *Parminder Jeet Singh* ◆

1 See Internet Governance Transparency Initiative website, https://k52lcjc5fws3jbqf.onion.lt/

2 http://www.umb.edu/gri/appraisal_of_wefs_perspectives_first_objective_enhanced_legitimacy/multistakeholderism

3 'Everybody's Business: Strengthening International Cooperation in a More Interdependent World', pp. 317-21. http://www3.weforum.org/docs/WEF_GRI_EverybodysBusiness_Report_2010.pdf

up separately, although they often do intersect. These are the fields of (1) freedom of expression, privacy and security, on one side, and (2) various economic, social and cultural issues, on the other. Developed countries have managed to keep the global IG ball firmly in the first court. In contrast, economic, social and cultural issues have not even been identified clearly enough till now. This is a job for developing countries to do. BRICS could take the lead and set up a think-tank initiative on 'economic, social and cultural issues related to the Internet'.

Developing countries should have a well-developed collective strategy for global fora, soundly supported by such knowledge resources as discussed above. After months of stalemate, the UN General Assembly has recently announced that a high-level meeting to review the implementation of the WSIS outcomes will be held in December 2015, with a preparatory process commencing from June 2015. This will be the single most crucial stage on which the developing countries must come together and present clear and strong proposals. Internal preparations for it must start now. The ITU Plenipotentiary Conference in October-November 2014 will be a good place to begin strategising together, although ITU looks at a relatively narrow segment of global IG issues.

It is however extremely unlikely that the US and its allies will yield any ground at global governance fora. Developing countries should simultaneously focus on South-South cooperation. The single most practical and effective approach today could be to announce some kind of an Internet Cooperation Platform or Forum at the BRICS, IBSA or G77 level, possibly all of them. It is only when such a forum is launched, and practical work on cooperation on Internet policy issues begins, that the US and its allies could be moved to offer global responses and solutions. The latter know that a global free trade regime for their Internet MNCs is of basic importance to their global ambitions. If developing countries, especially the larger ones, begin working together on Internet issues, it could curtail the unrestricted global reach and playing field available today to these companies. Such a move by larger developing countries will be the single most important game-changer in the area of global Internet governance today. Just setting up a BRICS and/or IBSA Internet Cooperation Platform will, at a single stroke, transform the global IG landscape and what follows thereafter.

It is worth noting that the tide is turning against an unregulated Internet even outside the developing countries. A recent French Senate report recognises an urgent need to take far-reaching steps to stem the US domination on the Internet.[14] Even within the US, civil society advocates have begun to realise that an unregulated Internet does not serve the public interest and that appropriate regulation of the Internet is needed.[15]

The stage is therefore set for developing a new paradigm for the governance of the Internet, based on (1) its commons nature, and (2) the need for at least some of its core functionalities to be made available as public utilities, even if supplied by regulated private entities. Appropriate models of policies and regulation are required that can ensure people civil, political, economic, social and cultural rights vis-a-vis the Internet. It is for developing countries to present such a new paradigm. They should stop playing catch-up and aim high this time around. There may still be time, although perhaps not too much, to reclaim the Internet for its egalitarian values. ◆

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Endnotes

1. WSIS was held in two phases, with two summits, one in Geneva in 2003 and the other in Tunis in 2005.
2. The Internet Corporation for Assigned Names and Numbers, which is responsible for the addressing system of the Internet.
3. See the Okinawa Charter on Global Information Society (2000) at http://www.mofa.go.jp/policy/economy/summit/2000/documents/charter.html.
4. This assertion is largely symbolic and normative, as shown, for instance, by a recent US court case where some groups have sought seizure of country top-level domain names of Iran and Syria, and the court seems to be responding favourably.
5 The CSTD, a subsidiary body of the UN Economic and Social Council (ECOSOC), was mandated to conduct the WSIS follow-up.
6. http://www.itforchange.net/sites/default/files/ITfC/IBSA-statement_Enhanced_Cooperation_Consultation.pdf
7 http://itforchange.net/Techgovernance/IndiaCIRP
8 http://webnet.oecd.org/OECDGROUPS/Bodies/ShowBodyView.aspx?BodyID=1837&BodyPID=7425&Lang=en&Book=False
9 http://www.thehindu.com/opinion/lead/a-false-consensus-is-broken/article4222688.ece
10 Control over capital and finance no doubt remains key, but these are the most significant new elements of the hegemonic global order that is being sought.
11 See, for instance, http://usoecd.usmission.gov/june2011_internet2.html
12 The Indian government however refused to allow the industry association to use the India IGF brand, and they held their meetings under different names.
13 A former Permanent Representative of India to the UN in New York, Hardeep Puri, has written about the extent of penetration by the representative of this company into India's Internet policy establishment. http://www.samachar.com/Time-India-woke-up-to-US-surveillance-oidgLFhgfbb.html
14 http://www.domainmondo.com/2014/07/icann-and-internet-governance-french.html
15 https://www.eff.org/deeplinks/2014/07/deep-dive-defense-neutral-net

The multistakeholder model and neoliberalism

Multistakeholderism, says *Michael Gurstein,* is the counterpart of neoliberalism and is being promoted as the basic governance model of Internet governance, not only by the US government and the corporate sector but also by wide elements of civil society.

YOU may not have come across the term 'multistakeholderism' (MSism) – and it is quite a mouthful – but you will likely hear a lot of it and very soon. The US government and its corporate and civil society allies have decided that it is to define the governance structure for the Internet (and through it, the preferred structure for global governance overall).

One of the truly remarkable recent developments in the Internet field from a civil society perspective is the sudden emergence and insertion of the 'multistakeholder model' in Internet governance discussions some 2-3 years ago. The term itself has been around a lot longer and has even been used within the Internet sphere to describe (more or less appropriately) the decision-making processes of various technical bodies (the IETF, the IAB, ICANN).

Associated with this is the new and somewhat startling drive by the US government et al. to transplant the MS model from the quite narrow and technical areas where it has achieved a considerable degree of success, towards becoming the fundamental, and effectively the only, basis on which Internet governance discussions are to go forward. Notably as well, 'multistakeholderism' seems to have replaced 'Internet freedom' as the mobilising Internet meme of choice ('Internet freedom' having been somewhat discredited by post-Snowden associations with the freedom of the US government to 'surveille', 'sabotage' and 'subvert' via the Internet).

In the midst of these developments there has been a subtle shift in presenting MSism as a framework for Internet governance consultation processes, where it is now put forward as the necessary model for Internet governance decision-making. Moreover, it is understood that this decision-making would be taking place not only within the fairly narrow areas of the technical management of Internet functions but also in the broader areas of Internet impact and the associated Internet-related public policy where the Internet's significance is both global and expanding rapidly.

Most importantly, the MS model is being presented as the model which would replace the 'outmoded' processes of democratic decision-making in these spheres – in the terminology of some proponents, providing an 'enhanced post-democratic' model for global (Internet) policy-making.

So what exactly is the 'multistakeholder model'? Well, that isn't quite clear and no one (least of all the US State Department which invoked the model 12 times in its one-page presentation to the NETmundial meeting in Brazil) has yet provided anything more than headline references to the MS model or examples of what it might look like (but probably wouldn't, given the likelihood of the need to contextualise individual instances and practices).

But whatever it is, a key element is that policy (and other) decisions will be made by and including all relevant 'stakeholders'. This will of course include, for example, the major Internet corporations, which get to promote their 'stakes' and make Internet policy through some sort of consensus process where all the participants have an 'equal' say and where rules governing operational procedures, conflict of interest, modes and structures of internal governance, rules of participation, etc. all seem to be made up as they go along.

Clearly the major Internet corporations, the US government and their allies in the technical and civil society communities are quite enthusiastic; jointly working out things like Internet-linked frameworks, principles and rules (or not) for privacy and security, taxation, copyright, etc. is pretty heady stuff. What isn't so clear is whether the outcome in any sense will be supportive of the broad public interest or an Internet for the Common Good, or anything beyond a set of rules and practices to promote the interests of those who are already getting the most returns from their current 'stake' in the Internet.

What I think is clear, though, is that the MS model now being touted is in fact the transformation of the neoliberal economic model, which has resulted in such devastation and human tragedy throughout the world, into a new form of 'post-democratic' governance. This connection between the neoliberal economic model and multistakeholder governance is presented most clearly in 'Toward a Single Global Digital Economy', a document published by the Aspen Institute with numerous Internet luminary co-authors and collaborators.

Thus, for example, the report outlines the following, which could be taken directly from the neoliberal playbook, as the essential ingredients for effective governance of the Internet:

'If countries wall themselves off from the global medium, or unduly restrict users' access to content, or if jurisdictional niceties block the transfer of information across borders, the public suffers in the following ways:

- Undue barriers to trade and increased protectionism lead to the loss of the benefits of competi-

tion: lower prices, choice of services and increased innovation.
- Deviations from a rule-of-law approach lead to a lack of trust as it relates to privacy, security and intellectual property protection.
- Lack of harmonisation can lead to differences in deployment of broadband infrastructure, impede spectrum management and hamper interoperability.
- Jurisdictional and regulatory differences can lead to differences in the adoption of human rights, particularly with respect to the freedoms of communication.'

The report argues for, outlines and celebrates the dominance of the Internet economy by the US, US corporations and selected OECD allies, and provides a plan of action for the implementation of the MS model as the supportive governance structure.

So, for example, while there are clear and well-regarded opportunities for participation by private sector stakeholders, technical stakeholders and civil society stakeholders in the Internet policy forums (marketplace), there is no one in the process (no 'stakeholder') with the task of representing the 'public interest'. No one has the responsibility for ensuring that the decision-making processes are fair and not contaminated and that the range of participants is sufficiently inclusive to ensure a legitimate and socially equitable outcome. Nor is there, in the multistakeholder model as in the neoliberal economic model, any external regulatory framework to protect the general or public interest in the midst of the interactions and outcomes resulting from the interactions between individual sectional interests.

In a normal democratic process (or a non-liberalised marketplace) the underlying framework and expectations of participation would be that the actors would be pursuing the 'public interest' (with, of course, different interpretations of what that might mean) and that there would be some basic social contract to provide a 'social safety net' for all the individuals and groups, particularly those least able to defend their own interests. However, in the MS model there is no promotion of the public interest. Rather, the public interest is seen as somehow a (magical) by-product/outcome of the confluence (or consensus) processes of each individual stakeholder pursuing their particular individual interest (stake). Government may or may not be an (equal) stakeholder in this model but in any case the overall intention is, if possible, to remove government altogether (even as the protector of rights and ensurer of equitable processes and outcomes).

This, of course, has to be seen as an overall 'privatisation' of governance where, for example, major Internet corporations have an equal standing alongside other stakeholders in determining Internet governance matters in areas such as regulation (where such is allowed to occur). In this model there is no space for the Internet as a common good or as a resource equally available for all as a tool for general economic and social betterment (including by the marginalised, the poor, those from less developed countries and even those who are not currently Internet 'users'). 'Stakeholders' get to make and even enforce the rules; as for anyone who isn't or can't be a 'stakeholder' – well, tough luck.

Similarly there is a refusal to accept even the possibility of a regulatory framework for the Internet (the argument most forcefully articulated in the course of the Internet freedom campaign); or that the Internet might be of sufficient importance as a fundamental platform for human action in this period, that it can no longer be seen as a domain of solely privatised action and control.

The damaging effects of neoliberalism are now highly visible and very well known. These have become evident through neoliberalism's promotion of the privatisation of public services such as education and health care in less developed (and developed) countries, with the consequent significant increases in non-schooling and deterioration in health among the poor, the marginalised and the rural; the undermining of the social contract and social safety nets in developed countries, with the associated increases in child poverty, homelessness and hunger; the 'Washington Consensus' and externally imposed austerity regimes, which many countries around the world are only now recovering from [and which the International Monetary Fund (IMF) itself has recognised as a serious and highly destructive mistake]; the actions of the IMF and World Bank in insisting on privatisation and deregulation, thus decimating numerous local enterprises in favour of multinationals; and overall, through providing the ideological drivers (and models) for a social and economic assault on the poor and vulnerable globally.

Neoliberalism's counterpart in global (Internet) governance and beyond, multistakeholderism, is now sought to be made the basic governance model for the Internet. It is promoted, quite unsurprisingly, by the corporate sector and the US government, but, equally and astonishingly, by wide elements of civil society and the technical community as well.

The real significance and ultimate target for this neoliberalisation of governance lies, of course, not in narrowly technical Internet governance matters but rather in issues such as taxation of Internet-enabled commerce and ultimately the need for revenue sharing with respect to Internet-related economic activity, in a world where income inequality is growing at an unprecedented rate on an Internet and global digitisation platform.

An uneven playing field

The current context, where global Internet giants such as Google and Amazon are completely free to transfer/allocate revenues and costs anywhere they choose within their multinational empires, so as to minimise tax exposure, is rapidly reaching a critical point where some sort of intervention is likely. On the longer-term horizon, both global and national income polarisation – much of it having some linkage to digital technology and the Internet – will at some point necessitate intervention and rebalancing if social unrest is to be avoided.

In a multistakeholder governance regime, however, the Internet giants will presumably be equal partners/stakeholders in the determination of matters of Internet regulation, taxation and the possible (re)allocation of overall benefits, i.e., those matters which are of direct financial concern to themselves and their shareholders. And these determinations will be taking place in policy contexts where there are no obvious champions/stakeholders representing the broad global public interest. That such an arrangement is directly supportive of US and other developed-country interests and the interests of dominant Internet corporations, i.e., those most actively lobbying for the multistakeholder model, is clearly no accident.

Equally of course, the less developed countries will be at a distinct disadvantage. Their governments lack the knowledge and often the resources to act as effective stakeholders in MS processes. Their national Internet corporations are either sub-units of global corporations or too weak to be effective in such environments; and many of their civil society organisations have been captured by means of the cheap baubles of international travel, the flattery of 'participation' in discussions with Internet luminaries, along with the crumbs of localised organisational benefits. The citizens of these countries (as with the disadvantaged populations in developed countries) will be completely at the mercy of elites in the developed countries and in those small segments of their own countries who have already achieved success in the global Internet sphere and stand to benefit enormously in prestige and otherwise through the dominance of multistakeholder governance processes. ◆

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Multistakeholderism – a conduit for the corporate takeover of the Internet

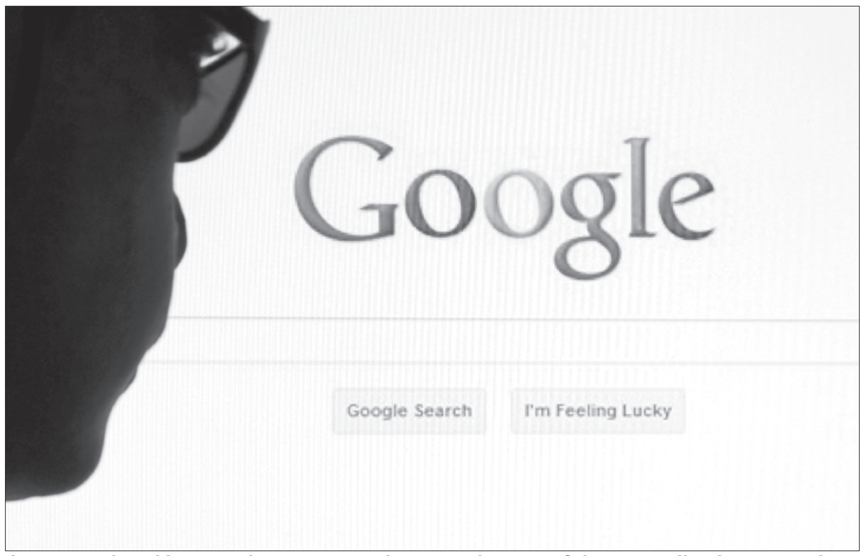
In underscoring the fact that the whole basis of the multistakeholder model is that there should be no regulation of the Internet economy, *Prabir Purkayastha* and *Rishab Bailey* point out that the unregulated market has led to the formation of powerful monopolies which stifle competition.

THE Edward Snowden revelations, published in leading newspapers around the world since June 2013, have proved a watershed moment in how the Internet is viewed and governed. The Internet, largely looked upon as a beneficial tool, is now being treated with an entirely new level of suspicion by states and individuals alike.[1]

The files leaked by Snowden demonstrated the overwhelming and illegal nature of the programmes used by the US and its allies to capture, store and analyse virtually all telecommunication flows across the globe – in various instances by coopting multinational corporations (MNCs) which have established monopolies in the online space. In addition, Snowden revealed the startling cyber-attack capabilities these countries have already put in place.

While the popular media has, by and large, focused on issues surrounding the invasions of privacy by the US National Security Agency (NSA)'s mass surveillance programmes, there is a far more important issue at stake – control. The Snowden revelations have highlighted something rarely spoken about in the popular press or in political circles: the reality that the Internet is a centralised tool used to sustain economic and political dominance in a globalised world.[2]

The initial response from the American government to these revelations was that surveillance was carried out only against terrorists and for national security purposes. However, the duplicity in these statements[3] was soon revealed as one expose after another showed how the US and its allies were systematically spying on hundreds of political figures (such as the President of Brazil, Dilma Rousseff, and German Chancellor Angela Merkel) as well as important political negotiations such as climate change talks in Bali in 2007 and Copenhagen in 2009. This was on top of spying on various economic targets such as Brazil's state oil company Petrobras.[4] In other words, Snowden demonstrated instances of surveillance which have no security concerns whatsoever but do have clear economic and political significance.



An unregulated Internet has generated extremely powerful monopolies in a very short span of time. For example, Google accounts for more than 50% of mobile Internet advertising revenue.

Snowden demonstrated quite simply that the United States and its allies will spy on anything and anyone – using any means possible – if they perceive that this will enhance their political and economic interests. Quite clearly for the United States, international economic affairs comprise an intelligence issue. The NSA is an instrument intended to serve the interests of centralised political and economic power in Washington. The corporate interests colluding with the state are its special beneficiaries.

This level of control over the medium is enabled by the existence of a complex and insidious relationship which some have termed the 'Digital Industrial Security Complex' (to indicate the proximity of the military industries, massive technology companies and political processes). With powerful political processes bent on ensuring unregulated (or minimally regulated) access to global consumers, the unprecedented monopolies and concentration of media and telecommunication industries, and the threat of terrorism (used as a red herring to weaken civil liberties), it seems as if there is almost no way in which online space can be reclaimed.

So while the Snowden revelations did draw international opprobrium and have prompted many countries to revisit their use of technology (and the need for global regulation of the Internet itself), what quickly became apparent was also the lack of international institutions and mechanisms that could adequately deal with these and other equally pressing issues in the context of the Internet ecosystem (such as demilitarisation of the Internet, unilateral control of the Internet's addressing system and so on). Given that the Internet was created in and by the US, this historical accident has enabled the American government to, generally speaking, control and suborn all existing governance systems.

Snowden has revealed that if left unchanged, current practices of governance, business and online activity pose risks not only to the privacy of citizens but also to the capacity of governments to protect what remains of their sovereignty, and to the ability of the global economic system to function fairly and effectively.

This is what Brazilian President Rousseff had pointed out in her speech in September 2013 at the United Nations General Assembly, placing before the world body the urgent need for a new model of Internet governance. It is this call that subsequently led to the NETmundial conference in Sao Paulo in April 2014 (see below).

A failure to make drastic changes to the status quo could quite easily lead to increased exercise of domestic sovereign authority over what should be a global commons – and therefore a very real threat of 'balkanisation' of the Internet. Without a globally agreed set of framing or guiding principles to govern the Internet, the Internet as we presently know it – a global tool of communication – could soon be a thing of the past as each country will attempt to propose its own governance models which it will try and enforce through domestic law.

UN Photo/Rick Bajornas

In her September 2013 speech at the UN General Assembly, Brazilian President Dilma Rousseff underlined the urgent need for a new model of Internet governance.

The multistakeholder model

In light of the Snowden revelations and the perceived need to 'internationalise' or 'globalise' Internet governance practices, what has become a crucial battleground in the governance of the Internet is what is commonly portrayed as a choice between a relatively undefined 'multistakeholder' model of governance (which, broadly speaking, aims to place 'all stakeholders' on an equal footing) and a comparatively well-defined multilateral model recognised in international law, in which a nation state is recognised as the representative of its citizens.

As more and more countries become wary of the US-centric model of governance in vogue since the inception of the Internet, there appears to be a strategy by currently powerful players of ensuring that Internet governance is never truly democratised. This is sought to be achieved by farming out control to the private sector (which, in the context of the Internet, is overwhelmingly Global North-based and therefore susceptible to partnership with their host governments).

This method of governance through private means is sold to the public as an attempt to ensure that there is no censorship or other repressive government control over the Internet. In reality, however, it is nothing more than a way to ensure that the Internet can continue to remain largely unregulated at a global level (or, more accurately, regulated as per the domestic norms of Global North countries, which have the ability to control the relevant corporations).

The US government had originally argued for a private sector-led Internet governance model as far back as the 1990s.[5] At some point this appears to have morphed into the current 'multistakeholder' model.[6] The form of the multistakeholder model that developed in the Internet Corporation for Assigned Names and Numbers (ICANN) is different from the well-known and accepted consultative process in which all stakeholders participate but elected representatives still make the decisions. In ICANN, the governments have only an advisory role through the Government

Advisory Committee. The exception of course is the US government, which has oversight of ICANN through the Internet Assigned Numbers Authority (IANA) contract and other agreements. To be accurate, it is a one-government-plus-private-sector-led Internet governance model that has existed until now. And this is what is now referred to as the multistakeholder model of Internet governance by the ICANN community.

The view of a non-government multistakeholder model has now given way even among some sections of the US government to a stakeholder model that includes governments as stakeholders – but only as one among equals. A *Wall Street Journal* commentator, for instance, talks about the two US government views of the multistakeholder model: 'The Obama administration proposal [on IANA transition] would have treated other governments as equal stakeholders, turning the concept of private-sector self-governance on its head. Robert McDowell, a former commissioner at the Federal Communication Commission, pointed out ... that "multi-stakeholder" historically has meant no government, not many governments.'[7]

Thus the private sector-led Internet governance initially in vogue in US documents is now postulated as a form of multistakeholder model sans one stakeholder – the governments. Obviously, as long as the US government was in control, keeping other governments out was a US strategy. That is why the current IANA transition that the United States has proposed has the precondition of 'no government control' of Internet governance (see below).[8]

The multistakeholder model embedded in the IANA transition offered by the Obama administration is, in our view, a neoliberal multistakeholder model.[9] It demands that governments play little role in Internet governance, that any role they actually play be placed on an equal footing with other stakeholders, and that decisions on all aspects of Internet governance be made through consensus. Any criticism of such a model, or discussions on the different roles and responsibilities of different stakeholders, are then labelled a multilateral or a statist model paving the way for repressive governments to capture the Internet. Such a binary formulation – multistakeholder versus multilateral – misses the fact that while some issues such as technical protocols can be worked out between various stakeholders through a consensual process (global standards are created in this way), the issues change when public policy is involved. Essentially, policy issues demand that a concept of public interest be introduced to override the sectoral interest of certain stakeholders.

Whistleblower Edward Snowden's *(pic)* revelations have highlighted the reality that the Internet is a centralised tool used to sustain economic and political dominance in a globalised world.

The neoliberal multistakeholder model of decision-making – with all stakeholders on an equal footing, and through consensus – does not take into account that stakeholders have differing interests. For example, corporations and consumers have obvious differences in objectives. This model, in effect, gives veto power to private corporations and denies public good or public interest. Such a model would allow the corporate stakeholder section to block any consumer interest regulation simply by not allowing consensus to form on the issue.

The key difference between governments and corporations is that governments are accountable to their people (at least in political theory) while corporations are answerable to their shareholders. The primary driver of corporations is profit; for governments, avowedly, it is the good of their citizens (even if governments do not necessarily fulfil this responsibility). If governments fail in their duties to the citizens, it is possible for the people to change their governments, either through elections in electoral democracies or through other means, in response to the state's failure to maintain the social contract. By extension, if the need of corporations for profit is in conflict with larger social interests, the state has the right as well as the obligation to regulate prices and the profits of corporations. (It is worth noting in this context that ICANN does regulate prices.) Similarly, policy issues such as the safety of consumers or the protection of the environment demand that the needs of the citizens override the interests of capital. This is the basis of regulating corporations and monopolies. For this reason, putting governments and corporations on an equal footing on all matters and privileging decision-making through consensus means effectively giving up the state's right to regulate private monopolies.

Net neutrality has been widely discussed in the context of Internet governance. It is an extension to the Internet of the well-known common carrier principle, which is to provide services to the public without discrimination. The underlying principle in net neutrality is that the carrier cannot discriminate between different sets of data packets 'by user content, site, platform, application, type of attached equipment, and modes of communication'.[10] Again, net neutrality is a regulatory issue and cannot be expected to be achieved by consensus among various stakeholders.

The combination of intelligence agencies and large global corporations has helped concentrate economic power and create large global monopolies on an unprecedented scale. The US stewardship of the key Internet organisations has enabled the United States to ensure that there is no international regulation of the Internet, while allowing extraterritorial application of many of its own laws and regulations (or lack of laws and regulations, such as lack of general protection of data privacy). This has led to the emergence of global monopolies in this space.[11]

The Internet economy tends towards monopolisation due to economies of scale and network effects. This means that global Internet companies can build Internet platforms that will allow bundling services – a case of horizontal monopoly (Google, Microsoft). If you are already on a Gmail platform, this can be used to connect you to Google Docs, Google+ and a host of other services. Others try and bundle access and services together – a case of vertical monopoly – such as telecommunications companies offering Internet services and then implementing various tiered pricing models for different kinds of services. This is, of course, what the net neutrality battle is all about.

It is not surprising that an unregulated Internet has generated extremely powerful monopolies in a very short span of time. Today, the top three Internet companies control more than 40% of the global digital advertising revenue.[12] In the triple-digit mobile advertising revenue, the concentration is even sharper, with Google alone taking more than 50% of the revenue. The digital ad revenues overtook broadcast television in 2013, having earlier overtaken satellite/cable television, indicating that digital advertising is rapidly replacing other media forms.[13] Again, a handful of companies control the global e-commerce market. An unregulated market therefore leads to the formation of powerful monopolies, which in turn stifle competition and generate very high (or super) profits.

The issue is not the dichotomy between multilateralism and multistakeholderism as posed by proponents of a certain kind of multistakeholder model. The issue relates to the functions or issues that can legitimately be dealt with through each of the processes to serve the interests of society as a whole. For example, how do you deal with something like cyber-warfare and surveillance, which fall squarely within the province of the states? How do you protect the right of a country against unilateral disconnection? Similarly, how do you address regulatory issues such as determining costs of access or regulating monopolies (both global telecom and Internet monopolies) so as to protect the consumers? In all of these issues, the roles of the states and global corporations are different.

Under the neoliberal paradigm, the role of the state has changed 'from being an entity apparently standing above society and intervening in its economic functioning in the interests of society as a whole, even at the expense of the unbridled interests of finance capital (such as for instance the State in the era of Keynesian demand management), to being an entity acting exclusively to promote the interests of finance capital'.[14] Here, we would like to expand the concept of the neoliberal state working in the interests of finance capital to other forms of rentier capital, including intellectual property holders. So when a proposed model of Internet governance formally takes away the role of the state in regulating corporations, its relationship to the neoliberal paradigm is obvious.

It is now clear that dragnet global surveillance has been carried out by the United States and other Five Eyes governments in alliance with the most powerful global corporations. These are also the forces that have been the loudest voices in favour of a multistakeholder model that wants global corporations to have a veto over Internet governance. Internet governance is at present carried out by the US government and global corporations through existing Internet organisations. After the Snowden revelations, the US 'stewardship' is no longer feasible. The US response has been to offer to shift what it calls its 'oversight' (in reality its control) to a multistakeholder process that meets with its approval. In March 2014, it was stated that, 'To support and enhance the multistakeholder model of Internet policymaking and governance, the US Commerce Department's National Telecommunications and Information Administration (NTIA) today announces its intent to transition key Internet domain name functions to the global multistakeholder community.'

There are, however, serious doubts about whether such a transition would ever take place. The US Congress has already raised the question of why the Internet, a US property, should be transferred to any other body where other governments can grab it. In a letter to NTIA, 35 US Senators have talked about '[strong] support [of] the existing bottom-up, multistakeholder approach to Internet governance'.[15] Interestingly, the US Congress does not believe that such a discussion on transition should be of a multistakeholder nature in the United States but purely the prerogative of Congress, showing US hypocrisy in discussions on the multistakeholder model.

The congruence between such a multistakeholder model, in which global corporations are treated on par with governments, and the neoliberal paradigm is obvious. Underlying this model is that there should be no global regulations or laws. That is why ICANN, a private non-profit corporation registered in California, today runs the DNS system through private contracts with domain registrars.

The neoliberal paradigm's central premise is that the state should not interfere with the market. But this cannot work where there are 'natural monopolies' such as in the telecom, electricity and water distribution sectors. In such cases, the state's task could be to (1) be the supplier of such services, or (2) regulate such services either directly or indirectly by creating a regulatory market. A complete withdrawal of the state from providing services or regulating private service providers would lead to obvious adverse consequences.

Crucially, the strategy to ensure lack of democratic governance over vital global sectors is not restricted to the Internet alone. The involvement of the private sector in international governance is now being championed at the World Economic Forum,[16] once again under the guise of a multistakeholder model of governance that would permit private interests to gain unhindered access to fora where regulatory practices are determined and public policy decisions made.

NETmundial and WSIS+10

As mentioned previously, in the context of the Internet, due to its historical development as a US-based system, present models of governance are US-centric. These have however been contested in the past and the Snowden revelations have highlighted once again the importance of international instruments such as the World Summit on the Information Society (WSIS) Tunis Agenda in challenging the US-centric foundations of the Internet.[17]

At WSIS a number of countries challenged the US control over the DNS system.[18] How can vital infrastructure, needed by every country for communications and commerce, operate under the jurisdiction of one particular government? WSIS raised this issue and underlined the need to enhance the role of other governments in Internet governance. Articles 68 and 69 of the Tunis Agenda addressed the need for such 'enhanced cooperation'.

WSIS identified the need for a more participatory structure for other governments. But the Internet Governance Forum set up after Tunis was a body that could only discuss issues; it could take no binding measures. The 'enhanced cooperation' agenda – essentially a code for addressing US control over the Internet – got nowhere with endless discussions; the United States and its allies, including the key Internet organisations such as ICANN, stonewalled the issue.

Brazil initiated a process within the India-Brazil-South Africa (IBSA) dialogue forum for a different form of Internet governance. It developed into a Declaration in Tshwane, South Africa, in October 2011, for a multilateral, democratic and transparent Internet. It focused on the 'urgent need to operationalise the process of "Enhanced Cooperation" mandated by the Tunis Agenda' of WSIS, and to set up a multilateral body under the United Nations for Internet governance.[19] At the 66th meeting of the UN General Assembly, on 26 October 2011, India proposed the setting up of a new UN-based body to act as a nodal governance agency of the Internet.[20] However, none of these efforts was pursued seriously by either the IBSA or the three countries individually.

Internet governance also came up at the 2012 World Conference on International Telecommunications in Dubai, with particular reference to revising the International Telecommunications Regulations (ITRs). Without getting into details, there was an attempt to paint the International Telecommunication Union (ITU) as the villain trying to gain control over the Internet. Such a narrative was fashioned by the United States and a set of US corporations, though a section of 'civil society' also lent their voice to the chorus. The consequence was that though 89 countries signed the new ITRs, the United States and the European Union refused to sign, citing grounds that were highly controversial.[21]

Things changed radically after the Snowden revelations. In her September 2013 speech in the UN General Assembly, Brazil's President Rousseff raised the issue of surveillance and called for a global meet on multilateral Internet governance.[22] The NETmundial conference, organised on 23-24 April in Sao Paulo, Brazil, was a consequence of this call.

From the beginning, there were two currents to NETmundial. On the one hand were the issues identified by Rousseff regarding surveillance, the violation of sovereignty of countries and the call for an increased multilateral oversight of the Internet. On the other hand, there was the call of Internet organisations such as ICANN for a multistakeholder model in which governments would participate, but along with other stakeholders – essentially the equal-footing multistakeholder model.

While NETmundial did make certain gains, the outcome text was by and large anodyne, once again demonstrating why the multistakeholder model is also practically unworkable. The most pressing issues leading up to the conference, such as surveillance, were ignored in the outcome text. In the need to forge consensus between sections whose interests are diametrically opposed, no progress can be made – and this is clear in particular in areas such as corporate regulation, regulation of surveillance and cyber-warfare and other issues where Global North-based companies and political interests meet (and are opposed to those who favour a more democratic and globalised form of governance and greater regulation of corporate power in the public interest). NETmundial further demonstrated how, through controlling key committees, those favouring the interests of big corporates and Global North-based countries could sufficiently derail the agenda and instead attempt to push their own narrow interests.[23]

Democracy can be ensured only if public policy decisions are made by or can be overridden through democratic processes and actions which derive their legitimacy from citizens directly exercising their will, or from representatives or institutions which are democratically accountable to the citizens they represent. However, NETmundial represented the opposite, with, for instance, media MNCs given the freedom to write text pertaining to copyright.

Nevertheless, while there was an attempt to ensure that NETmundial consecrates the multistakeholder model *inter alia* by replacing the traditional WSIS formulation that all stakeholders have certain roles and responsibilities which must be recognised in any governance process (i.e., that states have a public policy function that private organisations do not), the outcome text instead referred to a 'democratic multistakeholder' form of governance and reiterated the 'different roles and responsibilities' formulation used in the WSIS Tunis Agenda.

The battle, however, is far from over, as shown by the recently concluded WSIS+10 High-Level Event in Geneva in June 2014, which was convened to review progress of the WSIS agenda 10 years after it was adopted. Once again there was an attempt to tone down the roles and responsibilities formulation adopted in the Tunis Agenda, though the event concluded with an endorsement of the development of a *democratic* multistakeholder model as a 'priority area' to be addressed in the implementation of the Geneva Plan of Action Beyond 2015,[24] leaving open the question of what constitutes a democratic multistakeholder model.

Another interesting aspect to note in the establishment of governance processes and norms is how the norm-making process itself has now become 'non-democratic' in that traditional notions of states making public policy decisions (on behalf of their people) have been abandoned. Both NETmundial and the WSIS+10 High-Level Event placed states virtually on the same footing as private organisations.

IANA transition

The fact that the US government is quite clearly pushing the multistakeholder model as a means for it to retain control over governance institutions while maintaining the illusion of internationalisation is made clear from the recent furore surrounding the IANA transition.

As mentioned previously, given the increasing trust deficit in the US due to the Snowden revelations, there were immediate calls for the US to give up its role as the 'steward' of the Internet. The US response has been an offer to shift what it calls its 'oversight' (in reality its control) of the Internet's IANA functions to a multistakeholder process that meets with its approval.

The March 2014 NTIA announcement by the US Department of Commerce is an attempt to steer the discussion into a narrow framework. The US government has defined the limits of any transition and has therefore ensured it will not really relinquish control. The precondition to any internationalisation of IANA functions is the adoption of a multistakeholder model in which governments either play no role or, at best, play a role equal to that of other stakeholders, including business. The United States can then retain *de facto* control over the Internet via its juridical control over the Internet organisations and the US corporations, while giving up its *de jure* control of direct oversight.

ICANN has already released a draft of the scope of the transition.[25] In effect, this means that all IANA functions will be transferred to ICANN, and anything outside such a transfer falls beyond the scope.[26] The ICANN community broadly supports the private sector-led, multistakeholder model of Internet governance, in line with the US precondition for giving up control over the IANA function.[27]

It is clear, however, that the current approach to the IANA transition was unilaterally established by the US government, with no prior open stakeholder consultations, and that it sets preconditions which were not subject to any open discussions and ensures that the US can continue to control the Internet's critical resources.[28]

The struggle for democratic Internet governance, where people's interests prevail, calls for a much wider battle. It entails a battle not only over issues of the IANA transition and ICANN's control over the domain name and IP address system, but also against the surveillance state. It is a struggle against digital colonialism and the rentier economy of the Internet. It is a struggle for enlarging the global knowledge commons which is made possible by the Internet. It is a battle for freeing our computer hardware and software from proprietary systems and moving on to free and open source platforms. It is also a part of the larger struggle of the Global South against imperialism. Unless we can bring all these strands together, it would be difficult to beat back this offensive of global capital.

The Internet today is broken; people are under surveillance; and our data are being monetised and sold. If we want to change this, we need a different form of Internet governance. Cosmetic changes to existing institutions will not do. Deep-rooted changes are required, of the kind that will expand democracy and social and economic justice, preserve the rights of people as well as the sovereign rights of countries, and ensure that the Internet is used for peace, not war. ◆

Prabir Purkayastha and Rishab Bailey are with the Society for Knowledge Commons, India, and also a part of the Just Net Coalition. The above draws extensively from their paper 'US Control of the Internet: Problems Facing the Movement to International Governance', Monthly Review, *Volume 66, Issue 03 (July-August 2014).*

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How can the Internet be de-monopolised?

An interview with Robert McChesney

Sally Burch

'LEFT on their current course and driven by the needs of capital, digital technologies can be deployed in ways that are extraordinarily inimical to freedom, democracy, and anything remotely connected to the good life. Therefore battles over the Internet are of central importance for all those seeking to build a better society,' writes researcher Robert McChesney in the conclusion of his book Digital Disconnect: How Capitalism Is Turning the Internet Against Democracy *(The New Press, New York, 2013). Professor at the University of Illinois at Urbana-Champaign, McChesney studies the history and political economy of communication. He is also co-founder of Free Press, a national media reform organisation in the US. In the following interview with the non-profit information agency Agencia Latinoamericana de Informacion (ALAI), he summarises the arguments of his book, with emphasis on the tendency of the Internet economy to promote monopolies.*

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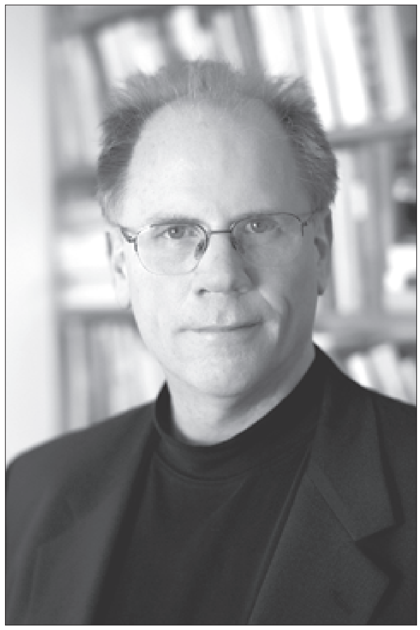
How would you characterise the evolution of the Internet over the past two decades?

To summarise, I would say that the Internet began as a function of the public sector. It was started by government subsidies and was non-commercial, even anti-commercial, in its earliest days. The vision that developed of it was always of an egalitarian, non-profit sector where people would come together and share. But the process starting in the early 1990s, especially after the development of the World Wide Web, has been towards its intense commercialisation on one hand, and on the other hand, an aggressive interest in the importance of the Internet by military, national security, intelligence and police agencies. Those two forces have really made the Internet their own in the last 20 years in a way that I think very few people, as recently as 1993 or 1995, thought possible.



Professor Robert McChesney.

At the global level, what do you see as the main implications of this evolution?

One of the great claims about the Internet was that it was going to spur economic efficiency, growth, competition. It was going to open up the economy for new players, especially for small businesses and new entrepreneurs to get in the game and be able to compete with larger entrenched corporations and businesses, because the Internet would allow them to make an end-run around the barriers to entry that kept them away from consumers and markets. It also was regarded as the place where consumers would be suddenly empowered because they'd have more choice and they'd have more leverage using the Internet to get lower prices and better service from companies.

Unfortunately almost none of this has come true in any meaningful sense, and one of the great ironies of the Internet is that it has become the greatest generator of economic monopoly ever known, in any economic system, certainly under capitalism. Instead of producing competitive markets and lots of successful entrepreneurs, the Internet has done just the opposite, because of network economics, where basically it's winner-takes-all economics. Once someone gets in first place, there's tremendous incentive for everyone to use that service, such as search, for example, or eBay or YouTube. You use the same search because you want to be on the network that everyone else is on, and you get what's called a 'natural monopoly' through the network effects.

When we look at the Internet, it is filled with these monopolies, there's no 'middle class' of 20 or 30 competing companies in an area. It's usually one company that dominates it, with maybe one or two others that have a little bit of the action. And it has really accentuated and aggravated the problem of monopoly in modern capitalism, which is one of the great problems, of course, of the world economy.

Now this is especially true outside of the US because – perhaps not coincidentally – the dominant monopolies of the global Internet – and it is a global phenomenon – are American-based. Google, Microsoft, Apple, Amazon, eBay, Facebook are US-based firms. So these are companies that have inordinate power outside of the US, and I think for people living in countries outside the US, their dominance is of particular concern.

And what are the repercussions of these dynamics in terms of democracy?

Democracy has a lot of components, and one of the great claims of the Internet was that it was going to make it possible for average people, those without property, to participate in politics in a way that never was thinkable prior to the Internet. That you could have access to all the information that only elites used to get. You could communicate with like-minded people inexpensively and establish networks that would be very powerful, that would shake that power and force it to either leave power or to respond to the democratic aspirations of the people. And it has had an element of that, let's be clear; there have been many positive aspects of the Internet for enhancing the power of those at the bottom against the top. But when those claims were made, it was forgotten that those at the top also owned computers. In fact, they own computer companies, they own the networks, and they too know what they're doing, and they're doing it to win, they're not playing by the rules. And what they're doing is to neutralise the threat of the Internet as a democratic force that can arrest or challenge elite power.

Now one of the crucial areas where this takes place – one that I study and write a great deal about – is the great crisis of journalism worldwide and in the US. As you go increasingly into the digital world, there's no way for journalism to be supported anywhere near a satisfactory manner, to have sufficient reporters covering people in social life, keeping tabs on people in power and what they're up to.

In a nutshell, the reason for this is that advertising in the digital era operates very differently than it did before the Internet. Before we had the Internet, the advertiser would buy an ad and the newspaper would use a significant amount of money from that ad to pay for the content; that's how they paid journalists. Advertising provided most of the revenues to most commercial news media in the world. In the digital era advertisers no longer need to pay for the content. They have found a more efficient way to reach final consumers. They can simply go to one of the big ad networks like the ones run by AOL, Google, Microsoft or Yahoo, and they say: we want to reach 30 million women aged 18 to 25, who might be in the market to buy new shoes in the next three months. They'll find those 30 million women right away, wherever they are on the Internet, because those companies know everywhere you go, there's no such thing as privacy on the Internet. So the advertisers don't need to pay a website for anything more than the cost of the one person they're trying to hit there. The website gets much less money and that's why online journalism is basically not solvent commercially. The advertising money has gone, and that accounted for well over half the revenues that paid for journalism over the years. This is causing an enormous crisis worldwide.

> **'[T]hose at the top... own computer companies, they own the networks, and they too know what they're doing, and they're doing it to win, they're not playing by the rules.'**

By this, I'm not saying that journalism was great before. Much of my work has been on the severe limitations of commercial journalism, which is true in Latin America as in North America, if not more so. But the starting point of journalism is that you've got to have someone who can do it, and eat. Someone who has time and the expertise to cover sometimes complicated stories about national security or the environment or economics. Ideally, you want competing news firms, so if someone misses a story someone else will get it. All that is disappearing now. Commercial interests are jumping ship; they say 'We can't make money doing journalism'. And that leaves us very far short of a democratic society. It should be Mission A, Job No. 1 for people committed to democracy, to set up institutions and resources to provide media and journalism, and ultimately culture, to communities that the market is no longer interested in. I think these all have to be non-profit and non-commercial entities to be effective. The market simply has given up on journalism and it should go its way now.

That means, if we're going to have credible, independent, competitive news media – and it will be digital – the resources are going to have to come from the public. The great challenge we face in democratic societies is: how do we do that? All countries need to be looking at that very seriously.

Coming back to the issue of monopolies … in a globalised economy, global political agreements and institutions are needed to establish the necessary rules, controls and checks on its functioning, in the public interest (as most nation states have to limit monopolies at the national level). But these international spaces are increasingly captured by the same global corporations that they should be controlling. With respect to the Internet, what do you see as the key issues to take on in terms of global governance?

I think your question is so good that it has part of the answer, because global trade, economic and governance arrangements are crucial, especially for the Internet. Unfortunately, because there is so much money now in the Internet, these governance arrangements are dominated by huge monopolistic companies that are so wealthy and so powerful that they can call on the US government to be their private police force. The global function now of the US government is to protect the interests of these private monopolies. It never does anything against their interest. That means that the ability of nation states in Europe, Latin America, Africa or Asia to countermand these pressures, to set up their own autonomous digital realm, is much more difficult without effectively taking on the entire economic structure of the world.

You have been involved in some of the big battles taking place in the US around freedom, rights, democracy and the Internet. What do you see as the main issues at present?

In my view the big issues in the US, and I think to varying degrees worldwide, are threefold. First, on the issue of getting serious funding for independent, non-profit, non-commercial, uncensored and competitive news media institutions, at the local and national level, we are working with colleagues on the idea of having a $200 voucher of federal money that anyone can give to a news medium of their choice. So you'd have a huge public subsidy of non-profit news media, but the government wouldn't control who gets the money, the people would.

The second great issue in this country – and probably everywhere – is that control over access to the Internet and to cellphones is limited to just three companies: Comcast, Verizon and AT&T. There are a few other companies in the game, like Sprint and T-Mobile, but the big three set the terms and everybody else follows. They have divided up the market like a cartel, they don't compete with each other, their prices are high so Americans pay an incredible amount of money for cellphones and Internet access for a very mediocre service. It's really outrageous. We need a campaign in the US – or internationally – to take Internet service provision out of the hands of private monopolies, and make it like the post office. Internet access should be a human right; the government should run it and then the costs would come tumbling down. It will be a difficult fight, because these companies are world-class lobbyists, they own all the politicians, but their existence is really illegitimate. They do nothing of value, except gouge us for super-monopoly profits to give us lousy service.

The dominant monopolies of the global Internet, such as Amazon, are American-based.

The third area – and this brings us back to the question of natural monopolies – is that there comes a point where you have three choices in a democratic society about how you deal with monopolies. Now, the way economists use the term monopoly basically means a company that has so much market share that it can set prices on the whole industry and it can determine how much competition it has. If it wanted to rub everyone out of 100% of the market, it could probably do it, but that would hurt its profits, so it settles for a lower percentage of the market and less people stay on the margins, but it gets the maximum profit it can in the industry. That's the sort of monopoly world we're looking at. John D Rockefeller, at the peak of his Standard Oil monopoly, did not have 100% of the oil market in the US, I believe his peak percentage was in the low 80s, but he was in a situation where if he wanted to, he had the power to lower the price to drive people out of business. It just wasn't in his interest to do so. Google, Apple, Amazon, Facebook, eBay and PayPal all have Standard Oil-type monopolies, and as a rule the only competition they face in their core monopoly markets comes from the other companies. So Google has a successful search, then of course Microsoft will have a competitor one. There are no independent companies competing with them, as they all get bought up along the way.

So what are we going to do about these monopolies that are completely antithetical to democratic theory? This isn't even a progressive notion. Milton Friedman – the right-wing conservative economist whose legacy in Latin America, thanks to the Pinochet era, is quite dark – was the first one to argue that the defence of capitalism in a democratic society was that the people who ran the economy didn't run the government. Power was diffused and that allowed freedom to prosper, unlike feudalism, unlike existing communism then, where the people who ran the government also ran the economy. The key to Friedman's argument was that the economic market had to be competitive. If it was dominated by a few giant firms, those giant firms would invariably and inevitably take over the government, and then that whole premise of democracy collapses like a house of cards. That's why, in democratic theory, from both the right and the left, monopoly economic power has always been a crisis.

In that context, there are three choices of what society can do. One, you can keep the private monopoly power and then try to regulate it in the public interest. In the US we did it for a long time with the telephone company AT&T and we still try to do it a little with our phone and cable companies. But the evidence is that it doesn't work. These companies are too big, they capture the regulators, they own the government and the regulation is largely ineffectual, so you still have monopoly gouging you and the monopolists run the government. That's really not a good solution.

The second solution is to try to break up the monopoly into smaller units that would actually compete. So instead of having one oil company, such as Standard Oil, you would break it up into 5, 10 or 15 that would compete with each other and give you the benefits of market competition without having the detriments of monopoly control of the government. Unfortunately, in the case of the Internet that's really not possible. Because of network effects, they become monopolies very quickly because that's the logic of the technology. There's no way to have competing search engines because people would gravitate to the best one and all the others would go out of business.

So with natural monopolies, you have only one course left, and it was Milton Friedman's mentor who actually said this. He said, even if you have free-market capitalism, you need to socialise and nationalise the monopoly companies, because otherwise they will steal profits from smaller businesses and charge them and consumers higher prices, and they will corrupt market economics from working efficiently, just to their benefit. So even those who truly respect and desire market economics should want to socialise those larger monopolies that are impossible to be competitive.

Might that mean nationalising or socialising Google or Microsoft…?

Well, that's the conversation we've got to have, ultimately. We can start now, or we can wait for 20 years and talk about it then, but eventually we'll have to do something along those lines. If you look at the 30 most valuable companies in the US today, in terms of their market value, 12 of them are Internet monopolies – the ones I've just named and a few others. They completely dominate the American political economy (if not the world political economy); they are the vibrant force, such as it is, of capitalism today. This sort of economic power translates into complete control over the government. In America, we always talk about the too-big-to-fail banks that got the huge bailout. As Senator Dick Durbin from Illinois said, they frankly own the government. They own Congress, they get their way with whatever they want. Well there are only two or three of those banks among the 30 largest firms in America, but there are 12 Internet monopolies. So if we're serious about addressing monopoly power as a threat to both the economy and to political democracy, if we're serious about reinvigorating democracy, even if one's a free-market person, then sooner or later we're going to have to address this issue of monopolies, and I would say the sooner we start having that conversation the better.

In the case of global monopolies, would that mean looking at the possibility of having global public companies?

These are really interesting questions, and I think that in America we haven't had that debate anywhere near enough, because our markets are so enormous and the companies are based here. We think in terms of national solutions being sufficient, since we have the companies here that we need to deal with. I think, though, as soon as one crosses the border to any other country in the world, the debate has to change, because then, clearly, purely national solutions have real limits to them, even in theory, and international or regional solutions become much more important. But at this point of the discussion I become a student, not a teacher.

So, coming back to our starting point, the evolution of the Internet: between digital utopia or Big Brother nightmare, what's the present balance?

It's moving to Big Brother nightmare. Those are loaded words, it's pejorative and you might dismiss what I'm saying with 'This guy's a whacko'. (Those weren't the terms I picked – I want to make that clear – but at the same time I'm not going to run from them.) One of the things that I came upon when I was doing the research for *Digital Disconnect*, that I didn't fully appreciate just two or three years ago, was the extent to which everything we do online is known to commercial and government interests. You must start from the assumption that everything you do is recorded, it's tapped, it's monitored and it's available to some people, somewhere, in some manner. I was shocked by that when I did the research, but as soon as the book came out, then the Snowden revelations came out about the NSA and there was a lot more general awareness of this whole process.

But I just had a new shock. The former head of the NSA's surveillance programme has recently left, and he's done some interviews in which he said that the NSA has access to everything and can track everyone everywhere globally. They really have that power and they're using it. So what do they do now if they want to arrest someone? It's very easy, they can put together a case on someone (and they can always find a law you've broken somewhere, it seems) and take their illegally gathered information to the police and say to them, 'Piece together whatever information you said get, come up with legal documentation.' Then they can arrest that person if they want; they have that capacity. As this former NSA head said, that's the definition of a police state. Now that might not always be exercised, but it's that very threat, the very notion that that's looming in the background, that creates exactly the Orwellian world that I don't think anyone wants to live in. ◆

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COVER

Western-dominated Internet governance harms Southern economies

Modern digital information and communication technologies hold great promise. Unfortunately, the Western dominance of Internet governance threatens to destroy a great part of the potential benefits, specifically for the economies of developing countries, warns *Norbert Bollow*.

When global companies like Facebook sell advertisements for business transactions which take place within a developing country, that increases the ICT-related flow of money out of the country.

MODERN technologies and the Internet can benefit everyone. However, it is wrong to assume that all economies would benefit in exactly the same way.

Imagine first a country or other geographic area where a large part of the population participates in the economy with well-developed professional skills and correspondingly earns good income. In this context, the main economic effect of the digital communication revolution is to increase the efficiency of business processes. The number of knowledge workers increases, while repetitive manual labour decreases. Wealth creation per worker increases, and everyone benefits if the increased productivity per worker leads to a fair corresponding increase in salaries. The costs of increased use of digital communication by consumers are generally not a problem at the individual level, and they are certainly not a problem in the aggregate at the national level. If (as is the case for most countries) more information and communication technology (ICT) equipment is imported than exported, the corresponding costs are easily compensated by the increase in value creation in the economy.

Now consider the typical situation of a developing-country economy where, for a variety of reasons, only a very small part of the population has the opportunity to acquire professional skills at a good level and then to use these skills to earn good income. In such a context, replacing manual labour with knowledge workers will not necessarily benefit the local or the national economy. For example, if the increase in efficiency does not lead to increased exports (because the export products are not becoming more competitive on the world market – after all, the competitors are also adopting modern ICTs) but the increase in ICT use leads to increased imports of ICT hardware, software and services, the country's overall situation will become worse. As the percentage of the country's exports which is used to pay for ICTs increases, the percentage which can be used to finance other essential imports decreases. Worse, it is possible that services within the country based on manual labour will be unable to compete with automated processes created by knowledge workers outside the country. For example, when global companies like Google or Facebook succeed in selling advertisements for business transactions which take place within a developing country, that increases the ICT-related flow of money out of the country so that even less revenue from exports is available for what were previously the important imports.

From the perspective of this economic analysis, it would not help in any significant way to insist that advertisements should be bought from a company within the developing country, such as a local subsidiary of Google or Facebook: that would not change the situation of money flowing out of the country (to pay for development work abroad and for profits that ultimately go into the pockets of the shareholders). And in view of how such companies generally organise their accounting across international subsidiaries so as to minimise the payment of taxes, taxation of such subsidiaries generally does not work very well. So when marketing services are provided by international Internet companies (either through their local subsidiaries or in any other way) rather than by local businesses, that will typically also imply a loss of tax revenue for the developing country, making the overall situation still worse.

Also, in regard to how infrastructure investments in developing countries can be funded, the Internet age is quite different from the age of telephony, because the international charging scheme for telephone calls generated funds for developing countries that could be used for infrastructure investments. That is, economically weak countries received revenues from phone calls originating in economically stronger countries, and these revenues could be used to guarantee investment loans and pay them off.

The task of creating promising development strategies for and using the Internet may not be trivial, therefore, but it is not hard to see that important steps forward are possible, and should be pursued urgently.

Take, for example, the realisation that, in developing economies, the adoption of ICTs and the Internet in particular needs to be pursued in a way that does not reduce the ability to make other essential imports. The obvious solution to this dilemma would be to ensure that the adoption of ICTs and the Internet happens in a way that increases exports by more than the cost of the corresponding imports. But to what extent so far have the peoples of the Global South, through the use of ICTs, become empowered to participate in the world market in new ways, producing exports at a good price which they were previously unable to do, so that their economies will truly benefit? In fact, increasing the percentage of people who have such opportunities is one way in which the objective of 'development' can be described.

The 2013 edition of the Internet Governance Forum was held in Bali. The yearly IGF has failed to meaningfully address issues surrounding the relationship between Internet governance and economic development.

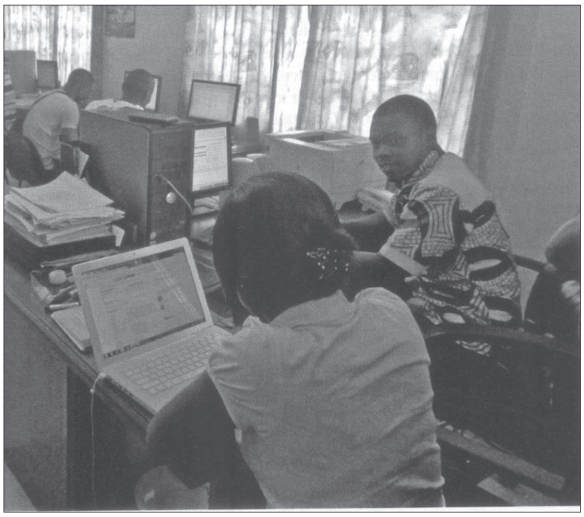
As the Internet is increasingly becoming a global marketplace, it is immediately plausible to pursue the idea that some exports could be in the form of sales made over the Internet by merchants based in developing countries. In regard to physical goods, there are of course challenges related to logistics. In regard to information goods and knowledge work, the matter of logistics should be easily resolved using the Internet. However, this still runs into an obstacle: the payment systems which are in use on the Internet today seriously discriminate against merchants in developing countries. Global public policy action is urgently needed to create global regulation of such payment systems that ends this discrimination. Developing countries should of course combine their engagement for such regulation with the framing of national development strategies aimed at empowering entrepreneurs in their country to make good use of the resulting opportunities.

Promising avenues for public policy action are also available in regard to addressing the risks to national economies posed by the strength of global Internet companies which threaten to capture an unreasonably large share of the global and local advertising markets. Economies of scale and network effects are the main reason why it is currently often difficult, if not impossible, for local Internet businesses to compete with the global giants. An Internet company with a large market is able to invest much more in developing and continually improving its software and services than a competitor with a small market.

This problem can be solved by means of public subsidies for the development of competitive software systems based on Free and Open Source Software (FOSS) and open standards. These subsidies should be financed by a tax on the use of Internet-based advertisements and other Internet-based marketing services. The tax can be independent of whether the company that provides the marketing services is local or international, but at least in developing countries there must be a strict rule that the subsidies can only be used to support the work of software developers within the country levying the tax. This would ensure that, as the emergence of ICTs leads to manual jobs being replaced by knowledge workers, corresponding expertise is built up within the developing country.

Once Free and Open Source Software is developed that enables competition with the Internet giants, it can be used competitively even by small companies, in particular by companies in developing countries aiming to address relatively small local markets. Such small companies can of course more easily acquire a better understanding of local markets than can the global Internet giants, which have a much less focused interest.

Therefore it is clearly possible to advance the economic development interests of the Global South through appropriate public policy action related to the Internet. However, it must be kept in mind that making use of the opportunities depends also on other factors in addition to technical infrastructure and cost of access (the problem of discrimination against merchants in developing countries was mentioned above), and that there are also economic risks that need to be managed and mitigated.



Appropriate public policy can ensure that use of information and communication technologies, particularly the Internet, in developing countries contributes to economic development.

In 2005, at the World Summit on the Information Society (WSIS), the following was noted as a working definition of Internet governance: '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'.

Figuring out strategies to make the Internet truly empower development, and then implementing those strategies, is clearly something that would contribute to shaping the evolution and use of the Internet. It is therefore clearly part of the scope of Internet governance in the sense of this internationally recognised working definition. And it is also clear and indisputable that this is an objective that should be pursued as a priority.

Since WSIS there has been no shortage of opportunities to pursue this objective of 'Internet governance for development', with the 'development' discussions often centring around various aspects related to the cost of Internet access. Clearly a high cost of access can prevent the Internet being used to its full benefit. The price of connectivity to the Internet is much higher, in relative terms, in developing countries than it is in developed countries, usually by factors well over 10. There are many reasons for this, including the fact that, in the international billing scheme for Internet connectivity, developing countries must pay for the full cost of connectivity, including the cost of receiving spam, web-based advertising and so forth. Developing countries need hard currency in order to purchase the equipment needed to expand Internet usage, but have no way to obtain that currency from Internet use: on the contrary, the more they use the Internet, the more money flows out of the country.

WSIS acknowledged already in 2005 that the charges for international Internet connectivity should be better balanced to enhance access and called for the development of strategies for increasing affordable global connectivity, thereby facilitating improved and equitable access for all. But there has been no meaningful action to make this happen. On the contrary, developed countries, at the urging of their industry players, drag out discussions in fora such as the International Telecommunication Union (ITU) and prevent meaningful decisions from being taken. They went so far as to block proposals at the World Conference on International Telecommunications (WCIT) to make transparency a general principle that should apply to all international telecommunications charging; lack of transparency means that it is impossible to know if major developed-country players are abusing their dominant position to overcharge customers in developing countries.

Another outcome of WSIS has been the creation of the UN's yearly Internet Governance Forum (IGF), but unfortunately this has failed to address the above-described issues of economic development in a meaningful way. Since 2006, the IGF has regularly hosted a significant part of the international discourse on Internet governance. A cursory look at what had been announced as the 'overall theme' for each of the IGFs from 2006 until last year's edition in Bali gives the impression that development, in the sense of the needs of the peoples of the Global South, is a primary objective of the Internet governance discourse. For example, the theme for 2012 was 'Internet Governance for Sustainable Human, Economic and Social Development', while the 2013 theme was 'Building Bridges – Enhancing Multistakeholder Cooperation for Growth and Sustainable Development'. Hence the IGFs should really have been a venue to address the various 'Internet governance for development' aspects that go beyond the issues related to the cost of Internet access.

Of course, it was quite intentional on the part of the organisers to give this impression to those who do not look far beyond the nice-sounding overall theme. The substantive discourse which takes place at these conferences is unfortunately riddled with acronyms and very often difficult if not impossible to understand for anyone besides Internet experts. But the vast majority of Internet governance experts have little or no understanding of the complex socioeconomic challenges of developing countries, nor apparently any significant interest in learning how these matters relate to the Internet and its use.

In fact there is a very Western economic ideology which drives much of the Internet governance discussions, and proposed workshop themes which don't fit into that way of thinking get rejected on the grounds of being 'unrelated to Internet governance', although in reality they are only outside the comfort zone of the career Internet governance specialists who evaluate the workshop proposals. Examples of workshop themes which were rejected in this way in 2013 included 'regulating global Internet businesses – need for global frameworks' and 'the roles of the Internet in anti-poverty strategies'. Actual in-depth discussion of development concerns and of how Internet governance can help hasn't happened at IGFs even when precisely that had officially been declared to be one of the main objectives!

The theme of the 2014 IGF is much more honest: the pretense of an emphasis on development aspects has been dropped, and the IGF theme now speaks about the actual objectives of those who largely dominate this discourse. This year's theme is 'Connecting Continents for Enhanced Multistakeholder Internet Governance'. Now 'development' is mentioned in only one of the eight subthemes (again together with 'growth').

Still more striking than the trend of reducing the emphasis on development is how the status of 'multistakeholder cooperation' or 'multistakeholder governance' is receiving increased attention. That topic was not mentioned at all in any IGF overall theme in any of the years from 2006 until 2012. In 2013 it was emphasised as ostensibly being a key means towards achieving the ultimate objectives of 'growth' and 'sustainable development'. Now 'enhanced' multistakeholder governance has been officially declared the IGF's overall goal, and the IGF is openly proclaimed as being intended to 'connect continents' with the objective of achieving that goal!

We must ask whether such 'enhanced multistakeholder Internet governance' is good or bad from the perspective of the development needs and interests of the peoples of the Global South. The question is not whether multistakeholder processes can be used to inform and guide governance actions that have a well-chosen development goal. No, the question is whether development interests will be served well or badly when 'enhanced multistakeholder Internet governance' is implemented in the absence of a clear and enforceable development-oriented goal framework, and with largely the current kind of composition of participants in Internet governance multistakeholder processes, where hardly anyone participates who has true expertise (in the sense of practical experience that goes beyond purely technical matters) in the field of ICT For Development. This is of course related to the question of who gets funded for travelling to Internet governance conferences and for participation in related discourse processes.

'Naive', 'equal-footing' multistakeholderism

While it would of course be possible to implement multistakeholder processes in a reasonable democratic framework (where ultimately decisions are taken by explicitly democratic bodies, such as national parliaments), the current craze of multistakeholderism is to get rid of any kind of decision-making entity with explicit democratic accountability. It is an ideology which insists that no public policy decisions may be made in the area of Internet governance except through multistakeholder consensus processes. This is the most extreme form of deregulation: this ideology even tries to remove the possibility of thinking that public-interest-oriented regulation might be possible. Of course in the short run at least, it will be primarily US companies and the US surveillance-industrial complex that benefit from such extreme deregulation.

When (as is currently the aspiration of the US and its allies) multistakeholder governance is constituted without explicit and enforceable measures to ensure democratic accountability and in particular to ensure that the needs of the people of the Global South are appropriately taken into consideration, it may be referred to as 'naive' or 'equal-footing' multistakeholderism. This form of multistakeholderism is naive because it is based on a naive ideological assumption that whatever 'the global Internet community' thinks is good will in fact be good for the world. Most of the adherents of this ideology seem to have adopted it in a politically rather naive manner, but of course among the proponents of this ideology there are those who know exactly what geo-political objectives it serves.

The attribute 'equal-footing' refers to the ideological demand that all stakeholders must have an equal say in the public policy discourse. This effectively gives global Internet companies the power to veto any kind of regulation that is not in their interest. Of course, any and all regulation that is needed to curb the powers of these global businesses in order to make the emerging Internet economy beneficial to developing countries would be among the victims of this veto power. It is the equivalent of allowing pharmaceutical companies to veto drug safety and effectiveness standards or price caps.

Developing-country governments need to step up their engagement on Internet governance matters at this point, both in regard to global fora like the IGF and in regard to increased coordination among each other. Otherwise the ideology of naive, equal-footing multistakeholderism will rule the day, with disastrous consequences for developing-country economies. ◆

Norbert Bollow is an independent consultant with expertise in mathematics, physics, informatics, open standards, and the use of logic trees for business strategy development. He is careful to avoid conflicts of interest between his business activities and civil society engagement on behalf of the Swiss Open Systems User Group /ch/open (a leading organisation in Switzerland for Free and Open Source Software and related topics), GodlyGlobal.org (a faith-based civil society organisation) and the Just Net Coalition (an international civil society coalition for a just and equitable Internet).

Human rights, the Internet and its governance

Drawing particular attention to economic and social rights and, in the light of the recent revelations of mass surveillance, the right to privacy, *Richard Hill* highlights some neglected dimensions of human rights on the Internet.

Caroline Trutmann/Save the Children

Economic rights such as the right to food cannot be fully realised in today's world unless all people have equal influence in the development and use of the Internet.

HUMAN rights on the Internet are threatened not just by government actions such as censorship and mass surveillance, but also by government inactions that allow private companies to abuse their dominant position.

Everybody knows that governments impose limits on what is considered acceptable Internet content, some more than others. But few understand the full extent to which private companies assert ownership over the information that they receive from Internet users, monetise that information to reap large profits, and take steps to lock users in so that they are discouraged from changing suppliers. Those actions threaten human rights as surely as do the actions of governments.

Human rights and the Internet

It is axiomatic that the rights that people enjoy offline also apply online, and conversely that the duties that people have offline also apply online. This has been confirmed by a long series of court decisions and laws dating back to telegraphy and has recently been explicitly affirmed in United Nations resolutions and other forums. It is also not disputed that states are responsible for ensuring that rights and duties are respected.

Developed countries have tended to stress freedom of expression as a right to be protected. More recently, the right to privacy has come to the fore, in light of revelations regarding mass surveillance. Further, the right to influence public policy decisions has also been raised as an issue, as has the right to development, which may involve controlling dominant private companies.

Freedom of speech

Much of the focus of discussions on Internet governance has been on freedom of expression. Despite idealists who take the view that the Internet cannot (or should not) be censored, the fact is that all states exercise some level of control of content, for example to prevent dissemination of paedophilia, sale of illegal substances or goods, violation of copyright, defamation, etc. Such controls are not controversial. What is controversial is control of hate speech and political speech, since the extent and intensity of such controls varies greatly by country, with the US exercising the least control and China probably the most (but it should be noted that hate speech and negation of genocides are not allowed in most European countries, that some European countries restrict access to online adult entertainment, and that the US does not allow access to online gambling sites).

Such restrictions are permissible only if they comply with Article 19.2 of the International Covenant on Civil and Political Rights (ICCPR), but the allowed restrictions are fairly broad. Proponents of free speech should consider changing that article so that fewer restrictions are allowed; however, it might be very difficult to renegotiate the ICCPR. As an alternative, it may be easier to negotiate a revision to a treaty that specifically deals with telecommunications (the ITU Constitution), with the idea of enshrining the principle that online freedom of speech should be broader than offline freedom of speech. [The International Telecommunication Union (ITU) is the specialised UN agency dealing with international telecommunication issues, including radio frequency harmonisation, standardisation, and development issues.]

Privacy

The ICCPR also provides for the right to privacy. The importance of this right has come to the fore following recent revelations of mass surveillance. As Dilma Rousseff, President of Brazil, stated in her 24 September 2013 speech at the UN: 'In the absence of the right to privacy, there can be no true freedom of expression and opinion, and therefore no effective democracy.'

That is, the right to privacy is an essential enabler of the right to freedom of expression: how can one develop opinions if one cannot discuss ideas privately without fear of being overheard and punished? And of course these days it must be possible to conduct such private discussions via email, social networks on the Internet, etc.

Thus there is growing recognition (albeit not yet sufficient in developed countries) that mass surveillance is a grave violation of fundamental human rights and must be ended. Surveillance can be legitimate, but only if it is necessary and proportionate, which is not the case with the current mass surveillance programmes practised by several developed countries.

The existing provision on the secrecy of telecommunications of the ITU Constitution, which dates back to telegraphy, could be revised to make it clear that mass surveillance is a violation of human rights.

Democracy

Art. 25 of the ICCPR provides that everyone has the right to take part in the conduct of public affairs, directly or through freely chosen representatives. That is, everyone has the right to take part, directly or through freely chosen representatives, in public policy decisions, where 'public policy decisions' refers to decisions that affect public affairs. This human right of course also applies to public policy decisions regarding the Internet, by virtue of the principle that offline rights apply equally online.

Thus the principle that people, either directly or through their chosen representatives, have the right to make public policy decisions also applies to public policy decisions regarding the Internet. This principle is correctly embodied in paragraph 35(a) of the Tunis Agenda adopted by the World Summit on the Information Society, which states that policy authority for Internet-related public policy issues is the sovereign right of states.

Various calls for non-government entities to participate on an equal footing with governments in decision-making regarding public policy matters are thus inconsistent with fundamental human rights, because such non-government entities may not be democratic and would likely weaken the right of people to take part in the conduct of public affairs through their chosen representatives.

In particular, private companies are not democratic institutions and thus should not have equal rights in decisions affecting the public interest: indeed, how could net neutrality ever be implemented if private companies can exercise veto power?

Yet many decisions regarding Internet public policy matters at the international level are made at present in forums dominated by private companies, with the result that the public interest is not always well represented. This is due to the fact that developed countries have resisted involving UN agencies in some aspects of Internet governance when they thought it might threaten the economic interests of their companies or their own geo-political interests. But it must be noted that developed countries have favoured the involvement of UN agencies when they thought it might further their interests, for example with respect to copyright.

This situation should be rectified: all issues should be treated equally and should be subject to the same democratic governance mechanisms, mechanisms which should ensure that private companies do not use governance mechanisms to further their commercial interests.

Economic rights

While they are not often mentioned by proponents of human rights, it is important to stress that those rights include 'the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services'.

Those economic rights cannot be fully realised in today's world unless all people have equal influence in the development and use of the Internet. In particular, those economic rights cannot be realised if a few US-based private companies are allowed to continue to reap large profits, and pay little tax, by exploiting their dominant positions regarding software, search engines, social networks, instant messaging, etc. And this in particular when the large profits come from selling targeted advertising whose value is derived by analysing information provided by users, and when the so-called 'free' services provided in order to obtain that information cost much less than the value derived from the information. This amounts to obtaning a valuable product at a low price by failing to inform the seller that the product is in fact valuable.

Other human rights

There are many other human rights that are important in the context of the Internet, such as the right to education, gender equality, etc. As stated in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993: 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, *on the same footing, and with the same emphasis*' (emphasis added).

The same concept is embodied in United Nations General Assembly Resolution A/RES/68/176, 'Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity'.

Conclusion

Developed countries should keep in mind that freedom of speech is not the only right that must be protected on the Internet, and developing countries should continue to stress that all human rights must be recognised and protected on the Internet, including the right to ensure that dominant private companies do not abuse their position to the detriment of citizens.◆

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Cyber-surveillance and control vs Internet rights

With the rapid expansion of digital communications, the tension between, on the one hand, protecting civil liberties and the privacy of communications, and, on the other, preventing cybercrime, intellectual property violations, spamming and terrorist activities, is likely to be at the centre of initiatives to regulate cyberspace activity. *Sally Burch* explores the issues.

cc Elvert Barnes

A march in Washington against mass surveillance by the US National Security Agency. If the public interest is not prioritised, there is a risk of continually increasing the levels of indiscriminate surveillance and control over the whole population.

THE Data Retention and Investigation Powers Act (or DRIP Act), which was rushed through the UK parliament in just one week in mid-July, with almost no debate nor input from the public, is a new and disturbing example of how the supposed threat of warfare and terrorism is being used to scare people into accepting the legalisation of mass surveillance and retention of their data. 'We face real and credible threats to our security from serious and organised crime, from the activity of paedophiles, from the collapse of Syria, the growth of Isis in Iraq and al Shabab in East Africa,' argued Prime Minister David Cameron in a bid to silence public opposition, while securing an agreement among the three main parliamentary parties.

This, of course, is not new: it took root in the US with the Patriot Act following the 9-11 attack and other countries followed suit to differing degrees. The UK had been applying the European Union's 2006 Data Retention Directive, alongside other national legislation, until the European Court of Justice ruled, in April of 2014, that such EU laws requiring communications providers to retain metadata across the board are invalid because they seriously interfere with fundamental privacy rights. The new UK law not only is designed to get around these EU limits, but also further extends some surveillance powers. For example, law enforcement officers can now access not just metadata but also the content of messages, even if they are held by companies outside the UK. However, the DRIP Act will be challenged in the courts on the initiative of two backbencher MPs together with the human rights organisation Liberty, arguing that it is incompatible with European rights norms that guarantee respect for private and family life and the protection of personal data.

With the rapid expansion of digital communications, the tension between, on the one hand, protecting civil liberties and the privacy of communications, and, on the other, preventing cybercrime, intellectual property violations, spamming and terrorist activities, is likely to be at the centre of initiatives to regulate cyberspace activity. These issues bring conflicting interests into play, so it has become urgent to open up a broad public debate (both nationally and internationally) with respect to the direction the technology is taking and the implications for human rights and for democracy itself. Otherwise, we may well face a series of *faits accomplis* once it is too late to change course.

Of course, people need protection against bank fraud, destructive viruses or terrorist attacks, while excessive spamming is a real nuisance and slows down Internet traffic. But such factors need to be addressed in proportion to their real relevance and risk level, subjected to judicial oversight, and balanced against the dangers of submitting the entire population to blanket surveillance, forfeiting their right to privacy. It does not normally justify inventing 'new' crimes and sanctions; whatever is a crime in the real world should also be a crime on the Internet. Modalities, of course, may change, especially with new techniques for surveillance and detection, but in the last resort, the public interest should take precedence. Otherwise, there is a risk of continually increasing the levels of indiscriminate surveillance and control over the whole population, under the pretext of preventing a few crimes. It is simply too high a price to pay.

This is further complicated by the fact that mass data storage and data mining has the potential to concentrate power in the hands of those (whether governments or private companies) with the capacity to hoard and process them; a power which could be used for political, economic or military benefit, and which experience shows can be contrary to the public interest.

Concentration

Barely two decades have passed since the Internet took off as a global and publicly accessible system, and with extraordinary speed became part of the daily routine of more than a third of humankind. Around this technology, our societies are rapidly reorganising in almost every sphere. Already, life without digital technologies is almost unthinkable, and yet we are barely at the initial steps of our digital future. Moreover, it is happening so fast that it is very hard to grasp the implications. But while the fascination with the technology and its applications continues to spread, the utopic vision of the early pioneers of the Internet is fast giving way to pragmatism or disillusionment.

To a large extent this is because, although initially conceived as an open, decentralised and non-commercial sphere, the last two decades of commercialisation of the Internet have led to levels of concentration and centralisation that few people could have envisaged, a phenomenon in part deriving from the nature of the technology itself, and in part from the absence of policies adopted to counteract it.

On the one hand, there is technological concentration, illustrated, for example, by the immense international fibre-optic cables that interconnect countries.[1] On the other hand, content and personal data is being concentrated in huge servers, including digital social networks, 'cloud' data storage services, search engines that track and remember personal data and behaviour, or companies and security agencies specialised in collecting 'big data' and using it to establish profiles of users, among others.

The revelations made by Edward Snowden concerning espionage by the US National Security Agency (NSA) confirm how the uses of this information include such questionable practices as spying on foreign diplomats in order to gain advantage in international negotiations or compiling data on the intimate lives of foreign political leaders with a view to using it for blackmail to gain their compliance or publicly discrediting them if convenient. Similarly, at the business level, it has come to light that certain data aggregator companies create profiles of users, including their vulnerabilities (such as sensitive health data), that they sell to other companies that can use them to target consumers and exploit them more effectively.[2]

If this is already happening with the digital trails people leave as they intercommunicate and navigate the Internet, how much might it intensify when the 'Internet of things' becomes fully operational? It is estimated that barely 1% of the devices apt to have an IP address (Internet identifier) actually have one at present. In the near future, almost every new gadget we buy will be part of the Network, creating a grid of instruments recording what goes on in our homes and private transport, while public spaces will be monitored with multiple forms of identification and surveillance apparatus, way beyond the present CCTV security cameras. This will, of course, bring with it a number of advantages, but it will be increasingly difficult – and inconvenient – to try to switch off or opt out. Unless adequate controls, protections and informed user options become mandatory – contrary to the present trend – there is a danger that this infinite data will accrue even greater power to the few public or private entities with sufficient capacity to compile and process such huge volumes of information.

In his latest book *No Place to Hide: Edward Snowden, the NSA, and the US Surveillance State*,[3] journalist Glenn Greenwald reveals how the NSA has convinced (through bribery, co-optation or voluntary alliances) no less than 80 global entities to act as partners in stealing information. These include Intel Corp. (producer of 50% of electronic chips), CISCO (the largest router producer), Oracle (databases for banks etc.), IBM (mainframe computers), HP, Microsoft, ATT, etc. The credibility of these companies has been seriously impaired but they continue to control a major part of the digital economy. Are we to trust them with the devices and applications we install in our homes and workplaces?

Legal frameworks

The great majority of people who use digital technologies have not felt concerned, until recently, about who manages or controls them, and how. But following the recent revelations by Snowden, awareness is growing that this issue is indeed important. However, while digital technology advances at exponential speed, the legal frameworks, rights and the mechanisms to guarantee their enforcement move at the pace of the analogue world. In fact, this is generally necessary to ensure adequate public debate and input (precisely what failed to happen with the UK law bill).

Obviously, the United States is not the only country to engage in surveillance and data retention, and all countries need to establish clear guidelines and practices on what is allowable, under what conditions, and what is not, in order to protect their citizens. The European Union and some countries such as Germany and Brazil have taken significant steps along these lines that could serve as a model.

The Brazilian Civil Rights Framework for the Internet, adopted by Congress in March 2014, which is centred on protection of citizens' rights, sets an important example of policy designed in the public interest. It was negotiated over a period of some five years and drafted mainly online in an open process by civil society actors. One of its main achievements was to shift the central focus

Inside the headquarters of the National Security Agency in Fort Meade, Maryland. Revelations by Edward Snowden concerning espionage by the NSA confirm resort to such questionable practices as spying on foreign diplomats and compiling data on the intimate lives of foreign political leaders.

from one of combating crime on the Internet to one of defence of human rights. This was a major turnaround since the initial proposals in Congress were centred on criminal activity such as bank fraud, paedophilia or unauthorised downloads of copyrighted material.

Some of the outstanding elements of this law include:

• protection of net neutrality (that is, equal treatment of data packets, independent of their origin or destination, so as to avoid content discrimination)

• guarantees for freedom of expression of network users. This includes exempting service providers from the responsibility of censuring user content. (In cases of libel accusations, due legal process must be followed, i.e., the courts decide, not the Internet service provider)

• protection of user intimacy, implying that firms operating in Brazil must develop technical mechanisms to ensure the privacy of communications. It is also illegal to hand personal data over to third parties without the users' informed, explicit and free consent.

The only clause that has provoked a strong rejection from those who defend user rights is the obligation for communications providers to retain communications data for six months.

Of course, national legislation can only partially resolve the protection and rights of citizens in the digital realm, given the global nature of the Internet, but it is an important starting point. At the international level, there is still no body with a clear mandate to address these issues, except at technical levels, and the ongoing debate on how to do this is far from resolved.[4]

Militarisation

Undoubtedly, the concentration of power arising from the control of technology, information flows, data mining and the knowledge derived from it, creates conditions for hegemonic control over the entire system. At present, this control is in the hands of the United States, arm-in-arm with a handful of US mega-corporations of the sector (Google, Yahoo, Amazon, Facebook, Microsoft, etc.). And this has geopolitical and ultimately military implications. Through their domination of cyberspace, in a sense, the US has expanded its borders across the geography of the planet, at least in this dimension of reality, exacerbating the dependency of other countries. This can also generate forms of neocolonialism, such as the way Facebook intermediates personal relationships or how Google search algorithms determine what information is most available to people across the world and what remains hidden.

As the United States consider they have great interests to defend globally (generally more closely identified with those of economic power groups than of their people), the US government deploys every means within its reach for that purpose, which means bringing into play their vast superiority in technology and knowledge, in particular in the military domain. Thus, at the beginning of this century, the Pentagon developed its renewed military strategy of 'full spectrum dominance'. Among other things, this involved a detailed systematisation of each and every level or area of the spectrum where a potential enemy might be hiding. Outer space, the atmosphere, oceans, land surface, the subsoil, public and private spheres needed to be surveyed through panoptic mechanisms, including CCTV cameras, spy chips, centralised data systems, etc., differentiated according to the type of domain, social class of the area, etc.[5] And to implement that, they have dedicated all their technological might.

Since 2001, the US has invested more than $500 billion in intelligence. A first obstacle they had to overcome was their own laws, which limited, to a certain degree, their margin for manoeuvre. Thus, the adoption of the Patriot Act virtually eliminated barriers to surveillance, even on their own citizens. A next step was to override international law with their thesis of preventive war. From the wars in Afghanistan and Iraq, they went on to invent drones as killing machines, and to the implementation of preventive cyber-attacks.

It is in this context that the indiscriminate and massive surveillance practised by the US needs to be understood: not simply as anti-terrorist action or prevention and investigation of criminal activity, but as a key component of the militarisation of cyberspace and full spectrum dominance. Surveillance is the first step for a cyber-attack, since it makes it possible to identify targets. Moreover, many of the technologies developed for mass surveillance can also be deployed to organise such attacks (such as taps on fibre cables, deliberate weakening of encryption standards, backdoors on security, etc.).

The US' indiscriminate and massive cyber-surveillance activities need to be understood as a key component of the militarisation of cyberspace and the 'full spectrum dominance' strategy developed by the Pentagon (pic).

From Snowden, we learn that in just one year, 2011, the US carried out no less than 230 offensive cyber-attacks. Moreover, the US is not alone in this game. Snowden has documented the partnership among the so-called 'Five Eyes' (the US, the UK, Canada, Australia and New Zealand) which, together with Israel, have compromised global communications systems, converting them into a war machine. There are also estimates that at least 30 governments have developed offensive capabilities and doctrines for the use of cyberweapons,[6] notably including Russia and China.

The US has explicitly stressed that cyber-attacks are an integral and necessary component of its cyber-defence strategy. Part of the logic behind this is that, in the digital realm, offence is cheaper than defence. Although offensive cyber-attacks by nation states are still much less prevalent than cyber-espionage, in the framework of global relations, a defence policy based on attack, rather than on protection measures and international law, carries a higher risk of escalating into open conflict. The Internet (or areas of it) could become hostage to such conflict situations.

At present, there are essentially no existing international agreements that would restrain cyber-warfare, and although there have been proposals to that end in the UN, there has been no consensus on even negotiating them.[7] Considering the escalation of cyber-offence capacity and the need to guarantee cyberspace as a peaceful domain, at the recent Group of 77 + China summit (Santa Cruz, Bolivia, June 2014), the Just Net Coalition of civil society groups and activists circulated a briefing paper proposing the need for a treaty to restrict cyberwar and to ensure that networks, and in particular the public Internet, are not used for offensive military purposes. To quote from the paper:

'Cyberspace is being increasingly used for offensive military operations, often covert, often directly against states that are not engaging in conventional military operations. That is, a state might be subject to a cyberattack even if it has not itself engaged in any kind of military offensive.

'The most powerful and richest nations are devoting increasing resources to both defensive and offensive cyberwarfare capabilities, often in secret. This creates an imbalance of power and can encourage those powerful states to engage in offensive cyberattacks, which might have unforeseen consequences, including conventional retaliation or retaliation by guerrilla tactics (including what is commonly referred to as terrorism).'[8]

Just Net considers that humanity's increasing dependency on the Internet and digital technologies in almost every sphere of activity makes it a crucial matter to protect cyberspace from militarisation and to build a culture of cyber-peace. ◆

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Endnotes

1. These cables have made spying by the US National Security Agency (NSA) much easier, since by intervening barely 190 data centres, they can monitor almost all the world's information flows, on the Internet, phone lines, etc.
2. See, for example: Catherine Crump and Matthew Harwood, 'Coming Soon: The Surveillance of Everything', 1 April 2014, http://www.alainet.org/active/72608.
3. Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA, and the US Surveillance State*, Metropolitan Books, May 2014.
4. See the articles by Michael Gurstein, and Prabir Purkayastha and Rishab Bailey in this issue.
5 See Ana Esther Ceceña, 'La dominación de espectro completo sobre América', 28 January 2014, http://www.alainet.org/active/70829.
6 See Joseph S Nye, 'The Regime Complex for Managing Global Cyber Activities', Global Commission on Internet Governance, May 2014, http://www.cigionline.org/publications/regime-complex-managing-global-cyber-activities
7 The UN Group of Governmental experts did agree, in principle, in July 2013 that the UN Charter and Law of Armed Conflict would be applicable to warfare in the cyber domain. But there is as yet no definition of what would constitute cyber-warfare. Also, the International Telecommunication Union (ITU)'s 2012 treaty on International Telecommunication Regulations calls for cooperation to improve network security, but this treaty has not been signed by most developed countries. Such cooperation could conceivably act as a restraint on some types of cyber-attacks, but the scope of ITU is limited to peaceful use of telecommunications.
8 http://justnetcoalition.org/notes-need-cyberpeace-treaty-english

Whither a just and equitable Internet?

The NETmundial Global Multistakeholder Meeting on the Future of Internet Governance, which was held in April in Sao Paulo, Brazil, raised hopes that a progressive roadmap for Internet governance would emerge. *Urvashi Sarkar* assesses its outcome.

The NETmundial Global Multistakeholder Meeting on the Future of Internet Governance was billed as the first conference of its kind.

IN 2013, the world was shaken by the Snowden revelations – information that the National Security Agency (NSA) of the United States had been spying on its own citizens and those of other countries. The revelations also showed that the NSA was monitoring personal communications including emails, phone calls and text messages of the presidents of Brazil and Mexico (Winter, 2013).

Following the revelations, Brazilian President Dilma Rousseff issued a sharp condemnation of the NSA's spying activities during the 68th session of the United Nations General Assembly. Rousseff called for the United Nations to play a leading role in regulating the conduct of states in relation to Internet technologies. She reiterated the need for multilateral mechanisms for the worldwide network that could ensure principles such as freedom of expression, privacy of the individual, respect for human rights, democratic governance, participation of society, government and the private sector, universality, cultural diversity and neutrality. Her speech articulated people's outrage over the 'grave violation of human rights and civil liberties', the threat of using cyberspace as a weapon of war, and violation of sovereign rights of countries.

This formed the backdrop of the NETmundial Global Multistakeholder Meeting on the Future of Internet Governance which was held in Sao Paulo, Brazil, on 23-24 April. The meeting, it was hoped, would emerge with a progressive roadmap for Internet governance.

The preamble of the NETmundial Multistakeholder Statement adopted by the meeting states that the document is a non-binding outcome of a bottom-up, open and participatory process involving thousands of people from governments, private sector, civil society, technical community and academia from around the world. Billing the NETmundial conference as the first of its kind, the preamble said the meeting aimed at contributing to the evolution of the Internet governance ecosystem. The Multistakeholder Statement consists of two broad elements: Internet governance principles and roadmap for the future evolution of the Internet governance ecosystem.

Issues surrounding NETmundial

ICANN involvement

Despite initial hopes regarding NETmundial, doubts began to emerge when it was learnt that the Internet Corporation for Assigned Names and Numbers (ICANN) was part of the core organising team of NETmundial. ICANN controls the governance of the Internet by allocating domain names and Internet Protocol (IP) addresses which are akin to telephone numbers and help identify all computers on the Internet. A non-profit corporation based in the United States, ICANN is under a contract from the US Department of Commerce known as the IANA (Internet Assigned Numbers Authority) functions contract.

ICANN is controlled by the United States in three ways. Firstly, it is a contractor to the US government. Secondly, it exercises influence over Internet organisations through backdoor manoeuvres – this is how the NSA managed to undermine encryption standards and placed the global financial system at risk. Thirdly, being located in the US, it is under the purview of US laws (Purkayastha, 2014). As a co-organiser of NETmundial, it was in a position to influence any decision related to choice of content, committee, secretariat, panellists, speakers and ultimately any critical outcome (Nothias, 2014).

The US has offered to surrender its supervision of ICANN by 2015, provided the world agrees to have a 'multistakeholder model' without governmental control of Internet governance. In other words, the US is paving the ground for the Internet to be handed over to ICANN and US corporations. Even after formal control is relinquished, ICANN would continue to be under the legal jurisdiction of the United States (Purkayastha, 2014).

Multistakeholderism

The issue of multistakeholderism has been a key concern, given that it implies rights for all participants and places corporations and governments on the same footing, in relation to defining or vetoing policies of public concern (Nothias, 2014). This would imply that big business would rule the Internet, without regulatory oversight by the states.

NETmundial's 27-member High Level Committee – set up by Brazil and consisting of representation from governments, business, civil society, the technical community, academia and international organisations – had come up with a draft virtually endorsing 'the equal footing multistakeholder model'. The World Summit on the Information Society (WSIS) declaration of 2005, known as the Tunis Agenda, and its stipulation of 'stakeholders in their respective roles and responsibilities' was missing from the draft.

In the final outcome document, the Tunis Agenda with roles and responsibilities of respective stakeholders was incorporated, though with the rider of evolving roles and responsibilities. The states are now accepted as being responsible for protecting citizens' rights (Purkayastha, 2014).

Reactions and concerns

The reaction to NETmundial has been varied. Some have hailed it as a first positive step towards a multistakeholder process. The US labelled it a 'huge success' while the European Commission felt NETmundial 'put us on the right track'. Big businesses released statements indicating their satisfaction with the outcome. However, the civil society group at NETmundial expressed 'deep disappointment' that the outcome statement did not address key concerns like surveillance and net neutrality (Kaul, 2014).

A critique of the outcome document has also been advanced by the Just Net Coalition (JNC), a coalition of civil society groups from different regions globally concerned with Internet governance, human rights and social justice and which also framed the Delhi Declaration on the future of the Internet (Just Net Coalition, 2014). The JNC welcomed the emphasis in the NETmundial outcome document on managing the Internet in the public interest.

On the negative side, the JNC has noted the insufficient denouncing of mass surveillance, lack of reference to cyber-weapons and cyber-peace, as well as relegation of the issue of net neutrality to the section on future plans.

The provisions on copyright rights and copyright enforcement in the outcome document – which were introduced at a very late stage – place curbs on the right to access, share, create and distribute information by privileging 'the rights of authors and creators'. This has been interpreted as an attempt to expand copyright by adding a category of 'creators', when only authors are recognised in international copyright law.

Also in relation to copyright, the topic of Internet intermediary liability limitations, having been introduced to protect the freedom of speech of Internet users, has now been clubbed with 'private policing' for enforcing intellectual property. Specific text encouraging 'cooperation among all stakeholders' to 'address and deter illegal activity' is only coded language for private policing by Internet service providers and other intermediaries.

The JNC noted that it was worrisome that vested interests could unduly influence the NETmundial meeting by exercising control over a few key committees. Further, processes used at NETmundial could also easily result in outcomes determined by the core interests of the most privileged parties – these often being the United States and big business – causing the sidelining of other voices (Nothias, 2014).

Another area of dissatisfaction was that the outcome document did not factor in many of the concerns on Internet governance raised by President Rousseff in her UN address. The original draft document did not mention mass surveillance, omitted reference to the issue of cyber-war and did not state anything in relation to net neutrality. Brazil recently passed its own Internet Bill of Rights for its citizens – known as Marco Civil – of which net neutrality is an important part. In the final document, the issue of mass surveillance is mentioned, but in a manner which falls short of outright condemnation of mass surveillance. Neither does it mention the 'necessary and proportionate' principle with regard to the conduct of surveillance by governments. Despite Rousseff's call, cyber-weapons and cyber-peace are not mentioned in the outcome document (Purkayastha, 2014).

A discordant South

Contrary to hopes that the developing countries would coordinate their positions to provide a Southern perspective to the NETmundial discussions and outcome, there appeared to be no cohesion (Purkayastha, 2014). The Third World countries failed to rally together or articulate a viewpoint that could have served as a counterpoint to a neoliberal Internet agenda. However, India did propose an 'Equinet' model of the Internet which entails treating the Internet as a global commons and how it can be used for social and economic justice.

'Third World countries should not just view the Internet from the point of view of freedom of speech and expression but also as an economic space,' said Prabir Purkayastha, who is with Knowledge Commons, a member of the JNC. The economic space is currently dominated by a handful of corporations of US origin which pose a threat to the space of local companies and regional initiatives.

According to Purkayastha, Third World countries had not articulated such concerns. Noting the lack of co-ordination between India and Brazil, Purkayastha added: 'If India and Brazil had coordinated their positions through diplomacy, they could have rallied the Third World countries behind them. India felt that Brazil was catering to US concerns while Brazil did not agree with Indian apprehensions on the multistakeholder model. Yet the US could manage to influence both sides and create a rift, but the Indian and Brazilian sides did not speak to one another and the two countries failed in their leadership role to rally the G77 [grouping of developing countries]. IBSA [the dialogue forum comprising India, Brazil and South Africa] too should have consulted and emerged with a coordinated position.' ◆

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How Israel undermines international law through 'lawfare'

Once again, as in its earlier military operations, Israel has enlisted prominent legal experts (and even a philosopher of ethics!) in its latest assault against Gaza, codenamed 'Operation Protective Edge', to delegitimise attempts to hold it accountable for its crimes under international humanitarian law. *Jeff Halper* explains.

OPERATION Protective Edge was not merely a military assault on a primarily civilian population. As in Israel's previous 'operations' (Cast Lead in 2008-09 and Pillar of Defence in 2012), it was also part of an ongoing assault on international humanitarian law (IHL) by a highly coordinated team of Israeli lawyers, military officers, PR people and politicians, led by (no less) a philosopher of ethics. It is an effort not only to get Israel off the hook for massive violations of human rights and international law, but to help other governments overcome similar constraints when they embark as well on 'asymmetrical warfare', 'counterinsurgency' and 'counter-terrorism' against peoples resisting domination. It is a campaign that Israel calls 'lawfare' and had better be taken seriously by us all.

The urgency of this campaign has been underscored by a series of notable legal setbacks and challenges Israel has incurred over the past decade or so, beginning with the indictment of Ariel Sharon in 2001 by a Belgian court over his involvement in the Sabra and Shatila massacres, for which he escaped trial. In the wake of Operation Defensive Shield in 2002, when Sharon's government oversaw the demolition of hundreds of Palestinian homes in the West Bank, the utter destruction of virtually all the infrastructure of Palestinian cities, the death of 497 Palestinians and the arrest of 7,000 people, Israel was accused of war crimes, but succeeded in foiling a UN investigation.

In 2004, at the request of the UN General Assembly, the International Court of Justice in The Hague ruled that Israel's construction of the wall inside Palestinian territory was 'contrary to international law' and that the wall must be dismantled. The ruling was upheld almost unanimously by the General Assembly, with only Israel, the US, Australia and a few Pacific atolls dissenting – though, again, it lacked any means of enforcement.

The Dahiya Doctrine

In the second Lebanon War in 2006, after destroying the Dahiya neighbourhood in Beirut, the Hizbollah 'stronghold', Israel announced its 'Dahiya Doctrine'. Gadi Eisenkott, head of the Israel Defence Forces (IDF)'s Northern Command, declared that what happened in Dahiya 'will happen in every village from which Israel is fired on … We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases … This is not a recommendation. This is a plan. And it has been approved.'

And it was applied again. The Goldstone Report on Operation Cast Lead concluded that 'The tactics used by Israeli military armed forces in the Gaza offensive [of 2008-09] are consistent with previous practices, most recently during the Lebanon war in 2006. A concept known as the Dahiya doctrine emerged then, involving the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations.'

The Dahiya Doctrine violates two cardinal principles of IHL: the principle of distinction and the principle of proportionality. The principle of distinction, embodied in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, lays down a hard-and-fast rule: civilians cannot be targeted by armies. On the contrary, they must be protected; violence to life and person is strictly prohibited, as are 'outrages upon personal dignity'.

The principle of proportionality, also embodied in the 1977 Protocols to the Geneva Conventions, considers it a war crime to intentionally attack a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage. 'The presence within the civilian population of individuals who do not come within the definition of civilians,' says Protocol I, Article 50(3), 'does not deprive the population of its civilian character.'

Not only were these principles violated yet again in the current round of fighting – and the Israeli government, aware of this, has carefully prepared its defence before the UN Human Rights Council's international committee of inquiry as well as before the International Criminal Court, should the Palestinian Authority turn to it – but an additional doctrine of intentional disproportionality has also been declared and perpetrated: the Hannibal Doctrine. This states that when an Israeli soldier is captured, rescuing him becomes the main mission, no matter how many civilians are killed or injured, how much damage is caused, or even if the captured soldier himself is killed or wounded by 'friendly fire'. When, then, it was believed (falsely, it turned out) that an IDF soldier had been captured by Hamas in the Rafah area, the entire urban area came under massive Israeli artillery fire and air strikes, in which hundreds of buildings were destroyed and at least 130 people killed.

Targeting 'non-state actors'

Violations of the principles of distinction and proportionality constitute grave breaches of international law – and we can only imagine what states would do if they were eliminated from the legal code or significantly watered down. But this is precisely what Israel aims to do. Using the Palestinians as their guinea pigs in a bold and aggressive strategy of 'fixing' international law, it wants to create new categories of combatants – 'non-legitimate actors' such as 'terrorists', 'insurgents' and 'non-state actors', together with the civilian population that supports them – so that anyone resisting state oppression can no longer claim protection.

This is especially relevant when, as British General Rupert Smith tells us, modern warfare is rapidly moving away from the traditional inter-state model to what he calls a 'new paradigm' – 'war amongst the people' – in which 'We fight amongst the people, not on the battlefield.' A more popular term used by military people, 'asymmetrical warfare', is perhaps more honest and revealing, since it highlights the vast power differential that exists between states and their militaries and the relative weakness of the non-state forces confronting them.

But 'the people', those pesky 'non-state actors', also have rights. Back in 1960, the UN General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples endorsed the right of peoples to self-determination and, by extension, their right to resist, even by armed force, 'alien subjugation, domination and exploitation'.

The push-back by governments over the years, and certainly since 9/11, led by the US and Israel, has been to delegitimise the right of non-state actors to resist oppression. Thus, when Obama or the EU uphold Israel's right to defend itself, they do not include as part of that right that of an occupied people to defend itself. Indeed, non-state actors are cast as 'terrorists' (the category into which Israel dumps all insurgents, revolutionaries and, by extension, any protesters threatening the powers-that-be), thus deprived of any legitimacy as 'a side' to a conflict with whom negotiations are possible.

When they seek the protection of international law, as did the people of Gaza, and take steps to hold state actors accountable for their illegal actions, they are engaging in what Israel defines as 'lawfare': when 'terrorists' employ international law as a weapon against democracies. Israel's campaign against lawfare attempts to cast non-state actors as the villains, of course, but 'lawfare' best describes Israel's own efforts to bend IHL to its needs – a kind of asymmetrical lawfare to remove all constraints on states in their attempts to pursue wars against peoples.

Israel's lawfare campaign is led by two Israeli figures. One is Asa Kasher, a professor of philosophy and 'practical ethics' at Tel Aviv University and the author of the Israeli army's Code of Conduct. Indeed, attaching a professional ethicist to the IDF provides the basis for Israel's oft-stated claim to have the 'most moral army in the world'. The second figure is Major General Amos Yadlin, former head of the IDF's National Defence College, under whose auspices Kasher and his 'team' formulated the Code of Conduct, and today the head of Military Intelligence.

It is completely appropriate and understandable that Israel should be leading the campaign to remove the protections enjoyed by non-combatant civilians, Kasher vigorously asserts. 'The decisive question,' he says, 'is how enlightened countries conduct themselves. We in Israel are in a key position in the development of law in this field because we are on the front lines in the fight against terrorism. This is gradually being recognised both in the Israeli legal system and abroad … What we are doing is becoming the law. These are concepts that are not purely legal, but also contain strong ethical elements.

'The Geneva Conventions are based on hundreds of years of tradition of the fair rules of combat. They were appropriate for classic warfare, where one army fought another. But in our time the whole business of rules of fair combat has been pushed aside. There are international efforts underway to revise the rules to accommodate the war against terrorism. According to the new provisions, there is still a distinction between who can and cannot be hit, but not in the blatant approach which existed in the past. The concept of proportionality has also changed…

'I am not optimistic enough to assume that the world will soon acknowledge Israel's lead in developing customary international law. My hope is that our doctrine, give or take some amendments, will in this fashion be incorporated into customary international law in order to regulate warfare and limit its calamities.'

In order to provide a philosophical basis for undermining the principles of distinction and proportionality, Kasher and Yadlin put forward a 'new doctrine of military ethics' based on their version of a 'Just War Doctrine of Fighting Terror'. Basically they privilege states in their conflicts with non-state actors by giving them the authority to deem an adversary 'terrorist', a term lacking any agreed-upon definition in IHL, thereby depriving it of any legal protection. They define an 'act of terror' as 'an act, carried out by individuals or organisations, not on behalf of any state, for the purpose of killing or otherwise injuring persons, insofar as they are members of a particular population, in order to instill fear among the members of that population ("terrorise" them), so as to cause them to change the nature of the related regime or of the related government or of policies implemented by related institutions, whether for political or ideological (including religious) reasons.'

If we remove the words 'not on behalf of any state', this definition of a terrorist act conforms precisely to Israel's Dahiya Doctrine. According to Major General Giora Eiland, attacks against Israel will be deterred by harming 'the civilian population to such an extent that it will bring pressure to bear on the enemy combatants'. Reducing a popular struggle to a series of discrete acts, moreover, makes it possible to label an entire resistance movement 'terrorist' purely on the basis of one or more particular acts, with no regard to its situation or the justness of its cause. Once this is done, it is easy to criminalise non-state resistance, since terrorism is, in Kasher's words, 'utterly immoral'.

Israel's attempts to have the Iranian Revolutionary Guards declared a 'terror organisation', even though it is an agent of a state, show the tendentiousness of Kasher's and Yadlin's philosophical definitions, since it does not fit into their very own 'state/non-state' dichotomy. What, then, would prevent the international community from naming the IDF and various covert Israeli agencies such as the Mossad or the Shin Bet (the General Security Services) as 'terror organisations'? The Goldstone Report itself concluded that Israel's offensive against Gaza during Operation Cast Lead was 'a deliberately disproportionate attack designed to punish, humiliate and terrorise a civilian population'.

Having delegitimised state-defined 'acts of terrorism', Kasher and Yadlin then go on to further legitimise state actions such as those taken by Israel against Hizbollah, Hamas or, indeed, all Palestinian resistance, by invoking 'self-defence' – again, a claim which, according to Just War Theory and Article 51 of the UN Charter, only a state can make. In order to do so, they begin the narrative of events leading up to the attacks on Gaza with the discrete acts that the 'terrorist' organisation had done by launching rockets on Israel, without any regard whatsoever for 47 years of occupation, 25 years of closure, seven years of a self-described regime of semi-starvation and the attacks on Hamas that preceded the rocket fire – or, for that matter, the right of Palestinians to resist 'alien subjugation, domination and exploitation'.

Kasher and Yadlin also imply that states cannot engage in terrorism – only because they are states which have a 'legitimate monopoly' over the use of force. In fact, the non-state 'terrorism from below' which so concerns them pales in scale when compared to 'terrorism from above', State Terrorism. In his book *Death By Government*, RJ Rummel points out that over the course of the 20th century about 170,000 innocent civilians were killed by non-state actors, a significant figure to be sure. But, he adds, 'during the first eighty-eight years of this [20th] century, almost 170 million men, women and children have been shot, beaten, tortured, knifed, burned, starved, frozen, crushed or worked to death; buried alive, drowned, hung, bombed or killed in any other of the myriad ways governments have inflicted death on unarmed, helpless citizens and foreigners. The dead could conceivably be nearly 360 million people.'

And that, written in 1994, does not include Zaire, Bosnia, Somalia, Sudan, Rwanda, Saddam Hussein's reign, the impact of UN sanctions on the Iraqi civilian population and other state-sponsored murders that occurred after Rummel compiled his figures. It also does not account for all the forms of State Terrorism that do not result in death: torture, imprisonment, repression, house demolitions, induced starvation, intimidation and all the rest.

'We do not deny,' Kasher concedes, 'that a state can act for the purpose of killing persons in order to terrorise a population with the goal of achieving some political or ideological goal.' However, he adds, 'when such acts are performed on behalf of a state, or by some of its overt or covert agencies or proxies, we apply to the ensuing conflict moral, ethical and legal principles that are commonly held to pertain to ordinary international conflicts between states or similar political entities. In such a context, *a state that killed numerous citizens of another state in order to terrorise its citizenry* would be guilty of what is commonly regarded as a war crime' (italics added).

Kasher's caveat – 'a state that killed numerous citizens of another state in order to terrorise its citizenry' – does not relate at all to a state that terrorises its own citizens, and lets Israel off the hook, since the terrorised population of Gaza are not citizens of another state.

The globalisation of Gaza

Israel's strategy of lawfare rests on repeating illegal acts while continuing to justify them with 'new military ethics'. 'If you do something for long enough,' says Colonel (res.) Daniel Reisner, former head of the IDF's Legal Department, 'the world will accept it. The whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries ... International law progresses through violations. We invented the targeted assassinations thesis [that extra-judicial killings are permitted when it is necessary to stop a certain operation against the citizens of Israel and when the role played by the target is crucial to the operation] and we had to push it. Eight years later it is in the centre of the bounds of legality.' 'The more often Western states apply principles that originated in Israel to their own non-traditional conflicts in places like Afghanistan and Iraq,' says Kasher, 'then the greater the chance these principles have of becoming a valuable part of international law.'

A few years ago (2005) the *Jerusalem Post* published a revealing interview with an Israeli 'expert in international law' who, choosing to remain anonymous, explained: 'International law is the language of the world and it's more or less the yardstick by which we measure ourselves today. It's the lingua franca of international organisations. So you have to play the game if you want to be a member of the world community. And the game works like this. As long as you claim you are working within international law and you come up with a reasonable argument as to why what you are doing is within the context of international law, you're fine. That's how it goes. This is a very cynical view of how the world works. So, even if you're being inventive, or even if you're being a bit radical, as long as you can explain it in that context, most countries will not say you're a war criminal.'

This, again, is serious stuff. Just as Israel exports its occupation – its weaponry and tactics of suppression – to such willing customers as US and European militaries, security agencies and police forces, so, too, does it export its legal expertise in manipulating IHL and its effective PR/hasbara techniques. Gaza itself represents little more than a testing ground for these varied instruments of suppression of Gaza. It is the globalisation of Gaza that is a key Israeli export. Exports, however, need local agents to package the product and create a market for it in the local economy. Thus, B'nai Brith in the US spawned 'The Lawfare Project' under the slogan 'Protecting Against the Politicization of Human Rights' <http://www.thelawfareproject.org>, whose main strategy is to enlist prominent legal experts to delegitimise attempts to hold Israel accountable for its crimes under IHL.

Globalising Gaza in both military and legal terms raises the slogan 'we are all Palestinians' from one of political solidarity to literal accuracy. Its corollary also highlights a key element of international politics of which we must be keenly aware: our governments are all Israel. ◆

Jeff Halper is the head of the Israeli Committee Against House Demolitions (ICAHD). This article is reproduced from CounterPunch.org.

'Nobody wants to be occupied!'

IN a powerful 25-minute speech on his return home to Tromsø, Norway, on 31 July after 15 days treating the wounded in Gaza, the Norwegian emergency surgeon ***Dr Mads Gilbert*** *said: 'The heart of the Earth beats in Gaza now. It bleeds, but it beats.'*

He went on to say: 'The Palestinian people's resistance in Gaza today is admirable, it is fair and it is a struggle for all of us. We do not want a world where raw power can be abused, to kill those who struggle for justice.'

Below is the text of the first few minutes of the speech transcribed from a video of the speech which is subtitled in English. The video (http://youtu.be/uOk_KaaXc9E) was produced by the Norwegian regional newspaper Nordlys. *In his speech, Gilbert asks Norwegian citizens to imagine what their country would be like today if they had not struggled for its liberation from German occupation.*

* * * * * * * *

I know you applaud for Gaza. I know you applaud for those who are there, the heroes of Gaza.

This will be no easy appeal to make, because I am now overcome by the mildness, the warmth, the safety, the absence of bombs, jets, blood and death. And then all that we've had to keep inside comes to the surface – so forgive me if sometimes I break.

I thought, when I got home and met my daughters Siri and Torbjørn, my son-in-law and my grandkids Jenny and Torje, that it is such a mild country we live in. It is so good, with a kind of humanity in all relationships, because we actually built this country on respect for diversity, respect for the individual, respect for human dignity.

And imagine being back in 1945. And I beg to be understood when I say that I am not comparing the German Nazi regime with Israel. I do not.

But I compare occupation with occupation. Imagine that we in 1945 did not win the liberation struggle, did not throw out the occupier, could not see a bright future or believe our kids had a future. Imagine the occupier remaining in our country, taking it piece by piece, for decades upon decades. And banished us to the leanest areas. Took the fish in the sea, took the land, took the water, and we became more and more confined.

And here in Tromsø we were actually imprisoned, because here there was so much resistance to the occupation. So we were imprisoned for seven years, because in an election we had chosen the most resilient, those who would not accept the occupation.

Then after seven years of confinement in our city, Tromsø, the occupier began to bomb us. And they began to bomb us the day we made a political alliance with those in the other confined parts of occupied Norway, to say that we Norwegians would stand together against the occupier. Then they began to bomb us.

They bombed our university hospital, then the medical centre, then killed our ambulance workers, they bombed schools where those who had lost their homes were trying to seek shelter. Then they cut the power and bombed our power plant. Then they shut off the water supply. What would we have done?

Would we have given up, waved the white flag? No. No, we would not. And this is the situation in Gaza.

This is not a battle between terrorism and democracy. Hamas is not the enemy Israel is fighting. Israel is waging a war against the Palestinian people's will to resist. The unbending determination not to submit to the occupation! It is the Palestinian people's dignity and humanity that will not accept that they are treated as third-, fourth-, fifth-ranking people.

In 1938, the Nazis called the Jews *Untermenschen*, subhuman. Today, Palestinians in the West Bank, in Gaza, in the Diaspora are treated as *Untermensch*, as subhumans who can be bombed, killed, slaughtered by their thousands, without any of those in power reacting.

So I returned home to my free country – and this country is free because we had a resistance movement, because we said that occupied nations have the right to resist, even with weapons. It's stated in international law. You are permitted to fight the occupier even with weapons. Nobody wants to be occupied! ◆

The above is reproduced from PalestineChronicle.com.

UN chief accused of biased stance on Gaza conflict

As a WikiLeaks document exposes his disturbing conduct concerning a UN probe report on Israel's human rights violations during the 2008-09 Gaza war, UN Secretary-General Ban Ki-moon has again come under fire for his pro-Israel bias with regard to the latest conflict in Gaza.

Kanaga Raja

Medics bring a young victim of an Israeli strike to a Gaza City hospital. In an open letter to UN Secretary-General Ban Ki-moon on his position towards the Gaza conflict, more than 130 civil society groups have expressed disappointment over his 'biased statements,... failure to act and the inappropriate justification of Israel's violations of international humanitarian law'.

OVER 130 Palestinian and international civil society organisations (CSOs) as well as prominent individuals have accused UN Secretary-General Ban Ki-moon of assuming a biased position towards the current conflict between Israel and the Palestinian group Hamas in Gaza.

This accusation came in an open letter sent to the UN chief on 5 August by the CSOs and which was also endorsed by notable individuals such as Richard Falk, the former UN Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories; John Pilger, a well-known journalist and author; Luisa Morgantini, former Vice President of the European Parliament; and Breyten Breytenbach, a poet and painter.

The civil society groups charged that Ban had failed 'to clearly condemn Israeli unlawful actions ... while ... not hesitating to accuse – sometimes mistakenly – Palestinian combatants in Gaza of violations of international law'.

In their letter, the groups charged that Ban had failed 'to clearly condemn Israeli unlawful actions in the occupied Palestinian territories, while, on the other hand, not hesitating to accuse – sometimes mistakenly – Palestinian combatants in Gaza of violations of international law'.

The CSOs called on Ban to stand up for law and justice or to resign, telling him that they were extremely disappointed by his performance, 'notably by your biased statements, your failure to act, and the inappropriate justification of Israel's violations of international humanitarian law, which amount to war crimes.'

'Until today,' the CSOs argued, 'you have taken no explicit and tangible measures to address the recent Israeli attacks in the occupied Palestinian territories since 13 June. Moreover, your statements have been either misleading, because they endorse and further Israeli false versions of facts, or contrary to the provisions established by international law and to the interests of its defenders, or because your words justify Israel's violations and crimes.'

The CSOs further told Ban: 'You have undeniably assumed a biased position toward the current attack on Gaza and Israeli violations in the West Bank by failing to clearly condemn Israeli unlawful actions in the occupied Palestinian territories, while, on the other hand, not hesitating to accuse – sometimes mistakenly – Palestinian combatants in Gaza of violations of international law.'

According to the letter, this bias could be noted in the following excerpts: 'The Secretary-General strongly condemns the killing today of at least 10 Palestinian civilians in shelling outside of an UNRWA [the UN agency for Palestine refugees] school in Rafah providing shelter to thousands of civilians. The attack is yet another gross violation of international humanitarian law, which clearly requires protection by both parties of Palestinian civilians, UN staff and UN premises, among other civilian facilities.'

The groups said that such a statement, by failing to name the perpetrator – Israel – was not only biased but also offensive to UNRWA as well as to other UN agencies and international organisations that struggle to provide relief and protection to Palestinians in Gaza.

The letter noted that UNRWA, which had lost nine staff members in Gaza since the beginning of Israel's Operation Protective Edge, hosted around 270,000 internally displaced persons (25% of Gaza's population) in its shelters.

UNRWA's preliminary analysis on a previous attack against one of its schools had indicated that it had been hit by Israeli artillery, constituting an indiscriminate attack and likely a war crime.

Moreover, the groups told the UN chief, by condemning the storage of weapons in UNRWA schools without offering complete details and a proper account on international law, 'your statements endorse Israeli excuses to unlawfully, indiscriminately target such civilian objects'.

The letter also pointed to Ban's condemnation of 'the reported violation by Hamas of the mutually agreed humanitarian ceasefire which commenced this morning. He is shocked

WikiLeaks: Ban Ki-moon worked with Israel to undermine UN report

UN Secretary-General Ban Ki-moon collaborated in secret with Israel and the United States to weaken the effects of a UN probe's report accusing Israel of human rights violations in Gaza in December 2008-January 2009.

WikiLeaks released documents on 8 August which revealed that Ban wrote a letter to the UN Security Council asking its members not to take into account recommendations by a UN board of inquiry on Israeli bombings in Gaza.

The report demonstrated that the Israel Defence Forces (IDF) had a direct role in seven of nine attacks against UN buildings in Gaza, and accused Israel of having breached the inviolability and immunity of UN premises: 'The summary of the report concludes that seven of the nine incidents covered by the report were caused by military actions of the Israeli Defence Forces (IDF) and that the IDF breached the inviolability and immunity of UN premises, that such inviolability and immunity cannot be overridden by demands of military expediency, and that the IDF did not take sufficient precautions to fulfil its responsibilities to protect UN property and personnel and civilians taking shelter therein. The Board found the Israeli government responsible for the deaths, injuries, and physical damage that occurred in those seven cases and estimated the cost to repair damages at something over USD11 million.'

According to WikiLeaks, then US Ambassador to the UN Susan Rice spoke at least four times with Ban 'to discuss concerns over the Board of Inquiry's report on incidents at UN sites in December 2008 and January 2009'.

The report's recommendations included the need for a deeper and impartial investigation into the recent 'incidents' and into the bombings of UN facilities:

'10) Ensure the timely investigation of other incidents involving UN premises and personnel that were not included within the Board's [terms of reference].

'11) Recommend that the nine UN incidents be further investigated and that non-UN-related incidents involving civilians also be investigated as part of an impartial inquiry into "allegations of violations of international humanitarian law in Gaza and southern Israel by the IDF and by Hamas and other Palestinian militants."'

According to WikiLeaks, Rice first asked Ban not to include the recommendations in the final report's summary, supposed to be transmitted to the UN Security Council on 5 May 2009.

Ban responded that 'he was constrained in what he could do since the Board of Inquiry is independent; it was their report and recommendations and he could not alter them'.

In the second conversation, 'Rice urged the Secretary-General to make clear in his cover letter when he transmits the summary to the Security Council that those recommendations exceeded the scope of the terms of reference and no further action is needed.'

Ban then replied that 'his staff was working with an Israeli delegation on the text of the cover letter'. 'Ambassador Rice asked the Secretary-General to be back in touch with her before the letter and summary are released to the Council.'

Ban confirmed in the last phone call that 'a satisfactory cover letter' had been completed. In the letter, 'Ban underscored that Boards of Inquiry do not consider questions of legality nor make legal findings; that Israel continues to work with the UN Secretariat to address the Board's recommendations; and that he will seek no further inquiry into matters the Board addressed which are outside its Terms of Reference, specifically its recommendation numbers 10 and 11…' – *teleSUR (www.telesurtv.net/english)* ◆

Palestinians seeking refuge at a UNRWA school in Gaza. The UN Secretary-General has been criticised for condemning a recent attack on a UNRWA school but failing to name the perpetrator, Israel.

and profoundly disappointed by these developments'. This, the letter said, revealed a reckless endorsement of the Israeli version of facts, blaming Hamas for violating the ceasefire, even though it was admitted that '[t]he Secretary-General notes that the UN has no independent means to verify exactly what happened'.

UN Secretary-General Ban Ki-moon.

According to the letter, the following statement further illustrated the Secretary-General's ignorance of facts on the ground: 'The Secretary-General has learned with concern that leaflets are reportedly being dropped by the Israeli Defence Forces in the northern Gaza Strip this evening, warning tens of thousands of residents to leave their homes and evacuate to Gaza City. If true, this would have a further devastating humanitarian impact on the beleaguered civilians of those areas of the Gaza strip, who have already undergone immense suffering in recent days.'

The groups underlined that the dropping of leaflets had been a known practice since the beginning of the Israeli operation in Gaza, contributing to a scenario of more than 480,000 internally displaced.

The CSO letter noted that in the same statement, 'The Secretary-General strongly urge[d] all sides to avoid any further escalation at this time[, noting] that all sides must meet all obligations under international humanitarian law, both towards civilians ahead of impending attacks, as well as maintaining proportionality in any kind of military response.'

In this regard, the letter pointed to the revelation of an undue equalisation of the two sides of the conflict which failed to address the greater impact of violations committed by Israel, which had killed at least 1,814, the vast majority of whom were civilians, during its operation in Gaza.

The groups addressed the following to the Secretary-General: 'When you make no distinction between oppressors and victims, in all your statements, when you name Palestinian combatants as perpetrators of violations and war crimes while you ignore naming Israel, as you used to do in referring to specific actions, when you avoid codifying Israeli actions that amount to war crimes, while you insist on prescribing Palestinian reactions as grave breaches of international humanitarian law, when you always advocate unlawfully the Israeli right to self-defence, while having not pointed out the Palestinians' legitimate and legal right to resist occupation, colonisation and institutionalised discrimination, when you adopt and advocate Israeli false stories, while not mentioning Palestinians' narrative, when you disregard facts on ground clearly resulting from Israeli attacks, while you seek the immediate and unconditional release of a falsely captured soldier who was in the battlefield, you do not maintain peace and security; nor do you ensure human rights.'

'By reviewing your statements, it becomes evident you have not been fulfilling your mandate,' said the groups. On the contrary, 'your statements have not only allowed the continuance of Israel's killing our people, but also encouraged States to continue providing Israel with impunity.'

The letter advised Ban to either drastically change his position – not only in words but also in his efforts to, through the UN, effectively end the current conflict – or resign.

'For us, if you continue playing this role, you prove what our people feel, that you are a partner in, or at least an enabler of, the ongoing violations of international humanitarian law committed by Israel against our families, children, women, elders – against our people,' the letter concluded. ◆

Kanaga Raja is Editor of the South-North Development Monitor *(*SUNS*) published by the Third World Network. This article is reproduced from* SUNS *(No. 7862, 12 August 2014).*

WORLD AFFAIRS

Can the Thai junta deliver on promise to 'bring back happiness'?

There is little prospect of a resolution of Thailand's political crisis by the military junta which has seized power as it is too aligned to the country's traditional royalist elite which has come under challenge in recent years, says *Tom Fawthrop*.

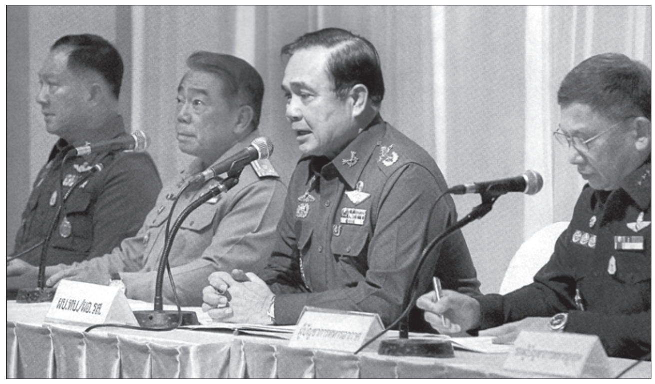
HOW can the silent reading of George Orwell's *Nineteen Eighty-Four* by a solitary Thai citizen sitting outside a shopping mall in central Bangkok trigger repressive police action?

This unprecedented arrest for the act of reading a political book in public outside the Paragon Mall took place in June. Handfuls of protesters have staged several silent readings of the book in recent weeks, saying its indictment of totalitarianism has become relevant after the Thai army deposed the nation's elected government in a 22 May coup.

The generals behind Thailand's latest coup, a well-planned seizure of power, have declared an ambitious agenda to fix the political system, dissolve conflict and 'bring back happiness'. The steps they are taking: closing down protest, pressuring academics and controlling the media. But will it deliver the results they are looking for? Will it heal a badly-fractured and polarised nation by suppressing all dissent?

The May coup is markedly different from the 2006 army power grab that ousted billionaire prime minister Thaksin Shinawatra. That coup provided a clear plan for restoring civilian rule and a timetable for elections. This time around, army chief General Prayuth Chan-ocha and his junta have refused to commit themselves to a clear date. They claim 'the political system has to be reformed before a new election can take place', suggesting that it may take 15 months if things run smoothly, or maybe much longer, before new elections can be held.

In the meantime, the Thai junta have set about consolidating their power, ruling by decree and suppressing even the most innocuous and silent forms of dissent. Gatherings of five or more people have been declared illegal. Anyone who defies their decrees will be tried by military court-martial.



The generals behind the Thai coup (led by army chief Prayuth Chan-ocha, second from right) have declared an ambitious agenda to fix the political system, dissolve conflict and 'bring back happiness'.

On the day of the *Nineteen Eighty-Four* reader's arrest, a woman wearing a T-shirt with the words 'Respect My Vote' was also grabbed by police and detained in a military camp. The 'Respect My Vote' motif became popular among many groups trying to counter anti-government protesters and their obstruction of February 2014 elections, later annulled in a controversial court ruling.

With the scrapping of the constitution and the dissolution of parliament, the military's power over policy-making and the judiciary is absolute. The junta's message to the public seems to be: 'Don't worry about the abrogation of human rights and freedom of assembly and the clampdown on the media.'

The military's public relations and social psychology unit has unleashed a series of free concerts and distributed free tickets to a stirring epic film that glorifies the victories of King Naresuan (who ruled Siam from 1590 to 1605). The concerts have featured songs lauding the army for saving the nation from the abyss and 'bringing back happiness'.

Beyond the entertainment, the message is clear: political divisions and debates have to be dissolved. The Thai people have to be united by ultra-nationalistic fervour and reverence for the monarchy.

Perhaps the clincher for winning over the masses was the junta's directive to ensure all World Cup matches were shown free on terrestrial Thai TV channels, at the cost of 427 million baht skimmed from another budget.

All this has combined to garner support from people in Bangkok and beyond, whose lives had been disrupted by months of anti-government rallies, blocked traffic and political deadlock.

Gagging the media

In July the military government tightened its grip on the media by banning them from criticising the junta's operations and threatening to immediately suspend the broadcast or publication of content that defies the order.

The ruling National Council for Peace and Order (NCPO) issued an order prohibiting criticism by anyone on all forms of media against the operations of the junta and its personnel. The edict also prohibited interviews of academics, former civil servants or former employees of courts, judicial offices and independent organisations who could 'give opinions in a manner that can inflict or worsen the conflict, distort information, create confusion in the society or lead to the use of violence'.

The Associated Press reported online media freedom advocate Sarinee Achavanuntakul as saying that ordinary citizens who express their views on social media also would suffer from the junta's grip. 'This is basically a gag order, and it's not just a gag order to the press, but it's extending to anyone in Thailand, especially now that a lot of Thai people use social media to express opinions,' said Sarinee, who co-founded Thai Netizen Network, Thailand's first Internet freedom civil society group. 'I think it is very dangerous and, to me, it signals that the coup makers may not have a clear idea of who the enemies are.'

Background to the coup

There is a common theme in both the coups of 2006 and 2014: the objective of disrupting and dislodging the electoral domination of the Shinawatra-led political parties – which since 2001 have consistently won at the ballot box – and their 'Red Shirt' supporters.

Prior to the May putsch, the country's fragile democracy had been battered and paralysed by months of raucous anti-government demonstrations, including the occupation of government ministries by die-hard monarchists known as 'Yellow Shirts'.

They were opposed to a government led by Yingluck Shinawatra, sister of the ousted Thaksin, who now lives in exile as a businessman in Dubai. A fugitive on the run from a two-year jail sentence for corruption, he has been tenaciously plotting his return.

Attempts to settle the conflict by holding an election in February 2014 were stymied by anti-government protesters blocking the way to many voting stations in Bangkok and the south. The election was later annulled by the courts, leaving the country in a state of political impasse.

Month after month, the Thai military chief General Prayuth Chan-ocha had fended off the media with assurances that there would be no coup because 'a coup is not the solution'.

But soon after, on 20 May, the army declared martial law, stressing that it was not really a coup. On 21 May, the army chief declared 'martial law is not the same as a coup'. Then on 22 May, martial law underwent a minor mutation, leading to full seizure of power. Overnight, the action became a fully-fledged coup under the command of the National Council for Peace and Order.

Despite appearances and General Prayuth's misleading statements, according to a reliable business source in close contact with the generals, it had all been planned a long time ago. This has now been confirmed by Suthep Thaugsuban, the former Democrat Party politician turned Yellow Shirt agitator-in-chief. The military have denied it.

The repression

The current hardline military regime has set about rooting out all anti-coup opposition – both Red Shirt as well as a politically liberal constituency based around groups of intellectuals, writers and academics.

The Thai Human Rights Alliance has reported that 470 people have been detained for questioning for seven days or more, after being summoned to appear before the generals. These included not only politicians and Red Shirt leaders but also human rights lawyers, academics, journalists and writers. Most have been released after being pressured to sign a declaration that they would not engage in any anti-coup activity.

Universities have been warned against holding political forums. In schools, a decree has banned any criticism of the coup. The NCPO is also considering rewriting history books to add patriotic fervour to classroom study.

Censorship of the Internet was already extensive before the coup. It has reached new heights under the junta, with an attempt to close down Facebook. However, it suddenly came back online after an hour with the military engaging in frantic denials.

Following the junta's taking control over TV, radio and print media, the only remaining source of independent information can be found on the Web. Blocking Facebook pages is part of a long-term strategy to rival the success of Burmese counterparts in controlling Internet gateways. Anyone who clicks 'like' on an anti-coup comment on the Web has, according to the NCPO, committed a criminal offence.

The junta tries to extend its grip overseas

Army chief General Prayuth has briefed 23 Thai ambassadors to keep a close watch for any anti-coup protests abroad. Any 'inappropriate comments' about the Thai monarchy should be reported and could be prosecuted under Thailand's notorious 'lese majeste' law. This controversial law bans any public debate of the monarchy and has been widely used to discredit political opposition.

In Thailand the military's first allegiance is to the royal family. The politics of the coup is viewed by many as part of a broader plan to ensure that the succession that follows the death of ailing 86-year-old King Bhumibol Adulyadej will be managed by a Thai parliament under the firm control of deeply committed monarchists, and not Thaksin's Red Shirt camp.

All sides profess affection and loyalty to the king, but the wearing of yellow indicates special allegiance to increasing the powers of the throne beyond the limits of a constitutional monarchy.

In late May, the Royal Thai Embassy in London tried to lobby the University of London's School of Oriental and African Studies (SOAS) and its Thai Society to cancel a public panel discussion on 2 June on the coup. Despite embassy pressure, the debate went ahead at SOAS. The event featured a panel of speakers including law academic Verapat Pariyawong, one of those summoned by the junta.

In Chiang Mai in northern Thailand, the long arm of the military was more successful, blocking the screening of the film *1984* based on Orwell's novel. A Thai cineclub had wanted to screen it at an art gallery with an anticipated audience of probably less than 30. As a result of pressure from an army colonel who contacted the gallery, it was cancelled.

This man, pictured reading George Orwell's *Nineteen Eighty-Four* as a form of protest outside a shopping mall in Bangkok, was subsequently arrested by the police. Anti-coup protesters in Thailand have held silent readings of the book for its indictment of totalitarianism.

Military newspeak and Orwellian times

Addressing the Foreign Correspondents Club in Bangkok, junta spokesman Colonel Werachon Sukondhapatipak urged the media: 'Please avoid using the word "coup", because the context of what happened in Thailand is completely different. The only thing that happened in Thailand is the change of the administration of this country.' The colonel also instructed the media against using 'junta', saying: 'One must never use that word, it sounds bad.'

He also declared: 'I don't like the word "detention" as people were only invited to come.' However, about 50 people who declined the 'invitation' have been charged and will be tried by court-martial.

The military have also said they wanted to end the country's deeply entrenched political divisions by setting up reconciliation forums under the Internal Security Operations Command (ISOC), a body established in 1966 to counter an armed communist rebellion.

ISOC spokesman Ban Pompeian said 'it's time for Thais to stop dwelling on the past'. Addressing primarily Red Shirt voters in the north and northeast, he said they 'should forget everything that happened before 22 May'.

In Orwell's *Nineteen Eighty-Four*, forgetting the past is all part of a totalitarian design to exert thought control and acceptance of a new reality. 'Thailand in 2014 is George Orwell's 1984,' Pavin Chachavalpongpun, a Thai associate professor of Southeast Asian Studies at Kyoto University, told *Time* magazine.

Pavin rejected the junta's 'invitation' to return to Thailand and has since had his passport cancelled for his defiance of the military regime.

David Steckfuss, an expert on northern Thailand who lectures at Khon Kaen University, argues there are many things that 'it would be hard for them [Red Shirts] to forget', mentioning specifically the military crackdown on Red Shirt supporters in Bangkok in 2010, which resulted in 90 people killed. The military fired live ammunition in order to disperse a mass protest that had blocked central Bangkok for over two months.

Steckfuss argues that reconciliation based on the barrel of a gun is not going to work. Red Shirt activists and the voters in northern Thailand do not view the junta as honest brokers between the two political sides, but as clearly aligned with one side comprised of the Bangkok elite, the Yellow Shirt monarchists and the royal palace, he said.

Kevin Hewison, a Thai studies expert who heads the Asia Research Centre at Australia's Murdoch University, commented that General Prayuth's actions during anti-government demonstrations were 'biased towards the anti-government side, protecting and promoting them under the guise of the military being "neutral"'.

Dark days ahead

Thailand's political history has been riddled with coups, usually involving a semi-feudal elite at loggerheads with the new capitalism represented by Thaksin and his telecom empire, and with the recent sense of empowerment by the voters of north and northeast Thailand.

Buddhist scholar Sulak Sivaraksa points out: 'Unfortunately, the military hasn't learnt much from their previous mistakes; that is, every coup thus far has been a fundamental failure, and the military must take full responsibility for this.'

If the country is to emerge from this crisis, Sulak argues, the elite and the military have to start respecting the poor who vote for Red Shirt parties and are starting to assert their political rights.

'Many Red Shirts are not pawns of Thaksin Shinawatra. They have bravely struggled for freedom from domination by the *ammarts*,' Sulak said, referring to the traditional elite closely linked to the judiciary and the royal palace.

The military's 'reform of the Thai system' and their apparent preference for a more limited or guided democracy will almost certainly only be welcomed by the circles of Yellow Shirt royalists, and roundly rejected by much of the country who insist that any election not based on one-man-one-vote is a sham.

If there is to be a credible reform process, Dr Lee Jones of Queen Mary, University of London, says: 'The only way forward is a new social contract that distributes power and resources more equitably. We get that by talking and negotiating, not from the barrel of a gun.' ◆

Tom Fawthrop is an author and filmmaker who specialises in coverage of the developing world from Cuba to Cambodia, Ecuador to East Timor and beyond. He can be reached at tomfawthrop@yahoo.co.uk. See www.tomfawthropmedia.com

UN moves to establish legal instrument on TNCs

The United Nations Human Rights Council (HRC) has adopted, through a vote, a historic and significant resolution to start a process for an international legally binding instrument on transnational corporations (TNCs). *Kinda Mohamadieh* reports.

OFFICIALLY entitled 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights', a historic resolution concerning the regulation of TNCs was adopted on 26 June at the 26th session of the HRC.

The resolution was co-sponsored by Ecuador and South Africa, and also supported by Bolivia, Cuba and Venezuela. In the vote on the resolution, 20 members of the HRC supported the resolution, while 13 members abstained and 14 members voted against it.

Countries that supported the resolution were Algeria, Benin, Burkina Faso, China, Congo, Cote d'Ivoire, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, the Philippines, the Russian Federation, South Africa, Venezuela and Vietnam.

Countries that abstained were Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, the Maldives, Mexico, Peru, Saudi Arabia, Sierra Leone and the United Arab Emirates.

Countries that voted against the resolution were Austria, the Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Macedonia, Montenegro, the Republic of Korea, Romania, the United Kingdom and the United States.

The resolution provides for the establishment of an open-ended intergovernmental working group (IWG) that is mandated with elaborating an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

The resolution provides that the IWG shall hold its first session for five working days in 2015, before the 30th session of the HRC. The resolution also provides that the first two sessions of the working group shall be dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument.

Speaking at the Human Rights Council, the Ecuadoran Ambassador said that victims of disasters caused by Union Carbide in Bhopal, Shell in the Niger Delta and Chevron in Ecuador are still awaiting remedy and fair compensation. Picture shows the site of an oil spill from an abandoned Shell well in the Niger Delta.

The resolution mandates the Chairperson-Rapporteur of the IWG to prepare elements for the draft legally binding instrument for substantive negotiations at the commencement of the third session of the working group, taking into consideration the discussions held at its first two sessions. It recommends that the first meeting of the IWG serve to collect inputs, including written inputs, from states and relevant stakeholders on possible principles and elements of such an international legally binding instrument.

The resolution requests the IWG to submit a report on progress made to the HRC for consideration at its 31st session.

The resolution explains in a footnote that the reference to 'other business enterprises' denotes all business enterprises that have a transnational character in their operational activities, while it does not apply to local businesses registered in terms of relevant domestic law.

The resolution also makes reference to the important role of civil society actors in promoting corporate social responsibility and in preventing, mitigating and seeking remedy for adverse human rights impacts of TNCs and other business enterprises.

In presenting the resolution to the HRC, Ambassador Luis Gallegos Chiriboga of Ecuador had stressed that the Council owes its existence to those who tirelessly fight to protect human rights and the victims of human rights violation, including those that are most in need of protection and support.

He called upon the Council to correct injustices, including the lack of protection for victims of violations of human rights carried out by TNCs. He noted that these corporations benefit from binding international protections. However, victims of harmful corporate activities lack access to legal protection, while only having available voluntary norms.

Ambassador Gallegos Chiriboga focused on the importance of protecting victims, noting that victims of disasters caused by Union Carbide in

The months before the June session of the Human Rights Council witnessed mobilisation by civil society groups calling for binding international regulation to address corporate human rights abuse.

Bhopal (India), Shell in the Niger Delta (Nigeria) and Chevron in Ecuador, among others, are still waiting for remedy and fair compensation.

He underlined the support of more than 500 civil society organisations from around the world, European Parliamentarians and the Vatican to the initiative towards elaborating a legally binding instrument on TNCs and other business enterprises with respect to human rights.

Ambassador Gallegos Chiriboga also stressed Ecuador's support for implementation of the United Nations Guiding Principles on Business and Human Rights.

(The Guiding Principles, proposed by UN Special Representative John Ruggie, had been endorsed by consensus by the HRC on 16 June 2011. At its 17th session, the HRC decided, in resolution 17/4, to establish a working group on the issue of human rights and TNCs and other business enterprises, consisting of five independent experts, with the mandate to promote the dissemination and implementation of the Guiding Principles.

(In a statement at the 17th session, the delegation of Ecuador had voiced its conviction that the UN should continue to work on the issue of establishing binding international standards on the activities of TNCs. Ecuador's statement underlined that the Guiding Principles are 'not binding standards', 'are just a guide' and thus 'are not mandatory'.

(At the September 2013 session of the HRC, the delegation of Ecuador delivered a statement on behalf of more than 85 countries stressing the need for a legally binding framework to regulate the work of TNCs. More on this statement is provided in the following article.)

Speaking on behalf of South Africa, co-sponsor of the resolution, Ambassador Abdul Samad Minty noted that the government of South Africa accords special priority to issues of TNCs, business and human rights. He highlighted that the government holds a strong view that these entities, which are the primary drivers of globalisation, cannot operate in a void.

He added that TNCs and other business enterprises often operate in an environment where appropriate national legislation to effectively regulate their operations, or mitigate the propensity for their violation of human rights, is either absent or very weak. Experience shows that in countries of the North, where there are strong binding laws and regulations promulgated by national parliaments, the violations of human rights by corporations are significantly minimised, according to Ambassador Minty.

He stressed that a universal regulatory framework in the form of a binding instrument to provide legal protections, effective remedies, as well as a range of other measures in the quest for protection of victims, is desirable and imperative. He also recalled the global mass mobilisations by over 500 civil society organisations calling for such an instrument.

Countries take the floor to explain their vote

China expressed its support for joint efforts by the international community to promote better protection and respect of human rights. It added that it is in favour of pursuing dialogue and cooperation to implement the Guiding Principles on Business and Human Rights and to ensure their actual effects. China noted that the formulation of an international legal instrument is a complex issue, highlighting the disparities among countries in terms of economic development, judicial systems, systems of enterprise, as well as historical and cultural backgrounds. China underlined the importance of being gradual towards gathering consensus.

India noted that the issue of TNCs and other business enterprises is an area where the international community must work together, not only to encourage businesses to respect human rights but also to hold them accountable for violations arising out of their business operations. India added that the work of the existing expert working group on the issue of human rights and TNCs and other business enterprises during the last three years provided guidance to states and businesses and shed light on glaring gaps in available protections.

However, India underlined, the Guiding Principles on Business and Human Rights have their own limitations and carry little impact in the case of victims whose human rights have been violated by operations of TNCs. India added that the resolution sought to open an opportunity for states to discuss, in a focused manner, the issues of TNCs, and provided an acceptable roadmap to move forward in this direction. As states promote the integration of the world economy and capital flows across borders, it is important to plug possible protection gaps that may arise due to business operations, it said.

When states are unable to enforce national law with respect to gross violations committed by businesses, or to hold them accountable due to the sheer size and clout of TNCs, the international community must come together to seek justice for the victims of violations committed by TNCs, India stressed.

The United States, the European Union, the United Kingdom, Japan and Ireland spoke against the resolution.

The United States focused its remarks on the Guiding Principles on Business and Human Rights, saying it considers them a success despite the limited three years since they were endorsed.

While agreeing that more needed to be done to improve access to remedy for victims of business-related human rights abuses, the United States raised concern that the resolution on a legally binding instrument was not complementary to the work on promoting the implementation of the Guiding Principles. The United States perceived that the proposed intergovernmental working group would create a competing initiative that would undermine efforts to implement the Guiding Principles. It expected that focus would turn to the new instrument while companies, states and other actors would unlikely invest significant time and money in implementing the Guiding Principles.

The United States cautioned that a one-size-fits-all instrument would be unlikely to be able to address concerns related to the complex issues of regulating business, noting that such an instrument would be binding only on states that became party to it. It also raised some practical questions concerning the application of the proposed international instrument to corporations, which were not subject to international law. The United States expressed its unwillingness to participate in the proposed intergovernmental working group.

Italy, speaking on behalf of the European Union member states, focused on the efforts undertaken since 2011 to disseminate and implement the Guiding Principles on Business and Human Rights. Italy referred to national action plans elaborated by several EU member states to reflect the Guiding Principles. It added that the Guiding Principles do not exclude further legal developments, while reaffirming its understanding that what has been done so far is not enough to prevent abuses and enable access to remedy when abuses occur.

The EU stressed that no international mechanism could replace robust domestic legislation and processes involving all stakeholders, calling for additional focus on implementation of the Guiding Principles. The EU also noted that the resolution focused on TNCs, while many abuses were committed by enterprises at the domestic level.

The United Kingdom was of the opinion that issues of business and human rights should be addressed through national rule of law at individual state level, and through the application of fair, just and independent legal systems that can protect victims and ensure that business activity can thrive. The UK added that focusing on the Guiding Principles would be the best way forward in dealing with these important issues.

Japan underlined its commitment to the Guiding Principles, noting that the resolution could undermine efforts undertaken with regard to their implementation. The Guiding Principles provide guidance on how states could fulfil their obligations in the area of human rights while respecting business-related international legal obligations, according to Japan. The international community could deepen its understanding on an international legally binding instrument through examining best practices in this regard in the course of implementing the Guiding Principles, Japan added.

Ireland aligned itself with the views expressed by the EU, underlining its commitment to the Guiding Principles while noting that the resolution could undermine the process of their implementation. While noting the importance of addressing barriers to access to judicial and non-judicial remedies, Ireland was of the opinion that an intergovernmental working group would not be the appropriate forum for such a discussion.

The 26th session of the HRC also adopted, by consensus, another resolution entitled 'Human rights and transnational corporations and other business enterprises', which was co-sponsored by Norway, Russia and Argentina. The resolution extends for a period of three years the mandate of the existing expert working group on the issue of human rights and TNCs and other business enterprises, as set out in HRC resolution 17/4. ◆

Kinda Mohamadieh is with the Arab NGO Network for Development. This article is reproduced from the South-North Development Monitor *(*SUNS, *No. 7834, 1 July 2014).* SUNS *is published by the Third World Network.*

Background on the moves towards a legally binding instrument

IN a statement delivered at the 24th session of the HRC in September 2013, the delegation of Ecuador, speaking on behalf of more than 85 countries, including the African Group, the Arab Group, Pakistan, Sri Lanka, Kyrgyzstan, Cuba, Nicaragua, Bolivia, Venezuela and Peru, had underlined the need for a legally binding instrument.

States subscribing to the statement stressed that 'the increasing cases of human rights violations and abuses by some TNCs remind us of the necessity of moving forward towards a legally binding framework to regulate the work of transnational corporations and to provide appropriate protection, justice and remedy to the victims of human rights abuses directly resulting from or related to the activities of some transnational corporations and other business enterprises'.

The statement noted that an 'international legally binding instrument, concluded within the UN system, would clarify the obligations of transnational corporations in the field of human rights, as well as of corporations in relation to States, and provide for the establishment of effective remedies for victims in cases where domestic jurisdiction is clearly unable to prosecute effectively those companies'.

In pursuit of the discussion on TNCs, human rights and a legally binding instrument, the Permanent Missions of Ecuador and South Africa to the United Nations in Geneva co-organised a workshop during the week of the 25th session of the HRC to explore this issue.

The workshop aimed at contributing to clarifying the ways in which a legally binding instrument on business and human rights would provide a framework for enhanced state action to protect rights and prevent the occurrence of human rights abuses. It also aimed at discussing the difficulties faced by developing countries when trying to hold transnational corporations accountable, as well as the gaps under the current soft law framework.

In this regard, the discussion tackled the extraterritorial duties of states, obstacles that victims of human rights violations face when trying to access justice and adequate remedies, including national, regional and international courts and non-judicial mechanisms.

According to the report resulting from the meeting, some of the main elements highlighted during the discussion focused on the importance of recognising that there are gaps in the international legal framework related to the duty to protect human rights in respect of business activities, and the concentration of related instruments in soft law.

The report noted as well the recognition of the asymmetry between rights and obligations of TNCs: while TNCs are offered rights through hard law instruments, such as bilateral investment treaties and investment rules in free trade agreements, and have access to a system of investor-state dispute settlement, there are no hard law instruments that address the obligations of corporations to respect human rights.

Furthermore, the report noted, the obligation of states to regulate business activities within their territorial jurisdiction is clear, but their obligation regarding corporate conduct abroad is not clear.

The report noted as well the importance that participants accorded to building on lessons learnt from the history of addressing the issues of business and human rights, including the experience of discussing the 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights'.

Mobilisation by civil society groups

The months before the 26th session of the HRC witnessed mobilisation by international networks, organisations and social movements from various regions organised under the umbrella of an alliance calling for binding international regulation to address corporate human rights abuse.

A statement calling for an international legally binding instrument has been signed by 610 civil society organisations and social movements as well as 400 individuals from 95 countries (see treatymovement.com).

The signatories call upon states to elaborate an international treaty that 'affirms the applicability of human rights obligations to the operations of transnational corporations and other business enterprises'.

They add that the treaty should 'require States Parties to monitor and regulate the operations of business enterprises under their jurisdiction, including when acting outside their national territory, with a view to prevent the occurrence of abuses of human rights in the course of those operations'.

They underline that the treaty should 'require States Parties to provide for legal liability for business enterprises for acts or omissions that infringe human rights and to provide for access to an effective remedy by any State concerned, including access to justice for foreign victims that suffered harm from acts or omissions of a business enterprise in situations where there are bases for the States involved to exercise their territorial or extraterritorial protect-obligations'.

The statement stresses as well the importance of providing for 'an international monitoring and accountability mechanism' and for 'protection of victims, whistle-blowers and human rights defenders that seek to prevent, expose or ensure accountability in cases of corporate abuse and guarantees their right to access to information relevant in this context'.

In a press release commenting on the HRC's adoption of the resolution initiating a process to develop a legally binding instrument, the Treaty Alliance of civil society groups emphasised that 'the establishment of a binding instrument is complementary to the implementation of the Guiding Principles and necessary to ensure glaring gaps in protection are addressed'.

The Alliance explained that 'some States opposing the resolution made attempts to come to a compromise, but were not willing to provide a concrete path towards the drafting of a binding instrument to prevent human rights abuses by TNCs and other business enterprises and allow for the provision of remedy to victims'.

The Alliance added, 'While companies must respect all human rights, as reaffirmed in the UN Guiding Principles on Business and Human Rights, they currently are not held accountable under international human rights law. Thus, the implementation of the Guiding Principles at the national level has been slow and the Guiding Principles remain insufficient to prevent human rights violations. In the meantime, many victims around the world continue to suffer without access to justice.'

The Alliance further noted that 'an intergovernmental process will contribute to addressing current imbalances under international law, particularly in light of protections companies can obtain under Bilateral Investment Treaties and Free Trade Agreements, which have allowed corporations to sue States'. – *Kinda Mohamadieh (reproduced from* SUNS*, No. 7834)* ◆

Activists, government push forward bill to prevent gender violence in Burma

Perpetrators of sexual violence in Burma have long evaded justice, but thanks to the efforts of women's rights activists, a bill to prevent violence against women is at last taking shape.

A march in Rangoon on the occasion of the International Day for the Elimination of Violence against Women. Burmese women's rights activists and government officials aim to finish drafting a bill by yearend to prevent violence against women.

Nyein Nyein

BURMESE women's rights activists and government officials aim to finish drafting a bill by the end of the year to prevent violence against women, activists say.

'Once enacted, it would be the first law to ensure the protection of women from all forms of violence, including physical, mental, sexual and verbal violence,' May Sabe Phyu, a peace activist and coordinator of the Gender Equality Network (GEN), a large network of civil society organisations, told *The Irrawaddy* magazine on 27 June.

Activists began drafting the bill with the Ministry of Social Welfare, Relief and Resettlement in 2012.

'We are still in the drafting process on the anti-violence against women [bill],' Myat Myat Ohn Khin, the minister of social welfare, relief and resettlement, told *The Irrawaddy*. 'We have been drafting bills for disabled people, childhood development and other socio-economic issues, so we are trying our best.'

Thirteen Burmese activists recently joined a Burmese government delegation in travelling to London to attend a summit that raised awareness about sexual violence in conflicts around the world.

At a press briefing about the trip in Rangoon on 27 June, the activists, including May Sabe Phyu, said Burmese victims of rape and sexual violence desperately required greater assistance. They called on Burma to bring perpetrators of sexual violence to justice, particularly in ethnic areas, where soldiers from the government's army have been accused of using rape as a weapon of war against ethnic armed groups.

Burma is one of 150 countries that have endorsed the Declaration of

Susanna Hla Hla Soe of the Karen Women's Empowerment Group: 'Gender discrimination persists in Burma, which harms development, liberty and peace.'

Commitment to End Sexual Violence in Conflict, a UN declaration launched last year.

'We welcome that the international community and the Burmese government have endorsed the commitment to end sexual violence in conflict, but we need to be careful that it is not just for show,' May Sabe Phyu said, urging concrete action. 'The voices of civil society groups need to be heard for greater effectiveness.'

The activists said victims of sexual violence in Burma often face threats and other obstacles to reporting their cases, while perpetrators are rarely brought to court. They said Chin women have been threatened with arrest after protesting against military rapes recently in Chin State (see box).

Susanna Hla Hla Soe, an activist from the Karen Women's Empowerment Group who also attended the summit in London, noted that Burmese soldiers accused of rape are not prosecuted in civilian courts.

'Gender discrimination persists in Burma, which harms development, liberty and peace,' she said, adding that it was positive that Burma was one of six countries that pledged at the summit in London to start implementing within the next six months a framework to end sexual violence.◆

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Women protest sexual violence by soldiers in Chin State

A protest by women in Matupi Township against the Burmese military's alleged use of rape as a weapon of war.

Nang Seng Nom

ON 24 June more than 130 ethnic Chin women participated in a protest against the Burmese military's alleged use of rape as a weapon of war in Matupi Township.

Protest leaders said the demonstration aimed to draw attention to sexual violence perpetrated by soldiers against women and children in Matupi, as well as to enhance awareness of women's rights issues among local residents.

Al Li, secretary of the Chin Women's Association, said six local women in Matupi had been raped by Tatamadaw soldiers, with the latest case on 10 June.

'The police arrested this rapist soldier, but we don't know yet what will happen next,' the protest organiser said.

Al Li said the Chin activists' initial request seeking permission for the protest march was rejected by local law enforcement, but they were later allowed to proceed.

'The police told us not to march to avoid traffic, but we marched as we said we would, to raise the issue of women being abused,' she said.

Many ethnic Chin women lack formal schooling and are poorly versed in women's rights issues, Al Li said, adding that greater efforts to educate the women were needed.

The local women said increased Burmese Army troop deployments in Chin State since 2010 had left many locals fearing for their safety and reluctant to cultivate their farmlands due to the presence of soldiers in the area.

Burma signed the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997, but women's rights activists say the government has yet to take meaningful steps to ensure the protection of women's rights.

In a January 2014 report, the Thailand-based Women's League of Burma accused members of the military of raping more than 100 women since 2010. The rape incidents' 'widespread and systematic nature indicates a structural pattern: rape is still used as an instrument of war and oppression,' the report said.

In April, UN Secretary-General Ban Ki-moon also called for the Burmese government to investigate the claims of rape by soldiers. ◆

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VIEWPOINT

The flight of the children

The arrival of tens of thousands of refugee children into the United States from Central America is the consequence of US involvement in Latin America over the years. These children, says *Jeremy Seabrook*, are the vanguard of those who, 'voting with their feet', threaten to undermine demarcations between privilege and poverty even when these are reinforced by barbed wires, dogs, military guards, walls and watchtowers.

Between October 2013 and June 2014, 52,000 unaccompanied children arrived in the US from Honduras, El Salvador and Nicaragua. Picture shows child detainees asleep in a holding cell at a US Customs and Border Protection 'processing facility'.

WHEN children flee their country, this suggests something more than a lack of confidence in the future of their native land; and when such lands have been ravaged by the country in which they seek asylum, it is scarcely to be expected that these uninvited guests will be welcomed by a reluctant 'host'.

The recent arrival of tens of thousands of refugee children from Central America who have crossed the southern border of the US prompted Obama to request $3.7 billion in emergency funding to deal with an unprecedented situation. Between October 2013 and June 2014, 52,000 unaccompanied minors arrived from Honduras, El Salvador and Nicaragua. Much rhetoric has been expended on the scandal of lone children being sent to seek sanctuary in the United States; less upon scrutiny of the violence and poverty that have driven them to this desperate course of action. The question is how to 'warehouse', accommodate or dispose of these juveniles, and not what horrors prompted their loved ones to permit or encourage them to go off into the unknown. The risks they incur, although considerable, are less than those to which they would be exposed if they remained in what ought to be 'home'.

In this sad situation, the 'hawks' would speed up the deportation process, while even the 'doves' would abate some of the protection to unaccompanied minors afforded by the human trafficking act of 2008. It would be difficult to identify the avian designation – perhaps the garuda or orphan-bird – which might be given to those who would grant them asylum from disorders for which the United States itself bears a heavy responsibility.

Detention facilities are the first consideration in this society of carceral freedoms, although the first flight of forced 'repatriations' has already taken place. Much of the need for enhanced funding focuses on 'border security' measures, to deter from entering the US those whose countries have been rendered dangerous as a consequence of US involvement in Central America in recent decades: going back to the overthrow of Arbenz Guzman in Guatemala in 1954 by the CIA and the United Fruit Company which owned a considerable portion of the country's land, and the use of Guatemala for the training of CIA forces to topple Fidel Castro. We might remember 'Operation Sophia' conducted by the Guatemalan army in 1980, which targeted the indigenous Mayan people in order to eradicate guerilla resistance, during which hundreds of villages were destroyed and up to 200,000 people killed. Nor should we forget the civil war in El Salvador waged against peasants, labour organisers, students and priests by the Washington-backed dictatorship, and the assassination of Archbishop Romero while saying mass in 1980. Then there was the arming in the 1980s of the 'contras' in Nicaragua, an army of avenging angels unleashed to topple the Sandinistas.

In the wake of this historic assault on Central America in the name of 'democracy', a US-dominated globalisation has been imposed, and with it, the doctrine of government retreat from both economy and society. The bottomless US demand for drugs is the most recent element to have laid waste the already ravaged societies of the 'Northern Triangle'. The US war on drugs and its interdiction of drug routes in the Caribbean shifted the pathways of drug movement to Central America. The Mexican assault on the drug cartels from 2007 (in which at least 60,000 people

'While justice decays and government falters, the "choice" for young people is either to join the gangs or flee to the apparent safety of the United States.' Picture shows Central American migrants riding atop a freight train in Mexico as part of their perilous journey to the US border.

died between 2006 and 2012) increasingly diverted the supply chain through the line of least resistance, the hapless territories of Guatemala, El Salvador and Honduras. It is estimated that 90% of the price of illicit drugs is due to the 'black market' premium. In the presence of such big money, corruption is total: politicians and law enforcement agencies have been faced with the choice between *plata o plombo* (silver or lead, cash or a bullet). This renders 'safe' the passage of substances which are apparently indispensable to alter the state of mind of the people of the most privileged country on earth.

All this has enfeebled administrations in Central America and left swathes of territory to the control of *maras* or gangs, drug cartels, human traffickers and crime syndicates – a vast caricature of capitalist enterprise which has filled the spaces evacuated by government, so that groups battling for drug routes, neighbourhoods, transport systems and human trafficking have replaced the elected by the brutal power of a self-serving elect.

It goes without saying that, in such governance-liberated zones, child labour – melon and coffee production in Honduras, domestic labour and prostitution in all countries – has flourished; malnutrition is estimated to affect half of Guatemalan children; and the homicide rate in all countries is the highest in the Western hemisphere, reaching 187 per 100,000 people in San Pedro Sula in Honduras, making a city of half a million people the most dangerous on earth.

While justice decays and government falters, the 'choice' for young people is either to join the gangs or flee to the apparent safety of the United States. Nor is flight a cheap option: the going rate for 'coyotes', or people-smugglers, to organise the arrival of any individual on the US border is between $5,000 and $7,000.

Of course, there are many humanitarian organisations – not least the churches – in the US who insist that the child refugees should have their cases for asylum properly addressed, but in general, the US repudiates any responsibility for conditions in what it once did not disdain to claim as its own 'backyard', and countries airily referred to as 'banana republics'.

It may be argued that it was not meant to be like this, yet the consequences for the region of the dogmas of the retreating state, and the criminality of 'non-state actors' – where civil society might have been expected to exist – are inextricably related to the work of the dominant power, which might, if it chose, see a distorted vision of itself in the mangled bodies and mutilated flesh of the youth of Honduras, Guatemala and Nicaragua, only without benefit of Tea Party, gun-lobby or far-right libertarian activists.

This is not the way the West's global projection of its earthly paradise was to have operated. It is true that a relentless imagery of plenty has been diffused globally for over half a century, which has set in movement a whole world of people anxious to find their way to the lands of fabled abundance.

The Western model of economic development was to have been imitated by all the nation-states of the world. Economic growth was to have propelled every country into its own particular inflection of the American dream: a replication of the holy trinity of freedom, democracy and choice was to have reigned supreme in every part of the globe.

It did not happen as calculated, because it could not. When national boundaries appeared to melt away in the presence of a single integrated economy, rich and poor ceased to be determined by 'local' (that is, national) conditions, but by a worldwide division of labour.

One result of this was that, even in the most successful 'economies' (as countries now find themselves disparagingly designated), the growth of an extensive middle class has been accompanied by an even greater number of poor; poor, not necessarily in the sense of being without basic nutrition, shelter and clothing, but poor in relation to the vast global hypermarket of excess, the overblown advertisement for the West's beatific vision. And in the rainshadow of the new rich, concentrations of traders in illicit goods, prohibited substances, endangered species and, of course, humanity itself, have prospered.

Clearly, in the homely provinces of Africa and Asia, in the dingy small towns, the sprawling slums, impoverished and degraded tracts of forgotten hinterlands, the promise that the whole world will be remade in the image of Western prosperity has been broken. In fact, not even the West itself can live up to the glowing imagery of abundance that it has exported, through the communications systems at its disposal, to the whole world. But that does not appear in the impressions, icons and tokens of wealth associated with the way of life of the West, when these reach the hungry eyes of the poor and outcast of the earth.

And on the whole, it is not the most wretched and deprived who make their way, in the illegitimate category recently devised by the rich world of 'economic migrants'. It is the most knowing, the wide awake, the educated and the competent, those who can afford the one-way fare to paradise, who will undertake risky voyages out of their own countries, staking their very survival on arriving in the sweet lands of their dreams, in order, all too often, to live six or eight in a room, getting up in the wintry dawn to pull cabbages or harvest strawberries, prepare coffee or sweep and scour great marble palaces of wealth before the workers arrive, or to lose themselves in labyrinths of petty crime, drugs and despair – the very circumstances they thought they were escaping.

When the people of the rich countries rise up, saying enough is enough, that they have become strangers in their own lands; when racism, xenophobia, intolerance and bigotry are expressed by people who complain of the dilution of their culture, the leaders of these countries are afraid. As long as the replenishment of a reserve army of labour could be sustained without any great public outcry – and the wellbeing of a majority was sustained up to the crash of 2007-08 – popular resentment at foreigners and aliens was only a sullen murmur, a sub-political disturbance that scarcely rippled the surface of life.

A Honduran policeman sits on seized packages of cocaine. Drug-related violence has hit the 'Northern Triangle' countries of Honduras, Guatemala and El Salvador.

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How different it has become now. The media will make of these children – the most vulnerable and defenceless people – illicit migrants, rather than fugitives from the consequences of American power. Obama himself, in Texas in early July, declared, 'This isn't theatre. It's a problem.' Half the \$3.7 billion he has asked for is to go on caring for and 'processing' refugees (a significant word, since this is now as routinely applied to humanity as it is to any industrial product), while the rest is for militarised 'border protection'. At the same time, the issue appears in foreign policy 'initiatives' of the US. Some \$9.6 million has been offered to rehabilitate and reintegrate the deported citizens of the three countries, as well as for crime and violence protection programmes. The derisory scale of this speaks for itself.

Obama has deported more people than any other president. Boundaries abolished for the passage of finance and goods throughout the world must be re-erected to prevent the movement of humanity. This is perhaps the most intractable result of globalisation: who is going to stay in the ruined landscapes of countries in which they never asked to be born, when all they have to do is to cross borders which can never be policed strongly enough to halt the waves of people evicted or expelled from their way of life, without redress or compensation of any other kind?

These sad children are the vanguard of those who, 'voting with their feet', threaten to undermine demarcations between privilege and poverty, even when these are reinforced by barbed wire, dogs, military guards and walls that cannot be scaled, overseen by watchtowers to repel what has been described as 'an invading army', but which may prove the nemesis of those who prioritise finance and merchandise over flesh and blood. ◆

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João Cabral de Melo Neto (1920-99), who was born and grew up in northeast Brazil, served as a diplomat in Spain and other countries for many years. Despite this, his poetry generally reflected his pastoral origins, with natural elements as the motif of many of his works.

Imitation of water

João Cabral de Melo Neto

On the sheet, on your side,
already so marine a scene,
you were looking like a wave
lying down on the beach.

A wave that was stopping
or better: that was refraining;
that would contain a moment
its murmur of liquid leaves.

A wave that was stopping
at that precise hour
when the eyelid of the wave
drops over its own pupil.

A wave that was stopping
in breaking, interrupted,
would stop itself, immobile,
at the height of its crest

and would make itself a mountain
(being horizontal and fixed)
but in becoming a mountain
would yet continue to be water.

A wave that would keep,
in a seashore bed, finite,
the nature without end
that it shares with the sea,

and in its immobility,
guessed to be precarious,
the gift of overflowing
that makes the waters feminine,

and the climate of deep waters,
that shadowy intimacy,
and a certain full embrace
you copy from the liquids.

Translated by Ashley Brown