Internet Governance: a critical theory analysis of the Internet Corporation for Assigned Names and Numbers (ICANN)

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ABSTRACT

The Internet has expanded its reach worldwide and its importance to almost every aspect of contemporary life. Suffice it to say this trend is expected to continue its upward trajectory. The Internet Governance system was established in the late 1990s with distinct characteristics compared to other international management models. As Internet Governance gains more importance, this major research paper proposes to analyze the management of the Internet's critical resources, more specifically the Internet Corporation for Assigned Names and Numbers (ICANN), the Californian non-profit company responsible for this task worldwide. ICANN's creation, operationality, and contested legitimacy will be assessed, a topic that divides countries into separate poles: one side supporting the organization and the other claiming for comprehensive reforms in the system. This major research paper (MRP) shows how, as a reflection of their hegemonic power, the US and its allies mobilize a particular set of discourses centred on freedom to legitimize the current regime and de-legitimize calls for radical reforms. It will also analyze how the lack of comprehensive reforms has an impact on ICANN's legitimacy. The MRP will employ insights drawn from critical International Relations (IR) theory and use data collected from ICANN's Board of Directors, the decision-making body, to evaluate discourses and international representation, essential factors in assessing ICANN's legitimacy in the global Internet Governance regime.

"Les discours sont des éléments ou des blocs tactiques dans le champ des rapports de force…"

(Michel Foucault)[1]

INTRODUCTION

Anyone old enough to remember the world before the Internet can understand the impacts of this technology in everyday life. Nowadays, the Internet permeates almost every aspect of human relations, a trend that will only accentuate with the new applications to emerge with the 5G and the expansion of the Internet of things. The COVID-19 pandemic potentially accelerated the transition of many activities into remote, being it educational, professional, or social.

The Internet is a new form of communication and "a network of information and communication technology networks at the global, national, local, one-on-one, one-to-many, many-to-many levels, with relatively open standards and protocols and barriers to entry comparatively low"[2]. The current Internet management system is decentralized, with the participation of different actors in different institutions and non-regulated in many areas. "The decision to have a system with minimal rules that had no central power and no censor was deliberate…"[3].

The benefits of the Internet are widely known, but its management is a topic still considered of limited interest and constrained to technical experts. That assumption is not a total

[1] Foucault, Michel. Histoire de La Sexualité. Paris: Gallimard, 1976. Print. Pg 101

[2] Chadwick, Andrew. Internet Politics: States, Citizens, and New Communication Technologies. New York and Oxford: Oxford University Press, 2006.

[3] Cavelty, Myriam & Wenger, Andreas (2020) Cyber security meets security politics: Complex technology, fragmented politics, and networked science, Contemporary Security Policy, 41:1, 5-32

misperception, as the structure of Internet management is complex and detailed in technical specifications, necessary to administer this universal and connected communication system. On the other hand, there is extensive political input in that structure, starting with constructing the idea that Internet management is mainly a technical issue, an effort to avoid politicizing the topic and a consequent increase of governmental interference. However, one has to question who is benefitted from that idea.

The objective of this Master Research Project is to discuss the political aspects of Internet Governance concerning the creation of the current regime, the key players, and their positions regarding the topic. It will discuss the defence of the existing institutions by the United States, supported by most of the Western countries, and the calls for reforms by various non-Western countries. With the critical theory of International Relations, this study will analyze the discourse used by the US and allies to defend the current regime. Their argument is based on the freedom of speech and protection against State interference. The aim is to shed light on Western countries' economic and political interests in avoiding reforms in the system and, at the same time, revealing incongruencies of one of the central institutions for Internet management, the Internet Corporation for Assigned Names and Numbers (ICANN).

1. ICANN AND THE INTERNET GOVERNANCE

1.1 Concepts

The World Summit on the Information Society (WSIS) defined Internet Governance as “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".[4] That definition is the foundation for the structure of the regime. However, some clarifications of concepts might be necessary before further analysis.

In this study, the private sector will be considered private corporations that operate in competitive markets or under monopolistic conditions, whose main objective is profit. Governments refer to the political executive and its bureaucracy to solve political or social problems, perceived or real[5]. Civil society, in turn, has a global reach, and it is composed of NGOs, activists, and other social groups. Its platform is used to argue about, campaign for (or against), negotiate about, or lobby for the arrangements that shape global developments. It is not democratic, and there is most often no process of selection.[6]

Concerning governance, the term is understood as "rules, structures, and institutions that guide, regulate, and control social life, features that are fundamental elements of power. To account for how global activities are guided and how world orders are produced, therefore, requires careful and explicit analysis of the workings of power". [7]

To fully understand the challenges faced by the actors and the discussions of the Internet Governance arena, it is essential to trace back the roots of the current model of governance, the organization of its structures and the functions implemented by its institutions. As mentioned earlier, Internet Governance is a defined term, but it still can be applied to multiple topics related to the Internet, such as cybersecurity, e-commerce, intellectual property, etc. For this study, the

[4] World Summit on the Information Society. Tunis Agenda for the Information Society. 2005
[5] Newman, Joshua. Governing Public-Private Partnerships Montreal: McGill-Queen's University Press, 2017. Pg 6-9
[6] Kaldor, Mary. "The Idea of Global Civil Society." International Affairs (Royal Institute of International Affairs 1944) 79, no. 3 (2003): 583-593. Pg 591
[7] Barnett, Michael N., and Raymond. Duvall. Power in Global Governance. Cambridge: Cambridge University Press, 2005, pg. 2

word will be solely associated with the management of critical resources, such as the Internet identifier names and numbers and its association with Internet protocols (IP), controlled by ICANN.

1.2 Origins of ICANN

The Internet Governance regime dates back to the 1990s with the emergence of the private use of the Internet. In 1998, the Clinton administration created ICANN and delegated the Internet Assigned Numbers Authority (IANA) function. The organization with the IANA power was responsible for managing internet protocol (IP) addresses and domain names, which made ICANN a central institution for maintaining the stability and interoperability of the globally unique identifiers, such as .ca, .br, .uk. "Following a number of White Papers and public consultations, ICANN was formed as a non-profit, California-based corporation in late 1998".[8]

For a complete understanding of the context of ICANN's creation, it is crucial to consider the international situation of the late 1990s, with the hegemony of the United States after the Cold War and the strengthening and expansion of neoliberal values. The Internet regime was conceived at the "Fukuyama's end of history" period, a theory subscribed by many scholars and policy-makers at that time, which supported a liberal globalization with less State interference. Those concepts were propagated as non-political ideas and technical requirements for promoting development and democracy. "It could appear to be merely a technical machine, but, in fact, there are strong values running this machine. Liberalism is the spirit in the machine".[9] That discourse still reverberates in the current Internet governance.

[8] Lipton, Jacqueline, and Mary Wong. "Trademarks and Freedom of Expression in Icann's New gTLD Process." Monash University law review 38.1 (2012): 188–227. Pg 201

[9] Barnett, M. p. 5

1.3 What is the ICANN?

As mentioned, ICANN is a non-profit corporation based in California, United States, responsible for maintaining the stability and interoperability of the globally unique identifiers, such as .com, .ca, .uk, etc. That function is known as the domain name system (DNS). "Because domain names are vastly easier to remember and use than individual IP addresses, the DNS is fundamentally important to the reliable and predictable routing of internet communications, and ensuring its accuracy, robustness and security is therefore essential".[10]

That assignment of letters and words as part of the Internet system had a fundamental impact on the commercial potential, as brands could be recognized and establish their marketplace on the Web. "Thus, the system for allocating Internet domain names represents a vital mechanism in the construction and maintenance of the electronic marketplace".[11]

Building up from the liberal principles and minimal State interference, Internet Governance – and notably ICANN – is organized under a multi-stakeholder approach that consists of the participation of governments, the private sector and civil society. That model was first adopted by the United States in the early stages of the Internet system and was cemented afterwards at the WSIS in 2005, Tunis.

According to Waz and Weiser, a multi-stakeholder organization must, at the minimum, satisfy the following two criteria:

(i) representation (or, at a minimum, openness to representation) from a diversity of economic and social interests; and

[10] Lipton and Mary W. p. 201

[11] Simpson, Seamus. "Explaining the Commercialization of the Internet: A Neo-Gramscian Contribution." Information, communication & society 7.1 (2004): 50–68. Pg 60

(ii) a representational role for civil society, generally defined as relevant stakeholders other than government.[12]

There were solid arguments for establishing a multi-stakeholder institution as ICANN to manage the Internet with minimal State interference. The first is related to the high complexity of Internet regulation, covering overlapping commercial, political, social and technical issues related to its infrastructure. "In situations of such complexity, for government officials with a political remit it is often alluring and convenient to extol the virtues of self-management[13]". The second argument relates to the history of the Internet and its development by the American government, with significant participation of the academic community and the private sector. Those actors were involved in Internet management since its inception and retained knowledge and influence in the topic. The third argument is focused on the global and highly decentralized nature of the Internet's architecture. The academic community, companies and users militated vigorously against the creation of State-led governance systems at either the national or global levels[14]. The famous statement of Lessig can express the civil society position, "code is law"[15]. That discourse promoted a view that the functional nature of the Internet seemed to possess an inherent logic of self-regulation[16].

As seen in Figure 1 below, the ICANN structure is managed by a Board of 16 directors elected by different bodies and structures. There are also three supporting organizations that formulate policy recommendations on their expertise: the Address Supporting Organization

[12] Waz, Joe and Phil Weiser. 2012. Internet Governance: The Role of Multistakeholder Organizations. Journal on Telecommunications & High Technology Law 10: 331-349. Pg 336
[13] Christou, George, & Seamus, Simpson. "The Internet and Public–Private Governance in the European Union." Journal of public policy 26.1 (2006): 43–61. Pg 50
[14] Idem
[15] Lessig, Lawrence. Code. Version 2.0. New York: Basic Books, 2006.
[16] Christou and Seamus, p. 50.

(ASO), the Country Code Names Supporting Organization (ccNSO), and the Generic Names Supporting Organization (GNSO). Additionally, there are various advisory committees that also issue recommendations but without representation at the Board (in grey colour). One of the latter is the Government Advisory Committee (GAC), which represents states and other public organizations. Since the latest reform of ICANN, its recommendations must be taken into account by the Board in their discussions. However, the Board still has the authority to decide on the implementation or not of a suggested policy. If it rejects a GAC's recommendation the Board will have to justify itself.

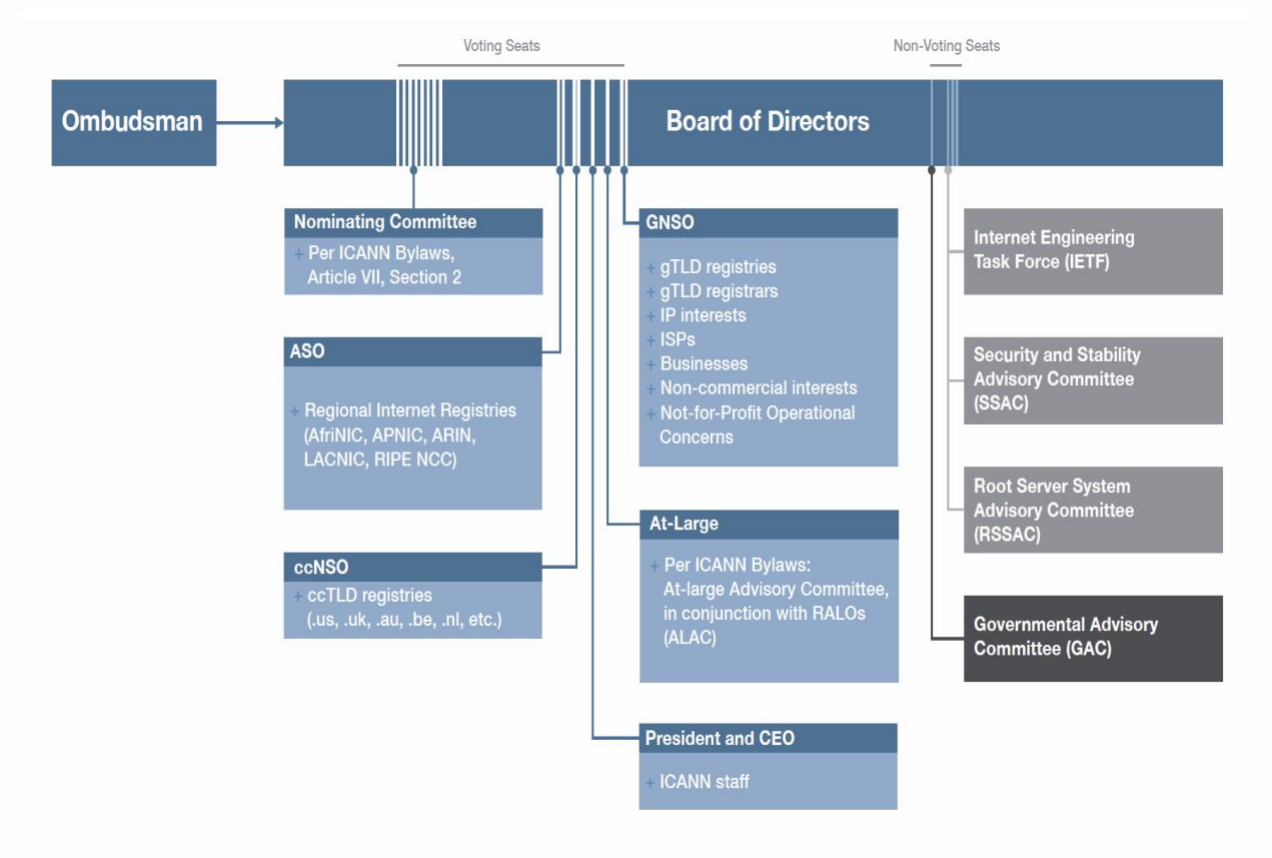

Figure 1. ICANN Organizational Chart [17]

[17] Source: Internet Corporation for Assigned Names and Numbers (ICANN). "ICANN Organizational Chart." ICANN, February 11, 2012. https://www.icann.org/resources/pages/chart-2012-02-11-en. (Last accessed May 8, 2021)

As Lucero points out, "who decides on the creation of new generic Top-Level Domain Names (gTLDs), such as ".com" and ".gov"? The ICANN Board of Directors on the advice of the GNSO, and without strong participation of government agents. The effects of such a procedure transcend the technical sphere and the North American jurisdiction, as gTLDs, unlike national names (ccTLDs), are domains with a global vocation, and the decision on new gTLDs can generate international legal, political, economic, social and cultural impacts."[18]. For instance, the recent assignment of the new gTLD ".amazon" to the private company of same name provoked a strong reaction from South American countries. Those countries claimed that the new gTLD should be assigned for Amazonian regional institutions, as the term has geographical and cultural importance to those nations and resident communities[19].

Regarding domains at the national level, ICANN does not directly control the management of each country's national names (ccTLDs), as ".ca". The institution signs commercial contracts with national organizations delegating that regional function but maintaining an oversight power. In case the national organization does not follow ICANN's conditions, the agreement can be nulled, and the regional assignment will be transferred to another regional partner.

The ICANN's management of the DNS has not only economic but also political impacts. "The management of the DNS must handle trademark conflicts over rights to domain names that touch on the sensitive subject of intellectual property. Besides trademark conflicts, political conflicts may also arise concerning the management of country-code top-level domains"[20]. An

[18] Translated from Portuguese into English. Lucero, Everton. (2011). Governança da Internet: Aspectos da formação de um regime global e oportunidades para a ação diplomática. Brasília, DF: Fundação Alexandre de Gusmão. Pg 162-163

[19] Vargas-Leon, Patricia., and Kuehn, Andreas. "The Battle for Critical Internet Resources: South America Vs. Amazon.com, Inc." Revista de Direito Setorial e Regulatório 1, no. 1 (2015): 1–22.

[20] Becker, Manuel. "When Public Principals Give up Control over Private Agents: The New Independence of ICANN in Internet Governance." Regulation & Governance 13, no. 4 (2019): 561–76. https://doi.org/10.1111/rego.12250. p. 565.

example of the political consequences is the assignment of DNS codes to not fully recognized countries, such as Palestine (.ps). The assignment of a new ccTLD for Palestine expands the country's claims of sovereignty to the Web, reinforcing its sense of community on the Internet, with potential impacts to the real-world conflict with Israel and to its recognition by other countries and institutions.

Despite the minimal State interference, a relevant feature of ICANN is its special relationship with the United States - its founder- which had maintained oversight power over the institution for many years. Since the creation of the ICANN in 1998 and until its last reform in 2016, the United States held two critical devices to control the institution: the IANA contract and the Affirmation of Commitments. "The IANA contract delegated the authority to exert the IANA functions to ICANN and had to be renewed regularly. The delegation relationship granted the US a de facto veto power because all changes to the content of the root zone (like the creation of a new top-level domain) required approval from the National Telecommunications and Information Administration (NTIA) before they could be implemented"[21].

On the other hand, the Affirmation of Commitments was "an agreement that allowed the US government to oversee ICANN's performance, as the agreement defined goals and principles ICANN committed itself to (inter alia stability, competition, private coordination, and representation)[22]". "As a result of the control mechanisms, ICANN could not deviate too much from US interests if it wished to maintain regulatory authority over the root[23]".

[21] Idem, p. 657.
[22] Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers. https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en. (Last accessed May 9, 2021)
[23] Becker, M. p. 657

1.4 ICANN and the World Summits

As the Internet was expanded throughout the world, many countries started to question ICANN's prominent role in Internet Governance and its submission to the US government. The issue was brought to the attention of the United Nations, which held discussions that culminated in the three World Summits about the topic: the World Summits on the Information Society of 2003 and 2005, in Geneva and Tunis, respectively; and the World Conference on Internet Telecommunications of 2012, in Dubai.

During the summits, there was a clear division between at least two groups of countries: one, composed mainly of Western countries, led by the United States, and which defended the existing structure. The other is formed by emergent countries, with particular reference to Brazil, China and Russia. They contested the current regime, noting the hegemonic control of the United States over ICANN and contesting ICANN's legitimacy. This group also proposed transferring the DNS management to the International Telecommunication Union (ITU), a body of the United Nations system. That organization functions based on national participation of one country-one vote, with a prominent role for the governments above the other potential actors, as the private sector and civil society, differently from the multi-stakeholder model adopted by ICANN. Despite their agreement in criticizing the hegemony of the United States in the Internet Governance regime, those countries did not have a common view regarding other discussions. For instance, "the main motivation among the contesting countries does not necessarily coincide with the views and priorities of the Brazilian society. Some countries of that group saw in the debate an opportunity to create government control rules over content accessed and distributed in their countries. (…) Saudi Arabia, China and Cuba, for example, had, and to a large extent continue to have, a primary

interest in exercising control over Internet use domestically, to avoid political opposition, religious discussion, dissemination of 'socially harmful' content or violation of press censorship laws.[24]"

The United States' position on those conferences was based on the support of the multi-stakeholder governance model as a safety mechanism to ensure the freedom of the Internet and human rights in the regime. Any discussion on reforming ICANN or transferring the IANA functions to an intergovernmental body would be deemed an attempt by governments to corrupt the system and have stricter control of their citizens' Internet content. "Limiting the role of governments is regarded by some as essential for the health of multi-stakeholder Internet governance. (…) Limiting government involvement relative to other stakeholders; however, is essential to maintaining the status quo in Internet governance – an outcome that is most favourable to those actors that helped establish it in the first place.[25]" The argument used in their favour is that "…governments should not (or cannot) be the sole arbiters of how the Internet is governed, based in part on the obvious technical factors that call for coordination between non-state actors like Internet service providers, Internet exchange points, telecommunications firms and Internet standards-setting bodies"[26]. Additionally, there is the perspective that states' involvement would undermine progress and innovation in the area.

Moreover, the United States decided to consolidate its position in ICANN due to the critics initiated in the first WSIS 2003. "The US government role in DNS governance was reinforced by a 2005 statement, entitled US Principles on the Internet's Domain Name Addressing System

[24] Lucero, p. 176
[25] Carr, Madeline. "Power Plays in Global Internet Governance." Millennium: Journal of International Studies 43, no. 2 (2015): 640–59. https://doi.org/10.1177/0305829814562655. Pg 652
[26] Idem

(NTIA 2005) which affirmed that: the United States will continue to provide oversight so that ICANN maintains its focus and meets its core technical mission"[27].

The multi-stakeholder was later established as a fundamental aspect, with the definition of Internet Governance in the WSIS 2005 Declaration, as earlier mentioned. The statement declares the participation of the governments, private sector, and civil society, without any reference to hierarchy among them. To increase the open debate and involvement of the multiple actors involved, the WSIS 2005 created the Internet Governance Forum, a multi-stakeholder platform organized by the UN to assemble yearly debates about Internet Governance. However, critics highlighted the diminished IGF's decision-power compared with ICANN's. "The IGF is a powerless talk-fest, which convenes every year to discuss worthy issues. ICANN, on the other hand, retains responsibility for key decisions relating to the DNS, being in the midst of managing a massive (and complex) expansion of gTLDs"[28].

Despite the consolidation of the multi-stakeholder model and the continuation of the US control over ICANN after the two WSIS, China and Russia led a group of countries, in 2012, that insisted on transferring the management of the Internet Governance to a UN body. The countries gathered 89 signatures for a proposal of revision to the International Telecommunications Regulations (ITR)[29]. The significant support to that proposal demonstrated that there is still an open debate about the Internet Governance model.

Another relevant discussion regarding Internet management was about the spelling of the word "Internet" with "I" instead of "i". That discussion took place in the ITU Plenipotentiary

[27] Lindsay, David. "What Do the .XXX Disputes Tell Us about Internet Governance? ICANN's Legitimacy Deficit in Context." Telecommunications Journal of Australia 63, no. 3 (2013). https://doi.org/10.7790/tja.v63i3.432. P. 2
[28] Idem, p. 2.
[29] Nocetti, Julien. "Contest and Conquest: Russia and Global Internet Governance." International Affairs 91, no. 1 (2015): 111–30. https://doi.org/10.1111/1468-2346.12189. P 111.

Conference, held in Antalya, Turkey, in November 2006, when the US delegation opposed using the term in lower case in official documents. According to Ambassador David Gross, head of the US delegation, the internet spelling could denote the ITU's intention to treat it as another regulable telecommunications system by that agency, like the telephone or the radio[30].

The first technical essays that refer to the Internet as a single global network employ the term internetwork in reference to the connection between networks. They also employ, in some excerpts, the term internet, in lower case, interchangeably with internetwork[31]. In the documents of organizations related to the development of technical protocols, the Internet became the spelling adopted, reinforcing the singularity of the Internet and its proper management by a different institution, ICANN, following the US interests.

2. CRITICAL THEORY

The discussions of the WSIS between two groups of countries are still relevant today. This study proposes to analyze the United States and allies' discourses for maintaining the existing structure, highlighting the arguments of protection of human rights and freedom of expression, but, at the same time, searching for other pressuring factors that motivate these countries to preserve the current regime. The critical theory of International Relations will be a valuable tool to implement that exercise. Thus, it is important to underline some of the essential concepts of this IR theory.

[30] Kurbalija, Jovan. An Introduction to Internet Governance. Genebra: DiploFoundation, 2008. p. 9

[31] Cerf, Vinton; Dalal, Yogen; Sunshine, Carl. "RFC675: Specification of Internet Transmission Control Program". December 1974. http://tools.ietf.org/html/rfc675. (Last accessed on May 13, 2021).

2.1 Concepts

Unlike other classical theories of International Relations (IR), scholars from the critical theory camp reject the problem-solving commitment of mainstream IR theories. The problem-solving method is ahistorical and focused on identifying existing issues within systems and structures, intending to find solutions for those problems without questioning the world structure. The problem-solving method is based on unchanging and universal laws, which is perceived as problematic by the critical theorists as it perpetuates discrepancies among the actors.

According to the critical theory, international relations can only be understood in their historical context, with particular attention to production structure. Robert Cox, author of many of the most important critical theory texts, such as "Production, Power and World Order", "Social Forces, States and World Orders: Beyond International Relations Theory" and "Gramsci, Hegemony and lnternational Relations: An Essay in Method", claims that the modes of production shape all the relations and interactions at the domestic and international levels. Moreover, there is a fundamental unjust structure that is not natural, thus passive of transformation.

The current capitalist mode of production is managed at a global level and relates to the process of internationalization of countries. Core elements on the State level are coordinated with the global level to implement and expand the internationalization of the existing mode of production. Examples of coordinating institutions on the global level are the World Bank and the IMF, which propagate neoliberal values and not rarely impose conditions for financial aid to countries, submitting them to global practices. The increasing participation of technocrats in the national policy-making and the creation of international forums of discussion specific for them build an environment of a global technocratic strata that support certain consensual values and

convey them to various States. For instance, Ministries of Finance and Central Banks are becoming more crucial in the national structures as, through them, the global consensual capitalist values are transposed to the States' policies.

For the critical theory, a fundamental concept is hegemony. According to Cox, "hegemony is a structure of values and understandings about the nature of order that permeates a whole system of states and non-state entities. In a hegemonic order these values and understandings are relatively stable and unquestioned. They appear to most actors as the natural order. Such a structure of meanings is underpinned by a structure of power, in which most probably one state is dominant, but that state's dominance is not sufficient to create hegemony. Hegemony derives from the dominant social strata of the dominant states in so far as these ways of doing and thinking have acquired the acquiescence of the dominant social strata of other states."[32]

Power is exercised through hegemony, which is not articulated by a State as a cohesive entity but, as mentioned, by a global dominant stratum of the dominant States. The hegemony is imposed by consent, not coercion. The Italian Marxist philosopher, Antonio Gramsci, explains how those two concepts will be crucial for international relations and later for the critical theory. For Gramsci, "both formal coercive laws and less formal consensus- promoting norms and modes of behaviour, expressed in political and civil society respectively, a social order was cemented in which the leadership and dominance of economic interests were promulgated and preserved. These essential twin elements of hegemonic power – consensus and coercion – were personified in Gramsci's use of Machiavelli's centaur (half man, half beast)"[33].

[32] Gill, Stephen. Gramsci, Historical Materialism and International Relations. Cambridge: Cambridge Univ. Press, 2000.), p. 42
[33] Simpson, Seamus. Pg 52

The consent is manufactured through the control of culture and social institutions. Those institutions, in turn, promote specific values through documents and best practices to different countries, not rarely patronizing them. "International institutions perform an ideological role as well. They help define policy guidelines for states and to legitimate certain institutions and practices at the national level. They reflect orientations favourable to the dominant social and economic order"[34]. The elites, also from emergent countries, are included in this system via education, "which brings about links among social classes of the countries encompassed by it"[35]. An example is the many technocrats who graduated from the Chicago School and promoted neoliberal values in their respective countries.

Even though the hegemony is not solely exercised by the dominant State, Cox stresses its importance for the international structure. "International institutions and rules are generally initiated by the state which establishes the hegemony. At the very least, they must have that state's support. The dominant state takes care to secure the acquiescence of other states according to a hierarchy of powers within the inter-state structure of hegemony. The consent of some peripheral countries is solicited"[36].

The Gramscian-inspired critical theory, as developed by Cox, points out that the Marxist idea of the proletariat revolution is problematic, especially transposing it to international relations. It states that it is not possible to presume the existence of a cohesive working class. There are subdivisions, and some workers – usually in high-skilled jobs - will be more connected to transnational companies and will support the current system, as they are relatively benefitted from it. This point is essential to understand the difficulties of creating an alternative order. For the

[34] Cox, Robert W. "Gramsci, Hegemony and International Relations : An Essay in Method." Millennium: Journal of International Studies 12, no. 2 (1983): 162–75. https://doi.org/10.1177/03058298830120020701. P. 172.
[35] Idem, p. 171
[36] Idem, p.171.

critical theory, the possible scenarios for contesting countries are: the reaffirmation of the order; incremental gains; and construction of a counter-hegemony with its own institutions. As Cox explains, "it means actively building a counter-hegemony within an established hegemony while resisting the pressures and temptations to relapse in pursuit of incremental gains for subaltern groups within the framework of bourgeois hegemony. That is the line between war of position as a long-range revolutionary strategy and social democracy as a policy of making gains within the established order."[37]

2.2 Critical theory and the Internet Governance

The concepts introduced above will be of utmost importance for analyzing Internet Governance and, more specifically, ICANN. Critical theory is particularly useful to that regime because it provides tools that question the Governance's structure while considering social and economic aspects. Critical theory also has an ample understanding of actors of International Relations, not only restricted to States, which is adequate for the evaluation of the multi-stakeholder model. Furthermore, in a multi-stakeholder model, it is vital to understand how different players act in consonance despite their theoretically different views on how the Internet should be managed, which can be explained by the consensus and hegemony concepts of critical theory.

The critical theory's concept of hegemony is central to understand the US and allies' preponderance in Internet Governance and how other actors are sometimes diminished by the economic interests of these countries in partnership with their private sector. The ideological role

[37] Idem, p. 165

of the institutions - ICANN, in this case – will be essential to build consensus among the different actors regarding specific guidelines and policies to be further developed, such as the adoption of a particular multi-stakeholder model with the allocation of its top positions to the private sector, the restrictions to the governmental influence, and the prioritization of intellectual property (IP) rights in the electronic marketplace over other concerns. As later discussed, ICANN has helped disseminate a discourse that legitimizes this approach and delegitimizes alternative models of governance (e.g., those that favour more control by public agencies). "Consensus and hegemony, rather than being oppositional forces, have been, somewhat paradoxically, intrinsic to the Internet's recent commercial development. Specifically, the emergence of a broad and growing consensus on the need to develop the Internet into a (at most) lightly regulated marketplace, an idea heavily promoted by governments in leading-edge industrial states and regions, has ensured that the interests and requirements of business – infrastructure owners, service providers and users alike – have predominated.[38]"

Moreover, critical theory highlights the importance of the dominant country in building and promoting those international institutions with States' acquiescence according to a hierarchy of power. That is the case of ICANN, created by the United States, in a context of undisputed world supremacy. Despite the absence of an international treaty regulating ICANN, the US government sought the support of different countries to improve the institution's legitimacy, primarily because of contesting voices at the WSIS. One mechanism to enlist allies was the introduction by the United States of a mandatory clause recognizing ICANN's Uniform Domain-Name Dispute-Resolution Policy (UDRP) mechanism in free trade agreements. That clause would protect trademarks in domain names registered on national code domains. The United States,

[38] Simpson, p. 51

resorting to the International Public Law, aimed to provide legal recognition to the core of the private domain-name management regime, created in the absence of a multilateral negotiating process. After signing those treaties, commercial partners were indirectly tying themselves to the existing domain-name management regime[39]. Another strategy used by the US to enrol more members to its side was sharing space at the Board of Directors – ICANN's decision-making body – with the private sector of selected countries, according to the hierarchy of power prescribed by the critical theory. This point will be further revisited in the section about ICANN's legitimacy.

Critical theory provides another valuable tool to understand the Internet Governance regime when it explains the connections created by the elites of dominant and emergent countries, building an international consensus via education. Moreover, this critical body of IR literature highlights the division inside the worker class, with a substratum linked to multinational companies and more prone to defend their interests. That concept will be necessary, again, in another section of this study related to the composition of ICANN's Board of Directors.

Additionally, critical theory brings interesting inputs to explain the difficulties of building a counter-hegemony order. The pressures for accepting incremental gains in the existing framework will be essential to understand the reform proposals of some countries while others continue to pursue the establishment of a different regime for Internet Governance. Those two avenues can be found at the suggestions of Brazil, Russia, India, China and South Africa (BRICS), which will be analyzed in a later section.

Last but not least, critical theory questions the world structures, proposing an analysis that defies the view that the world order follows unchanging and natural rules. That will be vital to put in perspective discourses replicated by governments, the private sector and civil society as

[39] Lucero, p. 148

fundamental rules of Internet Governance, such as the minimal participation of governments in the decision-making processes. Critical theory helps understand that the existing norms are created based on political choices rather than natural ones. Discourses are tools for reinforcing a current reality and diminishing alternative options. According to Cox, hegemony is a fusion of ideas, institutions, and material forces, which reinforce each other. Discourses, from this perspective, are the product of hegemonic institutions and help to support hegemony by "naturalizing" it.

3. THE UNITED STATES AND ALLIES' DISCOURSE

3.1 Obtaining the support of the private sector and the civil society

Since the first international debates about Internet Governance, the United States sought arguments to justify its hegemonic position in managing the Internet's critical resources. As previously described, the United States delegated the IANA functions to ICANN through a contract, and any fundamental change in the root services had to be approved by the NTIA, granting the US government a veto power. Moreover, ICANN had to follow the guidelines prescribed by the Affirmation of Commitments, which provided an oversight power to the Department of Commerce. If ICANN did not follow those guidelines, the US government could not renew its delegation contract to the institution.

This hegemonic position was backed by large sectors of civil society and the private sector. One can wonder why that situation would gather such support. The first argument would be the discourse of protection from State interference and, most importantly, guaranteeing freedom of expression on the Web. The US discourse in the WSIS 2003 was firmly based on that point. Ambassador David Gross opened his remarks at a press conference during the Geneva meetings, stating that "the issue, really, I think, is to some degree, ensuring that the focus really is on that

freedom of expression, and that people understand the importance of it." He also closed his remarks reinforcing the importance of defending the freedom of expression, affirming that "well, first of all, I'm very optimistic that we will have a strong statement in the document that will affirm the importance of freedom of expression. We believe that is extraordinarily important. We, of course, are not alone in that view. Many others feel the same way we do".[40]

The United States took the role of defender of the freedom of expression, which was a top priority for civil society at that time. Different non-governmental organizations (NGOs), scientific institutions, community media and others drew attention, in the preparatory works of both WSIS, to human rights, people-centred development, freedom of speech and press freedom. The technical community also defended the system as it was, avoiding any type of reform fearing there would be an attack on the efficiency of the Internet. Any other countries' proposal would be labelled as a potential threat to the freedom of expression. That community would adopt the motto "if it isn't broken, don't fix it" and "first, do no harm"[41]. The catchphrases and the fear of compromising the freedom of expression prevented civil society from seriously considering other countries' proposals for Internet management. Then, the United States had one of the three main actors of the multi-stakeholder model on their side.

The private sector, another important player, was also prioritized in the United States position during both WSIS. One of the pillars of the US negotiating strategy in Geneva was the commitment to the private sector and intellectual property rights protection. As most technological innovators were, at the time, from the US and Western countries, the defence of the private sector and IP rights was intimately aligned to those countries' interests. "The protection of copyright and

[40]Gross, David. "Briefing on World Summit on the Information Society". US Department of State. Washington, DC. December 3, 2003. https://2001-2009.state.gov/e/eeb/rls/rm/2003/26862.htm. Last accessed on May 11, 2021.
[41] Lucero, p. 111

trademarks is central to the current regime. The strengthening of existing rules and their application on a global scale are among the main objectives for which the regime was created"[42]. ICANN establishes in their delegation contracts with national partners clauses that foresee IP protection on the national level. At the same time, the US and allies handpick multilateral organizations to enforce the IP rights, such as the World Intellectual Property Organization (WIPO). Incongruently, the United States and allies resorted to international organizations to protect their business communities' interests while defending the leadership of the Internet regime by the private sector in a non-profit institution hosted in California, and opposing to assign a more significant role to governments and intergovernmental organizations in ICANN's structures.

Again, Ambassador David Gross referenced to the private sector leadership at the same press conference, highlighting that "we believe, as a core principle, that the process forward should be private sector-led because we think that it is such a dynamic space, constantly changing, that governments, by their nature, will not be able to keep up with the changing technology and the changing aspects, but rather, would be just more reactive. And so we think it's extraordinarily important that it continue to be private sector-led…"[43]. Protecting a private sector-led institution as ICANN, the United States protected their economic interests as the Internet was controlled mainly by Western companies. Thus, the US ensured, once again, the support of another important actor of the multi-stakeholder model.

That model was defended at the WSIS 2003 and formalized in the Declaration of WSIS 2005. The USA would continue supporting the multi-stakeholder model in international discussions to come. Ambassador Terry Kramer, US Head of Delegation to the World Conference on International Telecommunications in 2012, stated that "all of the benefits and growth of the

[42] Idem, p. 145
[43] Gross, D.

Internet have come as a result not of government action or intergovernmental treaty. They are an organic expression of consumer demand and societal needs, along with other multi-stakeholder governance.[44]"

It is clear how engaged was the United States in supporting the multi-stakeholder model, even in domestic discussions. In a keynote speech at a Senate Hearing in 2011, the Assistant Secretary of Commerce for Communications and Information, Lawrence Strickling, declared that "the multistakeholder process does not guarantee that everyone will be satisfied with the outcome. But it is critical to preserving the model of Internet governance that has been so successful to date that all parties respect and work through the process and accept the outcome once a decision is reached. When parties ask us to overturn the outcomes of these processes, no matter how well-intentioned the request, they are providing 'ammunition' to other countries who attempt to justify their unilateral actions to deny their citizens the free flow of information on the Internet. This we will not do"[45]. That discourse frames any other option for Internet management as a threat to the Internet and its freedom of expression, positioning the United States as its most important defender, thus legitimating their hegemonic powers in that regime.

3.2 The reluctance in formalizing international norms on Internet Governance

The United States and its allies promoted the multi-stakeholder model adopted by ICANN, also backed by the private sector and civil society. To expand the participation of these collaborative non-governmental actors, the United Nations created the Internet Governance

[44] Kramer, Terry. Prepared remarks, Dubai, United Arab Emirates, 13 December 2012, https://2009-2017.state.gov/e/eb/rls/rm/2012/201206.htm (Last accessed May 11, 2021)
[45] Strickling, Lawrence. Speech delivered at the 29th Annual Telecommunications Policy and Regulation Conference, Washington DC, 8 December 2011. <http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te> (Last accessed on May 12, 2021).

Forum, as a result of agreements at the WSIS 2005. As already mentioned, the platform is organized yearly and assembles the three main actors of the multi-stakeholder process. “The IGF’s limitations on the possibility of coordinating policies, making decisions, or negotiating agreements have not allowed progress in the standardization of the Internet management at the international level. In the absence of a universally applicable norm, national jurisdictions will continue to provide their own solutions to the issue, in accordance with the social, political and cultural values of each country, with the potential to harm the social and cultural relations on the Internet. Behind the scenes, the United Nations secretariat recognized that the IGF’s weakness laid in its inability to manifest against the unilateral US control of the DNS. The inequity in the geographic distribution of root servers was also perceived, in general, as one of the problems associated with the current model of Internet governance”[46]. That last point will be further revisited in a later section.

The United States, aiming to preserve their preponderance over Internet management's critical resources, resisted creating multilateral norms at the IGF, WSIS and other world summits on Information Society and Communications. If the United States and allies were mainly worried about protecting the Internet from State interference and harm to the freedom of expression, a legally binding agreement would be ideal for establishing the parameters and limits on how different countries could deal with Internet management. On the contrary, the option for non-regulation opens space for arbitrary resolutions at the national level. In the discourses, the freedom of expression is pointed to as one of the main reasons for avoiding further reforms at the ICANN and maintaining the oversight powers of the United States; however, that incongruence might

[46] Lucero, p. 159

reveal that the main reason for maintaining the *status quo* is to use ICANN as a platform of promoting and preserving US and Western countries' private sectors interests.

The discourse adopted by the United States and its allies was effective in gathering the support of civil society. "The broader US goal of an open and free internet was shared by the stakeholder community of ICANN, which is dominated by American actors for path dependent and technical expertise reasons"[47]. The US and Western private sectors were also favouring that discourse as the existing regime benefitted them. Again, optional models for Internet Governance were framed as threats, which stimulated the actors towards inertia, preventing serious considerations of reforms that could improve geographical diversification, necessary as the Internet expanded worldwide.

4. EDWARD SNOWDEN'S REVELATIONS

In 2013, the support for the US preponderance in the Internet Governance regime suffered a significant blow, following the National Security Agency's surveillance disclosures by Edward Snowden.

Edward Snowden was a former agent of the NSA, until then a rarely known agency in the United States bureaucracy. Snowden copied and leaked several highly confidential documents revealing that the US government ran a massive global surveillance program, jointly operated with countries from the Five Eyes – an intelligence-sharing group of countries composed of Australia, Canada, New Zealand, United Kingdom, and the United States. The large US digital and telecommunication companies, such as AT&T, Facebook, Google and Yahoo, were also involved,

[47] Becker, p. 570

sharing data from their users worldwide with the US authorities. Some European companies were also involved.

The US government charged Snowden for violating the Espionage Act of 1917 and the theft of government property. Right after, the Department of State revoked Snowden's passport, who was able to escape to Moscow, Russia, which granted asylum to him. Snowden remains in Russia, with permanent residency since 2020.

The leaks hit the newspapers in a series of stories, first at the Guardian. It created a massive reaction from countries and civil society, which opened the debate about mass surveillance, national security, and individual privacy. Edward Snowden defended himself, affirming that the disclosures were necessary "to inform the public as to that which is done in their name and that which is done against them"[48]. Snowden's revelations revealed that the USA and allies were spying on individuals and governments, some of which formal allies of Washington, such as Brazil and Germany.

The disclosures brought into attention irregularities in Internet management that were long pointed out by different countries but never really considered worthy of discussion, due to the potential threat to the freedom of expression. "Such moments of disruption highlight previously hidden characteristics of socio-technical artifacts, opening up opportunities for the study of new aspects of the phenomena that were not easily observable before or did not seem important[49]".

The Snowden revelations undermined the US and allies' discourse. The image of the United States as the protector of the freedom of the Internet was demolished, as it was unveiled a

[48] Greenwald, Glenn, Laura Poitras, and Ewen MacAskill. "Edward Snowden: the Whistleblower behind the NSA Surveillance Revelations." The Guardian. Guardian News and Media, June 11, 2013. https://www.theguardian.com/world/2013/jun/09/edward-snowden-nsa-whistleblower-surveillance. (Last Accessed: Jun 14, 2021)

[49] Cavelty & Wenger, p. 8.

massive scheme of espionage and data collection from users and governments, perpetrated in alliance with the Western private sector. "The American credibility as 'good stewards' has been so damaged by the Snowden revelations that even the European Union is considering adopting a local cloud to ensure protection of its sensitive data.[50]"

Furthermore, the revelation that US digital and telecommunication companies collaborated in the espionage program created a rift between the private sector and civil society. "The Snowden leaks revealed the extent to which the US intelligence community relied upon personal data gathered by these US information firms"[51]. It once again confirmed that a private-sector leadership in Internet Governance worked in favour of the United States. "The synergy between the dominant US private sector and the US government serves to aggregate rather than balance or counter power in the multi-stakeholder process"[52].

The civil society, notably the technical community, started to consider the necessity of protection from their protector, the United States. They released, in October 2013, the Montevideo Statement on the Future of the Internet Cooperation, signed by multiple technical institutions. In the document, the signees still advocate for the multi-stakeholder model. However, they "called for accelerating the globalization of ICANN and IANA functions, towards an environment in which all stakeholders, including all governments, participate on an equal footing".[53] They also "expressed strong concern over the undermining of the trust and confidence of Internet users

[50] Polatin-Reuben, Dana; Wright, Joss. "An Internet with BRICS Characteristics: Data Sovereignty and the Balkanisation of the Internet". FOCI 2014. Pg 2.
[51] Carr, p. 656.
[52] Idem
[53] Internet Corporation for Assigned Names and Numbers, 2013. "Montevideo Statement on the Future of Internet Cooperation." (online) 7 October. https://www.icann.org/en/news/announcements/announcement- 07oct13-en.htm (Last accessed May 12, 2020).

globally due to recent revelations of pervasive monitoring and surveillance"[54], demonstrating their frustration and unprecedented opening to discuss reform in the Internet system.

The adverse effects of Snowden revelations were captured by a poll conducted by Amnesty International in 13 countries that found that Germany and Brazil were the nations where the citizens were most concerned about surveillance from the United States – 81% and 80% respectively – and, in a lesser degree, from their own government – 69% and 65%[55]. Both countries were at the heart of Snowden's revelations having their President, Dilma Rousseff, and Chancellor, Angela Merkel, directly spied on. Brazil and Germany considered "NSA's actions as a violation of human rights and as something that highlighted the need for a debate on global norms about how to protect privacy"[56].

Both countries worked together, in 2013 and 2014, co-sponsoring two resolutions at the UN General Assembly (69/166 and 68/167), both entitled "The right to privacy in the digital age". "Without naming the NSA or the American government, the resolutions stress that mass surveillance and the violation of privacy are threats to democratic freedoms. It emphasizes that States and business companies have the obligation to respect and protect personal data. (…) Both resolutions call upon States to protect the right to privacy, take measures to preserve it and review its own actions to evaluate if they are not violating it".[57]

There was an evident change on the international scene regarding the preponderance of the United States on Internet Governance. Different countries noticed they could not rely on the US

[54] Idem.
[55] Santoro, Maurício, and Bruno Borges. "Brazilian Foreign Policy Towards Internet Governance." Revista brasileira de política internacional 60.1 (2017). Pg 3
[56] Abdenur, Adriana Erthal, and Carlos Frederico da Silva Gama. "Triggering the Norms Cascade: Brazil's Initiatives for Curbing Electronic Espionage." Global Governance: A Review of Multilateralism and International Organizations 21, no. 3 (2015): 455–74. https://doi.org/10.1163/19426720-02103007.
[57] Santoro; Borges, p. 5-6.

protection, as they were also the targets of espionage, and neither on US private companies, which were collaborating with the government. The discourse of the USA as a protector of the freedom of expression could not be maintained anymore.

Snowden's leaks were a catalyst for change in Internet Governance. It affected the international consensus, which connected the different actors, an essential factor in a multi-stakeholder institution such as ICANN. The disclosures opened space for contesting the hegemony and reinforced the necessity of reforms that were, until then, discouraged or so much opposed.

5. REFORMS

The world post-Snowden is different for Internet Governance. Various countries felt encouraged to move forward with their proposals for reforms, as the context was favourable for that discussion with the recent engagement of other actors, such as civil society. Despite the openness to discuss changes, the process of reform is still unfolding, as countries are until now divided into groups that diverge on the fundamentals of the Internet Governance regime.

In this study, the focus will be on the US and BRICS' proposals as they diverged the most. Another point of discussion will be the mechanisms of attraction of actors by the hegemonic system to preserve the established order.

As Lucero points out, there are mainly two avenues for the countries that intend to expand their participation in the Internet Governance regime: "acting - from within - in defence of the country's concrete interests in current spaces for government action, such as the GAC; and - on the outside - in the United Nations, following the WSIS, the IGF, the ITU, UNESCO and bilateral

contacts, to question the bases of the current regime, making it less dependent on the US government and more representative of the international community."[58]

5.1 China and Russia

China and Russia have similar proposals for the reform of Internet Governance institutions. Since the early discussions at WSIS 2003 and 2005, both countries demonstrated a deep concern with data sovereignty, which means that companies that do business and deal with their nationals should store data in their territories. Those two countries recurrently expressed worries about the cultural and social impacts of the Internet on their societies, notably related to potential damage to their countries' governance.

China and Russia support Internet Governance led by an international organization founded by a multilateral agreement where countries have the decision-making power. "China steadfastly supports a traditional, sovereignty-based communications governance regime in the international arena. It prefers an international regime organized around treaty-based intergovernmental organizations that rely on one country, one vote distributions of power".[59]

Furthermore, both countries co-sponsored with Tajikistan and Uzbekistan a United Nations General Assembly proposal in 2011 called "International code of conduct for information security". "This voluntary code, which has thus far failed to reach consensus, asserts that 'policy authority for Internet-related public issues is the sovereign right of States' as opposed to other stakeholders. Additionally, other sovereign rights are asserted over data, such as the right to curb 'the dissemination of information that incites terrorism, secessionism or extremism' and the right

[58] Lucero, p. 76
[59] Polantin-Reuben; Wright, p. 4

'to protect their information space and critical information infrastructure from threats, disturbance, attack and sabotage'"[60]. The proposal was not approved mainly due to the culturally protectionist language and the alleged shared interest of China and Russia in curbing the influence of domestic separatists. Their primary concerns would be the political control of information within their national borders[61].

As mentioned earlier, China and Russia proposed, in 2012, a revision of the International Telecommunications Regulations (ITR) to transfer ICANN's functions to the ITU. Both countries made another attempt, in 2020, with the personal involvement of Russia's former President and current vice-president of the National Security Council, Dmitri Medvedev, who stated that "the U.S. fully controls the Domain Name System used to resolve IP-addresses". That situation should be corrected to implement a rules-based order for promoting an open and secure Internet[62].

In a broader discussion about cyberspace - transcending ICANN's management of critical resources -, Russia proposed to the UN the creation of the Open-Ended Working Group (OEWG), a discussion body with all UN member states, responsible for the debate of different topics related to the Internet, such as cybercrimes, regulation of hate speech, etc. With the support of China, Russia intends to strengthen the OEWG in opposition to the existing Group of Governmental Experts, composed of 25 members, that have been issuing reports on tech issues for the United Nations for many years.[63]

[60] Idem, p. 2-3.
[61] Idem, p. 4
[62] Ignatius, David. "How Russia and China Are Attempting to Rewrite Cyberworld Order." The Washington Post. WP Company, March 31, 2021. https://www.washingtonpost.com/opinions/global-opinions/how-russia-and-china-are-attempting-to-rewrite-cyberworld-order/2021/03/30/16030226-9190-11eb-a74e-1f4cf89fd948_story.html. (Last accessed May 14, 2021)
[63] Idem

China and Russia employ the discursive tool of democracy to advance with their interests of reforming Internet Governance. The countries repeatedly stress the democratic importance of their proposal, an evident reference to the formula of one-country and one-vote, to the detriment of the current multi-stakeholder model, where non-governmental actors have the top positions, and where some countries are still feeling unheard. China and Russia propose a counter-hegemonic system, where the existing institutions – notably ICANN – would be replaced by a multilateral international organization, where sovereign States deter power, and China and Russia could have more important roles. The influence of the dominant global strata would be attenuated as their decision-power would not be exercised directly anymore.

5.2 India and South Africa

India and South Africa are not vocal actors in the Internet Governance debate for different reasons.

India has been active in ICANN, having Indian citizens being nominated as directors at the decision-making body of the institution, as will be further discussed in a later section. "It is worth noting that India appears to be most interested in safeguarding the data of its Western investors rather than asserting sovereignty over its own nationally-generated data.[64]" India is one of the most important providers of cloud services in the world, and the current regime favours the free flow of data required for that activity. For economic interests, India's approach to Internet Governance is similar to the US and Western's, supporting the multi-stakeholder model and accepting the private sector leadership.

[64] Polantin-Reuben; Wright, p. 4

South Africa, in turn, is not vocal in the Internet Governance regime as a reflection of the very incipient domestic debate about the topic. The country does not have a determined national foreign policy, often acting as a bloc with the other African States favouring the multi-stakeholder model and a free and open Internet[65].

Both countries have different incentives to conform to the international consensus and acquiesce to the existing hegemony. The modal of production, represented by the multinational digital companies, compels those countries to conform to the hegemonic order, transferring some economic benefits and creating advantages for following the existing norms and rules. India's consent is also pursued when the dominant actors provide more space and representation for Indian citizens at the Board of Directors. At the same time, those dominant actors strategically select Indian citizens who are professionally connected to multinational companies, leading to a situation where those individuals are more prone to defend the private sector's interests and the hegemonic consensus than India's national interests.

5.3 Brazil

Since the beginning, Brazil has been very vocal on Internet Governance discussions, supporting more democratic governance with increased government participation. One of Brazil's primary concerns is regarding the capture of institutions by private interests, which could be avoided by improving States' decision-making and oversight powers. Initially, Brazil and other emergent countries were sided with China and Russia for transferring the management of the

[65] Idem

critical resources to the ITU. However, Brazil's position has evolved, reflecting domestic developments.

"Historically, Brazil has been part of the coalition opposing the United States' government dominant role in this regime, claiming for more engagement of the UN institutions and more space for representatives of social movements and activists".[66] The support of the multi-stakeholder model gained traction after the approval of Brazil's digital framework, the "Marco Civil da Internet", in 2014, legislation that resulted from long public consultation and promoted collaboration with the private sector and civil society in the domestic Internet management. Brazil also gained more legitimacy by developing its own domestic multi-stakeholder approach and sharing its best practices at global forums, such as the IGF.

However, differently from the existing regime at ICANN, the country's model establishes a more prominent role for the government, which coordinates the inputs from the other actors. "The domestic legislation became the basis for the positions which Brazilian diplomats were proposing at the multilateral level, and they found a sympathetic global audience in the aftermath of the NSA´s disclosures".[67]

Brazil became more involved with the existing regime, acting within its structures for managing the national domain .br - with advice from the technical community -, and for defending the expansion of the role of governments via GAC – one of ICANN's advisory body - that would be capable of coordinating and articulating issues related to public policies within the scope of ICANN[68]. According to Brazil's position, GAC should have enforcing-power to implement a vital function in the institution: prioritizing the public interests and defending the capture of ICANN's

[66] Santoro; Borges, p. 2
[67] Idem
[68] Lucero, p. 76

structures by private companies. As mentioned earlier, Brazil also advocates for human rights on the Internet, notably protecting individuals' privacy. That could be achieved through international agreements, which the United States and its allies still oppose.

Under the critical theory lenses, Brazil's proposal of reform for ICANN would not be considered counter-hegemonical but one that sought incremental gains. As a democratic country, Brazil's domestic policies were also influenced by the hegemonic consensus through the connection of the Brazilian elite with the dominant global strata, partially internalizing the international consensus in the domestic legislation. Brazil modified some standard guidelines for the multi-stakeholder model, including hierarchical coordination with the government at the top. The domestic policy would be transposed to the country's international position at ICANN, with more substantial support for the multi-stakeholder model and an active engagement with the institution. On the other hand, Brazil still stands for expanding the governmental role that could be achieved within the existing framework through incremental gains.

5.4 ICANN's reform of 2016

Since Snowden's disclosure of the mass surveillance program, there was a massive pressure for comprehensive reform in Internet Governance, especially at ICANN. The discourse of the United States as protector of the freedom of expression on the Web, which legitimated the US primacy in the system, could not be sustained anymore. First and foremost, the United States lost its credibility to retain its veto power over ICANN.

From 2013 until 2016, the US government negotiated with ICANN its autonomy from NTIA. A reform in ICANN was implemented, with the termination of the US veto power and the

creation of several different bodies, as explained earlier and shown in Figure 1 (p. 10), to make the independent ICANN accountable.

ICANN was granted independence from the US government. The institution would, in turn, answer to a composition of actors through a detailed and complex new process, the Empowered Community (EC). The EC "is the mechanism through which ICANN's Supporting Organizations (SOs) and Advisory Committees (ACs) can organize under California law to legally enforce community powers. The community powers and rules that govern the Empowered Community are defined in the ICANN Articles of Incorporation and Bylaws".[69]

Representatives of all SOs and ACs, including the GAC, can participate in the EC, which "has a process to raise concerns with an action or inaction made by the ICANN Board or organization. This escalation process gives SOs and ACs opportunities to discuss solutions with the ICANN Board".[70]

The EC has the power of rejecting ICANN's budget, operating and strategic plans, bylaw amendments. It can approve fundamental bylaws, article amendments and asset sales. It can appoint and remove individuals to the Board of Directors (except the President) and recall the entire ICANN Board. It can initiate a community reconsideration request, mediation, or Independent Review Process (IRP), and it has the rights of inspection and investigation.

Despite the comprehensive structural reform, the power of governments in the institution was still diluted among other actors. The governments were only represented at GAC, one of many advisory boards to the Directors. The other actors of the multi-stakeholder model were represented in all different bodies and in the Board of Directors itself. "The US government's main objective

[69] Internet Corporation for Assigned Names and Numbers (ICANN). "Empowered Community." ICANN. Accessed June 14, 2021. https://www.icann.org/ec.
[70] Idem

was to prevent states with opposing preferences like China and Russia from being granted greater control over the DNS. Thus, the transfer of authority to another intergovernmental controlled agent like the ITU, as well as reforms toward greater control of ICANN by disadvantaged states, was highly unattractive"[71].

The reform consented to and implemented by the United States preserved the private sector-led model adopted since the beginning of ICANN. Thus, the composition of the private sector and civil society represented in the institutions increased in importance as there were no more oversight and veto powers. "The composition of ICANN's stakeholders itself increased the likelihood of future goal convergence. The composition includes companies, academics, and NGOs, such as the Internet Society (ISOC), headquartered in the United States. Therefore, from a US perspective, the diverse array of non-governmental actors represented in ICANN make that global body a more suitable traffic cop than the United Nations or another organization that's made up exclusively of state governments."[72]

As it will be further analyzed in another section, the nomination of US, European and other OECD corporations' representatives in the ICANN's bodies, notably the Board of Directors, will be of utmost importance to maintain a convergence of interests and the preservation of economic objectives, technological leadership, and the discourse of a free and open Internet. Those would rebuild the global consensus that was diminished after Snowden's disclosures. "When government tasks and authority are delegated…governance in networks becomes important. Under such conditions, governments no longer simply issue instructions and monitor their implementation, but

[71] Becker, p. 570
[72] Idem

seek to shape the framework conditions so that cooperation operates as smoothly as possible even without constant oversight coming with a set of challenges for state-society relationships".[73]

Another point that still provokes heated debates in ICANN is its submission to the domestic legislation of the United States. As a non-profit organization without an international legal personality, ICANN is submitted to California and US federal rules. According to its Articles of Incorporation, ICANN establishes that it is also submitted to public international law and principles of international law.

However, ICANN itself, commenting on the Working Group on Internet Governance's report – a group established by the UN in 2003 to recommend policies -, justifies its global operations by extensive use of private international law through agreements and memorandums of understanding signed with domain registry operators around the globe. In general, these contracts refer to the US laws and the state courts of California, ICANN's headquarters, to resolve any conflicts of execution[74]. "Moreover, if ICANN is regarded as a truly international regulatory body, whose decisions are subject to multiple internal checks and balances, it seems unusual that it should be subject to the domestic laws of one particular nation state"[75].

Therefore, the reform could indirectly maintain the influence of the US government through the preservation of the private sector and civil society powers at ICANN bodies and the restriction of direct influence of governments. The United States handed its oversight and veto powers in response to international pressure. Still, it could preserve its influence through the convergence of interests with US, European and OECD countries' companies and organizations, overly represented at ICANN's bodies. Moreover, ICANN is still subject to US domestic laws as

[73] Cavelty; Wenger, p. 9-10
[74] Lucero, p. 139-140
[75] Lindsay, p. 12

it is a non-profit organization based in California. Many countries considered that reform unsatisfactory, including the BRICS, as it vastly differed from their proposals. It rekindled debates about ICANN's legitimacy.

6. ICANN'S LEGITIMACY

The discussion about ICANN's legitimacy is vivid since the creation of the institution back in 1998. It is a perennial debate with particularly heated moments, such as both WSIS summits, the 2011 and 2012 China and Russia's proposals at the United Nations, the Snowden disclosures, and the 2016 ICANN's reform.

As mentioned earlier, ICANN does not have an international agreement that establishes its creation and norms by the member States. The institution was created unilaterally by the US government and relies on the multi-stakeholder model as a framework for operationality. The lack of international agreement and the adoption of the multi-stakeholder model set the conditions for the hardships and opportunities for ICANN to obtain legitimacy.

6.1 The lack of an international agreement and the bottom-up approach

The United States tried to create a web of bilateral and plurilateral agreements with cross-references to recognize ICANN's management of the Internet's critical resources. As previously described, the US government included mandatory clauses in free trade agreements that resorted to ICANN's UDPR mechanism to protect commercial brands and trademarks registered in the

national domains of the signees[76]. That was an attempt to circumvent the lack of international agreement for the creation of ICANN, as the United States indirectly recognized that it created a problem of legitimacy for the institution. "As a private corporation with a multi-stakeholder internal structure, ICANN has weak claims to formal legitimacy. As a result, as long as it exists in its present form, without a firm foundation in traditional public international law, such as would be provided by an international treaty, ICANN will be subject to questions about its legitimacy."[77]

Due to the lack of a founding international agreement, ICANN operates in an unstable system. Countries need to recognize ICANN's actions as legitimate constantly. On the bright side, it pressures the institution to have a better performance, but, at the same time, it creates instability as countries frequently complain about its voice being unheard in the institution, which could provoke rupture in the working system. Oppositely, "a UN-based organization, such as the ITU, has the imprimateur of its sovereign nation state members, it is remote from other stakeholders, and potentially cumbersome and unresponsive in its decision-making. It is, however, clearly based on a recognized lawful source of authority. On the other hand, it is impossible to point to a persuasive legal source for ICANN's authority over the international resource that is the DNS. Any legitimacy that ICANN has is not based on a positive legal source, but arises solely from the extent to which stakeholders, including national governments, recognize ICANN as legitimate. This means that the ICANN multi-stakeholder model is inherently unstable, as it must have continual recourse to contestable normative accounts of legitimacy.[78]"

To ensure its legitimacy, ICANN must resort to the argument of representativeness in a bottom-up approach. ICANN would be a voice for multiple actors and a platform that congregates

[76] Lucero, p. 148
[77] Lindsay, p. 11
[78] Idem, p. 4

users, technical experts, NGOs, the private sector, governments, and other international organizations. In article 2, III of ICANN's Article of Incorporation, the institution incorporated a version of the rule of law within its constituent legal documents, which, in general, require it to operate fairly and transparently. The aforementioned article states: "The Corporation shall operate in a manner consistent with these Articles and its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations"[79].

Thus, ICANN constantly has to prove its authority and efficiency in managing the Internet's critical resources while having the constant necessity of approval by the multiple actors involved. "In the absence of convincing external sources of legitimacy, ICANN's continued authority, therefore, rests, to a considerable extent, on how well it manages its stakeholders. Possibly, more importantly, ICANN's tenuous claims to authority mean that it must be meticulous in complying with fair and transparent policy processes.[80]"

6.2 Global diversity in ICANN

Still on legitimacy issues, ICANN's bylaws state that "it should seek and support 'broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making' and 'employ open and transparent policy

[79] Internet Corporation for Assigned Names and Numbers (ICANN). "Amended and restated Articles of Incorporation of Internet Corporation for Assigned Names and Numbers". https://www.icann.org/resources/pages/governance/articles-en.(Last accessed on May 20, 2021).
[80] Lindsay, p. 5

development mechanisms'"[81]. The institution relies on its multi-stakeholder model to prove its legitimate position managing the Internet's critical resources. ICANN also claims that it is geographically diverse, as mentioned above. However, different countries profoundly contested that point. They stress the lack of equitable and fair representation in the institution, especially at the decision-making body, the Board of Directors.

One example was the creation of the new generic top-level domain names (gTLDs). "TLDs are the letters found at the end of an Internet address, such as .com, .net, or .org. Any TLD that does not represent a country or a territory is known as a generic TLD or gTLD. The New gTLD Program has enabled hundreds of new top-level domains (…) to enter into the Internet's root zone since the first delegations occurred in October 2013"[82]. ICANN issued the Applicant Guidebook in 2011 and opened the window for applications in 2012.

Following its guidelines of openness and transparency, ICANN performed a process that could theoretically be accessible for everyone in every country. However, the results indicated an aggravation of global disparity. "ICANN's statistics on the new gTLD program indicate that 1586 of 1930 applicants for new gTLDs are from Europe and USA. As acknowledged in the Update to the Cost Considerations of the new gTLD Program, there remained concerns that the USD 185,000 required may act as a deterrent to applicants from developing nations, not-for-profits, and others with limited financial resources"[83].

Another example of the deficit in global diversity is in the allocation of IPv4. IPv4 is the addresses distributed by ICANN to registries worldwide that will allow the creation and expansion

[81] Lipton, p. 202
[82] Internet Corporation for Assigned Names and Numbers (ICANN). "New generic top-level domains. About the program". https://newgtlds.icann.org/en/about/program. (Last accessed May 21, 2021).
[83] ICANN Human Rights. "Potential Human Rights Issues Arising from the gTLD Subsequent Procedures". https://icannhumanrights.net/documents/ Published in Jun 2016. (Last accessed May 21, 2020).

of websites, connections, virtual marketplaces, etc. The IPv4 is composed of four slots of numbers, such as 00000000. 00000000. 00000000. 00000000. Each combination is linked to an assigned name, like "amazon.com". Instead of memorizing the sequence of numbers – a common practice for phone numbers – the Internet adopted the assigned name to facilitate the user experience. Initially, there were available 3.7 billion IPv4 numbers. Nevertheless, the distribution did not follow an equitable division globally.

The picture below presents the data of the world population per continent and the distribution of Internet users around the globe, also classified per continent.

WORLD INTERNET USAGE AND POPULATION STATISTICS
2021 Year-Q1 Estimates

World Regions	Population (2021 Est.)	Population % of World	Internet Users 31 Dec 2020	Penetration Rate (% Pop.)	Growth 2000-2021	Internet World %
Africa	1,373,486,514	17.4 %	590,296,163	43.0 %	12,975 %	11.7 %
Asia	4,327,333,821	54.9 %	2,707,088,121	62.6 %	2,268 %	53.6 %
Europe	835,817,917	10.6 %	728,321,919	87.1 %	593 %	14.4 %
Latin America / Caribbean	659,743,522	8.4 %	477,869,138	72.4 %	2,544 %	9.4 %
Middle East	265,587,661	3.4 %	188,132,198	70.8 %	5,627 %	3.7 %
North America	370,322,393	4.7 %	332,919,495	89.9 %	208 %	6.6 %
Oceania / Australia	43,473,756	0.6 %	29,284,688	67.4 %	284 %	0.6 %
WORLD TOTAL	7,875,765,584	100.0 %	5,053,911,722	64.2 %	1,300 %	100.0 %

Figure 2. World Internet Usage and Population Statistics[84]

It is possible to notice some overrepresentations, such as in North America with 4.7% of the world population and 6.6% of Internet users, in Europe with 10,6% of the population and 14.4% of Internet users, and Latin America with 8.4% of the population and 9.4% of Internet users. It was not a coincidence that Latin America was the first region where the IPv4 availability finished first. "ICANN announced today (May 20, 2014) that it has begun the process of allocating the remaining blocks of Internet Protocol version 4 (IPv4) addresses to the five Regional Internet Registries (RIR). The activation of this procedure was triggered when Latin America and

[84] Internet World Stats. https://www.internetworldstats.com/stats.htm. (Last accessed May 21, 2021)

Caribbean Network Information Centre's (LACNIC) supply of addresses dropped to below 8 million"[85].

North America and Europe did not face such a problem first-hand because there is an overallocation of IP numbers to the registries of those regions. "Under the original protocol of IPv4, IP addresses have run out – at least, they have now all been allocated to registries. Of these IP addresses, some 74 percent are allocated to the US despite the fact that China now has 538 million people online (only 40 percent of their population), and the US has only 245 million (78 percent of their population). This disparity in the distribution of what is essentially a commercial product with implications for access and expansion situates this aspect of global Internet governance back in a Westphalian framework"[86]. It is important to stress that those numbers are from 2015, and it is possible to assume that there is a higher number of people online nowadays in China, which just aggravates the inequality.

The map below demonstrates how unequal is the distribution of IPv4 numbers throughout the world. It is possible to see how OECD member States, developed countries in North America, Europe, Asia and Oceania, have clearer tones in the world map, indicating a higher proportion of IPv4 number per 1,000 people. On the other hand, Africa, Asia, Eastern Europe and Latin America have darker tones, meaning fewer IPv4 numbers per 1,000 people. "The US has approximately four IP addresses per capita while China has 0.2 per capita".[87]

[85] Internet Corporation for Assigned Names and Numbers (ICANN). "Remaining IPv4 Addresses to be Redistributed to Regional Internet Registries | Address Redistribution Signals that IPv4 is Nearing Total Exhaustion". https://www.icann.org/en/announcements/details/remaining-ipv4-addresses-to-be-redistributed-to-regional-internet-registries--address-redistribution-signals-that-ipv4-is-nearing-total-exhaustion-20-5-2014-en. Published on May 20, 2014. (Last accessed May 21, 2021).
[86] Carr, p. 647
[87] Idem

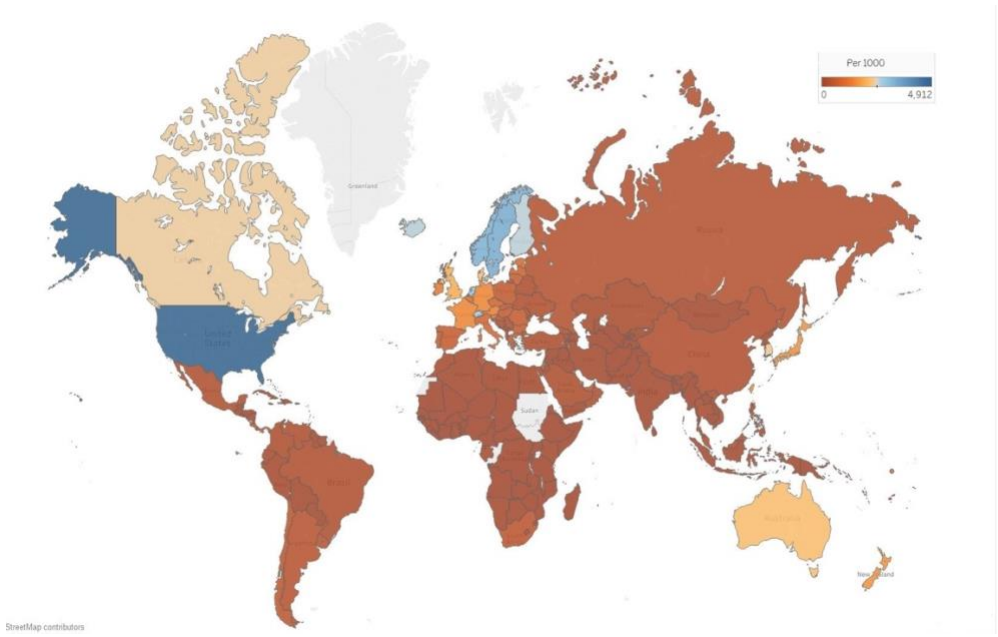

Figure 3. List of countries by IPv4 address allocation per 1000 population [88]

Those examples demonstrate how difficult it is to implement a comprehensive reform in ICANN that distributes the Internet's critical resources equally among countries. Governments and their private sectors, being benefitted by the current structure, are reluctant to lose their top position in the institution, helping them conveying their economic interests and protecting from problems, such as the scarcity of IP numbers in Latin America.

7. THE BOARD OF DIRECTORS AND GLOBAL REPRESENTATION

In addition to the discussion of ICANN's global diversity, this study proposes an analysis of the global representation of the Board of Directors, the decision-making body that occupies a prominent position at ICANN. It is presumed that there will be unequal participation of members

[88] Source: Wikipedia. "List of Countries by IPv4 Address Allocation." Wikipedia. Wikimedia Foundation, June 2, 2021. https://en.wikipedia.org/wiki/List_of_countries_by_IPv4_address_allocation. (Last accessed Jun 15, 2021).

born or with professional backgrounds in corporations from OECD countries, following the same pattern of other global inequalities in ICANN. The OECD was chosen due to the geographical diversity of its member States, which are recognized as economically developed and share common practices linked to economic liberal values.

To test the hypothesis, the names of directors were collected on ICANN's website, which had data available from 2000 until 2020. 119 different members have participated in the Board of Directors since then. There were only 6 members that were part of the Board in various compositions, but their names were counted only once.

For each member, it was also collected personal information regarding their country of origin and the country of the company they held a high-rank position. Those two inputs were necessary because they will demonstrate if there is a disparity in representation at the Board of Directors, either by country of origin or professional links to corporations from OECD countries. As the critical theory states, the consensus is constructed by an international dominant stratum via education or links to multinational corporations. Thus, it is essential to understand the connections of origins and work relations of the members.

To collect and confirm the information, the website "ICANNWiki" was the primary source. ICANNwiki is "a not-for-profit organization dedicated to supporting the Internet community's collaborative development of wiki articles on ICANN and Internet Governance-related topics. The wiki provides neutral, third-party information for ICANN meeting attendees and Internet citizens at large".[89] To confirm data about the members that was not fully complete, "Linkedin" was referenced, a social network focused on the members' professional careers and academic backgrounds.

[89] ICANNWiki. "Main Page." ICANNWiki. https://icannwiki.org/. (Last accessed May 21, 2021)

Before advancing to the data, it is crucial to understand that the Board of Directors comprises 16 voting members (15 appointed and the ICANN's president) and 4 non-voting members with advisory functions. This study will take into account only the voting members. According to ICANN bylaw, article 7, section 7.2, the Empowered Community (EC) designates 8 members, while the supporting organizations ASO, ccNSO, GNSO select 2 each, and the At-Large Community appoints one[90].

The bylaw takes into account the geographical diversity as a factor for appointing members, as the EC, the supporting organization and the At-Large community "shall ensure when it makes its nominations that the Board includes at least one Director who is from a country in each ICANN Geographic Region ('Diversity Calculation')"[91]. The Geographic Regions are divided into five categories: (a) Europe; (b) Asia/Australia/Pacific; (c) Latin America/Caribbean islands; (d) Africa; and (e) North America. There is a limit of 5 members from the same region in the Board for the same period.

ICANN demonstrated that it understands the importance of global representation for increasing its legitimacy. However, the institution considers only the country of origin as the determinant factor for fulfilling the requirement, not considering professional connections. Moreover, the bylaw allows members with more than one citizenship to choose one of them to comply with the geographical diversity rule. The bylaw states, "if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile"), that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country

[90] Internet Corporation for Assigned Names and Numbers (ICANN). "Bylaws for Internet Corporation for Assigned Names and Numbers: A California Nonprofit Public-Benefit Corporation." As amended November 28, 2019. ICANN. https://www.icann.org/resources/pages/governance/bylaws-en/#article7. (Last accessed May 23, 2021).
[91] Idem

of citizenship or Domicile that he or she wants the Nominating Committee to use for Diversity Calculation purposes"[92]. That mechanism has the potential of allowing the overrepresentation of the US and allies in the Board of Directors, as some members originally from non-OECD countries have professional connections and adopt the hegemon consensus while still complying with the diversity rules.

Three questions were elaborated to confirm or deny the hypothesis of overrepresentation of OECD countries in the Board of Directors. The first question is "Is the member originally from the United States **or** did the member hold a high-rank position in a US corporation?" The question is vital to assess the members that would be potentially connected to the interests of the US government and private sector so as to demonstrate a predominance of the United States in the institution. According to the pie chart below, from 2000 to 2020, 32% of the members were either from the United States or have worked for a US corporation, confirming the overrepresentation of that country in the Board of Directors.

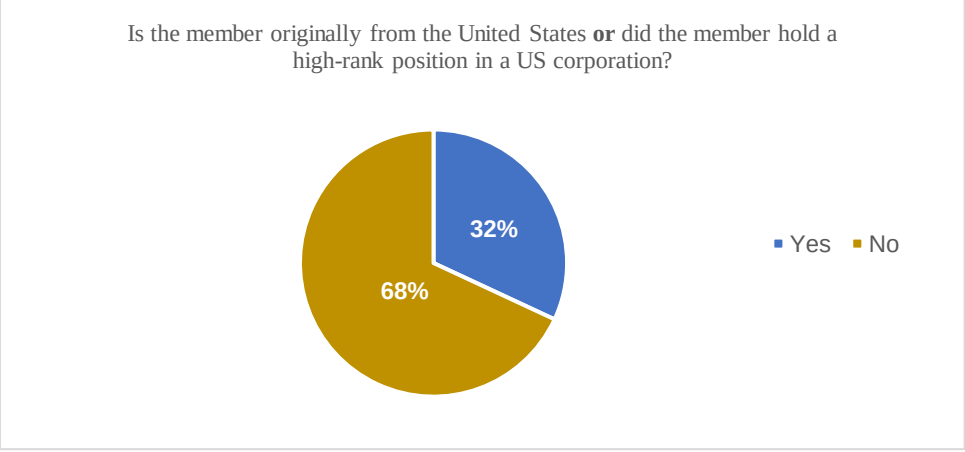

Figure 4. Pie chart with question 1

[92] Idem

The second question is “Is the member originally from an OECD country **and** did the member hold a high-rank position in a corporation from an OECD country?”. It is important to assess the number of members there is potentially part of the consensus, being born, educated and working in allied countries.

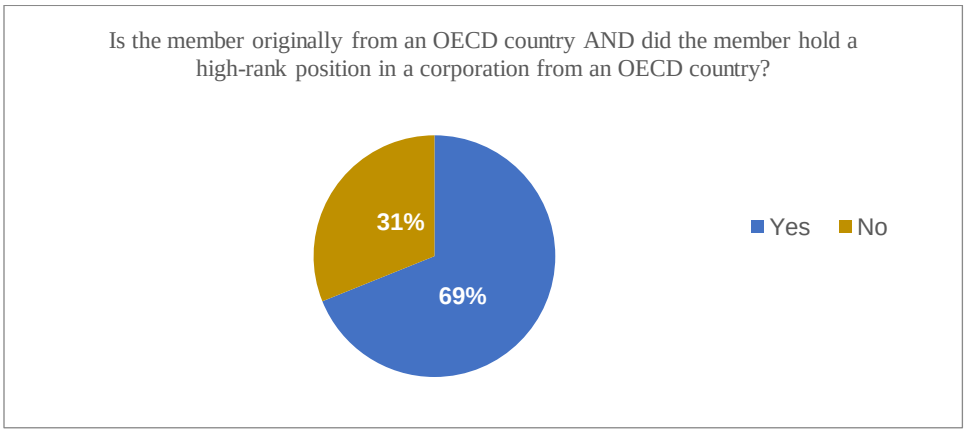

Figure 5. Pie chart with question 2

The data clearly indicates a vast disparity in members born and with professional ties with corporations from OECD countries, accounting for 69% of the total. Subtracting the members not related to the United States, as per question 1, 37% of members are born in allied countries.

The third question is “Is the member originally from an OECD country **or** did the member hold a high-rank position in a corporation from an OECD country?”. That question will be important to assess the difference between the numbers from questions 2 and 3. That difference will be the members born in non-OECD countries but who held a high-rank position at a corporation from an OECD country. It will account for the members there were potentially co-opted by the hegemonic system. It is important to note that only 4 members were born in OECD countries and held no connections with corporations from OECD countries. Those 4 have worked for international organizations.

As the pie chart below indicates, 82% of the members of ICANN's Board of Directors were either from an OECD country or have held high-rank positions in a corporation from an OECD country. Subtracting the two percentages of questions 2 and 3, it is possible to confirm that 13% of the members were born in non-OECD countries and work for corporations from OECD countries. As Cox pointed out, "the dominant state takes care to secure the acquiescence of other states according to a hierarchy of powers within the inter-state structure of hegemony. The consent of some peripheral countries is solicited"[93]. The focus of the dominant State is not to co-opt peripheral countries. Thus, 13% is significantly smaller than the 37% of members originally from allied countries, where the dominant State privileges access to the hegemonic structure.

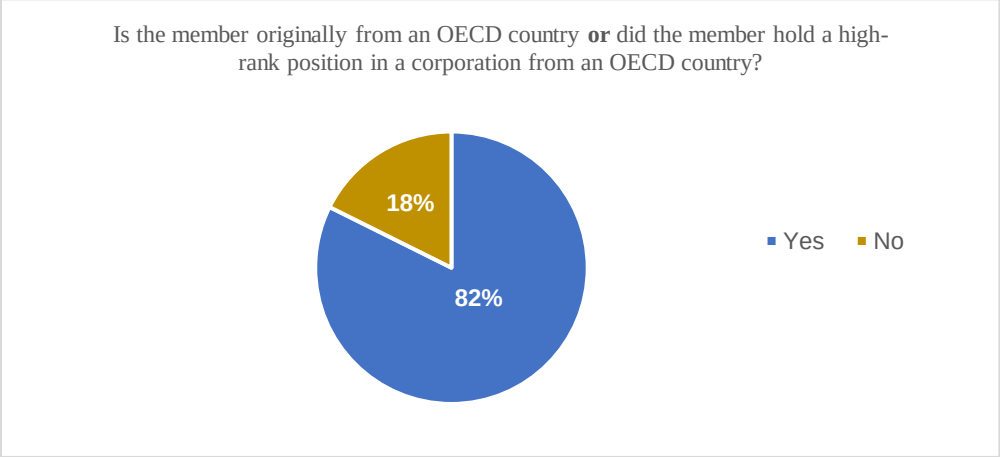

Figure 6. Pie chart with question 3

Moreover, there is a clear overrepresentation of the United States and allies in the Board of Directors. The third question also indicates that only 18% of the members have no birth or professional connections with the OECD countries. That score demonstrates that the Board of Directors is not globally diverse, potentially affecting ICANN's legitimacy.

[93] Cox, p. 171.

As some of the BRICS members were the most active against ICANN, it is crucial to assess their participation in the existing system. The members with birth or professional connections with the BRICS are only 8% of the members: 4 from Brazil; 3 from India, being 2 of those with professional careers in the United States; 2 from South Africa; and 0 from China and Russia. The data confirms what the reform proposals suggested. As previously described, Brazil engages with ICANN despite advocating for a more significant role for the governments; India also participates in ICANN and shares some political views with the dominant countries – which could be reinforced by the connections of Indian citizens to OECD companies; South Africa does not have an elaborated policy for the topic and had only 2 members; and China and Russia never had any member at the Board of Directors, as they propose counter-hegemonical institutions as a replacement for ICANN.

The picture below congregates the numbers of the three questions for a clear comparison.

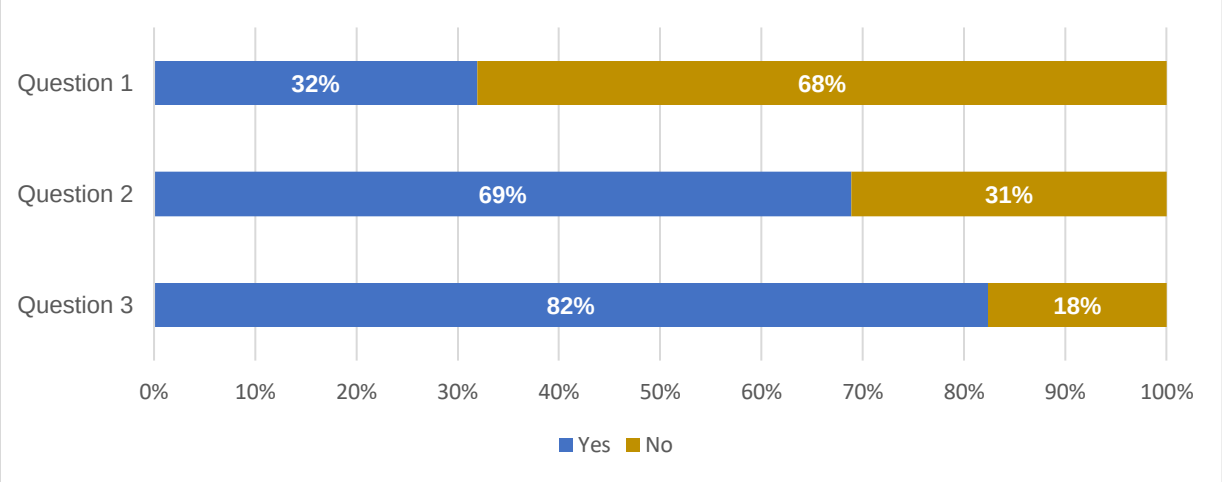

Figure 7. Graph with the compilation of questions 1, 2 and 3

Another point to be evaluated is to check if there was any change in the global diversity of the members of ICANN's Board of Directors after the 2016 reform. As earlier stated, there was international pressure for the United States to give in the oversight and veto powers over ICANN,

which was implemented. Nevertheless, the US government could still preserve the existing system and its national interests, restricting the governmental influence and maintaining an ample presence of the US private sector, which, in turn, would perform the task of forwarding the US interests in the institution. To test that argument, it will be evaluated the Board members from 2017 onwards and compare with the general numbers presented above. The three same questions will be used to assess the birth and professional connections of the members with the countries and corporations from the United States and OECD.

There were 33 members appointed to ICANN's Board of Directors from 2017 until 2020. As the graph below indicates, there was an increase of members with birth or professional connections with the United States, from 32%, between 2000 and 2020, to 39% between 2017 and 2020. The members with birth and professional ties with other OECD countries fell sharply from 69% to 52%. On the other hand, the members from non-OECD countries but with professional connections with corporations from OECD countries more than doubled, rising from 13% to 30%. That number is reached by subtracting, on question 3, the members with professional or birth connections with corporations from OECD countries (82%) from the number of members with birth and professional relationships with corporations from OECD countries (52%). The members without any connections with corporations from OECD countries remained the same at 18%.

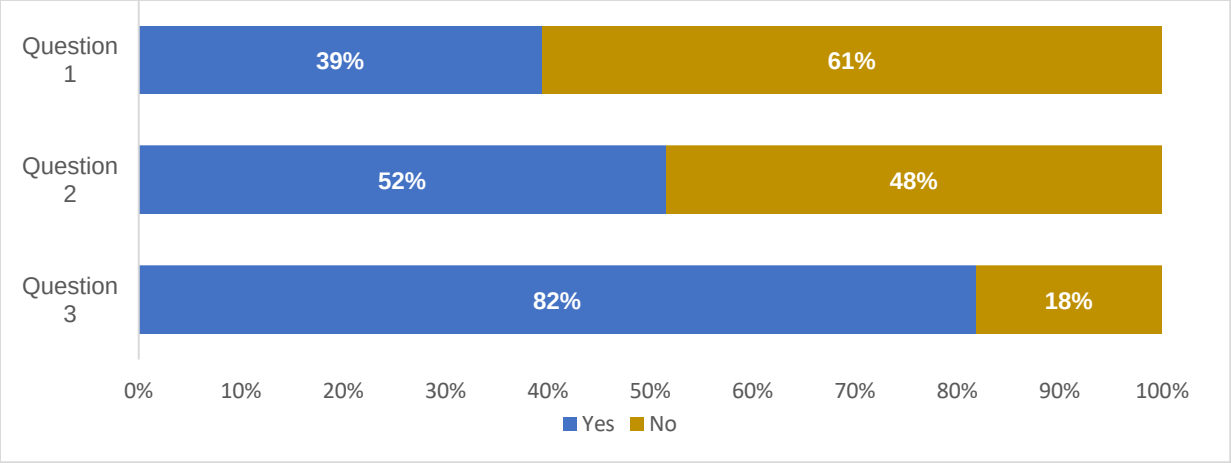

Figure 8. Graph with the compilation of questions 1, 2 and 3 after the 2016 reform

Those trends confirm the argument that the US government implemented a controlled reform in ICANN, preserving and even increasing the US private sector participation in the Board of Directors. The claims for greater global diversity – one of the main reasons for the reform – was also implemented, if it is only considered the birth aspect of the members, and it came at the expense of the United States' allies. However, the increase in the number of members born in non-OECD countries does not have an expansionist effect on the diversity of voices represented in the Board of Directors. Those members are part of the consensus, as they held high-rank positions in OECD corporations, maintaining the *status quo* at ICANN, despite the formal increase of diversity based on country of birth.

8. CONCLUSION

The Internet has increased its range and importance worldwide and in almost every aspect of society. That trend is estimated to continue its upward trajectory as new technologies advance society's reliance on the Internet, such as the 5G and the Internet of Things. That increasing dependence on the Internet reflects on the centrality of Internet Governance and, more specifically, the management of its critical resources.

One of the main factors of the Internet's success is its global connectivity. However, most people do not reflect on how that is achieved. At first glance, it might sound like a mainly technical subject reserved for experts' discussions. Due to the Internet's economic, cultural and social impacts, countries soon recognized the importance of their direct involvement in Internet management. The study of Internet Governance points out to an international regime permeated with political rivalries and the exercise of hegemonic powers.

This study analyzed a segment of the Internet Governance's political debate, focusing on the management of the Internet's critical resources, more specifically on ICANN. The critical theory of International Relations was the theoretical tool used to assess and explain facets of ICANN's functioning and its relationship with different stakeholders, as well as the evolving context since its creation in 1998 until now.

The Internet Governance framework was built in a context of the predominance of neoliberal values, with ideas such as the minimal interference of States and private-sector leadership, which explains the functioning of ICANN's bodies until today, such as the adoption of the multi-stakeholder model. Also, the United States was the undisputed hegemon and the country that established the Internet system. Its unique position was consecrated in veto and oversight powers over ICANN, which lasted until 2016.

The critical theory was fundamental to grasp aspects of Internet Governance that are not easily perceived by other IR theories. The concepts of hegemony and consensus and the role of the dominant social strata of the dominant countries were soundly applied to the Internet's regime, highlighting aspects of convergence among different relevant actors: governments, the private sector, and civil society. It could also highlight the construction and corroboration of specific values by the existing institutions (ICANN, IGF), which reinforced the dominant countries'

discourse of normalcy and non-politicization of the Internet Governance, and that also framed any proposal of reform as a threat to the system and its users. Moreover, the critical theory was useful to assess the difficulties of counter-hegemonical reforms, such as the Chinese and Russian cases, and the pressures for acquiescence and satisfaction with incremental gains, such as the Indian and Brazilian cases, respectively.

The disclosure by Edward Snowden of the mass surveillance program perpetrated by the United States and allies against users and authorities worldwide catalyzed Internet governance reforms. The consensus was disrupted, and segments of the civil society and the private sector endorsed the calls for changes in ICANN. Despite the fact the United States lost the veto and oversight power, this study points out that the country and its private sector still exercise a powerful influence over the institution, with an overrepresentation of members and the domestic US legislation jurisdiction over ICANN, a non-profit company based in California.

That situation increased the debates about ICANN's legitimacy. The lack of an international agreement and the prioritization of a particular group of countries to the detriment of others led to vocal critics by governments and the constant search for validation by ICANN to endorse its decisions. The data collected confirmed the overrepresentation of the United States and allies in the Board of Directors, despite ICANN's bylaws regulating the geographical representation. The 2016 reform did not fundamentally change the scenario, as the participation of more members born in non-OECD countries did not translate into a different voice, as many of those had significant professional connections with corporations from OECD countries.

ICANN is still under the scrutiny of several countries, as its legitimacy is considered debatable by many. The institution relies on its efficiency and the bottom-up approach – that would theoretically be more representative of the different communities – to secure its special position in

Internet Governance. However, the lack of fundamental reform is pushing the debate to its limits. The Internet governance regime, as structured today, does not have oversight mechanisms to prevent the capture of the public interest by the private and the extraterritoriality of policies defined in private forums, such as ICANN, without the proper input of governments.

The characteristic of the Internet to operate on a global scale, continuous and uninterrupted, shows that, despite the challenges and difficulties arising from the interaction of the participants of the regime, they have heeded their rules and regulations, so that the system complies with the purpose to maintain and operate an interconnected network on a global scale. Its strength can be exemplified by the ability to resist change of principles, norms, rules and decision-making[94]. However, the resistance in finding a balance, moving forward with comprehensive reform and addressing ICANN's fragile legitimacy might have serious consequences.

Some countries might not wait for fundamental reforms in Internet Governance and start building their own national systems. Yet, that could have potential negative economic impacts. "Complete data sovereignty would mandate the banishment of multinational cloud service providers from the national market, which would severely hamper trade and collaboration with other countries.[95]"

The different actors of the existing multi-stakeholder regime must understand the potential threats of not advancing with reforms that address the legitimation issues of Internet Governance and ICANN, more specifically. The priority should be to maintain the efficiency of the Internet's management while taking into account the reasonable concerns of governments.

A substantial reform might take place led by contesting countries, such as China and Russia, that would disrupt the current system and replace it by a classic multilateral organization

[94] Lucero, p. 84
[95] Polatin-Reuben; Wright, p. 7

where the discussions are led primarily by State representatives. The private sector and civil society would have their space and voice diminished and circumscribed to indirect interference. As explained earlier, that could have an impact on the Internet's functionality and modernization as non-State actors are the main drivers of innovation in that sector. According to the critical theory, such a disruption would not be an easy task to be achieved, as it would mean that the hegemonic powers would have lost their influence and other contesting countries would have established solid foundations in the international community in favour of their proposal. That difficulty is attested by the reluctance on reforming ICANN. However, China, Russia and other countries are continuously working towards strengthening their proposal for Internet Governance.

On the other hand, ICANN and its member countries might decide in implementing moderate reforms that would change the balance among the different stakeholders, more probably towards a stronger position for State representatives, but, at the same time, preserving the institution. That would be an intermediary option that would preserve the current structures while addressing the legitimacy concerns that have risen since Snowden's revelations and that were not corrected. Thus, incremental gains would be achieved towards a mix of the US and allies' position and some of its critics, a situation that could enhance ICANN's longevity.

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