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Brazilian Foreign Policy Towards Internet Governance

Abstract

Snowden´s whistleblowing on the NSA program had a powerful impact in Brazil, prompting Dilma Rousseff´s administration to promote, at the United Nations, resolutions on Internet privacy, freedom of expression, as well as to host important multistakeholder conferences and, domestically, to approve the innovative legislation known as Marco Civil. These answers were only possible due to a network of officials and activists. However, Brazil´s global leadership in Internet governance is fragile, with many internal contradictions.

Keywords: Internet governance, Brazilian Foreign Policy, human rights.

Introduction

This paper aims to analyze Brazilian foreign policy toward Internet governance in the 2010 decade, when the country became an important player in the discussions about the global rules to regulate digital privacy and surveillance. Since 2013, Brazil has sponsored resolutions at the United Nations, hosted two multistakeholders conferences on the subject (Internet Governance Forum and NETMundial) and approved an innovative domestic legislation – *Marco Civil da Internet* – that is now an international reference.

This unusual role for a developing country can be explained by a "two-level game" (Putnam 1988) in which the American National Security Agency (NSA) global disclosures about surveillance on Brazil and other countries worked as a powerful catalyzer, boosting Brazilian political networks that advocated new laws to regulate the Internet, with stronger protections to privacy and Net neutrality. These groups were a coalition of activists and government officials who became allies in the 2000s, drafting policies about open software and, later, reacting to bills under discussion in Congress which would have posed threats to freedom of expression online.

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In the current system, the Net is regulated by a non-profit civil society organization, the Internet Corporation for Assigned Names and Numbers (ICANN), which operates under a contract with the American Department of Commerce. It was created in 1998, after a long period when the system was usually controlled by the Department of Defense (Mueller 2002). 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. (Lucero 2011). However, Brazilian leadership on the matter is a very recent phenomenon.

The most important results of these mobilizations were Brazil´s digital framework, *Marco Civil* – and the new actions in the country´s foreign policy. 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. This two level-game follows Putnam classical request that:

> A more adequate account of the domestic determinants of foreign policy and international relations must stress politics: parties, social classes, interest groups (both economic and noneconomic), legislators, and even public opinion and elections" (Putnam 1988, 432)

However, Brazil´s foreign policy is often in contradiction with the political conflicts inside the country, such as the gaps and troubles in implementing *Marco Civil*, the discussion of new bills to rollback many of its articles and some Brazilian government initiatives that put Net neutrality in the country at risk. The political instability in the country make these threats bigger, due to the changes happening in Congress.

The first section of the paper discusses the impacts of the NSA whistleblower Edward Snowden in Brazil. The second addresses Brazilian actions concerning Internet governance at the United Nations. The third, fourth and fifth deal with the history of the creation of *Marco Civil* and the contradictions in its implementation.

NSA and Brazil

Many scholars and journalists highlight the threat to civil rights posed by the expanded powers of the NSA after the 9/11 attacks (Angwin 2015; Bamford 2009; Greenwald 2013; Schneider 2015). However, it was because of whistleblower Edward Snowden that the organization became the center of a world debate. One in which Brazil has an important position concerning Internet surveillance.

Snowden was an IT technician working as a contractor for NSA. He was appalled with the practices that he saw there and decided not just to quit his job, but deliver to the press several files with detailed information about the violations of American law perpetrated by the Agency.

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In a complex operation, he contacted filmmaker Laura Poitras and journalist Glenn Greenwald in Hong Kong. In a series of articles to the British newspaper The Guardian they told his story to an international audience, with immediate and huge impact (Greenwald 2013).[1]

Snowden´s disclosures revealed how the NSA spied on many countries, including Brazil, but the consequences for Brazilian politics where greater than in most nations, because of some very specific circumstances. Greenwald had been living in Rio de Janeiro for several years. He is married to a Brazilian and speaks Portuguese. In a partnership with the most influent media group of the country, Globo, he wrote about the NSA to its newspaper and appeared often on its prime time Sunday TV show.

There was no precedent of an American journalist telling Brazilians in their own language and on national television, how the United States spied on them and why they should care about it. The issue rose quickly to the top of the political agenda. President Dilma Rousseff was trying to restore good relations with the Barack Obama administration after difficult years when her predecessor Luís Inácio Lula da Silva and his American colleague had quarreled because of the Middle East. Snowden showed how the NSA spied on Brazil´s biggest company, the State-controlled Petrobras, and even on Rousseff´s personal cell phone and her communications with her cabinet.

The president was under pressure to do something about the scandal – by her allies, by the opposition, and by public opinion. The general mood was that Brazil was a victim and that the government should react, demand an apology and stress to the American administration that the NSA´s actions were unacceptable. Rousseff opted for a moderate response: to postpone her much-desired State trip to the United States (to postpone, not to cancel), and to present legislation both at the Brazilian Congress and at the United Nations to deal with the issues of privacy and Internet surveillance. (Santoro 2013).

Amnesty International conducted a poll in 13 countries and found that Germany and Brazil were the nations where the citizens where most concerned about surveillance from the United States – 81% and 80% respectively – and, in a lesser degree, from their own government – 69% and 65%. [2]. Both countries were at the heart of Snowden´s revelations and their diplomats also acted together at the UN. It is hard to imagine that they would play such a role without the impact of the NSA scandal.

Brazil´s Actions at the United Nations

Internet governance has been an issue for Brazilian foreign policy for several years, especially at the UN, where the country´s diplomats and activists have worked quite closely pressuring for Net neutrality and for the creation of an Internet Governance Forum friendly and open to civil society (Lucero 2011). Snowden's disclosures reinforced that agenda, and Brazil´s authorities reacted quickly

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1   See also the documentary "Citizen Four", directed by Laura Poitras (2014).

2   *Pesquisa inédita indica preocupação dos internautas brasileiros com vigilância e privacidade na internet.* https://anistia.org.br/noticias/pesquisa-inedita-indica-preocupacao-dos-internautas-brasileiros-com-vigilancia-e-privacidade-na-interne. Accessed July 2016.

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in framing the 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 (Abdenur and Gama 2015).

President Rousseff opened the 68th UN General Assembly addressing the issue in strong terms:

> As many other Latin Americans, I fought against authoritarianism and censorship, and I cannot but defend, in an uncompromising fashion, the right to privacy of individuals and the sovereignty of my country. In the absence of the right to privacy, there can be no true freedom of expression and opinion, and therefore no effective democracy. In the absence of the respect for sovereignty, there is no basis for the relationship among Nations.
>
> We face, Mr. President, a situation of grave violation of human rights and of civil liberties; of invasion and capture of confidential information concerning corporate activities, and especially of disrespect to national sovereignty. (Rousseff 2013).

She criticized the American government, demanding an apology, but let it clear that she was discussing something that went beyond Brasilia-Washington problems, and required multilateral action:

> The problem, however, goes beyond a bilateral relationship. It affects the international community itself and demands a response from it. Information and telecommunication technologies cannot be the new battlefield between States. Time is ripe to create the conditions to prevent cyberspace from being used as a weapon of war, through espionage, sabotage, and attacks against systems and infrastructure of other countries.
>
> The United Nations must play a leading role in the effort to regulate the conduct of States with regard to these technologies.
>
> For this reason, Brazil will present proposals for the establishment of a civilian multilateral framework for the governance and use of the Internet and to ensure the effective protection of data that travels through the web. (Rousseff 2013)

During 2013 and 2014, Brazil worked together with other countries, especially Germany – also a major target of NSA – and co-sponsored two resolutions at the UN General Assembly (69/166 and 68/167), both entitled "The right to privacy in the digital age". The two texts are similar, but the second one is more comprehensive, taking into account the discussions at other United Nations institutions, such as the Human Rights Council and the work of the Office of the High Commissioner for Human Rights, noting how they are building a global framework to deal with the Internet.

Without naming the NSA or the American government, the resolution stresses 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. The second resolution also mentions metadata – an important specification, since the latter is usually not well defined in national legislations.

Both resolutions call upon States to protect the right to privacy, take measures to preserve it and review its own actions to evaluate if they are not violating it. They were the first Brazilian attempts at the UN "to trigger a norms cascade" (Abdenur and Gama 2015), that is, to establish the bases for a future international treaty on privacy and the Internet. General Assembly resolutions are tools of soft law and are not binding, but they are often the first step to reach a formal agreement.

The resolutions co-sponsored by Brazil and Germany were indeed important and established the Brazilian government as a leader in Internet governance – quite a surprising position for a developing country (Santoro 2015a). In 2014 and 2015, Brazil hosted two major multistakeholders conferences on the subject – NETMundial and the Internet Governance Forum.

Both conferences are key in the debate about the global governance of Internet and the decision to host them in Brazil was taken after Rousseff´s speech at the United Nations, in recognition to the leadership role that the country assumed. The two gatherings were meetings of the most important players in the Internet governance struggles among civil society activists, scientists, technicians and scholars. To host one of the conferences is already a highlight in the field, thus to receive both of them is a recognition by the global community of the relevance of the Brazilian statements.

The importance of the *Marco Civil* was also highlighted, even by the president of the ICANN, the organ that manages the Web.[3] Both conferences discussed issues dear to the Brazilian agenda, such as privacy, endorsing the country´s proposals, although in a language that was not so strong. In spite the fact that there are no signs, in the short term, of an international treaty about the subject, the issue is getting stronger at the UN Human Rights Council, which appointed, in June 2015, a special rapporteur on the right to privacy.[4]

The History of Brazil´s Information Technology Policy

Despite Rousseff's internet policy visibility, discussions about Information Technology (IT) are not new inside the Brazilian State. The country has a decade-long history of attempts to control data, hardware, and software and to keep some degree of independence from outside forces. In fact, the search for information autonomy was the major impetus in the creation of Brazil's computer industry in the 1970s and 1980s, which led to major trade disputes with the developed world, especially during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) negotiations (Vigevani 1995; Borges 2010).

At the same time that major breakthroughs were being made in information technology and the computer industry in Silicon Valley during the 1970s, Brazil was under a military dictatorship with very nationalistic and developmentalist undertones. The Armed Forces were convinced that

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3   *Brasil sediará conferência mundial sobre governança da internet em 2014.* http://www.ebc.com.br/noticias/internacional/2013/10/brasil-sediara-conferencia-mundial-sobre-governanca-da-internet-em. Accessed July 2016.

4   Current and Former Mandate-Holders for Existing Mandates. http://www.ohchr.org/EN/HRBodies/SP/Pages/Currentmandateholders.aspx. Accessed July 2016.

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in order to gain power in the international system, Brazil needed to develop an autonomous computer industry not beholden to the United States nor Europe. The experience with the computer industry, promoted by the government during the 70s, represented a bold attempt to create autonomous technological capacity (Evans 1995).

The first batch of engineers that would work on the creation of Brazil's computer industry came straight from American universities, with Brazilian scholarships. The "*barbudinhos*" ("little bearded ones"), as they were called, had two ambitions: make Brazil a world center of hardware engineering, and create a developed platform for training of new engineers in the country (Evans 1995; Borges 2010). With government support, high tariffs on the import of any electronic device, and the creation of a state company to produce the computers (COBRA, *Computadores Brasileiros*), these engineers were able to create the basis of that sector.

Brazil did not become a major player in hardware production internationally, but the computer industry was able to create interest groups inside the country that supported the ambition of developing indigenous technology. This would prove to be a key factor inside the bureaucracy, which became directly interested in controlling and developing its own IT tools (Borges 2011). It also spurred the interest to build an information *sector* in Brazil, with jobs and training.

Acquisition of technology became a major hurdle for developing countries in the 1990s. With the increased presence of transnational corporations in the global economy, the autarkic model of complete independence from foreign capital/technology/trade could not be sustained.

Two reasons made it especially hard for Brazil to keep its old ambition to control both hardware, software and data. First, transitioning for a more open economy revealed the lack of support for protectionist policies that prevented consumers to buy the latest and greatest new technology from abroad. Second, under the new rules of the GATT (and subsequently, the WTO), it became very costly and nearly impossible to sustain any kind of protectionist policy in this area (Borges 2010).

As the fight for hardware independence waned, the Internet arrived in Brazil mainly through universities and research Institutes, and, by the 1990s, the government had created the National Network of Research (*Rede Nacional de Pesquisa*, RNP) in order to establish the basic infra-structure to connect the system to the Internet, including the country's first backbone. This would prove decisive to roll out Internet connection across the country and to regulate domain names inside Brazil.

The creation in 1995 of the Steering Committee in charge of Internet regulation (*Comitê Gestor*, CG), was another major step in Brazil's international role as an Internet participant. The CG's role was to represent Brazil in the Internet Corporation for Assigned Names and Numbers (ICANN), and from 2002 on, LACNIC (Latin American and Caribbean Internet Addresses Registry) as well, the main body of IP addresses registrar in Latin America.[5]

The rise of Luiz Inácio Lula da Silva to the Presidency in 2003 brought a new outlook on the technology policies of Brazil. As the country could not sustain the costs of closure both internally and externally to trade and technology, the shift focused on software autonomy and Internet access. The Lula administration changed tactics: it forged an alliance with open source/

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5 Details of that history can be found on the websites www.cg.org.br, www.lacnic.net, www.rnp.br.

free software advocates. At the same time, it started with other countries to push for a government-only International Telecommunication Union (ITU), a UN agency dealing with information and communication technologies issues, despite serious opposition from the United States (Abdenur and Gama 2015).

Open source software presented the Brazilian State with a public good that was reliable, flexible and worked with no strings attached. The experience that provoked the federal government into thinking about the adoption of open source software was local. Lula's Workers' Party (*Partido dos Trabalhadores*, PT) previous administration of the state of Rio Grande do Sul is usually cited by the actors involved in the national policy as one of the inspirations for the national adoption of open source software (Kim 2005).

The decision to migrate to open source software was connected with the Free/Open Source Software activists. Although they had a stake in promoting an ideological agenda in regards to OSS, the major reason given by the government was still cost-effectiveness (Kim 2005). Moreover, the possibility of owning and changing software, in order to make it work securely and locally was another quality that OSS presented to the Brazilian state. Reducing dependency on software vendors was seen at the time to be a major step towards unwanted foreign control of data resources.

Forces inside the government also contributed to this shift. Lula's appointment of singer and composer Gilberto Gil as Minister of Culture had an impact on the discussion of copyright and Internet freedom both inside the country and internationally. Gil, one of Brazil's most famous musicians, was a towering figure claiming for a different approach to copyright law and Internet culture, and was deeply influenced by the ideas of Lawrence Lessig and the Creative Commons movement (Goodman 2008). Gil was also an advocate for open source software and the changes in government policies. The ties to Creative Commons were important: Ronaldo Lemos, later one of the creators of the *Marco Civil*, was responsible for bringing the movement to Brazil and was also a part of this cultural and policy shift.

The creation of the Institute of Information Technology (*Instituto Nacional de Tecnologia de Informação*, ITI) was supposed to rationalize and implement the software policy from then on. The Institute was headed by Sérgio Amadeu, an open source software advocate. The federal government would adopt open source software for its bureaucracy, would use it for the educational public system, and would create incentives for the production and maintenance of code bases inside the country, in an attempt to foster software autonomy (Borges 2010).

Moreover, the policy could be "translated" into the language of electoral politics: by promoting "inclusion" and a "computer for everyone", the administration made sure that this opportunity could be converted into political cash. The government established the *PC Conectado* program (later renamed *Computador Para Todos* – "computers for all," in a clear allusion to a much repeated government goal, "digital inclusion").

The program would guarantee tax breaks and public loans for any private company that sold computers with a certain government-defined configuration. This configuration would favor a basic computer, with a top price already defined, with the ability to access the Internet and with general productivity applications such as a word processor and a spreadsheet program; and more

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important than those characteristics, the computer should run Linux, in Portuguese, independent of the distribution. That meant, in practice, that the government was directly subsidizing computers for the lower and middle-income groups, and indirectly "subsidizing" the usage of Linux, an open source/free operating system (Comino and Manenti 2005; Borges 2010).

The major gain from the open source software experience in Lula's first term was to create and organize political ties with Brazil's technological community. As expected, there was fierce resistance to the policy, both inside sectors of the bureaucracy and of interest groups that profited from selling and installing software for the Brazilian government, especially Microsoft (Borges 2010). However, the experience with groups from Brazilian civil society that were involved in Internet activism, copyright issues, and the open source/free software would prove to be an excellent base for resisting the private sector in regards to IT. These battle lines would not be defined only for this issue – as the Internet grew in importance in Brazil and mobile technology entered the picture, a whole new plethora of issues appeared, forcing both the government and civil society to react again.

The Creation of Brazil's *Marco Civil* and the role of Civil Society

The discussions that led to the creation of *Marco Civil* exposed the main positions about the use of data and technology in Brazil. It is a set of laws that regulate and define the use of the Internet by citizens, firms, and Internet providers. For many years before its creation, there had been a vigorous discussion about cybercrime and the inadequacy of Brazilian law to deal with its effects. Brazilian laws did not specify rules for the telecoms nor punishments for data mishandling, for example. On top of that, as Internet speeds increased, the issue of Net neutrality started to be discussed.

Creating laws that regulate technology exposes a major dilemma: the evolution of technology is much faster than the creation of legislation to regulate it. Moreover, as the computer frontier expands, legislation that is very specific to a certain kind of gadget gets old or may interfere with innovation. The challenge to lawmakers is to create "future-proof" legislation that encapsulates the main ideas of privacy/protection/security without specifying to which exact technology it is applied (Wu 2011). In the case of the United States, precedent and the interpretation of the Constitution in light of new cases are usually the path to new regulations. In Brazil, that would not be enough – without explicit rules, there would be no judicial protection for new cases.

There is another challenge when legislating about the Internet: the inherent international nature of networks (Benkler 2006). The discussion about a set of internal regulations would be constrained by the fact that most Web companies do not have offices in Brazil, and the ones that do, usually have servers outside the country. Since data retention policies vary, it is very unclear who has control over data or is responsible for it. As mobile phones took the market and the Internet became ubiquitous, questions of Internet governance became more salient politically and took little time to be seized as a polarizing issue. There is a growing tension between governments and firms regarding how much data can be retained and how protected it should be.

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One of the major ironies of the creation of *Marco Civil* was that the whole legislation was created as a reaction to a bill that increased government surveillance. In 2007, a Senator from the state of Minas Gerais and member of the opposition Party of Brazilian Social Democracy (PSDB), Eduardo Azeredo, proposed a new bill dealing with cybercrime. It defined and typified a series of Internet crimes and established punishments for them, both in fines and imprisonment. The bill established that, in order to use the Internet, providers would have to log and control the identities of every person using the service through their CPF number (which is the rough equivalent of Social Security numbers in the United States). Moreover, every provider was made co-responsible for any illegal activities perpetrated when using the service, which exposed them to heavy liabilities. What activists saw was a potential law that would monitor everyone's activity online, and they were quick to name the bill the "Digital AI-5", calling to mind the military regime decree which heavily censored and jailed Brazilian dissidents in 1968.

Although the bill was an innovation, it cast a wide net on Internet freedom, according to Internet activists. But the defenders of the bill had a valid point: there was still no legislation to deal with Internet crimes and, increasingly, there would be a need for one. Both Sérgio Amadeu (who previously overviewed the Open Source Software initiative inside Lula's government) and Ronaldo Lemos (then a Professor at Fundação Getúlio Vargas, FGV) were critics of the "Digital AI-5" bill and suggested a more active role for civil society in defining the new Internet Law.[6]

Lemos, especially, advocated for a *Marco Civil* (which translates as a "Civil Framework") for the Internet. It would be a form of both defining crimes and punishments and enshrining in law certain principles of openness and Net neutrality (Lemos 2007). Moreover, it tried to stem the tide of increasing government surveillance, which had practically no regulation for the new technologies and the Internet. The idea was that, with an open process of consultation with civil society, the legitimacy of the new set of laws would prove to be resilient and would overcome the several interest groups, especially the telecoms, that would try to halt the process. Although proposed by Lemos in 2007, the bill would only be discussed publicly in 2009.

The Executive branch partnered with FGV to create what would be the first draft of the legislation and would submit it to public consultation, building a blog to do it online, with the participation of anyone that wanted to contribute to the text, much in the way of open source software.[7] The principles that guided *Marco Civil* were very close to what the organized cyber activists wanted: it was heavily inspired by a libertarian view of the Internet, with an emphasis on civil rights, freedom of expression and privacy as the main focus of the law (Lemos 2007). That would mean that the *Marco Civil* bill tried to carve a space for anonymity and communication privacy without jeopardizing security and law enforcement access to data through legal channels. A compromise would have to be made: providers would be responsible for logging user data for no more than a year, and could only disclose it with a judicial warrant. Moreover, providers would

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6   *Opinião de Especialista: Sérgio Amadeu e o Marco Civil da Intern*et. http://culturadigital.br/marcocivil/2014/06/23/opiniao-de-especialista-sergio-amadeu-e-o-marco-civil-da-internet/. Accessed July 2016.

7   Marco civil da internet entra em vigor. http://culturadigital.br/marcocivil/. Accessed July 2016.

not be penalized for hosting illegal material, as long as they complied with a judicial order for takedown of such material if authorized by a judge.

The most contentious and important part of *Marco Civil* was related to Net neutrality. That would be difficult to approve in Congress, since telecoms had supported many congresspeople's campaigns and were highly organized. To make it even harder, Net neutrality was a new concept and no country had established it in legislation until then. *Marco Civil* would only be officially submitted as a bill in Congress in August 2011, already in Dilma Rousseff's administration, after two phases of thorough public discussions over the initial draft.

Responsible for the commission that analyzed the bill and one of the main advocates of *Marco Civil* was a young legislator from Rio de Janeiro called Alessandro Molon (PT). Molon realized that he could coordinate among several activists that had previously, one way or another, participated in defining technology policies and were already mobilized for the creation of this piece of legislation. However, due to political pressure by lobbies against it, the bill stalled (Câmara dos Deputados 2014).

With the Snowden revelations in 2013, the *Marco Civil* bill was brought back. It became clear that avoiding the issue of surveillance was no longer possible in light of public opinion. Creating a *Marco Civil* would be seen as a major step towards regulating the Internet in Brazil and creating a digital "Bill of Rights" connecting privacy, as a direct response to foreign spying by the NSA. The data which Snowden exposed clearly showed that the NSA not only spied on Brazilian corporations (such as Petrobras, for example), but was also collecting in bulk Brazilian Internet traffic, as Brazil was one of the hubs through which data passed in international communications. These revelations stocked Brazilian nationalism and revived the Brazilian state concerns with technological and data autonomy.

President Rousseff stamped the bill as urgent – which automatically placed it on top of the Legislature's agenda, blocking other bills until it would be discussed and voted. Revitalized by the political climate, the same coalition of players helped support the bill in Congress. The government could now credibly claim that it was a piece of legislation that was thoroughly revised and legitimated by public consultation with the support of several groups that had been supporting it for a long time, in every step of the way (Lourenço 2014).

This coalition was formed by civil rights advocates, free/open source software activists, academics, labor rights advocates, and NGOs. It included external support of institutions and personalities (such as the creator of the term "Net neutrality", Tim Wu, and the Web inventor, Sir Tim Berners-Lee) (Ferraz 2013). The group was decisive to show a broad range of support for a law that was one of first to incorporate the demands of Internet users. However, the coalition that supported *Marco Civil* was not formed at this precise moment. It had been growing since, at least, the forging of the open source policy of the mid-2000s.

The *Marco Civil* debate was also helpful in another way. When Snowden revealed the NSA documents showing widespread spying in Brazil, Rousseff's government found that its international response was backed by a ready-made domestic/international coalition already assembled for the approval of the bill. At the same time, she had the elements to pass legislation that was years

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in the making, as well as present an already legitimate domestic support for positions taken in international forums. So, one of the major international initiatives of Rousseff's administration in foreign policy was a mixture of a crisis, an opportunity, and political timing, all connected through years of advocacy for Internet and Technology rights.

Brazil´s Contradictions in Implementing *Marco Civil*

Although Brazilian foreign policy position towards the Internet has been consistent, the same is not true regarding the country domestic politics on the subject. The principles of *Marco Civil* are against the interest of many important players in Brazil´s power games, including, sometimes, the federal government itself. Also, the judges responsible to apply the law often do not have an extensive knowledge of the new information technologies and sometimes make decisions that are out of touch with the *Marco Civil*.

This is not really a surprise, for "In some instances, perhaps even unintentionally, international pressures 'reverberate' within domestic politics, tipping the domestic balance and thus influencing the international negotiations".(Putnam 1988, 454). Many of the actions that the Rousseff administration took were not part of a careful crafted plan, but rather the response to big foreign events, outside the control of domestic actors. Some of them rejected this external influence.

The most serious contradiction is the outrage that president Rousseff expressed concerning NSA in despite of the lack of transparency and accountability that are characteristic of her government´s surveillance policies. Most of Brazil´s actions in this field are heavily militarized, under the control of the Army, without an adequate supervision of civilian politicians or civil society.

The military usually treat cybersecurity as a big umbrella where espionage, cybercrime and domestic surveillance go together:

> While the Armed Forces has enthusiastically embraced this new role, placing them in charge of overall cybersecurity for both civilian and military networks is a mismatch that could have damaging consequences the country's security.
>
> Not all cyber threats are equal. Perhaps the most egregious one is economically-motivated cybercrime—the targeting of private banks, firms and individuals. Others are posed by domestic and international hacktivist groups intent on disrupting government services and corporate websites. Brazil's popular protests of June-August 2013, for example, coincided with a sharp rise in hacktivist activity. (Muggah and Glenny 2015)

These are disturbing trends, not unlike the activities of the NSA. If in the United States the war on terror has been criticized because of the violations of civil rights, in Brazil the nationalist concerns with American espionage can be manipulated as a pretext for curbing internal dissent. The concerns are stronger because of a recent history of violent repression against social movements

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and protests in the big demonstrations that since 2013 have been questioning national and local governments.

Some of Rousseff's actions also caused worries about Net neutrality. The president announced a negotiation with Facebook to boost Internet access to poor people in Brazil. The terms are not clear, but human rights activists have accused this kind of project sponsored by the company of practices such as limited visits only to sites that are partners of the social network, in clear violation of several *Marco Civil* clauses. Sixty-five NGOs wrote an open letter to Facebook´s CEO criticizing it for violations of Net neutrality and privacy.[8] Rousseff appeared to be more interested in the photo-op with Mark Zuckerberg, which served both as a way to establish some credibility with business groups and to signal that the government still had an agenda of expanding Internet access throughout the country.

There is also a conservative backslash in Congress, with its members presenting bills to amend t *Marco Civil* to allow government access to personal data without a court order, and to create tools for politicians to erase from the Internet material that are offensive to them. Most of these proposals were presented by the Inquiry Commission on Cyber Crimes, which affirmed in its report that the measures are necessary for protecting society from criminals who use the Internet to achieve their goals. [9]

These initiatives are sponsored by the former speaker of the House of Representatives, Eduardo Cunha, one of the main opponents of *Marco Civil* (Muggah and Thompson 2016). Cunha, a major player in calls for Rousseff's impeachment, has been since the 1990s an articulate voice for the telecom companies in Brazil. In many ways, the current struggles are a replay of the political struggles that led to the adoption of the new law after the NSA spy scandal.

Last, but not least, there are conflicts between Brazilian authorities and major Internet companies, such as Apple, Facebook and WhatsApp regarding access to personal data of its users, normally because of their refusal in complying to lawsuits. Two judges ordered three times the suspension of WhatsApp (an internet mobile-based communicator) in Brazil, after the company did not cede information to police investigations – Facebook claims that this is not possible, due to the cryptography used by the service. For several times the app was offline for hours in the country, until a higher court overruled the decision.

Ronaldo Lemos highlighted that it forbids the suspension of websites and the Judiciary must have a better understanding of human rights in the Internet. (Lemos 2015). Indeed, it is hard to imagine a Brazilian judge suspending the activities of a newspaper or TV channel because of a similar conflict with the one they faced with WhatsApp.

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8   Open Letter to Mark Zuckerberg: Internet.org vs. Net Neutrality, Privacy and Security. https://edri.org/letter-facebook-internet-org/. Accessed July 2016.

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Conclusion

In the 2010s, Brazil became a leader in the global struggles on Internet governance. The country proposed several initiatives to regulate online freedom of expression and privacy, to curb surveillance and to ensure Net neutrality. These ideas may be the base for a future international treaty on the Web, and are already an important part of the negotiations.

Brazilian foreign policy toward Internet governance has many sources, both domestic and international. These networks advocated rules to protect online privacy and Net neutrality, and were able to draft the *Marco Civil* as well as to influence Brazil´s diplomatic positions at the United Nations. The key event was the global debate about the NSA and its impact in the country. However, the origins of the policy coalition run deep in several government initiatives of the 2000s, which brought together officials and activists, such as the policy concerning open-source software.

Since 2013, Brazil co-sponsored two UN resolutions on privacy in the digital age, hosted multilateral conferences on the issue and took important steps to establish them in the human rights system of the United Nations. These achievements were, in part, a result of the turmoil caused by the NSA disclosures. The scandal helped the Brazilian government to overcome several domestic obstacles towards establishing *Marco Civil*. But that was a temporary relief and difficulties remain.

There are many contradictions in Brazil regarding the Internet, with powerful political groups in the country supporting different positions than the ones that have been adopted by the Rousseff administration. The security forces, for example, want more power of surveillance. The president herself spoke in favor of an agreement with Facebook that may put Net neutrality at risk. With the political instability in the country during and after the impeachment process, it is much more difficult to build a coalition to ensure *Marco Civil*.

What will be Brazil´s road in the next years? There are no guarantees that the country will remain a supporter of the current policy, especially due to the intense political and economic crisis faced by the nation. As a major emerging democracy, what happens in Brazil will be important to the global struggles about Internet governance.

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