GLOBAL INFORMATION SOCIETY WATCH 2011

INTERNET RIGHTS AND DEMOCRATISATION
Focus on freedom of expression and association online

Freedom of expression on the internet: Implications for foreign policy

Ben Wagner
European University Institute, Department
of Political and Social Sciences
www.eui.eu

Introduction

Since the birth of the public internet, questions of global internet governance have also been questions of international affairs.[1] However, while internet security has historically been heavily politicised at an international level, it is only more recently that the questions of internet expression and free speech have been perceived as a foreign policy issue. The following analysis will provide an overview of the two key foreign policy debates on free expression on the internet, before suggesting paths for the development of future internet foreign policy and what consequences these paths are likely to have for freedom of expression on the internet.

Internet freedom as foreign policy

The "internet freedom debate" has become one of the most important international debates on international freedom of expression and foreign policy.[2] One of the most important public statements of such a foreign policy initiative was United States (US) Secretary of State Hillary Clinton's "Remarks on Internet Freedom"[3] made on 21 January 2010. Despite including other countries, the obvious focus of her statement was China and Iran, which are both mentioned more than any other country. Moreover, within this foundational statement on internet freedom as foreign policy, two key aspects stand out: the assumption that ensuring freedom of expression might serve to foment "US friendly revolutions"[4] and the highly ambiguous role of the corporate sector in securing free expression.[5]

Following Clinton's remarks, several European countries began to develop internet freedom initiatives, which were generally understood to be a response to the suppression of mass public protests in Iran in 2009. Perhaps the best known of these is the Franco-Dutch initiative which was launched in a joint communiqué by Bernard Kouchner and Maxime Verhagen, then French and Dutch foreign ministers, in May 2010. The initiative culminated in a meeting at ministerial level on "The Internet and Freedom of Expression" in July 2010.[6] Here too the key aspects of the meeting agenda were the support of the supposed revolutionary activities of "cyber dissidents" and the ambiguous role of the corporate sector. However, the Franco-Dutch initiative includes significantly stronger references to a human rights framework to guarantee freedom of expression, compared to the US State Department's internet freedom initiative.

Since the Franco-Dutch initiative, however, it appears that the two countries have taken divergent paths in their approach to internet freedom. This can be attributed in significant part to cabinet reshuffles and shifting balances of power within the respective governments. The French foreign ministry has been hit by a turbulent period following the resignation of Bernard Kouchner. In this period the presidential palace increasingly came to dominate internet foreign policy following President Nicolas Sarkozy's call for a "civilised internet", with the state acting as a civilising force.[7] In the Netherlands, parliamentary elections in 2010 and the resulting cabinet reshuffle has also led to the appointment of a new foreign minister, Uriel Rosenthal. In contrast to France, he recently stated his interest to go *beyond* existing internet freedom initiatives, suggesting that industry self-regulation is insufficient and that additional governmental regulation is necessary.[8]

1   Tallo, I. (2011) eGovernment and eParticipation, paper presented at the European University Institute workshop Government and the Internet: Participation, Expression and Control, Florence, Italy, 8-9 March.

2   Ross, A. (2010) Internet Freedom: Historic Roots and the Road Forward, *SAIS Review*, 30 (2), p. 3-15; McCarthy, D. R. (2011) Open Networks and the Open Door: American Foreign Policy and the Narration of the Internet, *Foreign Policy Analysis*, January.

3   Clinton, H. (2010) Remarks on Internet Freedom. www.state.gov/secretary/rm/2010/01/135519.htm

4   Nye, J. S. J. (2009) Get Smart: Combining Hard and Soft Power, *Foreign Affairs*, 88 (4).

5   Human Rights Watch (2006) *"Race to the bottom": Corporate complicity in Chinese internet censorship,* Human Rights Watch, New York.

6   de la Chapelle, B. (2010) Remarks by Bertrand de la Chapelle during the Dynamic Coalition on Freedom of Expression and Freedom of the Media on the Internet Coalition Meeting, at the 5th Internet Governance Forum, Vilnius, Estonia, 14-17 September. webcast. intgovforum.org/ondemand/?media=workshops

7   Woitier, C. (2011) Sarkozy préfère «l'internet civilisé» aux cyberdissidents, *Le Figaro*, 20 May. www.lefigaro.fr/politique/2011/05/20/01002-20110520ARTFIG00584-sarkozy-prefere-l-internet-civilise-aux-cyberdissidents.php

8   Rosenthal, U. (2011) Speech by Dutch Foreign Minister Uri Rosenthal at the International Digital Economy Accords (IDEA) Brussels Meeting, Brussels, Belgium, 23-24 March. www.rijksoverheid.nl/documenten-en-publicaties/toespraken/2011/03/24/speech-by-pieter-de-gooijer-at-the-international-digital-economy-accords-idea-brussels-meeting.html

The internet freedom debate has also reached the German foreign ministry. Despite widespread public debates about national internet governance and regulation within Germany, these debates have had a limited impact on German foreign policy outside of Europe until relatively recently. Following this model, the first statement on internet freedom made by the German Foreign Minister Guido Westerwelle in May 2011 draws significantly more on international discourses on internet freedom than national debates about internet governance and regulation.[9]

Consequently, the challenge facing the German, French, Dutch and US foreign ministries is to create a coherent overall frame for internet governance that considers both national and international debates. It is important to note that the US, Dutch, French and German foreign ministries have all created internal structures that are explicitly tasked with pursuing internet freedom policies which promote freedom of expression internationally. This should in the medium and long term lead to noticeable development of internet foreign policy initiatives. However, as was previously noted, their ability to effect meaningful change on government policy depends heavily on dynamics within the respective ministries and governments.

Equally, there are signs that the internet freedom debate is maturing, both in regard to the development of substantive policy initiatives on internet freedom and a greater coherence between national and international policy. A recent report by the Washington think tank Center for New American Security, entitled "Internet Freedom: A Foreign Policy Imperative in the Digital Age",[10] proposes eight "principles" which should guide internet freedom policies in the US, many of which involve substantive policy initiatives for promoting freedom of expression such as reforming export controls, creating economic incentives for corporations to support freedom of expression, and an attempt to create international norms.

Internet human rights as foreign policy

While the internet freedom debate continues, another strand of the international debate on freedom of expression on the internet is noticeably distinct and could be termed the "human rights-based approach". This strategy has specifically been pursued by a number of states, particularly Sweden and Brazil, as well as a variety of international organisations and civil society actors. This discourse seeks to situate the debate on freedom of expression on the internet within existing human rights law, looking for ways of applying existing norms and developing "new rights" for the internet.[11] This strategy is typically pursued in co-operation with existing international institutions which promote human rights and freedom of expression, including the United Nations (UN).

A recent report by UN Special Rapporteur Frank La Rue entitled "Report on the promotion and protection of the right to freedom of opinion and expression" is primarily devoted to developing "general principles on the right to freedom of opinion and expression and the internet"[12] as well as a framework within which internet content can reasonably be restricted. This report was based on an extensive consultation process with governments, civil society, international corporations and experts. Consequently, it represents probably the single most well-developed framework for applying human rights norms to freedom of expression on the internet.

The Swedish foreign ministry has been particularly actively following this strategy at various different levels, most notably through consistent support of the Special Rapporteur.[13] Its long-standing support of human rights frameworks on the internet gives the foreign ministry a considerable level of international credibility when it comes to free expression on the internet, as does its ability to organise statements on freedom of expression on the internet representing a broad international coalition at the UN Human Rights Council.[14]

The pursuit of a human rights-based approach has also led to the development of a wide variety of declarations, principles and charters of rights on the internet. These are typically developed within international organisations or multi-stakeholder coalitions and attempt to develop human rights frameworks which also apply to freedom of expression on the internet.[15] The content of these documents is extremely diverse and ranges from an elaboration of basic principles such as the Brazilian Principles for the Governance and Use of the Internet (2009), the Global Network Initiative Principles (2008) or the Council of Europe's Internet Governance Principles (2011), to more extensive documents which seek to elaborate and apply rights such as the Association for

9   Westerwelle, G. (2011) Gastbeitrag von Guido Westerwelle: Die Freiheit im Netz, *Frankfurter Rundschau*, 27 May. www.fr-online.de/politik/meinung/die-freiheit-im-netz/-/1472602/8496970/-/index.html

10 Fontaine, R. and Rogers, W. (2011) *Internet Freedom: A Foreign Policy Imperative in the Digital Age,* Center for a New American Security, Washington, D.C.

11 Benedek, W., Kettemann, M. C. and Senges, M. (2008) *The Humanization of Internet Governance: A roadmap towards a comprehensive global (human) rights architecture for the Internet.* www.worldcat.org/title/humanization-of-internet-governance-a-roadmap-towards-a-comprehensive-global-human-rights-architecture-for-the-internet/oclc/619152167&referer=brief_results

12 La Rue, F. (2011) *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,* UN Human Rights Council, Geneva, p. 6.

13 Bildt, C. (2011) Carl Bildt's remarks on Digital Authoritarianism. www.sweden.gov.se/sb/d/14194/a/169246

14 Knutsson, J. (n.d.) Freedom of Expression on the Internet Cross-regional Statement. www.sweden.gov.se/sb/d/14194/a/170566

15 Benedek, Kettemann and Senges (2008) op. cit.

Progressive Communications (APC) Internet Rights Charter (2006)[16] or the Charter of Human Rights and Principles for the Internet (2010).

Common to all these documents is their reference to international human rights law, most frequently to the Universal Declaration of Human Rights (1948). Moreover, they are typically developed by a wide range of stakeholders from various institutional backgrounds, including civil society, the private sector, and the academic and technical communities. Foreign ministries, while often directly involved in the drafting process, have not typically taken leadership in the drafting of such documents.

One of the most interesting examples of such collaborative efforts is the Charter of Human Rights and Principles for the Internet,[17] which was developed by the Internet Rights and Principles Dynamic Coalition of the Internet Governance Forum. To give some idea of the diversity involved in the drafting process, the Steering Committee of the Coalition is composed of academics from Japan, Brazil, the UK and the US, Indian, US and Brazilian civil society representatives, German, US and UK private sector actors, representatives of the Council of Europe and UNESCO, and a Swedish diplomat.

Fundamental to all of these documents is the belief that human rights are a relevant frame for promoting the rights of individuals on the internet. Consequently, this approach stands and falls with the acknowledgement of "internet human rights" within the wider human rights community and international human rights law. It would seem that with the report by La Rue, which was presented to the Human Rights Council, a significant step in this direction has been taken, but it remains to be seen how the report itself is received.

The paths ahead? Internet policy coherence...

While many states are prepared to affirm the importance of human rights and rights to freedom of expression on the internet, as mentioned, relatively few have been actively involved in the process of developing the charters and principles which have proliferated over the last five years. Although these processes do not necessarily have to lead to international treaties like the Council of Europe Cybercrime Convention (2001), they do provide a space for defining and elaborating concepts and principles on freedom of expression on the internet.

Increasingly, foreign ministries have to wrestle with translating initiatives related to freedom of expression into foreign policy. The three key aspects that are persistently mentioned in this regard are (1) a linkage to existing human rights frameworks, (2) the perceived role of the internet in enabling or fuelling revolutions, and (3) the questionable role of the private sector. However, these aspects are developed in very different policy contexts. "Internet freedom strategies" focus more on specific foreign policy goals and specific events which are perceived to be causally linked to freedom of expression, typically protest events and revolutions. In contrast, "internet human rights strategies" focus more on developing and embedding aspects of freedom on the internet into existing human rights frameworks.

In the case of internet freedom-based strategies, overall government internet policy coherence is particularly important. This stems from very different international and national policy strategies on the internet, leading to value conflicts which may be particularly harmful for foreign policy. The tension between internet policies at a national level – WikiLeaks in the US or the HADOPI law in France – and a foreign policy which promotes internet freedom is by no means lost on those addressed by these policies. The challenge here is not just to bring the relevant policy areas together in one document, as was the case in the US International Strategy for Cyberspace,[18] but to develop a coherent framework with principles that can be applied across ministries and policy areas.

Here internet human rights strategies are at an advantage, as they already have a clear set of principles, but are dependent on the acknowledgement of "internet rights as human rights".[19] They also profit from a wide base of stakeholders who are involved in the drafting process. Considering the number of charters and principles currently circulating, it remains to be seen whether a coherent overall internet human rights framework can be developed.

Finally, as internet freedom policies mature and internet human rights frameworks develop, there is likely to be an increasing overlap between both internet freedom and human rights-based strategies.

While the divide between states pursuing separate foreign policy strategies on these issues is likely to remain, due to differing strategic interests and foreign policy objectives, there is reason to suggest that there might be space for greater cooperation between states in developing policies which pursue greater freedom of expression on the internet. ∎

16 Association for Progressive Communications (2006) *APC Internet Rights Charter*. www.apc.org/en/node/5677

17 Internet Rights and Principles Dynamic Coalition (2010) *Charter of Human Rights and Principles for the Internet: Beta Version 1.1.* internetrightsandprinciples.org/node/367

18 US National Security Council (2011) *International Strategy for Cyberspace: Prosperity, Security, and Openness in a Networked World,* Executive Office of the President of the United States, National Security Council, Washington, D.C.

19 Association for Progressive Communications (2011) *Internet Rights Are Human Rights.* www.apc.org/en/pubs/briefs/internet-rights-are-human-rights-claims-apc-human-

In the year of the Arab uprisings **GLOBAL INFORMATION SOCIETY WATCH 2011** investigates how governments and internet and mobile phone companies are trying to restrict freedom online – and how citizens are responding to this using the very same technologies.

Everyone is familiar with the stories of Egypt and Tunisia. **GISWATCH** authors tell these and other lesser-known stories from more than 60 countries. Stories about:

PRISON CONDITIONS IN ARGENTINA Prisoners are using the internet to protest living conditions and demand respect for their rights.

TORTURE IN INDONESIA The torture of two West Papuan farmers was recorded on a mobile phone and leaked to the internet. The video spread to well-known human rights sites sparking public outrage and a formal investigation by the authorities.

THE TSUNAMI IN JAPAN Citizens used social media to share actionable information during the devastating tsunami, and in the aftermath online discussions contradicted misleading reports coming from state authorities.

GISWATCH also includes thematic reports and an introduction from Frank La Rue, UN special rapporteur.

GISWATCH 2011 is the fifth in a series of yearly reports that critically cover the state of the information society from the perspectives of civil society organisations across the world.

GISWATCH is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

GLOBAL INFORMATION SOCIETY WATCH
2011 Report
www.GISWatch.org