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Bring in the Human Rights

Essay by Rikke Frank Jørgensen, November 16, 2009 in response to The Path Towards Centralization of Internet Governance Under the UN - Part 1

For a more elaborate account of the arguments presented in this essay, see Drake and Jørgensen, Introduction, in ***Human Rights in the Global Information Society****, Rikke Frank Jørgensen (ed.), MIT Press: Cambridge, MA 2006.*

The institutionalization of international human rights standards has constituted one of the major normative shifts in world politics since World War II. In December 1948, the UN General Assembly approved the Universal Declaration of Human Rights (UDHR), which deals with two broad categories of human rights: civil and political rights; and economic, social, and cultural rights. Since the adoption of UDHR human rights has become a deeply institutionalized field, involving, at the global level, the UN Commission on Human Rights, a multitude of monitoring mechanisms, interpretation guides (general comments on specific rights), special rapporteurs, and so on - working in a dense policy space to elaborate and interpret internationally- agreed rights, build capacity, and promote compliance.

The UN-based human rights system is supplemented by regional human rights mechanisms, which vary widely in constitution and effectiveness. In addition, development agencies have increasingly adopted a so-called right-based approach in recent years. According to the definition used by the UN Office of the High Commission of Human Rights, a rights-based approach is a conceptual framework for the process of developing policies that are normatively based on international human rights standards and operationally directed to promoting and protecting human rights.

Following from this, it would be natural to expect that the UN arenas for Internet policy also apply a rights-based approach, thus making Internet policies "operationally directed to promoting and protecting human rights." However, if we consider the UN World Summit on the Information Society (WSIS), which took place in Geneva in 2003 and in Tunis in 2005, and the annual Internet Governance Forum (IGF), which is a follow-up to WSIS, this is not the case.

In creating the first UN space in which to debate Internet policy, WSIS focused in particular on two human rights measures. First, it sought to ensure that the International Bill of Human Rights act as the overarching and guiding principles for the Geneva Declaration of Principles and Plan of Action. Second, it sought to utilize a human rights framing for specific information society issues. The explicit affirmation of human rights in the Geneva Declaration of Principles was realized, however only in the final days of the negotiations and as a result of strong pressure from the Western group of delegates.

The Geneva Declaration reaffirms the universality, indivisibility, interdependence, and interrelation of all human rights and fundamental freedoms, including the right to development. It further stresses that democracy, sustainable development, and respect for human rights and fundamental freedoms as well as good governance are interdependent and mutually reinforcing .

This commitment to human rights was reaffirmed in the Tunis Commitment and the Tunis Agenda for the Information Society, at WSIS phase two, which also included an explicit link

between human rights and Internet governance. However, while the policy documents adopted at WSIS acknowledged the importance of international human rights standards, there was limited intergovernmental debate on how human rights might apply to specific Internet policy issues. During the plenary sessions and working group negotiations, the Human Rights Caucus and other groups suggested numerous avenues for incorporating specific human rights language in the Geneva Declaration of Principles in relation to e.g. discrimination, data protection, labor rights, regulatory environments, press freedom, information access etc.; however human rights considerations hardly factored into the governments' negotiations on these topics.*

As such, the WSIS process demonstrated that for many governments the linkage between human rights and Internet policy issues is far from obvious. In the end, only few human rights references made their way into to the final version of the Geneva Declaration of Principles, i.e. the right to freedom of expression (UDHR Article 19) and the due recognition and respect for the rights and freedoms of others (UDHR Article 29). In addition, the Declaration contains more general references to the rights of children, the right of authors and artists, the principle of non-discrimination and the right to privacy.**

The Tunis Summit sought to operationalize these commitments by creating various mechanisms, including, for example, a global policy forum (the Internet Governance Forum), a UN coordination group on the Information Society, and a mechanism for evaluating progress under The Economic and Social Council's Commission on Science and Technology for Development.

However, four years down the road, there is still no clear indication of how the WSIS human rights commitment shall be measured or monitored. One of the few visible results of the Internet Governance Forum has been the creation of several multi-stakeholder arrangements in the form of "dynamic coalitions" that are focused on developing principles to guide information society policy-making. These include coalitions concerned with the Framework of Principles for the Internet, Privacy, Child Online Safety, Freedom of Expression and Freedom of the Media on the Internet, Internet Bill of Rights, and many more. Several of the coalitions refer to human rights— especially the right to privacy and the right to freedom of expression— however only at a very general and schematic level.

In sum, the WSIS process and its Internet Governance Forum have not yet realized or implemented the commitment to human rights, which was made at the Geneva Summit in 2003, and reaffirmed in Tunis in 2005. With the fourth IGF currently occurring in Sharm-El-Sheikh, Egypt, it will be interesting to see whether and how human rights standards are part of the agenda.

* *As part of a larger civil society coalition that came together around the WSIS, a small group of civil society organisations concerned with getting human rights on the WSIS agenda launched the Human Rights Caucus at the first preparatory conference in July 2002. At the Summit in 2005 the Caucus comprised more than 60 organisations. See* www.iris.sgdg.org/actions/smsi/hr-wsis/
***See the preamble and paragraph 3, 4, 5, 11,18, 36, 52, 58 of the Geneva Declaration of Principles, cf. note 3.*

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