

# The welcome brazilian idea about the United Nations supporting the regulation of Internet in housing rights, the probable failure of this idea.

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**Abstract** - *This paper discusses the idea of creating a Brazilian Multilateral Governance Pact on Internet, argument defended before at the UN, and the probable ineffectiveness practice of this measure, especially against the spirit of freedom of the Internet*

**Keywords:** *Internet; regulation; government; international laws; fundamental rights*

## 1. Introduction

This paper discusses the idea of creating a Brazilian Multilateral Governance Pact on Internet argument raised by the President of Brazil, Dilma Rousseff at the UN.

In spite of that salutary idea in his candid essence, in fact, the practical experience of the World Wide Web, it is feared that the bias aggressive and libertarian Internet becomes the measure, if approved, completely harmless and without any chance of achieving its purpose.

Corroborating, the fear that the new International Treaty turn dead letter finds room to germinate when they think of other examples experienced by humanity, with the turns violent actions of governments, despite there since 1948, a Charter of Rights supported by the UN.

Anyway, or the freedom that the internet is elementary condition, or lack of observance of governments to the text of treaties already signed, which in sight, unfortunately, is the likely ineffectiveness of the measure.

It is what goes on to explain.

## 2. The discourse and its arguments.

In the speech of the President of Brazil, Dilma Rousseff, at the United Nations in September 2013, due to the worldwide reported spying operation in which she and Brazil figured as victims, due to leaked documents by British journalist Edward Snowden, sustained the Brazilian head of state that the UN should consider a milestone civil multilateral of governance of the internet, a protocol to

which all member states should obey. In his words, so stood the President of Brazil:

*“The United Nations should play a leading role in efforts to regulate the behavior of the states facing these technologies and the importance of the internet, this social network, to build democracy in the world.*

*Therefore, Brazil will present proposals for the establishment of a landmark civil multilateral governance and use of internet and measures to ensure effective protection of data that travels through it.*

*We need to establish a global network multilateral mechanism:*

*1 – From freedom of expression, individual privacy and human rights.*

*2 – The Democratic governance, multilateral and open, exercised with transparency, stimulating collective creation and participation of society, governments and the private sector.*

*3 – From the universality that ensures social and human development and building inclusive societies and non-discriminatory.*

*4 – From cultural diversity without imposing beliefs, customs and values.*

*5 – From net neutrality to cover only technical and ethical criteria, making impermissible restrictions on political, commercial, religious or any other nature”.*

Analyzing the context of time, it is clear that the proof of the truth of the facts narrated converges to a violation of principles protected by international law, especially the sovereignty, and the dignity of the human person, regardless of this being the head of state and government of Brazil .

Following, if the intrusion as ventilated, has also been given in the commercial discovery of sensitive information and strategic Brazilian companies, it is not unreasonable distress to the UN, behold, BRAZIL, as a member of the United Nations, and traditions, never think to resolve this impasse in another field than dialogue and diplomacy.

It would be, on this scenario, again ratified the teachings of the Italian philosopher of our time, Norberto Bobbio, who argued: “the fundamental problem in relation to human rights today is not so much to justify them, but to protect them. This is a problem not philosophical but political.”

It would be, on this scenario, ratified the teachings of the Italian philosopher of our time, Norberto Bobbio[1], who argued: “the fundamental problem in relation to human rights today is not so much to justify them, but the protects them. This is a problem not philosophical but political.

“But with all due respect to the Brazilian position, the question is what causes anxiety, “- will solve?” Sorry to conclude with the pessimists. We explain:

Initially, it should be noted teachings of renowned Brazilian lawyer Patricia Peck Pinheiro[2], digital law expert, about the evolution of technology in recent decades until ratification of the massive use of the internet. Look up:

*“Just over forty years ago, the Internet was just a project, the term “globalization” was not coined and data transmission over fiber optics did not exist ... The everyday world summed up the legal papers, paperwork and deadlines. With the changes that have occurred since we entered the era of real-time, the virtual displacement of business, breaking paradigms. This new era brings transformation in various segments of society ... The law is also influenced by this new reality. The dynamics of the information age requires a deeper change in the very way the Right is exercised and thought of their practice ... It is important to understand that we live in a unique moment, both in terms of technological and economic spheres of society. The professional in any field, especially the law, has an obligation to be in tune with the changes taking place in society. We know that the birth of the Internet is one of the major factors responsible for this moment, but the fundamental, first and foremost, is to understand that these developments are not the result of a cold reality, only technological, divorced from the everyday world.*

*The Internet is more than a simple means of electronic communication, formed not only by a global network of computers, but mainly by a global network of individuals”.*

In the same sense as a buffer of information as a right to be seen by all, the doctrine of the prestigious professor at the University of São Paulo Celso Antonio Pacheco Fiorillo and Christiany Pegorari Conte[3]:

*“Infeasible discuss the advent of the Information Society without putting in a prominent position the Internet as well as their own reflections on the legal reality of the community. The information and communication technologies, especially the Internet, have brought the need for a new look at old rights, such as: information, communication, freedom of expression and to privacy, as well as questions about the emergence of new goods require specific legal protection (as in the case of so-called Computer Security, which covers the integrity of the information posted on the worldwide web, the availability of access to and confidentiality of information).*

*The “Internet problem” came to be identified when the technology began to interfere with the peaceful social relations and its subsidiaries, as well as some possible practices socially unpleasant and unwanted, such as its use in the commission of offenses and creating new contacts that jeopardize goods that have not yet recognized its relevance for the right.*

*The law must adapt to the new reality, under penalty of losing his true role, namely disciplinary social relations and enforce standards of conduct. Thus, the binomial law and the Internet is not passing phenomenon. It is a reality still underused, but that should be studied in all its fields of legal sciences, in order to secure new rights and the enforcement of existing ... We live in a society marked by the so-called Digital Revolution. Concepts such as the Internet, global village, virtual space and eliminating borders mark the social reality of the twenty-first century. In this context of virtual reality, new relationships are consolidated at each instant, requiring this way of legal protection in order to ensure effectiveness and safety for such relationships”.*

However, the greatest difficulty of any regulation in the field of internet is changing its essence free! The French thinker living in USA, Dominique Cardon[4] faced the issue:

*“It happens that, in the digital era, democracy has changed in appearance. The Internet allows not only communicate more, better and faster, she extends formidably public space and transforming the very nature of democracy.*

*The Internet would somehow be the natural result of the evolution of mass media, since it can associate text, sound and image in digital multimedia. But the notion that the big chains temporally information media, is overly simplistic ... Suffice dominate this young rebel media to perpetuate that economic models, cultural and political set over the twentieth century”.*

Plus, even with numerous rules adopted by the international community for the preservation of fundamental rights and guarantees of human dignity, since the ending of the Second World War the various societies of mankind are obstacles to ensure minimum rights in many cases.

The Universal Declaration of Human Rights UN (1948) wove thirty articles parameters robust copyright protection for the first time in broad international perspective, propagating the ideals of freedom and respect between individuals and between states and their nationals, raising the dignity of the level of human worth more consideration.

In the words of the ever revered Italian philosopher Norberto Bobbio[5], there was embryo of the “Age of Rights.”

As we know, the Universal Declaration of Rights of the United Nations was raised soon after the horrors and atrocities experienced by moisture in World War II – especially the ideals of Nazi extermination of other people. However, unfortunately, not so the world left to live in the years that followed clashes with new people, wars and suffering, often due to other interests that stems from

political and / or in many cases encouraging armed conflict until the collapse of one of the litigants.

Not infrequently these conflicts were mere splitting of shares from the post war 1945 – latent cases experienced by Eastern Europe in the 90s. On other occasions were due to political circumstances, accustomed to religious interests, political and commercial, as are examples of the Middle East, or the two U.S. military interventions in Iraq, for example.

In fact many other wars experienced humanity, without the vast majority of countries do not think of efforts to promote peace and honor respect the Charter of the UN Declaration of Rights, which is meant for itself a relevant tool in the search of the peace, however, not necessarily an effective guarantee. The Current situation in Syria to serve as a warning!

Incidentally, the difference is not so subtle way. Again using the teachings of Bobbio[5] we have:

*“The problem of the foundation of a right presents itself differently depending on whether to seek the grounds that it has a right or entitlement that would have. In the first case investigate the positive legal system, to which I belong as having rights and duties, if there is a valid norm that recognizes and what is this rule, in the second case, try to find good reasons to defend the legitimacy of the right in question and to convince as many people as possible to recognize it ... We assume that human rights are desirable things, i.e., ends that deserve to be persecuted and recognized ... finishing by finding the reason and compelling argument, to which no one can refuse to own membership”.*

Later Italian philosopher concludes:

*“The further increase the powers of individuals; especially diminish the freedoms of the same individuals. These are two different legal situations so that the arguments used for the first not worth to defend the second. The two main arguments for introducing freedoms between fundamental rights: a) the irreducibility of past beliefs b) the belief that the freer the individual is, the more he can progress morally and also promote the material progress of society. Now, these two arguments, the first is irrelevant to justify the requirement of new powers, while the second showed it as historically false. Well, two fundamental rights, but currently a contradiction, cannot have one and the other one absolute basis, i.e. a foundation that makes a right and its opposite, both irresistible and undeniable. Incidentally, it is worth recalling that, historically, the illusion of absolute foundation of some established rights was an obstacle to the introduction of new rights, fully or partially incompatible with those. Just think of the obstacles to progress posed by the social legislation of the absolute foundation of natural law theory of property: almost secular opposition against the introduction of social rights was made on behalf of the absolute foundation of rights of freedom”.*

Bailing the doctrine of Bobbio, what you want is to clarify the fact that sooner or later, with the internet, its benefits and harms, sees it possible that the Charter of Rights and Multilateral Guarantees Digital, as either the

Brazil (e-Treaty) may be taken over by the UN, but honestly, do not believe that this solves the problem, nor inhibit any recurrence.

About the first it is good to say that with the internet or without the internet procedures are traditional espionage, the Cold War itself and its actors will say. But, obviously, that new technologies have facilitated and very fundamentally the internet, modalities intrusion, whether between individuals, companies, or countries.

Now, what you want to Brazil, via the UN, ultimately would transform the core DNA of the Internet: freedom! But the essence free is virtually impossible to be regulated in their minutiae, because even if a country does not promote invasion / intrusion a cracker could do it, despite being criminally culpable conduct.

In this sense, even the teachings of Liliana Minardi Paesani, Brazilian international lawyer and professor, warns that[6]:

*“The law is always conservative, compared with the dynamics of the Internet, whose ability of new facts almost impossible lawmaker track their steps. Even being conservative, right cannot be silent and should seek to do justice, overcoming and adapting to the free nature of the Internet, in an attempt to preserve the rights of citizens, their privacy and integrity, blaming the offenders, even if virtual ... It appears that the idea of community is highly compromised. Private sphere and the public sphere, hitherto distinct, tend to mix it up. And there is a trend to replace traditional regulation by a kind of self-regulation relieved of political will, but The multiple connected networks of production and services”.*

And follows, basting the precepts of the Right to freedom of the Internet:

*“The information system has become articulated and complex and has won a place in society and the ever-increasing recognition in the constitutional laws of the biggest countries in the world. The extent of expression of thought is strengthening and limits – and could not be otherwise – in numerous constitutional”.*

Studies renowned Professor Dominique Cardon, Sociologist and researcher at the EHESS in analyzing public space extended by the internet, remember:

*“In the age of paparazzi, one must constantly remember that, since the late nineteenth century, the prominence of journalistic photography has raised many questions and this discussion prompted, then building a normative base for legally protecting the privacy of citizens. At the same time it develops a press hungry for news, Samuel Warren and Louis Brandeis theorized in 1890, the “right to peace”. Since the activities of anonymous are not necessarily in the public interest, the systems were constructed in order to protect its existence against an invasion more violent towards the public. The porosity between the space of sociability and public space created the risk of personal information exposed for all to see. A “institutional surveillance” of the state and enterprises around which the debates were organized on the personal overlaps currently*

*“a interpersonal surveillance” of a new kind ... The barrier has not disappeared off; it weakened”.*

Occurs, however, that analyzing the election by Brazilian approach, it is true that does not exist otherwise effective control giving prestige to the “irreducible ethical minimum”[7] acceptable in concrete actions of nations, this institute which, if violated, would imply sanctions to be discussed and applied by the international community, in fact, these penalties already exist, such as trade embargoes, requests for explanations, surveys, etc..

On the free internet universe has never been so crystal clear teaching of Bobbio, because the challenge is even protect the rights, and we do not see a Multilateral Pact between countries to be able to do it.

However, ensure their existence (the e-Treaty) is as welcome, even in the era of knowledge (fueled by technology) to repeat the same problems accruing to mankind after the 1948 rights era: There is an International Charter of Rights, so often violated, which is not desired.

In good time to note that in Brazil there is a Federal Law to dealing with digital crimes (committed by electronic means), Law 12,737 – known as Carolina Dickmann Law – famous actress of soap operas.

Professor Spencer Toth Sydow, Master of Law from the University of São Paulo, has very insightful work on the overview of computer crimes (as he prefers to call it), where we can withdraw from their work placements[8]:

*“New concepts came into existence with the technology. While most goods was formerly represented by atoms, today most of them are represented by bits. Atoms form a tangible substance, while the bits make up the language (intangible) used by the computer to compose files, programs and communication signals.*

*Assets consist of bits also come into existence be achieved, thanks to new technologies. Trade secrets, copyrights, cash, databases, among many other values come into existence in the immaterial form.*

*On our times, there are no worldwide normative demonstrating behavior rules, in the computer network. Bet for a long time that the networks and their participants would be able to regulate themselves, simply by his communicative action, but the reality was not so friendly.*

*The power (of information) given to the connoisseur of language and procedures meant that if they experienced abuse in the network, exceeding reasonable limits of good living, a repetition of the ideas of Machiavelli.*

*It is noteworthy that computer crime is a kind of special crime, perhaps the sport “white collar”, because practiced by educated and privileged groups, and assume that, in the opinion of experts ones, mostly the leadership among the crimes in the world in a very short time.*

*Offenders virtual criminals are not stereotyped in real society: not attending classes necessarily low, in general, need not committing criminal offenses to survive”.*

### 3. Conclusion

In conclusion, sustaining ourselves in the teachings of a renowned jurist and philosopher Brazilian Miguel Reale[9], there is a foundation for the idea of Brazilian President:

*“Every human history binds primarily to the history of law, for whatever a man does, from the great artistic achievements to the humblest domestic uses, everything is conditioned, directly or indirectly, by law or manifests itself through legal forms. The right is not the highest value, but what determines the other, it is not life, but the fundamental warranty of society...”*

*The law as cultural force it is, and, more precisely, as an element of order and ensuring the cultural values of a community, can not only be stable - that is stagnation and death - not only movement and change, which is the lack continuity, breakage, waste of life ...Every culture has a center's own values, or rather several "centers of value" side arranged around a core value because, in the succession of cultural cycles, a value is essential: the human person, we have already pointed as the source value”.*

About the universal source value of the rights on the most advanced societies and cultures, we emphasis the appointments of Professor Liliana Minardi Paesani:

*“The means of mass communication, enhanced by new technologies, break cultural boundaries, political, religious and economic. Internationalization of information was anchored on the doctrinal movement that seeks to protect the interest of the individual goals and, in this case, the collective interest connected to the computer and telecommunication. The sector of mass communication today is one of those areas, and most say the new rights of the people in its essence Community.*

*The law is always conservative, compared with the dynamics of the Internet, whose ability of new facts almost impossible lawmaker track their steps. Even being conservative, right cannot be silent and should seek to do justice, overcoming and adapting to the free nature of the Internet, in an attempt to preserve the rights of citizens, their privacy and integrity, blaming the offenders, even if virtual*

*It appears that the idea of community is highly compromised. Private sphere and the public sphere, hitherto distinct, tend to mix it up. And there is a trend to replace traditional regulation by a kind of detached self-regulation of political will, but connected The multiple production networks and services*

*“The Power, when abused, ceases to be legitimate and degenerates into tyranny; Freedom, in turn, when taken to excess, ends up producing the same effects.” (Benjamin Franklin)*

*The evolution of State forms (State Absolute State Liberal) and the affirmation of the welfare state that recognized and placed first in the economic and social rights highlight the current need to include other rights.*

*Today, scholars fall into the rights and freedoms "generations" linked to the historical period in which it is stated by those documents that was its precedents.*

*Freedoms and rights of first generation, comprising all freedoms of individual character;*

*Freedoms and rights of the second generation, composed of economic, social and cultural rights;*

*Freedoms and rights of third generation, also known as solidarity rights not for the individual, but directed to the social group (people). It is the right of peoples to self-determination, peace, development, ecological balance, the control of national resources and environmental protection;*

*Freedoms and rights of the fourth generation, Rights are being recognized for the field of genetic engineering, bioethics and new communication technologies.*

This convergence of thoughts in conclusion, no technology and their inventions are increasingly fascinating and intriguing, yet humanity is in the hands of one of their ancient dilemmas - free will, tied to ethics, education and culture of the people is that will determine what is acceptable (ethical minimum), and what is at stake!''.

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