Towards a European Constitution for the Internet? Comparative Institutionalization and Mobilization in European and Transnational Digital Constitutionalism

Dennis Redeker

Bremen International Graduate School of Social Sciences (BIGSSS)
University of Bremen and Jacobs University Bremen, Germany

1 | Introduction

The comprehensive definition of Internet governance provided by the Working Group on Internet Governance (WGIG) strengthened arguments of Internet rights as a core element of the discourse relating to the regulation of the Internet (Mueller, 2010). Even before the World Summit on the Information Society (WSIS), civil society actors and members of a growing technical community played an important role to bring onto the political stage topics such as privacy, freedom of expression, open standards or free software. Leading up to, during and after the WSIS, a number of groups started to publish comprehensive declarations of rights and principles for the Internet such as the Internet Rights Charter authored by the Association for Progressive Communications (APC). Ever since, this "digital constitutionalism" became a regular phenomenon of both national and transnational Internet right advocacy (Gill, Redeker, & Gasser, 2015; Padovani & Santaniello, 2018). Especially since the Snowden revelations in 2012, these documents have further proliferated and can now be found to be referred to by actors around the world. What makes these documents stand out from other advocacy documents of political actors in Internet governance is that they include an explicit or implicit judgement regarding how rights and principles are balanced out against each other. This is significant because it allows the authors of such documents to consider the order of a prospective "constitution" for the Internet. Here, the global "constitutionalization" of the Internet can refer to the application of accepted human rights and international law to the way the Internet works (Celeste, 2019). It can also refer to a number of "new rights" and governing principles that can find their way into official national legislation, international treaties and Internet governance practice. The path toward such constitutionalization requires tedious work by civil society and political actors, often against powerful state and non-state interests.

Documents of digital constitutionalism are not just emerging out of thin air, but their crafting requires actors which operate in particular circumstances. These actors require a certain degree of capacity to act effectively to achieve the realization of the aspirations laid out in these documents. The scholarship on digital constitutionalism has so far studied the emergence of

documents of digital constitutionalism and their textual context (e.g. Celeste, 2017; Pettrachin, 2018; Redeker, Gill, & Gasser, 2018; Santaniello, Palladino, Catone, & Diana, 2018) and included a number of diverse single-case studies (Anastácio, 2015; Franklin, 2016; Redeker, 2018; Rosa, 2019; Santaniello et al., 2016). In this paper I want to make a contribution to that body of knowledge by systematically investigating the actors behind documents of digital constitutionalism. Rather than focusing on the output (in terms of constitutionalization) of these projects, I want to show how the degree of institutionalization of the actors behind the documents affects the scale of the mobilization attained by their advocacy. This paper focuses on three distinct networks of actors engage in Internet governance transnationally: (1) the group that drafted the Charter of Digital Fundamental Rights of the European Union, (2) the network around the Feminist Principles of the Internet and (3) the Dynamic Coalition on Internet Rights and Principles connected to the Internet Governance Forum. The research question that is at the center of this investigation reads: *How can we explain the institutionalization and mobilization strategies of transnational advocacy networks engaged in digital constitutionalism?* Utilizing a comparative case-study approach I aim to uncover how institutionalization and political mobilization are linked for transnational networks while also illustrating the mechanism of how documents of digital constitutionalism link and their making link to specific network strategies.

I have organized the remainder of this paper in five sections. In the first section, I provide a short overview of the role of human rights in Internet governance and I suggest that digital constitutionalism is a useful framing to understand the advocacy in that field. The second section serves to review relevant International Relations and social movement literature on transnational advocacy networks (TANs) to explain how institutionalization and mobilization relate to each other. In the third section, I present my research design and method. In the fourth section, I analyze the three cases comparatively. Finally, the fifth section offers space for discussion of the results of the case studies.

2 | Internet governance, human rights and digital constitutionalism

Today, Internet governance is a broad policy field that encompasses a variety of sub-fields, including the Internet of Things, artificial intelligence and self-driving cars.[1] Additionally, users, companies and governmental actors engage in practices that often qualify to be characterized as *transnational*, evading the jurisdiction of a single state. While fragmentation of the Internet has occurred and increased in recent years (Drake, Vinton, & Kleinwächter, 2016), by and large, the Internet remains a relatively transnational space whose governance is

---

[1] To get an understanding of the breadth of the term Internet governance i.e. how the WGIG definition is actually practiced, one can consult the annual program of the Internet Governance Forum with its many workshops and discussion fora.

characterized by an interaction of global multistakeholder institutions like the Internet Governance Forum (IGF) and the Internet Corporation of Assigned Names and Numbers (ICANN) on the one hand, and national governments on the other. One of the crucial fields in which this interaction matters is the field of rights, specifically the question of who enjoys which (human) rights effectively in the digital age. To understand the current state of this governance environment, one needs to first understand how rights have become a more prominent topic in Internet governance.

2.1 | Internet governance' turn to human rights

In the early days of the development of the Internet, debates about whether the Internet should be governed or regulated, either by states, international organizations or private entities were often dominated by cyberlibertarian forces connected to technical development or investment of the Internet in the United States. Perhaps no-one made a more eloquent plea for Cyberspace to remain unregulated by worldly powers as John Perry Barlow:

> "Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather." (1996)

A few years later, through greater adoption among the public and greater economic significance, the importance of governing the Internet become more and more obvious to nation states, corporations and international organizations and thus the push toward greater global Internet governance occurred with the UN-sanctioned World Summit on the Information Society from 2003 to 2005 (Mueller, 2010). Although a somewhat unexpected outcome of the WSIS, a new definition emerged from that process that would legitimize a broad understanding of Internet governance. The Working Group on Internet Governance – tasked by UN Secretary-General Kofi Annan – arrived at the following working definition:

> "Internet governance is 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." (2005)

Indeed this definition expressed how much Internet governance was understood to go beyond the design of technical Internet protocols and standards, and to encompass "practically any communication-information policy issue" (Mueller, 2010, p. 67). The way was now open for those among civil society who demanded that the Internet should be governed in such a way

that the focus is on the realization of the Universal Declaration of Human Rights (UDHR) and other definitions of "digital rights" or "Internet rights". Civil society representatives involved in the WSIS were building up pressure to focus on a UDHR-based approach to Internet governance resulting in more focus on human rights in the second phase of the WSIS compared to the first phase (R. F. Jørgensen, 2013). The scope of Internet governance was broadened due to the WSIS definition and so was the ability of various stakeholders to partake in governance through the Internet Governance Forum, which was a way to continue the WSIS process into the future.

The annual Internet Governance Forum, which took place in 2006 in Athens for the first time, is in principle open to all participants in what is called a "multistakeholder" approach to governance. The Tunis Agenda, the WSIS outcome document, called for the "the full involvement of governments, the private sector, civil society and international organizations" (WSIS, 2005, Art. 26). At the IGF, in principle, no hierarchies are designated but in turn, no binding decisions are made. The continued legitimacy of the IGF then is not the result of good outcomes but instead finds its source in the "imaginar[ies] of global representation, the democratisation of the transnational sphere and the possibility of improved outcomes" (Hofmann, 2016, p. 44). Herein lies the reason why civil society by and large remains committed to multistakeholder governance, since the alternative would be rule by sovereign states or by markets. Civil society participated effectively to shape the outcomes of the WSIS (Mueller 2010), co-created the IGF's influential Internet Rights and Principles Dynamic Coalition in 2006 (R. F. Jørgensen, 2013), and forced change toward a more human rights-centered approach by another institution of Internet governance, ICANN (ten Oever, 2019).

While the role of civil society in championing a rights-based approach needs to be emphasized, there are those who argue that the inclusive nature of multistakeholder governance still remains a "fiction" (Hofmann, 2016) or "myth" (Dany & Freistein, 2016), especially with regard to the involvement of civil society and the Global South. In addition, only certain discourses take place at multistakeholder fora such as the IGF and ICANN. Jean-Marie Chenou offers a critique of the dominant multistakeholder approach to Internet governance, arguing that its discourses – dominated by neo-liberal transnational elites – have merely replaced those of their cyberlibertarian predecessors marginalizing views that champion sovereign control and anti-marketization (2014). Reinforcing the dominant discourse is the dramatic underrepresentation of some groups, including women, people from the Global South, LGBT+ individuals, and people with disabilities (Franklin, 2013). Making multistakeholder processes as inclusive as possible has thus been a constant demand by women's rights groups and groups from the Global South. One connected development has been the creation of RightsCon, a new multistakeholder forum that started in 2011, where "human rights in the digital age" take center stage. Another approach civil society chose was to engage in digital constitutionalism.

2.2 | Digital constitutionalism as an instrument for transnational civil society

Digital constitutionalism describes the practice of envisioning, drafting and distributing documents that "articulate[s] a set of political rights, governance norms, and limitations on the exercise of power on the Internet" (Redeker et al., 2018, p. 303). Digital constitutionalism is less concerned with the existence of actual written constitutions but with the escalating urgency of the mismatch between the development of digital technologies, their misuse and the protection of rights that drives this "constitutional moment" (Zalnieriute, 2015). Hence, the impetus for the emergence of "Bill of Rights" documents for the Internet comes from the fear of state or corporate overreach since "a truly accessible […] public space should not be subjected to private owning, nor to public control" (Musiani, 2009, p. 507). The origin of this practice may be traced back to anti-regulation works such as that of Barlow. Ten years later, a different tone was expressed at the first Internet Governance Forum when the 2006 call by Italian jurist Stefano Rodotà for the need of a "Charter of the Rights of the Net" was answered with the conception of the Internet Rights and Principles Dynamic Coalition (R. F. Jørgensen, 2013). In, 2010, the Coalition published the first full draft of the Charter of Human Rights and Principles on the Internet with the aim to "to provide a recognizable framework anchored in international human rights for upholding and advancing human rights for the online environment" (IRPC, 2018, p. 2). The embedding of Internet rights in the human rights discourse has been a strategic choice to give it a universal appeal and to allow it entry into the discourses in the realm of nation states and international organizations.

The Charter is by far not the last document of digital constitutionalism that emerged: Notable documents include the Delhi Declaration for a Just and Equitable Internet in 2014 and arguably Brazil's Marco Civil da Internet of 2013. Scholars have since started to track the proliferation of documents of digital constitutionalism in lists of various dimensions (e.g. Celeste, 2017; Pettrachin, 2018; Redeker et al., 2018; Santaniello et al., 2018). What these documents of digital constitutionalism have in common is that they are comprehensive approaches to Internet rights that address fundamental political questions, speak to a particular political community and aspire toward a formalized political recognition (Redeker et al., 2018). While various actors – including corporations, international organizations and governments – engage in writing such documents, the majority of documents can still be attributed to sole authorship or at least strong involvement of transnational civil society (Redeker et al., 2018).

A large number of documents of digital constitutionalism are written as part of that practice are widely seen as astute expressions of global networks of civil society to advocate for a just, rights-based Internet. Transnational civil society in Internet governance, which creates these documents, represents neither businesses nor nation states. Instead it criticizes

both activities of states, such as global spying operations, censorship or Internet blackouts, and business models of private enterprise, where these amount to "surveillance capitalism" (Zuboff, 2015) or fail to curb online hate. Global civil society is specifically strong where it focuses on those who are less represented in Internet governance, providing topics of access, civil rights protections, and development a forum at the IGF and beyond. Transnational civil society in the field of Internet governance can consist of smaller or larger NGOs, is characterized by a strong presence of academics, and relies very strongly on a large number of individual activists, engaging with other stakeholders also digitally as a "fifth estate" (Dutton & Dubois, 2015). The next section reviews a number of concepts from the fields of International Relations and social movement studies before three case studies are introduced.

3 | Transnational advocacy networks: Institutionalization and mobilization

In many ways intertwined with the world of nation states exists a large and lively sphere of global civil society. As part of this transnational sphere, activists, non-governmental organizations (NGOs), coalitions and networks guarantee a counterbalance to transborder activities of large transnational corporations, states and international organizations. Global civil society has proven helpful to upholding human rights, good corporate practices and the rule of (international) law (see e.g. Bieri, 2016; Scholte, 2004), even if some doubt their effectiveness (Dany, 2014; Porter, 2003) or legitimacy (Manji & O'Coill, 2002). Global civil society became more pervasive since 1945 with a strong growth of international and transnational civil society organizations. This is even more true in fields in which national borders mean little – such as in the governance of the planet's climate, the Internet and other technologies or the transnational movement of refugees, where "conventional statist formula of democratic accountability [do] not suffice in relation to present-day expanded global governance" (Scholte, 2004, p. 212). Transnational civil society is able to represent the interests of the whole or a part of the global citizenry. Since "veritable civil society associations do not pursue for themselves public office or pecuniary gain" (Scholte, 2004, p. 214), they represent a vehicle for more effective involvement of publics in global governance and potentially greater legitimacy. This section deals with a specific sub-set of global civil society – transnational advocacy networks. Before I present current scholarly work regarding institutionalization and mobilization strategies, I point to some of their general characteristics of TANs.

3.1 | Transnational advocacy networks

Margaret E. Keck and Kathryn Sikkink define TANs as to include "those actors working internationally on an issue, who are bound together by shared values, a common discourse, and

dense exchanges of information" (1999, p. 89). What sets transnationally advocacy networks apart from other actors working across borders – such as multinational corporations – is that they are "motivated by values rather than by material concerns" (Keck & Sikkink, 1999, p. 89). While TANs theoretically do not require a high degree of institutionalization "NGOs play a central role in most advocacy networks" (Keck & Sikkink, 1999, p. 92). Transnational advocacy networks tend to engage with a single policy field or policy issue. Thus, examples of TANs include the International Action Network on Small Arms (IANSA) or Make Poverty History (MPH). There tends to be notable discussion in the literature about a distinction between advocacy networks and coalitions. The latter with more deeper connections and "permanent staff members, a more permanent membership base, a headquarters or secretariat, and are organizations in and of themselves" (Yanacopulos, 2005). Hence, coalitions are often characterized by a larger degree of pooling of resources and shared added benefit from common organizing. However, from a practical perspective, it is sometimes difficult to distinguish the two categories, specifically since the literature tends to treat them interchangeably at times and because – due to increasing digitalization – a new form of networked advocacy appears that potentially requires less material organizational capacity to gain the same traction. Next, I want to concentrate on what TANs *do*.

Transnational advocacy networks aim to achieve their goals in a number of ways, both publicly and behind closed doors. Campaigns are usually the most visible approach to making the public and policy-makers aware of demands to fight against guns, against poverty – or for an open and free Internet. Campaigns are usually meant to educate the public, i.e. provide information outward, and "to mobilize publics around an issue" (Yanacopulos, 2009, p. 68). On a more conceptual level, Keck and Sikkink's typology of five tactics that TANs is still highly relevant (1999): *Information politics* refer to activities in which TANs exchange and/or distribute information and normative story-telling aimed to persuade the audience. These tactics break the information monopoly of states and today is helped much by the ubiquitousness of the Internet. *Symbolic politics* refer to the ability of TANs to frame events and provide explanations that help to mobilize the public or persuade policy makers. An example in the field of TANs working in the Internet space are the Snowden revelations of 2013 that were widely used as an anchor to highlight the importance of data protection, privacy and the problems of state surveillance. *Leverage politics* describe TANs' utilization of links to more powerful institutions or states that can help them achieve their advocacy goals vis-à-vis other actors. Finally, *accountability politics* describes measures to hold actors to account after they have been pressured or persuaded into agreeing to certain measures or omissions. TANs – with large their membership base – are said to be in a good position to measure progress concerning the agreed actions.

TANs have become an established actor both in world politics and in the academic scholarship of International Relations. Similarly, the five tactics outlined above remain a valid approach of understanding the work of TANs. In this paper I want to focus on an underexplored relationship concerning the work of transnational networks and coalitions: the relationship between institutionalization and mobilization of TANs.

3.2 | Institutionalization and mobilization

As explained above, the academic literature tends to distinguish between transnational advocacy *networks* and *coalitions*. The difference between them is largely one of organizational capacity (Yanacopulos, 2005). Both types can be more or less institutionalized whereby the institutionalization does not relate the own organizations structure and capacity but to the approach to advocacy. More concretely, in this paper, I will apply the following definition:

> "Institutionalization is a process that involves a shift toward more standardized, non-threatening forms of collective action that entails less mobilization and less disruption. The key indicators of institutionalization are changes in the forms of collective action. Institutionalization involves greater reliance on negotiations, the electoral process, and working though government institutions and agencies." (Hipsher, 1998, p. 157)

This definition of institutionalization of does neither require an organization, a TAN in this case, to be fully aware of the process nor it being intentional. The importance is that mobilization – in this view – is an alternative to institutionalization, it "denotes a shift in movement strategy" (Katzenstein, 1998, p. 198). What the literature shows is that institutionalization leads to de-mobilization (Kriesi, 1995). While the shift from mobilization to institutionalization can be a strategic choice for a civil society organization or a transnational network, it can also be a decision right from the start of a transnational advocacy network.

This paper aims to connect the making of documents of digital constitutionalism to the relationship between institutionalization and mobilization. The argument is that many of the groups that come up with a document outlining fundamental rights and principles for the governance of digital technologies have specific aims of how what these documents are to achieve (or what *they* want to achieve with them). From previous studies, we know that the writing process can have a profound impact on the way a TAN forms and organizes around such a document (Redeker, 2018). By conceptualizing a duality of institutionalization and mobilization, the paper aims to accentuate the difference between the TANs and their strategies. Both because of the transnational nature of the networks examined and due to the centrality of digital technologies to the normative core of the networks, mobilization does not necessarily

refer to mobilization of members and the public in the street. It rather refers to the attainment of ongoing grassroots support by the network.

4 | Design and Methods

In order to investigate *how can we explain the institutionalization and mobilization strategies of transnational advocacy networks engaged in digital constitutionalism* I adopted a comparative case study design. The sampling frame consisted of all TANs that have created and adopted a document of digital constitutionalism as a central document for their work. For that – the groups had to work transnationally in a significant way, advocate for the contents contained in the documents and indeed show signs of networking. Lists of documents of digital constitutionalism with annotations about who drafted the documents can be found in a number of recent studies (Pettrachin, 2018; Redeker et al., 2018; Santaniello et al., 2018).

A number of parameters guided the selection within the sampling frame. The initiatives concerned should be ongoing and relatively significant, with dozens or hundreds of actors to approach for interviews rather than a handful or less. The documents in question should be somewhat diverse in their approach i.e. not just a copy-paste solution by a new generation of activists. Finally, in terms of geographical representation, the documents and the TANs around them should represent both Western/Northern actors and significantly include people, organizations and thought from the global South. Most importantly, the sample should differ in terms of their initially perceived degree of bottom-up mobilization vs. institutionalization. From this – and certainly due to some difficulties to access other suitable TANs – three networks were chosen to be contacted.

- The network around the *Feminist Principles of the Internet*
- The Dynamic Coalition on Internet Rights and Principles connected to the Internet Governance Forum that published the *Charter of Human Rights and Principles for the Internet*
- The group that drafted the *Charter of Digital Fundamental Rights of the European Union*

The primary method of data collection were semi-structured in-depth interviews with individuals involved in the planning, drafting and dissemination phase of the documents in question. Interview guides were used to keep the interviews as consistent as possible and interviews were generally audio-recorded and transcribed. A total number of 20 interviews have been conducted across the three cases. In addition, various online and written materials produced by these TANs have been studied; secondary literature has been consulted. I also attended workshops and meetings of the studied networks at global for a such as the IGF,

EuroDIG and RightsCon. In the following section, I present the results of the comparative study resulting from this analysis.

5 | Comparative Case Study Results

This section aims to elucidate the relationship between institutionalization and mobilization for the transnational advocacy networks in the digital rights space. I proceed by introducing each case and by dedicating space to describe the drafting process of the document of constitutionalism in question. I then each describe how the network relates to institutionalization and to mobilization and their interplay, e.g. to what extent a move in one direction limits the other.

5.1 | The Feminist Principles of the Internet

The Feminist Principles for the Internet (FPI) come out of a deliberate move of the Association for Progressive Communications to bring together digital rights activists with feminist activists to "Imagine a Feminist Internet" and to create a document that expresses this imagination. In 2014, APC brought together about 50 people, an overwhelming majority came from countries outside of the OECD, to Port Dickson, Malaysia to "bridge the gap between feminist movements and internet rights movements and look at intersections and strategic opportunities to work together as allies and partners" (APC, 2014). Many of the participants were members and leading members of NGOs and less formalized advocacy groups. The three days of that "Global Meeting on Gender, Sexuality and the Internet" gave rise to a first version of the Feminist Principles that contained fifteen principles.[2] A second meeting was called in 2015 again in Port Dickson during which new and recurring participants amended the document to become a Version 2.0 of the Feminist Principles.

The process of drafting and revising the FPI was initiated in a top-down manner by staff of APC who invited participants for the meetings and set the agenda. The goal was to achieve a document. However, in terms of content, the methodology employed by the facilitators of the meetings has been described as open and "participatory". Indeed, many of the interviewees stressed the cordial atmosphere during the process:

> "[…] the atmosphere in the first and the second meeting was magic. So it's really a place where you go and you feel like you come out recharged. You work eight hours, you continues to talk in the evening. You do poetry, people like jokes bring people, bring stuff and share. But it's, it's really a, it's a community." (Interview with hvale)

---

[2] A number of studies have analyzed the content of the Feminist Principles (see e.g. Kee, 2017; Redeker, 2018).

For both meetings a methodology was applied that split the overall group into smaller groups that would work on a specific issue (such as "access" or "pornography"). These issues were not predetermined by APC but brought up by the participants and then voted on and clustered to decide which one them warranted a working group. Texts were devised in smaller groups and then discussed in the forum. Twelve or thirteen principles emerged from this process which were subsequently given to a group of "drafters" to write statements for each of them (cf. APC, 2014). The reworking of the Principles in 2015 followed the same logic and careful consideration for inclusiveness in the process.

What that process allowed for with relative ease was to create community and companionship between those who met in person in Malaysia to devise the Feminist Principles, which created a basis for the *mobilization* efforts that followed. All interviewees found the process meaningful and almost all of them continued to be active in the network that arose around the document. APC – which is a federated NGO, one might argue a TAN of its own – organizes the network using its resources and the reach into a large number of member NGOs. However, not all members of the TAN around the Feminist Principles are members of APC. Instead this new network has its own mailing list and its own website (albeit ostensibly run by APC) both of which represent parts of its core organizing structure. The mailing list is used by the members of the network to gain feedback to projects related to the FPI, to learn from others about their work and to coordinate common activities. New members can be added to the list, even if they have not been part of drafting the document. For instance, one interviewee emphasized the nice community-like atmosphere at the meetings to draft the Principles, though asked whether she had been present she admitted that she had not but heard many good things about these meetings. The website likewise focusses on building community and on mobilizing a force of supporters. One way it does so is the call to members of the network to organize so-called city conversations to bring the Feminist Principles directly to the people (women) in countries in which members of the network are active. As part of that initiative, Point of View, an organization from Mumbai (and also member of APC) conducted two such "conversations. Other workshops inspired by the Feminist Principles and by members of the network occurred in the Philippines and in Mexico, among other places. While not all members of the network around the principles see their purpose to translate into policy, mobilization was one of the ways in which it could support such an agenda:

> If you are focusing on policy change in Internet rights issues, [what we need to understand] is that these spaces have had very little engagement from the women's movement, very little engagement from the sexual rights movement. I think this was the biggest thing that we needed to address in order for meaningful policy change to happen: We needed hell of a lot more bodies in there. (Interview with Jac sm Kee)

One way to organize a network and work toward movement building can be to grow the number of people subscribing to the Principles, increase the number of conversations and to have "hell of a lot more bodies in there". But the question remains, where "there" is.

The drive toward *institutionalization* of the Feminist Principles network is difficult to discern. On the one hand, the content of the Principles is relatively radical (and anti-capitalist) if compared to the discourse in Internet governance fora such as the IGF and also in comparison to other documents of digital constitutionalism. While members of the network and APC staff brought the FPI to global such as RightsCon and the IGF, the more relevant institutionalization likely occurs not on the global but on the national level. Members of the network have taken the Principles in a number of occasions and translated them to the contexts of the countries in which they work. In the Middle East and South Asia, members would de-emphasize the right to pornography for women but focus on other principles. In other countries, the anti-capitalist tone of the document would be subdued. This is being done in a number of ways (cf. Redeker, 2018). For instance, in many places local members of the network have started translations of the document into national languages such as Arabic, Hindi or Spanish – making sure that translations are appropriate for local sensitivities and to make it more useful for local advocacy work with institutions. In other areas, the document was brought to local meetings, like in the Philippines, to devise a new document – the "Philippine Declaration on Internet Rights and Principles" by the Foundation for Media Alternatives (FMA) – that would then be proposed to the country's Department of Information and Communications Technology for adoption (which failed after the election of Rodrigo Duterte). In Mexico, the organization Luchadoras took the FPI as the starting point for their reporting on online violence against women, a report that was submitted to the UN Special Rapporteur on Violence Against Women, Dubravka Šimonović in November 2017. Indeed, "two of the highlights of the report come from the workshops that were organized about the Feminist Principles" (Interview with Lulú V. Barreras).

Concluding, one could argue that the text of the principles (and the process from which it originated) lends itself well to mobilize new members for the network and the public, in part due to its openly anti-capitalist and feminist core. On the global level, the Principles have found little avenues of institutionalization, e.g. by being discussed in the UN system. On the other hand, once the document is translated into national or local context and "is a process that involves a shift toward more standardized, non-threatening forms of collective action" (Hipsher, 1998, p. 157) in order to gain greater access to institutions both within a country and on the international level.

From the inaugural meeting of the Internet Governance Forum in Athens in 2006, Dynamic Coalitions developed within the IGF's working arrangement as open multistakeholder groups allowing for discussions about and organizing around specific topics. Among those coalitions is the Dynamic Coalition on Internet Rights and Principles (IRPC), founded in 2008. The IRPC is an open and changing network of members from the various stakeholder groups in Internet governance, including civil society, private companies, the technical community, international organizations and national governments. In part because of its voluntary and ad-hoc nature, scientists make up a dominant force within the coalition's leadership and membership. In 2010, the IRPC published its "Charter of Human Rights and Principles for the Internet" (Charter), which it and its members use for digital rights advocacy work within the IGF and beyond. The Charter received an update based on consultations held with the wider IGF community at the 2010 IGF in Vilnius. The Charter's 21 articles are written in a legalistic language and are closely aligned with the Universal Declaration of Human Rights (UDHR): Like the UDHR the Charter pronounces "freedom of expression & information [on the Internet]" (Article 5), the "right to work [& the Internet]" (Article 14) and the "right to culture [& access to knowledge on the Internet]" (Article 11). The first article of the Charter outlines a right to access to the Internet, thus not just adapting the conventional human rights to the digital age but invoking references to "new" rights human rights. How was the document created?

Following the Tunis phase of the WSIS process, initially two working groups started to take on the task to create an authoritative list of Internet rights and Internet governance principles. While the Internet Bill of Rights Dynamic Coalition targeted the development of a human rights charter, the Framework of Principles for the Internet Dynamic Coalition focused on Internet governance norms and principles (cf. Franklin, 2013; IRPC, 2018). Ultimately, in 2009, both coalitions decided to merge to create the IRPC in order to create the Charter. Within the newly founded advocacy network, several points of conflict remained with regard to approach the Charter should take. One of the most important struggles was around the question of whether "new rights" should be formulated or whether the Charter should be fully grounded in existing human rights standards, most eminently the UDHR. Among the members of the IRPC, were representatives of APC, whose "Internet Rights Charter" of 2006[3] had previously included references to the UDHR in most of their "themes" (see APC, 2006). Although demands have come up to think about Internet rights as "new rights" the dominating forces within IRPC held onto existing human rights and translated them into a digital age (Franklin,

---

[3] APC's "Internet Rights Charter" had already been developed in 2001 and 2002, through a number of workshops (APC, 2006).

2013; R. Jørgensen & Marzouki, 2015). After the general guidelines for the drafting of the text for a Charter were finally agreed, a core drafting team was tasked to come up with a specific proposal for a text. That team consisted of a small number of individuals asked to "expert advice to the Charter", chosen because of their visibility and their scholarly background in the field (interview with Rikke F. Jørgensen). The main work was conducted by three Europeans with an academic background in law: Meryem Marzouki (France), Rikke F. Jørgensen (Denmark) and Wolfgang Benedek (Austria). The task was seen "not to invent new standards for the digital era" but take existing human rights standards as a point of departure to "basically translate them to a digital context" (interview with Rikke F. Jørgensen). The members of the IRPC continued to provide comments to the draft, before it was eventually presented to the public by the IRPC in Vilnius in 2010.

The IRPC itself presents a sizable forum of actors with various backgrounds according to the multistakeholder character of the IGF. The *mobilization* of more supporters and also people outside of the Internet governance circles was part of the overall strategy to achieve policy outcomes with the Charter i.e. make sure that human rights as interpreted for the Internet age by the document are recognized and realized. The IRPC coalition is directed by a steering committee of usually two co-chairs and other members of the committee. An important tool to organize the network (and to generally organize the network around the Charter) is the IRPC mailing lists which currently has more than 320 "active participants from government departments, intergovernmental organisations, the private sector, civil society organisations, individuals, academics and the technical community" (IRPC, 2019). Regional meetings such as EuroDIG also represent another way for the network to gain further attention for the Charter and generally for Internet rights. In 2011, a document entitled "Ten Internet Rights & Principles" was derived from the long-form text of the Charter, aiming to be more effective in educating the general population and more useful doe some advocacy activities (interview with Marianne I. Franklin). In addition, in order to provide a more detailed advocacy tool than the "Ten Internet Rights & Principles" that is nonetheless not as complex as the Charter itself, in 2016 the IRPC in cooperation with Prof. McKnight and students at Syracuse University produced the "Educational Resource Guide". The Guide entails references to other laws and jurisprudence relevant to the articles of the Charter and further comprises of non-legal reference material including case studies (presented during an IRPC-organized session at the IGF in Geneva, 2017). Overall, the network around the Charter is well-developed and fairly transnational, also extending to the Global South in spite of the Europe-based group of early drafters of the Charter. Though how does the network engage with institutions and how does it institutionalize its work?

An interest in *institutionalization* of the network's main document, the Charter, has existed from the beginning. In the following, I present two ways in which the network was able

to enter formal institutions and be able to insert its thinking into policy-making relevant spaces. First, members of the IRPC, who were also members of a working group of the Council of Europe tasked to develop the 2014 "Guide to Human Rights for Internet Users", who argued that the Charter had been influential for the development of the Guide (interview with Rikke F. Jørgensen). The goal of the IRPC in all of this was to contribute to the safeguarding of the rights entailed in the Charter by engaging stakeholders across stakeholder groups, though aiming specifically for recognition by international organizations and states (interview with Marianne I. Franklin).

Another path opened up when the Cities Coalition for Digital Rights was formed in late 2018, which aimed to develop its own framework to protect digital rights on a local level. The Cities Coalition for Digital Rights was originally created by the cities of Amsterdam, Barcelona and New York City with the goal to "to promote and track progress in protecting residents' and visitors' digital rights" (Cities Coalition for Digital Rights, 2018, p. 1). The three cities, which style themselves as progressive with regard to protecting digital rights within their city limits, hope to create a broader momentum to recruit more cities to join in to "work together to solve common digital challenges [committing] to share practical examples of their work, learn from each other, and create and share action programs" (Cities Coalition for Digital Rights, 2018, p. 2).While many limits exist for how city administrations can shape policy, often precluded by national legislation, there are various openings for local policy makers, particularly of larger cities to regulate beyond existing laws. For their activities, the Cities Coalition for Digital Rights required a set of principles according to which to operate and against which to assess progress.

The coalition initially planned to come up with their own principles when they came across the IRPC Charter. They made contact with members of the IRPC and decided to drop their goal to develop their own detailed set of digital rights. Instead they adopted the IRPC Charter as a guideline for the work of the Coalition. The choice to opt for an adoption of the Charter did occur out of the necessity to quickly move beyond the phase of establishing a common set of principles in order to start growing the Coalition and actually start the exchange on concrete issues faced by the participating cities (interview with Tamas Erkelens). In addition to the Charter, the Coalition distilled a core set of five "evolving principles" as part of their "Declaration of Cities Coalition for Digital Rights" (Cities Coalition for Digital Rights, 2018, p. 1). These principles include elements of the IRPC Charter in a format that allows new partners of the Coalition to sign on to these general principles. The Declaration is introduced by explicitly referring to the Charter text: "Inspired by the Internet Rights and Principles Coalition (IRPC), the work of 300 international stakeholders over the past ten years, we are committed to the following five evolving principles […]" (Cities Coalition for Digital Rights, 2018, p. 1). One could either argue that the adoption of the Charter represents an outsourcing

of the debate on Internet rights and principles to another global transnational authority in order to save time and effort, or an explicit attempt to garner more traction within a larger advocacy movement by supporting and legitimating the IRPC's output – or both. In either case, the institutionalization of the Charter can be argued to be successful.

5.3 | The Charter of Digital Fundamental Rights of the European Union

The Charter of Digital Fundamental Rights of the European Union (proposed EU Charter) has been developed following a conversation by Frank Schirrmacher, Giovanni Di Lorenzo and Martin Schulz (Interview with Beate Wagner). The German foundation ZEIT Stiftung took up the idea to invite a number of thinkers to develop a charter that deals with fundamental rights in the digital age. The group consisted of a number of mostly German intellectuals, politicians, academics, journalists and representatives from different industries asked to develop a text for European (not German) charter for digital fundamental rights. Their ensuing meetings were financed by the ZEIT Stiftung. The members of that group met a number of times through 2015 and 2016 to write that document, which was conscious challenges presented by the private regulation of the Internet, the increasing misuse of (private) data by private and public actors, and the rise of artificial intelligence including the social impact of the use automated decision-making systems (Interview with Beate Wagner). Both the UDHR and the EU Charter of Fundamental Rights were taken into account to write the document. The group decided not to invent "new rights" but instead – and similarly to the IRPC – to be guided by current rights but conscious of digital changes. A final version was agreed and published in 2016. Later, an edited version of the proposed EU Charter, which incorporated feedback from the public, was published in 2018.

The proposed Charter aimed directly to become a matter of conversation both among the public, galvanizing support by ordinary citizens and among policy makers in Brussels. However, especially the *mobilization* for the document did not go as well as planned. The first version of the proposed EU Charter was published in a number of German and European newspapers in late 2016, immediately gaining some traction in public discourse. This was helped especially by the ZEIT Stiftung and with the German weekly ZEIT leading the pack. In parallel, a website hosting the document, a discussion forum and a list of signatories was aimed to support the mobilization. Until today, more than 1,850 people provided their name for a list of supporters. However, in spite of its European appeal, the document existed only in English and German but not in any other language of the EU; the discussion is so far also limited to the German-speaking world. The comments were also not as plentiful as hoped for, while the public reaction was partly negative. This apparently come to some degree as a surprise: "The small circle [of drafters] saw itself as providing an impulse to be taken up. Obviously, on reflection,

it would have been clear to any of us that it is not that easy" (interview with Beate Wagner). Until today, the network still only consists of the small number of drafters of the proposed EU Charter. Unlike with the network around the Feminist Principles and the IRPC, the network around the proposed EU Charter does make a clear distinction between those who drive the process from the inside and those who are mere supporters.

From the beginning, the proposed EU Charter – as is in the name – was a proposal for the *institutionalization* of a document of digital constitutionalism. The membership of the small drafting group included two influential members of the European Parliament: Martin Schulz, then President of the Parliament (and later candidate for chancellorship in Germany) and Jan Philip Albrecht who had previously led the process of getting the General Data Protection Regulation (GDPR) through the European Union's primary legislative body. The strategy of the network was thus firmly focused on the European Parliament and to gain access to other members there. Members of the network went to present the proposed EU Charter in the Civil Liberties, Justice and Home Affairs (LIBE) committee. With the new Parliament and new European Commission, the group now plans to reintroduce the document (interview with Beate Wagner). Of the three cases, the network around the proposed EU Charter has the least connection to global Internet governance fora such as the IGF, ICANN or RightsCon. The European Parliament remains the central and apparently only attempt to institutionalize the network around the proposed EU Charter.

6 | Discussion and further research

There are at least two ways in which documents of digital constitutionalism can serve as an instrument to transnational civil society. First, they are used as an advocacy tool to set the global agenda either in terms of discourse i.e. to frame issues from a digital or human rights perspective or to gain *institutional* support for the values contained therein. Second, they can be used as an instrument to foster a TAN's *mobilization* and coherence. Recalling the initial question of this investigation, I want to suggest how we can explain the institutionalization and mobilization strategies of transnational advocacy networks engaged in digital constitutionalism.

TANs in the Internet governance ecosystem have to choose how to use their resources to either or both institutionalization and mobilization. The Network around the Feminist Principles, by and large driven also by APC's organizational strategy, made a choice to focus mostly on transnational mobilization – through the way participants were invited to the activities that the continuing network conducts (such as the "City Conversations"). It did engage to inform about the FPI in the framework of global Internet governance for a but did not engage regional intergovernmental or supranational organizations or UN organizations

(unlike the other two networks). Nonetheless, members of the network started their own national initiatives and achieved some success there or engaged international actors (such as in the case of Mexico) but using the Feminist Principles indirectly or in a "translated" less radical version. In Table 1, the network around the FPI is thus marked as highly transnationally mobilized but only institutionalized on the local or national level.

	Mobilization	Institutionalization
Feminist Principles of the Internet (2014)	**High** (and transnational)	**Low** (but higher on the local and national level)
Charter of Human Rights and Principles for the Internet (2010)	**High** (and transnational)	**High** (transnationally and on European level)
Charter of Digital Fundamental Rights of the European Union (2016)	**Low** (as of now)	**High** (as of now)

Table 1: Comparative degrees of mobilization and institutionalization

More durable civil society networks – or TANs – in Internet governance form in a number of ways, indeed often around documents of digital constitutionalism, such as in the case of the IRPC, where the Charter was important document around which the work of the network occurred. The network around the Charter has both a strong emphasis on mobilizing and raising awareness for human rights applied to the digital age, as shown in add-on publications such as "Ten Internet Rights & Principles" and the "Educational Resource Guide" as well as the broad outreach conducted at IGFs and regional meetings. At the same time, through individual members and through strategic interactions, the network has been able to bring the Charter into inter-governmental institutions such as the Council of Europe and to establish the Charter as a guiding document for the Cities Coalition for Digital Rights. In Table 1, the network around the Charter is thus marked by high transnational mobilization and high degrees of institutionalization due to its links to intergovernmental organizations and a transnational coalition of cities and their mayors.

The proposed EU Charter had the potential to constitutionalize the Internet globally from Europe the same way that the GDPR has started to do, thereby providing an "Internet constitution" to not just Europe but potentially beyond. However, being the youngest of the three documents, the judge is still out regarding the outcomes from that document and the advocacy work done by the group that wrote it. The network aimed at mobilizing the public, both in Germany and in other countries of the European Union, and to institutionalize their effort by going through the European Parliament. The mobilization efforts did rely on a broad outreach through newspapers and reached many citizens initially. The website, equally, names almost 2,000 supporters for an EU Charter. But ultimately, the mobilization did not yield new

local actors in other countries (of the European Union) – as it was the case with the mobilization of the network around the Feminist Principles. Nonetheless, consultations in the European Parliament took place and are intended to be held again. Hence, in Table 1, the network around the proposed EU Charter is thus marked by low mobilization and relatively high in terms of institutionalization due to its links to and presence at the European Parliament.

Comparing the three cases of this analysis, each shows relative strength in a different area, often instigated by the nature of the network and its members. The closedness and connection of the group around the proposed EU Charter may lend itself to higher degrees of institutionalization but it excludes those that would like to become part of more than a list of signatories on a website. The TAN around the Feminist Principles in turn is an example of how well a broad transnational network can bring a document into different national contexts and, where necessary, defuse its radical language to have better chances to institutionalize its content. The IRPC shows a not only a remarkable staying power but also a tendency to master both transnational mobilization – likely helped through the visibility and the organizational advantages of the IGF – and institutionalization – not just in Europe but also through the Cities Coalition for Digital Rights throughout a number of countries. All three networks in their way contribute to the constitutionalization of the Internet while being firmly grounded in a document of constitutionalism that helped them both mobilize and institutionalize.

References

Anastácio, K. (2015). Brazil's approach to multistakeholderism: multi-participation in the Brazilian Internet Steering Committee (CGI. br). *Berkman Center for Internet & Society at Harvard University. Retrieved from: https://cyber.*harvard.edu/sites/cyber.harvard.edu/files/Publish_Kimberl%20Anastacio.pdf

APC. (2006). APC Internet Rights Charter. Retrieved from https://www.apc.org/en/pubs/about-apc/apc-internet-rights-charter

APC. (2014). Feminist Principles of the Internet. Retrieved from https://www.genderit.org/node/4097/

Barlow, J. P. (1996). A Declaration of the Independence of Cyberspace. In.

Bieri, F. (2016). *From blood diamonds to the Kimberley Process: How NGOs cleaned up the global diamond industry*: Routledge.

Celeste, E. (2017). The Scope of Application of Digital Constitutionalism Output from an Empirical Research. *Nexa Research Paper*.

Celeste, E. (2019). Digital constitutionalism: a new systematic theorisation. *International Review of Law, Computers & Technology, 33*(1), 76-99.

Chenou, J.-M. (2014). From Cyber-Libertarianism to Neoliberalism: Internet Exceptionalism, Multi-stakeholderism, and the Institutionalisation of Internet Governance in the 1990s. *Globalizations, 11*(2), 205-223. doi:10.1080/14747731.2014.887387

Cities Coalition for Digital Rights. (2018). Declaration of Cities Coalition for Digital Rights. Retrieved from https://citiesfordigitalrights.org/assets/Declaration%20Cities%20for%20Digital%20Rights.pdf

Dany, C. (2014). Janus-Faced NGO Participation in Global Governance: Structural Constrains for NGO Influence. *Global Governance, 20*, 419.

Dany, C., & Freistein, K. (2016). Global Governance and the Myth of Civil Society Participation. In B. Bliesemann de Guevara (Ed.), *Myth and Narrative in International Politics: Interpretive Approaches to the Study of IR* (pp. 229-248). London: Palgrave Macmillan UK.

Drake, W. J., Vinton, C. G., & Kleinwächter, W. (2016). *Internet Fragmentation: An Overview*.

Dutton, W. H., & Dubois, E. (2015). The Fifth Estate: a rising force of pluralistic accountability. *Handbook of digital politics*, 51-66.

Franklin, M. I. (2013). *Digital dilemmas: Power, resistance, and the Internet*: Oxford University Press.

Franklin, M. I. (2016). Mobilizing for Net Rights: The Charter of Human Rights and Principles for the Internet. In D. Freedman, Obar, J., Martens, c., McChesney, R. (Ed.), *Strategies for Media Reform. International Perspectives.* (pp. 72-90). New York: Fordham University Press.

Gill, L., Redeker, D., & Gasser, U. (2015). Towards digital constitutionalism? Mapping attempts to craft an internet bill of rights. *Mapping Attempts to Craft an Internet Bill of Rights (November 9, 2015). Berkman Center Research Publication*(2015-15).

Governance, W. G. o. I. (2005). Report of the Working Group on Internet Governance. Retrieved from https://www.wgig.org/docs/WGIGREPORT.pdf

Hipsher, P. L. (1998). Democratic transitions as protest cycles: social movement dynamics in democratizing Latin America. *The social movement society: Contentious politics for a new century*, 153-172.

Hofmann, J. (2016). Multi-stakeholderism in Internet governance: putting a fiction into practice. *Journal of Cyber Policy, 1*(1), 29-49.

IRPC. (2018). Charter of Human Rights and Principles on the Internet. Retrieved from http://internetrightsandprinciples.org/site/wp-content/uploads/2019/09/IRP_booklet_Eng_6ed_4Nov2018.pdf

IRPC. (2019). About. Retrieved from http://internetrightsandprinciples.org/site/about/

Jørgensen, R., & Marzouki, M. (2015). *Internet Governance and the Reshaping of Global Human Rights Legacy at WSIS+ 10.* Paper presented at the GigaNet: Global Internet Governance Academic Network, Annual Symposium.

Jørgensen, R. F. (2013). 14. An internet bill of rights? *Research handbook on governance of the internet*, 353.

Katzenstein, M. F. (1998). Stepsisters: Feminist movement activism in different institutional spaces. *The social movement society: Contentious politics for a new century*, 195-216.

Keck, M. E., & Sikkink, K. (1999). Transnational advocacy networks in international and regional politics. *International social science journal, 51*(159), 89-101.

Kee, J. s. (2017). Imagine a Feminist Internet. *Development, 60*(1-2), 83-89.

Kriesi, H. (1995). *New social movements in Western Europe: A comparative analysis* (Vol. 5): U of Minnesota Press.

Manji, F., & O'Coill, C. (2002). The missionary position: NGOs and development in Africa. *International Affairs, 78*(3), 567-583. doi:10.1111/1468-2346.00267

Mueller, M. L. (2010). *Networks and states: The global politics of Internet governance*: MIT press.

Musiani, F. (2009). The Internet Bill of Rights: A Way to Reconcile Natural Freedoms and Regulatory Needs. *SCRIPTed: A Journal of Law, Technology and Society*(2), 504-515. Retrieved from https://heinonline.org/HOL/P?h=hein.journals/scripted6&i=506

Padovani, C., & Santaniello, M. (2018). Digital constitutionalism: Fundamental rights and power limitation in the Internet eco-system. *International Communication Gazette, 80*(4), 295-301. doi:10.1177/1748048518757114

Pettrachin, A. (2018). Towards a universal declaration on internet rights and freedoms? *International Communication Gazette, 80*(4), 337-353. doi:10.1177/1748048518757139

Porter, G. (2003). NGOs and poverty reduction in a globalizing world: Perspectives from Ghana. *Progress in Development Studies, 3*(2), 131-145.

Redeker, D. (2018). Exploring the Bottom-Up Digital Constitutionalism of the 'Feminist Principles of the Internet'. *GigaNet: Global Internet Governance Academic Network, Annual Symposium 2018*.

Redeker, D., Gill, L., & Gasser, U. (2018). Towards digital constitutionalism? Mapping attempts to craft an Internet Bill of Rights. *International Communication Gazette, 80*(4), 302-319.

Rights, C. C. f. D. (2018). Press release. Retrieved from https://citiesfordigitalrights.org/assets/NYC-AMS-BCN-LaunchGlobalCoalitionToProtectDigitalRights.pdf

Rosa, F. R. (2019). What is National Internet Governance? A Multistakeholder Model in Context. *A Multistakeholder Model in Context (February 3, 2019)*.

Santaniello, M., De Blasio, E., Palladino, N., Selva, D., De Nictolis, E., & Perna, S. (2016). Mapping the debate on Internet Constitution in the networked public sphere. *Comunicazione politica, 17*(3), 327-354.

Santaniello, M., Palladino, N., Catone, M. C., & Diana, P. (2018). The language of digital constitutionalism and the role of national parliaments. *International Communication Gazette, 80*(4), 320-336. doi:10.1177/1748048518757138

Scholte, J. A. (2004). Civil society and democratically accountable global governance. *Government and opposition, 39*(2), 211-233.

ten Oever, N. (2019). Productive Contestation, Civil Society, and Global Governance: Human Rights as a Boundary Object in ICANN. *Policy & Internet, 11*(1), 37-60. doi:10.1002/poi3.172

WSIS. (2005). Tunis Agenda for the Information Society. Retrieved from http://www.itu.int/net/wsis/docs2/tunis/off/6rev1.html

Yanacopulos, H. (2005). The strategies that bind: NGO coalitions and their influence. *Global Networks, 5*(1), 93-110. doi:10.1111/j.1471-0374.2005.00109.x

Yanacopulos, H. (2009). Cutting the diamond: networking economic justice.

Zalnieriute, M. (2015). An international constitutional moment for data privacy in the times of mass-surveillance. *International Journal of Law and Information Technology, 23*(2), 99-133.

Zuboff, S. (2015). Big other: surveillance capitalism and the prospects of an information civilization. *Journal of Information Technology, 30*(1), 75-89.