

Brief on Outcome of the World Conference on International Telecommunications¹

February 4, 2013

The World Conference on International Telecommunications (WCIT) concluded in Dubai on December 14, 2012 with the adoption of a new treaty, updating the 1988 International Telecommunication Regulations (ITRs).² Contrary to ITU standard practice, consensus was not achieved and multiple votes were held. The new ITRs will enter into force in 2015. As of February 4, 2013, 89 Member States of the ITU have signed onto the new ITRs, and 55 have not.³ The proposals most threatening to an open internet were not adopted in the final treaty text; however, some provisions in the new ITRs could potentially legitimize greater government authority aspects of internet governance and may pose a threat to the exercise of human rights online.

The challenge moving forward is for countries that have ratified the ITRs to implement the treaty in such a way that protects human rights online and preserves an open internet. The treaty may also present an opportunity for improving access to international telecommunication for persons with disabilities and landlocked and small island developing countries. Finally, as a major global conference on the internet WCIT exposed geopolitical fault lines, which may be instructive in future internet governance debates.

Strengths

- No expansion of key definitions in the treaty to include aspects of the internet.
- New language protecting human rights included in the preamble.
- New provisions on transparency in roaming pricing (Article 4.4) and promoting access for persons with disabilities to international telecommunication services (Article 8B).
- Non-binding resolution to establish special measures for landlocked developing countries and small island developing states for access to international optical fibre networks. (Res.Plen/1)
- No language regulating routing, which would have conflicted with the internet's architecture and facilitated human rights violations.
- No language on "sending party pays" or "end-to-end quality of service," which could have lead to increased cost for internet services and threatened net neutrality.

Weaknesses

- Lack of clarity on application of treaty (Article 1.1 *abis*)
 - A major point of contention at WCIT was over what type of entities the treaty applies to. The 1988 ITRs govern "administrations," which by definition are limited to public entities as well as

¹ Note: Access attended WCIT as an observer on the Swedish delegation.

² The new ITRs are available at: <http://www.itu.int/en/wcit-12/Documents/final-acts-wcit-12.pdf>

³ According to the ITU, 154 Member States are eligible to sign the ITRs. The list of signatories is available at: <http://www.itu.int/osg/wcit-12/highlights/signatories.html>

- “recognized private operating agencies.” A bloc of Member States were pushing to replace this term with a much more expansive term “operating agencies,” defined as “any individual, company, corporation or governmental agency.” A compromise term “authorized operating agencies,” which is undefined in the ITU Constitution, was eventually adopted. The new term is preferable to “operating agencies,” but could be problematically interpreted to apply more broadly than “recognized operating agencies”, to include internet providers for example.
- The U.S. had pushed for including the term “public correspondence” in the definition of “authorized operating agencies” in the ITRs which would have made this formulation acceptable because it would have limited the applicability of the treaty roughly to the traditional common carriers. But as it stands, this language could concerningly implicate any company providing international telecommunication services to the public.
 - Recognition of the right of access of Member States to international telecommunication services (Preamble)
 - In the international human rights framework, rights are granted to individuals, not Member States. So while this language appears to advance the goal of universal access to international telecommunication services, it may be used as a geopolitical tool between governments.
 - Cuba had unsuccessfully proposed an article with similar language, which was directed at the sanctions imposed on it by the U.S., making them illegal under international law. Moving this language into the preamble can be viewed as satisfying this political motive.
 - The ITU, as a technical forum, is not an appropriate arbiter of human rights. Most delegations at WCIT were composed of communications authorities, which were not empowered to set human rights policy for their countries.
 - Requirement that Member States endeavor to prevent unsolicited bulk electronic communications, i.e., spam (Article 5B)
 - By including the term “electronic” the provision seems to apply to online communications.
 - The terms “bulk” and “unsolicited” are both subjective and could lead to the blocking of content that is protected expression under the international human rights framework.⁴
 - “Necessary measures” is a broad term that neither effectively limits restrictions on expression to those allowed under international law nor meets due process requirements.
 - The provision encourages Member States to cooperate, implying they will share information, but fails to include any limitations on the types of information that can be shared or ensure that user privacy and due process, as protected under international law.
 - Requirement that member states endeavour to ensure the security and robustness of international telecommunication networks (Article 5A)
 - Article 5A requires Member States to “individually and collectively endeavour to ensure the

⁴ Mentions of the international human rights framework in this section primarily refer to Articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR), on privacy and freedom of expression, respectively.

security and robustness of international telecommunication networks,” but fails to include any language limiting the types of action that governments should take by balancing security with human rights concerns, to prevent user privacy from being violated, for example.

- “Security” is an ambiguous and oft-used excuse by governments to legitimize censorship.⁵
- Resolution to foster an enabling environment for the greater growth of the internet (Res.Plen/3)
 - While resolutions made at the WCIT are non-binding, this resolution selectively references the outcome of the World Summit on Information Society in a way that is viewed as imbalanced for omitting references to the broader understanding of internet governance, and by ignoring the existing internet governance mechanisms outside ITU.
 - Procedurally, the way in which this resolution was “approved” was highly flawed. The Chair took “the temperature” of the room at 1:30am and declared that the resolution was approved. The following day, amid confusion he clarified that the “measurement of the temperature” was not a formal vote but the resolution would remain as it is.
- Provision on providing international calling line identification (CLI) information (Article 3.6)
 - Article 3.6 requires Member States to “endeavour to ensure that international CLI information is provided taking into account the relevant ITU-T Recommendations,” but CLI is undefined in the ITRs, and later ITU-T Recommendations could define the term broadly to include calls that are routed over the internet, using technologies such as VoIP, raising privacy and online anonymity concerns.

Geopolitical context

While the global divide over whether to sign the new ITRs has been characterized as the start of a digital cold war, this line of thinking is neither particularly accurate nor constructive. Many delegations went to Dubai with the priority of securing affordable access to ICTs and do not fit into this false dichotomy. The WCIT did however expose fundamental differences in how the world’s governments view internet governance, which are bound to come up in future debates. Some of the key debates are listed below:

- Governments that feel responsible to protect an open, decentralized, global internet versus those that feel responsible to protect national and culturally-based sensitivities and priorities.
- Governments that believe that the internet regulatory framework can be provided by the existing global multistakeholder organizations versus those that think that the Member States of ITU, individually and collectively, need to regulate the internet.
- Governments that view a decentralized internet as the key to the global economic growth versus those that view international regulation as the key to internet access in the global south.

⁵ UN Human Rights Committee’s General Comment 34 includes nuanced discussion of when free expression may be restricted for the purposes of national security or public order.

Upcoming internet governance debates at the UN

- **ITU World Telecommunication Policy Forum (Geneva, May 2013):** Organized by the ITU, the theme for this year's WTPF is "Internet-related public policy issues". The WTPF adopts non-binding recommendations and opinions that can be important in norm building and feed into the next ITU Plenipotentiary Conference, scheduled for October 2014, where the legally binding ITU constitution and convention will be renegotiated. It is expected that many of the internet-related proposals that failed at WCIT will be reintroduced at the WTPF.
- **WSIS 10 + (Paris, February 2013):** WSIS +10 is a 10 year review conference of the UN World Summit on Information Society concluded in 2005. The review conference will evaluate the progress of the Tunis Agenda, the outcome of WSIS, which among other things reinforced the multistakeholder framework for internet governance. The two-year process will conclude with a 2015 conference, possibly at the heads of state level. Opposing views of the future of internet governance are certain to resurface.
- **UNCSTD Working Group on Enhanced Cooperation (Geneva, June 2013):** The 67th UN General Assembly decided to establish a "Working Group on Enhanced Cooperation" under the UN Commission for Scientific and Technological Development (UNCSTD) with a mandate to make proposals for further action until summer 2014. The term "enhanced cooperation" has a variety of interpretations, ranging from the creating a new UN internet organization to strengthening the multi-stakeholder model. Governments that are not satisfied with the current state of internet governance will likely use this working group to push their preferred model.

Access will be actively engaged in the various upcoming internet governance debates at the UN and elsewhere with the goals of maintaining and enhancing the multistakeholder model of internet governance and extending and defending the human rights of internet users around the world.

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