



World Conference on International Telecommunication (WCIT) 3 - 14 Dec 2012, Dubai

From saving the Internet to the cold war in cyberspace

The World Conference on International Telecommunication (WCIT, 3-14.12) is over and commentators are as divided over potential long-term effects as the two camps (US and allies vs Arab States/Russia/China and a significant part of the rest of the world) were during the negotiations in Dubai. The most far-reaching interpretation of what the split at the conference might mean for Internet governance or net politics certainly was that it marked the beginning of a „cold war“ in the digital world.

While such war rhetoric fits into the hyperventilation in news reporting about WCIT and the ITR over recent month and the time of the conference itself certainly the level of distrust between the two camps is just enormous. This was obvious to observers of the conference that saw some rather bizarre discussions, for example on the need to include human rights and rights to access to telecommunication networks in the WCIT preamble.

First, of 144 member states with the necessary credentials to sign (of 152 present in Dubai, and 193 ITU member states) 89 signed at the spot, while 55 reserved the right to sign later. According to the ITU in 1988 112 signed the Melbourne ITR, with another 75 signing over the following years. So some countries might sign down the road, when the spotlight is out, but given the level of rejection there might not be so many late-signers.

In Dubai the US, many European and some Asian countries (with some Latin-American and African countries) decided not to sign. For the ITU the result is a failure, despite efforts by ITU Secretary General Hamadoun Touré to underline what he called the many „positive outcomes“ of the new treaty during the closing press conference.

Touré, the much tested WCIT Chair, Mohamed Nasser Al Ghanim and ITU expert Richard Hill tried to turn the criticism around during the press conference underlining that those who decided not to sign would „deprive their citizens of the positive outcomes“: lower mobile roaming prices, more transparency in roaming, less eWaste, better access for the disabled. On all these points the conference added new paragraphs. Yet the conference also included wording on Network security,

unsolicited bulk electronic communications – spam, feeding the concerns that, despite the erasure of „Internet“ from the text of the treaty and a preamble declaration that the provisions did not extend to content questions certainly the future ITR might at least bring legitimacy Internet control that exists in many countries.

What's in the ITR?

These are the most controversial points in the ITR:

- An addition to the preamble to include a human rights commitment and access to networks
- Scope of the treaty (companies ruled by ITR, relevant ITU body, definition of telecommunication)
- Additions to article 3 (investments in networks and exchange points, controversial Internet chapter is out from 3)
- Article 5 A Security and robustness of networks and
- Article 5 B Unsolicited bulk electronic email
- A set of new provisions in the financial chapter 6
- From the non-binding resolutions the one on „Internet governance“

Western Allies make a backflip on Human Rights / Access to networks should not be a right for states

„Member states affirm their commitment to implement these Regulations in a manner that respects human rights obligations.

These Regulations recognize the right of access to Member States to international telecommunication services.“

The discussion of the human rights provisions in the text took the entirety of three plenary debates with the US and EU¹ rejecting any mentioning of human rights in the ITR in the first place. Countries like Sweden (known for their heavy engagement in human rights on the Internet by initiating the first ever Human Rights Council discussion on it) helped to kill the Tunisian proposal on human rights. This proposal was supported by the Arab states and also a few European countries like Poland which had not – contrary to what the ITU Secretary General said in one of the media briefings – rejected the human rights referral in the beginning.

It was one of the bizarre moments of WCIT to see China side with the US and the EU on human rights with a near joint understanding that the ITR were a technical treaty. For the US-EU alliance the inclusion of human rights was a concern, they said, as it could imply that via freedom of expression content issues would be covered by the ITR.

¹ the European Commission that had to hide behind the Cyprus presidency flag to be allowed to speak

The proposal was on the other hand very much applauded and said to be indispensable by the Secretary General Hamadoun Touré who demanded the conference had to send „a strong signal“ that the conference and the treaty was not about censorship.

Touré in his plea alluded to the anti-WCIT campaign that had swept the press since end of last year and had been very much driven by US companies like Google and parts of the US administration/political arena more general. Somehow it was odd that those regions that had nurtured the WCIT Internet censorship concerns the most, did reject the human rights posturing most at the beginning of the conference - wicked WCIT. In the end the Secretary General himself first turned around asking for a mandate to convey the message that the WCIT is not about censorship in a press release.

It was Poland that put a more general referral to human rights back on the negotiating table, with EU member states joining one by one, in the obvious effort to make up for the rather bad headline that EU and US were opposed to a human rights referral in the ITR. The second attempt while accepted by Tunisia was countered by the Arab States, Russia and China, with the latter at least being consistent in their rejection of human rights.

It was another discussion about rights – more specifically the debate about the „*right of access to Member States to international telecommunication services*“ - in the preamble that triggered the final vote of the conference on Thursday evening, and effectively sealed the failure. The right of access of member states was originally part of a Cuban proposal that obviously was intended to be of help against US embargo measures making access to Internet services difficult in the country. Taken out from the provisions (3.7) in Chairman's final package proposal, the African group put it on the table as addition to the preamble during the decisive session Thursday night and got it included by a 77 against 33 vote (8 abstentions)The vote requested by Iranian “master gamer” delegate Kavouss Arasteh which did not allow for further discussion on the other controversial issues (mainly the scope, the UCE and network security issue) certainly made it easy for Western delegates to reject the new ITR. The ITU WCIT with taking a vote instead of looking for consensus had deviated from the classical ITU procedure of consensus which ITU Secretary General Hamadoun Touré promised he would stick to for WCIT.

The main substantial argument against inclusion of the member state access preamble sentence was that human rights always were individual rights and should not be confused with the right of states. Exercising a potential freedom of information right without having access to the network (that might be capped for the individual by his own or a third country) may be impossible, but obviously many member states think that one has nothing to do with the other, to quote the rather unsuspecting Swiss delegation:

„If you would allow us to put individual rights on an equal footing, individual rights are human rights, of course, put them on an equal footing with Member States. This doesn't seem appropriate to us. Indeed, it shocks us from a legal point of view and from a philosophical point of view. It's not at all the same thing. Human rights are applied to citizens. Member States are something else entirely. We understand the problems raised by many of the States present here with regard to non-discriminatory access. And we think the -- and we don't think that we could go in this direction. We have the impression that one is trying to create a new human right. So we should really try to find another solution to resolve the problem before us and the problem raised by a certain number of countries with regard to non-discriminatory access.“

The Human Rights discussion certainly showed the level of distrust between the camps, as it even resulted in European states to consider the rejection of something they are strongly supportive and are expected to be so.

Scope of the treaty – the daunting task to exclude the Internet from telecommunication

From the beginning the issue of the scope of the treaty was looming large over the treaty, and some researcher who will do a detailed analysis of all the statements before and during WCIT might come to the conclusion that consensus was, from the beginning, just not possible.

Confining a modern telecommunication treaty without creating any effects for the Internet seems a rather daunting task, to start with. All the posturing before the treaty, the warning that the treaty would kill the free Internet, or the UN would take over Internet control and the ITU Secretary General's repeated rejections that the ITR were about content, the Internet and Internet governance – while these three are rather different things – made it difficult to see how Internet and Telecommunications can be separated.

In the text, if one would put aside all proposals that quite clearly are related to Internet and Internet governance, with the Russian proposal being the most prominent, the question of what kind of operators would be covered and the short discussion about a limited definition of “telecommunication” were the more subtle attempts to highly narrow the scope. The US and its allies in the first plenary of the conference tried to put down their foot and announced only when the limited scope with regard to “registered operating agencies” vs. the broader “authorized operating agencies” was settled they would start to talk about substance. Yet somehow the Western alliance never executed this condition and so the conflict about it dragged on until the conclusive 14th plenary where the US while winning the “authorized operating agencies” formula lost with regard to their very late proposal to add the term public correspondence as a delimiter.

Richard Beaird, State Department (8th plenary)

“They also set rules applicable to those operating agencies authorized or recognized by a Member State to establish and operate a public correspondence International telecommunications service ('Authorized operating agencies').”

Asked after that session why the US that late in the process added a new term (which was fought by the Arab States and parts of their camp as once more opening up the discussion) US Ambassador Terry Kramer said to this reporter that the addition had been made as the US delegation was afraid about the path the negotiations had taken. CIRA CEO Byron Holland's comment on the public correspondence formula was that the US was correct in its concern. “Without it, or a descriptor for the concept, the wording as it now read will be interpreted to include government and private networks. In telecoms parlance, “correspondence” is the term that excludes them. This could prove to be a big issue. “

The final resolution in the treaty now reads:

These Regulations also contain provisions applicable to those operating agencies, authorized or recognized by a Member State to establish, operate and engage in international telecommunications services to the public, hereinafter referred as "authorized operating agencies".

The definition of „telecommunication” remains unchanged.

Given that the Internet for the US/Canadian/Australian/European delegations was a no-go area they could not bring a lot to the conference table. Many countries in that camp did not see the need for new ITRs at all, but, according to several statements, had been unable to oppose the review.

Much certainly the other camp certainly came with the presupposition that Internet and telecommunication are intertwined, that telecommunication definitions do include some aspects of Internet services and the ITU therefore anyway is in charge for some aspects.

The Nigerian Delegate expressed at some point when the Internet resolution was discussed:

„Actually if you look at the major business of telecommunication, it is to deliver services through open access, which we believe the Internet is one of those avenues, which service is delivered by telecommunication. To be candid, we are always disappointed when the issue of Internet has been restricted here in ITU because these two, they go hand-in-hand. One cannot go without the other.“

ITU Secretary General Touré immediately before the much debated „Internet resolution“ (see below), said:

And I beg you not to say, not to think, that we cannot even pronounce the name "Internet" in this meeting. We do. In ITU we can pronounce the name "Internet" because we are working and Internet is running on telecommunication platforms. It's not taboo to pronounce that. The two words needs to work together. This is very clear. It's not a crime to talk about Internet inside the ITU. Just like inside the bodies dealing with Internet they talk about telecommunications. Some of them are certain members of ITU and they are here in this room. Therefore, it should not be taboo. Let's not make an unnecessary or artificial fight between these two bodies that have been working together.

Certainly the „Internet is no-go“-camp had to be afraid to fall into a trap.

Additions to article 3 - the castrated Internet chapter

Article 3 was one of the major battlegrounds with regard to Internet governance and the Internet more generally. While it was clear from the outset that the Russian proposal – at one point included in the joint proposal by the Arab states, China and some more countries – was unacceptable, a paragraph on naming, numbering, addressing and identification resources (3.8), the provision on non-discriminatory access (3.7, see above) and a chapter on investment in infrastructure (3.9) were on the table for chapter three. A castrated version of 3.8 survived in the final text which limits the article to resources under the mandate of the ITU.

The original article 3.8 from DT 51 (December, 11th)

“Member states shall, if they so elect, be able to manage the naming, numbering, addressing and identification resources used within their territories for international telecommunications.”

vanished from the document after discussions that by talking about names and identifiers under the remit of the ITU. Many observers were taken aback about referrals to X400 and ITU-T standardized object identifiers as names and identifiers covered by the EU mandate. X400 is no longer in use.

What remained with regard to numbering were articles 3.5 and 3.6:

3.5 Member States shall endeavour to ensure that international telecommunication numbering resources specified in ITU-T Recommendations are used only by the assignees and only for the purposes for which they were assigned; and that unassigned resources are not used.

3.6 Member States shall endeavour to ensure that international calling line identification (CLI) information is provided taking into account the relevant ITU-T Recommendations.

Inconclusive are the interpretations about the „enabling environment“ article in 3.7

3.7 Member States should create an enabling environment for the implementation of regional telecommunication traffic exchange points, with a view to improving quality, increasing the connectivity and resilience of networks, fostering competition and reducing the costs of international telecommunication interconnections

Ondrej Filip, CEO of the Czech Registry CZ.NIC was concerned that the mentioning of Internet exchanges could also make them a target for state control or monitoring. To note: once more the word Internet exchange point was exchanged with “telecommunication traffic exchange point” - and the taboo word scratched, but in fact it is difficult to not interpret the sentence in any other way as to mean IXPs. On such provisions, opinions in the technical community more over seem to be different, as for example Avri Doria put the IXP fostering on her plus-list of the ITR.

In essence article 3 muted from battleground to victory chapter for the western alliance. With so much lost for the other camp in the “Internet chapter” the Internet resolution attached to the treaty text was said to be a little concession. Yet that little concession made a huge difference in the negotiations (see below) resulting in the first voting. While WCIT Chair Al Ghanim rejected that it had been a formal vote, he did declare the “Internet chapter” adopted by a majority.

Article 5 A and B: Security and Spam, overstepping the boundary to the net?

Members of the technical community argued that the two new chapters on Security and Spam, once more, extended the scope to the Internet. While being general to the border of being banal and superfluous, again the mere mentioning of both aspects resulted in concerns about a power grab by regulators with regard to content control – political ads could be filtered out as spam and authentication could become the matter of regulation.

Here are the two chapters:

ARTICLE 5A

Security and robustness of networks

41B Member States shall individually and collectively endeavour to ensure the security and robustness of international telecommunication networks in order to achieve effective use thereof and avoidance of technical harm thereto, as well as the harmonious development of international telecommunication services offered to the public.

ARTICLE 5B

Unsolicited bulk electronic communications

41C Member States should endeavour to take necessary measures to prevent the propagation of unsolicited bulk electronic communications and minimize its impact on international telecommunication services.

Member States are encouraged to cooperate in that sense.

While there is telephone spam – and in some countries regulation against it – certainly the chapter includes email filtering and this was confirmed by WCIT Chair Mohamed Nasser Al Ghanim in the press conference, when he pointed to related UAE opt-out regulation protecting consumers from advertisements sent to them.

Can the two really general articles harm the Internet? In the afternoon before the final vote at least some European countries seemed to be willing to accept these two new paragraphs, given that the „no content affirmation“ would be placed in the preamble. But by going for the vote on the „access right for states“ during the last night, those still prepared to compromise were pushed to not accept the treaty.

A set of new provisions in the financial chapter 6

Only a small part of the plenary time was spent on the financial issues, which is astonishing given the fact that some commentators have underlined that the financial interests were a huge topic for the ITR and had in fact triggered some of the reactions from the Internet sector in the US. A debate about sender party network pays (SPNP) or quality of service as an option for network operators (a thread that made WCIT a huge media topic in summer following a proposal by the European Telecommunications and Network Operator Association, ETNO) just did not take place and the ETNO representatives on the ground saw their chances being postponed as the discussions about human rights and the scope dragged on.

Some discussion went into a generally worded provision about the encouragement of investment in international telecommunication networks and promotion of competitive wholesale pricing for traffic carried on these. In fact this is what is left over from proposals by the European telecom operators:

6.1.1 Member States shall endeavour to encourage investments in international telecommunication networks and promote competitive wholesale pricing for traffic carried on such telecommunication networks

A whole set of potential „new provisions“ was dumped, they included

- promotion of cost-oriented wholesale pricing,
- reasonable compensation for carried traffic (here is the SPNP),
- promotion of commercial agreements and fair competition,
- innovation and quality of service and security, investment in bandwidth,
- mitigation of fraud,
- better access for landlocked countries (later in a resolution on „Special measures for landlocked developing countries and small island developing states for access to international optical fibre networks“),
- consumption oriented pricing and
- access to dispute resolution where problems with operators arise.

While all these were topics of interest there was just not enough time for discussion on them, the US delegation said. Finally they were put into a resolution that asks for further study of these issues in the study group 3 of the ITU (the title of the resolution is „International telecommunication service traffic termination and exchange“).

Two of the more successful deliberations were those on roaming price cuts and transparency. The Brazilian delegation said to this reporter they were satisfied with new provisions on roaming included into the treaty. Operators according to the treaty have to provide users with „up-to-date and accurate roaming price information“ when travelling and also offer a „satisfactory quality“ for the roaming services. Inadvertent roaming costs in border zones – which can create high bills for customers

unaware that they are on a neighbouring country network – are addressed in another paragraph as are competitive roaming prices. „We had to make compromises“, the head of the Brazilian delegation said, „but the core intentions are there.“ Brazil did sign the new ITR.

From the non-binding resolutions the one on „Internet governance“

The inclusion of a non-binding resolution on Internet governance, the correct title is “To foster an enabling environment for the greater growth of the Internet” does not look that powerful.

It invites Member States,

1 to elaborate on their respective positions on international Internet-related technical, development and public-policy issues within the mandate of ITU at various ITU forums including, inter alia, the World Telecommunication/ICT Policy Forum, the Broadband Commission for Digital Development and ITU study groups;

2 to engage with all their stakeholders in this regard.

And it instructs the Secretary-General

1 to continue to take the necessary steps for ITU to play an active and constructive role in the development of broadband and the multistakeholder model of the Internet as expressed in § 35 of the Tunis Agenda;

2 to support the participation of Member States and all other stakeholders, as applicable, in the activities of ITU in this regard.

The language was as soft as it could get, according to the ITU Secretary General, and it was the alternative to much stronger wording emanating from the Russian proposal. Other outside observers like US Internet Governance expert Milton Mueller warned against overreaction to that text which he qualified as part of a „clever, diplomatic way of resolving the basic conflict afflicting WCIT: keep the pro-ITU states happy with some minor concessions related to the ITU role in Internet governance, but couch it in vague terms about “fostering an enabling environment” and put it all in a nonbinding plenary resolution where it can’t do any real damage. It looked like the final outcome would rest on that bargain.“

Certainly there were those that saw the resolution as potential marching orders for the ITU and as yet another step in the piecemeal tactic to mission creep. As one observer put it, the resolution was a „disaster“, „while it was non-binding it would open the door for all ITU folks to reference it and overstep into areas of IG.

CIRA CEO Byron Holland is concerned that based on the ITR, even if they have not been accepted by many member states, some might „see Internet as much more under state control and start making it difficult for the multi stakeholder model.“ One battleground could be ICANN's GAC, according to Holland. „These are the harder to quantify issues that I am worried about, that change the balance of power about who really gets to govern the Internet.“

While it is unclear how the issues of further ITR review (put into a WCIT resolution for the future plenipotentiary conference of the ITU) and other discussions (like the study group 3 plans) are dealt with given that so many countries did not sign.

What is certain and agreed by most commentators is that Internet governance is on the table. More discussions about the future processes in the ITU are included. WCIT was the most open negotiating

conference ever, with webcasts, access for private sector and civil society members of the official delegations to many meetings and daily press briefings. Yet the flip side of the openness were gag-orders for the non-state delegations members – leading to some calls from civil society for a more independent role in the future (Nnenna Nwakanma said this in an interview, see also her blog <http://nenna-nenna.blogspot.de/>). Also the WCIT's Chair tactic to carve out deals away from the unruly plenary that certainly was aware of a lot of attention might be a result from the openness. For many days the most controversial issues were kept locked up in small negotiating groups, with the plenary circling around the big elephant in that room: the Internet taboo. When finally the beast had to be addressed, there was not enough time left. Next stops for the ongoing fight: the World Telecom Policy Forum and the next Plenipot.

Links

The full text of the Final Acts of the new ITRs can be found at:

- English: http://wftp3.itu.int/pub/epub_shared/GS/WCIT-12/E/web/flipviewerexpress.html
- French: http://wftp3.itu.int/pub/epub_shared/GS/WCIT-12/F/web/flipviewerexpress.html
- Spanish: http://wftp3.itu.int/pub/epub_shared/GS/WCIT-12/S/web/flipviewerexpress.html
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- Russian: http://wftp3.itu.int/pub/epub_shared/GS/WCIT-12/R/web/flipviewerexpress.html

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