

WHAT IS AT STAKE AT WCIT?

An Overview of WCIT and the ITU's role in Internet Governance

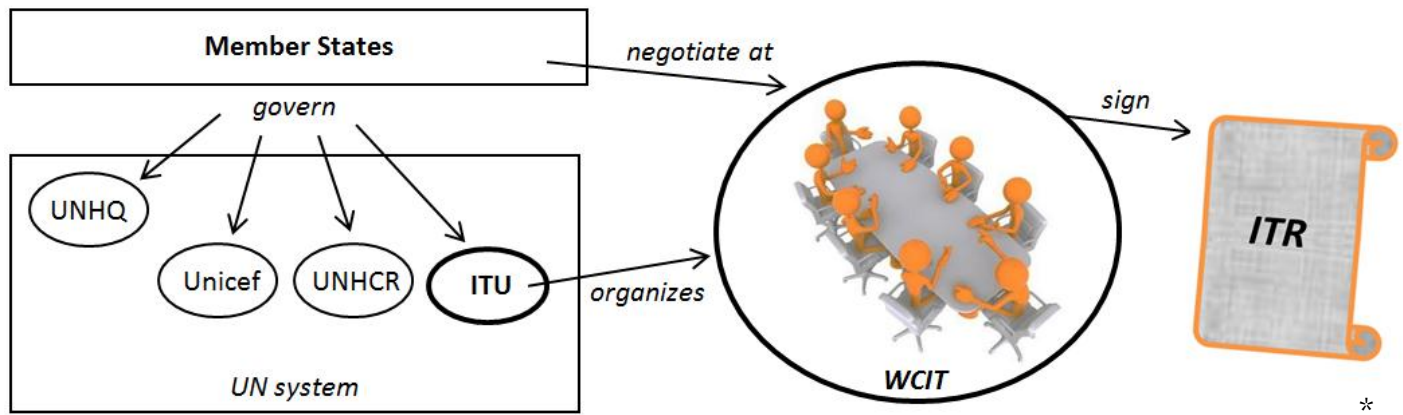
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What is WCIT? From December 3-14, 2012, diplomats from 193 states will meet in Dubai for the World Conference on International Telecommunication (WCIT). They will negotiate a revised text of the International Telecommunication Regulations treaty (ITR) which was adopted by governments in 1988. Unlike many other meetings on Internet governance, such as the Internet Governance Forum or the Internet Engineering Task Force's, WCIT is limited to government officials and its process has not been sufficiently inclusive and transparent, as highlighted in the statement adopted by civil society groups participating in the "Best Bits" meeting in 2012. Civil society and private sector representatives have no vote and little say beyond their ability to influence government delegations. At the same time, the ITR is an international treaty which has a binding effect under international law on those countries that sign and ratify it. What governments decide could therefore significantly impact the future of the Internet. That is why WCIT and the content of the ITR have attracted so much attention.

What is the ITR? The ITR is an international legally binding treaty adopted by the member states of the International Telecommunication Union (ITU) in 1988. The ITR focuses on high level principles that facilitate global interconnection and interoperability of telecommunication traffic. It outlines how traffic flows across borders, satisfactory quality of service, as well as the charging and billing between operators. The treaty requires its members to ensure that telecommunication network operators, many of whom were state-owned, adhere to the ITR. In 1988, the Internet was still in its infancy, used only by a small number of researchers, and therefore not mentioned in the ITR. However, one of the articles in the ITR, Article 9 on "Special Arrangements," is a provision with a general reference to traffic not covered by the other ITR provisions. According to the Internet Society, this section enabled exchanges of traffic not covered by the other ITR provisions. That is why the Internet remained outside the intergovernmental regulations covering telecommunication once it grew and interconnected with commercial networks and instead relies on a multistakeholder governance system which includes civil society, the private sector, and governments.

What is the ITU? The ITU is an intergovernmental organization founded in 1865, predating the United Nations (UN). It joined the UN system after World War II but has remained autonomous with its own independent plenipotentiary body and Secretary-General. The ITU has played a crucial role in helping to regulate international telecommunication as well as promoting early Internet protocols such as the X.25 standard. The ITU's 193 member states can enter into legally binding international agreements such as the ITR negotiated by diplomats at an international conference such as WCIT. The ITU's staff organizes such conferences. While ITU officials have no vote at the negotiation table, they can influence the outcome by framing issues, setting the agenda, and determining procedural questions.



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The ITU's 193 member states have offered their proposals for how to revise the ITR, which will form the basis for the negotiations at the WCIT. Some proposals express concerns by governments struggling to provide affordable access and the benefits of the Internet to their people. Others aim to expand governmental control over the Internet and could negatively affect human rights, fundamental freedoms, and how the Internet works. Below are a few spotlights on some of the most controversial proposals:

Spotlight 1: The scope of the ITR and governmental control over the Internet

The ITR focuses on telecommunication and currently does not mention the Internet. When the ITR was drafted in 1988, the Internet was a small network among researchers and barely known. At the time, the telecommunication sector was dominated by state-owned companies. An intergovernmental treaty was therefore an obvious avenue to bridge barriers across borders and among companies owned by different governments to ensure “global interconnection and interoperability.” One article in the ITR, Article 9 on Special Arrangements, mentions traffic not covered by the ITR. It became the legal basis for the Internet's traffic when it grew over the years according to the Internet Society. In the absence of an intergovernmental treaty and without

intergovernmental regulations, the Internet's interconnection and interoperability emerged based on peer-to-peer relationships. Moreover, its evolution was driven by competition for the most effective and simplest solutions, which designers and operators then adopted voluntarily. This model has been integral to its success. Today, the Internet is a worldwide “network of networks” permeating our lives. Consequently, some governments would like to play a bigger role in its governance and have submitted proposals which aim to extend their control by expanding the scope of the ITR to include the Internet subjecting it to its intergovernmental provisions. One way to achieve this goal is to change the definition of telecommunication to include a reference to the Internet. Such a reference could mean broadening the definition to include “data processing”, “information and communication technologies”, or redefining “recognized operating agency” as “operating agency,” thereby increasing the number of institutions covered by the ITR.

However, the history of telecommunication is very different from the evolution of the Internet. While the ITR played an important role in the globalization of telecommunication, it could have the opposite effect on the Internet, which has already achieved interoperability without intergovernmental regulations. Expanding the scope of the ITR to include the Internet (other than in Article 9) would resurrect barriers and hamper

the very features that made the Internet so successful in the first place. It would subject the Internet to a new regulatory regime that would create additional costs and stifle competition over efficiency and innovation. The ITR should therefore be limited to its original definition, which would ensure that the ITU continues to play the useful role it has assumed in the last 25 years.

Spotlight 2: The ITU's role and the Internet

The governance of the Internet has developed in the last few decades on an ad hoc basis between public and private organizations. This multi-stakeholder model has addressed key technical challenges and provided a forum for global interest groups (both public and private) to come together to find solutions. The ITU has been one among many organizations in the multi-stakeholder model. And it has made some notable contributions. The ITU's technical group (ITU-T) developed an Internet standard called X.25 that played an important role in the early days when various network protocols were developed. X.25 was a complex protocol that used a packet switch network approach to rebuild circuit switches virtually. Eventually, however, the more efficient and flexible IP/TCP became more widely adopted. ITU standards continue to be particularly relevant below the IP layer, for example, through its ADSL or fiber optic cable standards. In addition, the ITU provides useful data through its research and efforts on broadband adoption as well as the work of ITU-D, the division that promotes access to technology in developing countries and provides assistance to governments. The ITU's focus on the special needs of the disabled is also outstanding. The institution is an effective convener of government interests on many topics, but its value is not as an umbrella organization with overarching authority but rather as one part of a multi-stakeholder governance system.

In short, the ITU's role in the Internet's design as such has been limited but one of the many sources

that contributed to its evolution. This role is useful and the ITU can contribute to the multi-stakeholder model with voluntary proposals, opportunities for collaborative discussion, and information sharing. For example, assessing whether or not a new technical standard is more efficient and easier should be a voluntary process and not a forced requirement. Proposals to make the ITU-T recommendations mandatory contradict this principle. If ITU standards are more efficient and simpler than existing solutions, there will be intrinsic value in adopting them voluntarily. In addition, the ITU development work is very important to provide affordable access to people around the globe and to lend a stronger voice to those with special needs.

Spotlight 3: Internet traffic routing

Engineers built the Internet motivated by a search for the most efficient technologies to achieve the goal of interoperable networking. As a result, it is designed today to break data down into several packets that are sent individually to the destination address and reassembled upon arrival. Under this system, packets sometimes arrive faster even if sent half-way around the world rather than through the neighboring country. It is the same principle that makes it quicker to take a highway even if it is longer than a country road since the highway allows you to travel at greater speed.

This system is why national borders play a negligible role in how Internet traffic is routed. This transnational way of connecting and transporting data stands in stark contrast to the political order of nation states where territorial borders divide the world into sovereign governments. Some governments suggest changing the ITR to impose the concept of national borders on IP routing. This has the potential to make Internet traffic routing less efficient. Moreover, it makes it easier to restrict human rights and for malicious actors to target specific countries. Such a proposal is therefore not a

more efficient solution but is likely to create a more disadvantageous situation with negative effects on the Internet's efficiency, the protection of human rights, and security.

Spotlight 4: The Internet's economic model

Most of the Internet's traffic is transported by private sector companies that own the physical networks. The largest Internet Service Providers (ISPs) often exchange traffic with each other free of charge through relationships known as "peering." The revenue for network owners comes from the charges that end-users pay to produce content that is uploaded onto the Internet or to consume content that is downloaded. From its inception, the Internet has operated on a principle known as "end-to-end." This principle means that all network operators handle traffic without discrimination— no online content receives special treatment (e.g. faster delivery) because of who sent it or who receives it. The end-to-end principle created the fertile ground for innovation because every content developer and service provider – from Skype to YouTube to individual users – has a similar opportunity to access the network and communicate with users around the world.

Earlier this year, the European Telecommunication Network Operators Association (ETNO) submitted a proposal that threatened the end-to-end principle. It suggested allowing companies to enter into commercial agreements with differentiated quality of service delivery on the Internet. Such a shift would overturn end-to-end and replace it with "pay-to-play" whereby Internet companies could purchase the right to have their data treated with priority over other Internet content. This would have the effect of reserving high quality of service for big business customers and relegating noncommercial Internet content to whatever bandwidth might be left over for them. While it is tempting for companies to create discriminatory pricing models and charge different rates for

different products to increase the producer surplus, it diminishes the benefit to the consumer and stifles future innovations. It would be particularly harmful for developing countries that seek to grow content and services industries and desperately need the level playing-field that the free market of an end-to-end Internet offers. Notably, the ETNO proposal was rejected by European governments, but similar language has been supported by governments in other regions. Such proposals should be rejected at WCIT to maintain the Internet's positive effect on innovation and economic growth as well as to secure the benefit to the consumers. There are other, better ways to address revenue generation and new business models for network owners that do not involve destroying a fundamental principle of the Internet.

Spotlight 5: Safety and Security

Cyber-crime and cyber-security are important issues, but very different from the ITR. The ITR is not a cyber-security treaty. The World Summit on the Information Society suggested the ITU should serve as a facilitator of international cyber-security efforts, but not as a decision-making body. Generally, any debate over cyber-security must be grounded in international human rights, take place in the appropriate forum, and be integrated in a multi-stakeholder process. The UN is a part of that process. And there are organizations other than the ITU within the UN system whose mandates already cover this area. The UN General Assembly's First Committee has focused on the political dimension of cyber-security for over a decade with a third group of governmental experts currently discussing this topic. The Security Council set up a working group on how terrorists use the Internet several years ago. And the UN Office on Drugs and Crime is the recognized lead agency in the UN system for matters pertaining to crime and cyber-crime.

The Budapest Convention on Cybercrime also addresses many of the issues and could become

more effective if more member states sign and ratify it. For the politico-military cyber-security dimension, the ITU, as a technical organization, is not the appropriate forum. The Security Council and the UN General Assembly's First Committee are tasked with such questions under the UN Charter. With regard to child protection, UNICEF and other human rights organizations have demonstrated unique expertise and leadership over the past decades. And there are successful non-governmental initiatives that have, for example, successfully reduced the amount of spam.

Spotlight 6: The ITU's Role to Support Human Rights and the MDGs

The ITU is part of the multi-stakeholder process and can play an important role to help close the digital divide and to build capacity in the technical community in developing countries. It is one of the leading agencies responsible for the achievement of the Millennium Development Goal 8F that aims to "make available the benefits of new technologies, especially information and communications." The eight Millennium Development Goals have been the flagship program in the international community to reduce poverty worldwide since 2000. The 2012 Millennium Development Goal report highlighted that while much progress has been made, certain regions, particularly in Africa, have fallen behind. Some proposals submitted for WCIT threaten to undermine the achievement of this goal by its target deadline of 2015.

The ITU should therefore be a guardian of this objective and use its international reputation to promote principles of affordable access, universal service, and open standards as well as effective competition by supporting efforts to increase access

at more affordable cost. The ITU can also help raise awareness about the important resolution adopted earlier this year by its younger sister agency, the Human Rights Council, affirming that human rights apply online as well as offline, through its longstanding relationships with governments around the world.

Spotlight 7: Transparency

Traditional intergovernmental processes usually take place under a cloak of secrecy and proceed at a pace that cannot keep up with the dynamic speed of technological advances. The WCIT preparatory phase has not been sufficiently transparent and has fallen short in including key actors, in spite of some efforts to increase public input. In many countries, public and open consultations with actors from various constituencies have largely been missing. Yet, the history of the Internet demonstrates that the competitive search for efficient and simple solutions can only reach its full potential in a transparent and open environment so the participants involved can scrutinize and assess new standards and tools.

It is therefore paramount for these processes to become more transparent for non-governmental actors with expertise to inform decisions and policies based on the precedent set at the World Summit of the Information Society. Proposals and conference-related material should be made public with ample time for civil society groups to comment and to provide feedback. Sessions of WCIT should be public and live webcast with video, audio, and text transcripts available to enable participation by all, including persons with disabilities. This will help to develop effective high-level principles that can stand the test of time and foster human rights and sustainable economic growth.



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