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A false consensus is broken

Parminder Jeet Singh



The U.S. rejection of new global telecom regulations should not overshadow the need for an Internet-powered social agenda for the world

The United States's decision to walk out of the International Telecommunication Union's World Conference on International Telecommunications (WCIT) in Dubai along with some of its allies last week could represent a turning point in global Internet governance. These countries refused to sign the new International Telecommunications Regulations (ITRs) that contain some basic principles governing the technical architecture of the global communication system. They said they could not agree to the ITRs, and the ITU's remit, extending to the Internet. However, the new ITRs contain no reference to the Internet, all such language having been assiduously weeded out over the two weeks of intense negotiations. Also, the ITU has been undertaking Internet-related activities for more than a decade, with the U.S. participating in them.

In a full-blown Internet age, the new ITRs make no reference to naming and addressing the system of the Internet or its routing structures, make no effort to make ITU 'the' Internet standards making body, and make a clear statement that 'content is not included' in their remit. This could, in fact, have been taken to be a significant acknowledgement of the existing naming and addressing regime (ICANN) and Internet standards making processes (IETF or Internet Engineering Task Force). However, the U.S. remained adamant.

Diplomatic blunder

Both the U.S. and the ITU will take a hit from this meltdown of what was in any case a make-believe consensus. The U.S. seems to have said, well, the kid gloves are off and we are done with making polite noises about ITU. The old order is dead and the new has taken over. What if it is U.S.-centric; most people the U.S. likes to talk to seem to be happy with it. The walkout by the U.S. and its allies can also considerably damage the ITU. It has practically been told by these countries that they see no role for the ITU in an age when all communication systems will soon be Internet-protocol based. This suddenly leaves developing countries without any existing global forum to turn to for an appropriate role in global governance of the Internet. It is expected that this will lead to a hardening of their position on the existing U.S.-centric global Internet governance regime, something most of them have been lazily going along with. With the walkout on the ITRs, the U.S.'s diplomatic ability to defend the substantial control it has over the

existing privatised Internet governance regime will go down considerably.

It is unclear whether the U.S. had come expecting a deadlock but hoping it would happen in such a way that the blame could be pinned on authoritarian countries with an extreme agenda of statist control over the Internet. These countries did bring in highly problematic drafts which were all rejected or withdrawn. By the end of two weeks of negotiations, as noted by Eric Pfanner in the *New York Times*, “the United States got most of what it wanted, but then it refused to sign the document and left in a huff.” It may turn out to be a diplomatic blunder. Despite valiant statements from the U.S. about having defiantly stood for freedom of expression, the blame for the failure of the treaty process, and the consequent breakdown of the ‘false consensus’ on global Internet governance, will have to be borne by the U.S.

Sequence of events

The real reasons for this sudden shattering of the uneasy calm over ‘who governs the global Internet’ lie in the larger, long-standing structural issues, the kind which often come to a head when a definitive text has to be signed, as happened at the WCIT.

With less than two days to go before the end of the conference, the more active developing country actors began to get restive. The draft had gone bare-bone with hardly anything new in it compared to the existing ITRs. They felt that they had made all the concessions; included text that ‘content is not covered,’ agreed to human rights language in the preamble, and had withdrawn all proposals with explicit mention of the Internet, and also the more radical ones that would have taken the ITU into ICANN and IETF territory. As a delegate said in exasperation, “It is unacceptable that one party to the conference gets everything they want and everybody else must make concessions, and after having made many concessions we are then asked to suppress the language which was agreed to.”

Rather than seeking to give the ITU a new role with regard to the Internet, many countries legitimately feared that if the ITRs contained nothing at all about the Internet, this would be taken as the basis for pulling the ITU back from even its existing Internet-related activities. All along, the refrain from the U.S. side had been that it is fine for the ITU to keep doing what it already does with respect to the Internet, but it would not accept any mention of the Internet in a binding treaty like the ITRs. In this background, it was a rather legitimate compromise that the Internet be kept out of the ITRs but be mentioned in an appended resolution which does not have the force of a treaty. The resolution was merely a set of instructions to member states and the ITU’s Secretary General for a continuation of existing Internet-related activities and role by the ITU.

This resolution mostly repeated agreed language from the World Summit on the Information Society (WSIS). It was adopted by a show of hands past midnight of December 12, the second-last day of substantive negotiations. Its purpose seemed to be to make clear that the absence of the Internet from the ITRs should not be seen as taking away the kind of role that the ITU already plays in the Internet area, and/or as compromising the WSIS mandate in this regard. But the U.S. and its allies were very unhappy with the resolution, and the first indication of an impending breakdown emerged.

Right of access

The real flash point, however, came on December 13, on a proposal to include text in the preamble seeking the “right of access of Member States to international telecommunication services”. It is difficult to see what a global telecommunication treaty would mean without such a basic high-level principle. The U.S. took it to be aimed at the unilateral trade sanctions that it applies against some countries. Since this text had been hotly debated many times during the preceding days, and was in and out of the draft, Iran sought a vote on it. A gentleman’s agreement at the meeting had indeed been to not go for a vote and seek consensus. But an equally important point to note is that the U.S. was standing against a simple statement asserting a collective right of people. As the proposal to insert this text in the preamble was carried 77 votes to 33, the U.S. declared it would not sign the treaty. The U.S. was immediately followed by the U.K., and the process broke down.

The U.S. does claim in its post-WCIT statements that, apart from the above two reasons, it was the inclusion of some language on security of networks and spam that made it walk out. However, this language does not seek anything that could be taken as getting into content regulation, which the U.S. says it is afraid of, especially if read along with the clear text in the preamble that excludes content regulation. The WSIS had associated security and spam issues with the ITU and the ITU already works in these areas.

Even if somewhat contingent, the point of actual breakdown makes a telling statement. The U.S. will have to explain why it walked out on what was a simple assertion of the right of all countries to access global telecommunication services. If it cannot agree to even such a basic statement of principle, it has lost all legitimacy for overlordship of the global Internet, which it claims as its ‘historic role.’ Its legitimacy will now be more easily and openly questioned by

other countries.

The fallout from Dubai may also significantly compromise the ITU's role in the foreseeable future. The appended 'Internet resolution,' which was one of the main reasons for the walkout, contains many areas that the ITU is working on substantially at present. A very important ITU meeting — the World Telecommunication/ICT Policy Forum — to be held in May 2013 is mostly about the Internet. It remains to be seen how the U.S. and its allies will interact with the ITU from now on, especially regarding the latter's Internet related activities.

Positive agenda

The real problem with the WCIT was that there was no real positive agenda on the table, which is surprising given that we are on the cusp of an ICT triggered social revolution. It finally became just a battle between two sides, both with a largely negative agenda. One side wanted to prevent the U.S. from making a historical point that the Internet is to remain an entirely unregulated space — whereby its new global domination strategy leveraging its 'control' over the Internet remains unchecked. The other side was trying to prevent China, Russia *et al* from changing the basic nature of the global Internet into a tightly state-controlled space. There was no constituency oriented to any positive agenda in the global public interest. The fact that the clash ended the way it did was perhaps expected. It can be taken as an opportunity for progressive actors — from among civil society and many countries from both the South and the North — to begin shaping a positive agenda for the global communications realm.

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