ITU MOVE TO EXPAND POWERS THREATENS THE INTERNET: CIVIL SOCIETY SHOULD HAVE VOICE IN ITU INTERNET DEBATE

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The International Telecommunication Union (ITU) is considering this year whether to expand its regulatory authority to the Internet. Such a move would have profound implications for the future of the Internet and could threaten the medium's success as a platform for innovation, economic growth, human development, and democratic participation. Civil society must have a voice in this important debate.

Summary

This year, the International Telecommunication Union (ITU) will convene a meeting of the world's governments to decide whether and how the ITU should regulate the Internet. Currently, the ITU's underlying treaty does not address Internet technical standards, infrastructure, or content. However, some states, notably China and Russia, are advocating for an expansion of the treaty to include Internet regulation. Given the implications, civil society has been notably absent from this debate.

So far, the Internet has prospered precisely because it is governed by a lightweight and decentralized framework that features a mix of targeted government regulation at the national, regional, and international levels; self-regulatory initiatives; and formal and informal multi-stakeholder organizations that help guide the Internet's development. A network of consensus-driven, multi-stakeholder policy forums and voluntary technical standards bodies has successfully addressed the technical and policy challenges facing the Internet.

In contrast, the ITU's structure creates significant barriers to civil society participation. Given these barriers, the emergence of the ITU as the primary regulatory body for the Internet would represent a fundamental shift in Internet governance. That result could also undermine the success of the Internet as a platform for innovation, economic growth, human development, and democratic participation.

As member states renegotiate the ITU's treaty, civil society organizations and other stakeholders must urge their national governments to adopt as their negotiating position a commitment to preserve the open and decentralized system of Internet governance. A crucial first step is to ensure that the negotiation process is transparent (starting with publication of all proposals and working papers) and that there is robust opportunity for public input into the process.

I. The ITU seeks to expand its mandate over the Internet

The ITU is a specialized agency of the United Nations focused on telecommunications regulation with the goal of enabling interconnection and interoperability of national communications networks. It grew out of the International Telegraph Union (established in 1865) and now addresses a wide range of issues pertaining to telephone and radio communication, including the allocation of radio spectrum and satellite orbits and the adoption of standards for international telephone numbering resources and call-transmission tariffs. It also conducts non-regulatory programs designed to promote expanded access to information and communications technologies, especially in the global south.

The scope of the ITU's regulatory authority is delineated by a treaty known as the International Telecommunication Regulations (ITRs).[1] The current ITRs were adopted in 1988 "with a view to facilitating global interconnection and interoperability of telecommunications facilities" through mandatory regulation at the international level. By establishing a high-level framework for how nations must handle cross-border telecommunications traffic – ranging from technical requirements for national telecommunications facilities to governing what nations may charge each other for transmitting international telephone calls – the ITRs encouraged the development of a consistent, globally interconnected telecommunications network.

This year, the ITU will host the first-ever World Conference on International Telecommunications (WCIT12) in Dubai, United Arab Emirates, to revise the ITRs.[2] While the final agreement to the revised treaty will occur at WCIT12, negotiation over the content of the ITRs has already begun.

Within the ITU, the Council Working Group (CWG) conducts much of the preparatory work for WCIT12 – consolidating input from governments and Sector Members, debating policy points, and setting the agenda for December.[3] Composed of government representatives, the CWG is tasked with preparing a final report laying out proposals and options for revision of the ITRs raised in the first half of 2012. The CWG is expected to present this report to Member States by August 2012. In parallel, Member States will meet regionally to discuss proposals and raise issues for discussion at the WCIT12. Regional recommendations will also feed into the CWG's work. We provide a timeline of critical meetings in the Appendix A below. We also provide a guide to key acronyms in Appendix B.

II. The Internet has flourished under multistakeholder, decentralized models of regulation and governance

The Internet has prospered in large part because of a lightweight and decentralized regulatory environment that has featured a mix of targeted government regulation, self-regulatory initiatives, and the emergence of various formal and informal multistakeholder organizations that help guide the Internet's development. The current model is a bottom-up, decentralized, consensus-driven approach in which governments, industry, engineers, and civil society all have

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[1] Current International Telecommunication Regulations (ITRs), adopted in 1988, http://www.itu.int/oth/T3F01000001.

[2] ITU information page on the World Conference on International Telecommunications, http://www.itu.int/en/wcit-12/Pages/default.aspx.

[3] Internet Society background information on WCIT and the ITRs, http://www.internetsociety.org/background-international-telecommunication-regulations.

the opportunity to participate in standards and policy development.[4] Bodies such as the Internet Engineering Task Force and the World Wide Web Consortium, which set voluntary technical standards for the Internet, are relatively non-political and results-driven. Importantly, they are capable of keeping pace with technological change and responding to new developments and emerging standards needs.

Policy dialogue, coordination, and norm-setting also take place in a decentralized fashion at many levels. The global Internet Governance Forum (IGF) provides an open and inclusive platform for policy dialogue. Institutions as diverse as the OECD, APEC, the Global Network Initiative, and the Broadband Internet Technical Advisory Group also play their critical roles in norm-setting or coordination.

Many ITU Member States are committed to maintaining this lightweight, flexible, and scalable regulatory environment for fast-moving Internet technologies. Indeed, the OECD member states recently adopted a set of Internet Policymaking Principles that reaffirms the success of this model and emphasizes the importance of the multistakeholder approach to governance and policy-setting.[5] For those states seeking to maximize the growth of their domestic Internet industries – and the benefits to development, education, and e-government that come with ICT use – the OECD Principles provide useful guidance for how to address emerging policy challenges.[6]

III. The WCIT12 could fundamentally change how the Internet is regulated and governed

Several ITU Member States have been quite explicit about their desire to pull Internet regulation under the umbrella of a UN or other inter-governmental body. Last June, then–Prime Minister Vladimir Putin stated the goal of Russia and its allies as "establishing international control over the Internet" through the ITU.[7] And in September 2011, China, Russia, Tajikistan, and Uzbekistan submitted a proposal for an "International Code of Conduct for Information Security" to the UN General Assembly, with the goal of establishing government-led "international norms and rules standardizing the behavior of countries concerning information and cyberspace."[8] While this Code was presented as voluntary, China and Russia have advocated for similar provisions in a range of intergovernmental venues. India, Brazil, and South Africa have also advocated for UN-based coordination of Internet policymaking, though not the ITU specifically.

Many factors motivate these types of proposals. For example, some states have expressed concern about the outsized role they perceive the US as playing in the direction and development of Internet policy. Some states believe the status quo favors the interests of large, global ICT companies. Others note the ITU's significant accomplishments in expanding ICT

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[4] CDT commentary on multistakeholder governance processes, https://www.cdt.org/blogs/erica-newland/2302deeper-look-multistakeholder-organizations-and-questions-legitimacy.

[5] OECD Communiqué on Principles for Internet Policy Making, http://www.oecd.org/dataoecd/33/12/48387430.pdf.

[6] CDT commentary on the OECD principles, https://www.cdt.org/blogs/emma-llanso/2302open-multistakeholder-and-free-oecd-principles%E2%80%99-vision-internet-policy.

[7] Comments of Prime Minister Putin in meeting with ITU Secretary General on role of the ITU, http://premier.gov.ru/eng/events/news/15601/; see also http://www.nytimes.com/2011/06/27/technology/internet/27iht-internet27.html.

[8] Proposed International Code of Conduct for Information Security, http://www.fmprc.gov.cn/eng/wjdt/wshd/t858978.htm.

access and use and hope for similar success from the ITU in the more nebulous field of Internet governance and regulation.

Currently, regulation of the Internet does not fall under the ITU's purview. Article 9 of the ITRs ("Special Arrangements") allows for the "establishment, operation, and use of special telecommunication networks, systems, and services" outside of the scope of the ITRs. Internet Protocol (IP)–based communication has been categorized as an Article 9 matter, and thus is outside the scope of the ITRs. Under this exemption the Internet has flourished.

While the WCIT12 negotiations are framed as updates to the ITRs rather than the introduction of an entirely new treaty, there is still significant room for revisions that would allow the ITU to exert unprecedented regulatory control over the Internet.[9] Proposals include:

- Expansion of the scope of the ITRs (directly or by amending existing definitions) to cover any entity that operates a telecommunications installation, potentially including private Internet networks;

- Mandatory compliance with technical standards developed by the ITU;

- Governmental regulation of IP-traffic routing in ways that could undermine the current open and decentralized network;

- Content-related proposals focused on spam and fraud, but also "information security" and online child protection issues; and

- Expanding the ITRs to address issues of cybercrime and cybersecurity.[10]

The model of Internet governance and regulation that has supported the Internet's dramatic growth is quite different from the top-down, treaty-based system of regulations codified in the ITRs. The sum of these proposals, if accepted, would represent a fundamental shift in how the Internet is regulated and governed at the global level.[11]

IV. Challenges and opportunities for civil society

In a recent opinion piece, ITU Secretary General Hamadoun Touré articulated the goal of the WCIT process as to improve global communications technologies, address critical global threats like cybersecurity, and "creat[e] a fully inclusive information society over the next decade."[12] In describing respective roles in this process, the Secretary General also stated that governments must "shape policy and regulation in consultation with all stakeholders." To realize these aims,

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[9] Opinion piece of US Federal Communications Commissioner Robert McDowell, Wall Street Journal, Feb. 21, 2012, http://online.wsj.com/article/SB10001424052970204792404577229074023195322.html.

[10] *See, e.g.,* David A. Gross & Ethan Lucarelli, "The 2012 World Conference On International Telecommunications: Another Brewing Storm Over Potential UN Regulation Of The Internet," November 2011, http://www.whoswholegal.com/news/features/article/29378/the-2012-world-conference-international-telecommunications-brewing-storm-potential-un-regulation-internet/.

[11] *See* Internet Society's contribution to the February CWG meeting in Geneva, http://www.internetsociety.org/February%202012%20Internet%20Society%20comment%20to%20the%20WCIT%20Preparations.

[12] Opinion piece of ITU Secretary General Dr. Hamadoun Touré: "Securing the future benefits of technology," http://www.guardian.co.uk/media-network/media-network-blog/2012/mar/06/ict-international-regulations-cybercrime.

civil society must have meaningful, informed input into the WCIT process if Member States intend to extend the ITU's mandate over Internet technology and policy. Indeed, the history of Internet governance has demonstrated this imperative.

Currently, however, civil society participation in the work of the ITU is severely limited: Industry and other interested organizations can join the ITU as Sector Members or Associates, which allows them to participate in some discussions within the ITU, though not in its formal decision-making. However, the costs of membership are prohibitive for nearly all civil society organizations – especially those from emerging markets and less-developed economies – and there is no mechanism for individual or remote participation. In addition, most working documents and ITU products, including proposed revisions that will feed into the WCIT process, are only available to members and governments. These barriers to civil society participation stand in sharp contrast to the open and consensus-driven model of Internet governance that has so far successfully supported the Internet as an open platform for innovation, economic growth, and human rights. Thus, the first hurdle for civil society in ensuring that the ITU does not unduly extend regulatory authority over the Internet is to determine what is being proposed.

To address this hurdle, civil society could press their national delegations to insist that the ITRs renegotiation process is transparent and open to participation from all stakeholders. In addition, civil society organizations should consider petitioning their governments to create a public process at the national level to collect citizen input and inform their government's position at WCIT12. The new ITRs will have binding force on Member States. As with any important matter of public policy in a democratic society, what governments propose at the ITU must be a faithful expression of the will of its citizens.

Finally, to achieve the Secretary General's goal of a more inclusive information society, the Secretary General and the CWG should widen its consultations to include a broader range of civil society actors as it sets the agenda for WCIT12. The Internet has become increasingly vital for social, economic, and political life, and civil society must be given a chance to participate in any debate about its future.

For more information

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Appendix A: Timeline of key dates for renegotiation of the ITRs

February	27-29	ITU Council Working Group meeting, Geneva, Switzerland
March	19-24	Asia Pacific Telecommunity (APT) regional meeting, Cairns, Australia
April	2-6	Regional Commonwealth in the Field of Telecommunications (RCC) regional meeting, Tashkent, Uzbekistan
	14-15	Summits of the Americas meeting, Cartagena, Colombia
	23-25	ITU Council Working Group meeting, Geneva, Switzerland
	28-May 1	Arab States Regional meeting, Cairo, Egypt
May	14-15	Inter-American Telecommunication Commission (CITEL) regional meeting, Buenos Aires, Argentina
	14-18	World Summit on the Information Society Forum, Geneva, Switzerland
	21-24	Africa Regional meeting, Durban, South Africa
June	20-22	ITU Council Working Group meeting, Geneva, Switzerland
July		ITU staff produces a report of the CWG process within 4 months of WCIT12, to be released in August
December	3-14	World Conference on International Telecommunications (WCIT12), Dubai, UAE

Additional regional meetings to be announced. For an updated schedule, see ISOC's detailed calendar of events leading up to the ITRs treaty negotiations, http://internetsociety.org/itr-detailed-calendar.

Appendix B: Key acronyms

Acronym	Entity or Meeting
APT	Asia-Pacific Telecommunity
ATU	African Telecommunication Union
CEPT	European Conference of Postal and Telecommunications
CITEL	Inter-American Telecommunication Commission of the Organization of American States
CWG	Council Working Group
IETF	Internet Engineering Task Force
IGF	Internet Governance Forum
ITR	International Telecommunication Regulations
ITU	International Telecommunication Union
ITU-D	ITU Telecommunication Development Sector
ITU-R	ITU Radiocommunication Sector
ITU-T	ITU Telecommunication Standardization Sector
RCC	Regional Commonwealth in the Field of Telecommunications
WCIT12	2012 World Conference on International Telecommunications
WSIS	World Summit on the Information Society
WTPF	World Telecommunication/Information and Communication Technology Policy Forum