

Calling Stumps at WCIT: Win, Lose, or Draw?

The problem with setting expectations is that when they are not fulfilled the fallout is generally considered to be a failure. Everyone wants to claim parenthood of success, but failure is an orphan. Similarly, the WCIT meeting and the International Telecommunications Regulations (ITRs) that were being revised at that conference are both looking a lot like orphans.

There have been a number of reports^[1] on the outcome of the two-week WCIT meeting that concluded in Dubai in mid-December 2012. Most of the blogs were quick to characterize the outcome as a loss for the dark forces that lurked somewhere in the closets of the ITU's headquarters in Geneva. But there is more to it than that.

To quote one of the more carefully reported blog postings by Kieren McCarthy:^[2] "In a world where conferences are only ever measured by whether they are a "success" or a "great success", the Secretary-General managed to see that it had been a "success" but even in the UN this felt uncomfortable. A high-stakes game had been played badly and WCIT was a failure."

Some of the traditional press picked up on this failure theme, including the Fairfax press in Australia, and they ran a story on the ITU's "humiliating failure"^[3].

Other publications were more prepared to declare it a strange form of Cold War draw, such as a column in the Economist magazine^[4], and still others were displaying a more overt level of confusion, such as the New York Times column, labelling this outcome "murky"^[5].

Upon reflection, it's possible that setting expectations going into the meeting had a huge impact on the outcome.

ITRs: ceremonial or functional?

Part of the problem was the treaty up for revision, the ITRs, was based more in meaningless formalisms than in true functional substance. In a world of communications dominated entirely by telephony, perhaps many years ago the original authors of the ITRs intended to formalize a commitment by governments to the concept of a fair and rational framework for international financial settlements for telephony call termination services. This multilateral framework was intended to promote economically efficient models to support the transformation of international phone calls from an expensive and exclusive luxury to a commonplace business tool, and create an environment to find further opportunities to make international telephony more affordable and accessible. But that was many years ago.

The document revised during WCIT in December bore no relationship to the majority of regulatory measures applied by today's national regulatory authorities on their local

communications sectors. Instead, this supposed international regulatory document has become a strange mixture of the opportunistic, the aspirational, and the just plain silly.

To focus on the positive, the ITRs did include free phone calls for the ITU Secretariat and free phone services for national delegations to ITU meetings. Aside from that, they were largely ceremonial and non-regulatory in nature, expressing vague aspirations rather than carefully described common regulatory constraints that governments would apply upon their operating agencies.

Setting expectations

A few years back, when the ITU called a conference to review these international regulatory instruments, that had lost much of their relevance and traction with the evolving world of the global telecommunications enterprise, it was expected to raise at most a yawn or two.

Instead of a yawn we saw the preparations for WCIT seize a prominent position, both within the industry and in the broader public domain. The public debate quickly became about the values of the Internet and what the Internet represented in terms of desired objectives, aligning on quite predictable lines. Given that the ITRs had nothing substantive to say, it seemed perfectly fine to use these instruments for a bit of international posturing.

There was the argument that this regulatory instrument was no longer relevant. One side of the emerging debate proposed the “multi-stakeholder model” in its place, based around broad participation from the public and private sectors. Here the aspirational model is one of open, accessible communications as a platform for individual empowerment, and it includes the relationship of government to the individual as a dialogue.

On the other side was the view that governments are the only legitimate representatives of public, private, civil, and business interests that exist within a national context. Furthermore, that it is the exclusive role of governments to represent the entirety of these national interests in an international context. In this paradigm, communications is a national asset that operates as a public sector activity at the demand of the national government.

Of course these two sides are polar opposites, and the alignments that followed evoked strong echoes of the Cold War, with the US on the one side and Russia and China on the other. In this case we saw many European democracies aligning with the US position and a number of Arab states, including the host country, aligning with Russia and China, together with much of the developing world. Despite what ITU Secretary-General Dr Hamadoun Touré insisted at the outset, this argument really was all about the Internet and the perceptions of national interest in the evolving landscape of the Internet. It had nothing to do with how best to manage the declining fortunes of the old public switched telephone networks, but more about projecting a view of national perspectives into an international context.

Then the messages started to fall over each other. Dr Touré insisted the ITR negotiations at WCIT had nothing to do with the Internet. “This conference was not about the Internet

control or Internet governance, and indeed there are no provisions on the Internet,” Dr Touré told participants at the meeting. He also insisted the meeting’s outcome would not be determined by a vote among national delegations, but through consensus – supposedly in a manner consistent with the traditions of the ITU.

The government delegations attending the meeting had quite definite ideas about this. Some were indeed determined to ensure the business conducted at WCIT would have nothing to do with the Internet. This position was based on the view that the Internet was actually about content, not transmission, whereas the ITRs were about transmission, not content. To include content into the ITRs would take a significant step along an increasingly regulated environment where the provision of content and services, and even the area of data storage and processing, would be folded into the core remit of the ITU-T. This, they argued, was an unacceptable amount of mission creep, and was not a move to be undertaken without general consensus across all national delegations. These national delegations were strongly opposed to any such moves to expand the scope and mission of the ITU-T and its regulatory instruments.

Given the diversity of national perspectives, many other national delegations were equally determined to see precisely the opposite. They evidently saw the dramatic explosion of online content as services as a form of colonial exploitation, where a small number of enterprises, located predominately in the United States, were engaged in global enterprises with little or no constraint or balance, resulting in a form of technological exploitation where the benefits of this global network were flowing into a single national economy and everyone else was paying. Individual national interests were effectively powerless to stand up to this new international cartel, and the only way to restore some form of balance would be through the collective action of many nation states. For this reason there was the hope that the next incarnation of ITRs would establish a precedent of talking about the Internet in a manner that was both about content and transmission, which would pave the way for subsequent dialogue on coordinated regulatory actions among nations to find some balance and fairness in this new world international content economy

Obviously these conflicting national aspirations would be challenging to reconcile in a consensus process, and in the end the challenge proved too great.

This was meant to be all about consensus across national delegations. The negotiations were not intended to become a process based on voting and voting blocs, nor was it to be the consequent imposition of outcomes by the majority upon the minority. Yet, as in so many other public sector forums, voting lies at the heart of decision-making. So to abstain from voting, consider all inputs, and somehow meld a commonly acceptable consensus outcome was going to be very tough.

The faith in a consensus-based process effectively assumed that the desire to achieve a commonly acceptable (or unacceptable) outcome was considered to be of greater relative importance than the advocacy of national interests by each delegation. This also assumed the result was so critical to the operation of international telecommunications services that a commonly acceptable outcome was necessary. The problem with this assumption was that the 1988 version of the ITRs, which was pretty irrelevant at the time of its drafting, was supremely irrelevant by 2012. A number of delegations were determined to ensure they

stayed that way, while others were equally determined these regulations be rewritten in a way that directly addressed today's environment.

The omens for the WCIT meeting were not fortuitous. Despite assurances from ITU meeting veterans that all this was merely posturing and that consensus would be achieved in the final sessions, slaving away over bracketed text in all night sessions if necessary, the signals from others was that there were substantive differences of position that would not be amenable to compromise.

The WCIT meeting

What ensued was a shambles. Procedurally, the mix of plenary sessions, sudden adjournments and retreat into national delegation huddles, the use of various forms of voting to define a majority position, incorporating resolutions into the final text, and meandering away from a core of telecommunications into a vague mix of subjects that included the Internet's content and services on the one hand and human rights on the other, all highlighted the failure of the meeting process.

There was the ITR text itself, and then the inclusion of what Dr Touré described as “a non-binding resolution, which aims at fostering the development and growth of the Internet”.

The attempt to hold an open meeting in plenary was a notable failure, if indeed it represented an effort to emulate a multi-stakeholder forum. It was patently obvious from the outset of the meeting that some stakeholders, particularly from the national delegations, and some bodies, notably the Chair and the ITU Secretariat, controlled a much larger and much more influential stake than others. To add to this obvious imbalance of influence, there was the recourse to private closed-door sessions where subsets of national delegations undertook various negotiations. There were “unofficial” submissions that were not officially submitted for public consideration, and surprise moves that were played out in plenary, then rushed off to closed sessions.

These ad hoc actions are not consistent with an open, informed, and commonly understood process of multi-stakeholder dialogue. Instead, we witnessed a crude form of political posturing, with efforts made to impose an outcome onto the meeting. If some of these efforts succeeded, they would form the foundation of a more influential international forum that would be capable of assuming an expanded scope and mission, and would have folded into its scope the entirety of the Internet and the activities that take place on the Internet. If such efforts failed, there was always the prospect of a moral victory in parading the impotence of the impoverished fringe against the power and might of an implacable and rapacious incumbency.

The outcome: win, lose, or draw?

In my opinion WCIT was not a success – quite the opposite. There was not enough commonality of position to allow the governments to collectively sign up to a new document.

Why not? It was not about telephony. Obviously. It was about the Internet.

It's true that a number of critical elements of the Internet's infrastructure, including the IANA function of oversight over the Internet's names and addresses, remain a contracted activity with direct oversight by a US government agency. It's also reasonable to observe that over the past 14 years or so, the US government's hold over this function has tightened rather than relaxed, and what might have been a vague intention to pass this function over to a self-regulatory, private sector body at some indefinite time in the future has transformed to a grim determination to never relinquish control of these functions. However, the US has allowed this same private sector organization to carry on being the contractor for this function. The US government sees this as a necessary part of their stewardship of the multi-stakeholder model of a free and open Internet. Their stated concern is, were they to pass control over to an international organization, there's a distinct risk this organization would be captured by hostile national interests and the consequent risk, as they state it, is that the open nature of the Internet would be destroyed. The US is not alone in this view, and many other countries perceive the potential of a similar form of threat. They see the US role as either a positive force or, at worst, as the lesser of many potential evils.

On the other hand, many nations see the role of a single nation state in this global communications system as anomalous and threatening, and they would prefer to see control in the hands of an international body that specializes in international telecommunications, namely the ITU. They see the US as exerting an undue and improper level of influence and control, and they would like to see this function be more accessible to other nation states on a peer basis. So they came to Dubai to create a new aspirational document about the next 25 years of telecommunications, by supposedly, a process of consensus.

Given that these differences of perspective form diametric opposites, this meeting was never going to work if its objective was to arrive at an acceptable compromise position. Therefore it's little wonder the consensus process turned to votes, and open and transparent participatory processes turned to closed-door private agendas and power plays. It's not surprising that we witnessed walkouts, or that the effort has largely failed.

What is the meaning of failure?

The free phone calls for the ITU Secretary-General probably disappeared years ago, so the removal of that particular concession means nothing in the scheme of things. I suspect this failure is more ominous than that. This was a failure of the ITU to be acknowledged as having its scope and mission embrace the Internet. It was also a failure to recognize that the ITU's scope does allow for diverse, robust and open multi-stakeholder debate about its arrangement and conduct in an ITU forum. The ITU has proved itself incapable of sustaining such a role, and I suspect the ITU-T is now heading into the institutional status of "historic". Nations, industry players, business interests, civil society, and all other stakeholders will inevitably head to other forums that have a more direct form of influence and relevance to the Internet. Discussions will continue, as they must, but it's difficult to see how the ITU-T can find a central role to play in hosting these discussions, or have a role in the implementation of any outcomes, given the level of deep suspicion that this particular body is no longer a completely neutral venue to undertake such roles.

This failure is not so ominous that it's a portent of the end of the world, as we know it. Nor is this failure of WCIT and the ITU-T's effort to organize nations to redraft the ITRs an invitation to online chaos and anarchy. The Internet functions just fine without reference from the 1988 incarnation of the ITRs, and it will continue to function just fine. I suspect, however, that this is the final set of ITRs that will ever be produced. The world that needed these regulations, even as a common aspirational document, is long gone. The regulations, and the institution that created them, are now artifacts of a world that is, for better or worse, over. We are looking elsewhere for issues relating to communications governance, and that's not necessarily a bad thing. Indeed, it's probably a good thing.

There is the opportunity now to put the multi-stakeholder model to the test, to see if it can withstand the pressures for balance in so many dimensions. Can such a process manage to find an acceptable balance of a highly diverse collection of national interests? Can it prevent the ascendancy of monopolies and cartels and maintain a healthy, vigorous competitive environment that constantly challenges incumbents and drives providers to greater efficiencies? Can such a diverse multi-stakeholder process continue to feed the benefits of technical innovation back to businesses and consumers?

In challenging the old order, and effectively withholding the Internet from its purview, the consequent challenge is to offer an alternative framework that does not rely absolutely on the ongoing rigid will of a single nation. If we are going to rely on multi-stakeholder frameworks and liberalized markets as a means of balancing a large diversity of interests in a sustaining manner, then it had better work! I suspect that it will only work if either there is the will to see that it does work, or the pragmatic realization that the alternatives are simply unable to gain the necessary level of common acceptance.

So whether it's by choice or by the progressive elimination of alternatives, we are now entering into what is evidently uncharted territory for the global public communications endeavour. For better or worse, the cohort of Internet genies have been well and truly released from their bottles, and none of them are going to allow us to stuff them back in! Perhaps the best message to the nations that collectively compose and fund the ITU-T is that it's time to stop trying to rebuild the past, and instead look at where we should head from here. If that forward perspective requires new partnerships, new alignments, and new institutions to reflect a common purpose, then so be it.

Further reading on WCIT

The collective output of the commentary on WCIT and the ITRs compose a collection many times larger than the ITRs themselves. In addition to the commentaries referenced at the start of this article, here are a few more pointers to material on WCIT. It should be noted that these articles are on the whole partisan to some extent, and are generally sympathetic to the position taken by the US delegation.

1. <http://www.scoop.int/wcit> Leading up to the WCIT meeting, ISOC assembled a number of clips about the entire process and some mid-flight analyses of the meeting.
2. <http://www.brisbanetimes.com.au/technology/technology-news/humiliating-failure-confusion-on-internet-future-after-un-treaty-split-20> The view from a media chain in Australia, Fairfax Press.

3. <http://www.economist.com/blogs/babbage/2012/12/>The Economist saw this as an instance of the Cold War alignments resurfacing.
4. <http://www.nytimes.com/2012/12/15/technology/in-a-huff-a-telling-us-walkout.html>The New York Times did not understand why the US delegation walked away from the ITRs.
5. <http://www.internetgovernance.org/2012/12/13/what-really-happened-in-dubai>A commentary from Milton Muller, of the Internet Governance Project.
6. http://www.youtube.com/watch?v=cN_PwWkv14AAn interesting insight into the public position of the US after WCIT can be found in US Ambassador Kramer's summary of the WCIT outcomes, as recounted to a meeting of the ISOC Washington, DC chapter.
7. <http://linguasynaptica.com/wp-content/uploads/2012/12/itr-differences.pdf>What actually changed in the ITRs? This is a difference between the 1988 and 2012 documents.
8. http://infoqr.am/-mebue11_1355447340This is a good infographic. The argument proposed here is that "there is a clear correlation between a state's ranking in the Democracy Index and how their position on the International Telecommunication Regulations (ITR) at the International Telecommunication Union's (ITU) World Conference on Information Technology (WCIT-12)."

Calling Stumps

"Calling Stumps" is perhaps a term familiar only to those folks who are familiar with the game of cricket. It is the end of a day's play, e.g. "The umpires called stumps" means that the umpires have declared play over for the day. At the end of a session, before lunch or tea, the umpires will remove the bails; at the end of the day's play, the umpires will also remove the stumps.

The outcome of a cricket match can be a conventional win/lose outcome, or it can be a draw, when at the end of the allotted time for the match there is no outcome, or the match can be "abandoned" if for some reason, typically rain, the match could not be completed.