

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, and while everyone wants to claim parenthood of success, failure is generally an orphan. In that sense it looks like the WCIT meeting, and the International Telecommunications Regulations (ITRs) that were being revised at that conference are both looking a lot like orphans this week.

There have been a number of reports of the outcome of the two week WCIT meeting that concluded in Dubai in mid-December. 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.

One of the more carefully reported blog postings by Kieren Mccarthy, posting to dot-nxt [2]. To quote from Kieren: "In a world where conference are only ever measured by whether they are a "success" or a "great success", the Secretary-General managed to saw 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, who 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 others were displaying a more overt level of confusion, such as the New York Times column, who were labeling this outcome "murky" [5].

So perhaps the perception setting and expectations going into the meeting were also going to have a huge impact on the outcome.

ITRs: Ceremonial or Functional?

Part of the problem here was that the material they were working on, the ITRs, were based more in meaningless formalisms than in true functional substance. In a world of communications dominated entirely by telephony, one could guess that many years ago the forebears of these ITRs were intended to formalize the commitment of governments to the concept of a fair and rational framework for international financial settlements for telephony call termination services extended by one national operating agency to another. This multilateral framework was intended to promulgate economically efficient models to support the transformation of international phone calls from an expensive and exclusive luxury to a commonplace business tool, and create the prospects of realising further efficiencies to support a readily available and readily affordable extension to the basic telephony product for everyone. But that was many years ago. What the WCIT was working on in December was a document that bore no relationship to the majority of regulatory measures applied by today's national regulatory authorities on their local communications sector. Instead, this supposed international regulatory document has become a strange mélange of the opportunistic, the aspirational and the just plain silly.

However, focusing on the positive for a second, one thing they did do was enshrine free phone calls for the ITU Secretariat and free phone services for national delegations to ITU meetings. Aside from that, the ITR instrument was largely ceremonial and non-regulatory in nature, and expressed vague aspirations rather than carefully described common regulatory constraints that governments would apply upon their operating agencies.

Expectation Setting

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

But instead of a yawn we saw the preparations for WCIT seize a prominent position both within the industry and in the broader public domain. Very quickly the public debate was a debate about the values of the Internet, and what the Internet represented in terms of aspirational objectives, and the debate quickly aligned on what are these days quite predictable lines. Given that the ITRs had nothing substantive to say then 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, and what was proffered in its place was the "multi-stakeholder model" based around broad participation from public and private sectors made by one side of this emerging debate. Here the aspirational model is one of open accessible communications as a platform for individual empowerment, and the relationship of government to the individual as a dialogue - an "open society" aspiration.

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

Once again we saw the debate head into polar opposites, with the emergence of alignments that evoked some strong echoes of the old cold war alignments with the US on the one side and Russia and China on the other as the icons of the respective positions. 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. And yes, this really was all about the Internet, and all about the perceptions of national interest in the evolving landscape of the Internet. This was 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.

But then the messages started to fall over each other. The ITU Secretary General, Dr Hamadoun Touré, insisted that 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 that this was not a meeting whose outcome was to be determined by a vote among national delegations, but, supposedly in a manner consistent with the traditions of the ITU, this was a meeting that would reach its outcomes through consensus building.

The government delegations attending the meeting had quite definite ideas about this. Some were indeed determined to ensure that, as far as they could, the business conducted at WCIT indeed 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. And, forejudging the conclusion of such a more these national delegations were strongly opposed to any such moves to expand the scope and mission of the ITU-T and its regulatory instruments.

And given the diversity of national perspectives, many other national delegations were equally determined to see precisely the opposite. They evidently see 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, and the result was once more 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 it would only be through collective action undertaken by many nation states would some form of balance be restored. For this reason there was the hope that a new form of ITRs would establish a precedent of talking about the Internet in a manner that was both content and transmission and pave the way for a subsequent dialogue about how coordinated regulatory actions undertaken by a large number of nations would offer some forms of balance and fairness in this new world international content economy.

Obviously these sets of national aspirations are challenging to reconcile in a consensus process. But the meeting was unable to rise to this challenge.

This was meant to be all about consensus across national delegations. These negotiations were not intended to become a process based on voting and voting blocs, and not intended to be the consequent imposition of outcomes by the majority to a minority. Yet in so many other public sector forums voting lies at the heart of forum decision making, so to eschew voting and take on all inputs, and somehow meld a commonly acceptable consensus outcome was going to prove very tough.

The faith in a consensus-based process effectively assumed that the desire to achieve a commonly acceptable (or commonly unacceptable) outcome was considered to be of greater relative importance than the advocacy of national interests by each and every national delegation. This assumption assumed that 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 incarnation of the ITRs, which was pretty irrelevant at the time of its drafting was supremely irrelevant by 2012. A number of national delegations were determined to ensure that they stayed that way, while other national delegations were equally determined that these regulations be drafted 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 positioning 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 signalling by others on these subjects was that there were substantive differences that were not readily amenable to compromise.

The WCIT Meeting

What ensued was a shambles.

Procedurally, the mix of plenary sessions, the sudden adjournments and retreat into national delegation huddles, the use of various forms of voting to define a majority position, the incorporation of

resolutions in to the final text, and the meandering away from a core of telecommunications into a vague mix of subjects that included 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, 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 even 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 forms of 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.

None of these ad hoc actions are consistent with an open, informed, and commonly understood process of multi-stakeholder dialogue.

Instead, what we witnessed was a far cruder form of political posturing where we saw the efforts to impose an outcome onto the meeting. If some of these efforts succeeded then 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 then 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's not about telephony. Obviously.

It's about the Internet.

Its 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 remains a contracted activity with direct oversight by an agency of the US government. 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 an industry-based self regulatory private sector body at some indefinite time in the future has transformed to a grim determination never to relinquish reserve control of these functions. However, at the same time the US has allowed this same private sector based organization to carry on being the contractor for this function. The US government see this as a necessary part of their stewardship of the multi-stakeholder model of a free and open Internet. Their stated concern is that were they to pass control over to an international organization then it's a distinct risk that 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 and see the US role as either a positive force or, at worst, they see this 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 would prefer to see control be placed in the hands of an international treaty 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 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 twenty five 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.

Little wonder, therefore, that the consensus process turned to votes, and open and transparent participatory processes turned to closed door private agendas and power plays. Little wonder that we witnessed walk-outs. Little wonder that the effort has largely failed, and fail it has.

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.

But I suspect that this failure is more ominous than the cessation of free phone calls for the few. The failure here is a failure of the ITU to be acknowledged to have its scope and mission embrace the Internet and the failure to recognize that the ITU has the remit to allow the diversity of views about its arrangements and conduct to be debated in a robust and open manner in a multi-stakeholder fashion in an ITU forum. The ITU has proved itself to be incapable of sustaining such a role and as such I suspect that 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 into other forums that have a more direct form of influence and relevance to the Internet. Discussions will continue, as they must, but its 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 provider that can undertake such roles.

But this failure not so ominous that it's a portent of the end of the world as we know it. It's not that the Mayan prognostications were right. The Internet was not turned off at midnight on the 21st of December 2012. 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 function just fine tomorrow. 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 and the regulations, and the institution that created these regulations 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, probably, its quite the opposite. There is the opportunity here to put the concepts of multi-stakeholder to the test, to see if this model 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 such a process manage to prevent the ascendancy of monopolies and cartels and maintain a healthy and vigorous competitive environment that constantly challenges incumbents and drives providers to ever greater efficiencies? Can such a diverse multi-stakeholder process constantly 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 proffer 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! And 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 its by choice, or by the progressive elimination of alternatives, we are now entering into what is evidently uncharted territory for the global public communications endeavor. 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 look instead at where we should head from here. And 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 on the whole these articles are more or less partisan to some extent, and see the conference and its outcomes through a lens that was generally sympathetic to the position taken by the US delegation

- [1] <http://www.scoop.int/t/wcit>

The leadup to the WCIT meeting: ISOC has assembled a number of clips about the leadup to WCIT and some mid-flight analyses of the WCIT meeting.

- [2] <http://news.dot-nxt.com/2012/12/14/highlights-and-low-points-wcit>

A good summary of the meeting as an exercise in process.

- [3] <http://www.brisbanetimes.com.au/technology/technology-news/humiliating-failure-confusion-on-internet-future-after-un-treaty-split-20121217-2bi5b.html>

The view from a media chain in Australia, Fairfax Press.

- [4] http://www.economist.com/blogs/babbage/2012/12/internet-regulation?fsrc=scn%2Ftw_ec%2Fa_digital_cold_war_

The Economist saw this as an instance of the Cold War alignments resurfacing.

- [5] <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.

- [6] <http://www.internetgovernance.org/2012/12/13/what-really-happened-in-dubai/>

A commentary from Milton Muller, of the Internet Governance Project.

- [7] http://www.youtube.com/watch?v=cN_PwWkv14A

An 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.

According to Ambassador Kramer, it was not as bad as the US had feared, in so far as:

- Provisions on mobile roaming came out in a positive manner,
- The ETNO position on "sending party pays" had no traction, and
- It was a high level treaty that was largely innocuous.

But issues were still present:

- The US saw that the efforts to open the discussion on Internet content were not taken off the table. This was seen as unfavourable in that the US saw content issues as being beyond the remit of the ITU.
- The "best" outcome for the US would've been a pure telecom treaty - this was a path not followed, and there was a split in the national attendees between the desire to ring fence transmission and not take on payload and end services, and the desire to consider the "whole" of the environment.

[8] <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.

[9] http://infogr.am/-mebuell_1355447340

I rather like this 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)."

[10] <http://news.dot-nxt.com/2012/12/14/beyond-wcit-%E2%80%93-wsis10-and-comin>

Of course it's not stopping here. What's next? WSIS+10 of course!

Calling Stumps

"Calling Stumps" is perhaps a term familiar only to those folk who are familiar with that rather peculiar game of cricket. It is used as a term to mean 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.

Conventional test matches are either a fascinating game of tactics played over five days, or an endless tedium stretching out to an eternity of boredom, depending on your opinion of the game. But even limiting the action to five days is a modern innovation. We didn't used to rush cricket in this manner in the past. In the past some Tests were 'timeless', that is, they were scheduled to be played to their conclusion regardless of how long that took. The longest Test on record was between South Africa and England in Durban, South Africa. The game started on 3 March 1939 and play continued on the 4th, 6th, 7th, 8th, 9th, 10th, 13th and the 14th. Play was scheduled for the 11th, but none was possible because of rain, giving 9 days of actual, and 10 days of scheduled play. By the evening of 14 March England were 316 and 654 for 5 chasing South Africa's 530 and 481 needing just 42 more runs for victory. But England needed to leave Durban on the 15th to catch their boat home, so, despite being a 'timeless' Test, a draw was agreed. England's 654 is the highest score ever recorded batting last.

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About the Author

Geoff Huston B.Sc., M.Sc., has been closely involved with the development of the Internet for many years, particularly within Australia, where he was responsible for the initial build of the Internet within the Australian academic and research sector. He is author of a number of Internet-related books, and has been active in the Internet Engineering Task Force for many years.

www.potaroo.net