



BACKGROUND TO THE ITU PLENIPOTENTIARY CONFERENCE- 2014

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INTRODUCTION

This document concerns the International Telecommunications Union's (ITU) Plenipotentiary Conference – 2014 ('PP-14'), to be held in Busan, South Korea from 20th October, 2014 to 7th November, 2014. Some of the work of the ITU has begun to have important consequences for key debates around the shape and future of global Internet governance.

This document will attempt to introduce the ITU and PP-14 and spotlight some of the international public policy issues pertaining to the Internet that it is beginning to address, with reference to India where possible.

ABOUT THE ITU & THE PLENIPOTENTIARY CONFERENCE

The ITU

History

The International Telegraph Union was founded in 1865 by 20 Member States, all European, through the signing of the first International Telegraph Convention in Paris. The ITU succeeded the International Telegraph Union in 1934, when the International Telecommunication Convention of 1932, which merged the International Telegraph Convention and the International Radiotelegraph Convention. The ITU became a United Nations Specialized Agency in 1947.

Focus Areas

At a broad level, the ITU describes its work in the following terms:

“ITU is the leading United Nations agency for information and communication technology issues, and the global focal point for governments and the private sector in developing networks and services. For 145 years, ITU has coordinated the shared global use of the radio spectrum, promoted international cooperation in assigning satellite orbits, worked to improve telecommunication infrastructure in the developing world, established the worldwide standards that foster seamless interconnection of a vast range of communications systems and addressed the global challenges of our times, such as mitigating the impact of natural disasters and climate change and strengthening cybersecurity.

[...]

From broadband Internet to latest-generation wireless technologies, from aeronautical and maritime navigation to radio astronomy and satellite-based meteorology, from convergence in fixed-mobile phone, Internet access, data, voice and TV broadcasting to next-generation networks, ITU is committed to connecting the world.”¹

¹ ITU Newsroom, *About the ITU*, available at http://www.itu.int/newsroom/press_releases/aboutitu.html.

Membership

The ITU is presently composed of 193 Member States. In addition to national governments, the ITU membership also includes ‘Sector Members’ and ‘Associates’. These categories of membership are intended to allow for private sector to participate in the work of the ITU. In particular, the three sectors of the ITU accommodate non-state members: ITU-T (concerned with Telecommunication Standardization), ITU-D (concerned with Telecommunication Development) and ITU-R (concerned with Radiocommunications). Till date, some 700 private sector entities have joined the ITU.

The Plenipotentiary Conference 2010 agreed to set up a new category of membership called ‘Academia, Universities and Associated Research Establishments’ on a trial basis.² So far, 63 academic institutions have joined the ITU.

The ITU is an intergovernmental organization, which purports to operate on the principle of ‘international cooperation’. An important consequence of this structure is that only Member States have a right to vote.

Funding

An overwhelming portion of the ITU’s funding (80% in 2014) comes from ITU Members’ contributions. Of this, 10 Member States provide the greatest proportion of the funds (56% in 2012-15).³ India figures as one of these, after Japan, the United States, France, Germany, Canada, Italy, Russia, Australia and Saudi Arabia.⁴

Coverage of Internet-Related Issues

In regards to the Internet, Annex 1 to Council Resolution No. 1305⁵ lists the range of public policy issues concerning the Internet that the ITU works with to date. The list covers the following 12 heads:

1. Multilingualization of the Internet, including Internationalized (multilingual) Domain Names.

² Resolution 169 (Guadalajara, 2010).

³ ITU BACKGROUNDERS: HOW IS ITU FUNDED, p. 2 *available at* <http://www.itu.int/en/plenipotentiary/2014/newsroom/Documents/backgrounders/pp14-backgrounder-how-is-itu-funded.pdf>

⁴ *Id.*

⁵ Document No. C09/105-E.

2. International Internet Connectivity
3. International public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses
4. The security, safety, continuity, sustainability, and robustness of the Internet
5. Combating Cybercrime
6. Dealing effectively with spam
7. Issues pertaining to the use and misuse of the Internet
8. Availability, affordability, reliability and quality of service, especially in the developing world
9. Contributing to capacity building for Internet governance in developing countries
10. Developmental aspects of the Internet
11. Respect for privacy and the protection of personal information and data
12. Protecting children and young people from abuse and exploitation.

The Plenipotentiary Conference

The Plenipotentiary Conference of the ITU is held every four years in accordance with Article 8 of the ITU Constitution. It elects individuals to its five main offices and to its Radio Regulations Boards and Member States to the ITU Council, which governs and oversees the ITU's work between Plenipotentiaries. In addition, it is able to modify treaty texts (including Article 1 of the ITU Constitution) and pass new resolutions. Finally it formalizes Strategic and Financial Plans in accordance to which the ITU must work until the next Plenipotentiary Conference.

Member States, represented through national delegations, as well as private sector members attend the conference. However, voting rights are exclusive to member states.

BACKGROUND

The ITU's work and previous conferences have engendered debates, which would serve as useful context to understanding the issues at stake at PP-14. This section discusses these in turn:

Scope of Work

The ITU's scope of activities, particularly in relation to internet-related issues, has been the subject of considerable attention. It already serves as a facilitator of some of the deliverable outcomes of the World Summit on Internet Society, as laid out in the Geneva Plan of Action⁶ and has set up efforts like the Council Working Group on International Internet-related Public Policy Issues (CWG-Internet)⁷, and has even attempted (unsuccessfully) what was termed a 'takeover' of the functions of the Internet Corporation for Assigned Names and Numbers (ICANN) as early as in 1996.⁸ The proposal to expand the ITU's scope of work to more closely cover Internet-related issues has been proposed by states such as Russia⁹ (with both India and China supporting the proposal)¹⁰ and has been roundly criticized by states like the United States.¹¹ The expansion of the ITU's role into Internet related issues has been characterized by critics as having adverse consequences for the open, free and bottom-up character of the Internet.¹²

⁶ U.N. Document No. WSIS-03/GENEVA/DOC/5-E dated 12 December 2003 available at <http://www.itu.int/wsis/docs/geneva/official/poa.html>.

⁷ See ITU Council Resolutions No. 1305 and 1336 (for further information about CWG-Internet and its Terms of Reference).

⁸ Milton Muller, *threat analysis of itu's wcit (part 1): historical context*, May 24, 2012 available at

<http://www.internetgovernance.org/2012/05/24/threat-analysis-of-itus-wcit-part-1-historical-context/>

⁹ Council Working Group To Prepare For The 2012 World Conference On International Telecommunications; Cwg-Wcit12/C-40, 30 March 2011 available at <http://files.wcitleaks.org/public/Russia%2040.pdf>.

¹⁰ *Russia calls for internet revolution*, May 28, 2012 1 available at <http://rt.com/news/itu-internet-revolution-russia-386/>

¹¹ Daniel A. Sepulveda, Christopher Painter and Scott Busby, *Supporting an Inclusive and Open Internet* available at <http://iipdigital.usembassy.gov/st/english/article/2014/09/20140926308929.html#axzz3EewVZkXv>

¹² See, e.g. Center for Democracy and Technology, *Internet Threatened by Move to Expand Regulatory Powers of ITU* available at <https://cdt.org/insight/civil-society-must-have-voice-as-itu-debates-the-internet/>.

Transparency & Stakeholder Engagement

Access to ITU documents is available exclusively to fee-paying members of the body. Opportunities for participation are similarly limited, with the consequence that public-interest organizations or interested individuals cannot contribute even in the limited, non-decision-making capacity that non-state members usually can. In 2012, a group of researchers from a U.S. university set up WCITleaks¹³, a website which shared Member States' proposals at the WCIT. When the ITU Secretary-General brought the issue to the attention of the ITU Council, however, it responded by releasing one document, already available on WCITleaks.¹⁴ A subsequent press release termed the ITU Council's actions a "landmark decision".¹⁵

Another concern relates to the openness and inclusiveness of ITU processes. The ITU accommodated some of these concerns by employing an Informal Experts Group (IEG) during the World Telecommunication Policy Forum (WTPF) in 2013. Some civil society members regarded the modalities of their participation in the IEG as "unclear".¹⁶ In addition, they pointed out that the body tasked with identifying and considering issues relating to the Internet by the ITU Council, the CWG-Internet was closed, so that only Member-States would participate in its work and stated their agreement with the United States' and other states' proposals to "achieve open, transparent, and multistakeholder processes". A more recent and PP-14 focused call for transparency was addressed to the ITU's General Secretariat.¹⁷ The Secretary-General has responded to these requests positively.¹⁸

¹³ <http://wcitleaks.org/>

¹⁴ Eli Dourado, *ITU Releases a Single WCIT Document, Call Themselves Transparent*, July 24, 2012, available at <http://techliberation.com/2012/07/24/itu-releases-a-single-wcit-document-calls-themselves-transparent/>

¹⁵ Press Release: *Landmark decision by ITU Council on proposal for public consultation and open access to key conference document: Online public platforms will be created to enable multi-stakeholder consultation*, available at http://www.itu.int/net/pressoffice/press_releases/2012/46.aspx

¹⁶ Civil Society proposal to open participation in the Council Working Group on International Internet-Related Public Policy Issues, available at <http://bestbits.net/cwg-internet/>; Statement from members of Civil Society on the ITU Council's Rejection of the Proposal to Open CWG-Internet, available at <http://bestbits.net/cwg-internet-2/>

¹⁷ Open letter to the ITU on transparency of its Plenipotentiary in Busan, October 8, 2014, available at <http://bestbits.net/busan-transparency/>.

¹⁸ Response of the Secretary-General, October 14, 2014, available at <http://www.itu.int/en/plenipotentiary/2014/Documents/itu-sg-response-letter-civil-society.pdf>

Governments' Roles¹⁹

There has also been some debate around the role of governments in the Internet governance space.

At the World Conference on International Telecommunication (WCIT) in Dubai in 2012, the International Telecommunication Regulations (ITRs) raised a great deal of controversy for their attempt to draw regulation of critical matters concerning the regulation of the Internet, and potentially its content layer, into their fold.²⁰ Leaked proposals (which were later withdrawn) went so far as to treat the Internet as a system of State controlled and supervised networks.²¹ India did not ultimately sign the ITRs.

Even as the word Internet found no mention in the main outputs, it found its way into non-binding text by way of Resolution No. 3 titled "*To Foster an Enabling Environment for the Greater Growth of the Internet*". This document was seen by some quarters as "unbalanced" and "one sided" in its description of governments' roles and its use of the Tunis Agenda in describing it.²² The Indian Ministry of Communications & Information Technology stated in a press release that while it supported the remainder of the resolutions, it could only express support for the "broad thrust" of Resolution No. 3, and would need to consult with stakeholders before any firm position could be announced.²³

In 2013, the WTPF demonstrated that there are disagreements on this question.²⁴ In particular, among the draft outcomes of the event was an opinion "*On The Role Of*

¹⁹ Deborah Brown, *Spotlight on Internet Governance: Part Three International Telecommunication Union*, 2 March 2014, available at <https://www.accessnow.org/blog/2014/03/02/spotlight-on-internet-governance-part-three-international-telecommunication>

²⁰ See Chinmayi Arun, *The trouble with hurried solutions*, December 15, 2012, THE HINDU. (for an analysis of the debates at the WCIT)

²¹ Russia, UAE, China, Saudi Arabia, Algeria, Sudan, and Egypt, Proposals For The Work Of The Conference, 5 December 2012 (WCIT-12), available at <http://files.wcitleaks.org/public/Merged%20UAE%20081212.pdf>.

²² Wolfgang Kleinwächter, *WCIT and Internet Governance: Harmless Resolution or Trojan Horse?*, December 17, 2012, available at http://www.circleid.com/posts/20121217_wcit_and_internet_governance_harmless_resolution_or_trojan_horse/.

²³ Ministry of Communications & Information Technology 14-December, 2012 18:49 IST India's Officially Submitted Stand on ITRs at WCIT-2012, available at <http://pib.nic.in/newsite/erelease.aspx?relid=90748>.

²⁴ Deborah Brown, *WTPF: expected outcomes, revealing debate*, 17 May 2013, available at <https://www.accessnow.org/blog/2013/05/17/wtpf-expected-outcomes-revealing-debate>.

Government In The Multistakeholder Framework For Internet Governance”²⁵ which raised controversy. In a statement by some members of civil society at the closing of the event, civil society made clear that it was to be regarded as an *equal* stakeholder in the Internet governance process.²⁶ In November 2013, the CWG-Internet called for a consultation on the subject of governments’ role in Internet-related public policy issues.

Stable Constitution

At the previous Plenipotentiary Conference held in Guadalajara, Mexico in 2010 (PP-10), ITU Member States passed Resolution 163, which called for a stable Constitution for the ITU. The resolution established a Working Group of the ITU Council on a stable Constitution (CWG-STB-CS), with the body’s terms of reference set out in its Annex. The main task of the CWG-STB-CS was to develop a stable Constitution and a new convention. The need for a stable Constitution was felt for the following reasons:

- Modifications to the Constitution and Convention entailed an extremely burdensome process of ratification and accession
- Continual modifications to the Constitution and Convention were seen as problematic, given the principle of the integrity and homogeneity of the principal normative instrument applicable to the members of an intergovernmental organization.

The CWG-STB-CS’s outputs, in the form of draft instruments and a Final Report, were submitted to the ITU Council in 2013, and subsequently shared with members by the Council.

²⁵ Contribution from the Federative Republic of Brazil, Document WTPF-13/5-E, 26 April 2013,

²⁶ WTPF Closing Statement by members of Civil Society.

ELECTIONS

PP-14 will feature three tracks of elections. Only Member States are entitled to vote in the elections, provided that they have no arrears in their contributions to the ITU.²⁷

The *first* track covers the heads of the ITU. There will be elections to the following posts:

- Secretary-General
- Deputy Secretary-General
- Director of the Telecommunication Standardization Bureau
- Director of the Telecommunication Development Bureau
- Director of the Radiocommunication Bureau

The present Secretary-General, Hamadoun I. Touré has served two full terms since his election in 2006. This is the maximum duration that an individual may hold an elected post.

His successor will be Houlin Zhao, who is running unopposed.²⁸ The imminent appointment of the Chinese candidate has raised concerns about the threat to fledgling efforts at multistakeholder process within the ITU²⁹ notwithstanding its intergovernmental character. It is believed that his appointment may bolster China's ever expanding regulatory approach to the Internet. Mr. Zhao has previously recognized the existence of a predominant East Asian Block of contributors at the ITU-T that dominates all discourse and has even claimed that it is beneficial to China, Japan, and Korea, the members of this faction.³⁰ This has led to speculation about how he may deal with the declining global participation at the ITU-T as the head of a much larger organization.³¹

The *second* track of elections relate to membership of the ITU Council, which governs and oversees ITU activities, and presents Strategic Plans and Financial Plans to the

²⁷ Article 28, No. 169, ITU Constitution.

²⁸ *PP-14 Elections: Candidates, available at* <http://www.itu.int/en/plenipotentiary/2014/Pages/candidates.aspx>.

²⁹ Benjamin Bissell, More Tightening of Internet Restrictions by China Tuesday, September 23, 2014, *available at* <http://www.lawfareblog.com/2014/09/more-tightening-of-internet-restrictions-by-china/>

³⁰ Anthony Rutkowski, The East Asia Telecommunication Union, September 20, 2014, *available at* http://www.circleid.com/posts/20140920_the_east_asia_telecommunication_union/.

³¹ *Id.*

Plenipotentiary Conference every four years. The Council is composed of 48 members, who are split across ‘administrative regions’. Each region hold a specified number of Council seats – Region E (Asia and Australia) are allocated 13 of the 48 seats. All Member States are entitled to run for Council seats, without any limitation on the number of terms that they can serve. India is presently a Council member, and is seeking re-election.³²

The *third* track of elections relates to membership of the Radio Regulations Board.³³

³² Candidature of India for Membership to the ITU Council, *available at* <http://files.wcitleaks.org/public/S14-PP-C-0071!!MSW-E.pdf>.

³³ *PP-14 Elections: Candidates, available at* <http://www.itu.int/en/plenipotentiary/2014/Pages/candidates.aspx>.

ISSUES OF INTEREST AT PP-14³⁴

Deepening Academic and Public Interest Participation

Proposals for deepening academic engagement with ITU have been made, and are likely to be discussed at PP-14. In addition, PP-14 will also consider the advice of the Council Working Group on Finance and Human Resources concerning the setting up of a membership category for Non-Governmental Organizations.

Measures to improve access to documents have also been proposed.

Internet-Related Issues

Substantive internet-related issues could arise at PP-14 in a number of ways:³⁵

First, PP-14 is empowered to make amendments to the ITU Constitution and Convention. By altering Article 1 of the Constitution, which deals with the purposes of the ITU, for instance, PP-14 could make Internet-related issues an explicit point in its mandate.

Second, PP-14 can define terminology such as ‘information and communications technology’ (ICT),³⁶ so that the scope of all the ITU texts in which it is used is affected.

Third, PP-14 can enact new resolutions relating to the Internet.

Fourth, resolutions passed at previous Plenipotentiaries could be modified or revised.

Fifth, provision for activities relating to Internet-related issues could be made in the Strategic Plan. As part of the Strategic Plan for the coming four year period, it is anticipated that PP-14 will define specific targets under the ITU ‘Connect 2020’ platform, which sets out four goals (growth, inclusiveness, sustainability and innovation and partnership) for the Information and communications technology sector. The ITU

³⁴ See Dr. Hamadoun I. Touré, *PP14: Deciding the future direction of ITU* available at <https://itunews.itu.int/en/5235-PP14-Deciding-the-future-direction-of-ITU.note.aspx> (For the ITU Secretary-General’s overview of the main issues that the conference will discuss).

³⁵ See Internet Society, ITU Plenipotentiary 2014 – Issues Matrix as of 9 October 2014 available at <http://www.internetsociety.org/sites/default/files/ITU%20Plenipotentiary%202014%20%E2%80%93%20Issues%20Matrix%20as%20of%209%20October%202014.pdf> (For a detailed list of the text covering Internet-related issues which may be considered at PP-14).

³⁶ See Document No. 48 (Rev.1)-E

Council has endorsed³⁷ the targets set out in the Draft Strategic Plan.³⁸ Allowances for WSIS-related activities could also be made in this manner.

In addition, it appears that the question of whether the Internet must be governed through multilateral or multistakeholder processes will also play out at PP-14. There are some indications that India would favour a multilateral approach, and deepening states' role with regard to the Internet, although there is little in the way of explicit statements to this effect. For example, at a preparatory meeting in the run up to PP-14, the Indian government has attempted unsuccessfully to introduce a proposal that would require the ITU to treat planning and distribution of numbering and naming resources among Member States as a "focus area". While any claims as to the Indian position at PP-14 are speculative at this stage, this proposed resolution is very likely a preliminary signalling of the Indian position at PP-14 in relation to Internet governance issues.

³⁷ ITU BACKGROUNDER: CONNECT 2020: SETTING A GLOBAL AGENDA FOR THE ICT SECTOR available at <http://www.itu.int/en/plenipotentiary/2014/newsroom/Documents/backgrounders/pp14-backgrounder-connect-2020.pdf>

³⁸ Draft strategic and financial plans for the Union for 2016-2019, PP-14/Doc.42.