

Statement regarding the outcomes of International Telecommunication Union's Plenipotentiary Conference, 2014

The Just Net Coalition¹ (JNC) comprises several dozen civil society organisations and individuals from different regions globally, concerned with issues of Internet governance, from the perspective of all human rights, including democracy and economic and social justice.

The Just Net Coalition (JNC) has issued two statements, one prior² to, and another during,³ the 2014 Plenipotentiary Conference⁴ of the International Telecommunication Union (ITU). In the present statement, we comment on the outcomes of the conference.

As a preliminary matter, we note the complexity of the issues being addressed and that there is only a partial congruity between the broader issues to be addressed in on-going Internet Governance matters and the jurisdiction or operational methodology of any specific current institutional arrangement multilateral or otherwise. While we believe that institutional arrangements that more closely accommodate the opportunities and risks of the digital eras need either to be evolved from current arrangement or developed independently this does not mean that existing facilities such as the ITU should not be used to the limits of their current capabilities meanwhile being concerned with their reform and adaptation.

Further, we note that the outcomes of the conference confirm what we have seen in other UN meetings: for various reasons, UN bodies are not able to take concrete steps to deal with pressing issues. Significant reform is needed, but that reform cannot take the form of further empowering private companies to make decisions that affect public policies; in particular, we reject the so-called equal-footing multi-stakeholder model of public policy making, in which private companies are in effect given veto power over policies that would affect them.

It is JNC's position that a new UN based body, developed with an open and participatory design, is the best option for overall and inter-sectoral treatment of Internet related public policy issues. ITU should continue to have an important role in Internet matter as per its core technical and associated mandates. It must, however, become more transparent and open.

Thus, at an overall level, we commend the fact that it has now been unanimously agreed that the ITU does have a role to play regarding the development and governance of the Internet, even if disagreements persist regarding the extent of that role, and we commend the fact that some (albeit insufficient) steps have been taken to make the ITU more transparent and more inclusive. However, we regret that differences of views regarding many key issues, including those outlined in our first statement referenced above, were not reflected in the outputs of the

¹ <http://justnetcoalition.org>

² http://justnetcoalition.org/sites/default/files/ITU_PP_2014.pdf

³ http://justnetcoalition.org/sites/default/files/ITU_PP_2014_Stmt2.pdf

⁴ <http://www.itu.int/en/plenipotentiary/2014/Pages/default.aspx>



ad hoc groups that were presented to the formal, publicly-webcast decision-making groups⁵. While we agree that it was important to find consensus, we are of the view that a public discussion of the differences in views would have been informative, useful, and appropriate.

And we regret that some civil society organizations appear to have, at least tacitly, joined those countries that did not favor discussions on mass surveillance and privacy take place in the publicly-webcast sessions.

1. Positive Outcomes

We view the following outcomes as positive.

1.1 Resolution 64 on non-discriminatory access to ICTs has been reaffirmed and strengthened. It now invites Member States to refrain from taking any unilateral and/or discriminatory actions that could impede technically another Member State from having full access to the Internet. This text should be compared to the third paragraph of the preamble of the 2012 International Telecommunication Regulations, which recognizes the right of access of Member States to international telecommunication services.

1.2 Resolutions 101, 102, and 133 have been reaffirmed, and to some extent strengthened. These outline some of the roles that ITU should play with respect to Internet protocol-based networks, international public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses, and the role of administrations of Member States in the management of internationalized (multilingual) domain names. We note in particular that Resolution 101 now recognizes the need for affordable international Internet connectivity; and that it reaffirms that studies of this issue should continue in ITU. And we note that Resolution 102 now recognizes that the public sector, in addition to the private sector, continues to play a very important role in the expansion and development of the Internet; and resolves that the sovereign interests of countries regarding their ccTLDs need to be respected; it reaffirms that public policy is made by governments in consultation with all stakeholders and paragraph 35 of the Tunis Agenda; and the mandate of the Council Working Group on Internet-related Public Policy Issues (CWG-Internet). And it reaffirms that there should be greater cooperation and collaboration in order to increase the role of ITU in Internet governance so as to ensure maximum benefits to the global community.

1.3 Resolution 130, on the role of ITU in building confidence and security in the use of information and communication technologies, now refers to UNGA Resolution 68/167, on the right to privacy in the digital age; and it recalls that that ITU Council Resolution 1305, adopted at its 2009 session, identified the security, safety, continuity, sustainability and robustness of the Internet as public policy issues that fall within the scope of ITU; it now resolves that the ITU's work in this area should include promoting common understanding among governments and other stakeholders of building confidence and security in the use of ICTs at national, regional and international level, and to identify and document practical steps to strengthen security in the use of ICTs internationally. And it reaffirms that ITU has a fundamental role to play in building confidence and security in the use of ICTs.

1.4 Resolution 50 on mainstreaming a gender perspective in ITU and promotion of gender equality and the empowerment of women through information and communication technologies has been significantly expanded and strengthened. And Resolution 166 now invites the membership to promote the nomination of women candidates to the advisory groups, study groups and other groups of the ITU Sectors.

⁵ Plenary, Committee 5, Committee 6, and Working Group of Plenary.



1.5 Resolution 175 on accessibility has been significantly expanded and strengthened.

1.6 ITU's work on Child Online Protection has been recognized and endorsed.

1.7 ITU's role in developing telecommunications, including the Internet, has been recognized, endorsed, and strengthened, as has its role in capacity building.

1.8 ITU's work on conformance and interoperability has been reaffirmed.

1.9 ITU's work on e-health has been reaffirmed.

1.10 A new resolution on protection telecommunication users/consumers invites Member States to take certain actions and on the ITU to support the dissemination of best practices in this area.

1.11 A new resolution on protecting telecommunication users/consumers invites Member States to take certain actions and on the ITU to support the dissemination of best practices in this area. 1.12 A new resolution on facilitating the Internet of things to prepare for a globally connected world calls for certain actions and on the ITU to support the dissemination of experiences and information in this area.

1.13 A new resolution on empowerment of youth through telecommunication/information and communication technology calls for certain important actions.

1.14 A new resolution on using information and communication technologies to break the chain of health-related emergencies such as Ebola virus transmission calls for certain actions.

1.15 A new resolution on global flight tracking for civil aviation instructs the next World Radiocommunication Conference to include in its agenda the consideration of global flight tracking. This was a direct response to the disappearance of flight MH 370.

1.16 A new resolution on strengthening the role of ITU with regard to transparency and confidence-building measures in outer space activities encourages the dissemination of information, capacity building and the sharing of best practices in the use and development of radiocommunication satellite networks/systems, with the objectives of, *inter alia*, bridging the digital divide and enhancing the reliability and availability of the above-mentioned satellite networks/systems.

2. Mixed Results

We view the following outcomes as positive, but insufficient.

2.1 Resolution 102 now establishes open consultations prior to CWG-Internet. It is our view that qualified organizations (and in particular WSIS accredited civil society organizations) should be allowed to participate in all ITU meetings as observers with speaking rights. We regret that this decision was not taken at the conference, but we note that the matter will be further discussed in Council.

2.2 Input and output documents of ITU conferences and assemblies will now be publicly accessible. It is our view that all documents should be publicly available (subject of course to very specific exceptions). We regret that this decision was not taken at the conference, but we note that the matter will be further discussed in Council.

2.3 Two new resolutions, on combating counterfeit telecommunication/information and communication technology devices, and on assisting Member States to combat and deter mobile device theft, could improve consumer protection. But they could also potentially be used to justify inappropriate tightening of anti-consumer intellectual property protection, such

as trying to block legal parallel imports, or to minimize the flexibilities accorded to developing countries under the TRIPS agreements. We urge all states to avoid using these resolutions to justify anti-consumer measures such as prohibitions on parallel imports.

3. Disappointments

We are disappointed regarding the following outcomes, or lack of clear outcomes.

3.1 Participation by civil society was restricted to those who were accepted as members of national delegations. This limited the number of civil society participants and restricted the range of views that they could express.

3.2 The issues of mass surveillance and privacy were raised in several input contributions. There was a brief initial discussion in a public session, during which developed countries (including those that were recently exposed as practicing mass surveillance) stated that the matter is not in the scope of ITU (and this despite the fact that it is implicitly covered by article 37 of the ITU Constitution and that it is included in the mandate of CWG-Internet). There were subsequent discussions in ad hoc groups, but no agreement was reached. Thus, we would have expected that some text in square brackets would have been reported to the relevant committee (the Working Group of Plenary) and that the matter would be fully discussed in a public session. We regret that this was not the case and that the proposals in question were withdrawn in the ad hoc groups. We note, however, that the matter remains within the mandate of CWG-Internet and so can be discussed further in the future.

3.3 We also regret that there was limited discussion regarding certain proposals⁶ submitted (admittedly rather late) by India. While portions of that proposal are indeed problematic, we believe that a full and open discussion of all aspects of the proposal would have been instructive, because the problematic aspects could have been clarified or explicitly rejected, while other aspects might have led to fruitful ideas for further discussion.

3.4 We greatly regret that a number of developed countries⁷ reduced their financial contribution to ITU, unexpectedly and at the last minute, and we further regret that developed countries did not support use of the ITU's reserve account to bridge the deficit resulting from this reduction in revenues. Interestingly, after having reduced budgetary support, many of the same countries resisted proposals for ITU taking up many important and non-controversial activities on the grounds that its budget has been cut.

3.5 We regret that the conference did not decide to convene a new World Conference on International Telecommunications in 2020, and that it did not invite all states to accede to the 2012 International Telecommunication Regulations.

3.6 Fees levied in conjunction with the management of naming, numbering, and addressing resources are routinely used to fund the organizations that manage such resources, and in particular this is the case for ICANN, ISOC, IETF and the RIRs. Proposals to levy very modest fees for the comparable resources managed by the ITU were discussed at the conference, but no agreement was reached. Since such fees could contribute to establishing long-term financial stability for the ITU, we welcome further discussions on the topic in Council.

⁶ See the commentary at <http://www.ip-watch.org/2014/11/05/what-is-happening-at-the-itu-plenipotentiary-conference/>

⁷ Canada, France, Spain, Belgium, Finland, Sweden, Denmark and Portugal (listed in the order of the size of the reduction). On the other hand, China, Mexico, and Malaysia increased their contributions by one or more contributory units.



Just Net Coalition

3.7 We regret that the conference did not accept, in principle, that the ITU be the supervisory for the UNIDROIT space assets protocol, but we note that the matter will be further discussed in Council.

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The list of organizational members and individual members of the Just Net Coalition can be found at:

<http://justnetcoalition.org/jnc-members>