Study Guide - Week 15

UNHRC- Access to Internet as a Basic Human Right

1) TDLR:

What would we do without the internet? While many of us see this as a silly thought experiment, the truth is that there are those who suffer this reality. Losing access to internet can be seriously debilitating in our increasingly digitalized world. Many governments around the world implement censorship and sometimes even entire internet shutdowns to protect their interests. What is the cost of these restrictions? If internet is so essential, how come governments can just take away people's access? It is high time that the world looks at internet as a daily need and not as luxury commodity. This raises the question whether internet ought to become a recognized human right, guaranteeing access to all individuals around the globe. The UNHRC meets to discuss whether it is time for the international community to take this daring leap forward.

2) Background Information:

For many of us, internet is an essential component of our personal and professional lives. But what happens then, when we lose access to internet? National elections in Uganda, protests in Iran and regional disruptions in India are just some of the many examples of events where States deny individuals' access to the internet. And it's not just shutdowns. Censorship and filtering of information is rampant all over the world and nearly every country has a finger in that pie... So, what can be done about it?

The internet's role in the human rights discourse started in the early 2000s. The 2003-2005 World Summit on the Information Society (WSIS), run by the UN's International Telecommunication Union (ITU), sought to address the digital divide between the global north and south. The 2003 Geneva summit saw the adoption of a Declaration of Principles, which laid out a roadmap with the goal of achieving a society with equal access to information and shared knowledge. While the declaration had no binding effect or concrete steps to achieve this goal, it did state that "everyone should have the opportunity to participate in the information society and no one should be excluded,". The declaration also referenced the signatories' commitment to Art. 19 of the UDHR (freedom of expression including access to and sharing of information through any media). Unfortunately, the summit failed to yield any tangible results. This was mainly because of a lack of consensus among the members regarding internet governance.

In 2011, a shift occurred thanks to the report (A/HRC/17/27) penned by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue. The report was presented to the UNHRC, arguing that the internet is an indispensable tool for an individual's exercise of their right to freedom of expression, assembly, association, and participation in public life. The report also addressed censorship, surveillance and international disruptions (shutdowns), accusing states of utilising "increasingly sophisticated, multi-layered controls that are often hidden from the public" to arbitrarily restrict access to information. The report also mentioned how these restrictive state actions either lack legal basis or are based on ambiguous laws. The text condemns such approaches as "incompatible with States' obligations under international human rights law".

Since the report, the UNHRC passed several resolutions addressing internet and digital platforms in the context of human rights. Resolution 32/13 directly condemned "measures to intentionally prevent or disrupt access to or dissemination of information online". A more recent resolution (A/HRC/RES/47/16**)** passed in 2021. This resolution addressed internet shutdowns directly, stating that such actions directly cause damage to human rights and often conceal human rights violations.

Currently, access to internet is not a generally recognized human right. However, its importance as a conductor of human rights is recognized by the general UN framework. Internet is often referred to as essential for realization of certain existing rights, such as freedom of expression (Art. 19 UDHR), right to information (Art. 19 UDHR), right of participation (Art. 21 UDHR) and right to education (Art. 26 UDHR). Considering current events and the rapid development of online digital platforms, the UNHRC meets to discuss whether internet should be recognized as a human right by the UN.

3) Key Issues:

3.1) Internet as a human right vs. enabler of human rights: One of the most crucial questions that the UNHRC must answer is what would the establishment of access to the internet as a human right imply? On the one hand, the UN often refers to the internet as essential for the realization of other rights, demonstrating its importance. On the other hand, if access to internet were to become a human right, it would impart a positive obligation on states to uphold and safeguard that right. Is internet access a real human right, or just a tool for other rights? What actions should states take to uphold this human right? How should the UN implement the creation this new human right?

3.2) State-led internet shutdowns and disruptions: Governments increasingly restrict internet access utilizing various methods. Internet shutdowns are often justified as necessary to keep peace or to protect citizens. These shutdowns are commonly implemented during elections and protests. Further restrictions include censorship and filtering of information. States argue that they act within their power but is this really the case? Denying access to internet can cost people their livelihoods, who is then responsible for the loss they suffered? When are internet shutdowns justified and when are they being abused? Is there a way to prevent abuse on the UN level? Can states be held accountable for the damage caused by internet shutdowns?

4) What can the UNHRC actually do?

The United Nations Human Rights Council is an advisory body tasked with providing assistance to states and investigating the instances of human rights violations. Its resolutions are not binding but the reports provided by the UNHRC are generally respected and hold great informal importance on the international stage. Some of its main functions are:

- Establishing fact-finding missions in individual states to investigate human rights violations;
- Providing a forum for debate on the reports of human rights violations;
- Advising states and international institutions on actions aimed at ensuring the proper execution of international humanitarian law;
- Recommending actions to states and international institutions connected to the international humanitarian law;
- Providing technical assistance in form of experts in different fields to struggling states.

5) Major Stakeholder's:

5.1) Brazil: A strong proponent of human rights, Brazil has sponsored numerous resolutions regarding protection of human rights online. This includes the 2021 resolution which condemns internet shutdowns. Domestically Brazil passed its National Bill of Rights with strong provisions regarding net freedom of expression online. Brazil would likely support a resolution with direct and effective language, advocating for better internet access and prevention of abusive internet shutdowns.

5.2) China: The Chinese government operates one of the most sophisticated internet censorship systems in the word officially called the "Golden Shield Project". Within the UNHRC, China actively opposes strict resolution language regarding digital rights. China would argue for the resolution to respect national sovereignty, defending the ability of states to restrict internet access for security reasons.

5.3) France: France has a unique perspective on internet access. In 2009, the French Constitutional Court ruled domestically that internet access is intrinsically linked to core freedoms stemming from rights. France would therefore likely support a resolution which would safeguard internet access in the context of human rights, seeking to prevent strict state-led internet restrictions.

5.4) India: India's stance is nuanced, balancing pragmatic and moral approaches. Internationally, India supports efforts which aim to promote access to internet. India demonstrated its support by signing the 2021 resolution condemning internet shutdowns. However, internally India often restrict access to internet during elections and regional unrests, scoring the highest number of shutdowns according to various media sources. India likely has a mixed stance on the issue. It would support efforts to broaden access to internet worldwide, while ensuring that states are allowed to act when state interests are being actively threatened.

6) Sources and further reading:

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