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| PRINCIPLES FOR THE REVIEW OF THE INTERNATIONAL TELECOMMUNICATION REGULATIONS |

**Introduction**

Brazil was an active supporter of the 2012 World Conference on International Telecommunications (WCIT-12). We participated in all Council Working Group (CWG) preparatory meetings with numerous contributions. We presented 77 Brazilian proposals to WCIT-12, and co-signed 17 CITEL proposals. We brought 40 delegates to the Conference and participated actively in all meetings. In the end, we signed the Final Acts of WCIT-12 without any reservations. Today, Brazil continues to observe and comply with the 1988 and 2012 International Telecommunication Regulations (ITRs).

This document presents Brazil’s views on the ITR review process. Brazil understands that the main issues under discussion are the following:

* applicability of the provisions of the ITRs in fostering the provision and development of international telecommunication/ICT services and networks;
* flexibility of, or lack thereof, the provisions of the ITRs to accommodate new trends and emerging issues in international telecommunications/ICT environment;
* the costs of holding a new WCIT;
* the impacts on international cooperation and ITU's reputation.

**Applicability and flexibility of the ITRs in accommodating new trends and emerging issues in telecommunication/ICTs**

The applicability and flexibility of the ITRs can be examined based: (i) on the viewpoints of each Member State on the need for ITRs, (ii) on the scope of the ITRs, and (iii) on the pace and innovation of telecommunication/ICTs.

**(i) On the viewpoints on the ITRs.** There are two predominant viewpoints on the ITRs:

1. “View 1”: the ITRs are unnecessary because market competition, national regulatory policies, and bilateral agreements are enough to optimize the global provision of telecommunication/ICTs;
2. “View 2”: the ITRs are necessary because they establish common principles that enable and optimize the global provision of telecommunication/ICTs.

Views 1 and 2 are polar opposites of each other. Since acceding to the ITRs is optional, if the views on the applicability of the ITRs continue to be polarized, a new WCIT would produce the same outcomes of WCIT-12: no consensus and a rift among Member States. Even among signatory countries, there are no higher bodies to oversee and enforce compliance to the ITRs, and therefore the effectiveness and applicability of the ITRs fundamentally depend on a proactive, voluntary commitment to collaborate to solve common problems in the global provision of telecommunication/ICTs.

The decision to revise the ITRs and hold a new WCIT depends on a total or a large majority consensus that the ITRs are important to optimize and enable cross-border telecommunication/ICTs. In other words, there should be an almost total convergence to View 2 before such a decision is taken.

**(ii) On the scope of the ITRs.** Each of the 193 ITU Member States face unique regulatory challenges depending on context, the level of technical/economic development of each national market, the need for intervention/regulation, and the relevant stakeholders involved. The ITRs are not effective to solve problems that have a limited scope and affect only some countries. The ITRs should determine common rules to manage the interdependence among all nations in the provision of telecommunication/ICTs, and should reflect these three commitments by signatories[[1]](#footnote-1):

* to strengthen national-level management of cross-border spillovers;
* to protect any state’s sovereignty if it comes under attack;
* to cooperate in mitigating global system risks.

For the ITRs to be applicable, all Member States should be willing to strongly commit to these three objectives of international cooperation. This is one of the two main problems in discussing ITRs nowadays: Member States differ widely in terms of how to treat these commitments. Some Member States enter into bilateral or regional agreements with other Member States. Other Member States seek for an international overarching agreement, such as the ITRs. Other Member States prioritize their sovereignty and employ national policies to address cross-borders issues. In reality, the mentioned actions by Member States are not necessarily competing; they could be complementary, and this could be a guideline for the ITRs to seek.

The second main problem is the number and nature of stakeholders involved. When the ITRs were first approved in 1988, telecommunication/ICTs were provided mostly by State-owned companies, thus governments were the primary stakeholders as the providers of services, enforcers of agreements, and main “representatives” of society. Nowadays, the provision of telecommunication/ICT has been privatized in different levels and scopes in most countries, the dissemination of the Internet and social media gives everyone an active voice, and regulation has been shifting to a multistakeholder collaborative process, given the speed of development and adoption of new telecommunication/ICTs. The private sector, civil society and the technical community have been empowered in the governance process, and the consequence is the “exponential” growth of non-governmental stakeholders that need to be involved in a WCIT process.[[2]](#footnote-2)

**(iii) On the pace of innovation of telecommunication/ICTs.** WCIT-12 was held 24 years after WATTC-88. Official calls for another Conference started less than ten years after WATTC-88, and with the approval of Resolution 79 PP-98 officially called for a review of the ITRs. It then took more than 14 years for WCIT-12 to take place, and the new ITRs only entered into force in 2015 for the 89 signatories. In other words, the ITRs take a very long time to be revised, and thus are not an applicable instrument to govern features that are dynamic and change in a fast pace.

For the ITRs to be effective, they should govern elements and principles of telecommunications/ICTs that do not change so much over time and that endure the long gap between WCITs. However, telecommunication/ICTs evolve at an incredible pace, and this evolution is frequently creating new industries and new regulatory challenges. That is why the ITU has been recently discussing and developing the concept of collaborative regulation, which is inherently multistakeholder and calls regulations to be *“(…) adaptive, balanced and fit for purpose.”[[3]](#footnote-3)* These are four characteristics that the ITRs should present if they are to be an effective regulation instrument in today’s context.

**Cost-benefits of holding a new WCIT**

The process of revising the ITRs in 2011/2012 was highly contentious among the parties defending Views 1 and 2 described above, from the preparatory process in the CWG until the end of WCIT-12. Consensus was only achieved in specific points by softening the treaty language in the most crucial articles and subsections, resulting in provisions that are practically optional to the signatories. This represents the outcomes, or the benefits of WCIT-12.

More than 2,000 delegates participated in WCIT-12. It held 13 days of meetings at a cost of CHF 1.9 million (CHF 147,000 per day). The total cost of WCIT should include the preparatory meetings, the pre-WCIT costs of the host country, and the travel costs of all delegations and all people involved. There were also significant opportunity costs for the ITU and all parties involved (i.e., not using the budget and time allocated to WCIT-12 for other activities). Brazil, for example, held weekly four-hour multistakeholder meetings for one year prior to WCIT-12 in preparation for the Conference. This represents the costs.

A new WCIT should only be held if its outcomes produce concrete results in the telecommunication/ICT market that compensate for the financial and opportunity costs of holding a new WCIT.

**Impacts on international cooperation and ITU's reputation**

89 countries signed the final acts of WCIT-12, including Brazil, but there was a clear polarization. WCIT-12 failed to build consensus, and in an attempt to reach such a consensus, drafted a treaty with little effective impact even for the 89 signatories. The reputation of the ITU as an effective builder of consensus and promoter of international cooperation was damaged. Many key stakeholders lost their trust in the ITU.

The ITU cannot risk attaining a similar result.

If all the criteria described above are met, there will be ample consensus on holding a revision of the ITRs. In that case, a specific CWG should conduct the preparatory process with transparency, inclusiveness, efficiency, and thoroughness. The preparatory process should involve all ITU members on an equal footing, and all stakeholders through an open, inclusive and transparent consultation process.

A new WCIT should receive from the CWG a widely agreed proposal for a treaty, and discuss only minutiae during the Conference.

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1. Kaul, Inge (2013), “Meeting Global Challenges: Assessing Governance Readiness”, in Hertie School of Governance, *The Governance Report*, Oxford: Oxford University Press, 2013, chapter 2, pp. 33-58. [↑](#footnote-ref-1)
2. International Telecommunication Union (ITU, 2019), Global Symposium for Regulators (GSR) 2019 outcome document, *Best Practice Guidelines “Fast forward digital connectivity for all”*. [↑](#footnote-ref-2)
3. *Ibid.* [↑](#footnote-ref-3)