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| FURTHER STEPS in the IMPLEMENTATION OF RESOLUTION 146 (REV. DUBAI, 2018) OF THE PLENIPOTENTIARY CONFERENCE AND RESOLUTION 1379 (MODIFIED 2019) OF THE ITU COUNCIL AND PROPOSALS FOR THE FINAL REPORT of EG-ITRS |

# I Summary

This contribution calls on ITU Member States and Sector Members, including those participating in the meetings of EG-ITRs, to demonstrably make the meaningful efforts required to fulfil *resolves 2* of Resolution 146 (Rev. Dubai, 2018) of the Plenipotentiary Conference and achieve consensus on the way forward in respect of the ITRs.

# II Introduction

The World Conference on International Telecommunications (Dubai, 2012) (WCIT-12) revised the International Telecommunication Regulations (ITRs). The 2012 ITRs entered into force on 1 January 2015.

WCIT-12 adopted Resolution 4 (Dubai, 2012), on the periodic review of the International Telecommunication Regulations, *recognizing* *e)* of which states that “the International Telecommunication Regulations consist of high-level guiding principles that should not require frequent amendment, but in the fast-moving sector of telecommunications/ICTs may need to be periodically reviewed.”

The Plenipotentiary Conference (Busan, 2014) adopted Resolution 146 (Rev. Busan, 2014), setting out steps for the preparation of a possible revision of the ITRs, and the Council, at its 2016 session, adopted Resolution 1379, establishing the Expert Group on the International Telecommunication Regulations (EG-ITRs).

Pursuant to Council Resolution 1379, between February 2017 and April 2018, EG-ITRs carried out a review of the ITRs. It submitted its final report to the Council session in 2018, noting in particular that there are two main points of view as regards the applicability of the ITRs. That does not, however, mean that those points of view are diametrically opposed and irreconcilable. It is simply the case that the proponents of each viewpoint emphasize that some apply the ITRs as being relevant to current conditions and levels of technological development, while others do not, on the grounds that the ITRs are not relevant.

In this connection, Resolution 146 (Rev. Dubai, 2018) was reviewed by the Plenipotentiary Conference (PP) in 2018 and Resolution 1379 was reviewed by the Council at its 2019 session, with a view to undertaking a comprehensive review of the ITRs and achieving consensus on the way forward in respect of the ITRs.

Thus, if all the parties concerned agree on a single current text of the ITRs, it will as a result of such work be relevant for all Member States and telecommunication operators. **Moreover, the Constitution and Convention explicitly require this of Member States and provide for the following**:

# III Rationale

Note that:

– The provisions of the Constitution and the Convention are complemented by those of the Administrative Regulations (International Telecommunication Regulations and the Radio Regulations), which regulate the use of telecommunications and **shall be binding on all Member States** (No. 31 of the Constitution – Article 4, paragraph 3);

– The Member States **are bound to abide by the provisions** of the Constitution, the Convention and the **Administrative Regulations** in all telecommunication offices and stations established or operated by them which engage in international services or which are capable of causing harmful interference to radio services of other countries, except in regard to services exempted from these obligations in accordance with Article 48 of the Constitution (No. 37 of the Constitution – Article 6, paragraph 1);

– The Member States **are also bound to take the necessary steps to impose the observance of the provisions** of the Constitution, the Convention and **the Administrative Regulations** upon operating agencies authorized by them to establish and operate telecommunications and which engage in international services or which operate stations capable of causing harmful interference to the radio services of other countries (No. 38 of the Constitution – Article 6, paragraph 2);

– In order to facilitate the application of the provisions of Article 6 of the Constitution, Member States **undertake to inform and, as appropriate, assist one another with regard to infringements of the provisions** of the Constitution, of the Convention and **of the Administrative Regulations** (No. 190 of the Constitution – Article 39);

– Member States reserve for themselves, for the operating agencies recognized by them and for other agencies duly authorized to do so, the right to make special arrangements on telecommunication matters which do not concern Member States in general. **Such arrangements, however, shall not be in conflict with the terms** of the Constitution, of the Convention or **of the Administrative Regulations**, so far as concerns the harmful interference which their operation might cause to the radio services of other Member States, and **in general so far as concerns the technical harm** which their operation might cause to the operation of other telecommunication services of other Member States (No. 193 of the Constitution – Article 42);

– Each Member State reserves for itself and for the recognized operating agencies the right to fix the conditions on which it admits telecommunications exchanged with a State which is not a Member State of the Union. If a telecommunication originating in the territory of such a State is accepted by a Member State, it must be transmitted and, **in so far as it follows** the telecommunication channels of a Member State, **the obligatory provisions** of the Constitution, of the Convention and **of the Administrative Regulations** and the usual charges shall apply to it (No. 207 of the Constitution – Article 51);

– Decisions of world telecommunication standardization assemblies and world telecommunication development conferences **must** in all circumstances **be in conformity with** the Constitution, the Convention and **the Administrative Regulations** (No. 115 of the Constitution – Article 18, paragraph 3; No. 142 of the Constitution – Article 22, paragraph 4);

– The radiocommunication assembly, the world telecommunication standardization assembly and the world telecommunication development conference may establish and adopt working methods and procedures for the management of the activities of their respective Sectors. These working methods and procedures **must be compatible with** this Constitution, the Convention and **the Administrative Regulations**, and in particular Nos. 246D to 246H of the Convention (No. 145A of the Constitution – Chapter IVA);

– The Administrative Regulations, as specified in Article 4 of the Constitution, **are binding international instruments and shall be subject** to the provisions of the Constitution and the Convention.

Recall Articles 54, 55 and 56 of the ITU Constitution.

Based on No. 69 (Article 10, paragraph 4 (1)) of the Constitution, the Council shall take all steps to facilitate the implementation by the Member States of the provisions of the Constitution, of the Convention, of the Administrative Regulations and of the decisions of the Plenipotentiary Conference.

# IV Conclusion

All the provisions of the Constitution and Convention listed above in section III show that the review of the ITRs cannot be concluded with a simple stating of opinions as to whether the ITRs work or not, particularly for those countries which claim that the ITRs are not applicable, relevant or flexible. These claims in themselves demonstrate the need to produce an applicable, relevant and flexible version of these Administrative Regulations through a consensus-based approach for all ITU Member States so that they do work. This is directly incumbent on all ITU Member States, which have acceded to the Constitution and Convention, as well as the Administrative Regulations, which form in integral part thereof.

# V Proposal

Bearing in mind that, at present, the Member States and Sector Members participating in the work of EG-ITRs, which account for no more than one-fifth of all ITU Member States, share two fundamental opinions on how to solve the issues relating to the application of the 1988 and 2012 ITRs, EG-ITRs should, in order to fulfil its mandate, decide on, and recommend to the Council and the Plenipotentiary Conference in 2022, a single way forward in respect of the ITRs which is most acceptable to all Member States and focus on it as the main way forward at PP-22 towards the implementation of Resolution 146 (Rev. Dubai, 2018) by all ITU Member States.

Concluding the current mandate of EG-ITRs with a simple binary choice essentially between “the ITRs are needed and are applicable” and “the ITRs are not needed and are not applicable” is unacceptable and must not be the outcome of the current mandate of EG-ITRs. This outcome was already put forward under its previous mandate.

Furthermore, the very need for appropriately worded ITRs for today’s world and level of technological development in telecommunications neither is subject to doubt nor requires proof, by virtue of the corresponding provisions of the Constitution and Convention, and should not be considered in isolation; otherwise, it would be necessary to amend the corresponding articles of the Constitution and Convention. Such proposals, however, were not forthcoming throughout the review of the ITRs, indicating a lack of interest in doing so.

In the light of the above and the clarifications provided by the Secretariat and ITU Legal Adviser, it is proposed to:

**I. Consider two possible ways of resolving the existing disagreements at this time and identify the preferred option.**

***The first option*** is for all Member States to accede to the International Telecommunication Regulations (Rev. Dubai, 2012).

***The second option*** is for a partial or full revision of the ITRs with a view to the adoption of a new version of the treaty by consensus.

In the case of a partial revision, a new consensus may be achieved by identifying and then removing certain provisions of the ITRs that are particularly difficult for Member States to apply. This would enable the Union and Member States to save resources by holding a “short” world conference on international telecommunications.

In the case of a full revision, as well as highlighting difficulties it will be necessary to identify new priority provisions to be included in the new revised text of the ITRs.

In view of the foregoing, it is proposed that EG-ITRs identify its preferred way forward in respect of the ITRs and indicate it in its final report to the Council and PP-22, namely:

– the accession of all Member States to the version of the ITRs revised in 2012; or

– the partial or full revision of the ITRs.

**II. In the event that consensus cannot be reached on one of the above options, to the satisfaction of all participants of EG-ITRs**, and given that, at present, Member States and Sector Members participating in EG-ITRs account for no more than one-fifth of all ITU Member States, it is proposed to:

– reflect these options in the Final Report of EG-ITRs under section 3.5 “Further steps in relation to the ITRs” (previous contributions: [**EG-ITRs-1/3**](https://www.itu.int/md/S19-EGITR1-C-0003/en), [**EG-ITRs-1/4**](https://www.itu.int/md/S19-EGITR1-C-0004/en), [**EG-ITRs-5/6**](https://www.itu.int/md/S21-EGITR5-C-0006/en));

– reflect in the Final Report of EG-ITRs under section 4 “Summary” in a new paragraph that addressing this matter is left to the Plenipotentiary Conference in 2022, as EG-ITRs could not achieve consensus on further steps in relation to the ITRs and did not fulfil its mandate in this regard.

**III. Reflect in the Final Report of EG-ITRs in a new Annex 3 the contributions submitted by the Directors of the three ITU Bureaux** (previous contributions [**EG-ITRs-5/INF/1**](https://www.itu.int/md/S21-EGITR5-INF-0001/en), [**EG-ITRs-5/10**](https://www.itu.int/md/S21-EGITR5-C-0010/en))**.**

**IV. Reflect in the Final Report of EG-ITRs under section 4 “Summary” in a new paragraph that some EG-ITRs participants noted that the provisions of the ITRs were not in line with the Constitution or Convention and that such a state of affairs could not continue for an extended period and needed to be addressed** (previous contributions [**EG-ITRs-2/2**](https://www.itu.int/md/S20-EGITR2-C-0002/en), [**EG-ITRs-3/6**](https://www.itu.int/md/S20-EGITR3-C-0006/en), [**EG-ITRs-4/2**](https://www.itu.int/md/S21-EGITR4-C-0002/en), [**EG-ITRs-5/7**](https://www.itu.int/md/S21-EGITR5-C-0007/en))**.**

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