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| **World Conference on International  Telecommunications (WCIT-12) Dubai, 3-14 December 2012** |  |
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| PLENARY MEETING | **Corrigendum 1 to Document DT/1-E** |
|  | **3 December 2012** |
|  | **English only** |
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| PROPOSALS RECEIVED FROM ITU MEMBER STATES  FOR THE WORK OF THE CONFERENCE | |
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Please add the following proposal (ACP/3A3/1) under General Matters.

ACP/3A3/1

**Principles**

**Principle 1** CS 31 and 32 of Article 4 of the Constitution, “Instrument of the Union” stipulate that:

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| ***31   PP-98*** | *3**The provisions of both this Constitution and the Convention are further complemented by those of the Administrative Regulations, enu­merated below, which regulate the use of telecommunications and shall be binding on all Member States:* |
|  | *–**International Telecommunication Regulations,* |
|  | *–**Radio Regulations.* |
| ***32*** | *4 In the case of inconsistency between a provision of this Constitu­tion and a provision of the Convention or of the Administrative Regula­tions, the Constitution shall prevail. In the case of inconsistency between a provision of the Convention and a provision of the Administrative Regulations, the Convention shall prevail”* |

**Principle 2** CS 37 and 38 of Article 6 of the Constitution, "Execution of the Instruments of the Union” stipulate that:

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| ***37   PP-98*** | *1**The Member States are bound to abide by the provisions of this 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 the pro­visions of Article 48 of this Constitution.* |
| ***38   PP-98*** | *2**The Member States are also bound to take the necessary steps to impose the observance of the provisions of this 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.”* |

**Principle 3**

*1. The degree/scope by which a provision in a treaty is binding depends on the language and terms that are used in the text. For instance, text (s) in which the language (s) used is accompanied/proceeded by the word ‘shall’ or a word similar to that, e.g. ‘must’ or the terms ‘ is required’ or ‘are required’ would have a mandatory nature/status.*

*2. In contrast text (s) in which the language (s) used is accompanied /preceded by the word ‘should’ or a similar word, e.g. ‘may’ or by the terms ‘encouraged’ or ‘invited’ or ‘endeavor’ or even ‘shall cooperate’ would have a non-mandatory nature/status.*

**Criteria**

**Criterion 1; Incorporation of the Provisions/Articles contained in the ITU Constitution and the Convention in the Draft revised ITR**

* 1. Duplication or incorporation of Provisions/Articles of the Basic Instruments of the Union in the Administrative Regulations should be avoided unless absolutely necessary. An example of a necessary duplication is the verbatim inclusion of Article 44 of the ITU Constitution in the Radio Regulations.
  2. Any duplication or incorporation of Provisions or Articles of the Basic Instruments of the Union within the revised ITRs must be verbatim to those contained in the CS/CV, unless,
  3. The entire Provision or Articles to be referenced includes issues beyond the scope of the ITRs. In such circumstances the relevant section of that text can be included in the revised ITRs together with any necessary explanatory text.

**Criterion 2; Proposals relating to terms and definitions**

2.1 Duplication of definitions already contained in the Annexes of the CS/CV within the ITRs should be limited to those definitions present in the current ITRs.

* 1. Any repetition of definitions must be verbatim to those contained in the CS/CV
  2. To avoid inconsistency between the CS/CV and the ITRs, text deemed necessary for duplication within the ITRs should be preceded by the following: “*pursuant to No. x of CS or CV”* followed by the selected text in its entirety without any change other than those required for cross referencing. An example is paragraph 9.1 of Article 9 of the current ITR in which No. 31 of the Nairobi Convention is incorporated.
  3. Proposals which seek to modify existing terms and definitions contained within the CS/CV are not appropriate to be included in the ITRs.
  4. Any incorporation into the revised ITRs of modified terms and definitions currently found in the Annexes to the CS/CV should be avoided, in particular, any modifications submitted to past Plenipotentiary conferences and not agreed.
  5. Expansion or modification of the terms and definitions contained in the current ITRs should be avoided.
  6. Definitions of a technical and/or operational nature may be more appropriately contained in WCIT -12 Resolution(s). Consideration could also be given to an appropriate mechanism for their revision. If a term is not used in an Article or Provision, it is not necessary to define that term in the revised ITRs.

**Criterion 3; Reference to “ITU Recommendations”**

3.1 ITU Recommendations shall remain non-binding/voluntary. Proposals which directly or indirectly alter the non-binding/voluntary nature of ITU-T and ITU-R Recommendations are not appropriate to be included in the ITRs.

3.2 Any incorporation by reference to specific ITU-T Recommendations appears inappropriate given the dynamic nature of ITU-T Study Groups and the need to avoid frequent revision of the ITRs. Where absolutely necessary, reference should only be made to specific ITU-T Recommendations using the terms “taking into account/based on the latest version of the ITU-T Recommendation.

3.3 Where a reference to an ITU-T Recommendations absolutely necessary, the language used must make clear that there is no implication that the Recommendations are binding for example, “Member States are encouraged to implement the ITU-T Recommendations.”

3.4 Any references to “ITU Recommendations” should address the specific field of application (ITU-T or ITU-R). General references to “ITU Recommendations” are not appropriate and could cause unnecessary confusion.

**Criterion 4; Modification to the current structure of the ITR (reshuffling of Articles and/or Provision)**

4.1 Modification to the current structure of the ITRs including Chapters and Articles should be avoided unless absolutely necessary.

**Criterion 5; Use of the term “Member State”, “Administration”, “Operating Agency”, “Private Operating Agency, Recognized Operating Agency” and Private Recognized Operating Agency”**

5.1 As an integral part of the Administrative Regulations annexed to the ITU Constitution, the revised ITRs are a treaty, to be agreed, signed, ratified and implemented by Member States. Due to the different structures responsibilities and frameworks in place among Member States, any proposal to systematically replace the term “Administration” with “Member State” is not appropriate. The term “Administration” should be deleted throughout the revised ITU texts because the treaty obligations of the ITRs are observed by Member States and the operational obligations are observed by “Operating Agencies” as described in paragraph 5.2 below.

5.2 In view of the arguments mentioned in paragraph 5.1 above, the term “Administrations” should be replaced by the term “Operating Agencies” or “Recognized Operating Agencies” or “Private Operating Agency” or “Private Recognized Operating Agency.” This is because in the vast majority of ITU Member States the tasks that were undertaken or associated with “Administration” in 1988 are currently being performed by one of the four entities listed above, according to the context in which these terms are used in a given country.

5.3 Since the use of any of these four terms in lieu of “Administration” could create very different legal rights and obligations for ITU Member States and entities within Member States, each of these terms will be assessed on a case by case basis according to the prevailing circumstances and situations in each country

5.4 To resolve this matter and allow the flexibility to address the situation and circumstances which could exist in each country, a possible way forward would be to introduce an asterisk above the term “Operating Agency” with the following footnote to describe the situation:

“Whenever, in these Regulations, reference is made to “Operating Agency”, it is understood that the term also covers “Recognized Operating Agency” and/or “Private Operating agency “and /or “Private Recognized Operating Agency, “or other entities” that provide international telecommunication services to the public, according to the context in which these terms are used in a given country.