

Accession to the 2012 International Telecommunication Regulations

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A significant number of countries did not sign the International Telecommunications Regulations (ITRs) in Dubai in 2012. Almost all of those countries indicated that they required additional time in order to consider the implications of certain provisions, in particular those that were approved at the last minute.

As several commentators have noted², the lack of a uniform regime for international telecommunications might create some problems in the future. Thus it would appear desirable to take some steps to return to the uniform regime that has prevailed in the past.

One way to do this is to renegotiate the ITRs. Another way is for the non-signatories to accede to the ITRs. Accession would appear feasible because legal analysis³ of the provisions in question indicates that they do not actually have the effects that had raised concerns.

However, interpretation of treaties is the sovereign right of states, so it may be desirable for non-signatories to clarify the implications of the controversial provisions of the ITRs by issuing a statement upon accession to the ITRs.

Many non-signatories⁴ stated, at the closing session of the World Conference on International Telecommunications (WCIT) that they reserved their right to make reservations upon accession. These countries can issue a statement in the form of a formal reservation.

Countries that did not expressly reserve their right to make reservations cannot now make a formal reservation, however they can make a unilateral declaration which, in practice, would have an effect similar to that of a formal reservation.

Thus it is proposed that non-signatories of the ITRs consider acceding to the ITRs while possibly issuing a statement (reservation or declaration) along the following lines.

[NAME OF STATE] accedes to the International Telecommunication Regulations (Dubai, 2012), with the understanding that:

a) The third paragraph of the Preamble, which recognizes the right of access of Member States to international telecommunication services, does not limit or otherwise prejudice the right of Member States to suspend the international telecommunication service, pursuant to Article 35 of the ITU Constitution, either generally or only for certain relations and/or for certain kinds of correspondence, outgoing, incoming or in transit. Furthermore, the Preamble does not contain operative provisions and therefore it does not modify existing rights and obligations.

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² See for example the references given in Hill, Richard (2013) *The New International Telecommunications Regulations and the Internet: A Commentary and Legislative History* (2013) Schulthess/Springer; Chapter 8.

³ See Hill, Richard (2013) "WCIT: failure or success, impasse or way forward?", *International Journal of Law and Information Technology*, vol. 21 no. 3, p. 313, DOI:10.1093/ijlit/eat008

⁴ In particular, 18 members of the European Union: Austria, Croatia, Cyprus, Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal Slovak Republic, Slovenia, Spain.

b) As specified under number 4 (Article 1.1a), these Regulations do not address the content-related aspects of telecommunications. This understanding applies to all provisions of the ITRs, including in particular Article 6 on Security and robustness of networks, and Article 7 on Unsolicited bulk electronic communications.

c) Number 5 (Article 1.1b), which specifies that these Regulations also contain provisions applicable to authorized operating agencies, aligns the Regulations with number 38 (Article 6) of the ITU Constitution and thus does not change the scope of the Regulations regarding the entities to which they apply. Furthermore, the area covered by the Regulations, as defined in article 1, has not been changed. Thus the scope of the Regulations has not been changed compared to the 1988 version of the Regulations.

d) Resolutions contained in the Final Acts of the World Conference on International Telecommunications (Dubai, 2012) are not part of these Regulations. They do not require any ratification, acceptance or approval by individual Member States, and they are not inherently binding on Member States. We make this declaration especially in the context of Resolution 3 on Fostering an enabling environment for the greater growth of the Internet. In doing so, we reiterate our support for a multi-stakeholder approach to Internet governance. Furthermore, we state that the cited Resolution cannot and does not change the mandate of the ITU.
