

Expert Group on Reform of the International Telecommunication Regulations

Draft Summary Report of Working Group B

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The task assigned to WGB is “to progress the review of basic instruments with a view to meeting the current and future needs of Member States, either by revising or integrating the ITRs”.

Please note two key points in this remit:

- 1) The criterion is to meet the needs of "Member States", because it is Member States alone who take responsibility for any instrument at treaty level, such as the ITRs. Our group comprises a balanced group of experts, as required by the Plenipot Resolution, so as to ensure that the views of ROAs are taken into consideration.
- 2) Options are to be considered either to revise the ITRs, or to integrate the elements of the ITRs into other appropriate instruments.

A draft work plan agreed by the first meeting of the Expert Group and attached to its report (as Box 1) provided for work to proceed in parallel on the Revision option (3.1) and the Integration option (3.2). Contributions received by the Working Group have generally addressed one or the other of these approaches:

- 3.1 Revision option (Salma Jalife, Nestor Virata and Y. Grin); or
- 3.2. Integration option (Richard Thwaites, Anne Lambert, Bernard Rouxville, and T. Matsudaira)

Herbert Marks' contribution counselled "No immediate action" on the grounds that current arrangements were not causing insuperable problems, and that hasty change could result in unforeseen negative consequences. He suggests that “time and resources could be best allocated to educating Member States and Sector Members on the regulatory options which will better accommodate the variety of regulatory regimes, the changing patterns of national regulation and the evolving structure of telecommunications markets”.

This contribution is taken as a valid cautionary note that should be kept in mind while assessing the active options 3.1 and 3.2 and in particular the scope of any proposed additional areas of regulation.

Revision Proposals:

Contributors have put forward a number of issues that might be considered for inclusion in future ITRs (or equivalent instruments). These contributions were not discussed in any detail within the Working Group. They are listed in Appendix 1.

Integration Proposals:

Contributions advocating integration of the ITRs with existing instruments supported an approach which would move a small number of key government-level commitments into Constitution or Convention or the Radio Regulations, and devolve the remaining corporation-level principles and standards into ITU-T Recommendations. A number of members suggested items that are currently in the ITRs that should be considered in this way. A consolidated table of the proposals is attached at [Appendix 2](#).

Article 6 & Appendix 1 of the ITRs

Mr Matsudaira prepared a paper on Article 6 & Appendix 1 of the ITRs, which draws attention to the major inconsistencies between the ITRs and today's real market in the area of accounting and settlement rates. He points out that, if Article 6 & Appendix 1 were to be transferred to ITU-T Recommendations, the Convention would need to be amended to reflect the changes. Mr Matsudaira's contribution is at [Appendix 3](#).

Future Work

Stage 3.3 of the work program requires our Working Group to assess how to handle proposals that cannot be met by the minimalist integration approach. This means that we need to consider what process should be used to deal with a wide range of suggestions for new areas of regulatory agreement that have been proposed. Several procedures could be considered:

- 1) Add new articles or appendices to existing ITU treaty-level instruments other than the ITRs (that is, extending the integration approach to accommodate the new elements); and/or
- 2) Create new instruments such as MOUs, Resolutions or Recommendations to embody the new elements; and/or
- 3) Follow the established processes to revise the ITRs through a WCIT.

Members of the group supporting an Integration approach consider that future work should focus on detailed development of the texts and procedures that would transfer the essential treaty-level elements of the ITRs to other ITU treaty instruments, and that would transfer the industry-level elements of the ITRs to non-treaty instruments.

Proposals for new areas of regulation would require further development and refinement, with decisions taken on which areas were really appropriate for government-level regulatory agreement. Priority should be given to identifying items that could gain broad support for adoption at treaty level - ie. that require and could obtain treaty commitment from Member States. Other non-treaty procedures can be recommended for proposed items that may be agreeable at non-treaty level among ITU Member States and Sector Members.

Mediator's Note

While all proposals may have merit in meeting a need of all or some of the ITU membership, care needs to be taken in proposing appropriate mechanisms that will be effective in meeting that need. A major purpose of reviewing the ITRs is to restore credibility to the ITU within its field of competence. The ITRs currently are not fully respected, because they contain provisions unacceptable to many Member States. Most contributors to this Working Group have recognised that, in the new telecommunication environment, many Member States consider it inappropriate to undertake direct responsibility for particular commercial arrangements between telecommunication businesses in a global marketplace.

Any proposals that seek to bind all ITU Member States to more rigorous intervention in market arrangements are likely to be rejected by a significant number of Member States, and therefore will not achieve their purpose. On the other hand, proposals which have a strong basis of voluntary support among Member States, Sector Members and ROAs may find appropriate expression through the ITU in the form of treaty instruments, MOUs or Sector Recommendations. If the nature of the instrument is well matched to the purpose, it will enhance the credibility of the ITU as a global forum for consensus in international telecommunication matters.

Richard Thwaites
Mediator
Working Group B

Revision proposals:

The contributions proposed several issues that a future ITRs (or equivalent instrument) might seek to address. These have not been discussed in detail by the group, and are recorded as proposed:

- a mechanism to resolve disputes and apply sanctions
- creation of a permanent group to deal with definitions
- regulation to achieve satisfactory quality of service
- defining universal access and its technical and operational requirements
- different treatment of different types of networks with different flows of traffic
- transitional arrangements towards cost orientation
- regulation of competition
- regulation of content
- regulation of Internet traffic
- regulation of E-commerce
- regulation of new and emerging services
- interoperability procedure for new services
- socialised international telecommunication services
- socialised pricing arrangements for international telecommunication services
- arrangements for different categories of Members
- reasons and procedures for suspending services
- how information is to be disseminated
- special arrangements for developing countries
- provisions for international telecommunication mutual relations procedure based on WTO/GATS principles
- regulation of operators of global systems of communications

Integration Proposals**(Preliminary analysis of options that would meet current ITR purposes)****ITR Articles already covered by the Constitution or Convention**

Preamble	covered by the Preamble to the Constitution
Article 1.1a	covered by Article 1 of the Constitution
Article 1.1b	covered by Article 42 of the Constitution
Article 1.7a	covered by preamble to the Constitution
Article 2.1	covered by Constitution Annex 1012
Article 2.2	covered by Constitution Annex 1011
Article 2.3	covered by Constitution Annex 1014
Article 2.4	covered by Constitution Annex 1006
Article 3.1	covered by Articles 38 and 1.2c of the Constitution
Article 3.2	covered by Article 1.1c of the Constitution
Article 4.2	covered by Articles 1 and 38 of the Constitution
Article 5.1	covered by Articles 40 and 46 of the Constitution
Article 5.2	covered by Article 41 of the Constitution
Article 7	covered by Article 35 of the Constitution
Article 8	covered by Article 5.1 o and p of the Convention
Article 9	covered by Article 42 of the Constitution

ITR Articles covered in Recommendations

Article 2.7	covered by Recommendation D.000
Article 2.8	covered by Recommendation D.000
Article 2.9	covered by Recommendation D.000
Article 2.10	covered by Recommendation D.000

ITR Articles that could be covered in the Constitution or Convention

Article 1.2
Article 1.3
Article 1.6
Article 1.7b
Article 1.8
Article 2.5
Article 2.6
Article 3.4
Article 4.1

ITR Articles that could be covered in Recommendations

Article 1.5
Article 3.3
Article 4.3
Article 5.3
Article 6

ITR Articles that become obsolete under the Integration Option

Article 1.4
Article 1.7c
Article 10

Expert Group on the International Telecommunication Regulations

Working Group B

Considerations on ITR - Article 6 & Appendix 1 -

Mediator: Tsunekazu Matsudaira

1. General

- 1.1 One of the major “inconsistencies” between the ITRs and today’s “real” market is said to be the area of accounting/settlement. The ITRs take it for granted that any international telecommunication service offered to the public is provided jointly between two terminal carriers, with an involvement of transit carrier(s) where necessary. Because a service is jointly provided, there has to be a mechanism for apportionment of revenue. The wisdom of the industry has devised the accounting rate system and the settlement rules to enable what would otherwise be very complicated multinational financial transactions. The reality in the market today is that it is no longer required to provide an international service on a joint or a bilateral basis. “Self correspondence” or unilateral operation is possible. There are so-called “global transport providers”. Rather than jointly providing service on a 50:50 basis, carriers with originating traffic now have the choice of selecting the least cost route, and to trade volumes of traffic. Terminating carriers vigorously compete to provide termination and transit carriers strive to hub and re-originate traffic. Telephone minutes and routes have become commodities. The situation is far from that contemplated when the current ITR were written.
- 1.2 ITU-T Study Group 3 has recently adopted a substantial revision of Recommendation D150 (New system for accounting in international telephony). In an effort to respond to the market realities as summarized above, D150 now allows carriers to elect to use “other procedures” (than, for example, the conventional accounting revenue division procedure or the newly introduced termination charge procedure) where such procedures are more suited to the nature of their relationship.
- 1.3 On the other hand, although the conventional accounting/settlement procedures based on the ITRs have become outmoded, it should also be well recognized that for still a great majority of worldwide international telephone traffic today, the traditional arrangement is very much alive and it may well be for several more years. In fact, the greatest problem with the traditional accounting/settlement rate system is the level of the rates, rather than the system itself, although it may be said that the system is to blame for the high rates. Therefore, if the rates become more market-orientated, the system may well be sustained for much longer time.

The market forces (plus some effect of the US benchmarks) have had strong influence on the level of the actual rates in recent years so that they are declining at a rapid pace. Study Group 3, after adopting the first version of Recommendation D140 (Accounting rate principles for international telephone services) in 1992, has striven to meet the objective of attaining cost-orientated accounting rates, including the fierce debate during the recent several meetings over the adoption of the proposed Annex E to that Recommendation which was developed by the Focus Group. However, whether partly as the result of such efforts or not, accounting rates are falling down. For example, an ITU survey shows that for relations which had accounting rates revised, the average decline from 1998 to 1999 was 34.62 %.

2. What to do with Article 6 and Appendix 1 of the ITRs

2.1 As “officially” recognized by the amended Recommendation D150, there are now several procedures for accounting and settlement. The relevant parts of the ITRs basically elaborate only on the conventional “accounting revenue division procedure”. That seems to mean that there are mainly two choices as to the way forward: a) to incorporate the principles of other possible procedures into the ITRs, or b) to drop the present Article 6 and Appendix 1 to a D series recommendation, with necessary modifications and/or deletions. The choice would certainly depend also on the fate of the ITRs as a whole. However, given that the process of accounting and settlement for international telephone and other relevant services has now become much more if not entirely commercial in nature, it is doubtful if an international treaty status regulations are required, and for this reason, the mediator believes that the option b) is more realistic.

3. The issues

3.1 As already recognized through initial analysis by the Expert Group, Article 6 as well as Appendices 1, 2 and 3 were drawn up and included in the ITRs following the requirements of Articles 36, 37 and 38 of the Convention. These articles require that a) provisions regarding charges and free services, b) provisions regarding the rendering and settlement of accounts and c) the definition of the two monetary units, be set forth in the ITRs. Therefore, if Article 6 and Appendix 1 (as well as Appendices 2 and 3) are to be transferred to recommendations, the Convention needs to be amended. Indeed, at WATTC-88 itself as well as at meetings of PC/WATTC, there were already arguments in favour of dropping the principles of charging, accounting and settlement to D series recommendations. However, the requirement imposed in the Convention, as shown above, overruled. This issue should be considered within the whole context of the convergence approach.

3.2 In addition to the issue of legal consistency explained above, there is the issue of substance. Although there are several “escape” clauses such as “unless otherwise agreed” in the various provisions, Appendix 1 in particular sets out concrete rights and obligation of administrations and ROAs in areas such as the establishment of accounts and the settlement of balances of accounts. To give an

example, paragraph 2.2 of Appendix 1 provides: “The accounts shall be sent as promptly as possible and, except in cases of force majeure, before the end of the third month following that to which they relate.” Another example is paragraph 2.4: “any administration* has the right to question the contents of an account for a period of two calendar months after the receipt of the account ...”. Accordingly, if these provisions become Recommendations which have no binding power, there may be problems in the nature of commercial contracts between carriers worldwide because it can be said that the ITRs have effectively substituted the need for individual contracts in bilateral relations. The mediator suggests that Study Group 3 be called upon to examine the actual situation in the world as to the validity of Appendix 1 in this context and the possible consequences of converting the ITRs text to a recommendation text.

- 3.3 This paper has not covered the host of substantial questions raised in Document ITR/03, as it is understood that these basic issues are to be taken up in the second stage of the whole exercise.

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