

**EXPERT GROUP ON THE
INTERNATIONAL TELECOMMUNICATION
REGULATIONS**

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**COMMENTS FROM SALMA JALIFE - MEXICO TO THE EXPERT GROUP OF THE
INTERNATIONAL TELECOMMUNICATION REGULATIONS**

First of all let me thank Art Levin, Tim Kelly and Saburo Tanaka for the hard work they have done to put together documents ITR/03 and ITR/03a to ease our understanding and be able to elaborate on our main points of view to provide the Secretary General with the necessary elements to fulfil its mandate given by Resolution 79 of the Minneapolis Plenipotentiary Conference.

The views expressed in this paper are those of the author and does not necessarily reflect the opinions of the ITU Member State: Mexico.

To facilitate a fast distribution of this paper I will use the English language. To provide an easy understanding of my comments and proposals I will follow the same structure that was presented in document ITR/03 by the Secretariat.

PART A. LEGAL, ECONOMIC, COMMERCIAL AND OPERATIONAL ISSUES

As a firm believer of the important role ITU has played in the past and present of telecommunications regulation and related issues, I would like to begin by stating that ITU has to take a preponderant role for the present and future of International Telecommunication Regulations (ITR), and that other organizations such as WTO, OECD, APEC should follow what is discussed and agreed within ITU and not the other way around.

It is true that WTO has anticipated to the work of this Group of Experts, by concluding in 1997 the negotiation of the basic telecommunications agreement where close to 70 countries have already committed to some type of liberalization of their telecommunication service markets. However, if ITU takes advantage of the lessons learned from those negotiations and anticipates to the next round of negotiations, by providing the definitions and principles for the future of ITR, and prepare that could be discussed and agreed by more than 180 State Member and a considerable amount of representatives of the private sector, then I will be sure that the role of the ITU would be preponderant.

With this in mind I would urge you to consider that, regardless of the constraint stated in Article 48 of the Convention, where it says that World Conferences on International Telecommunications (WCIT), shall be held upon a decision of the Plenipotentiary Conference and that Article 25 of the Constitution states that the WCIT is the legally designated ITU structure for revising the ITRs, there is an urgent need to adapt the international regulatory framework of telecommunications to the dynamic changes of the sector. For this reason I would propose the following:

1. Use the WTO agreement only as a reference and try to improve its weaknesses

The GATS principles, the WTO agreement on basic telecommunications as well as the Reference Paper can serve as inputs to the discussions of how we will perceive future definitions and principles for the ITR. The current structure of the WTO agreement on basic telecommunications is very difficult to read and therefore to arrive to the same interpretation given by the country when reading the different country lists of commitments. The risk of misinterpretation and misleading the real commitment of a country is high because of the lack of proper definitions of services that are included or not in the list of commitments. This is the case of the word Internet, it appears in very few lists and it is not defined

throughout any document related to the WTO agreement.

Recommendation: ITU and specially this Expert Group, when analyzing the ITR, should take into consideration these omissions.

2. ITU should update the definition of telecommunication services. ITU should be used as the reference for telecommunications definitions.

The UN code of products used as a reference to describe telecommunication services on the WTO agreement has not been updated and it was used on the list of commitments of each country.

There is also, at least in the Spanish speaking countries, a different definition for the same service or product. As an example, the definition of private circuit, leased circuit or private link as they were literally translated into English may have the same or different meanings from country to country.

Recommendation: A permanently update of a uniform code of products and services provided by ITU is necessary to avoid misinterpretation.

3. The Secretary General should consult with the Legal Advisor to the ITU whether its possible or not to celebrate an extraordinary WCIT before the next Plenipotentiary Conference.

Considering the results of the work done by the Expert Group on the ITR and in consultation with the Director of the TSB, the Secretary General should prepare a draft proposal including all the issues that need to be addressed when discussing the modification of the ITR on the next WCIT. This draft proposal can be informally discussed and redrafted on the next Council Meeting.

In the meantime, the Legal Advisor to the ITU can analyze if there is a legal alternative that can speed up the process of updating the ITR.

Recommendation: Advance as much as possible on the analysis of the necessary changes to the ITR to have as much input as possible from the ITU Members, and be prepared to make an extraordinary WCIT if feasible.

PART B. EXAMINATION OF INDIVIDUAL PROVISIONS OF THE ITRs

Preamble and Article 1. Purpose and scope of the regulations

- *Whether references to telecommunications services and systems of transport are too narrow or too broad*
- *The extent to which the references encompass the Internet, Internet telephony and electronic commerce applications*

The concepts of telecommunications services and systems of transport are useful for the purposes and scope of the regulations, however, taking into account the evolution of services and systems of transport that are available today, it is important to make a clear description of their differences and how is the regulation going to address each one.

For example, there are two systems of transport that are important to differentiate:

- a) Those who are traditional systems of transport such as a telephone network that carries voice over a circuit switched network. This type of system of transport is currently related with international interconnection between carriers of different countries and the method of settlement of termination of traffic between one network to the other are mainly the bilateral negotiation of accounting rates.
- b) Those modern transport systems whose background are data networks that are completely digital and carry voice, data or video over packet switched networks using modern protocols. This type of system of transport do not necessarily have an interconnection agreement with carriers of different countries, the

cross border connection is made over a private leased line and the method of settlement depends on the bandwidth and usage of that pipeline.

Telecommunication services have also evolved:

a) Value added services should be redefined. For example, Internet used to be considered as a value added service. Today, it is no longer true, as its protocol is being updated and adapted to voice and video services, and therefore it can be better conceived as a part of the transport system rather than a value added service.

- *Whether there is a need to more precisely state the types of services that are included or excluded from the ITRs.*

An exhaustive list of types of services can be most helpful for the purposes of simplifying the scope of the regulations, mainly when national regulations tend to resolve those issues not covered or ambiguously covered by the international regulations. It could be advisable to include on the ITR provisions that allow ITU to continuously update this list to be able to keep at the same pace as the dynamics of telecommunications and technology innovation.

In Mexico we regulate the services we do not regulate technology. If this is the same direction of ITU, ITR will have to address how service providers that use new technologies for traditional services such as voice, will be imposed the same regulation as the current service providers that use traditional systems of transport, or should a new regulation be put in place to allow non discriminatory provisions for different technologies or to avoid new systems being in a better position (with less regulatory barriers) than the old ones, just because of the innovation of technology. For example, avoiding the accounting rate system for international traffic when providing voice over Internet.

- *Whether an how the reference to services offered to the "public" and the definition of that term excludes private telecommunications services and whether such services should continue to be excluded from the Regulations.*

Private networks should be excluded from the regulations. However it should be clearly stated that private networks are not allowed to transport public traffic of third parties. This is to avoid private networks bypassing public networks, as long as they remain private. Flexibility should be given for private networks to become public networks, only then, regulation will be applied.

- *The suitability of the rather ambiguous reference in 1.3 to facilitating the need for interconnection, given the importance that that issue has assumed over the past few years.*

A clear reference to the use of open architectures can avoid this ambiguity. However as stated by the ITR, ITU-T recommendations and instructions should not be mandatory but to the greater extent practicable.

- *To what extent could or should considerations of national sovereignty permit Member States to not apply or enforce the provisions of the ITRs.*

The ITRs should only address general principles that can be enforced by Member States. In most cases, bilateral agreements will address and resolve sovereignty concerns of both parties. Therefore, wording such as the one stated in Article 1.5 is highly recommended when updating the ITRs.

For the case of international routes, multilateralism cannot apply because each and every route has different characteristics. However, if similar routes with similar traffic flows are treated differently then MFN principle can apply. Otherwise what we are trying to imply is that no matter where the traffic comes from the termination rate should be the same for a given country. This principle could apply if we recognize that each country will have a different termination tariff depending on the stage of development of their telecomm infrastructure, the average cost to terminate a call in their territory etc. Therefore, several issues have to be agreed to be able to apply multilateral principles to bilateral agreements.

- *Should provision be made in the Regulation for a mechanism to resolve disputes*

It is highly recommended. Arbitrary and unilateral measures such as the "Benchmark Order" that the FCC imposed on all countries outside of their national jurisdiction could be stopped or avoided. Several Administrations and private companies tried to stop the extra territorial regulation of the FCC with

unsuccessful results, when the US judicial power granted the reason to the FCC.

ITU has to change its role and become an impartial International arbiter. This change of role may resolve the issue of *"should the ITRs be strengthened to have stronger legally binding effect"*. If general principles are established as legally binding and a proper mechanism for arbitration is put in place always reinforcing those principles stated on the ITRs.

- *What are the appropriate jurisdictional links for an administration to impose a licensing requirement or obligation under the ITRs or to impose national law or regulations*

Even though globalization requires further elaboration, as services are provided in a geographical territory, all service providers should be treated the same way. Therefore, national treatment should apply to all service providers providing services in the same territory. This principle guarantees no discrimination in any country and consistency on the application of national law.

- *Should either the Radio Regulations or the ITRs have precedence over the other and, if so, which one should have precedence*

Section 1.8 from my point of view is perfectly correct and should not be modified.

It is reinforcing the importance of the Radio Regulations for radiocommunications and in no way ITRs pretends to go against what the Radio Regulations already regulate.

Article 2. Definitions

As mentioned in Part A, definitions in the telecommunications sector are as dynamic as technology innovation. It is necessary to create a permanent group that deals with definitions and try to get as much consensus as possible from the ITU Members in order to update periodically the definitions. Also ITU should be the only organization to be consulted on telecommunications definitions for products and services to avoid misinterpretation. Mexico would be willing to participate in this group.

Definitions should be as broad as possible but also as precise as possible to avoid ambiguities. Definitions should also cover the latest updates on telecommunications services and systems of transport . This update can clarify what can be done and what are the obligations for new services and systems of transport, instead of trying to fit them in definitions that might not be the same when applying national laws.

As I mentioned before, I believe that Internet is no longer a value added service, and the term value added service might have to be redefined because the old definition of value added services no longer applies, value added services have become in certain circumstances basic services or the only service provided by an operator.

Article 3. International Network

Cooperation to ensure quality of service

Even though consumers are willing to sacrifice quality in return for a lower price, international and national regulation should continue to oversee that quality of service is satisfactory. I completely disagree with the comments made by the Secretariat, unless we as regulators impose some level of quality, in the near future we will be invaded with very low quality services. Take the example of international calls, how many of you have had in the past few weeks very good quality communications? My work depends on international calls and e-mails, most of the calls I receive or make either have noise or are highly compressed and the delay is noticeable as if it was a satellite communication. My e-mails sometimes fail to arrive to their destination or e-mails sent to me never arrive. **This is not unique to developing countries,** most low quality compressed calls come from industrial countries.

If we relax the obligation of a satisfactory quality of service even for lower prices, communications will be much worse in the near future and we will be failing to protect the consumers' interests.

As stated by the Secretariat the debate over any change to Article 3 is likely to politically-charged. It is important to understand that countries are in a different stage of opening to competition. It would be feasible to change this article if everybody had the stage of development of their network as industrialized countries and a high penetration rate. Also some countries have just privatized their national monopoly, they have not even open to competition. Therefore, unless we find a solution that would be reasonable to all, I prefer this

Article not to be changed.

Article 4. International Telecommunication Service.

I will only comment on the issue of type approval. In the case of Mexico there are national standards and norms that follow ITU-T recommendations on type approval for terminal equipment connected to the public telecommunications networks, if this is the case of all countries, then the reference to terminal equipment could be eliminated.

Article 5. Safety of Life and Priority of Telecommunications

No comments.

Article 6. Charging and accounting

Again as we see differences from one country to another on the stage or level of competition we cannot change the rules to a completely open market. As was stated in the Second World Policy Forum a transition must take place to allow administrations to readjust their financial systems (those who have not finished rebalancing may have difficulties) before the tariffs are oriented to costs. All ITU Members agree that tariffs should be oriented to costs, but also it has been widely discussed and agreed in Study Group 3 that a transition for developing and least developed countries should be established, unfortunately 5 industrialized countries have opposed to this transition, that is why it was not finally approved last year.

On the other hand there is no discrimination as stated by the Secretariat, we cannot consider different types of networks with different flows of traffic to have the same treatment. With different conditions the cost of providing a specific telecommunications service with all the constraints mentioned in the previous paragraph would definitely differ.

Article 7. Suspension of Services.

No comments.

Article 8. Dissemination of Information

No comments.

Article 9. Special Arrangements

Special arrangements will not allow for MFN before the transition period mentioned in the comments of Article 6 ends. If we look at international trends on accounting rates historically they have been going down. And each country has a different stage of development so even though accounting rates will continue to go down, it will not be at the same pace in all the countries. Countries cannot abruptly change the way things have been done in the past, as you all may remember, the profits from incoming calls for most of the developing countries were used to help expand the local network and to purchase equipment. Recent practices mainly established by those countries who have opened to competition since long ago, no longer support cross subsidies between local and long distance services. To be able to react to these changes countries have to establish policies for rebalancing at the same time they are privatizing and liberalizing their markets. Most of them are in the early stages of privatization and opening to competition, do not expect to see prices fall at the levels that other countries that have opened more than 10 years ago have reached. It is going to be fast but again, a transition period should take place.

To comment on how this article can change, I have two suggestions:

- a) The transition should be reflected in the ITRs.
- b) The new or future services could be included in a different section if treated in a different manner.

Article 10. Final Provisions

No comments.

I would send additional comments as the work of the Expert Group develops.