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# EXPERT GROUP ON THE INTERNATIONAL TELECOMMUNICATION REGULATIONS

GENEVA — FIRST MEETING — 8-10 NOVEMBER, 1999

## REVIEW OF THE INTERNATIONAL TELECOMMUNICATION REGULATIONS

*By Resolution 79, the Minneapolis Plenipotentiary Conference instructed the ITU Secretary-General, in consultation with the Director of the TSB and a balanced group of appropriate experts appointed by Council:*

> *"1 to undertake an exploratory study of the evolution of the respective roles and responsibilities of Member States and Sector Members (or recognized operating agencies) as regards the regulation and operation of international telecommunication services;*
>
> *2 to consider the wider context of multilateral treaty obligations that affect ITU Member States and those they regulate;*
>
> *3 to review the extent to which the current needs of Member States are reflected in the basic instruments of the Union and in particular the International Telecommunication Regulations;*
>
> *4 to report to the Council on the above points, by no later than the year 2000 …"*

*This commentary on the International Telecommunication Regulations (ITRs) has been prepared to assist the members of the ITRs expert group ahead of their first meeting in Geneva, 8-10 November 1999. It has been drafted by Art Levin, Tim Kelly and Saburo Tanaka of the Secretariat and is designed to stimulate discussion and raise questions. Part A covers legal, economic, commercial and operational issues. Part B provides an article-by-article examination of the ITRs. A separate document (ITR/03a) summarises the main questions for discussion raised in this paper. The views expressed in this paper are those of the authors and do not necessarily reflect the opinions of the ITU or its membership.*

# PART A: LEGAL, ECONOMIC, COMMERCIAL AND OPERATIONAL ISSUES

## 1. General Legal Issues

### 1.1 Introduction

The original Telegraph Regulations date back to the nineteenth century. The current ITRs were adopted in 1988 in Melbourne and appear in the Final Acts of the World Administrative Telegraph and Telephone Conference (WATTC-88). The 1988 Regulations abrogated and replaced previous, separate treaty texts for telephones and telegraphs (the 1973 Telegraph and Telephone Regulations). The ITRs are a binding treaty instrument and form part of the Administrative Regulations of the ITU (CS/31).[1] Under the instruments presently in force, the ITRs formally ***complement*** the Constitution and Convention (CS/31).[2]

### 1.2 The Procedure to Revise the ITRs

The World Conference on International Telecommunications (WCIT) is the legally-designated ITU structure for revising the ITRs. Article 25 of the Constitution states that such Conferences may completely or partially revise the ITRs, while CS/42 lists the WCIT as part of the structure of the Union.

Unlike the other main conferences and assemblies of the ITU, there is no prescribed frequency for the holding of a WCIT (see CV/Art. 3). Instead, number 48 of the Convention provides that a WCIT shall be held upon a decision of the Plenipotentiary Conference. Thus, it is the Plenipotentiary that must formally decide to convene a WCIT, and this would mean that the earliest a future WCIT could be held would be after the next Plenipotentiary Conference in 2002.

### 1.3 The role of a Plenipotentiary Conference with respect to the ITRs

As stated above, CS/146 clearly provides that it is the mandate of a WCIT to partially or fully revise the ITRs, seemingly precluding a Plenipotentiary from engaging in such a task. The Plenipotentiary Conference does have the responsibility of determining whether to convene a WCIT.

On the other hand, the Plenipotentiary Conference has the power to amend the Constitution and Convention. For example, the Plenipotentiary could decide to incorporate the revised substance of the ITRs into the text of the Constitution or Convention. This act would have the effect of terminating the present Regulations. [3]

It might also be asked whether a future Plenipotentiary Conference could suspend the ITRs. This is theoretically possible, although the ITRs themselves contain no such provision. Under Article 57 of the 1969 Vienna Convention on the Law of Treaties (the "Vienna Convention"), the operation of a treaty may be suspended in regard to all or a particular party at any time "by consent of all the parties after consultation with the other contracting states". Thus, suspension would require that all the proper parties be contacted and give their consent.[4] Further, under Article 58 of the Vienna Convention, certain parties can suspend the operation of a treaty between themselves, but only if this is permitted by the treaty, does not affect other parties and is not incompatible with the object and purpose of the treaty. The ITRs do not contain provisions that would authorize such an action.

Since the ITRs do not contain many of the boilerplate provisions commonly found in standalone treaties, the relevant provisions of the CS/CV would apply, e.g. in the case of denunciation. However, this is not expressly stated in the ITRs.

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[1] Pursuant to CS/31, the ITRs (as well as the Radio Regulations) "regulate the use of telecommunications and shall be binding on all Members".

[2] The current instruments of the Union are the Constitution and Convention (Geneva, 1992) as amended at Kyoto (1994) and Minneapolis (1998).

[3] With respect to the effect of the termination of a treaty, see Article 59 of the Vienna Convention on the Law of Treaties (the "Vienna Convention").

[4] The differences between "termination" and "suspension" of a treaty are set forth in Articles 70 and 72, respectively, of the Vienna Convention. In brief, under Article 70, termination releases the parties "from any obligation further to perform the treaty". In contrast, under Article 72, suspension releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of suspension.

### 1.4 The Impact of Succeeding Treaties and Other Developments on the Legal Force of the ITRs

In its contribution to the Minneapolis Plenipotentiary Conference (PP-98/21), Australia suggested that national laws and "higher precedence" multilateral treaty obligations limit the ability of countries to strictly apply the ITRs. There are many facets to this question.

First, national law generally determines the relationship between treaties and national laws for a particular country. Thus, the extent to which supervening national obligations conflict with a treaty would require an examination of the legal framework in each Member State concerned. Under Article 27 of the Vienna Convention, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. On the other hand, as is discussed below, many of the obligations contained in the ITRs are expressly subject to "national law".

Second, there is the matter of determining which treaty obligation is of "higher precedence". Article 30 of the Vienna Convention generally deals with the issue of successive conflicting treaties on the same subject matter. Where the parties to a later treaty do not include all the parties to the earlier one, the later treaty generally applies to States that are parties to both treaties. However, in the case of a state party to both treaties and a state party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations (see 30.4(b).

There are a number of grounds under the Vienna Convention on which the operation of a treaty may be considered to be terminated or suspended. In addition to the conclusion of a later treaty as discussed above (see also Article 59 of the Vienna Convention), these include: breach of the treaty (Art. 60); supervening impossibility of performance (Art. 61); and fundamental change of circumstances (Art. 62). It would be difficult to conclude that such a showing has been made with respect to the ITRs.

Finally, some would argue that customary international law recognizes that a treaty may be amended or modified, or even rendered obsolete, by the tacit consent of the parties, which is shown by a pattern of consistent and accepted practice by the parties at variance with the provisions of the treaty. Here too, it would be difficult to conclude at this point that such a showing has been made with respect to the ITRs.

## 2. Implications of the WTO Agreement on Basic Telecommunications

As discussed above, Articles 30 and 59 of the Vienna Convention address the effect of successive treaties on the same subject and the termination or suspension of a treaty implied by conclusion of a later treaty. An earlier treaty may be considered terminated if all the parties conclude a later treaty on the same subject matter and there is an intent in the later treaty that it should govern and if the provisions of the later treaty are so incompatible with the earlier treaty that it cannot be applied. Indeed, treaties are commonly terminated by the explicit terms of a new agreement negotiated and concluded by the parties to the original instrument.

It would be difficult to conclude that these Articles of the Vienna Convention apply with respect to the Agreement reached in 1997 at the World Trade Organization (WTO); (formally known as Protocol 4), since there is an incongruity of the Parties to the ITRs and Protocol 4. Many more states are party to the ITRs than to the WTO agreement.[5] In addition, Protocol 4 does not formally address its relationship to the ITRs. Moreover, only a few provisions in Protocol 4 are arguably in conflict with the ITRs (see discussion below).

On the other hand, some may consider that the WTO agreement could serve as the springboard for future development of the ITRs. In the Reference Paper that forms part of the WTO framework, the negotiating parties agreed to a set of definitions and principles on the regulatory framework for basic telecommunications. The principles in the Reference Paper include:

- competitive safeguards;
- interconnection;
- universal service;

[5] At present, 168 ITU Member States are Parties to the 1988 ITRs. Of those, approximately 70 have made some commitment under the WTO agreement on basic telecommunications.

- licensing criteria;
- independent regulators, and
- allocation and use of scarce resources.

However, these principles are stated in very general terms, and one possible role for the ITRs would be to provide more definition and guidance as to the requirements and obligations underlining these agreements, as well as to spread these principles to the majority of ITU Member States that are not parties to the WTO agreement. With the increasing globalization of telecommunications markets and services, the need for international consensus on these principles is heightened.

## 3. Economic Context of the International Telecommunication Regulations

The ITRs cover the international telecommunications business. In 1998, that business was worth some US$ 64 billion, or 8.9 per cent of the overall revenues of public telecommunication operators around the world. Since the ITRs were last revised in 1988, the number of minutes of international traffic has grown from 22.3 billion minutes to just over 90 billion minutes, a compound annual growth rate of 15 per cent per year (see Table 1).[6] On the face of it, therefore, there is little wrong with the industry and those who drafted the current ITRs might take some of the credit for this period of continued expansion.

However, this is only a partial story. It would be more accurate to say that the growth in the industry has been achieved *despite*, rather than because of, the existence of the ITRs. Nevertheless, if the ITRs are not actually harming the continued growth of the industry and the provision of ever cheaper international telephone calls to consumers, there would seem little reason to change them.

But within the last year or two, it has become apparent that the industry is changing in a number of ways which may require re-evaluation of the ITRs. Specifically, the combination of changes in market structure and technological change has intensified the search among companies active in the market for new opportunities for cost-cutting and business development. The top 20 Public Telecommunication Operators (PTOs), ranked by volume of international outgrowing traffic, saw their revenues fall by 9 per cent during 1998 despite a 7 per cent growth in traffic. In particular, the significant increase in the level of competition in a number of markets, following the implementation of the WTO basic telecommunications agreement and the EU telecommunication services directive regarding the implementation of full competition (96/19/EC), has prompted a price war. This has meant that PTOs need to grow their traffic even faster in order just to retain their current revenue levels. In fact, the level of growth in traffic volume actually slowed in 1998.

Globally, revenues for international voice/fax services have been in decline since 1996. This slowdown may well be because a significant share of traffic is not being measured by conventional means, for instance if it is passing outside the accounting rate system or if it is being routed via the Internet. In 1998, the volume of Internet traffic exceeded the volume of international voice/fax traffic for the first time.

A further significant structural change which has occurred since 1988 is the increasing separation of operational and regulatory functions. Many of the provisions of the ITRs are addressed to administrations*[7], without precision as to what this refers. Today, distinctions between policy-making, regulatory and operational roles are critical in many ITU Member States. PP-98 Resolution 79 specifically calls upon the Expert group to undertake a study of the *evolution* of the respective roles and responsibilities of Member States and Sector Members.

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[6] For a more detailed description of the international telecommunications market, please see ITU/TeleGeography Inc., "Direction of Traffic, 1999: Trading Telecom Minutes", 340pp, available for purchase from the ITU website at: http://www.itu.int/ti/.

[7] In all but two references in the ITRs to "administrations", a footnote asterisk is added to say "or recognised private operating agency(ies). The same convention of adding an asterisk is used in this document.

**Table 1: A changing world picture**

*Selected indicators of the changing status of the international telecommunications business, at year-end 1988 and 1998*

| *Indicator* | *1988* | *1998* | *Comments* |
|---|---|---|---|
| Minutes of int'l traffic | 22.3 billion | 91 billion | 15 % CAGR, but recent slowdown |
| Revenue from int'l traffic | US$27 billion | US$64 billion | 9 % CAGR, but decline since 1996 |
| Telephone main lines | 470 million | 840 million | 6 % CAGR, with growth accelerating since early-1990s |
| Mobilephone subscribers | 4 million | 318 million | 53 % CAGR, with recent acceleration outside N. America |
| Estimated Internet users | 532'000 | 160 million | 77 % CAGR, with progressive slowdown. |
| Percentage of international traffic market open to competition | <30 % | >70 % | In 1988, three countries permitted competition (Japan, UK, USA). Now the number is over 30 countries. |
| Separate regulatory bodies | <10 | >80 | In 1999, there were more than 84 independent regulatory agencies in ITU Member States. |

*Note:* CAGR = Compound Annual Growth Rate.
*Source:* ITU World Telecommunication Indicators Database.

It is this changed market environment of greater competition, slower revenue growth, and increasing diversion of traffic to the Internet which sets the economic context for a review of the ITRs. Specifically, Articles 3 (International Networks), 4 (International Telecommunication Services), 6 (Charging and Accounting) and 9 (Special Arrangements) may require revision from the viewpoint of market evolution.

## 4. Competition policy and the ITRs

The philosophy of the ITRs emphasises *cooperation* between administrations* on both a bilateral or mutual basis as well as on a multilateral basis. One reading of this is that, because cooperation is emphasised but *competition* is not mentioned, then the ITRs are indirectly encouraging cartel-like behaviour on the part of international carriers. Indeed, recent competition policy investigations of the type carried out in the United States and Europe over, for instance, the proposed merger of BT and MCI, the actual merger of MCI and WorldCom, and the alliance between BT and AT&T, have highlighted the fact that too much "cooperation" may actually be detrimental to consumer interests. Competition policy authorities have sometimes used their control over approval of global alliances (for instance, Unisource brought together national carriers in Netherlands, Sweden, Switzerland, and formerly Spain also) as an opportunity to leverage greater competition in the domestic markets of the countries concerned.

An alternative reading is that the stated level of cooperation is actually quite limited and does not, for instance, explicitly mandate the joint-provision of service, only the elements necessary to provide service such as network quality, capacity, connectivity etc. Nevertheless, if the ITRs were to be written today, it is likely that many ITU Members would choose to redress the balance between cooperation and competition, especially in the light of the WTO agreements.

## PART B. EXAMINATION OF INDIVIDUAL PROVISIONS OF THE ITRs

### Preamble

The Preamble to the ITRs serves to place them within the context both of national law and of other ITU treaty instruments. With respect to the former, the Preamble fully recognizes the sovereign right of each country to regulate its telecommunications.[8]

The Preamble further states that the ITRs "supplement" the ITU Convention. However, at the Additional Plenipotentiary Conference in 1992, the reference to the Administrative Regulations was changed to "complementing" the Constitution and Convention.[9] The Preamble concludes with a statement of the purpose of the ITRs.

### Article 1: Purpose and Scope of the Regulations

Article 1 sets forth the basic purpose and scope of the ITRs. It states that the Regulations establish "general principles" which relate to the international telecommunication service as well as to the underlying means of telecommunications transport (1.1). Thus, it is clearly established that the ITRs apply to both services and networks for telecommunications. The right to enter into special arrangements is mentioned (1.1), although this issue is more fully addressed in Article 9. Section 1.3 indicates that the Regulations are established to facilitate global interconnection and interoperability of telecommunications facilities (1.3). This reference in 1.3 is the only mention made in the Regulations to the matter of interconnection, which has taken on great importance since 1988 with the opening of markets to domestic and foreign competition.

The Meeting may wish to discuss the following:

- *Whether references to telecommunications services and systems of transport are too narrow or too broad.*
- *The extent to which such references encompass the Internet, Internet telephony and electronic commerce applications.*
- *Whether and 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.*
- *Whether there is a need to more precisely state the types of services that are included or excluded from the ITRs.*
- *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.*

#### The Legal Effect of the ITRs

Taken together, the Preamble and Article 1 raise a number of issues with respect to the legal weight of the ITRs. There are references to both national law and to the Constitution and Convention as taking precedence. Article 1 also clearly indicates that ITU-T Recommendations are not binding, as it is specified that references to CCITT (now ITU-T) Recommendations and Instructions do not give them the same legal status as the Regulations (1.4) and administrations* are to comply, "to the greatest extent practicable", with relevant Recommendations in implementing the "principles" of the ITRs (1.6).

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[8] A reference to the sovereign right of states also appears in the Preamble to the ITU Constitution.

[9] At the time the ITRs were adopted in 1988, the constituent instrument of the ITU was the Convention adopted at the Nairobi Plenipotentiary Conference in 1982. The first Constitution of the ITU was only adopted in 1989 at the Nice Plenipotentiary Conference. Under the present Constitution and Convention, the ITRs, as part of the Administrative Regulations of the Union, further complement[ed] the CS/CV (see CS/Art.4). Under CS/32, in the case of an inconsistency, the provisions of the Constitution and/or the Convention prevail over those of the Administrative Regulations.

The ITRs are a treaty instrument, and it is specifically stated in the Constitution (CS/A4) that they are a binding instrument on all ITU Member States.[10]

Nonetheless, for a number of reasons, doubt has been cast upon the legal rigor and enforceability of the Regulations. First, there are the references in the ITRs both to national law and to the Constitution and Convention of the ITU as having a priority status. Indeed, the extent to which the reference to national sovereignty weakens or dilutes the legal force of the ITRs has been considered in some national judicial decisions.[11] Second, it has been observed that although the Regulations have treaty status, much of the terminology used in the ITRs is not obligatory and serves to lessen their binding effect. In this regard, mention can be made of the use of non-obligatory language throughout the ITRs (e.g. "should"). Assuming *arguendo* that the ITRs are retained in some form, then their place in the legal hierarchy of the ITU and its Member States needs to be carefully reviewed.

The Meeting may wish to discuss the following:

- *To what extent could or should considerations of national sovereignty permit Member States to not apply or enforce the provisions of the ITRs?*
- *What is the significance of the change made in referring to the ITRs as "complementing" instead of "supplementing" the Constitution and Convention of the ITU?*[12]
- *Should the ITRs be strengthened to have stronger legally-binding effect?*
- *In light of changes recently made to the Radio Regulations, can or should certain ITU-T Recommendations be incorporated by reference in the ITRs and thereby given binding effect? Should the language used to refer to compliance with ITU-T Recommendations be strengthened?*
- *Should provision be made in the Regulations for a mechanism to resolve disputes?*

### 1.5: Mutual Agreement between Administrations

Section 1.5 recognizes that the provision and operation of international telecommunication services is pursuant to mutual agreement between administrations. As discussed below, this emphasis on mutual agreement provides a basis for bilateral agreements on such issues as accounting rates. However, it arguably runs counter to the basic principle of the free trading system, as expressed in Protocol 4 of the WTO Agreement, where emphasis is placed on the principle of multilateralism, i.e. MFN (Most-Favoured Nation).

The meeting may wish to discuss the following:

- *Is the focus in 1.5 on mutual agreement between administrations* consistent with the World Trade Organization (WTO) principles set forth in the 4th Protocol, including that of MFN?*

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[10] See, e.g., the statement of the US Federal Communications Commission in a decision concerning call-back and its legality under the ITRs. "There is no disagreement over the relevance of international law. The United States, as a party to the 1982 Nairobi Convention and to the ITR, is subject to the obligations imposed by those instruments. As the Commission has ruled, '[the] United States Government is bound … to assure that all U.S. nationals or other entities operating within its borders obey the binding international regulations' of the ITU". In the Matter of VIA USA Ltd., Order on Reconsideration, 10 FCC Rcd. 9540 (1995) (para. 34).

[11] See Cable & Wireless PLC v. FCC, 166 F.3d 1224 (D.C. Cir. 1999) "Nor does the Order violate the International Telecommunication Union treaty regime, International Telecommunications Regulations, S. Treaty Doc. 102-13 (Melbourne 1988). Although the treaty provides that carriers 'shall by mutual agreement establish and revise accounting rates to be applied between them' *id.* § 6.2.1; *see id.* § 1.5 (same), a separate provision 'recognize[s] the right of any member, subject to national law … to require that administrations and private operating agencies, which operate in its territory and provide an international telecommunication service to the public, be authorized by that member' *id.* § 1.7(a). We agree with the Commission that '[t]he right to authorize a carrier to provide service in a given country necessarily includes the right to attach reasonable conditions to such authorization' to safeguard the public interest. **Indeed, the treaty's Preamble makes clear that 'it is the sovereign right of each country to regulate its telecommunications.'"** (emphasis supplied) (p.6)

[12] In the French version of the ITRs, which is the official text, this term was not changed.

### 1.7.a: Right of Member States to Authorize the Providing of an International Telecommunication Service to the Public

This provision states that each Member State, has the right, subject to its national law, to require that administrations* and private operating agencies which operate in its territory be authorized by that Member State. Reverting to the Preamble, this provision again raises the issue of the relation between the ITRs and national law. With the increased globalization of telecommunications services and the opening of markets to foreign competition and competitors, the jurisdictional reach of this provision may require further elaboration.[13] In addition, the explosion of service providers has led some countries to either forego licensing or employ "lite" licensing for certain types of services and many forms of private telecommunications networks are not regulated at all.

The Meeting may wish to discuss the following:

- *The practicality of licensing and authorization for transiting arrangements.*
- *What are the appropriate jurisdictional links for an administration to impose a licensing requirement or obligation under the ITRs or to impose national laws or regulations?*
- *Is the spirit of the ITRs consistent with recent decisions taken on national and regional approaches to licensing?*

### 1.7: Cooperation to Implement the Regulations

Pursuant to section 1.7.c, Members shall also cooperate in implementing the ITRs, where appropriate. In addition, Resolution No. 2, which is non-binding, also addresses this issue and provides that a Member shall consult with another Member that is concerned about the limited effectiveness of its national laws with respect to an international telecommunication service offered on its territory.

The Meeting may wish to discuss the following:

- *Is there a need for the ITRs to formally establish a cooperation mechanism or obligation in cases where a Member State is effected by services emanating from and under the responsibility of another Member State?*

### 1.8: Relation of the ITRs to the Radio Regulations

The final provision of Article 1 establishes a link to the Radio Regulations, which also form part of the Administrative Regulations of the ITU. It states that the ITRs shall apply for any means of transmission used, so far as the Radio Regulations do not provide otherwise. Therefore, this provision establishes an implicit hierarchy between the ITRs and the Radio Regulations to the benefit of the latter.

Recommendation No. 1 of the Final Acts of WATTC, which is non-binding, also addressed the application of the Radio Regulations to the ITRs. It recommends that the Radio Regulations contain correct references to the updated ITRs, so that these provisions apply to the Radio Regulations as soon as they enter into force. This Recommendation also suggests a procedure for the transitional period at that time between revisions to the Radio Regulations and the date of entry into force of the 1988 ITRs.[14]

This provision raises both procedural and substantive matters. Concerning procedure, World

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[13] See In the Matter of VIA USA Ltd., supra fn. 8, at p. 17. "Indeed, the United States declared, in the Final Protocol adopting the International Telecommunication Regulations in 1988, that we understood the ITR as a whole, and Article 1.7 in particular, to mean that we did not 'accept any obligation to enforce any provision of the domestic law or regulations of any other Member.' The United States also declared that it did not 'endorse, in any way, domestic procedures of other Members which would require approval for providers of telecommunication services … seeking to do business outside the United States of America.' These declarations make clear that foreign governments could not, simply by enacting domestic legal, regulatory, or procedural measures, require the United States to implement such measures as a matter of international law. They do not, of course, preclude us from choosing to honor a provision of foreign law or regulation where we believe it warranted by exceptional circumstances."

[14] The date of entry into force of the Melbourne instrument was 1 July 1990 (Art. 10.1).

Radiocommunication Conferences (WRCs) are held on a regular schedule (CV/24), while a WCIT must be specially convened, thus the Radio Regulations are revised much more frequently than the ITRs. Accordingly, there is no significant problem in updating the Radio Regulations to reflect changes to the ITRs, although there may be a transition period between adoption of new ITRs and a subsequent revision of the Radio Regulations.

On a substantive note, it cannot be excluded that a WRC may take a decision that is not consistent with the ITRs. Although the Radio Regulations and the ITRs have equal status under the ITU Constitution, as both are administrative regulations, section 1.8 implies a current precedence for the Radio Regulations. Thus, there may be a need to further consider the relationship between the two instruments in cases of possible conflict.

The Meeting may wish to discuss the following:

- *What would be the appropriate reference to the Radio Regulations in a new version of the ITRs?*
- *Would there be a need to make an arrangement for references to the ITRs pending any needed amendments to the Radio Regulations?*
- *Should either the Radio Regulations or the ITRs have precedence over the other and, if so, which one should have precedence?*

## Article 2: Definitions

Article 2 sets forth ten definitions for terms that are used throughout the ITRs. Six of the definitions pertain to the scope of the ITRs (sections 2.1-2.2, 2.6-2.7, and 2.8-2.9; Nos. 14-15, 21-22, 25-26,) and four of them deal with more specific issues concerning privileged communications and the internal work of the ITU (sections 2.3-2.5 and 2.10; Nos. 16-18, 27).[15]

One of the key definitions is that of "telecommunication" (no. 14), since that term sets the scope of applications of the ITRs. The definition in the ITRs repeats the one found in the Constitution and, as it is broadly stated, arguably extends to Internet applications and technology.

Another concern relates to the use of the terms that describe those operators to which the ITRs apply. In its contribution to Minneapolis (PP-98/21), Australia noted that it has become increasingly difficult to comply with the ITRs. One reason is that many countries no longer have a single dominant operating agency which can be charged with implementing the ITRs, but have licensed many operators to provide telecommunications services. Further, new national laws limit the authority of the government over such operators (e.g., over 40 new operators were licensed in the UK in 1996). Finally, in the Australian view, commitments taken under the Basic Telecommunications Agreement adopted at the World Trade Organization (WTO) in 1997 may limit the ability of administrations* to apply the ITRs strictly.

The terms "operating agency" (OA) and "recognized operating agency" (ROA) are both defined in the Constitution.[16] In addition, Article 6 of the Constitution provides that Member States are bound to take the necessary steps to ensure that operating agencies that they authorize to establish and operate telecommunications observe the requirements of the ITU regulatory instruments. Although these terms are not again defined in the ITRs, many references to "administrations" in the Regulations bear an asterisk indicating that the provision also applies to "recognized private operating agencies" (RPOAs).[17]

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[15] Other terms that are used in or that are relevant to the ITRs are defined in the Constitution and Convention. These include "Administration" (CS/1002); "Public Correspondence" (CS/1004); "Operating Agency" (CS/1007); "Recognized Operating Agency" (CS/1008); "International Telecommunication Service" (CS/1011); "Telecommunications" (CS/1012); "Telegram" (CS/1013); "Government Telecommunications" (CS/1014); "Private Telegrams" (CS/1015); and "Service Telecommunication" (CV/1006).

[16] Id.

[17] This terminology was based on the basic instrument then in force, the Nairobi Convention of 1982. In Annex 2 to the Nairobi Convention, the terms "private operating agency" (No. 2008) and "recognized private operating agency" (No. 2009) are defined. In adopting the 1992 Constitution, the Additional Plenipotentiary Conference removed the word

For definitions in sections 2.7-2.9, see discussion under Article 6.

The Meeting may wish to discuss the following:

- *Is the definition of "telecommunication" (2.1), which is similar to that in the Constitution, sufficiently broad to encompass new telecommunications technologies, including the Internet? How does it apply to value-added services?*

- *Does the definition of international telecommunication service (2.2) extend to Internet transmission? Does the reference to capacities offered between countries adequately reflect the situation where a foreign operator is licensed and operates in a domestic territory? Do the terms telecommunications "offices or stations" reflect the current environment?*

- *With respect to the definitions of "Government", "Service" and "Privilege" telecommunications, are these special categories still needed and should provisions pertaining to such services be contained in a treaty instrument? Alternatively, would they more properly fit in the Convention of the ITU?*

- *Does the definition of "international route" adequately reflect the use of packet-switched technology or the increasing use of bypass, refile and other transiting arrangements through third countries?*

- *What steps should be taken to reconcile the various definitions of OA and ROA in the regulatory instruments of the ITU? Should the ITRs apply to all operators?*

- *Is the definition of the term "Instruction" consistent with current practice in the standardization sector?*

## Article 3: International Network

The four provisions in Article 3, especially paragraph 3.3, lie at the heart of the bilateral philosophy of the ITRs. They underlie the obligation placed by ITU Members on the administrations* they regulate to *cooperate* in order jointly to guarantee a satisfactory quality of service (3.1), sufficient facilities (3.2), a mutually agreed routing of traffic (3.3) and to ensure the right of users to send international traffic (3.4). It is notable that none of these provisions is repeated in the ITU Constitution of Convention, except perhaps 3.4 which is echoed in CS Article 33 on the Right of the Public to use the International Telecommunication Service. Of the four paragraphs, only the first (3.1) nominates a role for governments in regulating administrations* in a particular way; the other paragraphs address either the administrations* directly (3.2 and 3.3), or the rights of users (3.4).

### 3.1: Cooperation to ensure quality of service.

Para 3.1 calls upon ITU Members to ensure that administrations* cooperate in the establishment, operation and maintenance of the international network to provide a satisfactory quality of service.

If the sentence had ended after the word "network", the sense would have been very different. As it is, the goal of cooperation is specifically stated as being to provide a certain level of quality. Later on, in para 3.4, it is further explained that a satisfactory quality of service means, effectively, conforming with relevant CCITT (now ITU-T) Recommendations. In the 1973 Telephone Regulations, the stated objective was to "ensure the best possible quality of service".

Recent trends in international telecommunications have arguably been towards *lower* rather than higher quality of service. Indeed, resellers of capacity make most of their profits by applying digital multiplexing and data compression techniques in order to increase the throughput of data (and therefore billable calls) on the same line. These techniques inevitably lead to some distortion of the quality of voice transmission. The evidence seems to be that consumers are willing to sacrifice call quality in return for a lower price. It could be argued that users have become inured to lower quality voice transmission as they make more use of

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"private" from the terms "private operating agency" and "recognized private operating agency," but the meaning of the amended definitions remained essentially the same.

mobilephones and IP telephony. According to this reading, the obligation on carriers to ensure a minimum quality of service is tantamount to placing a floor on the price of calls, which may not be what customers actually want. In reality, there are many different types of consumer and many different levels of service. An alternative reading is that the concept of "satisfactory" quality of service is an evolving concept (*viz.* the revision since the 1973 text) and regulators should be prepared to change the definition according to consumer demand. If sufficient *information* about the quality of service is available in the public domain, then customers can make rational choices in the trade-off between price and quality.

### 3.2: Provision of sufficient capacity

Para 3.2 calls upon administrations* to endeavour to provide sufficient telecommunications facilities to meet the requirements of, and demand for, international telecommunication services.

At the time of the last revision of the ITRs, the so-called "Plan committees" were still in operation. Within the context of the work of the Standardization sector, these groups met to pool together traffic forecasts for different routes. However, this work became increasingly difficult to carry out as more and more data was considered commercially confidential. In any case, the forecasts were often poor and were based on the presumption of direct routing at a time when traffic flows were increasingly becoming indirect (see discussion of 3.3 below). The work of the Plan committees was abandoned in the early 1990s though actual bilateral traffic data (not forecasts) continues to be collected by the ITU-D Sector and published in the ITU/TeleGeography Inc. "Direction of Traffic" report and database. The most recent edition was released on 10 October 1999 and contains bilateral traffic data for the top 20 routes of all the most significant traffic-reporting countries between 1993 and 1997 and tariff data 1995-99.

Insofar as traffic forecasting still takes place, it is carried out on a bilateral or regional basis, or under the auspices of different satellite consortia (e.g., INTELSAT, INMARSAT, GMPCS operators) and undersea cable consortia (e.g., "club cables", Project Oxygen, Global Crossing). These forecasts are not generally available in the public domain. In a competitive marketplace, the provision of capacity should run ahead of demand. Indeed, on the major routes, especially across the Atlantic between North America and Europe where there will soon be more than 60 million traffic circuit equivalents in operation, well ahead of forecast voice/fax demand. However, there may be certain instances in which capacity is insufficient:

- On certain "thin" routes, for instance those connecting small developing countries to the global network, there may be insufficient demand to justify provision, say, of a dedicated satellite earth station or cross-border link;
- When there is excessive demand at a particular location (e.g., when a World Cup is being held, or when a major news story breaks);
- The growth of Internet traffic has been generally underestimated and there are some regions of the world where capacity is insufficient, notably in developing countries and across the Pacific;
- Resellers of capacity may knowingly provide capacity which is insufficient at the busiest times of day in order to ensure that the overall traffic load is high enough to cover their costs;
- In some cases, operators may deliberately limit the number of outgoing circuits in order to maximise incoming traffic, and thereby benefit from net settlements.

It is doubtful whether there is a regulatory role in these instances, except perhaps for the first, which is an example of market failure, and the last which may deprive customers of service. It may be that countries would benefit from a more liberal approach to the licensing of gateway facilities (e.g., cable landing rights, signatory arrangements for International Satellite Organisations) in order to ensure that there are no regulatory constraints, only economic ones of the type listed above, to the provision of sufficient capacity.

### 3.3: Mutually agreed routing

This paragraph calls upon administrations* to determine, by mutual agreement, which international routes are to be used. Furthermore it states that, pending agreement, and provided there is no direct route existing between the terminal administrations* concerned, the origin administration has the choice to determine the routing of its outgoing telecommunications traffic, taking into account the interests of the relevant transit and destination administrations.

This one of the most contentious provisions of the ITRs. In the 1973 version of the Regulations, the provision ended after the first sentence with the rest of the text being afforded the status only of a Recommendation. Because the explicit requirement for mutual agreement on routes and the implicit imperative for giving priority to direct routes are widely flouted, this provision arguably undermines the credibility of the ITRs as a whole. There are several dimensions to the problem:

- From a *technical perspective*, it may not be feasible, let alone desirable, to predetermine the route to be taken by traffic. In the circuit-switched world which prevailed in 1988, there was some logic to agreeing a predetermined route, but in the packet-switched world which now increasingly prevails, the precise routing to be followed is the result of a complex set of algorithms programmed into routers which determine, at any one time, which route is optimal. Different packets composing the same message may actually take different routes before being reassembled.
- From a *commercial perspective*, the most direct route may well not be the cheapest, especially if settlement rates on that route are high. The recent trend has been towards *Least Cost Routing* whereby programmed switches automatically select the cheapest route based on available data on costs and capacity. Indeed, the development of services such as *refile*, whereby a transit provider exploits the fact that two indirect routes may be cheaper than one direct one, are indicative of the fact that direct routes are often inefficient.
- From a *user perspective*, the ability to reverse the direction of a call (call-back) in order to obtain the lowest available tariff for a particular call implies that the roles of originating and terminating administrations* might sometimes be reversed. Call-back calls are treated in most countries, for accounting purposes, as originating where they are billed rather than where they are initiated.

Many of these problems could be solved simply by deleting the phrase which gives implicit priority to the direct route. The provision would then read quite differently: it would say that ideally agreement should be reached, but if not then the sending administration has the right to choose. This would be consistent, more or less, with current market practice.

But there is a deeper problem which relates to *by-pass*. Many of the alternative routing practices that are common in the marketplace—such as refile, asymmetric transit shares, leaky PBXs, short-stopping, mobile tromboning, call-back etc—imply that one party does not actually know the true origin or route of the traffic. If the terminating administration did know, it may object because it may be missing out on potential revenue, for instance a higher net settlement if a direct route had been followed. Indeed, in the case of mobile tromboning, the distant country may simply be acting as a bouncing board to transform a domestic mobile call into an international call in order to exploit the fact that mobile interconnect is frequently more expensive than international settlement rates, where traffic is in balance.

The fear of by-pass probably means that many developing countries would object to any change to this provision as it offers at least nominal support for the principle of direct routing of traffic. A majority of ITU Member States do not permit competition in international traffic and many of them prohibit the use of international simple resale (ISR), call-back or IP telephony. Many operators also deny that they engage in refile, though the practice is more widespread than is admitted. Consequently, debate over any change to this provision is likely to politically-charged.

### 3.4: Right to use the network

Whereas Para 3.1 addresses ITU Member States and 3.2 and 3.3 address Administrations/ROAs, Article 3.4 talks of the rights of users. Specifically it notes that, subject to national law, any user, by having access to the international network established by an administration, has the right to send traffic. In earlier texts of the Telegram Regulations, the rights of Prisoners of War to access the network were specifically protected. The provision goes on to echo Article 3.1 in stating that a satisfactory quality of service should be maintained to the greatest extent practicable, corresponding to relevant CCITT Recommendations.

This provision has echoes in the ITU Constitution (CS) where Article 33 states that “Members recognize the right of the public to correspond by means of the international service of public correspondence. The services, the charges and the safeguards shall be the same for all users in each category of correspondence without priority or preference”. The CS version is the stronger of the two because it introduces the notion of non-discriminatory treatment and is not explicitly subject to “national law”, as is the version in the ITRs.

The wording in the ITRs, concerning the "right to send traffic" is somewhat vaguer than the CS reference to "the right of the public to correspond". Furthermore, there is an implicit limiting factor in the ITRs text which talks only of users who have "access to the international network". This is not present in the CS text. It is difficult to avoid the conclusion that the version found in the CS is both more inclusive and more elegant than the text in the ITRs.

### Article 3: Issues for discussion

- *What value is added in Article 3 that is not present, for instance in the CS/CV?*
- *Could Para 3.3 be revised to make it more acceptable, for instance, be deleting the phrase which reads "and provided that there is no direct route between the terminal administrations* concerned"?*
- *Would it be useful to introduce other elements, for instance limiting the potential for cartelistic behaviour among operators or providers of international infrastructure? Should elements of competition policy be introduced?*
- *Should the ITR provisions be harmonised with those of the GATS, for instance in terms of access to, and use of, public telecommunications transport networks and services on reasonable and non-discriminatory terms (GATS Telecommunications Annex)?*
- *Would it be possible, or desirable, to integrate these provisions of the ITRs into the CS/CV*?

## Article 4: International Telecommunication Service

Whereas Article 3 deals with the *network* used for transmission of international services, Article 4 deals with *services* provided over the network. Significantly, all three provisions in Article 4 are addressed to ITU Member States rather than to Administrations/ROAs directly. In other words, they relate to the regulation of international services rather than their provision. Para 4.1 deals with the issue of widening network access, Para 4.2 with cooperation between service providers and Para 4.3 with quality of service and type approval issues.

### 4.1: Extending access

Para 4.1 calls upon ITU Member States to promote the implementation of international telecommunication services and to endeavour to make such services generally available to the public in their national network(s).

It might have seemed more logical to address this provision directly to Administrations/ROAs who are actually involved in "implementing" service rather than to Members who generally only regulate it. Nevertheless, the implied universal service provision of making international services "generally available to the public" is a legitimate role for the regulator. Similarly, there may be a political role for the government to play in "promoting" the service, for instance by negotiating access agreements with countries with whom there are no direct relations.

The provisions of 4.1 are similar to 3.4 and, moreover, to Article 33 of the CS. There is also an echo of Article 1d) of the CS which states that one of the purpose of the Union, and by implication its membership, is "to promote the extension of the benefits of the new telecommunications technologies to all the world's inhabitants". However, this article does introduce an extra element, not present in the CS, by implying that the ability to make international calls, as well as domestic ones, should be widely available. In some countries, access to international service is more restricted than domestic service. For instance, only certain telephones and payphones may be used for making international calls. Similarly, in the past international direct dialling (IDD) was more limited than it is now, making international calls more expensive for those users obliged to pass via an operator.

It is worth noting what this provision does not say. For instance, it does not guarantee that calls should be private, but equally it does not suggest any limitation on the use of encryption. Indeed, there are no references in today's ITRs to restrictions on the use of secret language, which was a major source of debate at around the turn of the century when administrations* tried to limit the use of secret codes in public telegraphs in order to make typing them easier (and more lucrative) for public telegraph offices. Some language on "Secrecy of telecommunications" survives in Article 37 of the CS.

### 4.2: Cooperation in service provision

Again addressed to Members, this provision calls upon them to ensure that administrations* cooperate within the framework of the ITRs to provide, by mutual agreement, a wide range of international telecommunication services which should conform, to the greatest extent practicable, to the relevant CCITT Recommendations.

There is a close relationship between this provision and that of 3.1, which refers also to Members ensuring that administrations* cooperate. In 3.1, the cooperation is for establishment, operation and maintenance of the international network whereas in 4.2 it is for providing services. However, the two provisions diverge in the purposes of the cooperation. In 3.1, the main purpose of cooperation is stated to be to provide a satisfactory quality of service, whereas in 4.2 it is to provide a wide range of services. However, the reference to conforming to CCITT Recommendations, which repeats text found in a number of other places, implies also the requirement to maintain quality levels.

Resolution 1 of the ITRs, on the dissemination of information concerning international telecommunications services available to the public, requires the ITU Secretary-General to disseminate information supplied by Members on the range of international services available in their countries. This is carried out via the mechanism of the Operational Bulletin.

In the modern world of liberalised market entry, it is increasingly possible for single companies, or consortia of companies, to provide international services directly without the need to cooperate with others. This ability to provide service in several different countries is sometimes called *one-stop shopping*. The ability of a company to provide both legs (outgoing and termination) of a call is referred to as *self-termination*. The ITRs do not specifically recognise this possibility, but neither do they restrict it.

### 4.3: Minimum quality of service

In arguments for and against the introduction of competition, the defence of the incumbent operator has often been that allowing competition would impair the quality of the network. This argument has also been used as a trade barrier, for instance by using over-restrictive type approval procedures to restrict the import of terminal equipment. Among countries which have opened up their markets and which have liberalised the sale and connection of consumer premises equipment, there is little evidence if any that any harm has been caused. As noted above, there is a trade-off between the price of a service and its quality, and the recent trend has been for customers to opt for lower quality service at a cheaper price. It may therefore be unwise for regulators to require minimum quality of service standards (implying a minimum price) as this may not be what customers actually want.

The paragraph has four sub-clauses.

4.3a) concerns type approval of terminal equipment. At the time the ITRs were last updated, many countries operated restrictive regimes concerning type approval, but much of this has subsequently been liberalised. Many countries now operate a system of mutual type recognition whereby, if a product is recognised in one country within the system, it can be used in all of them.

4.3b) is an entreaty to Members to ensure that administrations* make “international telecommunication facilities and services available to customers for their dedicated use”. This is actually one of the more liberal and forward-looking parts of the ITRs. In 1988, CCITT Recommendations D.1 and D.6 placed quite stringent restrictions on the use of international private lines (IPLs), recommending that they be restricted, for instance, to closed user groups such as SWIFT or SITA. Recommendation D.1 was subsequently liberalised and D.6 deleted. In the form in which is it written, the current text does not place any restriction on the use of IPLs, such as resale of capacity to third parties, connection to the PSTN at one or both end etc. However, the preamble to the clause does start with “Subject to national law …”. It is notable that the earlier version of this clause in the 1973 Telephone Regulations left it entirely to the discretion of administrations* whether IPLs be made available and furthermore made the decision subject to mutual approval (both administrations* on a particular route) and subject to all other demands for service by the public having first been met.

4.3c) calls upon Members to ensure that administrations* make available “at least a form of telecommunication which is reasonably accessible to the public, including those who may not be subscribers to a specific telecommunication service”. This goes beyond the “universal service” sentiments of article 4.1

and introduces the notion of "universal access". Although it is not specifically mentioned, the "form of telecommunication" might be payphones, public call offices, public telegraph offices etc. While the wording of the phrase is vague and open to interpretation, it is nevertheless a significant part of the ITRs. It is not clear, however, whether universal access obligations would apply only to the incumbent administration or to all operators present in the market. That interpretation, like others, would be "subject to national law". It is notable that both this *universal access* clause and the *universal service* clause in 4.1 are new text in the 1988 ITRs, having no direct precedents in the 1973 ITRs.

4.3d) completes the provision with a call to Members to ensure that administrations* provide "a capability for interworking between different services, as appropriate, to facilitate international communications". This could be interpreted in two ways: interworking between different service providers (e.g., between, say an incumbent operator and its competitors, or between service providers in different countries), or interworking between different types of international service (e.g., telex, telegraph, fax, voice etc). At the time this was written, much of the technology that facilitates, for instance, interworking between voice and text-based services, or between telex and e-mail, did not exist. This is only now becoming available with services like voice recognition, voice synthesis, optical character reading etc. However, the major motivation for providing such interworking facilities should presumably be driven by market demand rather necessarily than pressure from a regulator. While there is little to argue with the sentiments expressed for encouraging interworking between services, it seems more likely that what is really intended is interworking between service *providers*. This certainly is a regulatory concern. If that was the real intention of the article, then perhaps it could be rephrased appropriately.

**Article 4: Issues for discussion**

- *What value is added in Article 4 that is not present, for instance in the CS/CV?*
- *Is the text relating to type approval (4.3a) really necessary in an international treaty? After all, as stated in the opening phrase, this is really a matter for national law and, as a growing number of countries have abolished the requirement for type approval, could the text not be dropped?*
- *Could the text on universal service (4.1) and universal access (4.3c) be expressed more elegantly, perhaps as part of the Constitution and Convention?*
- *Could the requirement on operators to make IPLs available (4.3b) and to interwork (4.3d) be expressed as a Resolution or Recommendation? Alternatively, could it be integrated into the Constitution and Convention?*
- *What is the real intention of 4.3d? Is it interworking of services or of operators? Could the word "interconnection" be substituted for "interworking"?*
- *Is it necessary to retain the repetitive mentions of conforming with CCITT (now ITU-T) Recommendations? Could this not just be mentioned once? Is it worth, for the sake of completeness referring to ITU Recommendations as a whole (i.e., ITU-D, ITU-R and ITU-T)?*

## Article 5: Safety of Life and Priority of Telecommunications

Article 5 on Safety of Life and Priority of Telecommunications derives from Article 40 and 41 of the Constitution, entitled respectively "Priority of Telecommunications Concerning Safety of Life" and "Priority of Government Telecommunications".[18] Under Article 40, international telecommunication services must give "absolute priority" to all telecommunications concerning safety, as well as to epidemiological telecommunications of exceptional urgency of the World Health Organization. Under Article 41, government telecommunications enjoy priority over other telecommunications to the extent practicable.

Section 5.1 of the ITRs adds to Article 40 of the Constitution by stating that safety of life telecommunications shall be transmitted as of right and shall, "where technically practicable" have absolute priority in accordance with the Convention and taking account of relevant CCITT Recommendations. Section 5.2 establishes a further hierarchy by providing that government telecommunications shall have a

[18] Articles 40 and 41 were not amended at the 1998 Plenipotentiary Conference.

priority over other telecommunications, except for those mentioned in 5.1. Finally, section 5.3 of the Regulations states that the priority of other types of telecommunications is contained in relevant CCITT Recommendations.

The concern with the priority of safety of life telecommunications dates from the early years of this century and this Article of the ITRs does not seem to raise any new substantive concerns. Rather, the issue is one of procedure as to the most appropriate location for this text.

The Meeting may wish to discuss the following:

- *Can the essential elements of Article 5 be added to Article 40 of the Constitution? Is there a need for a separate article on this subject in the ITRs?*
- *Is there a need for any substantive changes to these provisions?*

## Article 6: Charging and accounting

Article 6 sets the rules for establishing the charge to be collected by an administration/ROA from its customers and remuneration procedures for the use of networks in the transiting and terminating countries. It includes the rules for establishment of accounts and settlement of balances of account. In addition, it also contains relevant provisions related to service and privilege telecommunications.

When presented to the WATTC 88, the text of Article 6 was quite long and very detailed. At the request of Nordic countries, this Article has been simplified leaving the details in the Appendices which form integral parts of the Regulations. We should also note that, at that time, Article 6 had been drafted to allow flexibility to Member States and Sector Members in the rapidly changing telecommunication environment.

The following paragraphs give clarifications on the interpretation of Article 6.

### 6.1: Collection charges

*6.1.1 Each administration* shall, subject to applicable national law, establish the charges to be collected from its customers. The level of the charges is a national matter; however, in establishing these charges, administrations* should try to avoid too great a dissymmetry between the charges applicable in each direction of the same relation.*

The establishment of the collection charge, including its level, is left as a national matter. However, to avoid opportunity for arbitrage (for instance, call-back) and therefore a great imbalance of traffic, a non mandatory paragraph has been added in order to avoid too great a dissymmetry. As this is not an obligation ("should try to avoid"), there is still a flexibility and freedom to allow the establishment of prices guided by the market force. In practice, traffic flows between countries have become increasingly distorted since 1993. This reflects increasing dissymmetries in the actual price of calls (including discounts).

*6.1.2 The charge levied by an administration* on customers for a particular communication should in principle be the same in a given relation, regardless of the route chosen by that administration *.*

To avoid confusion to the customer, this paragraph states that the price charged to the customer should in principle be the same if the traffic is routed on a primary route or secondary route (direct or transit). This paragraph does not prevent the administration* from establishing different prices for different quality of services (satellite route, cable route or different levels of compression, for example).

*6.1.3 Where, in accordance with the national law of a country, a fiscal tax is levied on collection charges for international telecommunication services, the tax shall normally be collected only in respect of international services billed to customers in that country, unless other arrangements are made to meet special circumstances.*

This paragraph was added to avoid double taxation on calls such as "collect call" (reverse charge). However, this paragraph is drafted in a flexible manner to allow double taxation in special circumstances, like in the cases of call-back or GMPCS where the government of a roamed country imposes a national tax. This paragraph may have implications for the development of e-commerce.

### 6.2 Accounting rates

*6.2.1 For each applicable service in a given relation, administrations* shall by mutual agreement establish and revise accounting rates to be applied between them, in accordance with the provisions of Appendix 1 and taking into account relevant CCITT Recommendations and relevant cost trends.*

Here we should make a distinction between accounting rates (the rate agreed between administrations*) and the accounting revenue division procedure (system to share the revenue). According to Appendix 1, there are three possibilities to establish accounting rates.

- The first possibility (Appendix 1, 1.1) is to use the accounting revenue division procedure (traditional method which has been considered as an obstacle by some for the orderly development of telecommunications).
- The second possibility (Appendix 1, 1.2) is to determine terminal and transit shares using cost studies, e.g. traffic unit price procedure, termination charge procedure or settlement rate procedure (see newly-revised Recommendation D.150).
- The third possibility (Appendix 1, 1.3) is to use the flat-rate remuneration system or other arrangements (special arrangements, see Article 9/ITR). This provision allows one single administration* to provide an end-to-end service in using leased circuit (e.g. ISR).

Appendix 1, Paragraph 1.4 is a safeguard to prevent the use of non authorized routes (refile for example), but again some flexibility is added at the end of the paragraph ("unless the administration* of destination is prepared to agree to a different share.")

### 6.3 Monetary unit

*6.3.1 In the absence of special arrangements concluded between administrations*, the monetary unit to be used in the composition of accounting rates for international telecommunication services and in the establishment of international accounts shall be:*

- *either the monetary unit of the International Monetary Fund (IMF), currently the Special Drawing Right (SDR), as defined by that organization;*
- *or the gold franc equivalent to 1/3.061 SDR.*

Administrations* are free to choose the monetary unit by bilateral agreement. In the USA, some 80% of the accounting rates are established in US dollars. Otherwise, it shall be either SDR or Gold Franc. Gold Franc is no longer used on the market and therefore it is linked to the SDR by a fixed conversion rate.

*6.3.2 In accordance with relevant provisions of the International Telecommunication Convention, this provision shall not affect the possibility open to administrations* of establishing bilateral arrangements for mutually acceptable coefficients between the monetary unit of the IMF and the gold franc.*

The conversion rate between SDR and Gold Franc is fixed in paragraph 6.3.1. However, following the request of some administrations*, extra flexibility was added to allow different conversion rates by bilateral arrangements.

### 6.4 Establishment of accounts and settlement of balances of account

*6.4.1 Unless otherwise agreed, administrations* shall follow the relevant provisions as set out in*

*Appendices 1 and 2.*

Appendices 1 and 2 contain rules for establishment of accounts and settlement of balances of account. Except for the delay accorded to the accounting authority for payment of a bill (six calendar months), which was considered too long by some administrations*, none of the provisions has raised problems in the past. However a number of administrations* are reporting increased variance in the reporting of outgoing and incoming traffic, especially where transit is involved, leading to increased disputes over payments.

### 6.5 Service and privilege telecommunications

*6.5.1 Administrations* shall follow the relevant provisions as set out in Appendix 3.*

Appendix 3 states the possibility for the administrations* to provide service telecommunications free of charge.

### Article 6: Possible items for discussion

In the case of those services to be provided within the public service framework (e.g. those services defined by the ITU-T excluding for example the Internet) and as rules applicable to administrations* (excluding private operating agencies like ISP), this Article 6 still seem suitable and simply needs to be updated, and maybe simplified. However, if the framework of the present Regulation (see article 1.5) is revised, a drastic change to this article will probably be required.

- *This article sets rules applicable to administrations* only. In the new market environment of greater competition, where private operating agencies (ISP for example) provide more and more international telecommunication services, is it fair and meaningful to regulate administrations* only? Alternatively, do we regulate only "operators" which have an international settlement obligation or do we need to set a rule to all "operators" ?*

### Collection charges (6.1.1 to 6.1.3)

In spite of rapidly falling costs of infrastructure, the average collection charge has been decreasing relatively slowly especially where the impact of competition has been limited. For the accounting rates, the ITRs state that cost trends should be taken into account.

- *Do we need to enforce Article 6.1.1 so that administrations* follow cost trends more closely when they establish the collection charge or is it up to the sovereign right of each country to regulate how its operators establish the collection charge?*

The current texts concerning collection charges have been drafted to give a maximum flexibility and it seems that these texts remain applicable to the current telecommunication industry structure and practices. However, we could examine if there are any provisions which restrain free competition or the development of telecommunications in general.

- *Is paragraph 6.2 an obstacle for free competition ?*

### Accounting rates (6.2 + Appendix 1, 1.1 to 1.6)

Paragraph 6.2, like other paragraphs, dates from a time when accounting rates were worked out mainly between governments, and when recognized operating agencies (ROAs) were direct agents of those governments.

As countries are increasingly establishing regulatory bodies which are separated from any supplier of basic telecommunications services (ROAs and private operating agencies), one logical way of regulating accounting rates in the future is to include in the ITRs only basic rules to be applied to the regulatory body, leaving the commercial negotiations between ROAs/POAs outside the scope of ITRs. The ITU-T Recommendations, which have a lesser status than the ITRs, provide guidelines to these commercial negotiations.

However, in this discussion, we will examine how the actual paragraphs on accounting rates may be in contradiction with the practice of today.

**High accounting rates and their discriminatory nature**

Article 6 states that when using the accounting revenue division procedure, the accounting rate shall be established taking into account the *trend* in the cost of providing the specific telecommunication service. The other procedures shall take into account actual bilateral cost studies. In the ITRs, there is no direct provision concerning "non discrimination" but indirectly through Recommendations, the principles of non-discrimination are established, albeit to a limited extent.

In spite of these rules, the accounting rates are still above the level of costs for most relations and there is discriminatory treatment of the same service (termination of international calls) relative to with its national origin.

The accounting revenue division procedure worked well when international services were jointly provided by monopoly partners and when collection charges were more or less equal to accounting rates. However, with the drastic change in the world monetary system and with the introduction of competition in the telecommunications market, collection charges started to differ for the same call made in different directions, and the balance between incoming and outgoing traffic was lost. When the traffic stream is unbalanced in favour of a certain country, the creditor country has the bargaining power not to accept lower accounting rates. When the one-way out-payment becomes excessive, the matter can become a trade conflict between the nations concerned. As a matter of fact, the FCC in the US has serious concerns over the matter and held an extensive inquiry in 1997.

The FCC subsequently adopted a Benchmark Order which obliges US carriers to negotiate an accounting rate share (half an accounting rate) of less than 15 to 23 US cents/minute, depending on the income level of the country. Many concerns have been expressed to this FCC action and many countries have requested to develop multilaterally agreed transitional arrangements in the ITU. However, the US Courts have ruled that there is no contradiction between the Benchmark Order and the ITRs.[19]

ITU-T Study Group 3 decided to reform the accounting rate system in depth and studied new remuneration systems which better fit the new telecommunication environment.

In December 1998, Study Group 3 made some important headway in reforming the embattled accounting rate system. It agreed on three new cost-orientated procedures for remunerating the termination of international traffic. One of these, a termination charge procedure, allowing countries to establish a single charge for terminating traffic in its country, provided the charge meets certain multilaterally agreed criteria, has been strongly supported by most of the developing countries. However, this procedure is not expected to be implemented overnight, as administrations* need to set cost-orientated charges. There are also additional conditions for administrations* to bilaterally agree on the new remuneration procedure that is most appropriate to their needs.

In order to facilitate the introduction of a new remuneration system, Study Group 3 has also been working to develop a cost model as well as a guideline for bilateral negotiations of transitional arrangements towards cost orientation.

In developing these Recommendations, it was the opinion of Study Group 3 that there was no inconsistency between ITRs and newly developed revised ITU-T Recommendations on charging and accounting.

Reforming the accounting rate system is a long process and it will probably take several additional years to reduce accounting to cost orientated levels.

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[19] See reference to Cable & Wireless PLC v. FCC, cited earlier.

- *Is it because Article 6 is written in too flexible and vague a manner that there are still high and discriminatory accounting rates ?*

**Obligation for the administrations* to conclude bilateral agreements**

The ITRs oblige administrations* to conclude bilateral agreements but POAs are not subject to such an obligation. This situation arguably creates unfair competition, administrations* being obliged to pay high accounting rates, and POAs having freedom to by-pass the accounting rate system or to use trading minutes, least cost routing etc., where local regulations permit.

On another hand it is also argued that new entrants might be discouraged because of the necessity to negotiate bilateral correspondent agreements with each individual administrations* and therefore that the accounting rate negotiation poses a barrier to market entry.

The second WTPF (Geneva, 1998) agreed to work on "a bilateral basis or on a multilateral basis", implicitly rejecting unilateral action to establish accounting rates. Study Group 3 concluded that there was a need to bilaterally agree on a new remuneration procedure, rejecting unilateral or multilateral agreements. Therefore, if the accounting rate negotiation creates unfair competition, it is probably not because of the accounting rate system itself but rather a problem with the framework of the present Regulations which require mutual agreement between administrations* as described in Article 1.5.

The second argument against the bilateral nature of the accounting rates does not seem very appropriate as many of the new entrants use transit routes leaving accounting negotiations to the transit administration*.

In conclusion, the accounting rate is a commercial negotiation to agree on the price of the traded minute, and there is a need to bilaterally negotiate such an agreement. If the ITRs should only contain the rule to be applied multilaterally, then Article 6 needs to be modified, so that commercial negotiation principles are treated at the Recommendation level. In such a case, Article 6 may only contain the main principles such as non-discrimination, transparency and cost orientation applying to governmental measures.

- *Is such a modification necessary to distinguish the governmental measures contained in the ITRs and the guidelines contained in the Recommendations to be applied to commercial negotiations?*

**Justification to introduce new practices such as trading of telecommunication minutes, least cost routing, refile…**

Again, it seems that ITRs do not apply to POAs and therefore, they could use the practices such as minutes trading, least cost routing, refile etc... ROAs are free to conclude special arrangements (Article 9) among themselves to provide these practices but is the current text of Article 6 flexible enough to allow ROAs to enter into special arrangements for these practices?

- *Is N°1.4 of Appendix 1 (which protects the interest of the destination country) contrary to the current needs of Member States or does it reflect those needs?*

**Monetary Unit (6.3.1)**

This text complements Article 38 (CV) giving the conversion rate between Gold Franc and SDR. This text does not seem to raise any major substantive concerns but according to the change made by PP 98 in the new Article 38 of the Convention, only Member States can conclude special arrangements on this issue. However, according to the ITRs, administrations* can conclude special arrangements.

- *Does this inconsistency necessitate revision of the ITRs?*

**Establishment of accounts and settlement of balances of account**

As stated earlier, the ITRs were adopted at a time when international telecommunication services were mainly provided jointly between administrations*. This implied a total confidence in the activities of other administrations* and the establishment of accounts was the responsibility of originating administrations*.

Today we have an increasing number of disputes as to the accuracy of accounts established by the originating administration* as the destination administration* now has the technical capability to register the total number of minutes from one particular administration*, and the amount of total traffic minutes declared by the originating administration often differs from the registered minutes, especially on routes where there is extensive use of transit or refile.

- *Do we need to modify the procedure for establishment of accounts in order to avoid disputes between administrations* and to reflect new technologies?*

As far as settlement of balances of account and payment of balances are concerned, the procedures set in the Appendix 1 seem to be clear and comprehensive. Article 37 (CV) also sets the obligations of the Member States and Sector Members concerning the settlement of accounts.

However, in spite of these rules and procedures in the Convention and in the ITRs, there is an increase of unilateral actions to stop the payment of balance of accounts because some administrations* do not agree on the accounting rate negotiation.

- *Shall the revision of ITRs prevent such unilateral actions ?*

**Service and privilege telecommunications**

The provision of telecommunication services is subject to bilateral agreement except for service and privilege telecommunications. Today, administrations* increasingly wish to include these services in the international accounting.

- *In the competitive environment, should administrations* continue to provide service and privilege telecommunications without concluding bilateral agreements?*

## Article 7 - Suspension of Services

Article 7 of the ITRs is based on a principle that is already expressed in Article 35 of the Constitution.[20] Under CS/Art. 35, Member States have the right to suspend the international telecommunication service, either generally or for certain traffic, provided that they notify other Member States through the Secretary-General.

To that basic principle, Article 7 of the Regulations adds that a Member State that exercises its right to suspend must notify the Secretary-General of the suspension and of the resumption of service. In addition, Article 7 directs the Secretary-General to immediately bring such information to the attention of other Member States, by the most appropriate means of communication.

In the past, one of the principal uses of this Article has been to suspend service when hostilities break out between countries. However, in the new environment for telecommunications, domestic markets are increasingly open to the provision of service by foreign or foreign-based operators and service providers. With the globalization of telecommunications, more than one country may claim or assert jurisdiction over a particular service or service provider.

The Meeting may wish to discuss the following:

- *Is there a need to more clearly indicate the basis upon which a Member State can assert jurisdiction to suspend a telecommunication service?*

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[20] Article 35 was slightly amended at the 1998 Plenipotentiary Conference to reflect the use of the new terminology, "Member States". There was no substantive change to this article.

- *Is there a need to define those circumstances or reasons for which a Member State can suspend international telecommunications services?*

- *Can the additional elements in Article 7 be added to the existing article in the Constitution or, alternatively, is it necessary that these added elements be included in a treaty instrument?*

## Article 8: Dissemination of Information

This article, which calls upon the ITU Secretary-General to disseminate information provided by administrations, of an administrative, operational, tariff or statistical nature concerning international telecommunication routes and services. It goes on to say that the publication of information should be in accordance with the relative provisions of the Convention, the decisions of the Council and of Plenary Assemblies of the International Consultative Committees.

Much of the wording and the references to other bodies is now out-of-date, but the instruction to the Secretary-General remains valid. The 1973 Telephone Regulations had not included this text but the 1973-WATTC had produced a Resolution listing 15 specific official service documents that should be published. The 1988 ITRs also contains Resolution 7 listing some 18 different texts to be published. Of this list, the only direct survivor is the Yearbook of Statistics, now published by the ITU-D Sector. Many of the other publications have either not been updated since the early 1990s or have been subsumed in the ITU Operational Bulletin, published fortnightly in paper, electronic and fax format, by the ITU-T secretariat.

While the original list is now out of date, it should be added that many other publications which fit within the generic description of information dissemination of the ITRs are published, mostly as joint publications between the Information Systems Unit of the BDT and the Strategic Planning Unit of the General Secretariat. The main ones include:

- World Telecommunication Development Report. Five editions published since 1994
- "Direction of Traffic" report and database of bilateral international telecommunication traffic flows. Three editions published jointly with TeleGeography Inc. since 1994.
- "Challenges to the Network" series of reports on the Internet. Two editions published since 1997.
- "Trends in Telecommunication Reform", series of reports and databases on telecommunication regulatory information. Two editions published since 1997.
- "World Telecommunication Indicators Database". Time-series statistics from 1960 onwards, updated every two weeks. Available as a subscription or a one-time download.
- Regional Telecommunication Indicators series. Individual reports covering Africa, Americas, Asia-Pacific and Arab States. Published at intervals since 1993.

Given the rate of change in individual titles, it is probably better that the text be as generic as possible. However, it should equally be noted that the text in Article 8 is actually a duplication of text which also appears in the Convention Article 5.1o) (relating to the General Secretariat), 15.2d) (relating to the ITU-T Sector) and 18.2 b), c) and d) (relating to the ITU-D Sector). There are similar provisions for publication of information relating to the Radio Regulations in Article 12.2(2)c).

### Article 8: Issues for discussion

- *Is this article really necessary given the more complete instructions given in the Convention?*
- *Is it desirable to have a list of specific indicators to be published?*[21] *If so, should this form part of a resolution or recommendation rather than being part of the main text?*

## Article 9: Special Arrangements

This Article allows not only administrations* but also organizations or persons to conclude special

[21] For information, statistical issues are currently discussed at the World Telecommunication Indicators Meeting, organised by the ITU-D. The most recent meeting was held on 29-31 March 1999.

arrangements for the establishment, operation and use of special telecommunication networks (like SWIFT, IRIDIUM), special telecommunication systems (like the Internet) and special telecommunication services (like aviation control systems) in order to meet specialized international telecommunication needs.

When the ITRs were last updated, 1988, there had been a 15 year period during which the previously separate Telegraph and Telephone regulations had become progressively more out-of date. By 1988, a number of economically significant countries had opened their international telecommunication markets to competition, notably Japan, the United Kingdom and the United States, and others were planning to do so. At same time, many other countries were not ready to liberalise their markets and viewed the increasing use of IPLs to resell traffic minutes with some alarm.

This divergence in the telecommunication policies of different countries threatened to derail the conference. The eventual compromise consisted of two principles:

1. The **Sovereignty of States** was explicitly recognised, recognising the right of Member States to institute a licensing scheme for all administrations* and private operating agencies operating in their territories if they decide to do so, and encouraging the application of relevant CCITT (now ITU-T) Recommendations by such entities (Article 1.7). The article was drafted in a way that allows flexibility for Member States to decide how extensively to authorise international services and how strictly to apply technical Recommendations.

2. In addition, **special arrangements** were sanctioned for administrations* and other Recognised Operating Agencies (ROAs) to provide international services between Member States as long as there is no technical harm. Under Article 9, “Special arrangements may be entered into on telecommunications matter which do not concern Members in general. Subject to national Laws, Members may allow administrations* or other organisations or persons to enter into such special mutual arrangements with members, administrations* or other organisations and persons that are so allowed in another country for the establishment, operation and use of special telecommunications network, systems and services, in order to meet specialised international telecommunications needs within and/or between the territories of the Members concerned, and including, as necessary, those financial, technical, or operating conditions to be observed”. The ability of Members to negotiate special arrangements were constrained only by the necessity to “avoid technical harm to the operation of the telecommunication facilities of third countries” (9.1b) and to “encourage parties .. to take into account relevant provisions of CCITT Recommendations (9.2)

The text of both Article 1.7 and 9 was new and represented a compromise package which some believe “saved” the Melbourne conference from failure. There are precedents for the special arrangements, for instance in the text which is currently Article 42 of the CS (though its origins are much older). The innovation was to take the existing provision for special arrangements at a domestic level and to apply them also to relations between Members (i.e., for cross-border services). Given the uneven pace of liberalisation which marked the telecommunications environment of 1988 and which still prevails, there are logically three types of relations between countries: monopoly/monopoly, monopoly/competitive and competitive/competitive. The special arrangements apply mainly to the latter but can, by mutual agreement, be applied to other types of relation too.

Article 9 refers to Article 42 (CS) but the content of Article 9 is much broader and flexible than the Article of the Constitution. In the Constitution, only Member States, ROAs and other duly authorized agencies can conclude special arrangements, whereas in the ITRs anyone is authorized. For the “Harmful interference” the verb “shall” is used in the Constitution whereas the ITRs state that special arrangements “should” avoid harmful interference.

Over time, it is special arrangements which have arguably become the norm for the majority of international traffic while a more restrictive application of the ITRs has become the exception. Furthermore, it has sometimes proved difficult to insulate third countries from the effects of competition and market innovation. For instance, the offering of call-back or IP Telephony services has sometimes proved difficult to regulate. Similarly, large multinational companies which own their own private networks frequently carry voice traffic over the network even if it may be technically a violation of the laws of individual countries to do so.

If the ITRs were to be renegotiated, at a future WCIT, it is likely that disagreements between countries over the treatment of call-back or apportionment of revenues would come to the fore. Discussion over these

topics has been a fairly constant feature of recent ITU Plenipotentiaries, Councils, WTDCs and WTSCs. For that reason, it may be unwise to open up the text for debate because the fragile compromise reached in 1988 might be easily broken.

One of the major difficulties with the special arrangements, ten years later, is that they appear to be in conflict with the trade principle of Most Favoured Nation (MFN) which many ITU Member States have signed up to under the WTO agreements. The text appears to exclude special agreements between Members, but does open the possibility of an agreement between a Member in one country and an administration in another. The idea of a special agreement is that certain trade privileges that are available under the agreement might not be available to an administration of Member from a third country. Indeed the whole philosophy of the ITRs is based on bilateral agreement and reciprocal access, whereas MFN is based on multilateral agreement. MFN implies that privileges extended to one Member of an agreement be available to all Members. Insofar as the special agreements discussed in the ITRs are between individual operators, there should not be a conflict with MFN, but if the special agreement is between Member States, there would appear to be a problem is the agreement had been concluded after the GATS came into force.

**Article 9: Discussion of issues**

- *Could (should) the text of the special arrangements be changed in any way?* For instance, to accommodate either the views of those who wish to see a more liberal interpretation of the ITRs or those who wish to see the rights of countries who have not chosen the route of competition to be protected?
- *Could (should) the text of Article 9 be integrated with Article 42 of the CS?*
- *Does this Article cover the provision of new or future value added services such as E-mail, Voice over Internet etc…? If yes, are the conditions quoted in b) and in 9.2 sufficient to regulate these new services at the international level?*
- *Is the clause on avoiding harm to the networks of third countries redundant?*
- *Could the word "specialised" in the phrase "specialised international telecommunication needs" be* dropped? It seems unnecessarily restrictive.
- *Is it necessary to align the text of "special arrangements" with the WTO trade principle of MFN*? For instance, by making it clear that the special arrangements are between administrations* rather than between Members,
- *Should there be any system for informing third countries when a special arrangement has been concluded?* For instance, when agreements to liberalise international simple resale (ISR) between countries are negotiated, could this information be broadcast, for instance via the Operational Bulletin?

## Article 10: Final Provisions

Article 10 addresses a number of legal procedural matters. Sections 10.1 and 10.2 set the effective date of the ITRs, as adopted in 1988, and indicate that they replace the previous Telephone and Telegraph Regulations of 1973. This Article further provides that the Appendices shall have the same binding weight as the Regulations.

### 10.3 Reservations

Section 10.3 addresses the effect of reservations made by a Member State with regard to one or more of the provisions of the ITRs. It provides that if a Member makes a reservation with regard to a provision of the Regulations, other Members and their administrations* shall be free to disregard that provision in their relations with the Member that has made the reservations.[22]

The 1998 Plenipotentiary Conference made significant amendments to the reservation procedure for ITU treaty instruments (see the Final Acts of the 1998 Plenipotentiary Conference, Article 32(b)). However, the

[22] This provision in the Regulations is consistent with Article 21 of the Vienna Convention.

amendments adopted at Minneapolis do not address the issue raised by Article 10.3 of the ITRs, namely the effect of making a reservation on other Member States.

The Meeting may wish to discuss the following:

- *What is the effect of the newly-adopted Article 32B of the Convention on the reservation process under the ITRs and should it be incorporated in any revision of the ITRs?*
- *Would a revision of the ITRs require a provision on reservations, or is Article 32B of the Convention sufficient?*
- *Should the additional obligation on reservations contained in 10.3 of the ITRs be added to the Convention as a proposed amendment?*

### 10.4 Notification of Approval

Since the ITRs are a treaty status instrument, following signature of the adopted text at a Conference, Member States then need to take the appropriate actions at the national level to formally indicate their intent to be bound by the instrument.[23] Section 10.4 requires that Members inform the Secretary-General of their approval of the ITRs and the Secretary-General in turn notifies other Member States of this act of approval. This obligation upon the Secretary-General is in keeping with the role of that office as the depositary of the Regulations.

At the time the ITRs were adopted in 1988, the ITU followed the unusual practice (as compared to other international organizations) of adopting a new basic instrument at each succeeding Plenipotentiary Conference. Under the practice then in effect, when Member States gave their approval to be bound by the latest version of the Convention, this included the Administrative Regulations then in effect. This procedure eliminated the need for Member States to separately act to approve the regulations.

As a result of reforms adopted at the Additional Plenipotentiary Conference of 1992, the ITU has moved to the model of a permanent Constitution and Convention, that can be amended (but is not replaced) at each Plenipotentiary Conference. Accordingly, the 1992 Constitution and Convention remain in effect, as amended by the Plenipotentiary in Kyoto (1994) and Minneapolis (1998). Therefore, Member States that have expressed consent to be bound by the Constitution and Convention now need only give their approval to the amendments adopted at each Plenipotentiary Conference. The ITU will shortly publish an integrated text, showing the 1992 Constitution and Convention with all the subsequent amendments.

In moving to this new model, the 1992 Conference recognized that it would be useful to introduce a new procedure for States to express their approval of the Administrative Regulations. Pursuant to Article 54 of the Constitution, the approach is to provide for provisional application of the Administrative Regulations, pending their approval or rejection by a Member State. Based on the experience of the World Radio Conferences of 1995 and 1997, however, and some perceived problems in the implementation of Article 54, this Article was significantly amended in 1998 at Minneapolis.[24]

The Meeting may wish to discuss the following:

- *In light of Article 54, is there a need for a provision in the ITRs on implementation and approval by Member States?*
- *Alternatively, should the Regulations simply reference the relevant provisions of the Constitution?*

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[23] Non-signatories may indicate their consent to be bound through accession to the instrument.

[24] Under CV/217B, as adopted at Minneapolis, a Member State may now notify the Secretary-General that its consent to be bound by amendments to the Constitution and Convention shall constitute consent to be bound by partial or complete revisions of the Administrative Regulations.

## Appendices

### Appendix 1 - General provisions concerning accounting

See discussion under Article 6.

### Appendix 2 - Additional provisions relating to maritime telecommunications

See discussion under Article 6.

### Appendix 3 - Service and Privilege Telecommunications

Appendix 3, which is binding, provides additional elements concerning service and privilege telecommunications, notably that administrations* may provide such telecommunications free of charge and may forego their conclusion in international accounting.[25] In this respect, Member States are to act under the relevant provisions of the Convention and the ITRs.

The issue of service telecommunications is also dealt with in the Convention, wherein the term is defined (see CV/No. 1006). Article 40 deals with the use of secret language for government and service telegrams, as well as for private telegrams. No. 24 of the new Rules of Procedures (1998) sets forth conditions for the granting of franking privileges.

The Meeting may wish to discuss the following:

- *Should service telecommunications be provided free of charge?*
- *Is there a need to address this issue in a treaty instrument, such as the ITRs?*
- *Alternately, could the entire issue of service and government telecommunications be dealt with in the Rules of Procedure of the Union?*

## Resolutions, Recommendations and Opinion

### Resolution Nº1 (Dissemination of information)

See discussion under Article 8.

### Resolution Nº2 (Co-operation among Members of the Union)

See discussion under Article 1.

### Resolution Nº3 (Apportionment of revenues)

This Resolution instructs the Secretary-General to carry out a detailed study of the cost of providing and operating telecommunication services between developing and developed countries.

Two detailed studies have been completed, showing that the cost of providing international telecommunication services is for some category of countries, twice as expensive in the developing countries than in the developed countries. The studies have been completed and reflected in the study of Study Group 3. In addition, the recent work of the Focus Group has recommended higher indicative target rates for low teledensity countries than for high ones. Therefore, it seems that there is no need to discuss this Resolution further.

### Resolution Nº3 (Changing telecoms environment)

This Resolution was addressed primarily to the Nice 1989 Plenipotentiary Conference where a paper prepared by an expert group on the changing international telecommunications environment was discussed. Insofar as this work is continued, many of the themes have been taken up in the telecommunication indicators series (see discussion under Article 8).

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[25] Pursuant to Article 10.1, Appendix 3 is "an integral part" of the ITRs and thus should be considered as binding.

**Resolution Nº5 (CCITT and World Wide Telecommunications Standardization)**

The WATTC 88 resolved to refer the matter raised in the CCITT Resolution 17 (Pre-eminence of CCITT in world-wide telecommunications standardization) to the Plenipotentiary Conference (Nice, 1989) for appropriate action.

This having been done, there is no need to discuss this Resolution further.

**Resolution Nº6 (Continued availability of traditional services)**

See discussion under Articles 3 and 4.

**Resolution Nº7 (Dissemination of operational information)**

See discussion under Article 8.

**Resolution Nº8 (Instruction for International Telecommunication Services)**

Article 1 and 2 of the ITRs make reference to “Instructions” which is a collection of provisions drawn from one or more ITU-T Recommendations dealing with practical operational procedures for the handling of telecommunication traffic. Resolution 8 instructs ITU-T to update the Instructions if necessary and instructs the Secretary-General to publish all operational provisions which the ITU-T considers as “Instructions”.

The last “Instructions” were published in 1993 (Instructions for the International Telephone service) but since then, no modification has been made and there were no requests to publish operational provision of new services as “Instructions”.

**Recommendation Nº1 (Application to the Radio Regulations)**

See discussion under Article 1.

**Recommendation Nº2 (Changes to definitions)**

See discussion under Article 2.

**Recommendation Nº3 (Expeditions exchange of accounts)**

See discussion under Article 6.

**Opinion Nº1 (Special telecommunication arrangements)**

See discussion under Article 9.