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| **Council 2017Geneva, 15-25 May 2017** |  |
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| **Agenda item: ADM 5** | **Document C17/93-E** |
| **28 April 2017** |
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Note by the Secretary-General

CONTRIBUTION FROM THE UNITED STATES OF AMERICA

ITU Participation in MoUs with Financial and/or Strategic Implications

I have the honour to transmit to the Member States of the Council a contribution submitted by **the United States of America**.

 Houlin ZHAO
 Secretary-General

Contribution from the United States of America

ITU Participation in MoUs with Financial and/or Strategic Implications

**Introduction**

Resolution 192 (Busan, 2014) of the Plenipotentiary Conference instructs Council to formulate criteria and guidelines for ITU consideration and participation in Memoranda of Understanding (as well as Memoranda of Cooperation and Agreement) (MOUs) that have financial and/or strategic implications. The criteria will help ITU management identify the limited number of MOUs that should be reviewed by Council before they are signed by the ITU. The guidelines define the process ITU management would use to obtain that review. One goal of the criteria and guidelines is to ensure that these MOUs are closely linked to the strategic objectives and results established in the strategic and operational plans. Following extensive and productive discussions, the principle concerns expressed during Council 2016 and previous meetings are addressed and we urge Council to approve these criteria and guidelines.

**Discussion**

Resolution 192 confirms Council’s important role in reviewing particular MoUs with significant financial, operational, or legal implications. This oversight is essential, particularly in these times of budgetary challenges, to allow Member States to consider carefully the financial and/or strategic implications of MOUs and weigh the need for particular MOUs against other priorities identified by Member States. Resolution 192 instructs Council “to implement a mechanism to review ITU participation in MOUs that have financial and/or strategic implications, and to provide guidance to the Secretary-General.” Such MOUs should thus be submitted as input documents, rather than as information documents, to Council meetings to obtain Council review so that it may provide guidance to the Secretary-General.

In previous meetings of Council and the Council Working Group – Financial and Human Resources (CWG-FHR C17/50-E, sections 1.10 – 1.18), draft criteria and guidelines have been discussed, resulting in very valuable, collegial exchanges, including a number of helpful questions and suggestions that contributed to everyone’s understanding of the intent of Resolution 192. At the May/June 2016 Council meeting, for example, two specific concerns were expressed. First, a number of counsellors were concerned that the proposed criteria would have a negative impact on MOUs for regional or national development initiatives. Second, some counsellors were of the view that Resolution 192 did not require prior Council approval before MOUs with financial and/or strategic implications may be signed by the ITU. Appendix 1 to this contribution contains draft criteria and guidelines addressing these two concerns and importantly, also reflecting the agreed comments from ITU Legal and Management as discussed at Council 2016. The purpose of those comments, as explained at the Council Working Group Financial and Human Resource February 2016 meeting (CWG-FHR 6/23, section 11.2), is to:

* To provide the Secretary-General and the entire Secretariat criteria and guidelines that are precise, concrete and applicable;
* To ensure that Member States have clear, complete and up-to-date information; and
* To ensure that the criteria to be applied do not impinge upon the day-to-day activities of the General Secretariat and/or the three Bureaux.

All of these suggestions were agreed by consensus and are reflected in the attached draft criteria and guidelines, which Council has been instructed to adopt by Resolution 192. Importantly, Plenipotentiary 2018 is only a year and a half away. Adopting these criteria and guidelines will allow the Secretary General to have sufficient time to implement them so that a meaningful report can be made to that Plenipotentiary on his experience with the criteria. Plenipotentiary can then adjust the criteria and guidelines, if necessary.

**Proposal**

The United States understands that the ITU’s participation in MOUs can be beneficial for ITU members and we support that activity. Partnering with expert organizations is vital to ensure the ITU is taking advantage of expertise and to avoid duplicated efforts in a cost-efficient manner. The United States also notes the importance of linking strategic, financial, and operational actions to achieve the objectives and goals of ITU. The United States supported Resolution 192 as adopted at the 2014 Plenipotentiary Conference, and its call for criteria and guidelines to be established by Council to guide ITU participation in MOUs with financial and/or strategic implications. Appendix 1 to this contribution contains draft criteria and guidelines in the form of a draft Council resolution, which this Council should approve. We urge this meeting to conclude work on the criteria and guidelines for ITU participation in MOUs with significant financial and/or strategic implications so the Secretary General will have a meaningful opportunity to use them before a report is submitted to the next Plenipotentiary on their effectiveness.

Appendix 1

DRAFT Resolution 9999

(adopted at the xx Plenary Meeting)

ITU participation in memoranda of understanding (MOUs)
with financial and/or strategic implications

The Council,

considering

a) that Resolution 192 (Busan, 2014) of the Plenipotentiary Conference instructs the Council to formulate criteria and guidelines for ITU participation in MOUs[[1]](#footnote-1)1 that have financial and/or strategic implications, to implement a mechanism to review ITU participation in MOUs that have financial and/or strategic implications, and to provide guidance to the Secretary-General;

b) that one of the purposes of the Union as set out in Article 1 of the ITU Constitution is to maintain and extend international cooperation between all its Member States for the improvement and rational use of international telecommunications;

c) that another purpose of the Union is to promote, at the international level, the adoption of a broader approach to the issues of telecommunications in the global information economy and society, by cooperating with other world and regional intergovernmental and non-governmental organizations concerned with telecommunications;

d) that MOUs in which ITU, Member States and Sector Members may participate, are often used to facilitate cooperative action,

recognizing

a) that Resolution 192 observed “that the Union has entered into MOUs in which ITU is a participant that have financial and/or strategic implications, and these were discussed during Council 2014 as described in the Report by the Chairman of the Standing Committee on Administration and Management” and that Council 2015 and 2016 discussed similar MOUs;

b) that Council 2015 instructed the Council Working Group on Financial and Human Resources (CWG-FHR) to develop the criteria and guidelines required by Resolution 192 and to forward them to Council 2016;

c) that Council 2016 received and considered the criteria and guidelines developed by the CWG-FHR and as no consensus was reached, Council sent them back to the CWG-FHR for further discussion and consideration;

d) that Council 2017 received and considered the criteria and guidelines from the CWG‑FHR,

resolves to instruct the Secretary-General

1. to implement the criteria and guidelines shown in Annex 1 of this resolution;

2. to develop the necessary practices and procedures to implement these criteria and guidelines; and

3. to submit a report to the annual session of the Council on the implementation of this resolution.

Annex 1 to Resolution 9999

**Criteria and guidelines for ITU participation in MOUs with significant financial
and/or strategic implications**

**1. Applicability**

For memoranda of understanding and similar instruments (MOUs) in which the ITU will be a participant, the criteria below will allow the ITU to identify those MOUs having significant financial and/or strategic implications. For those few MOUs, the guidelines describe how the ITU will obtain Council review and guidance, subject to guideline 4.4 below. These criteria and guidelines do not apply to MOUs intended for pluri-regional, regional or national development initiatives, voluntary contributions agreements, repayment agreements, license agreements, publication distribution agreements, agreements relating to staff matters, contracts for the purchase or rental by ITU of goods, works or services, and to the majority of MOUs the ITU enters into which, in the view of the Secretary-General, do not have significant financial and/or strategic implications, which do not require Council review and guidance.

**2. Guiding Principles**

The criteria and guidelines contained in this Annex are based on the following principles, described in Resolution 192 (Busan, 2014):

1. that ITU participation in an MOU will contribute to and be within the purposes of the Union as set forth in Article 1 of the Constitution and within the strategic, operational, and financial plans of the Union;
2. that interested Member States and Sector Members will be kept informed of the activities of ITU when it participates in MOUs, including those that have financial and/or strategic implications; and
3. that the sovereignty and rights of ITU Member States are fully respected and preserved.

**3. Criteria to Assess Significant Financial and/or Strategic Implications**

3.1 MOUs shall be deemed by the Secretary-General to have significant financial and/or strategic implications if he/she considers that one of the following criteria is met:

1. ITU participation in the MOU would require expenditures by the ITU of amounts that would create budgetary imbalances;
2. ITU assumes a liability, either on its own behalf or on behalf of other parties to the MOU, that would impair the ITU’s ability to remain within its authorized and approved budget or its ability to achieve objectives contained in the strategic or operational plans;
3. The level of staff or other resources ITU must divert from work required to implement projects and activities included in the approved strategic and operational plans or the timing of the work required from the ITU to support its participation in the MOU would exceed authorized and approved budgets or impair the ITU’s ability to achieve objectives contained in the strategic or operational plans; or
4. The ITU’s participation in the MOU would be obviously outside the mandate of the ITU as reflected in the ITU Constitution, Convention and Resolutions, or not within the financial, strategic, or operational plans of the Union;

3.2 Furthermore, the Secretary-General should bring to Council’s attention proposed MOUs if he/she is of the view that such MOUs would raise highly sensitive strategic and/or financial issues, even if none of the criteria above are met.

1. **Guidelines for Obtaining Council Review and Guidance of ITU Participation in MOUs with Significant Financial and/or Strategic Implications**

Consistent with the Resolution 192 instruction to Council “to implement a mechanism to review ITU participation in MOUs, that have financial and/or strategic implications, and to provide guidance to the Secretary-General,” the following guidelines should be followed to obtain Council review and guidance for ITU participation only in MOUs with significant financial and/or strategic implications as determined by the criteria in 3 above:

1. The Secretary-General, or his or her designee, will assess whether the criteria described above for determining if an MOU will have significant financial and/or strategic implications would be met by a proposed MOU;
2. For MOUs which the Secretary-General has assessed as having significant financial and/or strategic implications, the latter will prepare a contribution for Council describing the proposed MOU, the activity that would be required to be performed by ITU if it were to participate in the MOU, and the strategic impact such participation could have, as well as the financial and/or other resources that ITU would be required to expend to perform its obligations under the proposed MOU. In addition, the specific ITU Bureau, or, as appropriate, the Department of the General Secretariat, responsible for the MOU should be identified;
3. The Secretary-General shall provide this contribution to Council for review and guidance and based on that guidance, the Secretary-General may enter into the MOU on behalf of the ITU;
4. If the Secretary General determines that urgent circumstances require entry into an MOU prior to Council’s review and guidance, the Secretary-General or his designated representative shall include an explicit provision in the MOU allowing for termination or amendment and noting that the ITU Council could require termination or modification of the MOU;
5. Upon conclusion of the activity contemplated by the MOU, the Secretary-General shall provide a report to Council describing the outcomes achieved, the resources expended, and the next steps, if any, anticipated as a result of the completion of the MOU; and
6. In addition to these reports, the Secretary-General shall provide annually to Council a list of all MOUs it entered into since the last ordinary session of the Council.

1. 1 Wherever the term "MOU"" is used in this resolution, it includes memoranda of cooperation and memoranda of agreement. [↑](#footnote-ref-1)