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| Note by the Secretary-General |
| contribution from the federative republic of brazil |
| REVIEW OF THE INTERNATIONAL TELECOMMUNICATION REGULATIONS |

I have the honour to transmit to the Member States of the Council a contribution submitted by **the Federative Republic of Brazil**.

 Houlin ZHAO
 Secretary-General

Brazil (Federative Republic of)

REVIEW OF THE INTERNATIONAL TELECOMMUNICATION REGULATIONS

**Introduction**

Brazil was an active supporter of the 2012 World Conference on International Telecommunications (WCIT-12). We participated in all CWG preparatory meetings with numerous contributions. We presented 77 proposals to WCIT-12, and co-signed 17 CITEL proposals. We brought 40 delegates to the Conference, and participated actively in all meetings. In the end, we signed the Final Acts of WCIT-12 without any reservations. Brazil firmly observes and complies with the 1998 and 2012 International Telecommunication Regulations (ITRs).

This document presents Brazil’s views on ITR review process. Brazil understands that the main issues under discussion are the following:

* the applicability of the ITRs, including the issues of scope and pace of innovation;
* the need for a periodic review of the ITRs;
* the costs of holding a new World Conference on International Telecommunications (WCIT);
* the impacts on international cooperation and ITU's reputation.

**Applicability of the ITRs:**

There are two predominant viewpoints on the applicability of the ITRs:

1. “View 1”: the ITRs are unnecessary because market competition, national regulatory policies, and/or bilateral agreements are sufficient to optimize the global provision of telecommunication/ICTs;
2. “View 2”: the ITRs are necessary because they establish common principles that optimize the global provision of telecommunication/ICTs.

Views 1 and 2 are polar opposites of each other. Since acceding to the ITRs is optional, if the views on the applicability of the ITRs continue to be polarized, a new WCIT would produce the same outcomes of WCIT-12: no consensus and a rift among Member States. Some View 1 Member States possibly would not even attend a new WCIT.

Even among signatory countries, there are no higher bodies to oversee and enforce compliance to the ITRs, and therefore the effectiveness and applicability of the ITRs fundamentally depend on a proactive, voluntary commitment to collaborate to solve common problems in the global provision of telecommunication/ICTs.

The decision to revise the ITRs and hold a new WCIT depends on a total or a large majority consensus that the ITRs are important for cross-border telecommunication/ICTs. In other words, there should be an almost total convergence to View 2 before such a decision is taken.

Regarding the **scope of the ITRs**. Each of the 193 ITU Member States faces unique regulatory challenges depending on context, the level of technical/economic development of each national market, and the need for intervention/regulation in each country. The ITRs are not effective to solve problems that have a limited scope and affect only some countries. The ITRs should determine common rules to manage the interdependence among all nations in the provision of telecommunication/ICTs, and should reflect these three commitments by signatories[[1]](#footnote-1):

* to strengthen national-level management of cross-border spillovers (e.g., ICT-related intellectual property rights infringements);
* to protect any state’s sovereignty if it comes under attack (e.g., cyber-security threats);
* to cooperate in mitigating global system risks (e.g., failure of communications infrastructure).

For the ITRs to be applicable, Member States should be willing to commit to these three objectives of international cooperation.

Regarding the **pace of innovation of telecommunication/ICTs**. Telecommunication/ICTs evolve at an incredible pace, and this evolution is frequently creating new regulatory challenges and even new industries. The rules governing this dynamic sector should remain relevant independent of the fast pace of innovation, meaning that they should govern features that do not change so much over time.

WCIT-12 was held 24 years after WATTC-88. Official calls for another Conference started less than ten years after WATCC-88, and officially at PP-98 with the approval of Resolution 79. It then took more than 14 years for WCIT-12 to take place, and the new ITRs only entered into force in 2015 for the 89 signatories.

For the ITRs to be effective, they must endure the long gap between WCITs, and/or govern elements and principles of telecommunications/ICTs that do not change so much over time.

**Need for periodic review of the ITRs**

As one of the key instruments of the Union, the ITRs should be frequently reviewed by the affected parties and the ITU. The review should examine the applicability of the ITRs in the short, medium, and long term, according to the applicability criteria described above.

This however should not translate to the creation of formal groups at the ITU Council or ITU-T, and in the consequent financial and opportunity costs for all involved. Council and ITU-T’s mandates already allow for an ongoing review of the ITRs. The ITU Council and ITU-T could examine the need for a review of the ITRs and a new WCIT upon Member’s contributions, without the need to maintain formal working groups.

The ITU (i.e, Council or ITU-T) could maintain a living document with proposals for the revision of ITRs. When this document reaches a mature level of consensus and development, Council could examine the possibility of formally revising the ITRs.

**The cost-benefits of holding a new WCIT**

The process of revising the ITRs in 2011/2012 was highly contentious among the parties defending Views 1 and 2 described above, from the preparation process in the Council Working Group to the end of WCIT-12. Consensus was only achieved in specific points by softening the treaty language in the most crucial articles and subsections, resulting in provisions that are practically optional to the signatories. This represents the outcomes, or the benefits of WCIT-12.

More than 2,000 delegates participated in WCIT-12. It held 13 days of meetings at a cost of CHF 1.9 million (CHF 147,000 per day). PP-14 cost the same, CHF 1.9 million, but it was held during three weeks (CHF 95,000 per day). The total cost of WCIT should include the preparatory meetings, the pre-WCIT costs of the host country, and the travel costs of all delegations and all people involved. There were also significant opportunity costs for the ITU and all parties involved (i.e., not using the budget and time allocated to WCIT-12 for other activities). Brazil, for example, held weekly four-hour multi-stakeholder meetings for one year prior to WCIT-12 in preparation for the Conference. This represents the costs.

A new WCIT should only be held if its outcomes produce concrete results in the telecommunication/ICT market that compensate for the financial and opportunity costs of holding a new WCIT.

**The impacts on international cooperation and ITU's reputation**

89 countries signed the final acts of WCIT-12, including Brazil, but there was a clear polarization: no developed country signed. WCIT-12 failed to build consensus, and in an attempt to reach such a consensus, drafted a treaty with little effective impact even for the 89 signatories. The reputation of the ITU as an effective constructor of consensus and promoter of international cooperation was damaged. Many key stakeholders lost their trust in the ITU.

The ITU cannot risk attaining a similar result.

If all the criteria described above are met, there will be ample consensus on holding a revision of the ITRs. In that case, a specific Council Working Group should conduct the preparatory process with transparency, inclusiveness, efficiency, and thoroughness. The preparatory process should involve all ITU members on an equal footing, and all stakeholders though an open, inclusive and transparent consultation process.

A new WCIT should receive from the CWG a widely agreed proposal for a treaty, and discuss only minutiae during the Conference.

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1. Kaul, Inge (2013), “Meeting Global Challenges: Assessing Governance Readiness”, in Hertie School of Governance, *The Governance Report*, Oxford: Oxford University Press, 2013, chapter 2, pp. 33-58. [↑](#footnote-ref-1)