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| **Council 2018 Final meeting, Dubai, 27 October 2018** |  |
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|  | **Document C18/122-E** |
| **5 September 2018** |
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| Report by the Secretary-General | |
| eSTABLISHMENT OF AN itu aREA oFFICE FOR sOUTH aSIA | |

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| Summary  As requested by the April 2018 Council session, the secretariat has undertaken analyses of different elements related to the creation of an area office in South Asia and provides its findings in the current report.  Action required  The Council is invited to **consider** the information provided as requested in the present report when taking its final decision on this matter.  \_\_\_\_\_\_\_\_\_\_\_\_  References  [C18/85(Rev.1)](https://www.itu.int/md/S18-CL-C-0085/), [C18/119](https://www.itu.int/md/S18-CL-C-0119/) |

1. During its annual session in April 2018, the Council of ITU discussed document [C18/85(Rev.1)](https://www.itu.int/md/S18-CL-C-0085/), entitled “Contribution from the Republic of India, the People’s Republic of Bangladesh, Burkina Faso and the Federal Republic of Nigeria: Opportunity to establish ITU South Asian Area Office and Technology Innovation Centre in India”.

An extract of document [C18/119](https://www.itu.int/md/S18-CL-C-0119/), “Summary Record of the Seventh Plenary Meeting” states:

*“3.6 The Chairman took it that the Council wished to approve the principle of the establishment of an ITU Area Office for South Asia, with a final decision to be taken at the final meeting of Council-18, and to request the secretariat to undertake further analyses and report to the Council on matters such as the indirect financial implications, contractual relationships between those seconded to that office, diplomatic immunity and equipment.*

* 1. *It was so agreed.”*

Subsequently, in a letter from the Indian Minister for Communications it was confirmed that the location of the proposed ITU Area office would be New Delhi, and that India would provide full logistic and financial support for this office (see sections 24 and 25 below).

1. In line with the decision of the Council in April 2018, the secretariat has undertaken the analysis of different elements related to the creation of an area office in South Asia and provides its findings in this report.

**Location of the office**

1. Nine countries (Afghanistan, Bangladesh, Bhutan, India, Iran, Maldives, Nepal, Pakistan, and Sri Lanka) are considered part of the South Asia sub-region. According to the discussion at Council-18, ITU prepared and dispatched a letter addressed to the ministers of ICT of the eight countries concerned asking them to confirm their agreement to the establishment of an ITU Area Office for South Asia in India. These countries were requested to confirm their agreement by 6 July 2018 to allow the secretariat time to prepare its report to the Council.
2. As of 3 September 2018, out of the eight countries that were consulted, five countries have confirmed in writing their agreement to the establishment of an ITU Area Office for South Asia in the following terms. Out of the five, two countries supported the establishment of the ITU Area Office in New Delhi, India. One country supported the contribution from the Republic of India entitled “Opportunity to establish ITU South Asian Area Office and Technology Innovation Centre in India”, and one country supported the proposal of the Government of India to establish an ITU South Asian Area Office and Technology Innovation Centre in India. One country, although supporting in principle the establishment of an ITU Area Office for South Asia, considered that further consultations among the countries concerned are necessary with regard to the precise location of the office and that it would be preferable that detailed discussion take place at the ordinary session of Council-19.

**Host country agreement**

1. In order to regulate ITU’s legal status and the status of the area office, a host country agreement (HCA) has to be negotiated and signed between ITU and the Government of India. This agreement would include provisions on the purposes and sphere of activities of the area office, financing, legal capacity, privileges, immunities and facilities of the Union, the office and its staff, as well as entry into, departure from, and movement within India of ITU staff and delegates, means of communications, granting of ID cards, access for spouses to labour market, duration and the potential termination of the office, etc.
2. Although it is not necessary at this stage to enter into all the details of the provisions that such an agreement would have to include, it is important to identify the main features on which the agreement in question would necessarily have to be founded.
3. First and foremost, there is the question of recognition of ITU’s independence vis-à-vis the host country and, more specifically, institutional independence and jurisdictional independence.

i) Institutional independence

1. This independence requires that the host country recognize the Union’s and the area office’s legal personality, and their legal capacity (capacity to enter into contracts, capacity to engage in legal proceedings, capacity to acquire and use movable and immovable property, capacity to adopt its own rules, procedures and legal processes, etc.).
2. This institutional independence also implies that the agreement shall recognize the inviolability of the premises occupied by the area office and, as an indispensable corollary thereto, the Union’s freedom to ensure policing, security and safety within its premises, as well as the inviolability of its archives and any documents (content on any medium) intended for its official use.

ii) Jurisdictional independence

1. The ultimate objective of any rule concerning international organizations is to enable them to fulfil their functions and achieve their goals with complete independence. To this end it is imperative that the Union, and consequently, its area office, by virtue of its inherent character as an international organization, enjoy immunity from criminal, civil, and administrative jurisdiction that is formally recognized in the agreement, and that, in parallel, the buildings and spaces occupied by the area office and the property owned or used by the area office may not be subject to any requisition, search, seizure, or enforcement action. All of these features must also be included in the agreement.

iii) Freedom of communication and publication

1. The Union’s publications are one of its main means of expression. Accordingly, the principle that the Union’s publications are not subject to any restriction of any nature whatsoever on the part of the host country must also be enshrined in the agreement.
2. Similarly, the inherently transborder nature of the functions of an international organization and, more particularly ITU, requires that its communications be both free and effective. Currently, the status of the communications of international organizations, including ITU, is defined by reference to the rights, privileges, and facilities granted in this respect to the United Nations and, where appropriate, the diplomatic representations. It is on this regime that the inviolability of ITU communications is currently founded. This regime must imperatively be maintained through a relevant provision in the agreement.

iv) Privileges and immunities in relation to fiscal, financial, and customs matters and, more generally, unrestricted freedom of circulation of goods and capital

1. The exemption for the Union, its assets, revenues, and other property, from any direct tax, whether national, regional or local, must be laid down in the agreement, as well as exemption from any indirect tax, such as value-added tax and registration or stamp duties, particularly those commonly levied on real-estate transactions.

v) Financial privileges and immunities

1. ITU and the area office must enjoy broad freedom of exchange and, in this regard, it must be able to freely receive and hold, transfer or convert currencies. The same shall apply in respect of gold, cash, and other securities. These elements must also be reflected in the agreement.

vi) Customs privileges and immunities and no prohibition or restriction on import and export

1. The free circulation of articles for the Union (and the area office) may not be hampered by any increase in purchase price through the imposition of customs duties on import or export. Otherwise, the Union’s freedom would be affected, insofar as the application of customs duties could lead to a situation where the area office is obliged to source from within the host country.
2. Neither must this freedom be undermined by administrative obstacles. The circulation of articles for the Union/area office must not be prohibited or restricted by administrative stipulations liable to force the Union/area office to buy on the local market of the host country.
3. Consequently, it is important for the agreement to clearly stipulate that the Union’s articles are exempt from customs duties and may not be subject to any prohibition or restriction on import or export.
4. In addition to the privileges, immunities, and facilities granted to ITU as a legal entity, the headquarters agreement must also contain precise and detailed provisions on the privileges, immunities, and facilities granted to its staff.

vii) Privileges, immunities and facilities accorded to staff of the Union

1. The Head of the area office shall enjoy in the host country, by virtue of the agreement, the privileges, immunities, exemptions, and facilities granted to diplomatic agents under international law and practices (e.g. full and complete immunity from jurisdiction, registration of private vehicles with diplomatic number plates, exemption from customs duties and import taxes and, as appropriate, from value-added tax or the equivalent, duty-free import of two vehicles, import of other movable assets tax-free, tax-free fuel, access to dedicated tax-free shop, etc.). The Government shall also grant to the other officials of the area office, irrespective of their grade and nationality, privileges, immunities, and facilities not less favourable than that accorded by the Government to the staff of the United Nations and any of its Specialized Agencies in India.
2. However, and as a minimum, all staff members, irrespective of their grade and nationality, including nationals of the host country, shall be given, through the agreement, at least the following privileges, immunities, and facilities: immunity from jurisdiction in respect of acts performed, words spoken and material written in the discharge of their duties; exemption from all (national, regional, local) taxes on salaries, emoluments and indemnities paid to them by the Union, capital sums paid to them by a pension fund or a provident fund operating for the benefit of staff members, on any indemnity for sickness or accident; exemption from national service in the host country (except for nationals of the host country itself); no immigration restrictions or aliens’ registration formalities (including for their spouses and family members); currency exchange facilities; repatriation facilities in the event of international crisis (including for members of their families and their domestic staff); customs facilities, etc.
3. In parallel, the headquarters agreement shall provide, in respect of both participants in ITU activities and the Union’s staff members, simplified and expeditious procedures for issuing visas, without the payment of any charges, and free issue for staff members and members of their families of a document constituting a residence permit in the host country.
4. If the host country forms part of a particular territorial space that imposes certain conditions/restrictions regarding residence/circulation (e.g.: in the case of Switzerland, the Schengen area), staff members in the host country must have free access to all the national territories of the space in question, without restriction.
5. To complete this quick overview, which is in no way intended to be exhaustive, it is important to point out that the agreement must also contain provisions exempting the Union from all compulsory contributions to general social insurance funds in the host country.

**Direct financial requirements**

1. It is recalled that the Indian administration has outlined the following proposal in document C18/85(Rev.1):

*“Proposal & Offer from Indian administration*

***•*** *Host the ITU South Asian Area Office and Technology Innovation Centre in New Delhi or Bengaluru with necessary logistics including space, infrastructure and other amenities;*

*• Second staff necessary to support the operations in professional and general category for a period of initial 4 years extendable further as per requirement. Participation from other countries is encouraged and will be as per ITU SOPs;*

*• Offer necessary immunities and privileges as may be necessary; and*

*• Additional details could be further worked out in consultation with the Secretariat and other countries in the region.”*

1. India shall provide or fund the following:

* Premises for the offices
* Office furniture and equipment, including computers
* Communication equipment, including telephones, Internet, etc.
* Utilities, including electricity, water, insurance for the premises, etc.
* Parking facilities for office needs
* Security installations compliant with UN security requirements
* Operational and maintenance contracts for the above equipment and services
* All authorizations and permits required for the normal functioning of the office
* Full staff costs in accordance with ITU regulations, rules, and procedures

**Indirect financial implications**

Indirect costs are costs incurred in providing support to the area office by various ITU services, including the regional office, BDT, and the General Secretariat. The new proposed area office will not induce any new indirect costs for administrative and support services due to the limited size of the proposed office. The only specific additional costs will be linked to security aspects, including regular visits and inspections from ITU-HQ security officer to the new area office. The annual recurring additional cost might range between KCHF 10 to 20, depending on the characteristics of the new premises.

1. The cost savings in undertaking official travel in South Asia from Delhi as compared to Bangkok on the basis of travel undertaken in the last two years is estimated at 7% of total air travel costs.

**Contractual status of staff**

The staffing structure of the area office will be established in line with relevant ITU polices on regional and area offices and on the basis of the standard structure as presented to the 2012 Council session in document [C12/25](https://www.itu.int/md/S12-CL-C-0025). The recruitment process will be managed in accordance with applicable provisions in ITU Staff Regulations and Rules and other related texts. Positions in the professional and higher categories will be advertised internationally. The paramount consideration in the appointment shall be the necessity of securing for the Union the highest standards of efficiency, competence and integrity, due consideration being given to the importance of maintaining a geographically equitable and gender-balanced workforce. Positions in the General Services category will be subject to local recruitment. Qualifications being equivalent, the desirable balance between male and female staff will be taken into account when selecting candidates for position in that category. Contracts to be offered to selected candidates will be fixed-term contracts for an initial period of two years, with a possibility of an extension for two additional years. Further extension will be subject to the certification of the continuing need of functions and the availability of funding.

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