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| Proposal on the Review and Revision of the International Telecommunication Regulations (ITRs) | |

# 1 Introduction

Based on the framework agreed by EG-ITRs at its second meeting in September, 2017 concerning the final report of the Group to the ITU Council meeting in 2018 and the relevant parts of Resolution 1379 as well as the responses obtained through our survey targeted at the three major telecom operators - China Telecom, China Mobile and China Unicom - and OTT service providers and virtual network operators in China, this proposal has been developed to put forward some substantive suggestions for the review and revision of ITRs - making them keep pace with the times--with due regard to the work done in reviewing the 2012 ITRs so that telecommunication/ICT development and security needs in the context of new telecom trends worldwide will be met.

In view of the fact that the global new telecom trends are emerging, EG-ITRs, guided by Resolution 1379, has made the decision at its second meeting to incorporate in its final report to the ITU Council meeting in 2018 the impact of new trends in telecommunications/ICT, emerging issues and obstacles on ITRs themselves.

New trends in telecommunication/ICT is most evident in the more profound convergence of telecom and Internet services. While bringing huge opportunities for the telecom industry worldwide, this ever deepening convergence is also presenting a considerable number of new challenges of a global nature, in particular in the area of international telecom/ICT security. For example, infringement of the personal information of telecom users, cyber frauds, cyberattacks by hackers, online terrorism as well as expanding terrorist forces by terrorists via the cyber space. All these pose a common threat to the people worldwide. On top of this, “digital divide” between regions and countries is widening and the critical telecom/ICT infrastructure is still quite vulnerable.

In a telecom/ICT environment witnessing new trends, a set of ITRs that could advance with times are required. To this end, the ITU Plenipotentiary Conference in 2014 (PP-14) adopted a resolution that resolves to review ITRs periodically. The human and financial resources as well as time spent by ITU up till now in this regard is not only aimed at “reviewing” the Regulations, but also revising and improving the ITRs on the basis of the review work so that the Regulations will keep up with times, maintain their relevance and meet new demands. However, during the course of the ITRs review, diverging and confronting views have been expressed by Member States, namely, some are of the position that ITRs should be future oriented and advance with times; others believe that the Regulations should keep the status quo with no changes made.

To have a set of ITRs that can proactively respond to the new trends or a set that will only passively avoid the developments, ITU Member States are faced with a major choice to make. China considers that rather than fragmented efforts made by individual or groups of countries, concerted efforts of all ITU Member States are imperative in addressing the worldwide telecom/ICT issues. Therefore, by leveraging the international platform of ITU, Member States need to strengthen their cooperation, conduct better communication and expand their common ground for achieving, at the global level, balanced telecom/ICT development. To revise and enhance the ITRs so as to make them advance with times will contribute to responding and addressing the emerging issues and threats, thus attaining the afore-said goal.

# 2 Review of the 2012 ITRs, taking into account new trends in telecommunications/ICT, emerging issues and obstacles that may arise from the implementation of the 2012 ITRs and WCIT-12 Resolutions and Recommendations

As the Internet becomes more pervasive in people’s lives, telecom and Internet services are more converged than ever. At present, the majority of new international telecom services converge with the Internet. To be more specific, the mobile Internet environment has given rise to the taking off and extensive adoption of OTT, which has been posing unprecedented challenges to telecom operators worldwide. At the same time, problems such as the cyber security and invasion of privacy have become quite pronounced along the OTT industry chain. To rectify the situation, regulators in various countries are energetically exploring new ways of regulation that serve the new environment, the focus of which should be the protection of the telecom network security and that of user privacy.

The current ITRs lack provisions that are generally effective in protecting the world telecom/ICT network/infrastructure and the private data of users. To overcome this drawback, China proposes that ITRs should be based on the “concept of sustainable development and security in parallel” for the world telecom/ICT industry, which also reflects the UN purpose of “maintaining world peace and security”. In this way, the ITRs will play a very positive role in the multilateral governance of international telecom/ICT and its sustainable and secure development.

It should also be noted that some developing or underdeveloped countries still do not possess advanced ICT technologies, have not completed the building of modern telecom infrastructures and face acute shortage of ICT professionals. As a result, they are lagging further behind the developed countries digital-wise, thus being denied the equitable rights to telecom/ICT. These countries are in urgent need of a set of ITRs that embody the latest international telecom trends and can advance with times, which will be of help in their strive towards the development of modern telecom/ICT infrastructure and the bridging of their digital gap with the developed countries.

## 2.1 Applicability of the ITRs

Legal applicability of the ITRs means that after the 2012 ITRs came into force, the Regulations are de facto international telecom/ICT laws and regulations, therefore the current international telecom legal relationship and legal order is properly governed by the provisions of the ITRs.

Concerning the legal applicability of the 2012 ITRs, the contributions received and opinions expressed at the second meeting of EG-ITRs indicate that the general view of the developed countries and their operators is “ITRs are no longer relevant or are dated” mainly due to the fact that the content of the 2012 ITRs does not accommodate the new trends in international telecom/ICT. Their specific reasons are the following: first, the international telecom market is no longer monopolized, therefore the theoretical basis for ITRs in exerting their influences in the international telecom services becomes non-existent; second, in the present-day world, international telecom operators rely on bilateral commercial agreements for their international services without requiring ITRs for any kind of business regulation. Whereas on the part of the developing countries, they are concerned with the total blurring of traditional telecom service borders brought about by advances in ICT worldwide, and with it, the advent of new trends in international telecom/ICT - essentially converged telecom and Internet services, the rapid growth of OTT in particular. As such, the developing countries have been advocating for the review of ITRs that focuses on the new trends in international telecom/ICT so as to enable the Regulations to keep up with times.

It is the belief of China that the applicability of the ITRs is worldwide. It should be measured by taking into account the past, present and future telecom/ICT development of all ITU Member States instead of drawing the conclusion that these Regulations - a global multilateral treaty for telecom/ICT - are irrelevant or non-applicable on the sheer basis of the telecom/ICT development standard or experience of a handful of developed countries.

## 2.2 Legal analysis of the ITRs

The current 2012 ITRs represent the revision that ITU Member States made at the World Conference on International Telecommunications held in 2012 on the basis of an extensive review of the 1988 ITRs. The Regulations constitute a globally binding treaty that aims at facilitating global interconnection and interoperability of telecommunication facilities and promoting the efficiency, usefulness and availability to the public of international telecommunication services[[1]](#footnote-1).

A comparison and legal analysis of the 1988 and 2012 ITRs indicate that the additions and changes in the latter are very relevant in guiding the global telecom/ICT development. For example, in the 2012 ITRs, the obligation of Respecting and Upholding Human Rights is affirmed; points concerning transparency and competition of international mobile roaming as well as reduction of tariff for international telecom interconnection are added; provisions for taking necessary measures to prevent the propagation of unsolicited bulk electronic communications, maintaining the telecom network security and adopting energy-efficiency and e-waste best practices are incorporated. All this demonstrates that the 2012 ITRs is by no means non-applicable or irrelevant, instead, it has its due legal applicability in the global telecom/ICT sphere. The main problem with the 2012 ITRs is that it is in dire need of being enhanced in view of the new trends and new issues in telecom/ICT development worldwide, and in particular, the general principle of the international law of Development and Security in Parallel needs to be added to these Regulations.

## 2.3 Potential conflicts

With respect to the potential conflicts between the 1988 and 2012 ITRs, we consider that the legal conflicts or legal contradictions of the international law involve the international justice verses laws concerning foreign-related civil relations, especially the conflicts of legal applicability in exercising jurisdiction. As such, there exists no potential conflicts between the 1988 and 2012 ITRs for the reason that the latter is a complementation and improvement of the former. At present, both sets of the Regulations are in force with the applicability of the latter prevailing over the former.

The review and revision work of the 2012 ITRs in itself is an international telecom legislation activity and the purpose of this is to make changes - additions, improvements or deletions - to the Regulations so that they will constantly better serve the international telecom/ICT. The ongoing enhancement of the 2012 ITRs is a long-term legislation action. The potential conflicts are only witnessed in the notions of Member States, namely conflicts or contradictions arising from the pursuit of the objectives and the safeguard of the interests of Member States.

China firmly believes that these conflicts in notions of different countries will be resolved or put in abeyance so long as ITU Members, by adhering to the principle of extensive consultations and joint contribution for the shared benefits[[2]](#footnote-2), are willing to seek common ground, positively uphold the purpose of the Union, attach importance to the development of a set of ITRs that can advance with times and be relevant in guiding and governing the international telecom/ICT development as well as tackle major telecom/ICT issues at the global level head on.

# 3 Summary and suggestions

As stated above, the review and revision of the ITRs should aim to supplement and improve those contents which are no longer suitable to the new trends of telecommunications/ICT in the world, highlighting in particular two features and three major issues.

One of the two features to be highlighted in the ITRs is the principle of Development and Security in Parallel, which gives general guidance to the world telecommunications/ICT as a whole. Secondly, the ITRs should be featured as having a forward-looking and leading role to the development and security of telecommunications/ICT in the world. The three major issues refer to the ever intensifying security issues concerning telecommunications/ICT networks, protection of the private information related to users of telecommunications/ICT as well as the “digital gap” broadened day by day in the world.

First, the review and revision of the ITRs should focus on regulating the ever growing security problems faced by the global telecommunications/ICT industry as it “goes OTT” (services over the Internet). The safety and security of the world telecommunications/ICT networks have become a global concern in respect of sovereignty，security and development interests of all nations. Currently, over 70 international standards (ITU-T recommendations) published by ITU have their focus on security.[[3]](#footnote-3) However, as one of the important instruments of ITU, there’s a severe lack of provisions in the ITRs in relation to the governance of the international telecommunications/ICT network security, constituting a significant missing link in coping with the emerging trends. Therefore, ITU, as a specialized leading agency of UN dealing with ICT matters, and its Members are obliged to strengthen the ITRs so as to actively contribute to the protection of the public ICT infrastructure on a worldwide basis as well as the promotion of cooperation and governance on ICT network security.

Furthermore, the review and revision of the ITRs should focus on establishing regulations to deal with the rampant problems of infringements of the user personal information. As the intelligent mobile devices become ubiquitous, mobile Internet applications (APP) are turned into major carriers of OTT services. While APPs have enjoyed rapid growth, acts of theft, analysis and use of the user personal and private information, malicious deduct from deposit and frauds become prevalent. During the public consultation held by the CWG-Internet of ITU Council taking place in September 2017 in Geneva, some countries pointed out that, as a result of the OTT services which had obtained a large and stable user base, more and more user information had been solicited, stored, analysed and employed by the OTT service providers. Their role in protecting the network security and user privacy has become more evident, demonstrating an urgent need for the ITRs to attach great importance to the network security of OTT services, ensuring the safe and stable operation of the global telecommunications/ICT services as well as the safety of user privacy.

Last but not least, the review and revision of the ITRs should focus on the widening of “digital gap”. At present, some developing and under-developed countries have not yet acquired the advanced ICT technologies, nor have they had modern telecommunications infrastructure available. They suffer from a severe shortage of ICT talents. The digital gap between these countries and the developed ones is broadening steadily, making them hard to enjoy equal rights to communications. According to the “World Development Report 2016-Digital Dividends”, jointly launched by the World Bank and UNCTAD on 1 February 2016, among the poorest families which account for 20% of the world total, 70% have got mobile phones. However, due to the poor telecommunications infrastructure of their own countries, they have to search for better signals from the operators of other countries at the border.[[4]](#footnote-4) These countries in particular expect that the ITRs reflect not only the current situation but future trends of telecommunications in a way to facilitate and assist the less-developed countries in their development of national telecommunications and narrow the gap between the developed and under-developed countries in the field of ICT.

China would like to propose that the ITRs should be reviewed under the auspices of the purpose of ITU with an inclusive attitude of the Members and from the perspective of both development and security of global telecommunications/ICT. All Members of ITU should be fully conscious of the emerging trends and issues faced by the telecommunication sector in the world without circumventing or covering up the problems and reach a common understanding on such a basis that the ITRs should follow the new developments of world telecommunications, keeping up with the progress of the new era.

Any problem in regard of global telecommunications/ICT must be dealt with by way of the International Telecommunication Regulations. So long all members take a positive attitude towards everything mentioned above, based on the principle of extensive consultations and joint contribution for the shared benefits, the current embarrassing situation of the ITRs would be removed by analysing the problems that exist in the ITRs in an objective, faire and comprehensive manner and from a global point of view through dialogue instead of confrontations.

Honestly speaking, the process of review and modifying the ITRs will not go as smoothly as expected, there must be obstacles on the way ahead. However, it could not be stopped, let alone to go backward. China believes, the whole process will go forward continuously like a wave on the sea, high and low at different times, but it will make progress along with the new telecom development trends, and it will, of course, pave the way for the good development and security of the telecom industry, alongside with the inputs granted by the joint mission of all the Member States.

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1. See: World Conference on International Telecommunications (WCIT-12 <http://www.itu.int/zh/wcit-12/Pages/default.aspx> [↑](#footnote-ref-1)
2. See: Resolution adopted by the UN General Assembly: The United Nations in global economic governance. [↑](#footnote-ref-2)
3. See the overview of Study Group 17 of ITU on the website: <https://www.itu.int/zh/ITU-T/Pages/default.aspx>. [↑](#footnote-ref-3)
4. See World Bank “World Development Report 2016-Digital Dividends” on the website: [www.worldbank.org](http://www.worldbank.org). [↑](#footnote-ref-4)