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| **Expert Group on the International Telecommunication Regulations (EG-ITRs)** |  |
| **Third meeting – Geneva, 17-19 January 2018** |  |
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|  | **Document EG-ITRs 3/11-E** |
| **19 January 2018** |
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| REPORT OF THE third MEETING of  the expert group on the international telecommunication regulations  (eg-itrs) | |

1. **Introduction**

**1.1** On behalf of the Secretary-General, the Deputy Secretary-General Mr. Malcolm Johnson, welcomed the participants to the third meeting of EG-ITRs. He stressed the importance of the work that lies ahead of the Group, and highlighted that the ITU membership is looking to this group to provide valuable guidance to Council, and through the Council to the plenipotentiary conference later this year.

**1.2** The Chairman thanked the Deputy Secretary-General and Directors for their support. The Chairman stressed the need for the Group to work together in the spirit of consensus and thanked the Vice Chairs for their valuable support and advice. The Chairman remind the Group of the progress made since the September 2017 meeting of EG-ITRs, when the Group agreed to a plan for finalizing the report to Council 2018.

**2 Adoption of the Agenda and allocation of documents**

The Agenda (Document EG-ITRs 3/1 (Rev.1)) was presented by the Chairman and adopted as presented. The Chairman noted that in the agenda, the discussions have been categorized into two parts (a) the contributions made directly to the 3rd meeting (b) comments on draft 1.0 of the final report to Council 2018.

**3. Discussion on Document EG-ITRs 3/5: TSB Director's input to the third meeting of the EG-ITRs**

* At the 2nd meeting of the Group, the TSB Director provided the Group with an update on the activities of the ITU-T study groups (SG) on the review of the ITRs (see Final report of the second meeting). Document EG-ITRs 3/5 presents the current status of the responses of the ITU-T study groups.
* The ITU-T SG 20 chairman stated that the request to Study Groups was not clear and requested more clarity on what is expected from SGs.
* The Chairman stated that the guidance in relevant resolutions of PP-14 and Council provide the broad framework, and SGs are asked to use this framework to see how it relates to their respective SGs.
* A member stated that feedback from ITU-T SG3 and SG17 would be important as the ITRs touch upon several issues that are under the purview of these study groups.
* It was noted that as per the agreed process, the inputs from ITU-T SGs should be channeled through TSAG, taking into consideration, the timing of TSAG.
* The TSB Director said that he would go back to the relevant SGs, requesting them for further inputs, if any.

**4 Summary of Contributions made directly to the third meeting**

The Chairman proposed that – (a) the contributions would be presented in the order that they have been received. (b) After the presentation of each contribution, the floor will be opened for discussion. This proposal was accepted by the group.

The contributions presented are summarized as follows:

**4.1 Contribution EG-ITRs 3/2 from the People's Republic of China - Proposal on the review and revision of the ITRs**

New trends in telecommunication/ICT is most evident in the more profound convergence of telecom and Internet services. 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 ITR, but also revising and improving the ITR on the basis of the review work so that the ITR will keep up with times and meet the demands of the new trends in telecommunication/ICT.

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 number of developed countries.

Summary: (1) The current ITRs lack provisions that are generally effective in protecting the world telecom/ICT network/infrastructure and the private data of users. So the ITR(2012) should set up a principle of “Development and Security in Parallel”, which gives general guidance to the world telecommunications/ICT as a whole. (2) The ITR(2012) should be featured as having a forward-looking and leading role to the development and security of telecommunications/ICT in the world. (3) 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)，focus on establishing regulations to protect the user individual privacy and also focus on establishing regulations to make up for the widening of “digital gap”.

**4.2 Contribution EG-ITRs 3/3 from China Telecommunications Corporation - Proposal on the review and revision of the ITRs**

In response to the booming of the global telecommunications/Information and Communication Technologies (ICT) services and the new trends in telecom industry, the telecom operators are in urgent need of a new legal framework instrument such as ITRs in order to address the market requirements.

To address problems of a global nature, each and every Member State needs to realize that, as part of the Community of Shared Future for Mankind, they need to make unswerving efforts to achieve the common global prosperity.

Therefore, ITU is proposed to carry out studies on new challenges arising from recent developments in telecom industry and put in place by consensus a comprehensive legal framework instrument based on 2012 ITRs.

**4.3 Contribution EG-ITRs 3/4 from KDDI - Review of the 2012 ITRs**

KDDI quoted two summaries of Contributions from the report of the second meeting of EG-ITRs to show that its position on the review of the 2012 ITRs has not changed. The Contributions are EG-ITRs 2/9 from several Sector Members and 2/11 from Japan. KDDI is one of the sources of Contribution EG-ITRs 2/9 and has endorsed the position of the Japanese government. In the quote, it said that there are very few countries that continue to rely on the ITR-based accounting rate regime. Further, KDDI and other Japanese operators replied to the questionnaire of the Japanese government that they have not experienced or do not foresee any potential or actual conflicts.

At the last part of the Contribution, KDDI pointed out its active participation to the ITU-T SG3. The group is a very useful forum to discuss the regulatory and economic issues of telecommunications. Addition to it, KDDI commented its view about "new trends" which should not be solely highlighted.

**4.4 Contribution EG-ITRs 3/6 from Portugal**

In a contribution that was developed and agreed within the framework of a Regional Association, it was found counterproductive, at present and in the near future, to hold a WCIT, given the difference of opinions expressed by Member States and also operators on the applicability and usefulness of the 1988 ITRs and 2012 ITRs. In that contribution, it was also considered that for further examination of the matter the analysis made by Brazil (doc 2/4) and Mexico (doc 2/14) are particularly valuable.

**4.5 Contribution EG-ITRs 3/7 from Japan - Review of the 2012 ITRs**

Regarding the scope of the ITRs, Japan is of the view that the ITRs should remain focused on international telecommunication services offered to the public and should not be extended to domestic issues or issues related to the Internet. In order to maximize the benefits brought about by telecommunications/ICT, we need to build an enabling environment for accelerating operators’ business activity and fostering competition, instead of regulation. New trends and emerging issues are ever-changing in drastically and rapidly evolving international telecommunications/ICT environments. It is unfitting that continually changing new issues will be addressed by the ITRs by making assumptions about how new issues will evolve. In addition, new issues cause a lack of stability to the ITRs. Furthermore, setting an international legal framework to regulate new issues will make operators difficult to respond flexibly to rapidly evolving international environments, and as a result decrease the potential of new business and technological innovation. In the absence of international consensus among Member States, we do not recognize the necessity of revising the ITRs and of holding a WCIT. We have significant concern that holding WCIT will impose a huge financial and human resources’ burden on all the people involved.

**4.6 Contribution EG-ITRs 3/8 from the United States of America - United States views on the draft of the final report on the review of the ITRs**

The US contribution reiterated its views on the review of the 2012 ITRs as well as the perils of convening a WCIT to revise the 2012 ITRs. The US believes that the ITRS are no longer applicable or relevant to the vast majority of international communications traffic and that the existence of two versions of ITRs has not created any legal or practical conflicts. There has been no demonstration of conflicts in contributions to the Experts Group.

The US also repeated its serious concerns about the scope and applicability of the 2012 ITRS. In particular, it noted its concern that some of the provisions are outside the stated purpose and scope of the ITRS as articulated in Article 1 of both the 1988 and 2012 ITRs. It further stated that the ITRS like other treaty instruments should stand the test of time. Any attempt to revise the ITRS to reflect "new trends" would make it obsolete as soon as the regulations were adopted.

The US believes that a future WCIT is riddled with perils and would divert valuable ITU resources away from the implementation of the ITU's core mission and could even result in a third set of ITRs. Instead of spending energy on a future WCIT, the US believes that the Union should work to address the digital divide and work toward fulfilling 2030 development goals.

**4.7 Contribution EG-ITRs 3/9 from the Russian Federation, Republic of Armenia, Republic of Belarus and Kyrgyz Republic - Problematic issues related to the use of ITRs**

The contribution of the Russian Federation, supported by Republic of Armenia, Republic of Belarus and Kyrgyz Republic, outlines a number of fundamental problem issues connected with the application of the ITRs, such as the outdated terminology of the 1988 ITRs, that the 1988 ITRs do not correspond to the realities of modern telecommunications/ICTs, or to the roles, aims and practical functions of administrations and operators due to fundamental changes in the role and functions of administrations and operators in the course of global liberalization of international telecommunication markets and significant changes in the role and functions of ITU Member States in the provision of international telecommunications. It also notes changes in telecommunication infrastructure and emergence of new international telecommunication services, especially in the field of mobile wireless telecommunications and other various factors.

The contribution underlines that both versions of the ITRs include a number of differing provisions related to economic aspects of providing telecommunication/ICT services, which creates additional potential risks of financial loss for operators. This state of affairs creates new challenges for administrations and operators when collaborating with partners from countries in which different versions of the ITRs (1988 and 2012) are applied.

In the light of the foregoing, it was proposed to include in the final report of EG-ITRs the opinion on the importance of having a single text of the ITRs. To facilitate the organization of effective work by EG-ITRs, an article by article comparison of the 1988 and 2012 ITRs has been prepared, which was proposed to be reflected in Section 2.3 “Potential conflicts” of the draft Final Report.

**4.8 Contribution EG-ITRs 2/9 from the Republic of Zimbabwe - Review and revision of the ITRs**

The Contribution from Zimbabwe examined the ITRs in light of the terms of reference of the EG-ITRs. It covered issues relating to the implementation of the 2012 ITRs and WCIT-12 Resolutions and issues relating to possible conflict between the two treaties. The two Treaties are complimentary to each other, with the 2012 ITRs complimenting the 1988 one. The matters that they govern remain in existence albeit with variations in terminology and some institutional organizations. The new issues covered by the 2012 ITRs are real issues which the world is grappling with today and need to be covered in an international regulatory framework. It is important to carry everyone on board to find a lasting solution to the ITR problem. Accordingly, it is recommended as follows:

a) Measures be put in place for discussion of the contentious issues on security and emerging technologies in order to find a way of accommodating these appropriately in the ITRs

b) Appropriate consultations to ensure that there is buy in by the majority of Member States on a review of the ITRs need to made

c) That once consensus is reached, Review of the ITRs be made

d) Only when it is clear that consensus can be reached on the contentious issues, should a proposal to hold another World Conference on International Telecommunications be considered, in order to avoid a split result.

**5 Discussions on contributions made directly to the third meeting**

The Expert Group examined the various contributions, which were appreciated by the Group. During the discussions, it was observed that there were different views on the interpretation of the ToRs of the Group as specified in Council 2016 Res.1379.

**5.1 Discussion on Contribution EG-ITRs 3/2 from the People's Republic of China**

* Some members stated the importance of new trends and challenges raised in the contribution and its impact on ITRs.
* A member was of the view that the new trends may be taken into account in the work of the Group but the mandate of the Group is not to analyse or catalogue the new trends.
* Some members stated that some of the issues raised in the contribution fall outside the purview of the ITRs, and that there are other bodies to address them.
* Some members also stated that it was difficult to catch up with emerging trends in a treaty instrument, as there is a risk that the treaty would be outdated.
* Some other new trends, not included in the contribution, such as trends in innovation in services and technology were highlighted.
* The linkage between development and the ITRs was questioned by a member.
* Concerning security, there was a divergence in views on whether security should be included in a treaty instrument.

**5.2 Discussion on Contribution EG-ITRs 3/3 from China Telecommunications Corporation**

* Some members indicated that many of the issues raised may fall outside the ToRs of the Group, and that some issues may fall under domestic regulation, and some outside the purview of the ITRs.

**5.3 Discussion on Contribution EG-ITRs 3/4 from KDDI**

* Some members commented that there was indeed an agreement during WCIT-12 that the accounting rates system was not being used much even then, but decided to retain it as it continues to provide a legal basis for any existing transaction using the system.
* Some members reiterated the importance of having a discussion on new trends and their impact on the ITRs. In this regard, these members stated that developing countries had a need for the ITRs and it was important to consider the views of both developing and developed countries.
* Some members were of the view that if some parts of the ITRs are no longer applicable, it does not mean the ITRs as the whole is not needed. They highlighted issues such as regulations related to security, guarantee of access to telecommunication, especially for people with specific needs, taxation etc, included in the ITRs, which are still the responsibility of Member States.
* Some members stated that the experience of KDDI was similar to the experience of the operators in their countries.

**5.4 Discussion on Contribution EG-ITRs 3/6 from Portugal**

* A member stated that the need or not for a new WCIT is premature as the work of the Group has not concluded, and that such a decision has to be made by PP.

**5.5 Discussion on Contribution EG-ITRs 3/7 from Japan**

* Some members reiterated the view that that the need or not of a new WCIT is premature as such a decision has to be made by PP. It was also stressed that they are not of the view that the ITRs will impede development of telecommunications, giving the example of radio regulations as an example of regulations aiding growth of telecommunications.
* Some members reiterated that concerning inclusion of emerging trends in a treaty instrument, there is a risk that it would be outdated.
* Some members brought up the significant cost of holding a new WCIT, and that it could take attention away from ITU efforts concerning the SDGs.
* Some members were of the view that there were many issues beyond commercial agreements that needed to be addressed at the international level under a treaty instrument such as the ITRs.

**5.6 Discussion on Contribution EG-ITRs 3/8 from the United States of America**

* Some members reiterated the view that that the need or not of a new WCIT is premature as such a decision has to be made by PP, so that aspect of the final report is beyond the remit of this Group.

**5.7 Discussion on Contribution EG-ITRs 3/9 from the Russian Federation, Republic of Armenia, Republic of Belarus and Kyrgyz Republic**

* Some members expressed their support for the contribution, including the analysis in the Annex, which lists where the differences between the two versions of the treaties. They also reiterated the importance of having a single text of the ITRs. In this regard, these members highlighted changes in terminology, and provisions such as security, roaming in the 2012 version that don’t exist in the 1988 ITRs.
* Some members did not agree with the proposal made in the contribution, on including the annex in the contribution as part of the Group’s final report to Council 2018, and did not see any conflict in the existence of two sets of ITRs. They stated that differences between the two versions of the treaty does not inevitably lead to conflicts in their implementation.
* A discussion ensued on the need to clarify the correlation between "having differences in text in the 1988 and 2012 ITRs" and "Potential conflicts in the implementation of the 2012 ITRs", with a request for clarification by the Legal Advisor.

**Comments of the ITU Legal Advisor**

Up on the request of the Group, the ITU Legal Advisor addressed the issue of conflict of international norms or standards.  He noted that in this context, a conflict does not mean differences between two successive standards. He clarified that when we talk about a conflict in this context we talk about situations that arise as a result of two successive legal rules dealing with the same matter that are contradictory in nature, that are incompatible, and are nevertheless simultaneously applied to a specific concrete situation. Differences between two treaties does not necessarily implies that the treaties are incompatible *per se*.

The Legal Advisor noted that potential contradictions can arise between two successive international standards on the same issue in the same domain, and that is indeed the situation that could be found in this case because the 1988 ITRs and the 2012 ITRs refer to or are applied to the same domain and the same subject matter. Having said that, he emphasized that there are tools that can be used to resolve potential conflicts between two successive treaties in the same domain, and these tools are given to us in particular under Article 30 of the 1969 Vienna Convention on the Law of Treaties.

He then mentioned the different potential scenarios and the potential solutions which are offered by the Vienna Convention.

1. The first case would be when all parties to the 1988 treaty are also parties to the 2012 treaty. In this case, it is the latter treaty that applies except in such a case that in bilateral relations, Member States believe it is more appropriate to apply the former treaty, but normally it would be the more recent treaty that apply.
2. When parties to the previous treaty are not all parties to the subsequent treaty, as in the current case. In this case, two solutions are available.
   * In relations between parties to the second treaty, then it is the previous solution under Point 1 that applies.  It is the subsequent treaty that is applied in relations between parties to the two treaties.
   * If one State is party to both and another is only party to one, the treaty to which both states are Parties governs their mutual rights and obligations.

So, even if there could be potential conflicts that may arise between the 1988 ITRs and the 2012 ITRs, we nevertheless have legal solutions within international law that would allow us to solve this potential conflict.

**5.8 Discussion on Contribution EG-ITRs 3/10 from the Republic of Zimbabwe**

* Several members supported the proposals contained in the contribution including the recommendation made.
* Some members were of the view that the aspect of Security should be further developed, with some other members of the view that while there is general agreement on the importance of security, there is disagreement on the need to use the framework of the ITRs to develop a treaty on security.

**6 Comments on the draft final report to Council**

* A compilation document was presented to the Group containing edits, comments and new text proposals submitted by members on [Draft 1.0 of the Final Report of the Expert Group to Council 2018](https://www.itu.int/md/S18-CLEGITRREP-C-0001/en).
* Some members requested further clarifications on the distinction between contributions submitted to the Group’s third meeting and comments submitted on the Draft Report 1.0, and how these would be treated during the discussion of the Report.
* The Chairman clarified the process, using the plan agreed at the second meeting of the group as reference, while reiterating the importance of maintain traceability of the inputs received.
* The Chairman noted that he would collect various views on the Draft 1.0, and then work with the vice chairs and secretariat to produce a Draft 2.0 by February 15, as per the agreed plan.
* The Group went through the Draft 1.0 section by section. The Chairman invited those who had submitted comments on the report to present their comments to the Group. Each section as well as the comments receive were then discussed in detail.
* The Chairman and the members of the Group agreed on the need to strive for maintaining a balance while succinctly include the various views in the Final Report to Council 2018.

**7 Actions to be taken**

* The group will continue with its work as per the steps listed in the Table on page <https://www.itu.int/en/council/eg-itrs/Pages/report.aspx>, in accordance with the plan agreed at the second meeting of the Group.

**8 Closing of the Meeting**

In closing, the Chairman thanked all the ITU Member States and Sector Members who made contributions and participated in the work of the Expert Group (including those who participated remotely), the Vice-Chairmen, and ITU Elected Officials and the Secretariat for their efficient assistance during the meeting.

The Group thanked the Chairman, Vice-Chairmen and Secretariat for their effective organization and management of the Group. The Group also thanked the interpreters and the remote moderator.

**Chairman: Mr Fernando Borjón (Mexico)**