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| **Plenipotentiary Conference (PP-18) Dubai, 29 October – 16 November 2018** |  |
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| PLENARY MEETING | **Document 29-E** |
| **29 June 2018** |
| **Original: English** |
| Report by the Council | |
| Final Report of the Expert Group on the  International Telecommunication Regulations (EG-ITRs) | |

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| Further to discussions held during the 2018 Session of the Council, the Report of the Expert Group on the International Telecommunication Regulations (EG-ITRs) is transmitted to the Plenipotentiary Conference (Annex 1).  As requested by Council, extract of the Summary record of the second Plenary meeting of the 2018 Session of the Council is attached as Annex 2 of this document. |

Annexes: 2

ANNEX 1

Document C18/26 - Final Report of the Expert Group on the International Telecommunication Regulations

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| **Council 2018 Geneva, 17-27 April 2018** |  |
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| **Agenda item: PL 1.8** | **Document C18/26-E** |
| **13 April 2018** |
| **Original: English** |
| Final Report of the Expert Group on the International Telecommunication Regulations | |

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| Summary  In accordance with ITU Plenipotentiary Resolution 146 (Rev. Busan, 2014), and Council 2016 Resolution 1379, an Expert Group on the International Telecommunication Regulations (EG ITRs), open to all Member States and Sector Members, was created. This document is the final report of the Expert Group to Council 2018.  Action required  The Council is invited to **examine** the final report of EG ITRs and **submit** it to the 2018 Plenipotentiary Conference with the Council's comments.  \_\_\_\_\_\_\_\_\_\_\_\_  References  *ITU Plenipotentiary* [*Resolution 146 (Rev. Busan, 2014)*](http://www.itu.int/pub/S-CONF-PLEN-2015)*, Council 2016* [*Resolution 1379*](https://www.itu.int/md/S16-CL-C-0125/en) |

1. **Introduction**

**1.1** In accordance with Article 4 "Instruments of the Union" of the ITU Constitution, the International Telecommunication Regulations (ITRs) are one of the two Administrative Regulations included in the list of Instruments of the Union (paragraph 29 of the Constitution).

Two versions of the ITRs exist: the 1988 ITRs and the 2012 ITRs. Background information concerning the two versions are available at: https://www.itu.int/en/wcit-12/Pages/itrs.aspxhttps://www.itu.int/en/wcit-12/Pages/itrs.aspxhttps://www.itu.int/en/wcit-12/Pages/itrs.aspx

<https://www.itu.int/en/history/Pages/TelegraphAndTelephoneConferences.aspx?conf=4.33> and <https://www.itu.int/en/wcit-12/Pages/default.aspx>.

**1.2** In accordance with ITU Plenipotentiary Resolution 146 (Rev. Busan, 2014), the ITU Council, at its 2016 Session, adopted Resolution 1379, which resolves that an Expert Group on the International Telecommunication Regulations (EG‑ITRs), open to all Member States and Sector Members, be created.

**1.3** The Terms of Reference of the Group, as stated in Annex 1 of Council Resolution 1379, is as follows:

*1. On the basis of contributions submitted by Member States, Sector Members and inputs from the Directors of the Bureaux if necessary, the EG-ITRs shall undertake a 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.*

*2. The review should include among others:*

*a) An examination of the 2012 ITRs to determine its applicability in a rapidly evolving international telecommunication environment, taking into account technology, services and existing multilateral and international legal obligations as well as changes in the scope of domestic regulatory regimes;*

*b) Legal analyses of the 2012 ITRs;*

*c) Analyses of any potential conflicts between the obligations of signatories to the 2012 ITRs and signatories to the 1988 ITRs with respect to implementation of the provisions of the 1988 and the 2012 ITRs.*

*3. The EG-ITRs will present a progress report to Council 2017 and a final report to Council 2018 for examination and submission to the 2018 Plenipotentiary Conference with the Council’s comments.*

**1.4** Council 2016 appointed Mr. Fernando Borjón (Mexico) as the chairman of the Group. Council 2017 appointed six vice-chairs as follows:

1. Mr. Guy-Michel Kouakou (Côte d'Ivoire)
2. Mr. Santiago Reyes-Borda (Canada)
3. Mr. Al Ansari Al-Mashakbeth (Jordan)
4. Mr. Xiping Huang (China)
5. Mr. Aleksei S. Borodin (Russian Federation)
6. Mr. Fabio Bigi (Italy)

**1.5** In accordance with Council Res. 1379, EG-ITRs held four physical meetings. Reports of the four meetings are transmitted to the Council for information:

1. First meeting: 9 - 10 February 2017: see [report](https://www.itu.int/md/S17-CLEGITR1-C-0013/en)
2. Second Meeting: 13 - 15 September 2017: see [report](https://www.itu.int/md/S17-CLEGITR2-C-0020/en)
3. Third meeting: 17- 19 January 2018: see [report](https://www.itu.int/md/S18-CLEGITR3-C-0012/en)
4. Fourth meeting: 12 - 13 April 2018: see [report](https://www.itu.int/md/S18-CLEGITR4-C-0009/en)

All the contributions, information documents, input documents by members[[1]](#footnote-1), and by the TSB Director,  submitted to the four meetings of the EG-ITRs, are reflected and included in the reports of the meetings of EG-ITRs, which can be found on the EG-ITRs website, including webcasts of all the meetings: <https://www.itu.int/en/council/eg-itrs/Pages/default.aspx>.

1. **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**

**2.1 Applicability**

**2.1.1** Some general views were expressed on the applicability of the 2012 ITRs.

1. A member stated that the applicability of the 2012 ITRs should be understood in terms of the advantages derived from fulfilling the legal obligations thereof vis-à-vis other binding multilateral and/or international instruments. In general terms, this refers to the degree/level to which the provisions of the 2012 ITRs have been implemented in binding international instruments and national legal frameworks.
2. Concerning the scope of applicability, a view based on the results of the survey of some operators was expressed that along with the rapid development of technologies, international telecommunication markets and operators’ providing services which respond to market needs are also ever-changing, and in order to accommodate this rapidly evolving international telecommunication environment, the ITRs should be flexible and future-proof which could be applied in the future. As described in WCIT-12 Resolution 4, the ITRs should be “*high-level guiding principles*” and should not stipulate details as detailed operational matters, matters which need to be updated frequently, matters which impose undue and unnecessary burden on operators etc. These should be excluded from the ITRs and delegated to operators, or would be defined in non-binding documents such as recommendation or guideline only when it is absolutely necessary and agreed among ITU members.
3. A member stated a view that 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. In the member’s view, the ITRs should determine common rules to manage the interdependence among all nations in the provision of telecommunications/ICT, and should reflect the following three commitments by signatories: (1) to strengthen national-level management of cross-border spillovers (e.g., ICT-related intellectual property rights infringements); (2) to protect any state’s sovereignty if it comes under attack (e.g., cyber-security threats); (3) to cooperate in mitigating global system risks (e.g., failure of communications infrastructure). The member with this view also noted that for the ITRs to be applicable, Member States should be willing to commit to these three objectives of international cooperation.
4. Some members considered that the ITRs should remain focused on relevant international public telecommunications issues and should not be extended to domestic issues or to issues related to the Internet.
5. Some members expressed the view that the ITRs should always seek to facilitate and never to restrict the development of telecommunications and the availability of communications services.

**2.1.2** Two sets of divergent views were expressed by members on the applicability of the 2012 ITRs in a rapidly evolving international telecommunication environment.

**2.1.2.1.** Proponents of the first set of views expressed the following:

1. Some members, including some operators, expressed the view that many operators are no longer using the ITRs or using it in a very limited manner, as they operate under commercial agreements.
2. These members noted that when the ITRs were adopted in 1988 most telecommunications operators were state-owned enterprises and an international treaty was necessary to give private telecommunications carriers a baseline global framework that ensured interoperability and guaranteed revenue flow. Also, in a monopoly era, the absence of such regulations in an environment dominated by monopoly providers with market power could have resulted in poor interconnection, higher settlement charges, and poor quality of service.
3. These members highlighted that in the last two decades, international and domestic telecommunication markets have experienced extraordinary structural and technological changes. They were of the view that the monopoly environment has disappeared in the vast majority of countries, with the emergence of multiple competing private-sector operators in each country resulting in a competitive landscape. The presence of competition in a majority of countries means that most international telecommunication traffic is exchanged and terminated via competitive interconnection agreements, rather than through mutual agreements established through the ITRs framework. They believe that flexibility is indispensable for developing competitive business and promoting innovation in this rapidly changing international communications market.
4. The members with this view further stated that the ITRs are effectively irrelevant to international telecommunications traffic as the volume of such traffic being settled outside the accounting rate system increasingly dwarfs, and eventually will replace completely, the traffic being settled under that system. They noted that according to their knowledge, there are very few countries that continue to rely on the ITR-based accounting rate regime, and such traffic accounts only for less than 1% of global traffic flows (with some more examples cited in the corresponding contributions)[[2]](#footnote-2).
5. A member indicated that the ITU Constitution and Convention already contain provisions on cooperation in the provision of international telecommunication services.
6. These members were of the view that the successful deployment and use of telecommunication services and applications worldwide, as reflected and evidenced in several international telecommunication reports and publications, including those of the ITU, has not been the result of the ITRs, and that what has been and will continue to be a successful path for the deployment, adoption and use of telecommunications and ICTs in a rapidly evolving telecommunications sector, is the creation and enhancement of regulatory and policy environments that promote competition, investment, transparency, entrepreneurship and innovation.
7. An operator considered that the inclusion of detailed rules within ITR will restrict freedom of trade between the international carriers, and will have a negative impact towards the telecommunication industry and users.
8. Some members noted that along with the rapid development of technologies, international telecommunications/ICT environments are drastically and rapidly evolving, and new trends/emerging issues are also ever-changing. As no one can predict how such new issues will develop in the future, it seems impossible to give a clear and precise definition of them.
9. Some members expressed the view that the ITRs should not be used to determine or develop common rules on cybersecurity threats.

These members are of the view that taking into account these facts, it is unfitting that continually changing new issues will be addressed by binding international instruments by making assumptions about how new issues will evolve. In addition, new issues cause a lack of stability to binding international instruments. Furthermore, setting an international legal framework to regulate new issues will make operators difficult to respond flexibly to rapidly evolving international environments, including technological change and emergence of new markets, and as a result decrease the potential of new business and technological innovation, which may make a negative impact on the global economic growth.

**2.1.2.2.** Proponents of the second set of views expressed the following:

1. Some members, including some operators, expressed the view that 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.
2. These members were of the view that ICTs now underpin everything we do, therefore an up to date Treaty-level provisions are required for ensuring a connected world in a secure, safe and affordable manner and those international services are offered fairly and efficiently. The convergence of technologies, and the appearance of new ones, has changed the landscape dramatically and the ITRs must be reviewed to reflect this.
3. These members expressed the view that that the assumption of competitive international market may not necessarily hold true globally. They highlighted that there are players who are still dominant at the international level, including in the provision of cross border services and there is a need for some regulations to deal with this at the international level.
4. These members were of the view that some items in the ITRs continue to be of current relevance within the international telecommunication sector environment, in so far as they promote regulatory consistency and generate trust in international telecommunications. They include:

* The security and robustness of international telecommunication networks as an individual and collective obligation for Member States, which must pursue the harmonious development of international telecommunication services offered to the public.
* Promotion of investment in international and national telecommunication networks, including in the provision of taxation framework for cross border services.
* The establishment of provisions to ensure international calling line identification.
* The appropriate use of numbering resources.
* The creation of enabling environments for the implementation of regional telecommunication traffic exchange points.

A member with this view also noted that these current provisions of the ITRs are complemented by the present environment in which telecommunication markets have transited to scenarios under which authorized operating agencies have bilateral agreements and competition is constantly increasing, generating lower prices and increased access to telecommunication services.

As commented by some members, regardless the percentage of global traffic flows, the 2012 ITRs retained these provisions (Article 8 of 2012 ITRs) on purpose, because there is still a number of operating agencies from developing countries that continue to operate based on the accounting rate principles and ITRs remains the only legal instruments, that provides such a regime.

1. These members expressed the view that in bilateral agreements between some operating agencies, a number of provisions are based on ITRs, and stated that some operators feel the need for more coordination with their counterparts in other countries and intergovernmental coordination on issues concerning, for example:

* charging and accounting aspects,
* network security,
* unsolicited messages,
* taxation and additional charges,
* offsetting,
* settlements for maritime communications
* State regulation impacting business models.

1. An operator noted that certainty, predictability and uniform application of international rules governing commercial activities are crucial in creating a favourable investment environment necessary to expand connectivity to everyone.
2. Some members were in favour of the regular review of the ITRs given the current trends in the telecommunications/ICT market.

Some members note that 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 telecommunications/ICT - essentially converged telecom and Internet services, the rapid growth of OTT in particular. Therefore, they are of the view that the developing countries have been advocating for the review of ITRs that focuses on the new trends in international telecommunications/ICT so as to enable the Regulations to keep up with times.

1. It was emphasized by some members that a significant number of new trends have emerged in telecommunications/ICT. They led to tremendous increase in number of users and industries “being digitized”, the amount of data transferred through, disseminated and collected by telecommunications/ICT networks, systems and applications. Special attention should be paid to new technologies such as Internet of Things, blockchain, Big Data, Artificial Intelligence, Cloud Computing, and so on. This has also created new emerging issues to be solved on the international level such as: privacy and data protection; deployment of new technologies and services; providing basic principles for fair competion between different services using traditional and new technologies; protection of critical information infrastructure; protection of telecommunications/ICT systems from unauthorised use, unsolicited bulk electronic communications, etc.; cybersecurity; the “digital gap” broadened day by day in the world.

**2.2 Legal Analyses of the 2012 ITRs**

**2.2.1** While noting that legal analyses can deal with various different aspects, some members considered that the concept in hand entails that the legal analyses of the 2012 ITRs must focus on confirming that each provision thereof complies with the Purpose of the Regulations as established in Article 1. In this regard, a member expressed the concern 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.

**2.2.2** Some members highlighted certain elements included in the 2012 ITRs that they consider important e.g. custody of international telecommunication numbering resources, international calling line identification (CLI) etc. In this regard, a member expressed the view that a periodic review of the ITRs should be considered, to ensure that they are adapted to society’s new needs in the field of telecommunications/ICT, such as: new trends in telephony (VoIP, IP telephony), Over the Top (OTT) services, the Internet of Things (IoT), and others.

**2.2.3** Similarly, a member noted that a legal analysis of the 2012 ITRs, in their opinion, indicate that the provisions are very relevant in guiding the global telecommunications/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. In their view, 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 telecommunications/ICT sphere. According to this member, the main problem with the 2012 ITRs is that it is in need of being enhanced in view of the new trends and new issues in telecommunications/ICT development worldwide, and in particular, with the principles of international development and security.

**2.2.4** A member noted that the ITRs recognize the importance of international standards for the global compatibility and interoperability of telecommunication networks and services and undertake to promote such standards through the work of competent international organizations including the ITU. Moreover the ITRs also include provisions on safety-of-life with respect to distress telecommunications, security and robustness of networks, suspension of services, e-waste and accessibility matters. On the other hand, the member noted the WTO Agreement on Technical Barriers to Trade, and in particular Article 2, § 2.2 thereof, and said that the ITRs provide necessary regulatory elements and principles that do not affect trade and promote the removal of technical barriers to it.

**2.2.5** An operator stated that a number of countries, in which they operate, do not apply Article 8.3 of ITRs 2012 and Article 6.1.3 of ITRs 1988 despite their international commitments to do so, which has detrimental effects to its operations.

**2.2.6** Some members noted that Resolutions contained in the Final Acts of the World Conference on International Telecommunications (Dubai, 2012) are not part of the Regulations. They do not require any ratification, acceptance or approval by individual Member States, and they are not inherently binding on Member States. Some members sought the advice of the ITU Legal Adviser in this regard (see 2.2.7 for the response of the Legal Adviser).

**2.2.7** The ITU Legal Adviser stated that the Resolutions are an integral part of the final acts of WCIT 2012. However, generally speaking, as in all treaty making conferences, the Resolutions (as well as, as appropriate, Decisions and Recommendations) are not part of the treaty (in this case, the ITRs), and therefore do not have treaty status. It is also true that as they do not have treaty status, they do not go through (and are not subject to) the ratification, acceptance or approval processes which is generally necessary for Member States to become parties to a treaty concluded under the aegis of the Union.

Considering the part on whether Resolutions are not inherently binding on Member States, this is essentially true that these Resolutions in the final acts of the ITRs are not inherently binding on Members States. At the ITU, there are indeed some Resolutions that are binding in nature on Member States – i.e. those Resolutions that are incorporated by reference into the Radio Regulations.

**2.2.8** Some members supported the inclusion of two tables with texts of both 1988 and 2012 ITRs that illustrate differences between the two versions of ITRs and may help in further discussion on potential conflicts with respect to implementation of provisions of the 1988 and the 2012 ITRs[[3]](#footnote-3).

Some other members did not support the inclusion of such tables, and did not see any conflict between 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.

**2.3 Potential Conflicts between the obligations of signatories to the 2012 ITRs and signatories to the 1988 ITRs**

**2.3.1** Upon the request of the Group, the ITU Legal Adviser 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 Adviser 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 potentially 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.

**2.3.2** Some members were of the view that they do not foresee any potential legal conflicts between the 1988 and the 2012 ITRs, and these members also noted the some operators do not face any issues due to the existence of both 2012 and 1988 versions of the ITRs. They noted that no actual examples of conflict had been found and that even if they were ever found the Legal Adviser had stated clearly that tools were available to solve them.

They further referred to the explanatory text provided on the ITU website with regard to the applicability of the two version of the Treaties (cited below), which they see as a guideline for future implementation:

*“The 2012 treaty replaces the 1988 treaty for the parties to the 2012 treaty. Non-parties to the 2012 treaty remain bound by the 1988 treaty. Relations between a non-party to the 2012 treaty and a party to the 2012 treaty are governed by the 1988 treaty. It has to be noted that for those signatories of the 2012 treaty, the latter shall apply provisionally as from 1 January 2015.”*

With respect to whether there will be any practical conflicts arising from the fact that the 1988 ITRs will apply in some relations between ITU Member States and the 2012 version in others, those with this view noted that it may be too early to make such a judgment as the 2012 ITRs only entered into force two years ago (January 1, 2015) for its earliest adopters. They further expressed the view that even if some significant difficulties were discovered, however, it would be important to take into account their scale and scope and their impact on cross-border services.

Some operators pointed out, in response to questions from the Member States about the possible challenges arising from the implementation of the 2012 ITR, that their companies have not experienced any practical obstacles in this regard, and that they expect this is due to the fact that practically all international traffic is exchanged through commercial agreements. Based on their collective operational experience, they took the view that the ITRs are effectively irrelevant to international telecommunications.

Some members stated that differences between the two versions of the treaty does not inevitably lead to conflicts in their implementation

**2.3.3** Some members were of the view that the fact that only some countries are signatories to the 2012 ITRs could result in conflicts and limitations in terms of the implementation of the ITRs. They noted that application of 1988 ITRs is limited by the fact of obsolete understanding of the objectives and subject matter of the Regulations, and application of 2012 ITRs is limited by the small number of acceded countries. They therefore are of the view that simultaneous application of both 1988 ITRs and 2012 ITRs provisions is not possible.

They particularly highlighted certain provisions of the 2012 ITRs which do not form part of the 1988 ITRs, such as the provisions on accessibility, reduction of e-waste, cooperation in combating unsolicited bulk electronic communications etc., and could therefore appear as problematic in their implementation between different Member States, also posing challenges for telecommunication operators.

Some members pointed out to potential conflicts with respect to implementation of 1988 and 2012 ITRs, which can arise from the fact that 1988 ITRs impose direct obligations on Member-States, whereas similar provisions in 2012 ITRs call only upon actions from authorized operating agencies.

Some Members said that the risk of problems and obstacles arising in the future in the continued application of the 1988 and 2012 ITRs could not be ruled out. They said that given the lack of sufficient time to assess application practice, work would be needed on the collection of data globally on problems and obstacles on a regular basis.

Some members were of the view that one version of ITR will be of benefit for the whole union and the telecommunications/ICT environment to avoid potential conflicts and to have comprehensive compendium on the subject.

Some other Members noted that no examples of difficulties or conflicts had been found. They also noted that they were not aware of any particular difficulties caused by having two versions of the ITRs.

**2.3.4** Some members were of the view that it still remains a legal fact that in case of any dispute between countries signatory to the 1988 ITRs, and countries that only signed the 2012 ITRS and never signed the 1988 ITRs, there would be an obvious conflict.

Some other members were of the view that there are no potential conflict and highlighted the ITU Legal Adviser’s opinion in this regard (Section 2.3.1).

**2.3.5 Views on holding a new World Conference on International Telecommunications (WCIT)**

While recognizing that the task of Expert Group is to undertake a review of the 2012 ITRs, and not to develop a new set of ITRs or propose a new WCIT, several views were expressed by members concerning the convening of a new WCIT. The views can be summarized as follows:

a. Some members were of the view that holding another WCIT is not favourable because finding global consensus is difficult, and the financial burdens and opportunity costs are high, as well as the reputational risk to ITU. They also considered that holding a new WCIT would cause significant uncertainty, which might hold back investment and development. These members are of the view that another WCIT should only be held if there was a consensus position regarding the applicability and effectiveness of the Regulations. These members expressed their view that there is no need to continue a review process either because the ITRs are no longer relevant or because holding a new WCIT, given the fundamental difference of views between members, is currently unfeasible.

b. Some members were in favour of the regular review/revision of the ITRs given the current trends in the telecommunications/ICT market of the introduction of new technologies such as 5G, IoT, cloud computing, cyber security, emerging services, in particular Over-The-Top services and Big Data platforms in the ICT sector. They stated that we are experiencing a new era with a paradigm shift in the ICT sector which requires a review of the treaties including the ITRs, that would highlight the related challenges as well as the opportunities. These members are of the view to continue the work with a clear mandate in order to reach consensus on the issues raised above.

1. **Summary**

**3.1**There are two divergent points of view on the **applicability** **of the 2012 ITRs**:

1. Some members expressed the view that with the extraordinary structural and technological changes international and domestic telecommunication markets resulting in competitive markets in a majority of countries, the ITRs are no longer relevant, and that operators are not using the ITRs or using it in a very limited manner as they operate under commercial agreements.
2. Some other members expressed the view that ITRs continue to be of current relevance within the international telecommunication sector environment, as they promote regulatory consistency, facilitate coordination on issues concerning commercial agreements and beyond, and generate trust in international telecommunications.

**3.2** **Legal analyses of the 2012 ITRs** can deal with various different aspects. These include for example, confirming that each provision thereof complies with the Purpose of the Regulations as established in Article 1; whether or not an international legal instrument such as the ITRs is important for the global compatibility and interoperability of telecommunication networks and services; or the potential impact of the inconsistent application of ITRs.

Some members consider that 2012 ITRs are still useful and legally relevant, e.g. custody of international telecommunication numbering resources, and international calling line identification (CLI). In their view, the ITRs need to be enhanced in view of the new trends in telecommunications/ICT such as: new trends in telephony (VoIP, IP telephony), Over the Top (OTT) services, the Internet of Things (IoT), and others.

Some members noted that Resolutions contained in the Final Acts of the World Conference on International Telecommunications (Dubai, 2012) are not part of the Regulations and are not inherently binding on Member States.

**3.3** There are two divergent points of view about the **potential conflicts between the 1988 and 2012 ITRs:**

a. Some members are of the view that there are no legal conflicts between the 1988 and the 2012 ITRs and that if any examples of potential conflicts between the obligations of signatories to the 2012 ITRs and signatories to the 1988 ITRs were found, there are legal solutions to solve them.

b. Other members are of the view that simultaneous application of both 1988 ITRs and 2012 ITRs provisions is not possible.

**3.4** **Holding another WCIT**

a. Some members expressed their view that there is no need to continue a review process either because the ITRs are no longer relevant or because holding a new WCIT is currently unfeasible because finding global consensus is difficult, and the financial burdens are high, as well as the reputational risk to ITU. They expressed the view that a new WCIT should only be held if there was a consensus position regarding the applicability and effectiveness of the Regulations.

b. Some members were in favour of the regular review/revision of the ITRs given the current trends in the telecommunications/ICT market of the introduction of 5G, IoT, cloud computing, cyber security, emerging services, in particular Over-The-Top services and Big Data platforms in the ICT sector. These members are of the view to continue the work with a clear mandate in order to reach consensus on the issues raised above. As to when and how to revise it, it is up to the consensus of all the Member States.

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ANNEX 2

Extract of Document C18/105 - Summary record of the   
second Plenary meeting of the 2018 Session of the Council

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| **Council 2018 Geneva, 17-27 April 2018** |  |
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|  | **Document C18/105-E** |
| **17 May 2018** |
| **Original: English** |
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| Summary record  of the  Second Plenary meeting | |
| Wednesday, 18 April 2018, from 0935 to 1235 hours | |
| **Chairman**: Mr R. ISMAILOV (Russian Federation) | |

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|  | Subjects discussed | Documents |
| 1 | Report of the Expert Group on the International Telecommunication Regulations (EG-ITRs) | [C18/26](https://www.itu.int/md/S18-CL-C-0026/en), [C18/79](https://www.itu.int/md/S18-CL-C-0079/en), [C18/91](https://www.itu.int/md/S18-CL-C-0091/en), [C18/92](https://www.itu.int/md/S18-CL-C-0092/en) |
| 2 | Statements by councillors | - |
| 3 | Report on the outcomes of the activities of the Council Working Group on WSIS (CWG-WSIS) since Council-17 | [C18/8](https://www.itu.int/md/S18-CL-C-0008/en), [C18/70](https://www.itu.int/md/S18-CL-C-0070/en), [C18/78](https://www.itu.int/md/S18-CL-C-0078/en), [C18/82](https://www.itu.int/md/S18-CL-C-0082/en), [C18/87](https://www.itu.int/md/S18-CL-C-0087/en) |
| 4 | ITU Council contribution to the High-Level Political Forum on Sustainable Development (HLPF) | [C18/71](https://www.itu.int/md/S18-CL-C-0071/en) |
| 5 | Comprehensive report detailing the activities, actions and engagements that the Union is undertaking in the context of WSIS implementation and the 2030 Agenda for Sustainable Development | [C18/53](https://www.itu.int/md/S18-CL-C-0053/en), [C18/96](https://www.itu.int/md/S18-CL-C-0096/en), [C18/97](https://www.itu.int/md/S18-CL-C-0097/en) |

# 1 Report of the Expert Group on the International Telecommunication Regulations (EG-ITRs) (Documents [C18/26](https://www.itu.int/md/S18-CL-C-0026/en), [C18/79](https://www.itu.int/md/S18-CL-C-0079/en), [C18/91](https://www.itu.int/md/S18-CL-C-0091/en) and [C18/92](https://www.itu.int/md/S18-CL-C-0092/en))

1.1 The Chairman recalled that, pursuant to Resolution 146 (Rev. Busan, 2014), the Council was not asked to reopen discussion on the final report of EG-ITRs set out in Document C18/26 with a view to amending it, but only to examine and comment on it. The report, along with the summary record of the Council's discussions, would be sent as a package to PP-18.

1.2 The Chairman of EG-ITRs, introducing Document C18/26, reviewed the background to the group's establishment and its terms of reference. The final report, which the Expert Group had adopted at its meeting on 12-13 April 2018, had been drawn up with a view to providing a balanced, clear and detailed description of the divergent positions expressed in the group on the applicability of the ITRs, the legal analysis of the 2012 ITRs, potential conflicts between the obligations of signatories to the 1988 and the 2012 ITRs, respectively, and whether or not to hold a second world conference on international telecommunications (WCIT). The Expert Group's deliberations represented the first effort following WCIT-12 to engage ITU members in an open discussion of their positions on the ITRs and, as such, served as a starting point for possible further discussion on the ITRs and related subjects.

1.3 The councillor from Egypt, introducing Document C18/79, noted that the divergent points of view expressed by Member States and Sector Members had prevented the Expert Group from drawing final conclusions; the group therefore needed clearer terms of reference. It also needed greater involvement on the part of Sector Members and operators. Regarding the existence of two versions of the ITRs, the point was not whether there was a legal conflict between them, since the ultimate goal, in his view, was a consolidated treaty agreed by all Member States, but rather to identify which articles prevented some Member States from signing the ITRs. Moreover, the financial cost of holding a second WCIT would be substantial, and future WCITs should therefore take account of earlier preparatory work. Lastly, it should be remembered that the ITRs complemented the ITU Constitution and Convention; their repeal would simply mean that the Constitution and Convention would have to be amended accordingly.

1.4 The councillor from the United States, introducing Document C18/91, said that the lack of consensus reflected in the final report of the Expert Group should be reflected in the Council's report to PP-18. In her view, the ITRs were no longer applicable to most international communication traffic, as the provisions that had once been essential for many operations between State-owned monopolies had been replaced by commercially negotiated arrangements. Moreover, the fact that there existed two versions of the ITRs had not actually given rise to any legal or practical conflicts. Given the lack of consensus, a second WCIT would almost certainly not result in agreement; it would only divert ITU resources away from more constructive work and might even result in three versions of the ITRs being in force simultaneously.

1.5 The councillor from Brazil, introducing a multi-country contribution - Document C18/92, confirmed that the governments participating in the Expert Group had been unable to reach a consensus on the applicability of the ITRs, but neither had the private sector members present, some of which continued to use the ITRs. The final report in fact reflected not only two but three points of view: that the ITRs were no longer relevant and therefore a new WCIT should not be convened; that the ITRs were relevant and that a new WCIT should be convened at a later moment; and that the ITRs were important for coordinating the provision of increasingly transboundary telecommunication services, but a new WCIT is currently not feasible due to various reasons including financial costs, but could be convened only after there is consensus among ITU members.

1.6 All the speakers who subsequently took the floor commended the Chairman of the Expert Group for having produced a balanced report reflecting all views expressed on the various points raised.

1.7 One councillor observed that the Expert Group's terms of reference had been subject to different interpretations. For example, some participants considered that they extended to consideration of new and emerging technologies, while others deemed their scope more limited. He shared many of the views expressed by the councillor from Brazil, and supported an approach whereby the ITRs would continue to be reviewed but in the framework of an expert group with clearly defined terms of reference. He could not endorse an approach that would put an end to the group's work.

1.8 Some councillors were of the view that the Expert Group should continue to pursue its deliberations with a view to reaching consensus. One of those councillors said that the ITRs should exist in a single version that takes into account existing realities and new trends in telecommunications/ICTs. Another of those councillors said that the ITRs could help ensure the development of international telecommunications, in particular in the new telecommunication environment marked by a digital divide between developed and developing countries and issues relating to cybersecurity. Another councillor said that the fact that there were divergent points of view on the ITRs did not mean that they were not relevant.

1.9 One councillor said that it would not be feasible to convene a WCIT in the absence of a consensus. She agreed that the Expert Group should pursue its work, but noted that a consolidated treaty could only be adopted pursuant to a WCIT decision.

1.10 One councillor said that, as the ITRs were one of the legal instruments mentioned in Article 4 of the ITU Constitution, it was important that they took account of the current ICT environment. He agreed that a framework was needed that enabled participants to express their opinions, with a view, ultimately, to adopting a single text supported by all. That would only happen if the Expert Group was allowed to continue its work with new terms of reference and clearly defined objectives. The group could meet either within the context of a WCIT or in some other format.

1.11 A further councillor endorsed the conclusion set out in Document C18/92, namely that it was premature to consider convening a WCIT in the near future.

1.12 One councillor said that, while his country was in favour of consensus, no positive results would be obtained by maintaining the Expert Group and a second WCIT would be counterproductive. Instead, technical studies should be carried out to ascertain what a second WCIT would deal with.

1.13 A further councillor said that the changing nature of telecommunication services required an international framework; the challenge was to devise an agreement that was amenable to all. Pursuant to Resolution 146 (Rev. Busan, 2014), the Council could do no more than acknowledge the different points of view expressed.

1.14 One observer noted that a framework was needed for continued work on the ITRs, which it would be folly to end at PP-18. That framework could consist in the Expert Group with new terms of reference, or a new group.

1.15 Another observer agreed with the analysis put forward by the councillor of Brazil. In the absence of a consensus, it would be counterproductive to hold a second WCIT.

1.16 The Chairman, noting that councillors continued to hold divergent points of view, said that the final report of the Expert Group, along with the summary record of the discussions on the item that reflects the comments from Council would be sent to PP-18 as a package. Councillors would be given the opportunity to approve the summary record before the end of Council-18.

1.17 It was so **agreed**.

**……………**

The Secretary-General: The Chairman:

H. ZHAO R. ISMAILOV

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1. Henceforth in this document, ‘members’ refers to members of EG-ITRs i.e. Member States and Sector Members (including operators). In some cases, Member States or operators may be listed separately for additional specificity. [↑](#footnote-ref-1)
2. More specifically, the annual reports published by the United States Federal Communications Commission show that in 2012 – the latest year for which data is available - 0.5% of international telecommunications traffic between the member and foreign points was settled under legacy ITR accounting rate provisions, compared to 86% of such traffic in 1998.   
   See https://www.fcc.gov/reports-research/reports/section-4361-international-traffic-data-reports/international-9. [↑](#footnote-ref-2)
3. See <https://www.itu.int/md/S18-CLEGITR3-C/en> for more information [↑](#footnote-ref-3)