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| **Council 2019Geneva, 10-20 June 2019** |  |
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| **Agenda item: PL 2.11** | **Document C19/68-E** |
| **25 May 2019** |
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| Note by the Secretary-General |
| CONTRIBUTION FROM THE FEDERATIVE REPUBLIC OF BRAZIL and CANADAlegal CLARIFICATIONS concerning the role of TSAG in the creation of regional groups of ITU-T Study Groups, and the rights of PARTICIPATION OF Sector Members, ASSOCIATES AND ACADEMIA |

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

 Houlin ZHAO

 Secretary-General

CONTRIBUTION FROM THE FEDERATIVE REPUBLIC OF BRAZIL and canada

LEGAL CLARIFICATIONS CONCERNING THE ROLE OF TSAG IN THE CREATION OF REGIONAL GROUPS OF ITU-T STUDY GROUPS, AND THE RIGHTS OF PARTICIPATION OF SECTOR MEMBERS, ASSOCIATES AND ACADEMIA

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| SummaryBrazil and Canada present legal questions concerning the role of TSAG in the creation of regional groups of ITU-T Study Groups, and the rights of Sector Members in participating in the activities of the Sectors. The discussions around this proposal should support decisions on these issues at WTSA-20, in accordance with Recommendation 8 from PP-18 Committee 5.Action requiredSecretariat should clarify these legal questions and Council should discuss the issues, leading up to decisions at WTSA-20.\_\_\_\_\_\_\_\_\_\_\_\_References[*PP-18 Document 155-E*](https://www.itu.int/md/S18-PP-C-0155/en) *(“Report by the chairman of Committee 5”);*[*PP-18 Document 173-E*](https://www.itu.int/md/S18-PP-C-0173/en) *(“Minutes of the sixteenth Plenary Meeting”).* |

**Background and discussion**

Through the approval of Recommendation 8 from Committee 5 (COM 5), PP-18 invited *“… the World Telecommunication Standardization Assembly to review, in the context of Article 3 of the ITU Constitution, and revise, as appropriate, WTSA Resolution 1, WTSA Resolution 2, WTSA Resolution 22 and WTSA Resolution 54 to clarify the criteria for creation, participation and termination of regional groups of Study Groups, and the role of TSAG in this regard.”*

Brazil and Canada seek legal clarifications on the provisions and procedures pertaining to the creation of regional groups of ITU-T Study Groups (henceforth “RSG”); the modalities and rights of participation of Sector Members, Associates and Academia in those groups; and the role of the Telecommunication Standardization Advisory Group (TSAG) in these issues.

Brazil and Canada pose basically two questions, and ask the secretariat for clarification on its legal and procedural aspects:

**Question 1: Should TSAG review and endorse the approval by the ITU-T Study Groups of the creation of RSG? What are the legal foundations for this procedure?**

Brazil and Canada identify two main legal instruments that enable and foster the creation of RSG:

* Resolution 123 (Rev. Dubai, 2018): invites Member States to establish RSG;
* WTSA Resolution 54 (Rev. Hammamet, 2016); establishes the mechanism of RSG and some procedures.

Resolution 54 invites the regions and their Member States *“to develop draft terms of reference and working methods for these regional groups, which are to be approved by the parent study group, as regards areas of concern to them.”* However, it is not made clear which body has the competency to effectively create the RSG.

Brazil and Canada understand that it is indeed not necessary to establish in Resolution 54 which body has the competency to effectively create the RSG, because there are four existing legal instruments that assign that competency to TSAG:

* ITU Convention, Article 14A, item 197C: establishes the role of TSAG;
* WTSA Resolution 1 (Rev. Hammamet, 2016): defines in detail the creation of RSG and the role of TSAG;
* WTSA Resolution 22 (Rev. Hammamet, 2016): defines the role of TSAG in between WTSAs;
* Recommendation ITU-T A.1 (10/2016): defines the working methods of Study Groups and the role of TSAG.

The ITU Convention and WTSA Resolution 1 establish that TSAG shall *“****review*** *priorities, programmes,* ***operations, financial matters and strategies*** *for activities in the ITU-T”* and *“****provide******guidelines*** *for the work of study groups.”* Furthermore, Resolution 1 determines that *“A regional group may be established within a study group to deal with Questions and studies of particular interest to a group of Member States and Sector Members in an ITU region (item 2.1.4).”*

Considering that the creation of RSG clearly brings about operational, financial and strategic implications to the ITU and the membership, Brazil and Canada understand that TSAG, as the advisory body of the ITU-T, should review the approval by Study Groups of the terms of reference and working methods of a new RSG, and have final say on its effective creation.

Moreover, Resolution 54 resolves *“to support, on a case-by-case basis, the* ***coordinated*** *creation of regional groups of ITU-T study groups.”* It is essential to establish a common understanding of what ***coordinated*** means in this sentence. In Brazil and Canada’s understanding, it means that the creation of a RSG should be a closely coordinated effort among the ITU-T Study Group, TSAG, the concerned regional organization and the concerned Member States and Sector Members.

Finally, Recommendation ITU-T A.1 contains a detailed procedure for the approval and creation of Joint Coordination Activities (JCA), with a central role for TSAG. Brazil and Canada believe that a similarly detailed procedure should be established for the creation of RSG, with TSAG having final say on its effective creation.

**Question 2: Is there a conflict of constitutionality between Article 3 (Item 28A) of the ITU Constitution and the several legal provisions on the rights of participation of Sector Members, Associates and Academia in the activities of the sectors, particularly in RSG?**

On this issue, Brazil and Canada identify the following relevant legal provisions:

* ITU Constitution, Article 3, item 28A: establishes the rights of Sector Members in the works of the Sectors;
* ITU Convention, Article 19, items 241A-E and 248B: defines the rights of participation of Associates in the works of the Sectors;
* Resolution 169 (Rev. Dubai, 2018): approves the participation of Academia in the works of the Sectors;
* WTSA Resolution 1 (Rev. Hammamet, 2016), item 2.3: defines the participants allowed in regional groups.

Item 28A of Article 3 of the ITU Constitution determines that *“Sector Members shall be entitled to* ***participate fully*** *in all activities of the sector of which they are members.”* In here it is essential to reach a common understanding of what **participate** **fully** means, and what is the legal and practical implications of a real **full participation**.

This clarification is critical due to a potential conflict and legal contradiction among the ITU Constitution and WTSA Resolution 1. While the former determines the right for *“full participation” in all activities of the sector,”* the latter determines that, in fact, RSG are limited to the members from the concerned region and may invite other participants to attend all or part(s) of a meeting.

**Proposal**

Brazil and Canada kindly ask the Secretariat to provide an analysis, answers and guidance on the two questions presented in this contribution. Brazil and Canada do not seek to put into question past decisions of ITU-T Study Groups, or to initiate any retroactive actions based on the legal clarifications provided by the Secretariat. Brazil and Canada seek to clarify and advance the issues put forward by PP-18 COM5 in Recommendation 8, for decision by WTSA-20.