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| **Expert Group on the InternationalTelecommunication Regulations (EG-ITRs)** |  |
| **Fifth meeting – Virtual meeting, 30 September-1 October 2021** |  |
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|  | **Document EG-ITRs-5/7-E** |
| **15 September 2021** |
| **Original: Russian** |
| Russian Federation |
| FURTHER STEPS in the IMPLEMENTATION OF RESOLUTION 146 (REV. DUBAI, 2018) OF THE PLENIPOTENTIARY CONFERENCE AND RESOLUTION 1379 (MODIFIED 2019) OF THE ITU COUNCIL WITH A VIEW TO ACHIEVING CONSENSUS in respect of the International Telecommunication Regulations |

# 1 Summary

This contribution calls on ITU Member States and Sector Members to demonstrably make the meaningful efforts required to fulfil *resolves 2* of Resolution 146 (Rev. Dubai, 2018) of the Plenipotentiary Conference and achieve consensus on the way forward in respect of the ITRs.

Also, given that not all ITU Member States and Sector Members take part in the meetings of the Expert Group on the ITRs, this contribution proposes that the ITU Secretary-General hold consultations with all Member States and Sector Members on the preferred means of achieving consensus in respect of the ITRs.

# 2 Introduction

The World Conference on International Telecommunications (Dubai, 2012) (WCIT-12) revised the International Telecommunication Regulations (ITRs). The 2012 ITRs entered into force on 1 January 2015.

WCIT-12 adopted Resolution 4 (Dubai, 2012), on the periodic review of the International Telecommunication Regulations, *recognizing* *e)* of which states that “the International Telecommunication Regulations consist of high-level guiding principles that should not require frequent amendment, but in the fast-moving sector of telecommunications/ICTs may need to be periodically reviewed.”

The Plenipotentiary Conference (Busan, 2014) adopted Resolution 146 (Rev. Busan, 2014), setting out steps for the preparation of a possible revision of the ITRs, and the Council, at its 2016 session, adopted Resolution 1379, establishing the Expert Group on the International Telecommunication Regulations (EG-ITRs).

Pursuant to Council Resolution 1379, between February 2017 and April 2018, EG-ITRs carried out a review of the ITRs. It submitted its final report to the Council session in 2018, noting in particular that there are two main points of view as regards the applicability of the ITRs. That does not, however, mean that those points of view are diametrically opposed and irreconcilable. It is simply the case that the proponents of each viewpoint emphasize that some apply the ITRs as being relevant to current conditions and levels of technological development, while others do not, on the grounds that the ITRs are not relevant.

Thus, if all the parties concerned agree on a single current text of the ITRs, it will as a result of such work be relevant for all Member States and telecommunication operators.

In this connection, Resolution 146 (Rev. Dubai, 2018) was reviewed by the Plenipotentiary Conference (PP) in 2018 and Resolution 1379 was reviewed by the Council at its 2019 session, with a view to undertaking a comprehensive review of the ITRs and achieving consensus on the way forward in respect of the ITRs.

# 3 Rationale

Note that:

– The provisions of the Constitution and the Convention are complemented by those of the Administrative Regulations (International Telecommunication Regulations and the Radio Regulations), which regulate the use of telecommunications and **shall be binding on all Member States** (No. 31 of the Constitution – Article 4, paragraph 3);

– The Member States **are bound to abide by the provisions of** the Constitution, the Convention and the **Administrative Regulations** in all telecommunication offices and stations established or operated by them which engage in international services or which are capable of causing harmful interference to radio services of other countries, except in regard to services exempted from these obligations in accordance with Article 48 of the Constitution (No. 37 of the Constitution – Article 6, paragraph 1);

– The Member States **are also bound to take the necessary steps to impose the observance of the** provisions **of** the Constitution, the Convention and **the Administrative Regulations** upon operating agencies authorized by them to establish and operate telecommunications and which engage in international services or which operate stations capable of causing harmful interference to the radio services of other countries (No. 38 of the Constitution – Article 6, paragraph 2);

– In order to facilitate the application of the provisions of Article 6 of the Constitution, Member States **undertake to inform and, as appropriate, assist one another with regard to infringements of the provisions** of the Constitution, of the Convention and **of the Administrative Regulations** (No. 190 of the Constitution – Article 39);

– Member States reserve for themselves, for the operating agencies recognized by them and for other agencies duly authorized to do so, the right to make special arrangements on telecommunication matters which do not concern Member States in general. **Such arrangements, however, shall not be in conflict with the terms** of the Constitution, of the Convention or **of the Administrative Regulations**, so far as concerns the harmful interference which their operation might cause to the radio services of other Member States, and **in general so far as concerns the technical harm** which their operation might cause to the operation of other telecommunication services of other Member States (No. 193 of the Constitution – Article 42);

– Each Member State reserves for itself and for the recognized operating agencies the right to fix the conditions on which it admits telecommunications exchanged with a State which is not a Member State of the Union. If a telecommunication originating in the territory of such a State is accepted by a Member State, it must be transmitted and, **in so far as it follows** the telecommunication channels of a Member State, **the obligatory provisions** of the Constitution, of the Convention and **of the Administrative Regulations** and the usual charges shall apply to it (No. 207 of the Constitution – Article 51);

– Decisions of world telecommunication standardization assemblies and world telecommunication development conferences **must** in all circumstances **be in conformity with** the Constitution, the Convention and **the Administrative Regulations** (No. 115 of the Constitution – Article 18, paragraph 3; No. 142 of the Constitution – Article 22, paragraph 4);

– The radiocommunication assembly, the world telecommunication standardization assembly and the world telecommunication development conference may establish and adopt working methods and procedures for the management of the activities of their respective Sectors. These working methods and procedures **must be compatible with** this Constitution, the Convention and **the Administrative Regulations**, and in particular Nos. 246D to 246H of the Convention (No. 145A of the Constitution – Chapter IVA);

– The Administrative Regulations, as specified in Article 4 of the Constitution, **are binding international instruments and shall be subject** to the provisions of the Constitution and the Convention.

Recall Articles 54, 55 and 56 of the ITU Constitution.

Based on No. 69 (Article 10, paragraph 4 (1)) of the Constitution, the Council shall take all steps to facilitate the implementation by the Member States of the provisions of the Constitution, of the Convention, of the Administrative Regulations and of the decisions of the Plenipotentiary Conference.

# 4 Proposal

In view of the above and given the fact that not all ITU Member States and Sector Members currently participate in this series of EG-ITRs meetings (no more than one-fifth of overall ITU membership) and that EG-ITRs continues to be fixated on two polarizing views on the ITRs and is in need of additional input from all Member States and Sector Members of the Union in order to achieve consensus on the way forward in respect of the ITRs and fulfil its mandate, it is proposed that the ITU Secretary-General consult with all administrations and ITU Sector Members by correspondence on their preferred way forward in respect of the ITRs.

In particular, the Secretary-General could, based on clarifications received from the ITU Legal Adviser and on the binding nature of the ITRs, ask Member States and Sector Members for their preferred choice between the following two options for achieving consensus on the way forward in respect of the ITRs, namely:

–the accession of all Member States to the International Telecommunication Regulations (Rev. Dubai, 2012).

–the partial or full revision of the ITRs with a view to the adoption of a new version of the treaty by consensus.

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