

Article I of the Outer Space Treaty and the International Telecommunication Union

FRANCIS LYALL

Faculty of Law, University of Aberdeen
Aberdeen, AB24 3UB, Scotland, U.K.

Abstract

The responsibilities and work of the International Telecommunication Union fit well within the requirement of Art. I of the Outer Space Treaty that space should be used for the betterment of all. This is true not only in relation to space, but more generally also through the terrestrial responsibilities and activities of the ITU. There remain problems of finance and the imbalance between financial contribution and voting power, and there is a danger that some ITU 'events' are without real impact on the needs of many countries, but in many ways there is hope for the future.

1. Introduction.

This is one of what has so far turned out to be a ten-year series. In 1993 at the Colloquium of this Institute held Graz, Austria, I discussed the reconstruction of the ITU by the 1992 Geneva Extra-ordinary Plenipotentiary Conference of the International Telecommunication Union.¹ But, before the Geneva documents came into force they were overtaken and revised in some details by the decisions of the 1994 Kyoto Plenipotentiary.² In 1997 in Turin I

presented a paper which discussed Telecommunications and the Outer Space Treaty.³ The Kyoto arrangements were further revised by the 1998 Plenipotentiary Conference, held in Minneapolis, USA,⁴ which initiated a further reform process, so, in 2000 at the Rio de Janeiro Colloquium I took the opportunity to discuss some more possibilities.⁵ This 'Bremen' paper takes into account the decisions of the Plenipotentiary Conference held in Marrakesh in 2002,⁶ which to some extent implement some further reforms.⁷ However, I must apologise that I have not cited as much discussion by others as I would have liked: sciatica has made impossible access to certain material which I do know exists. To those who may feel their work has been ignored – that is the explanation.

A major step at Geneva 1992 / Kyoto 1994 was the splitting of the previous basic single constitutional document of the Union, the Convention, into a Convention, intended to contain matters less likely to change at successive plenipotentiaries, and the Constitution containing other constitutional matters.⁸ In this paper 'CV' indicates a reference to the Convention, while 'CS' refers to the Constitution. The numbers in brackets refer to the paragraph numbering in either document which it has become both customary, and given the complexity and length of some articles, convenient to use. The ITU has published a consolidated text of the Final Acts of the Geneva, Kyoto and Minneapolis Plenipotentiary Conferences, including the

© F. Lyall, 2003.

Published by the American Institute of Aeronautics and Astronautics Inc., with permission. Released to AIAA in all forms.

ITU Constitution and Convention together with relevant Resolutions and Recommendations in force in 1999.⁹

Technically an unofficial compilation, it (and its Index) are extraordinarily helpful. No doubt the ITU will publish a new consolidated text including the Marrakesh amendments and decisions.

As initially conceived this paper was to concentrate on whether and how the ITU meets the requirements of Art. I of the Outer Space Treaty, as to the betterment of all countries. As is well known, what constitutes 'betterment', and whether and how states have benefited, is a matter of dispute.¹⁰ To my mind it is axiomatic that space telecommunications is the major example of benefit, as it has bettered the conditions of virtually all states. I do not propose to argue that point. The ITU and its procedures have been important in the accomplishment of the high aspirations of Art. I in the field of telecommunications. In the course of writing, however, my thoughts have broadened, and the paper strays into a wider field - the extent to which the ITU functions for the betterment of all, including its terrestrial as well as its space responsibilities.

2. Background.

The opening of the Space Age with the launch of Sputnik in 1957 took us by surprise, but may be it should not. In the twelve years after the end of the Second World War rocket technology had made great strides. Both the Russians and the Western Allies had scrambled to obtain custody of both the technical personnel responsible for that technology, and the materiel itself. Those twelve years had seen the Cold War develop, and the military interest in missiles already fostered by the exigencies of war, grow. Nonetheless, the technical leap from short-range missiles (even such as the V-2) to the intercontinental ballistic missile was great,

and the ability to put a satellite into orbit, itself another leap. However, it is to be noted that putting a satellite into earth orbit was first done as part of the International Geo-physical Year, a major international co-operation in scientific endeavour. That itself indicated that the opening of space might be as important for peaceful as for military purposes. It also meant that much expenditure, formerly charged to military budgets, might be financed from civil and civilian sources. However, when the public purse, in the form of taxation revenues, (or later, private enterprise) is called on to shoulder such a burden, tax-payers (who are also electors of governments) look for an acceptable return for the expenditure they have financed.¹¹ In the case of finance for the exploration of space, scientific knowledge was a clear 'return', but the 'return' that was most obvious to the ordinary citizen/voter was a significant improvement in communications. There was there a 'benefit' to be obtained - a benefit that was readily understood, and one with the potential to benefit the entire world.

The United Nations early saw that space was something (if that is not too odd a way to refer to emptiness) that could be of benefit, and, in a series of Resolutions, expressed its views as to desirable developments in space, and as to how states using and exploiting space should conduct themselves. The preambular paragraphs of Resolutions 1603 (XV) of 1960, 1721 (XVI) of 1961 and 1803 (XVII) of 1962, move from expressing hope, to recommending and then, in Resolution 1962 (XVIII) of 1963 to 'solemnly' declaring 'principles' by which states 'should be guided' in their activities. The Preambles to these Resolutions also speak of the 'betterment of mankind' and of the 'benefit of States irrespective of their degree of economic or scientific development'. This is the language that appears in treaty form in Art. I, para. 1, of the Outer Space Treaty of 1967,¹² ratified by 97 members of the United Nations, and

signed by 27 others.¹³ This is a significant proportion of the states of the world,¹⁴ and there is an argument that the idea that all states should 'benefit' and derive 'betterment' from Outer Space is a matter of customary international law.¹⁵ Further, in this connection one should also now bear in mind the aspirations of the United Nations Millennium Declaration, adopted in 2000 as constraining at least some in their activities.¹⁶

3. The International Telecommunication Union.

The International Telecommunication Union did not need any spur to play an appropriate part in the international regulation of the use of outer space. Part D of General Assembly Resolution 1721 of 1961 noted that the ITU had already scheduled for 1963 an Extraordinary Administrative Radio Conference to start dealing with the requirements of space, and the allocation of appropriate radio frequencies for satellites. That function has continued, but there have been developments in the ITU structures and mechanisms. The ITU now consists of the Plenipotentiary Conference that meets every four years, a Council meeting annually, and the three Sectors through which most of the work of the ITU important for this paper is transacted - the Radiocommunication Sector (ITU-R), the Telecommunication Standardisation Sector (ITU-T) and the Development Sector (ITU-D).

3.1. Membership.

Membership of the ITU is open in two different forms, State Membership and Sector Membership, that is membership of one or more of the Sectors through which the ITU develops many of its rules and requirements. As at August 2003 there were 189 State Members of the Union. In other words virtually all countries in the world are members of the ITU. They are therefore

capable, so far as they are willing and financially able, to influence developments important for all of us. Sector Members are all State Members as of right if they should so wish, together with non-state entities authorised by an appropriate State Member, which may generally authorise entities under its jurisdiction to apply for membership direct to the Secretary General.¹⁷ Since Minneapolis there is also a category of Associate Member, which is available by permission of the Sector concerned to duly authorised entities which wish to take part in the work of only one Study Group within a Sector.¹⁸ There are more than eighty of Associate Members. The numbers of Sector Members have grown over the years, and their work has been useful in the furtherance of the Union's work. As at August 2003 there were about six hundred and fifty Sector Members, most of them, understandably, in the Standardisation Sector, where there is a good representation of manufacturers, whose interest it is to have acceptable and reliable international standards.¹⁹

3.2. Finance.

It is good that membership of the ITU in all forms is wide, but whether the ITU is able to carry out its task to some extent depends on adequate financing. Regrettably, finance may become a problem.

The ITU has never used the usual UN method of assessing contributions for defraying its expenses. It uses a 'contributory unit', the value of which can be varied.²⁰ Marrakesh does not depart from this practice and with minor modification unimportant for this paper, the financial arrangements remain as provided for in CV Art. 28 (155-170) and CS Art. 33 (468-487). By CS Art. 33 1.1 (468) State Members of the Union choose a class of contribution from 22 possible classes, namely, 40, 35, 30, 28, 25, 23, 20, 18, 15, 13, 10, 8, 5, 3, 2, 1 1/2, 1, 1/2, 1/4, 1/8, and

1/16. The last two classes are available only to Member States listed by the United Nations as being least developed or as allowed by the ITU Council (CV Art. 33 1.1*bis*). As I have often pointed out, from possible highest to lowest this represents a ratio of 460:1. Every Member State is required to choose its contribution for each new four-year cycle of the life of the Union. It is disappointing, and perhaps ominous, that the choice of classes for the current cycle, beginning 1 January 2004 and running to 31 December 2007, has resulted in a reduction of total Member States' contributions from 357 3/4 under the Minneapolis regime to 335 13/16, that is of 21 15/16 units or 6.13%. Sector Member contributions have also declined. These are also self-selected from the unit classes with a minimum of 1/2 unit, except for contributions to the Development Sector, where units 1/4, 1/8 and 1/16 are available. However, these last apply only to Sector Members from the least developed countries according to the UN Development Program list and approved by ITU Council. Sector Members choices reported to Council as at the Marrakesh Conference are all down from those of Minneapolis: Radiocommunication 122 (down 5), Standardisation 182 1/2 (-9), and Development 29 1/2 (3 1/8), a total reduction of 17 1/8 units or 4.88%. Overall the drop in units selected as at Marrakesh was 5.93%. However, the Secretary General reported to Council in March 2003 that taking into account new members and denunciations, the contribution of Sector Members had altered. The new figures were: Radiocommunication 122 1/2 units (an increase of 1/2); Standardisation 175 1/2 units (down a further 7); and Development 28 7/8 units (down a further 1 1/16).²¹

These are figures that should concern us. While we obviously would wish the ITU to run efficiently, and expend no more money than is required to do its tasks, there is a point where lack of finance could impede, not to say damage the ITU. The

2003 figures may indicate a level of dissatisfaction with the ITU on the part of some states,²² although the same point can not be made in other cases.²³ That said, it is noticeable that no Member State has increased its contribution class. I would also note that as in the past that there remains a colossal imbalance between contributions. Seventy two per cent of the state membership contributes twelve per cent of the main income.²⁴ We should also note that for the developing countries the reduction for the Development Sector Members' units should be extremely worrying. That said, for the small contributors, which include the developing countries, the ITU must be good value for money,²⁵ and therefore to some extent classifiable as 'benefit' in terms of Art. I of the Outer Space Treaty, for they all make use of space telecommunications, and many gain from other space uses, all of which are dependent on the work of the ITU, particularly the Radiocommunication Sector. But an uncharitable question may now be whether the small contributors are not to some extent freeloading. It would be interesting to know what their contributions are to the UN Agencies which adopt the normal UN funding formula.

The result of the contribution unit selection as at Marrakesh is reflected in Decision COM/2 'Financial Plan of the Union for the period 2004 to 2007'. Broadly this provides for widespread cost reduction, including reduction in staff numbers (and hence costs) in the Union. The base budgets for the Sectors are reduced respectively: Radiocommunication – 2%, and Standardisation and Development both 1%; the General Secretariat reduces by 5%. Other reductions are also planned, e.g. in abandoning the production of many summary records, and reducing the length of plenipotentiary conferences to three weeks. Whether these reductions are without effect on the efficiency of the working of the Union remains to be seen.

3.3. Function, speed and presence.

One of the criticisms of the ITU has been the speed of its work and the need for a systematic programme of work. The Marrakesh Conference has introduced a formal requirement that the General Secretariat and the Bureau of each Sector each draw up a four year rolling operational plan for its work.²⁶ Previously the requirement was for an annual plan, although sensibly in practice each usually tried to work to a longer-term. That said, it is good that a more coherent approach is being required as a matter of constitutional duty. The efficient working of the ITU is clearly for the betterment of all.²⁷ The 'Strategic Plan of the Union 2004-2007' is Res. 71 of the Minneapolis Conference, as amended at Marrakesh, and in particular the Annex thereto.²⁸ Goals are set. We await their attainment. One longer term goal is the revision of the International Telecommunication Regulations and consideration of the place of their substance within the ITU documents, since telecommunications developments are rendering the Regulations and/or the process of their adoption and amendment obsolete.²⁹ Another point is that as part of its reforms of 1992/1994 the ITU became conscious of the need to have a strong regional presence, and not be seen by much of the world as a remote institution far away in Europe. Resolution 25 as further amended at Marrakesh continues to provide for the strengthening that presence.

3.4. The Sectors.

The reconstruction of the Union of 1992/94 and the creation of the three Sectors has been useful. Of these Radiocommunication and Development are of the most interest for this paper.

3.4.1. Standardisation.

Standardisation is of course important for us all, assisting in making telecommunications work properly, and affording bases on which manufacturers of equipment can rely and therefore make decisions to invest in particular products.³⁰ Steps are being taken to improve the role and effectiveness of ITU-T work.³¹ There is also concern in the Sector as to a developing gap between developed and developing countries in the matter of standardisation, and steps are being taken to address the problem.³²

3.4.2. Radiocommunication.

For space the Radiocommunication Sector is fundamental, but its work extends to all uses of radio. Without the Radio Regulations agreed uses of particular radio frequency bands negotiated through Radiocommunication Conferences and the work of Radiocommunication Sector Groups, and without the work of the Bureau in compiling and maintaining the Master International Frequency Register, there would be more harmful interference than there is. This is important for the attainment of the objectives of Art. I of the Outer Space Treaty, although not confined to space matters. As is well known, CS Arts. 44 and 45 (195-199) recognise the responsibility of states to ensure that radio frequencies are properly used. CS Art. 44.2 (196) states that radio frequencies and orbits (particularly the geostationary orbit) are limited natural resources, and as such to be used 'rationally, efficiently and economically'. Equitable access to orbits and frequencies and the special needs of the developing countries are specially noted.

By CV Art. 12.2.c (166) a function of the Director of the Radiocommunication Bureau is to provide assistance to the developing countries in their preparation for Radiocommunication Conferences. The needs of these countries are thereby more likely to be cogently expressed, and therefore are more likely to be met. Further

when in terms of CV Art. 12.2.4.a (177) the Director carries out studies to help the maximal use of the radio spectrum in portions of the spectrum where interference is most likely to occur, the needs of member States requiring assistance and the developing countries are to be taken into account. Again this helps states which otherwise might lose out – benefit is therefore equalised.³³

Of course there remains the argument as to the use of the radio spectrum. Should the spectrum be divided by agreement not only as to use, but also as to which states will use which frequency bands? Should the spectrum (or parts of it) be ‘engineered’ and states given rights to frequencies whether or not they use them, or should we stick with the existing position under which, with limited exception,³⁴ what is important is priority of entry on the International Master Frequency Register?³⁵ However, at present that argument does not seem to be live for space at least. The problem of ‘paper satellites’ caused by a rush to get a system on to the Register is still with us, but is being slowly resolved.³⁶

Finally, by what may be a matter of general benefit, the Marrakesh amendments provide for an appeal process within the Sector. This is separate from negotiation between notifying administrations or the arbitral procedures available under CS Art. 56 (233-235) and CV Art. 41 507-518) and the (never yet used) Optional Protocol on the Compulsory Settlement of Disputes. By modification to CV Art. 10 (140), under a new Art. 10.2.2 (140), independent of the Sector the Radio Regulations Board will be able to consider appeals by interested administrations against determinations of the Bureau regarding frequency assignments. Previously all the Board could do was consider investigations made by the Director of the Bureau at the request of an interested administration, and make recommendations thereon. Whether this is good will have to await evidence as to use and practice. If the

new appeal process results in the solution of disputes it will be useful. If it produces a ‘litigious’ frame of mind on the part of administrations, it will be regretted. The functioning of the ITU depends on practices of compromise and mutual accommodation on the part of administrations. I hope the new appeal process does not diminish or detract from these practices either in relation to space or terrestrial services. My fear is that the privatised providers of space telecommunications may bring pressure to bear on their governments to appeal Bureau decisions for commercial rather than procedural or similar reasons. The (ab)use of ‘the law’ to ‘run interference’ on competitors is a practice not unknown in rampant ‘free markets’.

3.4.3. Development.

The 1992/1994 reforms introduced to the purposes of the ITU the promotion of technical developments to make telecommunication facilities ‘so far as possible generally available to the public’ (CS Art. 1 1. d (6)), the promotion of ‘the extension of the benefits of the new telecommunications technologies to all the world’s inhabitants’ (CS Art. 1.1.e (7)), and, together with financial and development organisations, the promotion of ‘preferential and favourable’ lines of credit to develop social projects aimed ‘inter alia at extending telecommunication services to the most isolated areas in countries’ (CS Art. 1.2.i (19)). Also specified in various places in CS Art. 1 are duties to promote co-operation and collaboration. The Development Sector, operating under Ch. IV of the Constitution (Arts. 21-24 (118-145A)) and Sec. 6 of the Convention (Arts. 16-18 (208-226) together with the provisions common to all Sectors (CV Sec. 8, Arts. 19-22 (228-254)). is the main agent through which these purposes are sought to be effected.³⁷ That the Sector has suffered a cut of 1% in its general financing, coupled with a reduction of 4 3/16

contributory units in the sums from its Sector Members³⁸ is a matter for concern.

Major results have been the adoption of Declarations and an Action Plan at successive World Telecommunications Development Conferences (WTDC), the first at Buenos Aires in 1992, and subsequently at Valletta, Malta, in 1998 and most recently in Istanbul in 2002. The Valletta Plan, as amended, has particular chapters on the development of a global information infrastructure, and as to a special programme for developing countries.

A matter of major concern to the Sector, and to the ITU generally, is the possibility of an emergent 'digital divide'.³⁹ A gulf may indeed come into being between countries which are analogue-based in their telecommunications, and those (in the main the developed countries) whose telecommunications are increasingly moving over to digitally based technologies. The World Telecommunication Development Conference of Istanbul 2002 adopted its Res. 37 on the matter, and by its Res. PLEN/3 the Marrakesh Conference has instructed the Director of ITU-D to take measures to implement the Istanbul resolution and to take other related actions.⁴⁰ Of course, the ITU is not the sole organisation moving in this area, but its role is significant.⁴¹

4. Other Activities.

4.1. TELECOM.

For many years the ITU has organised world and regional TELECOM exhibitions and forums. Exhibitors attend to show their wares, which serves to inform both state officials and private entities as to technical and other developments to the benefit of us all. A TELECOM Board assists the Secretary-General in continuing to provide this method of fostering world telecommunications.⁴²

4.2. The World Telecommunication Policy Forum.

A World Telecommunication Policy Forum to meet regularly was established by Res. 2 of the Kyoto Plenipotentiary Conference, and has met in 1996, 1998 and 2001. It provides a venue where 'high-level participants' can discuss global and cross-sectoral issues. How far the forum is of value has been questioned, and paras. 7 and 8 of Res. 2 as amended at Marrakesh interestingly provide that the agenda, themes and discussions should be based on a report by the Secretary-General, prepared with input from ITU conferences, assemblies, meetings and the views of State and Sector Members. Policy and strategy may now be discussed but the output of meetings as to any matter is not binding though reports and opinions may be submitted to relevant ITU bodies. Further there is now provision for Forums to be convened quickly on an ad hoc basis to respond to emerging policy issues.⁴³ This may indicate that previous forums have been less useful than expected, and we may hope that the tighter controls put in place by Marrakesh will be successful in improving matters.

4.3. The World Summit on the Information Society.

By its Res. 73 the Minneapolis Plenipotentiary Conference resolved that the holding of a World Summit on the Information Society (WSIS) should be put on the agenda of the UN Administrative Committee on Coordination. That action produced the desired effect and such a world conference is to be held in two sessions in 2003 and 2005.⁴⁴ Decision PLEN/1 of the Marrakesh Plenipotentiary Conference, with its Annexes sets out how the ITU input to the WSIS is to be dealt with. The development of information and communications technologies (ICTs), access to them and their use for sustainable as well

as economic and social development, together with special actions for developing countries, least developed countries, underprivileged populations and isolated and remote communities, are to be fostered by the ITU participation in WSIS. A Working Group of the ITU Council (in which all Council Members may take part) has been established to provide a framework for the contribution of the ITU. Annex 2 to Decision PLEN/1 indicates also the relevance of the Strategic Plan of the Union for 2004-2007, and the roles which the Sectors of the ITU can be expected to play.

The question is whether the World Summit on the Information Society will be useful. I have myself, and I have heard amongst knowledgeable persons, fears that WSIS will be merely a talking shop. Over the years that I have watched international telecommunications the idea has been developed and then been ground into my mind that it is the engineers that do things. Engineers are interested in getting telecommunications systems that work, whether they are systems of governance or systems of technology. Let the businessmen in and their interest is in profits. Let the professional civil servants in and normally their lack of expertise in telecommunications, coupled with a major interest in the furtherance of their careers, diminishes the value of their contribution. Let the politicians in, and the aim seems also to be personal advancement through the enunciation of a fine sounding set of syllables, which lack real foundation. In short, I wonder whether WSIS is a good move. It just could provide an impression of action without the substance thereof (cf. 2 Timothy 3:5).

4.4. Disasters

Last in this section I simply point to Resolution 36, as amended at Marrakesh,

which requires the ITU to play its part in disaster mitigation and relief and refers to the Tampere Convention of 2001.⁴⁵ This goes along with the more general duty under CS Art. 46 (200) imposed on all states to give absolute priority to, to reply to and to take action on distress messages.

5. A World Authority – Not yet.

Last is an observation that I have made many times before. It would be to the general good if the ITU were given more authority than it at present has. As we have it, it is an organisation which is the servant of its members, and which has problems in taking initiatives. While I would not discount the abilities of the officers of the Union to persuade Member States as to the wisdom of certain proposals and initiatives, and getting these introduced on the agenda of the Union through member States, the process is slow. I would like to see the officials of the Union able to make formal proposals. I would like to see the Radiocommunication Sector able to refuse to register notifications as to frequencies and orbits on the basis of the general world interest. I would like to see the ITU as a global FCC. I would like to see the ITU more able financially to bring betterment to areas where telecommunications technology is underdeveloped.

6. Conclusion.

But, even with Section 5 written, I do submit that the International Telecommunication Union, both in regard to the discharge of its responsibilities as to space matters, and more generally in its other and its terrestrial responsibilities, goes a good long way to meeting the requirements of Art I of the Outer Space Treaty as to the betterment of all countries without regard to their degree of social or economic development. There are still

problems, but we must hope, and where we can, see that this betterment of all continues.

NOTES

¹ F. Lyall, 'The International Telecommunication Union Reconstructed', (1993) 36 *Proc. IISL* 78-88.

² Final Acts of the Plenipotentiary Conference of the International Telecommunication Union, Kyoto, 1992 (Geneva: ITU, 1992).

³ F. Lyall, 'Telecommunications and the Outer Space Treaty' (1997) 40 *Proc. IISL* 385-92.

⁴ Final Acts of the Plenipotentiary Conference of the International Telecommunication Union, Minneapolis, 1998 (Geneva: ITU, 1999). In the light of the Strategic Plan the 1999 Council established a Working Group on ITU Reform (WGR), and Reform Advisory Groups (RAG) have been established for the three ITU Sectors.

⁵ F. Lyall, 'Re-thinking the ITU', (2000) 43 *Proc. IISL*, 309-19.

⁶ Final Acts of the Plenipotentiary Conference of the International Telecommunication Union, Marrakesh, 2002 (Geneva: ITU, 2003)

⁷ Cf. 'Strategic plan for the Union, 1999-2003', Res. 71, Minneapolis 1998. See Minneapolis *Final Acts* (preceding note) or *Collection* (n. 9 below).

⁸ The process of simplification continues. The Marrakesh Plenipotentiary Conference moved a good deal as to the calling of conferences and their rules of procedure to the separate document that deals with such matters. CV Arts. 26-30 (299-323) are suppressed. See sentences following in main text for explanation of citation modes. The Rules are now matters for the conferences and assemblies concerned.

⁹ *Collection of the basic texts of the International Telecommunication Union adopted by the Plenipotentiary Conference*, Edition 1999 (Geneva: ITU, 1999)

¹⁰ The Declaration on International Co-operation in the Exploration and Peaceful Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries' GA Res. 51/122, 4 February 1997; cf. M. Benko and K. Schrogl, 'The 1996 UN Declaration

on "Space Benefits" Ending the North-South Debate on Space Co-operation' (1996) 39 *Proc. IISL* 183-6.

¹¹ The principle is the same as that motivating the private investor of modern times, although the private investor seems more likely to disregard 'return' in any form other than money.

¹² Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies, (1968) 610 UNTS 205; (1968) UKTS 10, Cmd. 3519; 18 UST 2410, TIAS 6347; 6 ILM 386; 61 AJIL 644.

¹³ See 2003 Report of the Standing Committee on the Status of international Agreements relating to Activities in Outer Space, A.D. Terekhov, Chairman, printed as an Annex to this volume, 2003 *Proc. IISL*.

¹⁴ At August 2003 the United Nations has 191 Members.

¹⁵ I intend to discuss this question and the role of UN Resolutions in the creation of custom elsewhere.

¹⁶ UN A/RES/55/2 of 8 September 2000, the 'United Nations Millennium Declaration'.

¹⁷ CS Art. 3 (24-28C), Art. 12.3 (86-66), Art. 21.4 (134-136), Art. 17.3 (110-112); CV Art. 19.1. (228-231) and Art. 19.3-4 (234-234C).

¹⁸ CV Art. 19.12 (241A-241E).

¹⁹ The ITU website (www.itu.int) provides list of State, Sector and Associate members.

²⁰ The Marrakesh Plenipotentiary conference set the maximum value of the budget deriving from contributory units in the period 2004-2007 at 330000 Swiss francs (approx. GB£ 150000; US\$240900; Euro 214000), but instructed that in 2004-2005 the maximum should not exceed 315000 Swiss francs : See 2003 Council Doc. C03/E, 'Choice of Class of Contribution for Defraying the Union's Expenses'.

²¹ All figures are taken from Council Doc. C03/E, 'Choice of Class of Contribution for Defraying the Union's Expenses' (2003).

²² The Member States which have significantly reduced their choice of contributory unit are: Denmark and Finland, both down 1 from 5 to 4; Australia down 2 from 15 to 13. The Netherlands

and Sweden, both down 3 from 8 to 5; Italy down 5 from 20 to 15; and the United Kingdom also down 5 from 15 to 10. == 56

²³ Most Member States have left their choice of contributory units unchanged. Those unchanged and contributing 1 unit or more are: France, Germany, Japan, U.S.A. 30; Canada 18, Switzerland 15; China, Saudi Arabia 10; Spain 8; Belgium, India, Norway, Russia, South Korea 5; Brazil, Kuwait, South Africa 3; Ireland, New Zealand, Nigeria, Pakistan, Poland 2; Thailand 1 1/2, Algeria, Austria Cameroon, Chile, Colombia, Czech Republic, Greece, Hungary, Indonesia, Iran, Israel, Kenya, Libya, Lithuania, Malaysia, Morocco, Mexico, Poland, Senegal, Singapore, Turkey, United Arab Emirates, Venezuela 1. = 239 1/2

²⁴ As noted in the text, the Marrakesh figures show that the ITU States members contribute a total of 335 13/16 units (335.81). From the previous two footnotes that means that the four largest contributors produce one third of the State Member contributions – 120 units (35.7%). If we go down to 5 units, a total of 21 Member States (including the 4 maximum contributors) contribute 262 units (78%), and if we add the 32 which contribute 1 to 4 units, 53 Member States contribute 295 1/2 units (87.99%). The remaining 40 5/16 units are contributed by 136 Member States - 23 at the 1/2 unit level, 56 at 1/4 (the lowest permissible without special rules and permission) 20 at 1/8 and 37 at the 1/16 level.

²⁵ See immediately preceding note for a grouped breakdown of the units contributed by the 136 of the 189 Member States that contribute 40 5/16 units. To repeat what has been said in the text, 72% of the Member States contribute 12% of the main budget.

²⁶ Secretariat - CV Art. 5. *d. bis* (87A); Radiocommunication – CV Art. 12.4.f(181A); Standardisation - CV Art. 15.2.g (205A); Development - Art. 18.2.g (223A);

²⁷ But cf. above, Sec. 3.2 'Finance'.

²⁸ There is a Strategy and Policy Unit within the General Secretariat, whose work is accessible through the ITU Website. See also ITU Res. 72 as amended at Marrakesh, 'Linking strategic, financial and operational planning in ITU' which calls for a report to the 2006 Plenipotentiary Conference.

²⁹ The International Telecommunication Regulations were last revised in 1988 at Melbourne.

See Marrakesh Res. COM5/7. 'Review of the International Telecommunication Regulations'. A report may go to the ITU Plenipotentiary Conference in 2006 with a view to a world conference on the matter in 2007 or 2008.

³⁰ At its World Telecommunication Standardisation Assembly, Montreal, 2000 an 'alternative approval' system providing a fast-track system by which informal approval of new 'standards' can be obtained, was approved: WTS Res. 37, 'Alternative approval process for ITU-D'. Such approvals are not binding as Recommendations are, but will considerably increase the speed at which ITU-D reacts to swiftly developing technologies.

³¹ See Marrakesh Res. COM5/9, 'The evolving role of the World Telecommunication Standardisation Assembly'.

³² See Marrakesh Res. COM5/8, Bridging the standardisation gap between developing and developed countries'.

³³ See also Marrakesh Res. COM5/8, Bridging the standardisation gap between developing and developed countries', which involves ITU-R as well as ITU-D and ITU-T.

³⁴ For Space, I refer to the outcome of WARC-ORB 1985-88 by which all states were assigned the right of a position within an orbital arc, together with uplink and downlink frequencies for broadcasting purposes, others being able to use these positions until required by the assignee state. The arrangement was modified by the Istanbul Radio Conference, Istanbul, 2002. In terrestrial radio there are such as the European Broadcasting Plan, which is shortly to be revised. This allocates frequencies and signal strength to particular countries for particular broadcasting services.

³⁵ CS Art. 1.2.a (11), Art. 6 (37-38), Art. 14.2.a (95), Art. 42 (193), Art. 45 (193-197); CV Art. 12.2.2.e (172): together with relevant Radio Regulations, particularly RRS4, RRS4.2-4, and RRS8, RRS8.1, RRS8.3 (international recognition of registered assignments) and RRS8.5 (duty to eliminate harmful interference caused to registered assignments).

³⁶ The backlog of unprocessed notifications of assignments is being reduced, and the newer requirements as to detail are having some effect.

³⁷ I should make it clear that before 1992/94 the ITU did undertake a certain amount of such work. For example, the former International Frequency Registration Board (IFRB) conducted training courses and the like.

³⁸ See above, Sec. 3.2 'Finance' at nn. 21-22.

³⁹ T. Kosuge, 'Bridging the Digital Divide in Asia' (2001) 5 *SJICL* 253-8.

⁴⁰ For the Istanbul Action Plan, see WTDC-02 Doc. 272, and for the Istanbul Declaration see WTDC-02 Doc. 270. Cf. the Operational Plan of the ITU Development Sector 2003, available from the Sector website. Cf. also Marrakesh Res. PLEN/4 as to 'Support for the New Partnership for Africa's Development'.

⁴¹ See for example the Okinawa Charter on Global Information Society adopted by the G8 in 2000, and the follow-up actions, coordinated through the Digital Opportunity Task Force which it set up: available at www.dotforce.org. The G8 Meeting at Genoa in 2001 approved a plan of action, as to which see the dotforce website and www.eopl-net.org. On these questions see also R. S. Jakhu, 'Safeguarding the Concept of Public Service and the Global Public Interest in Telecommunications' (2001) 5 *SJICL* 71-110.

⁴² See Marrakesh Res. 11 'World and regional telecommunications exhibitions and forums', which replaces previous versions of Res. 11.

⁴³ See the latter half of Marrakesh Res. 11 'World and regional telecommunications exhibitions and forums'.

⁴⁴ UN A/RES/56/183 of 21 December 2001, 'World Summit on the Information Society' which in its preambular paragraph *Considering* indicates that the ITU has the leading managerial role in the preparation of the conference. The conference is to be held in sessions at Geneva in December 2003 and Tunis in November 2005. A 'Draft Declaration of Principles', of 13 July 2003, based on discussions at an intersessional meeting of WSIS has been issued: WSIS03/PCIP/DT/4(Rev.3).

⁴⁵ Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, Tampere 1998 (not yet in force), available at www.reliefweb.int/telecoms/tampere/icet-98.pdf or

through
www.state.gov/www/issues/relief/tpere1.html.