# ITU Instruments under the Perspective of General International Law

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**Abstract**

The current discussion on the scope of competences of the International Telecommunication Union raises again the general question as to the relation between the ITU legal framework and other sources of international law. The starting point of this contribution is the fact that, with the exception of peremptory norms of international law as codified in Article 53 of the Vienna Convention on the Law of Treaties and the obligation of the UN Member States under the UN Charter according to its Article 103, there is no clear hierarchy among the various categories of international legal instruments. In case of conflict, the maxims *lex posterior* and *lex specialis* are generally applicable. This contribution seeks to analyse the consequences of this legal situation on the relation between some of the ITU rules, such as the right to stoppage of telecommunication according to Article 34 of its Constitution, with those areas of international law which provide for freedom of expression and information as interpreted by the European Court of Human Rights and other judicial or quasi-judicial bodies, or with the sphere of the law of outer space based on the principle of freedom of exploitation.

## I. Introduction

The use of outer space and international telecommunication[1] are closely connected. Telecommunication is a vital means of connection with the majority of space objects and their installations; on the other hand, it is a traded service

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1 Telecommunication is defined as "any transmission, emission or reception of signs, signals, writings, images and sounds of intelligence of any nature by wire, radio, optical or other electromagnetic systems", Annex ITU Constitution, para 1012; International telecommunication services are defined as the "offering of a telecommunication capability between telecommunication offices or stations of any nature that are in or belong to different countries", Annex ITU Constitution, para 1011; Broadcasting service is defined as "a radiocommunication service in which the trans-

*ipso facto*. The importance of telecommunication for space activities was reflected in one of the first UN GA resolutions on the *International Co-operation in the Peaceful Uses of Outer Space* of 1961[2] which – in parallel to the central principles of the registration of space objects and the disarmament of outer space – devoted an entire section to space communication and welcomed the calling of a special conference of the International Telecommunication Union (ITU) to make allocations for radio frequency bands for outer space activities.[3] For the ITU, the regulation of the area of space communication meant only a prolongation of its activities which started from the international regulation of the telegraph:[4] On 17 May 1865, the representatives of 20 European States agreed on the International Telegraph Convention, an international treaty administered by the International Telegraph Union. Since that time, questions of international interconnection, common rules to standardize equipment, uniform operating instructions, as well as international tariff and accounting rules, have been the core of international telecommunication law.[5] New technological developments such as the invention of telephony and wireless telegraphy invoked additional international regulation and adaptation of the administrative structures: In 1932, the International Telegraph Convention of 1865 was merged with the 1906 International Radiotelegraph Convention to form the new International Telecommunication Convention and the name of the institution was changed to the International Telecommunication Union.

The principal purpose of the modern ITU – a specialized agency under Article 57 of the UN Charter and an international governmental organisation[6] – is to administer the allocation of bands of the radio-frequency spectrum, the allotment of radio frequencies as well as the registration of radio-frequency assignments and orbital positions in the geostationary orbit.[7] The exercise of the authority of the ITU was characterized as a "legislative" and "regulatory" process of stages of ordering the international use of the frequency spectrum by

missions are intended for direct reception by the general public", Annex ITU Constitution, para 1010; Finally, radiocommunication is "telecommunication by means of radio waves", Annex ITU Constitution, para 1009. These definitions illustrate that telecommunication is a general term used both for telecommunication service and broadcasting service.

2 1721 (XVI). International co-operation in the peaceful uses of outer space, 1961.

3 F. Lyall, Article 1 of the Outer Space Treaty and the International Telecommunication Union, IAC-03-IISL.2.01, Proceedings of the International Institute of Space Law 2004.

4 See F. Lyall, International Communications, Ashgate 2011.

5 S. von Schorlemer, Telecommunications, International Regulation, MPEPIL, para 2.

6 1947 ITU-UN Agreement, Treaty Series No. 76 (1950), Cmnd. 8124, Annex 3 to the ITU Convention, Article 1: "The United Nations recognizes the International Telecommunication Union (hereinafter called "the Union") as the specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein".

7 Article 1 of the ITU Constitution.

*Leive*[8] already in the 1970s, but this description is still relevant today: During the "legislative" process, international radio conferences representing all ITU members "allocate" the usable portions of the spectrum to different communications services. These allocations are formerly adopted by the conference, and thereafter appear in the Radio Regulations – one of the "instruments" of the ITU according to Article 4 of the ITU Constitution – in the form of a "Table of Frequency Allocations". The final allocations are the product of compromise at these ITU radio conferences among the conflicting interests of different countries and different communications services, all contending for the limited frequencies available.

The "regulatory" stage of the process begins when a Member State, seeking to establish a station for international or domestic communications, designates or "assigns" a particular frequency to that station. Such "frequency assignments" may then be notified to the Radio Regulations Board.[9] Depending on the assignment, this Board may then conduct an examination of the notice, correspond with the country concerned, issue findings with respect to the assignments' conformity with the ITU Convention, Constitution and Regulations, assess the probability of harmful interference with other previously recorded assignments, and record the assignment in the Master International Frequency Register.[10] Since the legal status of the assignment depends partly on the Board's finding, such finding has been termed "quasi- judicial".[11] However, the Board possesses only limited powers to review claims or to ensure compliance with the law.

The International Frequency Registration Board, now entitled the Radio Regulations Board since 1992/4, was set up by the ITU 1947 Atlantic City Conference.[12] Today, the Board is a specific combination of various types of institutions. According to *Leive*, it resembles a court in its issuance of findings which define the legal status of stations and in its interpretations of applicable international law. It acts as a recording office in its responsibility to enter information concerning frequency assignments submitted by administrations into the Master Register and to maintain the Master Register. It resembles a mediation and conciliation service in its effort to resolve harmful interference disputes voluntarily referred to it by national administrations. It also resembles an administrative or regulatory agency in its adoption of technical standards of general applicability, its formulation of procedures to implement its statutory

8 D.M. Leive, International Telecommunications and International Law: The Regulation of the Radio Spectrum, Sijthoff 1970, p. 19.

9 See Article 14 of the 1992 ITU Convention, as amended.

10 For details of the co-ordination process, see F. G. von der Dunk, Maintaining the Master International Frequency Register, in: M. Hofmann (ed.), International Regulations of Space Communications, Larcier 2012, pp. 45-68.

11 Ibid. fn. 8, p. 20.

12 In 1965, the USA along with some other States proposed the abolishment of the Board and the transfer of its functions to the ITU Secretariat, but according to Leive (p. 22) developing countries saw it as a guarantor of their interests.

tasks, and the need to determine the scope of its jurisdiction. Furthermore, it resembles a technical assistance agency offering aid to the developing countries, particularly in finding frequencies for their new international communication requirements.[13]

Whereas the Member States are bound to abide by the provisions of the ITU legal instruments (the Constitution, the Convention and the Radio Regulations[14]), the legal significance of the notification and registration procedure is nowhere clearly defined.[15] The rights and obligations of recorded assignments are based on two principles: their conformity with the applicable international law, and their earlier use and notification to the Board. The formal machinery for enforcement is either weak or nonexistent: the Board cannot order stations off the air and cannot even refuse to record frequency assignments in the Master Register. The ITU members generally observe them because it is in their own interest to do so.[16] Disputes are resolved without primary reliance upon juridical concepts or resort to arbitral or judicial processes. In sum, the ITU system has been described as self-enforcing and, in this way, guarantees the administrations' interference-free communications.

Our question focuses on how this complex, law-based international system correlates with other rules of international law related to space activities: with general international law, with the law of outer space, and also with other systems dealing with the transmission of signals, namely human rights. This question has been provoked by the study of several judgments of the European Court of Human Rights in which the ITU regime played a significant role, as well as the reading of works dealing with the position of an analogous "special sub-area" of international law, the WTO law.[17]

## II. General International Law

The substantive and procedural law of the ITU is highly complex and could theoretically collide with several provisions of general international law: As stated above, with the exception of peremptory norms of international law as codified in Article 53 of the Vienna Convention on the Law of Treaties (VCLT), and the obligation of the UN Member States under the UN Charter according to its Article 103, there is no hierarchy among the various categories of international legal instruments. Moreover, the "sub-areas" of international law should not be viewed as being in "clinical isolation" from general international

13 Ibid. fn. 8, p. 26.
14 Article 6 of the ITU Constitution.
15 Ibid. fn. 8, p. 22.
16 Ibid. fn. 8, p. 24.
17 See e.g. R. Hofmann/ C. J. Tams, International Investment Law and General International Law: From Clinical Isolation to Systemic Integration? Baden-Baden 2011, 275 pp.

law as it was expressed by the WTO Appellate Body in relation to the GATT.[18] The ICJ Teheran judgment mentioning the phenomenon of a "self-contained regime" has confused, rather than elucidated, debates.[19]

Fortunately, a conflict of the ITU provisions with general international law is of a highly hypothetical nature: It is improbable that the ITU would adopt a system of international responsibility different from the general customary rules or would try to deviate from the VCLT. Only for the sake of completeness, a conflict of an ITU provision with a rule of general international law, other than UN Charter and peremptory norms of international law, would lead to the application of Articles 31 to 33 of the VCLT. Suffice to recall that, while the VCLT applies to the founding treaties establishing international organizations (Article 5 VCLT), the interpretative rules contained in Articles 31 to 33 of the VCLT only apply to the primary law of the organization (the Constitution, Convention and Administrative Regulations), but not to the secondary rules adopted by international organizations (e.g. the record of assignments in the Master International Frequency Register). It is only "generally agreed" to apply these rules by analogy to secondary acts or to recur to customary rules of interpretation identical to those contained in the VCLT.[20]

A generally accepted technique of interpretation and conflict resolution in international law in case of conflict is the principle *lex specialis derogat legi generali*.[21] It suggests that, whenever two or more norms deal with the same subject matter, priority should be given to the norm that is more specific. The source of the norm is not decisive for the determination of the more specific standard. Certain types of general law – such as *ius cogens* – may not be derogated from by special law.

The principle *lex posterior derogat priori* (Article 30 VCLT) is applicable in a conflict between successive norms. According to this principle, when all parties to a treaty are also parties to an earlier treaty on the same subject, and the earlier treaty provision is not suspended or terminated, then in such a case, the previous provision applies only to the extent that its provisions are compatible with those of the later treaty. However, the application of this rule does not always lead to exact results: The first problem may be the question of

18 WTO Appellate Body, United States – Standards for Reformulated and Conventional Gasoline, WTO Doc. WT/DS2/AB/R (1996), at p. 17; see also Korea-Measures Affecting Government Procurement, WTO Doc. WT/DS163/R (2000), at para 7.96.

19 ICJ Reports 1980, 3, at para 86; according to R. Hofmann/ C. J. Tams, International Investment Law and General International Law: From Clinical Isolation to Systemic Integration? Baden-Baden 2011, p. 11, para 12.

20 M. Benzing, Secondary Law of International Organizations or Institutions, MPEPIL, para 46.

21 Conclusions of the Work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, International Law Commission 2006.

the definition of the "same subject matter",[22] and a further problem, which the VCLT also leaves open, may be the question of determining which of the two treaties is the earlier and which the latter. However, in case of conflicts or overlaps between treaties in different regimes, the question which of them is the latter in time would not necessarily express any presumption of priority between them. Instead, according to the Study Group on the *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law of the International Law Commission,* States bound by the treaty obligations should try to implement them as far as possible with the view of mutual accommodation and in accordance with the principle of harmonization.[23]

## III. Specific Treaty Regimes

Much more likely is a potential conflict of the ITU instruments with other specific treaty regimes, such as the regime of the law of outer space, human rights or the WTO-regime.

### Legal Regime of Outer Space

Can there be any potential conflict between the instruments of the law of outer space and the law of telecommunication? In fact, yes. Some provisions of the ITU instruments, e.g. Article 44 of the ITU Convention declaring the geostationary orbit a "limited natural resource" or the rules on "bringing into use" of an assigned frequency according to the Radio Regulations,[24] could be interpreted as limitations of the freedom of outer space enshrined in the 1967 Outer Space Treaty.

Again, it does not need to be repeated that international law knows neither a general hierarchy between its different sources nor, in principle, between different international treaties. Multilateral agreements are usually interlinked by a partial overlap of the contracting parties and, potentially, also of the subject-matters covered by the treaties.[25] Therefore, a conflict between treaties is a common phenomenon in international law. The lack of a centralized legislator, the lack of continuity in international law-making, and the lack of a comprehensive hierarchical structure of international law result in an enhanced prob-

22 According to Sinclair, the resolution of conflicts between successive treaties dealing with the same subject-matter is"a particularly obscure aspect of the law of treaties", see N. Matz-Lück, Conflict between Treaties, MPEPIL, para 13.

23 Conclusions of the Work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, International Law Commission 2006, No. 26.

24 P. Stubbe, New Definition of "Bringing into Use" in the Radio Regulations, in: M. Hofmann (ed.), International Regulations of Space Communications, Larcier 2012, pp. 79-102.

25 N. Matz-Lück, Conflict between Treaties, MPEPIL, para 3.

ability of contradictions and, at the same time, in shortcomings of feasible rules to address and resolve conflicts.[26]

In the case of conflict between two treaty norms, Articles 31 to 33 of the VCLT are applicable.[27] Also here, the rule *lex specialis derogat legi generali* could be, in principle, taken into account. Moreover, according to the ILC Study Group on Fragmentation, sometimes all the rules and principles that regulate a certain problem area are collected together so as to express a "special regime" which may prevail over general law under the same conditions as *lex specialis* generally.[28] In our case, most probably, this thesis would be relevant; the specific ITU regime would prevail over the general principle of the freedom of use of outer space.

Secondly, in a conflict between successive norms, the principle *lex posterior derogat priori* (Article 30 VCLT) is applicable. Again, the first problem may be the question of the interpretation of the "same subject matter"[29]: the freedom of outer space does not completely cover the "same subject" as the use of the geostationary orbit and the related frequencies. On the other hand, a determination which of the two treaties is the earlier one and which the latter one is easier to answer in our case: the geostationary satellite orbit was included in the ITU Convention during the Plenipotentiary Conference in 1998 and is clearly "*posterior*" in relation to the freedom of use of outer space adopted in 1967.

Fortunately enough, there is no need to solve the question of primacy of both systems of legislation: Article III of the Outer Space Treaty provides for a rule enabling the harmonization of provisions of both treaties. It stipulates that States Parties to the Outer Space Treaty shall carry on activities in the use of outer space in accordance with international law; this means that, in utilizing outer space for telecommunication purposes, the rules of the ITU are of relevance and have to be taken into account – one can speak about a "parallelism" of both regimes.

**Human Rights**

Two crucial human rights instruments – the almost universally applicable 1966 International Covenant on Civil and Political Rights (ICCPR)[30] and the regional European 1950 Convention for the Protection of Human Rights and Funda-

26 Ibid., para 1.

27 M. Benzing, Secondary Law of International Organizations or Institutions, MPEPIL.

28 Conclusions of the Work of the Study Group on the Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, International Law Commission 2006, No. 14.

29 According to Sinclair, the resolution of conflicts between successive treaties dealing with the same subject-matter is"a particularly obscure aspect of the law of treaties", see N. Matz-Lück, Conflict between Treaties, MPEPIL, para 13.

30 Article 19:
1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless

mental Freedoms (ECHR)[31] – protect the right to expression which includes the right to receive and impart information. Both treaties require States Parties to ensure that the rights contained in the respective provisions are given full effect in the domestic law; both allow for justified derogations from the protected rights only under strict conditions of lawfulness and proportionality. As one of the limitations of the freedom to receive and impart information may consist in licensing of broadcasting, Article 10 of the ECHR formulates expressly the right of States to establish a licensing system, whereas Article 10 of the ICCPR speaks of "certain restrictions" derived from "special duties and responsibilities" of the States. The relation of both legal systems is therefore treaty-based. According to the crucial case of *Groppera*[32] of the ECtHR, the insertion of the requirement to obtain a licence into the body of the Humans Rights Convention in 1950 corresponded to "technical or practical considerations such as the limited number of available frequencies and the major capital investment required for building" the necessary installations; at that time, "it also reflected a political concern on the part of several States, namely that broadcasting should be the preserve of the State. Since then, changed views and technical progress, particularly the appearance of cable transmission, have resulted in the abolition of State monopolies in many European countries and the establishment of private radio stations – often local ones – in addition to the public services"; the requirement of licensing of broadcasting services remains, however, still im-

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of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities.
   It may therefore be subject to certain restrictions, but
   these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

31 Article 10: Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

32 *Groppera Radio AG and others v. Switzerland*, No. 10890/84, 28 March 1990, ECtHR Series A No. 173.

portant. "Furthermore, national licensing systems are required not only for the orderly regulation of broadcasting enterprises at the national level but also in large part to give effect to international rules, including the ITU Radio Regulations" (para 60 of the judgment).

Pursuing different aims and purposes, the system of the ITU differs from the area of human rights: As analysed in the *Autronic* case[33] of the ECtHR, international (ITU) provisions seem to leave a "substantial margin of appreciation to the national authorities" (para 57). The regulation and control of national telecommunication systems belongs traditionally to the domestic jurisdiction of States: the fact that each country has the sovereign right to regulate its telecommunication is recognized in the Preamble of the ITU Constitution, para 1. Member States also retain their entire freedom in relation to military and radio installations (Article 48 (1) ITU Constitution). Despite the main principles of the ITU Constitution – the right of the public to use the international telecommunication service (Article 33) and the obligation not to cause harmful interference to the radio services or communications of other Member States (Article 45 ITU Convention) – the Member States reserve the right to cut off, in accordance with their national law, any private telecommunications which may appear dangerous to the security of the State or contrary to its laws, to public order or to decency (Article 34, para 2). Moreover, each Member State reserves the right to suspend the international telecommunication service, either generally or only for certain relations and/or for certain kind of correspondence, outgoing, incoming or in transit (Article 35 ITU Constitution), provided that it immediately notifies such action to each of the Member States through the ITU Secretary General. Pursuant to Article 37 ITU Constitution, Member States reserve the right to communicate international correspondence to the competent authorities in order "to ensure the application of their national laws" or the execution of international conventions.

Others examples of rules of specific character can be added: Radio Regulations as a part of the binding framework of the ITU (Article 4 of the ITU Constitution) expressly require that "no transmitting station may be established or operated by a private person or by any enterprise without a licence issued in an appropriate form and in conformity with the provisions of these Regulations by or on behalf of the government of the country to which the station in question is subject" (18.1); Article 23.2 Radio Regulations prohibits to establish and use "sound broadcasting stations and television broadcasting stations" on board of ships, aircraft or any other floating or airborne objects outside national territories. In sum, the ITU legal regime is – despite of significant regional efforts such as those of the European Union - substantially State-based; the rights of States to restrict or even suspend certain services are formulated unconditionally, without any test of proportionality.

Despite their differences, the regime of human rights protection and the ITU legal framework are closely intertwined in the area of communication as demonstrated by the references to the ITU regime e.g. in the jurisprudence of the

33 *Autronic AG v. Switzerland*, No. 12726/87, 22 May 1990, ECtHR Series A No. 173.

ECtHR. Therefore, several questions on their relation can be raised; most interesting seems to examine whether the ITU licensing procedures have to correspond to human rights standards and, *vice versa*, whether the ITU provisions can be considered as "law" in relation to justified limitations of the right to receive and impart information.

It seems to be without doubt that human rights instruments imply additional obligations on the licensing system of their States Parties: In its General Comment No 34 ICCPR[34], the UN Human Rights Committee described the conditions of the licensing procedure from the perspective of Article 19 ICCPR as follows: States Parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and license fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant. Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses.

Also according to the European Court of Human Rights, the system of licensing has to comply with the general requirements of legitimate interferences[35] as stipulated in paragraph 2 of Article 10, typically with the requirements of lawfulness and proportionality. Under Article 14 of the ECHR, no discrimination is permitted in the granting of licences; Article 6 ECHR protecting the right to a fair process contains procedural guarantees within the domestic legal order.

Concerning the possibility to invoke the ITU framework as "law" when limiting the right to expression, the answer is less unambiguous:

In the *Groppera*[36] case, the Court clearly relied on the ITU rules as "law": The non-conditional requirement of the authorities for a licence for terrestrial broadcasting from abroad according to the national and ITU legislation was found as both legitimate and proportionate by the Court. According to this judgment (para 70), the State interference may be "fully compatible" with the Convention if it protects "the international telecommunication order" and the "protection of the rights of others". In the given case, the applicant had disregarded "three basic principles of the international frequency order" (para 69): the licensing principle, whereby the establishment or operation of a broadcasting station by a private person or by an enterprise was subject to the issue of a licence (number 2020 of the former Radio Regulations); the co-ordination principle, which required special arrangements to be concluded between States where the frequency was used (number 584 of the former Radio Regulations)

34 CCPR/C/GC/34, 12 September 2011.

35 *Groppera Radio AG and others v. Switzerland*, No. 10890/84, 28 March 1990, ECHR Series A No. 173.

36 Ibid.

and the principle of economic use of frequency spectrum (Article 33 of the ITU Convention and number 2666 of the former Radio Regulations).
In the *Autronic* case,[37] however, the Court expressed doubts in evaluating the position of the ITU instruments as "law" allowing to limit the right to impart information in the sense of Article 10 para 2, "because it may be asked whether they do not lack the required clarity and precision" (para 57). In this case, the Government did not authorize public reception of signals from a foreign telecommunication satellite from outer space because – according to the ITU provisions – these signals had to be treated as confidential (Article 22 of the ITU Convention, today Article 37). In this case in which the differentiation between various services (fixed and broadcasting-satellite services) according to Radio Regulations was questioned, the Court decided to take into account "later developments" and the lack of protests against an extensive interpretation of the Radio Regulations by ITU Member States allowing the reception of signals originally intended as telecommunication signals by the public (para 62); it concluded that in this case, a complete ban of an unauthorized reception of transmissions from telecommunication satellites as the only way of ensuring "the secrecy of international correspondence" was "not necessary in a democratic society" (para 63) and as such violated the ECHR.
Without going into details, it is highly questionable whether the ITU instruments really suffer from a lack of clarity and precision; more important seems to be the argument of "lack of protest" and "later developments" against distributing information from telecommunication satellites which might signalize a "birth" of a new customary legal rule making the ban of distributing certain telecommunication data obsolete.

## IV. Conclusion

Our initial question was how the complex, law-based international system of the ITU instruments correlates or interacts with other rules of international law: with general international law, with the law of outer space, but also with other systems dealing with the transmission of signals, such as human rights.
In relation to general international law, one can only agree with *Crawford* who formulated the thesis about the relation between the general international law and the WTO rules explaining that a sub-system of general international law is never in the situation of a fully separate existence but situated somewhere in between the clinic isolation and systemic integration.[38] Fortunately, a conflict of norms is of a highly hypothetical nature in case of the ITU norms: it is unlikely that the ITU would adopt a system of international responsibility different from the general customary rules or would try to deviate from the VCLT.

37 *Autronic AG v. Switzerland*, No. 12726/87, 22 May 1990, ECHR Series A No. 173.

38 J. Crawford, International Protection of Foreign Investments: Between Clinical Isolation and Systematic Integration, in: R. Hofmann/ C. J. Tams, International Investment Law and General International Law: From Clinical Isolation to Systemic Integration? Baden-Baden 2011, p. 28.

In relation to other specific regimes of international law, the principle *lex specialis derogat legi generali* and *lex posterior derogat priori* are relevant according to the VCLT. In relation to the law of outer space, however, any potential conflict of the ITU regime and the law of outer space seem to be solved by the provision of Article III of the 1967 Outer Space Treaty which stipulates that activities in the exploration and use of outer space are to be carried out in accordance with international law. An interesting issue is the relation of international telecommunication law with the right to freedom of expression enshrined in human rights treaties, provided that the given States are Parties to both categories of instruments: According to the licensing of broadcasting, this relation is based on the specific regulations in the human rights treaties; the procedure of licensing has clearly to correspond to human rights, specifically the right to a fair process, without creating a complete obstacle to the implementation of the freedom of expression. Moreover, the principle of proportionality is crucial also in other cases of limiting the right to freedom of expression on the basis of the ITU legislation other than through licensing: Despite of the fact that the ITU legal framework does not operate with this principle, it is an immanent element of any test of the lawfulness of human rights limitations.