

## The United Nations Facing the Challenges of the “Information Society”

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“Young people are among the most prolific and knowledgeable users of information and communication technology. But the digital revolution is out of the reach for many of them, ... I therefore urge policy-makers and industry leaders to put their minds together, and to work cooperatively with children and youth to produce suitable technologies, applications and services to facilitate access to information and communications technology.”

UN Secretary-General, Ban Ki-moon,  
World Telecommunication and Information Society Day,  
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- I. Introduction
- II. The United Nations Politically Confronting Modern Communication Media
- III. The United Nations Specialised Agencies Facing the Technical Challenges of Modern Communication Media
  - 1. The Universal Postal Union
  - 2. The International Telecommunication Union
    - a. The Beginning: Telegraphy and Telephony
    - b. The Second Step: Radiocommunication Services
    - c. The Space Era: Satellite Broadcasting
    - d. The Internet Revolution and “Cyberspace” – A Shared Domain or Chaos?
      - aa. The Decisive Works of the Internet Society, the Internet Assigned Numbers Authority and the Internet Corporation for Assigned Names and Numbers
      - bb. The ITU’s Participation in the Information Society: The World Summit on the Information Society (WSIS)
- IV. Conclusion

## I. Introduction

Communication media have a long history.<sup>1</sup> The beginning of human communication through artificial channels, i.e. not vocalisation or gestures, goes back to cave paintings, drawn maps, and writing. The Ancient Romans devised what might be described as the first postal system in order to centralise control of the Roman Empire. This allowed for personal letters to be sent and for Rome to gather knowledge about events in its many widespread provinces. The rudimentary organisation of postal services, half official and half private, lasted from the Ancient World until the end of the Middle Ages.<sup>2</sup> But with the advent of printing, communication steadily increased. Under the pressure of those needs, the post inevitably developed. During the 16th century, due to the impetus given to it by Franz von Taxis, who for the first time created a postal service operating in several European states, it began to extend beyond national frontiers.

In the last century, a revolution in telecommunication has greatly altered communication by providing new media for long distance com-

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<sup>1</sup> As to the history see the comprehensive analysis by J. Wilke, *Grundzüge der Medien- und Kommunikationsgeschichte*, 2000.

<sup>2</sup> Cf. L. Weber, “Postal Communications, International Regulation”, in: R. Bernhardt (ed.), *EPIL* Vol. III, 1997, 1080 et seq.

munication. The first transatlantic two-way radio broadcast that occurred in 1920 paved the way for communication via analogue telecommunications media such as telephony, radio and TV broadcasts.<sup>3</sup> Only a few decades later, in the 1970s, space technology and the use of satellites introduced a new era of telecommunications with a global dimension. Today, space facilities provide on a competitive basis many services which formerly used terrestrial communication systems. Satellite technology has been incorporated into an effective, universally accessible, global communication network with a sustainable expansion of telecommunications offering a broad variety of new services over even very long distances.<sup>4</sup> Due to the advanced integration of computer and telecommunication technologies into the more unified concept of "information systems", the modern digital telecommunications even allow for computer-mediated communication, telegraphy, and inter-connected computer networks.<sup>5</sup>

Driven by this rapid technological development, the importance of coordination and cooperation between states, other subjects of international law and even non-state actors cannot be overestimated. There are few fields, primarily for technical reasons, where the need for international coordination and cooperation is as apparent as in telecommunications.

In the modern world in which societies largely rely on internet, satellite television, convenient telephone services and connections, universal standards are inevitable as their absence would lead to chaos.<sup>6</sup> Furthermore, telecommunication technologies are not only important for private actors but also play a vital role especially with regard to a state's economic, political and military activities.<sup>7</sup> For both reasons states, which generally defend their sovereignty and domestic jurisdiction (cf. Article 1 para. 2, Article 2 paras 1 and 7 of the UN Charter), are argua-

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<sup>3</sup> A. Noll, "The International Telecommunication Union: Its Inception, Evolution and Innate, Constant Reform Process", *Multimedia und Recht* 8 (1999), 465 et seq.

<sup>4</sup> P. Malanczuk, "Telecommunications, International Regulation", in: R. Bernhardt (ed.), *EPIL* Vol. IV, 2000, 791 et seq.

<sup>5</sup> K.W. Grewlich, *Konflikt und Ordnung in der globalen Kommunikation*, 1997, 17 et seq.

<sup>6</sup> F. Lyall, "Posts and Telecommunications", in: O. Schachter/ Ch. Joyner (eds), *United Nations Legal Order*, Vol. 2, 1995, 789 et seq.

<sup>7</sup> Malanczuk, see note 4, 792; S. v. Welck, *Satelliten in der internationalen Politik*, 1989, 10 et seq.

bly less reluctant to transfer substantial control to an international body than in other areas.

There are many international and regional organisations which are concerned in one way or another with telecommunications including, *inter alia*, the Organisation for Economic Cooperation and Development (OECD), the World Trade Organization (WTO) and the Council of Europe as well as the European Union.<sup>8</sup> Furthermore, civil society, represented, in particular, by private corporations and non-governmental organisations with growing competences in this field, is nowadays highly involved in establishing standards in the field of telecommunications.<sup>9</sup> Nevertheless, because of their universal character, the United Nations could be considered as being the organisation *par excellence* to confront and resolve the challenges of the modern “Information Society” which includes all forms and media of communication. In the following, it will be analysed whether and to what extent the United Nations system actually plays, or could play, a decisive role in facilitating and regulating global communication.

## II. The United Nations Politically Confronting Modern Communication Media

The main body responsible for the telecommunication sector within the United Nations is – besides the ECOSOC which *in praxi*, merely has a quite weak position<sup>10</sup> – the General Assembly (cf. Arts 13 para. 1 lit. b and 60 of the UN Charter). The best-known and most important General Assembly resolutions in the area of telecommunication media date

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<sup>8</sup> See C. Tietje, “Grundzüge und rechtliche Probleme einer internationalen Medienordnung”, in: Hans-Bredow-Institut (ed.), *Internationales Handbuch Medien*, 2002/2003, 15 et seq. (18). Further see K.W. Grewlich, “Access to Global Networks – European Telecommunications Law and Policy”, *GYIL* 41 (1998), 9 et seq.

<sup>9</sup> S. Hobe/ O. Kimminich, *Einführung in das Völkerrecht*, 8th edition 2004, 457.

<sup>10</sup> Even if the ECOSOC disposes of several functions with respect to international economic, social, cultural, educational, health, and related matters according to Arts 62 and 63 of the UN Charter, it is widely deemed as being the “permanent ill” of the UN, see E. Klein, “Die Internationalen und Supranationalen Organisationen”, in: W. Graf Vitzthum (ed.), *Völkerrecht*, 3rd edition, 2004, 312 and 344.

back to the time when direct broadcasting by satellite was developing technically. Before that period, broadcasting transmissions by the emitting state were made through terrestrial stations placed in the receiving state.<sup>11</sup> This so-called "point-to-point-transmission" did not cause major problems to state sovereignty.<sup>12</sup> Fixed installation services always required the collaboration of the states concerned in order to install a service line (i.e. cables) and to establish and operate the service. It followed from the established right of states to regulate and control their national telecommunication systems that international transmissions needed the prior agreement of the states involved.<sup>13</sup> Such agreements were constantly made on an individual or a general basis, as under the Convention of the International Telecommunication Union (ITU).<sup>14</sup> Hence, there was no need to intensively discuss this matter at the United Nations' level.

This arguably "comfortable" situation essentially changed when satellites could be used to transmit programmes by direct satellite broadcast.

The new technique of direct emission of electromagnetic waves on the one hand, and of reception by radiation of the satellite signal on the other could not be limited technically to the prior agreement of the states concerned.<sup>15</sup> Whether and to what extent the traditional principle of freedom of broadcasting also applied to the method of direct television broadcasting via satellite was therefore highly controversial.<sup>16</sup> On

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<sup>11</sup> Cf. W. Rudolf/ K. Abmeier, "Satellitendirektfunk und Informationsfreiheit", *AVR* 21 (1988), 1 et seq. (2); S. Magiera, "Direct Broadcasting by Satellite and a New International Information Order", *GYIL* 24 (1981), 288 et seq.

<sup>12</sup> B. Simma, "Grenzüberschreitender Informationsfluß und domaine réservée der Staaten", in: *Berichte der Deutschen Gesellschaft für Völkerrecht* 19 (1979), 39 et seq. (73).

<sup>13</sup> Ch. Engel, "Das Völkerrecht des Telekommunikationsvorgangs", *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 49 (1985), 90 et seq. (91); Malanczuk, see note 4, 792.

<sup>14</sup> Cf. T. Stein/ T. Marauhn, "Völkerrechtliche Aspekte von Informationsoperationen", *ZaöRV* 60 (2000), 1 et seq. (15).

<sup>15</sup> H. Engelhard, *Satellitendirektfernsehen – neue Technologie für einen besseren internationalen Informationsfluß?*, 1978, 8 et seq.

<sup>16</sup> As to this controversy see for example S. Courteix, *Télévision sans frontières*, 1975; M. Dausen, "Neuere Fragen des Weltraumrechts", *AVR* 17 (1976), 46 et seq.; A. Gottlieb/ Ch. Dalfen/ K. Katz, "The Transborder Transfer of Information by Communications and Computer Systems: Is-

9 November 1972, the General Assembly decided, unanimously against the United States, that the matter of direct satellite broadcasting should be regulated by treaties and that a committee (the then already created Committee on the Peaceful Uses of the Outer Space, COPUOS<sup>17</sup>) should elaborate principles to avoid international conflicts and protect the sovereignty of states against external interference.<sup>18</sup> At that time, the great majority of states was of the opinion that such use of broadcasting could interfere with state sovereignty and the principle of non-intervention.<sup>19</sup> They feared, in particular, that the newly achieved technical possibility of direct broadcast would violate their domestic jurisdiction including their political and cultural affairs. These fears were clearly demonstrated in article IX of the UNESCO Declaration concerning satellite broadcasting which was enacted only a few days later. According to that Declaration programmes should be essentially “apolitical”, the sovereignty of states should be respected and their prior consent should be obtained before directing broadcasts to their territory.<sup>20</sup>

The issue whether there existed a principle of “free flow of information” also permitting broadcasting from satellites to whoever may have the possibility to receive, or whether states had to be asked and give their prior consent, became, hence, the crucial matter of the discussions

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sues and Approaches to Guiding Principles”, *AJIL* 68 (1974), 227 et seq.; W. Kleinwächter, “Völkerrechtliche Aspekte eines direkten Satellitenfernsehens”, *Theorie und Praxis (DDR)* 61 (1976), 60 et seq.; J.B. Münch, *Aspects juridiques de la radiodiffusion directe par satellite*, 1975; K.M. Queeny, *Direct Broadcasting Satellites and the United Nations*, 1978; G. Gornig, *Äußerungsfreiheit und Informationsfreiheit als Menschenrechte*, 1988, 225 et seq.

<sup>17</sup> See A/RES/1472 (XIV) of 12 December 1959.

<sup>18</sup> A/RES/2916 (XXVII) of 9 November 1972.

<sup>19</sup> J.A. Frowein, “Satellite Broadcasting”, in: R. Bernhardt (ed.), *EPIL* Vol. IV, 2000, 317 et seq. (318). – According to the definition given by the ICJ in its Nicaragua judgment, ICJ Reports 1986, 14 et seq. (106 para. 202), the “principle of non-intervention involves the right of every sovereign state to conduct its affairs without outside interference ...” See also the Friendly-Relations-Declaration, A/RES/2625 (XXV) of 24 October 1970.

<sup>20</sup> UNESCO Declaration No. 4111 on “Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange”, of 15 November 1972, reprinted in: UNESCO, Final Acts of the General Conference, 17th Sess. 1972, Vol. 1, No. 4111.

in the UN, particularly within the frame of COPUOS.<sup>21</sup> Even if a consensus on a draft Convention could not be reached, the General Assembly adopted A/RES/37/92 on the "Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting"<sup>22</sup> by 107 to 13 votes with 13 abstentions.<sup>23</sup> All Western states either voted against or abstained,<sup>24</sup> except for Turkey and Cyprus which voted with the majority.

The main reason for this negative attitude of the Western states were paras 13 to 15 of the Annex of the Resolution which established a prior consent procedure. According to para. 13, a state which intended to establish an international direct television broadcasting satellite service should without delay notify the proposed receiving states of such intention and should promptly enter into consultation with any of those states which so requested. Only after these conditions had been met on the basis of agreements and/or arrangements in conformity with the relevant instruments of the ITU and in accordance with these principles could, an international direct television broadcasting satellite service be established (para. 14). Moreover, the inevitable "overspill" of the radiation of the satellite signal, i.e. the side-effect of broadcasting activities prepared for the territory of the emitting state,<sup>25</sup> could not in itself be objected to by the receiving state (para. 15). The reasons for this exception were the rules of international neighbourhood-law<sup>26</sup> as well as, in particular, the fact that obviously the ITU was deemed to be exclusively competent on the matter of the "overspill".<sup>27</sup>

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<sup>21</sup> Cf. D.M. Polter, "Bericht über die 15. Sitzung des Rechtsausschusses des Weltraumausschusses der Vereinten Nationen vom 3. bis 28. Mai 1976 in Genf", *Zeitschrift für Luft und Weltraumrecht* 25 (1976), 345 et seq.; P. Malanczuk, "Das Satellitendirektfernsehen und die Vereinten Nationen", *ZaöRV* 44 (1984), 257 et seq. (273).

<sup>22</sup> A/RES/37/92 of 10 December 1982.

<sup>23</sup> As to the long-lasting genesis of this Resolution see J. Schönbeck, "Die Resolution der Vereinten Nationen vom 10. Dezember 1982 über Prinzipien für das direkte Satellitenfernsehen", *Zeitschrift für Luftrecht und Weltraumfragen* 32 (1982), 16 et seq.

<sup>24</sup> Abstentions came from France, Portugal and Sweden, see Frowein, see note 19, 318.

<sup>25</sup> Tietje, see note 8, 21.

<sup>26</sup> See M.E. Bowman, "Is International Law Ready for the Information Age?", *Fordham Int'l L. J.* 19 (1996), 1935 et seq. (1937).

<sup>27</sup> Engel, see note 13, 97 et seq.

The Western states have continuously argued that the principle of “free flow of information”, recognised in international customary law for radio broadcasting in general,<sup>28</sup> should also be respected for direct satellite broadcasting.<sup>29</sup> Therefore, prior consent or prior arrangements were regarded as being unacceptable. Furthermore, the Western states rightly relied on the freedom of expression and information<sup>30</sup> which was – and still is – protected under the (legally non-binding) Universal Declaration of Human Rights of 1948 as well as under all human rights treaties, particularly under article 19 of the International Covenant on Political and Civil Rights (ICCPR) and under article 10 of the European Convention on Human Rights (ECHR).<sup>31</sup> The formula “regardless of frontiers” is included in most of these instruments. States may only interfere with this freedom when racial hatred or similar behaviour is at stake (cf. article 10 para. 2 ECHR, article 19 para. 3 and article 20 para. 2 ICCPR). Needless to say the existence of various human rights

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<sup>28</sup> The General Assembly adopted, in 1950, several resolutions condemning jamming of foreign radio broadcasts as a denial of freedom of information regardless of frontiers and recommending the limitation of freedom of information only in the most exceptional circumstances, cf. A/RES/424 (V) of 14 December 1950; further see A. Verdross/ B. Simma, *Universelles Völkerrecht*, 3rd edition 1984, para. 1052; P. Malanczuk, “Information and Communication, Freedom of”, in: R. Bernhardt (ed.), *EPIL* Vol. II, 1995, 976 et seq. (979).

<sup>29</sup> Engelhard, see note 15, 133 et seq.; J. Delbrück, *Direkter Satellitenrundfunk und nationaler Regelungsvorbehalt*, 1982, 21 et seq.

<sup>30</sup> Cf. Th. Buergenthal, “The Right to Receive Information Across National Boundaries”, in: Aspen Institute (ed.), *Control of the Direct Broadcast Satellite: Values in Conflict*, 1974, 74 et seq.; L. Gross, “International Law Aspects of the Freedom of Information and the Right to Communicate”, in: P.C. Horton (ed.), *The Third World and Press Freedom*, 1978, 55 et seq.

<sup>31</sup> As to article 19 ICCPR cf. W. Rudolf, “Informationsfreiheit und Satellitenrundfunk im Völkerrecht”, in: W. Fürst et al. (eds), *Festschrift für Wolfgang Zeidler*, Vol. 2, 1987, 1869 et seq. (1876). – The European Court of Human Rights, for instance, decided on 22 May 1990 that article 10 ECHR also covered the reception of television programmes addressed to the public even if they were broadcast by so-called telecommunication satellites, cf. ECHR, judgment of 22 May 1990, *Autronic AG*, Series A No. 178; see also ECHR, judgment of 28 March 1990, *Groppera Radio AG*, Series A No. 173. The Committee of Ministers of the Council of Europe recently stated that all rights enshrined in the ECHR remain fully valid in the “Information Age” and should continue to be protected regardless of new technological developments, see CM (2005) 56 final of 13 May 2005.



treaties has, in the meantime, dramatically reduced states' domestic jurisdiction also in matters of telecommunication.<sup>32</sup>

Even though neither General Assembly Resolutions nor UNESCO Declarations are as such legally binding,<sup>33</sup> they may, as a rule, reflect a common *opinio juris* of the "international community" in cases where they are supported by the majority of states.<sup>34</sup> Nevertheless, the preceding gives a clear example of a situation where a fundamental dispute existed between states as to the legal rules applicable or appropriate. Whereas the Socialist states and – for different reasons, but in a similar manner – the developing countries (especially the Group of 77) feared that the "free flow of information" would be a destabilising factor on their territories and maintenance of power,<sup>35</sup> the Western states put emphasis on democracy and the liberty of the individual.<sup>36</sup> Therefore, both General Assembly Resolution 37/92 and the UNESCO Declaration were not able to create international customary law.<sup>37</sup> Against this background, the relevance of the United Nations in facing the problems of the "Telecommunication Society" remains questionable. This is true at least in times where, as it was the case during the "Cold War", the world was politically and ideologically split up. The question, whether

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<sup>32</sup> Cf. J.A. Frowein, "Das Problem des grenzüberschreitenden Informationsflusses und des domaine réservé", in: *Berichte der Deutschen Gesellschaft für Völkerrecht* 19 (1979), 1 et seq. (18); Stein/ Marauhn, see note 14, 24.

<sup>33</sup> Cf. Verdross/ Simma, see note 28, para. 128, and Engel, see note 13, 93.

<sup>34</sup> Hobe/ Kimminich, see note 9, 458; Verdross/ Simma, see note 28, paras 634 et seq.

<sup>35</sup> Detailed analysis by Malanczuk, see note 21, 263 et seq.; G. Gornig, "Satellitenrundfunk und Völkerrecht", *Zeitschrift für Urheber- und Medienrecht* 36 (1992), 174 et seq. (182).

<sup>36</sup> R. Dolzer, "International Co-operation in Outer Space", *ZaöRV* 45 (1985), 527 et seq. (529). – Nevertheless, there were also some Western states, like Canada, which feared the massive influence of U.S. media on their territory, cf. G. Warren, "A Canadian Perspective on Direct Broadcast Satellites and the New World Information and Communication Order", *Syracuse Journal of International Law & Commerce* 8 (1981), 391 et seq. Further see E.F. Scholz, "Bericht über die Jahresversammlung des International Institute of Communications", *AVR* 21 (1983), 113 et seq.

<sup>37</sup> This is nearly undisputed, see Engel, see note 13, 103; Frowein, see note 19, 318; H. Fischer, "Weltraumrecht", in: K. Ipsen, *Völkerrecht*, 5th edition 2004, para. 56 No. 59; M. Benkö, "Outer Space, Law of", in: R. Wolfrum (ed.), *United Nations: Law, Policies and Practice*, Vol. 2, 1995, 947 et seq. (952).

this statement has to be revised regarding the today's "world information order", will be addressed later.

### III. The United Nations Specialised Agencies Facing the Technical Challenges of Modern Communication Media

A different result, however, may be found regarding the UN specialised agencies. In contrast to the UN, these agencies were created with the conceptual idea of decentralism and functionalism (cf. Arts 1 para. 3, 55 of the UN Charter).<sup>38</sup> Functionalism rests on the assumption that areas of activity relatively free from political controversy can be identified and that cooperation in technical areas may gradually spread over to other fields.<sup>39</sup> These agencies could therefore play a decisive role in facing the challenges of the modern "Telecommunication and Information Society". The most prominent specialised agencies in these fields are UPU which is focused on the postal exchange and, particularly, ITU the main actor in the area of telecommunication regulation.

#### 1. The Universal Postal Union

The creation of UPU goes back to the 19th century. Already at the beginning of the 19th century, after steam navigation and the railway had been invented, the postal service definitely became a public service. Nevertheless, international postal communications were still governed by bilateral agreements which answered the particular sovereign needs of each state.<sup>40</sup> This system, involving a great variety of rates calculated in different currencies and according to different units of weight and different scales, made the operation of the postal service complicated. In order to overcome this unsatisfactory state of affairs, a first international conference was convened in Paris in 1863. The conference

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<sup>38</sup> See Verdross/ Simma, see note 28, paras 295 et seq.

<sup>39</sup> However, this concept has been called into question, see E. Klein, "United Nations Specialized Agencies", in: R. Bernhardt (ed.), *EPIL* Vol. IV, 2000, 1172 et seq. (1189).

<sup>40</sup> W. Swindler, *Phases of International Law Affecting the Flow of International News Communications*, 1942, 41 et seq.

adopted a number of general principles for international postal services, to be observed by national postal administrations.<sup>41</sup> These principles did not bind states, but they were subsequently included in a number of bilateral and multilateral agreements. The following rapid development of international relations, however, prompted Heinrich von Stephan, a senior official in the postal administration of the North German Confederation, to draw up the outline of a plan for a postal union in 1868.<sup>42</sup> On the basis of his plan a conference was organised by the Swiss Government in 1874. The Congress resulted in the signing of the 1874 Treaty of Berne which established the first Convention governing the international postal service and founded the “General Postal Union” between the then 21 European states and the United States of America. The Convention, signed on 9 October 1874,<sup>43</sup> entered into force on 1 July 1875. Three years later, in view of numerous accessions which had taken place since then, the name was changed to “Universal Postal Union”.<sup>44</sup> After having concluded the relationship agreement with the United Nations according to Arts 57 and 63 of the UN Charter,<sup>45</sup> the UPU, with headquarters in Berne, finally became a specialised agency on 1 July 1948.

The current version of the Treaty goes back to the 1964 Vienna Congress, even though it has been amended and revised several times during the last decades.<sup>46</sup> The Constitution of the UPU has remained, since then, the fundamental act containing the organic rules of the Union.<sup>47</sup> The common rules applicable to the international postal service and the provisions concerning the letter-post and postal parcels services are laid down in the Universal Postal Convention and its regulations. Both acts, the Constitution and the Convention, are binding on all

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<sup>41</sup> L. Weber, “Universal Postal Union”, in: R. Bernhardt (ed.), *EPIL* Vol. IV, 2000, 1235 et seq.

<sup>42</sup> UPU, *Constitution. General Regulations with the International Bureau of the UPU, 2005, Part I – General: The Universal Postal Union, its Creation and Development*, VIII.

<sup>43</sup> CTS Vol. 147 No. 136.

<sup>44</sup> H. Volger, “Universal Postal Union”, in: id. (ed.), *A Concise Encyclopedia of the United Nations*, 2002, 643.

<sup>45</sup> UNTS Vol. 19 No. 116.

<sup>46</sup> Cf. Weber, see note 41, 1236.

<sup>47</sup> Cf. article 22 para. 1 of the Constitution. Further see UPU, *Constitution, General Regulations. With commentary by the International Bureau of the UPU, 2005, Part II – Commentary to the Constitution of the Union*, A.4.

states parties.<sup>48</sup> Other branches of the international postal service are governed by special agreements and their regulations. They are binding only on states that are parties to the agreements.<sup>49</sup>

Since its establishment, the UPU has pursued its work with a high degree of continuity. It has, to a large extent, managed to prevent undue politicisation of its organs and to ensure efficiency of its work.<sup>50</sup> The most important achievements of the Union have perhaps been the continuous elaboration and successful updating of the acts and regulations. In particular, the 1994 Seoul Congress introduced the first important changes by transferring to the Postal Operations Council<sup>51</sup> the power of enacting and amending the regulations concerning the operational, economic and commercial aspects of the international postal service. Since that date, the Postal Operations Council promotes, *inter alia*, the introduction of new postal products. During recent years, growing customer expectations, privatisations of national postal services, increased competition and progress in communication technologies have caused the UPU to review its role again.

Created in 2004 as a result of changing focuses, the Consultative Committee<sup>52</sup> now gives postal stakeholders other than public postal operators and regulators a voice in the organisation's deliberations in order to provide an increasingly global forum for its members and its (private) external partners.

With its 191 Member States,<sup>53</sup> the UPU is, without doubt, useful in building the "Information Society". Even if modern telecommunication media have gained much ground during the last decade, the "good old"

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<sup>48</sup> Cf. article 22 paras 2 and 3 of the Constitution.

<sup>49</sup> Cf. article 22 para. 4 of the Constitution.

<sup>50</sup> Weber, see note 41, 1239. However, political controversies could not always be kept away from the UPU, as has been demonstrated by the exclusion of South Africa in 1979 because of its apartheid system, see S. Magiera, "Universal Postal Union", in: Wolfrum, see note 37, 1382 et seq. (1385).

<sup>51</sup> The Postal Operations Council is the technical and operational body of the UPU and consists of 40 elected Member States, see article 18 of the Constitution.

<sup>52</sup> See article 104bis of the General Regulations of the UPU introduced by the 23rd Universal Postal Congress in Bucharest. The Consultative Committee consists of non-governmental organisations representing customers, delivery service providers, worker's organisations, suppliers of goods and services to the postal sector and other interested organisations.

<sup>53</sup> The last accession was made by Montenegro on 26 July 2006.

mail system has still a significant market share.<sup>54</sup> The organisation fulfils an important advisory, mediating and liaison role between Member States, non-governmental organisations and private stakeholders. It sets the rules for international mail exchanges and makes recommendations to stimulate growth in mail volumes and to ensure efficiency in international postal communications. Universally applied for more than a hundred years, the principal rules of the postal system arguably have become customary international law.<sup>55</sup> Since administrations do not distinguish between international and domestic mail in their day-to-day operations, the system has further set the terms not only for international but also for domestic services.<sup>56</sup> In addition, the opening up of the UPU to all postal sector partners (including private ones) coincides with the organisation of a cycle of increasingly successful annual conferences. The most recent conference, organised in cooperation with the ITU, took place on 8 June 2007 and featured the role of the postal sector in the information society.<sup>57</sup>

## 2. The International Telecommunication Union

It is often said that the most important work in the areas of telephony, information technology and broadcasting, including direct broadcast by satellite, is done by the International Telecommunication Union, which is the leading UN specialised agency for information and communication technology.<sup>58</sup> Indeed, the ITU bears the principal responsibility for all types of telecommunication at least as far as technical regulation on the international plane is concerned. Nevertheless, it is arguable whether the Union may actually be considered an international actor capable of dealing with all the numerous aspects of modern international communication.

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<sup>54</sup> Cf. UPU, *The Postal Sector: Your Partner in Delivering the Information Society*, 2006 (brochure available at: <[www.upu.int](http://www.upu.int)>).

<sup>55</sup> Cf. C.H. Aleandrowicz, *The Law of Global Communications*, 1971, 37 et seq.

<sup>56</sup> Weber, see note 2, 1084. – However, the UPU does not legally interfere in matters that fall within the domestic domain of national postal services. National posts still set their own postage rates and decide on how to manage their postal operations and staff.

<sup>57</sup> See <[http://www.upu.int/conferences/en/2007-06-08\\_programme\\_en.pdf](http://www.upu.int/conferences/en/2007-06-08_programme_en.pdf)>.

<sup>58</sup> Cf. J. Fawcett, "Broadcasting, International Regulation", in: R. Bernhardt (ed.), *EPIL* Vol. I, 1992, 506 et seq. (507).

### a. The Beginning: Telegraphy and Telephony

Similar to the UPU, the creation of the ITU also dates back to the 19th century. After the invention of the first electric telegraph in 1837 and the first public message sent over a telegraph line by Samuel Morse in 1844, telegraphy was, barely ten years later, available as a service to the general public.<sup>59</sup> In those days, however, telegraph lines did not cross national borders. Since each country used a different system, messages had to be transcribed, translated and handed over at frontiers, then re-transmitted over the telegraph network of the neighbouring country. Given the slow nature of this system, many of the then European states felt the need for establishing international telecommunication arrangements through numerous bilateral and multilateral treaties in order to facilitate interconnection of their national networks.<sup>60</sup> Very quickly, in the 1860s, they saw the necessity for a unification of such diverse treaty laws into one single legal instrument.<sup>61</sup> On the initiative of France, 20 European states met in Paris in March 1865 in order to elaborate such a treaty.

Their work was concluded with the first International Telegraph Convention and Regulations of 17 May 1865,<sup>62</sup> this date being generally considered as the birthday of the ITU, which was – under the name of the “International Telegraph Union” – the first International Administrative Union worldwide. The subsequent, 1868 Vienna Conference decided to establish the Union’s seat in Berne, Switzerland, where it remained until 1947.<sup>63</sup> Nevertheless, during this époque, states still had complete control over their respective territorial sovereignty. The sovereign right of each country to regulate its own telecommunication was fully recognised; the Convention’s object was merely to facilitate relations between the peoples by means of efficient telecommunication services. Furthermore, article 31 of the Telegraph Convention of 1865

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<sup>59</sup> A. Noll, “International Telecommunication Union”, in: R. Bernhardt (ed.), *EPIL* Vol. II, 1995, 1379 et seq. (1380).

<sup>60</sup> As to the development see M. Kloepfer, *Technik und Recht im wechselseitigen Werden. Kommunikationsrecht in der Technikgeschichte*, 2002, 119 et seq.

<sup>61</sup> For an overview of the ITU’s history and its activities until the early 1950s see G.A. Coddling, *The International Telecommunication Union – An Experiment in International Cooperation*, 1952.

<sup>62</sup> CTS Vol. 130 No. 198.

<sup>63</sup> Noll, see note 59, 1380.

stated that states may hinder or at least suspend any communication by telegraph for reasons of public order. Further exceptions were laid down in public interest clauses granting states broad discretion.<sup>64</sup>

Following the patent registration of the telephone invented in 1876 and the subsequent expansion of telephony, the ITU began, at the 1885 Berlin Telegraph Conference, to draw up international legislation governing telephony.<sup>65</sup> With the invention of wireless telegraphy in 1896 – the first type of radiocommunication –, and following the first radio transmission of the human voice in 1902, the 1906 Berlin Radiotelegraph Conference included the first provisions for regulating international radio services. These regulations governing wireless telegraphy are now known as Radio Regulations and have, since then, been expanded, renewed and revised by numerous conferences. However, the early Radio Regulations – very similar to the provisions regarding the telegraph communication – also provided for a series of exceptions in cases where a state’s public order was considered to be endangered. Political and technical conditions were, at that time, strictly separated.<sup>66</sup>

#### **b. The Second Step: Radiocommunication Services**

After the birth of sound broadcasting in 1920 and the creation of two independent International Consultative Committees on Telephone (1924) and Telegraph (1925), the 1927 Washington D.C. Plenipotentiary Conference established an additional International Radio Consultative Committee.<sup>67</sup> Furthermore, the 1927 Conference allocated, for the first time, frequency bands to the then existing radio services in order to ensure greater efficiency of operation in view of the increase in the number of radiocommunication services (broadcasting, maritime mobile and fixed) and their respective technical peculiarities. The assignment of individual radio channels to stations, however, was still left to states,

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<sup>64</sup> Cf. W. Kleinwächter, “The Search for a World Communication Order – Hundred Years of Global Negotiations on Communication Technology”, in: W. Kleinwächter/ K. Nordenstreng (eds), *International Security and Humanitarian Cooperation in the Reunited Europe*, 1991, 5 et seq.

<sup>65</sup> Noll, see note 3, 465.

<sup>66</sup> Cf. J. Evensen, “Aspects of International Law relating to Modern Radio Communications”, *RdC* 115 (1965), 471 et seq. (482).

<sup>67</sup> The committees were made responsible for coordinating technical studies, tests and measurements being carried out in the various fields of telecommunications, as well as for drawing up international standards.

which could acquire a right of non-interference for the station by informing the International Bureau of the International Telegraph Union. Under this regime, the basic scheme of which remains effective today, the plenary bodies of the ITU met periodically to amend the Table of Frequency Allocations, define new classes of services and agree upon necessary technical constraints upon services.<sup>68</sup> This regime worked on the “first come, first served” principle and was in favour of national sovereignty, too, because it did not transfer substantive powers to the ITU administrative bodies. Nevertheless, the “first come, first served” principle was later, starting with the period of decolonisation in the 1960s, heavily criticised by the developing countries because it obviously favoured nations with advanced telecommunication systems.<sup>69</sup>

The evolution in the radiotelegraph sector during the late 1920s demanded for a profound revision of the ITU rulings. The 1932 Madrid Plenipotentiary Conference reacted by merging the Telegraph and Radiotelegraph Conventions into one single instrument, the International Telecommunication Convention, which was supplemented by new radio, telegraph and telephone regulations.<sup>70</sup> It was also decided to change the name of the Union into “International Telecommunication Union”. The new name, which came into effect on 1 January 1934, was chosen to properly reflect the full scope of the Union’s responsibilities in all the areas of wireline and wireless communication. The new term “telecommunication” was, hence, defined as “any telegraph or telephone communication of signs, signals, writings, images, and sounds of any nature, by wire, radio, or other systems or processes of electric or visual (semaphore) signalling”.<sup>71</sup>

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<sup>68</sup> Ch. Kennedy/ V. Pastor, *An Introduction to International Telecommunication Law*, 1996, 33. For instance, subsequent conferences progressively raised the upper limit for radio broadcasting frequency, cf. Malanczuk, see note 4, 793.

<sup>69</sup> As to this critique and the reactions hereto see under III. 2. c.

<sup>70</sup> Noll, see note 3, 466; H. Volger, “International Telecommunication Union”, in: id., see note 44, 349.

<sup>71</sup> See Coddling, see note 61, 140. Following the dramatic technological evolution during the second half of the 20th century, this definition was revised fifty years later by the 1982 Nairobi Conference stating that telecommunication covers “any transmission, emission or reception of signs, signals, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems”, see Annex 2, 1012 of the Convention available at: <<http://www.austlii.edu.au/au/other/dfat/treaties/1994/28.html>>.



After World War II, during which the Berne Bureau had continued to work, the 1947 Atlantic City Conference took place with the aim of developing and modernising the organisation. It set up the Union’s Administrative Council, created the International Frequency Registration Board and revised the Convention accordingly, which was subsequently – due to ever-increasing technical developments and requirements – further refined and partly revised by several conferences (Buenos Aires 1952, Geneva 1959, Montreux 1965, Málaga-Torremolinos 1973, Nairobi 1982).<sup>72</sup>

The International Frequency Registration Board was established to coordinate the increasingly complicated task of managing the radio-frequency spectrum.<sup>73</sup> With the ITU having become a specialised agency on 15 November 1947,<sup>74</sup> the headquarters of the organisation were finally and definitely transferred from Berne to Geneva in 1948.

After the launching of the first artificial satellite, “*Sputnik-1*” in 1957,<sup>75</sup> the Radio Regulations were entirely revised first in 1959, and then completely restructured in 1979, whereas the Telegraph and Telephone Regulations were, at Melbourne in 1988, combined into one single instrument entitled “International Telecommunications Regulations”.<sup>76</sup> Step by step, the ITU, which formerly fully respected state sovereignty, began to interfere modestly with national telecommunication rulings. In this respect it is worth noticing that ITU membership consists not only of states but also “sector members”, private or public companies and organisations with an interest in telecommunications, being entitled to participate, with specific rights and obligations, in the work of one or more sectors of the ITU.

### c. The Space Era: Satellite Broadcasting

The real revolution of ITU’s work and structure happened, however, following the launching of the first active satellite “*Telstar*” into an el-

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<sup>72</sup> As to the details of this development cf. Noll, see note 59, 1380.

<sup>73</sup> Fawcett, see note 58, 507.

<sup>74</sup> The agreement entered into force on 1 January 1949, UNTS Vol. 30 No. 175.

<sup>75</sup> The Soviet satellite “*Sputnik-1*” was launched on 4 October 1957 and directly followed by the American satellite “*Explorer-1*” on 31 January 1958.

<sup>76</sup> R. Wolfrum, “Regelungen für einzelne Nutzungsformen”, in: G. Dahm/ J. Delbrück/ R. Wolfrum (eds), *Völkerrecht*, Vol. I/2, 2nd edition 2002, 466 et seq.

liptical orbit in 1962,<sup>77</sup> which marked the beginning of the space age. Only one year later, the first geostationary communication satellite (geosynchronous earth orbit satellite, GEOs) covering one third of the planet by using an orbit of about 36.000 km above the equator – the geostationary orbit – provided uninterrupted links.<sup>78</sup>

From a technical point of view, broadcasting services do not require any special coordination or prior agreement between sending and receiving states. This obviously did not conform with the concept of sovereignty of states at that period, and thus led to the, already mentioned, political controversy within the UN regarding the so called “prior consent” procedure.<sup>79</sup> Nevertheless, even at that time it was not disputed among the states that technical coordination and cooperation were needed both with regard to frequency and, in the case of satellite telecommunication, also with regard to orbital positions in outer space in order to avoid harmful interference of radio signals.<sup>80</sup> Although the legal power of the ITU to regulate space telecommunications and the positioning of satellites in outer space was initially questionable,<sup>81</sup> it has meanwhile been widely accepted in state practice for technical reasons and convenience. Those equatorial states which had signed the Bogotá Declaration of 3 December 1976<sup>82</sup> were an exception to this practice with regard to their claims of sovereignty – baseless in international law<sup>83</sup> – as including the segments of the geostationary orbit over their respective territories.

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<sup>77</sup> The elliptical orbit is at 963-9685 km of height.

<sup>78</sup> Ch. Koenig/ A. Neumann, “Rechtliches und organisatorisches Umfeld der Satellitenkommunikation”, *Multimedia und Recht* 10 (2000), 151 et seq.; Kennedy/ Pastor, see note 68, 51.

<sup>79</sup> See under II.

<sup>80</sup> E. Dahinden, *Die rechtlichen Aspekte des Satellitenrundfunks*, 1990, 185 et seq.

<sup>81</sup> See Doc. A/AC.105/271, Annex I, and A. Bueckling, “Grenzüberschreitendes Direktfernsehen durch Satelliten – rechtlich gesehen”, *NJW* 44 (1981), 1113 et seq. (1118).

<sup>82</sup> Reprinted in: *RBDI* 15 (1980), 48 et seq. See also the proposals made by equatorial states within the frame of COPUOS that they shall have preferential rights to the segment of the geostationary orbit superjacent to the territory under their jurisdiction, Doc. A/AC.105/C.2/L.147 of 29 March 1984.

<sup>83</sup> This is almost undisputed, cf. W. Graf Vitzthum, “Raum und Umwelt im Völkerrecht”, in: id. (ed.), *Völkerrecht*, 3rd ed. 2004, 409; Fischer, see note

Hence, already in 1959 (shortly after the launching of "Sputnik-1"), the ITU took the initial step to regulate the use of the radio frequency spectrum for space activities. In addition, an Extraordinary Administrative Conference for space communications was held in 1963 in Geneva to allocate frequencies to the various space services.<sup>84</sup> Subsequent conferences made further allocations and put in place regulations governing the use, by satellites, of the radio-frequency spectrum and associated orbital slots.<sup>85</sup> Through the World Broadcasting Satellite Administrative Radio Conference of 1977 (WARC-1977), the ITU finally regulated the frequencies to be used by, as well as the geostationary orbit positions available for, satellites of the different countries.<sup>86</sup>

WARC-1977 became a prominent and contentious event in the Union's history. The main problem was that the Conference did not restrain itself to administering and regulating the geostationary orbit positions but expressly stressed that the positions reserved to states were limited to their proper economical utilisation and that – besides the technically unavoidable "overspill" – a radiation of other states was, in principle, prohibited.<sup>87</sup> This was the first time that the ITU, whose purposes were limited to safeguarding and promoting the technical facilities of telecommunication, extended its competences to matters of broad political significance.

The Union's action was thus heavily criticised by the legal doctrine as being *ultra vires*.<sup>88</sup> State practice, in contrast, was not consistent with this issue. On the one hand, the majority of states (including the Western democracies) recognised that the Final Acts of WARC-1977 were

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37, para. 56 No. 15 et seq.; R. Wolfrum, "Sonderprobleme des Weltraums", in: Dahm/ Delbrück/ Wolfrum, see note 76, 453 et seq.

<sup>84</sup> Magiera, see note 11, 295.

<sup>85</sup> Cf. Malanczuk, see note 4, 794.

<sup>86</sup> Cf. ITU, *Final Acts of the World Administrative Radio Conference for the Planning of the Broadcasting Satellite Service in Frequency Bands 11.7-12.2 GHz (in Regions 2 and 3) and 11.7-12.5 GHz (in Region 1)*, 1977. See further ITU, *Twenty-first Report by the International Telecommunication Union on Telecommunication and the Peaceful Uses of Outer Space*, 1982, 8.

<sup>87</sup> Cf. Malanczuk, see note 21, 260 et seq.; Rudolf/ Abmeier, see note 11, 4 et seq.

<sup>88</sup> Cf. N.M. Matte, "Aerospace Law: Telecommunication Satellites", *RdC* 166 (1980), 119 et seq. (163); Rudolf, see note 31, 1871; Gornig, see note 35, 180.

legally binding for a period of 15 years.<sup>89</sup> On the other hand, even though the ITU's attitude fully reflected the opinion of the former Socialist states there was the tendency in the UN to regard the Final Acts of the ITU only as technical regulations coordinating the establishment of the direct broadcast by satellite systems which did not eliminate the need for further legal regulations to govern the relations of states in this area.<sup>90</sup> This led to further discussions within the UN (i.e. the COPUOS) and finally to the above-mentioned Resolution 37/92 of the General Assembly which basically upheld the views given at WARC-1977.

Further problems on the occasion of WARC-1977 arose in view of the subdivision of the orbital positions according to the "first come, first served" principle that obviously favoured the states with advanced telecommunication systems.<sup>91</sup> Advocates of the developing nations therefore called for specialised administrative conferences to subdivide and allot radio channels or satellite orbital positions to states in advance, regardless of present need or capacity to use them. The idea behind this was to prevent the pre-emption of the spectrum by industrialised countries.<sup>92</sup> This approach met the opposition, in particular, from the United States, which argued that it would waste valuable resources and hamper future technological development. Nevertheless, an "*a priori* plan" had already been adopted in 1974 by an Administrative Conference of the ITU dealing with maritime services,<sup>93</sup> and the World Administrative Radio Conferences from 1985 to 1988 subsequently laid down a planning regime providing for the allocation of orbital slots and radio frequencies for all states.<sup>94</sup> In this way, the "first come, first

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<sup>89</sup> See Rudolf/ Abmeier, see note 11, 6; Bueckling, see note 81, 1117. – The Western states signed the Final Acts of the Conference merely with a declaration that the prior consent procedure should not be applied but without making an explicit reservation, cf. Gornig, see note 35, 182.

<sup>90</sup> N. Jasentuliyana, "Regulations Governing Space Telecommunication", in: N. Jasentuliyana/ R.S.K. Lee (eds), *Manual on Space Law*, Vol. I, 1979, 220; B.H. Dickson, "Effects of 1977 ITU World Administrative Conference on the Formulation of UN Draft Principles on Direct Broadcast Satellites", *Annals of Air and Space Law* 2 (1977), 260 et seq.

<sup>91</sup> Fischer, see note 37, para. 56 No. 15 et seq.

<sup>92</sup> A. Bueckling, "Orbitnahmen im Weltraum", *Bayerische Verwaltungsblätter* 1987, 296 (298); Benkö, see note 37, 955.

<sup>93</sup> Malanczuk, see note 4, 793.

<sup>94</sup> See M.L. Smith, "Space Law/Space WARC: An Analysis of the Space Law Issues Raised at the 1985 ITU World Administrative Radio Conference on

served" principle was only basically retained in the interests of an efficient use of the geostationary orbit, but it was, at the same time, modified by a new approach of "equitable access" to those of limited resources in order to meet the concerns of developing countries.<sup>95</sup> As a result, the freedom of the states to use the geostationary orbit for telecommunication purposes was limited by reserving for each state a certain segment of the orbital positions in advance.<sup>96</sup> The principal idea of a "New World Information and Communication Order", which was presented in the late 1970s by the developing countries as an integral part of their (controversial) demand for a "New World Economic Order"<sup>97</sup> based on the principle of transnational solidarity, was thus partly realised.<sup>98</sup>

During the last two decades the above mentioned disputes have, to a large extent, shifted away from the aspects of (almost absolute) state sovereignty to the question of how to secure equitable access for all countries to these limited and economically valuable resources in outer space. Even though neither the status of the geostationary orbit nor the utilisation of satellites are codified in international conventions,<sup>99</sup> it can be assumed that the "prior consent" principle increasingly loses ground in favour of the "free flow of information" regime. This change is mainly due to the situation of political catharsis between the West and the East after the end of the "Cold War" as well as to various modern technical innovations.<sup>100</sup> Therefore, it is not surprising that the ITU's work also underwent noticeable changes after 1989/1990. In 1992, allocations were made for the first time to serve the needs of a new kind of space service using non-geostationary satellites, known as Global Mobile Personal Communications by Satellite. The same year, the ITU de-

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the Geostationary Orbit", *Houston Journal of International Law* 8 (1986), 227 et seq.; id., "The Space WARC Concludes", *AJIL* 83 (1989), 569 et seq.

<sup>95</sup> M. Will, *Solar Power Satellites und Völkerrecht*, 2000, 170 et seq.; R. Wolfrum, "Einzelne Formen der Nutzung des Weltraums", in: K.H. Böckstiegel (ed.), *Handbuch des Weltraumrechts*, 1991, 351 et seq. (379).

<sup>96</sup> J. Delbrück, "World Information and Communication Order", in: Wolfrum, see note 37, 1466 et seq. (1473); Magiera, see note 11, 298 et seq.

<sup>97</sup> Delbrück, see note 96, 1479 et seq.

<sup>98</sup> Malanczuk, see note 28, 978; Wolfrum, see note 76, 469.

<sup>99</sup> Wolfrum, see note 83, 452.

<sup>100</sup> Graf Vitzthum, see note 83, 412, at footnote 237.

veloped the next generation global standard for digital mobile telephones.<sup>101</sup>

In view of these modern satellite technologies, the structure and the role of the Union were modified in order to correspond in a more efficient way to the new challenges of the then emerging “Information Society”. In 1982 the Nairobi Plenipotentiary Conference had already given the mandate for the separation of the provisions of the, until then, applicable International Telecommunication Convention into two future instruments: a Constitution and a Convention of the ITU. Whereas the Constitution should be the basic and more stable instrument, which should be amended less frequently, the provisions of the Convention should complement those of the Constitution as a second and more easily amendable instrument.<sup>102</sup> Both instruments were finally adopted at the 1992 Geneva Conference, revised at Kyoto in 1994 and last amended in 2001.<sup>103</sup>

As a further result of this reorganisation, the Union was streamlined into three sectors, corresponding to its three main areas of activity – Telecommunication Standardisation (ITU-T), Radiocommunication (ITU-R) and Telecommunication Development (ITU-D).<sup>104</sup> The new system also introduced a regular cycle of conferences in order to help the Union to respond rapidly to new technological advances. This reform process of the new functions of the ITU actually started with the 1989 Nice Plenipotentiary Conference where the Development Sector, which had the aim of giving technical assistance to developing countries, was recognised as deserving to be on the same level of importance as the traditional Radiocommunication and Standardisation bodies.<sup>105</sup> The 1994 Kyoto Conference adopted the first-ever strategic plan for the ITU in order to establish the organisation as the international focus for

<sup>101</sup> Hobe/ Kimminich, see note 9, 461.

<sup>102</sup> K.U. Schrogl, “Die Strukturreform der ITU”, *Zeitschrift für Luft und Weltraumrecht* 42 (1993), 182 et seq. (184); A. Tegge, *Die Internationale Telekommunikations-Union. Organisation und Funktion einer Weltorganisation im Wandel*, 1994; Noll, see note 3, 466.

<sup>103</sup> See at: <<http://www.itu.int/aboutitu/basic-texts/constitution.html>> and <<http://www.itu.int/aboutitu/basic-texts/convention.html>>. As to the legal framework of operation and law-making of ITU cf. the detailed analysis by J. Hinricher, “The Law-Making of the International Telecommunication Union (ITU) – Providing a New Source of International Law?”, *ZaöRV* 64 (2004), 489 et seq.

<sup>104</sup> Schrogl, see note 102, 190; Hinricher, see note 103, 490 et seq.

<sup>105</sup> Tietje, see note 8, 18.

all matters relating to telecommunications in the global information society in the next century, advocating, at the same time, a more client-orientated approach. In addition, the 1992 Torremolinos Conference had already prepared the way for the introduction of personal communication services provided by mobile satellite and terrestrial networks, as well as for high definition television and digital audio broadcasting, finally addressed at the 1995 Geneva World Radiocommunications Conference. Further Conferences (1994 Kyoto, 1998 Valletta, 1999 Minneapolis) were dedicated to specific telecommunication development projects, primarily in the least developed countries,<sup>106</sup> and to the implications that the WTO Agreement on Basic Telecommunications would have on ITU Member States. While the international regulatory framework for telecommunications is still predominantly formulated by the ITU, the commercial and trade aspects of telecommunications fall within the competence of the WTO.<sup>107</sup>

All in all, satellite communication may seem to represent only a small part of the telecommunication sector, but it plays an important role within the global information system. The present phase is characterised by the commercialisation of outer space activities, involving the emergence of private actors, especially in the field of satellite telecommunications – where former telecommunications operators like INTELSAT, INMARSAT and EUTELSAT have been subjected to privatisation<sup>108</sup> –, and, to a lesser extent, in the field of remote sensing, i.e. the collection of information about the earth from mechanisms placed in the space.<sup>109</sup> Within this area, a new legal regime emerged pertaining to

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<sup>106</sup> For instance, for the period 1997-2001, 17.5 million Swiss Francs were earmarked for development projects, see Malanczuk, see note 4, 802.

<sup>107</sup> The regime applicable to the telecommunications industry in the framework of the WTO is the General Agreement on Trade in Services (GATS) and the WTO Agreement on Basic Telecommunication Services, annexed to the GATS, see Tietje, see note 8, 18.

<sup>108</sup> As to the privatisation of these operators Koenig/ Neumann, see note 78, 156; and particularly; I. Polley, *INTELSAT – Restrukturierung einer internationalen Telekommunikationsorganisation*, 2002.

<sup>109</sup> As to the still not definitely regulated matter of the remote sensing technique see P. Malanczuk, "Satelliten-Fernerkundung der Erde: Politische und rechtliche Aspekte", in: K. Kaiser/ S.F. Welck (eds), *Weltraum und Internationale Politik*, 1987, 57 et seq.; T. Klinner, *Satellitenfernerkundung im Völkerrecht*, 1989; Wolfrum, see note 83, 456 et seq. – Further see the General Assembly Resolution on Principles Relating to Remote Sensing of the

global air navigation by satellite.<sup>110</sup> Furthermore, the World Radio-communication Conferences since 1995 have given special attention to the use of low-Earth orbits satellites (LEOs) which are operating at centrimetric waves and on non-geostationary satellite systems in the fixed-satellite service as well as on broadcasting satellite service.<sup>111</sup> One particular problem arising from the increasing use of outer space by satellite projects is the production of space debris.<sup>112</sup> This refers to the increasing population of dysfunctional satellites and other components of man-made space objects remaining in circulation around the earth, endangering the use of the advantageous earth orbits in the future, and also causing dismay among astronomers.<sup>113</sup> The matter requires international regulation and is currently being studied not only by the ITU but also in the technical sub-committee of COPUOS.<sup>114</sup> Here again, it is evident that today's telecommunication issues need both, the technical standards regulated by the ITU on the one hand, and a political agreement on the "free flow of information" and on the principle of "equitable access" reached within the UN bodies on the other.

#### d. The Internet Revolution and "Cyberspace" – A Shared Domain or Chaos?

In parallel to the development of the direct broadcast by satellite, the development of digital and computer technologies made its first steps. At the beginning of the 1970s, however, the Internet<sup>115</sup> was mainly used

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Earth From Outer Space, A/RES/41/65 of 3 December 1986, which establishes principles for remote sensing activities.

<sup>110</sup> Malanczuk, see note 4, 803.

<sup>111</sup> See A. Noll, "The extraterrestrials are coming", *Telecommunication Policy* 1996, 79 et seq.; Koenig/ Neumann, see note 78, 151.

<sup>112</sup> See Status Report Submitted by the Committee on Space Research, Doc. A/AC.105/403 of 6 January 1988, 5.

<sup>113</sup> P. Malanczuk, "Legal and Policy Aspects of Controlling Space Debris", *Zeitschrift für Luft und Weltraumrecht* 45 (1996), 37 et seq.

<sup>114</sup> See Doc. A/AC.105/C.2/SR.446 of 22 April 1986 on the one hand, and Doc. A/AC.105/707 of 14 December 1998, Doc. A/AC.105/C.2/L.246 of 1 April 2003, on the other.

<sup>115</sup> The Internet is an international computer network that connects individual computer networks worldwide, cf. the characterisation given by the U.S. Supreme Court, in: *ACLU v. Reno*, 117 S.Ct. 2329, 2334 (1997).



by U.S. academics<sup>116</sup> who established quasi-legal rules called the "netiquette".<sup>117</sup> At that time, probably no one could anticipate the digital cross-border revolution which has fundamentally changed societies worldwide since approximately 1995. By the so-called "cyberspace" the world of today has become a "global village", and the number of the Internet users is constantly growing. Whereas in 2000 only 200 million people used the Internet, there are currently more than 1 billion Internet users.<sup>118</sup>

The regulation of the Internet poses a number of complicated legal problems that are not yet adequately resolved on the international level.<sup>119</sup> The problems range from the administration of Internet domain names to the regulation of the commercial use of the Internet.<sup>120</sup> From a trade perspective, a number of policy and regulatory issues arise from the electronic commerce. They include, *inter alia*, the legal and regulatory framework for Internet transactions, security and privacy issues, taxation, access to the Internet, market access for suppliers over the Internet, trade facilities, public procurement, intellectual property questions, and regulation of content. Most of these issues should be dealt with by the system of the WTO and not primarily by the UN. For instance, products purchased and paid for over the Internet but delivered physically are likely to be subject to the existing GATT rules, whereas products delivered as digitalised information via the Internet

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<sup>116</sup> In principle, the Internet was developed in order to have ways of communication in times of an atomic war, see R. Werle, "The Impact of Information Networks on the Structure of Political Systems", in: C. Engel et al. (eds), *Understanding the Impact of Global Networks on Local, Social, Political and Cultural Values*, 2000, 159 et seq. (161).

<sup>117</sup> L. Lessig, "Constitution and Code", *Cumberland Law Review* 27 (1997), 1 et seq.; W. Kleinwächter, "ICANN als United Nations der Informationsgesellschaft? Der lange Weg zur Selbstregulierung des Internet", *Multimedia und Recht* 8 (1999), 452 et seq. (453).

<sup>118</sup> W. Kleinwächter, "Globalisierung und Cyberspace", *Zeitschrift Vereinte Nationen* 54 (2006), 41 et seq.

<sup>119</sup> See J.H. Kaiser, "Das Recht im Cyberspace. Eine spontane Ordnung noch ohne Hierarchie", in: *Festschrift für Günther Winkler*, 1997, 397 et seq.; K.W. Grewlich, *Governance in Cyberspace: Access and Public Interest in Global Communications*, 1999.

<sup>120</sup> P.T. Stoll/ B. Goller, "Electronic Commerce and the Internet", *GYIL* 41 (1998), 128 et seq.; V. Röben, "International Internet Governance", *GYIL* 42 (1999), 400 et seq.

raise a variety of questions relating to the GATS and TRIPs.<sup>121</sup> Nevertheless, some issues – for example the administration of the “Internet Domain Name System”, the equitable access for all human beings to computer systems, or the establishment of safeguarding standards against attacks by cybercriminals – could be tackled within the UN or its specialised agencies. As communication between peoples might help to resolve conflicts, access to information and knowledge is a prerequisite of achieving the UN Millennium Development goals in 2015.<sup>122</sup>

*aa. The Decisive Works of the Internet Society, the Internet Assigned Numbers Authority and the Internet Corporation for Assigned Names and Numbers*

But reality shows that the UN system was, at least for a long time, more or less absent in (technically, legally and politically) accompanying Internet development.<sup>123</sup> The first general discussions regarding the Internet<sup>124</sup> took place at the Internet Society (ISOC), which is a non-governmental non-profit educational organisation that, since 1992, has promoted Internet use and access in order to assure the open development, availability and use of the Internet for the benefit of all people throughout the world.<sup>125</sup> On the other hand, the administration of Internet domain names was in the hands of the Internet Assigned Numbers Authority (IANA), an informal body financed by the U.S. Defence Department and research grants.<sup>126</sup>

A proposal submitted by IANA and ISOC at the end of the 1990s, comprising representatives from industry, service providers and users, to legally establish an institutionalised system on a regional and priva-

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<sup>121</sup> Cf. K.P. Leier, “Elektronischer Handel in der Welthandelsorganisation”, *Multimedia und Recht* 12 (2002), 781 et seq.; Tietje, see note 8, 24 et seq.

<sup>122</sup> See UN Millennium Declaration, A/RES/55/2 of 8 September 2000.

<sup>123</sup> As to minor UN actions that were useful to the Internet regulation see C. Engel, “Das Internet und der Nationalstaat”, *Berichte der Deutschen Gesellschaft für Völkerrecht* 39 (2000), 353 et seq. (404).

<sup>124</sup> As to previous bodies of decision-making and standard-setting regarding the Internet see Röben, see note 120, 402 et seq.

<sup>125</sup> ISOC is governed by its Board of Trustees, maintains joint offices in the United States and in Geneva and acts on a world-wide basis through several “National Chapters”. Further information on ISOC is available at <[www.isoc.org](http://www.isoc.org)>.

<sup>126</sup> See at: <[www.iana.org](http://www.iana.org)>.

tised basis with the settlement of disputes on domain names through special arbitral committees of WIPO was not accepted.<sup>127</sup> The U.S. government succeeded in having its alternative model adopted which has put the administration of the Internet address system as well as the root server system under the control of a non-profit organisation established in 1998, under the law of California. This company, the Internet Corporation for Assigned Names and Numbers (ICANN), was created in order to oversee a number of Internet-related tasks previously performed directly on behalf of the U.S. government and by other organisations, notably IANA and ISOC.<sup>128</sup> Acting globally and by periodic public meetings and, particularly, by a very well functioning Internet network and organisation,<sup>129</sup> ICANN is largely outside the control of international organisations or states. The U.S. sector alone controls about 85 per cent of the Internet's underlying infrastructure, which does confront the U.S. with criticism (especially from the EU) in view of its competition advantages.<sup>130</sup> It therefore has been suggested that ICANN should be internationalised and historical contractual links to the U.S. government should be removed in order to find a more appropriate basis of legal and political legitimacy at least in those matters which are of existential interest of common welfare.<sup>131</sup>

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<sup>127</sup> Malanczuk, see note 4, 804.

<sup>128</sup> Cf. F.C. Mayer, "The Internet and Public International Law – Worlds Apart?", *EJIL* 12 (2001), 617 et seq. (621); Kleinwächter, see note 117, 456 et seq.; Röben, see note 120, 414 et seq.

<sup>129</sup> ICANN represents the worldwide society of Internet users and of stakeholders. It is managed by a Board of Directors, which is composed of six representatives of the supporting organisations and sub-groups which deal with specific sections of the policies under ICANN's purview, eight independent representatives of the general public interest, selected through a Nominating Committee in which all the constituencies of ICANN are represented, and the President. Further information about the structure of ICANN is available at: <[www.icann.org](http://www.icann.org)>.

<sup>130</sup> See, for example, the Communication of the European Commission in: COM (2000) 202 final of 7 February 2000, 6.

<sup>131</sup> A.M. Froomkin, "Wrong Turn in Cyberspace: Using ICANN to Route Around the APA and the Constitution", *Duke Law Journal* 50 (2000), 17 et seq.; J. Weinberg, "ICANN and the Problem of Legitimacy", *Duke Law Journal* 50 (2000), 187 et seq. (213 et seq.). See further A. Segura-Serrano, "Internet Regulation and the Role of International Law", *Max Planck UNYB* 10 (2006), 191 et seq. (254), basing its proposals on the concept of the "common heritage of mankind".

*bb. The ITU's Participation in the Information Society: The World Summit on the Information Society (WSIS)*

Against this background, the UN family, especially the ITU, in the late 1990s, became aware of the necessity to initiate worldwide regulations of the Internet in order to facilitate an equitable, non-discriminatory access for all citizens and to guarantee an equitable balance of interests of all stakeholders.<sup>132</sup> The UN finally realised that, while the digital revolution has extended the frontiers of the “global village”, the vast majority of the world remains unhooked from this phenomenon, and that equitable access to scientific and technical knowledge, telecommunication facilities, and the distribution of valuable limited communication resources are essential to the development and economic independence of the developing countries and to the fight against poverty.<sup>133</sup> It has therefore become imperative for the world to bridge the “digital divide” between the North and the South, i.e. between the developed and the developing world.<sup>134</sup>

Recognising that these aspects require global discussion and new groundbreaking results, the ITU, following a proposal by the government of Tunisia, resolved at its Plenipotentiary Conference in Minneapolis by Resolution 73 (1998) to hold a World Summit on the Information Society (WSIS). After several consultations between the relevant UN committee,<sup>135</sup> the UN Secretary-General and the ITU Council, it was finally decided in 1999 that the summit would be held under the high patronage of the UN Secretary-General. It was planned that the ITU should assume the leading role in the summit and its preparation, assisted by contributions from all relevant UN bodies and other inter-governmental organisations, non-governmental organisations, civil society and the private sector. In 2001, the ITU Council decided to hold the summit on the Information Society in two phases, the first from 10 to 12 December 2003, in Geneva, and the second from 16 to 18 No-

<sup>132</sup> Cf. the first strategic plan set up by the 1994 ITU Kyoto Conference, which was amended and revised in the 2002 ITU Marrakesh Conference.

<sup>133</sup> Malanczuk, see note 28, 983; S. Johnson, “The Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information through the Internet”, *Administrative Law Review* 50 (1998), 277 et seq. (305).

<sup>134</sup> Kleinwächter, see note 118, 39; Tietje, see note 8, 20, at footnote 42.

<sup>135</sup> The initially competent UN Administrative Committee on Coordination was renamed the United Nations System Chief Executive Board pursuant to ECOSOC Decision 2001/321 of 24 October 2001.

vember 2005 in Tunis.<sup>136</sup> With A/RES/56/183 of 21 December 2001 the UN General Assembly fully endorsed the framework for the summit adopted by the ITU Council.<sup>137</sup>

As already mentioned, the World Summit aimed at bridging the digital divide and turning it into digital opportunity for all. The objective of the first phase was, hence, to develop and foster a clear statement of political will and take concrete steps to establish the foundations for an Information Society for all. Several heads of states and ministers from 175 countries as well as high-level representatives from international organisations, private sectors, and civil society attended the Geneva Phase of the WSIS and gave political support to the Geneva Declaration of Principles<sup>138</sup> and the Geneva Plan of Action<sup>139</sup> that were adopted on 12 December 2003.<sup>140</sup> According to both documents, one of the most outstanding challenges of the Information Society lies in guaranteeing universal, ubiquitous, equitable and affordable access to information and communication technologies infrastructure and services, and this should therefore be an objective of all stakeholders involved in building it. To that aim, the Geneva Declaration – which since then has been known as the Constitution of the "information era" – includes several key principles:

(1) access to information and knowledge enhanced by removing barriers; (2) capacity building in all stages of education, training and human resource development; (3) building confidence and security in the use of information and communication technologies, including information and network security, authentication, intellectual and consumer protection; (4) enabling the information and communication environment by coordination, standardisation, stability and fair competition rules as well as by secure, safe and healthy working environment; (5) guaranteeing and stimulating cultural diversity and identity, linguistic diversity and local content; (6) commitment to the principles of freedom of the

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<sup>136</sup> ITU Council Resolution 1179 (2001).

<sup>137</sup> A/RES/56/183 of 21 December 2001, para. 1. See also A/RES/57/238 of 20 December 2002.

<sup>138</sup> Declaration of Principles, Building the Information Society: a Global Challenge in the New Millennium, World Summit on the Information Society, Geneva 2003, 12 December 2003, Doc. WSIS-03/GENEVA/DOC/4-E.

<sup>139</sup> Plan of Action, Building the Information Society: a Global Challenge in the New Millennium, World Summit on the Information Society, Geneva 2003, 12 December 2003, Doc. WSIS-03/GENEVA/DOC/5-E.

<sup>140</sup> See Doc. A/C.2/59/3.

press and freedom of information, as well as those of the independence, pluralism and diversity of media; (7) acknowledging the importance of ethics for the Information Society especially regarding dignity and worth of the human person; and (8) effective international and regional cooperation among governments, the private sector, civil society and other stakeholders, including the international financial institutions.

All these guiding principles were translated in the Geneva Plan of Action into concrete action lines to advance the achievement of the internationally-agreed development goals and endorsed by the UN General Assembly.<sup>141</sup>

The objective of the second phase which took place in Tunis in November 2005 was to monitor and to evaluate progress on the Geneva Plan of Action as well as to find solutions and reach agreements in the fields of Internet governance, financing mechanisms, and implementation of the Geneva and Tunis documents and, in general, of the UN Millennium Development goals. Again, a large number of states and non-state actors from all parts of the world attended the Tunis Phase of WSIS and gave support to the Tunis Commitment<sup>142</sup> and Tunis Agenda for the Information Society<sup>143</sup> that were adopted on 18 November 2005. As a main requirement<sup>144</sup> the international finance institutions like the World Bank should give priority to the financing of the Internet development in developing countries. Furthermore, a “Digital Solidarity Fund” has been established as an innovative financial mechanism open to interested stakeholders with the objective of seeking new voluntary sources of “solidarity” financing. Finally, the summit invited the UN Secretary-General to convene a new forum for multi-stakeholder policy dialogue called the Internet Governance Forum (IGF).<sup>145</sup> After reaching a common understanding, the UN Secretary-General has cor-

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<sup>141</sup> See A/RES/59/220 of 22 December 2004.

<sup>142</sup> Tunis Commitment, World Summit on the Information Society, Geneva 2003-Tunis 2005, 18 November 2005, Doc. WSIS-05/TUNIS/DOC/7-E.

<sup>143</sup> Tunis Agenda for the Information Society, World Summit on the Information Society, Geneva 2003-Tunis 2005, 18 November 2005, Doc. WSIS-05/TUNIS/DOC/6(Rev. 1)-E.

<sup>144</sup> No consent could be reached regarding the administration of the Internet which was proposed to be changed by several developing countries and the European Union but could not find the consent of the U.S. Government.

<sup>145</sup> Tunis Agenda, see note 143, para. 72.

respondingly established, in 2006, a small secretariat in Geneva with the objective to initiate and to coordinate this dialogue.<sup>146</sup>

As the next conference is not scheduled until 2015, it seemed necessary to install WSIS follow-up in between times. A/RES/60/252 therefore recognised that the implementation and follow-up of the major decisions of the Geneva and Tunis Summits should be an integral part of the general follow-up system of the UN conferences.<sup>147</sup> Thus, the General Assembly urged the Member States, the relevant UN bodies and other governmental and non-governmental organisations as well as the private sector to actively contribute to the implementation of the WSIS principles. It especially addressed the ECOSOC and the UN Secretary-General to remain seized of the matter. Against this background, ECOSOC indicated, in its Resolution 2006/46, that the Commission on Science and Technology for Development (CSTD) would assist the Council in its annual considerations of the follow-up of the summit outcomes.<sup>148</sup> While preserving the inter-governmental nature of the Commission, ECOSOC decided that CSTD should make use of the successful multi-stakeholder approach that was pioneered by WSIS. During the next two sessions (2007 and 2008), the deliberations of CSTD will therefore be open not only to non-governmental organisations in consultative status with ECOSOC, but also, after approval by ECOSOC, to other interested organisations and civil society entities which were accredited to WSIS.

In sum, it may be concluded that, in the meantime, the UN system does consider that there is a reason to try to set up a coordinated system for "international Internet governance".<sup>149</sup> This not only includes Internet names and addresses, as dealt with by ICANN, but also other important policy issues such as access to Internet resources. In this regard, both the Geneva and the Tunis Agenda have built on the idea that policy authority for Internet-related public policy issues is the sovereign right of all states, and has therefore called for the requisite legitimacy of Internet governance, based on the full participation of all stakeholders, be they public or private, from both developed and developing countries.<sup>150</sup>

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<sup>146</sup> Further information on IGF available at: <[www.intgovforum.org](http://www.intgovforum.org)>.

<sup>147</sup> A/RES/60/252 of 27 March 2006, para. 12, endorsing ITU Council Resolution 1244 (2005).

<sup>148</sup> E/RES/2006/46 of 28 July 2006, paras 4 et seq.

<sup>149</sup> Segura-Serrano, see note 131, 255 et seq.

<sup>150</sup> Tunis Agenda, see note 143, paras 31 and 35.

In other words, today the common management of the Internet's core resources is not only regarded as being a mere technical matter but is also treated as a strong political question.<sup>151</sup> Furthermore, as stated by Principle No. 2 of the Geneva Declaration of Principles of the WSIS "connectivity is a central enabling agent in building the Information Society".<sup>152</sup> Telecommunications and the Internet therefore have the potential not only to ensure the human right to information and the freedom of communication but also to ensure the economic, educational, and social parity necessary to attain equality for each member of the society.<sup>153</sup>

#### IV. Conclusion

Already this short outline on the tasks and functions of and the actions taken by the UN system *vis-à-vis* the challenges of the "Telecommunication and Information Society" allows for several conclusions:

Firstly, it has become evident that both the UPU and the ITU have constantly been in a permanent reform process, the milestones of which have been set by various technical inventions in the telecommunication field.<sup>154</sup> It is probably the fate of international law on the "Information Society" that it must always keep pace with ever accelerating technological advances.<sup>155</sup> This also marks the limits of the possibilities of the UN system. Only after the invention or technological progress has been made, can the UPU and the ITU reasonably decide on what and how a certain subject matter should be internationally regulated or legislated upon.<sup>156</sup> However, different to the UN organisation itself – whose reform process has, for a long time, been politically paralysed –,

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<sup>151</sup> Segura-Serrano, see note 131, 258.

<sup>152</sup> Geneva Declaration of Principles, see note 138, para. 21.

<sup>153</sup> P.M. Worthy, "Racial Minorities and the Quest to Narrow the Digital Divide: Redefining the Concept of Universal Service," *Hastings Communication & Entertainment Law Journal* 26 (2003), 1 et seq. (3). However, it is to be stressed that a "right to Internet" or a "right to communicate" has not (yet) emerged in international human rights law, see Grewlich, see note 119, 84.

<sup>154</sup> Volger, see note 70, 350.

<sup>155</sup> A similar situation exists regarding the relationship between technical development and national law, see Kloepfer, see note 60, 268 et seq.

<sup>156</sup> Noll, see note 3, 466.



the UPU and the ITU are capable of reacting to the new challenges. In this context it is interesting to note that both organisations are starting to closely work together. The already-mentioned conference on the postal sector and the information society of 8 June 2007<sup>157</sup> is a good example of the new cooperation between those two specialised agencies.

Secondly, and this is probably the most important conclusion, the reason for the uniqueness of the UPU and the ITU among international organisations lies in the fact that both were originally founded on the principle of cooperation between governments and were continuously opened to processes that include the private sector. This development is due to the constant deprivation of state powers within the telecommunication sector which is nowadays largely dominated by private actors.<sup>158</sup> Governments more and more reach the limit of effective law-making and law enforcement in the domestic and international communication systems, and the involvement of private actors is becoming an increasingly important aspect of effective and flexible management of societies' needs. Private actors are of great importance, in particular, for Internet administration. They have more creative potential in governing this new area than states. Furthermore, government-set standards may prove hard to adapt to rapidly changing circumstances.<sup>159</sup> This situation has already led to new public-private cooperative administrative actions on the international level,<sup>160</sup> and might lead, in the future, to new forms of decisions, and thus, perhaps, to new sources of international law.<sup>161</sup>

Nevertheless, the whole system of international telecommunication – even if it might be described by the modern term of "global governance"<sup>162</sup> – still essentially depends upon states recognising the effects of failure to behave in a responsible manner. The problems which might arise from a failure to comply with standards and rules set up by the

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<sup>157</sup> See note 57.

<sup>158</sup> S. Hobe, *Der offene Verfassungsstaat zwischen Souveränität und Interdependenz*, 1998, 286 et seq.; Engel see note 123, 398.

<sup>159</sup> Röben, see note 120, 404 et seq.

<sup>160</sup> C. Tietje, *Internationalisiertes Verwaltungshandeln*, 2001, 447 et seq.; Engel, see note 123, 419.

<sup>161</sup> Hinricher, see note 103, 490; Noll, see note 3, 467.

<sup>162</sup> C. Tietje, "The Changing Legal Structure of International Treaties as an Aspect of an Emerging Global Governance Architecture", *GYIL* 42 (1999), 26 et seq. (35); S. Hobe, "Global Challenges to Statehood: The Increasingly Important Role of Non-Governmental Organizations", *Ind. J. Global Legal Stud.* 5 (1997), 191 et seq.

ITU are easily imaginable. Not only the private sector, but also governments depend on being able to communicate their messages via cable or satellite. Common standards in all fields of communication are evidently not merely a goal that has to be achieved *per se*, but they are the basis on which political cooperation can work.<sup>163</sup> Therefore, even simple recommendations and other legally non-binding decisions are practically turning into powerful and authoritative law, which must be almost universally followed.<sup>164</sup> Against this background, there is no doubt that the ITU does play a prominent role within the UN system in administering and regulating the emerging problems, compensating in part the weak position of the ECOSOC and the UN General Assembly in the telecommunication sector. Or in other words: the ITU is plainly indispensable for a transnational administrative standard-setting and for the emergence of an “international administrative law”.<sup>165</sup>

Thirdly, the core competences of the ITU in the fields of information and communication technologies – international and regional cooperation, radio spectrum management, standards development and the dissemination of information – are of crucial importance for building the “Information Society”. Being a UN specialised agency and an international organisation of an almost universal character including the interests of the developing nations,<sup>166</sup> the ITU should be the organisation which, at least in part is, in charge of running the Internet. This would be, of course, a dramatic departure from the current system, managed largely by U.S. interests. In order to find a compromise, one could think of establishing a new model according to which the ITU could address Internet access, security and financing, but would leave control over the Internet’s addressing and root server system to ICANN.

Needless to say that this proposal, as well as the general evolution and regulation of all the modern forms of communication, will probably be a long-, if not an ever-lasting, challenge. In recognition of this dynamic, it is worth noting that the WSIS, endorsed by General Assembly Resolution 60/252 of 2006, stated that 17 May henceforth will be celebrated as “World Telecommunication and Information Society

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<sup>163</sup> Tietje, see note 8, 16 et seq.

<sup>164</sup> Hinricher, see note 103, 495. Similar S. Magiera, “International Telecommunication Union”, in: Wolfrum, see note 37, 821 et seq. (824).

<sup>165</sup> Tietje, see note 160, 101. As to the legitimacy of this transnational cooperation see C. Möllers, “Transnationale Behördenkooperation”, *ZaöRV* 65 (2005), 351 et seq. (378).

<sup>166</sup> Currently (as of June 2007), the ITU has 191 Member States.

Day”.<sup>167</sup> The main objective of this day, which took place for the first time on 17 May 2006, is to raise global awareness of societal changes brought about by the Internet and new technologies.<sup>168</sup> It also aims to help to reduce the “digital divide” and to look for stable solutions especially concerning Africa.<sup>169</sup> Whether and to what extent the UN family really will be capable politically to resolve these challenges remains to be seen.

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<sup>167</sup> A/RES/60/252 of 27 March 2006, para. 13.

<sup>168</sup> See the messages of UN Secretary-General Kofi Annan and of the Secretary-General of ITU Yoshio Utsumi, available at: <<http://www.itu.int/wisd/2006/unsg-message.html>>.

<sup>169</sup> On 17 May 2007 the ITU announced, by Resolution 68 (Rev. Antalya 2006) the launching of “Connect Africa”, a programme which has the aim to accelerate partnerships and the roll-out of technology infrastructure in order to boost social and economic development in the African region.

