The Law-Making of the International Telecommunication Union (ITU) – Providing a New Source of International Law?

*Jens Hinricher**

I. Introduction

"Our Sages taught, there are three sounds going from one end of the world to the other; the sound of the revolution of the sun, the sound of the tumult of Rome ... and some say, as well, the sound of the Angel Rah-dio."[1]

Until the mid-19th century, single inter-governmental agreements were used to regulate various aspects in conjunction with telegraphy, the foundation stone of modern telecommunication.[2] Out of the necessity to find and develop international standards[3] and to provide necessary technical assistance,[4] the International Telegraphic Union – the predecessor of today's International Telecommunication Union (ITU) – was founded as a specialised body in 1865. In 1932[5] it changed its name to the current one and was later made an agency under the UN umbrella in 1947, retaining its special(ised) character until today.

The International Telecommunication Union (together with the Universal Postal Union – UPU) belongs to the lesser known UN agencies and seems to be the Sleeping Beauty among international organisations. Indeed it has not been disturbed in its slumber by many academic writers – in addition the ITU itself rarely steps out into the limelight of public attention – yet, due to the importance of some of the issues it deals with, e.g. to governments, ITU conferences can see hard bar-

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* DipLaw (Kent), Dipl.-Jur. (Münster), LL.M. (Nottingham).

1 The Talmud, Tractate Yoma 20 (b) (translated from the Hebrew), cited by Glazer, The Law-Making Treaties of the International Telecommunication Union Through Time and Space, 60 Michigan LR (1962), 269 at 269.

2 Noll, International Telecommunication Union, in: Bernhardt (ed.), Encyclopedia of Public International Law, Vol. 5, Amsterdam 1984, 177.

3 The *raison d'être* of the ITU; see Codding/Rutkowski, The International Telecommunication Union in a Changing World, Dedham MA 1982, Ch. 10.

4 Many countries decided to establish arrangements which would facilitate interconnection of their national telegraph networks. However, because such arrangements were managed by each country at a national level, setting up telegraph links often required a huge number of separate agreements.

To simplify matters, countries began to develop bilateral or regional agreements, so that by 1864 there were several regional conventions in place. There was a need for common rules to standardise equipment and to facilitate international interconnection. See History of the ITU <http://www.itu.int/aboutitu/overview/history.html>; for an excellent overview of the ITU's history and its activities until the early 1950s cf. Codding, The International Telecommunication Union – An Experiment in International Cooperation, Leiden 1952.

5 Sands/Klein, Bowett's Law of International Institutions, 5th ed., London 2001, 106.

gaining on stage and even attract some public attention.[6] All in all the ITU in general is far away from being an anaemic or dull organisation.[7] This article will highlight its importance and recognition which it still gains out of the same reason and necessity for which its predecessor was established in the 19th century. Unusual when compared to some other UN bodies and agencies the ITU and its work are accepted among its 189[8] members. The reason for its uniqueness among international organisations partly lies in the fact that it was founded on the principle of co-operation between governments and the private sector,[9] and has lead to a rather unique process of decision- and 'law-making' that is rare and unparalleled within the wider UN family.

While exploring the ITU's objectives, its foundation and legal framework and examining the reasons for its speciality, it will further be discussed, whether the decisions made can even be seen as a truly n e w source of international law.

II. Objectives

While in general recognising the sovereign right of each state over its telecommunication,[10] the ITU is concerned with maintenance and extension of co-operation with regard to the use of telecommunication on the international plane. In addition it also promotes development of facilities and efficiency of services,[11] as enshrined in Article 1 of the ITU Constitution[12] (CS).

III. Basic Structure

Following the 1992 Additional Plenipotentiary Conference, which took place in Geneva, the ITU was dramatically remodelled in order to provide it with greater flexibility to adapt to today's increasingly complex, interactive and competitive environment. A change that had been called for by experts and academics for years.[13]

As a result of the 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 Develop-

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[6] Williams, The Specialized Agencies and the United Nations – The System in Crisis, London 1987, 37.

[7] Cowhey, The International Telecommunications Regime: The Political Roots of Regimes for High Technology, 44 International Organization (1990), 169 at 176.

[8] As of 27th April 2004.

[9] See Role and Work of the ITU <http://www.itu.int/aboutitu/overview/role-work.html>.

[10] Preamble of the ITU Constitution.

[11] Sands/Klein (note 5), at 107.

[12] (Geneva 1992) as amended.

[13] Savage, The Politics of International Telecommunications Regulation, Boulder 1989, 231 et seq.

ment (ITU-D). The new system also introduced a regular cycle of conferences to help the Union rapidly respond to new technological advances.

The basic structure of the Union is set forth by Article 7 of the ITU Constitution that states that the Union shall comprise: the Plenipotentiary Conference as the supreme organ of the Union (Art. 7 *lit.* a); the Council, which acts on behalf of the Plenipotentiary Conference (Art. 7 *lit.* b); world conferences on international telecommunications (Art. 7 *lit.* c); the Radiocommunication Sector, including radiocommunication conferences, radiocommunication assemblies and the Radio Regulations Board (Art. 7 *lit.* d); the Telecommunication Standardisation Sector, including telecommunication standardisation assemblies (Art. 7 *lit.* e); the Telecommunication Development Sector, including telecommunication development conferences (Art. 7 *lit.* f); and the General Secretariat (Art. 7 *lit.* g).

IV. Legal Framework of Operation and Law-Making

The General Secretariat which is directed by a Secretary-General, who acts as the ITU's legal representative,[14] co-ordinates all activities.[15]

The Plenipotentiary Conference is composed of delegates of all members,[16] and as the supreme organ of the ITU, besides other things, determines the general policies needed to fulfil the purposes of the ITU as prescribed in Article 1 CS,[17] and elects the member states which are to serve on the Council, the Secretary-General, the Deputy Secretary-General and the Directors of the Bureaux of the Sectors as well as the members of the Radio Regulations Board.[18]

Between Plenipotentiary Conferences, the Council serves as the governing body of the Union within the limits of the powers delegated to it.[19] It consists of a maximum 25% of the member states of the Union the exact number (currently 46) being determined by each successive Plenipotentiary Conference.[20] Given the technical and specialised nature of the ITU, its Convention[21] (CV) demands that persons that are appointed by a member state for being elected to serve on the Council shall be "qualified in the field of telecommunication services".[22]

It is the Council's responsibility to take all steps to facilitate the implementation by the ITU member states of the provisions of the Constitution, of the Convention, of the Administrative Regulations, of the decisions of the Plenipotentiary

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[14] Art. 11 (1) 2 *lit.* d CS.
[15] Art. 11 (1) 2 *lit.* a CS.
[16] Art. 8 (1) CS.
[17] Art. 8 (2) *lit.* a CS.
[18] Art. 8 (2) *lit.* f-h CS.
[19] Art. 10 (3) CS.
[20] Art. 10 (1) 1 CS, Art. 4 CV.
[21] (Geneva 1992) as amended.
[22] Art. 4 (5) CV.
[23] Art. 10 (4) CS.

Conference, and, where appropriate, of the decisions of other conferences and meetings of the Union.[23]

World conferences on international telecommunications may partially, or in exceptional cases, completely revise the International Telecommunication Regulations and may deal with any question of a world-wide character within its competence and related to its agenda.[24] The conferences can further adopt resolutions and decisions.[25]

The specialised agencies of the UN, including the ITU, have been said to be quite productive and effective when it comes to law making and compliance with these laws – even more than the United Nations in general.[26] Within the complex structure of the ITU, lawmaking takes on a variety of different forms – all dealing exclusively with international telecommunications. According to Article 4 CS, the legal framework of the ITU, the Constitution and Convention of the International Telecommunication Union, have treaty status and are binding on ITU Member States.[27] These are complemented by the Administrative Regulations (Radio Regulations and International Telecommunication Regulations), which are binding on its members, too, according to Article 4 (3). Article 6 (1) CS limits the binding force of the Constitution, the Convention and the Regulations. It states that "Member States are bound to abide by the provisions of this Constitution, the Convention and the Administrative Regulations in all telecommunication offices and stations [...] which engage in international services or which are capable of causing harmful interference to radio services of other countries" [emphasis added]. Yet, it can nevertheless be argued that whatever is decided in the field of telecommunication on the international plane might also show effects on a national or even local basis.[28]

Voting generally takes place in the form of 'one state – one vote',[29] with amendments to the Constitution requiring a two-thirds majority and amendments to the Convention requiring a majority of at least half of the delegates at a Plenipotentiary Conference.[30]

Any amendments to the Constitution adopted at a plenipotentiary conference enter into force at a date fixed by the conference between those member states that have deposited before that date their instrument of ratification, acceptance or ap-

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[24] Art. 25 (1) CS.

[25] Art. 25 (2) CS.

[26] White, The World Court, the WHO, and the UN System, in: Schermers/Blokker (eds.), The Proliferation of International Organizations: Legal Issues, The Hague 2000, 98.

[27] In order for any decision to be binding, no matter what name is given to it, regulation, resolution or recommendation etc., a provision for such bindig effect is needed in the constitutive document; cf. Detter, The Effect of Resolutions of International Organizations, in: Makarczyk (ed.), Theory of International Law at the Threshold of the 21st Century – Essays in Honour of Krzysztof Skubiszewski, The Hague 1996, 385.

[28] Lyall, Posts and Telecommunications, in: Schachter/Joyner (eds.), United Nations Legal Order, Vol. 2, Cambridge 1995, 789.

[29] Art. 3 (2) *lit.* b & c CS; Art. 32 A CV.

[30] Art. 55 (4) CS and Art. 42 (4) CV, respectively.

proval of, or accession to, both the Constitution and the amending instrument. It has to be noted however, that partly ratification, acceptance or approval of, or accession to, an amendment is prohibited.[31] The procedure governing amendments to the Convention is in essence the same.[32]

Regarding the Administrative Regulations, reservations can be made at the time of signature of the Administrative Regulations or revisions thereof.[33] Any revision of these regulations enters into force on the date or dates specified therein only for the members which have delivered an instrument of ratification, acceptance or approval of that revision or of accession thereto or have notified the Secretary-General of their consent to be bound by that revision.[34] In addition, any revision of the Administrative Regulations is applied provisionally in respect of any member that has signed the revision but has not notified the Secretary-General of its consent to be bound.[35] Should a member fail to notify the Secretary-General of its consent to be bound within thirty-six months following entry into force of the revision, that member is deemed to have consented to be bound by that revision.[36]

Thus the law-making system of the ITU appears to be rather strict and does not allow for much action of the individual member. Decisions are taken by the majority and no individual reservations are possible with the exception of those made with regard to the Administrative Regulations, where *de jure* a system of contracting-out – that is *de facto* limited by the disadvantages and future technical problems that might result from this – exists; though usually acceptation is just presumed.

Yet it has been uttered that the real impact the ITU has on the international plane is made within its three main sectors,[37] namely the Telecommunication Standardisation (ITU-T), Radiocommunication (ITU-R) and Telecommunication Development (ITU-D).

Within the ITU-R Sector, the world radiocommunication conference may partially or, in exceptional cases, completely, revise the Radio Regulations and may deal with any question of a world-wide character within its competence and related to its agenda.[38] Radiocommunication assemblies, which may be associated in place and time with world radiocommunication conferences,[39] have the duty to provide the necessary technical basis for the work of the world radiocommunication conferences and respond to all requests from world radiocommunication conferences.[40]

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31 Art. 55 (6) CS.
32 Art. 42 (6) CV.
33 Art. 54 (2) CS.
34 Art. 54 (2bis) & (3bis) CS.
35 Art. 54 (3penter) CS.
36 Art. 54 (5bis) CS.
37 Lyall (note 28), at 805.
38 Art. 13 (1) CS.
39 Art. 13 (3) CS.
40 Art. 13 (3) CS.

In the ITU-T Sector, the world telecommunication standardisation assemblies have been established to fulfil the purposes of the ITU relating to telecommunication standardisation by studying technical, operating and tariff questions and adopting recommendations on them.[41]

Within the ITU-D, world and regional telecommunication development conferences have been established to act as a forum for discussion and consideration of topics, projects and programmes relevant to telecommunication development and further for providing direction and guidance to the Telecommunication Development Bureau.[42] According to the ITU Constitution, the development conferences do not produce "Final Acts" but their findings take the form of resolutions, decisions, recommendations or reports.[43]

It has to be noted that all these ITU resolutions, decisions or recommendations are non-binding, voluntary agreements.

In this regard, it seems to be rather surprising that the ITU almost entirely lacks a powerful procedure or mechanism for policing and enforcing its decisions. The provisions regarding the settlement of disputes are set out in Article 56 of the ITU Constitution and require that disputes are to be settled "[...] by negotiation, through diplomatic channels, or according to procedures established by bilateral or multilateral treaties concluded between them for the settlement of international disputes [...]",[44] thus placing particular emphasis on methods agreed upon outside the ITU system. In case that no settlement is achieved, the ITU Convention provides for an arbitration procedure available to members that are party to the dispute.[45] Further, an 'Optional Protocol on the Compulsory Settlement of Disputes [...]' exists[46], applicable only to those members that are parties to that Protocol.

What then makes member states, and even the telecommunication industry abide by the voluntary agreements that are entered into apart from the binding laws regarding the Constitution, the Convention and the Administrative Regulations? A question that is supported by a look on the outer packaging of any current computer modem found in high-street shops.[47]

In the absence of any special agreement vis-à-vis the ITU to implement these voluntary agreements, which would lead to legal consequences flowing even from

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[41] Art. 18 (1) 1 CS.

[42] Art. 22 (1) CS.

[43] Art. 22 (4) CS.

[44] Art. 56 (1) CS.

[45] Art. 41 CV.

[46] See Optional Protocol on the Compulsory Settlement of Disputes Relating to the Constitution of the International Telecommunication Union, to the Convention of the International Telecommunication Union and to the Administrative Regulations.

[47] See e.g. ITU-T Recommendation V.90 (09/98), A digital modem and analogue modem pair for use on the Public Switched Telephone Network (PSTN) at data signalling rates of up to 56 000 bit/s downstream and up to 33 600 bit/s upstream.

[48] Frowein, The Internal and External Effects of Resolutions by International Organizations, ZaöRV 49 (1989), 778 at 784; Sands/Klein (note 5), at 285 et seq.

initially non-binding resolutions or recommendations,[48] one might call it "necessity"[49] or use the more eloquent words of one scholar who stated that the whole system of international telecommunication that is enshrined in the ITU 'essentially depends upon states recognizing the effects of failure [...] to behave in a responsible manner'.[50] Indeed it is not too difficult to imagine the chaos and problems, a failure to comply with standards and rules set up by the ITU and its experts would inevitably lead to. Communication is a very powerful tool and especially governments depend on being able to communicate their messages and to 'paint a perfect picture' not only internally but more and more on an international basis as well, via cable or satellite. Not to follow the advice given, not merely by politicians but by real experts in their respective fields, could even be described as being 'lethal' to many of them. Common standards in all fields of communication are not the ultimate goal that has to be achieved in the future, as maybe contrasting the questionable attempt by other states and organisations to achieve world-wide democracy, but are the basis on which co-operation is achieved. Restrained by the laws of physics, not by the laws of politics, co-operation is vital and unavoidable, thus turning simple recommendations and other legally non-binding decisions into powerful and authoritative 'law', which is, to use the words of a former ITU Secretary-General, 'almost universally followed'[51].

V. A New Source of International Law?

As mentioned earlier, some of the ITU's decisions are binding on its members while others, mostly in the form of recommendations, are not. While first exploring, whether the binding decisions can be seen as a new source of international law, I will then turn to the more complex and controversial issue, namely, whether even non-binding decisions can be regarded as a new source of international law.

1. Binding Decisions

As examined earlier, decisions that are binding on members exist within the ITU system with regard to the Constitution, the Convention and the Administrative Regulations or any amendments to these, though a contracting-out possibility exists in respect to amendments and revisions made to the latter.

While resolutions issued by other UN bodies such as the Security Council may have binding legal effect in the external sphere of the organisation,[52] although the effect they have is often open to discussion and interpretation as SC Resolution

[49] Detter (note 27), at 391; arguing that recommendations regarding technical standards are 'necessary or, at least, most useful, for the efficient functioning of international society'.

[50] Lyall (note 28), at 805.

[51] Cowhey (note 7), at 181 fn. 38.

[52] Art. 25 UN Charter, with respect to decisions taken under Chapter VII UN Charter.

1441 has dramatically shown, those resolutions of the ITU taken with regard to the Constitution and the Convention do only affect the organisation in its internal sphere. Though the Administrative Regulations are mostly effective in the internal sphere, too, they can to some extent affect the external sphere as well.

As Detter stated in her thesis on law making by international organisations: "[...] international organizations [...] have an important function to crystallize and in a gradual way, create, international law."[53] Regarding the ITU an example can be found to illustrate this and show how Administrative Regulations initiated by the ITU out of the necessity of international co-operation, have gradually become international law. According to Article 45 of the ITU Constitution which deals with harmful interference in respect of radiocommunication, '[a]ll stations [...] must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other Member States [...]'[54]. Harmful interference is described as '[i]nterference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with the Radio Regulations'[55]. Given the complex physical nature of radiocommunication, co-operation among all members of the ITU is needed in order to prevent such an interference and enabling all to benefit from this technology. Interference by just one member would inevitably affect others and last not least the offender state itself, as, due to physics, its use of the global network would be interfered with as well. In order to avoid severe global consequences, the ITU-R draws up the technical characteristics of terrestrial and space-based wireless services and systems. Radio frequencies are then allocated to particular services on a world-wide, or regional, basis by agreement at appropriate conferences. States themselves assign the use of a frequency to a particular user. When that user will or may cause international interference it arranges for that assignment to be put through the process for entry on the Master International Frequency Register, which gives international protection to that assignment. Radio Regulations are binding on its members by virtue of Article 4 (3) CS.[56]

Due to the very importance of radiocommunication and the danger that harmful interference can bring along these rules have been presumed to bind member states and non-member states alike and thus can be said to have a large effect in the external sphere of the ITU, as well, and have become international law.[57]

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[53] Detter, Law Making by International Organizations, Stockholm 1965, 212.

[54] Art. 45 (1) CS.

[55] See Annex to the ITU Constitution, Definition of Certain Terms Used in This Constitution, the Convention and the Administrative Regulations of the International Telecommunication Union, No. 1003.

[56] See Overview of ITU and Its Three Sectors – Radiocommunication Sector <http://www.itu.int/aboutitu/overview/o-r.html>.

[57] Alexandrowicz, The Law-Making Functions of the Specialised Agencies of the United Nations, Sydney 1973, 93; Abbott/Keohane/Moravicsik/Slaughter/Snidal, The Concept of Legalization, 54 International Organization (2000), 401 at 417, 419.

Law-making resolutions, i.e. those which are 'binding on its addressees by virtue of the decision of the organisation and which lays down general and abstractly formulated rules of conduct',[58] have been classified as new sources of international law, not falling under those categories enlisted in Article 38 (1) of the Statute of the International Court of Justice by some scholars.[59] Traditionally the only sources of international law are regarded to be those enumerated in Art. 38 (1) of the ICJ Statute. Thus limiting these sources to conventions (i.e. treaty) and custom – the chief sources of international law – and in addition the rather nebulous "general principles of law recognized by civilized nations" as well as judicial decisions and teachings. The latter two being subsidiary and not *per se* sources of law but means "to illuminate the three sources of treaty, custom and general principles".[60] Yet, it has to be noted that the traditional approach to international law and law-making is to some extent outdated and makes it difficult to cope with the need for new international legal norms e.g. in the area of satellite communication or the rapidly growing internet and mobile telephony sector. One might say that there is a lack of effective procedures and even question whether the traditional sources of international law are able to provide what Danilenko calls 'adequate normative responses to growing community problems'.[61]

While there seems to be a consensus that the rapid changes within the international community can give way to new sources of international law, there is no common agreement on how the traditional sources of international law can be modified.[62] On the one hand it is argued that all that is needed to introduce new sources is a consensus among members of the international community, as the international legal order is formless in its nature,[63] on the other hand, others argue that Art. 38 ICJ Statute constitutes a basic constitutional norm, thus new sources requiring not only a consensus among members of the international community but a consensus expressed in a new constitutional norm or principle that has developed through an existing source of law.[64] The latter view seems to be the more convincing one, as a change of the constitutional rule in Art. 38 (1) ICJ Statute does, of course require a consensus among the international community, yet, changing or amending established sources of international law without paying respect to already existing sources cannot be said to, or even be, to lead to a consensus among the international community.

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[58] Skubiszewski, A New Source of the Law of Nations: Resolutions of International Organisations, in: Recueil d'Etudes de Droit International, En Hommage à Paul Guggenheim, Genève 1968, 509.

[59] Ibid., 508.

[60] Hall, The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism, 12 European JIL (2001), 269 at 284.

[61] Danilenko, Law-Making in the International Community, Dordrecht 1993, p. xiii.

[62] Ibid., at 190.

[63] Van Hoof, Rethinking the Sources of International Law, Deventer 1983, 198 et seq.

[64] Thirlway, International Customary Law and Codification, Leiden 1972, 39; Szasz, The Security Council Starts Legislating, 96 American JIL (2002), 901 at 901.

Thus in order to be regarded as a new source of international law, the resolutions and recommendations produced by the ITU have to be linked to one of the already existing sources of law, or, as Virally put it 'every imaginable new source is indirectly envisaged in the list in Article 38 and is simply the product of the law emanating from the sources which are mentioned [...]'.[65]

Therefore binding resolutions of the ITU can not be said to constitute a new source of international law by themselves, yet, they are a "new" source of international law in conjunction with those treaty provisions authorising the ITU to take these decisions, namely the Constitution and the Convention of the Union.

The argument made by Skubiszewski, that law-making resolutions can be regarded as entirely new sources of international law, not falling under those categories enlisted in Article 38 (1) ICJ Statute,[66] is not convincing, or at least not applicable to the ITU.

The amendments made in respect of the Constitution and the Convention do not create entirely new law but merely amend rules and laws already laid down by treaty, also they rather seem to be intended to belong to the internal legal system of the organisation and not to lay down rules which are considered to be part of the international law under which the organisation was established itself and which governs its external activity.[67] These kinds of resolutions do not constitute independent regulations.[68] Though the Administrative Regulations and law made under them go beyond the internal sphere of the ITU, they are still miles away from law-making resolutions which are 'binding on its addressees by virtue of the decision of the organisation [...]',[69] as they allow reservations to be made and give ITU members the chance simply to opt-out if it pleases them when new regulations are to be introduced. They are therefore more treaty-like than a law-making resolution and even Skubiszewski has to admit that 'it remains the essence of the treaty that it imposes duties on [...] only those who have consented to it'.[70]

2. Non-Binding Decisions

Most of the work undertaken by the ITU and the regulations that follow from this take the form of resolutions or recommendations. Though not binding, these resolutions and recommendations that amount to hundreds each year – the Telecommunication Standardisation Sector ITU-T currently produces around 210 re-

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65 Virally, The Sources of International Law, in: Sørensen (ed.), Manual of Public International Law, London 1968, 122.

66 Skubiszewski, *supra* note 59.

67 Monaco, Sources of International Law, in: Bernhardt (ed.), Encyclopedia of Public International Law, Vol. 7, Amsterdam 1984, 430.

68 Virally (note 65), at 163.

69 Skubiszewski (note 58), at 509.

70 Ibid., at 518.

71 See Overview of ITU and its three Sectors – Standardization Sector <http://www.itu.int/aboutitu/overview/o-s.html>.

commendations each year[71] – thus amounting to a new or updated standard per working day for this sector alone (!), are accepted by its members as regulatory.[72]

The question to be answered is, whether, and to what extent, these can be seen as a new source of international law. It is clear that what was said regarding binding decisions taken within the ITU is also perfectly applicable to those non-binding recommendations produced by the ITU, thus requiring them to be linked to one of the already existing sources of law in order to be regarded as a new source of international law.

While recommendations of international organisations have in the past been described as mere 'suggestions' or as 'opinion' and 'advice', they are in fact more than this, more than just an 'extra-legal phenomenon',[73] as these non-binding resolutions and recommendations may well indicate what states think the law is.[74]

In conjunction with perhaps the most accepted source of international law, international treaties, recommendations of the ITU have gradually developed into international law themselves as e.g. with regard to the use of the outer space, recommendations of the ITU can be seen as amending those principles enshrined in the 1967 Outer Space Treaty[75] and thus have become part of international law themselves.[76]

Though non-binding resolutions and recommendations do lack a direct legal effect, they are far from being 'legally irrelevant',[77] but have what White has called 'a significant independent legal effect'[78] or even a moral, political or social force.[79]

As mentioned earlier, non-binding decisions might nonetheless force states to comply due to pure necessity of compliance, as non-compliance could in all three ITU Sectors lead to severe consequences up to complete isolation from the 'telecommunication-world' due to non-matching standards or outdated equipment. The overall compliance of states with non-binding recommendations issued by in-

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[72] Schermers, We The Peoples of the United Nations, 1 Max Planck YBUNL (1997), 111 at 117.

[73] Schreuer, Recommendations and the Traditional Sources of International Law, 20 GYBIL (1977), 103 at 105.

[74] Frowein (note 48), at 789; cf. also Abbott/Snidal, Hard and Soft Law in International Governance, 54 International Organization (2000), 421 at 445, 454 et seq.

[75] Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, 1967, 610 UNTS 205.

[76] See e.g. ITU-R Recommendation SA.1013 (03/94), Preferred frequency bands for deep-space research in the 40-120 GHz range. Due to technical limits the usable radio frequencies in this area are limited and a recommendation regarding the allocation and use of these frequencies can be said to promote international co-operation and exploration of the outer space and therefore amend those rules established in the 1967 treaty and have become international law itself.

[77] Schreuer (note 73), at 103.

[78] White, The Law of International Organisations, Manchester 1996, 93.

[79] Detter (note 53), at 207; cf. Abbott/Snidal (note 74), at 434 et seq.

[80] Skubiszewski, Forms of Participation of International Organizations in the Lawmaking Processes, 18 International Organization (1964), 790 at 795; Abbott/Keohane/Moravcsik/Slaughter/Snidal (note 57), at 412.

ternational organisations such as the ITU can according to Skubiszewski 'slowly evolve into binding customary rules and practices',[80] thus placing them into the framework of international customary law, a view which is the most widely accepted one with regard to the legal nature of recommendations.[81]

While this may in general be the case, there seems to be another way in which a new rule of international law can be established through the mere action of a specialised agency such as the ITU flowing from what Alexandrowicz calls 'the action of the Agency influencing the municipal law of member countries to the extent of achieving universal uniformity'.[82] Arguing that uniformity with regard to municipal law has logically to be the *ex post* effect of the agencies action, he goes on arguing that through this action general principles of law can be incorporated into the legal systems of member states and concludes that even non-legally binding recommendations can exercise a '*de jure* or *de facto*' pressure on member states leading to uniform municipal law-making and thus at, what he calls, 'an advanced stage' to new general principles of [international] law.[83]

The binding regulations and especially the non-binding recommendations made by the ITU cannot be regarded as an entirely new source of international law. Yet, they are to be regarded as "new" in the sense that they constitute new legal phenomena. Just as the ITU is concerned with various kinds of communication, 'the evolution of the law is a process of communication which can take a variety of forms'[84], too, yet they are both operating in a system that 'remains sufficiently flexible and adaptable to accommodate new phenomena'.[85]

VI. Conclusion

Driven by technical necessity the importance of the work of the International Telecommunication Union can not be overemphasised. Especially in our modern society in which we virtually all rely on internet, satellite television, convenient telephone services and connections and maybe even access to the latest football results via short-wave in the remotest parts of our planet, universal standards are inevitable as their absence would lead to chaos.[86]

It is not at least through this necessity, and not as in other cases and organisations through legal provisions or force, that even non-binding decisions of the ITU are commonly accepted by its members as if they were binding. It is the specialised matter the ITU deals with and the advanced legislation on complicated technical

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[81] Schreuer (note 73), at 106; Hall (note 60), at 284, 290.
[82] Alexandrowicz (note 57), at 89.
[83] Ibid., at 89 et seq.
[84] Schreuer (note 73), at 114.
[85] Ibid.; cf. Brölmann, A Flat Earth? International Organizations in the System of International Law, 70 Nordic JIL (2001), 319 at 340.
[86] Lyall (note 28), at 790.

terms and issues as well as the ITU's general reputation for expertise and accuracy that makes its 'laws' generally accepted.

While the law-making process within the ITU cannot be seen as an entirely n e w source of international law, the ITU is involved in reshaping and supplementing international law, a system which is neither exclusive nor rigid but allows for the incorporation of new methods of law-making through its traditional channels. While the regulations and recommendations etc. made by the ITU may not already be placed 'alongside the classical sources' t o d a y, from what has been discussed and examined above it is clear that one cannot 'deny their positive influence on the creation of international legal rules'.[87]

For now over 135 years, the ITU has enabled us to use "tele-communication" meaning "communication across a distance", as a means to communicate with virtually everyone without any unnecessary interference. No matter how different the standards of those who communicate with each other, the standard of their means of communication, at least, will be the same – as it was in respect of the Morse code in 1865[88] and it is in respect of the latest picture messages and video sequences send via mobile phone, today.

[87] Monaco (note 67), at 434.
[88] Codding/Rutkowski (note 3), at 5.