

Settlement of International Telecommunications Disputes

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The International Telecommunications Domain : The Role of the ITU

The **International Telecommunication Union (ITU)** → oldest among all the specialized agencies of the UN System (dates back to 1865, when its predecessor, the International Telegraph Union, was founded).

On 17.5.2021: 194 Member States, 533 Sector Members, 207 Associate and 158 from Academia.

The **ITU Radiocommunication Sector (ITU-R)** plays a vital role in the global management of the radio-frequency spectrum and satellite orbits - limited natural resources which are increasingly in demand from a large and growing number of services (fixed, mobile or emergency telecommunications, broadcasting, space research, meteorology, global positioning systems, environmental monitoring and communication services).

The International Telecommunications Domain : The Role of the ITU

The International radio frequency management by the ITU

Spectrum management is the process of regulating the use of radio frequencies to promote efficient use and gain a net social benefit. The term radio spectrum typically refers to the full frequency range from 3 kHz to 300 GHz that may be used for wireless communication.

1st step → **allocation**: put the frequency bands in groups of services. Table of frequency allocations.

2nd step → **allotment**: giving frequencies to States.

3rd step → **assignment**: giving frequencies to operators.

The International Telecommunications Domain : The Role of the ITU

The key provision: Art. 44(2) ITU Constitution

In using frequency bands for radio services, Member States shall bear in mind that **radio frequencies and any associated orbits, including the geostationary-satellite orbit, are limited natural resources** and that they must be used **rationally, efficiently and economically**, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have **equitable access** to those orbits and frequencies, taking into account **the special needs of the developing countries** and the geographical situation of particular countries.

“Equitable access” → frequencies for all States!

The International Telecommunications Domain : Dispute Settlement

The UN framework on peaceful settlement of international disputes (art. 2 para. 3 + Ch. VI) is also applicable.

ITU CONSTITUTION

ARTICLE 1

Purposes of the Union

1 The purposes of the Union are:

...

e) to promote the use of telecommunication services with the objective of **facilitating peaceful relations;**

The International Telecommunications Domain : Dispute Settlement

ITU CONSTITUTION

ARTICLE 56

Settlement of Disputes

1 Member States may settle their disputes on questions relating to the interpretation or application of this Constitution, of the Convention or of the Administrative Regulations **by negotiation, through diplomatic channels, or according to procedures established by bilateral or multilateral treaties concluded between them for the settlement of international disputes, or by any other method mutually agreed upon.**

2 If none of these methods of settlement is adopted, any Member State party to a dispute **may have recourse to arbitration in accordance with the procedure defined in the Convention.**

3 The **Optional Protocol on the Compulsory Settlement of Disputes** Relating to this Constitution, to the Convention, and to the Administrative Regulations shall be applicable as between Member States parties to that Protocol.

The International Telecommunications Domain : Dispute Settlement

“...recourse to arbitration in accordance with the procedure defined in the Convention”:

ITU CONVENTION

ARTICLE 41

Arbitration: Procedure

(see Article 56 of the Constitution)

→ The party which appeals to arbitration shall initiate the arbitration procedure by transmitting to the other party to the dispute **a notice of the submission** of the dispute to arbitration.

→ Arbitration to be entrusted to **individuals, administrations or governments.**

The International Telecommunications Domain : Dispute Settlement

“...recourse to arbitration in accordance with the procedure defined in the Convention”:

ITU CONVENTION

ARTICLE 41

Arbitration: Procedure

(see Article 56 of the Constitution)

→ Within three months from the date of receipt of the notification of the submission of the dispute to arbitration, **each of the two parties to the dispute shall appoint an arbitrator.**

→ The two arbitrators thus appointed **shall choose a third arbitrator.** Failing an agreement between the two arbitrators as to the choice of a third arbitrator, each of these two arbitrators shall nominate a third arbitrator. **The Secretary-General shall draw lots in order to select the third arbitrator.**

The International Telecommunications Domain : Dispute Settlement

“...recourse to arbitration in accordance with the procedure defined in the Convention”:

ARTICLE 41

Arbitration: Procedure

→ **A single arbitrator appointed by agreement;** or alternatively, each party may nominate an arbitrator, and request the Secretary-General to draw lots to decide which of the persons so nominated is to act as the single arbitrator.

→ The arbitrator or arbitrators = **free to decide upon the venue and the rules of procedure to be applied to the arbitration.**

→ The arbitration decision **shall be final and binding** upon the parties to the dispute.

→ **Each party shall bear the expense** it has incurred in the investigation and presentation of the arbitration. All other costs = **divided equally between the parties.**

→ ITU → furnish all information relating to the dispute which the arbitrator or arbitrators may need. Upon agreement of the parties, the arbitration decision → be communicated to the Secretary-General for future reference purposes.

The International Telecommunications Domain : Dispute Settlement

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**

The International Telecommunications Domain : Dispute Settlement

ARTICLE 1

Unless one of the methods of settlement listed in Article 56 of the Constitution has been chosen by common agreement, disputes concerning the interpretation or application of the Constitution, the Convention or the Administrative Regulations mentioned in Article 4 of the Constitution **shall, at the request of one of the parties to the dispute, be submitted for compulsory arbitration. The procedure to be followed is laid down in Article 41 of the Convention, paragraph 5 (No. 511) of which shall be amplified as follows:**

“5. Within three months from the date of receipt of the notification of the submission of the dispute to arbitration, each of the two parties to the dispute shall appoint an arbitrator. If one of the parties has not appointed an arbitrator within this time-limit, **this appointment shall be made, at the request of the other party, by the Secretary-General** who shall act in accordance with Nos. 509 and 510 of the Convention.”

The International Telecommunications Domain : Dispute Settlement

There are currently **194 Member States** of the ITU (The Republic of Palau, New York, 19 September 2024).

On 3.12.2019, **45 States** ratified, accessed or accepted the Protocol. (Greece, UK, Italy, Belgium, Canada, Netherlands: yes / US, Germany, France, Russia, China: No)

Concluding:

- International Telecommunications disputes can be settled according to international law. The general scheme of peaceful settlement of disputes according to the UN Charter (Art. 2 para. 3, Chapter VI) is applicable.
- The ITU Constitution recommends recourse to arbitration for the settlement of disputes between ITU member States, according to art. 41 of the ITU Convention.
- In the context of the ITU members, an optional Protocol provides for compulsory settlement of disputes, through arbitration.