

BOOK REVIEW

INTERNATIONAL TELECOMMUNICATION AGREEMENTS. By Gerd D. Wallenstein. Kenneth R. Simmonds, General Editor. Dobbs Ferry, New York: Oceana Publications, Inc. Loose-leaf service in three binders. Binder I issued in 1977; Supplement issued in March 1979. Binder II issued in August 1980. Binder III issue date unavailable. Cost of Binders I and II is \$175.00.*

This service is described in the publisher's advertising literature as providing "... an analysis of how the I.T.U. [International Telecommunication Union] functions, supplemented with a wide range of documents and agreements, actions and cases," and "... a logically coherent single reference source on the status of telecommunication agreements."¹ It is further suggested that these materials "... illustrate how the I.T.U. can be used as a possible model for international collaboration . . . [and that] [m]anagement people in business and government, and law firms serving them, can . . . consult the text of a particular agreement in an analytical framework thus helping them to evaluate an actual application of a particular agreement."² Although the objectives of this service are laudable, it is this reviewer's opinion that the narrow treatment of the subject, combined with a poor selection of previously published material, has resulted in a marginally useful service.

A cursory search through Binder I reveals the following material:

- 1) a 2 page Introduction;
- 2) a 194 page study of the I.T.U. as a collaborative international institutional mechanism, prepared by Wallenstein under a National Science Foundation grant as his dissertation at Stanford;
- 3) a 65 page section of "I.T.U. Case Studies" consisting of: a Wallenstein article on the I.T.U. 1971 Space Conference, two short Wallenstein articles extolling the virtues of the I.T.U. as a collaborative mechanism, and a short report of the Chairman of one of the I.T.U. Consultative Committee Study Groups;

*This review encompasses only Binder I, which contains general subject material. Binder II contains material on "Worldwide Networks: Standardization and Planning;" Binder III will contain material on "Radio Regulation and Standardization."

1. OCEANA'S STANDARDS FOR LOOSE-LEAF SERVICES 33 (1980).
2. *Id.*

- 4) a 266 page reproduction of the 1932 and 1973 (current) International Telecommunication Conventions;
- 5) a 320 page reproduction of the resolutions and decisions of the I.T.U. Administrative Council;
- 6) a 39 page outline of the staff structure of the I.T.U.;
- 7) a 28 page reproduction of the I.T.U.'s 1978 List of Publications [the latest was issued in August 1980]; and
- 8) a 66 page miscellaneous collection of references, bibliography and index to the Wallenstein study. The latest entry in the bibliography is dated 1975.

This material makes it clear that the service is limited only to matters before the International Telecommunication Union (I.T.U.). It fails to describe (indeed, even note the existence of) the many other institutional mechanisms for effecting international telecommunication agreements, such as the United Nations, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization (WIPO), the Universal Postal Union (UPU), the Intergovernmental Bureau for Informatics (IBI), the Council of Europe, the Organization for Economic Cooperation and Development (OECD), to mention only a few. The last two have become increasingly important forums in recent years for the study and promulgation of legal standards for transnational data flows. Wallenstein also fails to list or discuss the many regional and bilateral agreements concerning telecommunication. Thus, the service is not only very incomplete, but also fails to provide any information on ". . . the status of telecommunication agreements."

In addition to the narrow scope of the service, the selection of material limits the utility still further. From the perspective of a reference librarian, the only useful document contained in Binder I is the 1973 International Telecommunication Convention (which is otherwise available at 28 U.S.T. 2495, T.I.A.S. NO. 8572, or as a paperback book from the I.T.U. at a cost of 34 Swiss francs (approximately 24 dollars)).

From the perspective of a practitioner representing a client, or anyone attempting to deal with contemporary telecommunication issues, Binder I contains essentially no useful material. A service such as this needs an introductory chapter which plainly and concisely outlines: 1) the scope, authority, structure, instruments, and contemporary activities of the international organizations active in fashioning multilateral telecommunication agreements; 2)

mechanisms and instruments of bilateral telecommunication agreements; 3) the force and effect of the international law which is established; and 4) the processes by which nations (especially the United States) participate in such legislative activities and implement the results. The only general material provided by the service is Wallenstein's Stanford dissertation (discussed further below). While it may be a scholarly analysis of the I.T.U. as a collaborative mechanism, it would seem to be of little use to the occasional sojourner into the complex realm of international telecommunication.

It should be noted that private practice before an I.T.U. body does not exist. The Union's Members consist of States, and all participation in I.T.U. activities must be through a Member.³ Thus, the kind of information which is needed by the practitioner concerns the roles of the various responsible agencies within the U.S. government and the mechanisms by which a client's interests can be advanced.⁴ Those who become so involved in international proceedings as to participate on government advisory committees or U.S. delegations will normally be provided all current material.

As has been pointed out before,⁵ there is a substantial need for widespread dissemination of current, relevant material in this field. However, the cost, bulk, and timeliness of documents necessitates a systematic method of dissemination coupled with available regional reference centers. Perhaps most importantly, it requires a centralized bibliographic data base, so that potential users know of the existence of a document as well as where to obtain it. The Oceana/Wallenstein service, although it could serve a useful function short of reference centers and data bases, unfortunately provides largely useless material.

Wallenstein's only significant original contribution to Binder I of the service is an extensive analysis of the I.T.U. as a model organization for international agreement. It is a work of some academic interest, making useful analogies, and depicting the

3. The only exception to this rule exists in the Consultative Committees which may include "... any recognized private operating agency ... with the approval of the Member which has recognized it." International Telecommunication Convention, *done* Oct. 25, 1973, art. 11, 28 U.S.T. 2495, T.I.A.S. No. 8572 (*effective* April 7, 1976).

4. For an abbreviated portrayal of this information, see A. RUTKOWSKI, UNITED STATES POLICY MAKING FOR THE PUBLIC INTERNATIONAL FORUMS ON COMMUNICATION (1981).

5. See Coddling, Book Review (Wallenstein, International Telecommunication Agreements), 72 AM. J. INT'L L. 689 (1978); Rutkowski, *supra* note 4.

agreement making mechanisms which usually prevail at international conferences. However, even if the analysis did not suffer from several apparent flaws, its utility would be limited by its narrow scope (*i.e.*, negotiations among sovereigns having common, positive-sum, technical interests).⁶ Nonetheless, the work does evidence considerable multidisciplinary analysis; and is representative of the kind of continuing effort needed in the field of international policy making.

Wallenstein's central assumption in the analysis is that "[v]oluntary acceptance requires the absence of coercion . . ." He further asserts that " . . . an international agreement making organization fares best if it bypasses or minimizes legalistic doctrines."⁸ The I.T.U. is then set forth as the " . . . model for international collaboration . . .,"⁹ based on " . . . its longevity, the diversity of its competence with regard to resources straddling the national and transnational domains, and the diversity of its organizational structure."¹⁰ All these assumptions are dubious at best. Throughout his study, Wallenstein constantly portrays the I.T.U. in a favorable light, praising it at every turn. While the Union has indeed fostered considerable collaborative international agreement, its deliberations have often been marked by significant political and economic controversies. Because nations differ in their values and regulatory approaches, and often proceed on the basis of nationalistic standards, substantive issues will always be controversial. On such matters, there is little evidence that the I.T.U. has been any more successful than any other public international organization. For example, the most controversial function within the I.T.U.'s domain involves the establishment and maintenance of various schemes by which States are vested with a right to use radio frequencies or satellite positions free from harmful interference from other States. Since the inception of the first scheme in 1906, endless battles have been fought over the efficacy of various vesting mechanisms. Indeed, it remains the single most

6. The author himself remarks at the end of the report that "[t]he possibility of this model's serving as a catalyst in . . . intensely political international relations problems surely must be called highly speculative." Wallenstein, 1 INTERNATIONAL TELECOMMUNICATION AGREEMENTS 193 (1977).

7. *Id.* at 11.

8. *Id.* at 29.

9. *Id.*

10. *Id.* at 187.

controversial issue before the I.T.U. today as the Third World nations attempt to force the industrialized nations to adopt more equitable schemes.¹¹ It is doubtful whether the I.T.U. will ever foster complete agreement on such a subject. Regional or specialized mechanisms, on the other hand, have often demonstrated greater success.

The assertion that "voluntary acceptance requires the absence of coercion" is plainly refuted by the factual evidence. If the I.T.U. has enjoyed any greater success in achieving international agreement on controversial matters than other organizations, it is precisely because of coercion, and *not* the lack of it. Unlike other kinds of international activities, communication requires the cooperation of the affected parties. Two uncoordinated stations operating on the same radio frequency in the same area will likely destroy the value of the service for both. Similarly, a transatlantic telephone cable must appear on the sovereign territory and interconnect with the networks of another State in order to function. If mail is to be conveyed to an address in a foreign State, the cooperation of at least two States is required. These realities of communication facilities are patently coercive. It also explains why the oldest existing international organizations, the I.T.U. and the Universal Postal Union (U.P.U.) are those dealing with communication. The longevity of those organizations was assured through coercion.

There is also little evidence to suggest that the I.T.U.'s structure is particularly ideal. Its Consultative Committees — one dealing with radio matters and the other dealing with Telegraph and Telephone systems — enjoy a structure which has changed little during the 55 years of their existence, despite the fact that technology has changed dramatically during that period. Wallenstein completely glosses over the intransigence and protectionism which have marked the activities of these groups, and the barriers which they often present to the development of new technology and services.¹² In many cases, the activities have been little more than those of a cartel of monopolists contriving rates and thwarting competition.

11. See Rutkowski, *Six Ad-Hoc Two: The Third World Speaks its Mind*, SATELLITE COMMUNICATIONS, March 1980, at 22.

12. See I. Pool, *Communications and Integrated Planning*. (September 10, 1980) (Paper presented before the International Institute of Communications, Ottawa).

An additional problem displayed by I.T.U. collaborative mechanisms is the matter of effective involvement of Third World participants. Many Union activities have been characterized by the systematic exclusion of participants from developing countries, particularly in the work of the Consultative Committees. The matter will be a potentially volatile one before the 1982 I.T.U. Plenipotentiary Conference (equivalent to a constitutional convention). It might well be argued that many of the apparent successes of the I.T.U. agreement mechanisms occurred because the representation was significantly less than global. The I.T.U. has made great strides in recent years toward redressing this condition, but much more remains to be accomplished.

Although Wallenstein denigrates the utility of "legalistic doctrines," this may be precisely where the long-term viability of international institutional arrangements for controversial telecommunication matters lies. For example, the establishment of a common heritage of mankind doctrine with respect to the geostationary satellite/spectrum resource may represent the kind of legalism which has utility in dealing with controversial resource allotment issues. It would seem that the adoption of a norm recognizing the right of all peoples to equitably share an international resource is preferable to technocratic schemes which allow any individual nation to lay claim to *de facto* property rights in the resource. The law has characteristically demonstrated its greatest utility in producing acceptable results involving matters of substantial controversy. In a pluralistic world growing increasingly complex and interdependent, "world peace through law" is a goal worth fostering.

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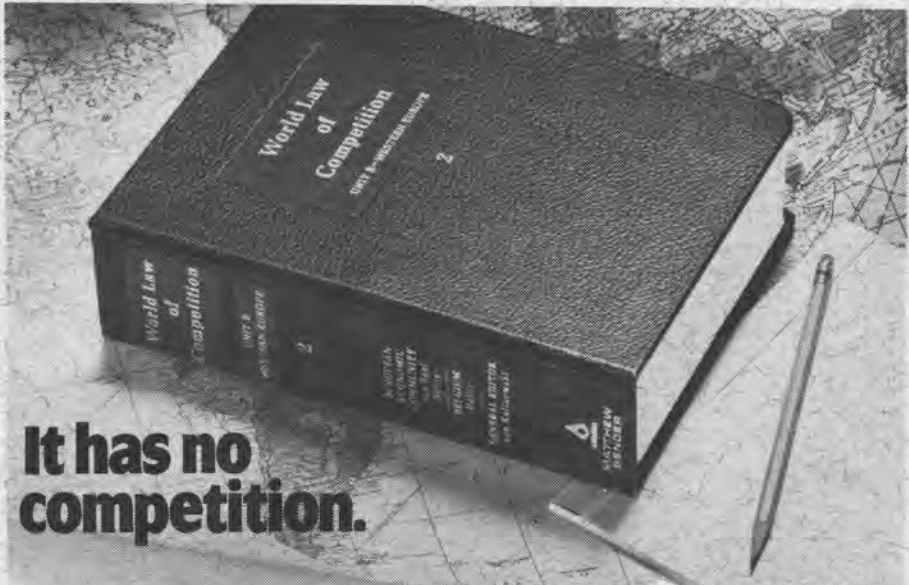
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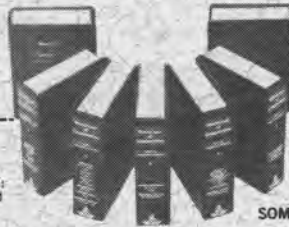
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