

UNITED STATES POLICYMAKING FOR THE PUBLIC INTERNATIONAL FORUMS ON COMMUNICATION

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ABSTRACT

Communication issues are appearing with increasing frequency before numerous public international organizations such as the ITU, UNESCO, UN, WIPO, IBI, and others. The international law produced by the legislative forums of these organizations is rapidly growing and assuming greater significance on both global and domestic levels.

This paper focuses on the manner in which the United States makes its international communication policy for introduction into these legislative forums in which it participates as a member state. There are many actors in the government policymaking infrastructure, but the actual policies are predominantly fashioned by middle-level officials in the Federal Communications Commission, the National Telecommunications and Information Administration and the Department of State. The lines of authority and jurisdiction are not clear, but the power seems to have been effectively shared or apportioned by agreement among the participants. The processes of gathering information and creating policy are amorphous and pluralistic, arising from public proceedings and several kinds of internal actions.

Some facets of these processes, however, appear to hinder the development of effective and balanced United States policy in the contemporary world. These deficiencies lie in the lack of an existing comprehensive policy, as well as mechanisms for evaluation and change. The overlapping jurisdiction combined with decisionmaking by consensus results in policies which are the lowest common denominator of acceptability. This generally discourages risk-taking and comprehensive analyses, and encourages maintenance of the *status quo*. The lack of participation by nonindustry, private sector individuals due to constraints on information availability and economic resources is a significant problem. In addition, the use of advisory committees in many instances does not appear to conform fully with the spirit, if not the letter, of statutory requirements.

Several recommendations are suggested in order to bring a greater diversity of opinion and perspective into the policymaking process. A desirable internal change involves the institution of a more centralized and comprehensive policy *analysis* (as compared to policymaking) function. Desirable external changes include making

the meetings of the public international organizations open to public and press, facilitating access to the materials of such organizations, strictly adhering to the requirements for balance in membership and public notice requirements of the Advisory Committee Act, and following the guidelines on the classification of United States government documents. The expertise and varied perspectives of the nonindustry, private sector can be brought into the policymaking process through experimental use of electronic mail conferencing facilities.

I. INTRODUCTION

Communication has long been a subject of substantial international interest. It is vital to international trade and finance, to the security of governments, to the coordination of far-flung outposts of nations and organizations, and to the sharing of mankind's rich and varied intellectual and cultural heritage among all peoples. It is not surprising, therefore, that the two oldest international organizations are those established to facilitate communication among States.¹

As technology has enabled information to be communicated by electronic means, speed and flexibility have always made this mode of communication attractive. During the past few decades such means have not only been significantly enhanced, the costs

1. The International Telegraph Union was created in 1865. In 1934, it was merged with other unions to form the present International Telecommunication Union. See G. CODDING, *THE INTERNATIONAL TELECOMMUNICATION UNION* (1952). The General Postal Union was created in 1874, and subsequently renamed the Universal Postal Union. See G. CODDING JR., *THE UNIVERSAL POSTAL UNION* (1964).

have also been dramatically reduced. At the same time, the costs of alternative forms of communications which rely on the transfer of paper have markedly increased as energy and wood pulp supplies are dwindling and increasing in value. These developments are likely to continue unabated in the future.

As part of a technological revolution in telecommunications, radio and wire transmission paths are being joined with computer systems in such a way that an integrated, global network is developing. Within the next two decades, most major telecommunication systems and computer facilities will be interconnected in such a way that a person with a universal terminal can access this network from virtually anyplace in the world to obtain information on nearly any subject. One will be able to exchange messages, be entertained, participate in conferences, and obtain the latest news. Information is becoming the lifeblood of modern society, which must rely on an electronic circulatory system for its survival. The problems of electronic information in decades to come will concern effective access to that system and control over the information conveyed.

Because communication has long been a subject of international interest, it is understandable that the developments mentioned above have encouraged a proliferation of activity and issues among international organizations. The topics range from the regular standardization and coordination activities of the International Telecommunication Union (ITU) to the specialized study and normative functions of the United Nations (UN), United Nations Educational, Scientific and Cultural Organization (UNESCO), the Intergovernmental Bureau for Informatics (IBI), and the World Intellectual Property Organization (WIPO) and to the implementation and maintenance of global operations by the International Telecommunications Satellite Organization (INTELSAT) and the International Maritime Satellite Organization (INMARSAT). In addition, the Universal Postal Union (UPU) continues to serve as a means for coordinating and facilitating the physical transfer of materials among the world's postal systems, as well as examining the future role and methods of postal systems in the electronic information age.

The range of issues is as diverse as the forums for their exposition. A multitude of studies, debates, standards and norms are being applied to all phases of information gathering, storage and

dissemination, including the effects of communication itself. A code of conduct for journalists, the right of reply, taxation of communication resources, transfer of technology, imbalances in the flow of information, privacy, equitable access to resources, and development assistance are but a few of the myriad topics being considered. Although these matters have in the past been treated as disparate subjects, they are increasingly being merged in public international forums and treated under the common topic of information communication.

The United States of America participates in the international conferences and meetings of these organizations as a member nation and engages in the associated legislative, administrative and quasi-judicial activities. Thereafter, the United States may ratify the provisions adopted by the international organization, or enact responsive domestic law. Even where such actions may not be legally required or appropriate, a change in domestic policy may nonetheless be unavoidable. This situation arises from the need for cooperation among all affected parties to achieve international communication. Indeed, because radio waves do not stop at geographical borders, a measure of international cooperation may be required to effect many forms of purely domestic communication.

The purpose of this paper is to focus on the participatory activities of the United States in the legislative and policymaking forums of public international organizations in the field of communication. It is not the intent to examine the substance of United States policy in these forums, but rather the mechanisms by which these policies are determined. The emphasis will be on the policymaking process and the issues associated with that process. Apparently because of the dynamic and interdisciplinary nature of this subject, this process has received scant attention.² The growing importance of international organization activities and the

2. Some focus in recent years has occurred with respect to international carrier issues. See, e.g., Grad and Goldfarb, *Government Regulation of International Telecommunication*, 15 COLUM. J. TRANSNAT'L L. 384 (1976); *Report by the Federal Communications Commission on International Telecommunication Policies*, Statement of Richard E. Wiley, Chairman, FCC, before the Subcommittee on Communications of the Senate Committee on Commerce, Science and Transportation (July 13, 1977); *Responsibilities, Actions, and Coordination of Federal Agencies in International Telecommunication Services*, Report of the Comptroller General, GAO Report CED-77-132 (1977); *Greater Coordination and A More Effective Policy Needed for International Telecommunications Facilities*, Report by the Comptroller General, GAO Report CED-78-87 (1978). These activities and issues, however, are merely one segment of a larger, more complex but interrelated picture.

potential effects on world communication and transnational corporations clearly suggests greater awareness and involvement by the legal and business communities, indeed, by all those who are interested in communication and information issues.

Although this treatment of the subject is intended to be comprehensive, it does not purport to be complete. The subject touches virtually every major activity in our society, and nearly every government agency and private organization has some international communication interests. Only the roles and institutional mechanisms of the principal actors will be addressed. Matters concerning United States participation in INTELSAT and INMAR-SAT are not covered in this paper, as the issues have been covered extensively by others.³

II. THE INTERNATIONAL LAW OF COMMUNICATION

For the purposes of this paper, the international law of communication consists of those provisions or norms concerning communication which are binding upon States in their dealings with each other. These provisions or norms arise largely from the instruments created by organs of the public international organizations. At this point, it is appropriate to list briefly these organizations and review their purposes and structures, particularly as they relate to United States participation in their international legislative processes. Appendix A supplements this review with a structured list of current meetings of these organizations.

A. Legislative Forums

1. INTERNATIONAL TELECOMMUNICATION UNION (ITU)

The International Telecommunication Union is a public international organization which is now a specialized agency within the United Nations system.^{3a} It is headquartered in Geneva and con-

3. See note 2, *supra*.

3^a. Relations between the UN and the ITU "are governed by an agreement concluded in 1947 between the two organizations providing, *inter alia*, for reciprocal representations, exchange of information and documents, and cooperative efforts in financial, budgetary and personnel matters." D. Levine, INTERNATIONAL TELECOMMUNICATIONS AND INTERNATIONAL LAW: THE REGULATION OF THE RADIO, *citing* 1947 Atlantic City Convention, Annex 5, agreement between the United Nations and the International Telecommunication Union.

sists of several legislative and administrative organs:

<i>Legislative</i>	<i>Administrative</i>
◦ Plenipotentiary Conference	◦ Administrative Council
◦ Administrative Conference	◦ International Frequency
◦ International Telegraph and Telephone Consultative Committee (CCITT) Plenary Conference	Registration Board (IFRB) ◦ General Secretariat ◦ CCITT Secretariat ◦ CCIR Secretariat
◦ International Radio Consultative Committee (CCIR) Plenary Conference	

The ITU currently serves four functions in the field of telecommunication (*i.e.*, the electronic transmission of information): 1) administrative gathering, processing, and disseminating vast amounts of information related to the operation of telecommunication systems around the globe; 2) the promulgation of technical and operating standards to allow efficient integration and use of systems and equipment; 3) the vesting of rights in the use of radio channels and satellite orbit positions to States; and 4) the furnishing of technical assistance to developing countries. The provisions and activities which establish these functions are found in: the ITU Convention (the basic instrument of authority which is adopted by the Plenipotentiary Conference); the Regulations, Agreements, and Plans (which are adopted by various world and regional administrative conferences); and the Recommendations (which are adopted by the plenary conferences of the consultative committees); a master register which is maintained by the IFRB; and a variety of assistance programs conducted by the administrative bodies.⁴

The Convention, Regulations, Agreements, and Plans generally enjoy the force and effect of treaties. The Recommendations derive their force and effect either by reference from the Regula-

4. See International Telecommunication Convention, Malaga-Torremolinos, 1973; Final Acts of the 1973 World Administrative Telegraph and Telephone Conference; Final Acts of the 1979 World Administrative Radio Conference; [Documents of the] CCITT Fifth Plenary Assembly, Geneva, 1976, (informally known as the "red books"); [Documents of the] CCIR XIVth Plenary Assembly, Kyoto, 1978 (informally known as the "green books"); Report of the Activities of the I.T.U., 1979.

tions, or through custom and usage throughout the world. In addition, there are many resolutions, recommendations, and opinions which are attached to these instruments that are normative in nature and represent a kind of customary international law.⁵

The number of continuing groups operating within the CCIR and CCITT are worth notice (see Appendix A). These seventy-five groups function in the same manner as congressional committees in the preparation of international legislation which is later adopted by plenary assemblies. The result is a substantial body of provisions which is often effectively mandatory for countries.

2. UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION (UNESCO)

The United Nations Educational, Scientific, and Cultural Organization (UNESCO) has an extremely broad jurisdiction: "to contribute to peace and security by promoting collaboration among nations through education, science, and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms which are affirmed for the peoples of the world. . . ."⁶ To realize this purpose, UNESCO (a) collaborates in the work of advancing mutual knowledge and understanding through all means of mass communications; (b) gives fresh impulse to popular education and to the spread of culture; and (c) maintains, increases, and diffuses knowledge.⁷

It is apparent that communication is wholly encompassed within UNESCO's jurisdiction, and it is a subject which has received increasing attention in recent years. The principal means for effecting its communication functions are by: 1) adopting normative resolutions at meetings of the principal organ, the biennial General Conference; 2) performing and publishing studies by staff, panels of experts, and contractors;⁸ 3) participating at the meetings and con-

5. Such provisions have been increasingly used in recent years to create a body of "development law." See Abi-Saab, *The Third World and the Future of the International Legal Order*, 29 REV. EGYPTIENNE DE DROIT INT'L 27, 61; Schacter, *The Evolving International Law of Development*, 15 COLUM. J. TRANSNAT'L L. 2, 9 (1976); A. MUTHARIKA, *THE INTERNATIONAL LAW OF DEVELOPMENT* (1978).

6. UNESCO CONST. art. 1, para. 1.

7. See *id.* at para. 2.

8. For example, there are now more than sixty publications in the series: "Reports and Papers on Mass Communications."

ferences of other international organizations, and 4) sponsoring specialized seminars and conferences.⁹

One of the UNESCO's first efforts in the field involved its participation at the ITU's Mexico City Conference at which it introduced items to promote shortwave broadcasting as a medium to promote international peace and understanding.¹⁰

In more recent years, UNESCO has become extensively involved in examining the potential uses of direct broadcasting satellites and promoting a set of norms regarding their use. As early as 1962, studies on the subject were begun. Over the next ten years, numerous panels of experts met, and the effort was finally culminated in the adoption of a declaration on the subject at the 1972 General Conference.¹¹ As a matter of tradition, conferences concerning intellectual property protection and communication are jointly sponsored by UNESCO and the World Intellectual Property Organization (WIPO), and are discussed under WIPO, below.

During the last three years, UNESCO has been best known in this field for the studies and report of the International Commission for the Study of Communication Problems (commonly referred to as the MacBride Commission because of its chairmanship by Sean MacBride, noted jurist and champion of human rights). This Commission's final report was recently delivered to the UNESCO Director General for consideration, and was accepted by the 1980 General Conference at Belgrade. The report is notable not only for its promotion of the New World Information and Communication Order (analogous in concept to the New International Economic Order), but also for its promotion of a new intergovernmental body under the aegis of UNESCO: the Inter Governmental Council to coordinate an International Program for the Development of Communication (IPDC).

9. *See, e.g.*, Final Report, Inter-Governmental Conference on Communication Policies in Latin America and the Caribbean, San Jose, July 12-21, 1976; Final Report, Inter-Governmental Conference on Communication Policies in Asia and Oceania, Kuala Lumpur, Feb. 5-14, 1979.

10. *See* UNESCO Draft Resolution, Int'l H.F. B'casting Conf., Mexico City 1948/49, Doc. No. 676; UNESCO Memo, Conf. Doc. No. 120. Such action was consistent with art. 1 of the UNESCO Constitution, which specifies that the Organization will "recommend such international agreements as may be necessary to promote the free flow of ideas by word and image."

11. For a summary of UNESCO work in this area, *see* K. M. QUEENEY, DIRECT BROADCAST SATELLITES AND THE UNITED NATIONS 117-37 (1978).

3. UNITED NATIONS (UN)

Until recently, the United Nations itself had not chosen to play a substantial role in the communication field. Perhaps their first endeavor involved the adoption of the right to communicate among the other fundamental human rights.¹² Later, communication issues began to appear within the UN Committee on the Peaceful Uses of Outer Space (COPUOS) and the Working Group on Direct Broadcasting Satellites. The Committee, as well as its two subcommittees on Legal and Scientific & Technical matters, remains a significant forum for the development of normative provisions associated with the use of the geostationary orbit for radio-communication. Indeed, the Committee is preparing for a Second UN Conference on the Peaceful Uses of Outer Space in 1982, which could lead to a new international agreement on the subject.¹³

Evidence of the UN's increased interest in communication in its broadest sense is evident from the activities of the new Committee on Information, which was restructured and made permanent by recent action of the General Assembly.¹⁴ Although it is currently unclear precisely what role this Committee will play among the numerous other entities in the field, its activities could be significant in specialized areas such as the UN's establishment of broadcasting and other telecommunication capabilities.

4. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

As more of society's wealth of information is captured, stored, disseminated, and displayed through electronic systems, a concern arises regarding the protection of intellectual property rights held by the author of the information disseminated by such systems.

12. "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." UNIVERSAL DECLARATION OF HUMAN RIGHTS, G.A. RES. 217A, U.N. Doc. A/810, art. 19 (1948). The text of the declaration is reprinted in, *inter alia*, M. MELTZER, *THE HUMAN RIGHTS BOOK* 172-78 (1979).

13. See *Report of the Committee on the Peaceful Uses of Outer Space*, 34 U.N. GAOR, Supp. (No. 20) 14-22, U.N. Doc. A/34/20 (1979).

14. See *Questions Relating to Information*, 6, A. Res. 182, 34 U.N. GAOR, Supp. (No. 46) 83, U.N. Doc. A/34/46 (1979), Resolutions Adopted on the Reports of the Special Political Committee at 150-54 (1979). The Committee on Information was formerly known as the Committee to Review United Nations Public Information Policies and Articles (also known as the Committee of 42). See *Report of the Committee*, 34 U.N. GAOR, Supp. (No. 21) U.N. Doc. A/34/21 (1979).

On an international level, such matters fall within the province of the World Intellectual Property Organization, which maintains its offices in Geneva and administers several dozen protective conventions.

In recent years, WIPO and UNESCO have jointly sponsored working groups of experts in the fields of satellite program distribution, cable television, and matters related to appropriate national copyright and patent legislation for developing countries in the electronic age.¹⁵ The first of these efforts led to the preparation of a Convention Relating to the Distribution of Programme-carrying Signals Transmitted by Satellite (also known as the Satellite Piracy Convention) in 1974.¹⁶

5. UNIVERSAL POSTAL UNION (UPU)

The Universal Postal Union, established in 1874, is one of the oldest existing international organizations. The official aims and purposes of the UPU are: to form "a single postal territory for the reciprocal exchange of correspondence," and "to secure the organization and improvement of the postal services and to promote in this sphere the development of international collaboration."¹⁷

The UPU operates through three representative organs: the Congress (which is the supreme authority), the Executive and Liaison Committee (an interim governing authority), and the Consultative Committee for Postal Studies (a body to study technical, operational and economic problems).¹⁸ In addition, the International Bureau of the UPU, located at Bern, provides secretariat functions, and also serves as a conciliator and arbitrator in disputes over postal matters between Administrations.

Until relatively recently, the issues before the UPU have been largely non-controversial and unchanging. The rapid evolution of electronic information and communication systems, coupled with the rising costs of physically moving materials, is presenting

15. See, e.g., *Working Group on the Problems in the Field of Copyright and so-called Neighbouring Rights Raised by the Distribution of Television Programmes by Cable*, 12 COPY. BULL. 17 (1978).

16. See Records of the International Conference of States on the Distribution of Programme-carrying Signals Transmitted by Satellite, Brussels, May 6-21, 1974, UNESCO/WIPO (1977).

17. Ottawa Postal Convention, art. 1 (1957).

18. See Codding, *supra* note 2, at 132-84.

some fundamentally important matters before the organization. One of the most obvious is the inauguration of "electronic mail" systems. Another involves the subsidization of costly mail delivery systems through the assessment of extremely high tariffs on electronic communication systems. Although this issue is unrecognized in the United States because of its separate and distinct postal and telecommunication systems, it is not so in most other countries, which have integrated government administration of the post, telephone, and telegraph (PTT) systems. The impact of this cross-subsidization is keenly felt by transnational corporations employing extensive international telecommunications. Thus, the impact of these matters is by no means solely a foreign domestic concern.

Ultimately, the UPU, along with other international organizations such as ITU, which are structured around services which will dramatically change in character during the coming decades, can be expected to evolve or be merged into organizations necessary to provide the international institutional arrangements for a new age. To the extent these matters are beginning to be faced by the UPU, the activity occurs in Committee I of the CCPS which is responsible for examining the future role of the postal system.

6. OTHER PUBLIC INTERNATIONAL ORGANIZATIONS

A number of other public international organizations have significant legislative processes in which the United States participates. The newest, and perhaps the one with great potential importance, is the Intergovernmental Bureau for Informatics (IBI). Although this Rome-based organization is not part of the United Nations system, it enjoys the membership of several dozen states (the United States is presently an observer, and has not formally joined). The IBI holds periodic conferences for the consideration of the broad policy and legal questions associated with trans-border data flows and similar electronic information-related issues.¹⁹ Its forward-looking focus on these issues has given the organization significant stature, particularly among the developing countries. While it is unclear if IBI will do more than serve as a clearing house on these issues, the effect it can have on domestic legisla-

19. See *Issues on Transborder Data Flow Policies*, IBI Doc. SPIN/230, (1979).

tion alone may be significant. Indeed, a resolution adopted by the IBI conference which is followed by a significant majority of countries would seem to qualify as a controlling international normative provision—if not customary international law.

Other organizations include the Intergovernmental Maritime Consultative Organization (IMCO), which has several components that consider telecommunication issues related to maritime navigation, and the International Civil Aviation Organization (ICAO), which does the same with respect to air navigation.

A host of regional organizations also considers many of these same issues. They serve both as forums for achieving regional agreements, as well as for developing a consensus on a common position prior to the meetings of global organizations. The most prominent regional organization in which the United States participates is the Inter American Telecommunications Conference (CITEL) whose ongoing meetings are held under the auspices of the Organization of American States. Information related issues are also receiving substantial consideration by the largely European-oriented Organization for Economic Cooperation and Development (OECD).

B. The Law and Its Application

The many public international forums discussed above produce a wide variety of written instruments. These include conventions, covenants, final acts, agreements, resolutions, declarations, recommendations, and opinions.²⁰ In some cases there exists a continuing codification of provisions such as the ITU Radio Regulations which are adopted in their entirety at general conferences, and selectively amended at interim specialized conferences. In most instances, however, the provisions simply stand alone, with many addressing a similar subject.

Often these instruments are signed by State representatives at the time of adoption. The obligation being assumed may also be clarified by means of a protocol statement or reservation. Some of these instruments are subject to further ratification processes.

20. The only known outline of this material is contained in two documents of the MacBride Commission. See *Listing of International Instruments Concerning Different Aspects of Communication*, UNESCO International Commission for the Study of Communication Problems, Doc. 21 (1979); *Communication: Extracts from International Instruments*, UNESCO International Commission for the Study of Communication Problems, Doc. 22. However, the listing is clearly incomplete.

Such actions add to or detract from the force and effect of the instrument as international law. Although there may be considerable debate regarding the exact legal nature of materials not so approved either collectively or by individual States, it is difficult to argue that they are not law. "The most prominent general feature of law at all times and places is that its existence means that certain kinds of human conduct are no longer optional, but in *some* sense obligatory."²¹ Because communication, unlike many other activities, requires the cooperation of all the parties engaging in communication, most of the international instruments in this field tend to be compelling.

In considering the status of this material as international law, it is not always clear whether a provision constitutes public law, customary law, or some nebulous category which is more than advisory but less than customary. As Henkin notes in his seminal article concerning the law of international organizations, public international bodies do "legislate" substantive international law. He points to "ten formal 'declarations', beginning with the Universal Declaration of Human Rights, which, while not purporting to have the quality of law, have in differing degrees entered the stream of international law and influenced national behavior."²²

Henkin also observes that "[m]uch of the new law which comes with or from international organization aims directly not at order but at distributive justice and general welfare."²³ This observation is particularly applicable to an increasingly significant portion of international communication law. The Declaration for a New International Economic Order has given rise to progeny known as the New World Information Order (NWIO) and the New International Communication Order.²⁴ When a number of these instruments con-

21. H.L.A. HART, *THE CONCEPT OF LAW* 6 (1961), (emphasis omitted).

22. Henkin, *International Organization and the Rule of Law*, 23 INTL ORG. 656, 660-61 (1969). See also L. HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 192-98 (1972).

23. Henkin, *International Organization and the Rule of Law* 23 INTL ORG. 656, 662 (1969).

24. See Declaration on the Establishment of a New International Economic Order, G.A. RES. 3201, 29 U.N. GAOR, Supp. (No. 1) 3, U.N. Doc. A/9559 (S-VI) (1974). Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War, UNESCO 20th General Conference (1978). See also, Final Report of the International Commission for the Study of Communication Problems; Rutkowski, *A Structured Analysis of WARC79*, (a study on new legal and institutional developments done under contract to UNESCO) 26-42 (March, 1980).

sistently and collectively set forth international norms on a subject, when they have adopted with complete or near complete unanimity, and when they form the basis for significant further domestic and international legislation, it is difficult to argue that they do not constitute customary international law. The ability of these instruments to progressively assume the status of customary law is reinforced by the occurrence of a similar process in the field of human rights where the "Universal Declaration . . . has over the years become a part of customary international law."²⁵

A similar difficulty regarding the status as international law exists with respect to the many provisions emanating from the consultative committees of these organizations. Such committees regularly adopt provisions at plenary sessions which, although termed recommendations, may possess all the characteristics of law. This may occur when such a recommendation is incorporated by reference into a treaty provision. It may also occur when the provisions are so universally followed that a nation would be precluded from communicating with other nations if it did not comply. Indeed, the economic and administrative consequences of failing to abide by international communication and transportation standards and procedures may effect a *de facto* obligation irrespective of lack of formal approval or reservations which may have been entered.

The international law of communication will continue to grow in importance as the body of law expands due to the increased integration of world systems and the concomitant recognition of the importance of such systems by the world community. As this occurs, domestic law and policy will be increasingly constrained by international provisions. Perhaps the most striking recent example of this occurred when the Federal Communications Commission adopted a policy of allowing multiple private carriers to directly access the international carrier systems to provide service, only to face a stridently hostile letter from the Director of the ITU's Telegraph and Telephone Consultative Committee complaining that the action explicitly contravened CCITT "recommendations."²⁶

25. *Montreal Statement of the Assembly for Human Rights March 22-27, June 1968*, 9 J. INT'L COMM. JURISTS 94, 95 (1968).

26. See letter from L. Burtz, Director of the CCITT, to Arthur Freeman, Director, Office of International Communications Policy, Department of State, 20 June 1980, CCITT

III. THE UNITED STATES INTERNATIONAL COMMUNICATION POLICYMAKING PROCESS

The United States policymaking process in the field of communication is highly amorphous and pluralistic. It is a composite of many activities, assembled and refined by certain actors who have specific responsibilities within the government infrastructure. In order to examine the manner in which the process operates, it is necessary to focus on these actors, the ways in which they acquire and assemble information, and the way policy is fashioned in response to issues and controversies that arise during the preparations for, or conduct of a multilateral meeting.

A. *Jurisdiction and Structure of Federal Bodies*

The international communication policymaking process is made significantly more complex by the concurrent jurisdiction of three major federal agencies: the Federal Communications Commission, the National Telecommunications and Information Administration in the Department of Commerce, and the Department of State. Each agency has substantial responsibilities emanating from different sources, with no guidelines to delineate how that power is to be shared or how conflicts are to be resolved. The necessity of producing common United States positions has produced a measure of comity among these agencies, but the price is frequently rather significant: the adoption of positions which represent the lowest common denominator of acceptability among the agencies and all the actors in their infrastructures—a policymaking system virtually guaranteed to stifle innovative policies. Grad and Goldfarb suggest a natural genesis:

No agency of the United States Government has the express function of comprehensive oversight of international telecommunications. There are, however, a number of agencies that have some obligations in the area. An analysis of their authority and functions demonstrates that the distribution of functions among the several agencies was not the result of planned allocation. Rather, the assignment of functions in the past was in response

COM III-412/YB; Notice of Proposed Rulemaking in the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier International Communications Services, 77 F.C.C. 2d 831 (1980). See also, R. CRANE, *THE POLITICS OF INTERNATIONAL STANDARDS* (1979).

to problems resulting from particular technical or industrial developments in the field.

The dispersion of the regulatory power over international telecommunications among a number of agencies is also a reflection of the structure of the communications industry in the United States.²⁷

1. EXECUTIVE BRANCH

A key role in the formulation of United States foreign policy lies with the Executive Branch. "Although originally the principal authority in foreign policy was probably intended for Congress, the character of international affairs and the growing importance of daily, routine relations have given the President the dominant part, not subject to effective check or balance."²⁸ Within the Executive Branch, the Department of State (DOS) and the Department of Commerce's National Telecommunication and Information Administration (NTIA) are the prime organizational components for formulating international communication policy.

a. Executive Office of the President

Within the Executive Office, the President and a designated assistant within the Domestic Policy Staff play obvious key roles. It is the assistant who is given the task of being generally familiar with all significant developments in the field, who seeks to have policy decisions resolved at lower levels, and if necessary, assembles facts and options for the President in any controversy requiring an Executive Office resolution.²⁹ Depending on the way in which the President has organized the office, it may well be the National Security Council (NSC), rather than the President, which ultimately resolves the matter. A personal expression of the President, of course, counts heavily in any NSC deliberation.

Although the NSC was established "to advise the President

27. Grad and Goldfarb, *supra* note 2, at 385.

28. Henkin, "A More Effective System" for Foreign Relations: the Constitutional Framework, 61 VA. L. REV. 751, 764 (1975). See also, L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION (1972).

29. "The Domestic Policy Staff shall perform such functions related to the preparation of Presidential telecommunications policy options as the President may from time to time direct." Transferred Telecommunication Functions, Exec. Order No. 12046, 43 Fed. Reg. 13349, at para. 6-102 (1978) as amended by Exec. Order No. 12148, 44 Fed. Reg. 43239 (1979), reprinted in 47 U.S.C. § 303 (Supp. III 1979).

with respect to the integration of domestic, foreign, and military policies relating to the national security. . . , [and] more effectively coordinating the policies and functions of the departments and agencies of the Government relating to the national security . . .",³⁰ it in fact plays a key role in the determination of all foreign policy in the Executive Branch.³¹ No doubt this is based on an arguable nexus between any foreign policy matter and the "national security," as well as a recognition of the necessity for allowing the President to organize the functions of the immediate office as desired.

The NSC acts on foreign policy matters through, *inter alia*, the adoption of Presidential Review Memorandums (PRMs) prepared by the head of an agency, or through a variety of directives.³² The NSC obtains information from a wide variety of high-level agency sources, including reports prepared by the Central Intelligence Agency (CIA).

The CIA exists under the NSC "[f]or the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security . . . to advise the National Security Council in matters concerning such intelligence activities . . . [and] to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government. . . ."³³

The most important role of the CIA in the communication policymaking process lies in its preparation of reports and analyse of both open and closed (*i.e.*, classified) intelligence by the directorate which exists for that purpose, the Deputy Director for Intelligence (DDI). DDI possesses the most advanced and complete information systems in the government and employs highly capable professionals as well as contractors to produce issue-oriented reports. Such reports are usually succinct, well documented, and predictive, based on the Center's understanding of United States

30. 50 U.S.C. §§ 402a-402b (1976).

31. The NSC is explicitly responsible for developing policy options concerning the National Communications System (NCS) and for carrying on the work formerly done by the Subcommittee on Communications of the Executive Committee of the NSC. Transfer of Telecommunication Functions, *supra* note 29, at para. 6-101.

32. *International Communications Policy*, Presidential Review Memorandum/NSC-35 (1978) is the most recent comprehensive statement of policy on communication issues.

33. 50 U.S.C. § 403d (1976).

policy and the likely actions of foreign actors. Unfortunately, the amount of DDI resources devoted to communication issues in the international organizations has been minimal.

Although DDI reports and analyses do not establish foreign policy *per se*, they may have a significant effect in reinforcing or destabilizing a policy or position adopted by another agency. They are distributed at the highest levels of the government and, by their nature, command attention.

b. Department of State

The Secretary of State, since the establishment of the Republic, has been responsible for "negotiations with public ministers from foreign states . . . or . . . such other matters respecting foreign affairs as the President of the United States shall assign to the department. . . ." ³⁴ Pursuant to that authority, the President has directed that:

[W]ith respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this responsibility the Secretary of State shall coordinate with other agencies as appropriate, and, in particular, shall give full consideration to the Federal Communications Commission's regulatory and policy responsibility in this area. ³⁵

Within the Department of State (DOS), two bureaus play major roles in the determination of international communication policy: the Bureau of International Organization Affairs (IO), and the Bureau of Economic and Business Affairs (EB). The subject matter jurisdiction of each depends upon the international organization involved. Other components of DOS that play ancillary roles are the Under Secretary for Security Assistance, Science Technology (T), the Policy Planning Staff (S/P), and the Legal Adviser's office (L). Occasionally, special *ad hoc* components may be established to convey a special stature or circumvent chains of command. ³⁶

34. 22 U.S.C. § 2656 (1976).

35. Transfer of Telecommunications Functions, *supra* note 29 at para. 5-201.

36. The most recent example of this approach occurred during the preparations for the ITU's WARC79 where the chairman of the delegation and his staff were placed in a special component (D/WARC) reporting directly to the Deputy Secretary of State.

Within IO, the Office of the Deputy Secretary for Human Rights and Social Affairs, and specifically, the Agency Director for Transportation and Communications (IO/TRC), generally have jurisdiction over communication issues in the UN, UNESCO, UPU, and IBI. However, this jurisdiction is to some extent shared with the Agency Director for UNESCO Affairs (IO/UNESCO). Within EB, the division on Transportation and Telecommunications Affairs (EB/TT), and specifically, the Office of International Communications Policy (EB/TT/TD) generally have jurisdiction over communication issues in the ITU, INTELSAT, and INMAR-SAT. The EB/CTA/TD office is also officially responsible for the conduct of two important permanent advisory committee structures which are responsible for United States preparations and submissions to the ITU consultative organs, the CCITT and CCIR. These advisory committees are further discussed below. In copyright matters, EB's Division on International Finance and Development (EB/IFD/BP) has jurisdiction over communication copyright issues before WIPO and UNESCO. The components other than those in EB and IO will often participate in interbureau or interagency meetings, and will facilitate and coordinate special matters or appeals; but they will not ordinarily play a lead role in resolving issues.

Two Executive Branch agencies are formally independent of DOS, but historically and practically are linked to such an extent that they should be mentioned at this point. The Agency for International Development (AID) serves as a mechanism for assisting developing countries to enhance their communication capabilities through bilateral grants. Because many of the issues in public international organizations today revolve around the assistance offered to developing countries, AID programs and contractor activities in communication become an integral part of the United States policy-making process.³⁷

The United States International Communication Agency (ICA) serves as a vehicle for disseminating information concerning the United States through its operation of the Voice of America. In some areas it is responsible for assisting the Department of State on

37. See, e.g., Development Communication Report (a publication of the Clearinghouse on Development and Communication, Washington DC); Hudson, Development Communications and the World Administrative Radio Conference 1979: A Briefing Paper, prepared for USAID by the Academy for Educational Development (Sept., 1979).

communication policy development. In addition to participating on some interagency committees, ICA sponsors public conferences on communication issues, participates on United States delegations, and employs contractors to study particular issues. It is also responsible for the conduct of a permanent advisory committee, the United States Advisory Commission on Public Diplomacy (formerly the United States Advisory Commission on International Communications, Cultural and Educational Affairs).

Another allied component of the State Department which enjoys some significance in the policymaking process is the National Commission on Educational, Scientific, and Cultural Corporation [sic], now officially referred to as the United States National Commission for UNESCO. Congress established this Commission in 1946. It now consists of 130 representatives of voluntary organizations and individuals, in fulfillment of article VII of the UNESCO constitution.³⁸ The Commission meets annually to, *inter alia*, adopt positions on issues occasionally involving communication, and it hosts occasional conferences.³⁹ The Commission has a small staff of State Department employees located in Washington, D.C., and reports to IO.

c. Department of Commerce/ National Telecommunication and Information Administration

In 1978, the National Telecommunication and Information Administration (NTIA) was created by executive order, and placed under the leadership of the Assistant Secretary of Commerce for Communication and Information.⁴⁰ This action merged the functions formerly performed by the White House Office of Telecommunications Policy (OTP) and the Department of Commerce Office of Telecommunication (DOC/OT). The Order provided that:

[T]he Secretary of Commerce shall develop and set forth, in coordination with the Secretary of State and other interested agencies, plans, policies, and programs which relate to interna-

38. See Pub. L. No. 79-565, 60 Stat. 700 as amended and codified at 22 U.S.C. §§ 287m-287r (1976).

39. At the Commission's annual meeting at Athens, Georgia, in December 1979, it sponsored a three day conference. See *Toward an American Agenda for a New World Order of Communications*, Conference Report, U.S. National Commission for UNESCO (1980).

40. See *Transfer of Telecommunications Functions*, *supra* note 29, at § 305.

tional telecommunications issues, conferences, and negotiations. The Secretary of Commerce shall coordinate economic, technical, operational and related preparations for United States participation in international telecommunications conferences and negotiations. The Secretary shall provide advice and assistance to the Secretary of State on international telecommunications policies to strengthen the position and serve the best interests of the United States, in support of the Secretary of State's responsibility for the conduct of foreign affairs.⁴¹

International communication responsibilities are apportioned among the various divisions of NTIA depending on the nature of the issue of the international organization involved. ITU radiocommunication matters generally fall within the jurisdiction of the Office of Federal Systems and Spectrum Management (FSSM), while international carrier issues in ITU, INTELSAT, and INMARSAT are handled by the Office of International Affairs. The FSSM directorate also serves as secretary for the sizable interagency body which coordinates government-wide radiocommunication requirements, the Interdepartment Radio Advisory Committee (IRAC).⁴² IRAC serves as a medium for coordinating common federal agency positions and policies with respect to many activities of the ITU, and has established an elaborate structure of so-called *ad hoc* committees to assist in that function. Large users of government radiocommunication such as the Department of Defense play a significant role within IRAC. FSSM is also responsible for a public advisory committee, the Frequency Management Advisory Council (FMAC).

Individuals in the Office of Policy Analysis & Development, Office of Chief Counsel, and the Office of Telecommunications Applications participate in international communication policymaking activities. In addition, the special assistant to the Administrator has taken a lead role in informatics matters;⁴³ and the staff at the Institute for Telecommunication Sciences (ITS) at Boulder, Colorado, lends technological research support on appropriate issues.

41. *Id.* at para. 2-404.

42. *See id.* at para. 2-502. It should be noted, however, that IRAC is not an advisory committee for the purposes of the Advisory Committee Act of 1972 because it has no private sector participants.

43. *See* Bushkin and Yurow, *The Foundations of United States Information Policy*, Doc. NO. NTIA-SP-80-8 (June, 1980).

d. Other Executive Branch Agencies

Within the Executive Branch, the Department of Defense is by far the largest telecommunication user. Its interests in international communication, however, are essentially limited to those provisions concerning the use of radio, and represented through the IRAC mechanism.

The Department of Transportation's Federal Aviation Administration (FAA) has a significant interest in both civil and government use of radio for aviation communication and navigation. These interests are in part represented through the IRAC mechanism. Insofar as ICAO may consider these matters, the FAA, together with the State Department, is directly responsible for formulating policy before that international organization. The United States Coast Guard has a similar involvement in ship radio-communication issues which appear in the ITU and IMCO.

At the United States Postal Service, the Assistant Postmaster General for International Affairs enjoys a virtually exclusive role in formulating policy and representing the United States at meetings of the UPU.

2. CONGRESS

Congress' role in the area of United States foreign policy derives from its constitutional roles in giving advice and consent on treaties, establishing general national policies, and overseeing the management of government.⁴⁴

In international communication matters, Congress has traditionally played a minimal role, although its interest in recent years has increased.⁴⁵ The major components for consideration of these issues are the House Subcommittee on International Operations of the Committee on Foreign Affairs, the House Subcommittee on Communications of the Committee on Interstate and Foreign Commerce, the Senate Subcommittee on International Operations of the Committee on Foreign Relations, and the Senate Subcommittee on Communications of the Committee on Commerce, Science and Transportation. The most subtle but significant control which

44. See L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 67-88 (1972).

45. See, e.g., *UNESCO and Freedom of Information, Hearings before the Subcomm. on International Organizations*, 96th Cong., 1st Sess. (1979); as well as references *supra* note 2.

Congress can exert over the foreign policymaking process is that of appropriations.⁴⁶

Within the Legislative Branch, the Library of Congress and the Office of Technology Assessment (OTA) both have roles in the international communication policymaking process. Three rather disparate roles exist within the Library. The Congressional Research Service (CRS), Foreign Affairs and National Defense Division and the Science Policy Research Division have each been request of congressional representatives or their staff, and are legislative activities.⁴⁷ Such studies are initiated at the specific request of congressional representatives or their staff, and are intended to edify or point out problems associated with United States policymaking processes. Such reports are generally widely distributed throughout the government.

The Register of Copyrights enjoys the lead role in formulating policy and representing the United States in WIPO forums dealing with communication matters. Indeed, the personal stature of the incumbent Register has resulted in her being significantly involved in nearly all such forums during the last decade, as well as contributing to published literature on the subject.⁴⁸

Other offices in the Library of Congress, especially the Network Development Office, have participated in UNESCO and other international organization activities devoted to establishing global bibliographic standards such as UNISIST and facilitating the world science and technology information network.

The Office of Technology Assessment provides Congress with a mechanism for monitoring technological and institutional developments. Its current major activity in the international communication field involves a study on the implications of the ITU's 1979 World Administrative Radio Conference, and the institution of an

46. See, e.g., *Authorizing Appropriations for Fiscal Years 1980-81 for the Department of State, the International Communications Agency, and the Board for International Broadcasting, Hearings before the Subcomm. on International Operations, 96th Cong., 1st Sess. (1979).*

47. See, e.g., Woldman, *The World Administrative Radio Conference of 1979: U.S. Preparations and Prospects*, CONGRESSIONAL RESEARCH SERVICE, June 29, 1979; Woldman, *An Introduction to the Foreign Policy Implications of the 1979 World Administrative Radio Conference*, CONGRESSIONAL RESEARCH SERVICE, March 31, 1978.

48. See, e.g., Ringer, *The Use of Copyrighted Works in Information Storage and Retrieval Systems* (Oct. 10, 1967) (unpublished paper presented at Max Planck Institute and reproduced in *TECHNOLOGY AND COPYRIGHT* at 296).

Advisory Panel on the Impacts of the 1979 World Administrative Radio Conference.⁴⁹

3. FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission as an independent agency derives its authority wholly from its enabling legislation, which gives it jurisdiction over "all . . . foreign communication by wire or radio and all . . . foreign transmission of energy by radio, which originates and/or is received within the United States. . . ."⁵⁰ In addition, the Communications Satellite Act of 1962 requires FCC participation together with the State Department, the Department of Commerce, and the National Aeronautics and Space Administration (NASA) in effecting policies:

to establish, in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national objectives, which will serve the communication needs of the United States and other countries, and which will contribute to world peace and understanding.⁵¹

The FCC's jurisdiction is obviously very broad and based on specific Congressional intent.⁵²

Within the FCC, the Office of Science and Technology (OST) and the Common Carrier Bureau (CCB) play key roles. The International Staff in the Immediate Office of the Chief Scientist of OST has the responsibility for overall coordination and involvement in international communication policymaking activities, while the CCB's International Programs Staff has general responsibilities in the area of international carrier activities. Additionally, the Broadcast

49. Radiofrequency Use and Management: Impacts from the World Administrative Radio Conference of 1979, Office of Technology Assessment (1982).

50. Communications Act of 1934, ch. 652, tit. I, § 2a, 48 Stat. 1064 (1934), (current version at 47 U.S.C. § (1976)). It is interesting to note, however, that with respect to jurisdiction over "transmission of energy by radio, which . . . is received within the United States . . ." the Commission's authority would appear to be significantly limited by virtue of U.S. adherence to the International Telecommunication Convention. For example, merely because the signal from a station operated by a foreign State within its own territory is received in the U.S., the FCC does not have a right to interfere in any way with the operation of that station.

51. Communications Satellite Act of 1962, 47 U.S.C. § 701a (1976).

52. See Grad and Goldfarb, *supra* note 2, at 386-95 for a further exposition of FCC sources of international communication authority and legislative history.

Bureau is involved in international matters concerning broadcasting, and the Private Radio Bureau (PRB) is significantly involved in international aviation and marine communication matters.

Although the jurisdictional boundaries among the FCC's staff divisions are not always well defined and sometimes overlap, like other agencies in the government infrastructure, each component has a generally recognized primary responsibility. However, over the next decade a variety of rapidly emerging technological and operational developments can be expected to greatly exacerbate these difficulties. Historically, the government regulatory infrastructure arose as a response to and mirror of the user configurations. Now that users are being increasingly merged and served by common, integrated systems, the government is being faced with fundamental questions, both domestically and internationally, regarding the nature of its regulatory role.

As is discussed further below, it is the FCC which serves as the major vehicle for public involvement in the United States policymaking process in this field. It is also the Commission which must undertake rulemaking proceedings following the adoption of various provisions by international organizations where those provisions impact the private (*i.e.*, nongovernment) sector.

4. OTHER AGENCIES

Several other government agencies have international communication interests that are peripheral to their primary missions. These include the National Aeronautics and Space Administration (NASA), which not only promotes satellite radiocommunication and remote sensing, but also requires the use of various frequencies for control and telemetry purposes; the Board for International Broadcasting (BIB) which operates Radio Free Europe (RFE) and Radio Liberty; the International Communications Agency (ICA) (discussed under the Department of State, above); and the National Science Foundation (NSF), which supports numerous radio astronomy activities. All of these agencies participate formally or informally in the international communication policymaking processes.

At this point, mention should be made of the existence of numerous *ad-hoc* and permanent interagency bodies which also play a substantial role in developing United States international communication policy. The Interdepartment Radio Advisory Committee (IRAC) is one of the oldest (existing for more than sixty years)

and most prominent of these interagency bodies. Nearly every major upcoming ITU conference possesses an analogous interagency planning group. The Committee on Information coordinates UNESCO and United Nations communication-related positions, while the Informatics Committee coordinates OECD—and IBI—related positions. In addition, an Interagency Group on International Communication Policy, consisting of senior level representatives from the FCC, NTIA, DOS, NSC, OMB, and ICA, also meets occasionally to discuss significant policy matters.

B. Policymaking Mechanisms

The United States policymaking process in international communication matters is amorphous and pluralistic. Like most government activities, it is usually prompted by specific inducements rather than arising *sua sponte* out of abstract studies or deliberations. With respect to United Nations forums, the driving force is the necessity to participate in specific conferences and meetings and to develop policy with respect to those participatory activities. In many respects, this process is no different from that employed for United States policy in any of the public international organizations. To the extent that it does differ, the distinctions are due to trilateral jurisdiction in the international communication field.

Reviewed below are the various processes of the United States government by which information is gathered and policy fashioned in this field. These processes may operate independently of each other, or in concert with each other. The net result is a loose body of documents or pronouncements, enjoying varying levels of official sanction or cognizance, which may be said to constitute United States policy.

While the primary purpose for the creation of these policies is for United States participation in the legislative forums of the public international organizations, it should be noted that domestic applications exist as well. For example, in the matter of direct broadcasting satellites (DBS) for the United States, the domestic and international issues are inextricably entwined. The policies established for the public international legislative forums have a significant impact on domestic policy options, and *vice versa*. For those interested in influencing either domestic or international policymaking processes, it may be useful to play one set of constraints against the other. Thus, it may be argued, during the

pendency of a domestic proceeding, that a certain result should be favored in order to support a particular United States international policy. However, the converse may also occur, and thus this tactic can become circular.

1. PUBLIC PROCEEDINGS

Generally, any government agency intending to adopt a rule or policy affecting the public must follow certain procedures and give interested persons the opportunity to participate.⁵³ However, such requirements do not apply to the extent that there is involved a "foreign affairs function of the United States. . . ."⁵⁴

This exception to the Administrative Procedure Act generally has been applied broadly. Relatively few foreign policymaking proceedings have published notice in the Federal Register, received public comment, or have had the resulting policy determination publicly justified. The intent of Congress is expressed in this exception, and a survey of the Federal Register Index indicates that federal agencies generally utilize it. Nonetheless, the FCC has generally chosen to issue a Notice of Inquiry followed by Orders which seek to establish foreign policies regarding United States participation in ITU administrative conferences.⁵⁵ In light of the statutory exception, however, such a proceeding is advisory in nature. In addition, in the view of the Executive Branch, the Commission's policy determination itself is merely advisory.⁵⁶ The FCC, however, has apparently never acceded to this assertion of exclusive jurisdiction by the Executive Branch.

In practice the FCC closely coordinates its activities with NTIA to produce common government/nongovernment positions. Together, the two agencies possess a staff of several dozen persons devoted in whole or in part to these international issues. The State Department, on the other hand, possesses a very small staff to deal with international communication issues. The result is that on many issues, particularly technical ones, if a coordinated FCC/NTIA policy is adopted, the State Department will rarely deviate.⁵⁷

53. See Administrative Procedure Act, 5 U.S.C. § 553 (1976).

54. *Id.* at § 553 (a)(1).

55. See, e.g., *In re. World Administrative Conference*, 70 F.C.C. 2d 1193 (1978).

56. See *Transfer of Telecommunications Functions*, *supra* note 29, at 5-201.

57. Such deviations have occurred when an agency feels aggrieved by a decision and chooses to utilize various unstructured appeal processes. For example, the U.S. positions with respect to the ITU's 1979 World Administrative Radio Conference were altered when

2. ADVISORY COMMITTEES

One of the principal means by which the public can participate in government policymaking processes is through advisory committees. The term refers to "any committee, board, commission, council, conference, panel, task force, or other similar group . . ." established by the President or a federal agency "in the interest of obtaining advice or recommendations."⁵⁸ Such committees "are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government."⁵⁹

In an attempt to limit the unfettered use of advisory committees, Congress passed the Advisory Committee Act in 1972. This Act, *inter alia*, requires balanced membership, public notice of meetings, freely available records, Executive Branch management, an annual report to Congress, and termination of unnecessary committees.⁶⁰ Pursuant to the Act, the Office of Management and Budget (OMB) has adopted further guidelines.⁶¹ At the end of 1979 there were a total of 820 committees.⁶²

In 1979, approximately seventy-five of those 820 committees (nine percent) dealt primarily with the formulation of United States foreign policy. Forty-four concerned international trade and commerce (principally the multilateral trade negotiations), twenty-six concerned United States participation in international organizations (principally the International Telecommunication Union), and five concerned generalized policy matters.

3. INTERNAL MEMORANDA

As part of this amorphous process of foreign policymaking, various kinds of memoranda and reports are regularly produced and circulated in such a manner that *de facto* policies result. For

the Board for International Broadcasting took its cause to the NSC and the Deputy Secretary of State, and succeeded in altering the policy established by FCC/NTIA. Compare the *Report and Order*, *supra* note 55, with the *U.S. Proposals for the Work of the Conference*, WARC79 Docs. 43, as to H.F. broadcast service allocations.

58. Federal Advisory Committee Act, 5 U.S.C. App. I, § 3(2) (1976) *as amended by*, Pub. L. No. 94-409, § 56, 90 Stat. 1247.

59. *Id.* at § 2(a).

60. *See id.* at §§ 5-14.

61. *See* OMB Circular A-63, 38 Fed. Reg. 2306 (1973) (revised March 27, 1975), and associated Transmittal Memoranda.

62. *See* Federal Advisory Committees, Eighth Annual Report of the President Covering the Calendar Year 1979-March 1980, 16 WEEKLY COMP. OF PRES. DOC. 507.

example, a staff member may prepare a telegram on a particular issue, and, through the Department of State computer/telecommunications system, disseminate it to a large number of embassies, missions, and other government agencies. In the process, policymaking has occurred. The existence of varying kinds of approval requirements attendant to these efforts further reinforces the policymaking nature of the process.

Other similar activities in the government infrastructure include the preparation of Presidential Review Memoranda for the National Security Council, interagency and intra-agency memoranda of understanding, and National Foreign Assessment Center reports. In various subtle ways, the preparation of all this material offers the opportunity to create, modify, reinforce, or terminate United States foreign policy.

4. PUBLIC STATEMENTS

One of the more valuable public documents which portrays United States policy in the United Nations communication forums is the annual report by the President to Congress on United States participation in the United Nations.⁶³ This report, published annually since 1946, contains separate sections devoted to the various international organizations.

This report is important, not only because it is often assembled from delegation reports which are frequently unavailable to the public, but also because the President is portraying for Congress the positions taken and their underlying rationales. Other useful public statements delineating United States policy are the articles published by key staff members in the government infrastructure and statements made or included in the record of hearings before congressional subcommittees.⁶⁴

5. CONTRACTOR STUDIES

In addition to internal policymaking activities, the various agencies involved in these processes may employ outside contrac-

63. See, e.g., DEPT OF STATE PUB. NO. 8964, U.S. PARTICIPATION IN THE U.N. (1978) (covering 1977).

64. See, e.g., MAYNES, DEPT OF STATE BULL. NO. 2027, FY APPROPRIATIONS FOR INTERNATIONAL ORGANIZATIONS AND CONFERENCES 51 (1979); VANCE, DEPT OF STATE BULL. NO. 2026, AMERICA'S COMMITMENT TO THIRD WORLD DEVELOPMENT 33 (1979); UNITED NATIONS, DEPT OF STATE BULL. NO. 2026, SUMMARIES OF U.S. STATEMENTS 64 (1979); DEPT OF STATE BULL. NO. 2031, WORLD RADIO CONFERENCE 65 (1979).

tors or consultants to study various issues and produce reports. This can be an important mechanism for the infusion of an independent perspective and new approaches into the often stale internal processes.⁶⁵

However, contractor studies are not always as useful as they might appear. If objectivity and independence are not emphasized in the selection process, the contractor may serve as little more than a means for reiterating existing policy prevalent in the agency or promoted by the requesting office. In the international communication field, the matter is further complicated by the lack of available information and familiarity with the subject matter endemic to the general public. The contractor must often approach those within the government policymaking infrastructure to obtain much of the information necessary to complete the task. By selectively furnishing information, or by presenting a preferred perspective, those in the infrastructure can shape the contractor's product. In addition, the contractor may consist of ex-employees from within the same infrastructure who bear the same frame of mind. All of these factors can result in a work product that fails to provide the diverse and independent expertise which served as the basis for originally seeking the contractor.

6. INTERNATIONAL CONFERENCE DELEGATION ACTIVITIES

Because a growing number of international forums are holding meetings devoted to communication issues with increasing frequency, the United States policymaking infrastructure is being driven by the necessity to prepare for these meetings. (See Appendix A). Notwithstanding the use of other policymaking processes, it is the preparatory and participatory activities attendant to particular international meetings that are the most important. Such activities afford an opportunity to modify or reinforce the prevailing policies as they are actually advocated before an international legislative body.

a. Preconference Adoption of Positions

At some point in advance of an international conference or meeting, either the appointed head of the United States delega-

65. See, e.g., WARC79 Study, Office of Technology Assessment, Request for Proposal No. 80-7 (1980); G. A. Coddling, Final Report: The IFRB and Development Assistance, FCC Contract No. FCC-0287 (Aug. 1979).

tion or a designated staff aid will call together the various actors in the domestic communication infrastructure who are deemed to have a vested interest in the conference. Initial meetings will usually include only government employees because of a host of antitrust, conflict of interest, security, and Advisory Committee Act implications raised by the inclusion of private sector individuals. This initial effort in itself may be a highly political process, for those who are selected will not only have access to the latest policymaking information, but will also have an opportunity to shape the resultant positions. Many of those called together will also eventually be selected to attend the conference.

At an initial meeting or meetings, the overall strategy and significant issues are usually defined, and individuals or subgroups are given the responsibility to draft "position papers." At successive meetings of the delegation and support staff, the position papers are reviewed and approved by consensus. This method of approval promotes conservative positions and inhibits substantial change. Unless the head of the delegation is thoroughly familiar with the issues and is able to independently assert policies, the characteristics of the consensus process will prevail. In the international communication field, the heads of United States delegations have rarely enjoyed such capabilities. As a result, United States policy is generally little more than a reaffirmation of the *status quo*.

The various participants in the process, who generally represent a constituency within the government (or, depending on the nature of the conference, represent a constituency outside the government as well), are expected to coordinate all relevant matters with others in the sector which they represent. This task is relatively easy for representatives of government constituencies. It is obviously difficult, if not impossible, for those representing broad-based external constituencies. Hence, there is a special concern regarding the role and power of such nongovernment delegation members when they represent vested business interests. This concern led the Department of Justice and the Department of State to undertake a study and a public proceeding in 1978-79 which led to the publication of rules limiting such participation.⁶⁶

66. See Participation of Private Sector Representatives on U.S. Delegations, Proposed Guidelines, 43 Fed. Reg. 37783 (1978); *id.*, Final Guidelines, 44 Fed. Reg. 17846 (1979).

However, Congress subsequently has indicated a desire to override these agency proceedings and waive federal conflict of interest prohibitions for private sector members of ITU delegations.⁶⁷

The final form of each position paper generally indicates: the issue, a summary of the United States position, the initial public United States position, a variety of "fallback" positions, a "bottom line" position and general background information. Immediately prior to any conference, the associated position papers will generally receive formal approval by all those in the government infrastructure having a significant interest in the matter. In most communication issues this includes the FCC, NTIA, DOS, and ICA. A line of appeal also exists which involves the Secretary of State or the Deputy, and thereafter the NSC. Because this appellate process places a high value on prior consensus among the many interested agencies, the burden of persuasion lies heavily on the deviating agency.

Because the negotiating strategy segments of these position papers would be valueless if the contents were known to foreign participants at the conference, the papers are invariably controlled by various designations such as "Delegation Use Only," "Limited Official Use," "Official Use Only," or "Confidential." Only the last category is a legitimate classification designation⁶⁸, and only rarely will position papers in the majority of United Nations conference situations receive a designation above confidential. Because position papers are usually quickly assembled by personnel who are not familiar with the Executive Order setting forth classification requirements and procedures⁶⁹, abuses of overclassification are fairly endemic.⁷⁰

67. The provisions of the Ethics in Government Act, 18 U.S.C. §§ 205-208 (1976) were allowed to be waived by the Secretary of State for private sector individuals participating in the ITU WARC79 delegation. See, Department of State Authorization Act, Fiscal Years 1980 and 1981, Pub. L. No. 96-60, § 406, 93 Stat. 395, 404 (1979). See also, 125 CONG. REC. 55650 (daily ed. May 10, 1979). This waiver is to be made permanent for all ITU meetings under pending legislation. See H. R. REP. NO. 7305, 96th Cong., 2d Sess. (1980); S. REP. NO. 2727, 96th Cong., 2d Sess. (1980).

68. See National Security Information, Exec. Order No. 12065, 32 C.F.R. § 2001.7 (1979), reprinted in 50 U.S.C. § 401, para. 1-303 (Supp. III 1979).

69. See *id.*

70. For example, several thousand pages of position papers were prepared for the ITU WARC79. All these papers were classified confidential in total with a general declassification schedule (GDS) date in 1984. The Executive Order, on the other hand, clearly

The classification issue is raised here because conference position papers are extremely valuable sources of documented United States foreign policy in this field. Indeed, it might be argued that they are the ultimate policy source with respect to United States participation in United Nations forums because they state in fairly definitive terms what the United States will and will not agree to, and further reveal the various priorities and trade-offs.

Information used in the preparation of position papers is overwhelmingly derived from open sources such as the proposals submitted in advance by other nations, from bilateral contacts with government officials, and from published articles. In the course of preparing for a conference, telegrams briefly stating the issues will often be sent to foreign embassy personnel. The telegrams also request that open contact be made with representatives of the foreign government to obtain their views on the specified subjects. This information is then used to refine the positions on various issues, or judge the degree of acceptance a particular tactic is likely to enjoy.

b. Positions Introduced at Conferences

The positions introduced at conferences by the United States are only a subset of those contained in the position papers. Depending on the conference strategy, the initially introduced positions may be either: 1) the actual policy, *i.e.*, the desired outcome on a given issue; or 2) an extreme variant of the policy, *i.e.*, a construct devised for the purpose of negotiating a desired middle ground. It is not possible to know which tactic is being employed without accessing the position papers. Increasingly the latter approach seems to be preferred in forums hostile to United States positions, or where it is assumed that a *quid pro quo* rule is understood by the conference participants.

For many major conferences, the initial positions of each country are forwarded to the secretariat of the particular international organization and distributed prior to the conference. The alternative positions are then introduced during the course of the conference in response to the changing environment at meetings.

indicates that materials are to be classified on a paragraph by paragraph basis. It is plainly improper to classify those portions of a position paper containing openly available background information and the "public" U.S. position. Yet the simple expedient of classifying the papers in total is generally used to avoid the extra work entailed in deciding and designating those few portions which are actually harmful to U.S. interests if known by unauthorized persons.

Unfortunately, not all meetings are on the record, and a valuable perspective on the legislative process may be lost. The summary records of meetings represent an important record of United States policy on a par with the position papers. Indeed, the summary records may reveal where there has been either a refinement of a more generalized policy indicated in the position papers, or where there has been a significant change in position based on a reevaluation of policy during the course of the conference and approved by the responsible authority in Washington.

Unfortunately, in an attempt to reduce costs, there have been recent efforts in the United Nations to eliminate summary records of meetings. This would have the undesirable effect not only of destroying all remnants of legislative history associated with an enactment, but would also prevent the public from assessing what occurred in meetings which are often closed to all but the participants.

c. Post Conference Evaluations

After every international conference or significant meeting, a "Report of the Head of the U.S. Delegation" is prepared as a record of the organization, structure, issues, United States role, and actions taken by the conference. These reports are valuable records of United States policy when set against the realities of international politics. Often there is an attempt at self-aggrandizement and self-protection in these reports. It is obviously difficult for anyone in the policymaking infrastructure to undertake and publish an objective analysis of his own decisions and conduct. But the reports do present a useful perspective on the significant issues raised at the conference and the manner in which the United States attempted to shape its outcome.

Depending on the practice of individual staff components within the State Department, as well as the nature of the conference, the report may be unclassified, classified, or in some instances, exist in both versions. These reports are also important because they often form the basis of news releases, testimony before congressional committees, and the President's annual report to Congress.

IV. ISSUES RAISED

The existing United States processes for making its international communication policies raise a number of interesting, and

occasionally disturbing, issues. Several of them have been mentioned above in the course of describing the infrastructure and processes of the United States policymaking system. In this part, the basic "process issues" are set forth and examined in detail.

Before proceeding, the underlying analytical premise should be restated. It is assumed that the purpose of the policymaking system is to ascertain the nature of United States interests with respect to the legislative activities of the public international forums on communication, and to effectively further those interests. This task is complex and dynamic, calling for an understanding of domestic and global needs and aspirations in the context of an ongoing multi-institutional and multidisciplinary dialogue. It calls not only for a knowledge of history and contemporary facts, but also the skills of lawyers, engineers, economists, sociologists, and politicians. Because such an understanding may not be capable of attainment, the system should attempt to involve as broad a range of expertise as possible and should subject the output to as great a scrutiny as effective negotiation will permit. This goal is certainly not unique to the international communication policy field. However, in few other fields is the technological environment so rapidly changing, or the ultimate policy goals so elusive and vague.

The issues are divided into two major categories: procedural and substantive. Although in practice these matters are not capable of such neat division, the distinctions are useful for analytical purposes.

A. Procedural Issues

Procedural issues are those which arise due to the requirements of law or public policy. Such requirements are instituted as generalized schemes to further some broad societal norm. For example, the conflict-of-interest laws applying to governmental decisionmakers exist because experience has demonstrated that decisions directly involving the public good are more likely to be just when the decisionmaker has no special stake in the outcome.

1. ACCESS TO INFORMATION

Issues of access to meetings and materials arise at both the domestic and international levels. Resource limitations and bureaucratic hoarding tendencies exist at both levels. Beyond

these similarities, however, the origin of access issues is quite different.

Among the public international organizations, the policy regarding access to and availability of copies of materials varies significantly. Most United Nations materials are widely disseminated among major libraries and United Nations information centers. Copies are often provided at nominal reproduction costs. The materials of the specialized organizations, however, are generally available only at the headquarters, and the practice with respect to copies is limiting. Published materials will be provided to a member of the public, although often, particularly in the case of the ITU, at extremely high cost.⁷¹ Copies of current materials for legislative forums are generally not available at all. There are but two alternatives: visit the library or archives of the organization, or visit the offices of the United States government agency responsible for formulating policy for the forum. The latter source can also be approached through a Freedom of Information Act request, or a friendly contact. Nonetheless, the non-availability of current information seriously hampers anyone who is attempting to partake in the policymaking process and who is not privy to the regular distribution of materials.

The ability of the public to obtain information by attending the meetings of international legislative forums is generally even more restricted. While the policy seems to vary among the organizations, the prevailing rule today appears to favor closed meetings. Only recognized delegates are allowed to attend most meetings, and the public and the press are excluded.⁷² The usual justification for the practice is that it enhances the candor of the participants, and thereby facilitates the multilateral negotiation

71. For example, the INTERNATIONAL TELECOMMUNICATION CONVENTION, a small paperback book of 269 pages, costs Administrations (*i.e.*, government agencies) approximately seventeen dollars each. A member of the public will pay in excess of twenty dollars.

72. For example, at the recent ITU 1979 World Administrative Radio Conference at which nearly 2000 delegates met for ten weeks, all meetings except the opening and closing plenary sessions were closed to the public. The Secretary General, at the opening session made the remark that "in accordance with past practice" all non-delegates were to be excluded. The remark was omitted, however, from the summary record of the session. The historical facts would not support such an assertion. Throughout most of the history of the organization the meetings had been open to the public. Indeed, the U.S. apparently at one time required the heads of delegations in their official reports to include a statement on public accessibility. *See, e.g.*, Report of the Delegation of the United States Concerning the International High Frequency Broadcasting Conference, Mexico City 22 (1949).

process. In light of the formal nature of official meetings, however, it is doubtful that this benefit is realized. It would seem that real candor would only occur in the context of small, informal discussions. When balanced against the longstanding values held by open societies concerning open legislative processes, the practice of closed meetings is highly questionable.

At the domestic level, the source of impediments to access is somewhat different. One of the basic problems is recordation. Policy is all too frequently locked in the minds of those in various positions of responsibility at middle levels of the United States government. For example, a responsible official, when asked what the United States policy is on a given subject, may give a definitive reply, but when asked to furnish authoritative documentation of such a policy, the official may be unable to do so.

To some extent, this situation is inevitable. There are useful parallels between law and foreign policy. Each sets forth certain general norms which are then applied to concrete controversies as they arise. Thus, the government official is often placed in the role of a judge, applying the guidelines to specific issues. In some cases, the guidelines are purposely kept few in number and general in substance to allow considerable flexibility in making decisions, or to reflect a genuine lack of internal consensus on the subject. This is likely to be particularly true in the nontechnical matters which are increasingly appearing in international communication forums.

Much of the recorded United States foreign policy in this field is classified and barred from the public. In general, there are several compelling reasons for keeping some of these materials out of the public light, at least prior to conferences. The foremost reason is that no government could function in international forums if all of its positions and areas of potential compromise were known in advance. In a decidedly pluralistic world, international meetings today are closer to multilateral negotiation sessions for trading off power blocs, than to collegial bodies for the reasoned exploration of contemporary issues. The *quid pro quo* standard is the prevailing operating rule. In this climate of gamesmanship, if a player's moves were known in advance, the person's effectiveness would be seriously diminished. On the other hand, this argument is often abused. The past record of most countries, coupled with public statements or closed intelligence, gives

a fairly reliable indication of the positions likely to be taken by any government. Furthermore, group dynamics at international forums are more often a determinant of outcome than are individual positions of countries.

Another compelling reason for barring public access to some information is to protect intelligence sources and methods. These range from the simple passing-on of "corridor talk" at international organizations or foreign government agencies, to clandestine information collected by the intelligence agencies. Additionally, in certain telecommunications matters, such as the ITU's allocation of radio frequencies, the information may have substantial defense or intelligence implications.

Notwithstanding these concerns, it is not possible to justify the "confidential" classification of a great many communication policy documents. The executive order setting forth classification requirements is specific in its intent to discourage the classification of documents in total. "Even though information is determined to concern . . . [foreign relations or foreign activities of the United States], it may not be classified unless an original classification authority also determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security."⁷³ Furthermore, "[i]n order to facilitate excerpting and other uses, each classified document shall, by marking or other means, indicate clearly which portions are classified with the applicable classification designation, and which portions are not classified."⁷⁴ This is generally done by placing a parenthetical designation adjacent to each paragraph or title, *e.g.*, (u), (c), (s) for unclassified, confidential, or secret, respectively.

As to the duration of classification, this period should have some reasonable relationship to the period during which the material must remain protected. In all too many instances, the maximum automatic declassification schedule (ADS) date of six years after preparation⁷⁵ is used as a matter of routine practice.

73. National Security Information, *supra* note 68, at para. 1-302.

74. *Id.* at para. 1-504. This requirement appears to be closely followed by the CIA, but widely abused by the State Department because of fewer challenges which State receives under the Freedom of Information Act.

75. *See id.* at para. 1-401.

Although an OMB Information Security Oversight Office exists to stem classification abuses⁷⁶, it appears to have been ineffective in diminishing the bureaucratic expediency of overclassification.

It is likely that the only way this tendency is going to be effectively altered is by increased use of the Freedom of Information Act and the pursuit of various review procedures.⁷⁷ If unnecessarily classifying materials becomes more of a liability than an asset, the practice will be abated.

Effective access to international communication policy materials is also at issue in the conduct of domestic advisory committees which appear to skirt the requirements of the Advisory Committee Act. Because this matter is more a problem of public participation than of access to information, it is discussed below.

2. PRIVATE SECTOR PARTICIPATION

Since the inception of international institutional arrangements for communication in the middle of the last century, the United States private sector has had a role in the attendant United States policymaking process. The United States practice of allowing private entrepreneurs to operate telecommunication systems results in a policymaking environment which necessitates significant private sector involvement. The prime difficulty has been to decide precisely what the respective roles of system operators and the government should be. This is a significant substantive issue which is discussed in greater detail below. Certain facets of the private sector's role are, however, affected by a variety of procedural provisions designed to promote or constrain that role in the interest of diversity and fairness.

Traditionally, "private sector" has been treated as a term embracing only communication equipment manufacturers and service industries that have a direct stake in the outcome of specific international legislative provisions. Indeed, many of the advisory committees have been referred to as "industry" advisory committees. However, there are several public interest groups, an increasingly large and diverse body of academics, several professional organizations, and a sprinkling of private consultants that must be

76. See National Security Information, *supra* note 68, 32 C.F.R. § 2001, 50 U.S.C. § 5-2.

77. See 5 U.S.C. § 552 (1976). See also, 22 C.F.R. §§ 5.1, 6.1 (Dept. of State FOIA procedures); 32 C.F.R. § 1900 (CIA FOIA procedures); and 32 C.F.R. § 2101 (NSC FOIA procedures).

taken into account. It is this non-industry collection of groups possessing a multitude of perspectives, analytical capabilities, experience and enthusiasm which has often been precluded from participating in a substantive capacity in the policymaking processes.⁷⁸

There are many important international, domestic, legal, social, and economic issues arising in this field. Within the present processes, however, the only effective participants are either a few middle level government employees whose jobs require involvement in the field, or a few score industry employees or their counsel who possess the time and money to study the issues, to travel to meetings, to prepare documents, and to maintain frequent contact and acquaintances with the government officials who shape the policies. Such economic constraints represent a significant barrier to effective participation in the process.

The three primary means for bringing the private sector into the policymaking process have been: through the use of notice and comment proceedings, through advisory committee activities, and by placing individuals on delegations to international conferences. Although the last of these means has been recently enhanced by the so-called Biden Amendment,⁷⁹ none appear to have served their intended purpose very well.

In recent years, the FCC has increased its use of notices of inquiry to solicit public opinion on these issues. In the international communication policy field, it is doubtful whether this has been anything more than a procedural gesture. Without access to background materials, which are very difficult to obtain, and a substantial understanding of the issues and trade-offs, useful comment rarely can be furnished.

In addition, because the comments filed by various parties are only available in Washington, reply comments (*i.e.*, rebuttal) can only be made by those who have visited the agency public refer-

78. See, *e.g.*, Nelson, *Report on WARC 1979* (Feb., 1980 memorandum by the legislative counsel of Consumers Union); Bowie, *Third World Countries at WARC*, paper presented at the Annenberg Conference on World Communications, May 1980; Honig, *Lessons for the 1999 WARC*, 30 J. COMM. 48 (1980). These individuals were named to the ITU 1979 WARC delegation pursuant to the Biden Amendment to represent views which might not have otherwise been brought into the policymaking process.

79. Foreign Relations Authorization Act, Fiscal Year 1973, Pub. L. No. 95-105 § 113, 91 Stat. 848 (amending 22 U.S.C. § 2691 (1976)) (adding 22 U.S.C. § 2692 (Supp. III 1979)); Financial Assistance to Participants in State Department Proceedings, 45 Fed. Reg. 37785 (1978).

ence room or otherwise obtained the information provided in the comments of others. The few who do have access to the materials and possess the necessary time and financial resources, invariably make their positions known through other means. Indeed, they are often made part of delegations which ultimately represent the United States at the international legislative forums.

Perhaps a potentially more effective means for public participation is through the use of advisory committees. Interested parties are then able to obtain background materials and interact with government decisionmakers. Both of these capabilities are important, particularly the access to materials. As noted above, at the preconference stage, most international communication policy materials are given a confidential classification, or otherwise controlled. Membership on an advisory committee becomes the basis for receiving a current security clearance and a need to know⁸⁰ for private sector committee members. Thus, the advisory committee mechanism becomes the only means of bringing private sector diversity into the policymaking process during the critical period when conference policy is being established. While the same kind of clearance and access is provided those private sector individuals who are placed on the delegation, policy has often been firmly established by the time the delegation is named.

Advisory committees, however, may present certain additional difficulties which the notice and comment process does not have. The undesirable characteristics of advisory committees are comprehensively addressed by the Advisory Committee Act of 1972, and include lack of balanced representation, the making of policy rather than the mere furnishing of advice, the existence of meetings between government officials and the private sector hidden from the public, and public access to meetings and documents of such committees. The Act is very clear as to what constitutes an advisory committee. The term "means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . which is established or utilized by one or more agencies, in the interest of obtaining advice or recommendations . . ." Emphasis added⁸¹.

In litigation undertaken to enforce the provisions of the Act,

80. See, e.g., 22 C.F.R. § 8.7.

81. Federal Advisory Committee Act, *supra* note 58, at § 3(2).

the courts have generally adopted a pragmatic approach in construing the limits of the definition. The outer limits are probably those enunciated by Judge Gesell in the *Nader* case.⁸² Thus, "the Act was not intended to apply to all amorphous, *ad hoc* group meetings." Citations omitted.⁸³ In making a determination as to whether a group fell within the definition or not, the following characteristics were found persuasive: fixed membership, usually selected by a federal official; establishment by a federal official; a defined purpose of providing advice regarding a particular subject or subjects; an organizational structure; and regular or periodic meetings.⁸⁴ The Department of State appears to have emphasized both the *Nader* criteria and the need for balanced membership in promulgating its administrative regulations.⁸⁵

Notwithstanding what appear to be fairly definitive requirements noted above, the spirit if not the letter of Act seems to have been less than fully carried out. For example, the United States Organization for the International Radio Consultative Committee (CCIR) is an organization of advisory committees which is chartered under the Act.⁸⁶ Its charter specifies that this organization will consist of a National (steering) Committee and several Study Group committees with a structure which generally "will parallel that of the international CCIR. . . ."⁸⁷ The international CCIR has, over the years, created numerous subgroups and so-called interim working parties (IWPs) for performing specialized tasks. Generally, an analogous domestic group has been constituted within the United States organization structure. However, despite the fact that most of these groups have existed and held meetings over a period of many years under the control of a federal official, none of these groups have been treated as advisory committees under the Act. Similar examples exist with respect to

82. See *Nader v. Baroody*, 396 F. Supp. 1231 (D.D.C. 1975).

83. *Id.* at 1233.

84. See *id.* at note 4 (citing 38 Fed. Reg. 2307 (1973)).

85. An advisory committee is "[a] formal subgroup or subcommittee independently possess[ing] significant requisites of an advisory committee, i.e., fixed membership, periodic meetings, etc." 22 C.F.R. § 8.4 (b). Members are selected for their expertise in the committee's functions and should be chosen from different vocations having knowledge in the subject. *Id.* at § 8.6 (a).

86. See Federal Advisory Committee, Eighth Annual Report of the President Covering the Calendar Year 1979-March 1980 *supra* note 62, at 70.

87. See Charter of the United States Organization for the International Radio Consultative Committee (CCIR) 3 (1979).

other international organizations and conferences. Frequently it has been convenient to call together a group of private sector individuals to meet on several occasions prior to an international conference to allow them to suggest appropriate United States policy at the conference. Such gatherings are neither *ad hoc* nor amorphous, and possess all the *Nader* criteria for advisory committees. Perhaps most importantly, they do have a significant effect in shaping United States international communication policy.

Such activities appear to fall squarely within the ambit of the Advisory Committee Act. However, it is easy to envision how federal officials could regard the procedural requirements of the Act to be unproductive and frivolous as applied to such groups. In most strictly engineering matters, there are generally single "correct" solutions, and factors like diversity of views and balanced representation are not significant. However, these groups are increasingly exploring matters which are not technological in nature and have no idealized solution.⁸⁸

Perhaps most importantly, a sentiment exists that merely complying with the procedural requirements of the Act will probably have no effect whatsoever on the resulting positions and policies. There is a realization that the fundamental problem is one of economics — that without substantial motivation (usually economic rather than ideological) coupled with the necessary resources in time and money, a member of an advisory committee cannot be sufficiently informed to articulate alternative views. The practical result of this process is that those with the resources are able to skew United States policy to serve a few narrow self-serving aims. When this is added to governmental tendencies to maintain the *status quo* in international forums that are frequently struggling to devise meaningful solutions to significant technological and political problems, a policy results which is unresponsive to the needs and concerns of most of the world community. It robs the United States of the stature necessary to effect its valid concerns.

The third mechanism for bringing the private sector into the policymaking process is through appointments to international conference delegations. As noted above, there has been significantly greater concern in recent years regarding the appropriate-

88. For example, IWP 4/1, which has existed for twelve years, is now studying the question of "equitable access to the geostationary orbit." See Report to Study Group 4 by CCIR Interim Working Party 4/1 on its Ninth Meeting, in Paris, May 5-9, 1980.

ness of certain private sector interests negotiating in international legislative forums on behalf of the United States in matters in which those interests have a stake.⁸⁹ This is especially true of the CCITT, where the United States government maintains little awareness of communication policy matters which lie largely in the hands of private sector interests and which have the potential for impeding domestic policy.⁹⁰ However, recent Congressional actions to waive federal conflict-of-interest prohibitions for private sector delegates runs contrary to these concerns. Such actions are anomalous not only because they are uniquely applied to international telecommunication forums, but also because they are without apparent justification.

An additional concern is evidenced through the so-called Biden Amendment.⁹¹ The intent of this provision "is to lower the financial barrier to effective public participation in certain aspects of the State Department policy-making process . . . by authorizing the Department of State to finance the participation of public interest groups in Department proceedings, advisory committees, or delegations when: (a) [t]he group represents an interest which can reasonably be expected to contribute substantially to a fair determination of the issue before the Department; (b) [t]hat interest would not otherwise be adequately represented; and (c) [t]he group seeking to represent that interest is not able to participate effectively without financial assistance."⁹² Because the Biden Amendment is discretionary and the money is limited, its use in international legislation has been very limited.⁹³

B. Substantive

The procedural issues discussed above address certain legal requirements which are intended to further the ability of the policymaking process to produce an acceptable result. Here, several issues are raised which are more fundamental in nature, and go to the efficacy of the process itself.

89. See note 63, *supra*.

90. See note 26, *supra*.

91. See note 76, *supra*.

92. S. REP. NO. 194, 95th Cong., 1st Sess. 14, reprinted in [1977] U.S. CODE CONG. & AD. NEWS 1636.

93. The only known use was for four individuals to be part of the ITU 1979 World Administrative Radio Conference. Only one was present for the full ten week duration of the conference, and none had favorable reflections on the role they played. See note 75, *supra*.

1. ABILITY TO ASSESS UNITED STATES INTERESTS

At the beginning of this section, the assumption was set forth that the threshold purpose of the policymaking process was to ascertain United States interests with respect to matters before the public international legislative forums on communication. It seems appropriate at this time to consider the extent to which this purpose is achievable. The matter is of considerable importance, for the ascertainment question is necessarily anterior to subsequent choices among many alternative actions in the public international forums.

The federal government has abandoned any dominant role in devising a national communication system.⁹⁴ The national system is a complex network of myriad interconnected subsystems which are independently devised and operated by private enterprise. Because of this scheme, United States communication interests are largely determined in the market place, not by the government. While the federal government certainly plays a significant role in these matters, if only because of its licensing and resource allocation activities, this role traditionally has been more that of a partner or facilitator than that of a centralized planning authority.

The United States domestic communication regulatory environment has often produced awkward situations before international legislative forums on communication. In these forums, the preponderance of national administrations dominate their domestic communication environment, and are able to speak with authority concerning their interests and advocate measures designed to promote their aims. The United States, on the other hand, can only indirectly assess its interests through the variously described policymaking processes. Both internal to the government and external to the private sector, those processes invariably operate by consensus. An assessment of United States interests rarely occurs. Instead, it is assumed that the processes themselves will produce results which are axiomatically in the United States interest. Thus, if the preponderance of participants in the processes converges on a particular course of action or an array of acceptable alternatives, those results become *a fortiori* in the United States interest. Conversely, a single significant participant can exercise veto power.

It would appear that the policymaking process itself is more

94. Except, of course, for its own internal, defense, and foreign broadcasting systems.

determinative of United States policy than are the issues or the participants. This is not a denigration of the existing process, but rather the inevitable result of a national scheme whereby United States interests in communication matters are not the sole prerogative of the government. However, a global integrated services digital network is rapidly emerging. In the light of such a profound development, it is unclear whether the United States will be able to continue to *ad hoc* its way through numerous resultant international proceedings without the benefit of a more comprehensive and thorough assessment of the United States interest.

2. CENTRALIZED VERSUS DISTRIBUTED POLICYMAKING

Somewhat allied with the ascertainment issue discussed above is the matter of optimal decisionmaking infrastructures within the government. The existing infrastructure is rather complex and amorphous, with power shared among various middle level officials within the government. It is a distributed policy making configuration, in contrast to a centralized one. From time to time, the efficacy of the existing scheme is challenged, and designs for a single policymaking authority appear.

The struggle, it would seem, devolves to a balance between innovation and efficiency. Distributed decisionmaking brings more individuals into the process. Policy is represented by the aggregate of numerous independent decisions, and inherently allows for substantial innovation. In the aggregate, policy conflicts among different forums may be obvious. This may arise from a lack of coordination, incompetence, or a genuine disagreement on appropriate policy. However, the attendant confusion, redundancies, and conflict clearly may result in considerable inefficiency.

Centralized decisionmaking, on the other hand, where a relatively small group of individuals decides policy, enjoys considerable efficiency. However, the aura of orthodoxy, which is the inevitable byproduct of such a scheme, tends to stifle ingenuity. The United States was born as a reaction to centralized power, and its tradition for delicate distributions of power runs deep. Even in the foreign policy field, where the power has been substantially invested in the Executive Branch, it is subject to various checks and balances. This seems particularly appropriate in matters of international communication policy, where neither the nature of United States interests nor the appropriate choice of actions are clear.

Fortunately, the enhanced use of information systems themselves may allow the United States to benefit. By providing for significantly improved organization of policymaking material, more centralized analysis, and speedier communication among the participants, the liabilities of distributed decisionmaking can be overcome.

V. *RECOMMENDATIONS*

If it can be assumed that the purpose of the policymaking system is to ascertain the nature of United States interests with respect to the public international forums on communication and to effectively further those interests, certain changes flow from the issues discussed above. These changes apply both to wholly internal matters relating to the government infrastructure, as well as to external concerns relating to effective private sector involvement.

The question of an appropriate government policymaking infrastructure is clearly a most difficult and perplexing one. A course must be steered between the Scylla of an inconsistent and noncomprehensive international communication policy, and the Charybdis of a single, all powerful policymaking component operative within the government. The choices call for subtle balancing among traditionally competing interests, which ultimately devolve to choices between efficiency and innovation. The existing scheme may not produce nicely organized policy, but it does allow considerable freedom for individual participants to exercise their initiative to shape a collective result through diverse actions.

Recent House drafts for an "International Communications Reorganization Act of 1980," or others which tend to merge existing policymaking authority into a single high level body reveal a certain naivete concerning the efficacy of such mechanisms. The issues in the international communication field are extraordinarily complex and rapidly changing; the underlying values relied upon in making judgments are diverse, and real effects of policy alternatives are unclear. The threshold question, which goes to what the precise United States interests are in many of the legislative proceedings before the public international organizations or in bilateral negotiations, often remains unanswered. Logically subsequent questions as to a choice among available international legislative alternatives, or appropriate procedural strategies often are

answered by default and without the benefit of a resolution of the threshold question.

It would seem that a better choice of internal reform would lie in the establishment of a broad, multidisciplinary analytical function within the government infrastructure, devoted to international communication issues. Such a function should consist of four components: 1) a current, centralized bibliographic reference center such as the one described below, 2) an open staff component located in a major responsible agency and sheltered from rigorous bureaucratic entrapments, 3) a closed, dedicated staff component within DDI, and 4) a permanent advisory committee with a mandate to assure diversity. Such a delicate balancing of strengths and weaknesses within the United States system of government could significantly improve the policymaking process.

In the area of desirable changes relating to the external policymaking environment, the following seem appropriate. Regarding the dissemination of materials, the government should strongly support and participate in a nonprofit corporation established for the purpose of maintaining an on-line data base of international communication bibliographic information. This data base would contain all materials prepared by every known source, including the government itself. Such a system would assist those having an interest in obtaining current materials for the purpose of academic study, policy review, or participation in the policymaking process. An excellent model for such an endeavor already exists in the field of geology where the American Geological Institute is funded and jointly managed by government and the private sector to perform the above functions with respect to all documents in the field of geology.

The meetings of the public international organizations must be opened to members of the public and the press, and selected international materials must be disseminated to centers of communication studies throughout the United States. Regarding the former, the United States must become as staunch an advocate for openness as it was in the past, and not willingly participate in clandestine legislative gatherings. If restrictions must be imposed due to lack of facilities, accredited members of the press should always be able to gain access to all formal meetings.

At the highest levels of government, policy should be established to assure effective and balanced advocacy of all controver-

sial issues considered within the context of advisory committees. Unchartered and unfettered advisory committees should be brought within the requirements of the Advisory Committee Act. Additionally, those who are responsible for such committees should be made to demonstrate precisely how diversity will be maintained. If skilled advocates for one side of the controversial issue cannot be obtained from appointed group representatives, the task should be given to specially assigned counsel to assure that all viewpoints are effectively articulated. The intent here is to effect a change in emphasis from form (the appointment of nominal representatives of diverse groups) to substance (the skillful presentation of alternative views). In short, advisory committees should obtain their information by an active adversary process, rather than passive "notice and comment" from the members who happen to be present at meetings.

Pending Congressional legislation exempting private sector participants on ITU delegations from conflict of interest prohibitions should be subject to far greater scrutiny before adoption. Such exemptions are without apparent justification and constitute a disturbing precedent for other international legislative forums.

Lastly, experimental use should be made of electronic mail conferencing networks in an attempt to make the notice of inquiry process an effective adjunct to policymaking. For example, a substantive international issue requiring a United States policy could be advertised, and all those wishing to participate could provide their comments, as well as read the comments of others, through existing packet data network facilities and a host computer. The participatory costs of groups otherwise precluded could be underwritten by a government agency. In such a fashion, the notice and comment mechanism could be given meaning and effectiveness in bringing all interested persons into the policy-making process.

United States policymaking for the public international forums on communication can be significantly improved through the use of these or other innovative methods which bring all of our national expertise into processes which are presently limited to a privileged few.

A STRUCTURED LIST OF THE
PUBLIC INTERNATIONAL FORUMS ON COMMUNICATION

GLOBAL PUBLIC INTERNATIONAL ORGANIZATIONS (*i.e.*,
Members are exclusively States)

INTERNATIONAL TELECOMMUNICATION UNION (ITU), Geneva
Plenipotentiary Conference

* Nairobi, Oct. 1982

Administrative Conference

Radio

* Region 2 MF Broadcasting (2d Session), Rio de Janeiro,
Nov. 1981

* Region 1 VHF-FM Broadcasting (1st Session), Geneva,
Aug. 1982

* World Mobile Telecommunication, Geneva, Feb. 1983

* Region 2 Broadcasting-Satellite, Geneva, June 1983

* World HF Broadcasting (1st Session), Geneva, Jan. 1984

* Region 1 VHF-FM Broadcasting (2d Session), Geneva,
Oct. 1984

* World Space (1st Session), Geneva, July 1985

* World HF Broadcasting (2d Session), Geneva, Jan. 1986

* Region 2 MF Broadcasting 1605-1705 kHz Band, Geneva,
Sept. 1986

* Africa VHF/UHF Broadcasting, Geneva, Jan. 1987

* World Space (2d Session), Geneva, Sept. 1987

* Region 3 VHF/UHF Bands, Geneva, Mar. 1988

* World Mobile Telecommunication, Geneva, Sept. 1988

Telegraph and Telephone

* (presently unnamed conference), Geneva, 1985

Other

* (none anticipated during next five years)

International Radio Consultative Committee (CCIR)

Plenary Assembly

* Fifteenth, Geneva, Feb. 1982

IWP PLEN/1 (Interim Working Party to Review the
Organization and Work of the CCIR)

* First meeting, Geneva, June 1979

* Second meeting, Geneva, July 1980

**IWP/PLEN/3 (Updating of the Texts of the Special Report
on Possible Broadcasting Satellite Systems
and Their Relative Acceptability)**

* Sixteenth, (site undetermined) 1985

CCIR Study Groups

1 (Spectrum Utilization * Monitoring)

* Interim meeting 1978-82, Geneva, June 1980

* Final meeting 1978-82, Geneva, Oct. 1981

**IWP 1/2 (Use of Analysis Techniques and Computers in
Frequency Management)**

* Meeting, Geneva, June 1980

* Meeting, Wroclaw, Sept. 1980

2 (Space Research and Radioastronomy Services)

* Interim meeting 1978-82, Geneva, June 1980

* Final meeting 1978-82, Geneva, Oct. 1981

**IWP 2/1 (Space Research and Astronomy Issues Relative
to the Work of IWP 4/1)**

3 (Fixed Service at Frequencies Below about 30 MHz)

* Interim meeting 1978-82, Geneva, Sept. 1980

* Final meeting 1978-82, Geneva, Oct. 1981

4 (Fixed Service Using Satellites)

* Interim meeting 1978-82, Geneva, Sept. 1980

* Final Meeting 1978-82, Geneva, Sept. 1981

**IWP 4/1 (Technical Considerations Affecting the Efficient
Use of the Geostationary Satellite Orbit)**

* Meeting, Paris, May 1980

* Meeting, Geneva, Nov. 1980

* Meeting, Geneva, May 1981

5 (Propagation in Non-Ionized Media)

* Interim meeting 1978-82, Geneva, June 1980

* Final meeting 1978-82, Geneva, Aug. 1981

**IWP 5/1 (Prediction of Phase and Amplitude of Ground-
Waves)**

* Meeting, Geneva, Sept. 1979

**IWP 5/2 (Tropospheric Propagation Data for Broadcasting,
Space and Point-to-Point Communications)**

* Meeting, Geneva, Sept. 1979

**IWP 5/3 (Influence of the Non-Ionized Regions of the
Atmosphere on Wave Propagation)**

* Meeting, Geneva, Sept. 1979

6 (Propagation in Ionized Media)

* Interim meeting 1978-82, Geneva, June 1980

* Final meeting 1978-82, Geneva, Aug. 1981

**IWP 6/1 (Sky-Wave Field Strength and Transmission Loss
at Frequencies above 1.6 MHz)**

* Meeting, Geneva, Jan. 1978

* Meeting, Geneva, June 1980

IWP 6/2 (Radio Noise)

* Meeting, Geneva, Jan. 1978

* Meeting, Geneva, June 1980

IWP 6/3 (Basic Long-Term Ionospheric Predictions)

* Meeting, Geneva, Jan. 1978

* Meeting, Geneva, June 1980

**IWP 6/4 (Sky-Wave Propagation at Frequencies Between
150 and 1600 kHz)**

* Meeting, Geneva, Oct. 1979

* Meeting, Geneva, June 1980

**IWP 6/5 (Propagation at Frequencies Below about 150 kHz
with Particular Emphasis on Ionospheric Effects)**

* Meeting, Geneva, Jan. 1978

* Meeting, Geneva, June 1980

**IWP 6/7 (Operational Parameters for Ionospheric Radio
Circuits)**

* Meeting, Geneva, Jan. 1978

* Meeting, Geneva, June 1980

IWP 6/8 (VHF Propagation by Sporadic E)

* Meeting, Geneva, Jan. 1978

* Meeting, Geneva, June 1980

**IWP 6/9 (Ionospheric Factors Influencing Communication
and Navigation Systems Involving Spacecraft)**

* Meeting, Geneva, Jan. 1978

* Meeting, Geneva, June 1980

**IWP 6/10 (Ionospheric Modification by High-Power Trans-
missions)**

* Meeting, Geneva, Jan. 1978

* Meeting, Geneva, June 1980

**IWP 6/11 (Special Problems of Radiocommunication
Associated with the High-Latitude Ionosphere)**

* Meeting, Geneva, Jan. 1978

* Meeting, Geneva, June 1980

- 7 (Standard Frequency and Time-Signal Services)
- * Interim meeting 1978-82, Geneva, June 1980
 - * Final meeting 1978-82, Geneva, Oct. 1981
- IWP 7/4 (World-wide Time Dissemination by Means of Satellites)
- * Meeting, Geneva, June 1980
- IWP 7/5 (Inaccuracy and Reliability of Frequency Standards and Reference Clocks)
- * Meeting, Geneva, June 1980
- 8 (Mobile Services)
- * Interim meeting 1978-82, Geneva, Nov. 1980
 - * Final meeting 1978-82, Geneva, Aug. 1981
 - * Special meeting in preparation for 1982 Mobile WARC, Sept. 81
- IWP 8/5 (Automated VHF/UHF Mobile Radiotelephone Systems)
- * Meeting, Geneva, Jan. 1981
- IWP 8/6 (Numerical Identification of Ship Stations) (IWP task completed)
- IWP 8/7 (Technical and Operating Characteristics of Systems in the Maritime Mobile Satellite System)
- * Meeting, Norway, June 1980
- IWP 8/8 (Digital SELCAL)
- * Meeting, Geneva, July 1980
- 9 (Fixed Service Using Radio-Relay Systems)
- * Interim meeting 1978-82, Geneva, Sept. 1980
 - * Final meeting 1978-82, Geneva, Sept. 1981
- 10 (Broadcasting Service (Sound))
- * Interim meeting 1978-82, Geneva, Sept. 1980
 - * Final meeting 1978-82, Geneva, Sept. 1981
- 11 (Broadcasting Service (Television))
- * Interim meeting 1978-82, Geneva, Sept. 1980
 - * Final meeting 1978-82, Geneva, Sept. 1981
- IWP 11/2 (Protection Ratios for the Broadcasting-Satellite Service for the Purpose of Frequency Sharing (Television))
- IWP 11/3 (Broadcasting Services Intended for Alpha-numerical and/or Graphic Display)
- * Meeting, Geneva, Apr. 1980
 - * Working Group I (Teletext services)

- * Working Group II (Compatibility)
- * Meeting, Rome, Sept. 1980

Joint CCIR/CCITT Study Groups

CMTT (Television and Sound Transmission)

- * Interim meeting 1978-82, Geneva, Sept. 1980
- * Final meeting 1978-82, Geneva, Sept. 1981

IWP CMTT/1 (Digital Systems for the Transmission of Sound-Programme and Television Signals)

CMV (Vocabulary)

- * Interim meeting 1978-82, Geneva, June 1980
 - * Final meeting 1978-82, Geneva, Oct. 1981
- IWP CMV/1 (Terms and Definitions)**

Ad Hoc CCIR/CCIT Joint Working Party on Alphanumeric and/or Graphic Displays on Television Receivers

International Telegraph and Telephone Consultative Committee (CCITT)

Plenary Assembly

- * Seventh, Geneva, Nov. 1980
- * Eighth, (site undetermined), June 1984

CCITT Study Groups (meetings occur regularly during an annual 36 week period)

COM I (Telegraph Operation and Quality of Service)

GM SMM (Joint Working Party on the Maritime Mobile Service)

COM II (Telephone Operation and Quality of Service)

COM III (General Tariff Principles)

GR TAF (African Region Tariff Group)

GR TAL (Latin American Region Tariff Group)

GR TAS (Asia and Oceania Region Tariff Group)

GR TEUREM (Europe and Mediterranean Basin Region Tariff Group)

GM UMI (Joint Working Party on the International Monetary Unit)

COM IV (Transmission Maintenance of International Lines)

COM V (Protection against Dangers and Disturbances of Electromagnetic Origin)

COM VI (Protection and Specifications of Cable Sheaths and Poles)

COM VII (New Networks for Data Transmission)

- COM VIII (Telegraph and Terminal Equipment, Local Connecting Lines)
- COM IX (Telegraph Transmission Quality)
- COM X (Telegraph Switching)
- COM XI (Telephone Switching and Signalling)
- COM XII (Telephone Transmission Performance and Local Telephone Networks)
- COM XIV (Facsimile Telegraph Transmission and Equipment)
- COM XV (Transmission Systems)
- GM LTG (Joint Working Party on the Use of Telephone-Type Lines for Purposes Other Than Telephony)
- COM XVI (Telephone Circuits)
- COM XVII (Data Transmission)
- COM XVIII (Digital Networks)

Joint CCITT/CCIR Study Group

CMBD (Circuit Noise and Availability)

Joint CCITT/CCIR Committees

WORLD PLAN

PLAN AFRICA (Africa)

PLAN LATIN AMERICA (Latin America)

PLAN ASIA (Asia and Oceania)

PLAN EUROPE (Europe and the Mediterranean Basin)

Special Autonomous Working Parties

GAS 3 (Economic and Technical Aspects of the Choice of Transmission Systems)

GAS 5 (Economic Conditions and Telecommunication Development)

GAS 6 (Economic and Technical Aspects of the Choice of Switching Systems)

Administrative Council

* 37th Session, Geneva, May 1982

* Plenary

* PL/A (Working Group on Council Resolutions and Decisions)

* PL/B (Working Group on Future Administrative Conferences)

- * Committee 1 (Finance)
- * Committee 2 (Staff * Pensions)
- * Committee 3 (Technical Cooperation)
- * 38th Session, Geneva, June 1983

International Frequency Registration Board (IFRB)

Group of Experts on Extended Use of the Computer by the IFRB

- * Meeting, Geneva, Apr. 1980
- * Meeting, Geneva, Oct. 1980

Panel of Experts to Assist the IFRB in Preparation of the Region 2 MF Broadcasting Conference

- * Meeting, Geneva, June 1980

UNITED NATIONS EDUCATIONAL SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO), Paris

General Conference

- * 21st Session, Belgrade, Sept. 1980
- * 22nd Session, (site undetermined), 1983
- * 23rd Session, (site undetermined), 1984
- * 24th Session, (site undetermined), 1986

Intergovernmental Committee on Communications Development

- Session 1 (site and time undetermined)

International Commission for the Study of Communications Problems (MacBride Commission)

- Paris, Nov. 1979 Session (final)

Working Group on Low Telecommunication Rates

- Paris, Nov. 1979 Session

Intergovernmental Conference for Co-Operation on Activities, Needs and Programmes for Communication Development

- Washington, Nov. 1979 Session
- * Paris, Apr. 1980 Session [final]

Intergovernmental Conference on Communications Policies in Africa

- * Yaounde, July 1980

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO), Geneva

Group of Independent Experts on the Impact of Cable Television in the Sphere of Copyright (co-sponsored by UNESCO)

UNIVERSAL POSTAL UNION (UPU), Bern

Congress

* Rio de Janeiro, Sept. 1979

* Hamburg, Sept. 1984

Executive Council

* Meeting, Bern, May 1980

* Meeting, Bern, May 1981

Consultative Council for Postal Studies (CCPS)

* Plenary, Bern, Oct. 1978

* Plenary, Bern, Oct. 1980

Committee I (Future of the Postal System)

* Meeting, Bern, Oct. 1980

UNITED NATIONS (UN), New York

General Assembly

37th Session, New York, Sept. 1981

First Committee

* 37th Session, New York, Sept. 1981

Special Political Committee

* 37th Session, New York, Sept. 1981

* 38th Session, New York, Sept. 1983

Committee on Information (reports to Special Political Committee)

- First Session, New York, May 1980

- Second Session, New York, June 1980

- Third Session, New York, Aug. 1980

Committee to Review United Nations Public Information Policies and Activities (Committee of 42)

- Organization Session, New York, Apr. 1979

- First Session, New York, June 1979

- Second Session, New York, July 1979

- Third Session, New York, Sept. 1979

Ad Hoc Working Group

* Meeting, New York, July 1979

(Note: This Committee became the permanent, independent Committee on Information by General Assembly action in January 1980)

Committee on the Peaceful Uses of Outer Space (COPUOS) (reports to First Committee)

24th Session, New York, June 1981

25th Session, New York, June 1982

Legal Subcommittee

* 19th Session, Geneva, Mar. 1980

* 20th Session, New York, Mar. 1981

* 21st Session, Geneva, Mar. 1982

Scientific and Technical Sub-Committee

* 18th Session, New York, Feb. 1981

* 19th Session, New York, March 1982

Working Group on the Conference (2nd UN Conference on the Peaceful Uses of Outer Space)

Second UN Conference on the Exploration and Peaceful Uses of Outer Space,

* Vienna, Aug. 1982

Secretariat

Director General for Development and International Economic Cooperation Center on Science and Technology for Development

* (Activities becoming defined)

Intergovernmental Committee on Science and Technology for Development

- First Session, New York, Jan. 1980

- Second Session, New York, May 1980

United Nations Conference on Science and Technology for Development

Vienna, Aug. 1979

INTERGOVERNMENTAL BUREAU FOR INFORMATICS (IBI),

Rome

Assembly

* Session, Rome, Nov. 1980

* Session, , 1982

Executive Council

- 41st Session, Buenos Aires, Oct. 1979

- 42nd Session, Tunis, Mar. 1980

World Conference on Transborder Data Flow Policies (SPIN II), Havana, Cuba 1983.

ORGANIZATION FOR ECONOMIC COOPERATION AND
DEVELOPMENT (OECD), Paris

Committee on Scientific and Technological Policy

Working Party on Information, Computer and Communications
Policy (ICCP)

High Level Conference on Information, Computer and
Communications Policy, Paris, Oct. 1980

INTERGOVERNMENTAL MARITIME CONSULTATIVE
ORGANIZATION (IMCO), London

Assembly

- 11th Session, London, Nov. 1979
- 12th Session, London, Nov. 1981

Council

Maritime Safety Committee

Subcommittee on Standards of Training and Watchkeeping

* Meeting, London,

Subcommittee on Radiocommunications

* 22nd Session, London, Sept. 1980

Working Group on Global Maritime Distress and Safety

INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO),
Montreal

Assembly

- 22nd Session, Montreal, Sept. 1977
- 23rd Session, Montreal, Sept. 1980

Council

- 101st Session, Montreal, Nov. 1980

Air Navigation Commission

Frequency Management Study Group

Communications Division

* Meeting, Montreal, Mar. 1981

All Weather Operations Panel

* 6th Meeting, Montreal, Feb. 1977

All Weather Operations Division

QUASI-PUBLIC INTERNATIONAL ORGANIZATIONS

INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION (INTELSAT), Washington

Meeting of Signatories

- * Ninth Meeting, Orlando, Mar. 1980
- * Tenth Meeting, Auckland, Apr. 1981

Assembly of Parties

- * Fifth (extraordinary) Meeting, Orlando, April 1980
- * Sixth (regular) Meeting, Venice, Oct 1980
- * Seventh (regular) Meeting, Buenos Aires, Oct. 1982

Board of Governors

- * 42nd Meeting, Bogata, June 1980
- * 43rd Meeting, Sept. 1980

Advisory Committee on Technical Matters

- * 34th Meeting, Sept. 1980

Advisory Committee on Planning

- * 16th Meeting, Nov. 1980

INTERNATIONAL MARITIME SATELLITE ORGANIZATION (INMARSAT), London

Assembly of Parties

- * First Session, London, Oct. 1979
- * Second Session, London, Oct. 1981

Council

- * Fourth Session, Washington, May 1980
- * Fifth Session, London, July 1980

Advisory Committees

- Technical and Operational Matters
- Financial and Marketing Matters

REGIONAL PUBLIC INTERNATIONAL ORGANIZATIONS

ORGANIZATION OF AMERICAN STATES (OAS), Washington

General Conference

Inter-American Telecommunications Conference (CITEL)

- * Third Conference, Buenos Aries, Mar. 1979
- * Fourth Conference, Mexico City, Sept. 1982

Permanent Executive Committee (COM/CITEL)

* 10th Meeting, Buenos Aries, Mar. 1980

* 11th Meeting, Buenos Aries, Mar. 1981

PTC I (Permanent Technical Committee: Inter-American Telecommunications System)

* 2nd Meeting, Lima, Oct. 1980

Working Group on Planning

* 5th Meeting, Lima, Oct. 1980

Working Group on Rates

* 5th Meeting, Lima, June 1980

* 6th Meeting, Lima, Oct. 1980

PTC II (Permanent Technical Committee: Radiobroadcasting)

* Meeting, Rio de Janeiro,

Working Group on Radiobroadcasting

* 7th Meeting, Rio de Janeiro, Aug. 1980

PTC III (Permanent Technical Committee: Radiocommunications)

* 5th Meeting, Bogata, Nov. 1980

Seminar in Preparation for ITU Region 2 Broadcasting Satellite Conference**CONFERENCE ON LATIN-AMERICAN INFORMATICS****AUTHORITIES, (organized by IBI)**

Third Conference, Buenos Aries, Oct. 1979

- Plenary Assembly

* First Commission (National Policies and Plans)

* Second Commission (Procurements and Standards)

* Third Commission (Transborder Data Transfer)

- Working Group on Transborder Data Transfer (preparation for IBI World Conference)

COUNCIL OF EUROPE, Strasbourg

Committee on Transnational Data Flow

EUROPEAN CONFERENCE OF POSTAL &**TELECOMMUNICATION ADMINISTRATIONS (CEPT),****Stockholm**

Coordination Committee for Harmonization

Committee on Cable Communications (CTLA)