

THE INTERNATIONAL FREQUENCY REGISTRATION BOARD

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Abstract

The IFRB was instituted by the Atlantic City reconstitution of the International Telecommunication Union (1947). There has been debate over the years about its size and function. The High Level Committee considering the restructuring on the ITU has recommended that the present five member full-time Board be replaced by a nine member part-time Radio Regulations Board. The arguments are finely balanced.

1. Introduction

One of the stranger, and more interesting entities in International Law is the International Frequency Registration Board (IFRB), one of the organs of the International Telecommunication Union (ITU). It plays a crucial role in the international regulation of the use of the radio spectrum by terrestrial and space stations, and in space matters it has additional functions regarding orbital positions. That its future is in doubt is a matter of concern, though not necessarily of alarm.

2. Background

The work of the ITU is fundamental to virtually all uses of space. Radio-telescopes could not function effectively without their special frequencies being given a measure of international protection from interference by man-made radio sources. Without radio there can be little tracking, and no telemetry or control of satellites. Telecommunications, direct broadcast, weather, remote sensing satellites and the like would be simply useless pieces of junk.

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The IFRB was introduced into the ITU structure by the 1947 Atlantic City reconstruction of the ITU following the Second World War. Under art.6 of the Atlantic City Convention the IFRB had two essential duties; first, the orderly recording of frequency assignments by states in accordance with the procedures of the Radio Regulations 'with a view to ensuring the formal international recognition thereof', and second, (paraphrased) the providing of advice so as to help make the best use of the radio spectrum. These duties, elaborated in the Radio Regulations and revised and expanded by later plenipotentiary conferences, encapsulate the role played by the IFRB through the next forty-five years.

This is not the place to rehearse the history of those years.¹ Suffice it to say that the IFRB has played an integral role in the developing ITU responsibilities. Its procedures for checking assignments notified to it for their compliance with the allocations in the Radio Regulations, for their potential for harmful interference and for conflict with existing stations are well known. Its ability to delete unused frequencies from the international Register has not been unimportant. Its role in securing compromise between potentially interfering assignments has been strategic. The advice it has given to Members and the preparatory and advisory work it has done for and during successive Radio Conferences has been significant.

The Plenipotentiary Conference of the Union to held in Geneva in December 1992 is therefore a matter of concern. It is likely radically to revise the ITU constitutional documents and bring into being an entirely new structure for the Union, in which the history of telecommunications regulation will no longer be obvious,² which is better organised for present needs, and which will be able more quickly to respond to the rapid developments in telecommunications.

The December Conference has its roots in the decision of the Nice Plenipotentiary Conference of 1989 to charge a High Level Committee to review the structure and functioning of the Union and recommend

improvements. The High Level Committee did its work swiftly, reporting in April 1991.³ The Administrative Council of the ITU then called the December Conference, and a Drafting Group established under the Administrative Council's Resolution No. 1021, produced final drafts on 1 May 1992 for discussion and revision at the Plenipotentiary. The revised ITU Constitution and Convention adopted by the Nice Plenipotentiary in 1989 are not likely ever to come into force.

Basing itself on the High Level Committee Report, the draft Constitution and Convention will, if adopted, make sweeping structural changes to the Union at levels below that of the Plenipotentiary Conference and Administrative Council.⁴ In particular, the work of the Union will be re-organised into three new Sectors (each with a Bureau and a Director), Standardisation, Radiocommunication and Development. The Standardisation Sector will take over from the Consultative Committee on International Telegraph and Telephone (CCITT) and certain of the responsibilities of the International Consultative Committee on Radio (CCIR). The Development Sector will take on responsibilities assigned to the Telecommunications Development Bureau under the Nice arrangements. The Radiocommunication Sector will absorb the work of the CCIR not dealing with question of standardisation and would also include the work of the IFRB and its Specialised Secretariat. Complementing these institutional changes, a more rigid programme of conferences will be scheduled within a four year cycle which would correspond to the new cycle of plenipotentiary conferences. The intention of these changes is the promotion of efficiency, cost effectiveness and also the need more swiftly to respond to the rapidly changing telecommunications environment which does require speedy decisions particularly in the area of the setting of international standards.

Within these changes the High Level Committee recommended, and the Drafting Group has provided, that the present IFRB five full-time members should be replaced by a Radio Regulations Board (RRB) of nine part-time members.⁵

3. Why change?

3.1. Several separate questions interact in the proposed substitution of the RRB for the familiar IFRB: why have a Board at all (a question interrelated with its members' qualifications?); why move to the RRB concept?; a full-time or part-time Board?; how many members?; their qualifications?

3.2 Why have a Board at all?

Is a Board necessary? At the Montreux Plenipotentiary in 1965 the abolition of the IFRB was proposed, on the main ground that it had by then completed compiling the International Master Frequency List from wartime and the remaining recording function could be done simply by administrators within the General Secretariat. In 1965 it was mainly the developing nations that stood out for the IFRB, perceiving that it was useful to them as an impartial voice in arguments as to frequency allocation, and as a source of disinterested advice. These justifications have increased with the advent of satellite communications.

That said, the root justification of an IFRB or of an RRB is the instilling and maintenance of confidence in the international radio regulatory system. The Atlantic City Conferences had recognised that an international body was needed to administer the system. It had to be independent and trustworthy. But is it merely to record, or be more active?⁶ Particularly as radio has become more complex, and with the opening of space, it has to be said that the Board has become more active than many expected in 1947.

There were many different expectations of the IFRB when it was set up. As established, some thought the IFRB was to act as a witness and nothing more in the operation of the system of registration of frequency allocations.⁷ As it has developed, however, it has been spoken of as some sort of Federal Communications Commission established for the world with some of the characteristics of the International Court of Justice.⁸ That is too visionary, although as it has developed the IFRB has borne some resemblance to the FCC.⁹ The present duties of the Board are, in part, of extreme technical complexity and in part effectively juridical and it also has an important advisory role particularly (but not exclusively) for the 'weaker' Members of the Union.

Formally the IFRB has six important classes of function. First, it maintains the Master Frequency Register. Second, and intimately connected with that, it has developed and continues to maintain rules of procedure for the operation of international radio regulation. Although nominally technical standards and procedures are adopted by Members of the Union, in the main what the IFRB proposes is enacted. Third, and particularly in relation to space, the approval of the IFRB for the design of a proposed system affords a good basis on which to proceed - a factor important in funding

projects. Fourth, the Board functions as a quality control on the work of its Specialised Secretariat, the body that carried through the routine work of checking and recording assignments. Fifth and sixth go together: fifth is the function of interpreting the Radio Regulations in particular instances, and merging into sixth - the quasi-judicial aspect in truly difficult cases (albeit that in the last analysis the right to assign remains with the Member of the Union).

But the most important function that the IFRB discharges is not explicitly listed in its constituent documentation. Fundamentally, the IFRB gives credibility to the international system. Its presence and actions induce confidence, particularly among those countries less able in telecommunications matters. Unless there is a continuing general agreement (faith or belief, indeed) that the international system works, and works reasonably and fairly, the international system might well collapse. I have myself pointed out that because of the laws of physics, some sort of international system for the avoidance of harmful interference is necessary. But that is justification for only a minimal system. The ITU works to a broader frame and in bolder colours than those dictated by mere necessity: but to do so international confidence is required. The IFRB is a major element in the creation of that confidence.

You can see this in the simple, clear statements that have carried down through the successive versions of the ITU Conventions. IFRB members 'serve, not as representing their respective countries, or of a region, but as custodians of an international public trust.'¹⁰ IFRB members are not to request or receive instructions as to how they carry out their duties from anyone, and Members of the Union are not to seek to influence them.¹¹ IFRB members refrain from acts incompatible with their status, and do not have financial interests in telecommunications (save pension and similar arrangements).¹² 'As far as possible' Members of the Union are not to recall elected official of the Union during their periods of office, and in their election the 'paramount consideration' is the 'necessity of securing for the Union the highest standards of efficiency, competence and integrity', with 'due regard' to as wide a geographic basis as possible.¹³ There is also the technical qualification that is required of members of the Board. Down to and including the Nairobi revision of the ITU constitution, the requirement has been that the Board members shall be 'thoroughly qualified by technical training in the field of radio and shall possess practical experience in the

assignment and utilisation of frequencies'.¹⁴ Further there is the requirement of familiarity with the geographic, economic and demographic conditions in a particular area of the world,¹⁵ an element extended by the stipulation that Board members be of different nationality,¹⁶ and accentuated by the Nairobi decision that all elected officials of the Union be of different nationalities.¹⁷

To do all these jobs, and to provide the basic confidence in the ITU system, a Board is necessary.

3.3. IFRB or RRB?

The very titles of the two bodies indicates the problem now faced. 'Frequency Registration' is not the same as 'Radio Regulation'. The new name has a more 'regulatory' feel. The present IFRB performs the variety of functions, detailed above, and some mechanism will be required to continue to perform these within the new ITU structure. But need it be the responsibility of an IFRB. The fact is much of the IFRB's work is even now carried out by its Specialised Secretariat. That work will be subsumed into the new Radiocommunications Sector if the proposed changes are made. Maintaining the Register, checking assignments for compliance with Regulations and with the Table of Assignments used to be a huge task.¹⁸ However, much of this work has been computerised, and since eighteen months ago Members have available CD-Rom versions of assignments wherewith to check their own plans prior to notification to the IFRB.

The new name of 'Radio Regulations Board' indicates a change in the balance and range of responsibilities for the Board. The new body will deal with less routine matters. It will approve rules of procedure to implement ITU conference decisions, and interpret the Radio Regulations, as well as carry out other functions which may be entrusted to it.¹⁹

3.4. Full-time or part-time?

The proposal is for a part-time RRB of nine members, elected by Plenipotentiary Conference more or less on the same basis as the present IFRB.²⁰ The question arises whether a part-time Board is satisfactory. Justifications for a part-time RRB are cost and workload. The RRB will meet up to four times a year at Geneva, with a quorum of six, and while unanimity is preferred, able to decide on a basis of five votes.²¹ It is reckoned this will suffice to meet the workload.

On the other hand, 'part-time' implies that RRB members will be otherwise employed, presumably in

telecommunications. Although the various phrases about independence, 'custodians of an international public trust' and so on are repeated in the new drafts, the fact is that independence will not be seen to exist. Should not Caesar's principles be adhered to, even as against financial considerations?²² My own instinct is for a full-time Board, whose independence is undoubted, and therefore whose existence will continue to foster trust in the ITU system. Cost alone should not be determinant.

3.5. Size of Board

But a cost-effective part-time Board can be larger than a permanent one.

The proposal is for a nine member RRB.²³ Such a size has one great advantage - a greater diversity of members can be appointed for the same expenditure on salary etc. As originally conceived in 1946/7 merit alone would have staffed the IFRB, but 'geographic principle' had already infiltrated UN thinking, and was transposed to the new member of the UN family. In 1965, following an attack on the very existence of the IFRB, the Montreux Plenipotentiary reduced the size of the IFRB from eleven to five largely on cost arguments.

Cost remains an argument compelling for most ITU Members. A part-time Board should cost less, even if its numbers are more than five. An increase in numbers will permit nationals of more countries to be included in the new Board. This is desirable in the interests of strengthening that confidence in the ITU system spoken of above. States other than the major telecommunications states will be likely to see nationals of 'their' group on a nine member Board. Despite the high words about independence and integrity, the fact is that (particularly in the minds of politicians), justice should not only be done, but should be seen (sc. be thought to be) done! The developing countries feel themselves under-represented in international organs that actually decide what amounts to their future. This applies particularly in areas where the common benefit of all mankind are involved.²⁴ A larger Board would allow a greater numerical (though not necessarily proportionately greater), representation of the less developed countries in a body which plays a major role in the use of space.

3.6 Qualifications of Members

It remains to note a slight, but perhaps significant, change in the list of qualifications proposed for members of the new RRB. As indicated above, all the statements as to the independence of the Board remain in the new drafts. That is well. But, in my view, a strength of the IFRB was that its members were all technically qualified. Certainly it is true that nowadays Board members are not going be grappling with technical questions where engineering expertise is essential - there are advisers for that. But I am disappointed that the new phraseology omits technical training and speaks only of appointees being highly qualified in the field of telecommunications.²⁵ I think it important that the RRB be staffed by persons with technical radio training, not pure administrators, or worse, from the commercial and political side of telecommunications.

4. Evaluation

The arguments are finely balanced. Certainly much of the workload of the IFRB is nowadays a matter of administration, and the Board could carry on much of its supervision of that work without being a permanent body. Personally I would prefer the continuation of a permanent, technically qualified and wholly independent body to deal with knotty questions on a clearly impartial basis. It might be underworked for a period (as the ICJ has been), but it could be given duties to study and advise for the new rolling programme of ITU administrative conferences - the present IFRB has done much similar useful work.

On the other hand the proposal of the RRB does sit within a radical restructuring of the ITU itself. It is part of a package, and fits in that package reasonably well.

But there remains that awkward question of trust and belief in a in international process, a procedure and a body dealing with matters fundamental to all radio, and particularly space. The Board (old and new) does have a function in the interpretation of radio regulations. In his book, David Leive points out that in a curious way, as time has gone on the ITU has developed more principles than rules. Principles upon which States do and do not do various things have been elaborated, while hard and fast legal rules have been increasingly departed from.²⁶ That process will, I hope, continue. In addition to the High Level Committee which has produced the present proposals, the 1989 Nice Plenipotentiary Conference

also established a Voluntary Group of Experts that is seeking to simplify the Radio Regulations. That work will result even more in a move to principles rather than rules. The interpretative function of the Board will therefore be extremely important. Quality control of ITU action in particular instances, mediation and conciliation, will remain crucial. International confidence in the ITU in this new way of working will need to be fostered and maintained - and so we are back at the element of trust and confidence that I have gone back to again and again. A full-time Board seems a better option for that purpose.

On the other hand few that I have spoken to (and I have not spoken to members of the IFRB themselves) doubt that the IFRB as presently constituted is not over-worked and that cost/benefit dictates a change to a part-time Board. And, running interference against the principle that the best should be appointed, it might be that an underworked but full-time RRB would not attract the best candidates.

And that final point could overcome the 'full-time' argument. Appointees to the new Board must be of the highest quality if their work is to retain the confidence of Members in the system. If the decision were to turn on that factor, on balance, I would allow the need for high quality appointees to override the 'independence' argument. Only quality will preserve that confidence in the work of the Board on which the ITU to a large degree depends.

The awkward thing, of course, is that if confidence in the Board is weakened it will take a long time to recover.

NOTES

¹ See D.M. Leive, International Telecommunications and International Law: The Regulation of the Radio Spectrum (Leiden: Sijthoff; New York : Oceana, 1970); F. Lyall, Law and Space Telecommunications (Aldershot, Hants: Dartmouth, 1989); R.L. and H.L. White, The Law and Regulation of International Space Communication (Boston : Artech House, 1988).

² The present structure has elements clearly traceable to the days when the telegraph and telephone were the only modes of international telecommunication. An elementary proof is in the role and even the name of the Telegraph and Telephone Consultative Committee.

³ "Tomorrow's ITU: The Challenges of Change" The Report of the High Level Committee to Review the Structure and Functioning of the International Telecommunication Union (ITU), (Geneva: ITU, April 1991).

⁴ The splitting of the ITU Convention into a Constitution (containing provisions unlikely to be changed) and a Convention (containing rules more likely to be altered over the years) is an interesting device found, for example also in the Universal Postal Union. The Nice Plenipotentiary Conference of 1989 already took that step for the ITU, though as noted in the text, the Nice document are unlikely ever to come into force. The December documents will be substituted for them.

⁵ Draft ITU Constitution art. 7.4 and 12.

⁶ On the creation of the IFRB see G.A. Codding Jnr, The International Telecommunication Union: An Experiment in International Cooperation, (Leiden: E.J. Brill, 1952; rep. New York: Arno Press, 1972) 241-52.

⁷ See the Chairman of the Working Group which drew up the IFRB procedure as quoted by Codding (n.(?)) at 245.

⁸ Cf. H.K. Jacobson 'The International Telecommunication Union: ITU's Structure and Functions' cited by G.A. Codding, Jr., and A.M. Rutkowski eds., The International Telecommunication Union in a Changing World (Dedham, MA: Artech House, 1982); and, D.M. Leive, International Telecommunications and International Law: The Regulation of the Radio Spectrum (Leiden: A.W. Sijthoff; Dobbs Ferry N.Y.: Oceana Publications, 1970) 25.

⁸ M.T. Paglin, A Legislative History of the Communications Act of 1934, (New York and Oxford: Oxford University Press, 1989).

¹⁰ Nairobi Convention, art.10.3.

¹¹ Nairobi Convention, arts.57.4, and 13(1)-(3).

¹² Nairobi Convention, art.13.(1), (3).

¹³ Nairobi Convention, art.13(4),(5), and (6).

14 Nairobi Convention, art.57.1(1). See below as to the RRB.

15 Nairobi Convention, art.57.1(2).

16 Nairobi Convention, art.10(1).

17 Nairobi Convention, art.13.2.

18 There are 1.3 million assignments currently notified to the IFRB.

19 Draft ITU Convention, art.12(2)(a)-(c).

20 Draft ITU Constitution, art.12.1 and 9.A.1.

21 Draft ITU Convention, art.5.4(2)-(3).

22 Julius Caesar divorced his wife who had been suspected but cleared of impropriety on grounds that 'Caesar's wife should be above suspicion' - Plutarch, Life of Caesar, 10.

23 Draft ITU Constitution, art.12(1).

24 Cf. Art.1, Outer Space Treaty 1967.

25 Draft ITU Constitution, art.12.1 speaks of members of the RRB being 'highly qualified in the field of radio and possessing practical experience in the assignment and utilisation of frequencies' as well as the geographic, economic and demographic conditions in an area of the world. Cf. the language cited at n.(?) above.

26 D.M. Leive, cited above n.(?).