

A Review of a Book Written by Uchenna Jerome Orji on International Telecommunications Law and Policy

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ABSTRACT

This technical note is a review of a book entitled ‘International Telecommunications Law and Policy’ written by Uchenna Jerome Orji and published by Cambridge Scholars Publishing, Newcastle upon Tyne. It is a hardback edition with a total of 399 pages. It was published in 2018.

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I. INTRODUCTION

This book discusses international and regional regimes that govern telecommunications regulation within the framework of relevant international organisations such as the United Nations (UN), the International Telecommunication Union (ITU), the World Trade Organization (WTO), and African regional organizations such as the African Union (AU), the African Telecommunications Union (ATU), the Economic Community of West African States (ECOWAS), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community of Central African States (ECCAS), the Economic and Monetary Community of Central Africa (CEMAC), the East African Community (EAC), and the Southern African Development Community (SADC).

The book comprises eleven chapters – each with an introduction and conclusion. Each chapter of the book has a separate focus and discussion on the central theme of international and regional telecommunications regulatory regimes. Dr

Uchenna Orji’s book structure clearly presents an international perspective to telecommunications law and policy.

II. HISTORICAL ORIGINS OF TELECOMMUNICATION

The author first traces the earliest historical origins of telecommunications. The evolution of telecommunications is examined considering the technological implications on law and policy. For example, there is an overview of the various generations of mobile telecommunication networks (1-4G). Fixed and wireless systems are also introduced. The sources of international telecommunications law provide an important introductory context to facilitate the understanding of subsequent chapters.

III. INTERNATIONAL TELECOMMUNICATION REGIMES WITHIN THE UNITED NATIONS FRAMEWORK

The second chapter provides a discussion on international telecommunication regimes within the UN framework with respect to the law of the sea such as the UN Convention on the Law of the Sea (UNCLOS), the Convention for the Protection of Telegraph Cables and the Convention on the Continental Shelf) and international space law (such as the Outer Space Treaty). In the context of UNCLOS, the author argues that all States that are connected by submarine cables should establish adequate measures including penal sanctions to deter intentional damage to cables laid in areas of the territorial seas that are subject the jurisdiction of States.¹ Otherwise, it would be challenging to ensure perpetrators of crimes are brought to justice. In this regard, the argument to go beyond what the author contends to be the rather limited application of universal jurisdiction of UNCLOS is a good precursor to his discussion on the Outer Space Treaty.² The critique of this treaty (for example, regarding the consequences of ‘orbital debris’ and definitional inadequacies) is insightful.

IV. REAL-WORLD IMPLICATIONS FROM AN INSTITUTIONAL STANDPOINT

Chapters three and four provide important insights into real-world implications from an institutional standpoint. This chapter discusses the ITU and the obligations of Member States, particularly to ensure the sanctity of international telecommunications under the relevant legal regime. These include obligations concerning installation and operation of telecommunication or radio services. There is an illuminating discussion of the no-harm obligation to international law principles on State responsibility.³ However, it is chapter four that arguably provides even better engagement with respect to the institutional framework and implications for international telecommunications law. Chapter four, in discussing the International Telecommunication Regulations (ITRs), examines the proposals of various State parties to the ITRs during its review in 2012. This examination provides insights into the socio-political underpinnings of certain national policies concerning international telecommunications. The author also identifies major factors that influenced the proposals of Member States to include concerns over the United States’ perceived dominance of the multi-stakeholder Internet governance structure at the time, concerns over the perceived Internet governance agendas of countries such as China,

Russia and the Arab countries, and questions on the relevance of the ITRs for global telecommunications governance in contemporary times. Such factors, the author contends, were to a large extent responsible for impeding consensus on the 2012 ITRs. The lack of consensus at the World Conference on International Telecommunications (WCIT) notwithstanding, the author argues that disagreements at the international level are not new and “Internet governance issues would continue to remain a source of contention amongst ITU Member States”.⁴ These views provide a helpful foundation for the next chapter.

V. PROVISIONS OF INTERNATIONAL TELECOMMUNICATION REGULATIONS AND VIEWS OF SOME MEMBER STATES OF INTERNATIONAL TELECOMMUNICATION UNION

In chapter five, the author builds on the discussions earlier provided in chapter four. Thus, while analysing several provisions of the 2012 ITRs, he also revisits arguments made by some Member States at the WCIT. There were some important opposing views by the United States, for example, regarding the obligation on States to ensure the security of international telecommunication networks,⁵ and the inclusion of spam control provisions.⁶ The United States had security concerns and contended that the ITU and the ITRs were not the appropriate venue or framework respectively. Further discussions then provide practical insights into the political and international security influences on the United States position. Robust efforts are made to present a balanced scholarly analysis with a presentation of criticisms by other scholars including the author.⁷

In this regard, Dr Orji demonstrates the awareness to go beyond the major views and consider certain wider implications; “the ITU may provide a broader platform that will accommodate the perceived interests of developing countries that are opposed to the Council of Europe’s Convention on Cybercrime”.⁸ Thus, there could be a real possibility of attaining a global cybersecurity regime. However, there is a need to first address the dualism of the ITR framework where countries are bound by the 2012 ITRs or the 1988 ITRs (if they have not accepted the former). The author further argues that

¹ Pp 37-39 of the book.

² P 45.

³ P 73-74.

⁴ P 127.

⁵ Art 5A of the ITRs 2012.

⁶ Art 5B of the ITRs 2012.

⁷ P 149-154.

⁸ P 151.

the fragmenting effects of such dualism may be addressed if Member States use the ITRs' special arrangements regime to negotiate mutual bilateral or multilateral telecommunication agreements that will mitigate its perceived effects on international business conditions and practices in the telecommunications industry.

VI. EXPLORATION OF GLOBAL AND HARMONISED EFFORTS CONCERNING TELECOMMUNICATIONS LAW AND POLICY

The theme of exploring global or harmonised efforts concerning telecommunications law and policy continues in chapter six. In this chapter, the author argues that the Radio Regulations remain relevant.⁹ Arguably, it took the dramatic but unfortunate sinking of the Titanic to reconsider the inability to reach a consensus during the Berlin Conference of 1906 with respect to the intercommunication of radio systems.¹⁰

VII. TELECOMMUNICATIONS REGULATORY REGIME WITHIN THE CONTEXT OF GENERAL INTERNATIONAL AGREEMENT

In chapter seven, the author discusses the WTO's telecommunications regulatory regime within the context of the General Agreement on Trade in Services (GATS). The GATS, inspired by the General Agreement on Tariffs and Trade (GATT), came into force in 1995 and has promoted trade and development partly through a liberalisation of relevant policies. However, such international policies do not always guarantee an application on national levels as countries can also regulate the supply of services. In this context, the author examines the domestic framework of some countries including the United States, the United Kingdom and Nigeria with a view to exploring how relevant WTO agreements may be given effect on a direct¹¹ or indirect basis.¹²

VIII. AFRICAN PERSPECTIVE ON INTERNATIONAL TELECOMMUNICATIONS LAW AND POLICY

Dr Orji introduces a robust African perspective in chapter eight. In examining telecommunications

policies within relevant legal and institutional frameworks such as the AU, he considers the challenges that should be overcome if Africa is to leverage its unprecedented growth in the penetration of mobile telecommunications. The AU Commission's telecommunications regulation harmonisation initiatives include the AU Division of Information Society, the Reference Framework for the Harmonization of Telecommunication and ICT Policies and Regulation in Africa, the Comprehensive Continental ICT Strategy for Africa, and the New Partnership for Africa's Development's (NEPAD) Protocol on High Level Policy and Regulatory Framework Broadband ICT Infrastructure for Eastern and Southern Africa (Kigali Protocol). He identifies the impediments to harmonisation in Africa. It is a striking observation that the sub-regional bodies do not necessarily support harmonisation – an argument that holds true for other areas of law that have international elements. While an effective integration of "other African sub-regional intergovernmental institutions" would help,¹³ the author may have gone further to examine how such integration can be attained if the AU is unable to provide effective coordination of sub-regional efforts.¹⁴ A sanctions regime may gain traction only slowly or be of rather limited effect. This possibility does not detract from the persuasive arguments presented because they not only factor in the challenges that exist, but also contextualise the current potential to attain significant harmonisation in Africa. The discussion on the African perspective is consolidated in chapter nine which arguably illustrates (through the ATU, the United Nations Economic Commission for Africa etc) that the major challenge which African countries face is not the existence of international organisations or initiatives, but ensuring effectiveness of such initiatives by providing adequate logistical and financial support underpinned by expertise.

IX. TELECOMMUNICATION REGIMES OF THE ECONOMIC COMMISSION OF WEST AFRICAN STATES (ECOWAS)

Chapter ten focuses on the ECOWAS telecommunication regimes. He analyses several aspects of the ECOWAS Telecommunications Package such as legal frameworks concerning the interconnection of ICT networks, services, service providers and the management of radio frequency spectrum. He considers the West African

⁹ P 179.

¹⁰ P 173.

¹¹ P 226.

¹² P 229.

¹³ P 276.

¹⁴ Further complicated by "diverse legal traditions" at p 275.

Telecommunications Regulators Assembly (WATRA) and explores challenges to regional telecommunications regulation. This discussion resonates with the analysis earlier provided regarding challenges to harmonisation in Africa. Once more, the author highlights the potential for harmonisation through the instrumentality of WATRA. This largely untapped potential is given further detailed consideration in the last chapter where Dr Orji provides insights into other sub-regional efforts in southern, eastern and central Africa. In the context of the SADC, for example, he argues that “the SADC represents at least three main legal traditions, namely: the Common Law, Roman-Dutch Law and Civil Law”.¹⁵ Thus, these differences in legal systems impede the harmonisation of telecommunications law and policies.¹⁶ There is scope for debate in this area, but the author has succeeded in articulating his views in a coherent manner which is of practical benefit to academic literature. Other aspects of his analysis include several sub-regional organisations such as the COMESA, the East African Community (EAC). He concludes that “to a large extent, the highlighted challenges appear similar across all the sub-regions that were discussed”.¹⁷ These challenges must be addressed to facilitate regional economic integration.¹⁸

X. CONCLUSION

A major strength of this book lies in the scope of coverage and the discussion of topical issues in telecommunications law and policy underpinned by an extensive use of legal authorities. In an area where there is a paucity of academic literature, especially Africa, the book is a commendable effort to provide invaluable insights and a guide to scholars who will find it to be a good basis for further research. The international comparative legal analysis makes the book appealing to scholars in various jurisdictions around the world. But beyond scholarly circles, the book should be useful to lawyers, regulators, policy makers and potential investors.

¹⁵ P 366.

¹⁶ *Ibid.* the monist and dualist perspectives in the context of giving effect to international legal frameworks on telecommunications.

¹⁷ P 389.

¹⁸ P 390.