

~~Sc~~  
sclabour  
06/03/22  
Saur as: ppo2 briefing

**BRIEFING DOCUMENT ON THE FINAL ACTS OF THE PLENIPOTENTIARY  
CONFERENCE, MARRAKESH, MOROCCO 2002**



**FOR THE SELECT COMMITTEE ON LABOUR AND PUBLIC ENTERPRISES**

**CAPE TOWN, 22 MARCH 2006**

## TABLE OF CONTENTS

	<b>INTRODUCTION TO THE INTERNATIONAL TELECOMMUNICATION UNION</b>	<b>3</b>
	<b>SOUTH AFRICA AND THE ITU</b>	<b>3</b>
	<b>MEMBERSHIP</b>	<b>3</b>
	<b>THE LEGAL FRAMEWORK OF THE ITU</b>	<b>5</b>
	<b>THE ITU PLENIPOTENTIARY CONFERENCE</b>	<b>6</b>
	<b>FINAL ACTS OF THE PLENIPOTENTIARY CONFERENCE, MARRAKESH, 2002</b>	<b>7</b>
	<b>PROCEDURES FOR RATIFICATION</b>	<b>7</b>
	<b>MODEL OF INSTRUMENT OF RATIFICATION</b>	<b>8</b>

## **INTRODUCTION TO THE INTERNATIONAL TELECOMMUNICATION UNION**

The ITU was founded in Paris in 1865 as the International Telegraph Union. The current name "International Telecommunication Union" was decided by the Madrid Plenipotentiary Conference in 1932. The ITU is a specialized agency of the United Nations. ITU activities are governed by the ITU Constitution adopted in 1992 and as revised at the plenipotentiary Conference at Minneapolis, USA in 1998 and again in Morocco, Marrakesh in 2002.

The Union's most recent plenipotentiary conference, held in Marrakesh from 23 September to 18 October 2002, endorsed the organization's Strategic Plan. In the period 2004-2007, the priority actions to be undertaken by the Union will seek to achieve the goals set out in the plan, which include bridging the international digital divide by facilitating development of fully interconnected and interoperable networks and services and taking a leading role in the preparations and follow-up of the World Summit on the Information Society. It also specifies that ITU develop tools, based on contributions from members, to safeguard the integrity and interoperability of networks.

### **SOUTH AFRICA AND THE ITU**

South Africa became a member of the ITU in 1881. In 1965 following the Montreux Plenipotentiary Conference South Africa was excluded from participating in meetings of the Organization but continued to remain a member of the organization. A follow-up decision taken at the 1989 Plenipotentiary Conference in Nice resolved that South Africa would continue to be excluded from all conferences, meetings and activities of the ITU until such time as apartheid policies were eliminated.

This resolution was set aside by the Executive Council on 9 May 1994 and formally adopted during the 1994 Plenipotentiary Conference. South Africa submitted instruments of accession to the constitution, convention and optional protocol of the ITU on 30 June 1994, thus permitting its full participation in the ITU with effect from the 1994 Plenipotentiary Conference held in Japan. At that conference and at the subsequent conferences in Minneapolis, in 1998 and Marrakech, in 2002, South Africa was nominated and elected to membership of the Council.

### **MEMBERSHIP**

South Africa is a member of ITU and contributes financially in the form of an annual contribution to the amount of 945 000, 00 Swiss Francs (+- R 5 Million). The contribution is paid by the Department of Communications from the Multilateral Budget under Transfer payments. Table 1. indicates the membership of South African organizations.

Table 1.

Name	ITU-R	ITU-T	ITU-D	Categories
<b>Sudafricaine (Rép.) - South Africa - Sudafricana (Rep.)</b>				
Ministry of Communications , PRETORIA				MINISTRY
Department of Communications , PRETORIA				ADMIN
Independent Communications Authority of South Africa (ICASA) , SANDTON				ADMIN RELATED / REGULATOR
Cell C (Pty) Ltd. , BENMORE	X	X	X	ROA
Mobile Telephone Networks (Pty) Ltd. (MTN) , SANDTON			X	ROA
Orbicom (Pty) Ltd. , SANDTON	X			ROA
Sentech (Pty) Ltd. , HONEYDEW			X	ROA
Telkom SA Ltd. , PRETORIA	X	X	X	ROA
Transtel , JOUBERT PARK	X	X	X	ROA
Vodacom (Pty) Limited , SANDTON	X	X	X	ROA
10 member(s) (ITU-R=5, ITU-T=4, ITU-D=6, any=7).				

ITU-R =Radiocommunications Sector

ITU-T = Telecommunication Standardization Sector

ITU-D = Development Sector

The Union's main source of financing is the contributions of its Member States, which account for 66.1% of the overall budget. At each plenipotentiary conference, every member (States and Sector Members alike) selects its class of contribution. The amount of the contributory unit is determined when the budget is approved and the current value of one contributory unit for a Sector Member is set at 1/5 of that of a Member State. Sector Members contribute 13.3% of the overall budget. The scale of unit classes ranges from 1/16 of a unit to 40 units but any member may choose a number of contributory units over 40. Only Member States listed by the United Nations as least developed countries and those determined by the Council may select the 1/8 and 1/16 unit classes of contribution.

Through membership of the ITU, government and industry alike can ensure their voice is heard, and make an important and valued contribution to the developments reshaping the world around us. Direct involvement in the work of ITU gives all members a chance to influence, learn and play a part in forging a new world for a new millennium.

Because of its unique role and track record in worldwide telecommunications, ITU provides the ideal forum for governments and the private sector to come together to set agendas and policy frameworks that will have tremendous impact on the future of global business.

## THE LEGAL FRAMEWORK OF THE ITU

The legal framework of ITU comprises, in particular, the following legal instruments of the Union, which have treaty status. These instruments are:

- The Constitution and Convention of the International Telecommunication Union signed on 22 December 1992 (Geneva) and which entered into force on 1 July 1994. Since their adoption in 1992, the ITU Constitution and Convention have been amended by Plenipotentiary Conferences (Kyoto, 1994; Minneapolis, 1998 and Marrakesh, 2002).

Those amendments entered into force on 1 January 1996, 1 January 2000 and 1 January 2004. Membership of ITU is open to governments, which may join the Union as Member States, as well as to private organizations like carriers, equipment manufacturers, funding bodies, research and development organizations and international and regional telecommunication organizations, which can join ITU as Sector Members.

Under the Constitution of the International Telecommunication Union, the purposes of ITU are:

- To maintain and extend international cooperation between all its Member States for the improvement and rational use of telecommunications of all kinds
- To promote and enhance participation of entities and organizations in the activities of the Union, and to foster fruitful cooperation and partnership between them and Member States for the fulfilment of the overall objectives embodied in the purposes of the Union
- To promote and offer technical assistance to developing countries in the field of telecommunications, and also to promote the mobilization of the material, human and financial resources needed to improve access to telecommunications services in such countries
- To promote the development of technical facilities and their most efficient operation, with a view to improving the efficiency of telecommunication services, increasing their usefulness and making them, so far as possible, generally available to the public
- To promote the extension of the benefits of new telecommunication technologies to all the world's inhabitants
- To promote the use of telecommunication services with the objective of facilitating peaceful relations
- To harmonize the actions of Member States and promote fruitful and constructive cooperation and partnership between Member States and Sector Members in the attainment of those ends
- To promote, at the international level, the adoption of a broader approach to the issues of telecommunications in the global information economy and society, by cooperating with other world and regional

intergovernmental organizations and those non-governmental organizations concerned with telecommunications.

## **THE ITU PLENIPOTENTIARY CONFERENCE**

The supreme authority of the Union is the Plenipotentiary Conference, a meeting composed of delegations from the Union's Member States, held every four years to adopt the underlying policies of the organization and determine its structure and activities.

Plenipotentiary conferences determine the direction of the Union and its activities, and make decisions relating to the structure of the organization via a treaty called the Constitution and Convention of the International Telecommunication Union. The current Constitution and Convention date back to 1992, and were adopted by the Additional Plenipotentiary Conference held in Geneva that year. They have since been amended by the Plenipotentiary Conferences of Kyoto (1994), Minneapolis (1998) and Marrakesh (2002).

Under the ITU Constitution, the Plenipotentiary Conference:

- determines the general policies needed to fulfil the purposes of the Union
- considers reports by the Council on the Union's activities since the last plenipotentiary conference and on the policy and strategic planning of the Union
- establishes the basis for the budget of the Union and determines, in the light of decisions taken on the activities of the Union and on the recommended policy and strategic planning of the Union, financial limits until the next plenipotentiary conference
- establishes the total number of contributory units for the period up to the next plenipotentiary conference, on the basis of the classes of contribution announced by Member States
- elects the Member States which serve on the Council and determines the number of Council seats
- elects the Secretary-General, Deputy Secretary-General and the Directors of the three Bureaux
- elects the members of the Radio Regulations Board
- considers and adopts proposals for amendments to the Constitution and Convention
- concludes or revises agreements between the Union and other international organizations, and examines any provisional agreements with such organizations concluded by the Council
- examines and approves the accounts of the Union
- provides general directives on the staffing of the Union and, if necessary, fixes basic salaries, salary scales and the system of allowances and pensions for all officials of the Union

- amends the rules of procedure of conferences and other meetings, if required, and
- deals with any other telecommunication issues which require action.

## **FINAL ACTS OF THE PLENIPOTENTIARY CONFERENCE, MARRAKESH, 2002**

The Final Acts of the Plenipotentiary Conference of Marrakesh can also be referred to as the instruments amending the constitution and convention of the ITU as amended by the Plenipotentiary Conference in Kyoto, 1994 and the Plenipotentiary conference in Minneapolis, 1998.

The Final Acts is published in the form of a book issued by the ITU. The publication contains the articles of the constitution and convention, declarations and reservations by member countries, General rules of conferences, assemblies and meetings of the union and, decisions resolutions and recommendations of the conference.

The South African head of delegation Ms Lyndall Shope-Mafole accredited to participate in the Marrakesh Plenipotentiary conference signed the final acts at the conference in October 2002.

## **PROCEDURES FOR RATIFICATION**

### Concluding international agreements

The procedure for concluding international agreements (which includes treaties and conventions) is set out in Chapter 5 of the Manual on Executive Acts of the Office of the President of South Africa. In short this procedure involves the following:

- an opinion on the agreement's consistency with domestic law must be obtained from the State Law Advisers at the Department of Justice and Constitutional Development;
- an opinion on the agreement's consistency with international law and South Africa's international obligations must be obtained from the State Law Advisers (IL) at the Office;
- a President's Minute must be prepared by the responsible government department for signature by both the responsible line function Cabinet Minister and the President;
- the President's Minute, a short explanatory memorandum together with two copies of the agreement must be forwarded to the Office for certification in accordance with the prescribed procedures in a Z137 coversheet, before it can be presented to the Presidency for approval.

Chapter 5 of the Manual must be read together with section 231 of the Constitution

of the Republic of South Africa, Act No. 108 of 1996. This Manual clearly indicates what each step involves and examples of the relevant documentation are reflected in Annexures 1,2 and 3.

### **Obtaining President's Approval**

All international agreements must be submitted for legal advice to the State Law Advisers of the Department of Justice and Constitutional Development and to the State Law Advisers of this Office to obtain the opinions as indicated above.

All international agreements to be signed must be approved by the National Executive. This is regardless of whether or not the agreement falls within the ambit of section 231(2) or 231(3) of the Constitution. This must be done prior to the signature of any agreement. In practice, this is done by obtaining a President's Minute, that is signed by the Cabinet Minister responsible for the specific subject matter of the agreement and counter-signed by the President.

### **Certification of agreements**

In order to obtain a President's Minute, the text of the agreement must be certified by the State Law Advisers (IL) of the Office. The following documents need to be submitted in order to obtain the certification of the agreement:

- ◆ Text of the President's Minute
- ◆ Explanatory Memorandum, indicating the proposed date of signature
- ◆ Two copies of the final text of the agreement
- ◆ Certificate of authenticity issued by the Minister of the responsible government department in case of multilateral agreements
- ◆ A copy of the Legal advice of the State Law Advisers of the Department of Justice and Constitutional Development
- ◆ A copy of the Legal advice of the State Law Advisers (IL) of the Office
- ◆ The State Law Advisers (IL) need at least 24 hours to certify agreements
- ◆ All documents must be contained in Folder Z137

(Source: office of the chief state law advisor: international law)

All of the above requirements have been met and the Final Acts are tabled for approval by the committee and ratification by parliament.



**Model of Instrument of Ratification – (Marrakesh, 2002)**

*For use by a Member State of the International Telecommunication Union (ITU) that is a signatory to the Final Acts of the Plenipotentiary Conference (Marrakesh, 2002)*

[STATE OF .....]  
or<sup>1</sup> [GOVERNMENT OF .....]

**Instrument of [Ratification][Acceptance][Approval]<sup>1</sup>  
of the  
Instruments amending the  
Constitution of the International Telecommunication Union (Geneva, 1992)  
and the  
Convention of the International Telecommunication Union (Geneva, 1992),  
as amended by the Plenipotentiary Conferences (Kyoto, 1994; Minneapolis, 1998),  
adopted by the Plenipotentiary Conference (Marrakesh, 2002)**

**Whereas**

on 18 October 2002, the Member States of the International Telecommunication Union participating in the Plenipotentiary Conference (Marrakesh, 2002) signed the Instruments amending the ITU Constitution and Convention (Geneva, 1992), as amended by the Plenipotentiary Conferences (Kyoto, 1994; Minneapolis, 1998),

**and whereas**

\_\_\_\_\_ <sup>2</sup> is a Member State of the International Telecommunication Union, a Party to the above-mentioned Constitution and Convention and a signatory to the Instruments amending the said Constitution and Convention adopted by the Plenipotentiary Conference (Marrakesh, 2002);

\_\_\_\_\_ <sup>2</sup> is thus qualified to [ratify][accept][approve]<sup>1</sup> the said Instruments of Amendment, in accordance with Article 55 of the Constitution and Article 42 of the Convention,

**We/I<sup>1,3</sup>** \_\_\_\_\_

declare, by virtue of this single Instrument, that \_\_\_\_\_ <sup>2</sup> [ratifies][accepts][approves]<sup>1</sup> the above-mentioned Instruments of Amendment, adopted by the Plenipotentiary Conference (Marrakesh, 2002), and undertakes to abide faithfully by all of the provisions contained therein.

This Instrument of [Ratification][Acceptance][Approval]<sup>1</sup> shall become effective on the date of its deposit with the Secretary-General of the International Telecommunication Union.

Done at \_\_\_\_\_ on \_\_\_\_\_

(Seal)

(Signature)<sup>3</sup>