

Global Governance
International Law and Contemporary Challenges



The Law of the International Community: Subjects and Sources of International Law

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3A – Subjects: International Organizations

International organizations as “functional” subjects of the international legal order

- very **useful** - not structurally necessary subjects in the international Community (the Community and its legal order existed also before their emergence as a relevant phenomenon)
- created on **voluntary** basis (through a treaty) by the founding member States
- limited to **powers** which are explicitly **attributed** (and **implied**) in their statute

International organizations as “functional” subjects of the international legal order

- means for **institutionalized co-operation** between States (ad hoc international conferences do not consent the necessary continuity and timeliness of action)
- co-operation mechanisms studied in order to obtain **effective rapprochement** between different positions of States (co-operation = middle-way between harmony and discord, common interest being never the only – and not always the main – reason of the eventual success of such rapprochement)
- institutional structure and the internal rules of the organization must ensure **a certain autonomy** of its deliberations (not the simple sum of each member State's will=not always unanimity of Parties required)

-See ICJ, *Legality of the use by a State of Nuclear Weapons in Armed Conflict* (1996), Opinion

The constituent instruments of international organizations “is to create new subjects of law **endowed with a certain autonomy**, to which the parties entrust the **task of realizing common goals**”.

International organizations as “functional” subjects of the international legal order

Autonomy of the organization, though, must not be perceived as an excessive “threat” to States' sovereignty and “ascendent” phase must take into account the possible difficulties in the implementation phase

When the organization has the power to adopt binding acts, similarly to what happens for the formation of customary international law rules, the **different power/political influence of States** is reflected in the composition of the organs of the organization and/or in the procedural mechanisms for the adoption of their decisions

see the examples:

- of the **UN Security Council** (15 members, 5 of which **permanent members with veto right**);
- of the **EU Council** (one member per State, usually **voting by qualified majority**)

International organizations as “functional” subjects of the international legal order

- the powers of each organization are shaped according to its **specific function** (to be inferred through the interpretation of its statute)
- there are very **different types** of international organizations (technical/political, regional/universal)
- **similar structure** in most organizations: assembly organ (all member States represented), executive organ (only few member States, usually elected) and individual organ (Secretary/Director-general) – **in exceptional cases not facultative jurisdictional organ**

International organizations as “functional” subjects of the international legal order

- International **legal personality** as a general status (different from domestic legal personality in the member States and in headquarters States, usually mandatory under treaty sources)
- Parameters to ascertain sufficient **autonomy** from member States: institutional structure and procedures, organs, capacity to conclude international treaties
- Only IGOs (not NGOs) are international law subjects (their attributed “**public powers**” enable them to participate in performing the functions of the international legal order and to be directed some of its rules)

International organizations as “functional” subjects of the international legal order

International organizations as subjects of international law which are characterized by their specific functions and not by their status of “sovereign equality” (as is the case for States):

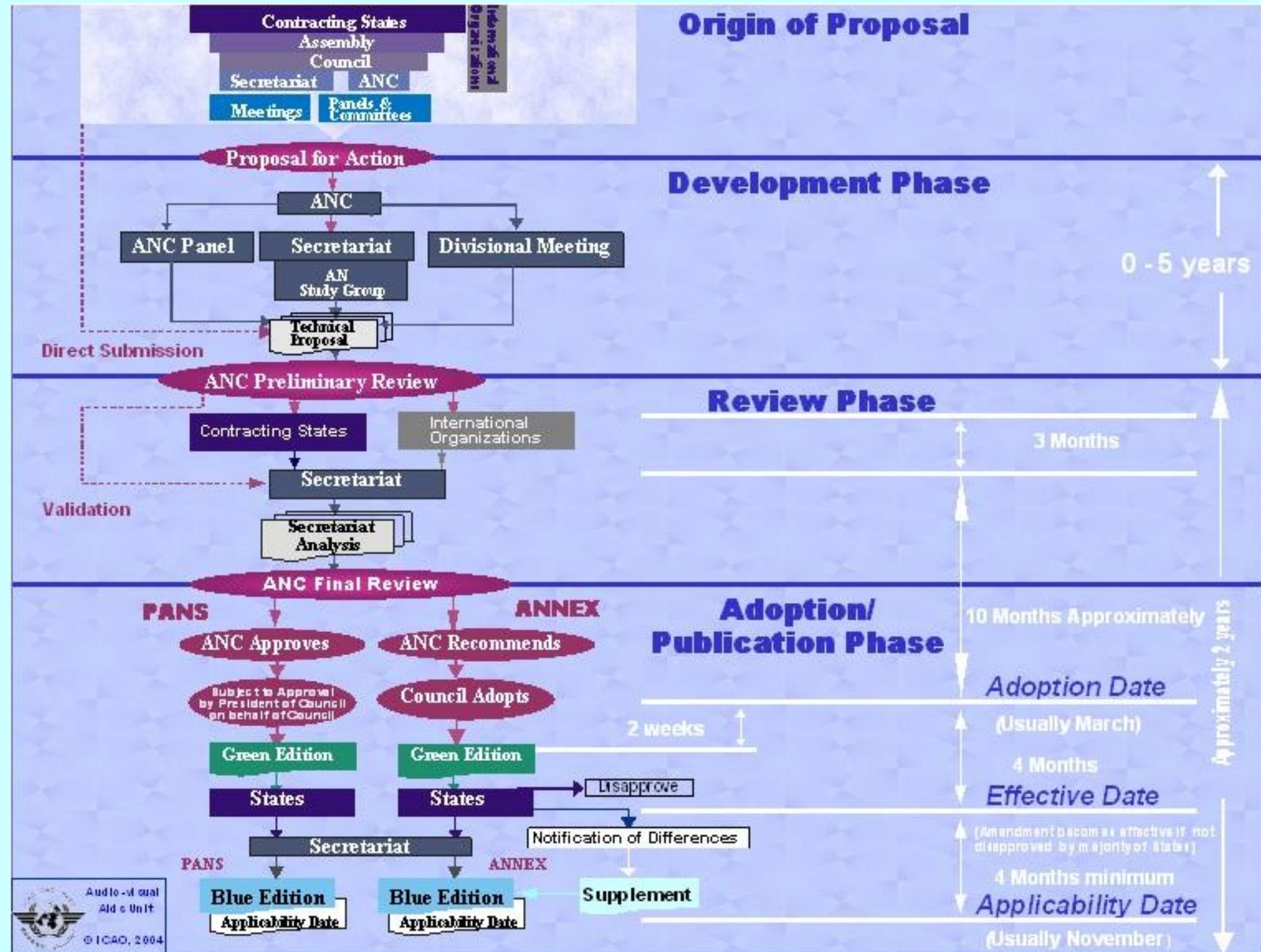
- have a **separate responsibility** under international law - topic studied by the International Law Commission (but practice is rare on this issue and there are also “mixed agreements” and voluntary assumptions of responsibility also by member States – see EU practice and art. 216.2 of the TFEU)
- are recognised **privileges and immunities** in domestic jurisdictions for their assets, properties and representatives (but the question is settled in its own way in each headquarters agreement)

“Law making” powers of international organizations

- adoption of acts as provided for in the Statute of the organization (legitimation of such acts comes from – and is limited to – the **powers attributed** through treaty to the organization by member States and those therein implied)
- **usually** the Statute of the organization enables its organs to adopt only **non-binding** external acts (recommendations) as a result of the necessity to accept the majority vote to ensure the organization's autonomy from members
- outstanding **exceptions**: EU binding acts and the deliberative powers of the UN Security Council
- **possible “liceity effect” of recommendations** (combination of the obligation of Parties to cooperate in good faith with the organization and estoppel)

“Law making” powers of international organizations

- most international organizations are specialised fora for the conclusion by States of international **treaties** (IMO, UNESCO, ILO...)
- in sectors where continuous technical co-operation is indispensable, institutional mechanisms are conceived in order to facilitate general acceptance of the **common standards** adopted by majority:
 - example of ICAO procedures
 - example of WHO procedures



Adoption / Publication Phase

ANC Final Review

ANC Recommends

Council Adopts

Green Edition

States

Disapprove

Secretariat

Notification of Differences

Blue Edition

Supplement

Applicability Date

ANNEX

Adoption Date

(Usually March)

2 weeks

4 Months

Effective Date

(Amendment becomes effective if not disapproved by majority of States)

4 Months (minimum)

Applicability Date

(Usually November)

ANNEX



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CONSTITUTION OF THE WORLD HEALTH ORGANIZATION

Article 21

The Health Assembly shall have authority to adopt regulations concerning:

- (*a*) sanitary and quarantine requirements and other procedures designed to prevent the international spread of disease;
- (*b*) nomenclatures with respect to diseases, causes of death and public health practices;
- (*c*) standards with respect to diagnostic procedures for international use;
- (*d*) standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products moving in international commerce;
- (*e*) advertising and labelling of biological, pharmaceutical and similar products moving in international commerce.

Article 22

Regulations adopted pursuant to Article 21 shall come into force for all Members after due notice has been given of their adoption by the Health Assembly except for such Members as may notify the Director-General of rejection or reservations within the period stated in the notice.