INTERNATIONAL REGIONAL ENTITIES AND THE PROCESS OF ESTABLISHING TREATIES

REGIONAL ANTI-CORRUPTION INITIATIVE

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This thematic study will look at the place occupied by international organizations within the international legal arena putting emphasis on regional organizations and the establishment of treaties. The study is focused on South Eastern Europe region and especially on Regional Anti-Corruption Initiative (RAI), as regional international organization.

The overall idea behind this study is to picture the essential elements that make an organization to be an international governmental organization (IGO), and to exemine RAI's essential elements from the perspective of an IGO. By looking into the international community and by comparing different actors, the study focusses on the reality of RAI and also gives the specific steps in order to bring the reality of the organization to match the formal aspects of its existance as an IGO.

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I. OVERVIEW OF INTERNATIONAL ORGANIZATIONS

The current period of globalization brings with it calls for international co-ordination and collective action. Moreover, globalization increases the demand for international action in order to control the continuous expand of economy, keeping world peace, strengthening democracy, preventing corruption acts and so on.

The last fifty years have witnessed dramatic growth in various measures of international cooperation and institution-building, including an overall increase in inter-governmental exchange, treaties, and international governmental organizations. In addition, nations also sometimes create international organizations possessing delegated authority to study global problems, generate recommendations or policies, implement programs, or enforce rules and settle disputes.[1]

International organizations first appeared in the 19th century as a mean of conducting international relations and fostering cooperation between Sates.

They evolved from the *ad hoc multilateral conferences convened by States (Congress of Vienna-1815)* into institutions in which member States not only meet regularly, but which also possessed organs that functioned on a permanent basis.[2] The second half of the 19th century witnessed the creation of „public international unions" which were similar to modern intergovernmental organizations. Such examples are: the International Telegraph Union founded in 1865, and the Universal Postal Union established in 1874.

The early international organizations dealt with narrow spheres of activities, mainly of a technical nature whereas nowadays modern international organizations play a crucial role in certain fields and interstate activity such as the sphere of international economics, international security, protection of international human rights[3] and also international peace and security, tasks carried out by an organization which was born later, „The League of Nations", created in 1919 which was the forerunner of the United Nations 1945.

In the literature on International public law and international relations there

1 http://www.hks.harvard.edu/m-rcbg/research/c.coglianese_governance_globalization.and.design.pdf

2 International Law", Malcom N. Shaw, Cambridge University Press, 6th Edition, pg. 253

3 „The Responsibility of International Organizations Toward Third Parties: some basic principles", Martinus Nijhoff Publishers, pg.3

are many different definitions on IGOs. However, no matter how different the definitions are, what is common for all of them are the three essential elements which must exist in order for an entity to be considered an IGO. For the purpose of this study, the following definition will be used:

"International organization" means an organization established by a treaty or other legal instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities.[4]

By analyzing the definition above we can find and describe the three essential elements which are considered to be the key criteria for identifying whether a certain entity is an IGO or not:

1. Established by a treaty or other instrument governed by international law. International organization can come into being through different international instruments, treaties being the most common ones and the most enforceable. Other legally binding instruments, as formal as a treaty, are conventions. Afterall, no matter the title, any other legal instrument, if it is governed by international law and has the proper content, will be considered as international legal instrument apropriate for establishing an IGO. An agreement between governments to erect a power station under the national legal system of one of them does not create a public international organization.

2. Possessing its own international legal personality. For an entity to be an international organization it must possess autonomous organs having a will which is separate from that of the members.[5]

3. Member States. Sovereignty represents the third essential element of the definition of IGOs. Many international organizations have only sovereign States as members. Membership of organizations can be either worldwide (United Nations-membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the U.N. Charter and, in the judgment of the Organization, are able and willing to carry out these obligations[6]) or regional, on a specific continent (Council of Europe) or even smaller regions, the focus of

4 ILC Reports, 2009, p. 43
5 International Law", Malcom N. Shaw, Cambridge University Press, 6th Edition, pg. 254
6 http://en.wikipedia.org/wiki/Member_states_of_the_United_Nations

the study being on South Eastern Europe (Regional Cooperation Council). An increasing number of international organizations include among their members other entities such as other international organizations, agecies, civil socities etc. Many international organizations take part in the work of other international organizations, but not often as full members, the more usual course of affairs being for them to have observer status and a purely advisory role.[7]

The criteria set out above distinguishes international governmental organizations- IGO's from other type of international association such as internationl non-governmental organizations. The notion "non-governmental" refers to the function of these organizations: they are not endowed with governmental tasks. NGO's are not created by treaty nor are they established under international law.[8] This study focuses only on IGOs. There are different ways of classification of IGOs, the most obvious being in terms of their membership, geographical territory they cover, or the geographical area of the member states, and their structure.

In terms of membership, IGOs may be either universal (open) or closed.

Universal organizations are open to all States (e.g. U.N.) whilst closed organizations limit membership to those States fulfilling certain criteria.[9] Universal membership distinguishes international organizations from similar institutions that are open only to member states from a particular region.

The geographical position represents a crucial distinction for an organization's status. That is when membership is conditioned by the position on the globe.

Therefore, there are two main distinctions related to the geographical position as follows: worldwide organizations, U.N. for example, is a global entity which has its membership open to any State; organizations which span over a continent, such as the Council of Europe and the classification could go even further, mentioning also even smaller organizations, Regional Anti-Corruption Initiative, focal point of this study, in smaller regions such as South Eastern Europe.

Besides the geographical criteria, there is also the language related distinc-

7 "International Institutional Law", Henry G. Schermers& Niels M. Blokker, Martinus Nijhoff Publishers, Fifth revised edition, pg. 72

8 "International Institutional Law", Henry G. Schermers& Niels M. Blokker, Martinus Nijhoff Publishers, Fifth revised edition, pg. 48

9 "International Law", Malcom N. Shaw, Cambridge University Press, 6th Edition, pg. 254

tion: (The Arab League), religion related (Organization of Islamic Cooperation) and commodity related (Organization of the Petroleum Exporting Countries).

Regional organizations are the most common kind of closed organizations. The notion 'regional' is often not appropriate, since there are few organizations the membership of which is entirely based on geographical factors. Generally, political factors play at least an equally important role. Still, organizations such as the Council of Europe, the African Union may well be called regional, despite the fact that not all states of the region were or are entitled to participate.[10]

Furthermore, less importance is given to regional organizations in contrast with global ones, but regional organizations are more focused on a certain problem in the region, such as corruption, unlike worldwide organizations which deal also with other issues such as peace and security, human trafficking, protection of the environment and so on.

Regional organizations are more familiar with the sources of the relevant conflict and more invested in its solutions.[11]

When it comes to the structure of international organizations, it varies from one to another. Using different names such as "Executive Board", "Council", "Governing Body" or "Executive Council", all universal organizations, and many regional organizations, have policy making organs, composed of a limited number of member states. The tasks and competences of these boards vary greatly. In principle, we can distinguish between two types of boards: executive boards, which play a secondary role under the authority of the general congress; and governing boards, which have their own independent powers. Executive boards prepare the agenda of the general congress and executes its decisions. They usually supervise the Secretariat and the budget of the organizations. In order to establish the greatest degree of conformity between both organs, executive boards are generally composed of government representatives, selected in such a way that all important interests within the general congress are represented on the executive board. This method of composition of the executive board enables member states to know from the preparatory discussions in the board what the views of the general congress will be, and ensures that later execution by the executive board will be in line, as much as possible, with previous

10 "International Institutional Law", Henry G. Schermers& Niels M. Blokker, Martinus Nijhoff Publishers, Fifth revised edition, pg. 54

11 http://blogs.cfr.org/patrick/2012/03/23/the-un-versus-regional-organizations-who-keeps-the-peace/

decisions of the general congress.

On the other hand, a governing board has its own task, independent of the general congress. Particular functions of the organization are entrusted to it and it performs them on behalf of the whole organization. Governing boards are generally composed of government representatives. The execution of their tasks has only exceptionally been entrusted to experts not under government instruction.[12]

Most commonly international organizations are structured in committees, (a type of small deliberative assembly that is usually intended to remain subordinate to another, larger deliberative assembly- which usually is organized so that action on committee requires a vote by all its entitled members. It is common for a chairperson to organize a committee meeting through an agenda, which is usually distributed in advance[13]), steering committee is a committee that provides guidance, direction and control to a project within an organization, sub-committees (a subdivision of a committee usually organized for a specific purpose), a decision-making body (which acts as a leading body of the organization and relevant decisions can be taken in a collective forum in order to find the appropriate solutions for the on-going activities), a Secretariat (which is the executive branch which provides support and oversight to the organization which is usually composed by high level representatives who make sure the decisions taken are done in their joint efforts). The tasks and influence of secretariats vary, of course, with the tasks and influence of the organizations themselves. Their influence depends further more on several factors: the powers granted by the constitution (or other constituent instrument) of the organization provides the boundaries within which the secretariat must operate; the financial support of a secretariat will greatly influence its quality and capacity of conducting the running projects.

12 "International Institutional Law", Henry G. Schermers& Niels M. Blokker, Martinus Nijhoff Publishers, Fifth revised edition, pg. 408

13 http://en.wikipedia.org/wiki/Committee

I .1.COUNCIL OF EUROPE

The Statute of the Council of Europe (also known as the Treaty of London (1949)) is a treaty that was signed on 5 May 1949, which created the Council of Europe.[14]

This regional intergovernmental organization currently has 47 member states. Article 4 of the Council of Europe Statute specifies that membership is open to any "European" State. This has been interpreted liberally from the beginning (when Turkey was admitted) to include any Eurasian state with a toe-hold in Europe.[15]

The organization of the Council is categorized in 4 main sections: Institutions, the Secretariat General, Partial Agreements and External Offices.

The organs of the Council of Europe are: the Committee of Ministers is the organ which acts on behalf of the Council of Europe. On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters. Its conclusions shall be communicated to members by the Secretary General.[16] The Committee of Ministers adopts its rules of procedures which determine the quorum, the procedure for the admission of items to its agenda, including the giving of notice of proposals for resolutions.

The Consultative Assembly is the deliberative organ of the Council of Europe. It discusses and makes recommendations upon any matter within the aim and scope of the Council of Europe.

Both these organs are served by the Secretariat of the Council of Europe.

The Secretariat consists of a Secretary General, a Deputy Secretary General and such other staff as may be required.[17]

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14 http://en.wikipedia.org/wiki/Council_of_Europe
15 Statute of the Council of Europe, London, 5. V. 1949
16 Statute of the Council of Europe, London, 5. V. 1949
17 Statute of the Council of Europe, London, 5. V. 1949
18 "International Institutional Law", Henry G. Schermers& Niels M. Blokker, Martinus Nijhoff Publishers, Fifth

II. INTERNATIONAL REGIONAL ENTITIES

Nowadays, many issues transcending national boundaries are dealt with by regional organizations. In addition, within their framework, the members' policies are sometimes coordinated to present one regional standpoint in universal organizations.

Regional organizations are, in a sense, international organizations as they incorporate international membership and encompass geopolitical entities that operationally transcend a single nation state. As stated in the previous chapter, the term 'regional' is often not appropriate as they encompass international membership. However, their membership is characterized by boundaries and demarcations characteristic to a defined and unique geography, such as continents or smaller regions (e.g. South Eastern Europe),or geopolitics, such as economic blocks. [19]

While undertaking the research different types of organizations have been found and the differences are not always reflected by their names as it will be explained further: these different types of organizations are: regional organizations, regional initiatives and regional task forces. They take actions to support institutional strengthening, fundraising, networking, they come from an array of different sectors in the region.

To make the distinction more understandable three organizations will be considered here:

II .1.REGIONAL COOPERATION COUNCIL (RCC)

The RCC focuses on promotion and enhancement of regional cooperation in South East Europe (SEE) and supports European and Euro-Atlantic integration of the aspiring countries and is known as the successor of the Stability Pact for South Eastern Europe.

The RCC Secretary General is a strong political figure from the region. Following the endorsement of the RCC Annual Meeting, the Secretary General is ap-

revised edition, pg. 82

19 http://en.wikipedia.org/wiki/Regional_organization

pointed by SEECP Foreign Ministers and approved by the SEECP Summit.

The Secretariat of the RCC is directed by the Secretary General and supports the RCC as well as the SEECP in fulfilling their tasks by working towards the preparation and implementation of decisions of the RCC Annual Meeting and Board as well as decisions of SEECP Summits and/or Ministerial meetings. The Secretariat provides analytical, organizational and technical support to the Secretary General, the RCC Annual Meeting and Board as well as operational support – if required – in preparing SEECP Ministerial meetings and Summits. It provides a coordination framework for regional cooperation activities within SEE and acts as an information and focal point for such activities. Those RCC participants contributing to the budget of the Secretariat form the RCC Board, currently comprising 27 participants. [20]

The RCC Board provides operational guidance and supervision of the organization in between the Annual Meetings. The Board accepts the Annual Report of the Secretary General and adopts the Strategy and Work Programme, reviews progress in the course of the year and provides proposals and initiatives with the view of further development of regional cooperation. The Board consists of those RCC participants contributing to the budget of the RCC Secretariat as well as the European Union, represented by a representative of the High Representative of the Union for Foreign Affairs and Security Policy and a representative of the European Commission.

The Statute of the RCC forms the basis for its operations.[21]

II .2.REGIONAL ANTI-CORRUPTION INITIATIVE (RAI)

Regional Anti-Corruption Initiative, the only organization dealing with the problem of corruption in the region and the primary interest of this study, brings together all countries in South Eastern Europe to fight against corruption.

The Regional Anti-corruption Initiative (RAI) was initially adopted in Sarajevo in February 2000, as Stability Pact Anti-corruption Initiative (SPAI), to address corruption- one of the most serious threats to the recovery and development of the South East European countries.

Currently the Initiative consists of nine member countries (Albania, Bosnia

20 http://www.rcc.int/pages/14/structure
21 file:///C:/Users/Admin/Downloads/RCC%20Statute_25April2013.pdf

and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania and Serbia) from the region, providing all of them with a general framework for coordination, optimization of efforts and permanent dialogue with the partner community involved in the fight against corruption.

RAI has two main bodies: The Steering Group, which is the decision-making body of the organization. It is composed by high level representatives of South Eastern European (SEE) member countries. It works both as a leading body of the initiative where regional approaches to corruption problems facing SEE countries can be discussed in an equal footing and relevant decisions can be taken and a collective forum where wide responses to such challenges are formulated and worked out.

As part of the Steering Group body, worth mentioning is the Chairperson of RAI.

The Chairperson plays a pivotal role within the Initiative's framework for ensuring the permanent coordination of the activities undertaken by the member countries in implementing the commitments endorsed within the Regional Anti-corruption Initiative Strategic document. In this regard he/she convenes and chairs the Steering Group meetings. The Chairperson also oversees the enforcement of the decisions taken by the Steering Group. He/she represents the Initiative in the relations with all international partners and promotes the implementation of RAI's strategic objectives.[22]

The Secretariat is the executive body, where all the decisions, policies and strategies are executed.

The marking point was the opening for signature and ratification of the organization's Memorandum of Understanding (MoU) by the member countries. By signing the MoU, the signatory countries ensured the financial sustainability of the Secretariat by providing an annual financial contribution and decided for the first time to raise a Chairman of the Initiative from the region. It was a further clear step towards a full regional ownership and leadership of the Anti-corruption Initiative, thus demonstrating the involvement of the SEE countries in the fight against corruption.[23]

22 http://www.rai-see.org/steering-group/chairperson.html
23 http://www.rai-see.org/about-us/historical-background.html

II .3.TASK FORCE FOSTERING AND BUILDING HUMAN CAPITAL OF THE REGIONAL COOPERATION COUNCIL

Regional task force is a simple grouping formed to carry out a specific mission or project, or to solve a problem that requires multi-disciplinary approach.[24] Unlike intergovernmental organizations these groupings have not been founded by a constituent document.[25]

The Task Force Fostering and Building Human Capital (TFBHC) of the Regional Cooperation Council (RCC) was launched by the RCC Board in June 2008 and is entrusted with the promotion of coherency between education, higher education and research cooperation in South Eastern Europe.

As described in its constituent document[26], the aim of the Task Force Building Human Capital is to promote coherency and coordination between education, higher education, research and science by creating a platform for dialogue and cooperation of actors involved in these sectors.

In order to reach its aims, the TFBHC builds upon and draws on already existing and new regional networks and initiatives, and ensures coordination with other RCC priority areas.

The TFBHC closely cooperates with the RCC Secretariat, in particular through the Senior RCC Expert on Fostering and Building Human Capital and in the framework of the regular Task Force meetings. The RCC assists the TFBHC and facilitates its work in accordance with the Joint Declaration on the establishment of the RCC and the RCC Statute.

In line with the high-level coordination process envisaged in the Framework for Action to the Memorandum from Istanbul, the TFBHC holds its regular meetings once a year and promotes and facilitates regular meetings of high level/senior officials and senior experts from the education, higher education and research sectors of the SEECP region.

The Task Force Secretariat is lead by a core team comprised of a chair and 2 co-chairs elected by consensus. Chair and co-chair positions are taken by the representatives of the founding members of the Task Force. All founding members are

24 http://www.businessdictionary.com/definition/task-force.html
25 http://en.wikipedia.org/wiki/Intergovernmental_organization
26 http://www.taskforcehumancapital.info/fileadmin/documents/Constituent_Document_of_the_TFBHC.pdf

eligible to chair and co-chair the Task Force on an equal basis.

Unlike the other two entities mentioned above, a task force is different from a regional organization because of its limited existence in time. It carries out a specific task or activity for a short period of time.

After giving a brief description of the different types of regional organizations, we can thus see that the similarity between these three entities is related to their area (regional) of activity. The differences concern their legal status, founding agreements, structure and differing modus operandi.

III. THE ROLE OF INTERGOVERNMENTAL ORGANIZATIONS IN DRAFTING INTERATIONAL AGREEMENTS

The focus of the study in the first two chapters was dedicated to international and regional organizations, making the distinction between them. But the question of what international and regional organizations are is really less important than the question of what they can do; and the answer in each case is largely dependent upon the relevant legal instrument, which establishes international organization set out both the purposes, structure and competences of the organization as a whole and the particular functions and powers granted to its individual organs. An organization is an artificial and deliberate creation. *It owes not only its existence but also its ability to act to the instrument which founds it.*[27]

When setting an organization, the first and most important aspect is setting its founding instrument. Regardless of terminology, these international agreements (normally founded by a treaty but also by a covenant, convention, charter - legal instruments with binding force - as well as declaration, recommendation, resolution - without binding force - , under international law, they are equally considered to be treaties, rules are the same and a new legal person is created. The particular designation does not affect the agreement's legal character.[28] The legal instrument of an organization, sets the pattern for the legal order of the international organization, specifies its aim, sets the regulation rules for the organization, it stipulates what is

27 "International Institutional Law", Henry G. Schermers& Niels M. Blokker, Martinus Nijhoff Publishers, Fifth revised edition, pg. 726

28 https://treaties.un.org/pages/Overview.aspx?path=overview/definition/page1_en.xml

has been agreed upon and so on.

But what exactly is an international agreement? How is it created and by whom?

1969 Vienna Convention on the Law of Treaties Article 2(2) defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".

As mentioned above, although these instruments differ from each other by title, from region to region, they all have common features and international law has applied basically the same rules to all of these instruments. These rules are the result of long practice among the States, which have accepted them as binding norms in their mutual relations. Therefore, they are regarded as international customary law. Since there was a general desire to codify these customary rules, two international conventions were negotiated. The 1969 Vienna Convention on the Law of Treaties, which entered into force on 27 January 1980, contains rules for treaties concluded between States. The 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organization, which has still not entered into force, added rules for treaties with international organizations as parties. Both treaties do not distinguish between the different designations of these instruments. Instead, their rules apply to all of those instruments as long as they meet certain common requirements[29], which will be discussed further.

An important treaty which is relevant to be given as an example is the 1969 Vienna Convention on the Law of Treaties (VCLT). Most nations recognize it as being the preeminent "Treaty of the Treaties", widely recognized as the authoritative guide vis-à-vis the formation and effects of treaties.[30]

As briefly mentioned above, the VCLT regulates treaties between States, so it does not cover agreements between States and international organizations or between international organizations themselves. It does apply, however, to treaties between States within an intergovernmental organization.[31]

Worth mentioning is that the Convention is not retroactive and only applies to treaties concluded after its entry into force (art.4 VCLT).

29 https://treaties.un.org/pages/Overview.aspx?path=overview/definition/page1_en.xml
30 http://en.wikipedia.org/wiki/Vienna_Convention_on_the_Law_of_Treaties
31 Art. 2 and 5 of 1969 VCLT

Although the VCLT does not apply to treaties between States and international organization *per se*, those of its provisions that reflect rules of customary law do apply to such treaties (art. 3(b)). Moreover, the provisions of the VCLT apply as between State parties to the VCLT as regards treaties to which other forms of subjects of international law (such as international organizations) are also parties (art. 3 (c)).[32]

Having mentioned the core stone of treaties, the study will further look more closely into the analysis of the making of a treaty (consent to be bound, drafting of the treaty, competent organs to conclude treaties- state representatives, signing and ratifying, entry into force).

The process of formulating a treaty, from its drafting point until its entry into force and becoming legally binding to all parties, is a lengthy process and in the likelihood of achieving it, several aspects must be taken into account such as the need of creating the instrument, the likelihood that the proposed instrument will be accepted by a sufficient number of significant states/organizations, costs and so on.

32 "International Law", Malcom N. Shaw, Cambridge University Press, 6th Edition, pg. 175

III.1. THE TREATY-MAKING PROCESS

There are situations in which a newly emerged problem arises at an international or regional level, therefore, some kind of action is needed to be taken.

An IGO organ or an initiator of the proposal, will in the first place adopt a declaration expressing that consensus, making certain recommendations and perhaps taking the initial steps towards the formulation of a law-making treaty. Often the task of looking into the current state of national and international activities and laws in the area is assigned to the organization's secretariat, which can either perform it with its own resources, with specially engaged staff (especially if the exercise is a large-scale one or with consultants). Another preferred approach is to convene expert groups, the members of which are either appointed by the executive head of the IGO (who is likely to do so on the basis of governmental recommendations and will in any event take into account various political balances) or by particular States interested in and able to participate in the project.[33]

The first step is the drafting of the text. Drafting might be assigned to the above-mentioned organs in charge with the initial research either by a negotiating forum, a working group etc.

A difficult and long sub-stage in the treaty-making process is the negotiation part related to its terms and text. It is this part of the process that is most clearly political, in that it involves the mediation of the various interests concerned: those that favor a strong and those that favor a weak instrument; those that desire a wide and those that prefer a narrow one: those that prefer different approaches based on differing scientific perceptions or legal habits; and especially those that may wish to obtain resources from the proposed new regime and those that might have to contribute resources in order to make such a regime feasible and acceptable.

Often negotiation starts before the treaty-formulating process has been formally initiated, in that the initiator may consult with leading states before ever introducing a proposal. The considerations involved in whether to initiate the process may also already involve advance decisions as to substance and form, which may be reflected in the terms of the IGO resolution approving the start of the process and also in the choice of or in the composition of any ad hoc organs (whether state rep-

33 http://archive.unu.edu/unupress/unupbooks/uu25ee/uu25ee09.htm

resentative or expert) mandated to carry out or to assist in the formulating process.[34] In most of the cases, the preferred organ for carrying out the negotiations is the representative one that is an organ consisting of the instructed representatives of states.

During the process, governments are always up to date with the state of progress of the legislative project through the designated states representatives.

Another important aspect in the treaty-law making process is the authority to conclude treaties, the holder of which is authorized to adopt and authenticate the text of a treaty and to express the consent of the State to be bound by a treaty. VCLT, art. 7, para. 1(a) and (b) stipulates that a person is considered as representing a State for the purpose of expressing the consent of the State to be bound by it if he or she produces appropriate full powers[35].

There is a group of persons, however, who by virtue are considered to have such authority: Heads of State, Heads of Government and Ministers of Foreign Affairs are considered as representing their state for the purpose of all acts relating to the conclusion of a treaty and do not need to present full powers. Heads of diplomatic missions do not need to present full powers for the purpose of adopting the text of a treaty between the accrediting state and the state to which they are accredited. Likewise, representatives accredited by states to an international conference or to an international organization or one of its organs do not need to present full powers for the purpose of adopting the text of a treaty in that conference, organization or organ.[36]

When it is judged by the competent organ that the process of treaty formulation is complete or at least that it has progressed as far as it can at that stage, a decision as to its adoption must be taken.

III .2.METHODS OF EXPRESSING THE CONSENT TO BE BOUND

After the decision, the signature constitutes an intermediate step, indicating that the states representatives have agreed upon the text of the treaty and are willing

34 http://archive.unu.edu/unupress/unupbooks/uu25ee/uu25ee09.htm

35 according to the Vienna Convention on the Law of treaties (1969), art.2 (1) (c), the term "full powers" means a document emanating from the competent authority of a state designating a person or persons to represent the state for negotiating, adopting, authenticating the text of a treaty, expressing the consent of a state to be bound by a treaty, or for accomplishing any other act with respect to that treaty.

36 https://treaties.un.org/Pages/Overview.aspx?path=overview%2Fglossary%2Fpage1_en.xml&clang=_en#full

to accept it.

In order for a State to become party to a treaty, it has to express its consent to be bound by it (its willingness to undertake the legal rights and obligations contained in the treaty). The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.[37]

When a treaty is subject to discretionary ratification after signature, the signature is referred to as a „simple signature", whereas a signature that indicates consent to be bound is referred to as a „definitive signature".[38] A simple signature does not commit a State to ratify a treaty, let alone comply with its terms. To make the comparison more clear: a definitive signature has the same force as a simple signature, which is followed by ratification.

As mentioned above, there are more ways in which a States expresses its consent to be bound. Besides the consent to be bound to a treaty expressed by signature, a State can also express its consent expressed by ratification, acceptance or approval and accession.

Ratification, which is the next step after signature, is understood as a formal, solemn act on the part of Head of State through which approval is given and a commitment to fulfill its obligations is undertaken, although the significance of the act at the international level has changed over time.[39]

Usually, ratification involves two distinct procedural acts. The first one is related to the (constitutional) internal laws of a contracting party. It involves the international procedure that must be fulfilled before the state can assume the international obligations enshrined in the international agreement. The second element focuses on the international level. It is the process through which the contracting party indicates its consent to be bound to the other contracting parties.[40]

When talking about the domestic side of ratification, although it represents an international act, what precedes it is carried out subject to domestic law and domestic political and administrative considerations. While the representatives who participated on the international plane may have been impatient to achieve the for-

37 Vienna Convention on the Law of treaties (1969), art.11
38 http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3088&context=faculty_scholarship
39 International Law", Malcom N. Shaw, Cambridge University Press, 6th Edition, pg. 177
40 http://europatientrights.eu/countries/signing_and_ratifying_a_treaty.html

mulation and adoption of a treaty, the domestic actors who must approve ratification (who in any event include executive officials, but may also involve those of the legislature) may have at best different priorities and at worst different substantive objectives. In particular, in democratic states a whole series of steps may have to be taken to ensure that the proposed treaty is both politically and legally acceptable.[41]

Without going into many details, it is needed to mention that the consent of a State to be bound by a treaty may also be expressed by acceptance or approval and accession. The first method of expressing consent to be bound is used with the purpose of simplifying constitutional procedures such as conditions that require obtaining parliamentary authority prior to ratification and in reality there are no great differences between signature subject to acceptance or approval and signature subject to ratification and the rules applicable to ratification also apply for acceptance or approval.[42] On the other hand, accession is the means of consent to be bound which refers to a States willingness to be become a party to a treaty that was not in the position to sign.[43]

III .3. ENTRY INTO FORCE OF A TREATY

As already mentioned, the international legislative process differs from the municipal one in one important feature: once a municipal law is adopted by the legislature and, if necessary, approved by the executive and perhaps even vetted by the judiciary, then it automatically binds all who are subject to the government in question; in contrast, the adoption of an international treaty by an IGO or a conference normally has no immediate legal effect at all. What is required is that individual states take action in respect of the instrument -normally by having an authorized representative sign it and then having that signature ratified by appropriate governmental action, which may involve parliamentary approval - and also that enough states do so, sometimes within a specified time limit. Even then the treaty only enters into force for the States that have ratified, and subsequently for those that do so later.

41 http://archive.unu.edu/unupress/unupbooks/uu25ee/uu25ee09.htm
42 https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml#acceptance
43 International Law", Malcom N. Shaw, Cambridge University Press, 6th Edition, pg. 178

Treaties in general may entry into force:

- Upon a certain number of States depositing instruments of ratification, approval, acceptance or accession with the depositary[44];
- A specific time after a certain percentage, proportion or category of States deposited instruments of ratification, approval, acceptance or accession with the depositary;
- A specific time after a certain number of States have deposited instruments of ratification, acceptance, approval or accession with the depositary;
- On a specific date after certain conditions are fulfilled;

III.4. UN TREATY SERIES (UNTS)

After the adoption of a treaty, treaties as well as their amendments may have to follow the official legal procedures of the United Nations, as applied by the Office of Legal Affairs, including signature, ratification, and entry into force.[45]

Since 1946, a collection of treaties and international agreements have been registered or filed and recorded with and published by the Secretariat, pursuant to article 102 of the UN Charter.

Article 102 of the Charter of the United Nations provides that "every treaty and every international agreement entered into by any Member State of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it".[46] All treaties and international agreements registered or filed and recorded with the Secretariat are published in the United Nations Treaty Collection (UNTS).

Moreover, Art.1 of the General Assembly Regulations to give effect to Article 102 of the Charter of the United Nations provides that the obligation to register applies to every treaty or international agreement "whatever its form and descriptive name".

44 See, for example, article VIII of the *Protocol relating to the Status of Refugees, 1967*: The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

45 http://en.wikipedia.org/wiki/Coming_into_force

46 „International Law Documents, Blackstone's Statutes", Malcom D. Evan, Oxford University Press, 11th Edition, pg. 25

III.5. REGISTRATION OF TREATIES AND INTERNATIONAL AGREEMENTS

It will be recalled that the General Assembly has never laid down a precise definition of the term "treaty and international agreement", the matter having been left to gradual development through practice. It is noteworthy in this regard that, in accordance with article 2 (1) (a) of the Vienna Convention on the Law of Treaties and for the purposes thereof, the term "treaty" means "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation"(treaty, convention, MoU, protocol etc). As pointed out by the International Law Commission in paragraph 2 of its commentary on article 2 of the draft articles on the law of treaties, the term treaty in one sense connotes only the single formal instrument as opposed to less formal instruments, including multiple instruments such as exchanges of notes. However, the existence of semantic variations from one legal system to another has been provided for by paragraph 2 of article 2 of the Convention, which is based on the corresponding text proposed by the International Law Commission in its draft articles, and article 1 of the General Assembly regulations, of course, makes the latter applicable to every treaty or international agreement concluded by a Member State following the entry into force of the charter, whatever its form and descriptive name.[47]

Therefore, the title and form of a document submitted to the Secretariat for registration are less important than its content in determining whether it is a treaty or international agreement. An exchange of notes or letters, a protocol, an accord, a memorandum of understanding and even a unilateral declaration may be registrable under Article 102. More information about the registration of an international agreement into the UNTS of RAI shall be provided in chapter 4.

Thus, States Members of the United Nations have a legal obligation to register treaties and international agreements with the Secretariat, and the Secretariat is mandated to publish registered treaties and international agreements. Within the Secretariat, the Treaty Section is responsible for these functions. Registration, not

47 https://treaties.un.org/xml/db/MSDB/pageRegulation_en.html

publication, is the prerequisite set up in the Charter of the United Nations for a treaty or international agreement to be capable of being invoked before the International Court of Justice or any other organ of the United Nations. The objective of Article 102, which can be traced back to article 18 of the *Covenant of the League of Nations*, is to ensure that all treaties and international agreements remain in the public domain and thus assist in eliminating secret diplomacy[48].

Role of Secretariat

When the Secretariat receives instruments for the purpose of registration, the Treaty Section examines the instruments to determine whether they are capable of being registered. The Secretariat generally respects the view of the party submitting an instrument for registration that, in so far as that party is concerned, the instrument is a treaty or an international agreement within the meaning of Article 102. However, the Secretariat examines each instrument to satisfy itself that it, *prima facie,* constitutes a treaty. The Secretariat has the discretion to refrain from taking action if, in its view, an instrument submitted for registration does not constitute a treaty or an international agreement or does not meet all the requirements for registration. Where an instrument submitted fails to comply with the requirements under the Regulations or is unclear, the Secretariat places it in a "pending" file. The Secretariat then requests clarification or additional documents, in writing, from the submitting party. The Secretariat will not process the instrument until it receives such clarification or additional documents.[49]

Adopted texts of treaties and international agreements

Following the formal adoption of the texts of treaties and international agreements to be deposited with the Secretary-General of the United Nations, the adopted texts shall be submitted by the relevant department, office or regional commission, in both paper and electronic formats, to the Treaty Section, in all the authentic languages, for purposes of preparing the originals of such agreements, and

48 UN Treaty Handbook

49 UN Secretariat- Bulletin, Procedures to be followed by the departments, offices and regional commissions of the United Nations with regard to treaties and international agreements, 2001

for performing the requisite depositary functions. In general, a period of four weeks should be allowed between the dates of adoption and the dates on which the treaties or international agreements are opened for signature to enable the preparation of the originals of the treaties or international agreements and the distribution of the certified true copies.

Following the formal adoption of such texts, no further changes shall be made to the texts by any department, office or regional commission, except in consultation with the Treaty Section.

Ex officio registration by the United Nations

Article 4 (a) of the Regulations[50] provides that every treaty or international agreement that is subject to registration and to which the United Nations is a party shall be registered *ex officio*. *Ex officio* registration is the act whereby the United Nations unilaterally registers all treaties or international agreements to which it is a party. Although not expressly provided for in the Regulations, it is the practice of the Secretariat to register *ex officio* subsequent actions relating to a treaty or international agreement that the United Nations has previously registered *ex officio*. Where the Secretary-General is the depositary of a multilateral treaty or agreement, the United Nations also registers *ex officio* the treaty or international agreement and subsequent actions to it after the relevant treaty or international agreement has entered into force.

50 The General Assembly, by Resolution 97 (1), 14 Dec. 1946, adopted Regulations to give effect to Article 102 of the UN Charter.

IV. INTERNATIONAL LEGAL STATUS OF REGIONAL ANTI-CORRUPTION INITIATIVE (RAI).

When seeking to establish RAI's (international) legal status, we should turn to the definition and characteristics of an international organization to make it clear and to leave no doubts concerning its status. Qualification of an international organization is important because it determines the legal status of the organization and its capacity to act under international law.

Even though, RAI might be cataloged as a regional organization and as an initiative judging by its name (RAI contains the word "Initiative" in its name but that does not mean that the organization represents an Initiative rather the name is a remnant of the past. Since October 9, 2007, through a decision of the member countries, approved at the 11th Steering Group Meeting in Podgorica, the Stability Pact Anti-corruption Initiative was renamed as Regional Anti-corruption Initiative (RAI)) ,it encompasses all the required criteria to be considered an international intergovernmental organization as follows:

1. Established by a treaty or other instrument governed by international law: RAI might not be established under a treaty per se, its founding legal instrument being an MoU thus, according to Art.1 of the General Assembly Regulations to give effect to Article 102 of the Charter of the United Nations provides that the obligation to register applies to every treaty or international agreement "whatever its form and descriptive name"51 and here conventions, protocols, MoU's, exchange of notes and so on are included in this category. The particular designation does not affect the agreement's legal character.

2. Possessing its own international legal personality: RAI has 2 bodies, The Steering Group which is the decision-making body of the organization and a Secretariat. The activities of the Steering Group are supported by the Executive body of the Initiative – the Secretariat which is based in Sarajevo, Bosnia and Herzegovina. The Chairperson plays a pivotal role within the Initiative's framework for ensuring the permanent coordination of the activities undertaken by the member countries in implementing the commitments endorsed within the Regional Anti-corruption

51 https://treaties.un.org/xml/db/MSDB/pageRegulation_en.html

Initiative Strategic document. In this regard he/she convenes and chairs the Steering Group meetings. The Chairperson also oversees the enforcement of the decisions taken by the Steering Group. He/she represents the Initiative in the relations with all international partners and promotes the implementation of RAI's strategic objectives.

RAI has concluded a number of agreements between different organizations, worth mentioning: the MoU between RACVIAC- Centre for Security Cooperation and RAI. The purpose of the Memorandum being to establish the cooperation between the 2 signatories in order for them to mutually support each other in fulfilling their missions and contributing to security and good governance in the SEE region.

In 2005, the Stability Pact for South Eastern Europe and Stability Pact Anti-Corruption Initiative (initial name of the organization until 2007 when it has been changed into RAI) signed a Declaration on 10 joint measures to curb corruption in South Eastern Europe.

Another MoU with relevant importance was signed in 2009 between RAI and "The Commercial Criminal Law Institute of the Vienna University of Economics and Business Administration" on cooperation in fighting corruption.

Furthermore, also in 2009, RAI and the Academy for training of judges and public prosecutors (Republic of Macedonia) signed an MoU with the purpose of their operation in the framework of this bilateral agreement, in organization of the 4th edition of the "Summer School for Junior Magistrates" (which is a forum that brings together young magistrates from SEE offering them benefit from the knowledge and experience in the anti-corruption area) in South East European countries.

Last but not least, the latest agreements which was signed within the organization, was the MoU between RAI and the United Nations Development Program in Kosovo. The purpose of this cooperation is to facilitate collaboration between the parties in area of common interest during 2014-2016.

The full legal personality is also clearly stipulated in the agreement between Bosnia and Herzegovina and The Office of the Special Coordination of the Stability Pact for South Eastern Europe on SPAI RSLO Headquarters (since October 9, 2007, through a decision of the member countries, approved at the 11th Steering Group Meeting in Podgorica, the Stability Pact Anti-corruption Initiative was renamed as **Regional Anti-corruption Initiative (RAI)**, agreement which gave RAI all priv-

ileges and immunities as the status granted to diplomatic and consular missions by the Vienna Convention on Diplomatic Relations, 1961.[52]

3. Member states: RAI incorporates international membership, its member countries being 9 sovereign states and it has concluded several agreements with other intergovernmental organizations. RAI's aim is to fight corruption in Southeast Europe and not all the countries from this region are part of the organization. Cyprus, Greece, Slovenia and Turkey would also be eligible to become a member of the organization.

52 http://www.rai-see.org/images/doc/32/Agreement_BiH_SCSP.pdf

IV.1. REGISTERING RAI IN THE UNITED NATIONS TREATY LIST

In order for an international agreement to be recognized by the UN, it should be registered in the United Nations Treaty List (U.N.T.S.).

Therefore, international organizations have the obligation to register treaties and international agreements with the Secretariat of the United Nations, and the Secretariat is mandated to publish registered treaties and international agreements in the UN treaty list. After the publication of the treaty, it can be considered a fully fledged international organization.

Registration of RAI is possible mainly because it's MoU has been ratified by 8 member countries out of 9, Serbia being the only remaining member country which has not ratified yet but it is doing all the necessary procedures to complete its process of ratification in the near future. This will be possible when Serbia will finish its procedure on internal adoption of the MoU and notify the depositary state (Croatia) about it. The MoU of RAI stipulates in its final provisions that all 9 member countries have to ratify the MoU in order to come in force.

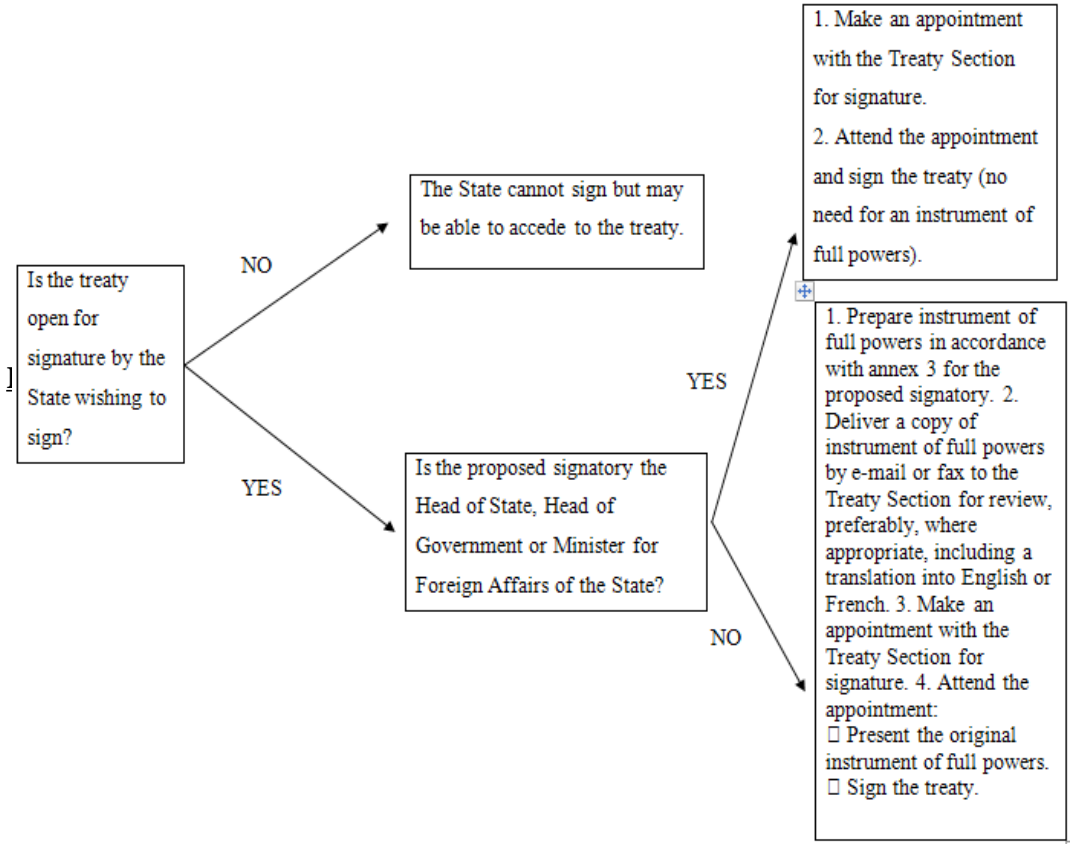
After concluding that RAI is eligible to register to the UN treaty list, the attention should therefore go towards the process of filling the application. According to the UN Text Book, an instrument submitted for registration must meet the following requirements (or to say it differently, RAI needs to take the following steps in order to become part of the UNTS):

c) RAI must submit one certified true and complete copy of all authentic text(s) in paper format and, if available, one electronic copy to the Secretariat for registration purposes. It is also required to provide to the Secretariat all copies of attachments, if any. As all registered treaties will subsequently be published in the United Nations Treaty Series, it is imperative that the hard copy version is clear, legible and capable of being reproduced in the United Nations Treaty Series.

d) moreover, RAI needs to provide a list of the contracting States with the date of deposit of the instruments, the type of instruments (signature, ratification etc) and the date of entry into force of the treaty indicated for each contracting State. The documentation submitted must specify the date and method of entry into force, as well as the date and place of conclusion of the agreement. The names of the signatories should be specified unless they are in typed form as part of the signature block. All these types of information can be provided in the certifying statement.

Once the international agreement is registered, the Secretariat issues to the registering party a certificate of registration signed by the Secretary-General or a representative of the Secretary-General. Upon request, the Secretariat will provide such a certificate to all signatories and parties to the treaty or international agreement.

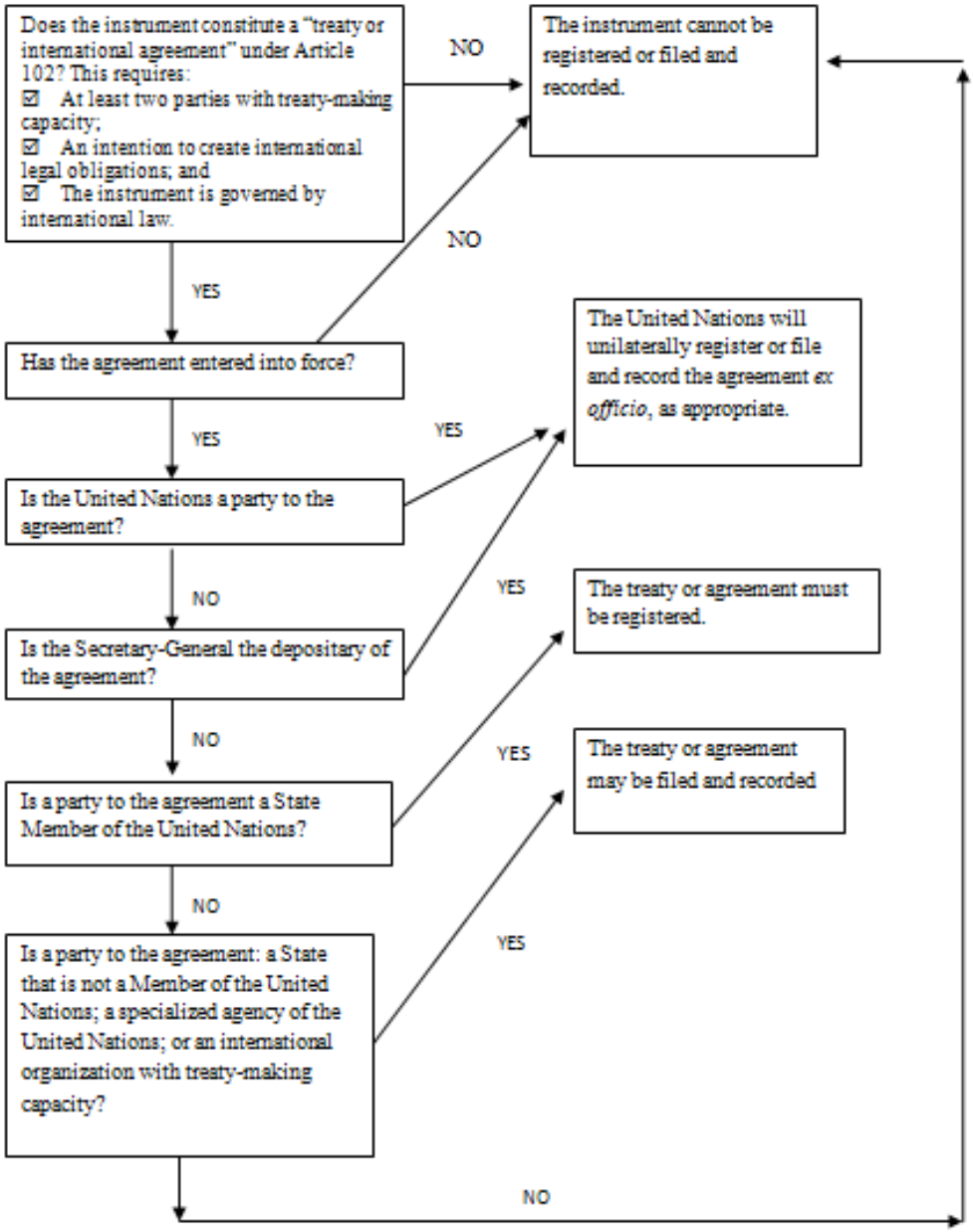
Signing a multilateral treaty[53]



53 "Treaty Handbook - Prepared by the Treaty Section of the Office of Legal Affairs", UNITED NATIONS PUBLICATION, eISBN-13 978-92-1-055293-6, Sales No. E.12.V.1, Copyright © United Nations 2002-2012, Revised edition of 2012 https://treaties.un.org/doc/source/publications/THB/English.pdf page 42.

54 "Treaty Handbook - Prepared by the Treaty Section of the Office of Legal Affairs", UNITED NATIONS PUBLICATION, eISBN-13 978-92-1-055293-6, Sales No. E.12.V.1, Copyright © United Nations 2002-2012, Revised edition of 2012 https://treaties.un.org/doc/source/publications/THB/English.pdf page 46.

Registering or filing and recording a treaty with the Secretariat[1]



54 "Treaty Handbook - Prepared by the Treaty Section of the Office of Legal Affairs", UNITED NATIONS PUBLICATION, eISBN-13 978-92-1-055293-6, Sales No. E.12.V.1, Copyright © United Nations 2002-2012, Revised edition of 2012 https://treaties.un.org/doc/source/publications/THB/English.pdf page 46

To sum up what the charts show, RAI needs to prepare the following documentation which needs to be sent to Treaty Section Office of Legal Affairs United Nations New York:

a) one certified true and complete and legible copy of **all** authentic text(s) **and**, if available;

b) one electronic copy on electronic media (the same rule applies for any other attachments such as annexes, protocols);

c) List of contracting States/organizations: the list should contain the following information: date of deposit of the instrument; nature of the instrument (signature, ratification etc); date of entry into force of the agreement;

d) A certified statement which will include: statement of true and complete copy (for both paper and electronic copy); title of agreement; date and place of conclusion; date of entry into force; method of entry into force (signature, ratification); authentic languages; names of signatories.

Not registering RAI's founding agreement in the UNTS will not preclude the organizations' good functioning and will not create an obstacle into fulfilling its aims but the major benefit will be that it will be internationally recognized as a fully-fledged regional international organization. If RAI does not take such action, according to the United Nations General Assembly Resolution 97 (1) of 14 December 1946, titled "Registration and Publication of Treaties and International Agreements: Regulations to give effect to Article 102 of the Charter of the United Nations", a treaty or international agreement which has not been registered may invoke that agreement before any organ of the United Nations and it can also be concluded that no obligations under international law have been created.

IV.2. SHORT DESCRIPTION OF RAI'S MEMORANDUM OF UNDERSTANDING

The initial MoU of the organization was amended by a protocol of the 11th of July, in Croatia, where some changes in the initial Memorandum have been made.

One of the most important changes that have been made was changing the name of the organization from "Stability Pact Anti-Corruption Initiative"[55] to "Regional Anti-Corruption Initiative" (RAI)[56]. Another example of amendment is related to the duration of the MoU (which will remain in force for an indefinite period of time). In total, a number of 7 amendments have been made to the initial Memorandum.

RAI's MoU begins with a preamble describing the contracting parties (sovereign titles) and their joint objectives in executing the agreement. After the preamble, numbered articles follow which contain the substance of the parties' actual agreement. It consists of 4 articles as follows: governance; financing the operational and programmatic budget; financial reports and audit; duration, termination and deposit of the Memorandum.

The end of the agreement is signed by the parties, mentioning the location and date of the signature.

Republic of Croatia serves as the depositary state of the Memorandum.

The Memorandum goes through internal process of ratification which offers it international capacity. It was signed by the country's representatives of different state bodies, confirming to the other parties of the treaty that the state in question accepts the treaty, as signed by its representatives. Each country issues and deposits the instrument of ratification after its internal ratification process is finalized by all required state bodies, in accordance with each country's internal constitutional requirements.

55 http://www.rai-see.org/images/doc/32/Memorandum%20of%20understanding.pdf

56 http://www.rai-see.org/doc/Protocol_Amending_the_Memorandum_of_Understanding_Concerning_Cooperation_in_Fighting_against_Corruption_Through_the_South_Eastern_European_Anti-Corruption_Initiative.pdf

CONCULSION

Therefore, as closing remarks, it has been shown that RAI is a fully functional organization. It has 2 main bodies, the Steering Group, which is the decision-making body and the Secretariat, the executive body, with its headquarters in Sarajevo. RAI has international membership, of 9 sovereign countries curently. It cooperates with local and international civil society organizations, bilateral aid agencies, and international organisations which combine their efforts to help curb corruption. Registering RAI in the United Nations Treaty List will make it a fully-fledged international organization.

This study's aim was to provide an easy understandable and substantial overview about international organizations and regional ones.

Beginning with international entities, the first organizations were mentioned, their scope, the 3 main elements which defines them as well as membership, territory and structure of international organizations.

After discussing about international organizations, the focus was set on the regional ones, to make the distinction clear between the two. The most important aspect which has been mentioned is that the notion „regional" is often not very appropriate, since there are few organizations the membership of which is entirely based on geographical factors (the Council of Europe was given as an example) and also, regional organizations encompass international membership such as RAI which is composed by 9 sovereign states.

One comment has been made which is not entirely shared by all. The comment reffered to the little importance which is given to regional organizations in contrast with global ones, but regional ones are more focused on a certain problem in the region, like RAI's main goal is to curb corruption in South Eastern Europe. Regional organizations are more familiar with the sources of the relevant issues/conflicts and more committed in its solutions. What they lack is...funds and support.

Part 3 of the study was covered by the explanations on how treaties and international agreements are created, starting from their drafting point until the moment of their entry into force (treaty-making process). A whole chapter was dedicated to this because the legal instrument of an organization sets it's status. As M. Blokker said in his „International institutional book": „An organization is an artifi-

cial and deliberate creation. The legal instrument owes not only its existence but also its ability to act to the instrument which founds it" suggesting that an organization is largely dependent upon its founding legal instrument.

As it is known by now, RAI, the centre of the study, was signed under an MoU. Many scholars believe that an MoU does not confer an organization the international legal status because it is not as powerful and enforceable as a treaty and is not legally bounding but it has been demonstrated that RAI encompasses the necessary criteria to be considered as having international legal personality. In order for a Memorandum to be considered legally binding, this agreement has to: identify the contracting parties; spell out the subject matter of the agreement and its objectives; summarize the terms of the agreement and it has to be singed by the representatives of the member states.

From a personal perspective, RAI encompasses all the criteria to be considered an international organization: it is established by an instrument governed by international law, MoU; it possess its own international legal personality and last but not least, its membership is composed of sovereign States.

However, based on the careful research, an improvement of it's MoU can be made.

By adding some more amendments, a more detailed overview of it's organs and tasks, final provisions might make it more enforceable in the legal arena. However, some amendments have already been made to the initial text.

Furthermore, an important step which needs to be taken by RAI is the UNTS registration. By doing so, the unclear status of RAI shall no longer constitute a problem at the international level.

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