



WORKSHOP ON TREATY LAW AND PRACTICE

**Grand Copthorne Waterfront Hotel
16 – 19 January 2012, Singapore**

**WORKSHOP REPORT
(10 October 2012)**

PROFILES

CENTRE FOR INTERNATIONAL LAW (CIL)

HISTORY CIL was established in 2009 at the National University of Singapore's Bukit Timah Campus in response to the growing need for international law expertise and capacity building in the Asia-Pacific region. **MISSION AND VISION** The mission of CIL is to enable Singapore and the Asia-Pacific region to play a more significant role in the promotion and development of international law. CIL's vision is to become Asia's intellectual hub and thought leader for research on and the teaching of international law. **FOCUS AREAS** CIL focuses on the following thematic areas: ASEAN Law and Policy / Ocean Law and Policy / Trade Law and Policy / International Dispute Resolution. **PROGRAMMES AND ACTIVITIES** CIL engages in research, executive and student training, and counsel and consultancy on international law and policy. CIL organises forums for dialogue on significant international law and policy issues affecting South East Asia or the Asia-Pacific region. CIL also collaborates with a network of partner and stakeholder organisations in Singapore and overseas to further the development of international law and thought leadership in the region.

www.cil.nus.edu.sg

BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW (The Institute)

MISSION AND VISION The British Institute of International and Comparative Law continues a mission first begun in 1895: to advance the understanding of international and comparative law; to promote the rule of law in international affairs; and to promote their practical application through research, publications and events. It is one of the leading independent research centres for international and comparative law in the world, and is the only one of its kind in the United Kingdom. **ACTIVITIES** The Institute brings together a diverse community of scholars, practitioners and policy-makers and its work is well-known globally through its website, books and other publications and its widely respected journal, the International and Comparative Law Quarterly. It has a vibrant and extensive programme of research and events in the field of public international law, now expanded through the establishment of the Arthur Watts Fellowship programme, which has a special focus on the practical application of public international law to contemporary problems.

www.biicl.org

LIST OF ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
ASEC	ASEAN Secretariat
CIL	Centre for International Law
NGO	Non-governmental organisation
SOP	Standard operating procedures
The Institute	British Institute of International and Comparative Law
UN	United Nations
VCLT 1969	Vienna Convention on the Law on Treaties of 1969
VCLT 1986	Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986

TABLE OF CONTENTS

PROFILES	2
LIST OF ABBREVIATIONS	3
PREFACE.....	7
I. INTRODUCTION	8
A. Aims of the Workshop	9
B. Best Treaty Practice Project	10
C. Questionnaires on Treaty Practice of States and International Organisations	12
II. MAIN ISSUES RAISED IN THE WORKSHOP AND POSSIBLE SOLUTIONS.....	14
A. Generic Criteria for Best Treaty Practice	14
B. Legal Capacity: The Role of Lawyers in Treaty Matters	19
C. Organisation of Treaty Procedural Work: Strategic Plan, Functions, Structure, Personnel, Skills, Professionalism, and Knowledge Management	24
D. What is a Treaty? Distinguishing Treaties from Other Treaty-Like Documents	28
E. Managing Treaty Collections: Accessibility, Reliability, Authenticity, and Archiving	32
1. Accessibility	32
2. Reliability	33
3. Authenticity	33
4. Archiving	33
F. Centralised verses Decentralised Treaty Management	34
G. Mechanisms for Effective Treaty Management: Standard Operating Procedures, Inter-agency Co-ordination and Legislation	35
H. Managing External Communications and Consultations with Parliaments and Other Stakeholders	38
I. Conformity with International Law: Common Problems	40

1. Registration of Treaties at the United Nations	40
2. Reservations and Declarations	41
J. Implementation of Treaties: The Importance of Follow-through at both Domestic and International Levels	44
1. Domestic Implementation of Treaty Obligations	44
2. Continuing International Engagement with the Treaty	45
3. The Rule of Secretariats	46
III. RECOMMENDATIONS ON TREATY PRACTICE.....	46
A. Recommendations for ASEAN Member States with Respect to National Treaty Practice	47
B. Recommendations for ASEAN on Treaty Practice	49
C. Recommendations for Workshop Organisers	50
IV. THE WORKSHOP: SUMMARY OF PROCEEDINGS.....	51
A. Session 1 – Introduction to the Workshop	52
B. Session 2 – Organisation of Treaty Work in Governments and International Organisations	53
1. The Netherlands	53
2. The United Kingdom	54
3. The Council of Europe	55
C. Session 3 – Organisation of Treaty Work in ASEAN Member States and the ASEAN Secretariat	55
D. Session 4 – Management of Treaty Collections	57
1. Management of Treaty Information for Internal Users	57
<i>a. The United Kingdom</i>	57
<i>b. The Netherlands</i>	59
<i>c. The Council of Europe</i>	59
2. Management of Information for External Users	60
3. Functions of Depositories in International Organisations	60

4.	Issues for Governments When Acting as Depositary	61
E.	Session 5 – Concluding a New Treaty: Actions on the International Plane	62
1.	Birth of a Bilateral Treaty	62
2.	Birth of a Multilateral Treaty	63
3.	Becoming Party to a Treaty: Consent to be Bound (Multilateral Treaties)	63
4.	Becoming Party to a Treaty: Entry into Force	64
5.	Becoming Party to a Treaty: Reservations and Objections	64
F.	Session 6 – Treaties versus Non-Binding “Treaty-Like Instruments”	67
G.	Session 7 – Break-out Session: Issues on Treaty Law and Practice	68
H.	Session 8 – Special Session	68
I.	Session 9 – Concluding a New Treaty: National Action on the Domestic and International Planes	69
1.	Action Before Ratification	69
2.	Action after Ratification	69
J.	Session 10: Implementing Treaties in Domestic Law	70
K.	Session 11 – Break-out Session: Issues in ASEAN Treaty Practice	71
L.	Session 12: Conclusions	71
	ANNEX 1 – WORKSHOP PROGRAMME	73
	ANNEX 2 – SPEAKERS’ BIOGRAPHIES	78
	ANNEX 3 – LIST OF WORKSHOP PARTICIPANTS	82
	ANNEX 4 – TEXTS OF INTRODUCTORY REMARKS	89
A.	Prof. Tommy Koh, Chairman, CIL	89
B.	H.E. Bagas Hapsoro, Deputy Secretary-General, ASEAN	94

PREFACE

From 16 – 19 January 2012 the Centre for International Law (CIL) and the British Institute of International and Comparative Law (the Institute) jointly conducted an International Workshop on Treaty Law and Practice at the Grand Copthorne Waterfront Hotel, Singapore (the Workshop). This Workshop Report provides a summary of the proceedings and discussions undertaken during the Workshop, and an overview of a larger research project on best treaty practice, of which the Workshop comprised a key element.

The Workshop Report consists of four parts:

Part I provides an introduction to the Workshop, explaining its aims in relation to those of the larger research project on best treaty practice;

Part II provides an in-depth account of the main issues raised across the Workshop. This analysis of the major issues draws upon reflections of the organisers and participants, both during and subsequent to the Workshop. The idea of what constitute the criteria for good treaty practice was a concept repeatedly raised and revisited throughout the Workshop; Part III sets out recommendations on treaty practice which were developed in response to the process of assessing and refining these criteria; and

Part IV provides a detailed summary of proceedings undertaken during the Workshop. It includes an overview of each of the sessions, together with summaries of information imparted by the speakers. This section will be particularly relevant for the participants in the Workshop and for readers seeking a synopsis of the treatment of each subject in the order set out in the Workshop programme, which was structured to look in turn at each of the key functions of a typical treaty office. (The programme is in Annex 1.)

In order to provide Workshop participants with background material and as part of the wider research project on treaty practice, the CIL and the Institute prepared a compilation of constitutional and legislative provisions of selected States and international organisations. The compilations were provided to the Workshop participants and are available on the websites of the CIL and the Institute; www.cil.nus.edu.sg and www.biiicl.org.

An Executive Summary of the Workshop is also available on the websites of the two institutes.

I. INTRODUCTION

1. From 16 – 19 January 2012 the CIL and the Institute conducted a Workshop on Treaty Law and Practice. The Workshop was organised pursuant to a memorandum of understanding concluded between the two institutions.
2. CIL and the Institute have agreed to conduct a joint research project on treaty law and practice with the objective of publishing a book or manual on Best Treaty Practice. As an integral part of that project, CIL and the Institute co-organised this Workshop so that the experts linked to the Institute could brief officials from the member States of the Association of Southeast Asian Nations (ASEAN) and the ASEAN Secretariat (ASEC) on what, in their view, are some of the best practices followed by governments and organisations on treaty law and practice, and to obtain feedback and comments from the participants at the workshop on whether it would be feasible for these practices to be adopted in ASEAN.
3. The Workshop brought together more than 35 participants from the 10 ASEAN member governments and the ASEC, together with observers from Belgium, China, Indonesia and Singapore. The participants comprised both lawyers and non-lawyers, all with varying roles within the treaty or legal office of the Ministry of Foreign Affairs or other government department of their respective home States, or within ASEC.
4. The Workshop speakers were treaty experts with extensive experience in dealing with treaty law and practice. The speakers included:
 - **Ms. Jill Barrett**
Arthur Watts Senior Research Fellow in Public International Law British
Institute of International and Comparative Law
Former Legal Counsellor, Foreign and Commonwealth Office, United Kingdom
 - **Mr Paul Barnett**
Visiting Fellow and Consultant
British Institute of International and Comparative Law
Former Head of Treaty Section, Foreign and Commonwealth Office, United
Kingdom
 - **Associate Professor Robert Beckman**
Director, Centre for International Law, National University of Singapore

- **Ms Elise Cornu**
Head of the Treaty Office and Legal Adviser
Council of Europe
- **Mr Gerard Limburg**
Consultant
British Institute of International and Comparative Law
Former Director of Treaties, Ministry of Foreign Affairs of the Kingdom of the Netherlands

5. During the 3-day Workshop presentations were given by the speakers on a broad array of topics pertaining to treaty law and practice and the international and domestic legal frameworks in which treaties are concluded. The presentations were interspersed with break-out and interactive sessions, in which participants formed discussion groups to address specific issues, elaborate on concepts of good treaty practice raised during the presentations, and to engage with speakers on topics of interest specific to each participant. From the early stages of the Workshop it became apparent that there are a number of common problems with respect to States' own treaty law and practice, and that the problems experienced are not specific to common law, civil law, or hybrid legal systems.
6. The Workshop Report sets out the main issues raised during the workshop and recommendations for ASEAN member States and ASEC to move forward with assessing and enhancing their own treaty practices. The Report also provides a summary record of the presentations given at the Workshop and comments by the speakers and participants, including a range of possible solutions to problems raised during the proceedings. The Workshop Programme is set out in Annex I.

A. Aims of the Workshop

7. The focus of this Workshop was on "treaty practice", meaning the procedures and practices followed by States and international organisations in the handling of treaties and actions related to them. The Workshop also considered the legal framework within which treaty practice takes place, but the main emphasis was on the "nuts and bolts" of treaty practice rather than the jurisprudential issues.
8. The aims were (a) to provide treaty officials from ASEAN States with information about a range of good treaty practices from other regions of the world, as well as an opportunity to exchange views and experiences with their counterparts within the region, in order to review, assess and improve their own practices; and (b) for researchers from CIL and the Institute to find out more about treaty practices in

South-East Asia and exchange views with officials from the region about best treaty practice, to help inform the joint research project.

B. Best Treaty Practice Project

9. CIL and the Institute have agreed to undertake a joint research project on treaty law and practice with the objective of publishing a book on best treaty practice.
10. The purpose of this project is to examine and compare treaty practices in a broad range of governments and international organisations, and to make recommendations on best treaty practice. It is intended to provide a practical guide for any government or organisation wishing to consider ways of improving its treaty practice, and especially for those new to this area of work, or who are setting up a dedicated treaty office for the first time.
11. Every State possesses capacity to conclude treaties.¹ Indeed, treaties are the principle means by which States formalise their relations on a vast array of subjects, and are one of the primary sources of international law.² Despite their importance in underpinning international relations, treaty-handling practices by some States can be opaque and inconsistent. It can be very difficult for those outside the foreign ministry or treaty office of a State to find information about that State's practice (and can even present challenges to those inside, if record-keeping is poor).
12. This presents significant challenges to domestic and foreign stakeholders, and can adversely affect a State's ability to manage its legal relations with other States. In order to promote the rule of international law, enhance clarity and understanding of treaty procedures and practices, and reduce disputes regarding treaty instruments, it is essential for States to promote and employ good treaty practice at every level of their treaty-making and treaty-handling processes.
13. The goal of the CIL and the Institute is not only to present a range of treaty practices from a variety of States and international organisations, but also to provide a useful analytical tool to enable each government and organisation to identify and develop the best treaty practice for their circumstances, recognising that "one size does not necessarily fit all".

¹ Article 6, Vienna Convention on the Law of Treaties 1969, 1980 *United Nations Treaty Series*, Vol 1155, p 331, available at: www.untreaty.un.org (accessed on 18 September 2012).

² Article 38, Statute of the International Court of Justice, 18 April 1946, available at: www.icj-cij.org (accessed on 18 Sept 2012).

14. As a part of the preparation for the Workshop and to develop its joint study, the CIL and the Institute examined treaty practices from a number of jurisdictions outside ASEAN in order to provide a starting point for identifying best treaty practice.
15. In order to produce a balanced selection of legal systems it was deemed vital to include studies of States from both civil and common law jurisdictions, to include large and small States, and States with well-settled institutionalized systems as well as those with more recently developed legal systems. Given the importance of the project to ASEAN it was also essential to examine the practices of a regional organisation. For practical reasons it was deemed necessary to select States that provide widely accessible information in English.
16. On the basis of the above criteria it was decided that a detailed study would be made of the treaty practices and procedures of Australia, France, the Netherlands, New Zealand and the United Kingdom. The international organisations selected for analysis were the United Nations and the Council of Europe, the latter being a regional international organisation with a small but very efficient treaty office with a scale of treaty operations more comparable to that of ASEAN. CIL and the Institute also intend to undertake studies of additional States and organisations in the future.
17. Prior to the Workshop the Institute produced a preliminary formulation of generic criteria for “Best Treaty Practice”, based on its study of treaty practices from the selected States and organisations, and its own functional analysis of the objective standards that treaty practice needs to meet. The Institute presented a draft of 18 generic criteria of best treaty practice, which were widely discussed and developed during the course of the Workshop by both the speakers and the participants.
18. A key purpose of the Workshop discussions was to test this preliminary formulation of generic criteria of best treaty practice, and to seek to improve upon them in light of feedback from all participants. The final version of the criteria will be presented in the forthcoming book on best treaty practice, together with the conclusions of the further research now being conducted by the CIL and the Institute. The book is intended to be a practical guide that takes the reader inside the treaty office and will provide a comprehensive analysis of the practices involved in every stage of the preparation, negotiation, conclusion and maintenance of treaty instruments, with recommendations on what best treaty practice looks like and how to achieve it. It will provide an invaluable resource for treaty officers, other officials in governments and international organisations, non-government organisations (NGOs) and legal practitioners as well as for international law scholars and students.

C. Questionnaires on Treaty Practice of States and International Organisations

19. As a key element of the preparatory work for the Workshop two detailed questionnaires were drafted by CIL and the Institute. The first questionnaire was designed to elicit information about the treaty practice and applicable legal provisions of each of the States selected for study. The second questionnaire was designed to elicit equivalent information about the treaty practice and applicable legal provisions of the international organisations selected for study.
20. The first questionnaire, on national treaty practice, sought information on the respondent State's constitutional and legislative provisions relating to treaties, including the relevant provisions to enable the government to give consent to be bound by a treaty and for treaty implementation procedures after the decision has been taken to ratify.
21. It asked for detailed statistics on the numbers of treaties in force for the State (if an assessment had been made), numbers of bilateral and multilaterals signed, whether the State is a depositary and, if so, for which treaties and what their depositary practice is.
22. The questionnaire also asked for organisational data in relation to treaty management within government, and for details of procedures for handling treaty signatures, ratifications and accessions, including the involvement of government ministries and agencies as well as national parliaments. It also sought detailed information on the management of the State's treaty collection, including any internal or external databases and guidance for officials, as well as the national publication of treaties and the State's procedures for registering them with the United Nations in accordance with Article 102 of the United Nations Charter.
23. Information on reservations, interpretive declarations and objections, with examples, was also sought, together with the procedures and practices followed by the State in determining whether to make a reservation or interpretive declaration. The questionnaire also asked whether the State had ever exercised its right to opt out of dispute settlement provisions included in a treaty and, if so, for details.
24. As well as asking for information on treaties the questionnaire also requested information on procedures and practices for dealing with "treaty-like" instruments.
25. On each section of the questionnaire the respondent State was invited to mention any problems encountered and any matters on which they would welcome information from other States about their practices.

26. The second questionnaire was drafted to address the treaty practices of international organisations. Many of its questions were similar to those in the first questionnaire, but with more emphasis on the details of the depositary practice of the respondent organisation, for example on procedures for handling treaty signatures, ratifications, accessions, acceptances and approvals by member States, and for notifying treaty acts by those States to other members.
27. It asked for details on the process for drafting treaties within the organisation, and on mechanisms for promoting and monitoring compliance. The questionnaire also requested information on procedures for dealing with new member States, and for details of any problems that the organisation may be encountering.
28. As with the first questionnaire, international organisations were asked for details of their organisational structure for dealing with treaties, statistical data on numbers of treaties and the relevant legal provisions, as well as for examples of appropriate documents.
29. Prior to the Workshop research staff from the CIL and the Institute compiled draft answers to the questionnaires on the basis of desk-top research.³ During the Workshop, CIL researchers discussed the questionnaires and draft answers with representatives of each ASEAN State and the Secretariat, and revised the answers as appropriate in light of the advice and information received. The Institute contacted treaty officials in Australia, France, the Netherlands, New Zealand, the UK, the Council of Europe and the UN and revised its answers to those questionnaires in the light of advice and additional information received from those officials.
30. The information provided in response to the questionnaires forms a vital part of the joint research project being conducted by the CIL and the Institute. It will be analysed together with information gained from the Workshop and used as valuable background material for the book. A considerable amount of information has been collected which is not available to the public. As some of it has been provided in confidence, the complete set of responses will not be published. Rather, the CIL and the Institute will draw upon this information as appropriate in the course of writing the book on best treaty practice.

³ Some modifications were made to the questionnaires used in respect of the ASEAN members States and the ASEAN Secretariat, to take account of regional circumstances and specific aspects of ASEAN treaty practice.

II. MAIN ISSUES RAISED IN THE WORKSHOP AND POSSIBLE SOLUTIONS

31. There were several recurring themes running through both the Workshop presentations and the discussions among participants. There was a high convergence of views on the essential ingredients of good treaty practice. The difficulties experienced by States in achieving this appear, by and large, to be similar in developed and developing States, large and small, albeit that the scale and depth of those problems differ greatly. Generally the difficulties experienced are not specific to common law, civil law or hybrid legal systems. Issues relating to the implementation of treaty obligations in particular appear to be pervasive.
32. Many of the issues experienced by States are inter-related. Issues discernible at the nascent stages of treaty preparation have the tendency to become compounded during the lifespan of an instrument, particularly in circumstances where multiple government agencies become involved. An overview of the common themes raised during the Workshop is provided in the following paragraphs.

A. Generic Criteria for Best Treaty Practice

33. Before examining the main issues and making recommendations on “best treaty practice”, it is necessary to consider the criteria to be used to distinguish good practice from not so good, and to select the best from among the good. “Best” should be considered from whose point of view?
34. Accordingly, this question was raised by Ms Barrett and Mr Barnett in the first session of the Workshop and was revisited on a number of occasions. There is no universally agreed set of criteria for good treaty practice. Without such criteria, it is not possible or sensible to select the practice of one State or organisation as a model for all others to follow. One size does not fit all.
35. Therefore, the approach taken by the Institute in conducting its research on this subject was to analyse the basic ingredients of good treaty practice, starting from first principles. This analysis took into consideration the purposes treaty practice is designed to serve, whose needs should be taken into account, what they are, and what standards need to be applied to meet those needs.
36. This requires an analysis of all categories of people involved in the handling of treaties and treaty acts (actors), or affected by them (stakeholders), their role in treaty practice and what that requires of others. The purpose of doing this was to ensure that the formulation of generic standards of best treaty practice takes into

consideration the needs of all actors and stakeholders, and is not focused only on the needs of the officials inside the treaty office.

37. The Institute considered the standards that each category of actors and stakeholders typically might look for in good treaty practice. Alongside these, consideration was given to a range of balancing factors and limitations that typically form the context in which treaty practice is carried out. The recurring themes were distilled into a set of generic criteria that may be applicable to the treaty practice of any State or international organisation. They are “generic” in the sense that they are intended not to be specific to any particular State or type of legal system. They are “criteria” in the sense that they are designed to be used by any State or organisation to assess how good its practice is, and how it might be improved so as to achieve the best possible treaty practice for its circumstances.
38. A tentative set of 18 generic criteria of best treaty practice was formulated prior to the Workshop. An experiment was conducted at the Workshop to find out whether they chimed with the views and experiences of the participants. During Session 1, before the Institute’s draft was introduced, participants were invited to identify all the actors and stakeholders involved in or affected by their treaty practice. Their lists were compared with the Institute’s list and found to be very similar.
39. A number of actors and stakeholders were identified. These included:
 - **International Level** – other governments, international/regional organisations and secretariats, depositaries, international courts and tribunals, NGOs participating in treaty bodies;
 - **National Level** – government: including Head of State, ministers, Ministry of Foreign Affairs, other ministries/agencies, inter-agency committees, policy officials, diplomats at overseas posts, government lawyers, treaty officials; national archives, national judiciary, national legislature, regional authorities and representative bodies, lawyers, academics, NGOs, business community, public interest groups, individuals, the media.
40. Participants were then asked to consider:
 - What **standards** they expect or wish to be applied in treaty practice in their own offices (i.e. by themselves, their colleagues and staff)?
 - What **standards** do they think are expected of them by those with whom they have dealings in their treaty practice (i.e. by other actors and stakeholders)?

41. After discussion each group put forward its suggestions and these were combined into an aggregated list and discussed. Ms Barrett and Mr Barnett then introduced their tentative list of criteria, which were as follows:
1. **Accessibility:** there must be easy access to treaty procedures, guidance and information for all who need it for their work, and for others as appropriate.
 2. **Accuracy:** all treaty instruments and related information must be accurate and no errors should be tolerated. There must be a mechanism for prompt correction of any errors and publication of corrections to all relevant users.
 3. **Authenticity:** it must always be clear whether a treaty document is the original text or a certified true copy of it; and if it is not, where the original or certified copy may be found.
 4. **Authorisation:** it must always be clear who is authorised to do what treaty acts and there must be procedures to ensure that unauthorised acts cannot occur.
 5. **Centralisation:** there should be one point of contact within government for treaty procedures (e.g. a treaty section or treaty office) for all internal and external contacts. A single central authority should also be responsible for databases containing treaty collections.
 6. **Clarity:** establish clear treaty practices and procedures, formalised in writing for all staff throughout the government/organisation. All practices and procedures should be regularly reviewed.
 7. **Communication:** treaty procedures must be actively disseminated so that they are widely known and understood by all who need to observe them, including officials, government ministers, parliament and the courts.
 8. **Consistency:** procedures and practices that have been established need to be consistently followed, unless there is a good reason for variation or novelty.
 9. **Distinction:** the distinction between treaties and non-binding international instruments needs to be understood and made clear.
 10. **Inclusion:** care is needed to ensure that the appropriate actors and stakeholders are included at every stage of work on a treaty, and during the design and formulation of treaty procedures, so that all relevant expertise and viewpoints are taken into account.

11. **International law of treaties:** treaty practice needs to be in conformity with the generally accepted international law of treaties, this being reflected in the Vienna Conventions on the Law of Treaties 1969 and 1986 (VCLT 1969 and 1986).
 12. **“Joined-up” government:** there must be effective co-ordination between government ministries and agencies in all stages of treaty work, from negotiation through to ratification and domestic implementation, to ensure follow-through on treaty obligations.
 13. **Knowledge management:** effective internal systems should be established for recording, sharing and handing over knowledge of treaty procedures and precedents.
 14. **Organisation:** collections of treaty instruments and records of activities need to be organised and maintained in a manner capable of providing for effective retrieval and use by treaty officials and other staff.
 15. **Professionalism:** of treaty expertise. This includes planning for recruitment, training, capacity building, development and retention of treaty officials and others involved in treaty work. It is important to establish career paths for treaty officials in order to retain institutional knowledge and attract quality staff. It is also important to ensure that treaty officials are afforded opportunities to network with counterparts in other governments/organisations.
 16. **Publication:** there must be an organised system for official national publication of treaty texts and treaty acts. Publication should be widely and publicly accessible and user-friendly.
 17. **Registration:** a State’s treaty practice should make provision for the systematic registration of all treaties entered into (in accordance with Article 102 of the United Nations Charter).
 18. **Time-effective:** timelines should be managed effectively and legal deadlines should be observed. Treaty procedures and guidelines should establish a realistic and reasonable timeline for each phase of treaty practice.
42. These “18 Generic Criteria” were discussed at length and augmented during the Workshop by the participants and speakers. The standards suggested by participants were along very similar lines, with the ones most frequently mentioned being:

- Accessibility (of treaty materials and procedures);
 - Centralisation (the importance of a single focal point dealing with treaties);
 - Clarity of guidelines and standards and clarity in drafting of treaties; and
 - Good knowledge management practices - especially establishment of a central database for the whole government.
43. Additional principles suggested by participants included: equality of contracting parties; respect for other treaty parties; accountability and transparency between treaty parties; good faith; and the importance of effective mechanisms for compliance and implementation. It was observed that some of these pertain more to the substance of diplomatic relations between States than to the work of a treaty office.
44. The speaker from the Council of Europe, Ms Cornu, endorsed the selection of these 18 criteria. In her view, the most important three for the Council of Europe were:
- **Accessibility** of treaty information to the public, given the role of a regional organisation as a service provider. This is achieved through the availability of all their database information on their website;
 - **Authenticity**, meaning that any information emanating from the treaty office must be authentic and reliable. To achieve this treaty officials must strictly comply with the organisation's procedures; and
 - **Consistency**, the same rules should be applied in similar situations for all States. This is very similar to the principle of equality. Neutrality is very important for a treaty office in an international organisation or for any depositary. Flexibility should, however, be allowed when it has no impact upon legal rules; there should be a balance between consistency and flexibility.
45. Another Workshop speaker, Mr Limburg, emphasised the importance of making a clear distinction between what is a treaty and what is not a treaty; and of providing clarity in the legal status of any texts signed in conjunction with treaties. Also, the wording of a treaty should make clear that it is concluded between States (not parts of States such as ministries or agencies).
46. In light of the discussion of the 18 criteria and the others suggested for inclusion in the list, there was general agreement among speakers and participants that reference should be made to the "equality of States", as an important feature of consistency, especially for international organisations and depositaries. It was also

agreed that “flexibility” was an important feature of treaty practice, and should be mentioned as a counterbalance to consistency, with the proviso that it be exercised as appropriate within the legal framework.

47. The Institute and CIL were grateful for the feedback received from the participants and other speakers on the preliminary list of generic criteria, and undertook to reflect further on how best to formulate them and organise the list in a way that would be most useful to treaty offices. As a part of the Best Treaty Practice project the responses of a number of other governments and organisations to these suggested principles will be canvassed. These views and responses, together with the feedback received during the Workshop, will be used by the Institute and CIL to further refine the generic criteria. The results will be set out in the book on treaty practice.

B. Legal Capacity: The Role of Lawyers in Treaty Matters

48. The focus of this Workshop was on the procedural aspects of treaty of practice.⁴ Treaty work has many substantive aspects too, involving both law and policy, and the role of lawyers in all treaty matters was a key theme.⁵
49. Since treaties are creatures of international law and governed by international law, the role of international lawyers is crucial in all aspects of treaty work. At some stages of treaty work, lawyers need to be directly involved, if not in charge of the work. At other stages it may be appropriate for the work to be led by other personnel such as policymakers, provided that they have sufficient access to legal advice and sufficient legal awareness to know when to seek it. Where domestic implementation of treaty obligations is concerned, lawyers versed in the relevant aspects of domestic law also need to be engaged in the work.
50. Treaty work includes several different types of function:

⁴ In the Workshop, “treaty practice” is referred to as procedures and practices followed in the handling of treaties, conducted within the framework of international law as well as domestic law, including such matters as treaty drafting, adoption, processing for signature, signature, ratification, tabling of reservations and declarations; the management of treaty records and publications; management of domestic constitutional and parliamentary procedures, implementation of treaty obligations in domestic law; depositary functions. *See* Part IV, Session 1 – Introduction to the Workshop.

⁵ *See also* Part IV, Session 2 – Organisation of treaty work in governments and international organisations and Session 3 – Organisation of treaty work in ASEAN member States and the ASEAN Secretariat.

- **Political and policy decision-making:** this includes such decisions as when and whether to negotiate and join new treaties, how to prioritise ratification of treaties, whether to support proposed decisions at treaty meetings about policies and programmes under the treaty, how to conduct bilateral treaty disputes.
 - **Administration:** this includes the routine execution of substantive policy actions under each treaty, engagement with treaty secretariats, implementation of treaty obligations and policy in domestic systems, compiling national reports to treaty bodies.
 - **Legal:** interpreting, drafting and giving legal advice on treaty texts, treaty acts and on implementation in the domestic legal system.
 - **Treaty procedures:** managing procedural aspects of treaties including becoming party to a treaty, carrying out treaty actions, managing treaty records and publications.
 - **Public diplomacy:** providing information to the public about treaties and the government or organisation's policies in relation to particular treaties, conducting public education and stakeholder engagement.
51. **Legal** work in relation to treaties requires lawyers who are qualified in public international law as well as lawyers qualified in the domestic legal system and knowledgeable about the areas of law involved in implementing the treaty. Other areas of treaty work (**policy, administration, treaty procedures**, etc) may be carried out mainly by non-lawyers, but it is essential that they do so with awareness of the international legal framework and with ready access to the right kind of legal advice.
52. To ensure the necessary legal input to treaty work, the key points for governments and organisations are that:
- Sufficient lawyers trained in public international law must be available to the foreign ministry and all other ministries and agencies involved in treaty work (and likewise to all parts of an international organisation);
 - Lawyers engaged in treaty work need to have a broad and thorough knowledge of public international law;
 - Lawyers engaged in treaty work also need specialist training in the international law of treaties and treaty practice and procedures;

- International lawyers in government working on a particular treaty need to work closely with the lawyers in the ministry responsible for implementation, who are experts on the relevant aspects of domestic law;
 - Ministers, organisation heads, policy officials, diplomats and administrators engaged in treaty matters need legal awareness, and to engage actively with their legal advisers on all aspects of their dealings with a treaty;
 - Lawyers need to be appointed at sufficiently high level in government (or the organisation) to be taken seriously by ministers and high-level officials, and for their voice to carry sufficient weight on important legal matters (especially when the advice is not what policy officials or ministers wish to hear).
53. The location of public international lawyers within government naturally varies from one State to another. Traditionally, in most governments, expertise in public international law is concentrated within the Foreign Ministry. Foreign Ministry lawyers may be organised in a specialist legal cadre, or dispersed throughout the ministry in various policy departments, or both. In some governments, advice on international law is provided to all ministries by single team of international lawyers based in a legal department such as an Attorney General's Chambers or Ministry of Justice. Whatever the particular arrangement, the crucial question is whether there are enough lawyers versed in international law, whether they are sufficiently accessible to all officials dealing with international matters, and whether those officials consult them in a timely manner when they should.
54. Participants from several ASEAN States considered that their ministries suffered from a lack of sufficient legal expertise. Experts on international law and domestic law in government offices are often too thinly spread.
55. Some workshop participants noted that even when international lawyers are available in the relevant ministries, they are often omitted from the delegations negotiating and are not consulted until later in the proceedings, if at all. In such instances treaties are inevitably drafted by administrative officials rather than by lawyers. This may arise from the fact that policy concerns normally drive the early preparation and negotiating stages of treaty-making. Those responsible for policy may lack awareness of the legal framework in which they are operating and the legal consequences of their choices.
56. In their experience the inadequate involvement of lawyers in treaty work had resulted in a number of problems on occasions, such as:

- Insufficient legal expertise to enable ASEAN member States to play an effective role in treaty negotiations, especially when several important negotiations are in progress at the same time, resulting in under-representation of the views of ASEAN States in multilateral negotiations;
 - Where the subject-matter of the treaty under negotiation has a high legal content or major legal implications, the absence of a lawyer on the negotiating team of a State may disadvantage that State in relation to others which are better informed;
 - Poor drafting of ASEAN and other treaties, e.g. confusion as to whether a new instrument is intended to be binding or non-binding, inconsistent use of terminology, unclear obligations, or confusion as to when and how a treaty is to enter into force;
 - Poorly drafted reservations and declarations to treaties tabled by ASEAN States, resulting in doubts about the status and intended effect of the text and negative reactions from other States parties to the treaty;
 - Ambiguity or misunderstandings about the legal status of an instrument or scope of obligations undertaken, making it more likely that disputes will occur between the parties at a later date;
 - Breach of international legal obligations resulting from lack of understanding as to what is required to give effect to them in the domestic legal system;
 - Breach of international legal obligations resulting from the lead Ministry being unaware of on-going compliance requirements involving monitoring and reporting, and of the implications of tacit acceptance provisions for technical annexes;
 - Lack of clarity for ASEC staff as to whether, and if so when, to perform the depositary functions that pertain to treaty instruments.
57. Many participants were of the view that there needs to be an increase in institutional capacity to handle treaties in the ASEAN member States and an increase in the influence of ASEAN member States in international treaty negotiations. To do so, more resources need to be allocated to expand the legal capacity within the ASEAN Secretariat and ASEAN member States. It was suggested that States should always include lawyers in the negotiation team for a new treaty, and that more attention needs to be given to training government lawyers in international law.

58. The Secretariat in international organisations has an important role to play in assisting the member States to build their capacity in international law. For example, where the member States have permanent representation at the seat of the organisation, the Secretariat can provide briefing, information and training for new members of missions whose functions include treaty matters.
59. Various suggestions were made for enhancing the legal capacity of the ASEAN Secretariat. Ideas included improving the profile of the legal bureau within the Secretariat; establishing a legal committee of ASEAN to take the lead in addressing legal affairs; and assigning overall responsibility for legal and treaty affairs to one of the Deputy Secretaries-General. It was commented that enhancing the legal capacity of ASEC might require more resources from the member States. Another suggestion was that member States needed to define more clearly what they expect from the ASEC legal unit, and that there should be a review of the role that lawyers could and should play within ASEC.
60. Participants suggested various ways in which they would like to see the ASEC legal unit enhance its support to ASEC and the member States, resources permitting it to:
- Provide legal advice to other departments within ASEC;
 - Develop a handbook on treaty procedures and practices, for use by ASEC and for the information of ASEAN member States;
 - Provide up to date and reliable information relating to all ASEAN instruments (status of ratification);
 - Remind member States of treaties that they have not yet ratified;
 - Provide information about the date of entry into force of ASEAN instruments;
 - Provide more substantive inputs for drafting treaties, e.g. model clauses, model agreements, first drafts of agreements, legal advice on procedures for adopting new texts;
 - Provide model legislation for implementing particular treaties.
61. A recurring suggestion was that both ASEC and the governments of the member States could enhance their own legal capacity through various kinds of co-operation with research institutes. For example, one group of participants asked whether ASEAN could consider giving observer status at certain ASEAN meetings to research institutes, to provide assistance in improving and streamlining processes.

62. It was acknowledged that some of these suggestions for ASEC go beyond the subject of treaty practice, but that it was important to air these issues, as the effective management of a State or organisation's treaty practice depends on the effective management of its legal work more broadly.

**C. Organisation of Treaty Procedural Work:
Strategic Plan, Functions, Structure, Personnel, Skills,
Professionalism, and Knowledge Management**

63. The two overarching key themes are (a) the importance of centralising treaty procedural functions in a single treaty office within the government or organisation and (b) having a clear strategic plan for the work of the treaty office and its relationship with legal advisory work.
64. Centralisation of official treaty information is essential. There must be a single authoritative source of information within a government about the government's treaty acts - signatures, ratifications, accessions, reservations, declarations, withdrawals, etc. There must be a single authoritative source of information about the texts of treaties to which the government (or organisation) is party or for which it is the depositary. Although in principle such a service could be provided by two or more offices working in very close collaboration, in practice it is more easily achieved by a single integrated team.
65. Centralisation of certain kinds of treaty procedural functions is also essential. There must be a single source for the issue of documents which provide authority for the carrying out of treaty acts, such as full powers documents. Treaty texts and treaty instruments such as instruments of ratification need to be prepared in the correct manner by a single team of treaty professionals. There needs to be a consistently high standard of quality control exercised over all treaty procedural functions.
66. For governments, the most common way of achieving the centralisation of treaty procedural functions is the establishment of a treaty office within the Ministry of Foreign Affairs (or its equivalent, however named). However, the most appropriate choice of location of the treaty office depends on the way in which ministries and their legal departments are organised in the particular government concerned. For some governments, it may be convenient to locate the treaty office in a legal ministry such as a Ministry of Justice or Attorney General's Chambers. For international organisations, the treaty office is normally located within or very close to the organisation's legal department.

67. The most important question concerning the location of the treaty office is its relationship with the legal department which provides advice on international law. Most commonly, the treaty office is part of, or directly under the supervision of, the legal department. If a treaty office were to be located elsewhere in a ministry or organisation, it would be essential for it to operate in very close co-operation with the legal department and for its officers to be lawyers or have very ready access to legal advice.
68. Closely related to the question of the best location for the treaty office is the importance of a clear statement of its functions. Treaty procedures are only one aspect of work relating to treaties. **Core treaty procedure functions**⁶ for any treaty office are:
- Managing a collection of treaty texts;
 - Managing treaty data (especially the treaty acts of the government/organisation);
 - Providing authoritative treaty information to other officials;
 - Publishing treaty information and treaty texts;
 - Registering treaty texts with the UN;
 - Producing treaty instruments and preparing treaty texts for signature;
 - Performing depositary functions as applicable.
69. In addition to the core treaty procedure functions, *some* treaty offices *may* carry out one or more other kinds of treaty functions, such as:
- Providing legal advice on the formal aspects of treaties;
 - Providing legal advice on the contents of particular treaties;
 - Negotiating and drafting treaties;
 - Making policy recommendations to ministers/organisational heads about treaty priorities, such as whether to support a new negotiation or sign or ratify a particular treaty;
 - Providing administrative services to the meeting at which States negotiate a new treaty.

⁶ Treaty procedures work, as distinct from other kinds of work relating to treaties, is defined above in Part II, section B on “Legal capacity – the role of lawyers in relation to treaty matters.”

70. The remit of some treaty offices may extend beyond treaties, for example, to the handling of “treaty-like instruments”. Records may be kept of certain kinds of international document which are not legally binding, because it is considered convenient to keep them alongside treaty records and be handled according to analogous procedures. In other cases, the functions of the treaty office are confined strictly to treaties, while responsibility for handling and recording other kinds of international documents rests with the policy or operational department which generated it.
71. It is very important that each government or organisation has a strategic plan for the work of its treaty office, which defines clearly what its functions and objectives are, and what they are not. Care is needed to align the functions of the office with the type of personnel engaged in it and the skills and expertise they have.
72. Treaty office personnel may consist of lawyers, administrative officers, librarians/information management professionals, diplomats, secretaries. The choice of personnel should be related to the functions of the treaty office, e.g. whether concentrated on the core treaty procedure functions, or whether they are broader.
73. Requisite skills for core treaty procedures work include: clerical proficiency, meticulous accuracy, information management, editing and publishing, typing and IT, database input and management, deep knowledge of treaty practice and precedents, awareness of relevant aspects of the international law of treaties and domestic law, awareness of policy context of treaty work and diplomatic sensitivity. If the functions of the treaty office are limited to core treaty procedures work, it may be done effectively by non-legally qualified administrative staff with these skills, provided that they work very closely with lawyers. Many treaty offices are staffed mainly by lawyers, at least at the higher levels.
74. If the treaty office carries out other functions of a legal or policy nature, it will need to have staff with the requisite additional expertise. Clearly, only legally qualified personnel are equipped to provide legal advice on treaties. It should be noted that treaty offices do not usually carry out policy functions in relation to treaties; it is generally considered better practice to keep these functions separate, especially given the importance of impartiality and consistency in treaty procedures.
75. Knowledge of treaty practice and procedure is very difficult to acquire outside of the treaty office. So, for most treaty officers extensive on-the-job training is necessary combined, where available, with training programmes provided by trainers who have practical expertise gained from working inside a treaty office. It is therefore important for the treaty office to retain personnel for long enough to build up

expertise and to make use of it. High turnover of staff compromises the quality of work and is to be avoided wherever possible.

76. Knowledge management is key; there must be an organised system for collecting knowledge of treaty procedures and precedents, cataloguing them for easy retrieval and reference by other staff, after the departure of the officer who handled the matter, i.e. an institutional memory needs to be developed and managed. This is especially important in offices where detailed treaty procedures are not clearly set out in writing, as is the case in several ASEAN countries.
77. Professionalism in treaty procedure work is also essential. Treaty practice needs to be recognised as a specialist area of expertise vital to the effective functioning of the ministry/government/organisation. There needs to be human resource planning to ensure that there is an available pool of suitable expertise from which to recruit; a suitable and attractive onward career path for treaty professionals at the end of their tour in the treaty office - whether it involves a return to legal, information management, diplomatic or other work. In ministries where this kind of planning is absent, it tends to be difficult to recruit and retain staff with the skills and talent necessary for treaty work.
78. Treaty professionals in different governments and organisations should be encouraged to develop networks and share their experiences and expertise. Where possible, training for a new treaty officer could usefully include a visit to one or more treaty offices in other governments and/or organisations. This is especially important for treaty officers whose work does not normally involve travel and for whom the opportunity to meet their overseas counterparts rarely arises.
79. Typical problems described by workshop participants in relation to their treaty offices are illustrated by the following comments:

“No institutional memory, turnover is really high.”

“Youngsters coming in are not familiar with treaty terms; treaty officers should be equipped with these skills. We do send out officers to study international law, but this is a little too generic, when they should focus on training in treaty law and practice.”
80. Similar issues were raised with respect to the ASEC; there should be a single integrated treaty office within ASEC with a sufficient number of staff with requisite skills including expertise in treaty law and treaty practice; clear contact points within ASEC for all treaty matters; a clear mandate specifying the functions and tasks of the treaty office; internal procedures on treaty practice covering all those functions and

tasks. It was also suggested that ASEC needs to acquire greater knowledge from other comparable secretariats as to best practice with regard to treaty functions.

D. What is a Treaty?

Distinguishing Treaties from Other Treaty-Like Documents

81. Central to the whole Workshop was the fundamental question of what a treaty is, and how to distinguish treaties from other international documents which may look similar but are not binding. These questions gave rise to lively debates about the status of particular instruments, and also to the fundamental question as to whether, and, if so, why, it is important to make such a distinction.
82. Distinguishing between treaty and non-binding treaty-like instruments can be a complex task. A treaty is defined in Article 2(1)(a) of the Vienna Convention on the Law of Treaties 1969 as “an international agreement between States in written form and governed by international law”. Treaty-like instruments may include instruments concluded between States, between international organisations, or between States and international organisations, which are either governed by a system of domestic law (e.g. contract law) or which are not legally binding at all.
83. During session 6 of the Workshop, when participants (divided into five groups), examined a set of ten texts of international documents to identify which were treaties and which were not, and then presented their group’s view to the workshop, interesting results emerged.⁷ Four of the texts gave rise to divergent views and lively discussion about their legal status. Three of these were ASEAN instruments, while one was concluded in another forum by a number of States including some member States of ASEAN.
84. With regard to the three ASEAN instruments in question, all entitled “Memorandum of Understanding”, the groups were divided in their conclusions as to whether the text was a treaty or not. In some cases, the conclusion of one group was met with astonishment by another group, who were equally certain of the opposite view. The discovery of such divergent views gave rise to some interesting discussion as to how such ambiguous texts could have been concluded and what the consequences might be.
85. After discussion, the majority of participants came to the view that one of the three ASEAN instruments entitled “Memorandum of Understanding” was a treaty, whereas one of them probably was not, having regard to differences in wording,

⁷ See Part IV, section F on Session 6 – Treaties v. non-binding “treaty-like instruments”.

especially in the final clauses. The third instrument proved to be the most difficult to determine, with participants remaining firmly divided in their analysis. In the case of the non-ASEAN multilateral instrument, the majority view was that this document was probably not a treaty, but some considered it impossible to determine due to its hybrid nature.

86. There was extensive discussion as to the reasons for ambiguity in legal status being a common feature of ASEAN instruments. Some were of the view that it was due to poor drafting, which tended to occur when international law advisers were not involved in the negotiations. This was typically the case when the negotiators were from a domestic ministry such as forestry or the environment. Others suggested that ambiguity was sometimes intended, for various reasons such as a desire to avoid parliamentary procedures.
87. Some participants commented that in their government there was no procedure for identifying which official or government department is authorised to make a determination regarding the legal status of documents entered into by the government. Many participants expressed concern that divergent views among ASEAN member States on the legal status of particular instruments could be widespread. In most cases, the difference would not come to light unless and until a dispute occurred, but then it could have serious implications, especially for a State which had assumed in error that it had not undertaken legal obligations. They suggested that more care should be taken in future to avoid such ambiguity in the drafting of ASEAN instruments.
88. One participant argued strongly that it was not necessary to distinguish between legally binding and non-binding ASEAN instruments. All commitments were solemnly undertaken, and would be complied with, whether binding or not. It was a question of honour. This was the “ASEAN way”. Litigation was not the way to resolve differences.
89. A variety of views were expressed as to what the “ASEAN way” consists of in relation to treaties. Some suggested that, as ASEAN has as its objective the creation of a rules-based international organisation, some modernisation of approach was required.
90. On a practical level, it was noted that the ASEAN Secretary-General serves as the depositary authority for all ASEAN treaties and agreements, supported by ASEC. In relation to the determination of the status of ASEAN instruments, there is no clear authoritative organ in ASEAN to decide whether an instrument is binding or not. If the text of the instrument leaves this ambiguous, how is ASEC to decide whether an instrument should be registered with the United Nations in accordance with Article 102 of the UN Charter?

91. If any treaty office, in a government or secretariat, is uncertain as to the nature of an instrument, this creates various difficulties in their work. For example, it creates uncertainty over whether to register the instrument in the national treaty list, whether to publish it in the national treaty series, whether to notify or consult the legislature, how to handle notifications received from other States or organisations about that instrument, and over the precise extent of their duties and functions in relation to that instrument.
92. The speakers all emphasised the importance of observing a clear distinction between agreements which are binding in international law (treaties) and those which are not binding ("treaty-like instruments"). Although non-binding documents should always be concluded in good faith and duly carried out, failure to do so does not entail a breach of legal obligations and legal liability. That is a very important distinction. Even if a treaty does not contain any mandatory settlement of disputes mechanism, if a party considers another party to be in breach it may present a legal claim through diplomatic channels and invoke the international law of treaties and the law of State responsibility (or responsibility of international organisations). That is not the case where a non-binding instrument is concerned.
93. Ms Barrett recalled a bilateral negotiation between the UK and another State which had lasted eight years, when it was discovered - on the point of signing - that one side intended the document to be a treaty while the other side believed it to be non-binding and was unable to sign a treaty. This resulted in very serious embarrassment for the UK ministry concerned and for the other party. The moral of this sorry tale was that the UK domestic ministry should have consulted international lawyers at a much earlier stage, and both sides should have discussed the legal status of the document they were negotiating at the outset.
94. Reference was also made to the 1994 judgment of the International Court of Justice in the Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain,⁸ in which the Court held that in order to ascertain whether particular documents constitute an international agreement "the Court must have regard above all to its actual terms and to the particular circumstances in which it was drawn up". Bahrain argued that its Foreign Minister had not intended to sign a binding agreement. However, the Court concluded that "The two Ministers signed a text recording commitments accepted by their Governments, some of which were to be given immediate application. Having signed such a text, the Foreign Minister of Bahrain is not in a position subsequently to say that he intended to subscribe only to

⁸ Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, ICJ Reports 1994, paras 21-30, available at: www.icj-cij.org (accessed on 18 September 2012).

a "statement recording a political understanding", and not to an "international agreement."

95. There was general agreement that unintended ambiguity in the status of instruments served the interests of no party and care should be taken to avoid it. Those negotiating a new instrument should always be clear what kind of instrument they are intending to negotiate and why. The lead ministry or agency should always consult on this matter with other ministries and seek advice from international lawyers versed in treaty practice. It is also good practice to raise with other treaty parties at the outset of a negotiation whether the aim is to conclude a treaty or a non-binding document. If negotiating objectives differ among the parties, compromises will obviously need to be made, but this should not be achieved at the expense of clarity over the legal status of the agreed document.
96. The drafting of ASEAN instruments could be improved by the use of a set of standard final clauses for treaties, as well as guidelines on appropriate wording for use in instruments which are not intended to be binding.
97. It is for each State to decide whether or not to include non-binding instruments in a centralised database. However, if non-treaties are to be included in the same database as treaties, there must be guidelines in place for distinguishing between treaties and non-treaty instruments. In many ASEAN States there is no consistent practice for the handling of treaty-like instruments when managing treaty collections and, generally speaking, no guidelines in place for distinguishing between treaties and treaty-like instruments. In the practice of ASEC, the division responsible for managing records of ASEAN instruments usually keep treaty-like instruments together with ASEAN treaties and agreements, and make no distinction between them.
98. The practice of non-ASEAN States regarding the keeping of records of treaty-like instruments is varied. The UK Treaty Section staff keep a record in their database of any treaty-like instrument that happens to cross their desks. But this record is kept informally, for internal reference only, is kept separate from the treaty list, and is not published. The primary obligation to keep records of treaty-like instruments falls to the lead ministry or agency. In contrast, the Netherlands Treaty Office does not include treaty-like instruments in its treaty database at all; it does not deal with them.

**E. Managing Treaty Collections:
Accessibility, Reliability, Authenticity, and Archiving**

99. Efficient management of treaty records is the first and most important task of any treaty office. Even before any question arises of entering into new treaty relations, the first question for a State or organisation's legal advisers and treaty officers is what treaty relations already exist? Where is the information? Can we rely on its accuracy? There are several important principles for effective management of treaty records:

(1) accessibility; (2) reliability; (3) authenticity; and (4) archiving.

1. Accessibility

100. Treaty officials, at the very least, must have rapid and direct access to all official treaty records. There needs to be a single organised collection, with an accurate and comprehensive index, easily searchable, which leads directly to the treaty data and the treaty texts required. Information that cannot be easily searched and retrieved when required is not useful. Treaty officers need to be able to ascertain quickly what treaties the government/organisation has signed, ratified or acceded to, or withdrawn from, which ones are in force for it, whether it has tabled any reservations or declarations and if so whether there have been any responses, and whether it has responded to the reservations or declarations of other parties.

101. How should access to treaty information be provided to other staff? Is it necessary to provide direct access to all staff via an electronic database? Provided that the designated treaty officers are sufficiently well resourced to provide a treaty enquiry point for whole of government or the organisation that may serve the purpose well enough, provided it is widely known who the designated treaty officers are and how to contact them quickly. In that case, a quick and reliable service may be provided to all officials on the basis of a paper record collection and index cards. An electronic database is of course highly desirable, but if not available this does not preclude the provision of an efficient treaty information service to all officials.

102. If the treaty data is stored in an electronic database, it may then be possible to make the information available online directly to other officials of the government or organisation. Although it may be expensive and labour-intensive to set this up, it will ultimately save the time of treaty officers dealing with enquiries, and provide a better service to the user with easier and round-the-clock access to information.

2. Reliability

103. The official records of the treaty office must be 100% reliable. The question is how to achieve that and eliminate human and mechanical error. The experience of long-established treaty offices such as the UK and the Netherlands shows that it is very important to recruit the right staff to manage the records, and to retain them for a substantial period of time. Administrative skills such as the ability to pay meticulous attention to detail is more important than flair for political diplomacy, so recruiting a trained librarian or proof-reader who is home-based may make more sense than appointing a junior diplomat eager for the next overseas posting. It is also essential to have a single authoritative collection of treaty records, as, if duplicate or separate records are kept in different ministries, discrepancies inevitably occur.

3. Authenticity

104. Authenticity is an important element of reliability. Treaty officials must be aware of the difference between authentic original documents and certified copies on the one hand, and information derived from them on the other. The original treaty instrument is the one bearing the original signature(s) or stamp or other mark from which its authenticity can be verified definitively. Normally there will be only one original, which must be stored safely, with limited access. Treaty officials need to know where the original of any document may be found, but do not normally need to access it. The official treaty records must contain information derived directly from the original. For example, the government's officially published treaty text should be a copy of the original document, not a copy of an unofficial version used in the negotiating room or reproduced by a third party.
105. It is also important that it is clear to any official or member of the public which published treaty data and treaty texts are the ones officially published by the government or organisation as the definitively correct version, and where they can obtain these. While most people may find it convenient and adequate to use treaty information from other sources, for example, internet search engines or publications of third parties, there has to be a single official source whose accuracy is guaranteed and which can be relied upon.

4. Archiving

106. Original treaty documents need to be kept secure and preserved in legible condition for the lifetime of the treaty to which they relate - which could be hundreds of years. That means that adequate storage space has to be available to the agency responsible for the archives, and they have to have a proper system for organising the material so that everything can be accessed quickly if required and nothing is misplaced. It is

also essential for professional archivists to provide expert advice. The facilities have to be maintained at the right temperature for preservation of the documents, and be secure from fire, flood, wildlife or human interference.

F. Centralised verses Decentralised Treaty Management

107. As noted above, centralisation of treaty procedural functions is important for a number of reasons. Treaty offices are generally, but not always, part of a State's Foreign Ministry. The treaty office in Australia, France, the Netherlands, New Zealand and the UK are all located in the Foreign Ministry; they are responsible for treaty procedures for the whole government and maintain a national treaty database.
108. Participants from several ASEAN countries reported that, to their regret, their government did not yet have a centralised database for managing treaty information. In their experience, decentralised record keeping practices result in treaty instruments, notices, correspondence, memorandums, commentaries and so forth being stored in a variety of government offices. This has a number of consequences; such as responsible stakeholders being unaware of on-going obligations, an absence of methodologies for regularly reviewing instruments to monitor changes in status, conflicts with newly concluded treaties, and expiring treaties. As staff move on to new roles there is a loss of institutional memory pertaining to a particular instrument and management practices may well be forgotten. These problems apply to both paper-based and electronic treaty collections.
109. Where treaty procedures are not handled by a single treaty office, it tends to compound the problems with regard to record keeping. Some participants from governments without a centralised treaty office spoke of problems arising when various ministries handle the conclusion of a treaty but fail to forward the original documents or even the information to the department responsible for international law advice.
110. A key contemporary issue is the need to provide internal and public access to treaty collections through databases and websites. Lack of resources, technical expertise, and rapidly out-dated software are difficulties experienced by most ASEAN countries. In some States there is a gradual movement towards increased transparency of governance and more information is being made available both within government and to the general public. In part, momentum has been generated by the advent of the internet. Many participants therefore expressed a keen interest in identifying effective and economical means to create and maintain databases of digitised treaty records with web-based access. But with many historical documents as well as an increasing number of treaties being signed every year it can sometimes be difficult to even decide where to start this herculean task.

111. The types of documents to place on a database and the level of access to afford stakeholders will be a policy decision individual to each country. Customised software and hardware may be needed but is often prohibitively expensive. A large amount of labour resources are also required to digitise or upload records, as well as to update records at appropriate intervals. Software applications may date rapidly and be unsupported by providers after a small number of years. Thus databases require on-going budgeting and planning over a span of many years. Treaty offices starting to develop an electronic database for the first time could benefit from the experiences of those who have led the way but encountered difficulties.
112. A possible solution to boost capacity, where a government does not have its own treaty database or lacks the resources to maintain it, is to collaborate with an academic institution. Care is needed to ensure there are sufficiently clear contractual arrangements in place to protect the government's position in case the arrangement is discontinued in the future.

**G. Mechanisms for Effective Treaty Management:
Standard Operating Procedures, Inter-agency Co-ordination
and Legislation**

113. Whether treaty procedure functions are centralised, or shared among more than one ministry, it is vital that all officials concerned use the same manual or set of standard operating procedures (SOPs). (Although reference is made here to "a manual", it does not have to be a single document as long as all the parts of it are clearly identified, cross-referenced and accessible to the users). Treaty procedure professionals should write the manual, consulting legal advisers if they are not themselves legal practitioners. They need to ensure that it is widely disseminated throughout government ministries and agencies to all officials who might encounter a treaty in their work. They also need to ensure it is regularly reviewed and updated, and that the updates are transmitted effectively to all who hold copies of the manual or use it online. The manual should cover all aspects of handling a new treaty, from negotiations, through becoming party, to implementation and follow-through, recording of actions and storage of original documents. It should set out the steps to be followed, indicating clearly which ministry is responsible for what.
114. It is not necessary for the operating manual to be made accessible to the public, although a government may choose to make it so. For example, the UK, Australia and New Zealand treaty offices each issue a detailed manual for all officials across government, but their practices regarding its publication differ. The New Zealand treaty office has published 'International Treaty Making: Guidance for Government Agencies on Practice and Procedures for Concluding International Treaties and

Arrangements' (August 2011). This document is directed towards government agencies, and describes the procedures for concluding a treaty (or considering doing so). The New Zealand Cabinet Manual (2008) sets out the procedures that should be followed by the Cabinet in taking 'treaty action', has also been published.⁹ The Australian Treaties Secretariat provides an 80-page annually updated manual to government officials, but does not publish it. The UK Treaty Section provides extensive online guidance, regularly updated, to officials across government via an intranet. Part of it is published in a booklet called 'Treaties and MOUs: Guidance on Practice and Procedures' on the FCO website,¹⁰ but this version has not been updated for some years (nor does there appear to be any public demand for more information of this nature).

115. Some States set out treaty procedures and allocate departmental responsibility for treaty acts in legislation. Examples of such laws are: The Netherlands Kingdom Act on the Approval and Publication of Treaties 1994; the Indonesia Law No. 24 of 2000 on International Treaties; the Vietnam Law on Conclusion, Accession to and Implementation of Treaties 2005; and the Procedural Law of the People's Republic of China on the Conclusion of Treaties 1990. Some participants from these States, including Mr Limburg, expressed the view that it was essential to have legislation on these matters to ensure effective control by the Foreign Ministry.
116. Other States, including the UK, Australia and New Zealand, do not regulate these matters by legislation (except, in the case of the UK, for certain parliamentary procedures relating to ratification of a treaty). In these countries it is not generally considered necessary to regulate such matters by law. Internal governmental processes and constitutional conventions are normally effective. For example, the requirement in international law for any minister except the Head of Government or Foreign Minister to produce full powers to sign or ratify a treaty effectively curbs their ability to act without reference to the Foreign Ministry treaty office. As far as parliamentary procedures are concerned, constitutional conventions regarding requirements to inform and consult parliament are generally effective, and are underpinned by the power of parliament to thwart government plans to ratify a treaty by refusing to pass the necessary implementing legislation.
117. A number of participants observed that in their countries there was an issue with lack of interagency co-ordination. In some cases there is a treaty procedure law, but

9 New Zealand Cabinet Manual 2008, 5.73-74, 7.112-122, available at: www.cabinetmanual.cabinetoffice.govt.nz (accessed on 18 September 2012).

10 Foreign & Commonwealth Office, *Treaties and MOUs: Guidance on Practice and Procedures*, available at: www.fco.gov.uk (accessed on 18 September 2012).

it is not always complied with. In other cases there is neither a treaty procedure law nor a detailed practice manual. The desire for clear procedures and guidelines was expressed repeatedly by participants.

118. ASEAN adopted the Rules of Procedure for Conclusion of International Agreements by ASEAN in November 2011.¹¹ These Rules specify the procedure for the conclusion of international agreements by ASEAN as an intergovernmental organisation in the conduct of external relations. The Rules do not apply to the conclusion of international agreements concluded by all ASEAN member States collectively and which create obligations upon individual ASEAN member States.¹² The Rules were referred to during the workshop as a very important step for ASEAN in its development as a rules-based organisation.
119. It is noteworthy that the Rules of Procedure for Conclusion of International Agreements by ASEAN define “international agreement by ASEAN” as “any written agreement, regardless of its particular designation, governed by international law which creates rights and obligations for ASEAN as a distinct entity from its Member States.”¹³ This definition, being based on the Vienna Convention on the Law of Treaties between States and Organizations or between Organizations 1986,¹⁴ clearly excludes non-binding instruments.
120. It was suggested that, in due course, ASEAN might consider adopting some rules of procedure or guidelines for the conclusion of international agreements among ASEAN member States and which create obligations upon individual ASEAN member States.

11 The Rules were adopted by the ASEAN Coordinating Council (ACC) at their 9th meeting on 16 November 2011 in Bali, Indonesia, see ASEAN, *Evolving towards 2015*, p. 20, available at: <http://www.aseansec.org/documents/annual%20report%202011-2012.pdf> (last visited 18 Sept 2012). The text of the Rules is available at: www.aseansec.org (accessed on 18 September 2012).

12 Rule 1, Rules of Procedure for Conclusion of International Agreements by ASEAN.

13 Rule 2, Rules of Procedure for Conclusion of International Agreements by ASEAN.

14 Article 2.1, Vienna Convention on the Law of Treaties between States and Organizations or between Organizations 1986. not yet into force, available at: www.untreaty.un.org (last visited 18 Sept 2012).

H. Managing External Communications and Consultations with Parliaments and Other Stakeholders

121. An important issue for all treaty offices is what information to make available to the legislature and to the public, and how. Constitutional and legislative requirements must be observed; over and above this, there is always a balance to be struck between openness, transparency and accessibility of information on the one hand, and the ability to progress treaty procedures within a reasonable timeframe and within available resources, on the other.
122. Where the positive approval of the legislature or its enactment of new legislation is required before the government may ratify a treaty, this can be problematic for the government. Participants from those ASEAN States concerned considered that the process of gaining express approval from parliament can take an excessive length of time. The problem may occur due to the parliamentary workload rather than any concerns about or opposition to the treaty; for example, the parliament might decide not to consider a particular treaty because it is not a high priority or the proposal to ratify it has not been included in their schedule. It can be very frustrating to the government to have a ratification proposal delayed due to inactivity rather than time actually devoted to scrutiny of its provisions by parliamentarians.
123. In many common law jurisdictions, constitutional practice is to lay a treaty before parliament for a prescribed number of days, to provide the opportunity for scrutiny and for a debate to be requested. This is known as a “silent” or “tacit approval” procedure, as, in the absence of any objection within the prescribed period, the government may proceed to ratify the treaty.
124. In some civil law jurisdictions, there is a mixture of express and tacit approval procedures in parliament. For example, constitutional or legislative provisions may require certain categories of treaty to be referred to the legislature for express approval (sometimes referred to as “ratification”). It may require “significant” treaties to be sent to parliament or those concerning specified subjects such as defence and security; border delimitation; sovereignty and sovereign rights; human rights; public expenditure, etc. In other cases, the treaty is subject to a silent or tacit approval procedure. The Netherlands is an example of this kind of mixed system. This kind of system has the advantage that it facilitates parliamentary scrutiny and debate of treaties where there is a political interest in its content, while avoiding protracted delay in the ratification of treaties which are not controversial and of limited interest to the public.
125. A problem mentioned by several participants from ASEAN countries with civil law jurisdictions is that their legislation does not provide for “tacit approval” by

parliament. Where there is a legislative requirement for a certain category of treaty to be approved by parliament, only express approval or the enactment of legislation will suffice.

126. An issue has arisen in some countries as to when and how often the Executive should advise its parliament of treaty negotiations in progress, prior to the adoption or signing of the text.
127. Where treaty information and treaty texts are provided systematically to the legislature, these same materials can be made available to the public in a published treaty series. Access may be provided by making hard copies available for consultation in public libraries and/or for purchase in official bookshops.
128. Governments and international organisations which maintain an electronic treaty database may use this to provide information online to the public, instead of, or in addition to, a paper publication. Increasingly there is public demand for online information and for it to be free of charge. Examples of governments which provide public access to extensive online treaty databases are Australia, France, the Netherlands, New Zealand and the United Kingdom.
129. A major issue for any government or organisation providing an online database is whether to put all the data in its internal database directly online, so that the public see the same data as officials, or, whether to maintain a physical separation between the internal database and the public website. An advantage of separation is that it allows storage of additional information for internal use only to be stored in the database, for example, legal advice or notes about ongoing policy matters. But it carries the disadvantage that if information has to be manually transferred from the internal database to the website, the process is more labour intensive and there is more scope for human error. The Council of Europe is an example of an organisation which makes all its treaty data automatically visible online to the public. By contrast, the UK treaty office maintains a physical separation between the internal database and the public website UK Treaties Online. The Netherlands maintains an internal database only for the use of the Treaty Department, and provides an external database that enables public access to extracts of information on treaties. These extracts are taken automatically from the internal database.
130. It was suggested that ASEC could enhance its capacity in this area by looking at the practice of treaty offices in other international organisations, especially those of a regional character such as the Council of Europe, and also by collaborating with research institutes such as the CIL.

I. Conformity with International Law: Common Problems

131. While all Workshop participants agreed on the importance of treaty practice being in conformity with the international law of treaties, several issues arose where there was doubt as to what the law required or where some practices seem problematic from this perspective. Two issues that gave rise to lively discussion were registration of treaties and reservations and declarations.

1. Registration of Treaties at the United Nations

132. One recurring issue was the obligation under Article 102 of the Charter of the United Nations to register all treaties. Article 102(1) provides: "Every treaty and every international agreement entered into by any Member of the United Nations shall as soon as possible be registered with the Secretariat and published by it." Responsibility for registering the treaty lies with the parties. Where the parties to a multilateral treaty have designated a depositary, this function rests with the depositary unless the parties provide otherwise.¹⁵

133. For governments such as the UK and the Netherlands the issues are how to ensure that registration is completed in a systematic, efficient and timely manner, with checks to ensure no errors or omissions, and how long a delay is compatible with the obligation to register all treaties "as soon as possible". Mr Barnett explained the UK's approach to the task is to register treaties in batches, which in some cases may mean that there is an interval of 2-3 months between entry into force and registration. But as there are normally several to register every year it would be a less efficient use of staff time to register them one at a time. Ms Cornu reported that the Council of Europe registers all treaties for which it is the Depositary within one month of their entry into force.

134. Although most ASEAN member States normally register their treaties, some participants reported that their government never did so (it seems that three are in this position) and one said that registration of bilateral treaties depended on the other party. There was some discussion as to why it is important to register treaties and what the consequences of non-registration might be.

135. A difficult issue for some ASEAN governments is the confidentiality of the subject-matter of certain bilateral treaties. It was indicated that in such cases the two governments may agree not to register or publish the treaty. Ms Barrett and Mr Barnett spoke about the practice of the UK, which is always to register and publish treaties. If the subject-matter of a text needs to be kept confidential, a non-binding

¹⁵ Article 77(1)(g) of the VCLT 1969 and Article 78(1)(g) of the VCLT 1986.

text is concluded - not a treaty. In some cases, where only certain matters are confidential, a treaty may be concluded with an accompanying confidential non-binding arrangement in a separate document. The same approach to registration appears to be taken by Australia, New Zealand and a number of other States.

136. The question of ASEC responsibility for the registration of treaties arose. ASEC has the responsibility to register treaties to which ASEAN is a party. ASEC should also register treaties entered into by the member States, where the Secretary-General of ASEAN is designated as the depositary. The consistency of current practice in this regard may need review in order to ensure full compliance with the requirements of international law.

2. Reservations and Declarations

137. The topic of reservations, declarations and objections is a complex and difficult area of the international law of treaties. For many workshop participants the law and policy issues involved in drafting and responding to these instruments proved to be of great importance.¹⁶

138. The key issue for governments when **drafting** a reservation is how to ensure that the reservation:

- is legally effective to limit the State's obligations under the treaty to the extent required by its domestic law and policy, but no more; and
- is legally permissible under the law of treaties; and
- does not attract objections or adverse responses from other States or (if applicable) the depositary.

139. While the decision to make a reservation, declaration or objection is one of both policy and of law, the drafting of the text requires legal drafting skills and knowledge of the law of treaties. If a reservation is poorly drafted, it risks failing to achieve its intended purpose as well as receiving challenges or adverse reactions from other States or the depositary. It may be necessary to involve government lawyers expert in the relevant branch of domestic law, as well as international lawyers versed in the law of treaties. In addition, the form of any reservation, declaration or objection, how it is made, when, by whom, and the means by which it is communicated or tabled is a matter of treaty procedure which requires the advice of treaty procedure experts.

¹⁶ See also Part IV, section E, Session 5 - Concluding a new treaty – actions on the international plane, Becoming party to a treaty – reservations and objections.

140. A particularly difficult issue for States is the difference between reservations and interpretative declarations; which to use in a particular case, and how to draft it appropriately. The title a State uses is not definitive of the legal status of the text; so if the substance of the text indicates that it is a reservation, an attempt to disguise it as a declaration will not be effective.
141. Working to precise **timelines** is particularly critical in this area, given the provisions in the Vienna Convention on the Law of Treaties 1969 concerning time. Two particular time requirements which States and depositaries need to pay close attention to are:
- The provision in Article 19 concerning the time at which a reservation may be tabled: “when signing, ratifying, accepting, approving or acceding to a treaty” means at the same time. If a State ratifies a treaty and then purports to table a reservation at a later date, its effect is uncertain and it is liable to attract objections from other States and/or the depositary; and
 - The provision in Article 20, paragraph 5, for tacit acceptance of reservations to be presumed if a State has not expressed an objection to it within 12 months of being notified of the reservation (or having expressed its consent to be bound by the treaty, if later). As legal consequences flow from the acceptance of another State’s reservation, a late objection may have no effect, or less effect than intended.
142. These two requirements as to timing are contained in the VCLT 1969 provisions on reservations, which do not indicate whether they also apply to the tabling of interpretative declarations. A difficult issue for States and depositaries for many years has been to develop consistent rules and practices regarding when an interpretative declaration may be tabled and whether any deadline applies to the tabling of objections. In general, States seem to observe the same deadlines as for reservations even though there is no clear legal requirement to do so.
143. Time restrictions placed upon the tabling of reservations and objections highlights the importance of the role played by treaty depositaries. It is vitally important that depositaries have clear procedures for notifying treaty parties in a timely manner of any reservations and objections tabled. If the depositary is slow to send out such notifications, it may increase the period of uncertainty for States parties as to the legal effect of a reservation or objection to a reservation.
144. Ms Cornu noted that when the Council of Europe Treaty Office receives an apparently problematic reservation, their practice is to approach the member State concerned to discuss the matter informally. If that State still wishes nevertheless to

proceed with its reservation then the depositary authority will circulate it to the other member States, with or without a covering comment, depending on the nature of the issue. It is then up to the other member States to table any objection or other response and to take any other action they deem necessary. By comparison, as reservations and declarations are not normally made to ASEAN instruments, it has not been necessary for ASEAN to develop guidelines on the role of ASEC in relation to the checking of member States reservations for formal or substantive compliance with ASEAN treaty requirements.

145. Some ASEAN countries stated that their treaty practice includes the review of reservations and declarations made by other States party to a non-ASEAN treaty. The Ministry of Foreign Affairs or the Attorney General's Office is primarily responsible for this review. One State noted that it involves its parliament in the process of reviewing reservations or declarations made by other States. However, other ASEAN States indicated that they have no internal mechanism for carrying out any such reviews. It appears that not all ASEAN States systematically record reservations and declarations made by other countries to treaties to which they are parties. Clearly, an accurate record is a precondition to an effective review process, without which the opportunity to respond to other States' reservations and declarations is lost.
146. The Workshop discussed whether ASEC could provide any assistance to member States in relation to their handling of reservations, declarations and objections concerning non-ASEAN treaties. As an illustration of the kind of role that a regional organisation can play in this regard, Ms Cornu spoke about the European Observatory of Reservations to International Treaties which operates within the Council of Europe.¹⁷
147. At the present time ASEAN does not have a forum for reviewing reservations and declarations tabled by member States or third parties to non-ASEAN treaties. Nor does ASEC circulate any information of this type to member States. Given its mandate and resources, it is reasonable for ASEC to focus on developing internal procedures in relation to its obligation to support the depositary functions of the ASEAN Secretary-General rather than adopting rules and guidelines concerning reservations made to treaties which are deposited with other international or regional organisations.
148. During the Workshop there was some interest expressed, in light of the International Law Commission's recommendation about regional "observatories", in the possibility of ASEAN member States developing a forum in which government legal advisers

¹⁷ See also Part IV, section E, Session 5 - Concluding a new treaty – actions on the international plane, Becoming party to a treaty – reservations and objections.

could engage in the type of observatory activities undertaken by the European Observatory, in order to monitor reservations and interpretative declarations being tabled in other treaty bodies. Some participants thought this could be a very useful development for ASEAN States while others suggested that the kind of role played by the European Observatory was not a priority for them. There was insufficient time in the Workshop to explore the idea in depth.

J. Implementation of Treaties: The Importance of Follow-through at both Domestic and International Levels

1. Domestic Implementation of Treaty Obligations

149. Ensuring the effective implementation of treaty obligations in domestic law is a recurring issue for many States and many treaties. The way States approach this task varies considerably, dependent as it is on the particular features of the domestic legal system. It is probably the most challenging of all areas of treaty work, yet the most difficult to learn from the experiences of other countries. ASEAN States' preliminary steps for implementing treaties vary, with differences between civil and common law systems. In those member States with common law systems, treaty provisions are not self-executing. If domestic legal effect is required, it must be implemented through legislation. By contrast the domestic legal effect of self-executing provisions is less clear in some civil law countries in Southeast Asia. Even if a treaty provision is self-executing, it may not be sufficient to implement the obligations under the treaty. It may be necessary to enact further detail such as how an offence may be prosecuted and the applicable penalties.
150. There are a number of global conventions which expressly require States parties to amend their domestic legislation, or create new legislation to give effect to treaty provisions. For example the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988 SUA Convention) and the 1979 International Convention against the Taking of Hostages (1979 Hostages Convention) require States to criminalise particular conduct and impose penalties within their municipal law, or to declare an intention to exercise jurisdiction over a particular type of conduct. This requires additional action to be undertaken by the State, and requires inter-agency co-operation at an early stage of treaty negotiations.
151. Implementation of these types of provisions is problematic for some civil law ASEAN States. This is because some of these States have no written laws or regulations that set out procedures for ratification and implementation, and have no specific agency responsible for recommending ratification or for monitoring the obligations contained in global conventions. During the Workshop Professor Beckman observed

that in the arena of international maritime crimes, ASEAN common law countries, consistent with their dualist approach, have already developed a practice of passing new laws or legislative amendments creating offences, ascribing extraterritorial jurisdiction over such offences to national courts, and stipulating punishments. This approach is helpful and may be contrasted with the approach adopted in some civil law jurisdictions where issues relating to obligations upon ratification of a treaty persist.

152. Where there is a lack of evaluation of national legislation so as to accommodate new treaty obligations or guidelines to conduct such evaluation, this may contribute to the problems States face in enacting new implementing legislation or amending existing legislation as required by treaty obligations. If a State fails to (i) criminalise offences set out in these conventions, (ii) establish jurisdiction over such offences, and (iii) set out appropriate penalties, then implementation of treaty obligations will become problematic regardless of whether the State has a common law or civil law system. Furthermore, this problem is also pertinent to the general issue of the harmonisation of domestic legislation, as conflicts between treaty obligations and other domestic laws and regulations may also arise.
153. The need to adopt implementing and additional legislation can delay States from ratifying/acceding to treaties for prolonged periods. This is particularly so where inter-agency coordination is required to draft and implement legislation and regulations. Delays that prevent treaties from coming into force can be problematic, as momentum is lost for all participating States, international relations may sour, and the benefits of the treaty provisions for a State may be lost. It is therefore essential that States take significant steps to anticipate impediments to ratification prior to signing, and lay the legal groundwork in their domestic settings thoroughly at an early stage of treaty negotiations.
154. Participants emphasised the importance of each government setting out clear internal procedures to guide officials in the actions required for domestic implementation of treaties, including how to take on board the concerns of stakeholders. Some advocated a flowchart to set out implementation and public communication procedures step by step. Each government should have a process for internal monitoring to ensure effective enforcement post-ratification, and to identify and remedy any gaps.

2. Continuing International Engagement with the Treaty

155. The ability to continue to engage internationally with the treaty after ratification is also a major issue for ASEAN States. Participants suggested that where there is a requirement to submit reports to treaty monitoring bodies, their governments need

to make it a high priority to submit on time. To achieve this there needs to be more effective co-ordination among the responsible ministries and agencies. It is also important to participate in treaty meetings, to take part in decisions about treaty amendments and implementing decisions. Legal advice should always be sought from the Ministry of Foreign Affairs or Attorney General Chamber lawyers, to ensure that any new decisions are consistent with international law.

3. The Rule of Secretariats

156. Some secretariats of international organisations play an important role in providing assistance to member States with regard to domestic implementation of treaties. For example, they may provide model implementing legislation or model clauses for States to use when drafting their own. This is not however a core function of a treaty office, and where this service is provided it is normally by the legal advisers or operational department which has expertise on the subject-matter of the particular treaties. This task requires not only expertise in the legal drafting and the subject-matter of the particular treaty, but also awareness of the limitations of the role of a secretariat in this regard and the need to avoid being too prescriptive. Some secretariats establish a database of information about the domestic legislation of existing States parties to a particular treaty for new and potential States parties to use as a reference resource.
157. While some participants would like ASEC to monitor the domestic implementation of treaties by ASEAN member States, others stressed that it would not be appropriate for the secretariat to take on any kind of policing or monitoring role, even if it had the resources to do so. Some suggested that think tanks or NGOs would be better placed to perform an external review function.
158. There may be issues for ASEAN to consider with regard to the implementation of treaty obligations undertaken by ASEAN as a party to a treaty in its own right. For example, who in ASEC is responsible for taking implementing action and to whom and how is this reported?

III. RECOMMENDATIONS ON TREATY PRACTICE

159. The recommendations which follow summarise the key points recurring most frequently throughout both presentations and discussions. A wide range of suggestions were made, many of which are referred to above. In this Part, we have extracted the central core of those suggestions, selecting those most relevant to address the issues identified by participants as the key ones for ASEAN member

States and ASEC, and which seemed to attract the most support from Workshop participants. However, this concise formulation of the recommendations was not specifically discussed at the Workshop, so should not be presumed to reflect the views of any particular individual participant.

A. Recommendations for ASEAN Member States with Respect to National Treaty Practice

160. The following actions were identified by participants as ones for each ASEAN member State to consider taking to help in improving its own national treaty practice:
1. Ensure sufficient lawyers trained in public international law are available to the Foreign Ministry and all other ministries and agencies involved in treaty work; increase resources where necessary to expand international law department;
 2. Ensure government lawyers engaged in treaty work receive specialist training in the international law of treaties and in treaty practice and procedures;
 3. Ensure ministers, policy officials at all levels, diplomats and administrators engaged in treaty matters have “legal awareness” and engage actively with their legal advisers when dealing with treaties;
 4. Include government international lawyers in delegations negotiating new treaties wherever possible;
 5. Centralise treaty procedure work for the whole government, ideally in a single dedicated office; plan its relationship with the department responsible for providing international law advice carefully; define its responsibilities and functions clearly in a law or internal administrative document available to all officials;
 6. Review human resource strategy to secure appointment of the right staff to the treaty office, ensuring alignment of skills and expertise to the functions of the office. Consider the appropriate balance of legal, clerical, information management, IT, diplomatic, policy or other skills required, and the importance of institutional memory and experience. Ensure clear and rewarding career path for treaty staff;
 7. Provide training in treaty practice and procedures for treaty office staff and opportunities for further development as treaty professionals;

8. Encourage treaty office staff to develop networks with their counterparts in other governments and international organisations, and share their knowledge and experiences; facilitate training visits to other treaty offices where possible;
9. Distinguish clearly between treaties and non-binding international instruments; when negotiating a new international instrument clarify with other parties whether it is intended to be binding and ensure it is drafted appropriately; involve government international lawyers in drafting; ensure all officials understand the consequences and effects of concluding a treaty as opposed to a non-binding instrument; ensure appropriate handling of the instrument according to its status;
10. Clarify the role of the treaty office in relation to non-binding treaty-like documents;
11. Treaty officials must have rapid and reliable access to accurate treaty information, including all treaties signed, ratified, acceded to or denounced by their State, the current status of each treaty, reservations tabled by that State and any responses received; to ensure this, each government should have a centralised and authoritative set of records maintained by treaty professionals;
12. Consider establishment of electronic database for national treaty records. Ensure it is user-friendly, easily searchable and cost-effective to update;
13. Authoritative national treaty information should be provided to the legislature and the public, whether by a series published on paper or by means of an online database, or both;
14. Create a treaty procedures manual or set of standard operating procedures (SOPs) for all government officials; ensure it is widely disseminated throughout all government ministries and agencies; review and update regularly;
15. Consider whether new or further legislative provisions on treaty responsibilities and procedures are needed to ensure effective implementation;
16. Each government should register all treaties entered into with the UN Secretariat in a timely manner in accordance with Article 102 of the UN Charter (except where a depositary has been appointed to do this). Internal procedures should allocate responsibility for this task and ensure it is done systematically;

17. Pay close attention to the international law of treaties when tabling reservations or declarations, to ensure they are drafted in a way that is legally effective, legally permissible, and tabled at the appropriate time; and
18. Develop clear internal procedures to guide officials in the actions required for domestic implementation of treaties, including how to take on board the concerns of stakeholders; enhance internal monitoring to ensure effective enforcement post-ratification, and to identify and remedy any gaps.

B. Recommendations for ASEAN on Treaty Practice

161. Below is a list of recommendations identified in the course of the Workshop to improve the treaty practice of ASEAN and ASEC:
 1. Enhance the legal capacity of the ASEC, for example, by raising the profile of the legal unit within ASEC; improving the legal skills of the staff of the legal unit; increasing the resources available to the legal unit if possible;
 2. Member States should define more clearly the legal services they expect from the ASEC legal unit and assign clear priorities in light of the resources available to the legal unit;
 3. ASEC should establish a treaty office within ASEC to provide a single contact point for treaty procedure matters within the ASEC legal unit; plan the relationship between treaty work and other functions of the legal unit carefully; define its treaty procedure responsibilities and functions clearly; ensure the contact point is well known to all ASEC officials and treaty officials in member States;
 4. ASEC should review practice on appointments and retention of staff to treaty work, to ensure alignment of skills and expertise to functions. Consider the appropriate balance of legal, clerical, information management, IT, diplomatic, policy or other skills required, and the importance of institutional memory and experience and providing a clear and rewarding career path for treaty officers.
 5. Provide training in treaty practice and procedures for treaty staff and opportunities for further development as treaty professionals;
 6. Encourage treaty staff to develop networks with treaty officials in the members States and in other international organisations, and share their knowledge and experiences; facilitate training visits to other treaty offices where possible;

7. ASEC needs to adopt comprehensive written internal procedures and guidelines in relation to its obligation to support the depositary functions of the ASEAN Secretary-General;
8. ASEC should provide briefing and information about ASEAN treaty practice to member States, especially to new representatives of members States in Jakarta;
9. Ensure systematic and timely registration under Article 102 of the UN Charter of all treaties to which ASEAN is a party, and all treaties entered into by the member States, where the Secretary-General of ASEAN is designated as the depositary;
10. Consider creating a forum where ASEAN legal and treaty officials can meet informally to discuss treaty procedure issues, progress, problems and solutions;
11. Consider creating an electronic forum (e.g. using social media) in which ASEAN legal and treaty officials can interact informally to share information about treaty procedures and discuss issues, progress, problems and solutions; and
12. Engage in more co-operative arrangements with research institutes and think tanks in South East Asia, to assist ASEAN in identifying problems and formulating solutions in matters concerning treaty practice; for example consider granting observer status to research institutes to attend ASEAN meetings and to provide expertise or information on treaty matters on request.

C. Recommendations for Workshop Organisers

162. Apart from recommendations to improve States' and ASEAN's treaty practice, participants also made recommendations directed to the organisers, CIL and the Institute, on activities that they would like to be done after this Workshop in order to complement these efforts:
 1. Provide follow-up treaty practice training workshops to strengthen legal capacity of legal and treaty officials from ASEAN member States and ASEC. (Subjects requested by participants for consideration in future workshop programmes include reservations to treaties, in light of the International Law Commission Guidelines, treaty drafting and the use of treaties versus non-binding instruments);
 2. Provide more research and analysis on practical issues and modern trends of treaty law, such as the use of treaties versus non-binding instruments, the

growth of lawmaking by treaty bodies, the conclusion of agreements by international organisations and reservations;

3. Publish articles and commentaries on ASEAN-related legal issues relating to treaties; and
4. With regard to the intention of CIL and the Institute to publish a book on Best Treaty Practices, the workshop gathered a list of suggested inputs which included:
 - A comparative matrix of treaty laws and practices, hopefully leading to convergence;
 - Analysis of basic issues of treaty law such as what obligations arise from signature or ratification of a treaty;
 - Guidance on the use of treaties versus non-binding instruments;
 - A collection of legal provisions concerning treaties from all ASEAN member States and ASEAN itself;
 - The target readership should be government officers in all ministries and around the world, not only legally trained personnel.

IV. THE WORKSHOP: SUMMARY OF PROCEEDINGS

163. The Workshop programme was divided into subjects based on the main functions of a typical treaty office. The Workshop speakers spoke in depth about the treaty law and practice of their respective States and organisation, as well as on specific topics. Presentations were interspersed with break-out sessions and group discussions on each topic. The Workshop programme is set out in Annex 1. A summary of the Workshop proceedings, following the order of the programme, is provided in this Part.
164. Professor Beckman and Ms Barrett opened the workshop by welcoming the participants and outlining the concept of a joint research project between the two institutes on treaty law and practice, and the aims of the three-day workshop programme.
165. Ambassador Tommy Koh, Chairman of the Centre for International Law, delivered the opening speech, in which he commented on the significance of international law,

on the significance of treaty law and practice, and on the CIL and its initiatives to promote the first two.

166. H.E. Bagas Hapsoro, Deputy Secretary-General of ASEAN, responded by thanking the CIL and the Institute for convening this workshop, which was important for ASEAN, especially at this time when ASEAN is in the middle of transforming itself into a rules-based organisation and moving toward an ASEAN Community by 2015. The full texts of these opening remarks are in Annex 4.¹⁸

A. Session 1 – Introduction to the Workshop

167. As principal speaker at the Workshop, Ms Barrett chaired this introductory Session. **Ms Barrett** opened the Session by outlining the aim of the Workshop, to examine and compare treaty practices in a broad range of governments and international organisations and to make recommendations on best treaty practice. In addition to the ASEAN member States and ASEC a number of other States and international organisations had been chosen for study by the Institute and CIL, and Ms Barrett explained the factors that led to the selection of the States and international organisation concerned.
168. She stressed the importance of treaty law and practice, given that the vast majority of obligations under international law arise under treaties, and explained the meaning of the term “treaties” under international law. Ms Barrett also discussed “treaty-like” instruments which are not binding under international law, and the need to differentiate clearly between these two.
169. She explained the meaning of “treaty practice”, this being the procedures and practices followed in the in the handling of treaties and actions related to them, and how this differs from the law of treaties. Handling of treaties includes such matters as treaty drafting, adoption, processing for signature, signature, ratification, tabling of reservations and declarations; the management of treaty records and publications; management of domestic constitutional and parliamentary procedures, implementation of treaty obligations in domestic law; depositary functions. Treaty practice is conducted within the framework of international law as well as domestic law. “Treaty practice” as a subject covers many of the same topics as the international law of treaties but has a different emphasis – it concerns the “nuts and bolts” of day-to-day treaty work rather than the legal rules that apply to it. Some treaty practices may be mandated by law, but practice goes well beyond law (just as

¹⁸ The ASEAN Deputy Secretary-General’s speech is also available on the ASEAN Secretariat’s website at: www.aseansec.org (accessed on 18 September 2012).

a car must be driven in accordance with the rules of the road, but those rules do not cover all aspects of good driving).

170. She explained that the emphasis of this Workshop would be on treaty practice. Ms Barrett then discussed the concept of good versus best treaty practice, and how this might be measured. A key element of this is to develop a functional approach based on an analysis of treaty engagement by a range of stakeholders.
171. This was followed by an interactive discussion with participants led by Ms Barrett and Mr Barnett on who the stakeholders in treaty practice are, and a discussion of the general criteria for good treaty practice including the views of Mr Limburg and Ms Cornu. Mr Barnett then introduced 18 suggested generic criteria for good treaty practice (see Section II. A) and led a short discussion in the light of the views expressed by participants.

B. Session 2 – Organisation of Treaty Work in Governments and International Organisations

172. The three speakers each gave a presentation on treaty practice within their own State or international organisation. These presentations were followed by a short question and answer session with participants.

1. The Netherlands

173. **Mr Limburg** spoke about treaty law and practice within the Kingdom of the Netherlands. The legal framework is provided for in the Constitution, and in the *Kingdom Act on the Approval and Publication of Treaties 1994*. These documents contain national treaty law, which is needed in every State in addition to international treaty law. The Minister of Foreign Affairs has overall responsibility for the implementation of these rules.
174. The Netherlands has a monist legal system, in which treaties have domestic legal effect as soon as they have been ratified and published by the government. Parliament will therefore already have enacted any implementing legislation required to make the treaty applicable, have repealed incompatible legislation and appropriated any necessary funds by the time the treaty enters into force for the Netherlands. Similarly, executive organs are compelled to bring administrative regulations into line and to execute municipal law in conformity with the provisions of the published treaty. Constitutional law of the Netherlands provides that treaty law takes precedence over national law.

175. Treaty ratification requires the prior approval of the States-General (bicameral legislature), unless they deal with certain categories of subject matter or have a maximum duration of one year. The manner in which this approval is given may be by tacit or express approval. In practice the government is selective about when to seek tacit or express approval, and Mr Limburg stated that out of an average of 100 treaties concluded each year approximately 70 were likely to need parliamentary approval. Of these, around 10% would follow the explicit approval procedure, while the others follow the tacit approval procedure which requires that the treaty be laid for 30 days before parliament before ratification may proceed.
176. The treaty office of the Netherlands is part of the Ministry of Foreign Affairs. The staff within the treaty office are a mixture of lawyers and administrative officers, and serve about four to six years there on average.

2. The United Kingdom

177. **Mr Barnett** gave an overview of treaty practice in the United Kingdom. He explained that the UK is a common law country, with a bicameral parliament. Treaties are not self-executing in UK law, and many require either primary or secondary legislation in order to have domestic legal effect, although in some instances existing legislation may be deemed sufficient. It is the practice of the UK Government not to ratify a treaty until any legislation required is in place.
178. Parliament does not formally approve treaties, but from 1924 a practice was introduced whereby treaties were laid before Parliament for 21 sitting days before ratification (the so-called "Ponsonby rule"). Over time, this practice developed and came to be regarded as obligatory, although not legally enforceable (i.e. it was a constitutional convention). Mr Barnett explained the recent changes introduced by the *Constitutional Reform and Governance Act 2010*. This Act puts parliamentary scrutiny of treaty ratification onto a statutory footing for the first time, and gives legal effect to a resolution of the House of Commons or the House of Lords that a treaty should not be ratified, although the legal effect of a vote against ratification is different for each House. The Act also contains provisions that allow for the 21 sitting day scrutiny period to be extended, and for flexibility in exceptional circumstances.
179. The UK's Treaty Section is part of the Legal Information Group (LIG) within a wider Legal Directorate in the Foreign and Commonwealth Office. The Treaty Section has eight staff who are all administrators and, as none of them are lawyers, they look to international lawyers within the Legal Directorate for legal advice on treaty matters. Treaty Section provides advice, guidance and information on UK treaty practice and procedures to all officials and ministries. Its work is conducted under two branches; Treaty Procedures and Treaty Information. The Treaty Information branch

maintains the database of UK treaties, is the central point of contact for external treaty queries, maintains the “UK Treaties On-Line” database, and undertakes the depositary role for the UK. The Treaty Procedures branch is responsible for all treaty formalities including sealing and signing arrangements, preparing full powers, ratification and other instruments, publishing treaties and laying them before Parliament.

3. The Council of Europe

180. Following a video presentation on the Council of Europe, **Ms Cornu** discussed treaty practice within the Council of Europe. She explained that following the foundation of the organisation in 1949 its aim was to achieve greater unity between its members. To achieve this, the statute of the Council of Europe provides in its first Article that this aim shall be pursued through the organs of the Council of Europe by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms. The Council of Europe has contributed to achieving this aim by concluding more than 210 multilateral treaties to date between its 47 members in these areas of competence. Ms Cornu further explained that the treaties concerned are not acts of the Council of Europe as an international organisation, but that each treaty is for individual member States to determine whether to ratify and implement at a national level.
181. The Treaty Office of the Council of Europe, which has three staff members of whom only one is a lawyer, is a part of the wider Directorate of Legal Advice and Public International Law, which is directly supervised by the private office of the Secretary-General of the Council. The Secretary-General is the depositary of all of the Council of Europe’s treaties except for the first one, the 1949 Statute of the Council of Europe, for which the United Kingdom is the depositary. Ms Cornu explained that the Treaty Office undertakes a number of functions, for example publishing and acting as custodian for the original texts of all of the Council of Europe’s treaties and their associated instruments, organising and attending signature ceremonies, receiving and registering ratifications and any declarations or reservations and notifying the other member States, and other parties to the treaties concerned, of all such acts.

C. Session 3 – Organisation of Treaty Work in ASEAN Member States and the ASEAN Secretariat

182. A representative from each of the 10 ASEAN States provided an overview of the way in which treaty work is organised in their respective States, and a summary of ASEC treaty practice was also provided. This information was very helpful for all

- participants as it gave valuable insights into the way in which ASEAN States and ASEC undertake their respective treaty law and procedures.
183. In Brunei, the Attorney General's Chambers and the Ministry of Foreign Affairs and Trade are both involved in treaty work. The Attorney General's Chambers (International Affairs Division) handles the substantive legal issues and ensures that treaties do not contradict the Constitution and the laws of Brunei while the Ministry of Foreign Affairs and Trade (Treaty Unit) acts as the depositary of all treaties signed by Brunei.
 184. In Cambodia, the Ministry of Foreign Affairs and International Cooperation (Legal and Consular Department) is the co-ordinating agency of the government for treaty matters. Their work includes participating with relevant agencies in the process of drafting, negotiating and concluding treaties; providing legal advice to relevant agencies on treaty matters; updating and following-up on the process of treaty ratification.
 185. In Indonesia, the Ministry of Foreign Affairs (Directorate-General of Legal Affairs and Treaties) is generally in charge of treaty work, although there is a mechanism for inter-ministerial co-ordination. The Directorate-General of Legal Affairs and Treaties is divided into the Secretariat of the Directorate General of Legal Affairs and International Treaties, the Directorate of Legal Affairs, the Directorate of Political, Security and Territorial Treaties and Directorate of Economic and Socio-cultural Treaties. The treaty work itself is organised under the Directorate of Economic and Socio-cultural Treaties, in which daily treaty work is handled by a "treaty room".
 186. In Laos, treaty work and treaty procedures are generally undertaken by the Ministry of Foreign Affairs (Department of Treaties and Law).
 187. In Malaysia, the Attorney General's Chambers and the Ministry of Foreign Affairs are both involved in treaty work, although there is no specific treaty division under either the Ministry of Foreign Affairs or the Attorney General's Chamber. But depending on its subject matter, different treaties may have different leading agencies responsible for the conclusion and implementation of treaties.
 188. In Myanmar, the Attorney General's Office (International Law and ASEAN Legal Affairs Division) is the principal agency of the government when it comes to advice on legal subjects, including on matters relating to international treaties.
 189. In the Philippines, the Department of Foreign Affairs (Office of Legal Affairs, Treaties Division) is the co-ordinating agency of the government in the conclusion of international treaties. The Treaties Division is involved in all aspects of treaty-

making from drafting and negotiation to treaty procedural issues, including depositary and record-keeping functions, responding to questions about interpretation and settlement of treaty disputes.

190. Singapore does not have a single department or ministry that has a treaty division. Treaty negotiation and conclusion is handled by the relevant agencies in accordance with the subject matter of the treaty. However the Attorney-General's Chambers does render advice to other agencies on the draft agreements that they intend to conclude.
191. In Thailand, the Ministry of Foreign Affairs (Department of Treaties and Legal Affairs) is the responsible agency for matters relating to treaties.
192. In Vietnam, the Ministry of Foreign Affairs (Department of International Law and Treaties) takes the lead and co-ordinates treaty work for the government. The duties of the Ministry of Foreign Affairs include participating in treaty negotiations, completing treaty procedures, preparing long term plans and annual plans on the conclusion, accession and implementation of treaties and organising the custody, deposit, publication and registration of treaties.
193. There is no treaty section at the ASEAN Secretariat. However, in certain situations, if ASEAN member States would like to seek information on ASEAN Instruments, then the ASEAN Resource Centre could act as a 'Treaty Office'.

D. Session 4 – Management of Treaty Collections

194. This Session examined the management of treaty information in detail, and began with an introduction from Ms Barrett. Each of three speakers then described the procedures for managing such information within their own government or organisation.

1. Management of Treaty Information for Internal Users

a. The United Kingdom

195. **Mr Barnett** explained the management of treaty information within the UK. Treaty information was first recorded by the UK in 1835 on a series of ledgers, which were followed by a card-index system from 1945 and finally a computerised database that began in 1987. The scope of the database covers only those treaties in which the UK has a direct interest through participation as a signatory, a contracting State or a party. It contains approximately 14,000 treaty records. It includes treaties which

- may have been terminated and those concluded on behalf of the former Dominions and non-self governing States with third parties as well as extensions of treaties to the UK's (current) Overseas Territories. Treaty records are never deleted, even when the treaty itself has been terminated (this explains why the number of treaties in the database is larger than the number of treaties which are current for the United Kingdom). The full database can only be accessed by Treaty Section staff – it is not available to officials elsewhere in the FCO or in other government departments, or to the general public. Until recently the only way for those not in Treaty Section to access any of the information on the database was to telephone or email staff in Treaty Information with a request. Providing information to other officials is one of Treaty Section's most important information functions. Other officials still do not have direct access to the database, but they can now find much of the information they need on the public website UK Treaties Online.
196. Mr Barnett reported the launch of UK Treaties Online in 2010, which gives web users the ability to search a range of information on the treaty database by accessing it from a link on the FCO's web page. The full version of the database can still only be accessed by Treaty Section staff as there are some fields, such as peripheral notes, that would not be appropriate for the general public. In addition to the information on the database the web link also gives access to the full texts of all treaties published as Command Papers since the UK Treaty Series began in 1892. All UK treaties are published as Command Papers prior to their entry into force to enable them to be laid before Parliament, and are published again in the UK Treaty Series when they enter into force for the UK. Since 1997, each treaty laid before Parliament has been accompanied by an Explanatory Memorandum – now a requirement of the *Constitutional Reform and Governance Act* – and UK Treaties Online gives access to these documents also.
197. Once a treaty enters into force for the UK the original text (if it is a bilateral treaty) or the certified true copy (if it is a multilateral treaty) is placed in the UK's National Archives for permanent preservation. Government officials can arrange to retrieve the original if required. Members of the public may inspect it or make a copy at the offices of the National Archives.
198. There is no requirement in UK law or constitutional procedures for "treaty-like" instruments to be laid before Parliament or published in any way. Nor is there any requirement for such instruments to be sent to Treaty Section, although Mr Barnett confirmed that Treaty Section do, on request, check the text of all draft "treaty-like" instruments that they receive (to ensure that they do not contain treaty language). They maintain a record of these instruments for internal purposes, but do not include them in the same database as treaties, nor are they listed or published in UK Treaties Online.

b. The Netherlands

199. **Mr Limburg** explained the management of treaty information in the Netherlands. Original treaty instruments and certified copies are kept in a vault in the Ministry of Foreign Affairs, with a separate section for the depositary treaties. The collection only contains records from 1945 onward. Older documents are stored in the national archives. The text of treaties is also stored electronically (a process that has been in practice for the past 15 years). Records are updated by the Treaty Department on a continuous basis.
200. There are two databases maintained by the Treaties Department; the first is an internal database which is only accessible to the Department, and contains some 10,000 records dating from 1648. The second is an external database which is publically accessible through the Ministry of Foreign Affairs website, but contains only an extract of the data contained in the internal database. There is also a separate database, maintained by the Ministry of the Interior, which contains the text of all national legislation and the text of treaties in force in consolidated form (amendments are included under the responsibility of the Treaties Department).
201. The government of the Netherlands is required to submit a list of draft treaties under negotiation to parliament every three months. Treaties are published in the Netherlands Treaty Series after implementing legislation is approved, as soon as possible after signature. It is a statutory requirement that treaties be published. Publication of the treaty in electronic form constitutes the authoritative text.
202. Mr Limburg confirmed that the Netherlands does not record information on “treaty-like” instruments on their database – as with the UK the Ministry of Foreign Affairs is not aware of all such instruments that may be produced within the Netherlands and could not therefore maintain an accurate record of them.

c. The Council of Europe

203. **Ms Cornu** began by outlining the role of the Treaty Office in the management of treaty information within the Council of Europe, confirming that the Treaty Office maintain custody of all original documents including full powers and instruments of ratification and accession presented to it. These documents are kept in a closely controlled area with very limited access, but have to be readily available since Council of Europe treaties remain open for signature by a member State wishing to join the treaty at any time.
204. Ms Cornu also discussed treaty information on the Council of Europe’s website. The Treaty Office does not have a separate restricted internal database for treaty information; all the information in its database is automatically displayed in a

publically accessible website. This website contains the text of each Council of Europe treaty, a table with dates of signature and ratification by individual States, any reservations or declarations made and explanatory reports. Ms Cornu confirmed that the website is kept fully up to date, and is revised immediately following each treaty act. The website receives in excess of 1 million visits annually.

2. Management of Information for External Users

205. **Mr Barnett** gave an overview of the way in which governments manage treaty information for external users, looking at how and which texts are made available to national legislatures and the public.
206. To illustrate this Mr Barnett briefly described the means by which treaties are made available to legislatures in the Australian and New Zealand national systems, and compared these with procedures in the UK and the Netherlands. He noted that each national system had a procedure whereby treaties are laid before parliament for a varying number of parliamentary days, but that each State had a different requirement for the type of treaty that must be presented.
207. Mr Barnett then discussed the ways in which external users would be able to find the texts of treaties that had been presented to national parliaments, again using these four States as examples. He noted that in each case the texts of treaties are published and placed on the web for public access.
208. He also considered how users might ensure that the version of the treaty text they were able to view on the web was the official version and not an unofficial text which might have been amended or displayed inaccurately by a third party.

3. Functions of Depositaries in International Organisations

209. **Ms Cornu** gave a presentation on the practical functions of the Council of Europe when acting as a depositary. One of the main advantages in having an international organisation as a depositary rather than a State is that such an arrangement enables a link to be maintained between the treaty and the organisation within which that treaty was concluded. International organisations would rarely agree to act as a depositary of a treaty with which they have no substantial connection.
210. Ms Cornu stressed the need for depositaries to act impartially, in accordance with Article 76(2) of the Vienna Convention of the Law on Treaties 1969. This may in fact be easier for an international organisation than a State, since individual States acting as depositaries may encounter situations where the obligation to act impartially may

cut across their national interests. She confirmed that all Council of Europe staff are obliged to act without influence of any national consideration or instruction.

211. She focussed on three key aspects of the depositary function, these being notification, registration with the UN and publication. Ms Cornu explained that in the Council of Europe notifications of any instrument or communication relating to a treaty for which it is depositary are sent electronically to all member States and other parties at a set time each week. This is supported by a monthly paper list of all notifications sent out in the preceding month, thus ensuring that notifications are not missed. All Council of Europe treaties are registered with the Secretariat of the UN within one month of entry into force.
212. The text of all Council of Europe treaties, their explanatory reports, the status of signatures and ratifications, declarations and reservations made by States, as well as the notifications issued by the Treaty Office since 2005, are available on the website of the Council of Europe Treaty Office. However, the website displays an important disclaimer which makes clear that only the treaties published in booklet form in the "European Treaty Series" (ETS) or "Council of Europe Treaty Series" (CETS) are deemed authentic. Treaties are done in English and French, the official languages of the Council of Europe. Translations into other languages are provided for information only.
213. Ms Cornu also discussed difficult issues for the depositary, noting that perhaps the most difficult of these is a disagreement between the treaty office and a State submitting a reservation. Where a convention does not permit any reservations the situation is easier since the treaty office can say to the State concerned that they cannot register the ratification since the reservation is not permitted by the treaty. But in other cases, where the treaty permits certain kinds of reservations, it is more difficult for the treaty office to refuse a State's reservation, even if doubts appear as to its permissibility under the terms of that treaty or general treaty law. Ms Cornu said that in such cases the policy of the Council of Europe Treaty Office was to engage in a dialogue with the State concerned. However if the State insisted on depositing the reservation then the matter would be submitted to the parties to the treaty in accordance with Article 77(2) of the Vienna Convention on the Law of Treaties 1969.

4. Issues for Governments When Acting as Depositary

214. **Mr Limburg** discussed the issues that affect governments when acting as a depositary. He also emphasised the importance of acting impartially, and the need for adequate separation of the role of depositary from national roles, especially when handling communications that are subject to national disputes.

215. The Government of the Netherlands is the depositary for over 100 treaties, although not all of these are active, and has been a depositary for over 100 years. Within the Ministry of Foreign Affairs there are four members of staff, including one lawyer, whose duties include dealing with depositary matters.
216. Mr Limburg discussed a number of the problems the Netherlands has faced as a depositary, for example in dealing with incorrect instruments and instruments in languages other than the authentic languages of the treaty in question. He stressed that this last issue is especially important when dealing with reservations and declarations, as the need for these to be clear and unambiguous is paramount. This is the responsibility of the State concerned, not of the depositary.

E. Session 5 – Concluding a New Treaty: Actions on the International Plane

1. Birth of a Bilateral Treaty

217. **Mr Barnett** introduced the practical issues around the formatting and production of the text of a new bilateral treaty. He stressed the need to ensure that when drafting the treaty particular attention is paid to the final clauses, as these effectively govern how the treaty will operate and can often be overlooked by negotiators. He also emphasised the need for caution in preparing the testimonium and signature blocks, particularly when the treaty is in two or more languages one of which may be written in a different script.
218. He explained the procedures for formatting the text of a treaty, and the need to ensure that any text in a foreign language is carefully checked by a translator. Once the text of the treaty has been prepared it is common for a short meeting to be held between officials of each side the day before signature to authenticate the final text. This is generally known as a sealing ceremony since it is usual for each treaty, once finalised, to be sealed into its binder ready for signature.
219. Mr Barnett also discussed full powers and the need for them. It is normally necessary for each side to provide the other with full powers, since they provide irrefutable proof that the person named in them is representing their State for the purposes of signing the treaty. He explained that sometimes the two States concerned may agree to dispense with full powers in a particular case. He cautioned against taking the step of dispensing with full powers lightly, and advised that if this is desired it should always be proposed to the other bilateral partner well in advance.
220. Finally Mr Barnett discussed signature ceremonies and in particular the need for officials from treaty offices to be able to think rapidly on their feet at such events, as

each ceremony has the potential to go wrong at very short notice. He illustrated this point with some examples.

2. Birth of a Multilateral Treaty

221. **Ms Cornu** discussed the drafting and preparation of multilateral treaties within the Council of Europe. Such conventions are prepared and negotiated within the institutional framework of the Council of Europe, with the Committee of Ministers being the body empowered to adopt treaties. The initiative to draft a treaty may come from a number of sources, but importantly any proposal has to be approved by the Committee of Ministers. Once approved, a mandate is given to draft the convention.
222. Treaties are drafted by a committee of experts from member States and, following a review by the Secretariat's legal advisers, are then sent to the Parliamentary Assembly of the Council of Europe for an opinion. They are then returned to the Committee of Ministers for adoption and opening for signature, both of which are decided by a two-thirds majority.
223. Treaties opened for signature have a single original copy, in the English and French languages only, which is prepared by the Treaty Office. Signature ceremonies are organised by the Treaty Office in collaboration with the Council of Europe's protocol department, and Treaty Office staff attend every ceremony.

3. Becoming Party to a Treaty: Consent to be Bound (Multilateral Treaties)

224. **Mr Barnett** and **Ms Cornu** gave a presentation on giving consent to be bound. Mr Barnett explained that the precise procedure for the preparation of an instrument of ratification and accession would vary between States, as each State has its own constitutional and administrative requirements. In the UK, once parliamentary procedures have been completed and any necessary implementing legislation is in place, the instrument can be prepared.
225. He described the procedure by which Treaty Section then prepare the instrument, clear it with FCO legal advisers and submit it to the Foreign Secretary for signature. Once signed, the instrument is sealed and sent to the relevant FCO post overseas for deposit with the depositary.
226. He stressed the need to ensure that the instrument is being deposited in the right place, and that if possible a receipt is obtained, since incorrect delivery of such instruments can cause delays. Confirmation of receipt also ensures that the depositing State is aware of the precise date on which its instrument was received.

227. **Ms Cornu** discussed the action a depositary should take when it receives an instrument of ratification or accession. She emphasised that one of the most important steps is to ensure that the instrument complies with the treaty's provisions, for example that the State concerned is entitled to sign and ratify the treaty, that any compulsory declarations have been enclosed and whether any reservations have been made, if permitted by the treaty.
228. In addition to ensuring compliance, it is also important to check that the instrument has been signed by a person authorised to do so, and that the name and title of the signatory is clearly indicated. Finally, the title of the treaty being ratified or acceded to must also be clearly stated on the instrument.

4. **Becoming Party to a Treaty: Entry into Force**

229. Some bilateral treaties are brought into force by signature. More commonly, the trigger is the mutual exchange of notification by each State of completion of its domestic procedures. Mr Barnett explained how this process works and that whereas sometimes the two notifications can be exchanged in person at a meeting, in other cases there can be delays of months or even years between the two notifications.
230. He also discussed the wide range of entry into force provisions found in multilateral treaties. Some of these have provisions that the treaty enters into force on a defined number of days after the deposit of a set number of instruments, and others may provide that the treaty enters into force after a given period following such deposit.

5. **Becoming Party to a Treaty: Reservations and Objections**

231. **Ms Barrett and Ms Cornu** gave a detailed presentation on the importance of reservations, declarations and objections. Ms Barrett began by discussing the legal framework contained in Articles 19 to 23 of each of the Vienna Convention on the Law of Treaties 1969 and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986. Also important is Article 2 of each of these Vienna Conventions, which defines a reservation as a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State (or that organisation).¹⁹

¹⁹ See also Part II, section I, point 2 "Reservations and declarations".

232. The drafting of reservations and declarations is a matter for policy officers and their legal advisers, although treaty offices may be asked to advise on the form of instrument containing the declaration or reservation and the means by which it is deposited.
233. Ms Barrett advised that when drafting a reservation, the first point of reference should be the treaty to which the reservation is to be made, to ascertain whether reservations are either expressly permitted or prohibited by the treaty. It may also be the case that only reservations of a certain type are permitted. If the treaty contains no provisions specifying whether reservations may be made or not, then the default rules set out in Article 19(c) of the Vienna Conventions apply, and reservations may be made provided that they are not incompatible with the object and purpose of the treaty.
234. Article 23 of the Vienna Conventions contains important provisions on the procedure for depositing reservations, although it does not prescribe the form in which the reservation has to be made, other than that it has to be formulated in writing and communicated to the other States participating in the treaty. The key factors are that the reservation has to be written in a way that makes clear that it is a formal condition attaching to consent to be bound; and that it must be deposited at the same time as signature or ratification. Reservations made when signing subject to ratification should be confirmed on ratifying the treaty, and Ms Barrett discussed two alternative means of doing this: either by referring back to the reservation made at signature when ratifying the treaty or by repeating the entire text of the reservation. The former has the advantage of being more concise, whereas the latter has the advantage of greater clarity.
235. Ms Barrett then discussed declarations, which are not defined in the Vienna Conventions. Interpretive declarations are not the same as reservations, and have a different function. They may be used where a treaty provision is unclear in order to clarify a State's understanding of the effect of certain provisions, or to state how it intends to implement them in its domestic law. However such declarations have to be based on a tenable interpretation of the provision, and must be consistent with the other provisions of the treaty. If not, they are most likely to be disguised reservations. In circumstances where reservations are not permitted by the treaty, declarations that are really disguised reservations will cause doubt about the validity of the ratification by the State concerned.
236. Reservations expressly authorised by a treaty do not require any subsequent acceptance by other contracting States, unless the treaty so provides. Where the treaty does not expressly authorise a reservation, it must be accepted by one other party to the treaty for the reserving State's consent to be bound to be effective.

Article 20 of the Vienna Conventions makes it clear that the absence of an objection by another party within a 12 month period from the date the reservation is notified to them means that the reservation has been accepted. If another party to the treaty does object, the effect of the reservation will only affect treaty relations between those two States. Interpretive declarations are not subject to the 12 month time limit in Article 20, but in practice States usually table any responses within a similar timeframe. The effect of an objection to a declaration is simply that it sets out a competing legal view on the interpretation of the treaty.

237. Ms Barrett also discussed the Guide to Practice on Reservations to Treaties adopted by the International Law Commission of the United Nations in 2011 (the Guide).²⁰
238. Some parts of the Guide are intended to codify State practice, while other parts represent progressive development. The extensive commentaries were (at the time of the Workshop) yet to be published, and ASEAN countries may wish to wait until these are available before deciding whether the Guide can contribute significantly to the treaty practice in the region. Nonetheless she suggested that all States should review the Guide thoroughly and express their views on it at the UN General Assembly, because if widely supported its influence will be considerable.
239. It is also worth studying the Annex on reservations dialogue and the recommendation on mechanisms of assistance. The latter contains an interesting recommendation that States consider establishing “observatories” at the regional and sub-regional levels, which might be inspired by the practice of the European Observatory of Reservations to International Treaties established within the Council of Europe.
240. **Ms Cornu** explained the way in which the European Observatory of Reservations to International Treaties operates. The Council of Europe has a Committee of Legal Advisers of Public International Law (CADHI). The Committee is composed of the legal advisers of the 47 member States of the Council of Europe, and meets twice a year to exchange views on topical questions of international law. At each meeting there is an agenda item on reservations and interpretive declarations. Under this

²⁰ The Workshop discussed the documents adopted by the International Law Commission in 2011, which included the Text and title of the draft guidelines [A/CN.4/L.779]; the Annex on reservations dialogue [L.793]; the Recommendation on mechanisms of assistance [L.795]. The final versions of these documents, which now include the Commission’s commentaries, were later published as part of the Official Records of the Sixty-Sixth session of the General Assembly in Report of the International Law Commission Sixty-third session (26 April-3 June and 4 July-12 August 2011) (A/66/10/Add.1) available at www.daccess-dds-ny.un.org (accessed on 26 September 2012).

item the legal advisers exchange views on reservations and interpretive declarations recently deposited by member States in relation to Council of Europe treaties and by all States in relation to other multilateral treaties. Thus, CAHDI acts as the European Observatory of Reservations. The Council of Europe Secretariat services this committee by compiling and circulating lists of all relevant reservations and declarations, on the basis of information provided by the Treaty Office. These lists also provide a reminder to member States of the date of expiry of the 12 month deadline for responding to reservations. The role of the CADHI Secretariat and of the Treaty Office is strictly procedural; they do not provide opinions on the substance of reservations.

F. Session 6 – Treaties versus Non-Binding “Treaty-Like Instruments”

241. During this Session, participants divided into small groups to undertake three practical exercises. In the first exercise, participants were presented with five hypothetical scenarios involving international negotiations. They were invited to consider, for each scenario, whether it would be more appropriate to negotiate a treaty or a non-binding instrument to achieve the given objectives, and to arrive at a group view on this issue. A spokesperson for each group then presented the group's agreed conclusions for each scenario, together with their reasoning, outlining the possible consequences of selecting one approach rather than the other.²¹
242. In the second exercise, the participants were invited to study a set of ten texts of (real) international instruments and to consider whether each one is a treaty or not. Four of these were ASEAN instruments, while the other six were a variety of multilateral and bilateral texts. A spokesperson for each group presented the group's conclusions to the workshop, indicating their reasons for deciding that the text was a treaty, was not a treaty or, in a few cases, why they could not reach a firm conclusion and what further information they would need to do so.
243. In the third exercise, participants focussed in detail on one of the ten texts, and discussed two hypothetical scenarios: (a) if they had been negotiating this text on behalf of a party which wished to have a treaty, what drafting changes would they have argued for to turn the text unambiguously into a treaty and, (b) if they had been negotiating this text on behalf of a party which wished to conclude a non-binding instrument, what drafting changes would they have recommended to ensure that the instrument is not interpreted as a treaty.

²¹ See Part II, section D “What is a treaty? Distinguishing treaties from other treaty-like documents.”

G. Session 7 – Break-out Session: Issues on Treaty Law and Practice

244. In this Session participants again divided into groups to conduct a comparative discussion on the issues relating to treaty law and practice that had been raised in earlier Sessions, seeking to identify common problems on treaty law and practice and possible solutions.
245. Common themes arising in these discussions concerned the organisation of treaties, management of treaty collections, concluding a new treaty – action on the international plane, differences between binding and non-binding agreements and best treaty practice.²²

H. Session 8 – Special Session

246. This Session was an interactive session that enabled individual or groups of participants to consult privately with the speakers regarding particular problems experienced in their State or organisation, to exchange views on different topics pertaining to treaty law and practice, and to identify areas for further discussion. Participants were free to attend the group of most interest to them or request a short private session on an issue of their choice.
247. A further group was established to explain CIL's Document Database, with Professor Beckman and a consultant from CIL giving a presentation on the features available on the CIL Document Database and how to use them. The session for this group was divided into three parts, the first phase was to explain the international law database, the second phase was dedicated to explaining CIL's ASEAN Instruments Database, and the last phase focused on CIL's Status Database.
248. CIL's Research Associates also used this opportunity to interview several participants and complete questionnaires on national treaty practice. As each country was represented by more than two participants, each country was able to participate in more than one interest group.

²² See Part II, where the themes emerging from the discussions in this session are reported.

I. Session 9 – Concluding a New Treaty: National Action on the Domestic and International Planes

1. Action Before Ratification

249. **Ms Barrett** opened the Session by discussing some of the principles that should be considered when dealing with national action on the domestic and international planes, in particular the need for inclusion and for “joined-up” government.
250. She clarified this by emphasising the importance of including all those affected, such as policy officials, relevant government lawyers, treaty officials, ministers, parliament, regional authorities and the public, at the appropriate stages when designing treaty procedures. Joined-up government is a similar concept, but refers to the effective horizontal co-ordination of ministries and agencies across the whole of government. Ms Barrett also examined the need for a collaborative process between international lawyers, domestic legal experts in government and policy officials when determining the action to be taken on concluding a new treaty. She considered ways in which this might be achieved, and the role which government lawyers can play, for example through the establishment of a network of domestic and international lawyers across government.
251. **Mr Barnett** considered the issue of consulting parliaments. If this was to be done during treaty negotiations, while having the benefit of openness it could potentially present many difficulties with confidentiality and timing. Some States accompany treaties laid before their national legislature with an explanatory document, which is variously known in different States as an Explanatory Memorandum, an Explanatory Note or a National Interest Analysis. The exact composition of these varies in detail but in essence they all require officials to explain the text of the treaty in ways that can easily be understood by parliamentarians, to identify the benefits and burdens that the treaty would bring, and to justify the government’s recommendation that ratification would be in the national interest.

2. Action after Ratification

252. **Mr Barnett** examined the process of registering treaties with the United Nations, noting that Article 102 of the United Nations Charter requires that every treaty and every international agreement entered into by any member of the United Nations shall as soon as possible be registered with the Secretariat and published by it. Mr Barnett clarified that the act of registration does not of itself confer the status of a treaty onto the document being registered. He detailed the information to be

submitted to the United Nations when registering, and noted that the UN Treaty Office had an extremely useful online Handbook as an aid to registration.²³

253. **Professor Beckman** gave a presentation on modern treaty practice and the changing nature of global and regional treaties. Professor Beckman drew attention to the increased role of secretariats and the greater use of compliance mechanisms, tacit acceptance procedures, and dispute settlement provisions in modern treaties.
254. He noted that many developing countries are not aware of the ongoing and frequently onerous participatory obligations involved in modern treaties (such as extensive reporting requirements), and suggested that States need to be more aware of their capacity to perform these obligations when concluding treaties. An essential element of good treaty practice is the forward planning for continued engagement with a treaty throughout its lifespan.

J. Session 10: Implementing Treaties in Domestic Law

255. **Professor Beckman** gave a presentation on the problems of implementing international maritime crimes conventions. He looked at the record of countries in the region in ratifying the relevant treaties and discussed whether their domestic legal systems were adequately equipped to implement treaty obligations addressing maritime crimes such as piracy. He examined the role of the legislature in certain States, comparing the features of common and civil law systems, and the effectiveness of inter-agency committees.
256. **Mr Limburg** gave a presentation on implementing treaties in domestic law in the Netherlands. He explained that even though a treaty may be incorporated automatically into national law by virtue of ratification, it remained good practice to examine and amend existing legislation where there may be provisions that would be in conflict with new obligations in the treaty.
257. For bilateral treaties in the Netherlands, new implementing legislation is rarely required, whereas for multilateral treaties it is often necessary. Mr Limburg considered various situations in which additional legislation may be required, for example in circumstances where a change in the domestic penal code is needed. He emphasised that when implementing legislation is necessary, the treaty in question may not follow the tacit approval procedure in the Netherlands parliament; it has to have express approval.

²³ See Part II, section I, point 1 “Registration of treaties at the United Nations”.

258. **Ms Barrett** spoke about implementing treaties in domestic law in the UK. She confirmed that it was the UK's consistent practice to ensure that any necessary implementing legislation was in place before a treaty could be ratified or acceded to.
259. Ms Barrett discussed the various situations that could arise when the UK is considering how to implement a treaty's provisions. In some cases, it may be that no new implementing legislation is necessary, either because the treaty only requires administrative action or because the requisite legislation is already in force in the UK. In other cases, it will be necessary to secure the passage of new primary legislation or new secondary legislation, or a combination of both.
260. Ms Barrett considered the range of legislative drafting styles that could be used for legislation designed to give effect to a treaty's provisions. One method is to draft a short statute which provides that the treaty, whose entire text is set out in an annex, is to have the force of law. This method is rarely satisfactory and is not generally used. More commonly the relevant substantive provisions of the treaty are used as the basis for drafting operative provisions of a statute, in a drafting style that is consistent with other UK statutes. The obligations of a treaty may be incorporated into a single statute or into a range of different pieces of legislation.

K. Session 11 – Break-out Session: Issues in ASEAN Treaty Practice

261. In this Session participants met in small groups to discuss their respective domestic treaty practices, identify common problems on treaty law and practice (focussing on the issues and problems raised in Sessions 9 on conclusion of treaties and 10 on treaty implementation) and consider possible solutions, including strengthening inter-agency coordination, setting out clear procedures for the implementation of treaties, compliance monitoring, capacity-building and technical assistance for individual States and ASEC.
262. The participants were divided into eight groups in accordance with their respective seating arrangements. Each group appointed a representative who then presented the results of their discussion. Apart from identifying common problems that countries face in respect of their treaty practice, the discussion also evolved to include the participants' expectations and recommendations on what individual ASEAN States, ASEC, and academic institutions such as CIL and the Institute should do to improve the treaty practice of ASEAN member States, ASEAN and ASEC.

L. Session 12: Conclusions

263. The Workshop sessions concluded with an evaluation of best treaty practice. The discussions on the proposed generic criteria of best treaty practice are summarised

in Part II, section A, of this Report. The participants were invited to make suggestions as to what type of information they would find helpful in a Best Treaty Practice book and to suggest topics for follow-up Workshops that would assist them in developing their expertise in treaty practice and considering possible improvements in working practices in their respective organisations. Key points are summarised in Part III.

264. At the conclusion of the Workshop it was widely agreed that the proceedings had been immensely valuable for both the participants and the organisers. There was a great deal of interest in the book or manual on Best Treaty Practice that CIL and the Institute intend to publish and also in a follow-up workshop, to be convened in 2013 if possible.

ANNEX 1 – WORKSHOP PROGRAMME

International Workshop on Treaty Law and Practice Grand Copthorne Waterfront Hotel, Singapore 16 – 19 January 2012

Pre-Workshop	Monday, 16 January 2012
18.00 – 20.00	Pre-Registration Reception and Collection of Workshop Materials Foyer of Flamingo Room, Level 3, Grand Copthorne Waterfront Hotel
Day 1	Tuesday, 17 January 2012
8:30 – 9:00	Registration Galleria Ballroom, Level 3, Grand Copthorne Waterfront Hotel
9:00 – 9:10	Welcome: <ul style="list-style-type: none"> • <u>Robert Beckman</u>, Director, Centre for International Law, National University of Singapore • <u>Jill Barrett</u>, Arthur Watts Senior Research Fellow in Public International Law, British Institute of International and Comparative Law; Former Legal Counsellor, Foreign & Commonwealth Office, United Kingdom
9:10 – 9:30	Opening Speech: <u>Ambassador Tommy Koh</u> , Chairman, Centre for International Law, NUS
9:30 – 10:30	Session 1: Introduction to Workshop – Treaty Law And Practice <u>Chair Person:</u> Jill Barrett <u>Rapporteur:</u> Tara Davenport, Research Fellow, Centre for International Law, NUS
09:30 – 09:45	Jill Barrett
09:45 – 10.05	<u>Jill Barrett</u> and <u>Paul Barnett</u> , Visiting Fellow and Consultant, British Institute of International and Comparative Law; Former Head of Treaty Section, Foreign & Commonwealth Office, United Kingdom
10.05 – 10.15	Paul Barnett

10:15 – 10:25	<ul style="list-style-type: none"> • <u>Gerard Limburg</u>, Consultant, British Institute of International and Comparative Law; Former Director of Treaties, Ministry of Foreign Affairs of the Kingdom of the Netherlands <i>and</i> • <u>Elise Cornu</u>, Legal Adviser, Head of the Treaty Office Unit, Directorate of Legal Advice and Public International Law, Council of Europe <p><i>General criteria for good treaty practice (Dutch/Council of Europe perspectives)</i></p>
10:25– 10:30	Q&A
10:30 – 10:40	Group Photo Session
10:40 – 11:00	Coffee Break
11:00 – 12:30	<p>Session 2: Organisation of Treaty Work in Governments and International Organisations – Introduction</p> <p><u>Chair Person</u>: Jill Barrett</p> <p><u>Rapporteur</u>: Leonardo Bernard</p>
11:00 – 11:10	<u>Jill Barrett</u> – <i>Comparative Overview</i>
11:10 – 11:30	<u>Gerard Limburg</u> – <i>Dutch Treaty Practice</i>
11:30 – 11:50	<u>Paul Barnett</u> – <i>UK Treaty Practice</i>
11:50 – 12:10	<u>Elise Cornu</u> – <i>Council of Europe Treaty Practice</i>
12:10 – 12:30	Q&A
12:30 – 14:00	Lunch Break
14:00 – 15:30	<p>Session 3: Organisation of Treaty Work in ASEAN Governments and the ASEAN Secretariat</p> <p><u>Chair Person</u>: Robert Beckman</p> <p><u>Rapporteur</u>: Ranyta Yusran</p>
14:00 – 15:00	Introductory Comments by Participants
15:00 – 15:30	Q&A
15:30 – 16:00	Coffee Break
16:00 – 17:30	Session 4: Management of Treaty Collections

	<u>Chair Person</u> : Jill Barrett – <i>Introduction</i> <u>Rapporteur</u> : Sanjay Pala Krishnan
16:00 – 16:10	<u>Paul Barnett</u> – <i>Management for Internal Users in the UK Government</i>
16:10 – 16:20	<u>Gerard Limburg</u> – <i>Management for Internal Users in the Dutch Government</i>
16:20 – 16:30	<u>Elise Cornu</u> – <i>Management for Internal Users in the Council of Europe</i>
16:30 – 16:45	<u>Paul Barnett</u> – <i>Management for External Users:</i>
16:45 – 17:00	<u>Elise Cornu</u> – <i>Functions of Depositaries in International Organisations</i>
17:00 – 17:15	<u>Gerard Limburg</u> – <i>Issues for Governments when acting as Depositary</i>
17:15 – 17:30	Q&A
19:00 – 21:00	Welcome Dinner The Promenade, Lobby Level, Grand Copthorne Waterfront Hotel
Day 2	Wednesday, 18 January 2012
9:00 – 10:30	Session 5: Concluding a New Treaty – Action on the International Plane <u>Chair Person</u> : Jill Barrett <u>Rapporteur</u> : Monique Page, Research Associate, Centre for International Law, NUS
09:00 – 09:10	<u>Paul Barnett</u> – <i>The birth of a treaty - Bilateral treaties:</i>
09:10 – 09:20	<u>Elise Cornu</u> – <i>The birth of a treaty - Multilateral treaties:</i>
09:20 – 09:30	Interactive Discussion on key differences between bilateral and multilateral treaties
09:30 – 09:50	<u>Paul Barnett</u> and <u>Elise Cornu</u> – <i>Becoming Party to a treaty - Consent to be bound</i>
09:50 – 10:10	<u>Jill Barrett</u> and <u>Elise Cornu</u> – <i>Becoming Party to a treaty - Reservations and Objections</i>
10:10 – 10:30	Q&A
10:30 – 11:00	Coffee Break
11:00 – 12:30	Session 6: Break-Out Session 1 – Treaties v. Non-Binding “Treaty-

	<p>Like Instruments”</p> <p><u>Chair Person:</u> Jill Barrett</p> <p><i>Practical exercises on the differences between treaties and non-binding “treaty-like” instruments</i></p> <p><u>Rapporteur:</u> Tara Davenport</p>
11:00 – 11:40	Break-Out Session
11:40 – 12:00	Group Report
12:00 – 12:30	General Discussion Jill Barrett, Paul Barnett, Gerard Limburg and Elise Cornu
12:30 – 14:00	Lunch Break
14:00 – 15:30	Session 7: Break-Out Session 2 – Issues on Treaty Law and practice
15:30 – 16:00	Coffee Break
16:00 – 17:30	Session 8: Special Sessions with Speakers and Research Associates
Day 3	Thursday, 19 January 2012
9:00 – 10:30	<p>Session 9: Concluding a New Treaty – National Action on the Domestic and International Planes</p> <p><u>Chair Person:</u> Jill Barrett</p> <p><u>Rapporteur:</u> Leonardo Bernard</p>
09:00 – 09:30	<u>Paul Barnett</u> and <u>Jill Barrett</u> – <i>Action on the domestic plane</i>
09:30 – 09:45	<u>Paul Barnett</u> – <i>Further action on the international plane - Action after ratification:</i>
09:45 – 10:00	<u>Jill Barrett</u> – <i>Continuing engagement with the treaty:</i>
10:00 – 10:15	<u>Robert Beckman</u> – <i>Reporting, compliance-monitoring and dispute-settlement procedures:</i>
10:15 – 10:30	Q&A
10:30 – 11:00	Coffee Break
11:00 – 12:30	<p>Session 10: Implementing Treaties in Domestic Law</p> <p><u>Chair Person:</u> Jill Barrett</p>

	<u>Rapporteur</u> : Ranyta Yusran
11:00 – 11:05	<u>Jill Barrett</u> – <i>Introduction: General overview of the issues</i>
11:05 – 11:20	<u>Robert Beckman</u> – <i>Problems of Implementing International Maritime Crimes Conventions</i>
11:20 – 11:50	<u>Gerard Limburg</u> – <i>Implementing treaties in domestic law in The Netherlands</i>
11:50 – 12:00	<u>Jill Barrett</u> – <i>Implementing treaties in domestic law in the UK</i>
12:00 – 12:30	Q&A
12:30 – 14:00	Lunch Break
14:00 – 15:30	Session 11: Break-Out Session 3 – Treaty Practice in ASEAN <u>Chair Person</u> : Robert Beckman
15:30 – 16:00	Coffee Break
16:00 – 17:30	Session 12: Conclusions – Evaluation of Best Treaty Practice <u>Chair Person</u> : Robert Beckman <u>Rapporteur</u> : Sanjay Pala Krishnan
17:30	Closing Remarks <u>Robert Beckman</u> and <u>Jill Barrett</u>

ANNEX 2 – SPEAKERS’ BIOGRAPHIES

JILL BARRETT

**Arthur Watts Senior Research Fellow in Public International Law
British Institute of International and Comparative Law**

Jill Barrett joined the Institute in 2010 from the Legal Adviser's team at the Foreign and Commonwealth Office, where she was Legal Counsellor. Her role at the Institute is to lead and develop the research and events programme in public international law, and she brings over twenty years' experience of advising on legal aspects of foreign policy, negotiating international agreements and representing the United Kingdom abroad.



Jill led the Government's work on creating a new statutory regime for parliamentary scrutiny of treaties, resulting in enactment of the provisions on Ratification of Treaties in the Constitutional Reform and Governance Act 2010.

She acted as UK Deputy Agent in the Mox Plant Cases under UNCLOS and the OSPAR Convention, and represented the UK at many international conferences such as the Antarctic Treaty Consultative Meeting, International Whaling Commission, Optional Protocol to CEDAW and the UN Framework Convention on Climate Change.

She was First Secretary (Legal) at the UK Mission to the UN, New York, 1994-97.

Previously Jill was a Lecturer in Law at SOAS, University of London, and at the University of Durham.

She is the author of academic articles on various aspects of public international law. Her article on *The United Kingdom and Parliamentary Scrutiny of Treaties: Recent Reforms* has been published in the ICLQ and forthcoming publications include articles on secondary law-making under treaties and new developments in Antarctic and Arctic governance.

PAUL BARNETT
Visiting Fellow and Consultant
British Institute of International and Comparative Law



As Head of Treaty Section at the Foreign and Commonwealth Office for eight years (2002-2010), Paul was responsible for the practice and procedural aspects of all international agreements involving the United Kingdom including treaty signings, ratifications and accessions, treaty publications, laying of treaties before Parliament, registration at the United Nations, Depositary functions, the organisation of treaty records and public information including the launch of UK Treaties Online in 2010.

He has extensive experience of working with foreign diplomats based in London embassies, and regularly hosted visits and provided briefing for officials from other countries' Ministries of Foreign Affairs. He initiated the establishment of an international forum for treaty professionals from a range of Governments, to exchange experiences and views on contemporary issues in treaty practice.

Paul has given numerous presentations and talks on UK treaty practice including an annual talk to post-graduate students at Queen Mary College London, presentations to legal advisers at other UK Government departments and to UK academics at an international law seminar, as well as the Institute's conference "Celebrating 40 Years of the Vienna Convention on the Law of Treaties."

Prior to joining the FCO, Paul worked at the Department of Health in a number of roles relating to the administration of legal procedures, including Clerk to the Mental Health Review Tribunal and Deputy Clerk to the Medical Practices Committee. His civil service career began in 1979 with the Crown Agents for Overseas Governments and Administrations, London.

GERARD LIMBURG**Consultant****British Institute of International and Comparative Law**

Gerard Limburg retired as the Head of the Treaties Department (Director of Treaties) of the Netherlands' Ministry of Foreign Affairs in October 2011.

During his law studies at the University of Amsterdam he specialized in international and European law. In 1975, he entered the service of the Ministry and was successively appointed at the Treaties Department, the General and Consular Affairs Department and again the Treaties Department. During these years, he was a member of delegations of the Netherlands to inter alia UN Conferences on the Law of the Sea and on treaty law. On leave of absence from the Ministry, he worked with the United Nations Office (UNDP) for Tunisia and with the Legal Office of FAO, Rome.



Gerard has written a number of articles on UN-matters and on treaty law.

ELISE CORNU**Legal Adviser and Head of the Treaty Office Unit
Council of Europe**

Elise Cornu joined the Council of Europe in 2002. She has been working as a legal adviser for the Legal Advice Department and Treaty Office for eight years and became Head of the Treaty Office Unit in 2009. Elise is in particular responsible for providing legal advice with regard to the drafting of new conventions, for assisting States in becoming a party to Council of Europe conventions and for supervising the fulfilment of depositary functions by the Treaty Office.

Elise obtained her PhD in Public International Law in 2004 from the University of Strasbourg (France) with a doctoral thesis devoted to the effectiveness of the convention process of the Council of Europe. Elise is also the author of a number of academic articles on international law and human rights issues such as the abolition of the death penalty in Europe or the influence of Council of Europe standards on the European Union.

ROBERT C BECKMAN
Director
Centre for International Law
National University of Singapore

Robert Beckman is the Director of Centre for International Law (CIL), a university-wide research centre at the National University of Singapore (NUS). He heads CIL's programme in Ocean Law and Policy, as well as its Research Projects on Submarine Cables, International Maritime Crimes and the South China Sea, as well as its Documents Database Project.



Prof Beckman is also an Associate Professor at the NUS Faculty of Law, where he has taught for more than 30 years. He lectures at the Rhodes Academy of Oceans Law & Policy. He is an expert on the issues of law of the sea in Southeast Asia, including piracy and maritime security. He served for several years as a regional resource person in the workshops on Managing Potential Conflicts in the South China Sea. He has also represented Singapore in various CSCAP meeting on maritime security, and has worked on legal issues relating to the Straits of Malacca and Singapore. He is an Adjunct Senior Fellow in the Maritime Security Programme at the S Rajaratnam School of International Studies (RSIS), Nanyang Technological University (NTU).

ANNEX 3 – LIST OF WORKSHOP PARTICIPANTS

GUEST-OF-HONOUR

Professor Tommy Koh

Chairman, Governing Board
Centre for International Law, NUS

SPEAKERS

1. Jill Barrett

Arthur Watts Senior Research Fellow in Public International Law
British Institute of International and Comparative Law
Former Legal Counsellor, Foreign & Commonwealth Office
British Institute of International and Comparative Law (the Institute)
j.barrett@biicl.org

2. Paul Barnett

Visiting Fellow and Consultant, British Institute of International and Comparative Law
Former Head of Treaty Section, Foreign & Commonwealth Office
British Institute of International and Comparative Law (The Institute)
p.barnett@biicl.org

3. Gerard Limburg

Consultant, British Institute of International and Comparative Law
Former Director of Treaties, Ministry of Foreign Affairs of the Kingdom of the Netherlands
British Institute of International and Comparative Law (The Institute)
limburggerard@gmail.com

4. Elise Cornu

Head of the Treaty Office and Legal Adviser
Council of Europe
elise.cornu@coe.int

5. Robert Beckman

Director
Centre for International Law, NUS
cildir@nus.edu.sg

PARTICIPANTS

ASEAN SECRETARIAT

- 1. H.E. Bagas Hapsoro**
Deputy Secretary-General of ASEAN

- 2. Un Sovannasam**
Senior Officer
Legal Services and Agreements Division (LSAD)

- 3. Reza Haryanti**
Technical Officer
ASEAN Secretariat Resource Centre

- 4. Sendy Hermawati**
Technical Officer
Legal Services and Agreements Division (LSAD)

BRUNEI DARUSSALAM

- 5. HRH Princess Hajah Muta-Wakkilah Hayatul Bolkiah**
Counsel
Attorney General's Chambers

- 6. Hjh Siti Norishan binti Hj. Abdul Ghafor**
Deputy Senior Counsel
Attorney General's Chambers

- 7. Elma Darlini Haji Sulaiman**
Legal Counsel, International Division
Attorney General's Chambers

- 8. Muhammad Adi Faisal Bin Haji Omar**
Legal Counsel, International Division
Attorney General's Chambers

- 9. Pengiran Mohammad**
Legal Officer
Attorney General's Chambers

CAMBODIA

10. Ker Vicseth

Director of Legal and Consular Department
Ministry of Foreign Affairs and International Cooperation

11. Long Hay Kampoul

Chief of Treaty Bureau, Legal and Consular Affairs
Ministry of Foreign Affairs and International Cooperation

INDONESIA**12. Shanti Damayanti**

Head of Section
Directorate of Treaty on Political, Security and Territorial Affairs
Ministry of Foreign Affairs

13. Joannes Tandjung

Directorate for Economic and Socio-Cultural Treaties
Directorate General of Legal Affairs and International Treaties
Ministry of Foreign Affairs

14. Yosep Trianugra Tutu

Directorate General for Legal Affairs and International Treaties
Ministry of Foreign Affairs

LAO PDR**15. Viengvone Kittavong**

Director General of Treaties and Law Department
Ministry of Foreign Affairs

16. Nalonglith Norasing

Deputy Director-General, Law Research and International Cooperation Institute
Ministry of Justice

17. Thiphasone Sengsourinha

Acting Director of Multilateral Treaties Division
Ministry of Foreign Affairs

MALAYSIA

18. Zurshida Murni Binti Abdul Hamid

Federal Counsel, Research Division
Attorney General's Chambers

19. Prisheela Prakas

Principal Assistant Secretary, Multilateral Political Affairs Division
Ministry of Foreign Affairs

MYANMAR

20. Thi Thi Myint

Deputy Director, International Law and ASEAN Affairs Division
Legal Advice Department
Union Attorney General's Office

21. Kyaw Kyaw Naing

Assistant Director, International Law and ASEAN Affairs Division
Legal Advice Department
Union Attorney General's Office

22. Min Min Htet

Staff Officer, International Law and ASEAN Affairs Division
Legal Advice Department
Union Attorney General's Office

PHILIPPINES

23. Henry Bensurto

Secretary General
Commission on Maritime and Ocean Affairs Secretariat
Department of Foreign Affairs

24. Maria Angela Ponce

Director
Treaties Division, Office of Legal Affairs
Department of Foreign Affairs

25. Neil Campo Brillantes

Staff Officer

Treaties Division, Office of Legal Affairs
Department of Foreign Affairs

SINGAPORE

26. Lionel Yee

Second Solicitor-General
Attorney-General's Chambers

27. David Low

State Counsel
International Affairs Division
Attorney-General's Chambers

28. David Zhang

Manager
International Affairs Division
Attorney-General's Chambers

29. Kenny Tay

Deputy Manager
International Affairs Division
Attorney-General's Chambers

THAILAND

30. Benjamin Sukanjanajtee

First Secretary
Department of Treaties and Legal Affairs
Ministry of Foreign Affairs

31. Benjaporn Niyomnaitham

Second Secretary
Department of Treaties and Legal Affairs
Ministry of Foreign Affairs

32. Pinyada Reiniger

Third Secretary
Department of Treaties and Legal Affairs
Ministry of Foreign Affairs

VIET NAM

33. Le Thi Tuyet Mai

Deputy Director General
Department of International Law and Treaties
Ministry of Foreign Affairs

34. Ton Thi Ngoc Huong

Deputy Director General
Department of International Law and Treaties
Ministry of Foreign Affairs

35. Phan Duy Hao

Assistant Director-General
Department of International Law and Treaties
Ministry of Foreign Affairs

OBSERVERS

BELGIUM

36. Jean-Claude Piris

CHINA

37. Li Zhaojie

Professor of Law
Tsinghua University School of Law

38. Zhou Lulu

Section Chief for Treaty Affairs
Ministry of Foreign Affairs

INDONESIA

39. Hikmahanto Juwana

Professor of Law
Faculty of Law
University of Indonesia

SINGAPORE

40. Pan Jingxuan

Country Officer
Southeast Asia Directorate
Ministry of Foreign Affairs

41. Johannah Han

Assistant Director
International Legal Division
Ministry of Law

42. Prabhakar Singh

President's Graduate Fellow / CIL Associate
National University of Singapore

ANNEX 4 – TEXTS OF INTRODUCTORY REMARKS

A. Prof. Tommy Koh, Chairman, CIL

Pak Bagas Hapsoro, Deputy Secretary-General for Community and Corporate Affairs, ASEAN Secretariat

Ms Jill Barrett, Arthur Watts Senior Research Fellow, British Institute of International and Comparative Law

Distinguished Speakers (Mr Paul Barnett, Mr Gerard Limburg and Ms Elise Cornu)

Participants from ASEAN governments and the ASEAN Secretariat

Assoc Prof Robert Beckman, Director, Centre for International Law

Ladies and gentlemen

Welcome

1. I would like to join Jill and Bob in welcoming you to the first Workshop co-organised by CIL and the British Institute of International and Comparative Law (BIICL). I would also like to congratulate Bob and Jill and their staff for working together so well in organising this Workshop in Singapore. BIICL is a world class institution and a valued partner. I hope that the success of this Workshop will lead to other joint ventures between us.
2. I would like to make three points today. First, on the significance of international law. Second, on the significance of treaty law and practice. And third, on the Centre for International Law and its initiatives to promote the first two.

I. International Law

3. In 2010, I was asked to comment on “Whether there was a role for law in a world ruled by power?” Realists like to say that the world is ruled by power. They tend to be dismissive of international law. I argued that even in a world ruled by power, all States need international law and they generally comply with it.
4. States interact with one another in many areas, including trade, investment, tourism, aviation, shipping, telecommunications, banking, tax, mobility of workers, refugees, terrorism, non-proliferation of nuclear weapons, human rights, women's rights,

children's rights, diplomatic immunity, transnational crime and so on. Globalisation has amplified the old interactions and created new interactions, such as those dealing with the Internet.

5. What is not very well known is that in all these areas, as well as in others, there are applicable international law, conventions, rules and institutions. This is a reality that has an impact on States as well as on individuals.
6. International law is particularly important for small States. For instance, the principles of the United Nations Charter on the sovereign equality of States; respect for the territorial integrity and political independence of States; non-resort to force; the peaceful settlement of disputes; and non-interference in a country's internal affairs, provide the international legal framework which empowers small States to coexist peacefully with bigger States. As we move toward a more multipolar world, with emerging powers in Asia and elsewhere, the importance of international law for the regulation of relations between States and between the rising powers and the incumbent powers will increase.

II. Treaty Law and Practice

7. We live in an increasingly inter-connected and inter-dependent world. It is a world bound together, not just by State interests, but also by international law, international organisations, regional groupings, customs and practices. There are two primary sources of international law: customary law and treaties.
8. Treaties are usually the means by which these international actors commit to activities of mutual interest or for the global good. They are, in essence, contracts among States through which willing parties assume obligations among themselves. A party that fails to live up to its obligations can be held accountable under international law.
9. Treaties are also frequently the basis for regional groups that are tasked with promoting regional cooperation as well as preventing or resolving conflicts between neighbouring States. For example, the 1976 Treaty of Amity and Cooperation has established norms of conduct between the member States of ASEAN as well as between ASEAN and other powers. More recently, the 2007 ASEAN Charter provided the legal and institutional framework for ASEAN's transformation from an association to a community. The Charter also governs all aspects of ASEAN's activities.
10. In order for ASEAN States to fully achieve the goals of the ASEAN Community, treaties and other instruments agreed to by the ASEAN States need to be implemented and managed in accordance with international law, best practice and national law. In

addition, the ASEAN Secretariat will need the legal and institutional capability to cope with a rules-based ASEAN and to assist member States to fulfill their ASEAN obligations.

11. For this reason, I am very pleased that CIL decided to host this comprehensive three-day Workshop. The objective of this Workshop is to set out broad criteria on good treaty practices by examining the practice of selected civil and common law jurisdictions as well as that of international organisations serving as treaty clearing-houses or depositories.
12. In addition, I understand that CIL and BIICL will convert the outcomes of this Workshop into a manual on treaty law and practice specifically for practitioners of international law and international affairs. I am sure that both the Workshop and publication will be useful for officials in governments and international organisations.

III. Centre for International Law

13. CIL was established as a university-wide research institute at the National University of Singapore in 2009 in response to the growing need for international law expertise and capacity-building in the Asia-Pacific region. The Centre is an outcome of close cooperation between the University's Faculty of Law and Singapore's Ministry of Foreign Affairs and Attorney-General's Chambers.
14. The Centre's current focus areas are ASEAN law and policy; ocean law and policy; trade and investment law and policy; air law and policy; and finally international dispute settlement, which also cuts across the other focus areas. I expect that treaty law and practice will become another focus area for CIL after this Workshop.
15. In the area of ASEAN law, CIL has embarked on a major research project "Integration through Law: The ASEAN Way in a Comparative Context", spearheaded by Professor Joseph Weiler of New York University (NYU) and involving over 70 researchers from Asia and around the world. The project's outcomes are expected to support the efforts of ASEAN member States to achieve the ASEAN Community.
16. In the area of ocean law and policy, CIL has organised several conferences, workshops and seminars on pressing international issues such as maritime crimes and piracy; the protection of submarine telecommunications cables (which carry the Internet around the world); joint development in zones of overlapping maritime claims; and the legal aspects of the South China Sea territorial and maritime disputes.
17. The Centre has also made rapid progress in the field of international economic law with Associate Professor Michael Ewing-Chow, head of CIL's trade and investment law programme, appointed as the World Trade Organization (WTO) Chair for Singapore in 2011. In addition, CIL organised two successful global conferences on international

investment arbitration in 2010 and 2011. I am happy to say that CIL will host the biennial global conference of the Society of International Economic Law (SIEL) in July 2012.

18. In the field of air law, CIL partnered with the Singapore Aviation Academy to bring the acclaimed “IASL International Conference on Law and Regulation of Air Transport and Law of Space” to Singapore in 2010. The conference assembled many distinguished academics, the private sector and government officials who discussed critical issues of aviation and space.
19. The readiness of established think tanks and international organisations to enter into MOUs or partnership arrangements with CIL, a relatively ‘new kid on the block’, is indicative of CIL’s growing reputation as a centre of excellence on international law. I mentioned the WTO earlier. In addition, CIL also has cooperative arrangements with the Rhodes Academy of Ocean Law and Policy, the International Boundaries Research Unit (IBRU) of Durham University; the United Nations Division of Ocean Affairs and the Law of the Sea (UNDOALOS) and others. Of course, as Bob mentioned, this Workshop is the happy fruition of CIL’s MOU with the respected British Institute of International and Comparative Law.
20. An important mission of the Centre is to enable Singapore and the Asia-Pacific region to play a more significant role in the promotion and development of international law. In keeping with this capacity-enhancement and training mandate, CIL has facilitated the participation of 27 officials from ASEAN governments, 4 ASEAN Secretariat officials and 3 expert observers from the wider Asia-Pacific region at this Workshop.
21. However, this is only the tip of the iceberg. Since 2009, CIL has organised 4 international conferences, 8 international workshops, 5 training courses and 55 seminars. For many of these, CIL made a purposeful effort to invite and support the participation of officials from ASEAN countries and the ASEAN Secretariat. CIL has also sponsored officials from Southeast Asia to attend courses conducted by other institutes such as at the Rhodes Academy in Greece. Over 100 officials from the region have benefited from CIL’s support since 2009, making it not just a Centre for Singapore, but a resource for ASEAN and the Asia-Pacific region as well.
22. Another capacity-enhancement initiative of the Centre that was launched in 2010, and of particular relevance to this Workshop, is the “CIL Documents Database”. The database is a free, user-friendly resource of selected ASEAN and International Law documents that can be accessed by anyone through the CIL website. The database is continually updated and presently contains 460 ASEAN instruments, 260 international law documents and 130 investment agreements from Southeast Asia. A flyer on the database has been included in your Workshop folder.

Conclusion

23. I shall conclude by urging everyone to have an active, open and vigorous discussion at this Workshop. Jill, Bob and I would like to hear your views, suggestions and proposals on treaty law and practice. This Workshop is not intended to be a typical training course but a platform for an exchange of ideas, experiences and knowledge. I wish all our participants a happy stay in Singapore.
24. Thank you.

B. H.E. Bagas Hapsoro, Deputy Secretary-General, ASEAN

Prof. Tommy Koh, Chairman of the Centre for International Law, NUS, and Chairman of the CIL Governing Board,

Prof. Robert Beckman, Director of the Centre for International Law, NUS,

Ms. Jill Barrett, British Institute for International and Comparative Law (BIICL),

Distinguished Delegates,

Ladies and Gentlemen,

1. First of all, I, on behalf of the Secretary-General of ASEAN Dr. Surin Pitsuwan, would like to express my sincere appreciation to the Center for International Law (CIL) and British Institute for International and Comparative Law (BIICL) for organizing this important workshop and for the invitation and hospitality extended to me and my delegation.
2. I also wish to thank each and every person involved in making this Workshop possible. It gives me a great pleasure and honour to be among the leading legal experts, international lawyers, academia and scholars to discuss and exchange views on the trend and development of international law and treaty making, in particular in ASEAN.
3. Prof Beckman just mentioned that the aim of the Workshop is to set out broad criteria on good treaty practices by examining the treaty procedures and practices of selected civil and common law jurisdictions as well as that of international organizations serving as treaty clearing-houses or depositaries.
4. I am glad that many participants from the 10 ASEAN member governments and the ASEAN Secretariat (ASEC) plus 2 officers from the Government of China are attending this Workshop. The speakers at the Workshop include treaty experts formerly with the Foreign Commonwealth Office (FCO) and the Ministry of Foreign Affairs of the Kingdom of the Netherlands, as well as a legal advisor to the Council of Europe.
5. For ASEAN this workshop is important. This workshop is organized at the time when ASEAN is in the middle of transforming itself into a rules-based organization and moving toward an ASEAN Community by 2015.

Ladies and Gentlemen,

6. For the benefit of the participants of the Workshop, it might be useful for me to highlight to you some important key developments in ASEAN, in particular, those relating to legal matters and treaty-making process in ASEAN.
7. I believe that those topics could be of interest of you in further elaborating various issues included in the Workshop.
8. As you might be well aware, Indonesia has just successfully completed the chairmanship of ASEAN under the theme "ASEAN Community in a Global Community of Nations". Cambodia has recently taken over the chairmanship for the year of 2012 with the theme "ASEAN: one Community, one Destiny".
9. As a country holding the chairmanship, Cambodia has just successfully hosted in Siem Reap the Retreat of the ASEAN Foreign Ministers' Meeting which discussed and explored ways and means to expeditiously realize the integration and community building goal and objective.
10. ASEAN, at every level, including the ASEAN Leaders, is committed to intensify work toward a rules-based ASEAN, and to advance the ASEAN Community building process through concrete, practical and meaningful actions.
11. One important legal instrument, which has just been adopted by the ASEAN Coordinating Council and is more relevant to the topic of the discussion of the today's Workshop, is the Rule of Procedures for Conclusion of International Agreements by ASEAN.
12. The Rules prescribes the procedures for ASEAN as an inter-governmental organization to enter into agreement with countries, international, regional and sub-regional organizations and institutions in pursuing its external relations as provided for in Article 41.7 of the ASEAN Charter.

Ladies and Gentlemen,

13. Transforming into a rules-based organization comprising of 10 Member States with different legal systems is not an easy task which can be accomplished within a short period of time.
14. Challenge is not only the adoption or creation of laws and regulations which could be acceptable to those different legal systems, but also strengthening institutional capacities of various organs/bodies both at the regional and national level to implement or enforce them.

15. More efforts need to be done among Member States and ASEAN organs to further promote awareness and understanding of various rules, procedures and agreements/instruments concluded by ASEAN.
16. In addressing these challenges and as part of the capacity building process, I do hope that this Workshop on Treaty Law and Practice would provide a great opportunity for the participants to share views and best practices on treaty-making process as well as the trend and development of international law and treaty.
17. I am certain that the ASEAN Secretariat would tremendously benefit from the discussion during the Workshop since the ASEAN Secretariat could act not only as the resource person in the treaty-making process, but also the depository of ASEAN agreements/instruments.
18. Let me once again to congratulate the CIL and the BIICL for conducting this workshop.
19. Finally, I look forward to discussing all the issue further in detail during our three-day Workshop, and wish all the success to all of you.
20. Thank you for your kind attention.