WORKSHOP ON THE PROMULGATION OF LAWS AND REGULATIONS IN ASEAN MEMBER STATES Jakarta, 23-24 April 2014

TREATY-MAKING AND THE STATUS OF TREATIES IN ASEAN MEMBER STATES: AN OVERVIEW

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Draft





Organization of Presentation



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) Treaty-Making Power

Treaties in the Hierarchy of Norms

4 Incorporation of Treaties in Domestic Legal Systems

Conclusion and Recommendations





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INTRODUCTION



Which authority has the power to conclude treaties?



What is their status within the domestic hierarchy of legal norms?



Are treaties regarded as part of the "law of the land"? Or there must be implementation legislation for a treaty to have effect at the domestic level?

Need to promulgate law on treaty in ASEAN Member States?

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Treaty-Making Power

Constitution: The Sultan and Yang Di-Pertuan have the power to make laws for peace, order, security and good government. Constitution: The King shall sign and ratify international treaties and conventions after the National Assembly and the Senate have approved them.

Constitution: The President with the approval of the DPR may declare war, make peace and conclude treaties with other countries.

Brunei

Cambodia

Indonesia

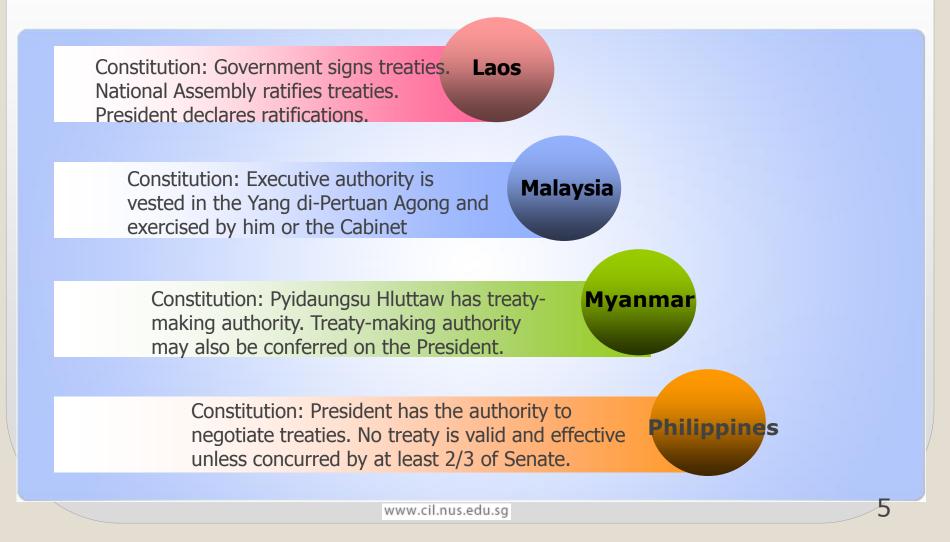
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Treaty-Making Power

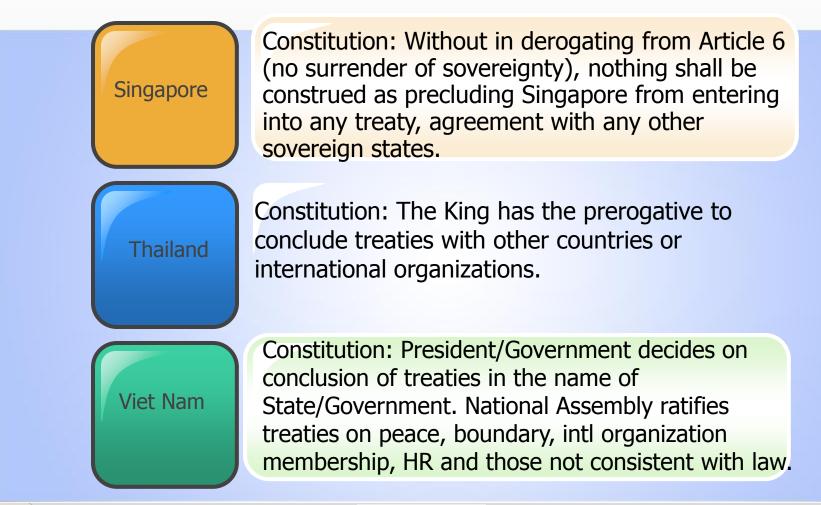






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Treaty-Making Power







Status of Treaties

No provisions in the Constitution or in any legislation on the status of treaties in the legal system of Brunei. Constitution is the supreme law; treaties incompatible with the independence, sovereignty, territorial integrity, neutrality, and national unity shall be annulled. Specific legislations provide for the primacy of treaties over national law.

No provisions in the Constitution or in national legislation on the status of treaties. Law No. 24 of 2000 however provides that treaties bind all citizens --> at least equivalent to law?

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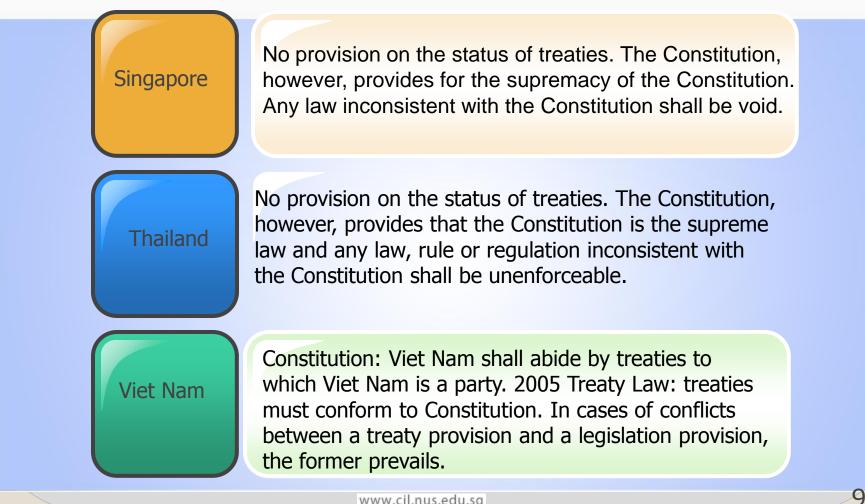
Status of Treaties







Status of Treaties

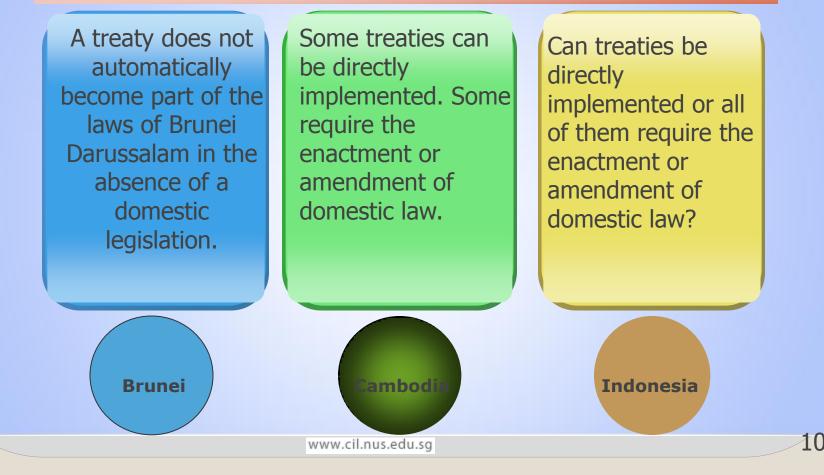






Incorporation

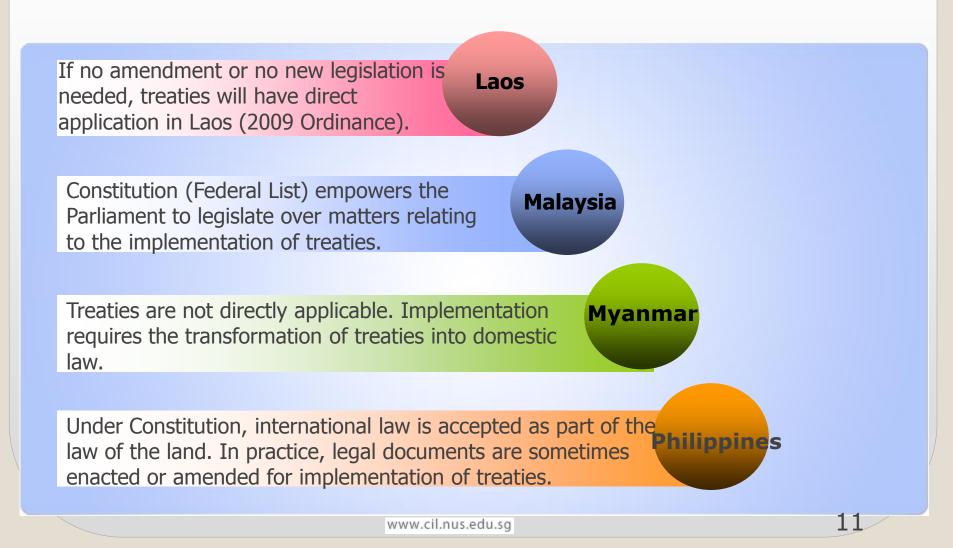
An examination of the practice of ASEAN states indicates that







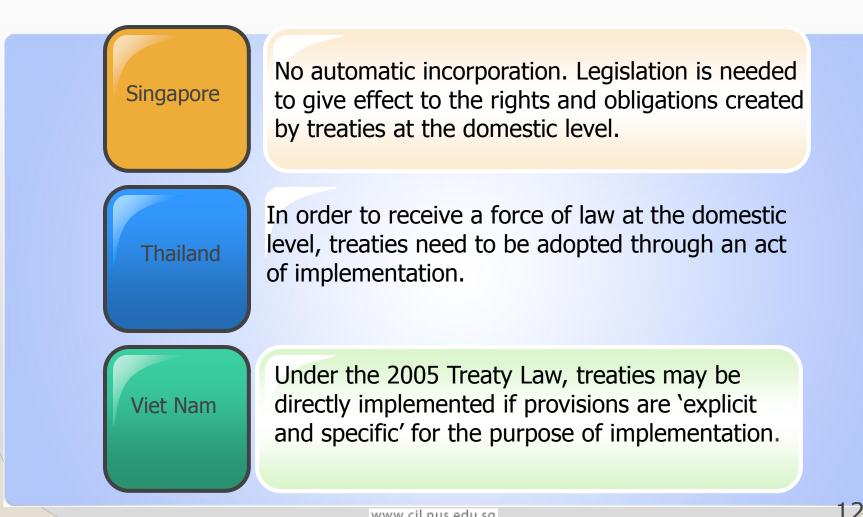
Incorporation







Incorporation



Centre for International Law Conclusion and Recommendations

- Regulations and practice are diverse.
- Many states have no written laws or regulations that set out procedures for ratification and implementation of treaties.
- Some do not have a central agency responsible for treaty issues in general.

- Promote understanding and share experience.
- Develop procedure for treaty conclusion and implementation at the domestic level.
- Establish or designate an agency responsible for internal monitoring to ensure effective enforcement post-ratification, and to identify and address possible gaps in treaty-making and treaty implementation at the domestic level.





Thank you!

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