

**WORKSHOP ON THE PROMULGATION OF LAWS AND
REGULATIONS IN ASEAN MEMBER STATES**

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

**Hao Duy Phan – Senior Research Fellow
Centre for International Law
National University of Singapore**



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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?

Treaty-Making Power

Constitution: The Sultan and Yang Di-Pertuan have the power to make laws for peace, order, security and good government.

Brunei

Constitution: The King shall sign and ratify international treaties and conventions after the National Assembly and the Senate have approved them.

Cambodia

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

Indonesia

Treaty-Making Power

Constitution: Government signs treaties.
National Assembly ratifies treaties.
President declares ratifications.

Laos

Constitution: Executive authority is
vested in the Yang di-Pertuan Agong and
exercised by him or the Cabinet

Malaysia

Constitution: Pyidaungsu Hluttaw has treaty-
making authority. Treaty-making authority
may also be conferred on the President.

Myanmar

Constitution: President has the authority to
negotiate treaties. No treaty is valid and effective
unless concurred by at least 2/3 of Senate.

Philippines

Treaty-Making Power

Singapore

Constitution: Without in derogating from Article 6 (no surrender of sovereignty), nothing shall be construed as precluding Singapore from entering into any treaty, agreement with any other sovereign states.

Thailand

Constitution: The King has the prerogative to conclude treaties with other countries or international organizations.

Viet Nam

Constitution: President/Government decides on conclusion of treaties in the name of State/Government. National Assembly ratifies treaties on peace, boundary, intl organization membership, HR and those not consistent with law.

Status of Treaties

No provisions in the Constitution or in any legislation on the status of treaties in the legal system of Brunei.

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.

Cambodia

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?

Indonesia

Status of Treaties

2009 Presidential Ordinance provides that the enactment of law shall not prejudice Lao's treaty obligations.

Laos

No constitutional or legislative provisions on the status of treaties in the legal system

Malaysia

Section 456 of the Constitution says that Myanmar shall honor obligations arising out of treaties.

Myanmar

Under the Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land.

Philippines

Status of Treaties

Singapore

No provision on the status of treaties. The Constitution, however, provides for the supremacy of the Constitution. Any law inconsistent with the Constitution shall be void.

Thailand

No provision on the status of treaties. The Constitution, however, provides that the Constitution is the supreme law and any law, rule or regulation inconsistent with the Constitution shall be unenforceable.

Viet Nam

Constitution: Viet Nam shall abide by treaties to which Viet Nam is a party. 2005 Treaty Law: treaties must conform to Constitution. In cases of conflicts between a treaty provision and a legislation provision, the former prevails.

Incorporation

An examination of the practice of ASEAN states indicates that

A treaty does not automatically become part of the laws of Brunei Darussalam in the absence of a domestic legislation.

Brunei

Some treaties can be directly implemented. Some require the enactment or amendment of domestic law.

Cambodia

Can treaties be directly implemented or all of them require the enactment or amendment of domestic law?

Indonesia

Incorporation

If no amendment or no new legislation is needed, treaties will have direct application in Laos (2009 Ordinance).

Laos

Constitution (Federal List) empowers the Parliament to legislate over matters relating to the implementation of treaties.

Malaysia

Treaties are not directly applicable. Implementation requires the transformation of treaties into domestic law.

Myanmar

Under Constitution, international law is accepted as part of the law of the land. In practice, legal documents are sometimes enacted or amended for implementation of treaties.

Philippines

Incorporation

Singapore

No automatic incorporation. Legislation is needed to give effect to the rights and obligations created by treaties at the domestic level.

Thailand

In order to receive a force of law at the domestic level, treaties need to be adopted through an act of implementation.

Viet Nam

Under the 2005 Treaty Law, treaties may be directly implemented if provisions are 'explicit and specific' for the purpose of implementation.

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!

Hao Duy Phan (S.J.D.)

Senior Research Fellow, Centre for International Law (CIL)

National University of Singapore

***Email:* CILPDH@NUS.EDU.SG**

***Website:* WWW.CIL.NUS.EDU.SG**