Treaty Management in International Organisations: Lessons Learnt and ASEAN Practice

2 December 2016
Jakarta, Indonesia

Workshop Report
Executive Summary

Organised by

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List of Abbreviations

AMS	ASEAN member states
ASEAN	Association of Southeast Asian Nations
ASEC	ASEAN Secretariat
ASLOM	ASEAN Senior Law Officials Meeting
CIL	Centre for International Law
CoE	Council of Europe
CPR	Committee of Permanent Representatives to ASEAN
EU	European Union
FTA	Free Trade Agreement
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
IAEA	International Atomic Energy Agency
IMO	International Maritime Organization
IO	international organisation
LSAD	Legal Services and Agreements Directorate, the ASEAN Secretariat
MoU	Memorandum of Understanding
NGO	non-governmental organisation
ROPCIA	Rules of Procedure for the Conclusion of International Agreements by ASEAN
SG	Secretary-General
UK	United Kingdom
UN	United Nations

Summary of the Workshop

1. The Workshop on "Treaty Management in International Organisations: Lessons Learnt and ASEAN Practice" (**"Workshop"**) was held on 2 December 2016 by the Centre for International Law (**"CIL"**) and the Secretariat of the Association of Southeast Asian Nations (**"ASEC"**), with the support of the Deutsche Gesellschaft für Internationale Zusammenarbeit (**"GIZ"**) GmbH.

2. This Workshop focused on the treaty management practices of the Association of Southeast Asian Nations (**"ASEAN"**). The Workshop was specifically designed for ASEAN member states (**"AMS"**), most notably the representatives of the Committee of the Permanent Representatives to ASEAN (**"CPR"**), ASEAN Senior Law Officials Meeting (**"ASLOM"**), and relevant AMS' legal officers and ASEC desk officers who both are already familiar with the practice of states and international organisations (**"IO"**) in the conclusion and management of international agreements.

3. The objectives of the Workshop were as follows.

    a. To provide a perspective on the treaty management and practice of other established IOs

    b. To promote awareness and identify issues and challenges in the context of ASEAN's legal personality

    c. To identify best practices and measures needed to address possible problems in the ASEAN treaty management

    d. To identify and raise awareness of gaps and issues in the ASEAN treaty management and practice

    e. To promote a more cohesive practice in the management of ASEAN instruments by AMS and ASEC

f. To promote higher compliance with the obligations prescribed in ASEAN instruments

4. Attended by approximately 80 representatives from the CPR, ASLOM, AMS and ASEC, the Workshop offered perspectives on the treaty management practices of ASEAN, the Council of Europe (**"CoE"**) and the International Atomic Energy Agency (**"IAEA"**). The Workshop also discussed domestic treaty management practices of the United Kingdom (**"UK"**), Singapore and Thailand.

5. The Workshop identified challenges in the treaty management practices of ASEAN and a set of recommendations aimed at improving treaty practices in the region in general and ASEAN treaty management practice in particular. These issues are captured in this report.

6. The Workshop speakers, listed below, are experts experienced in treaty law and practice and the international and domestic legal frameworks in which treaties are concluded.

a. Ms Jill Barrett

- Visiting Reader, School of Law, Queen Mary University of London
- Former Legal Counsellor, Foreign and Commonwealth Office, United Kingdom

b. Ms Ana Gómez Heredero

- Head, Treaty Office Unit, Council of Europe

c. Mr Un Sovannasam

- Director, Legal Services and Agreements Directorate, ASEAN Secretariat

d. Ms Rena Lee

- Senior State Counsel, International Affairs Division, Attorney-General's Chambers, Republic of Singapore

e. Dr Tull Traisorat

- Director, Treaty Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Kingdom of Thailand

f. Mr Anthony Wetherall

- Senior Research Fellow, Centre for International Law, National University of Singapore
- Former Legal Officer, Nuclear and Treaty Law Section, Office of Legal Affairs, the International Atomic Energy Agency

g. Ms Ranyta Yusran

- Research Fellow, Centre for International Law, National University of Singapore

7. The next section of the report covers the challenges and recommendations identified during discussion on the topics below.

a. The role of a treaty office in managing treaties/instruments

b. Treaty practice related to agreements concluded by an IO and AMS' internal procedures

c. Treaty practice related to agreements concluded by ASEAN and its relation to AMS' internal procedures for the conclusion of international agreements

d. Lessons learnt and the way forward

Identification of Challenges and Recommendations

A. The Role of a Treaty Office in Managing Treaties or Instruments

8. The discussion in this topic focused on the mandate given to a Secretary-General (**"SG"**) as the depositary of the legal instruments of an IO, specifically the function of the Treaty Office in managing an IO's legal instruments.

9. The discussion highlighted the role of the Treaty Offices of the CoE, the IAEA and ASEAN; treaty management functions; determination of the status of the legal instruments of an IO; interpretation of those legal instruments; the general role of the Secretariat in treaty management; and the general criteria on what constitutes good treaty management.

10. A list of generic criteria on good treaty management in IOs and in domestic jurisdictions was presented and summed up as the "PLATO" Principles—**P**rofessional, **L**egal, **A**ssured, **T**ransparent and **O**rganised.

    - **Professional** refers to the approach to treaty work by treaty professionals and their organisations.
    - **Legal** means legal requirements must be met and lawyers should be fully engaged.
    - **Assured** means reliable, dependable, trustworthy and guaranteed.
    - **Transparent** means easy access to relevant information regarding treaties, clear guidelines for treaty officials, etc.
    - **Organised** means treaty management practice should be systematic, efficient and regularly updated.

11. The discussion identified the challenges faced by ASEAN's treaty office and offered recommendations to improve ASEAN's treaty management, by comparing and assessing the different practices of the CoE, the IAEA and ASEAN.

Challenges

12. The designation and role of the depositary in ASEAN agreements and instruments are in many cases ambiguous and could be subject to various interpretations.

    While the ASEAN SG is appointed as the depositary in ASEAN legal instruments, such a designation and role are not always clear and consistent in the context of, for instance, ASEAN+1 Free Trade Agreements (**"FTA"**) or agreements concluded between ASEAN and external parties. The practice varies from one ASEAN+1 FTA to another.

13. The meaning of the term "competent authority" of a state during a notification process is vague.

    In other words, who is competent to notify the depositary that his/her state has completed its internal procedure for the treaty to enter into force? Within ASEAN, although the SG as the depositary of ASEAN legal instruments could only validate the notifications deposited by the Permanent Mission of each member state to ASEAN, sometimes the member states' relevant ASEAN sectoral bodies—depending on the subject matter of the treaty—insist that they have the authority to deposit and notify the depositary of the completion of the relevant state's internal procedures.

14. It is difficult to determine when a treaty enters into force.

    In some cases, there is a lack of information on the date on which a member state has notified the depositary of its completion of internal procedure. In other cases, the provision on "entry into force" in some ASEAN agreements is not clear and is open to different interpretations.

15. It is unclear what steps should be taken if there is a political imperative to complete the ratification of a treaty in a short period of time while some states parties cannot complete their internal procedures or enact the necessary implementing legislation in time.

Recommendations

16. The depositary of ASEAN agreements and the role of the depositary in each ASEAN agreement could be consistent.

    It is recommended that in ASEAN legal instruments, the ASEAN SG acts as the depositary. The depositary will then notify all states parties of all depositary matters through their respective Permanent Missions in Jakarta. This reflects the best practice in the management of treaties.

17. Standard final clauses for ASEAN instruments could be determined.

    Examples of such clauses include the status of "completion of a state's internal procedure" in relation to ratification, acceptance, approval, notification or accession, and the entry into force of an ASEAN legal instrument. Guidelines are needed on what to do if a state cannot complete its internal procedures within a time period specified by an agreement. Article 25(1) of the Protocol on the Legal Framework to Implement the ASEAN Single Window is an example of a provision that specifies a time period in which AMS must complete their internal procedures for the Protocol to enter into force. However, there are no guidelines on what to do when not all AMS were able to complete their internal procedures within the time limit set out by the Protocol. Below are three possible solutions.

    a. Regulate that the treaty will enter into force by way of "tacit acceptance", whereby a state party that has not ratified a treaty that it has signed for a certain period of time—for example, two years—will be deemed to have accepted the obligations under that treaty, unless the state party objects within a stipulated period of time. Tacit acceptance has also been used within the framework of some IOs, in particular under treaties relating to the protection of the environment.

    b. Put a clause stating that if the treaty has not entered into force after the deadline set by the treaty has lapsed, it will enter into force for the states that have completed their internal procedures after a certain period of time and after a certain number of states have notified the depositary of the completion of their procedures. An example of determining a specific

deadline for the entry into force of a legal instrument can be seen in Article 7(2), Chapter 18 of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area.

c. Draft the treaty in a way that allows it to come into force with a small number of ratifications, so that it does not have to be ratified by all states parties. States that are ready can bring the treaty into force upon themselves. Those that are not yet ready, should there be a political imperative, may issue a political statement, such as a non-binding declaration stating that the ratification of the treaty may take place on a certain date or within a certain period of time, or that they support the objectives of the treaty and are working towards ratification.

B. Treaty Practice Related to Agreements Concluded by an IO and Member States' Internal Procedures

18. The discussion on this topic focused on the internal procedures of the CoE and the IAEA in relation to the process of concluding an international agreement with member states and/or other states, organisations or third parties. The discussion also included a general overview of treaty practice related to agreements concluded by an IO and a discussion on the internal procedure of the UK in concluding and implementing agreements concluded by an IO of which the UK is a member.

19. The discussion identified challenges faced by ASEAN's treaty office and offered recommendations to improve ASEAN's treaty management, by comparing and assessing the different practices of the UK, CoE and IAEA.

Challenges

20. ASEAN has no common, consistent approach in relation to Article 102 of the UN Charter. Some ASEAN legal instruments are registered with the United Nations (**"UN"**) SG, while others are not.

Recommendations

21. ASEAN could clarify when to register a treaty with the UN.

    Bilateral or multilateral agreements that are not adopted by an organ of an IO and not ratified by the IO member states do not need to be registered with the UN. However, all treaties adopted by an organ of an IO and ratified by its member states will be registered with the UN upon their entry into force. For example, the General Agreement on Privileges and Immunities of the CoE, adopted on 2 September 1949, was ratified by all the CoE member states and was therefore registered with the UN. Furthermore, the UN Treaty Handbook may serve as a guideline on when to register a treaty with the UN (https://treaties.un.org/doc/source/publications/THB/English.pdf).

22. Although there are no issues on the confidentiality of ASEAN agreements, ASEAN could adopt a practice similar to the CoE with regard to such a subject.

    In the CoE, agreements (usually bilateral) concluded by the CoE that concern privileges, immunities or financial matters are kept confidential and will not be published on the CoE website. The CoE relies on the respective technical departments that conclude the treaties in determining whether they are confidential. Once the departments deem the treaty confidential, the Treaty Office will not publish it on the CoE website.

C. Treaty Practice Related to Agreements Concluded by ASEAN and ASEAN Member States' Internal Procedures

23. The discussion of this topic focused on the internal procedures of ASEAN and AMS in relation to the process of concluding and implementing agreements concluded by ASEAN (both with AMS and external parties) as an intergovernmental organisation and also as a group of AMS. The internal procedures of ASEAN and AMS on the conclusion and implementation of ASEAN agreements are very relevant to the implementation of the 2011 Rules of Procedure for the Conclusion of International Agreements by ASEAN (**"ROPCIA"**). Examples of agreements concluded by ASEAN with an

AMS and an external party include the 2012 Agreement between Indonesia and ASEAN on Hosting and Granting Privileges and Immunities to the ASEC and the 2007 MoU by ASEAN and the UN. This session also discussed agreements concluded by AMS collectively, which entail separate rights and obligations from those of ASEAN, and agreements concluded with external parties. The purpose of this session was to discern the different internal processes, if any, in concluding these agreements.

Challenges

24. The interpretation of ROPCIA—particularly whether an agreement concluded by ASEAN as an intergovernmental organisation will impose obligations on AMS—depends on the way each member state interprets and applies it to each agreement and on the provisions of the agreement itself.

25. ASEAN does not have guidelines or procedures to deal with mixed agreements, i.e. agreements that give rise to rights and obligations to both ASEAN and AMS; contracts with an international character; and non-binding agreements concluded by ASEAN as an intergovernmental organisation. ROPCIA only serves as guidelines for ASEAN in concluding international agreements and differentiates such agreements from those concluded by AMS with external parties.

26. The internal procedures of some AMS are ambiguous and do not differentiate clearly between agreements concluded by ASEAN as an intergovernmental organisation and agreements concluded by the AMS collectively. Contrary to the internal procedures of some AMS, ROPCIA makes a distinction between the treaty-making capacity of ASEAN and that of individual AMS. As such, ASEAN+1 FTAs—legal instruments concluded based on collective negotiations by AMS—are not considered "international agreements of ASEAN" and do not fall under the scope of application of ROPCIA.

27. ROPCIA is ambiguous on whether it is the CPR or the sectoral bodies that have the role and authority to initiate the negotiation of an international

agreement to be concluded by ASEAN. While ROPCIA seems to grant the CPR the authority to decide on the negotiations of ASEAN agreements, in reality the negotiation of an international agreement to be concluded by ASEAN is usually initiated by the concerned sectoral bodies, because they engage directly with external partners. The CPR will later decide on the act of confirmation and authorisation of the SG to sign the agreement.

Recommendations

28. ASEAN could review and improve its treaty practice and management.

    Although the drafters of ROPCIA did not intend to abandon ASEAN practice vis-à-vis agreements concluded by AMS collectively, ASEAN could refer to specific guidelines on each phase leading up to the conclusion of an international agreement by ASEAN as an intergovernmental organisation and by AMS collectively, e.g., the negotiation phase, the drafting phase, etc. It may also be useful for relevant sectoral bodies and the CPR to reach a common position at the consultation stage on the status of the agreement; whether it is an agreement concluded by ASEAN or an agreement creating rights and obligations upon individual member states.

29. AMS could consider classification of certain agreements as agreements concluded by ASEAN to help them determine the appropriate internal procedures.

    Internal procedures would be clearer if member states could consider that agreements with a certain nature (such as development cooperation and collaborative activities within the framework of ASEAN that are submitted to AMS for consideration or approval) are in general agreements concluded by ASEAN as an intergovernmental organisation rather than agreements concluded by AMS collectively.

30. ASEAN could develop a common understanding on ROPCIA.

    Such an understanding is relevant not only to AMS but also to different divisions of ASEC, considering the different procedures applied by each member state and the fact that not all AMS have a separate internal

procedure on agreements concluded by ASEAN as an intergovernmental organisation. Therefore, it is necessary to have tools such as explanatory notes and to disseminate information on ROPCIA and the different rules of procedures and corresponding guidelines, especially to officers and officials who do not have a legal background.

31. ASEAN and AMS may also consider providing clarity on the areas of competency in which ASEAN may conclude agreements as an intergovernmental organisation, in order to avoid different interpretations by individual AMS as to whether an agreement concluded by ASEAN creates rights and obligations on them.

32. ASEAN could adopt guidelines for the AMS or internal guidelines within ASEC on the conclusion of non-binding agreements and contracts with external parties by ASEAN, and other agreements that create rights and obligations upon both ASEAN and AMS.

D. Lessons Learnt and the Way Forward

33. This discussion identified good treaty management practices and the problems related to ASEAN treaty management practice. It also identified issues surrounding the conclusion and implementation of international agreements concluded by ASEAN as an intergovernmental organisation and by AMS collectively with a view to possibly expediting the process of consultation and approval for such conclusion.

34. The discussion on challenges and recommendations focused on the ASEAN treaty management practice—especially in relation to ROPCIA—reflecting on the treaty management practices of the CoE and IAEA and the internal procedure of the UK on conclusion of agreements by an IO to which it is a party.

Challenges

35. There is a lack of clarity on whether some ASEAN agreements are binding. For example, what is the status of an MoU? Do ASEAN MoUs constitute "agreements", especially those with specific final clauses? Do they have any legal consequences in cases of non-implementation or non-compliance?

36. There is a lack of consistency in standard clauses in the agreements that ASEAN enters into, in particular, the final clauses on the operational and procedural aspects of the treaty, including provisions on entry into force, declaration, reservation, withdrawal, depositary, dispute settlement, amendment, duration, authentic texts, etc.

37. There is also a lack of clarity and/or consistency in the ASEAN procedure with regard to amendments and withdrawal from ASEAN legal instruments. Questions that arise include the following. Do all amendments to and withdrawal from all of ASEAN legal instruments need to go through the same process as their conclusions? Does ASEAN need a simplified procedure instead? How does ASEAN determine which instruments need to go through the full process of amendment or withdrawal, and which ones may go through a simplified procedure? Who may be in charge of the amendment or withdrawal? There are arguments that certain bodies, such as the ASEAN Agricultural Ministers, are not competent to make amendments to treaties, since they are arguably not competent to make decisions that create legally binding consequences.

Recommendations

38. Clearer guidelines are needed on how to determine if an instrument is binding.

39. Guidelines are needed on standard clauses to be included in the agreements ASEAN enters into, such as final clauses (clauses on the operational and procedural aspects of the treaty), which include provisions on entry into force, withdrawal, depositary, dispute settlement, amendment, duration, authentic texts, etc.

Guidelines should also exist to provide for references on what should be included in the preamble of an ASEAN agreement, what terms should be used for binding instruments or non-binding instruments, and what main points should be included in the body of the text. In this regard, one may use the CoE Model Final Clauses for Conventions as a reference.

40. There should be guidelines on amendments to and withdrawal from ASEAN legal instruments, i.e., instruments concluded among AMS under the auspices of ASEAN. Specifically, the guidelines should include the following: how to initiate the amendment or withdrawal procedure; who has the competence to propose the amendment or withdrawal; what steps need to be taken; when the amendment or withdrawal takes effect; and whether certain treaties may be amended in a simplified procedure and if so, what types of treaties may undergo such a process. ASEAN could consider the following two practices of the IMO and CoE.

    a. In the IMO, there is a notion of "tacit acceptance" in amending a treaty. Very technical economic agreements (usually found in annexes to a broader treaty) are normally amended regularly. Under the notion of "tacit acceptance", these treaties are automatically binding upon the states parties, unless they object. This will save time, since those agreements do not have to go through the full ratification process of the states parties.

        If ASEAN decides to formulate some model rules on tacit acceptance, there should also be guidelines on when to use these rules and how to implement them. The practice must be consistent with internal laws of AMS, and they must be able to implement the amendment within the time frame set out by the amendment and/or the main treaty. However, if they are not able to do so, perhaps they should not agree to the tacit acceptance procedure.

    b. Another example is the CoE procedure with regard to amendment of technical appendixes to treaties. According to this procedure, following the lapse of a certain period of time, amendments to appendixes shall enter into force for those contracting parties that have not filed any

objection, unless one-third of the contracting parties have notified objections.

ASEAN may also consider to put a clause in the agreement clearly distinguishing the procedure that will apply in case of amendment to the annex (i.e., the simplified procedure) from the procedure that will apply to amendments to the main text of the treaty.

41. ROPCIA should have guidelines prescribing each step that needs to be taken during the negotiation, e.g., each negotiating party needs to clarify or seek clarification on what the agreement is intended for; whether it is meant to be binding; whether it is intended to be concluded by ASEAN, AMS or both; and what substantive and procedural clauses it should contain, etc.

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2 December 2016
Jakarta, Indonesia

Workshop Report

Organised by

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INSTITUTIONS' PROFILES

ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN)

ASEAN was established on 8 August 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration). It is currently composed of ten member states: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam. The purposes of ASEAN include (1) to accelerate the economic growth, social progress and cultural development of its member states and (2) to promote regional peace and stability through respect for justice and the rule of law. On 20 November 2007, the ten member states of ASEAN adopted the ASEAN Charter, which serves as a firm foundation in achieving the ASEAN Community by providing legal status and institutional framework for ASEAN. The ASEAN Charter entered into force on 15 December 2008. In accordance with the Charter, the ASEAN Community was established, comprising three pillars: the Political-Security Community, the Economic Community and the Socio-Cultural Community. Each pillar has its own Blueprint 2025, which forms part of *ASEAN 2025: Forging Ahead Together.* In February 1976, the ASEAN Secretariat was set up by the Foreign Ministers of ASEAN. Its function is to provide for greater efficiency in the coordination of ASEAN organs and for more effective implementation of ASEAN projects and activities. The seat of the ASEAN Secretariat is in Jakarta, Indonesia.

www.asean.org

CENTRE FOR INTERNATIONAL LAW (CIL)

CIL was established as a university-level research institute at the National University of Singapore (NUS) in 2009 in response to the growing need for international law thought leadership and capacity-building in the Asia-Pacific region. CIL works closely with the NUS Faculty of Law and is located within the Faculty's premises at the NUS Bukit Timah Campus. CIL's mission 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 a regional intellectual hub and thought leader for research on and teaching of international law. The Centre focuses on international law relevant to the region, including ocean law and policy, ASEAN law and policy, trade and

investment law and policy and international dispute resolution. CIL engages in research and training, as well as consultancy on key international law and policy developments. The Centre also organises conferences, workshops and seminars on international legal issues that have an impact on Southeast Asia and the Asia-Pacific region. CIL collaborates closely with a network of established partner and stakeholder organisations in Singapore and overseas to further the development of international law thought leadership in the region. The Centre also makes available to the public, at no cost, the CIL Database of ASEAN and International Law Documents on the CIL website.

www.cil.nus.edu.sg

DEUTSCHE GESELLSCHAFT FÜR
INTERNATIONALE ZUSAMMENARBEIT (GIZ) GmbH

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LIST OF ABBREVIATIONS

AANZFTA	Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area
AMS	ASEAN member states
ASEAN	Association of Southeast Asian Nations
ASEC	ASEAN Secretariat
ASLOM	ASEAN Senior Law Officials Meeting
CETS	Council of Europe Treaty Series
CIL	Centre for International Law
CoE	Council of Europe
CPR	Committee of Permanent Representatives to ASEAN
ETS	European Treaty Series
EU	European Union
FTA	Free Trade Agreement
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
IAEA	International Atomic Energy Agency
IMO	International Maritime Organization
IO	international organisation
LSAD	Legal Services and Agreements Directorate, the ASEAN Secretariat
MoU	Memorandum of Understanding
NGO	non-governmental organisation

OLA	Office of Legal Affairs of the IAEA
ROPCIA	Rules of Procedure for the Conclusion of International Agreements by ASEAN
RSA	Revised Supplementary Agreement concerning the Provision of Technical Assistance by the IAEA
SG	Secretary-General
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea, 1982
USA	United States of America
VCLT	Vienna Convention on the Law of Treaties, 1969

OVERVIEW OF THE WORKSHOP

1. The Workshop on "Treaty Management in International Organisations: Lessons Learnt and ASEAN Practice" (**"Workshop"**) was held on 2 December 2016 by the Centre for International Law (**"CIL"**) and the Secretariat of the Association of Southeast Asian Nations (**"ASEC"**), with the support of the Deutsche Gesellschaft für Internationale Zusammenarbeit (**"GIZ"**) GmbH.

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    b. To promote awareness and identify issues and challenges in the context of ASEAN's legal personality

    c. To identify best practices and measures needed to address possible problems in the ASEAN treaty management

    d. To identify and raise awareness of gaps and issues in the ASEAN treaty management and practice

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f. To promote higher compliance with the obligations prescribed in ASEAN instruments

4. Attended by approximately 80 representatives from the CPR, ASLOM, AMS and ASEC, the Workshop offered perspectives on the treaty management practices of ASEAN, the Council of Europe (**"CoE"**) and the International Atomic Energy Agency (**"IAEA"**). The Workshop also discussed domestic treaty management practices of the United Kingdom (**"UK"**), Singapore and Thailand.

5. The Workshop speakers, listed below, are experts experienced in treaty law and practice and the international and domestic legal frameworks in which treaties are concluded.

   a. Ms Jill Barrett

      - Visiting Reader, School of Law, Queen Mary University of London
      - Former Legal Counsellor, Foreign and Commonwealth Office, United Kingdom

   b. Ms Ana Gómez Heredero

      - Head, Treaty Office Unit, Council of Europe

   c. Mr Un Sovannasam

      - Director, Legal Services and Agreements Directorate, ASEAN Secretariat

   d. Ms Rena Lee

      - Senior State Counsel, International Affairs Division, Attorney-General's Chambers, Republic of Singapore

   e. Dr Tull Traisorat

      - Director, Treaty Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Kingdom of Thailand

   f. Mr Anthony Wetherall

- Senior Research Fellow, Centre for International Law, National University of Singapore
- Former Legal Officer, Nuclear and Treaty Law Section, Office of Legal Affairs, the International Atomic Energy Agency

g. Ms Ranyta Yusran

- Research Fellow, Centre for International Law, National University of Singapore

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   - The role of a treaty office in managing treaties/instruments
   - Treaty practice related to agreements concluded by an IO and AMS' internal procedures
   - Treaty practice related to agreements concluded by ASEAN and its relation to AMS' internal procedures for the conclusion of international agreements
   - Lessons learnt and the way forward

SUMMARY OF THE WORKSHOP PROCEEDINGS

A. The Role of a Treaty Office in Managing Treaties/Instruments

7. In this session, four speakers delivered presentations on the role of the Treaty Office in their respective states or IOs.

   a) Ms Jill Barrett delivered a presentation on "Treaty Management in IOs"

   b) Ms Ana Gómez Heredero delivered a presentation on "The Role of the CoE Treaty Office in Managing International Treaties and CoE Instruments"

   c) Mr Anthony Wetherall delivered a presentation on "The Role of the IAEA's Office of Legal Affairs in Managing IAEA Instruments"

   d) Mr Un Sovannasam delivered a presentation on "The ASEC Depositary: Role and Function"

   This session was chaired by Associate Professor Robert C. Beckman. The speakers' presentations were followed by a question and answer session.

8. The discussion focused on the topics below.

   a) Mandate given to a Secretary-General (**"SG"**) as the depositary of the legal instruments of an IO, specifically the function of the Treaty Office in managing the IO's legal instruments

   b) Role of the Treaty Offices of the CoE, the IAEA and ASEAN

   c) Treaty management functions, such as the determination of the entry into force of legal instruments, communication and documentation procedures in depositing instruments of ratification, acceptance, approval, notification, accession and/or reservation

   d) Determination of the status of the legal instruments of an IO

e) Interpretation of those legal instruments

f) General criteria on what constitutes a good treaty management

g) Challenges faced by ASEAN's treaty office and recommendations to improve ASEAN treaty management, by comparing and assessing the different practices of the CoE and the IAEA

1. Depositary & Competent Authority

9. Before the role of the Secretariat in managing treaties can be assessed, there should be a clear understanding of who acts as the depositary of international treaties, i.e., who performs treaty functions and treaty management.

10. Each IO has a different depositary. In the CoE, treaty management and other treaty functions are performed by the Treaty Office Unit within the Directorate of Legal Advice and Public International Law. In the IAEA, depositary functions are performed by the Office of Legal Affairs (**"OLA"**) acting on behalf of the Director-General as the depositary for the multilateral treaties adopted under the auspices of the IAEA and/or in respect of which the Director-General serves as the depositary. The specific section in OLA responsible for performing these depositary functions is the Nuclear and Treaty Law Section. In ASEAN, the SG is the depositary, and the ASEC Legal Services and Agreements Directorate (**"LSAD"**) is entrusted with discharging the SG's depositary function.

11. While the ASEAN SG is appointed as the depositary in ASEAN legal instruments, the role is often ambiguous and inconsistent. For instance, the practice of appointing the SG as the depositary of an ASEAN legal instrument varies from one ASEAN+1 Free Trade Agreement (**"FTA"**) to another. Under the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (**"AANZFTA"**) signed on 27 February 2009 in Cha-am, Phetchaburi, Thailand, there is no reference to the role of the ASEAN SG. The AANZFTA does not even contain any provision on a

depositary; Article 7(1), Chapter 18 of AANZFTA stipulates that "[e]ach party shall notify each other . . . upon completion of its internal requirements necessary for entry into force of this Agreement".

12. However contrary to the above article, Article 6 of the First Protocol to AANZFTA stipulates that AMS should deposit the Protocol with the ASEAN SG, "who shall then promptly furnish a certified true copy thereof, to each ASEAN Member State". According to Mr Un, this shows that the Protocol limits the role of ASEC to issuing a certified true copy of the Protocol only, because Article 5 of the same Protocol stipulates that each party shall notify each other for the Protocol to take effect. This practice contrasts with the general ASEAN practice, where states parties normally notify ASEC first of the completion of their domestic procedures, after which ASEC will notify other parties.

13. In another example of contradicting depositary provisions in the AANZFTA, Article 6 of the First Protocol to AANZFTA stipulates that AMS should deposit the Protocol with the ASEAN SG, but Article 5 of the same Protocol stipulates that each party shall notify each other for the Protocol to take effect. Furthermore, in the Memorandum of Understanding (**"MoU"**) on Establishing the ASEAN-China Centre, there are two depositaries: ASEC and the Chinese Ministry of Foreign Affairs.

14. Assoc Prof Beckman was of the view that the generally accepted practice in IOs seems to be that any notifications should be sent to the depositary first, who will then notify other states parties of all depositary matters. This seems to be the best practice in the management of treaties and is also consistent with Article 77 of the 1969 Vienna Convention on the Law of Treaties (**"VCLT"**).

15. Another important question explored in this session is, who is the "competent authority" of an AMS to notify the depositary that his/her state has completed its internal procedure for the treaty to enter into force? Within ASEAN, although the SG as the depositary of ASEAN legal instruments could only validate the notifications deposited by the Permanent Mission of each AMS to ASEAN, sometimes the member states' relevant ASEAN sectoral bodies—depending on the subject matter of the

treaty—insist that they have the authority to deposit or notify the depositary of the completion of the relevant state's internal procedures.

16. Mr Un said that the competence of the member states' officials cannot be verified by the LSAD but by the CPR in accordance with the internal procedures of their respective states. The Permanent Representatives will then inform ASEC who their competent authorities are.

17. As a comparison, in respect of multilateral treaties adopted under the IAEA auspices, the completion of a state party's internal procedure is not a requirement for the state to join a treaty, nor is it subject to a depositary notification. Depositary notification is needed only for Safeguards Agreements. With regard to the notification procedure, the IAEA can accept a duly signed and conforming instrument/notification submitted on behalf of a Permanent Mission of a member state and non-member state.

2. Treaty Functions & Treaty Management

18. The session then looked into the role of the Secretariat in managing treaties. One of the duties of the Secretariat of an IO is to perform "treaty functions", which include clerical function (e.g., processing, organising, recording, producing and publishing treaties), legal function (e.g., interpreting, drafting, advising and negotiating treaties), policy function (e.g., assessing the substance of a treaty in light of purposes and budget of the organisation, which may or may not be performed by an IO, depending on its nature and mandate), and ceremonial and representational function (e.g., signing treaties, presiding and declaring).

19. The next question is, which of the functions mentioned above constitute "treaty management"? Treaty management encompasses treaty functions that are removed from the content of the treaty. These functions should be managed centrally to ensure consistency, professionalism and impartiality. Thus, treaty management includes the core of clerical functions, document management, librarianship, and knowledge management.

20. Usually, treaty management and other treaty functions are performed by the Treaty Office of the Secretariat or the Office of Legal Affairs, as is the case with the IAEA. However, the authority that performs treaty functions, and the scope and the extent of the treaty functions differ from one IO to another.

21. In general, the depositary functions performed in the CoE, IAEA and ASEC are similar to one another. The functions, guided by the VCLT, include keeping custody of the original texts of the treaties; preparing certified copies of the original texts; receiving and keeping custody of instruments of ratification; ensuring that the instruments received are in due and proper form; and informing the parties of the entry into force of a treaty and changes in treaty status, including when a new party joins the treaty.

3. Entry into Force

22. A question central to this session is when a treaty enters into force. A good treaty should always include "Final Clauses", which are treaty provisions regulating the procedural and operational aspects of the treaty. These include provisions on entry into force, declaration, reservation, withdrawal, depositary, dispute settlement, amendment, duration, authentic texts, etc. The Treaty Offices of some IOs, such as that of the CoE are actively involved in the drafting of final clauses to ensure an effective operation of the treaty.

23. It is important for an IO to have standard final clauses that can guide it in all treaties that it will conclude, because determining the entry into force of a treaty can be problematic. In the ASEAN practice, sometimes this difficulty arises from the lack of information on the date on which an AMS has notified the depositary of its completion of internal procedure. In other cases, the provision on "entry into force" in some ASEAN agreements is ambiguous. For example, Article 25(1) of the Protocol on the Legal Framework to Implement the ASEAN Single Window reads:

> This Protocol shall enter into force, after all Member States have notified or, where necessary, deposited instruments of ratifications with the Secretary-General of ASEAN upon completion of their internal

> procedures, which shall not take more than one hundred and eighty (180) days after the signing of this Protocol.

The provision above essentially requires the AMS to fulfil the following two conditions: 1) to notify the depositary after it has completed its internal procedures; and 2) to complete its internal procedures within 180 days after the date of signing of the Protocol.

The question of the entry into force of this Protocol arises when not all AMS can complete their internal procedures within 180 days as required by the Protocol, and in fact, not all of them were able to do so (as of now, there are only 8 (eight) AMS that have ratified the Protocol). Thus, how does the depositary determine the date of the entry into force of the Protocol when member states have failed to fulfil the agreed commitment provided for in the Protocol?

24. Mr Un stated that the rationale behind the above Article 25(1) is that the member states wanted to translate the political commitment and goal into the legal language. On the one hand, by setting the 180-day time limit, member states aimed to allow the Protocol to enter into force as soon as possible after the signature. On the other hand, all member states are aware that internal legal requirements are within the prerogative of individual member states. The question on duration that is required to complete such process may not be necessarily within the purview of the negotiators. The language was then crafted to ensure that member states would strive to complete their internal procedures within 180 days.

25. Ms Gómez Heredero stated that this practice is completely unknown to the CoE. In the CoE, it suffices to stipulate in the treaty that it will enter into force after a certain number of instruments of ratification are deposited. The CoE has included "tacit acceptance" clauses in some specific treaties. Those clauses set a fixed period after which the treaty would automatically enter into force unless a state had notified an objection. The clauses would not prevent states that wish to do so or are obliged to do so by their domestic laws, from signing or depositing an instrument of ratification, acceptance or approval. However, the use of "tacit acceptance" clause

remains rather exceptional, because of the reluctance of some member states. Only five CoE Protocols amending the main conventions or agreements contain tacit acceptance clauses. Tacit acceptance has also been used within the framework of some IOs, in particular, under treaties relating to the protection of the environment. These IOs include the World Health Organization, the International Civil Aviation Organization, the International Maritime Organization (**"IMO"**) and the International Whaling Commission.

26. Ms Barrett was of the view that Article 25(1) does not seem very practical, because it seems to imply that if not all member states have submitted the relevant instrument or notification within 180 days, the whole treaty fails. However, the status of the treaty is unclear.

27. One possible solution is to put a clause stating that if the treaty has not entered into force after the deadline set by the treaty elapses, the treaty will enter into force for the states that have completed their internal procedures after a certain period of time and after a certain number of states have notified the depositary of the completion of their procedures. Such tacit acceptance-like provision can be seen for example, in Article 7(2), Chapter 18 of the AANZFTA, which states that:

> If this Agreement does not enter into force on 1 July 2009 it shall enter into force, for any Party that has made the notification referred to in Paragraph 1 [on the completion of its internal requirements], 60 days after the date by which Australia, New Zealand and at least four ASEAN Member States have made the notifications referred to in Paragraph 1.

4. Legal Interpretation & Opinion

28. Another important question raised during the session is, what role, if any, does the Secretariat, Treaty Office or depositary play in interpreting the treaties?

29. In the CoE practice, the Treaty Office provides legal advice and information on treaty law and the depositary practice of the SG. The Treaty Office also publishes "explanatory reports" on its website, which may serve as guidance on how to interpret the treaties. These are neither the *travaux*

préparatoires of the treaties nor official interpretations of the treaties and thus, are not binding. However, they provide for a clearer understanding of the provisions of the treaties, including reservations and declarations.

30. ASEC also frequently receives requests for opinions on certain legal issues by the ASEAN Sectoral Ministerial Bodies on a case-by-case basis. LSAD normally assists the SG in preparing the opinions. However, the legal opinions of the SG are not binding.

5. Political Considerations

31. During the session, a question was raised as to what happens if there is a political imperative to complete the ratification of a treaty in a short period of time and some states parties cannot complete the internal procedures or enact the necessary implementing legislation in time.

32. Ms Barrett shared her view on the practice of the UK. The UK will not ratify a treaty unless it has ensured that it is in a position to implement all the provisions of the treaty. If new domestic legislation is required to implement the treaty, the government will need to secure the enactment of such legislation by Parliament before it submits the instrument of ratification to the depositary. Ms Barrett also said that legal advisers to the government should advise the government to ratify a treaty only if it is able to implement all the obligations imposed under the treaty.

33. She stated that a possible solution to the issue in paragraph 31 above is to draft the treaty in a way that would allow it to come into force with a small number of ratifications, so that it does not have to be ratified by all the states parties. Those states that are ready sooner can bring the treaty into force upon themselves. Those that are not yet ready, should there be a political imperative, may issue a political statement, such as a non-binding declaration stating that the ratification of the treaty may take place on a certain date or within a certain period of time, or that they support the objectives of the treaty and are working towards ratification.

6. Principles for Good Treaty Management

34. Based on her research, Ms Barrett proposed "The PLATO Principles" as principles for good treaty management. PLATO stands for **P**rofessional, **L**egal, **A**ssured, **T**ransparent and **O**rganised.

35. **Professional** means the approach to treaty work by those who do it and by their organisation. This comprises three elements:

    a) Professional approach to treaty expertise

    b) Flexibility with discretion and fairness

    c) Public service ethos

36. **Legal** means legal requirements must be met and the lawyers should be fully engaged. This encompasses four elements:

    a) Treaty practice needs to be in conformity with international law.

    b) Treaty practice needs to be in conformity with domestic law.

    c) Lawyers should be fully engaged in treaty work to ensure that the procedures meet legal requirements and that the treaties are properly drafted, interpreted, and implemented.

    d) The distinction between treaties and non-binding international instruments needs to be understood and appropriately addressed.

37. **Assured** means reliable, dependable, trustworthy and guaranteed in the three aspects below:

    a) The accuracy of all treaty texts, instruments and mechanisms for corrections when needed

    b) The authenticity of treaties and other instruments

    c) The authority of each person involved in treaty procedures

38. **Transparent** means the following:

    a) There must be easy access to treaty texts, procedures, practice guidance, and information.

    b) Guidelines, standards and information provided for treaty officials and the public must be clear.

    c) Treaty practices and procedures must be actively disseminated.

    d) There should be sufficient information to enable oversight of the exercise of treaty-making powers, and there should be meaningful opportunity for member states to scrutinise treaties.

39. **Organised** means treaty management practice should be systematic, efficient and regular. This includes the following:

    a) Record management systems work

    b) Written operating procedures

    c) Consistency in the application of treaty procedures

    d) Centrality, in that there should be one point of contact and a single central authority in treaty procedures

    e) Coordination between all aspects of treaty procedure

B. Treaty Practice Related to Agreements Concluded by an IO: IO's and Member States' Internal Procedures

40. In this session, the following speakers delivered their presentations.

    a) Ms Jill Barrett discussed "Participation of IOs in Treaties and the UK's Internal Procedures".

    b) Ms Ana Gómez Heredero discussed "Internal Procedure on the Conclusion of International Agreements by the CoE".

    c) Mr Anthony Wetherall discussed "Internal Procedure on the Conclusion of International Agreements by the IAEA"

    The session was chaired by Professor Lucy Reed.

41. This session focused on the internal processes or procedures of the CoE and the IAEA in relation to the process of concluding an international agreement with member states and/or other states/organisations/third parties. The session also included a general overview of treaty practice related to agreements concluded by an IO and a discussion on the internal processes and procedures of the UK in concluding and implementing agreements concluded by an IO of which the UK is a member.

1. Agreements Concluded by IOs v. Agreements Involving IOs

42. It is important to distinguish agreements concluded by an IO from agreements involving an IO, since the former creates rights and obligations on the organisation and the latter may or may not. Member states might want to focus on the former, since those agreements have direct implications on them, and consequently they need to know precisely how to treat those agreements in accordance with their internal procedures.

43. This session identified several categories into which agreements involving IOs fall:

    a) Agreements concluded between the IO and its member state(s)

These are typically agreements establishing the headquarters of the organisation or agreements conferring privileges and immunities on the organisation in the host state. An example is the Agreement between the United Nations (**"UN"**) and the United States of America (**"USA"**) regarding the Headquarters of the United Nations (1947).

b) Agreements concluded between the organisation and external parties, for example, the Agreement between the European Union (**"EU"**) and Viet Nam on Certain Aspects of Air Services (2010)

c) Agreements concluded between the organisation and its member states together, of the one part, and an external party, of the other part

An example is the Euro-Mediterranean Aviation Agreement between the EU and its member states, of the one part, and Jordan, of the other part (2010).

d) Agreements concluded between the organisation and its member states separately (but acting in coordination), of the one part, and an external party, of the other part

For example, the EU and its member states are parties to the 1982 United Nations Convention on the Law of the Sea (**"UNCLOS"**).

e) Agreements concluded by the member states, to which the organisation itself is not a party

These are typically agreements establishing the organisation itself. For example, the UN Charter 1946, in which 49 states founded the UN.

f) Agreements concluded under the auspices of the organisation

These are normally agreements under which the organisation acts as a forum for its member states to negotiate and enter into the treaty. The organisation itself might not be a party to the treaty. Examples are the 1994 Convention on Nuclear Safety (adopted under the IAEA auspices)

and the ASEAN Convention against Trafficking in Persons, Especially Women and Children (2015).

44. It may be quite clear that categories (a), (b), (c) and (d) above constitute "agreements concluded by IOs". However, categories (e) and (f) also merit attention, since they may also create rights and obligations on the organisation and/or the member states. The extent of these rights and obligations, if any, depend on the provisions of the agreements themselves. It is not always easy to define "agreements concluded by IOs". Therefore, in identifying what constitutes "agreements concluded by IOs", IOs must take into account all elements of the agreements, including the ordinary meaning, object and purpose of each provision.

2. Subjects & Types of Treaties

45. Before an IO enters into a treaty, it should identify the parties to and the type of the treaty, because the subjects and types of treaties usually determine how the organisation and its member states will treat them in accordance with their internal procedures.

46. In identifying who should be the parties to a treaty, an IO should consider whether the organisation in its own right should be a party or the organisation together with the member states should be parties. This depends on the competence of each IO as stipulated in its constituent documents. For example, the EU has both exclusive and shared competences with its member states, depending on the subject matters. This can be seen, for instance, in the Agreement between the EU and Viet Nam on Certain Aspects of Air Services (2010), where the EU in its own right concluded the agreement without the participation of its member states. However, in the Euro-Mediterranean Aviation Agreement (2010), the EU and its member states acted together as co-parties to conclude the agreement with Jordan as another party.

47. The internal procedures of an IO and a member state in respect of treaties may vary depending on the parties to the treaty. For example, in the UK, the procedure differs between cases where the UK is a party to an

agreement but the IO (of which the UK is a member state) is not party to that agreement, and cases where the UK does not become party to a treaty but the organisation of which it is a member becomes party to it. A more complex procedure will apply to cases where both the UK and the organisation of which it is a member are co-parties to a treaty. This will be further elaborated in Part 3 below ("Internal Procedures").

48. The types of the treaties usually also determine the applicable internal procedure of an IO or its member states. For example, the CoE usually keeps agreements containing financial issues confidential and does not publish them on its website (paragraph 59 elaborates on this example).

3. Internal Procedures

49. In some organisations, the Treaty Office plays a more substantive role, whereas in others, the Treaty Office plays a more technical or administrative role, since the substantive work is usually undertaken by another entity. For example, with respect to treaties concluded by the IAEA, the OLA provides for substantive inputs during the negotiation, including the drafting process, and ensures that the provisions of the treaty are legally correct. In the UK, although every treaty negotiation is different, drafting committees are usually in charge of negotiating and drafting the treaties. Normally lawyers in each drafting committee are substantially involved in the negotiation, drafting and editing of the text of the treaty. At the CoE, treaties are also drafted by groups of experts. The Treaty Office provides legal advice with regard to draft treaties and in particular, on final clauses.

50. In the UK, one must distinguish cases where the UK is a party to a treaty from cases where the IO (of which the UK is a member) is a party to a treaty but the UK itself is not. In the former, the UK's normal treaty procedures apply, whereas in the latter, different procedures apply, depending on the nature of the organisation concerned. Where the UK and the organisation are both parties to the treaty, both the normal treaty procedure of the UK and a different procedure apply. The UK's normal

treaty procedures also apply to cases where the UK ratifies a treaty negotiated under the auspices of an IO.

51. The UK's normal internal procedures mainly consist of three phases: negotiation, signature and ratification. During the negotiation, there will be coordination across the government and Devolved Authorities, i.e., the authorities of Scotland, Wales and Northern Ireland. During the signature process, there will also be coordination across the government and the Devolved Authorities. In addition, Full Powers (VCLT, Article 2(c)) must also be produced by individuals for the purpose of signing a treaty, unless the treaty will be signed by the Queen, Prime Minister or Minister for Foreign Affairs (VCLT, Article 7(2)). The next phase, which is ratification, also involves coordination across the government and the Devolved Authorities, enactment of implementing legislation where necessary and/or required, and compliance with parliamentary procedures. In ratifying treaties, the UK follows its Constitutional Reform and Governance Act (2010).

52. Where the UK is not a party to a treaty but the IO (of which it is a member) is party to that treaty, the UK may participate in the organisation's internal decision making on the mandate, but different procedures apply internally, since the UK parliamentary treaty procedures do not apply when the UK is not a party. For example, in respect of the UN-USA Headquarters Agreement, the UK had a vote in the General Assembly debate on the draft agreement. Another example is the CoE-France Headquarters Agreement. At the CoE, the UK had a vote in its plenary organ.

53. Where the UK and the organisation are parties to the same treaty, the UK's normal treaty procedure above applies, but different procedures apply to the UK's internal decision making on its participation in the organisation's decision making in respect of its negotiation, signature and ratification. This different procedure can be seen for example, in the agreements concluded by the EU and the UK together on matters falling within areas of shared competence. Two examples are the Euro-Mediterranean Aviation Agreement between the EU and its member states, of the one part, and Jordan, of the other part (2010), and the UNCLOS, to which both the EU and its member states are parties. These agreements normally require declarations on competence, which will then be deposited with the EU.

When the EU negotiates, signs and ratifies a treaty, it requires a mandate from the EU institutions. The UK participates in meetings in Brussels to decide on the mandate. There are specific UK parliamentary procedures for EU legislation and other EU documents.

54. At the CoE, the drafting of treaties is governed by a flexible procedure based on the Organisation's practice supplemented by some Statutory Resolutions and Recommendations. The initiative to draft a new treaty may come from the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities, a Conference of Specialised Ministers, and Steering or Monitoring Committees. Any initiative to draft a new treaty has to be approved by the Committee of Ministers, the executive organ of the CoE. The Committee of Ministers usually entrusts a steering committee or a committee of experts with the task of drafting a new treaty. The draft Convention is then transmitted to the Committee of Ministers, which will send the text to the Parliamentary Assembly for opinion.

55. The Committee of Ministers will adopt the draft Convention by a two-third majority of votes cast, and a majority of the representatives entitled to sit on the Committee cast their votes. However, in general, there is no vote. The Committee of Ministers will then open the treaty for signature, and it will decide when to open it, e.g., during a ministerial conference, a session of the Parliamentary Assembly, etc. The next stages are signature, ratification and implementation by states parties.

56. Treaties in the CoE may be adhered to by member states and/or non-member states. In cases where a non-member state wishes to accede to a CoE treaty, it will first have to submit an official letter of interest to the CoE SG. Then the Treaty Office consults all member states of the CoE (whether or not they are parties to the treaty) and parties to this treaty that are not member states, on the request for invitation. If there are objections, the process will cease. Otherwise, the request will be transmitted to the competent Rapporteur Group of the Committee of Ministers, which will examine the request and submit the result of the examination to the Committee of Ministers. The Committee of Ministers will then make its

decision, which will be communicated to the state. Then, the state invited can deposit the instrument of accession. Since April 2013, the Committee of Ministers has limited the validity of invitations for non-member states to accede to the CoE conventions to five years.

57. Two questions usually arise after a treaty is concluded by an IO. Should the treaty be registered with the UN, and should the treaty be published? The first question is particularly important for ASEAN, because Article 102 of the UN Charter stipulates the following:

> 1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
>
> 2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

58. In general, bilateral or multilateral agreements that are not adopted by an organ of an IO and not ratified by the IO member states do not need to be registered with the UN. However, all treaties adopted by an organ of an IO and ratified by the member states will be registered with the UN upon their entry into force. For example, the General Agreement on Privileges and Immunities of the CoE, adopted on 2 September 1949, was ratified by all the CoE member states and was therefore registered with the UN. Furthermore, the UN Treaty Handbook may serve as a guideline on when to register a treaty with the UN (https://treaties.un.org/doc/source/publications/THB/English.pdf).

59. As for the issue of publication, Ms Gómez Heredero explained that in the CoE, agreements (usually bilateral) that concern privileges, immunities or financial matters are kept confidential and will not be published on the CoE website. The CoE relies on the respective technical departments that conclude the treaties in determining whether or not they are confidential. Once the departments deem the treaty confidential, the Treaty Office will not publish it on the CoE website. Although there are no issues on the confidentiality of ASEAN agreements, it is recommended that ASEAN adopts

a practice similar to CoE with regard to the confidentiality of ASEAN agreements.

60. In the IAEA, all international agreements are concluded on behalf of the IAEA by the Director-General or his/her authorised representative. The policy-making organs of the IAEA, i.e., Board of Governors and General Conference, also play roles in the development and approval of international agreements. The OLA acts as the depositary for all international agreements concluded by the IAEA, and in respect of some agreements, responsibilities are shared among the three Sections in the OLA (General Legal Section, Non-Proliferation and Policy-Making Organs Section, and Nuclear and Treaty Law Section).

61. In general, there are several types of agreements to which the IAEA is a party:

    a) IAEA agreements with the UN

    b) Cooperation agreements between IAEA and UN Specialised Agencies

    c) IAEA Headquarters Agreement with Austria and related agreements

    d) Cooperation agreements with regional intergovernmental organisations

    e) Agreement(s) on the Privileges and Immunities of the IAEA

    f) Safeguards Agreements

    g) Revised Supplementary Agreement(s) concerning the Provision of Technical Assistance by the IAEA (**"RSA"**)

62. An overwhelming number of the agreements concluded by the IAEA are bilateral agreements, e.g., Safeguards Agreements. Furthermore, specific procedures apply to agreements on technical cooperation, such as the RSA. First, states need to inform the IAEA Secretariat of their decision to conclude an RSA. The text is based on a model text of the RSA, i.e., the United Nations Development Programme Standard Basic Assistance

Agreement. This model provides that the treaty will enter into force upon signature, which will be followed by updating the relevant status list and registration with the UN.

C. Treaty Practice Related to Agreements Concluded by ASEAN: ASEAN and Member States' Internal Procedures

63. Four speakers delivered their presentations in relation to "Treaty Practice Related to Agreements Concluded by ASEAN: ASEAN and Member States' Internal Procedures".

    a) Ms Ranyta Yusran delivered a presentation on "Past and Present ASEAN Practice in Concluding International Agreements" (co-authored with Dr Hao Duy Phan).

    b) Mr Un Sovannasam delivered a presentation on "The Rules of Procedures for the Conclusion of International Agreements by ASEAN".

    c) Ms Rena Lee delivered a presentation on "Singapore's Internal Procedures upon the Conclusion of an Agreement by ASEAN".

    d) Dr Tull Traisorat delivered a presentation on the "Internal Procedures of Thailand on the Conclusion of an Agreement by ASEAN".

    This session was chaired Ms Jill Barrett. The presentations were later followed by discussion and a question and answer session.

64. The discussion of this topic focused on the internal procedures of ASEAN and AMS in relation to the process of concluding and implementing agreements concluded by ASEAN (both with AMS and external parties) as an intergovernmental organisation and also as a group of AMS. These internal procedures are very relevant to the implementation of the 2011 Rules of Procedure for the Conclusion of International Agreements by ASEAN (**"ROPCIA"**). Examples of agreements concluded by ASEAN with an AMS and an external party include the 2012 Agreement between Indonesia and ASEAN on Hosting and Granting Privileges and Immunities to ASEC, and the 2007 MoU by ASEAN and the UN. Furthermore, this session also

discussed agreements concluded by AMS collectively, which entail separate rights and obligations from those of ASEAN, and agreements concluded with external parties. The purpose of this session was to discern the different internal processes, if any, in concluding these agreements.

65. Articles 3 and 41(7) of the ASEAN Charter conferred legal personality and capacity to ASEAN to conclude agreements with countries or other organisations. In 2011, ASEAN adopted ROPCIA, which defines "international agreements by ASEAN" (**"ASEAN agreements"**) as agreements governed by international law creating "rights and obligations for ASEAN as a distinct entity from its Member States". Furthermore, ROPCIA implicitly requires a clear demarcation between ASEAN agreements and agreements concluded by AMS collectively.

66. These provisions, from a practical point of view, require the institution of internal procedures of both ASEC, as the facilitator of ASEAN agreements, and individual AMS regarding the process of concluding and implementing ASEAN agreements. The granting of ASEAN legal personality and capacity to conclude agreements also raise the need to examine the past and present practices of ASEAN, ASEC and AMS collectively in concluding agreements with third parties.

1. Past and Present ASEAN Practice in Concluding International Agreements

67. Based on CIL's research, ASEAN and ASEC had concluded agreements with external parties even before the entry into force of the ASEAN Charter and the adoption of ROPCIA in 2008 and 2011 respectively. This implies a form of de facto acknowledgement of ASEAN's legal personality and capacity to conclude an agreement with a third party, may it be a state or other entities. The observation divided the conclusion of ASEAN agreements into two periods: pre- and post-Charter. Furthermore, each period consists of three categories of practice: 1) agreements concluded by ASEAN with a third party; 2) agreements concluded by ASEC with a third party; and 3) agreements concluded by AMS collectively with a third party.

68. Approximately 31 agreements belong to the aforementioned categories. In the first category, CIL identified seven agreements, five of which are binding. The binding agreements include agreements concluded with Indonesia on the privileges and immunities of ASEC and the use and maintenance of the premises of ASEC. All agreements in this category were signed by the ASEAN SG. Mr Un added that the necessity for the conclusion of these two agreements may serve as an impetus to the de facto acknowledgement of the legal personality of ASEAN. ASEC also concluded four, including three non-binding, agreements with third parties. These are different from ASEAN agreements, as it seems that ASEC concluded these agreements in its own capacity. All of the non-binding agreements contain a similar caveat stipulating that "this MoU shall not be legally binding under international law".

69. The last category (agreements concluded between AMS collectively and third parties) has approximately 21 agreements, excluding protocols and amendments. The treaty practice in this category has at least two inconsistent trends. First, the titles of the agreements suggest that the agreements are concluded by ASEAN as an intergovernmental organisation. However, the provisions of the agreements stipulate that the agreements are actually concluded by AMS collectively. While in other agreements, the titles state that the parties to those agreements are AMS collectively and external parties. Second, how AMS refer to themselves collectively is inconsistent. In some agreements, they refer to themselves as "ASEAN" or "ASEAN Member States", while in others they refer to themselves only as "Member Countries of ASEAN". Such a practice may present ambiguity in the impact of such agreements on ASEAN and its member states collectively.

70. In the post-Charter period, approximately 27 agreements were concluded from 2008 to 2015. There is a noticeable decreasing trend in ASEAN practice in concluding binding ASEAN agreements during this period; there is only one binding agreement with Indonesia on the hosting and granting of privileges and immunities to ASEC. Furthermore, despite the non-binding nature of the agreements, all of these agreements have final clauses on, e.g., dispute settlement, entry into force and amendments. Ms Barrett observed that the inclusion of final clauses in non-binding agreements is

not unusual in other international fora, as states may not want to bind themselves in treaties but want to express higher political commitments. One of the ASEAN agreements concluded in 2015 with the International Telecommunication Union was concluded by the AMS on behalf of ASEAN. Although ROPCIA leaves the competency to conclude agreements on behalf of ASEAN to the discretion of the CPR, this practice deviates from the pre-Charter and post-Charter customs in which ASEAN agreements were and are usually concluded by the SG on behalf of ASEAN.

71. On agreements concluded by ASEC with third parties, all of the agreements in this category are non-binding. They all contain the obligatory caveat that stipulates that the agreements are not intended to be binding under international law. There are approximately 17 agreements belonging to the third category (agreements concluded by AMS collectively with external parties). Most of these agreements are on economic and technical cooperation in other fields. The trends identified in the previous period still prevail and may become an issue, particularly in the post-Charter period, as the ambiguities resulting from these inconsistencies may contradict the definition of ASEAN agreements as set out in ROPCIA.

72. Based on the findings vis-à-vis the study on the past and present ASEAN practices in concluding international agreements, relevant stakeholders might find it worthwhile to consider the following.

    a) The need for ASEAN, ASEC, CPR and AMS to consider adopting guidelines for the conclusion of non-binding agreements by ASEAN, and guidelines for the conclusion of agreements by AMS collectively

    b) The need for ASEAN and ASEC to consider developing a repository of agreements concluded by ASEAN and AMS collectively

2. Rules of Procedure for the Conclusion of International Agreements by ASEAN (ROPCIA)

73. ROPCIA is clear on its scope of application: it only concerns the conclusion of agreements by ASEAN with external parties, based on the ASEAN Charter and the agreement on the privileges and immunities of ASEAN. The agreements concluded by ASEAN only creates rights and obligations on ASEAN and not on the AMS.

74. The negotiation procedure of ROPCIA is a dynamic process, as there are now 27 ASEAN ministerial sectoral bodies engaging directly with external parties. The commencement of the negotiation of an ASEAN agreement is undertaken by the relevant ASEAN ministerial sectoral body in consultation with the CPR, and the CPR may appoint negotiators. In the process of the negotiation, the relevant ministerial sectoral bodies will always consult among themselves and the CPR to achieve an ASEAN common position on the negotiated agreement. After the draft text of the agreement is completed, it must be endorsed by the relevant sectoral bodies and submitted to the CPR. The CPR then decides on the formal act of confirmation vis-à-vis expression of consent to be bound. Lastly, the ASEAN Foreign Ministers Meeting, through the CPR, will decide and appoint the person to sign the agreement, who in many cases, is the ASEAN SG, acting on behalf of ASEAN. Throughout these processes, ASEC plays a coordinating role to assist the sectoral bodies and CPR in, e.g., working on and finalising the draft agreement.

75. Over the past five years after the adoption of ROPCIA, ASEAN has faced many issues and challenges surrounding the conclusion of ASEAN agreements. First, on the scope of application of ROPCIA, although the rule is clear that ROPCIA only applies to international agreements concluded by ASEAN, it is not clear how ASEAN and AMS define 'international agreements' or 'contracts with international character'. Another issue is how to differentiate between binding and non-binding agreements. However, based on ASEC's review of ROPCIA, the status of an agreement does not make a difference in ROPCIA as the conclusion of all agreements must gain the CPR's approval.

76. Second, on the rights and obligations arising from an ASEAN agreement, although the ROPCIA definition on ASEAN agreements is quite clear, in practice it is often difficult to draw the line between an agreement that creates rights and obligations for ASEAN as an intergovernmental organisation, AMS collectively or both (mixed agreements).

77. The third issue concerns the procedural aspects of the implementation of ROPCIA, i.e., the coordination between the CPR and the sectoral bodies. ROPCIA is ambiguous on whether it is the CPR or the sectoral bodies that have the role and authority to initiate the negotiation of an international agreement to be concluded by ASEAN. While ROPCIA seems to grant the CPR the authority to decide on the negotiations of ASEAN agreements, in reality the negotiation of an international agreement to be concluded by ASEAN is usually initiated by the concerned sectoral bodies, because they engage directly with external partners. The CPR will later decide on the act of confirmation and authorisation of the SG to sign the agreement.

78. Fourth, should individual member states' internal rules and procedures apply to agreements concluded by ASEAN, especially considering that under ROPCIA, AMS are not parties to such agreements? In many cases, such internal rules and procedures will often apply, as the Permanent Representatives to ASEAN will consult their lawyers in their respective capitals, and each member state will apply its internal rules and procedures. Therefore, it is difficult to distinguish agreements concluded by ASEAN from those concluded by AMS.

3. Singapore's Internal Procedures upon the Conclusion of an Agreement by ASEAN

79. Although ROPCIA was not intended to cancel out all other ASEAN treaty practices, it is intended to cover agreements concluded by ASEAN as an intergovernmental organisation with an external party or an AMS. However, the term "agreements concluded by ASEAN" can also mean agreements concluded by the 10 member states, because such agreements often refer to the AMS collectively as "ASEAN". This is particularly true in the pre-

Charter era, when there was still no clear understanding of whether ASEAN had a legal personality, and also in the post-Charter practice.

80. Like agreements in the pre-Charter era, post-Charter era agreements still do not differentiate between agreements concluded by ASEAN as an intergovernmental organisation and those concluded by ASEAN as a group of 10 member states. The lack of differentiation between the two forms of agreements may be due to AMS' tendency to follow precedence. Additionally, there are still agreements meant to apply to AMS but signed by the ASEAN SG on behalf of AMS (this is permissible under treaty law) that can be also be considered as agreements concluded by ASEAN as an intergovernmental organisation. Agreements concluded among AMS could potentially, because of ASEAN treaty practice, be considered as agreements concluded by ASEAN as well. ASEAN may also enter into non-binding agreements, which could be considered agreements concluded by ASEAN.

81. This examination of the nature of the ASEAN agreements is relevant to Singapore's internal procedures vis-à-vis agreements concluded by ASEAN, as the nature of the agreements determine which internal process should apply in Singapore. The key is whether the agreement that Singapore is considering imposes any obligation on the country. Generally, Singapore would expect that agreements concluded by ASEAN as an intergovernmental organisation would not create obligations for Singapore, because ASEAN is not a supranational organisation and cannot impose obligations automatically on its member states.

82. Generally, Singapore's domestic process for the approval on the conclusion of an international agreement is as follows:

    a) Consultation among relevant agencies

    b) Approval by the Cabinet

    c) Drafting of implementing legislation, if necessary

    d) Passing of implementing legislation by Parliament

    e) Deposit of instrument of ratification/accession (where applicable)

This process typically applies when Singapore is contemplating to undertake legal obligations. Similar to the UK treaty practice, Singapore is of the position that it will not take on treaty obligations until it is confident that it can comply with those obligations. Singapore is a dualist country; treaties are not self-executing and do not become part of Singapore's law until Singapore enacts implementing legislation. Although the process seems to be straightforward, in practice it can take some time to complete, especially when it involves the drafting and passing of implementing legislation. Unlike other countries, in Singapore the approval to become a party to a treaty is given by the Cabinet. The Parliament plays a role when legislation needs to be implemented. The processes outlined above are not necessarily sequential. For instance, Singapore may deposit its instrument of ratification/accession before it passes an implementing legislation. Sometimes, the act of depositing an instrument of ratification/accession is not necessary, as ASEAN practice or a specific treaty provision may require a member state to only give a notification that its internal procedure has been completed. Such notification is different from depositing an instrument of ratification/accession.

83. Singapore's domestic process almost invariably starts with consultation among relevant agencies. The determination of relevant agencies depends on the subject matters of the agreement, assuming that the text is already adopted and Singapore is considering whether to become a party to the agreement. This is where the nature of the agreement is important to determine the next process. If the agreement is to be concluded by ASEAN as an intergovernmental organisation, typically the agreement does not require the Cabinet's approval. The decision to approve the agreement is then transmitted to ASEAN through Singapore's representative to the CPR. When approving agreements and undertaking the obligations of ASEAN as an intergovernmental organisation, Singapore may consider the financial implications of those obligations that ASEAN will undertake, especially since member states contribute to the ASEAN budget.

84. Generally, when Singapore decides that it will become a party to an agreement, it will assume all of the rights and obligations arising from that

agreement, decide whether legislation needs to be implemented and if so, when the implementation is required. Typically, Singapore will enact implementing legislation before it deposits the instrument of ratification. However, the sequence of the process depends on some considerations. Certain treaties prescribe obligations to enact implementing legislation such as the UN Convention against Transnational Organised Crime and the UN Convention against Corruption. For such treaties, Singapore would enact the implementing legislation before depositing the instrument of ratification, particularly if the treaty is already in force. Other agreements, such as the provisions on deep sea bed mining under UNCLOS, leave it to states parties on how they want to implement the specific provisions. In such cases, Singapore may or may not enact implementing legislation before it becomes a party. There are also instances when Singapore may deposit the instrument of ratification but has not enacted an implementing legislation since the agreement is not yet in force. An example of this is the ASEAN Agreement on Privileges and Immunities.

4. Internal Procedures of Thailand on the Conclusion of an Agreement by ASEAN

85. According to Section 23(1) of the current Thailand's Interim Constitution, the Cabinet has the prerogative to conclude treaties with other countries or IOs. However, Section 23(2) of the Constitution stipulates that the conclusion of some forms of treaties needs the approval of Thailand's National Legislative Assembly. These treaties consist of the following:

a) Treaties that may cause a change in the territories of Thailand or external territories on which Thailand has sovereign rights or jurisdiction under a treaty or international law

b) Treaties that require the enactment of implementing legislation

c) Treaties that have a wide-scale impact on the economic or social security of the country

d) Treaties on free trade and custom unions

e) Treaties that seek to use Thai's natural resources or cause the loss of rights over natural resources in whole or in part

If there is any doubt as to whether a treaty falls under Section 23(2) or (3), under Section 23(4) of the Constitution, the Cabinet may consult and request the Constitutional Court to decide on the matter.

86. Agreements concluded by ASEAN as an intergovernmental organisation as provided under ROPCIA do not create direct obligations on Thailand. Regardless of the status of the agreements—binding or non-binding—they are not considered agreements concluded by Thailand as set out in Section 23 of the Constitution. However, they are still subject to the Cabinet's approval. This is in accordance with Section 4(7) of the Royal Decree on the Submission of Matters and Meetings of the Cabinet B.E. 2548 (2005).

87. On agreements concluded by the 10 AMS collectively, these agreements will create direct obligations on Thailand and will be considered as treaties under Section 23 of the Thai Constitution. Such agreements must be binding in nature, and they are to be submitted for Cabinet's approval. The Cabinet will then decide whether an agreement belonging to this category either falls under Section 23(2), which only requires the Cabinet's approval to conclude and/or ratify, or falls under Section 23(3), which requires the National Legislative Assembly's approval to conclude and/or ratify. However, ROPCIA and the ASEAN practice are still unclear on the classification of agreements concluded by ASEAN as an intergovernmental organisation and agreements concluded by the 10 (ten) AMS collectively. In this case, Thailand takes the position that it will still decide on a case-by-case basis. In the future, the formulation of guidelines to solve this issue will help AMS in preparing their internal procedures and in the signing and ratification processes.

88. According to Cabinet Resolution of 7 July 2015, line agencies need the Cabinet's approval for the granting of the mandate to negotiate agreements of which subject matters will affect Thailand's international relations and will result in long-term commitments. The requirement to have the

Cabinet's approval is also in line with Section 4(7) of the Royal Decree on the Submission of Matters and Meetings of the Cabinet B.E. 2548 (2005).

89. Thailand's new Constitution, which has passed the referendum on 7 August 2016 and is still awaiting the Royal Assent, has very similar provisions to the current interim Constitution. Additionally, the new Constitution imposes additional obligations on line agencies concerning the conclusion of an international agreement: the agencies must go through the procedure for public consultation and also formulate necessary remedies to overcome the wide-scale impacts that a treaty may have on the economic or social security of the country. Thailand will set up a committee to review and check whether each obligation can be implemented fully under the existing Thai laws and suggest necessary amendments to facilitate the implementation of the obligations. Then, implementing legislation and/or amendment to legislation will be submitted together with the request to conclude or ratify an agreement.

5. Treaty Practice Related to Agreements Concluded by ASEAN: What Is Working and What Has Not Worked in the AMS?

90. Participants were then asked to discuss and evaluate what aspects of the ASEAN procedure for the conclusion of international agreements have worked and not worked from the point of view of each AMS. The participants were then asked to share their perspectives.

91. Most participants who shared their views cited the lack of common understanding of ROPCIA and the way it is applied to different sectors. Some AMS cannot differentiate clearly between agreements concluded by ASEAN as an intergovernmental organisation and those concluded collectively by the AMS in their individual capacities.

92. The interpretation of ROPCIA—particularly whether an agreement concluded by ASEAN as an intergovernmental organisation will impose obligations on the AMS in their individual capacities—depends on each member state's interpretation of the applicability of ROPCIA to each agreement and the provisions of the agreement itself.

93. ROPCIA confirms ASEAN's treaty-making capacity as distinct from the treaty-making capacity of individual AMS, by clearly distinguishing "international agreements concluded by ASEAN" from international agreements concluded by AMS with external parties. As such, ASEAN+1 FTAs—legal instruments concluded based on collective negotiations by AMS—are not considered "international agreements of ASEAN" and do not fall under the scope of application of ROPCIA.

94. Although the drafters of ROPCIA did not intend to abandon ASEAN practice vis-à-vis other agreements, e.g., agreements concluded by AMS collectively, ASEAN could review some of its treaty practices. Specific guidelines on each phase (negotiation phase, drafting phase, etc.) leading up to the conclusion of an international agreement by ASEAN as an intergovernmental organisation and by AMS collectively may help improve ASEAN treaty practice and management. It may also be useful for relevant sectoral bodies and the CPR to reach a common position at the consultation stage on the status of the agreement, whether it is an agreement concluded by ASEAN or an agreement creating rights and obligations upon individual member states.

95. AMS could consider classifying agreements of a certain nature as agreements concluded by ASEAN (rather than agreements concluded by AMS collectively), to determine the appropriate internal procedures. Examples of agreements of this nature are development cooperation and collaborative activities within the framework of ASEAN that are submitted to member states for consideration or approval.

96. Some participants also argued that ROPCIA should contain more detailed guidelines on the procedural aspects of the conclusion of a treaty, such as on the negotiation and drafting phases.

97. Considering the different procedures applied by each AMS and the fact that not all AMS have separate internal procedures on agreements concluded by ASEAN as an intergovernmental organisation, it may be useful to have a common understanding of ROPCIA. Such an understanding is not only relevant to the AMS but also to different divisions of ASEC. Therefore, it is

necessary to have tools such as explanatory notes and to disseminate information on ROPCIA and the different rules of procedures and corresponding guidelines, especially to officers and officials who do not have a legal background.

98. ASEAN and AMS may also consider providing clarity on the areas of competency in which ASEAN may conclude agreements as an intergovernmental organisation, in order to avoid different interpretations by individual AMS as to whether an agreement concluded by ASEAN creates rights and obligations for them.

99. In addition, it may also be necessary to adopt guidelines for the AMS or internal guidelines within ASEC on the conclusion of non-binding agreements and contracts with external parties by ASEAN, and other agreements which create rights and obligations for both ASEAN and AMS.

D. Lessons Learnt and Way Forward

100. This session identified good treaty management practices, problems related to ASEAN treaty management practice, and issues surrounding the conclusion and implementation of international agreements concluded by ASEAN as an intergovernmental organisation and by AMS collectively, with a view to expediting the process of consultation and approval for such conclusion.

101. The discussion focused on the ASEAN treaty management practice—especially in relation to ROPCIA—reflecting on the treaty management practices of the CoE and IAEA and the internal procedure of the UK on conclusion of agreements by the IOs to which it is a party.

1. Binding v. Non-binding Instruments

102. It is sometimes difficult to identify whether an instrument concluded by ASEAN or its bodies is binding. Some instruments contain a clause stating that they are not intended to create legally binding consequences. However, not all agreements have this clause, and there are more

complicated questions on whether these agreements are binding. For instance, what is the status of a MoU? Do ASEAN MoUs constitute "agreements", especially those with specific final clauses? Are they binding? Do they have any legal consequences in cases of non-implementation or non-compliance?

103. Therefore, it is important for ASEAN to adopt guidelines that prescribe in detail how to determine whether or not an instrument is binding, including what terms to use for binding instruments or non-binding instruments. Verifying whether the treaty is meant to be binding during the treaty negotiation with one's counterpart is also important.

2. Standard Clauses

104. There should be clearer and more detailed guidelines to help AMS determine what to include as standard clauses in the agreements that ASEAN enters into, in particular, the final clauses on the operational and procedural aspects of the treaty, e.g., provisions on entry into force, declaration, reservation, withdrawal, depositary, dispute settlement, amendment, duration, authentic texts, etc.

105. These guidelines should also provide for references on what should be included in the preamble of an ASEAN agreement, what terms should be used for binding instruments or non-binding instruments, and what main points should be included in the body of the text. In this regard, one may look at the CoE Model Final Clauses for Conventions as a reference. Nonetheless, these Model Final Clauses have been elaborated only for multilateral treaties. The CoE does not have standard clauses for MoUs that are not intended to be binding.

106. Furthermore, clear guidelines are needed on the procedure of amendments and withdrawal from ASEAN legal instruments, i.e., instruments concluded between AMS under the auspices of ASEAN. Questions that arise include the following. Do all amendments to and withdrawal from all of ASEAN legal instruments need to go through the same process as their conclusions?

Does ASEAN need a simplified procedure instead? How do the drafters determine which instruments need to go through the full process of amendment or withdrawal, and which ones may go through a simplified procedure? Who should be in charge of the amendment or withdrawal? There are arguments that certain bodies, such as the ASEAN Agricultural Ministers, are not competent to make amendments to treaties, since they are arguably not competent to make decisions that create legally binding consequences.

107. The aforementioned guidelines should address the following questions. How can the amendment or withdrawal procedure be initiated? Who has the competence to propose the amendment or withdrawal? What is the procedure? When does the amendment or withdrawal take effect? May certain treaties be amended in a simplified procedure? If so, what types of treaties may undergo such a process?

108. The practice of the IMO may serve as an example. In the IMO, there is a notion of "tacit acceptance" in amending a treaty. Very technical economic agreements (usually found in annexes to a broader treaty) are normally amended regularly. Under the notion of "tacit acceptance", these treaties are automatically binding upon the states parties, unless they object. This form of tacit acceptance will save time, since those agreements do not have to go through the full ratification process of the states parties. This practice is similar to the CoE procedure with regard to amendment of technical appendixes to treaties. According to this procedure, following the lapse of a certain period of time, amendments to appendixes shall enter into force for those Contracting Parties that have not notified objections, unless one-third of the Contracting Parties have notified objections. This practice can be seen, for example, in the following treaties: Article 17 of the Convention on the Conservation of European Wildlife and Natural Habitats (European Treaty Series (**"ETS"**) No. 104); Article 30 of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS No. 150); Article 2 paragraph 3 of the Protocol of Amendment to the European Convention for the Protection of Vertebrate Animals Used for Experimental and other Scientific Purposes (ETS No. 170); Article 28 of the Council of Europe Convention on the Prevention of Terrorism (Council of Europe Treaty Series (**"CETS"**) No.

196); and Article 17 of the Council of Europe Convention on Cinematographic Co-Production (revised).

109. Another option would be to put a clause in the agreement clearly distinguishing the procedure that will apply in case of amendment to the annex (i.e., the simplified procedure) from the procedure that will apply to amendments to the main text of the treaty.

If ASEAN decides to formulate some model rules on tacit acceptance, there should also be guidelines on when to use these rules and how to implement them. The practice must be consistent with the AMS' internal laws, and AMS must be able to implement the amendment within the time frame set by the amendment and/or the main treaty. However, if they are not able to do so, perhaps they should not agree to the tacit acceptance procedure.

110. The final clauses regulating withdrawal from the treaty must also specify that the withdrawal will only take effect within a certain period of time after the withdrawal procedure is completed (e.g., a written notification has been submitted to all the other parties or to the depositary). This period may vary according to what is agreed upon by the parties, for example, three to six months. This period will allow all the other parties to ensure that the withdrawing party fulfils all of its obligations under the treaty before it ceases to be a party.

111. Lastly, there should also be clearer and more detailed guidelines on ROPCIA. There should be guidelines prescribing each step that needs to be taken during the negotiation. For example, each negotiating party needs to clarify or seek clarification on what the agreement is intended for; whether it is meant to be binding; whether it is intended to be concluded by ASEAN, AMS or both; what substantive and procedural clauses it should contain; etc.

ANNEX I: WORKSHOP PROGRAMME

Time	Agenda
Registration, Opening and Welcome Remarks	
08:30 – 09:00	Registration and Coffee
09:00 – 09:10	Welcome Remarks by the Deputy Secretary-General of ASEAN, H.E. AKP. Mochtan
09:10 – 09:20	Welcome Remarks by the Permanent Representative of the Republic of Singapore to ASEAN, H.E. Tan Hung Seng
09:20 – 09:30	**Group Photo-Taking**
Session 1 – The role of a Treaty Office in Managing Treaties/Instruments (110 minutes)	
	Brief Description: This session focused on the mandate given to a Secretary-General as the depositary of an IO's legal instruments, specifically on the function of the Treaty Office in the treaty management of an IO's legal instruments. It highlighted the role of Treaty Offices of the CoE, the IAEA and ASEC. Emphasis was given on treaty management functions such as the determination of the entry into force of legal instruments, communication and documentation procedures *vis-à-vis* depositing instruments of ratification or accession and reservation, determination of the status of an IO's legal instruments, and interpretation of legal instruments. The session also included discussion on the role of the Secretariat in general on treaty management, as well as universal criteria on what constitutes good treaty management. Moderator: **Associate Professor Robert C. Beckman**, Head Ocean Law and Policy Programme (CIL) Rapporteurs: CIL Research Associate and LSAD Staff
09:30 – 09:50	An Overview of the Role of the Secretariat in Managing

Time	Agenda
	International Treaties — *Ms Jill Barrett, former Legal Counsellor, UK Foreign Commonwealth Office*
09:50 – 10:10	The Role of the Council of Europe (CoE) Treaty Office in Managing International Treaties and CoE Instruments — *Ms Ana Gomez Heredero, Head, Treaty Office Unit (the CoE)*
10:10 – 10:30	The Role of the International Atomic Energy Agency (IAEA) Treaty Office in Managing IAEA Instruments — *Mr Anthony Wetherall, Senior Research Fellow (CIL)*
10:30 – 10:50	The Role of the ASEAN Treaty Division in Managing International Treaties and ASEAN Legal Instruments — *Mr Un Sovannasam, Director, Legal Services and Agreements Directorate (ASEC)*
10:50 – 11:20	Discussion – Q & A
11:20 – 13:00	**Friday Prayer and Lunch Break**
Session 2 - Treaty Practice related to Agreements Concluded by an IO: IO's and Member States' Internal Procedures (80 minutes)	
	Brief Description: Session 2 focused on the internal processes or procedures of the CoE and the IAEA in relation to the process of concluding an international agreement with member states and/or other states/organisations/third parties. It also included a general overview of treaty practice related to agreements concluded by an IO and a discussion on the internal processes and procedures of the United Kingdom (UK) in concluding and implementing agreements concluded by an IO of which the UK is a member. Moderator: **Professor Lucy Reed**, Director (CIL) and formerly General Counsel of IO Korean Peninsula Energy Development Organization Rapporteurs: CIL Research Associate and LSAD Staff

Time	Agenda
13:00 – 13:20	Overview of treaty practice related to agreements concluded by international organisations Internal procedures of the UK on conclusion of international agreements by an IO of which it is a member — *Ms Jill Barrett, former Legal Counsellor to the UK Foreign Commonwealth Office*
13:20 – 13:35	Internal procedure on the conclusion of international agreements by the Council of Europe — *Ms Ana Gomez Heredero, Head, Treaty Office Unit (the CoE)*
13:35 – 13:50	Internal procedure on the conclusion of International Agreements by the IAEA — *Mr Anthony Wetherall, Senior Research Fellow (CIL)*
13:50 – 14:20	Discussion – Q & A
14:20 – 14:30	**Coffee Break**
Session 3 – Treaty Practice related to Agreements concluded by ASEAN: ASEAN and Member States' Internal Procedures (90 minutes)	
	Brief Description: Session 3 focused on the internal processes or procedures of ASEAN and its AMS in relation to the process of concluding and implementing agreements concluded by ASEAN (both with an AMS and external parties) as an intergovernmental organisation and agreements concluded by ASEAN member states as a whole. The focus of this session was very relevant to the implementation of the 2011 Rules of Procedure (ROP) for Conclusion of International Agreements by ASEAN. The conclusion of the 2012 Agreement between Indonesia and ASEAN on Hosting and Granting Privileges and Immunities to the ASEAN Secretariat may be used as an example. Additionally, it was also important to discuss agreements concluded collectively by AMS as well as agreements concluded by ASEC to discern the different internal processes, if any, in concluding these instruments. Moderator: **Ms Jill Barrett** Rapporteur:

Time	Agenda
	CIL Research Associate and LSAD Staff
14:30 – 14:45	Past and present ASEAN practice in concluding international agreements — *Ms Ranyta Yusran, Research Fellow (CIL)*
14:45 – 15:00	Rules of Procedure for Conclusion of International Agreements by ASEAN — *Mr Un Sovannasam, Director, Legal Services and Agreements Directorate (ASEC)*
15:00 – 15:15	Internal Procedure of *Singapore* on conclusion of an agreement by ASEAN — *Ms Rena Lee, Senior State Counsel, Attorney-General Chambers, Singapore*
15:15 – 15:30	Internal Procedure of *Thailand* on conclusion of an agreement by ASEAN — *Dr Tull Traisorat, Director of Treaty Division, Ministry of Foreign Affairs of the Kingdom of Thailand*
15:30 – 16:00	Discussion — Q & A
16:00 – 16:15	**Coffee Break**
Session 4 – Lessons-learnt and the Way Forward (60 minutes)	
	Brief Description: This session served to evaluate the good treaty management practices as well as the problems related to ASEAN treaty management practice identified in the course of the Workshop. It also identified issues involved in the conclusion and implementation of international agreements concluded by ASEAN as an intergovernmental organisation and by AMS as a whole with a view to looking into possibility of expediting the process of consultation and approval for such conclusion and discussed action(s) required to overcome the problems identified. This session required the participants to engage actively in the discussion. Moderator: **Associate Professor Robert C. Beckman**, CIL Head of Ocean Law and Policy Programme Rapporteurs: CIL Research Associate and LSAD Staff

Time	Agenda
16:15 – 17:15	All resource persons and participants engaged in the discussion on treaty management problems identified in the Workshop and recommendations to move forward
Closing Remarks	
17:25 – 17:35	Closing Remarks by CIL Director, Professor Lucy Reed

ANNEX II: SPEAKERS' BIOGRAPHIES

JILL BARRETT

Visiting Reader in the School of Law, Queen Mary University, London

Jill Barrett teaches public international law to postgraduate students at the School of Law, Queen Mary University, London. She is also Associate Member at 6 Pump Court Chambers and works independently as an international law consultant. Her areas of expertise include the law and practice of treaties, the Polar Regions, international environmental law and law of the sea. Until recently she was the Arthur Watts Senior Research Fellow in Public International Law at BIICL, and in 2013 she was Visiting Professor at Kobe University, Japan.

Formerly, she was Legal Counsellor at the Foreign and Commonwealth Office. During her 20-year FCO career she advised on legal aspects of UK foreign policy and represented the UK at numerous international conferences. She served as First Secretary (Legal) at the UK Mission to the UN in New York. She 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 supervised the work of FCO Treaty Section, developing new ways of delivering legal information, knowledge management and treaty services to the Government and the public.

ANA GÓMEZ HEREDERO

Head of the Treaty Office Unit, the Council of Europe

Ana Gómez Heredero joined the Council of Europe in 1995 and the legal service in 2014. She is the Head of the Treaty Office Unit within the Directorate of Legal Advice and Public International Law. Ana is in particular responsible for providing legal advice as regards draft treaties, for assisting states on procedures to become a party to Council of Europe treaties and for supervising the fulfilment of depositary functions by the Treaty Office.

Prior to the work at the DLPIL, Ana served in various positions in the legal field, i.e., at the Directorate of Legal Affairs, in the legal cooperation programmes with Central and Eastern Europe (coordinator for Armenia before its accession to the Organisation). She was also in charge of the legal and penal aspects of combatting drug abuse and illicit trafficking in drugs within the Pompidou Group. Ana was responsible of the social security sector within the social policy department and worked at the Department of the European Social Charter on collective complaints.

Ana obtained her degree in law at the University of Salamanca (Spain) and has post-graduate degrees on International relations and European law from the Universities of Amsterdam (Netherlands) and Lausanne (Switzerland). Ana has written two books: *Social Security—Protection at the International Level and Developments in Europe* and *Social Security as a Human Right*. The protection afforded by the European Convention on Human Rights". She is also author of a number of academic articles on international law and human rights.

RENA LEE

Senior State Counsel, International Affairs Division
Attorney-General's Chambers, Singapore

Rena Lee is Senior State Counsel with the International Affairs Division of the Attorney-General's Chambers in Singapore. She covers a range of issues in various areas of

international law, including law of the sea, boundary delimitation, human rights, climate change and privileges and immunities. Rena has been part of Singapore's delegation in several fora, both multilateral and bilateral, such as the UN and ASEAN. Within ASEAN, Rena was part of Singapore's delegation to the High Level Legal Experts Group (HLEG) on the Follow-up to the ASEAN Charter, as well as the SOM Working Group dealing with the remaining legal instruments under the ASEAN Charter, which worked on the 2011 Rules of Procedure for Conclusion of International Agreements by ASEAN, among others. She recently co-authored a book on ASEAN's External Agreements.

HAO DUY PHAN

Senior Research Fellow, Centre for International Law
National University of Singapore

Dr Hao Duy Phan is a Senior Research Fellow at the Centre for International Law (CIL), a university-wide research centre at the National University of Singapore (NUS). He is the author of many books and articles on various issues of international law. Prior to joining CIL, he worked as a legal expert at the Department of International Law and Treaties, Ministry of Foreign Affairs of Vietnam, and a visiting research fellow at the East-West Center in Washington D.C. and the Institute of Southeast Asian Studies in Singapore. Hao Duy Phan received a B.A. from the Institute for International Relations of Vietnam, an LL.M. from the University of Notre Dame Law School (*summa cum laude*), and an S.J.D. from the American University Washington College of Law.

<u>UN</u> SOVANNASAM

Director, Legal Services and Agreements Directorate
ASEAN Secretariat

Mr Un Sovannasam, a Cambodian national, is currently Director of the Legal Services and Agreements Directorate, the ASEAN Secretariat.

Prior to joining the ASEAN Secretariat in 2004, Mr Un was assigned to different portfolios in the Ministry of Foreign Affairs and International Cooperation of Cambodia. He carried out various legal related works and assignments, including legal review and opinion on international agreements and treaties. He also served as international law expert in the Cambodia Joint Border Committee to negotiate border treaty/agreement with neighbouring countries.

In 2009, following the entry into force of the ASEAN Charter and the ASEAN Secretariat-wide restructuring exercise, Mr Un was assigned to a newly established Legal Services and Agreements Division (LSAD). He assumed the post of the Head of LSAD in 2013. He went on to become the Director of the Legal Services and Agreements Directorate following the restructuring and upgrading of LSAD.

In addition to the support of the work of the ASEAN Law Ministers Meeting (ALAWMM) and other Sectoral bodies at both senior officials' and working groups' level, Mr. Un is also responsible for overseeing various legal services, ranging from corporate law to public international law to international economic, trade and investment law. He has been involved in negotiations of various agreements, including ASEAN FTAs with dialogue partners such as ASEAN-China FTA, ASEAN-Hong Kong, China FTA and RCEP.

TULL TRAISORAT

Director, Director of Treaty Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs of Thailand

Dr Traisorat completed his LL.M. from University of Cambridge and his Ph.D. in Law from University of London, United Kingdom. He has published a book and a number of academic articles on international banking and financial law, and has served as a lecturer and a research fellow in various universities in Thailand, United Kingdom and the USA. He served as a lawyer in Baker & McKenzie Ltd. before joining the Ministry of Foreign Affairs in 1999. Later, he was posted as First Secretary at the Permanent Mission of Thailand to the United Nations in New York, and has worked at the Office of the Minister of Foreign Affairs, Office of Thailand Trade Representative, Department of Treaties and Legal Affairs as well as Department of International Economic Affairs.

ANTHONY WETHERALL

Senior Research Fellow, Centre for International Law National University of Singapore

As a Senior Research Fellow at the Centre for International Law, National University of Singapore, Anthony is responsible for implementing the Government funded project on nuclear law and policy. A UK qualified lawyer, Anthony has some 15 years of experience advising on international and national legal, regulatory and commercial issues in the areas of nuclear safety, security and liability. Anthony has worked for twelve years in the IAEA Office of Legal Affairs (2002–2008 and 2010–June 2016). At UK law-firm Burges Salmon LLP (from 2008 to 2010), Anthony advised on a number of new-build, operational, decommissioning, transport and waste management projects, including a secondment into the UK's Nuclear Decommissioning Authority.

RANYTA YUSRAN

Research Fellow, Centre for International Law
National University of Singapore

Ranyta is a Research Fellow at the Centre for International Law (CIL), a university-wide research centre at the National University of Singapore (NUS). Her research interests at CIL include treaty law and practice, ASEAN law and policy, transnational crime and international dispute settlement. Prior to joining CIL, Ranyta worked as a consultant and development planner at the Directorate of Law and Human Rights of the Ministry of National Development Planning in Indonesia, focusing on anti-corruption, civil and political rights, effectiveness of development grants, and access to justice. She clerked at the Jurisdiction, Cooperation and Complementarity Division of the Office of the Prosecutor, International Criminal Court in 2009. Ranyta received her LL.B in Public International Law from University of Indonesia and her LL.M in International Human Rights Law from Lund University, Sweden.

ANNEX IV: LIST OF WORKSHOP PARTICIPANTS

ASEAN Member States

No.	Name	Designation	Institution	Country
CPR				
1.	Noor Isra Faizura Ismail	Research Officer	Ministry of Foreign Affairs and Trade	Brunei Darussalam
2.	Safwan Sulaiman	Second Secretary	Permanent Mission of Brunei Darussalam to ASEAN	Brunei Darussalam
3.	Soeung Solida	Official at General Department of ASEAN	Ministry of Foreign Affairs and International Cooperation	Cambodia
4.	Smann Vannthida	IRDP Department	Ministry of Justice	Cambodia
5.	Ngo Salong	IRDP Department	Ministry of Justice	Cambodia
6.	Yom Pharot	Deputy Director of Cabinet	Ministry of Justice	Cambodia
7.	Sam Pracheameanith			Cambodia

No.	Name	Designation	Institution	Country
8.	Buon Somonn			Cambodia
9.	Sam Sokcheat			Cambodia
10.	Aloysius Selwas Taborat		Directorate for Treaties on Political Security and Territorial Affairs	Indonesia
11.	Muhammad Syafri		Permanent Mission of the Republic of Indonesia to ASEAN	Indonesia
12.	Rama Yudo Wirawan		Permanent Mission of the Republic of Indonesia to ASEAN	Indonesia
13.	Kanya Khammoungkhoun	Deputy	Permanent Mission of the Lao PDR to ASEAN	Lao PDR
14.	Raja Intan Nor Zareen	Director	Ministry of Foreign Affairs and Legal Affairs	Malaysia
15.	Prisheela Prakas	First Secretary	Permanent Mission of Malaysia to	Malaysia

No.	Name	Designation	Institution	Country
			ASEAN	
16.	Tan Hung Seng	Ambassador	Permanent Mission of Singapore to ASEAN	Singapore
17.	John Paul T. Samonte	Third Secretary	Permanent Mission of the Philippines to ASEAN	The Philippines
18.	Busadee Santipitaks	Ambassador	Permanent Mission of the Thailand to ASEAN	Thailand
19.	Manasawee Tonyoopaiboon	First Secretary	Department of Treaties and Legal Affairs	Thailand
20.	Nguyen Thanh Trung	Legal Officer	Department of International Law and Treaties, Ministry of Foreign Affairs	Viet Nam
21.	Vuong Viet Anh	Third Secretary	Permanent Mission of Viet Nam to ASEAN	Viet Nam

No.	Name	Designation	Institution	Country
ASLOM				
1.	H.E. Tanheang Davann	General Director of Justice Development	Ministry of Justice	Cambodia
2.	Ardiningrat Hidayat	Assistant Deputy Director for MLA Treaties	Ministry of Law and Human Rights	Indonesia
3.	Vilakone Somsanith	Acting Director of ASEAN Affairs Division	Department of Planning and Cooperation	Lao PDR
4.	Al Muhammad Mukmin bin Abd Ghani	Senior Federal Counsel	The Attorney General's Chambers of Malaysia	Malaysia
5.	Dr Thida Oo (Ms)	Director General	Union Attorney General's Office	Myanmar
6.	Carmeline Q. Viniegra	State Counsel IV	Department of Justice	Philippines
7.	Rena Lee	Senior State Counsel	Attorney-General's Chambers	Singapore
8.	Mr Muhammad Izwan Wong	Assistant Executive	Attorney-General's Chambers	Singapore
9.	Dr Tull Traisorat	Director of Treaty Division	Department of Treaties and	Thailand

No.	Name	Designation	Institution	Country
			Legal Affairs	
10.	Lai The Anh	Head of Division, Legal International Cooperation Management, Department of International Cooperation	Ministry of Justice	Viet Nam

ASEAN Secretariat

No.	Name	Designation	Directorate/Division
ASEAN Political-Security Community (APSC) Department			
1.	Leena Ghosh	Assistant Director	Human Rights Division
2.	Tarika Wongsinsirikul	Assistant Director	Political Cooperation Division 1
3.	Nguyen Thi Than Thoo Nguyen	Assistant Director	Political Cooperation Division 2
4.	Pham Thi Thu Huong	Senior Officer	External Relations Division 1
ASEAN Economic Community (AEC) Department			
5.	Ho Quang Trung	Director	Market Integration Directorate
6.	Wan Joon Lian	Assistant Director	IAI & NDG Division

No.	Name	Designation	Directorate/Division
7.	Nora'in Ali	Assistant Director	Enterprise & Stakeholders Engagement Division
8.	Mark Andrew C. Herrin	Senior Officer	Competition, Consumer Protection & IPR Division
9.	Anita Komala	Technical Officer	Competition, Consumer Protection & IPR Division
10.	Fika Yulialdina Hakim	Technical Officer	Competition, Consumer Protection & IPR Division
11.	Aung Soe Moe	Senior Officer	Transport Division
12.	Tan Tai Hiong	Assistant Director	Service and Investment Division
13.	Wai Mun Hong	Senior Officer	Service and Investment Division
14.	Madelyne Almazora	Senior Officer	Service and Investment Division
15.	Sovyana Putranti	Technical Officer	Service and Investment Division
16.	Hilvy Bratakusuma	Technical Officer	Service and Investment Division
17.	Nurul Imlati	Technical Officer	Service and Investment Division
18.	Rulli Rizki	Technical Officer	Finance Integration

No.	Name	Designation	Directorate/Division
			Division
19.	Debie Meliala	Technical Officer	Finance Integration Division
20.	Dian Wahyuni	Technical Officer	Finance Integration Division
21.	Joseph Arbiol	Senior Officer	Food, Agriculture & Forestry Division
22.	Fajar Hidayat	Assistant Director	External Economic Relations Division
23.	Hoang Thi Yai Yen	Senior Officer	External Economic Relations Division
24.	Febru Ario Nugroho	Senior Officer	External Economic Relations Division
25.	Angga Airlangga	Technical Officer	External Economic Relations Division
26.	Syed Sagoff Alsagoff	Senior Officer	Standards and Conformance Division
27.	Poppy Luciana Sitompul	Technical Officer	Standards and Conformance Division
ASEAN Socio-Cultural Community (ASCC) Department			
28.	Saroj Srisai	Assistant Director	Environment Division
29.	Rocky Pairunan	Technical Officer	Environment Division
Community and Corporate Affairs (CCAD) Department			

No.	Name	Designation	Directorate/Division
30.	AKP Mochtan	Deputy of Secretary General	CCAD Department
31.	Un Sovannasam	Director	Legal Services and Agreements Directorate
32.	Nadya Fanessa	Senior Officer	International Economic & Trade Law Division
33.	Sendy Hermawati	Senior Officer	Treaty Division
34.	Elisa Intania	Technical Officer	Treaty Division
35.	Dian Kusumawardhani	Technical Assistant	Treaty Division
Office of the Secretary-General			
36.	Lim Chze Cheen	Director	ASEAN Connectivity Directorate
37.	Gizella Marie A. Herrera	Senior Officer	ASEAN Connectivity Division
38.	Tia Safitri Djaharani	Technical Assistant	Executive Support Division
Attachment Officers			
39.	Prom Thol	Attachment Officer	Services and Investment Division
40.	Phann Sophea	Attachment Officer	Education, Youth & Sports Division

CIL, GIZ, Resource Persons and Observers

No.	Name	Designation	Institution
ASEAN Political-Security Community (APSC) Department			
1.	Prof Lucy Reed	Director	CIL
2.	Assoc Prof Robert C. Beckman	Head of Ocean Law and Policy	CIL
3.	Sharon Seah	Associate Director	CIL
4.	Anthony Wetherall	Senior Research Fellow	CIL
5.	Ranyta Yusran	Research Fellow	CIL
6.	Hadyu Ikrami	Research Associate	CIL
7.	Timo Goosman	First Secretary, ASEAN Affairs	German Embassy
8.	Nicole Heppner		GIZ
9.	Joerg Hager		GIZ
10.	Vera Tjandrawinata		GIZ
11.	Nurul Imany		GIZ
12.	Jill Barrett	Visiting Reader	Queen Mary University of London
13.	Ana Gómez Heredero	Head	Treaty Unit, Council of Europe
14.	Assoc Prof Hitoshi Nasu	Lecturer	Australian National University

ANNEX V: PARTICIPANTS' EVALUATION OF THE WORKSHOP

At the end of the Workshop, we distributed evaluation forms to the participants, which they could fill out anonymously. The completed forms, which are on file with CIL, were then collated and analysed. The result is presented below, and **each answer given by the highest number of respondents is highlighted in yellow.**

Total respondents: 18

I. Rating of the Overall Workshop

Rank	Answer	No. of answers	Total respondents who answered this question	%
1	Excellent	7	14	50%
2	Good	6	14	42.8%
3	Fair	1	14	7%
4	Poor	0	14	0%
Note: Four respondents did not answer this question.				

II. Rating of Each Session

Session 1: The Role of a Treaty Office in Managing Treaties/Instruments

1. An Overview of the Role of the Secretariat in Managing International Treaties (Speaker: Ms Jill Barret)

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	**Answer**	**No. of answers**	**Total respondents**	**%**	**Rank**	**Answer**	**No. of answers**	**Total respondents**	**%**
1	Excellent	11	18	61%	1	Excellent	9	18	50%
2	Good	6	18	33%	2	Good	6	18	33%
3	Fair	1	18	5.5%	3	Fair	3	18	16.6%
4	Poor	0	18	0%	4	Poor	0	18	0%

2. The Role of the Council of Europe (COE) Treaty Office in Managing International Treaties and CoE Instruments (Speaker: Ms Ana Gómez Heredero)

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	**Answer**	**No. of answers**	**Total respondents**	**%**	**Rank**	**Answer**	**No. of answers**	**Total respondents**	**%**
1	Excellent	10	18	55.5 %	1	Excellent	8	18	44%
2	Good	6	18	33%	2	Good	6	18	33%
3	Fair	2	18	11%	3	Fair	4	18	22%
4	Poor	0	18	0%	4	Poor	0	18	0%

3. The Role of the International Atomic Energy Agency (IAEA) Treaty Office in Managing IAEA Instruments (Speaker: Mr Anthony Wetherall)

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	**Answer**	**No. of answers**	**Total respondents**	**%**	**Rank**	**Answer**	**No. of answers**	**Total respondents**	**%**
1	Excellent	9	18	50%	1	Excellent	7	18	38.8%
2	Good	7	18	38.8 %	2	Good	6	18	33%
3	Fair	2	18	11%	3	Fair	5	18	27.7%
4	Poor	0	18	0%	4	Poor	0	18	0%

4. The Role of the ASEAN Treaty Division in Managing International Treaties and ASEAN Legal Instruments (Speaker: Mr Un Sovannasam)

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	Answer	No. of answers	Total respondents	%	Rank	Answer	No. of answers	Total respondents	%
1	Excellent	10	18	55.5 %	1	Excellent	9	18	50%
2	Good	8	18	44%	2	Good	8	18	44%
3	Fair	0	18	0%	3	Fair	1	18	5.5%
4	Poor	0	18	0%	4	Poor	0	18	0%

5. Rating of the overall session

Rank	Answer	Number of answers	Total respondents who answered this question	Percentage
1	Excellent	9	16	56.25%
2	Good	6	16	37.5%
3	Fair	1	16	6.25%
4	Poor	0	16	0%

Note: One respondent did not answer this question. Another respondent provided an invalid response by rating the overall session as "9/10".

Session 2: Treaty Practice Related to Agreements Concluded by an International Organisation (IO): IO's and Member States' Internal Procedures

1. **Overview & Internal Procedure of the UK on Conclusion of International Agreements by an IO to Which It Is a Member (Speaker: Ms Jill Barrett)**

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	Answer	No. of answers	Total respondents	%	Rank	Answer	No. of answers	Total respondents	%
1	Excellent	11	18	61%	1	Excellent	10	18	55.5%
2	Good	6	18	33%	2	Good	6	18	33%
3	Fair	1	18	5.5%	3	Fair	2	18	11%
4	Poor	0	18	0%	4	Poor	0	18	0%

2. Internal Procedure on the Conclusion of International Agreements by the CoE (Speaker: Ms Ana Gómez Heredero)

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	**Answer**	**No. of answers**	**Total respondents**	**%**	**Rank**	**Answer**	**No. of answers**	**Total respondents**	**%**
1	Excellent	12	18	66.6%	1	Excellent	9	18	50%
2	Good	5	18	27.7%	2	Good	5	18	27.7%
3	Fair	1	18	5.5%	3	Fair	4	18	22%
4	Poor	0	18	0%	4	Poor	0	18	0%

3. Internal Procedure on the Conclusion of International Agreements by the IAEA (Speaker: Mr Anthony Wetherall)

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	**Answer**	**No. of answers**	**Total respondents**	**%**	**Rank**	**Answer**	**No. of answers**	**Total respondents**	**%**
1	Excellent	11	18	61%	1	Excellent	8	18	44%
2	Good	5	18	27.7%	2	Good	5	18	27.7%
3	Fair	2	18	11%	2	Fair	5	18	27.7%
4	Poor	0	18	0%	3	Poor	0	18	0%

4. Rating of the overall session

Rank	Answer	Number of answers	Total respondents who answered this question	Percentage
1	Excellent	9	15	60%
2	Good	5	15	33%
3	Fair	1	15	6.6%
4	Poor	0	15	0%
Note: Two respondents did not answer this question. Another respondent provided an invalid response; he/she rated the overall session as "9/10".				

Session 3: Treaty Practice Related to Agreements Concluded by ASEAN: ASEAN and Member States' Internal Procedures

1. **Past & Present ASEAN Practice in Concluding International Agreements (Speaker: Ms Ranyta Yusran)**

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	Answer	No. of answers	Total respondents	%	Rank	Answer	No. of answers	Total respondents	%
1	Good	9	18	50%	1	Good	9	18	50%
2	Excellent	8	18	44%	2	Excellent	7	18	38.8%
3	Fair	1	18	5.5%	3	Fair	2	18	11%
4	Poor	0	18	0%	4	Poor	0	18	0%

2. Rules of Procedure for Conclusion of International Agreements by ASEAN (Speaker: Mr Un Sovannasam)

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	**Answer**	**No. of answers**	**Total respondents**	**%**	**Rank**	**Answer**	**No. of answers**	**Total respondents**	**%**
1	Excellent	10	18	55.5%	1	Excellent	9	18	50%
2	Good	8	18	44%	2	Good	8	18	44%
3	Fair	0	18	0%	3	Fair	1	18	5.5%
4	Poor	0	18	0%	4	Poor	0	18	0%

3. Internal Procedure of Singapore on Conclusion of an Agreement by ASEAN (Speaker: Ms Rena Lee)

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	**Answer**	**No. of answers**	**Total respondents**	**%**	**Rank**	**Answer**	**No. of answers**	**Total respondents**	**%**
1	Excellent	11	18	61%	1	Excellent	9	18	50%
2	Good	7	18	38.8%	2	Good	8	18	44%
3	Fair	0	18	0%	3	Fair	1	18	5.5%
4	Poor	0	18	0%	4	Poor	0	18	0%

4. Internal Procedure of Thailand on Conclusion of an Agreement by ASEAN (Speaker: Dr Tull Traisorat)

Aspect assessed									
Knowledge of subject matter					Ability to hold participants' interest				
Rank	**Answer**	**No. of answers**	**Total respondents**	**%**	**Rank**	**Answer**	**No. of answers**	**Total respondents**	**%**
1	Excellent	10	18	55.5%	1	Excellent	8	18	44%
2	Good	7	18	38.8%	2	Good	8	18	44%
3	Fair	1	18	5.5%	3	Fair	2	18	11%
4	Poor	0	18	0%	4	Poor	0	18	0%

Session 4: Lessons Learnt and the Way Forward

Rating of the overall session

Rank	Answer	Number of answers	Total respondents who answered this question	Percentage
1	Excellent	8	16	50%
2	Good	7	16	43.75%
3	Fair	1	16	6.25%
4	Poor	0	16	0%
Note: Two respondents did not answer this question.				

III. Answers to Specific Questions

Below are the answers of the respondents to specific questions that we asked. **All the following answers were copied verbatim from the evaluation forms.** The numbering of the answers is not based on any particular order.

1. Are there any topics which we spent <u>too little</u> time on? If yes, which one(s)?

No.	Answer
1.	The focus of this workshop is to have best practices on, among others, the management of international treaties. This issue however was not raised/discerned by the moderator.
2.	No, it's appropriate time for all subjects.
3.	Everything is OK.
4.	No.
5.	Treaty practice related to Agreement concluded by ASEAN, and AMS internal procedures.
6.	Yes, all of them should have been a 2 days-workshop.
7.	—
8.	Session 1—The role of treaty office in managing treaties/instruments.
9.	Session 3.
Note: Eight respondents left the answer box blank. One respondent has illegible handwriting.	

2. Are there any topics which we spent <u>too much</u> time on? If yes, which one(s)?

No.	Answer
1.	Session 1 & Session 2.
2.	No.
3.	—
4.	Nil.
5.	No.
6.	OK.
7.	Non.
8.	No.
Note: Ten respondents left the answer box blank.	

3. Are there any topics which we should have covered but did not cover? If yes, what would it/they be?

No.	Answer
1.	The management of international treaties.
2.	No.
3.	—
4.	– More workshop on how ASEAN MS should "harmonize" their domestic law to ease/facilitate ASEAN Agreement. – ASCCD agreements must be elevated in numbers as their

No.	Answer
	policies touch people's lives.
5.	Focusing on ROPCIA.
6.	—
7.	NA.
8.	The type of training that non-legally trained treaty officers should undergo before assuming the role.
9.	T/
Note: Ten respondents left the answer box blank.	

IV. Individual Comments and/or Suggestions

In this section, we asked the respondents to provide any comments and/or suggestions that they might have had. **For the purpose of this Report, we have edited the grammar and style of the comments and/or suggestions.** The numbering of the answers is not based on any particular order.

No.	Answer
1.	Workshop should provide Q&As in-between presentations. More time should be spent on Q&As.
2.	The workshop should give more opportunities to representatives from ASEAN Member States to present the legal issues & procedures in negotiating, drafting, and concluding treaties on their respective countries and discuss problems/challenges that they are facing now on this subject.

No.	Answer
3.	A [illegible] requisite for understanding Treaty practice. Thank you.
4.	Very informative workshop, but it should have been longer.
5.	The topics discussed are very enlightening. The issues raised are lively and current. Kudos!
6.	So many issues arise from treaty practice, management, internal procedure, but short time, within one day.
7.	The workshop has generated valuable input on ASEAN agreements. More should be held in the future, in which the inputs should be positively contributing to the improvement of ASEAN agreements or international legal system.
8.	I prefer to have another seminar on other topics related to the ASEAN community.
9.	Suggestions: 1) To include an app-based questionnaire system, such as a website that uses barcodes, so questions can also be sent online to the speakers 2) To have an informal roundtable session 3) To have discussion groups
Note: Eight respondents left the answer box blank. One respondent has illegible handwriting.	