



# TREATY MAKING PROCESS

Public Officers' Law Seminar :  
Understanding the Law  
26<sup>th</sup> and 27<sup>th</sup> October 2016

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# Outline of Presentation

- What is a Treaty?
- How to make a Treaty?
- How to conclude a Treaty?
- How to change or stop a Treaty?



# What?

- Vienna Convention on the Law of Treaties 1969
- Article 2(1) defines a 'treaty' as:  
“an **international agreement** concluded **between States** in **written form** and **governed by international law**, whether **embodied in a single instrument or in two or more** related instruments and **whatever its particular designation**”



# 6 elements of a Treaty

**“an international agreement”**

**“concluded between states”**

**“in written form”**

**“governed by international law”**

**“whether embodied in a single or more number of instruments”**

**“whatever its designation”**



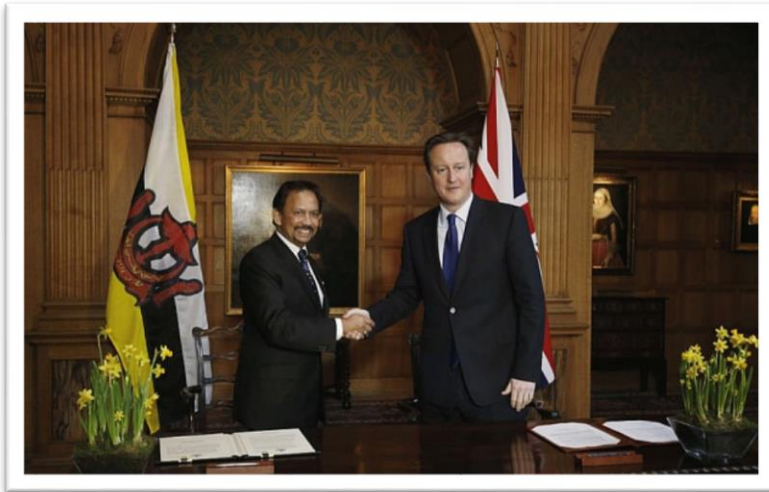
# ***“an international agreement”***

- International character
- Inter-state, inter-governmental, inter-ministerial, international organisations
- Universal or regional
- Bilateral, multilateral or plurilateral





## *“concluded between States”*



- ✓ State and another State
- ✓ State and an international organisation
- ✗ State and international or multinational company
- ✗ Non-state institution and foreign non-state institution



## *“in written form”*

- Excludes oral agreements
- Allow for modern technology eg. Fax, email
- Permanent and readable form





# *“governed by international law”*

## ■ Two aspects:

1. Rights and obligations created under international law



2. Distinct from rights and obligations under domestic law





***“whether embodied in a single instrument or in two or more related instruments”***

- Framework Agreement
- Additional Protocols
- Annexes, appendices and schedules
- Side letters and exchange of notes



# ***“whatever its particular designation”***

- No systematic use of titles
- Convention, Agreement, Treaty
- MOUs, Declarations, Exchange of Notes
- Content is more crucial



## Differences with MOU

- Publicly available
- Specific rights and obligations
- Formal
- Dispute settlement
- Funding involved



# Drafting Process

## ■ Negotiations

- Bilateral: e.g. BJEPA, Visa Exemptions
- Multilateral: UN Conventions



- Plurilateral: Trans Pacific Partnership Agreement
- Regional: ASEAN



# Drafting Terminology

Treaties (Legally Binding)	MOUs ( Non Legally Binding)
Shall	May
Have agreed as follows	Have entered into the following undertaking
Agree	Accept/approve
Done	Signed
Article	Paragraph
Enter into force	Come into effect



# How to Conclude

“Consent to be Bound”

Vs

“Entered into Force”



# How to Conclude

- Legal Scrubbing
- Powers to Conclude
- Signature
- Ratification
- Accession



# Legal Scrubbing

- Drafting Guidelines
- Editorial amendments
- No substantive changes





# Powers to Conclude

- Full Powers
- Automatic:
  - ✓ Heads of States, Govts and Foreign Ministries
  - ✓ Heads of diplomatic missions
  - ✓ Accredited representatives



# Consent to be bound

- Article 11, VCLT

“The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed”



# Signature

Definitive	Simple
Bilateral/ few members	More than 6 member states
No need for parliamentary approval	Some or all states need to obtain parliamentary approval
No need for new implementing laws	Further action needed before entry into force





# Ratification

- Display of “consent to be bound” on the **international plane**
- Different from need for parliamentary approval
- AGC’s position: “ratify ready”



# Ratification

- ***Why more time?***

Require legislation

Require Parliamentary Approval

Consider any implications



# Ratification

- Instrument of Ratification( MOFAT )
- Full Powers

■ Must identify:

**Title**

**When &  
where  
Concluded**

**Who is  
signing**

**When  
&  
where  
issued**

- Treaty Depository



# Accession

- Usually, where State unable to sign
- Multilateral treaties
- Instrument of Accession



# Entry into force

- Legally bound
- Only on countries who have expressed CTTB
- Manner of entry into force:
  - Specified date
  - After a certain number of countries expressed CTBB
  - Proportion of GDP





# Amendment

- Bilateral
- Multilateral
- Supplementary Treaties (amending Protocols)



# Duration

- Specified time period
- Automatic renewal vs Review process
- Extension of Treaties



# Termination

- Conclusion of implementation
- Renewed by a new Treaty
- Breach
- Supervening impossibility of performance
- Fundamental change of circumstances



# QUESTION AND ANSWER SESSION

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**THANK YOU**

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