

# TREATY MAKING PROCESS BRUNEI'S PERSPECTIVE

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# Why Are Treaties Important?

- ▶ Source of International Law
- ▶ Satisfy the fundamental needs of States

# Outline of Presentation

- **What is a Treaty?**
- **Treaty Making Process – Brunei's Perspective**

# Definition

- ▶ 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”*

## International Character

- Between countries
- International organisations

# “*an international agreement*” cont

## Bilateral or multilateral

- ▶ Bilateral – between **two countries**
- ▶ The Brunei-Japan Economic Partnership Agreement (BJEPA)
  
- ▶ Multilateral – between **two or more countries**
  - ▶ Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (11 Countries)
  - ▶ The Regional Comprehensive Economic Partnership (RCEP) (15 Countries)
  - ▶ United Nation Conventions (up to 193 Countries)

# “concluded between States”

## Applies:

- Between State and another State
- Between State and international organisations
- Between international organisation

# *“In Written Form”*

Exclude  
Oral  
Agreement

Readable

Language?

# “*governed by international Law*”

- ▶ What are considered as international Law?
  1. Treaty law
  2. International law recognized by custom (Customary International Law)
  3. General principles of international law

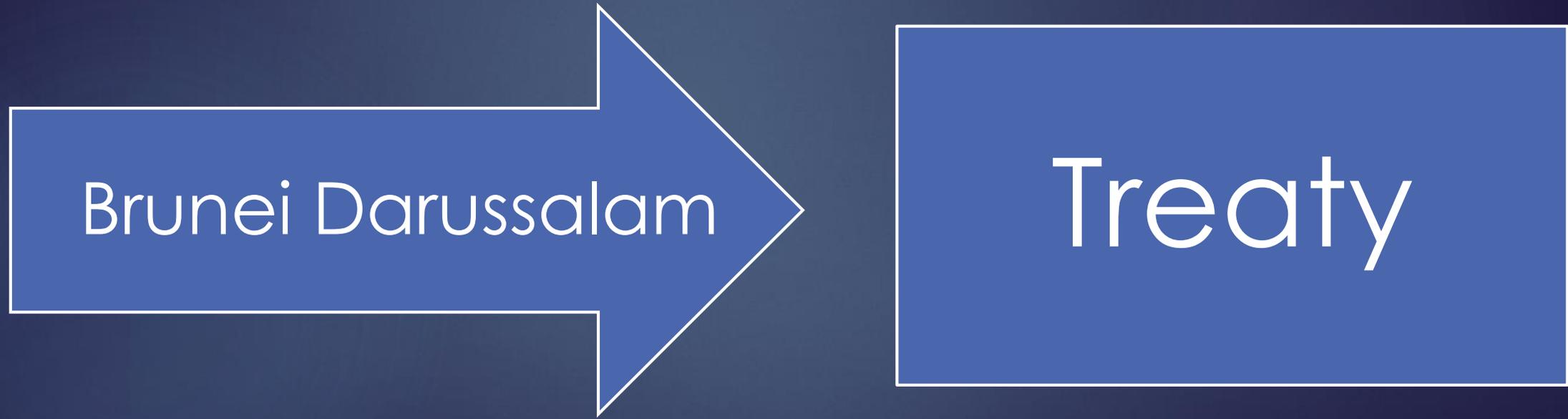
*“whether embodied in a single instrument or in two or more related instruments”*

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

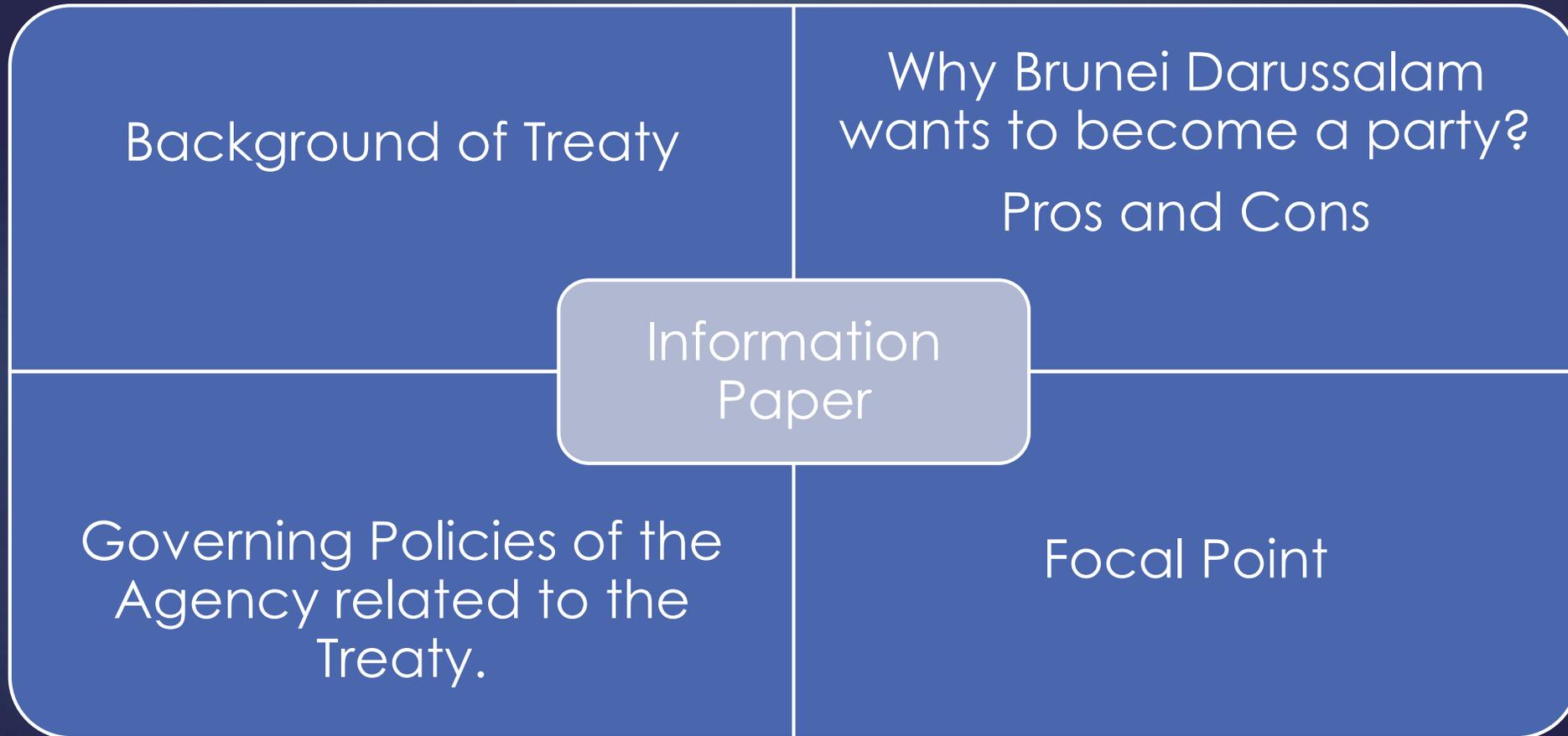
*“whatever its particular designation”*

- ▶ No systematic use of titles:  
Convention, Agreement, Treaty
- ▶ Content is more crucial

# Treaty Making Process: The Brunei's Perspective



# Step 1: Lead Agency Will Write to AGC for Legal Advice



# Step 1: Lead Agency Will Write to AGC for Legal Advice (Cont')

## Summary:

1. Who?
2. What?
3. Why?
4. When?
5. How?

# Step 2: AGC will provide legal opinion and recommendations

## Legal Opinion & Recommendations:

- ▶ Highlight the obligations of the treaty
- ▶ Analysis of the relevant existing laws
- ▶ Highlight whether there is a need to **amend existing laws** or **introduce new laws**.
- ▶ Make recommendations to consult other agencies.
- ▶ Proposal for **reservation** (exclude or modify part of the Treaty)

## STEP 3: Relevant Agency to Consider AGC's Legal Opinion & Recommendation

### ▶ **Internal Consultations**

- To any address any policy concerns and/or legal issues raised by AGC
- To consider further negotiation

### ▶ **inter-agency consultation**

- Implication of policy with other agencies
- Consider amending existing laws, introducing new laws or policies

## Step 4: AGC will provide further opinion for final submission for consent of His Majesty

- ❑ Negotiation has completed
- ❑ All policy cleared
- ❑ Issues related to amendments or introducing new laws are settled.

### **AGC Endorsement:**

- ▶ Final review of the treaty
- ▶ Legal scrubbing (if possible)
- ▶ Preparation of the instrument of **Full Power/Accession/Ratification** (if requested)

# Why Accession/Ratification?

- Indicates the State has agreed to become a party to treaty.
- To undertake the legal rights and obligation of the treaty upon entry into force.

# STEP 5: Submission of Instrument of Accession/Ratification/Full Power

Consent of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam

Submission of the instrument of Accession/Ratification by:

1. The Minister of Foreign Affairs; or
2. The Minister of the relevant agency (with Full Powers)

# Full Powers

What is an Instrument of full power:

- Authorisation of **any person** to sign a treaty on behalf of a State.

Instrument of Full Powers are not required for:

- Head of State/Government; or
- Minister for Foreign Affairs.

# Summary of The Process

1. Agency will write to AGC

2. AGC will provide legal views

3. Consultation

4. AGC Endorsement

5. Submission of Relevant Instruments



# QUESTION AND ANSWER SESSION



# Thank You

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