



TREATY MAKING PROCESS BRUNEI'S PERSPECTIVE

Public Officers' Law Seminar :
Understanding the Law
11th and 13th November 2017

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Outline of Presentation

- **What is Public International Law?**
- **An Overview - International Affairs Division of the AGC**
- **Treaty Making Process – Brunei's Perspective**



What is Public International Law?

- State to State relationship
- International Organisations
- Governing the Rules and Conduct of States



Importance of Public International Law

- ✓ Certain issues cannot be resolved by a single State
- ✓ Maintain peace, harmony and mutual cooperation



Areas of Public International Law

Law of
Treaties

Law of the Sea

Maritime Law

International
Trade Law

Intellectual
Property

International
Environmental
Law

Bilateral and
Multilateral
Negotiations

International
Criminal Law

Civil Aviation
and Outer
Space

Terrorism

Privileges and
Immunities

International
Dispute
Settlement

Disarmament
and Arms
Control

International
Organisations

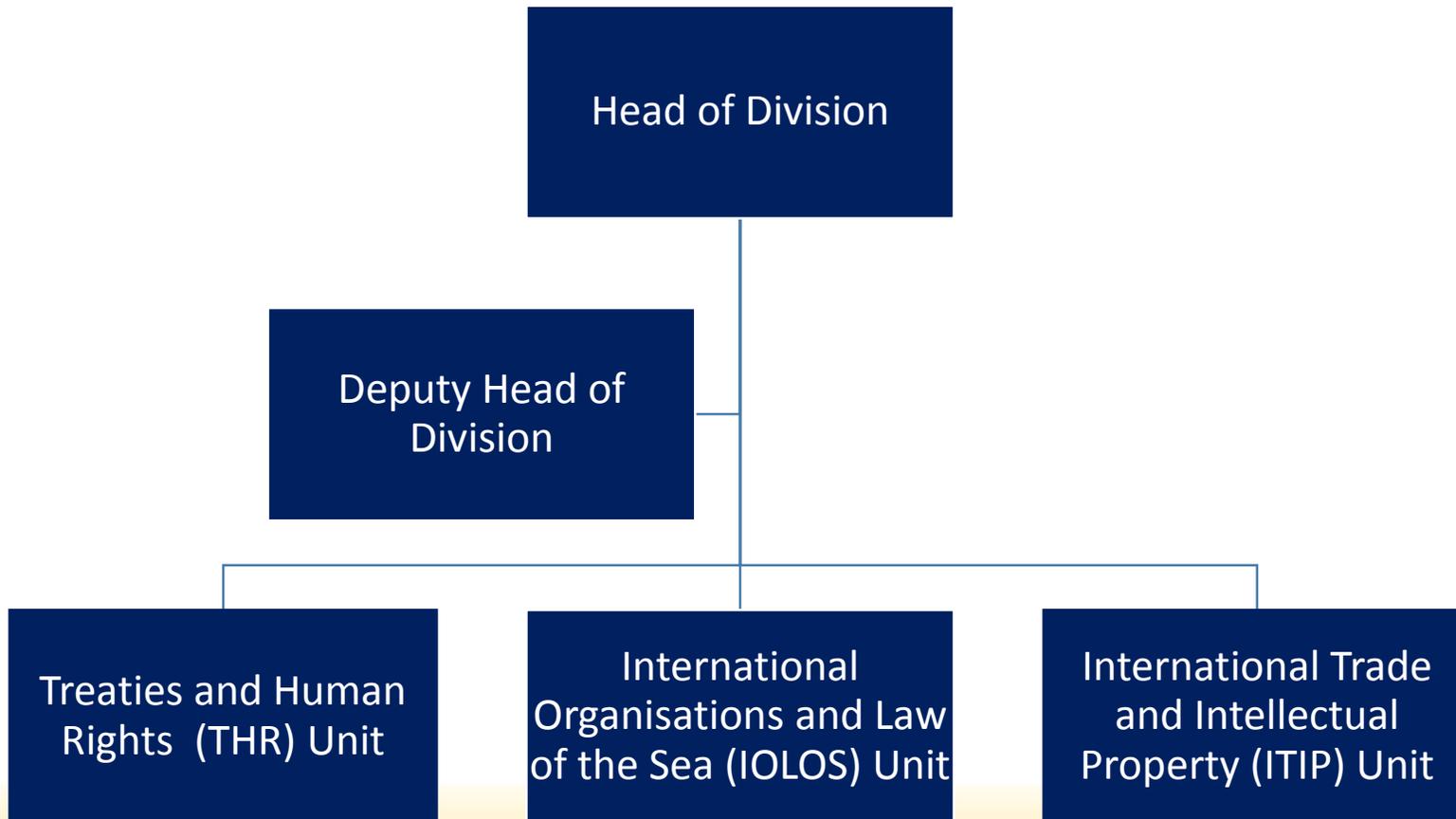
International
Banking and
Finance

Military
Cooperation

Human Rights



Organisational structure of IAD





Scope of Work

Responsible for all legal issues

between states (G to G) and

between states and international organisations

based on principles of **public international law.**



Terms of Reference

- ❖ Preparing opinions and recommendations upon joining a treaty or an International Organisation
- ❖ Negotiating, drafting, vetting, legally scrubbing and interpreting various international instruments
- ❖ Attending international meetings as BD representative Preparing legal opinions based on public international law
- ❖ Members of national committees relating to BD's international obligations
- ❖ Preparing country reports, advising, monitoring and implementing BD's international obligations



TREATY MAKING PROCESS

❖ Vienna Treaty 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”



Examples of Agreements/MOUs

▪ Agreements

- BN–Malaysia Agreement on Economic Cooperation
- BN-Philippines Agreement on Cultural Cooperation
- Agreement/Exchange of Notes on Visa Exemption
- ASEAN Agreements
- Transpacific Partnership Agreement
- UN Treatys

▪ MOUs

- MOU between BN-Russia on Cooperation
- MOU BN-Kuwait on Tourism Cooperation
- MOU BN-Singapore on Defence Technology Cooperation
- MOU BN-Viet Nam on Cultural Cooperation



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United Kingdom



Indonesia



Qatar



South Korea



Malaysia



China





Treaty Making Process – Brunei's Perspective

Treaty X

Brunei intends to become a state party



Treaty Making Process – Brunei's Perspective

Step 1:

Relevant Agency will write to AGC for legal
advice

Information Paper: Background information, policies of
the relevant agency

*Focal Point of Contact



Treaty Making Process – Brunei's Perspective

STEP 2:

AGC (IAD) will provide a 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



Treaty Making Process – Brunei Perspective

STEP 3:

Relevant Agency will consider
further – inter-agency consultation

- To clarify on the policies
- Implication to policies of other agencies
 - Consultations
 - Get Directions
- Consider amending existing laws or introducing new laws



Treaty Making Process – Brunei's Perspective

STEP 4:

AGC (IAD) will provide further opinion – legally
in order for final submission for His Majesty's
consent

- When all the policy issues are cleared
- Amendment to the existing laws or new law is finalized
 - AGC endorsement – legally in order
- Draft Instrument of Accession/Ratification – including reservations if any.



Treaty Making Process – Brunei's Perspective

STEP 5:

Instrument of accession/ratification

- Consent of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam
 - Submission of the Instrument of Accession/Ratification by Ministry of Foreign Affairs and Trade or Minister of relevant agency (having the instrument of Full Powers)



Treaty Making Process – Brunei's Perspective

- Accession/Ratification?

Article 2 of the VCLT means an act whereby a State establishes on the international plane its consent to be bound by a treaty

Article 11, VCLT further provides

- “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”



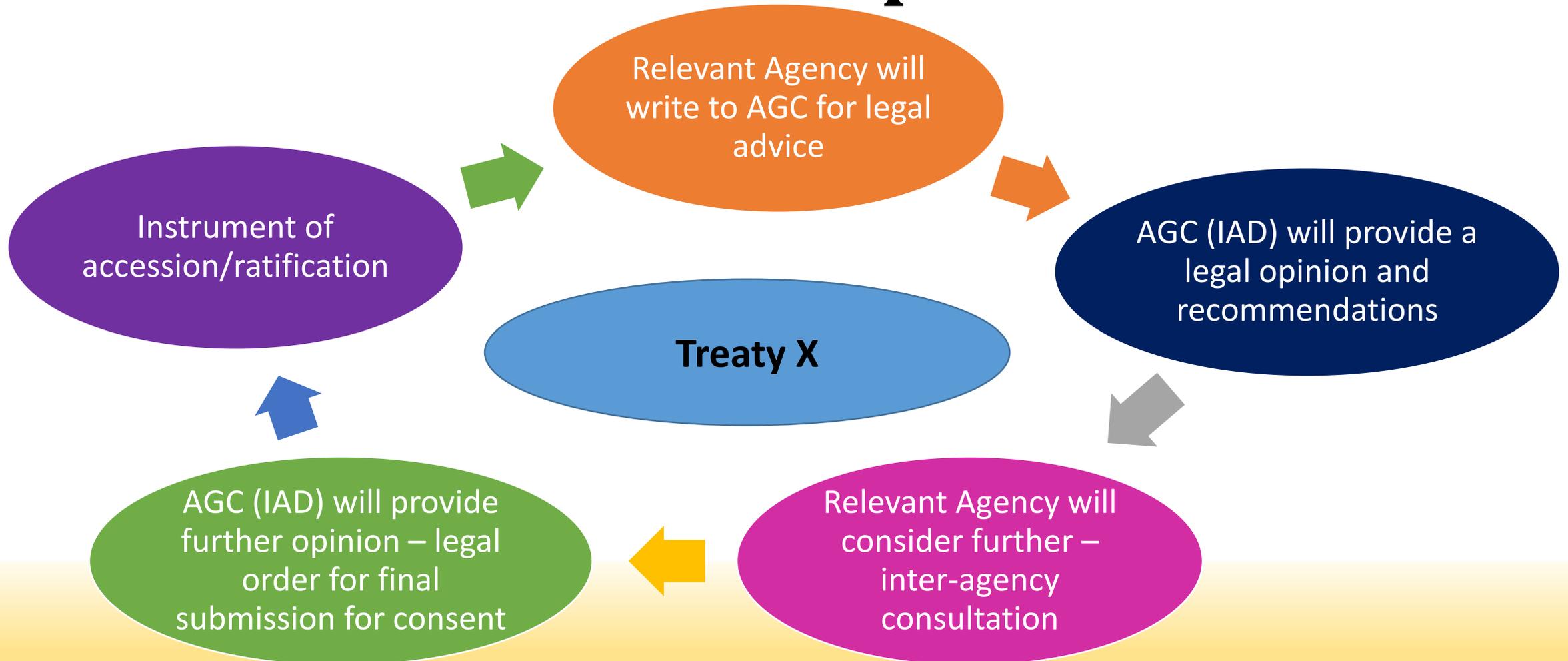
Treaty Making Process – Brunei's Perspective

Instrument of Full Powers?

Article 7 of the VCLT – only Head of State, Heads of Government and Ministers for Foreign Affairs, Head of Diplomatic Mission



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QUESTION AND ANSWER SESSION

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THANK YOU

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