



# TREATY MAKING PROCESS BRUNEI'S PERSPECTIVE

Sharifah Afizah  
International Affairs Division

[afizah.ali@agc.gov.bn](mailto:afizah.ali@agc.gov.bn)



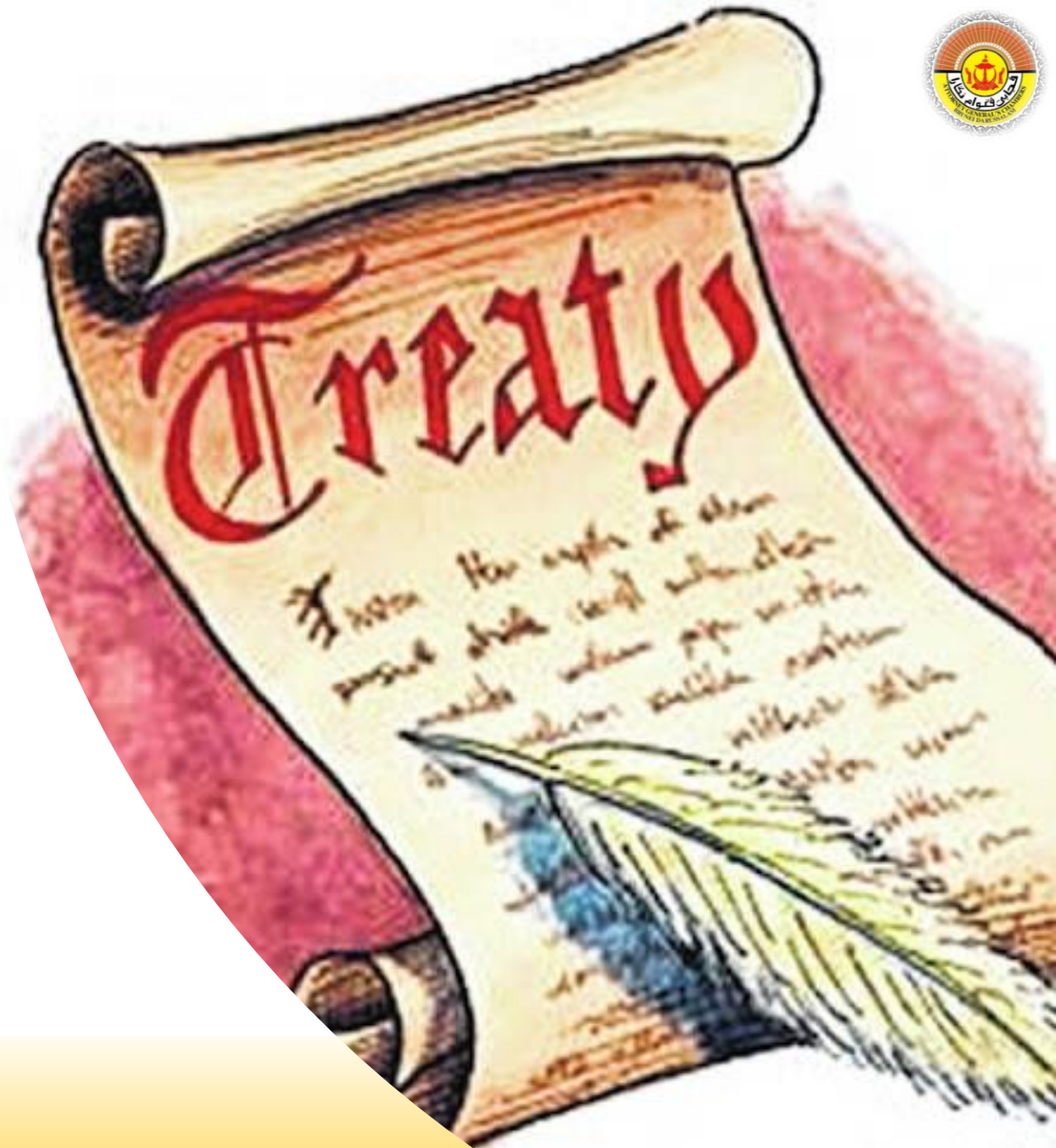


# Outline

- What is a Treaty?
- Treaty Making Process- Brunei's Perspective
- Suspension or Termination of a Treaty

# What is a Treaty?

- Most important source of international law.
- Importance in fields such as:-
  - ✓ environmental protection (Kyoto Protocol);
  - ✓ international trade (WTO/GATT); and
  - ✓ maritime- law of sea (UNCLOS).
- Gives rise to international legal rights and obligations.
- Ensure friendly and peaceful relations of states with one another.

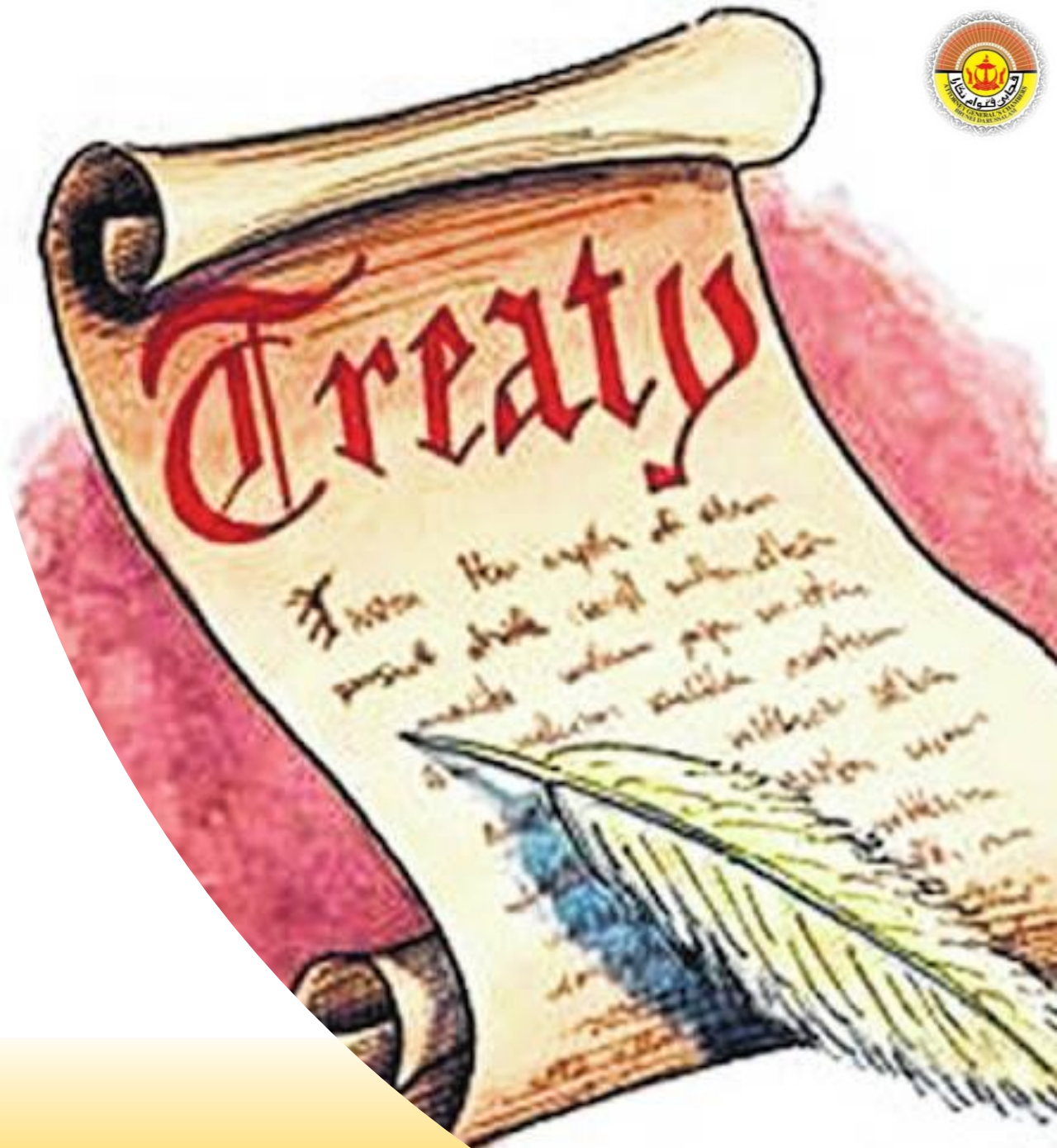






# What is a Treaty? con't

- Means by which international organizations take form, regulate and monitor their affairs.
- Examples of international organizations that have been established by means of treaties:-
  - International Civil Aviation Organization (ICAO);
  - World Customs Organization (WCO); and
  - World Health Organization (WHO).





# Vienna Convention on The Law of Treaties

## Main reference

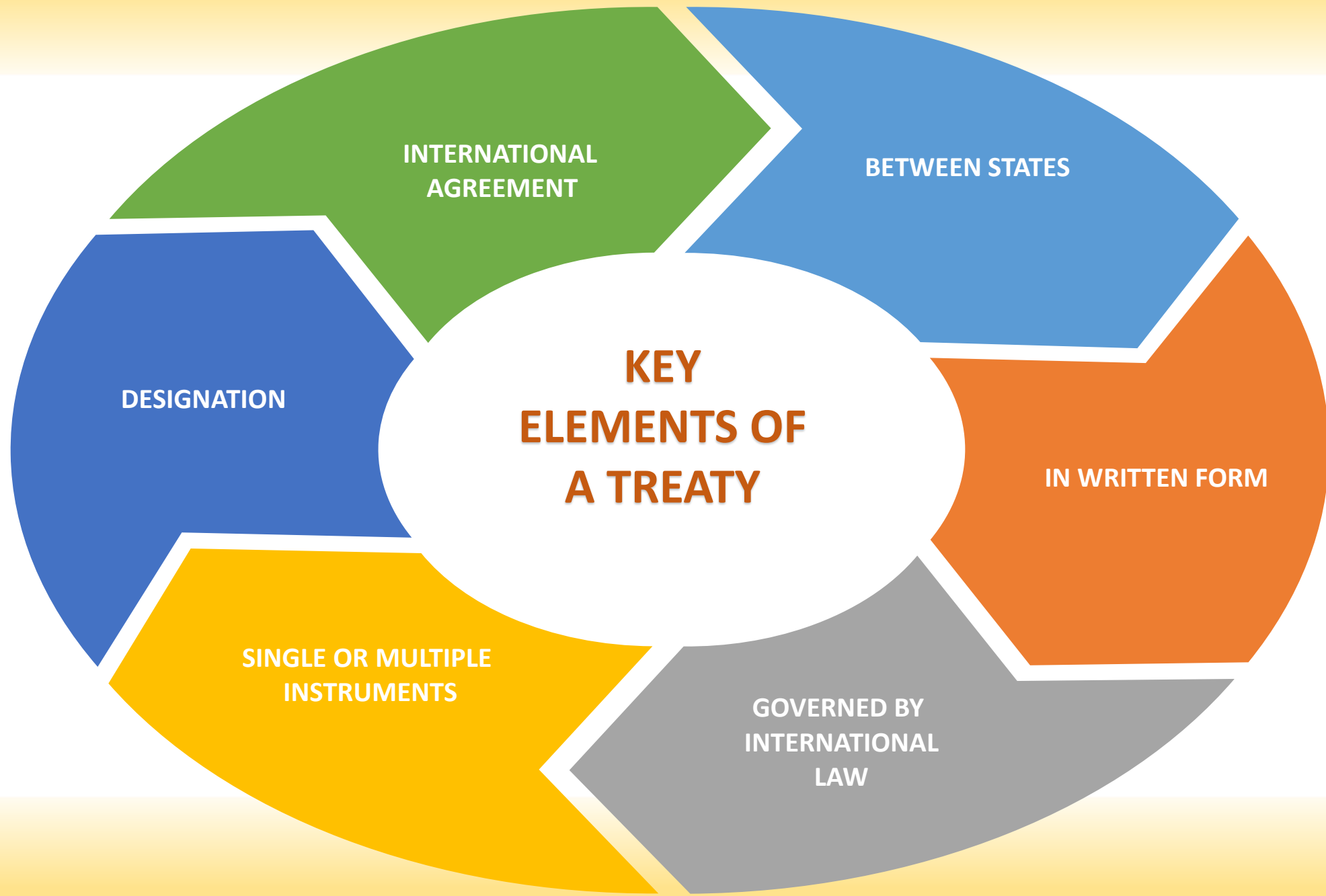
- Vienna Convention on the Law of Treaties, 1969.
- It has been ratified by 116 States.
- It contains, amongst others, the:-
  - (i) basic principles of treaty law,
  - (ii) the procedures for how treaties become binding and enter into force,
  - (iii) principles for interpreting treaties; and
  - (iv) consequences of a breach of treaty.
- So how does the VCLT define what a Treaty is?



## Definition of a Treaty

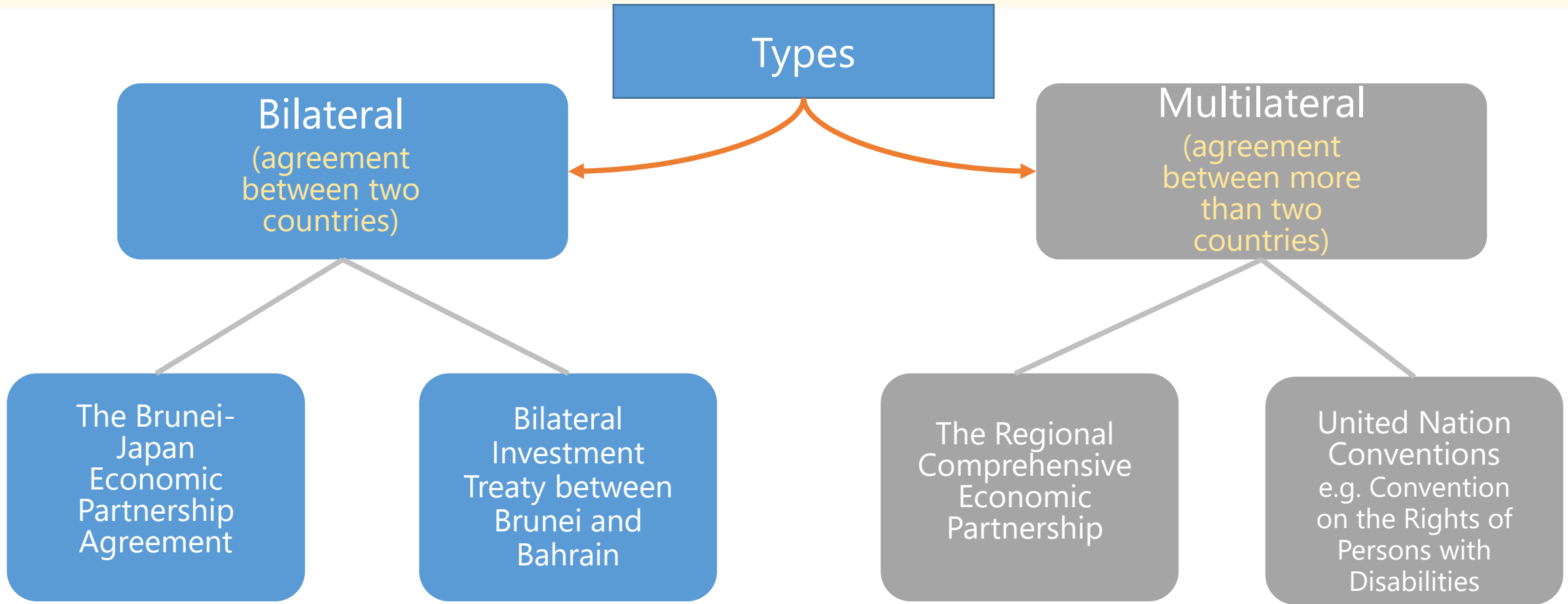
Article 2(1) of the Vienna Convention on the Law of Treaties 1969 defines a 'treaty' as:

“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”





# “an international agreement”







# *“concluded between States”*

**States - States**

**States and International Organizations  
or between  
International Organizations**  
(Vienna Convention on the Law  
of Treaties between  
States and International  
Organizations or between  
International Organizations  
1986)



# Treaty No. 9.

Articles of a Treaty made and concluded at the several dates mentioned therein, in the year of Our Lord one thousand nine hundred and five between His Most Gracious Majesty the King of Great Britain and Ireland, by His Commissioners Duncan Campbell Scott, of Ottawa, Ontario, Esquire, and Samuel Stewart, of Ottawa, Ontario, Esquire; and Samul Saq, the Madamjish, Ontario, Esquire, representing the Province of Ontario, of the one part; and the Ojibway Cree and other Indian inhabitants of the territory within the limits hereinafter defined and described, by their Chiefs and Headmen, haurnto subscribed, of the other part:

Whereas the Indians inhabiting the territory hereinafter defined have been convened to meet a Commission representing His Majesty's Government of the Dominion of Canada at certain places in the said territory in this present year of 1905, to deliberate upon certain matters of interest to His Most Gracious Majesty, of the one part, and the said Indians of the other.

And whereas the said Indians have been notified and informed by His Majesty's said Commission that it is His desire to open for settlement, immigration, trade, travel, mining, lumbering, and such other purposes as to His Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned and to obtain the consent thereto of His Indian subjects inhabiting the said tract, and to make a treaty and arrange with them, so that there may be peace and good will between them and His Majesty's other subjects, and that His Indian people may know and be assured of what allowances they are to count upon and receive from His Majesty's bounty and benevolence:

And whereas the Indians of the said tract, duly convened in Council at the respective points named hereunder, and being requested by His Majesty's Commissioners to name certain Chiefs and Headmen who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon, and to become responsible to His Majesty for the faithful performance by their respective bands of such obligations as shall be assumed by them, the said Indians have therefore acknowledged for that purpose the several Chiefs and Headmen who have subscribed hereto:

And whereas the said Commissioners have proceeded to negotiate a treaty with the Ojibway Cree and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada, for His Majesty King, and His Successors forever, all their rights, titles and privileges whatsoever, to the lands included in the following limits, that is to say:— That portion or tract of land lying and being in the Province of Ontario bounded on the south by the Height of Land and the northern boundaries of the territory the Robinson-Superior Treaty of 1850, and the Robinson-Huron Treaty of 1850, and on the East and North by the boundaries of the said Province of Ontario as defined by law, and by a part of the eastern boundary of the territory ceded by the North West Angle-Treaty land containing an area of nearly thousand square miles, more or less.

## “In Written Form”

- Exclude Oral Agreement.
- Format of a Treaty adopted normally include a preamble, followed by articles & annexes.







## *“governed by international law”*

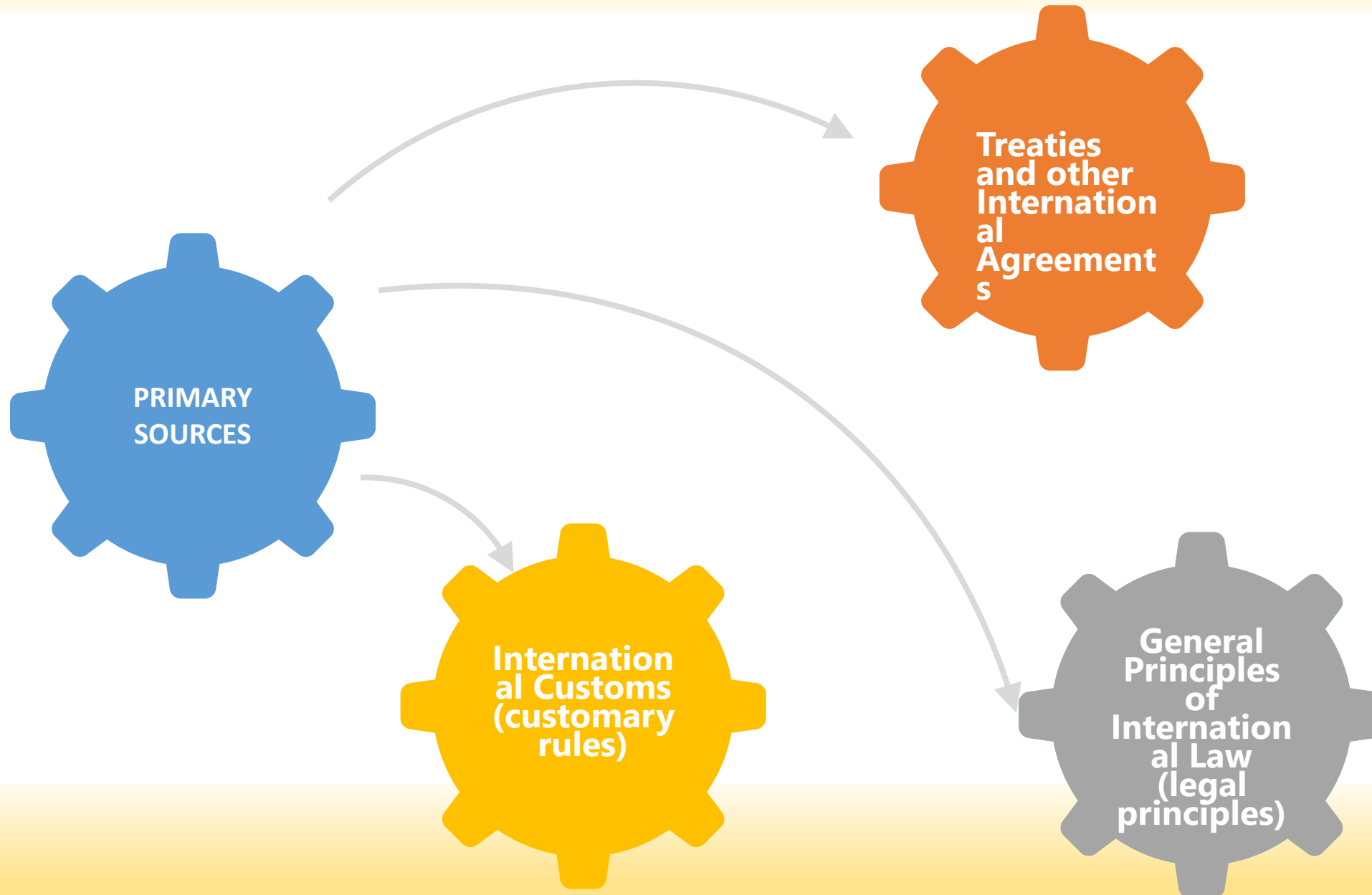
- What are considered international law?

International law is the body of rules that governs the conduct of STATES and other international associations, such as the UN in areas of the law such as armed conflict, human rights, the sea, space, trade, territorial boundaries, and diplomatic relations.

- Where do we get these rules from?



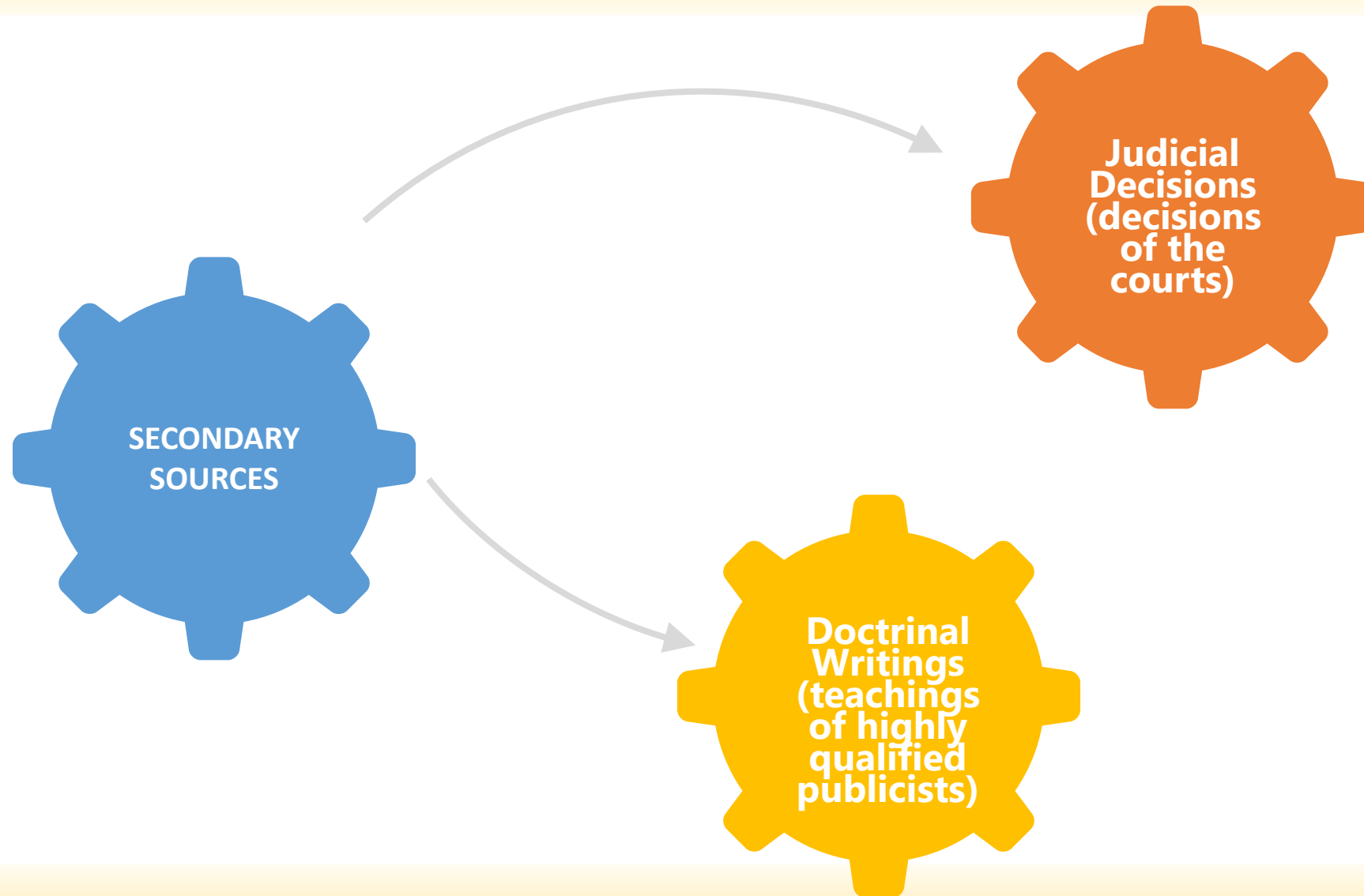
# Sources of international law







# Sources of international law





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

Framework  
Agreements

Additional  
Protocols

Side letters  
and  
Exchange of Notes

Annexes,  
Appendices  
and  
Schedules





# Framework Agreements

To establish general obligations for its parties while leaving more detailed obligations to subsequent agreements between parties

## ASEAN FRAMEWORK AGREEMENT ON SERVICES

The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Vietnam, Member States of the Association of South East Asian Nations (hereinafter referred to as "ASEAN");

**RECOGNISING** the Singapore Declaration of 1992 which provides that ASEAN shall move towards a higher plane of economic cooperation to secure regional peace and prosperity;

**RECALLING** that the Heads of Government, at the Fourth Summit held in Singapore on 27-28 January 1992 declared that an ASEAN Free Trade Area (AFTA) shall be established in the region;

**NOTING** that the Framework Agreement on Enhancing ASEAN Economic Cooperation signed in Singapore on 28 January 1992 provides that ASEAN Member States shall explore further measures on border and non-border areas of cooperation to supplement and complement the liberalisation of trade;

**RECOGNISING** that intra-ASEAN economic cooperation will secure a liberal trading framework for trade in services which would strengthen and enhance trade in services among ASEAN Member States;

**DESIRING** to mobilise the private sector in the realisation of economic development of ASEAN Member States in order to improve the efficiency and competitiveness of their service industry sector;

**REITERATING** their commitments to the rules and principles of the General Agreement on Trade in Services (hereinafter referred to as "GATS") and noting that Article V of GATS permits the liberalising of trade in services between or among the parties to an economic integration agreement;

**AFFIRMING** that ASEAN Member States shall extend to one another preference in trade in services;

# Additional Protocols

To amend existing or  
establish additional  
rights and obligations  
of the Agreement



## PROTOCOL TO IMPLEMENT THE INITIAL PACKAGE OF COMMITMENTS UNDER THE ASEAN FRAMEWORK AGREEMENT ON SERVICES

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The Governments of Brunei Darussalam, the Republic of Indonesia, Lao People's Democratic Republic, Malaysia, Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam, Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN");

**RECALLING** the ASEAN Framework Agreement on Services signed on 15 December 1995 in Bangkok, Thailand;

**HAVING** carried out negotiations pursuant to Article IV of the ASEAN Framework Agreement on Services;

**HAVING** reached an initial package of commitments;

**HAVING** achieved commitments which are beyond those inscribed in each Member State's schedule of specific commitments under the General Agreement on Trade in Services or which are at least as favourable as existing service regimes, for which Member States shall accord preferential treatment to one another on a Most-Favoured Nation basis;

**DESIRING** to set out in a schedule, the specific commitments that each Member State shall undertake;

**HAVE AGREED AS FOLLOWS:**

1. Member States shall extend to other Member States preferential treatment in



# Annexes, Appendices and Schedules

Additional documents attached to  
the Agreement and form an integral  
part of the Agreement

## ANNEX ON AIR TRANSPORT ANCILLARY SERVICES

1. **Aircraft Repair and Maintenance Services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.
2. **Selling and Marketing of Air Transport Services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.
3. **Computer Reservation System (CRS) Services** means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.
4. **Aircraft Leasing without Crew** means the lease of an aircraft without crew is normally referred to as a "dry lease", Under most lease agreements the lessee who provides the crew is the responsible party who must exercise operational control over the aircraft with all the attendant responsibilities.
5. **Aircraft Leasing with Crew** means the lease of an aircraft with crew provided is normally referred to as a "wet lease". In wet lease the lessor normally exercises operational control of the aircraft. Usually the wet lease situation means the aircraft should be operated under an Air Operator Certificate (AOC) issued by the competent authority of the State of Registry of the aircraft.





4 February, 2016

The Honourable Pehin Dato Lim Jock Seng  
Minister at the Prime Minister's Office and  
Second Minister of Foreign Affairs and Trade  
Bandar Seri Begawan  
Brunei Darussalam

Dear Minister Pehin Dato Lim Jock Seng,

I have the honor to confirm the following understanding reached by the Republic of Chile and Brunei Darussalam, in the course of the negotiations of the Trans-Pacific Partnership Agreement (TPP).

The Government of the Republic of Chile and the Government of Brunei Darussalam agree that the provisions of the TPP shall not be construed in order to undermine rights and obligations under Article 10.5 (Geographical Indications) of Chapter 10 (Intellectual Property) and Annex 10.A (List of Geographical Indications) of the Trans-Pacific Strategic Economic Partnership Agreement signed among the Governments of Brunei Darussalam, the Republic of Chile, New Zealand and the Republic of Singapore (TPSEP), on the 18th day of July, 2005.

For greater certainty, the Government of the Republic of Chile and the Government of Brunei Darussalam agree that the matters covered by Article 10.5 (Geographical Indications) of Chapter 10 (Intellectual Property) and Annex 10.A (List of Geographical Indications) of the TPSEP shall remain in force.

I have the further honor to propose that this letter and your letter in reply shall constitute an understanding between our two Governments, which shall enter into effect on the date on which the TPP enters into force for both Brunei Darussalam and Chile.

Sincerely,

HERALDO MUÑOZ VALENZUELA  
Minister of Foreign Affairs of Chile

# Side letters

Side letters are instruments negotiated in conjunction with free trade agreements. Side letters is to clarify bilateral matters between two parties that do not affect the rights and obligations of the other signatories.

# Exchange of Notes

To record the agreement of  
two states.



Treaty Series No. 7 (2015)

## Exchange of Notes

between the Government of the United Kingdom of Great Britain and Northern Ireland and His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah ibni Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, The Sultan and Yang Di-Pertuan of Brunei Darussalam amending the Exchange of Notes of 22<sup>nd</sup> September 1983 concerning the Arrangements for a United Kingdom Force in Negara Brunei Darussalam

Chequers, 16 February 2015

[The Exchange of Notes entered into force on 16 February 2015]

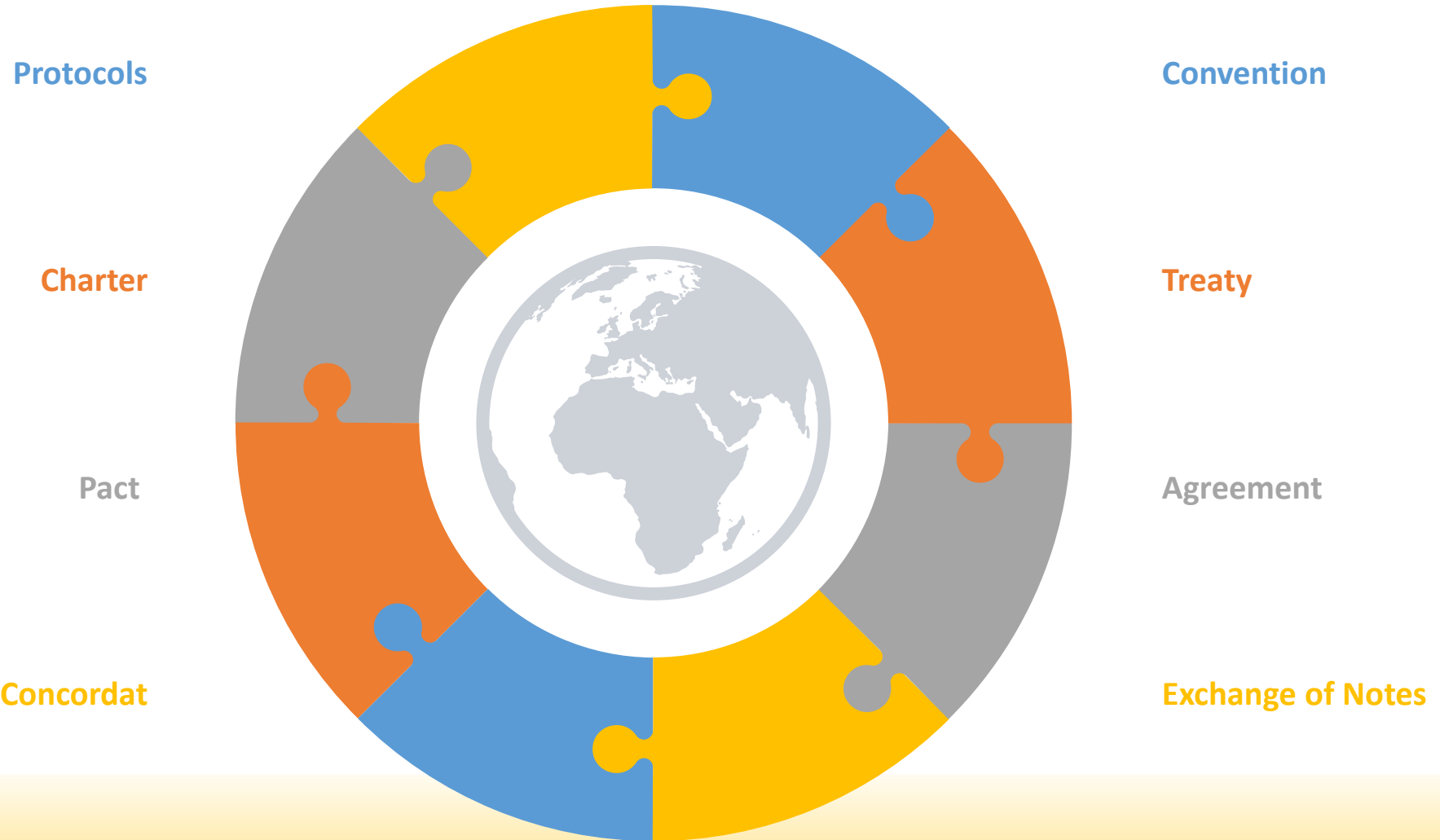
*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty*





# *“whatever its particular designation”*

No systematic use of titles.







## *“whatever its particular designation”*

- What’s important is the EFFECT of the document.
- It must be intended to create legal obligations and be legally binding.
- If they are binding, then the rules are the same regardless of what the treaty is called.



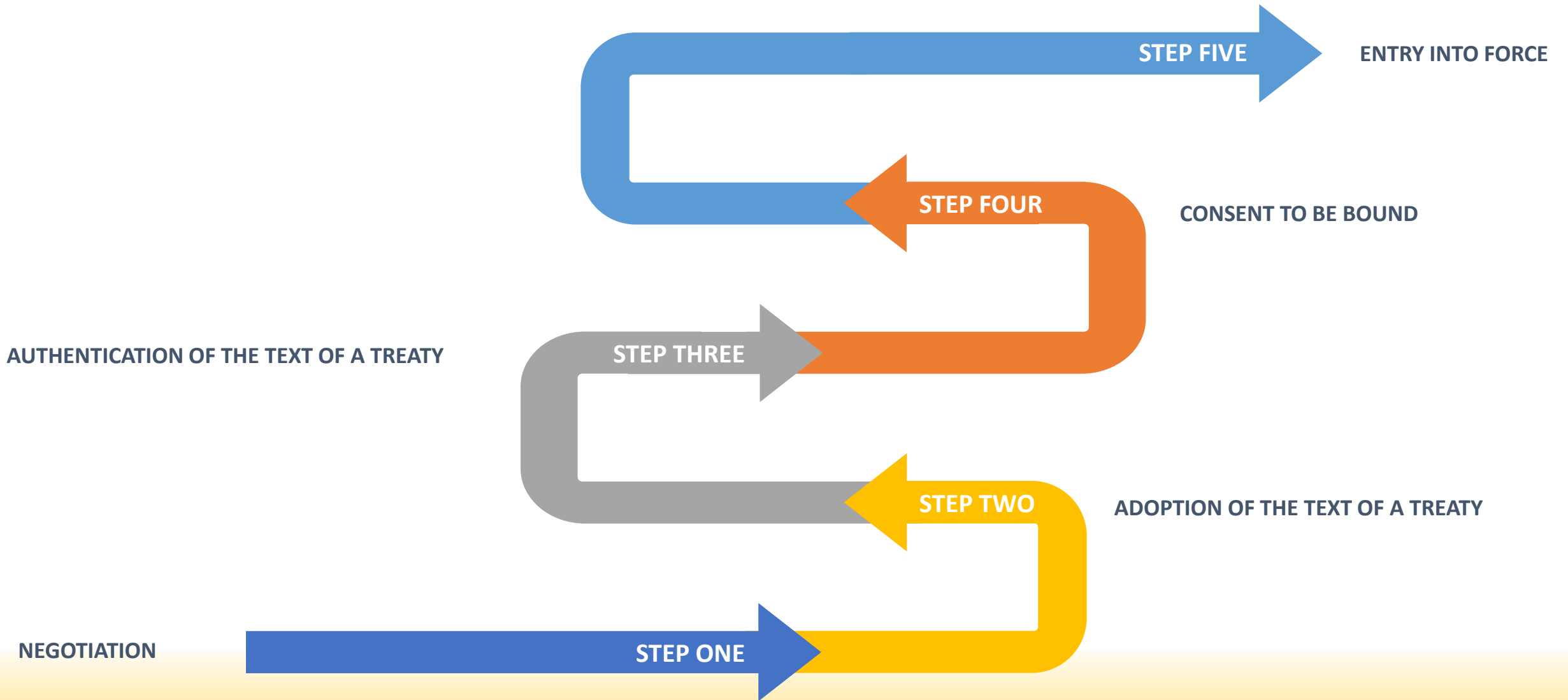
# Treaty Making Process: The Brunei's Perspective

Brunei Darussalam

Treaty X



# Treaty Making Process







# Step 1: Negotiation of a Treaty



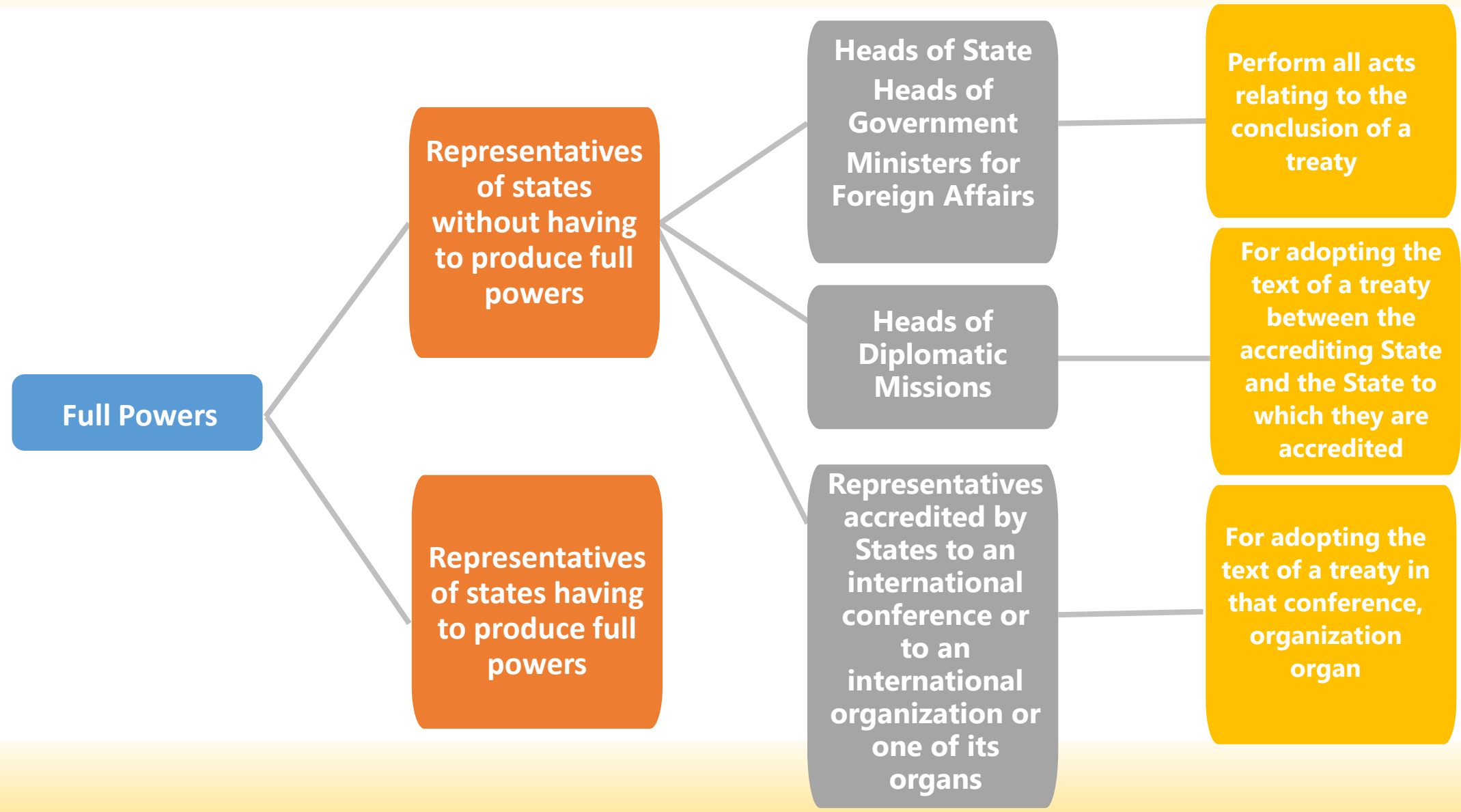
Parties come together to negotiate or discuss a treaty topic

State representatives only with full powers can negotiate a treaty on State's behalf

Full powers means the State has given authorization to their representative to negotiate



# Negotiation- Full Powers





# Full Powers

**FULL POWERS TO SIGN THE ...[name of Agreement]...**

I, **SULTAN HAJI HASSANAL BOLKIAH MU'IZZADDIN WADDAULAH**, Sultan and Yang Di-Pertuan of Brunei Darussalam,

**HEREBY AUTHORISE** ....[name of Minister...], Minister of ....[name of Ministry]...., to sign the ....[name of Agreement...], on behalf of the Government of Brunei Darussalam.

Done at Bandar Seri Begawan on this ..... day of [Month], 2021.

**SULTAN HAJI HASSANAL BOLKIAH MU'IZZADDIN WADDAULAH, SULTAN AND  
YANG DI-PERTUAN OF BRUNEI DARUSSALAM**





# Negotiation- Role of Implementing Agency



**01**

Any provisions in the Treaty that will affect national law

**02**

New legislation needs to be in place to fulfil treaty obligations

**03**

Any need for any reservations to be in place



# Reservations

- A State may, while signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation.
- Reservation means a unilateral statement, however phrased or named, made by a State by which it intends to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.
- A State will make a reservation where it feels that the implementation of the entire treaty would not be possible under the State's domestic law or would conflict with it.



# Reservations

- A State may formulate a reservation unless:
  - (a) the reservation is prohibited by the treaty;
  - (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
  - (c) the reservation is incompatible with the object and purpose of the treaty.



# Reservations

Extracted from the United Nations Convention on International Settlement Agreements Resulting from Mediation

## Article 8. Reservations

1. A Party to the Convention may declare that:

(a) It shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration;

(b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

2. No reservations are permitted except those expressly authorized in this article.

3. Reservations may be made by a Party to the Convention at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force

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of this Convention in respect of the Party to the Convention concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto, or at the time of making a declaration under article 13 shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations deposited after the entry into force of the Convention for that Party to the Convention shall take effect six months after the date of the deposit.

4. Reservations and their confirmations shall be deposited with the depositary.

5. Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect six months after deposit.





## Step 2: Adoption of the text of a treaty

- Must have consent of all the States participating in its drawing up;
- Except if the adoption of the text of a treaty at an international conference takes place by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.

## Step 3: Authentication of the text of a treaty



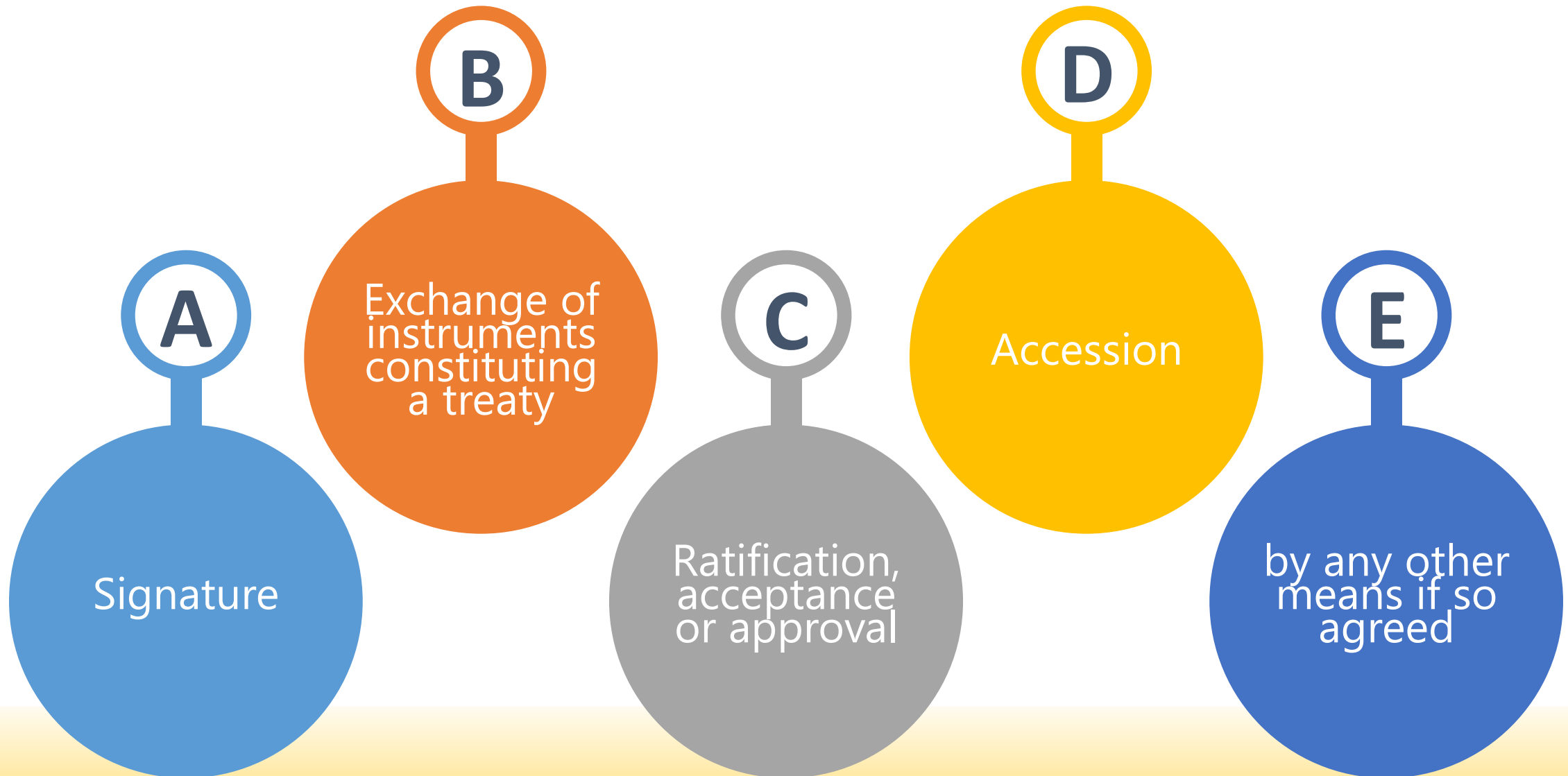
Negotiating States will sign the treaty text as confirmation that the text is final.

This is to prevent misunderstandings about the treaty language.

This is done by confirmation by such procedure provided for in the treaty; or by the signature, signature ad referendum or initialling by the representatives of the Negotiating States.



## Step 4: Consent to be bound





# Instrument of Ratification

**When the State is a signatory to  
the international convention**



## INSTRUMENT OF RATIFICATION FOR THE ASEAN AGREEMENT ON ELECTRONIC COMMERCE

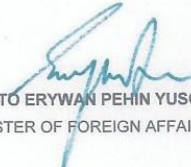
WHEREAS the ASEAN Agreement on Electronic Commerce (hereinafter referred to as "the Agreement") was signed on behalf of the Government of Brunei Darussalam at Ha Noi, the Socialist Republic of Viet Nam on 22<sup>nd</sup> January 2019;

AND WHEREAS Article 19(1) of the Agreement provides that the Agreement shall enter into force upon the deposit of the instruments of ratification, approval or acceptance by the Member States with the Secretary-General of ASEAN;

NOW THEREFORE I, DATO ERYWAN PEHIN YUSOF, Minister of Foreign Affairs II, declare that the Government of Brunei Darussalam, having considered the Agreement, hereby ratifies the same and undertakes faithfully to perform and carry out the stipulations therein contained;

IN WITNESS WHEREOF, I have signed this Instrument of Ratification and affixed hereunto my official seal.

Done in Bandar Seri Begawan, Brunei Darussalam on this 15<sup>th</sup> day of September 2020.

  
DATO ERYWAN PEHIN YUSOF  
MINISTER OF FOREIGN AFFAIRS II







## MODEL INSTRUMENT OF ACCESSION

(To be signed by the Head of State, Head of Government  
or Minister for Foreign Affairs)

### ACCESSION

**WHEREAS** the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date],

**NOW THEREFORE I**, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned [treaty, convention, agreement, etc.], accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

**IN WITNESS WHEREOF**, I have signed this instrument of accession at [place] on [date].

[Signature]

# Instrument of Accession

**When the State is not a signatory  
to an international convention but  
decides to become a party**



# Step 5: Entry Into Force

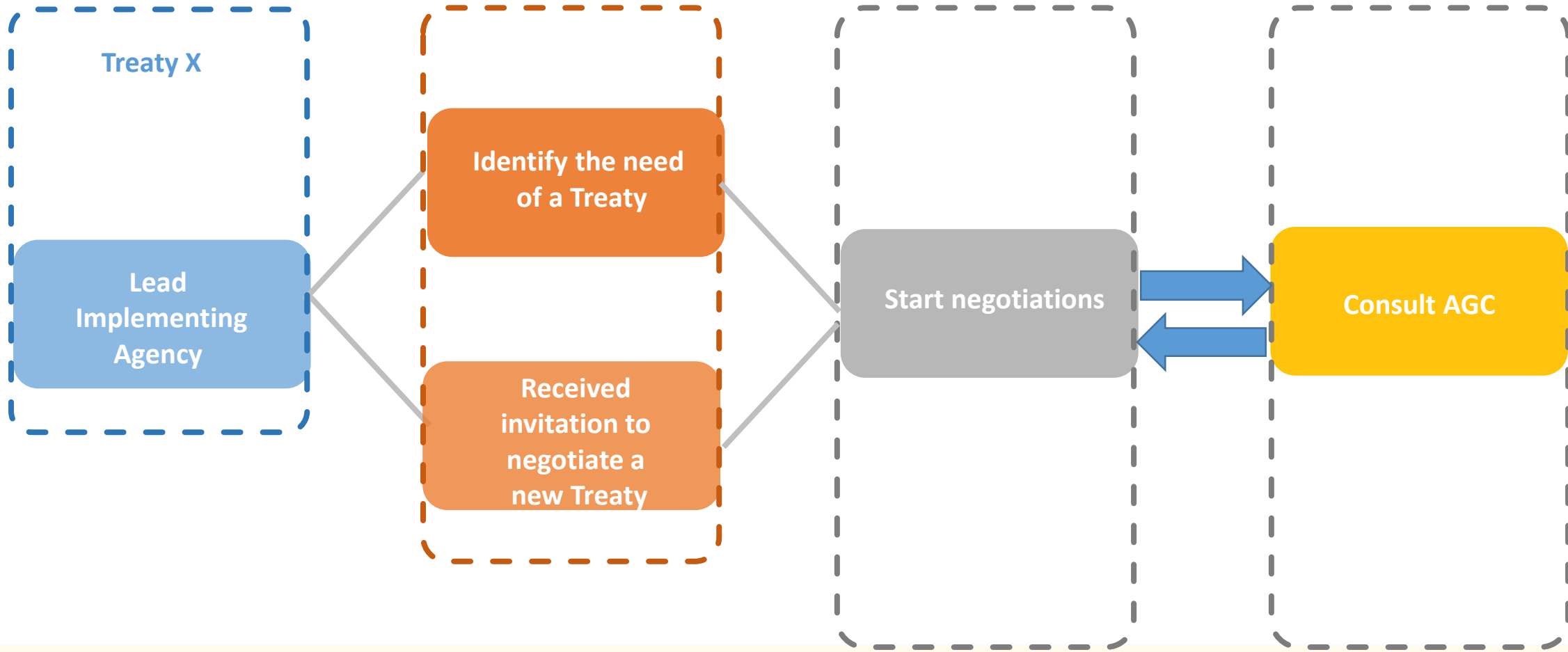
- Conditions for entry into force are normally specified in the treaty itself.
- Otherwise, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

15.9.	Protocol to Implement the Third Package of Commitments on Financial Services under the ASEAN Framework Agreement on Services	<b>Vientiane, Lao PDR</b> 06 April 2005	This Protocol shall enter into force upon the deposit of Instruments of Ratification or Acceptance by all signatory governments with the Secretary-General of ASEAN, which shall be done not later than 31/12/2005	<b>In Force (IF)</b> 08 September 2008
15.10.	Protocol to Implement the Fifth Package of Commitments Under the ASEAN Framework Agreement on Services	<b>Cebu, Philippines</b> 08 December 2006	This Protocol shall enter into force 90 (ninety) days after the date of its signature. Member Countries undertake to complete their internal procedures of ratification for the entry into force of this Protocol.	<b>In Force (IF)</b> 08 March 2007
15.11.	Protocol to Implement the Fifth Package of Commitments on Air Transport Services under the ASEAN Framework Agreement on Services	<b>Bangkok, Thailand</b> 08 February 2007	This Protocol shall enter into force on the sixtieth day after the deposit of the sixth Instrument of Ratification or Acceptance from ASEAN Member Countries with the Secretary-General of ASEAN, and shall become effective only among the Contracting Parties that have ratified or accepted it.	<b>In Force (IF)</b> 06 March 2010
15.12.	Protocol to Implement the Sixth Package of Commitments under the ASEAN Framework Agreement on Services	<b>Singapore</b> 19 November 2007	This Protocol shall enter into force ninety (90) days after the date of its signature Member Countries undertake to complete their respective internal procedures for the entry into force of this Protocol.	<b>In Force (IF)</b> 19 February 2008
15.13.	Protocol to Implement the Fourth Package of Commitments on Financial Services Under the ASEAN Framework Agreement on Services	<b>Da Nang, Viet Nam</b> 04 April 2008	This Protocol shall enter into force 90 days after the date of its signing. Member States undertake to complete their respective internal procedures of enter into force of this Protocol. Each Member States shall, upon the completion of its internal procedures, notify the ASEAN Secretariat in writing.	<b>In Force (IF)</b> 04 July 2008
15.14.	Protocol to Implement the Seventh Package of Commitments under the ASEAN Framework Agreement on Services	<b>Cha Am, Thailand</b> 26 February 2009	This Protocol and the commitments set out in its Annexes shall enter into force ninety (90) days after the date of signature for Member States that have signed. For a Member State that is unable to submit its full commitments under the Seventh Package by the time of signing of this Protocol: (a) commitments that are submitted thereafter but before the entry into force of this Protocol and its Annexes, shall also enter into force ninety (90) days after the date of signature of this Protocol; and (b) commitments that are submitted after the entry into force of this Protocol and its Annexes shall enter into force upon their submission.	<b>In Force (IF)</b> 26 May 2009
15.15.	Protocol to Implement the Sixth Package of Commitments on Air Transport Services under the ASEAN Framework Agreement on Services	<b>Hanoi, Viet Nam</b> 10 December 2009	This Protocol shall enter into force on the sixtieth day after the deposit of the sixth Instrument of Ratification or Acceptance from ASEAN Member States with the Secretary-	<b>In Force (IF)</b> 14 January 2012



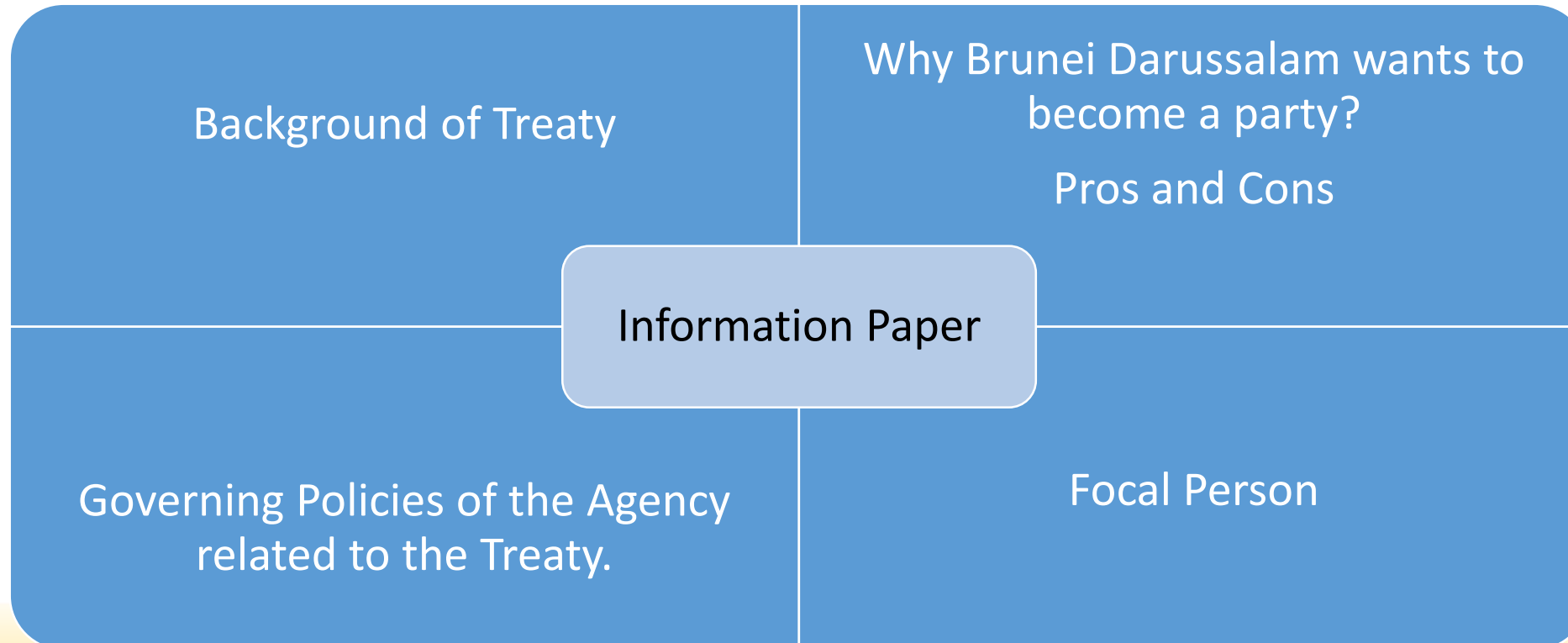
# Treaty Making- Domestic Processes

## First Round





# Information Required from Lead Implementing Agency







# AGC Legal Opinion and Recommendations





# Next steps for Lead Implementing Agency

**Consider AGC's legal opinion and recommendations**

**01**

**Address any policy concerns and best way forward**

**02**

**Hold inter-agency consultation**

**03**

**Hold further negotiations**

**04**

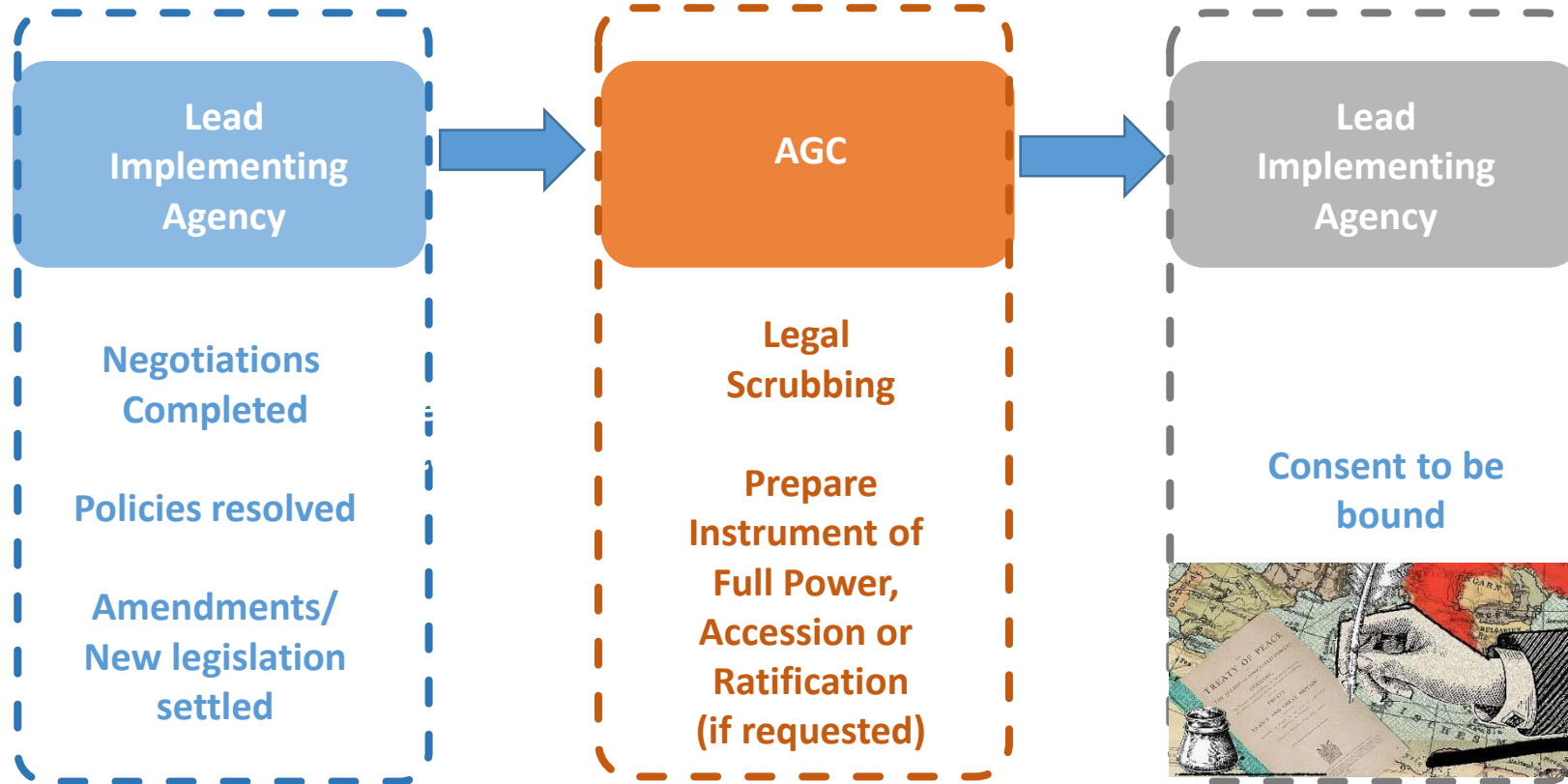
**Consider and instruct to amend existing laws, introduce new laws or policies**

**05**



# Treaty Making- Domestic Processes

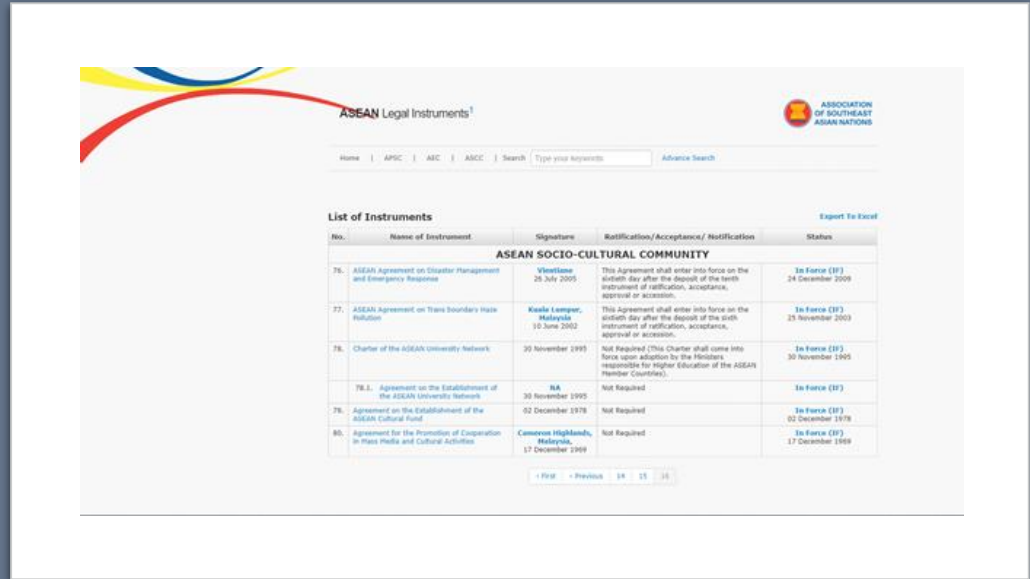
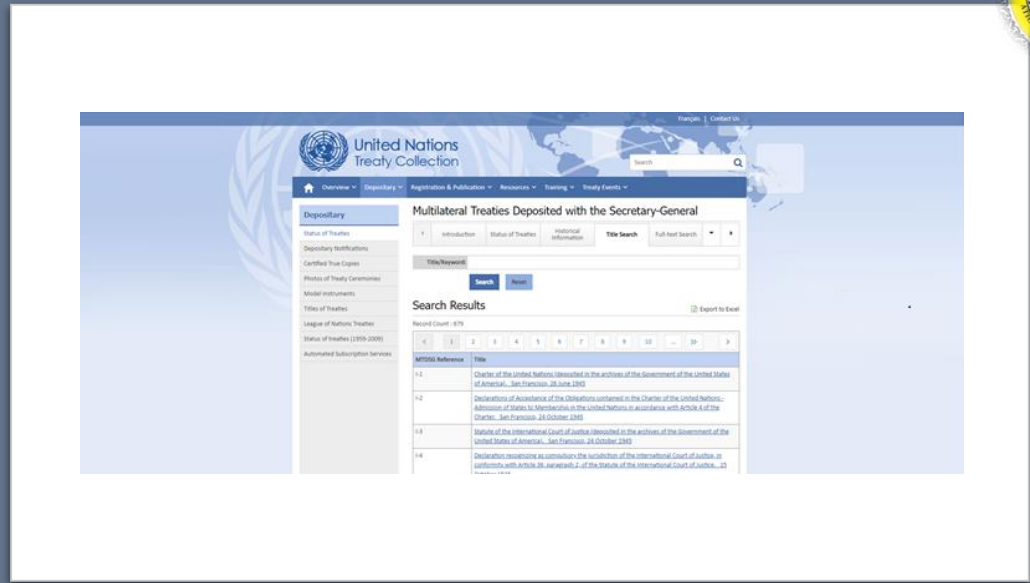
## Second Round





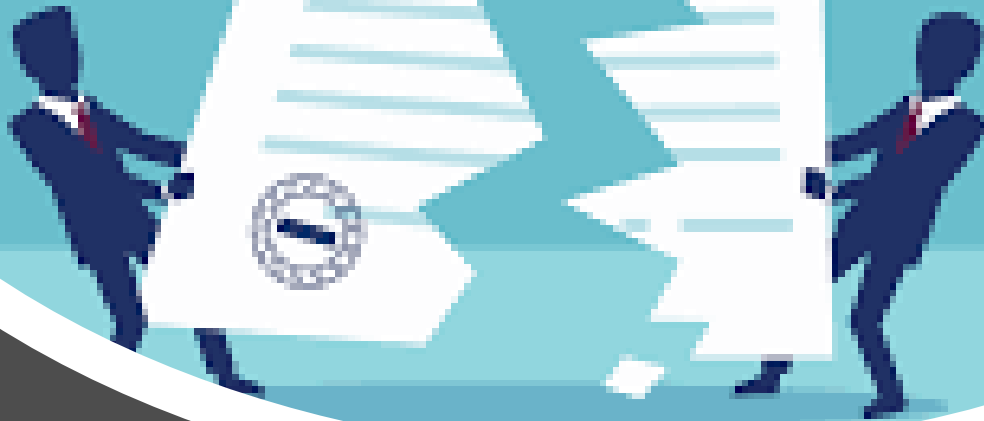
# Depositary of treaties

- Multilateral treaties generally establish a depositary.
- The depositary receives and keeps, on behalf of the parties, the original text of the treaty, the full powers of signature, the ratification instruments, and all acts relevant to the implementation and the field of application of the treaty in question.
- It normally would be the secretariat of the international organization under the auspices of which the treaty was concluded.
- UN, Switzerland and ASEAN Secretariat have been depositaries for many multilateral treaties.





# CONTRACT



## Suspension or Termination of Treaties



# Suspension or Termination of Treaties

- A state can suspend or terminate from a treaty if the treaty allows for it in its terms or if all other parties consent to the suspension or termination.
- Difference between suspension and termination is that:
  - When a treaty is suspended it is still valid, but its operation is suspended temporarily.
  - When a treaty is terminated it is no longer in force as it has ended its existence.



# Suspension or Termination of Treaties

**In conformity  
with the provisions  
of the treaty**

**Consent of all parties**

**Conclusion of a  
later treaty**

**Supervening  
impossibility**

**Fundamental  
change of  
circumstances**

**Material Breach**



THANK YOU!

ANY

QUESTIONS?

[international.affairs@agc.gov.bn](mailto:international.affairs@agc.gov.bn)