

WORKSHOP ON TREATY LAW AND PRACTICE

**Grand Copthorne Waterfront Hotel
16 – 19 January 2012, Singapore**

**WORKSHOP REPORT
EXECUTIVE SUMMARY**

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I. Summary of the Workshop

1. The **British Institute of International and Comparative Law** (the Institute), based in London, is one of the leading independent research centres for international and comparative law in the world, and is the only one of its kind in the United Kingdom.¹ The **Centre for International Law** (CIL) was established in 2009 at the National University of Singapore’s Bukit Timah Campus in response to the growing need for international law expertise and capacity building in the Asia-Pacific region.² Collaboration between the two institutes on a joint research project on treaty law and practice began in 2011, with the objective of publishing a book or manual on best treaty practice intended for a broad readership worldwide in governments, international organisations and beyond.
2. As a part of their collaboration, CIL and the Institute jointly conducted an **International Workshop on Treaty Law and Practice** for government and secretariat officials from the Southeast Asian region. The first of its kind, this Workshop focused on the operational aspects of treaty practice which comprise the daily work inside treaty offices all over the world, and on which very little published information is available. Good treaty practice is vital to the clarity of states’ international legal relations and to their ability to comply with international law. The Workshop provided a rare opportunity for treaty officers to exchange views and experiences with their counterparts from other countries in the region as well as international experts in the field.
3. The Workshop’s output includes a **set of recommendations** designed to improve treaty practices in the region. These recommendations also offer an important contribution to the debate on the transformation of the Association of Southeast Asian Nations (ASEAN) to a rules-based regional organisation.
4. This **Workshop report** provides a summary of the proceedings and discussions undertaken at the Workshop and an overview of a larger project on best treaty practice of which the Workshop comprised a key element. It provides an in-depth analysis of the main issues raised and possible solutions,

¹ www.biiicl.org

² www.cil.nus.edu.sg

drawing upon the reflections of the organisers and participants, both during and after the Workshop. It explains how the criteria for identifying best treaty practice evolved throughout the Workshop and how the recommendations were developed in response to the process of assessing and refining those criteria.

5. The Workshop took place in Singapore from 16 – 19 January 2012. It brought together more than 35 **participants** from the 10 member governments of the ASEAN and the ASEAN Secretariat (ASEC), together with observers from Belgium, China, Indonesia and Singapore. The participants comprised both lawyers and non-lawyers, all with varying roles within the treaty or legal office of the Ministry of Foreign Affairs or other government department of their respective home States, or within ASEC.
6. This Workshop was organised as an integral part of the research project, so that the experts linked to the Institute could brief officials from the member States of ASEAN and ASEC on what, in their view, are some of the best practices followed by governments and organisations on treaty law and practice, and to obtain feedback and comments from the participants at the Workshop on whether it would be feasible for these practices to be adopted in ASEAN. This information will provide a valuable input to the joint research project.
7. Opening the Workshop, Ambassador Tommy Koh, Chairman of CIL, emphasised the importance of international law, especially for small States, and the relevance of treaties to the objectives of ASEAN. He said “In order for ASEAN States to fully achieve the goals of the ASEAN Community, treaties and other instruments agreed to by the ASEAN States need to be implemented and managed in accordance with international law, best practice and national law. In addition, the ASEAN Secretariat will need the legal and institutional capability to cope with a rules-based ASEAN and to assist member States to fulfill their ASEAN obligations.” H.E. Bagas Hapsoro, Deputy Secretary-General of ASEAN, responded by thanking the CIL and the Institute for convening this Workshop, which was important for ASEAN, especially at this time when ASEAN is in the middle of transforming itself into a rules-based organisation and moving toward an ASEAN Community by 2015.
8. The **Workshop speakers** were treaty experts with extensive experience in dealing with treaty law and practice:

Ms Jill Barrett

Arthur Watts Senior Research Fellow in Public International Law, British Institute of International and Comparative Law
Former Legal Counsellor, Foreign and Commonwealth Office, United Kingdom

Mr Paul Barnett

Visiting Fellow and Consultant, British Institute of International and Comparative Law
Former Head of Treaty Section, Foreign and Commonwealth Office, United Kingdom

Professor Robert Beckman

Director, Centre for International Law
National University of Singapore

Ms Elise Cornu

Head of the Treaty Office and Legal Adviser, Council of Europe

Mr Gerard Limburg

Consultant, British Institute of International and Comparative Law
Former Director of Treaties, Ministry of Foreign Affairs of the Kingdom of the Netherlands

9. Presentations were given by the speakers on a broad array of topics pertaining to treaty law and practice and the international and domestic legal frameworks in which treaties are concluded. The **main topics** were:
 - Treaty law and treaty practice; identifying all actors and stakeholders involved in treaty practice; generic criteria for best treaty practice;
 - Organisation of treaty work in governments and international organisations;
 - Management of treaty collections: providing treaty information for internal and external users; depositary functions;
 - Treaties versus non-binding treaty-like instruments;
 - Concluding a new treaty: adoption, signature, ratification, reservations and objections; differences between bilateral and multilateral treaties; registration and publication of treaties; parliamentary procedures and implementation of treaty obligations in domestic law; and

- Continuing engagement with a new treaty: reporting and monitoring obligations; dispute settlement procedures – opting in or out.
10. The presentations were interspersed with break-out and interactive sessions, in which participants formed discussion groups to address specific issues, elaborate on concepts of good treaty practice raised during the presentations, and to engage with speakers on topics of interest specific to each participant.
 11. The **main recurring issues and problems** raised during the Workshop concerned:

A. Generic Criteria for Best Treaty Practice

How to identify generic criteria for best treaty practice applicable to any State or international organisation; what standards participants expect of their own treaty practice; what standards they believe their stakeholders expect;

B. Legal Capacity: The Role of Lawyers in Treaty Matters

Problems arising when governments lack expertise on international law or when administrators fail to consult lawyers on treaty matters;

C. Organisation of Treaty Procedural Work: A Strategic Plan, Functions, Structure, Personnel, Skills, Professionalism, and Knowledge Management

The value of having a single treaty office within a government or international organisation and a clear definition of its functions and its relationship with legal advisory work;

D. What is a Treaty? Distinguishing Treaties from Other Treaty-like Documents

Difficulties in distinguishing treaties from other instruments that look like treaties but are not binding under international law; ambiguities in the status of some ASEAN instruments; when to use a treaty and when not to; does the distinction matter?

E. Managing Treaty Collections: Accessibility, Reliability, Authenticity, and Archiving

Practical issues facing treaty officials such as how to provide ready access to up to date and reliable treaty information to other officials and the public; should the same information be provided to all?

F. Centralised versus Decentralised Treaty Management

Problems arising from too much decentralisation of treaty functions; how to organise a national treaty database for the first time;

**G. Mechanisms for Effective Treaty Management:
Standard Operating Procedures, Inter-agency Co-ordination and
Legislation**

How to write standard operating procedures; how to ensure all ministries and agencies use them; whether to define ministerial responsibilities relating to treaties in legislation;

**H. Managing External Communications and Consultations with
Parliaments and Other Stakeholders**

What information to provide to the legislature and the public, when and how; achieving the right balance between openness and efficiency;

I. Conformity with International Law: Common Problems

- Registration of treaties at the United Nations

Does the obligation under Article 102 of the United Nations Charter to register treaties at the United Nations apply to all treaties? What to do when content is confidential?

- Reservations and declarations

How to ensure that reservations are legally effective and don't attract objections from other States? How to distinguish between a reservation and an interpretative declaration? What deadlines apply?

**J. Implementation of Treaties: The Importance of Follow-through at
Both Domestic and International Levels**

- Domestic implementation of treaty obligations

When is it necessary to enact new legislation to implement a treaty? What is the best way to do it? Can other countries' experience provide a useful model?

- Continuing international engagement with the treaty

Problems for States in keeping up with treaty monitoring and reporting requirements; what international secretariats can do to help.

12. **The Recommendations (set out in the Annex to this summary)** summarise the key actions suggested by the Workshop participants to address the issues raised during the Workshop. These recommendations are intended to assist ASEAN member States and ASEC to move forward with assessing and enhancing their own treaty practices. They also include some action points for the Workshop organisers.
13. **New online resource:** CIL and the Institute have prepared a *Compilation of constitutional and legislative provisions on treaty practice of selected States and international organisations*. These documents were provided to Workshop participants as background materials, and are now available online to the public on the websites of the CIL and the Institute: www.cil.nus.edu.sg and www.biicl.org. The development of this online resource will be an invaluable research tool for users and scholars of treaties worldwide.
14. At the conclusion of the Workshop, it was widely agreed that the proceedings had been immensely valuable for both the participants and the organisers. There was a great deal of interest in a follow-up workshop for ASEAN participants to be convened in 2013 if possible, and also in the book or manual on treaty practice that CIL and the Institute intend to publish for a wider readership.

The full Workshop Report (80 pages) is available on the websites of both institutes at: www.cil.nus.edu.sg and www.biicl.org

II. Recommendations on Treaty Practice

The recommendations which follow summarise the key points recurring most frequently throughout both presentations and discussions.³

³ Note: A wide range of suggestions were made by participants at the Workshop (which are noted in the full report). In formulating these recommendations, the Workshop organisers have extracted the central core of those suggestions, selecting those most relevant to address the issues identified by participants as the key ones for ASEAN members States and ASEC, and which seemed to attract the most support from Workshop participants. However, this concise formulation of the

A. Recommendations for ASEAN Member States on National Treaty Practice

The following actions were identified by participants as ones for each ASEAN member State to consider taking to help in improving its own national treaty practice:

1. Ensure sufficient lawyers trained in public international law are available to the Foreign Ministry and all other ministries and agencies involved in treaty work; increase resources where necessary to expand the international law department;
2. Ensure government lawyers engaged in treaty work receive specialist training in the international law of treaties and in treaty practice and procedures;
3. Ensure ministers, policy officials at all levels, diplomats and administrators engaged in treaty matters have “legal awareness” and engage actively with their legal advisers when dealing with treaties;
4. Include government international lawyers in delegations negotiating new treaties wherever possible;
5. Centralise treaty procedure work for the whole government, ideally in a single dedicated office; plan its relationship with the department responsible for providing international law advice carefully; define its responsibilities and functions clearly in a law or internal administrative document available to all officials;
6. Review human resource strategy to secure appointment of the right staff to the treaty office, ensuring alignment of skills and expertise to the functions of the office. Consider the appropriate balance of legal, clerical, information management, IT, diplomatic, policy or other skills required, and the importance of institutional memory and experience. Ensure clear and rewarding career paths for treaty staff;
7. Provide training in treaty practice and procedures for treaty office staff and opportunities for further development as treaty professionals;

recommendations was not specifically discussed at the Workshop, so should not be presumed necessarily to reflect the views of any particular individual participant.

8. Encourage treaty office staff to develop networks with their counterparts in other governments and international organisations, and share their knowledge and experiences; facilitate training visits to other treaty offices where possible;
9. Distinguish clearly between treaties and non-binding international instruments; when negotiating a new international instrument clarify with other parties whether it is intended to be binding and ensure it is drafted appropriately; involve government international lawyers in drafting; ensure all officials understand the consequences and effects of concluding a treaty as opposed to a non-binding instrument; ensure appropriate handling of the instrument according to its status;
10. Clarify the role of the treaty office in relation to non-binding treaty-like documents;
11. Treaty officials must have rapid and reliable access to accurate treaty information, including all treaties signed, ratified, acceded to or denounced by their State, the current status of each treaty, reservations made by that State and any responses received; to ensure this, each government should have a centralised and authoritative set of records maintained by treaty professionals;
12. Consider the establishment of an electronic database for national treaty records (or, if there is one already, review its adequacy). Ensure it is user-friendly, easily searchable and cost-effective to update;
13. Authoritative national treaty information should be provided to the legislature and the public, whether by a series published on paper or by means of an online database, or both;
14. Create a treaty procedures manual or set of standard operating procedures (SOPs) for all government officials; ensure it is widely disseminated throughout all government ministries and agencies; review and update regularly;
15. Consider whether new or further legislative provisions on treaty responsibilities and procedures are needed to ensure effective implementation;
16. Each government should register all treaties entered into with the UN Secretariat in a timely manner in accordance with Article 102 of the UN

Charter (except where a depositary has been appointed to do this). Internal procedures should allocate responsibility for this task and ensure it is done systematically;

17. Pay close attention to the international law of treaties when making reservations or declarations, to ensure they are drafted in a way that is legally effective, legally permissible, and made at the appropriate time; and
18. Develop clear internal procedures to guide officials in the actions required for domestic implementation of treaties, including how to take on board the concerns of stakeholders; enhance internal monitoring to ensure continuing and effective enforcement of treaty obligations post-ratification, and to identify and remedy any gaps.

B. Recommendations for the ASEAN Secretariat (ASEC) on ASEAN Treaty Practice

Below is a list of recommendations identified in the course of the Workshop to improve the treaty practice of ASEAN and ASEC:

1. Enhance the legal capacity of the ASEC, for example, by raising the profile of the legal unit within ASEC; improving the legal skills of the staff of the legal unit; and increasing the resources available to the legal unit if possible;
2. Member States should define more clearly the legal services they expect from the ASEC legal unit and assign clear priorities in light of the resources available to the legal unit;
3. ASEC should establish a treaty office within ASEC to provide a single contact point for treaty procedure matters within the ASEC legal unit; plan the relationship between treaty work and other functions of the legal unit carefully; define its treaty procedure responsibilities and functions clearly; and ensure the contact point is well known to all ASEC officials and treaty officials in member States;
4. ASEC should review practice on appointments and retention of staff to treaty work, to ensure alignment of skills and expertise to functions. Consider the appropriate balance of legal, clerical, information management, IT, diplomatic, policy or other skills required, and the importance of institutional memory and experience and providing a clear and rewarding career path for treaty officers;

5. Provide training in treaty practice and procedures for treaty staff and opportunities for further development as treaty professionals;
6. Encourage treaty staff to develop networks with treaty officials in the members States and in other international organisations, and share their knowledge and experiences; facilitate training visits to other treaty offices where possible;
7. ASEC needs to adopt comprehensive written internal procedures and guidelines in relation to its obligation to support the depositary functions of the ASEAN Secretary-General;
8. ASEC should provide briefing and information about ASEAN treaty practice to member States, especially to new representatives of member States in Jakarta;
9. Ensure systematic and timely registration under Article 102 of the UN Charter of all treaties to which ASEAN is a party, and all treaties entered into by the member States, where the Secretary-General of ASEAN is designated as the depositary;
10. Consider creating a forum where ASEAN legal and treaty officials can meet informally to discuss treaty procedure issues, progress, problems and solutions;
11. Consider creating an electronic forum (e.g. using social media) in which ASEAN legal and treaty officials can interact informally to share information about treaty procedures and discuss issues, progress, problems and solutions; and
12. Engage in more co-operative arrangements with research institutes and think tanks in Southeast Asia, to assist ASEAN in identifying problems and formulating solutions in matters concerning treaty practice; for example consider granting observer status to research institutes to attend ASEAN meetings and to provide expertise or information on treaty matters on request.

C. Recommendations for Workshop Organisers

Apart from recommendations to improve States' and ASEAN's treaty practice, participants also made recommendations directed to the organisers, CIL and the Institute, on activities that they would like to take place after this Workshop in order to complement these efforts:

1. Provide follow-up treaty practice training workshops to strengthen the legal capacity of legal and treaty officials from ASEAN member States and ASEC. (Subjects requested by participants for consideration in future workshop programmes include reservations to treaties, in light of the International Law Commission Guidelines, treaty drafting and the use of treaties versus non-binding instruments);
2. Provide more research and analysis on practical issues and modern trends of treaty law, such as the use of treaties versus non-binding instruments, the growth of lawmaking by treaty bodies, the conclusion of agreements by international organisations and reservations;
3. Publish articles and commentaries on ASEAN-related legal issues relating to treaties; and
4. With regard to the intention of CIL and the Institute to publish a book on best treaty practices, the Workshop participants gathered a list of suggested inputs which included:
 - A comparative matrix of treaty laws and practices, hopefully leading to convergence;
 - Analysis of basic issues of treaty law such as what obligations arise from signature or ratification of a treaty;
 - Guidance on the use of treaties versus non-binding instruments;
 - A collection of legal provisions concerning treaties from all ASEAN member States and ASEAN itself.

It was suggested that the target readership should be government officers in all ministries around the world, not only legally trained personnel.