

**BINDING AND NON-BINDING AGREEMENTS:
A QUESTIONNAIRE FOR MEMBER STATES**

(presented by Dr. Ducan B. Hollis)

- I. How do you differentiate among treaties, political commitments and contracts?** How does your State define treaties under international law? Do you have a practice of concluding “non-binding” agreements (often called political commitments or memorandum of understanding)? If so, how do you define such agreements? Do you have a practice of using contracts governed by domestic law in reaching agreements with other States, and, if so, how do you define these contracts? Beyond these definitions, do you use specific terminology or include specific clauses to differentiate among various types of binding and non-binding agreements?
- II. Who has the capacity to conclude binding and non-binding agreements?** Under your national law, can ministries and government agencies conclude treaties governed by international law? Under your national law, can sub-national territorial units like states, provinces or municipalities conclude treaties governed by international law? Do your agencies and sub-national units ever conclude non-binding agreements or contracts? How does your national law or practice deal with agreements made by an agency or a sub-national unit that were not authorized by the national government?
- III. What are the legal effects of your binding agreements?** For any treaties governed by international law concluded at the agency level or by sub-national territorial units, where does international legal responsibility for the performance of those agreements lie – with the concluding party or the State as a whole? Should the State bear responsibility for an agency or sub-national unit’s agreement even if those entities did not follow the appropriate domestic procedures before concluding the agreement? How, if at all, does your state regard the legal effects of non-binding agreements or contracts done at the agency or sub-national level?
- IV. What are your National Procedures for Making Binding and Non-Binding Agreements?** What are your internal procedures for deciding whether and when a treaty negotiation may commence or be concluded? If you have a practice of doing binding agreements under international law with agencies or sub-national units, what domestic procedures exist for these entities to receive authorization to negotiate and conclude such agreements? What, if any, procedures do you have for the conclusion of political commitments?
- V. Priorities:** Of the aforementioned topics, does one (or more) of them pose a greater problem for your State than the others? Would you appreciate a set of general principles or best practices on issues of differentiating among binding and non-binding agreements, the capacity to conclude such instruments and/or the procedures employed to do so?