



REPORT
ASEAN WORKSHOP ON INTERNATIONAL LEGAL COOPERATION IN
TRAFFICKING IN PERSONS CASES
23 – 25 November 2009, Bangkok

INTRODUCTION

1. The ASEAN Workshop on International Legal Cooperation in Trafficking in Persons Cases was held on 23 - 25 November 2009 in Bangkok, Thailand. The Workshop was organized under the auspices of the Senior Officials Meeting on Transnational Crime (SOMTC) Working Group on Trafficking in Persons. It was organized with the support of UNODC and the ARTIP Project. Financial support was provided by the European Union (EU) through UNODC.

2. The Workshop was attended by delegations from all ASEAN Member States, representatives from the ASEAN Secretariat, and experts from UNODC and ARTIP. Representatives from the Governments of Thailand and Australia, the EU, UNODC and ARTIP were also present as observers. The list of delegates appears as **ANNEX A**

OPENING SESSION:

Welcome

3. Workshop participants and guests were welcomed by representatives of the organizing and supporting organizations: Mr Melchor Rosales, SOMTC Lead Shepherd for Trafficking in Persons and Chairperson of the SOMTC Working Group on Trafficking in Persons; Mr Gary Lewis, UNODC Regional Representative for East Asia and the Pacific, and Mr Phillippe Allen, Minister Counsellor, AusAID.

Keynote Address by the ASEAN Deputy Secretary-General

3. Mr. Sisouvong Syanakane, Deputy Secretary General, ASEAN Political and Security Community, delivered his keynote address to the Workshop. The Keynote Address appears as **ANNEX B**. The Chairperson thanked the Deputy Secretary-General for his address and officially declared the workshop open.

Overview of workshop objectives and structure

4. Dr Anne Gallagher, assistant to the Chair, outlined the objectives of the Workshop and explained the structure of panels and working group sessions. The expected outputs of the Workshop, including finalization of the *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, were also outlined. She referred to the annotated Workshop agenda that is attached as **Annex C**

THEME 1:

LAW, POLICY AND PRACTICE OF MUTUAL LEGAL ASSISTANCE:

Panel Discussion

5. The first speaker on the six-person panel was Mr Michel Bonnieu, UNODC. Mr Bonnieu provided an overview of the international legal framework around mutual legal assistance (MLA) in trafficking in persons (TIP) and related cases. He highlighted the importance of the United Nations Convention on Transnational Organized Crime (UNTOC) as an alternative legal basis for MLA in the absence of a bilateral treaty. The speaker touched briefly on the challenges of developing effective practices and procedures around MLA and the particular complexities introduced by TIP.

6. The second speaker on the panel was Ms Baizura Haji Kamal, Head of the Mutual Assistance on Criminal Matter Unit, Attorney-General's Chambers, Malaysia. Ms Kamal focused her presentation on the ASEAN Treaty on Mutual Legal Assistance (AMLAT), an important regional instrument that has now been ratified by eight of the ten ASEAN Member States. The speaker outlines the major provisions of the AMLAT, highlighting its usefulness as a framework for effective cooperation in transnational crimes including trafficking in persons.

7. The third speaker on the panel was Mr Wanchai Roujanavong, Deputy Director-General, International Affairs Department, Office of the Attorney-General, Thailand. Mr Wanchai provided participants with an overview of the trafficking situation in Thailand and of the response of the Government of Thailand to this crime. He then outlined the law and practice of mutual legal assistance in Thailand, providing insight into the obstacles that are commonly faced and how these have been dealt with. Keys to success identified by the speaker include personal contacts, informal approach and knowledge of the counterpart's legal system.

8. The fourth speaker on the panel was Mr Kow Keng Siong, Deputy Senior State Counsel, Attorney-General's Chambers, Singapore. Mr Kow outlined Singapore's mutual legal assistance framework and then considered whether assistance can be rendered in the absence of an applicable treaty with Singapore. He concluded with a consideration of issues and challenges that arise in dealing with requests..

9. The fifth speaker on the panel was Mr Albert Moskowitz, Prosecutorial Adviser, ARTIP. Mr Moskowitz spoke on the role of the prosecutor in mutual legal assistance. He presented a TIP-related scenario and then identified five steps to be taken by the prosecutor: assess the needs of the case; determine the status of the evidence; decide how to request; assist in drafting the request; and monitor compliance.

10. The final speaker on the panel was Pol.Lt.Col. Chanchai Chaogasem, Anti-Human Trafficking Division, Royal Thai Police, who delivered a presentation on informal cooperation highlighting the Heads of Specialist Trafficking Units (HSU) Process which involves all ASEAN member States as members or observers. The speaker explained the origins of the HSU process and its structure. He focused particularly in the HSU mechanism as a tool for informal cooperation between countries. Examples of successful cooperation were identified and obstacles to more effective cooperation were briefly considered.

11. The panel presentations were followed by a discussion, moderated by Mr Willem Pretorius, ARTIP. Questions related to issues that arise in the context of MLA with civil and common-law countries: the number of MLA requests that have been made under the AMLAT; the proposal of Thailand for an MLA unit within the ASEAN Secretariat; and the use of *lettres rogatoire* in other regions.

Working Group Session and Feedback

12. Workshop participants were divided into three working groups with each group considering a case study from the perspective of their national law and practice. Their second task was to consider the 'mutual legal assistance' chapter of the draft ASEAN handbook and to provide suggestions for how the draft could be strengthened.

13. Workshop rapporteurs from Brunei, Malaysia and Cambodia communicated the results and recommendations from their respective working groups. A discussion was then held in which several delegates provided clarification on certain aspects of the national legal framework. Additional questions were asked regarding differences in responding to requests from states parties and non-states parties to the relevant treaties. The conclusions of the working group and plenary discussions were summarized and submitted to delegates for review in accordance with the procedure set out in the Chairperson's Closing Statement, which appears as **ANNEX D**.

THEME 2: MUTUAL LEGAL ASSISTANCE IN RECOVERY OF PROCEEDS:

Panel Discussion

14. The first speaker on the three-person panel was Ms Candice Welsch UNODC. Ms Welsch provided an overview of the place of international cooperation for the purposes of confiscation in the criminal justice response to crimes such as TIP. She identified the types of assets that could be subject to recovery and the ways in which recovery could take place. The presenter then provided an overview of the international legal framework around MLA in recovery of proceeds, highlighting the relevant provisions of the UNTOC. The various options available for use of recovered proceeds were considered. Participants were informed of the resources that are available to facilitate recovery of proceeds including handbooks and templates.

15. The second speaker on the panel was Dr Jayampathy Wickramaratne, UNODC. Dr Wickramaratne provided participants with an overview of the legal and procedural framework around recovery of proceeds in Sri Lanka, identifying some of the obstacles that commonly arise in relation to recovery of proceeds including the problem of vague information from the requesting state, lack of political will on both sides; lack of investigative skills, experience, legal knowledge and other capacities in the requested state; complications arising from laundered proceeds; and judicial caution. In relation to the specific issue of trafficking, the lack of political will on the part of requested states was identified as a further complicating factor.

16. The Final speaker on the panel was Mr Joonmyung Lee, UNODC Adviser. Mr Lee explained Korea's approach to recovery of assets. He illustrated his presentation by drawing

on several examples of large recovery of proceeds cases in Korea. one of which involved trafficking in persons. He explained how the criminals involved hid and laundered their assets in their own state as well as in other more 'vulnerable' states, demonstrating the complexity of the law enforcement and prosecutorial task in 'following the money'. His presentation confirmed many of the obstacles and complications that arise in such cases, particularly when assets have been successfully laundered.

17. The panel presentations were followed by a discussion, moderated by Mr Michel Bonnieu, UNODC. Questions related to the major obstacles that arise in recovery of proceeds cases and the most important steps that countries can take to meet these challenges. The issue of technology in recovery of assets was also discussed. The moderator, Mr Bonnieu, concluded the session with a brief overview of Chapter 5 of the UNCAC, which deals with return of recovered proceeds.

Working Group Session and Feedback

18. Workshop participants were divided into the same three working groups with each group considering a new aspect of the case study from the perspective of their national law and practice. Their second task was to consider the "Recovery of proceeds" chapter of the draft ASEAN Handbook and to provide suggestions for how the draft could be strengthened.

19. Workshop rapporteurs from Singapore, Indonesia and Lao PDR communicated the results and recommendations from their respective working groups. The conclusions of the working group and plenary discussions were summarized and submitted to delegates for review in accordance with the procedure set out in the Chairperson's Closing Statement, which appears as **ANNEX D**.

THEME 3: EXTRADITION

Panel Discussion

20. The first speaker on the three-person panel was Ms Candice Welsch, UNODC. Ms Welsch provided an overview of the international legal framework around extradition with particular focus on extradition in relation to transnational organized crimes such as trafficking in persons. She then drew on her experience as a practitioner to identify some of the preconditions and safeguards that commonly operate around international, regional and national extradition regimes as well as the obstacles to quick and effective extradition. The presenter touched briefly on the procedures involved in making and responding to an extradition request.

21. The second speaker on the panel was Dr Jayampathy Wickramaratne, UNODC. Dr Wickramaratne identified the particular obstacles to extradition that arise in TIP cases. He then examined the various legal bases for extradition and provided several practical examples. The presenter then identified the problems associated with prosecuting instead of extraditing. He considered the practical aspects of dual criminality; human rights and other issues that arise in extradition cases and, finally, how states can help and be helped towards more effective extradition practices and procedures.

22. The final speaker on the panel was Mr Pravit Roykaew, Chief Public Prosecutor, Pattaya Provincial Prosecutor Office, Office of the Attorney-General, Thailand. Mr Roykaew provided a comprehensive overview of Thailand's law and practice on extradition. He illustrated his presentation with case examples and explained how the various protections and conditions around extradition operate. The presenter explained the availability of additional tools such as simplified procedures and underlined the importance of preparation in ensuring the success of extradition procedures. He concluded by identifying some of the major challenges in extradition practice including language, communication and coordination and lack of awareness of national and international law and practice on extradition.

23. The panel presentations were followed by a discussion, moderated by Mr Albert Moskowitz, ARTIP. Questions related to the role of Interpol as an extradition channel; common obstacles to extradition, the political offence exception; potential pitfalls of "informal" extradition; and ways to avoid multiple trials in cases where states prosecute rather than extradite.

Working Group Session and Feedback

24. Workshop participants were divided into the same three working groups with each group considering a new aspect of the case study from the perspective of their national law and practice. Their second task was to consider the "extradition" chapter of the draft ASEAN Handbook and to provide suggestions for how the draft could be strengthened.

25. Workshop rapporteurs from Myanmar, the Philippines and Vietnam communicated the results and recommendations from their respective working groups. The conclusions of the working group and plenary discussions were summarized and submitted to delegates for review in accordance with the procedure set out in the Chairperson's Closing Statement, which appears as **ANNEX D**.

CLOSING SESSION

Adoption of the Report

26. The Chairperson presented the report, which was considered and adopted by the meeting.

Chairperson's Statement

27. The Chairperson delivered his final statement to the meeting. The statement is attached as **Annex D**. The Chairperson took the opportunity of the statement to remind delegates of the timetable agreed for submission of: (i) amendments and additions to the information on national laws and procedures provided to the working groups; and (ii) additional suggestions for improvement of the draft Handbook.

ACKNOWLEDGEMENT

28. The delegates expressed their sincere thanks and appreciation to the organizers for their warm hospitality and excellent arrangements made for the Workshop. The Meeting expressed particular thanks and appreciation to the ASEAN Secretariat, to ARTIP and to UNODC for their valuable assistance as well as to the EU for financial support.

29. The Meeting was held in the traditional ASEAN spirit of cordiality and solidarity.
