

**The Ninth Session of the General Assembly
Of the ASEAN Law Association
Bangkok, Thailand
22-25 November 2006**

Report of the Rapporteur-General

1. The 9th General Assembly of ASEAN Law Association was held at the Plaza Athenee Hotel, Bangkok, Thailand during 22-25 November 2006. The General Assembly was attended by delegates of ASEAN Law Association from Brunei, Cambodia, Indonesia, Malaysia, the Phillipines, Thailand, Singapore and Vietnam as well as observers from academic and business sectors as well as relevant agencies of the Royal Thai Government.

2. His Royal Highness Crown Prince Maha Vajiralongkorn of Thailand graciously entrusted Her Royal Highness Princess Bajrakitiyabha of Thailand to represent His Royal Highness in presiding over the Opening Ceremony of the General Assembly on 23 November 2006. In Her address to the Assembly, Her Royal Highness noted the unique responsibility of the legal profession is the duty to maintain justice. In this connection, Her Royal Highness emphasized that the legal profession must uphold their morals and integrity, possess fine discretion independent from all types of prejudice, and have a clear understanding of prevailing societal and cultural conditions as well as the people's ways of life in order that they enact and enforce the law in a right and appropriate manner and render real happiness and justice to the people at large.

3. At the Opening Ceremony, H.E. Justice Panya Thanomrod reported to Her Royal Highness and the meeting on the work of the ASEAN Law Association during the past year which included among other things the publication of the ASEAN Comparative Law Series, the academic exchange program, and the establishment of the ASEAN Law Fund. He also stated the inclusion of the topic of "Judicial Cooperation" into the ASEAN Law Association's website as well as the recent study visit to the Supreme Court of Singapore to learn about the case management and the submission of claims via electronic means.

4. At the first session, Her Royal Highness Princess Bajrakitiyabha of Thailand graciously delivered the keynote speech. Her Royal Highness noted that against the backdrop of globalization, ASEAN lawyers can contribute to ASEAN's effort in achieving its common goal in meeting with the challenges and reaping the benefits from globalization in the three main areas of focus of ASEAN, namely, (1) peace and security (2) economic development and (3) social development. In this regard, Her Royal Highness elaborated that in the area of peace and security, ASEAN policymakers and lawyers, as well as the ASEAN Inter-Parliamentary Organization (AIPO) and ASEAN Senior Law Officials' Meeting (ASLOM), can also strengthen their cooperation through the conclusion and implementation of treaties on extradition, mutual legal assistance and treaties on the suppression of transnational organized crime as well as a common strategy on counter-terrorism. In the area of economic integration and development, ASEAN public and private lawyers should work closely with our relevant agencies in the negotiation and implementation of intra

and inter ASEAN economic integration agreements. In the process of liberalization, Thailand proudly adheres to the Sufficiency Economy Philosophy initiated by His Majesty King Bhumibol Adulyadej, which we trust would lay a firm foundation for the Thai people to face the challenges and competition in today's globalized economy. In the area of social development, Her Royal Highness encourages ASEAN lawyers to work actively on the promotion of fundamental rights of the peoples, especially the vulnerable members of the society such as women and children in order that we can solve socio-cultural problems such as domestic violence, sexual offences and human trafficking. Lastly, since the rule of law is an essential foundation for ASEAN integration process, Her Royal Highness strongly believes that the ASEAN lawyers must involve in the process to address such important legal issues as legal personality of ASEAN, the harmonization of ASEAN laws and regulations as well as dispute settlement mechanism.

5. Workshop One dealt with **Class and Public Interest Litigation**. The panelists addressed the two types of litigation which are closely related. Class action, or more commonly known as representative action, is a procedure device used in litigation to determine the rights and remedies for large numbers of people whose cases involve common question of law and facts and such group of people appoint their representative from within to represent their interests. Public Interest litigation, on the other hand, is an action that may be brought by a singular individual or an organization or as a class action, however, whether the remedy sought may benefit the applicant directly or not, the litigation may be regarded as public interest litigation if the impact of such decision will serve the wider public interests. ASEAN legal systems are diverse as to the levels of acceptance and use of class and public interest litigation. It was noted that there was much benefit to be gained, namely, the rebalancing of power, reduction of the costs and time for injured individuals and the workloads of the courts. Nonetheless, it was noted that careful consideration must also be given to a proper procedural legal framework so as to achieve such perceived benefit.

6. Workshop Two dealt with **Legal Education in ASEAN in the 21st Century**. It was noted that there are three major challenges facing the legal education in ASEAN in the 21st Century, namely: 1) globalization 2) introducing non-law subjects into law courses and 3) resources. In the past, legal education focused on local laws but today, globalization is forcing ASEAN countries to acknowledge the need to develop law courses that bring in foreign elements and prepare ASEAN lawyers for globalization. It was suggested that there needs to be inter-disciplinary learning by introducing non-law courses into law degree programmes in order to produce all-rounded lawyers who understand the law they are applying. One major hindrance to legal education in ASEAN countries is the lack of resources. It is recognized that more needs to be invested in lecturers and libraries if ASEAN is serious about improving its legal education. However, the advancement in technology in the form of the Internet has allowed for distance learning and easy access to information. It was noted that due to different historical backgrounds and influences of Western countries in most ASEAN countries, different legal systems exist. With the realization that this is the time of great change in legal education, ASEAN countries should focus on facing the challenges through greater collaboration and improving resources. Emphasis was placed on the importance of teaching legal ethics, in particular ASEAN should focus on a legal education system that has as its main objective of producing good lawyers

who uphold the rule of law and carry out their profession in an ethical and moral way in addition to being committed to justice. The question arises as to how legal ethics should be taught in the 21st Century. It was concluded that there are two schools of thought: legal ethics should be taught pervasively throughout all law courses or instead there should be specific course on legal ethics.

7. Workshop Three focused on the **Protection of Victims, particularly Women and Children, against Domestic Violence, Sexual Offences and Human Trafficking.**

It is noted that there are legislations on the protection of victims against domestic violence, sexual offences and human trafficking but in reality, these crimes remain a major problem with a large number of cases still going unreported or reaching the courts. There is general consensus that legal protection for women and children exists but they are not sufficient and implementation far from satisfactory. World-wide, human trafficking is only second to the trafficking of drugs and guns. In the case of sexual offences, one major problem of prosecuting sex offenders stems from jurisdictional limitation due to most offenders are from overseas. It is recognized that victims' testimony is considered the best source of evidence against the defendant if the case gets to court and therefore the legal process should allow for anonymity of the victims as much as possible. There is general agreement that there needs to be harsher punishment for human traffickers with one delegate calling for the maximum penalty. It was suggested that in addition to penal punishment for offenders there should also be financial compensation for the victims.

8. Workshop Four focused on **the implications for ASEAN from WTO and regional trade liberalization.**

It was observed that the proliferation of Regional Trade Agreements (RTAs) was due to the stalled progress of the Doha Round of negotiations at the WTO. It was noted that present-day RTAs in the form of free trade agreements (FTAs) were wide in scope and coverage which went beyond liberalization of trade in goods to cover trade in services, investment, competition, intellectual property, rules of origin and other trade-related matters. Liberalization conducted through RTAs could prove beneficial for ASEAN countries, but also presented challenges due to the complexity of the newer types of FTAs. From an economic perspective, FTAs which are WTO-consistent and which leads to trade creation would be beneficial for ASEAN countries. However, there is also a need for sufficient safeguards provisions in the agreement and liberalization to be undertaken on a progressive manner. ASEAN countries should identify clearly what is in the national interest and make a thorough assessment of their export capacity and readiness for foreign competition. It was also suggested that ASEAN adopt a unified text for FTA negotiations with its dialogue partners and to ensure that account is taken of the different levels of development amongst ASEAN countries. Despite the surge of FTAs, the WTO system remains relevant and ASEAN lawyers should be educated on the WTO dispute settlement mechanism. WTO obligations also need to be implemented in national legal systems and ASEAN must ensure that national laws are consistent with WTO rules and be aware of the transparency requirements. A particular development at the WTO which affects the legal profession is the development of disciplines under the GATS Agreement which could erode the ability of ASEAN countries to self-regulate by subjecting law society rules on licensing and qualification requirements to review by an international dispute settlement body. Therefore, to benefit from trade liberalization whether at the WTO or through RTAs,

ASEAN countries must proceed with care, ensure stakeholder participation and keep abreast of international developments.

9. Workshop Four discussed **Alternative Dispute Resolution in ASEAN**. It was noted that the level of popularity of ADR in ASEAN countries differs from one country to another. Some countries were of the view that ADR should be supported and developed further as an alternative to litigation. This view was based on the notion that ADR would reduce workload of the courts and also involve less expenses and time of the parties concerned. In addition, the nature of ASEAN countries suggests that ADR is a more suitable way of resolving disputes, as compared to adversarial nature of litigation. However, in some countries, reliance on ADR has been minimal. Yet, the practice of most ASEAN countries has signified that the most popular means of ADR used is arbitration in commercial disputes.

10. All workshops were widely participated and featured active and insightful discussions.

Vichai ARIYANUNTAKA
RAPPORTEUR-GENERAL

25 November 2006