

ASEAN LAW ASSOCIATION
8TH GENERAL ASSEMBLY
SINGAPORE: 29 Nov – 2 Dec 2003

REPORT OF THE RAPPORTEUR-GENERAL
(2 Dec 2003)

1. The ASEAN Law Association gathered at the Shangri-La hotel in Singapore for its 8th General Assembly from 29 Nov to 2 Dec 2003. The General Assembly was attended by delegates from the ASEAN Law Association Chapters in Brunei, Indonesia, Malaysia, the Philippines, Thailand and Singapore as well as observers and guests from Vietnam, Laos and Australia. A total of 243 delegates and accompanying persons were registered for this event. The proceedings were chaired by The Right Honourable Tun Dato' Seri Mohamed Dzaiddin bin Haji Abdullah, President of the ASEAN Law Association.

2. The Opening Ceremony of the General Assembly on 29 Nov 2003 was officiated by His Excellency The President of the Republic of Singapore Mr S R Nathan. In his Address to the Assembly, His Excellency noted the role law plays in strengthening ASEAN and the important role that the ASEAN Law Association has in promoting greater mutual understanding among ASEAN member states of each other's laws and legal systems. His Excellency also noted the opportunities that the Association has of promoting the harmonisation of the laws of ASEAN member states, especially in relation to trade matters. This would not only facilitate the flow of trade among ASEAN countries but would strengthen ASEAN considerably as an important regional grouping.

3. At the First Plenary Session, the General Assembly was addressed by the President of the Association and received Reports from the Acting Secretary-General, the Heads of Delegation of Brunei, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam as well as the ALA Foundation. The Assembly noted that the Association is on track to achieving its objectives and that its finances are satisfactory. The General Assembly also inducted the National Chapters of Vietnam and Laos as members of the Association. Proposals were also made for the amendment of Article 6 of the Constitution of the Association. It was decided that the proposals be referred to the Governing Council and be considered again towards the close of the General Assembly.

4. The General Assembly thereupon proceeded to deliberate on various subjects presented for discussion. These were undertaken during 7 workshop sessions. With the exception of Workshops 2 and 3 which were held concurrently, all workshops were held consecutively and in plenary. A list of Workshop Chairpersons, Speakers and Rapporteurs is appended to this Report.

5. Workshop One dealt with ***Strengthening the Independence and Efficiency of the Judiciary***. There was unanimous agreement that judicial independence is of fundamental importance in the administration of justice. This extends beyond executive interference in the Judiciary and encompasses independence from media and from litigants. Judicial independence in no way implies a lack of judicial accountability. Judges must at all time dispense justice fairly and expeditiously with reasoned judgments. It was noted that in recent years, courts throughout ASEAN have introduced measures to improve efficiency, particularly to address the backlog of cases that many

court systems are confronted with. One commonly used device is the pre-trial conference. It was however noted also that judicial efficiency should not be at the expense of justice and must not result in poor quality judicial determinations.

6. Workshop Two discussed **Cross-Border Legal Services in ASEAN under WTO**. It was noted that many ASEAN nations take the view that the right to practice in the local Bar is an adjunct of sovereignty. Thus many ASEAN countries still prohibit foreign nationals from entry to the local Bar. However, the liberalisation of the legal services sector in ASEAN countries is both desirable as well as inevitable. The difficulties in achieving this include the diversity of languages and legal systems within ASEAN. To overcome this, there is a need to harmonise laws and entry criteria. The concerns of the local Bar can be addressed through the conferment of reciprocal practice rights. It was recognised that given the political nature of the issue, there is a need for political will if the legal services sector in ASEAN countries are to be liberalised. It was suggested that the Governing Council of the ASEAN Law Association initiate a programme whereby every National Chapter would advocate that every ALA member be permitted to practice the law of their own country as well as international law in any ASEAN country.

7. Workshop Three which was held concurrently with Workshop Two discussed the **Challenges to Legal Education in a Changing Landscape**. Law schools in ASEAN are currently faced with the challenges presented by globalisation. There is a need to train lawyers who are commercially relevant in an era where cross-border transactions are increasingly the norm. Also, law students need to be sensitised to the larger issues of globalisation such as human rights and the environment. This would necessitate curriculum changes to include, for example, greater emphasis on international and comparative laws, and also programmes such as student exchanges and co-operative partnerships with other law schools. On the teaching of ASEAN legal systems in the law schools of ASEAN countries, it was noted that the main problem in conducting such a programme is the lack of suitable teaching materials in English.

8. Workshop Four dealt with **Arbitration and Mediation in ASEAN: the Law & Practice**. Mediation is a traditional mode for dispute resolution among ASEAN countries. Increasingly, ASEAN countries have recognised the utility of arbitration as a means of dispute resolution. Many ASEAN countries have introduced laws to facilitate arbitration and most of these laws are based on the UNCITRAL Model Law on Arbitration. Both modes of ADR can alleviate judicial workloads and it is recognised that these have been largely successful in ASEAN in achieving this objective. There was wide support for greater harmonisation of laws on arbitration and it was suggested that the New York Convention on the Reciprocal Recognition and Enforcement of Foreign Arbitral Awards is an appropriate means of achieving this. Considerable interest was also expressed in establishing a Pan-ASEAN Arbitration Protocol (falling within the larger umbrella of the New York Convention) as well as a Core of ASEAN arbitrators. It was suggested that the ASEAN Law Association can take the lead in taking these ideas further.

9. Workshop Five focused on the **Legal Issues of Electronic Commerce and Electronic Contracting**. Electronic commerce holds great promise for ASEAN and all ASEAN countries are aware of the legal issues that must be addressed to enable this activity. Crucial to the development of electronic commerce is the need to ensure the functional equivalence of electronic transactions with paper-based transactions. Brunei, the Philippines, Thailand and Singapore have enacted laws based on Model Laws drawn up by UNCITRAL to facilitate electronic commerce. Other ASEAN countries are actively considering the promulgation of similar laws. It was noted that the UNCITRAL Model Law on Electronic Commerce is premised on a different technological environment and must be updated to be relevant to the present technology and business practices. It was

also noted that for electronic commerce to operate effectively, there is a need to ensure harmonised rules for electronic transactions that cross national borders. UNCITRAL is working on these issues through a Convention on Electronic Contracting. It was suggested that ASEAN countries should follow closely these developments at the international level.

10. Workshop Six dwelt on ***National and Cross-Border Issues in Recent Developments on Insolvency Law and Business Rehabilitation***. There is increasing attention in ASEAN on the laws pertaining to insolvencies. Given the economic cycles which has affected the economies of ASEAN countries, the emphasis now is on business rehabilitation rather than recovery of business debts. Several ASEAN nations have or are in the process of revising their insolvency regimes to provide for this. An important part of these efforts include the establishment of specialised insolvency courts. The importance of the work of UNCITRAL in establishing a harmonised regime for cross-border insolvencies was recognised, particularly in the context of an increasingly globalised world. But it was recognised that the strong desire of some developed countries that the judgments and orders of their courts in insolvency proceedings must be recognised outside their national borders pose difficulties to the adoption of UNCITRAL's work.

11. Finally, Workshop Seven discussed ***the Application of WTO in ASEAN, including Foreign Direct Investments***. 8 of the 10 ASEAN member states are present or intending WTO members. WTO membership promises substantial trade benefits. But membership also requires compliance with clearly defined rules in a non-discriminatory manner. There are clearly different expectations between developed and developing countries in their approach to and perception of WTO. There are concerns that the WTO framework is being manipulated by more powerful developed countries solely for their own interests. Thus, many countries prefer to enter into FTA and BITs where they can have better control over their obligations. But the WTO framework is an effective framework to protect the weak against the strong. So, for FTAs to work, they must be consistent with the underlying principles of the WTO. It was noted that ASEAN countries have not been more forthcoming in acting together to pursue their interests in WTO. It was suggested that this should be addressed. As a first step, there can be more discussions among ASEAN member countries and relevant professionals over WTO issues. This should be held before the next WTO ministerial meeting.

12. All workshops enjoyed wide participation and featured interesting and insightful discussions into common issues which are of interest to all participants.

13. The 8th General Assembly of the ASEAN Law Association has concluded its academic programme and is now convened for its Final Plenary Session.

JEFFREY CHAN WAH TECK
RAPPORTEUR-GENERAL

2 Dec 2003

8th ASEAN Law Association General Assembly 2003

WORKSHOP CHAIRMEN, SPEAKERS & RAPPORTEURS

Workshop 1

Strengthening the Independence and Efficiency of the Judiciary

Chairman : CR Rajah, SC (Singapore)

Rapporteur : Woo Ka Wai

Brunei Darussalam	Justice Datin Paduka Hayati Salleh
Indonesia	Prof Dr Paulus E Lotulung
Malaysia	Mr Steven Thiru
Philippines	Justice Leonardo A Quisumbing
Singapore	Mr L P Thean (Retd Judge of Appeal)
Vietnam	Professor Dr Nguyen Nien
Thailand	Judge Thammanoon Phitayaporn

Workshop 2

Cross-Border Legal Services in ASEAN under WTO

Chairman : Atty Alonzo Q. Anchetta (Philippines)

Rapporteur : Lee Kee Yeng

Brunei	Dk Siti Nurbani binti Pg Dato Haji Tengah Dr Colin Ong
Malaysia	Prof Madya Dr Rahmat Muhammad
Philippines	Prof H Harry Roque Jr
Singapore	Mrs Arfat Selvam
Thailand	Mr Bamrong Tanchittiwatana

Workshop 3

Challenges to Legal Education in a Changing Landscape

Chairman : Dato James Foong (Malaysia)

Rapporteur : Davinia Filza Abdul Aziz

Brunei Darussalam	Haji Nabil Daraina Badaruddin
Indonesia	Prof Mardjono Reksodiputro
Malaysia	Madam Hendon Mohamed
Philippines	Dean Raul C Pangalangan
Singapore	Assoc Prof Tan Cheng Han
Thailand	Assist Prof Tithiphan Chuerboonchai

Workshop 4

Arbitration and Mediation in ASEAN: the Law & Practice

Chairman : Warren Khoo (Singapore)

Rapporteur : Chew Chin Yee

Brunei Darussalam	Dr Colin Ong
Indonesia	Mr Mas Ahmad Santosa
Malaysia	Tuan Haji Kuthubul Zaman Bukhari
Philippines	Dean Eduardo de los Angeles
Singapore	Mr Goh Joon Seng (Retd Judge) Assoc Prof Lawrence Boo
Thailand	Mr Sorawit Limparangsri

Workshop 5

Electronic Commerce and Electronic Contracting Legal Issues

Chairman : Prof Dr Mieke Komar Kantaatmadja

Rapporteur : Vinod Sabnani

Indonesia	Prof Dr Hikmahanto Juwana
Malaysia	Mr Christopher Leong
Philippines	Mr Ivan John E Uy
Singapore	Mr Jeffrey Chan Wah Teck
Thailand	Dr Pinai Nanakorn

Workshop 6

Recent Developments on Insolvency Laws and Business Rehabilitations – National and Cross-Border Issues

Chairman : Judge Kanok Indrambarya

Rapporteur : David Lee

Brunei Darussalam	Mr Muhd Jamil Abas bin Abdul Ali @ James Chiew
Indonesia	Prof Dr Sutan Remy Sjahdeini
Malaysia	Madam Rohatul Akmar
Philippines	Atty Francis Ed Lim
Singapore	Mr Lee Eng Beng
Thailand	Mr Wisit Wisitsora-At

Workshop 7

Application of WTO in ASEAN including FDI (Foreign Direct Investment)

Chairman : Dr Colin Ong

Rapporteur : Christopher Tan

Malaysia	Mr Kenneth Goh
Philippines	Prof Ma Lourdes A Sereno (Paper presented by Atty. Bartolome S Carale)
Singapore	Assoc Prof Locknie Hsu
Thailand	Judge Suthiphon Thaveechaiyagarn