

**ASEAN LAW ASSOCIATION
XTH GENERAL ASSEMBLY
Hanoi: 15 October – 17 October 2009**

**REPORT OF THE GENERAL RAPONTEUR
(17 October 2009)**

1. The 10th General Assembly of The ASEAN Law Association was held in Hanoi (Sheraton hotel) from 15 October to 17 October 2009. It was attended by delegates from Brunei, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam. A total of 355 delegates and accompanying persons were registered for this even The Assembly also has the hornour to receive the Vietnam State President, Hon. Nguyen Minh Triet and the General Secretary of ASEAN, Mr. *Surin Pitsuwan* at the opening ceremony.

2. At the Opening Ceremony on 15 October, His Excellency, The President of Vietnam, Mr. Nguyen Minh Triet gave his key note speech. In his Greeting Address to the Assembly, His Excellency emphasized the importance of the ASEAN Charter and the opportunities the ASEAN countries may have and the challenges they may face in order to meet with the requirement of the establishment of the ASEAN Community under the Charter. His Excellency pointed out that the Charter will create the legal basis for ASEAN countries to reach new goal: Peace, Security and Sustainable Development. He also informed the delegates about the efforts of Vietnamese people in building the Law-based State by the people, of the people and for the people and expressed Vietnam's readiness to learn the experiences of other ASEAN countries in order to foster this cause. His Excellency also emphasizes the big important role and contribution of the ALA in paving road to the ASEAN Law.

3. At the First Plenary Session, the General Assembly was addressed by the President of the ALA and Heads of Delegation. Following introductory speeches of the heads of delegations, Dr. Surin Pitsuwan, ASEAN Secretary Gerenal gave his key note speech on the possibility

of cooperation between ASEAN and ALA. In his address, Dr. Surin Pitsuwan emphasized the necessity to create common standards for ASEAN countries in different fields for making the Charter living and the important role of ALA in this cause. He also emphasized the necessity to establish a joint ALA ASEAN working group on the implementation of ASEAN Charter.

4. After the opening, six workshops were discussed consecutively. The results of the workshops are as follows:

4.1 . Workshop one dealt with implications of the ASEAN Charter on legal education in ASEAN countries. The reports from 7 countries explored the current state of legal education in each country and point out the necessity of enhancing the cooperation in this field in light of the ASEAN Charter. The reports also pointed out the necessity of unifying and harmonizing the law of ASEAN countries to pave the road to the Law of ASEAN. Political, economic and social integration amongst the Member States should see an increasing consolidation of its various legal systems and therefore a new approach from many institutions providing legal studies will be necessary. Some solutions to make educated persons from the ASEAN Member States knowledgeable of the various legal systems in the other ASEAN Member States were suggested at the Workshop. To reach this goal, it is advised to introduce “ASEAN-oriented subject or module the law courses offered by the various law schools in each individual Member State. It is also advised that exchange programs in various aspects among law schools in ASEAN countries should be encouraged.

4.2. Workshop Two discussed resolution of the current legal issues under the ASEAN Charter. The reports of Workshop Two brought in the most actual legal issues that should be jointly solved by ASEAN countries in light of the ASEAN Charter. They are namely: integration, dispute resolution mechanism, labour and migrants, terrorism and human rights.

Some solutions were proposed to solve the current issues under the ASEAN Charter, namely, to create an effective mechanism of cooperation between ALA and ASEAN, so that ALA can support ASEAN in proposing ways to harmonise laws of ASEAN members states, developing common university curriculum and other ways to realise an ASEAN community; to study the possibility of establishing ASEAN judicial body and promulgate ASEAN laws; and to work out a more effective dispute resolution mechanism.

4.3 Workshop Three dealt with the recent developments of the legal system in ASEAN countries. An overview on the legal system of each of the ASEAN countries and their latest developments was introduced in this workshop. The new laws and institutions that have appeared and have been established recently in the ASEAN countries are analyzed as the new developments. Big attention was given to the new competition law, Party-list Act, liberalization of regulatory environment for legal services, law on combating human trafficking and ratification of some international documents. The reports underline the impact of new developments in legal system of the country-members on socio-economic and political life of ASEAN the countries.

4.4 Workshop 4 attempted to discuss the investment law regime and assess its relevance to the changing environment of business and politics in the ASEAN countries. Laws and regulations governing investment activities are viewed from different perspectives, especially their impact on the development of national economy. It was suggested that ASEAN Law Association may contribute to building commonality of investment laws in ASEAN countries to make investment laws as a tool of progress for the region. All ASEAN countries should now focus on further harmonizing their respective laws including relevant regulatory regimes of investment in order that all pertinent regional agreements on economic cooperation can be smoothly implemented. In this regards ALA needs to take a strong stand in legal issues affecting ASEAN arising out of the ASEAN Charter. Therefore it is humbly suggested that ALA considers itself to be eligible to act as proxy legal advisors for

ASEAN in interpreting and advising member states on the various legal aspects of the ASEAN Charter.

4.5 Workshop 5 dealt with judicial reform in ASEAN countries. The country reports pointed out the measures taken by each country to reform its judicial system. The common components of judicial reform in ASEAN countries were listed. They are: independence of judiciary, more effective protection of fundamental rights of people access to justice; timely handling, quality of judiciary, friendly-accessible court system, transparency of formalities and decisions; possibility of establishment of small-value trials and etc. Some solutions were suggested to promote judicial reform and strengthen quality of the judiciary in each country. The workshop underlined the following: identification of the reasons for deadlock of cases; the commitments of the leaders of each country to the success of judicial reforms, larger application of high technology in the judicial activities; increase of number of local courts; promotion of court-annexed mediation. There was a consensus on the lessons learnt from judicial reforms in ASEAN countries: Judicial reform is not an easy task that needs constant lasting efforts; judicial reform inevitably leads to changes of the current system and the awareness of people; the capacity of the judiciary in ensuring justice goes parallelly with the investments in human and material resources; judicial reform needs more effective international and regional cooperation.

4.6 Finally, Workshop 6 dealt with the foreign arbitration award enforcement in ASEAN countries and the solutions for its improvement. The Workshop listed the reasons of the low effect of foreign arbitration awards, namely : discrimination between the domestic arbitration agreements and foreign arbitration agreements; different approaches in applying the 1958 New York Convention by national courts of ASEAN countries; incompatibility of national arbitration law. Some solutions for improving enforcement of foreign arbitration awards in ASEAN countries were suggested. Among the suggestions made by the Speakers, the following need to be underlined: Harmonization of arbitration laws of ASEAN countries and make it more compatible with the 1978 New York Convention; raising awareness of the 1978 New York Convention, especially

awareness of judges; adopting a protocol of ASEAN on implementation of the 1978 New York Convention that makes clear and uniform implementation of some Convention provisions such as “*written form*”, “*application of temporarily-urgent measures*”, “*public order*”; organization of annual meeting to discuss arbitration issues under umbrella of ALA and its Standing Committee on ADR.

All workshops were enjoyed and actively participated by the participants and were closed at 12.30 on 17 October.

LIST OF CHAIRPERSONS AND PAPER WRITERS

| Workshop 1: Implications of the ASEAN Charter on Legal Education in ASEAN | | | |
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| | <u>Chairperson:</u> | | |
| | Prof. Dr. Le Hong Hanh | Director, Institute for scientific law research, Ministry of Justice | Vietnam |
| 1 | Aminuddin Zaki Bin D.P Haji Abd Rahman | | Brunei |
| 2 | Dr. Rico Pandeirot, SH, LL.M | Member of the Indonesian National Committee of ALA | Indonesia |
| 3 | Puan Siti Naaishah | | Malaysia |
| 4 | Atty. Victoria V. Loanzo | Professor of Law, University of the East & Far Eastern University | Philippines |
| 5 | Prof. Tan Cheng Han, S. C. | Dean of the Faculty of Law of the National University of Singapore | Singapore |
| 6 | Prof. Sakda Thanitcul | Vice – Dean, Faculty of Law, Chulalongkorn University | Thailand |
| 7 | Prof. Dr. Mai Hong Quy | Headmaster of Hochiminh Law University | Vietnam |
| Workshop 2: Resolving Present Legal Issues under the ASEAN Charter | | | |
| | <u>Chairperson:</u> | | |
| | Swandy Halim | | Indonesia |

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| 1 | Mohd Nizam Ismi | | Brunei |
| 2 | Prof. Dr. Jur. Otto Cornelis Kaligis, SH, MH | Senior practicing lawyer and member of the Indonesian National Committee of ALA | Indonesia |
| 3 | Puan Sri Datin Seri N Saraswathy Devi | | Malaysia |
| 4 | Bartolome Carale | Philippines Law University | Philippines |
| 5 | Prof. Walter Woon | Attorney-General | Singapore |
| 6 | Dr. Pornchai Danvivathana | Deputy Director General, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs | Thailand |
| 7 | Pham Duy Nghia | Head of Law Department, Hanoi National University | Vietnam |
| Workshop 3: Recent Developments (2004-2009) in the Legal Systems of ALA Member Countries | | | |
| | <u>Chairperson:</u> Wisit Wisitsora-at | Deputy Permanent Secretary for Justice, Ministry of Justice | Thailand |
| 1 | Riana Dewi Haji Aji | | Brunei |
| 2 | Dr. Syamsul Maarif, SH, LL.M. | Justice at the Indonesian Supreme Court and a member of the Indonesian National Committee of ALA | Indonesia |
| 3 | Mr. Murad Ali Bin Abdullah | | Malaysia |
| 4 | Prof. Myrna S. Feliciano | Executive Director, Mandatory Continuing Legal Education Office (MCLE) | Philippines |
| 5 | Sommanat Juaseekoon | Legal Officer, Legal Affairs Bureau, The Office of Permanent Secretary, Ministry of Justice | Thailand |
| 6 | Mr Jeffrey Chan Wah Teck, S. C. | Deputy Solicitor-General | Singapore |
| 7 | Prof. Duong Thanh Mai | Institute for scientific law research, Ministry of Justice | Vietnam |
| Workshop 4: Critical Evaluation of Investment Laws as a tool of Progress within ASEAN Countries | | | |
| | <u>Chairperson:</u> Mr. S. Radhakrishnan | Honorary Treasurer ALA | Malaysia |

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| | | Malaysia Consultant, Sean Delamore & Co (Malaysia) | |
| 1 | Dr. Colin Ong | | Brunei |
| 2 | Dr. Normin S. Pakpahan | Former Indonesian Representative at Asian Development Bank and a member of Indonesian National Committee of ALA | Indonesia |
| 3 | Dr. Rusniah Ahmad <i>(Presenter)</i> | Professor of Law, College of Law, Government & International Studies (COLGIS), University Ultra Malaysia (UUM), Sintok, Kedah: LLB. Hons (Malaya), LLM (Edinburgh), PhD (Manchester), Advocate & Solicitor, Malaya | Malaysia |
| 4 | Senior Lecturer Mrs. Rohana Abdul Rahman <i>(Co – writer)</i> | COLGIS, UUM: LLB, LLM, Advocate & Solicitor, Malaya | Malaysia |
| 5 | Lecturer Mr. Ahmad Nasyran Bin Azrae <i>(Co-writer)</i> | COLGIS, UUM: LLB (IIUM), Diploma in Syariah Legal & Practice (IIUM), LLM (IIUM) | Malaysia |
| 6 | Jose Martin R. Tensuan | Partner, Angara Abello Concepcion Regala & Cruz Law Offices | Philippines |
| 7 | Ms Deborah Barker, S.C. M/s Khattar Wong | Partner | Singapore |
| 8 | Cynthia Pornavalai | Partner, Tilleke & Gibbins International Ltd. | Thailand |
| 9 | Nguyen Duc Minh | Institute of State and Law | Vietnam |
| Workshop 5: Current Judicial Reforms in ASEAN Countries — Lessons and Experiences | | | |
| | <u>Chairperson :</u> Judge Montri Sillapamahabundit | Chief Judge of the Nonthaburi Municipal Court | Thailand |
| 1 | Radin Shafiee Radin Mas Basiuni | | Brunei |
| 2 | Prof. Dr. Paulus Lotulung, SH | Deputy Chief Justice at Indonesian Supreme Court | |

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| | | and Deputy Chairman of Indonesian National Committee of ALA | Indonesia |
| 3 | Ms. Fadzlin Suraya | | Malaysia |
| 4 | Justice Renato C. Corona | Justice, Supreme Court of the Philippines | Philippines |
| 5 | Mr Tan Siong Thye | Senior District Judge, Singapore Judiciary | Singapore |
| 6 | Surin Cholpattana (writer and reporter) Patcharin Rui-on (co – writer) | Justice of the Office of the President of the Supreme Court Foreign Relations Officer, International Affairs Division, Office of the Judiciary | Thailand |
| 7 | Master Nguyen Hai Ninh | Vice – Director, Department of Law and Judicial Reform, Office of Central Party | Vietnam |

Workshop 6: Improving on Enforcement of International Commercial Arbitral Awards in ASEAN Countries

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| | <u>Chairperson :</u> Low Siew Joon | Vice – Chairman of ALA Singapore | Singapore |
| 1 | Hj Mohd Rosli Hj Ibrahim | | Brunei |
| 2 | Dr. Huala Adolf | A member of the Indonesian National Committee of ALA | Indonesia |
| 3 | Dato’ Syed Ahmad Idid | | Malaysia |
| 4 | Patricia Ann T. Prodigalidad Angara Abello Concepcion Regala & Cruz | Practicing Lawyer Partner | Philippines |
| 5 | Prof. Lawrence Boo | Resident, The Arbitration Chambers; District Judge, Singapore Judiciary | Singapore |
| 6 | Sorawit Limparangsri | Judge of the Office of the President of the Supreme Court | Thailand |
| 7 | Dr. Nguyen Minh Chi | President of VIAC Center | Vietnam |