

Messeges

from Hon. Chief Justice Atthaniti Disatha-Amnarj
President of the Asean Law Association



*T*his is a very interesting time for the Asean Law Association. We have survived the Asian economic crisis and now are healthier and stronger than ever. Times of trouble and sometimes even despair make us realize more the true value of friendship and the spirit of togetherness. Asean Law Association is in the process of passing from the first generation to the next. Cambodia and Vietnam are added to our members. To these Laos and Myanmar may soon be followed. It is our duty and function to maintain the spirit of ALA in this ever increasing forum. To cherish and be proud of our being, to honour our founding members, some may have long passed away, but they will always be with us, in our spirit and in our memories, in the history of ALA.

*O*ur activities are diverse, far reaching and fundamental. In the field of Judicial Cooperation, with the kind arrangement of the Singapore Chapter for ALA, many of our members have the opportunity to visit the beautiful and state-of-the-art Supreme Court building there. To also witness the court related technology and the case management method in what may be said as one of the best in the world.

*L*egal Education is an area where ALA may rightfully claim its contribution. ALA's official website, www.aseanlawassociation.org, contains some of the riches and best legal literature for the Asean legal systems, available to all law students, academics, practitioners and all interested persons free of charge. This could bring our younger generation of lawyers together and bring us closer together. The traditional studies of comparative law in dividing 'legal family' into common law, civil law and religious law may come to see a new light when we can explore our respective legal system from our cultural heritage in our own perspective.

*I*nternational law of Asean's perspective, business law and alternative dispute resolution are on the rise in our region. No one region of the world can claim exclusivity in international commercial arbitration any more. Each and every economy in ALA has at least an Arbitration Institute of its own. Conciliation, whether out-of-court or court-annexed, are widely practiced. I am most certain that with the unique blend of cultures and traditions in our region, dispute resolution which is non-confrontational and non-aggressive which has been practiced for hundred of years will be here to stay for good. It is heartening to see the burgeoning of ADR to the extent that a new Standing Committee has been formed.

*T*hese activities can all gear up to one thing. Something coined very appropriately by our beloved Mr. T P B Menon as "Taking ALA to New Heights". I am sure this will be an agenda for serious discussion in our XXVIII Governing Council Meeting in Jakarta during July 19-22, 2007.

*L*astly, on a lighter note, our Golf Chapter has been progressing well. I am most certain that in each and every Governing Council Meeting attempts will be made to add some cultural aspects to the meeting; after all this is our way of life and it reflects in our ALA spirit from day one.



◀ Hon. Atthaniti gave a warm welcome to Hon. Mr. Pham Quoc Anh, Chairman of ALA Vietnam at the Suvarnabhumi Airport Lounge



◀ Justice Pornpetch, Chairman of Thai National Committee greeted Justice Dato' Hashim bin Dato' Haji Yusoff



◀ Delegates register



◀ Heads of Delegation

Welcome Dinner on 22 November 2006





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 Philippines, Thailand, Singapore and Vietnam including observers from academic and business sectors as well as relevant agencies of the Royal Thai Government.

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.



▲ Heads of Delegation

(L – R) Dato' Seri Paduka Haji Kifrawi bin Dato Paduka Haji Kifli (Brunei) Prof. Dr. Bagir Manan (Indonesia) Dato' Hashim bin Yusoff (Malaysia) Justice Chao Hick Tin (President ALA) Mr. Charles Lim Aeng Cheng (Secretary - General ALA) Atty. Avelino V. Cruz (Philippines) Mr. Chelva Retnam Rajah (Singapore) Hon. Chief Justice Atthaniti Disatha-Amnarj (Thailand) and Mr. Pham Quoc Anh (Vietnam)



◀ Justice Chao Hick Tin addressed Ceremony



Keynote Speech by Hon. Chief Justice Atthaniti Disatha-Amnarj, ▶
Chairman of the Thai National Committee of ALA

At the Opening Ceremony, Hon. Chief Justice Panya Thanomrod, President of the Supreme Court 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 "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.



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 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 well as dispute settlement mechanism.



Head of delegation during the Open ceremony



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.



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 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.



▲ A delegate raises a question during meeting



◀ TPB Menon (Singapore), Chairman workshop II

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 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.

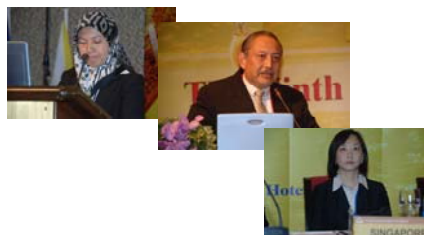
Workshop Three focused on the **Protection of Victims, particularly Women and Children, against Violence, Sexual offences and Human Trafficking**. It is noted that there are legislations on the protection of victims against domestic violence, sexual offences and human trafficking but in reality, these 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.

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 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.

Workshop Five 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. Yes, the practice of most ASEAN countries has signified that the most popular means of ADR used is arbitration in commercial disputes.

Judge Vichai Ariyanuntaka reported of the Rapporteur - General



Governing Council Meeting



Sight-seeing programme, visit to the Grand Palace



23 November 2006, Dinner Reception hosted by Hon. Pornpetch Wichitcholchai



Mr. Chaikasem Nitisiri, Deputy Attorney - General hosted Lunch Reception

H.E. Mr. Chanchai Likhitjitta, the Minister of Justice hosted the Dinner Reception on 24 November 2006



ALA Farewell hosted by Hon. Chief Justice Panya Thanomrod, President of Supreme Court on 25 November 2006



Cultural Activities



Brunei Delegation



Singapore Delegation



Malaysia Delegation



Philippines Delegation



ALA Golf Chapter

Indonesia Delegation



The ALA Anthem

Music: Avelino V. Cruz
Lyrics: Magdangal M. de Leon
AVC/October 12, 2005



Working together, building the future
Holding a beacon, the laws of our region
Fostering goodwill, bridges of friendship
Lawyers of ASEAN together as one
Come, spread the word, let's heed the call
Lawyers and judges and law teachers all
Join hands and fight for the freedoms we owe
To ASEAN brotherhood, to the rule of law
We are brothers all in ASEAN land
Trust and understanding are all ours to share
We're united as one in our diversity, blending cultures & history
Harmonizing our laws is our mission of hope
Together, we will reach our cherished dream,
Our fervent pray'r, a vision of justice and peace
We promise to keep our noble faith,
Our fervent pray'r for a region of progress and peace
ASEAN Law Association!
ASEAN Law! ASEAN Law!

Postscript:

The Secretary-General who is responsible for this newsletter expresses his profound apologies for not including news from various Members of ALA. The only excuse is time constraint and lack of experience. Members please send news and photographs of events to be published in our next newsletter to:

ALA Secretariat C/O International Affairs Division, Office of the Judiciary Ratchadaphisek Road, Bangkok 10900, THAILAND
Tel: 66 2541 2016, 66 2512 8491 Fax: 66 2541 2016
E-mail: inad@judiciary.go.th