



2022

**ASEAN
LAW
ASSOCIATION**



OPENING ADDRESS

43RD ASEAN LAW ASSOCIATION GOVERNING COUNCIL MEETING

ALA PRESIDENT

THE HONOURABLE CHIEF JUSTICE
SUNDARESH MENON

A very good afternoon, and welcome to the 43rd ALA Governing Council Meeting.

May I first convey our heartfelt condolences to our hosts upon the twin tragedies that have afflicted our family and friends in Indonesia: the deaths sustained over the course of the football match in East Java, and then the injuries and casualties arising from the earthquake in North Sumatra. Both these tragic events happened over the course of the last few days. Our thoughts and prayers are with our hosts as they struggle with the pain of these tragic events; and our gratitude that they have nonetheless continued to extend their warm hospitality to all of us. May I please ask all of those present to rise (the rest of us joining remotely please stay seated) to observe a moment of silence to commemorate all the lives lost. Thank you. May I please ask those present to be seated please.

Next, let me apologise for not being able to be there in person. Over the course of the last week, I was beset by a series of relatively minor health issues that became less manageable as they all came together – beginning with an aggravated back and spine injury, then a severe case of sinusitis, which then led to a bad throat culminating in my losing my voice completely on Saturday. Thankfully, my voice is returning and each of the various issues are resolving slowly. My sincere apologies for the last minute change of plans and in particular, for missing the tribute dinner for my friend, Bapak Hatta Ali last night. I shall say more on this in a moment.

Just as the 42nd Governing Council Meeting was significant because it was the first ever virtual meeting of the Governing Council, the 43rd Governing Council Meeting will be remembered as the first time that some of us have had the opportunity to meet face-to-face as an ALA family since the pandemic, in this hybrid meeting. We have our hosts, ALA Indonesia, to thank for this. You may remember that their commitment was only to host another virtual meeting this year, but they very gamely chose to give us all a foretaste of what is to come at the 2023 ALA General Assembly, by organising a farewell golf event-cum-dinner in honour of the immediate past Chair of ALA Indonesia, retired Chief Justice Muhammad Hatta Ali, and by arranging for this hybrid meeting today.

As we prepare for the formal proceedings today, I wish to warmly welcome our new ALA Vice-President and Chair of ALA Thailand, the Honourable Chief Justice Chotiwat Luengprasert, who was appointed President of the Supreme Court of Thailand on 1 October 2022, and who succeeds the outgoing Chair, the Honourable Chief Justice Piyakul Boonperm. I thank Chief Justice Boonperm for steering ALA Thailand with a steady hand over the past year, and in particular for seeing to the superb organisation of another round of the ASEAN Law Institute (or "AsnLI") Roundtable series on the ASEAN Comprehensive Investment Agreement. I look forward to working with Chief Justice Luengprasert in the remainder of my term as President.

I also wish to pay a special tribute today to the immediate past Chair of ALA Indonesia, retired Chief Justice Muhammad Hatta Ali. Although my colleague, Justice Lee Seiu Kin, the Chair of ALA Singapore delivered on my behalf the tribute to Pak Hatta Ali last night, I thought it fitting to reiterate some of the points I made in my tribute and place them formally on the record of the proceedings of this meeting.

Chief Justice Hatta was elected ALA President at the 2012 Bali General Assembly. Since then, he has attended every Governing Council meeting, every General Assembly and every meeting of the Council of ASEAN Chief Justices until the end of his term as Chief Justice in 2020. From the time I first met Chief Justice Hatta shortly after we both took office as Chief Justice of our respective courts, I have been struck by his warmth and cheerfulness, his dedication to the ASEAN cause, and, of course, his enduring passion for the game of golf. I am deeply grateful to Chief Justice Hatta for his genuine friendship and his strong commitment to the cause of promoting closer ties between the ASEAN judiciaries and legal communities. I wish Pak Hatta Ali a long and happy retirement, and many joyous years of golf ahead.

Let me now turn to briefly mention some of the work we have undertaken since we last met in November 2021. At last year's meeting, I emphasised the importance of our Working Groups keeping up the momentum of their work. This required us to revise various concept notes which we had previously put up to the ASEAN Secretariat (or "ASEC") on various areas in which ASEC had requested our collaboration and assistance. I am delighted that the concept note on promoting legal convergence in the enforcement of foreign arbitral awards and international settlement agreements has since been revised and submitted to ASEC for consideration. The ALA Working Groups have also worked tirelessly to finalise the other three notes (on working with ASEC to support compliance with ASEAN instruments by ASEAN Member States, establishing a panel of experts that ASEC may consult in specific areas and promoting awareness of ASEAN legal instruments and their implementation), which have been tabled before this meeting. I look forward to hearing from the respective Chairs, along with the updated ASEAN protocol for communication with non-disputing states on issues of treaty interpretation and the concept note on the ALA Virtual Marketplace for training opportunities. I very much hope that these also can be finalised and submitted before long.

The AsnLI also had a busy year. Together with ALA Malaysia and ALA Thailand, the Institute organised two further instalments of its Roundtable series on the ASEAN Comprehensive Investment Agreement. It is also poised as the anchor organisation to implement the recommendations of the ALA Working Group tasked to revise the concept note on promoting legal convergence in the enforcement of foreign arbitral awards and international settlement agreements. We shall hear more of this proposal later, along with the Institute's 2022 annual report and proposed 2023 workplan which are being tabled for endorsement at today's meeting.

Like last year, the ALA Standing Committees and the Trade and Investment Group (or "TIG") have also been able to meet virtually this year. They have tabled written updates on their deliberations for endorsement. I would particularly like to highlight two of these. First, the ALA Standing Committee on International Law is proposing to expand the scope of its work to specifically include areas related to climate change. Second, the TIG has, following the activities it proposed at last year's meeting, organised a webinar in June 2022 on issues and developments relating to ASEAN free-trade agreements. Supported by AsnLI and ALA Singapore, this webinar featured speakers from Malaysia, Singapore and Thailand, and a report has since been published on the AsnLI website.

In the remaining term of my presidency, I wish to see through ALA's work with ASEC, which grew out of my initial discussions with the ASEAN Secretary-General in 2019, and was further driven by the painstaking efforts of the Working Groups revising and finalising the concept notes which I mentioned earlier. I also hope to be able to complete my round of calls by visiting ALA Cambodia, and Lao PDR. The ALA Secretariat has been working with the Supreme Court of Lao PDR on constituting ALA Lao PDR, and I hope to be able to present ALA Lao PDR when we next meet in Malaysia. I am delighted that they will be represented today.

On that note, ALA Malaysia has been working at a feverish pace, gearing up for what promises to be an excellent General Assembly and Governing Council Meeting in 2023, both to be held entirely in-person. While we once took this for granted, the pandemic has left us wiser in better appreciating the value of such meetings which are truly a privilege. The draft programmes for the meetings have been circulated and the views of the National Committees have been conveyed to ALA Malaysia, which will provide an update on the meetings later today

Finally, let me acknowledge and thank my colleague, Judge Paul Quan, for all his invaluable assistance as Secretary-General of ALA. The ALA Secretariat has had another busy year and its work is detailed in the Secretary-General's report, which has been tabled before the Governing Council. I am also deeply grateful to the National Committees for working closely with him and the Secretariat to meet the priorities I outlined at last year's meeting, in particular wrapping up the work of the various ALA Working Groups successfully

As we emerge from the pandemic, I am so very pleased to be able to renew my friendships with so many of you. I would like to again express my gratitude to our host, the Chief Justice of Indonesia and Pak Swandy and his team for making it possible to participate in this face-to-face in Bandung, Indonesia – and I cannot think of a more fitting place to do this except that I wish I were there. I am heartened that as we try to put the pandemic behind us, there will be more opportunities for us to return to our long established practice of meeting in person. I hope to see the rest of our friends in our ALA family in Malaysia next year, if not sooner. I am deeply grateful as always to the Vice-Presidents, the ALA National Committees, and each and every member of the ALA family for extending their fullest support to me and the Secretary-General. I have no doubt that this will be yet another fruitful meeting and I very much look forward to a rich discussion later in the course of this afternoon.

Thank you so very much.

43RD GOVERNING COUNCIL MEETING

REPORTED BY ALA INDONESIA



The ASEAN Law Association (“ALA”) held its 43rd Governing Council Meeting in the InterContinental Hotel, Bandung, West Java, Indonesia, on 3rd of October 2022 hosted by ALA National Committee of Indonesia.

This event marked the first time that an ALA Governing Council Meeting was hosted in a hybrid format, with delegates attending the meeting on-site or virtually. Highlights of the meeting included the report and work progress of ALA Working Groups, and the report and work plan of ASEAN Law Institute (AsnLI).





As a tribute to the immediate past Chairman of ALA Indonesia and past President of ALA, the Governing Council Meeting was complemented by a Farewell Golf Tournament and a Farewell Dinner, both hosted by ALA National Committee of Indonesia to honor retired Chief Justice Hatta Ali's contribution to ALA. Chief Justice Hatta Ali's unwavering commitment to ALA is shown through his perfect record of attendance in every General Council meeting, General Assembly and Council of ASEAN Chief Justices meeting. Both events served as a token of appreciation to Chief Justice Hatta Ali's years of service and to commemorate his milestone in completing a decade of leadership in ALA National Committee of Indonesia.



COURTESY CALL REPORTED BY ALA SINGAPORE

The ALA President, the Honourable the Chief Justice of Singapore Sundaresh Menon, completed his tour of calls on all ASEAN Member States with his call on ALA Cambodia's National Committee and the People's Supreme Court of Lao PDR, in July and September 2023 respectively. The ALA President and the ALA Singapore delegation were warmly received in both calls.

The ALA President also called on the ASEAN Secretary-General earlier in the year in March 2023.

ALA President's call on ASEAN Secretary-General



The ALA President called on ASEAN Secretary-General Dr Kai Kim Hourn on 14 March 2023 and apprised him of the areas of collaboration outlined by:

- four concept notes submitted to the ASEAN Secretariat ("ASEC") on promoting legal convergence in the area of enforcement of foreign arbitral awards and international settlement agreements; promoting ASEAN instruments and their implementation, establishing a panel of experts that ASEC may consult with on specific legal areas; and supporting compliance of ASEAN instruments by ASEAN member states ("AMS");
- the guidelines on best practices on the enforcement of arbitral awards within ASEAN; and
- the proposed ASEAN protocol for communication with non-disputing states on treaty interpretation issues



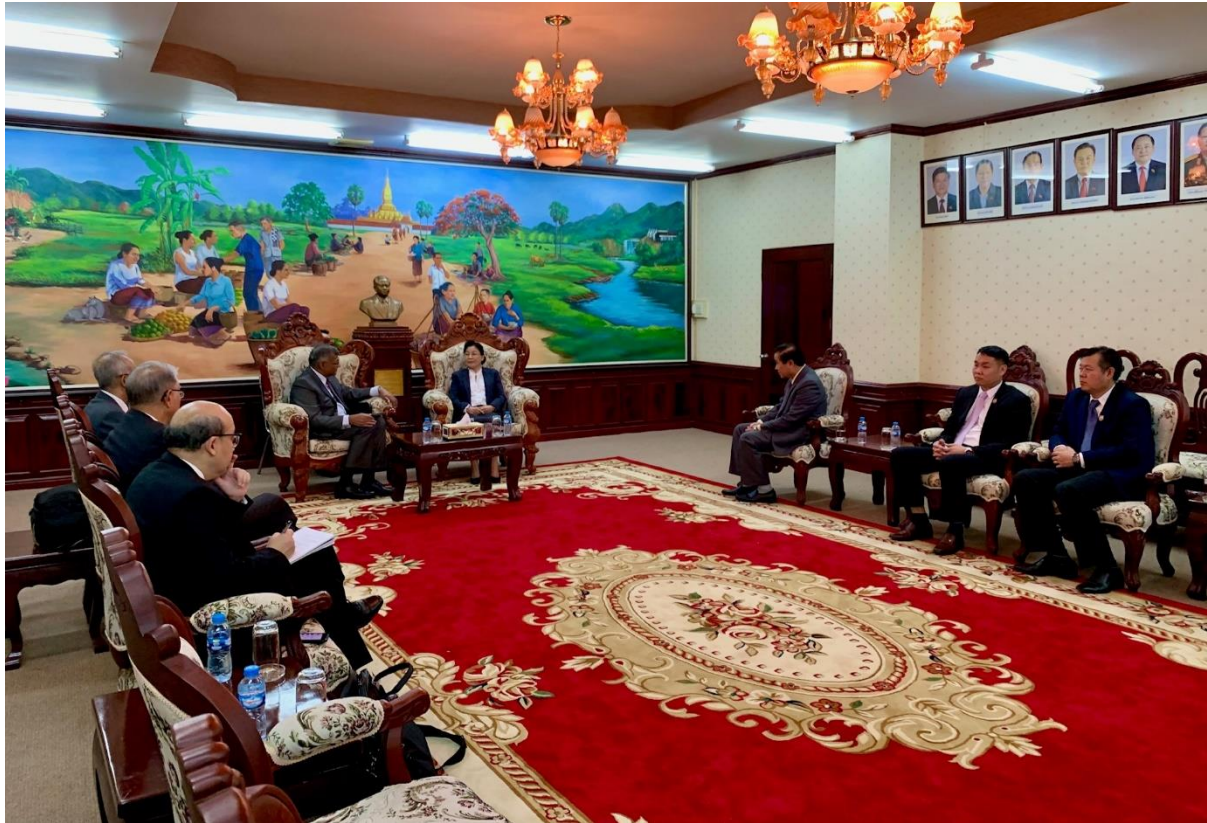
The ASEAN Secretary-General welcomed these efforts and identified specific priorities for collaboration with ALA aimed at building the capacity of AMS and ASEC, as well as promoting awareness of ASEAN legal instruments.

ALA President's call on ALA Cambodia



The ALA President, together with the Chairman and Vice Chairman of the ALA Singapore National Committee, the Honourable Justices Lee Siu Kin and Pang Khang Chau respectively, called on the Chairman of the ALA Cambodia National Committee, His Excellency Atty Ly Chantola, at the Bar Association of the Kingdom of Cambodia. During the call, the ALA President expressed appreciation to ALA Cambodia for ably hosting the historic 42nd ALA Governing Council Meeting. This was of especial significance as this was ALA Cambodia's first time hosting a GC meeting, and ALA's very first virtual meeting.

ALA President's call on the People's Supreme Court of Lao PDR



The ALA President and the ALA Secretary-General District Judge Paul Quan, together with the Chairman and Vice Chairman of the ALA Singapore National Committee, called on Dr Viengthong Siphandone, the President of the People's Supreme Court of Lao PDR. The ALA President commended the efforts in kickstarting the process to form the ALA Lao PDR National Committee, and expressed hope for the establishment of ALA Laos before the upcoming ALA General Assembly.

ROUNDTABLE DISCUSSION

REPORTED BY ALA THAILAND

Thailand & the ASEAN Comprehensive Investment Agreement

On 26 May 2022, ALA Thailand and ASEAN Law Institute jointly organised a virtual roundtable discussion under the topic "Thailand & the ASEAN Comprehensive Investment Agreement", in pursuance of the ASEAN Law Institute's workplan. The session provided a timely opportunity for lawyers, judges and legal practitioners in the ASEAN countries to first-handedly gain the latest insights from experts on top of implementing the ASEAN Comprehensive Investment Agreement (ACIA) in Thailand.



The roundtable discussion was participated by over seventy representatives from ALA Malaysia, Myanmar, the Philippines, Singapore, and Thailand. The event commenced with the welcoming remarks delivered via pre-recorded video-message by Hon. Chief Justice Piyakul Boonperm, President of the Supreme Court of Thailand and Chairman of National Committee of Thailand ASEAN Law Association. Chief Justice Piyakul Boonperm cordially welcomed all attendees and addressed direct and indirect benefits from ACIA, especially this year, when many countries have lifted COVID-19 measures to reflowerish economic and social activities. This will expectedly yield a promising recovery on countries which rely on tourism industry such as Thailand and many countries in the ASEAN region.

H.E. Atty. Avelino Cruz, Chairman, ASEAN Law Institute, next delivered his official opening remarks, focusing on objectives of the event, namely:

- (i) to clarify all accompanying benefits from the ACIA;
- (ii) to identify the specific areas which investors should take note of; and
- (iii) to discuss Thailand's climate for foreign investments, especially outlining the latest developments in dispute settlements mechanisms under the ACIA.



The topic “Thailand & the ASEAN Comprehensive Investment Agreement” was discussed and presented by Dr. Kraijakr Thiratayakinant, Ms. Prewprae Chumrum and Asst. Prof. Dr. Visanu Vongsinsirikul, as moderated by Judge Thiti Susaoraj, Judge in the Research Division of the Court of Appeal for Specialised Cases, Thailand.



Dr. Kraijakr Thiratayakinant, Counsellor and Head of International Agreements Sub-Division, Ministry of Foreign Affairs of Thailand, introduced the key features of ACIA and the benefits that investor can enjoy under ACIA before sharing meticulous details on ACIA & New Trends in IIAs. In addition, Ms. Prewprae Chumrum, the Executive Director, Bureau of Trade in Services and Investment Negotiations, Ministry of Commerce of Thailand, discussed topics of the current review of ACIA, the present and upcoming challenges of ACIA implementation, and the future trends of investment obligations. Lastly, Asst. Prof. Dr. Visanu Vongsinsirikul, Lecturer at the Faculty of Economics, Rangsit University, briefly covered the recent global economy challenges and review the cooperation with other states under various agreements.

ASEAN FTAS – ISSUES AND DEVELOPMENT

REPORTED BY ALA TRADE & INVESTMENT GROUP

The Trade and Investment Group (TIG) of the ASEAN Law Association (ALA) held its first webinar on 2 June 2022, entitled “ASEAN FTAs – Issues and Developments”. The webinar, held as part of the TIG’s mandate to share information on trade and investment law matters with ALA members, was supported by the ASEAN Law Institute (AsLI) and the ALA Singapore Committee.

Three highly qualified speakers with strong ASEAN negotiating experience made presentations covering a range of matters from the general approach of ASEAN member States in FTA negotiations, dispute settlement provisions, and illustrative issues arising from negotiations of the ASEAN-Hong Kong, China Investment Agreement. A number of interesting questions were also raised by the active online audience.



The speakers and moderator were as follows:

Malaysia:

Mr Amri Bukhairi Bakhtiar
Director & Negotiator with the Strategic Negotiations Division, Ministry of International Trade and Industry

Singapore:

Mr Jason Tan
Senior State Counsel, International Affairs Division
Attorney-General's Chambers

Thailand:

Mr Varapol Chensavasdijai
Counsellor, International Law Development Division
Department of Treaties and Legal Affairs
Ministry of Foreign Affairs

Moderator:

Professor Locknie Hsu
Singapore Management University, Singapore
TIG Coordinator



The speakers made their remarks in their personal capacities.



Mr Jason Tan kicked off the discussion with an overview of the ASEAN approach to negotiating FTAs, including the principles of ASEAN centrality, which is enshrined in the ASEAN Charter, and the 'ASEAN minus X' approach. The former involves ASEAN member States negotiating among each other before they do so with external parties. Arriving at a common ASEAN position can, however, be challenging, given the different positions of member States, depending on the issue. He shared that with ASEAN centrality, ASEAN can also be a neutral and balancing force that helps to depoliticize some of the politically sensitive issues. The 'ASEAN minus X' formula was useful in allowing negotiations to move forward, since not all ASEAN member States may be able to achieve the same level of commitment in terms of the obligations to be undertaken at the time of negotiation.

Mr Varapol Chensavadjajai explored the various modes of dispute settlement which may be found in an FTA, including Joint and Sectoral Committees, consultations, Dispute Settlement chapter panels (State to State) and investor-State mechanisms. He highlighted the fact dispute settlement mechanisms can help to prevent unilateral actions by parties (which may lead a spiral of retaliatory actions), mitigate imbalances between stronger and weaker countries, and ensure security and predictability in the FTA regime. He also shared some statistics on investor-State disputes, which showed that ASEAN member States had prevailed in most of the disputes. In response to a question by the moderator regarding preparedness of ASEAN lawyers for such disputes, he observed that cases are generally handled by a small group of law firms which represent States. Lastly, he also shared that the United Nations Commission on International Trade Law (UNCITRAL), which includes several ASEAN members, is considering the possibility of an advisory centre on investment disputes, observing that for WTO disputes, there is an Advisory Centre on WTO Law (ACWL).

Mr Amri Bukhairi Bakhtiar shared that the ASEAN-Hong Kong, China FTA and ASEAN-Hong Kong, China Investment Agreement were negotiated and signed in parallel. The ASEAN-Hong Kong, China Investment Agreement contains provisions such as most favoured nation (MFN) and national treatment commitments. He highlighted some interesting challenges in the negotiations, including matters arising under the Work Programme for negotiators, such as the definition of a 'natural person' (as some ASEAN member States do not have the concept of permanent residents) and applicability of expropriation provisions to tax measures.

The TIG is very grateful to the above speakers for sharing their valuable insights with the ALA community.

ALA NEW APPOINTMENT

ALA THAILAND

On October 1st, 2023, Chief Justice Anocha Chevitsophon was appointed as the 49th President of the Supreme Court of Thailand, and subsequently, she assumed the position of the new Chairman of ALA Thailand.

Chief Justice Chevitsophon graduated with a Bachelor of Laws degree (first class honors) from Chulalongkorn University. She completed the Barrister-at-Law requirements of the Institute of Legal Education, Thai Bar Association under Royal Patronage. Furthermore, she earned a Master of Laws degree from Chulalongkorn University.

Chief Justice Chevitsophon began her judicial career as a judge-trainee in November 1984. Throughout her illustrious career, she held various esteemed positions in the Court of Justice of Thailand, including Justice of the Supreme Court, Chief Justice of the Central Juvenile and Family Court, and President of the Court of Appeal for Specialized Cases.

Before her appointment as President of the Supreme Court and Chairman of ALA Thailand, Chief Justice Chevitsophon served as President of the Juvenile and Family Case Division of the Supreme Court from October 2022 to September 2023. She was also appointed as Vice-Chairman of ALA National Committee of Thailand on April 3rd, 2023.

