

SUMMARY REPORT

TITLE: Workshop on Treaty Law and Practice for ASEAN countries and Timor Leste

DATE: 7 to 9 October 2003

VENUE: Vientiane, Lao People's Democratic Republic (Lao PDR)

PARTICIPANTS:

From United Nations Treaty Section/OLA: Dr. Palitha T.B. Kohona, Mr. Bradford Smith and Ms. Hanna Dreifeldt.

From ASEAN States: All ASEAN States were represented by at least two delegates each, including civil society representatives. Timor Leste was also represented by 3 delegates. The Lao PDR delegation contained over 35 representatives, including many who participated in the Workshop held in February.

From UNDP: The UNDP team varied between 4 and 6 and included the coordinator, Mr. Wickramaratne.

OPENING CEREMONY:

1. The workshop was ceremoniously declared open by the Vice-Minister for Foreign Affairs, Mr. Phongsarath Boupha, who delivered the keynote address. The Vice-Minister underlined his government's support for the workshop as an important part of the Lao legal project, "Project Lao 00/006", as a means of strengthening the rule of law in Lao PDR and assisting in much needed capacity building. The Vice-Minister also informed the delegates that, mainly as a result of the Treaty Section workshop held in February in Thalath, Lao PDR participated in the Treaty Event this year and deposited 4 instruments of accession to the United Nations Convention against Transnational Organized Crime and its three Protocols. Furthermore, he stated that Lao PDR is currently studying the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights with the intention of becoming party to these two instruments in the near future.

2. UNDP was represented at the ceremony by Ms. Yamazaki, Resident Representative, a.i., who spoke on behalf of UNDP. Dr. Kohona made his remarks in response to the keynote address by the Vice-Minister and the comments by Ms. Yamazaki. The diplomatic community and the media were represented at the opening ceremony.

SUMMARY OF PROCEEDINGS

Objectives of Project Lao 00/006

3. Dr. Wickramaratne, Consultant on "Project Lao 00/006", introduced the objectives of the Project and Lao PDR's achievements under it. He also highlighted capacity building in the area of the rule of law as an overall goal and stressed the importance of regional cooperation and

exposure to the experience of other states, international organisations and other institutions. In this context, Dr. Wickramaratne declared that the Treaty Section workshop in February had been very useful and invited the regional countries to take this opportunity to share their experience and commence a regional dialogue as well as create an action plan based on the workshop discussions.

Expectations of the Participants

4. The participants emphasized a desire to obtain a better understanding in the following areas:
 - Implementation of treaties;
 - Technical legal assistance available for this purpose;
 - Depositary procedures;
 - Registration of treaties;
 - Gaining access to treaties;
 - Reporting and monitoring under Human Right treaties.

The majority of the participants also stressed the need for a regional dialogue in order to share experiences in these matters.

Overview of Workshop

5. Dr. Kohona provided an overview of the workshop. The importance of treaties as a source of law for the regulation of inter-state relations was emphasised. In addition, he pointed out that treaties increasingly tend to impact on the daily lives of individuals and the business activities of companies. He underlined that much of today's business activities could not occur if not for the underlying framework of treaties. He commented that some of the Lao participants would be familiar with many of the principles that would be discussed during the workshop as they had attended the workshop in Thalat in February 2003. He encouraged them to be interactive during the workshop to assist the international participants.

6. Dr. Kohona's presentation was followed by a general discussion on the situation in the region relating to the registration of treaties under Article 102, the participation in multilateral treaties and the problems encountered by the various countries. The participants underlined that often it was not the content of a treaty that was the main problem to participation but the constraints relating to the implementation of treaty obligations in the domestic sphere, including political issues, lack of capacity and the paucity of technical skills.

Depositary Practice and Workshop

7. The key presentation related to the Secretary-General's practice as depositary of multilateral treaties, including frequently arising issues and problems (Mr. Smith). A range of questions were posed on various aspects of the Secretary-General's practice. The presentation was followed by a practical workshop. Participants highlighted the need to develop technical skills in their countries in this area.

Human Rights Treaties and Anti-Terrorism Legislation

8. Ms. Dreifeldt gave a presentation on the reporting requirements and complaint mechanisms under human rights treaties. Ms. Dreifeldt also highlighted the assistance that many NGOs, donor countries and United Nations agencies provide to enable States to implement their

obligations under human rights treaties. Attention was drawn to the legal technical assistance web site of OLA.

9. The delegations of the Philippines and Indonesia gave presentations on their domestic anti-terrorism legislation and their experiences with regard to implementation. Following the presentation, there was a discussion about national anti-terrorism measures and concerns relating to human rights. The need to comply with universal human rights norms and the rule of law in countering terrorism were emphasised by the TS/OLA team.

Reservations, Declarations and Objections

10. Dr. Kohona gave an overview of the depositary practice relating to reservations and declarations. Special attention was paid to the legal implications of reservations and objections. The use of reservations by some states to participate in treaties in which they would not otherwise participate due to domestic constraints was highlighted.

UN Treaty Collection on the Internet

11. Mr. Smith provided an overview of the UN Treaty Collection on the Internet as well as other related websites, especially the legal technical assistance site.

Registration Practice and Workshop

12. Ms. Dreifeldt explained the registration requirements under Article 102 of the Charter and the practice of the Secretariat. The presentation was followed by a practical workshop. It was noted that the ASEAN States have registered only 56 treaties so far – the Philippines accounting for more than half of them. There was considerable interest among the participants (being members of ASEAN) on the ability of international organizations to conclude and register treaties. States members of ASEAN were encouraged to ensure that agreements concluded with ASEAN were registered with the UN. It was also clear that ASEAN did not have the capacity to bind its member States in the same manner that the EU did. In response to a question, it was suggested that it would be necessary to examine the Mekong River Commission Agreement to determine whether the Commission possesses treaty-making capacity. The submission for registration of agreements which predate the UN was encouraged. It was clear that, in the case of some States, the obligation under Article 102 was neglected because it was not clear as to which arm of the bureaucracy was responsible for this function.

Treaties Against Transnational Organized Crime and Terrorism, International Law Commission and the Sixth Committee

13. Mr. Smith provided an overview of the Convention Against Transnational Organized Crime and its Protocols, and the UN Conventions against terrorism, in particular, requirements relating to participation and the lodgement of a range of notifications. Mr. Smith also highlighted the provisions of the Convention facilitating assistance to developing States. Dr. Kohona drew attention to the new UN Convention against Corruption which will be opened for signature in Merida, Mexico in December 2003. Mr. Smith also provided a brief overview of the work of the ILC and the Sixth Committee, and, in particular, their role with the development of a number of treaties that have been concluded recently.

National Action Plans

14. The final workshop of the seminar allowed the participants to draft national action plans with the assistance of the TS/OLA team. The participants were encouraged to devise tangible measures regarding the registration of treaties and the deposit of legal instruments with the Secretary-General. The necessity for training in treaty law and practice, especially with regard to the depositary and registration practices was highlighted by many delegations. Vietnam made a specific request for assistance from TS/OLA in this respect. Indonesia and the Philippines were also keen to obtain assistance in developing their technical capacities. Other challenges emphasised included reporting requirements under certain treaties (e.g., human rights), monitoring the implementation of obligations, adoption of implementing legislation, and coordination among ministries.

CONCLUSIONS:

15. The participants were extremely interactive during the workshop. The fact that many of them were from Foreign Ministries or Justice Ministries was particularly helpful. The workshop may have contributed to the development of intra-regional cooperation in the matter of treaties. A number of delegations described their plans for becoming party to key treaties deposited with the Secretary-General. They were encouraged to proceed with their plans, but the need for securing enabling legislative action and political support was recognized. Some delegations identified difficulties relating to coordinating and monitoring bilateral treaties concluded under the auspices of various line ministries which posed a major obstacle to registering them pursuant to Article 102. It was suggested that there may be countries in the region which had addressed this problem and which may be able to provide guidance and assistance in this respect. A number of delegations indicated that they would seek UNDP and TS/OLA assistance with regard to capacity building in the above areas. There would appear to be a clear need in this area and its links to advancing the international rule of law should be addressed.

16. Finally, it is noted that the Lao hosts had spared no effort to make the workshop a success. They were very generous in their hospitality. In addition to the Vice-Minister, the Permanent Secretary to the Ministry of Foreign Affairs also took a personal interest in the workshop. The UNDP office in Vientiane made an outstanding contribution to ensure the success of the workshop.

(Drafter: Hanna Dreifeldt Lainé)