

**KEYNOTE ADDRESS
TO THE MEETING OF ATTORNEYS GENERAL
ON A MUTUAL ASSISTANCE IN CRIMINAL MATTERS TREATY
MONDAY 30 JUNE 2003
BY
YAB DATO' SERI ABDULLAH HAJI AHMAD BADAWI
DEPUTY PRIME MINISTER
AND MINISTER OF HOME AFFAIRS, MALAYSIA**

On behalf of the Government of Malaysia, I extend a warm welcome to all distinguished delegates, observers and guests to the Meeting of Attorneys General on a Mutual Assistance in Criminal Matters Treaty. It is indeed an honour and privilege for Malaysia to host so many distinguished participants at this Meeting. I hope that your deliberations during the course of this event will yield tangible and fruitful results.

2. The ASEAN Ministerial Understanding on the Organization Arrangement for Cooperation in the Legal Field was adopted in Bali on 12 April 1986. It was agreed that legal cooperation among ASEAN Member Countries should initially comprise three aspects, namely the exchange of legal materials, judicial cooperation and legal education and legal research. The Senior Legal Officials of ASEAN Member Countries were given the task of studying these aspects of legal cooperation. At the same time, the Ministers of Justice, Ministers of Law and Attorneys General were mandated to meet at necessary intervals to review their work.

3. This in turn gave rise to the ASEAN Senior Law Officials Meetings (ASLOM) and the ASEAN Law Ministers Meeting (ALMM). Both these meetings have proved to be useful avenues for discussion and cooperation among the legal fraternity of ASEAN Member Countries and have produced key initiatives. It is for this reason that Malaysia chose to table its idea for cooperation in criminal investigations and criminal proceedings, more generally known as "mutual assistance in criminal matters".

4. Malaysia's paper entitled "ASEAN Model Treaty for Mutual Legal Assistance in Criminal Matters" proposed that like-minded ASEAN Member Countries should initiate and pursue a Mutual Assistance Treaty among themselves. This is in line with the cooperative regional effort to combat transnational crime. Although several bilateral treaties have already been entered into by and between ASEAN Member Countries, Malaysia was of the view that a regional instrument would prove to be a cost and time saving device.

5. The need for effective international cooperation in criminal matters is increasingly required in today's world. It is a sad fact that globalisation does not only open borders to economic activity, but also to criminals and criminal activities. Crime transcends national boundaries and national jurisdictions in utter disregard of national sovereignty. Therefore, there is an urgent and compelling need for greater international cooperation to prevent those who flout the law from gaining the upper hand by exploiting weaknesses in the region's legal systems. Collective effort is critical to ensure there are no safe havens for criminals in our territories. We cannot allow them to escape justice just because of differences between our legal systems and laws. We cannot allow them to walk free just because procedural and administrative difficulties impede obtaining evidence of their crimes.

6. In this context, the current proposal by Malaysia seeks to deal with two of these forms of international cooperation, namely mutual assistance in criminal matters and cooperation in restraining and confiscating proceeds of crime.

7. At present, informal networks between law enforcement agencies exist. The cordial working relationship that our respective security law and order organizations enjoy is a sterling example of the ASEAN cooperative spirit. In the interests of enhancing the efficiency of this relationship, we believe that a regime of formal mutual assistance in criminal matters would complement and augment the informal assistance networks that are currently in place.

8. While it is true that such informal assistance networks have the advantage of speed, efficiency, confidentiality and effectiveness, it is also true that they are limited. Assistance is only granted in cases where a compulsive legal process in the requested country to obtain the desired evidence or assistance is not required. For example, informal mutual assistance would not be effective if the requesting country needs bank records or the evidence of an uncooperative witness. Nor would it be effective if premises need to be searched and items found in it seized. This is because such action usually requires a court order to ensure its constitutionality and the admissibility of the evidence. The existence of a formal arrangement would act to plug these possible loopholes and ensure a more comprehensive framework for cooperation.

9. The Mutual Assistance in Criminal Matters Treaty that has been prepared for your consideration has been drafted with reference to the United Nations Model Treaty on Mutual Assistance in Criminal Matters. It has taken into account the provisions of the Commonwealth Scheme for Mutual Assistance in Criminal Matters. It has also taken into consideration other international cooperation regimes provided in instruments such as the United Nations Convention against Transnational Crime. This has been done to make it easier for the participating countries to find common ground and to enable the interests of the countries to be taken into account.

10. The Treaty as proposed by Malaysia contains several key features. First, the governing principle for mutual assistance in criminal matters must be to provide the widest scope of assistance possible and to provide that assistance in a useable form for the requesting country. In order to effectively combat transnational crime, the assistance to be rendered among the participating countries should cover a wide spectrum of criminal activities, especially all serious crimes.

11. Second, a competent central authority that will handle or channel all the requests for mutual assistance should be designated by the participating countries to facilitate the implementation of the Mutual Assistance in Criminal Matters Treaty. The central authority would serve as the ~~link~~ to the respective Governments. It should be in a position to provide the requesting countries with

the proper advice and guidance on requests for mutual assistance. This mechanism overcomes the major obstacles hindering effective law enforcement cooperation – the lack of timely exchange of information and the confusing plethora of different authorities with which a requesting country has to deal.

12. Third, where necessary, participating countries will be required to enact the necessary enabling legislation to implement the mutual assistance in criminal matters regime. For Malaysia, the principal enabling legislation has been enacted for this purpose in the form of the Mutual Assistance in Criminal Matters Act 2002. Countries will also be required to establish the administrative framework for the processing of mutual assistance requests and resources to execute requests in a timely manner.

13. Fourth, the proposed Treaty aims to standardize the conditions for the granting of mutual assistance in criminal matters, the grounds for refusal of requests, as well as the forms and procedures that will be involved in handling requests and in transmitting evidence obtained. All requests should be executed in accordance with the law of the requested country and to the extent not prohibited by that law.

14. Before I conclude, I would like to thank all of you for making the effort to attend and participate in this Meeting. The problem of transnational crime is a serious one and we must utilise all of the resources at our disposal to address the issue effectively. Our resolve must never falter regardless of the challenges we face.

15. I reiterate my sincere hope that this Meeting will produce a positive outcome with the cooperation and participation of all participating countries. Let the deliberation of this Treaty send a signal to the transnational organized criminals that we are serious in our efforts to thwart their insidious activities. We will allow no avenue for our territories to be used as safe havens.

16. On this note, I hereby declare the Meeting of Attorneys General on a Mutual Assistance in Criminal Matters Treaty open.

Thank you.