

**THE 3RD MEETING OF ATTORNEYS GENERAL ON A MUTUAL
ASSISTANCE IN CRIMINAL MATTERS TREATY
-MONDAY 29 NOVEMBER 2004**

SPEECH BY

**YB DATO' MOHD. RADZI SHEIKH AHMAD
MINISTER IN THE PRIME MINISTER'S DEPARTMENT**

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Distinguished Delegates

Honoured Guests

Ladies and Gentlemen

On behalf of the Government of Malaysia, I welcome all delegates and guests to the 3rd Meeting of Attorneys General on the Mutual Assistance in Criminal Matters Treaty.


I also thank Attorneys General and Ministers of Justice for being present today to witness the signing of the Treaty on Mutual Legal Assistance in Criminal Matters by eight countries in the ASEAN region, namely, Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, the Republic of the Philippines, the Republic of Singapore, the Socialist Republic of Viet Nam and Malaysia. Reflecting the importance of this Treaty, signatory States are represented by high-level delegations led by their respective Attorneys General and Ministers of Justice.

Ladies and Gentlemen

Deliberations by participating ASEAN countries at the first meeting held in Kota Kinabalu on the 30 June 2003 and the second held in Kuala Lumpur on 24 and 25 May 2004 have indeed been successful, and will today culminate in the signing of the Treaty, as the legal instrument to effectively facilitate international cooperation in criminal matters within ASEAN.

Briefly, the principles underlying this Treaty may be summarized as follows–

- The creation of a multilateral instrument on mutual legal assistance in criminal matters for like-minded countries in the ASEAN region;
- The creation of an effective tool to facilitate and enhance efforts to combat transnational crime in the ASEAN region;
- The facilitation of the process by which countries in the ASEAN region may request for and give assistance in the gathering of evidence for criminal investigations and criminal proceedings; and
- The facilitation of the implementation of member nation's obligations under international criminal instruments, such as, the UN Convention against Illicit Traffic in Narcotic Drugs and




Psychotropic Substances, the UN Convention against Transnational Organized Crime, the UN Counter-Terrorism Conventions and Protocols and Security Council Resolution 1373 (2001).

The Treaty on Mutual Legal Assistance in Criminal Matters to be signed today offers the widest scope of mutual legal assistance in criminal matters among parties to the Treaty. It emphasises on providing requested evidence in a form that is useable and admissible in the requesting party's legal system. Requests to and from the parties will be channelled through a designated Central Authority to facilitate the orderly, effective and timely execution of requests for mutual legal assistance in criminal matters. The rendering of assistance pursuant to the Treaty will be "subject to the respective domestic laws" of the parties. This recognizes that it is the domestic law of the requested party that will apply when requests are being carried out, as it will involve the gathering of evidence in the requested country using the resources of the requested country such as its police force and its courts. It also recognizes that limitations and constraints may exist in the domestic legislative framework of the respective parties on certain matters, for example, mechanisms for seizure, forfeiture and repatriation of proceeds of crime.

Ladies and Gentlemen

Recognition given to limitations and constraints that currently exist in the domestic laws of parties is not intended as a barrier to co-



operation. It is instead, to provide flexibility to such parties during the transitional period, to update their respective domestic laws and policies, in the interest of greater regional cooperation to combat transnational crime.

The parties to the Treaty will endeavour to facilitate the execution of requests under the Treaty through consultation. The consultative mechanism will afford opportunities for periodical discussions to gauge the operational aspects of the Treaty as well as ad hoc consultations to deal with issues arising from particular requests between the parties.

The Treaty on Mutual Legal Assistance in Criminal Matters does not in any way prevent parties from providing assistance to one another pursuant to other treaties, bilateral or multilateral arrangements, such as the enabling provisions of the United Nations Convention on Transnational Organized Crime. The Treaty will operate in conjunction with existing formal and informal co-operation mechanisms, such as the International Police Organization (INTERPOL). Its intention is to enhance existing cordial working relationships among security and law enforcement agencies in the region by providing them with an additional and effective tool to combat Transnational crime.

Ladies and Gentlemen

Although the Treaty is being signed today, it does not automatically come into effect. The Treaty is subject to ratification, acceptance,

approval or accession in accordance with the constitutional procedure of the signatory States. The Treaty will come into force for each party ratifying, accepting, approving or acceding to it, on the date of the deposit of its instrument of ratification, acceptance, approval or accession. Thus, the Treaty will come into force as between any two States that have ratified, accepted, approved or acceded to the Treaty, without needing all eight instruments of ratification, acceptance, approval or accession to be deposited.

For States that have participated throughout the discussions but are still awaiting the necessary approvals to become a party to the Treaty, they may accede to the Treaty at a later date.

Ladies and Gentlemen

The Government of Malaysia is designated as the Depositary State under the Treaty. The implementation of the duties of the Depositary State has been entrusted to the Attorney General's Chamber of Malaysia, as the prescribed Central Authority of Malaysia under the Mutual Assistance in Criminal Matters Act 2002.

Malaysia's, and by reference, the Honourable Attorney General's first task as the Depositary State after today's signing ceremony, will be to register the Treaty pursuant to Article 102 of the Charter of the United Nations. This is in line with the United Nation's call to all its member nations to register their treaties with the United Nations.

Ladies and Gentlemen

The adoption and signing of the Treaty today is a landmark achievement for ASEAN and proof of the region's united commitment to combat Transnational crime in all its forms. Its expeditious conclusion is also a testament to the close working relationship among the law enforcement fraternity of the region and its serious desire to forge an effective mechanism to enhance cooperation to combat transnational crime.

Today, eight countries will sign the Treaty on Mutual Legal Assistance in Criminal Matters. These are the countries that were able to complete the constitutional requirements in time to participate in this Meeting. We look forward to the participation of other countries in the very near future.

On this note, I congratulate everyone and every country that has played a role in the successful negotiation and conclusion of this Treaty.

May the spirit of cooperation and mutual understanding in pursuit of criminal justice continue throughout the implementation of this Treaty.

Thank you.