



Introduction to the Handbook

The Challenge of International Cooperation

The crime of trafficking in persons is often transnational in both commission and effect. In contrast, criminal justice responses to trafficking in persons (criminal laws, law enforcement agencies, prosecution services and the courts) are typically structured and generally only operate within the confines of national borders. The disjuncture between the reality of transnational crime and the limits of national systems presents a significant challenge to the ability of countries to effectively respond to trafficking in persons.

There are numerous practical and political factors that can impede cooperation across borders in criminal investigations and prosecutions. These include the difficulties in communicating with counterparts who speak a different language; differences in legal, political and cultural traditions; political considerations; and even apprehension about cooperating with colleagues in another country. However, while there are many challenges, there are also important opportunities. Through national laws and international agreements, most countries have developed a range of tools that can be used by criminal justice agencies to facilitate cooperation across borders in criminal matters. These include the tools of mutual legal assistance (which incorporates a sub-set of tools that can assist with recovery of proceeds of crime) and extradition. An understanding of these tools and of how they work is an important first step in encouraging States to take a more proactive approach to international cooperation in trafficking in persons cases.

ASEAN Commitment to International Cooperation

Over the past several years, ASEAN and its Member States¹ have affirmed the importance of stronger and more effective regional and international cooperation in the area of trafficking in persons - recognizing that such cooperation is vital to successful domestic prosecutions as well as to eliminating safe havens for traffickers and their accomplices.² A number of instruments have been developed that support such cooperation. A treaty on mutual legal assistance in criminal matters, completed in 2006, is directly relevant to this issue. A set of guidelines on trafficking in persons, endorsed by the (ASEAN) Senior Officials Meeting on Transnational Crime (SOMTC) in 2007, provide detailed guidance to criminal justice practitioners on international cooperation as it relates to trafficking in persons cases. Instruments developed by other multilateral organisations such as the *United Nations Convention against Transnational Organized Crime*³ (UNTOC), the *United Nations Convention against Corruption*⁴ (UNCAC) and the *Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International*

¹ The Member States of the Association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

² See, for example, Association of Southeast Asian Nations [ASEAN], *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*, Nov. 29, 2004 [hereinafter *ASEAN Declaration Against Trafficking in Persons*]; ASEAN, *ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims* (ASEAN, 2006 (Supplement and Update, 2007)).

³ *United Nations Convention against Transnational Organized Crime*, Dec. 12, 2000, UN Doc. A/RES/55/25 (Annex I), entered into force Sept. 29, 2003 [hereinafter UNTOC].

⁴ *United Nations Convention against Corruption*, Oct. 31, 2003, UN Doc. A/RES/58/422 (Annex), entered into force Dec. 14, 2005 [hereinafter UNCAC].

*Business Transactions*⁵ (OECD Anti-Bribery Convention), are also relevant in situations where trafficking offences are facilitated by related offences such as organized crime, corruption and money laundering. Most ASEAN Member States have signed or ratified one or more of these instruments.

ASEAN Mandate for the Handbook

The 2007 SOMTC Work Plan to implement the *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children* (ASEAN Declaration Against Trafficking in Persons) commits ASEAN Member States to:

Strengthen[ing] the legal and policy framework around trafficking in order to promote more effective national responses as well as greater regional and international cooperation especially in relation to the investigation and prosecution of trafficking cases and the protection of victims.⁶

The Work Plan further encourages Member States to:

[C]onsider supporting a region-wide survey of trafficking related laws including those dealing with money laundering, mutual legal assistance and extradition with a view to identifying effective practices within and outside the region and supporting those countries that wish to strengthen their applicable legal frameworks. The survey could also include recommendations for strengthening of regional legal mechanisms in identified areas such as extradition.⁷

In June 2008, SOMTC proposed to implement this commitment by supporting development of an *ASEAN Handbook on International Cooperation*. The document was completed in draft form and submitted in mid-2009 to both the SOMTC (through its Working Group on Trafficking in Persons) and the ASEAN Senior Law Officials Meeting (ASLOM) for consideration and feedback. Shortly thereafter, SOMTC announced that the draft Handbook would be piloted at a regional Workshop, to be attended by practitioners from the ASEAN Member States. That Workshop was held in November 2009, with participants making contributions to the draft Handbook in plenary and small group sessions, as well as in written form after the Workshop.

Purpose of the Handbook

The purpose of this Handbook is to provide criminal justice officials within the ASEAN region with an introduction to the key tools of international cooperation, specifically mutual legal assistance and extradition and to provide guidance on how these tools might be relevant to the investigation and prosecution of trafficking in persons cases. The Handbook is aimed at criminal justice practitioners, primarily law enforcement officers, prosecutors, central authority lawyers, and others who may be involved in investigating and prosecuting trafficking in persons cases, or in processing or considering requests for assistance across borders.

The Handbook has been designed to both *encourage* and *enable* criminal justice officials within the ASEAN region to initiate and engage in the processes of mutual legal assistance and extradition where this would facilitate an investigation or prosecution of the crime of trafficking in persons or a related crime. An increase in willingness and capacity to collaborate across borders will assist ASEAN Member States to give practical effect to their cooperation obligations as set out in international, regional and bilateral agreements as well as in national laws. Ultimately, it is hoped that an increase in international cooperation in trafficking in persons cases, within a framework of respect for national and international law, will help to redress the level of impunity currently enjoyed by offenders, while also contributing to the ability of victims of this crime to seek and achieve justice for the wrongs committed against them.

While the Handbook is intended primarily for ASEAN countries, it addresses issues that are relevant to all countries engaged in combating trafficking in persons through a more effective criminal justice response.

⁵ Organisation for Economic Co-operation and Development [OECD] *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Dec. 17, 1997, 37 ILM 1, entered into force Feb. 15, 1999 [hereinafter *OECD Anti-Bribery Convention*].

⁶ ASEAN Senior Officials Meeting on Transnational Crime [SOMTC], *2007-2009 Work Plan to Implement the ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children*, section 1.2, endorsed by the 7th ASEAN SOMTC, Vientiane, Lao PDR, Jun. 27, 2007 [hereinafter *SOMTC, 2007-2009 Work Plan to Implement the ASEAN Declaration Against Trafficking in Persons*].

⁷ SOMTC, *2007-2009 Work Plan to Implement the ASEAN Declaration Against Trafficking in Persons*, section 1.2.2.

The Normative Framework

The information contained in the Handbook is primarily based on international legal standards as they relate to both trafficking in persons and the mechanisms of international cooperation. Of particular relevance in this regard are the UNTOC and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*⁸ (UN Trafficking Protocol) and the UNCAC. The Handbook also reflects norms and standards that have been developed at the regional level (e.g. *Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries*⁹ (ASEAN MLAT)) and through bilateral treaties. Frequent reference is made to key international human rights instruments, such as the *International Covenant on Civil and Political Rights*¹⁰ (ICCPR) and the *United Nations Convention against Torture*¹¹ (Convention against Torture), as these provide a normative framework for criminal justice systems and outcomes that respect the rights of all persons. Finally, the Handbook considers both accepted and emerging norms and standards that are contained in non-legal instruments such as policy documents of intergovernmental organisations, model laws and memoranda of understanding between States.

Organisation of the Handbook

The Handbook is divided into five chapters:

Chapter 1: provides information on trafficking in persons with an emphasis on the elements of the crime of trafficking in persons as it has been defined in international law (and in the national legislation of most ASEAN Member States). The chapter also provides an overview of the international legal framework around trafficking in persons with a particular focus on those instruments that are most directly relevant to international cooperation.

Chapter 2: provides an introduction to international cooperation in the investigation and prosecution of trafficking cases. It explains the importance of such cooperation; identifies the main forms of cooperation; and provides an overview of its legal basis. The chapter concludes with a note on the key issues of sovereignty, safeguards and human rights as these relate to international cooperation.

Chapter 3: considers the international cooperation tool of mutual legal assistance. It commences by identifying the key international and regional principles on mutual legal assistance; explaining the relevance of mutual legal assistance in trafficking cases; and summarizing the legal basis for mutual assistance. The chapter then identifies and considers the various principles and conditions attached to mutual legal assistance. Information is provided on how to prepare, transmit and respond to mutual assistance requests.

Chapter 4: follows on from the previous chapter by considering mutual legal assistance in the specific context of recovery of proceeds of trafficking crimes. It commences by identifying the key international and regional principles on mutual legal assistance in this situation; explaining the importance of pursuing the financial proceeds of trafficking crimes; and summarizing the legal basis for mutual assistance to recover trafficking proceeds. The chapter then identifies and considers the procedural and evidential requirements as well as additional considerations that may arise in the context of cross-border proceeds recovery.

Chapter 5: deals with extradition. It includes information on the nature of extradition; the importance of extradition as a tool in prosecuting trafficking cases; and the various legal bases that can be relied on to support a request for extradition. The chapter then considers the pre-conditions and safeguards that typically apply in extradition cases. It concludes with practical information on procedures that are typically followed in extradition cases and on how to prepare, transmit and respond to extradition requests.

⁸ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, Dec. 12, 2000, UN Doc. A/RES/55/25 (Annex II), entered into force Dec. 25, 2003 [hereinafter *UN Trafficking Protocol*].

⁹ *Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries*, Nov. 29, 2004, done at Kuala Lumpur, Malaysia [hereinafter *ASEAN MLAT*].

¹⁰ *United Nations International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 UNTS 171, entered into force Mar. 23, 1976 [hereinafter *ICCPR*].

¹¹ *United Nations Convention Against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment*, Dec. 10, 1984, 1465 UNTS 85, entered into force June 26, 1987 [hereinafter *Convention against Torture*].

The Handbook contains a number of important annexes. Annex 1 provides comprehensive country summaries of the legal and procedural framework relevant to international cooperation in each of the ten ASEAN Member States. Those country summaries have been organized in a way that tracks the structure of the present book.

Other annexes include full texts and extracts from the major international and regional treaties that provide a legal basis for extradition between ASEAN Member States.