

Informal Expert Group Meeting on International Cooperation in Criminal Matters

UNODC, Vienna 23-25 October 2023

Thailand's Feedback

1. Briefing/national feedback on recent cases, if any of international cooperation in criminal matters involving the use of UNTOC as a legal basis for such cooperation.

According to our domestic laws on Extradition as well as Mutual Legal Assistance in Criminal Matters, Thailand could render international cooperation assistance to foreign states on treaty obligations, and we may do so to non-treaty country but the requesting state has to promise to render similar assistance when receive a request from Thailand

On the fact that Thailand has never explicitly expressed our position to apply UNTOC as legal basis for extradition or mutual legal assistance in criminal matters according to Article 16 and Article 18 of the UNTOC respectively. However, it is a matter of interpretation that our domestic laws related to Extradition and Mutual Legal Assistance in Criminal Matters whether we accept the Convention as one of our binding treaties for providing international cooperation. Nonetheless, we can generally accommodate requests for assistance involving offenses defined in UNTOC. The offenses covered in UNTOC have never impeded Thailand to provide mutual legal assistance and extradite any sought person in because these offenses are crimes under Thai laws punishable by more than 1-year imprisonment, thus all of them are extraditable offenses under Thai laws as long as reciprocity statement provided by the Requesting State.

In 2017, Romania made a request for assistance to Thailand to inform charges to the accused who was convicted and serving his sentence in Thailand's prison. The alleged offender was under the investigation in Romania on several charges including one of establishing an organized criminal group, an offense under UNTOC. Romania cited UNTOC as legal basis for the request. However, Romania did not express the reciprocity to be provided

In our consideration whether to accept the request for further execution, at that time we took the view that that the term "treaty" in our MLA laws should confined only to bilateral or multilateral treaties which provides specific and certain scope of our obligations rather than general scope of cooperation under UNTOC. Moreover, the language of the Article 18 para 30 of UNTOC seems not to provide automatic obligations for MLA among its State Parties, it stipulated that "State Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purpose of, give practical effect to or enhance the provisions of this Article. For the purpose of interpretation of this MLA provision of UNTOC, a more detailed bilateral or multilateral agreements may be further needed for MLA cooperation for State Parties.

As a result, due to non-treaty between Romania and Thailand and lack of reciprocity expressed by Romania Authority, we decided to decline the assistance until we received the reciprocity commitment from Romania.

As for extradition, in 2018, Thailand made a request to Hong Kong SAR for extradition of a fugitive on charges of instigation, hiring a gunman for premediated murder, having in possession of gun and ammunitions etc. However, Hong Kong SAR denied the request on grounds of lack of extradition treaty between the two states. Moreover, it was clearly stated that there was no legal basis for the Hong Kong SAR Government to surrender a fugitive offender to Thailand based on the principle of reciprocity. In that request, Thailand did not state that the request had used UNTOC as legal basis for extradition. However, Hong Kong SAR informed Thailand that Hong Kong SAR has been bound by the UNTOC and other Convention related to extradition.

At present, Thailand still has the position to provide international cooperation based on its bilateral or multilateral treaties specifically on extradition or mutual legal assistance, and do not apply UNTOC as our legal basis.

In this regard, it was unfortunate that the fugitive was free from prosecution and punishment.

However, for the future requests, Thailand may wish to review its legal position on whether to use UNTOC as legal basis for international cooperation among State Parties to the UNTOC. As the term "treaty" provided in our law on mutual legal assistance in criminal matters and our extradition law may be interpreted broadly to include our multilateral treaty or convention, if so, Thailand would be obligated to provide assistance to other State Parties to the UNTOC regardless of reciprocity requirement. This expecting interpretation could broaden our cooperation to other States Parties and come along with Article 18 para 1 of the UNTOC which provided that that the State Parties shall afford widest measures of mutual legal assistance in investigation, prosecution and judicial proceedings in relation to the offences covered by the UNTOC

2. A briefing from national and regional perspective, if applicable, on legal and practical issues pertaining to the implementation of article 19 of UNTOC on joint investigations.

Thailand have received foreign requests for assistance in taking statements from witness, search or seizure properties linked to the offenses under investigation, the requesting party sometimes requested for their officers to participate, or supervise the investigation conducted in Thailand. Due to the concern over the sovereignty, we allow them to be present in the course of our execution of a request as observers, taking no part in direct investigation or operation in Thailand. However, they could actively advise for the proper execution of their requests

As of now, there is no legal support in an existing domestic law on international legal mutual legal assistance nor Mutual Legal Assistance treaties allowing foreign authorities to conduct direct investigation in the territory of Thailand, therefore, joint international investigations could not be legally conducted in Thailand. However, in practice, there exists informal cooperation in investigation such as establishing channels for direct communications between authorities of different jurisdictions in sharing information,

knowledge , exchanging experiences, or other tools available between authorities from different jurisdictions for efficiency in prevention and suppression of crimes

In recognizing the need for effectiveness' in combat and prosecution of transnational organized crimes as stated in Article 19 of UNTOC, we need to afford such necessity by enacting or amending our laws to legally authorize international joint investigation by international agreement for more efficient investigation or prosecution. The cooperation should be conducted , subject to certain conditions, to maintain the country's sovereignty as stated in the context of UNTOC.

3. A contribution on possible suggestions and elements for revision of the UNODC Manual on Extradition and Mutual Legal Assistance (2012)

The Manual is recommended to add some points or examples as the followings:

- 1) In the context of Article 16 of the UNTOC, the Manual may discuss the issue whereby the sought person may be denied his extradition when the offence for which extradition is requested is punishable by death under the laws of the requesting state, and the laws of the requested party do not permit such punishment . The sufficient assurance from the requesting party that death penalty shall not be imposed is usually required by the requested state. In addition to information provided by Requesting State for non-imposing of death sentence, the Manual may suggest a drafting of standard terms for such assurance to the effect that the death sentence ,if imposed, shall be reduced automatically by a sentencing judge or at the request of public prosecutor to life imprisonment or other lower penalty generally acceptable and in compliance with domestic laws of both the Requesting and Requested Parties. Such proposed assurance would facilitate the process of extradition and reduce time for the two Parties to agree to the terms of assurance.
- 2) Article 16 para 8 of the UNTOC stated in relation to the evidence submitted for extradition that State Parties should simplify evidentiary requirements subject to its laws. In this regard, the Manual may further suggest the matter in relation to simplified extradition procedure as stated in Article 6 the UN Model Treaty on Extradition in the case that the person sought explicitly consents to his extradition before a competent authority. The Manual may suggest essence of the content to be stated in a consent of a fugitive which shall be voluntary and irrevocable. The procedure to follow after that consent should be simplified and faster that are required under normal extradition procedures.
- 3) Article 16 para 10 of the UNTOC stated that the non-extradition of nationals as one of the grounds for extradition refusal. The problems exist as to the time for determination of such nationality for protection. It could be the time the alleged offenses were committed or the time the commencement of extradition process which may be more complexed in case of dual nationality or naturalization. The Manual may illustrate these problems and explore possible solutions.

- 4) According to Article 16 para 13 of the UNTOC, the person sought shall be guaranteed fair treatment and enjoys all rights and guarantees at all stages of proceedings provided by the domestic law of the requested state, this context may be further elaborated in the Manual that the guarantees provided should include commitment under the International Covenant on Civil and Political Rights (ICCPR) and obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) or Convention for the protection of all persons from Enforced Disappearance (ICPPED) to which the Requesting State or the Requested State is a Party. Where there are substantial grounds for believing that the violations of such rights against the sought person are highly possible in the Requesting State, such factors shall be seriously taken into consideration by the Requested State in deciding whether to extradite the person sought or to provide a surrender but subject to certain serious conditions.

4. Briefing from national and regional perspectives, if applicable, on lessons learnt regarding the impact of the COVID

In Thailand, the pandemic covid 19 kept a lot of us inside our homes to avoid risks of seriously contacting the deadly virus when going outside during the crisis time. Online banking transactions had emerged as a boom as well as online stoppings, thus increasing the risks of fraudulent activities. We have faced a multiple cases of banking scammers and online frauds. Additionally; online gambling had also become popular among our teenagers luring them to commit other serious offenses to pay for their losses in games. We had arrested and prosecuted members of online gambling networks, including anyone who took part in online gambling, whether they are an operator, bookie or a player. According to online reports, from January 1, 2022 to September 12, 2023, a total of 326,392 cases were reported with damages exceeding 45,245 billion baht.

To fight those crimes, relevant authorities acknowledged the need for closer international cooperation as the crimes often have the nature of cross border dimensions. During the crisis time and thereafter, authorities have taken the chance for closer operation with their counterparts by using increasing electronic means such as meeting online platforms for their fast, effective and functional communications. These online communications efficiently bring closer relationship among counterparts from different jurisdictions.

As for Thailand's experiences, we have improved our practice in responding to foreign requests for mutual legal assistance requests as follows:

- 1) A review of legal interpretation of conducting witness statements or testimonies via video conference

In the past, Thailand received many requests for an interview witnesses via video conference in transnational organized crime cases especially during the covid-19 pandemic where there was travel restriction.

Earlier, we denied such requests due to our traditional view that our Criminal Procedural Code do not specifically so allowed. However, we subsequently relied on the

Thai Court of Justice regulation allowing witness hearing via video conference. Additionally, we have a new thinking that the Criminal Procedure Code do not specifically refrain witness interview via video conferences. Finally, we have decided that rendering assistance in conducting witness interviews or testimonies via video conference is legally practicable, it is no doubt that such application is the effective tools in prosecuting defendants, still preserving the right of defendants to confront the witnesses. We have believed in its actual benefits of saving time and expenses in travelling between the relevant states while keeping the quality and purpose of the interview by seeing face to face with the witnesses especially observe that emotional response, facial expression, or other reactions.

2) Electronic Request Acceptance

Previously, the request sent to Thailand must be in a form of paper only as a condition for Thailand to start working on MLA. However, during Covid 19- pandemic, we see a going paperless trend among our partner when requesting MLA. Some of Central Authorities prefer sending them a request via a form of email such as USA and UK. We believe that there are many advantages of going paperless. First, we can prevent losing the request while the documents are transmitted from one place to the other. There are many cases that the requesting state sent us a request but we do not receive the request since the document lost or the destination is incorrect. Second, sending the request via electronic save a lot of time. Once you click the button, the request shall be transferred and the system will automatically keep record especially date and time. The prosecutor responsible for such request can start studying the case beforehand. If we find out something is missing, we will suddenly notify the requesting state. It definitely saves time and makes us familiar with each other. Nonetheless, the requesting party still have to send us a request in a form of paper later.

2) Applying SEAJust Connection

SEAJust or South East Asia Justice Networks was first established with a support from UNODC in March 2020 with the objectives to help each member to combat crimes by informal method like “friends help friends”, Thailand has joined the network since the early stage of its formation and has impressive experiences with the cooperation from SEAjust connection, especially during the time of crisis. Moreover, SEAjust network could further expands its networks to connect with Eurojust Networks and European Judicial Networks. The more the networks in each region are connected, the more successful sharing of information, challenges, case studies or lessons learned and we will be able to build a stronger regional network in time of crisis and thereafter in the fight against transnational organized crimes.