

Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime

Ad Hoc Experts' Group II

Legislation Workshop

**10-11 November 2003
Port Dickson, Malaysia**

Summary of Outcomes

The second Bali Process legislation workshop was held in Port Dickson, Malaysia, 10-11 November 2003. The workshop was part of a programme of practical activities to give effect to Ministers' decisions at the Second Regional Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, held in Bali in April 2003. 70 participants attended from 25 countries as well as IOM and UNHCR. The participating countries included: Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Hong Kong SAR, Fiji, Indonesia, Iran, Japan, Kiribati, Republic of Korea, Lao PDR, Malaysia, Nepal, New Zealand, Palau, Philippines, Samoa, Singapore, Sri Lanka, Thailand, Timor Leste, Tonga, Turkey and Vietnam. There were also three observers, Canada, UNODC and ARCPTT.

The workshop demonstrated the significant progress made by Bali Process countries since the first Bali Regional Ministerial Conference in February 2002 and the first legislation workshop in September 2002, in drafting, enacting or amending existing legislation to criminalize people smuggling and trafficking in persons.

Background

The first legislation workshop, held in Port Dickson, Malaysia, 23-25 September 2002, provided a valuable opportunity for legislative and immigration experts to discuss what is required in legislation to combat people smuggling, trafficking in persons and related transnational crimes. Participants recognized that all states should make best endeavours to criminalize these serious offences. Because these crimes often cross borders, countries also recognized the need for close cooperation, and for legislation to facilitate that cooperation.

At the first workshop, participants developed **Key Elements** required in legislation to:

- Effectively prosecute people smuggling;
- Effectively prosecute trafficking in persons; and
- Effectively investigate and cooperate in combating people smuggling, trafficking in persons and related transnational crimes.

China and Australia were tasked to draft model laws incorporating the above elements as well as key provisions of the *Protocol Against the Smuggling of Migrants by Land, Sea and Air* (the People Smuggling Protocol), and the *Protocol to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children* (the Trafficking in Persons Protocol), both of which supplement the United Nations Convention against Transnational Organized Crime. The model laws were presented at the review conference of AHEG II in Tokyo, 10-11 March 2003. The aim of the model legislation was to assist the development of national legislation criminalizing people smuggling and trafficking in persons.

At the AHEG II review meeting, held in Tokyo, 10-11 March 2003, participants agreed to hold a further workshop focusing in more detail on the legislative requirements for effective cooperation. Such legislation needed to be developed and implemented in ways that are appropriate to the national circumstances of each individual country.

Progress since the first legislation workshop

In order to achieve a clearer picture of the state of criminalization legislation in Bali Process participating countries, Police Major General Krerckphong, the chair of AHEG II, IOM and Australia jointly developed a matrix document which draws together the relevant information on each country's legislation, presented in a country by country table. The matrix document: provides an information-sharing service; highlights each country's approach to the issues; and demonstrates to the broader community that regional countries are working cooperatively together to combat people smuggling and trafficking in persons on a range of levels.

A review of current information included in the matrix shows that:

- 19 countries now have criminalization legislation in place for people smuggling and/or trafficking in persons legislation;
- 12 countries are currently considering implementation of criminalization legislation or are in the draft stage of implementing such legislation;
- 18 countries have made use of the model legislation;
- 8 of those countries with legislation have also adopted key protection measures for victims of trafficking;
- 15 countries have mutual legal assistance arrangements and/or extradition legislation covering people smuggling and trafficking in persons and related transnational crimes; and
- 9 countries have established national action plans, prevention strategies or inter-agency cooperation mechanisms.

Second Legislative Workshop - Information exchange

The second legislation workshop provided a valuable opportunity for member states to exchange information on implementation of legislation, law enforcement cooperation,

including mutual legal assistance and extradition, the importance of regional and international cooperation in combating transnational crime, including information sharing, and victim protection. The group heard presentations from Australia, China, Papua New Guinea, UNHCR, Cambodia, Fiji, the Philippines, Thailand, New Zealand and Hong Kong SAR. A number of other countries also shared their experiences. The case study on PNG and Cambodia highlighted the complexity of implementing criminalizing legislation in different legal systems.

The workshop also broke up into focused working groups on implementation issues, law enforcement cooperation and protection for victims. These working groups gave participants the opportunity to consider these issues in more detail and to contribute their national experiences in implementing people smuggling and trafficking in persons laws. Many participating countries are now focusing on practical methods of implementing legislation on people smuggling and trafficking in persons.

The workshop highlighted the significant amount of information that can be drawn on by countries when considering implementation of criminalization legislation. All presentations made at the workshop will be posted on the Bali Process website, (www.awiz.net/bmcw).

Conclusions

Participants agreed that the two workshops had assisted countries in developing legislation, appropriate to their national circumstances, and in further developing effective regional networks to combat people smuggling, trafficking in persons and related transnational crimes. Participants noted that the information available to them on the Bali Process website would provide them with an important resource in developing their own legislation. They also agreed that any further work on these issues in the Bali Process would need to avoid duplicating existing efforts underway in other forums. The results of the second workshop will be presented to the Bali Process Senior Officials Meeting in 2004.