



Mutual Legal Assistance in Criminal Matters for Cybercrime between Vietnam and Other Countries in ASEAN

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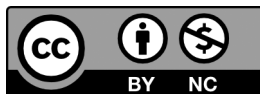
Abstract: Mutual legal assistance in criminal matters between Vietnam and ASEAN countries is the receipt and settlement of requests for mutual legal assistance in criminal matters from Vietnam's prosecuting agencies entrusted to ASEAN countries and vice versa. Cybercrime is a new and increasing crime in Southeast Asian countries^[1]. However, the legal basis for mutual legal assistance in criminal matters of ASEAN and its member states on cybercrime is still incomplete, leading to many obstacles in practical application. This article aims to examine and assess the current state of the law and the application of mutual legal assistance in criminal matters for cybercrime in Vietnam and ASEAN countries. The goal is to identify challenges and obstacles, and to propose recommendations for enhancing the laws of ASEAN and Vietnam, in order to enhance the quality of mutual legal assistance in criminal matters for all crimes, particularly cybercrime, between Vietnam and ASEAN countries.

Key words: Cybercrime; Mutual legal assistance; Criminal matters; Legislation; Implementation of the law; Southeast Asian countries; Vietnam; ASEAN

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1 Introduction

Cybercrime means the crime or illegal activity that is done using the internet^[2]. Cybercrime is defined in the

Vietnamese Law on Cyber Security 2018 as an act of using cyberspace, information technology or electronic means to commit a crime specified in the Criminal Code. There is a popular perception that cybercrime is an anon-

[1] Currently, all but one of the 11 Southeast Asian countries have joined ASEAN, with East Timor being the exception. Consequently, in this article, the term "Southeast Asian countries" refers exclusively to ASEAN member states.

[2] Cambridge University Press. Cambridge dictionary [OL]. <https://dictionary.cambridge.org/dictionary/english/cybercrime> (accessed 2022-11-28).

ymous activity. With seemingly faceless attackers and so-called ‘darknet’ sites, a picture emerges of a threat unlike anything we’ve seen before. But cybercrime shouldn’t generate this kind of paradigm shift. As Peter Grabosky astutely argued almost 20 years ago, ‘old wine in new bottles’^[1]. The crime types—fraud, extortion, theft—remain the same; only the tools have changed. For the following analysis, I employ a broad definition: cybercrime is the ‘use of computers or other electronic devices via information systems such as organisational networks or the Internet to facilitate illegal behaviors’^[2]. Vietnam is a significant location of cybercrime, particularly by regional standards^[3]. As described in a 2020 Interpol report, the impact of cybercrime will only increase as cybercriminals become more sophisticated, taking advantage of the inefficiencies in regional law enforcement structures^[4].

According to Interpol, the types of cybercrime that have been identified as a global threat include: (1) Phishing; (2) Ransomware; (3) Sextortion; (4) Cryptojacking; (5) Business email compromise (BEC) fraud; (6) Online crimes against children^[5]. In fact, cybercrime is transnational, with collusion between domestic and foreign entities, so mutual legal assistance in criminal matters is very necessary to collect documents and evidence to prove these crimes.

International cooperation in general and mutual legal assistance in criminal matters in particular for handling infringement upon and preventing threats to the cybersecurity of each country must be carried out on the basis of respect

for independence, sovereignty and territorial integrity, non-interference in each other’s internal affairs, equality and mutual benefit. According to Article 7(1) of the Vietnamese Law on Cyber Security, “international cooperation in cybersecurity is carried out on the basis of respect for independence, sovereignty and territorial integrity, non-interference in each other’s internal affairs, equality and mutual benefit”. Meanwhile, Malaysia and the Philippines stated that the countries should closely protect cybersecurity against every risk from unexpected incidents, disruptions, or terrorist attacks, cyber terrorism, and wars in cyberspace^[6]. The Thailand Cybersecurity Act, enacted in 2019, also sets out measures to ensure the nation’s cybersecurity. In 2016, Singapore launched a National Cybersecurity Strategy. This strategy shows that Singapore will build a resilient infrastructure, create a more secure cyberspace, develop a vibrant cybersecurity ecosystem, and strengthen international partnerships. At the same time, Singapore also coordinated with other ASEAN countries to develop a roadmap to protect regional cybersecurity^[7], and in 2017, Singapore also promulgated the Law on Cybersecurity^[8]. In 2012, the ASEAN Community for Cybersecurity (ASEAN Network Security Action Council) was established to promote cooperation among national computer incident response teams and promote knowledge sharing through annual meetings^[9]. Among the initiatives to protect cybersecurity, ASEAN has encouraged member countries to develop their own legal tools, first to solve each country’s security problems, and

[1] Grabosky P. Virtual criminality: old wine in new bottles? [J]. *Social & Legal Studies*, 2001, 10: 2.

[2] Quade MCS. Understanding and managing cybercrime [M]. Boston: Allyn and Bacon, 2006.

[3] Lusthaus J. Cybercrime in Southeast Asia: combating a global threat locally [R]. Policy Brief, 2020, 29: 6.

[4] INTERPOL. INTERPOL report shows alarming rate of cyberattacks during COVID-19 [OL]. <https://www.interpol.int/en/News-and-Events/News/2020/> (accessed 2022-11-28).

[5] INTERPOL. INTERPOL reminds public that online crimes is real crime? [OL]. <https://www.interpol.int/en/News-and-Events/News/2020/> (accessed 2022-11-30).

[6] Dang ND. ASEAN and cyber security [J]. *Legislative Research Journal*, 2021, 18 (442): 19.

[7] Singapore’s Cybersecurity Strategy. National strategies repository Singapore 2016 cybersecurity strategy [G/OL]. <https://www.itu.int/en/ITU-D/Cybersecurity/Documents/> (accessed 2022-11-25).

[8] Anh Q. 138 countries have enacted cybersecurity laws [OL]. <https://vtv.vn/luat-an-ninh-mang-cua-singapore.html> (accessed 2022-11-26).

[9] Heintz HC. Regional Cyber Security: Moving towards a Resilient ASEAN Cyber Security Regime [J]. *S Rajaratnam School of International Studies*, 2013, 263 (9): 29.

then to become part of the regional security programme regulating e-commerce activities as well as stipulating the law on dealing with cybercrime^[1].

In recent years, ASEAN has made considerable progress in cooperation among countries in the fight against cybercrime, such as: (1) Enhancing regional cybersecurity through capacity-building programmes; (2) The creation of a new multilateral institution; (3) And its endorsement of international norms developed through the United Nations.

As it moves forward with proposing innovative solutions and mechanisms to tackle cyber threats, ASEAN would benefit from establishing a shared cybercrime framework to fill some of the gaps created by inefficiencies in regional law structures^[2].

However, the above is the result of international cooperation activities of ASEAN countries in the fight against cybercrime. Mutual legal assistance in criminal matters for cybercrime is mentioned quite faintly in this area, even though it is a topic of international cooperation. That comes from many reasons, of which the main reason is that ASEAN and its member states have not had specific provisions on mutual legal assistance in criminal matters for cybercrime, leading to legal assistance in criminal matters still following the general provisions on mutual legal assistance. This has led to many problems in practical application. In addition, Vietnam and ASEAN member states have not yet made specific assessments on the reality of mutual legal assistance in criminal matters activities for cybercrime, so the quality of mutual legal assistance in criminal matters activities for cybercrime has not yet met the requirements.

2 Legal Status of Mutual Legal Assistance in Criminal Matters for Cybercriminals of Vietnam and ASEAN Countries

On November 29, 2004, ASEAN countries signed the Mutual Legal Assistance Treaty (MLAT) in Criminal Matters in Kuala Lumpur, Malaysia. This treaty, built on the initiative of Malaysia, is the first multilateral treaty on mutual legal assistance in criminal matters between

Southeast Asian countries, demonstrating the common determination of these countries to cooperate in the prevention and control of regional crimes, especially transnational crimes. The MLAT came into effect on September 20, 2005, and up to now, all ASEAN member states are members of the MLAT (Thailand is the 10th country to submit the instrument of ratification of the MLAT on January 31, 2013). The MLAT consists of thirty-two articles, specifically stipulating important contents such as: scope of mutual assistance, mutual assistance procedures, content of mutual assistance, costs of mutual assistance and other issues such as dispute settlement, reservations to the treaty, effect, and deposit^[3].

This Agreement has been upgraded to an international treaty of ASEAN in 2019. This is the first multilateral treaty on mutual legal assistance in criminal matters between Southeast Asian countries; at the same time, it is one of the effective multilateral legal instruments in the region, establishing a close and long-term coordination mechanism, demonstrating the consensus and common determination of ASEAN countries to cooperate in prevention and control of transnational crime in the region^[4].

Besides the MLAT, ASEAN has also signed many international treaties in specific areas with provisions on mutual legal assistance in criminal matters, such as the 2007 ASEAN Convention on Counter Terrorism (ACCT) and the ASEAN Convention against Trafficking in Persons, Especially Women and Children 2015 (ACTIP). In

[1] ASEAN. Declaration to Prevent and Combat Cybercrime adopted at the 31st ASEAN Conference [C]. Manila, Philippines, November 13, 2017.

[2] Vision of Humanity. ASEAN needs to enhance cross border cooperation on cybercrime [OL]. <https://www.visionofhumanity.org/> (accessed 2022-11-28).

[3] Vu THY. Outstanding results and solutions to continue to improve the work of criminal legal assistance in the coming time [OL]. <https://kiemsat.vn/> (accessed 2022-11-24).

[4] P V Trillion gambling rings: \$35 million recovered in Singapore [OL]. <https://vietnamnet.vn/duong-day-danh-bac-ngan-ty-thu-hoi-35-trieu-usd-o-singapore-475690.html> (accessed 2022-12-05).

addition, to further strengthen the legal basis and meet the requirements of regional cooperation in mutual legal assistance in criminal matters, ASEAN countries have also actively negotiated, signed, and implemented bilateral treaties in this area. As of March 2018, Vietnam has signed 03 bilateral treaties regulating mutual legal assistance in criminal matters with ASEAN countries^[1].

However, the application of both the Mutual Legal Assistance Treaty (MLAT) in Kuala Lumpur, Malaysia and other legal documents mentioned above to cybercriminals is limited as they lack specific provisions to address cyber threats, such as regulations on electronic data collection. These regulations are very important because typically electronic data is stored by service providers headquartered in a country other than the country where the data is collected. Therefore, if there are specific regulations on electronic data collection, they will help mutual legal assistance in criminal matters activities between ASEAN countries be faster and more convenient.

Currently, the only legally binding multilateral instrument for dealing with cybercrime is the 2004 Budapest Convention. The Council of Europe drew up this convention. The Convention tackles cyber and computer crimes by harmonising national laws, improving investigative techniques, and strengthening international cooperation and mutual legal assistance between states. But the Budapest Convention has not reached a consensus and has been rejected by countries such as China, Russia, India, and Brazil. Among the ASEAN member states, the Philippines is the only country that has ratified this Convention. The main points of contention are the Convention's violation of the principles of national sovereignty and non-interference in the internal affairs of other states.

However, in the current context, when cybercrime is complicated and increasing in Southeast Asia in particular and around the world in general, it is essential for ASEAN countries to produce common regulations regarding international cooperation and mutual legal assistance in criminal matters for cybercrime. Because there is no separate regulation on the process of receiving and handling requests for legal assistance in criminal matters for cybercrime between judicial agencies of

ASEAN member states, at present, the implementation of legal assistance in criminal matters for cybercrime still follows the general provisions on mutual legal assistance in criminal matters between ASEAN countries. These regulations cover the following groups of activities.

(1) Mutual assistance activities related to individuals; mutual assistance related to documents, papers, and records; property-related mutual assistance; other mutual assistance.

(2) Mutual assistance activities related to individuals include address verification, identification of witnesses and suspects; arrangement to provide evidence or support of criminal matters; collection of voluntary testimonies...

(3) Mutual assistance activities related to documents, papers and records include evidence collection; transfer of legal papers and documents; provision of copies, certified originals of relevant documents, records, and evidence...

(4) Mutual assistance activities regarding assets include search and seizure of assets; inspect objects and places; recovery and confiscation of property obtained as a result of crime; Restricting asset transactions or freezing assets obtained from criminal activities...

(5) Other mutual assistance activities: according to treaty and in accordance with the purposes of the Treaty and national laws^[2].

Currently, nine ASEAN member countries have laws on mutual legal assistance in criminal matters, which are Laos (2020), Cambodia (2020), Singapore (2020), Thailand (1992), Malaysia (2002), Brunei (2005), Indonesia (2012), Myanmar (2004), and the Philippines (2021). Only Vietnam still applies the Law on Mutual Legal Assistance 2007, but does not have a separate Criminal Justice Law like other ASEAN member states.

[1] Lao People's Democratic Republic signed in 2000, The Republic of Indonesia signed in 2016, The Kingdom of Cambodia signed in 2016.

[2] ASEAN. Mutual legal assistance agreement in criminal matters in Kuala Lumpur, Malaysia (MLAT) , Article 1 [G]. 2004.

However, as an active member of the ASEAN Community, over the years, Vietnam has always carried out the policy of expanding international cooperation in all fields. Moreover, we should focus on international cooperating in strengthening international cooperation in law in the fight against crime in general and cybercrime in particular. Vietnam has actively negotiated, signed and implemented relevant international treaties; formulated and perfected domestic laws, step by step strengthening the entire apparatus, organisation of personnel, ensuring necessary conditions to create an effective cooperation mechanism between Vietnamese functional agencies and foreign functional agencies, including ASEAN member countries. Up to now, Vietnam has been a member of 22 Multilateral International Treaties and 23 Bilateral Treaties with provisions on mutual legal assistance in criminal matters (of which 23 treaties have been officially signed and one has been initialised)^[1].

In particular, Vietnam signed the ASEAN Convention on Prevention and Control of Trafficking in Persons, Especially Women and Children in 2015 (effective for Vietnam from March 8, 2017). In addition, Vietnam continues to sign and ratify many Bilateral International Treaties on mutual legal assistance in criminal matters with ASEAN countries, such as the Agreement on mutual legal assistance in criminal matters between the Socialist Republic of Vietnam and the Republic of Indonesia (effective for Vietnam from January 21, 2016)^[2]. These documents are essential international legal bases for Vietnam and other countries in the ASEAN region to provide mutual legal assistance in criminal matters to effectively prevent and combat crimes, especially transnational crime, organised crime^[3].

Regarding cybercrimes, the National Assembly of the Socialist Republic of Vietnam has approved the 2015 Penal Code, which has been amended and supplemented in 2017. This Code adds provisions for crimes using high technology as a basis for considering requests for mutual legal assistance in criminal matters. Based on the provisions of the Penal Code, the Criminal Procedure Code 2015 stipulates the order, competence, and procedures of Vietnamese competent agencies in determining

whether the criminal acts committed in a foreign country constitute a crime as prescribed in the Penal Code or not, and then conduct criminal prosecution in Vietnam at the request of the foreign party.

In addition, based on the contents of criminal mutual legal assistance specified in Chapter III of the Law on Mutual Legal Assistance in 2007, the Criminal Procedure Code 2015 has supplemented a number of provisions related to mutual legal assistance in criminal matters such as: recognising the results of judicial entrustment as a source of evidence (Article 87); stipulating that the Supreme People's Procuracy is the central agency of the Socialist Republic of Vietnam in criminal legal assistance activities (Clause 2, Article 493); regulations on the legal value of documents and objects collected through international cooperation in criminal proceedings (Article 494); the presence of witnesses, experts, and persons serving prison sentences abroad in Vietnam (Article 496); handle property acquired by crime in the case of overseas assets (Article 507); cooperate in investigation and apply special investigative and procedural measures (Article 508).

In addition, the Criminal Procedure Code 2015 also added that electronic data is also considered a source of evidence (point c, Clause 1, Article 87), which documents are identified as electronic data (Article 99), order, procedures, and manner of collecting electronic means and electronic data (Article 107)... These are important regulations that are the basis for collecting evidence in cybercrime cases. Based on these regulations, in cybercrime cases, when there are documents and objects collected by a foreign competent authority under the

[1] The Socialist Republic of Vietnam. Report of the 8th Senior Officials' Meeting on the Agreement on Mutual Legal Assistance in Criminal Matters between ASEAN countries [R/OL]. April 26-27. 2018.

[2] The Republic of Indonesia. Mutual Legal Assistance in Criminal Matters in Indonesia [G/OL]. <https://ahu.go.id/mla/download/id> (accessed 2022-11-28).

[3] Vu TPT, Nguyen NKC. Improving the effectiveness of mutual legal assistance between ASEAN countries [J]. Journal of Legislative Studies, 2020, 19 (419): 25-35.

judicial mandate of a competent Vietnamese authority or documents and objects sent to Vietnam by a foreign competent authority to entrust criminal prosecution, the above provisions may apply.

According to article 497 Criminal Procedure Code 2015, the receipt and transfer of documents and objects related to the case is regulated as: “The acquisition and transfer of items and documents related to a legal case shall conform to international agreements that the Socialist Republic of Vietnam has signed, regulations of this Law, laws on judicial assistance and other relevant laws of Vietnam”. However, these regulations of Vietnam are still general, principled, and do not specify the conditions, order, and procedures for mutual legal assistance in criminal matters, so the implementation of the contents of mutual legal assistance in criminal matters in general and for cybercrime in particular between Vietnam and other countries still faces many problems.

So far, there has been no separate agreement between Southeast Asian countries on mutual legal assistance in criminal matters for cybercrime. The receipt of outgoing and incoming mutual legal assistance for cybercriminals between Vietnam and these countries is still done on the basis of the 2004 Mutual Legal Assistance Treaty (MLAT) and mutual legal assistance laws of ASEAN member states, as mentioned above. It shows that Southeast Asian countries will face many difficulties in receiving and handling requests for mutual legal assistance in criminal matters for cybercrime.

3 Current Status of Mutual Legal Assistance in Criminal Matters Activities for Cybercrime between Vietnam and ASEAN Countries

3.1 Achievements

3.1.1 Results of Receipt and Settlement of Requests for Mutual Legal Assistance from Domestic Law Enforcement Agencies Entrusting Foreign Countries to Perform Against Cybercrime (Outgoing MLA Requests)

In the 14 years from 2008 to 2022, the Supreme

People’s Procuracy of Vietnam received 2,301 requests for mutual legal assistance in criminal matters from domestic procedure-conducting agencies and sent them to foreign competent authorities recommended for implementation. Among them, 75% of the requests were sent to countries that have signed the Agreement on Mutual Legal Assistance for Vietnam^[1]. Regarding ASEAN countries, in 14 years (from 2008 to 2022), Vietnam has sent 450 requests to countries in the region. Among Southeast Asian countries, the countries receiving the most requests for mutual legal assistance in criminal matters from Vietnam are the Lao PDR, the Kingdom of Cambodia, Singapore, Malaysia, Thailand, Indonesia, and the Philippines. In which, ASEAN countries have completed or partially fulfilled the requirements of Vietnam (reaching the rate of 60%).

The scope of work and the scope of requests for mutual legal assistance in criminal matters are quite diverse; in which, requests for judicial papers and documents, provision of information and documents which is evidence, performing science examination, taking testimonies, verifying criminal records accounted for 78.6%; request for documents and papers account for 10.5%; request for transfer of criminal prosecution accounted for 1.5%, and other requirements (summoning witnesses, experts, appointing competent authorities to participate in performing mutual legal assistance, collecting electronic data,...) accounted for 9.4%. Commonly requested crimes include trespassing; infringing on life and health; drug crimes; human trafficking crimes; crimes using high technology; wildlife trafficking crimes; crime of violating the regulations on driving road vehicles^[2].

Thus, the reception and settlement of requests from Vietnam has been effectively implemented by ASEAN countries, basically meeting practical requirements, con-

[1] The Supreme People’s Procuracy of Vietnam. Conference: Mutual Legal Assistance in Criminal Matters between countries ASEAN [C]. November 23, 2022.

[2] The Supreme People’s Procuracy of Vietnam. Summary report of implementation of the Law on Mutual Legal Assistance 2007 in the field of criminal legal assistance [R]. 2022.

tributing to the settlement of cases with foreign elements, which include cybercrime cases. Besides, a few requests have not been fulfilled because Vietnam has not provided enough information to identify the subjects. During the implementation of criminal legal assistance activities with ASEAN countries, Vietnamese authorities (People's Public Security, People's Court, People's Procuracy at all levels, Ministry of Justice, Ministry of Foreign Affairs...) have actively coordinated in solving each specific case, in accordance with international treaties to which Vietnam is a member.

3.1.2 Results of Receipt and Settlement of Requests for Mutual Legal Assistance in Criminal Matters from Foreign Law Enforcement Agencies Entrusting Vietnam to Perform Against Cybercrime (Incoming MLA Requests)

From 2008 to 2022, the Supreme People's Procuracy in Vietnam received and handled 1,148 requests for mutual legal assistance. Vietnam implemented and returned 815 requests from foreign competent authorities, reaching 79.43%^[1]. From 2008 to 2022, Vietnamese judicial authorities received 35 requests for mutual legal assistance in criminal matters from ASEAN countries. In which, there were 12 requests from the Lao People's Democratic Republic^[2]; 07 from Thailand; 07 from Cambodia; 05 from Malaysia; and 04 from Singapore. Up to now, Vietnam has completed 23 requests, reaching 66.6%. The contents of the request for mutual legal assistance were to request Vietnam to serve judicial papers and documents; provide information, documents, and evidence; take testimonies via videoconference; and transfer to criminal prosecution. Claims-related crimes include property trespassing crimes; crimes infringing on life and health; human trafficking crimes; crimes of violating regulations on driving road vehicles; cybercrime,...

Similar to outgoing criminal legal assistance requests, incoming legal assistance requests in the report of the Supreme People's Procuracy were also not classified by criminal groups, so it is difficult for us to collect specific data on the mutual legal assistance requests for the cybercrime group. Regarding the group of cybercrimes, the report mentioned: "Foreign mutual legal assistance requests involve many types of crimes, including cyber-

crime, crime of using high technology to commit acts of appropriating property...".

There are some large cases of cybercrime between Vietnam and ASEAN countries. They include the cases of "Organising gambling" "Gambling" "Using the internet to commit acts of stealing" "Property appropriation" "Illegal purchase and sale of invoices" "Money laundering", and "Abusing positions and powers while performing official duties". They were committed by Phan Sao Nam, Nguyen Van Duong, and their accomplices, who obtained illegal profits of over 9,800 billion VND (about 408 million USD). Phan Sao Nam has deposited this amount at Vietnamese and foreign banks, including 3.5 million USD at a Singapore bank. The Ministry of Public Security has coordinated with the Supreme People's Procuracy of Vietnam to set up a special case team with the Interpol International Police and coordinate with the authorities in Singapore to recover the proceeds of this crime^[3]. In another case in February 2020, a criminal named Loc took advantage of the COVID-19 pandemic that broke out throughout Southeast Asian countries. He knew the need to buy thermometers and medical masks or transfer money to relatives who were studying abroad, living abroad or moving back to Vietnam from abroad. Thus, Loc used his Facebook social network account "Duong Dinh Loc" to join groups to buy and sell electronic thermometers. In fact, Loc did not have a supplier of thermometers and did not accept money transfer services abroad. However, from February 14, 2020, to April 2, 2020, Duong Dinh Loc continuously scammed money from many people via social networks, with a total amount of more than 1.4 billion VND, equivalent to 58,000 USD. Among those victims,

[1] Vu ND. ASEAN Mutual Legal Assistance and Practise in Vietnam [OL]. <https://lsvn.vn/> (accessed 2022-11-24).

[2] Lao People's Democratic Republic. Law on Mutual Legal Assistance in Criminal Matter [G/OL]. <https://asean.org/> (accessed 2022-11-28).

[3] P V Strengthening international cooperation and mutual legal assistance in criminal matters between ASEAN countries for the second time [OL]. <https://baovephapluat.vn/kiem-sat-24h/ban-tin-kiem-sat/> (accessed 2022-11-24).

there were 6 Vietnamese in Korea, Singapore (mostly women) who were scammed of nearly 500 million VND, about 20,000 USD. However, due to the COVID-19 situation, the victims could not return to their home country to settle and provide mutual legal assistance, so the investigating agency separated the case for later handling^[1]. Another example of taking advantage of social networks to defraud and appropriate property is a group of subjects in Cambodia who pretended to be soldiers, foreign doctors on WhatsApp to make friends and get to know Vietnamese women. After talking for a while and confessing their love, the group of foreigners expressed their desire to give gifts and send high-value foreign currency to the victims as bait. After having the victim's information, they also took their bank account information. Then, the criminals in Cambodia would provide information to those in Vietnam to "impersonate" the management and delivery staff at Tan Son Nhat airport. They called and informed the victims that there was a parcel from relatives from abroad, and requested the victims to pay fees through their bank accounts to complete the procedures to receive the goods. With these tricks, only from June until their discovery, the criminals scammed hundreds of victims in Vietnam with a total amount of money appropriated of nearly 400 billion VND, equivalent to 160,000 USD^[2].

These are just a few typical cases of transnational cybercrime. Criminal groups have taken advantage of the convenience of cyberspace in connecting with victims as well as easily erasing traces after committing crimes. In addition, the transnational criminal group causes many difficulties in collecting evidence and other mutual legal assistance activities. Currently, cybercrime is becoming more and more common and complicated not only in Vietnam but also in other Southeast Asian countries, requiring these countries to have close coordination to crack down on this type of crime.

In summary, Vietnam does not have separate statistics on mutual legal assistance in criminal matters for cybercriminals in both groups of criminal legal assistance activities to and from other ASEAN countries. In the summary reports of the Supreme People's Procuracy of Vietnam, they also pointed out that recently, there have

been new requests for mutual legal assistance in criminal matters, namely the requirement to provide electronic data and collect evidence. Another evidence for the widespread nature of cybercrime is a group of criminals using high technology to appropriate property, but the report does not provide data, as well as specific case contents on the request for mutual legal assistance for cybercriminals. This is also one of the major limitations in the reports, showing that the actual statistical work carried out in Vietnam is incomplete and has many shortcomings.

3.1.3 Coordination of Law Enforcement Authorities between Vietnam and Other ASEAN Countries in Mutual Legal Assistance in Criminal Matters for Cybercrime

Although there have not been many activities of Vietnam and ASEAN countries in mutual legal assistance in criminal matters for cybercrime, the cooperation between Vietnam and other countries has recently been clearer shown. One worth mentioning is the ASEAN Ministerial Conference on Cybersecurity (AMCC). In addition, there is an active cooperation between the Ministry of Public Security of Vietnam and the Ministry of Home Affairs of Singapore in the prevention and control of cybercrime. Especially within the framework of the ASEAN Ministerial Meeting on Transnational Crime Prevention and Control (AMMTC), Vietnam and Singapore have been active in improving their capacity in ensuring cybersecurity, preventing and controlling cybercrime and high-tech crime in the region.

Vietnam and Singapore have established a coordination mechanism to improve the efficiency of handling cybercrime and high-tech crime between law enforcement agencies of the two countries through international treaties and cooperation agreements, memorandum of

[1] Tran T. Taking advantage of the Covid 19 epidemic to commit transnational fraud [OL]. <https://congty.vn/loi-dung-dich-covid-19-de-lua-dao-xuyen-quoc-gia-186039.html> (accessed 2022-12-05).

[2] Van D. Breaking down the transnational fraud line [OL]. <https://baotainguyenmoitruong.vn/> (accessed 2022-12-05).

understanding, hotlines, direct communication channels... to promptly coordinate, respond to, and handle incidents of cyberattacks, and law violations in cyberspace that happen very quickly, fast and unpredictable^[1].

Thus, it can be seen that Vietnam and ASEAN countries are gradually focusing on unifying the awareness and actions of ASEAN countries on cybersecurity, moving towards building common legal frameworks to facilitate international coordination and cooperation in the field of cybersecurity. The relationship between the focal agencies on mutual legal assistance in criminal matters for cybercrime among ASEAN countries is increasingly closely coordinated in building the ASEAN Cybersecurity Centre.

3.2 Difficulties in the Practise of Mutual Legal Assistance in Criminal Matters for Cybercrime

Through research on the practice of mutual legal assistance in criminal matters, activities in general. For cybercrime in particular, between Vietnam and Southeast Asian countries, the following main obstacles and difficulties can be found:

Firstly, ASEAN is lacking provisions on mutual legal assistance in criminal matters for cybercrime in the Mutual Legal Assistance Treaty or in related legal documents, leading to difficulties in implementation between member countries.

In comparison with the Budapest Convention, the ASEAN treaty lacks the following provisions to deal effectively with cybercrime: (1) Expedited preservation of stored computer data; (2) Expedited disclosure of preserved traffic data; (3) Mutual assistance regarding accessing stored computer data; (4) Transborder access to stored computer data with consent or where publicly available; (5) And mutual assistance in the real-time collection of traffic data.

In the long run, ASEAN could consider drafting a regional cybercrime convention that establishes common cybercrime policies and institutions to foster cross-border cooperation in line with its own values^[2].

Secondly, the results of mutual legal assistance provided by a foreign country for Vietnam or provided

by Vietnam for a foreign country have not yet achieved the desired effect due to the difference between the provisions of the laws of Vietnam and of other countries or due to Vietnam lacking regulations to apply.

Most ASEAN member states have adopted cybercrime laws in key areas, such as fraud and forgery, child pornography, and offences against confidentiality, integrity and availability of computer data and systems. However, capabilities and national priorities vary across member states, creating a marked disparity in cybercrime laws and enforcement. In particular, there are important differences in how members define criminal conduct in cyberspace and how they go about collecting electronic evidence for cybercrime investigations, making cross-border cooperation lengthy and complex.

For Vietnam, the provisions on criminal legal assistance are still included in the Law on Mutual Legal Assistance 2007. Law on Mutual Legal Assistance 2007 regulates all 04 areas of mutual legal assistance in civil, criminal, extradition and transfer of people serving prison sentences. Technically, this practice is not really consistent with international practices when countries around the world consider mutual legal assistance in civil, criminal, extradition and transfer of people serving prison sentences as separate branches of law independent of each other and develop separate laws that govern each area. This inadequacy leads to the fact that a number of competent agencies and law enforcement officers have not clearly distinguished the difference between the fields, thereby causing difficulties and obstacles in coordination, implementation and enforcement. In addition, the provisions on mutual legal assistance in criminal matters are incomplete, unspecific, and not systematic; many provisions have inadequate contents that do not meet practical requirements, lack synchronisation with the legal documents in the same

[1] Viet C. Vietnam and Singapore cooperate to prevent and combat cybercrime [OL]. <https://vov.vn/> (accessed 2022-11-24).

[2] Vision of Humanity. ASEAN needs to enhance cross border cooperation on cybercrime [OL]. <https://www.visionof-humanity.org/asean-needs-to-enhance-cross-border-cooperation-on-cybercrime/> (accessed 2022-11-24).

field that were promulgated at a later stage, especially the 2015 Criminal Procedure Code. In addition, the content of a number of provisions in the implementation guides of the Law on Mutual Legal Assistance in 2004 also shows inadequacies and is no longer consistent with reality. The lack of cohesion and synchronism, and the unreasonableness of domestic procedural law related to mutual legal assistance in criminal matters also affect the timely settlement of requests for mutual legal assistance.

Thirdly, it takes a long time to process requests for mutual legal assistance in criminal cases in general and for cybercrime in particular between Vietnam and South-east Asian countries.

Currently, the summoning of witnesses and experts, the permission of the law enforcement personnel to go to the requested country to participate in the mutual legal assistance implementation process, the escort of the sentenced person abroad to assist in the investigation or to provide evidence, the collection of electronic data evidence, the collection of witness statements via video conference, the transfer of criminal prosecution still faces many difficulties and obstacles in practice, because the implementation of requests for criminal legal assistance often takes a long time. In contrast, the settlement of criminal cases must comply with the time limit prescribed by law. In recent times, criminal legal assistance activities between Vietnam and ASEAN member states still face some difficulties and obstacles in the practice of the Agreement on mutual legal assistance in criminal matters. For example, “the provisions on measures and the scope of mutual legal assistance mentioned in the Agreement are relatively narrow, a few provisions of the Agreement are no longer relevant and lack binding; the implementation of requests for mutual legal assistance in criminal matters between ASEAN countries is still slow, especially in the context of the COVID-19 pandemic”.

Fourthly, the quality of judicial entrustment dossiers for some specific cases sent abroad by Vietnam’s law enforcement agencies is still limited.

Many dossiers still lack necessary information and documents; contents are incomplete according to the provisions of Articles 18 and 19 of Vietnam’s Law on

Mutual Legal Assistance and the provisions of the Mutual Legal Assistance Treaty (MLAT); some applications are not accompanied by a translation into the language of the requested country or another language acceptable to the requested country. Many localities in Vietnam do not have professional translation organisations. The translation of documents in unpopular languages, such as Laos, Cambodian... limits the quality of the documents as well as prolongs the implementation time of mutual legal assistance. Some dossiers of entrustment documents sent abroad were returned due to poor translation quality, leading to foreign competent authorities not understanding and being unable to implement them. Therefore, the number of dossiers required to be redone is still large, affecting the time for settling mutual legal assistance in criminal matters requests.

Fifthly, the quality and quantity of persons competent to conduct activities in legal assistance in criminal matters in general and for cybercrime in particular in Vietnam are not commensurate with the requirements of mutual legal assistance activities.

The number of officers specialised in legal assistance in criminal matters is still lacking, while mutual legal assistance in criminal matters in general is increasingly complex in content, increasing in volume with increasingly high requirements, especially for cases in the cyber field. The awareness of a portion of law enforcement officers about the meaning and importance of international law cooperation activities in general and mutual legal assistance in criminal matters in particular is inadequate. The capacity, qualifications and knowledge of international law and foreign languages of officials, especially local officials, are still limited.

Sixthly, the work of statistics, inspection, periodical evaluation reports, and lessons learned for the work of mutual legal assistance in criminal matters for cybercrime has not been fully evaluated and summarised. Therefore, it is very difficult to assess the effectiveness of the mutual legal assistance activities of this crime group. The reports of the Vietnamese competent authorities on mutual legal assistance in criminal matters are limited to data on mutual legal assistance in criminal matters in

general for all countries, but no data has been given on specific countries in Southeast Asia or other regions of the world. The evidential data and cases related to mutual legal assistance in criminal matters for cybercrime have only been raised, but not given specifics and details, so the research process on mutual legal assistance in criminal matters for cybercrime faces many difficulties.

4 Solutions to Improve the Effectiveness of Mutual Legal Assistance in Criminal Matters Against Cybercriminals between Vietnam and Other ASEAN Countries

4.1 ASEAN Should Have Separate Provisions on Mutual Legal Assistance in Criminal Matters Against Cybercriminals As a Legal Basis for Handling/Resolving Cases Related to Cybercrime Among Member States

The introduction of separate provisions on mutual legal assistance against cybercrime may lead to the need to amend and supplement the provisions of the LMAT. It is very important for ASEAN to add provisions on mutual legal assistance against cybercriminals to the LMAT in order to ensure the harmonisation of member states' cybercrime laws, and to ensure their rationalisation in the criminal justice system as well as mutual legal assistance processes between member countries, thereby safeguarding more effective coordination among countries in this area. For example, member states need to agree on the terminology and classification of cybercrime or electronic data with a view to putting forward reasonable fiduciary requirements.

However, the introduction of these provisions must reach the consensus of member countries, so the implementation process may take a long time, while at present, cybercriminals are becoming more active and more sophisticated in Southeast Asian nations. To strengthen cooperation for joint operations against cybercrime in close cooperation with private partners and CERT communities, the ASEAN Desk will conduct and coordinate more operational activities in 2020, reflecting the unique challenges and needs within the ASEAN region^[1].

Not only in Southeast Asian countries, but in recent years, the protection of cyber safety and security, and the prevention of cybercrime, have become an issue in the security strategy of many countries. In 2019, the United Nations General Assembly established a Special Committee mechanism with the task of timely developing an international convention of universal application to promote effective international cooperation in the prevention of crime using information and communication technology.

The establishment of the United Nations Special Commission mechanism reflects the concern of the international community in the face of the growing threat posed by crimes using information and communication technology, and at the same time demonstrates the efforts of United Nations member states in timely releasing the first international legal document to regulate this issue^[2]. Thus, from 2023, countries will begin to negotiate the specific content of each article of the draft Convention. General provisions, provisions on the criminalisation of cybercrimes, provisions on legal proceedings and enforcement measures against cybercrime... are also considered by countries to be part of the draft. The final draft of the Convention on the prevention of crimes using information and communication technology is expected to be finalised by the end of 2023 and will be submitted to the United Nations General Assembly for adoption during its 2024 session.

Therefore, Vietnam and other countries in Southeast Asia also need to make active contributions in developing the provisions of the United Nations Convention on the prevention of crimes using information and communication technology. After this Convention is ratified, ASEAN countries will carry out the internalisation of the Convention and complete the provisions of national laws. In addition, ASEAN also needs to add provisions on mutual legal assistance for cybercriminals to the

[1] INTERPOL. INTERPOL report highlights key cyber-threats in Southeast Asia [OL]. <https://www.interpol.int/en/News-and-Events/News/2020> (accessed 2022-11-24).

[2] Ngoc B. Vietnam participates in the Convention on the prevention of information and communication technology crimes [OL]. <https://baotintuc.vn> (accessed 2023-01-23).

MLAT to ensure compatibility between legal documents.

From the perspective of Vietnam, the number of cybercrime cases is increasing day by day, causing a lot of damage to national security, the economy, and other aspects of social life. In many criminal cases, criminals use servers abroad, making it difficult to extradite criminals and collect evidence. Therefore, it is extremely necessary to actively contribute ideas to the provisions of the United Nations' draft of the Convention on the prevention of crimes using information and communication technology.

In practise, when Vietnam requested relevant countries to extradite criminals and requested evidence collected by Vietnamese courts for trial, Vietnam's request was not satisfactorily met due to either Vietnam's regulations on cybercrime still not being tight, or because Vietnam and concerned countries have not signed agreements on extradition, so there is no legal basis for extradition to Vietnam...

At the regional level, ASEAN countries have signed the Agreement on Mutual Legal Assistance in criminal matters, but the Agreement itself does not contain provisions on extradition. Facing such a reality, the adoption of the United Nations' Convention on the prevention of crime using information and communication technology will give the competent authorities of Vietnam a necessary legal basis to amend and supplement the provisions of the Vietnamese law and to request relevant countries to strictly prosecute or extradite cybercriminals to Vietnam for trial. At the same time, after formulating the Convention, during negotiations with countries in general and with ASEAN countries in particular on bilateral agreements on extradition, Vietnam will have the right to request that cybercriminals be included in the list of offences subject to extradition. Parties concerned will have no reason to refuse because that obligation has already been demonstrated.

4.2 Vietnam Needs to Quickly Build the Law on Mutual Legal Assistance in Criminal Matters

The formulation of the Law on Mutual Legal Assistance in Criminal Matters needs to satisfy a number of requirements as follows.

(1) Institutionalising the views and policies of the Par-

ty and State on judicial reform and international cooperation in the judicial field comprehensively and deeply.

(2) Inheriting the advantages and overcoming the limitations of the current law and practice of criminal legal assistance.

(3) Selectively acquiring experience in developing the Law on Mutual Legal Assistance in criminal matters from ASEAN countries and other countries.

(4) Ensuring the synchronisation with the study and development of the Law on Mutual Legal Assistance in Civil, the Law on Extradition and the Law on Transfer of Persons currently serving prison sentences; The development of the Law on Mutual Legal Assistance in Criminal Matters needs to ensure that it does not affect the provisions applicable in other areas of the Law on Mutual Legal Assistance 2007.

(5) Supplementing, fully and comprehensively, the scope of criminal legal assistance, grounds for refusal or postponement of the implementation of criminal assistance; supplementing regulations on the implementation of reciprocal commitments, commitments not to apply the death penalty in criminal legal assistance activities in case the foreign side requests such commitment.

There should be specific regulations on the scope of mutual legal assistance for criminal matters and mutual legal assistance for criminal procedures in the mutual legal assistance law. Currently, the scope of mutual legal assistance in criminal matters specified in Article 17 of the Law on Mutual Legal Assistance is still limited, inconsistent with Vietnam's international commitments, and unable to meet practical requirements. The law does not contain provisions on allowing procedure-conducting persons of the requesting country to participate in certain activities in the course of providing mutual legal assistance in the requested country; organising for persons in the requested country to travel to the requesting country to assist in an investigation or to provide evidence; specific regulation on mutual legal assistance in the blockade, restraint, seizure, confiscation and handling of property acquired by crime and tools and means of crime...

There should also be specific regulations on the order and procedures for implementing a number of

requests for mutual legal assistance in criminal matters such as: summoning witnesses and experts; escorting people serving prison sentences abroad to assist in the investigation or provide evidence; in addition, the Law on Mutual Legal Assistance in Criminal Matters should make a clear distinction in the order and procedures for receiving and handling requests for mutual legal assistance from domestic procedure-conducting agencies entrusting foreign countries to perform (outgoing MLA request) and request for criminal legal assistance by foreign competent agencies entrusting Vietnam to perform (incoming MLA request); the Law on Mutual Legal Assistance in Criminal Matter also needs to specify the content of the entrustment requests in the entrustment file, the entrustment document, and clearly stipulate that the submission of the judicial entrustment dossier can be done in electronic forms in order to improve the efficiency and timeliness of receiving and settling requests for mutual legal assistance in criminal matters... None of this content is specified in the Law on Mutual Legal Assistance 2007, leading to difficulties for implementation. In addition, Vietnam's Law on Mutual Legal Assistance in Criminal Matters also needs separate provisions stipulating a number of scopes, procedures, and orders in legal assistance activities in criminal matters for cybercriminals, such as collecting electronic data, access to electronic data stored with the consent of other countries, or that data is publicly available...

When developing the Law on Mutual Legal Assistance in Criminal Matters, Vietnam needs to amend the provisions on consular legalisation and the subject of costs in mutual legal assistance activities in accordance with international treaties and practices in the same field in order to improve the effectiveness of cooperation in crime prevention and combat. Article 31 of the 2007 Law on Mutual Legal Assistance stipulates that the requesting country must pay the costs of mutual legal assistance between Vietnam and a foreign country. Meanwhile, basically, the Agreements on mutual legal assistance in criminal matters between Vietnam and foreign countries as well as according to international practise, the clause on costs stipulates in the following direction: Expenses for the implementation of mutual legal assistance shall be borne by the requested State, except in

the following specific circumstances where it is covered by the requesting State: (1) the costs associated with the transportation of a witness, expert or detained person to or from the territory of the requesting State's territory, and the remunerations, subsistence expenses, expenses enjoyed by that person during his/her presence in the requesting country; (2) the costs associated with the carriage of the escorting or escorting officer; (3) costs related to the assessment; (4) costs associated with translating, translating and copying documents and obtaining visual evidence via videoconference or other technical means from the requested country to the requesting country; (5) extraordinary costs incurred in the course of making the request when the requested country makes an offer. The provisions of Article 31 on costs of the Law on Mutual Legal Assistance 2007 are currently not compatible with the provisions of international treaties and international practices in the field of mutual legal assistance in criminal matters.

Therefore, Vietnam needs to quickly develop a Law on Mutual Legal Assistance in Criminal Matters with regulations on appropriate order and procedures, remove difficulties and obstacles in the current practice, and create favourable conditions for the implementation of mutual legal assistance activities in criminal matters, contributing to improving the efficiency of mutual legal assistance in criminal matters in the coming time.

4.3 Vietnam Needs to Further Strengthen the Negotiation and Signing of Agreements on Mutual Legal Assistance for Cybercriminals with Bordering Countries and ASEAN Member Countries

It is important for Vietnam to strengthen cooperation with offices and international organizations with the function of preventing and combating cybercrime in the region and the world, such as ASEANPOL, as well as judicial agencies and law enforcement agencies of countries in the region.

Strengthening cooperation for joint operations against cybercrime in close cooperation with private partners and CERT communities, the ASEAN Desk will conduct and coordinate more operational activities in 2020, reflecting the unique challenges and needs within the ASEAN region.

4.4 Vietnam Needs to Improve the Capacity and Quality of Persons Competent to Conduct Criminal Proceedings in Vietnam and Those Involved in Mutual Legal Assistance in General, and Mutual Legal Assistance for Crimes, in Particular, Cybercrimes

The effectiveness of mutual legal assistance activities depends hugely on the team of people having the authority to conduct legal proceedings. Thus, it is necessary to strengthen international cooperation in training and intensive training to improve professional qualifications, legal knowledge, and foreign languages for staff working to prevent and combat transnational crimes and crimes with foreign elements. In addition, it is necessary to build a specialised force capable of actively dealing with all risks occurring in cyberspace, strengthen cooperation with countries with a high level of development in information technology to train human resources, absorb new science and technology and learn from experience in ensuring network safety and security and network information of the nation.

4.5 Vietnam Needs to Strengthen Coordination between Relevant Agencies in Mutual Legal Assistance in Criminal Matters in General, and Mutual Legal Assistance in Criminal Matters for Cybercriminals in Particular

To do so, Vietnam needs to clearly define a coordination mechanism between relevant agencies in mutual legal assistance activities; promote the roles and responsibilities of relevant agencies in implementing mutual legal assistance activities; ensure the consistency and efficiency of mutual legal assistance activities; to improve coordination between Vietnam and Southeast Asian countries, Vietnam also needs to have effective coordination mechanisms between the central authority and the judicial mandate-making agency and the foreign representative agency in exchanging information, contacting, and urging the settlement of requests for mutual legal assistance.

4.6 The Competent Authorities of Vietnam Need to Perform well in the Statistics and Assessment of Mutual Legal Assistance Activities in Criminal Matters in General, and Mutual Legal Assistance in Criminal Matters for Cybercriminals in Particular

Good statistics and assessment will help Viet-

nam provide operational directions and timely solutions in mutual legal assistance activities in criminal matters between Southeast Asian countries. The data and cases on mutual criminal legal assistance should be updated by crime groups, regions, countries that have signed mutual legal assistance, etc. Thereby, we can evaluate the complexity of these criminal groups, then assess the obstacles and limitations of mutual legal assistance activities in criminal matters, and the causes of their existence, to have effective and timely solutions. Besides, Vietnam also needs to keep updated on the mutual legal assistance activities of ASEAN member countries to gain experience and limit the consequences.

5 Conclusion

Even though ASEAN countries have been making efforts to find ways to prevent cybercrime, the rate of cybercrime is increasing and becoming complicated. Therefore, mutual legal assistance for cybercriminals has been receiving much attention and coordination among ASEAN countries. In order to effectively implement mutual legal assistance in general and for cybercriminals in particular, Vietnam and ASEAN member countries need long-term as well as immediate measures. The completion of the Law on Mutual Legal Assistance in Criminal Matters, the addition of the provisions of mutual legal assistance for cybercriminals to LMAT, and the law on mutual legal assistance of ASEAN countries are indeed necessary to have the legal basis for application. Besides, Vietnam also needs to quickly develop a Law on Mutual Legal Assistance in Criminal Matters to follow the trend of ASEAN countries and worldwide. Furthermore, strengthening coordination between ASEAN member countries, improving the quality of staff, performing statistics and evaluation activities well, etc., are also essential solutions to meet the requirements of mutual legal assistance activities for cybercriminals.

(Editor: Shirley Li)