

INTERNATIONAL COOPERATION: MUTUAL LEGAL ASSISTANCE AND EXTRADITION

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It is indeed an honour and a pleasure for me to open the discussion at the sixth Regional Seminar on Good Governance for Southeast Asia and the Pacific, which includes the Joint Ceremony for UNAFEI's 50th and ACPF's² 30th Anniversaries. As the Deputy Director of UNAFEI, I will devote my utmost effort to make the Seminar and the Ceremony successful and productive.

I. UNAFEI'S RECENT ACTIVITIES AGAINST CORRUPTION

It goes without saying that corruption is the main cause of the erosion of good governance and the rule of law. Corruption control is of crucial importance to restore justice and democracy, and to achieve safe and prosperous society.

With this view, UNAFEI has been conducting the UNCAC³ Training Programme from 1998. We have just concluded the 15th UNCAC Training Programme, which lasted for 5 weeks. Two hundred seventy-eight alumni from 74 countries have completed the UNAFEI UNCAC Training Programme.

In addition, UNAFEI started the Regional Seminar on Good Governance for Southeast Asian Countries in 2007. We have discussed most important issues relating to UNCAC during the three-day Good Governance Seminar each year:

- 1 Corruption Control in the Judiciary and Prosecutorial Authorities (in 2007);
- 2 Corruption Control in Public Procurement (in 2008);

¹ United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, which is an international training and research institute in the field of crime prevention and criminal justice, established in 1962 by the agreement between the United Nations and the Government of Japan. For over 50 years, UNAFEI's major activities have been focusing on providing training programmes for criminal justice practitioners from around the world in a multinational format.

² Asia Crime Prevention Foundation, which is an international NGO, in general consultative status with the United Nations Economic and Social Council.

³ United Nations Convention against Corruption

- 3 Measures to Freeze, Confiscate and Recover Proceeds of Corruption, Including Prevention of Money-laundering (in 2009);
- 4 Securing Protection and Cooperation of Witnesses and Whistle-blowers (in 2010);
- 5 Preventing Corruption: Effective Administrative & Criminal Justice Measures (in 2011).

UNAFEI has also been dealing with corruption-related themes at its conventional five-week training course, which include:

- 1 Measures to Secure Protection and Cooperation of Witnesses and Whistle-blowers (149th Training Course in 2011);
- 2 Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures (146th Training Course in 2010);
- 3 Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials (143rd Training Course in 2009);
- 4 Effective Legal and Practical Measures for Combating Corruption: A Criminal Justice Response (138th Training Course in 2008).

II. THE IMPORTANCE OF INTERNATIONAL COOPERATION

The main theme of this sixth Good Governance Seminar is “International Cooperation: Mutual Legal Assistance and Extradition”. The global economy and internet society have made corruption crimes more and more sophisticated, cross-border, and difficult to detect and collect evidence. We would not be able to combat corruption without international cooperation of law enforcement officials in each country.

The importance of international cooperation led UNCAC to devote one chapter⁴ to international cooperation, which includes articles on extradition,⁵ the transfer of sentenced persons,⁶ mutual legal assistance (MLA),⁷ the transfer of criminal proceedings,⁸ law enforcement cooperation,⁹ and joint investigations.¹⁰ The United Nations Convention against

⁴ Chapter 4 of UNCAC

⁵ Article 44 of UNCAC

⁶ Article 45 of UNCAC

⁷ Article 46 of UNCAC

⁸ Article 47 of UNCAC

⁹ Article 48 of UNCAC

¹⁰ Article 49 of UNCAC

Transnational Organized Crime (UNTOC) also allocates five articles¹¹ to international cooperation.

These provisions on international cooperation provide the States Parties which require treaties to execute MLA, extradition and other forms of international cooperation with the common platform to execute such cooperation.¹² Furthermore, whenever dual criminality is considered a requirement, it shall be deemed fulfilled — irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party — if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties .¹³

III. OBSTACLES TO INTERNATIONAL COOPERATION AND MEASURES TO OVERCOME THEM

It is quite obvious that UNCAC and UNTOC require the states not only to acknowledge the importance of international cooperation but also to execute the actual MLA, extradition and other forms of international cooperation efficiently and effectively. That is the reason why we need to identify the main obstacles to the smooth execution of international cooperation and how to overcome them. There are many obstacles; however, I would like to suggest that the following are major ones amongst them:

- Little knowledge on the legislation, requirements and procedures of MLA, extradition and other forms of international cooperation of the requested country, which causes delay, frustration and even unexecutable requests;
- Little or no acquaintances at the central authority of the requested country, which hinders smooth communication and mutual understanding;
- The translation of the formal request into the official language of the requested country, which not only makes the procedure lengthy and costly but also makes the request difficult to understand or, in some cases, incorrect, as the officials of the requesting country cannot make sure that the request is translated with precision if they do not understand the language of the requested country.

¹¹ Article 16 on extradition, Article 17 on the transfer of sentenced persons, Article 18 on mutual legal assistance, Article 19 on joint investigation, and Article 21 on the transfer of criminal proceedings.

¹² Article 44(5) and Article 55(6) of the UNCAC.

¹³ UNODC (2004), UNITED NATIONS CONVENTION AGAINST CORRUPTION, p30

This Good Governance Seminar can provide good solutions to some of these obstacles. This Seminar sees delegations composed of corruption expertise and central authority officials from eight countries, namely, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Viet Nam. We also have speakers from Japan, Korea, Singapore, the Basel Institute's ICAR,¹⁴ and Beijing Normal University. The participants and speakers have prepared papers with the latest information on the legislation, requirements and procedures of MLA, extradition and other forms of international cooperation, which will be presented during this Seminar.¹⁵

The delegations meet each other in this very conference room. You have already gotten acquainted with each other. You can foster mutual understanding and confidence during this three-day Seminar, after which all of you will be UNAFEI family members! You will be able to consult with each other in very informal ways, which will remove many practical obstacles in executing MLA, extradition and other forms of international cooperation.

Other solutions to smooth execution of international cooperation include:

- Bilateral treaties;
- Multilateral treaties: *inter alia* the so called "ASEAN MLAT"¹⁶ was entered into by the government of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Philippines, Singapore and the Socialist Republic of Vietnam;
- Eurojust, which was established in 2002 as an agency of the EU to support and strengthen coordination and cooperation between national authorities in fighting serious cross-border crime that affects the EU, may reveal lessons which we can follow without compromising state sovereignty. Twenty-seven Member States second experienced prosecutors, judges or police officers of equivalent competence to the Eurojust office in The Hague.¹⁷ The outcome of this permanent international

¹⁴ International Centre for Asset Recovery

¹⁵ The presentation papers will be also available on UNAFEI's web site. See <http://www.unafei.or.jp/english/index.htm>

¹⁶ The official name is the "Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries", which was signed in November 2004 in Kuala Lumpur, Malaysia.

¹⁷ Eurojust (2011), Eurojust: The European Union's Judicial Co-operation Unit (http://eurojust.europa.eu/doclibrary/corporate/corporatepublications/Eurojust%20brochure%202011/EUROJUST-2011_EN.pdf)

cooperation agency is enormous. One thousand four hundred and forty-one cases were dealt with by the coordination meetings of Eurojust, 263 European Arrest Warrants were registered in 2011, which facilitates extradition of offenders, and 31 Joint Investigation Teams were formed with Eurojust's assistance in 2011;¹⁸

- Placing legal attaché at the Embassy to assist and make arrangements for smooth execution of MLA, extradition and other forms of international cooperation;
- Dispatching investigators for the execution of requests, which helps to emphasize the important points of the request for the officials of the requested countries.

The requirement of the use of national languages for formal requests of MLA or extradition often causes various problems. If we allow each other to use English text for formal requests, where appropriate, it can be of great help.

IV. CONCLUSION

There are many practical obstacles to the smooth execution of MLA, extradition and other forms of international cooperation. To identify and overcome them, it would be extremely beneficial for officials in charge of international cooperation from various countries to meet face to face to identify practical obstacles and measures to overcome them. As obstacles may change over time, and we cannot avoid transfers or job rotations, periodical meetings would be ideal, if it is practically possible.

This Seminar sees delegations from eight countries and speakers from five countries or institutes. Furthermore, Mr. Sandeep Chawla, the Deputy Executive Director of the UNODC,¹⁹ Mr. Kim Il-Su, President of Korean Institute of Criminology, Dr. Kittipong Kittayarak, Permanent Secretary for Justice, Ministry of Justice, Thailand, Mr. Severino H. Gaña, Deputy Prosecutor General, National Prosecution Service, Department of Justice, Republic of Philippines, and Mr. Elias Carranza, Director of ILANUD²⁰ and other distinguished guests will deliver speeches or lectures at the Joint Ceremony for UNAFEI's 50th and ACPF's 30th Anniversaries this afternoon.

¹⁸ Eurojust (2012), Eurojust Annual Report 2011 (<http://eurojust.europa.eu/doclibrary/corporate/eurojust%20Annual%20Reports/Annual%20Report%202011/Annual-Report-2011-EN.pdf>), p11, p13&p23

¹⁹ United Nations Office on Drugs and Crime

²⁰ United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders

I am sure that we will have beneficial and fruitful discussions during this Seminar, which will foster mutual understanding and confidence.