CHAIR'S SUMMARY
Eighth Regional Seminar on Good Governance
for Southeast Asian Countries
Kuala Lumpur, 18 – 20 November 2014

General

1. The Eighth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Malaysian Anti-Corruption Commission (MACC) and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was held at Hotel Istana in Kuala Lumpur from 18th to 20th November 2014.

2. Officials and experts from the following jurisdictions attended the seminar: Brunei Darussalam, the Kingdom of Cambodia, the Hong Kong Special Administrative Region, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam.

Opening Ceremony

3. Mr. Yamashita, Terutoshi, Director of UNAFEI and the Honourable Datuk Hj. Mustafar bin Hj. Ali, Deputy Chief Commissioner of the MACC, delivered opening speeches, both expressing their gratitude to the participants for their attendance and stressing the importance of good governance and the rule of law. Mr. Kodama, Yoshinori, Deputy Chief of Mission of the Embassy of Japan in Malaysia, welcomed the participants and expressed his thanks to UNAFEI, the MACC and MACA for organizing this Seminar. He noted that Japan will continue to support collective efforts to address anti-corruption efforts and other issues throughout Southeast Asia.

Keynote Addresses and Lectures by Experts

4. Mr. Taro Morinaga, Deputy Director of UNAFEI, delivered the keynote address. Besides encouraging participants to intensively discuss best practices in the criminal justice response to corruption, he also stressed the importance of prevention based on deep analysis of the causes of corruption in the indigenous context. He further asked the participants to share information with each other in order to facilitate international cooperation with respect to the investigation of corruption.

5. The first expert's lecture was given by Mr. Lee, Jin Soo, Senior Prosecutor of the Seoul Central District Prosecutors' Office. Mr. Lee introduced the experiences of Korean authorities in combating corruption. First, he briefly explained the Korean

criminal justice system, which basically has a civil law tradition but also has significant influence from the common law system. Then he went on to talk about the structural relationship between the prosecutors and police force, showing the supremacy of the prosecution with regard to criminal investigation. According to Mr. Lee, Korea has been making continuous efforts in order to improve its investigation and prosecution systems to respond to the high expectations of the general public, which is not only becoming more and more aware of the detrimental effects of corruption but also very particular about the fairness and political impartiality of the prosecutors' investigations. As to effective investigation, he stressed the importance of digital evidence and the way to handle it.

6. Ms. Chan Shook Man, Senior Assistant Director of Public Prosecutions, Prosecution Division, Department of Justice of Hong Kong, delivered the second expert's lecture. After briefly explaining the common law style criminal justice system of Hong Kong, she described in detail the way trial prosecutors in Hong Kong work. Although the Hong Kong prosecutors do not have the authority to investigate criminal cases, including corruption cases, by themselves, they play a decisive role in combating corruption since they are vested with prosecutorial discretion, which means that they decide whether or not to bring a specific case to the court. In exercising this significant power, she told us that Hong Kong prosecutors are required to be completely fair and impartial, and are also required to function as a watchdog to ensure fair investigation. Further, she explained in detail the need for careful trial preparation, including the drafting of charges, presentation of witnesses, presentation and admissibility of documentary evidence, the use of expert witnesses, the duty of disclosure, and the use of accomplice witnesses and confessions.

Discussion Summary

7. The Current Situation of Corruption

Although the characteristics and gravity differ from country to country, corruption is seen in every jurisdiction as a phenomenon quite detrimental to society, undermining democracy and the rule of law. The existence of special legislation and special law enforcement agencies designed to combat corruption in every jurisdiction is, ironically, proof that corruption is a major problem in all countries and regions. Some states are plagued with widespread corrupt activities in almost all sectors of society, while in others, large-scale crimes of corruption become more and more sophisticated and organized, making them harder to detect. In some jurisdictions, grand corruption is a huge problem hindering sound development, while in others petty corruption, or small-scale bribery, takes place frequently and frustrates citizens' daily lives. Some countries are facing the worst type where corruption almost becomes a common habit or culture—"systemic corruption". To make matters worse, corruption is not something of a domestic character anymore. Together with the rapid globalization of economies and trade, many crimes of corruption today are becoming international and more often than not involve foreign elements. Corruption today is definitely borderless. In addition, we must not underestimate the negative impact on society which corruption in the private sector

can cause. The general public and the market are paying more and more attention to what efforts a country is exerting in order to eliminate private sector corruption.

8. Counter-Corruption Laws and Law Enforcement Agencies

A majority of countries represented at this forum have special laws and law enforcement agencies or prosecution authorities designed to combat and eliminate corrupt activities.

One prestigious example would be Singapore with its Corrupt Practices Investigation Bureau (CPIB). The CPIB was established in 1952 as an independent organization exclusively dealing with the enforcement of anti-corruption laws. The CPIB has been quite successful with its active operation under the "Zero-Tolerance" policy, making full use of effective laws, such as the Prevention of Corruption Act as well as a number of relevant statutes.

Hong Kong surely is another example of success. The expert from Hong Kong told us that the Independent Commission Against Corruption (ICAC), established in 1974, is engaged in vigorous investigation activities and brings high-profile cases to the prosecutors. Once the prosecutors receive cases from the ICAC, they make full use of their professional skills in order to bring corrupt offenders to justice while strictly maintaining fairness and impartiality.

The Malaysian Anti-Corruption Commission (MACC) is making tremendous efforts to pursue high-profile cases, learning from bitter experiences in the past and in collaboration not only with domestic organizations but also with their regional counterparts. Something remarkable about Malaysia is that the MACC is supported by the Malaysia Anti-Corruption Academy (MACA), which is the training academy for anti-corruption officials and which is rarely seen in other jurisdictions.

Another example of a sole, independent authority would be the Anti-Corruption Bureau of Brunei Darussalam. Based on the Prevention of Corruption Act of 1981, it has been working closely together with the Attorney General's Chambers, dealing with every kind of corruption varying from petty to grand corruption as well as other complex white-collar and financial crimes. Although the Brunei delegates explained the numerous challenges they are facing, the strong commitment towards eliminating corruption is clear.

The KPK of Indonesia has emerged with strong powers of investigation of corruption. It has developed procedures for investigation and prosecution specifically designed to tackle complicated corruption cases, including the use of wiretapping and witness protection programmes. It is quite noteworthy that Indonesia has an obstruction of justice crime specifically designed to protect the investigative ability of the KPK—the crime of "hindering KPK process". On the other hand, the Office of the Attorney General (OAG) noted the challenge of pursuing corruption cases against high-ranking officials without first obtaining the approval of the President of Indonesia. Further, the OAG is unable to conduct

wiretapping in corruption cases. Interestingly, the KPK's investigations are not limited by either of the restrictions faced by the OAG.

Myanmar's new system is now ~~taking off~~performing well with the recently enacted Anti-Corruption Act of 2013. Myanmar has designed a rather heavy-duty scheme of counter-corruption activities, having the Union Attorney General's Office and the Anti-Corruption Commission with its two internal organizations—the Investigation Board and the Preliminary Scrutiny Board.

Thailand has a multi-layered system with multiple actors, each playing their respective roles: the National Anti-Corruption Commission (NACC) and the Public Sector Anti-Corruption Commission as well as the Office of the Attorney General. The Thai delegates told us about the difficulties inherent in the multi-layered system which have to be overcome by close collaboration and cooperation between those agencies.

The Royal Cambodian Government, strongly committed to fighting corruption, established the Anti-Corruption Unit (ACU) to investigate all forms of corruption cases. Based on the Anti-Corruption Law enacted in 2010, the ACU is vested with powers that the ordinary judicial police do not have. It can investigate corruption crimes independently without the approval of prosecutors, and it is allowed to utilize modern investigative techniques such as eavesdropping and wiretapping.

A unique system has developed in the Philippines. There, the Office of the Ombudsman is a special body mandated by the constitution to investigate and prosecute corrupt activities. Although the field investigators of the Office of the Ombudsman seem to have faced various challenges and difficulties, their efforts and success in the investigation of the "Pork Barrel" scandal that we heard from the Philippines' participants is highly commendable and something that the involved investigators should be proud of.

In contrast to those countries which have established independent special agencies under special laws, there are countries which chose a different way—to deal with corruption within the conventional framework of the criminal justice system.

A typical example may be Japan, which does not have any comprehensive anti-corruption law or any independent, special organization handling corruption exclusively. Still, the relevant provisions of the Penal Code and various administrative laws seem to be working well. As to investigation and prosecution, the white-collar crime investigation units of the prosecutors' offices have so far gained fair success.

The activities of the Korean prosecution, based on its strong investigative power and highly developed skills, explains why in Korea there is less need of a special anti-corruption apparatus. Led and supported by the Supreme Prosecutor's Office, having a special division dealing with crimes of corruption, the District Prosecutors'

Offices engage in proactive investigation and prosecution.

Viet Nam does not have special investigation agencies either. Depending on the nature of the specific crimes, authority to investigate is shared between the police and the procuracy investigators. Participants from Viet Nam stressed the need of an independent, fully authorized body for the sake of combating the serious situation of corruption in their country.

Lao PDR is in a similar situation with Viet Nam, although the investigation of corruption cases is not handled by the prosecutors. Corruption investigations are conducted by the State Inspection Authority, which was established for the purpose of dealing with compliance with the law by all government officials.

9. Valuable Examples of Investigation, Prosecution, Adjudication and International Cooperation

Interesting and inspiring experiences of real cases were presented from each of our participants.

a) Investigation

The "Pork Barrel" scandal introduced by the participants from the Philippines showed a large-scale, serious case of public fund misuse in which the field investigators have had a tremendously hard time bringing the offenders to justice. This case reminded us that it is not only the legal system or the law enforcement agencies' skills that count. The investigators of this case faced problems of illiteracy, language barriers, lifestyles or health conditions of the involved people who were potential witnesses. The possibility of such practical drawbacks exists in other jurisdictions as well, so it is quite important that, when designing a system or a capacity-building scheme, these sorts of issues are taken into account.

Singapore's example, the Wilson Raj Perumal match-fixing case, was surely a successful investigation involving transnational elements. We thank the Singaporean participant for bringing up a quite contemporary issue—corruption in the world of sports—which seems to be a major problem everywhere and is drawing much public attention. Hearing about this case, we once again learned how "international" organized crime can be, and how crucial international cooperation in the field of criminal justice is. Also, we were reminded of the importance of following the money trail as well as looking for forensic evidence, especially the skills of the labs handling electronic data analysis. The case further advised us to be mindful and not to underestimate the impact that the social media may have on a high-profile case.

Our participant from Viet Nam also told us about the important but difficult issue of international investigation, citing the case of Mr. Duong Chi Dung. We imagine that Vietnamese authorities must have experienced great frustration while chasing Mr. Dung in Cambodia and looking for evidence in Russia. But it looks like it worked. Further, Mr. Dung's case reminded us of the annoying reality that persons

in influential positions can hinder detection and investigation of crimes—Mr. Dung had repeatedly broken the law for a period of seven years, with the help of his acquaintances in the Ministry of Public Security and his own policeman–brother. Personal and family relationships outweighing the law is, in fact, a phenomenon commonly seen in the Asian region; of course the bond among family members and friends is admirable, but once crime is involved, we may have to think twice.

b) Prosecution

The "Mr. DS"-simulator-procurement case introduced by the Indonesian participant from the KPK was very much interesting since it raised the issue of offenders challenging the legitimacy of prosecutorial acts, trying to find loopholes in the law. It is indeed well perceivable that a desperate defendant, with the help of counsel, may try to get away with the committed offence, or at least try to somehow keep the assets gained by criminal activities, taking advantage of legal technicalities. Investigators and prosecutors have to be prepared to handle such allegations.

The Thai Auditor General's misuse of state funds by way of fabricating seminars and the corruption in the Bangkok Metropolitan Administration involving procurement of fire trucks and fire boats must have been big scandals. The participants from Thailand, by introducing these cases, suggested that at the prosecution stage, there is much need of a careful selection of defendants based on multi-angle analysis of available evidence and precise interpretation of applicable laws as well as thorough discussion between the investigators and prosecutors. Indeed, the relationship between the investigators and the prosecutors is always a crucial issue. There is no doubt that good communication between them is an indispensable element when handling complicated cases such as grand corruption.

c) Adjudication

Brunei Darussalam experienced several problems in the course of prosecution and trial of a diesel smuggling case which seems to have been a shock to Brunei's customs service with a large number of customs officials involved. Brunei's participant drew our attention to two very technical but important issues at the trial stage—whether to try the defendants together or separately—and the trial schedule affected by the existence of a foreign witness. Also, Brunei raised the issue of how to persuade a witness to testify when he/she expresses concern about his/her safety, and to what extent the authorities can secure his/her protection—the witness protection issue which is something rather crucial, especially in cases involving accusations against senior public officials or persons having connections with organized crime.

The participants from Myanmar shared an example that would be a difficult decision for any legal professional in similar cases—the case *U Ganaysin v. the Union*. There are indeed bribe givers who suddenly betray their counterparts and start accusing them once they feel that the bribe taker does not do what they wanted them to do. How should investigators, prosecutors and judges respond to such situations? Is it really appropriate to acquit the bribe taker by saying that the bribe

giver is unreliable as a witness just because he is the one who gave the bribe and later dared to shift all the responsibility to his counterpart? The answer may differ from country to country and may require us to revisit the public perception of what is just and fair.

d) International Cooperation

In a case shared by the Brunei Darussalam delegation, a contractor for Brunei Shell Petroleum had, over a period of almost 10 years, submitted false claims in the amount of $18 million for chemicals that were claimed to have been supplied to Brunei Shell. Investigation revealed that none of the chemicals were supplied. The contractor bribed 22 Shell officials in the process in order to enable the payment of his claims. The investigation into the Brunei Shell Petroleum case had been a challenging one. The contractor fled Brunei to Malaysia during the investigation. Prior to that, the contractor had taken some of the money out of the country and deposited it into a bank in Singapore. The investigation was successful because of the close networking and cooperation between the anti-corruption agencies of Brunei, the CPIB of Singapore and the MACC in Malaysia. The agencies assisted in the arrest of the contractor in Malaysia, which eventually led to the contractor being charged and convicted. The CPIB Singapore assisted to freeze the contractor's assets in Singapore, and the proceeds of crime in the amount of almost $1 million was able to be recovered and repatriated to Brunei Darussalam. This case shows the importance of close inter-jurisdictional cooperation between anti-corruption agencies in spite of the formal MLA provisions established under international law.

10. Lessons Learned

a) Establishment of an independent anti-corruption body can be a powerful tool for combating corruption. Still, the conventional criminal justice institutions can also achieve good results.

b) As mentioned by the delegation from the Philippines, inter-agency cooperation—both inside and outside of the criminal justice system—is crucial for the effective and speedy investigation of corruption cases.

c) Exhaustive investigation including the utilization of modern techniques of investigation and forensic evidence is indispensable. The case study referenced by the Malaysian delegation was a lesson in the need for specialized investigators and prosecutors in the field of financial crimes and the need to anticipate and be prepared to respond to the high level of proof that courts will require.

d) Prosecutors must be fully equipped to counter legal ambiguity, loopholes and technicalities that will be raised by defendants which can impair the realization of substantial justice.

e) Corruption is no longer domestic; international cooperation at all levels of criminal

justice is crucial. We must understand each other's systems and find solutions to remove obstacles to cooperative activities.

f) Help and support from the public is quite important in the course of investigation and prosecution. Moreover, public trust and support are crucial factors for the operation and existence of anti-corruption bodies.

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