

A Note on the 146th International Training Course: “Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures”

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1. Introduction

From 25 August to 1 October 2010, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) conducted the 146th International Training Course. The main theme of the Course was “Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures”. This programme was attended by 20 participants from ten different countries, including Japan: eleven participants were from overseas and nine from Japan. Those who participated are all criminal justice practitioners: police officers, public prosecutors, judges, a narcotics control officer, a criminal investigator of a national tax agency and a Coast Guard officer. In this note, I would like to present an overview of the Course from my perspective as its Programming Officer.

Please be reminded that the opinions expressed in this note are my own personal views.

2. Major Points and Issues of the Main Theme

Confiscating ill-gotten gains from offenders is a particularly effective means of suppressing organized and economic crime, including corruption; it lets the world know that “crime does not pay”, and it stems the flow of a criminal organization’s lifeblood – its financial resources. Confiscation of the proceeds of crime has other desirable consequences. Assets successfully confiscated may be utilized for victim compensation, and in corruption cases, where a huge amount of public assets have been diverted and transferred by a corrupt politician or high-ranking official to his or her personal accounts overseas, returning the confiscated assets to the victim country’s national treasury can be possible. Confiscating and repatriating the proceeds of cross-border corruption to the victim country is called “asset recovery” and has become a matter of international concern. The United Nations Convention against Corruption (UNCAC), adopted in 2003 contains many provisions regarding international co-operation to realize asset recovery. In addition to the UNCAC,

the “40+9 Recommendations” issued by the FATF (Financial Action Task Force on Money Laundering) require each country to take appropriate measures to ensure identification, tracing, freezing and confiscation of crime proceeds and to prevent and detect money laundering often committed in the process of concealing criminal proceeds.

Notwithstanding the foregoing actions in the world, various legal and practical issues still arise throughout the process of identification, tracing, freezing, and confiscation of crime proceeds and their return to victims or repatriation to victim countries. Some examples of these issues are how can criminal justice practitioners:

- identify and trace, from among a vast number of daily bank transactions, those transactions suspected to involve the transfer of crime proceeds;
- promptly freeze identified criminal proceeds to prevent them from being concealed, dispersed or lost;
- overcome the obstacle whereby, in no small number of cases, the assets which should rightfully be confiscated are left uncontrolled as a result of difficulties that investigators frequently face in proving that “the asset was generated from the crime” when they seek a court’s decision to approve the confiscation thereof; and
- encourage effective co-operation and collaboration among the criminal justice agencies of relevant countries when seeking to repatriate any ill-gotten gains generated from transnational crime to the victim countries, etc.

3. Effective Countermeasures Shared in the Training Course

In the Training Course, three visiting experts from overseas offered us their knowledge and information on various advanced approaches in different countries, and global standards and international efforts in this field. The visiting experts were:

- Ms. Jean Weld, Senior Trial Attorney, Asset Forfeiture and Money Laundering Section, the United States Department of Justice;
- Mr. Daniel Thelesklaf, Executive Director, Basel Institute on Governance (a Swiss-based UN institution providing technical support to developing countries in the improvement and enforcement of laws regarding Asset Recovery); and
- Mr. Wayne Walsh, Head of the Mutual Legal Assistance Unit, International Law Division, Department of Justice, Hong Kong Special Administrative Region,

The visiting experts were joined by ad-hoc lecturers from Japan, including:

- Mr. Yuichiro Tachi, Chief Prosecutor, Sakai Branch, Osaka District Public Prosecutors Office; and

- Mr. Shuichiro Hoshi, Professor, Tokyo Metropolitan University.

We then held a series of discussions in the form of Group Workshops, based upon the knowledge and experience of each participant. Through the discussions, participants were able to share various effective measures for the identification, confiscation and recovery of crime proceeds, as well as detection of and punishment for money laundering. Due to limitations of space, let me list up here only a selection of the effective countermeasures shared during the Course:

- (1) To identify crime proceeds from their point of entry into the financial system, financial institutions must verify the identity of customers and true beneficiaries when an account is opened or when large-volume cash transactions occur. In particular, in the case of transactions involving politicians, high-ranking officials or their families verify the identity of customers and true beneficiaries with utmost caution in order to identify the proceeds of corruption.
- (2) Establish a Financial Intelligence Unit (FIU) equipped with adequate human and material resources. Also establish a system whereby adequate information on “suspicious transactions” is provided by financial institutions, etc. to the FIU for analysis, and then is widely shared with relevant investigative agencies.
- (3) Promote not only the prompt and real-time sharing of information between the FIUs or law enforcement agencies (such as police and customs) of relevant countries, but also joint investigations by the agencies of relevant countries, in order to facilitate identification, tracing and seizure of crime proceeds.
- (4) Introduce a legal system which enables more rapid freezing of crime proceeds by, for instance, empowering police officers or public prosecutors to issue an order of temporary freezing on such proceeds. Also, upon the receipt of requests for freezing of crime proceeds from foreign agencies, implement rapid freezing of such proceeds as much as possible, without procedural restrictions, etc.

- (5) Develop an adequate legal system which allows conviction-based confiscation of crime proceeds in criminal proceedings and take full advantage of it. In addition, consider enacting a law to allow non conviction-based confiscation of crime proceeds (e.g. civil forfeiture or *in rem* forfeiture), which can lower the standard of proof of that “the asset was generated from the crime” and enable confiscation of such proceeds even if an offender cannot be prosecuted for reasons such as his or her death or flight. Also consider enacting a law to allow shifting to the offender the burden of proof of the origin of alleged proceeds of crime.
- (6) Push forward close international co-operation on freezing, confiscation and recovery of crime proceeds in cases where such proceeds are hidden across borders. In particular, promote effective international co-operation through informal discussions among the criminal justice agencies of relevant countries prior to any formal request for mutual legal assistance.

4. Conclusion

Numerous times during the Training Course, I was greatly impressed by the sincerity and eagerness of the participants. At the beginning of the Course, some overseas participants seemed to have limited knowledge regarding the main theme due to the insufficiency of legislation and inactivity of already established legal systems in their home countries. To my delight, however, those participants undoubtedly absorbed the relevant knowledge as they learned from the visiting experts from overseas, ad-hoc lecturers from Japan, and other participants, and participated in the discussions during the Course, closely examining the gap between the current legislation of their home countries and global standards. Some participants expressed comments as follows: “Participation in the Course offered us the first opportunity to intensely examine the legislation in our countries on confiscation of crime proceeds and anti-money laundering. We are now aware that there are some countries which have adopted more advanced countermeasures, and we also gained better insight into where the focus of our criminal justice systems should be directed in the future. We would like to widely disseminate the information gained at UNAFEI back in our countries by reporting it to our superiors at work, and passing it on to our colleagues and subordinates, or in any other way.” I am very excited that the Course could help those countries make a big step forward in the betterment of their criminal justice systems.

In addition to that, the Course seemed to have allowed a cordial friendship to develop

among all the participants during their six weeks living together at UNAFEI, which is more precious than anything else. I believe that international human networks among criminal justice practitioners make a significant contribution when international co-operation through informal communication channels is required, as indicated in the above 3 (6). I am confident that the Training Course will further promote international co-operation aimed at our shared goal, namely, the eradication of crime.

For your information, the lectures made by the visiting experts, results of the Group Workshops, and individual presentations made by some Course participants, which are all mentioned in this note, will be included in Resource Material Series 83, to be published by UNAFEI in early 2011. This publication will also be uploaded onto the UNAFEI website. If you are interested in any of the above, please refer to the publication or the website.