KEYNOTE ADDRESS
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I. INTRODUCTION

Before beginning with my remarks, I just would like to say that it is really a great honour and privilege for me to be given an opportunity to deliver the keynote address in the presence of such honourable guests, learned experts and distinguished participants gathered here at this meaningful occasion. UNAFEI is truly grateful as to the efforts made by all those who have been involved in the planning, preparation and implementation of this Ninth Regional Seminar on Good Governance here in Jakarta. I would like to express special thanks to the people of the Attorney General's Office of the Republic of Indonesia and the Corruption Eradication Commission for their tremendous job of co-hosting, as well as for their kindness and hospitality.

Each year, the purpose of this seminar is to discuss and share with each other experiences, information and insights about investigation, prosecution and prevention of corruption cases. This year, the focus will be on the two topics we have chosen in advance and which were approved by our co-hosts.

The idea of choosing the first topic of this year's seminar, "mutual legal assistance and asset recovery", stems from our perception that, although fighting against corruption has already become quite an international issue, law enforcement and the judiciary have so far been unable to keep up with the rapid pace of internationalization of corruption crimes. In order to outpace this trend, investigators, prosecutors and also the courts need to be backed up with effective systems, equipped with practical knowledge, skills and handy tools, and provided with information and support which enable them to do their jobs effectively and efficiently, even if the cases before them involve international elements and require cross-border activities — just as though they're just dealing with any other domestic case.

The second topic "public-private partnership in the prevention and detection of corruption" reflects our view that today it is no longer possible for any law enforcement agency or officer to take effective action towards the detection and prosecution of crimes of corruption without the strong support and cooperation of the general public. This is true not only for the detection, investigation and prosecution of already committed crimes, but also for prevention. The issue of public–private partnership also extends to the area of raising awareness among the general public as to the perilous and damaging nature of corruption with respect to which school education, as well as social activities for the promotion of good governance and integrity in the private business sector, are especially important.

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Since the scope of the two topics is very broad, one may imagine a huge variety of discussions spotlighting the relevant issues from many different angles. However, what we have in common in this forum is that most of us are practitioners, not policymakers or academics. So, naturally, our discussion will be, and ought to be, anchored in our individual or institutional experiences in the field. Our express or implied message that could be reflected in the results of our discussion during the next two days might bear the characteristics of a shared opinion from a practitioner's point of view. That message is something we can all bring back home and hopefully utilize for the improvement of our individual or institutional capacity to tackle crimes of corruption. But at the same time, it is also my hope that our message will serve as a catalyst for the improvement of our anti-corruption systems and legal frameworks. And I would be more than delighted if that message eventually leads to the raising of awareness and enhancing of the commitment of policymakers and the general public to fight against corruption in each of our jurisdictions, resulting in enlarged allocation of human and financial resources to the efforts being made towards the eradication of corruption.

II. MUTUAL LEGAL ASSISTANCE

In our last seminar in Kuala Lumpur, I mentioned the psychological barriers that make investigators and prosecutors reluctant to pursue activities involving international matters including the use of mutual legal assistance. Although I still believe that such psychological hindrances are one of the biggest obstacles which must be overcome by practitioners, it is true that sometimes the difference in the systems and practices between countries can be an obstacle when trying to obtain evidence from abroad or to have a suspect extradited. In spite of that, we have heard of many examples of cases which were prosecuted successfully, cases in which investigators and prosecutors equipped with adequate practical knowledge and skills have overcome obstacles by making use of every possible tool and channel available to them. I believe that, behind such success, there must have been a good understanding and sufficient knowledge among the investigators and prosecutors of the systems and practices of their respective counterparts and a shared idea about what it is like to be involved in a corruption investigation. And if you would like to understand and make use of systems and practices of a foreign country or jurisdiction, you will be required to be very flexible in your way of thinking. There may be systems and practices which you have never heard of before, and you may be puzzled by those, but if you study those systems or practices carefully with an open mind, you will find out that every system or practice has its own rationale and background, and there is a way to connect the foreign system or practice to your system or practice. Figuratively, every system or practice can "interface" with another system or practice. All you have to do is to find, with the help of your flexible thought, the interface.

Now, let me tell you about an example of how my mind was inflexible when I encountered international assistance for the first time in my career as a Japanese prosecutor — a small experience which was very much eye-opening for me.

As far as I recall, it was in my fourth year as a public prosecutor when I was ordered to join an investigation team of prosecutors at the Tokyo District Public Prosecutors Office handling a fraud case that had quite an international feature. An international business lawyer, in conspiracy with an executive of an international courier company, defrauded a corporation in Tokyo of 3 million US Dollars. The corporation filed a criminal complaint with the Tokyo District Public Prosecutors Office, and the investigation was carried out by its prosecutors

without any involvement of the police force. The lawyer and his accomplice recommended the victimized corporation to purchase a quite sophisticated, high-tech industrial garbage disposal machine invented and produced by a company in Switzerland. The victim was persuaded to enter into a contract to purchase of one of those machines at the wholesale price of 3 million US Dollars, but the actual wholesale price offered by the Swiss company was only 1 million US Dollars. The suspects forged the relevant documents and received 3 million Dollars from the victim by wire transfer to a bank account which the suspect had opened in Switzerland. As the investigation proceeded, we found clues indicating that a substantial part of the money in that bank account may have been subsequently transferred to several bank accounts in Switzerland, England, Canada, the United States and the Commonwealth of the Bahamas. So, we went on trying to obtain the records of these bank accounts, and for that purpose we requested, via the proper channels, assistance in investigation from these countries. Since our lead prosecutor, having had some diplomatic experience, knew that only sending papers to these countries may not be very effective, he decided to visit the relevant authorities of these countries, and asked me to help him with that. He went to Switzerland, England and Canada, and I went to the US and the Bahamas.

Now, all of our requests for assistance to these states, except the Bahamas, were very quickly responded to and good results were achieved in due time. Actually, I was very much surprised that the first substantial response came from the US within two weeks, from a US assistant district attorney of the Southern District of California. But the relevant authority in the Bahamas withheld its response for some reason and said that it would wait until I arrive and give them a detailed explanation. So, after finishing my task in Washington and Chicago, I flew to Nassau and visited the Department of Legal Affairs.

There, I was welcomed by a rather high-ranking officer in charge, the Director of International Affairs, who bothered to have a thorough discussion with me. In addition to the explanation about the whole case and the necessity to obtain the bank account records, he asked me to explain the Japanese prosecution system and the role of public prosecutors. After carefully listening to my explanation, with some crucial questions and answers in between, he told me, that, with regret, he had no other choice than to turn down our request. According to his explanation, in order to obtain a bank account record in the Bahamas, where protecting bank secrecy is a national policy, a court order is needed, and for a court in the Bahamas to issue an order to that effect based on a request from a foreign country, it needs to have a request from the “judiciary” or an “equivalent authority” of the requesting country. And the reason why the Ministry of Legal Affairs withheld its response was that they were not sure whether the Japanese authority which made the request — the Japanese prosecution — can be regarded as being, in the context of applicable laws of the Bahamas, an “equivalent authority” if not considered a part of the “judiciary”, and had needed further information on this point. I once again tried to persuade him that the Japanese prosecution is to be understood as being a “quasi-judicial organ” and should be qualified to make the request to a Bahamian court. But the Director cited a precedent in which the High Court of the Bahamas refused the assistance request from a US Federal Grand Jury for the reason that the it does not qualify as a “judiciary or an equivalent authority” and concluded that, given the characteristics of the Japanese prosecution as compared to the US Grand Jury, it is difficult to regard it as fulfilling this procedural requirement.

I was indeed disappointed, but what struck me was the sincere attitude of the Ministry of Legal Affairs of the Bahamas. From the conversation I had with the Director and from his very persuasive explanation, I felt that he, and maybe his staff members, too, had already

done thorough, exhaustive legal research before my arrival at Nassau about whether there was any way they could positively respond to our request under Bahamian law, although the result was negative. I think that my guess is partly proven by the advice the Director gave me after telling me about the refusal of our request. Maybe he felt a bit sympathetic about the poor, inexperienced, young prosecutor from Japan who had come all the way from the other side of the globe just to be informed about a negative outcome. He told me that, although the threshold was very high, and the Ministry of Legal Affairs as a part of the Bahamian government could not in any way assist, there was another possibility for the Japanese government to obtain the bank records — to file a civil lawsuit against the bank. His explanation was that, if the government of Japan or the victim of the fraud is willing to be a civil plaintiff, then it can hire a Bahamian private lawyer and file a motion with a Bahamian court seeking disclosure of evidence which is to be used in subsequent civil litigation seeking the recovery of the defrauded money. Of course there was no guarantee that the court would grant the disclosure, he said, but if the Japanese prosecution was desperate to get the bank records, it would be worth trying.

Our investigation team did not take further action as to the bank account in the Bahamas, because it seemed quite difficult and also costly for the Japanese government, as well as the victim, to act as a plaintiff in a Bahamian court of law. Besides, judging from the results of other investigation activities, we came to the conclusion that the money stashed in the Bahamian bank account seemed to be an insignificant amount, and we could just ignore it. But the experience in Nassau had a significant meaning to me personally. At that time, I must confess, I was really ignorant about what we need to do when seeking international assistance. It should have been done by us, but it was the officers of the Bahamian Ministry of Legal Affairs that did the research to find the interface needed for international cooperation between the Bahamas and Japan. And, the possibility of pursuing the civil procedure, I must confess, had never come to my mind until I had the conversation in Nassau; I simply had lacked the flexibility in my legal mind. As to that, I really felt ashamed as a government lawyer. Keep your mind flexible, do the research well, and be eager to know your counterpart. That is the key to success.

III. ASSET RECOVERY

Some 15 years later, when I started working at UNAFEI and the issue of asset recovery in corruption cases began to pop up as a quite popular topic in our training courses, it made me recall the advice of the Bahamian Director who suggested that we could initiate a civil proceeding. The concept of asset recovery, especially the non-conviction-based forfeiture as a remedy, has very similar aspects to what the Director told me. In fact, in the United States, non-conviction-based forfeiture seems to have been conceived as a civil remedy.

Although UNCAC recommends its member countries to establish a certain system for asset recovery, the differences among legal systems are naturally due to the differences in their respective laws and practices. When asset recovery becomes a cross-border issue, these differences have to be studied very carefully, since they directly affect the ability to recover the proceeds of crime. A well-established system in one country may not be known to the other. A good investigation strategy developed in one jurisdiction may not always be fit for use in another. For a quick example, the system of civil litigation against an asset, which seems to be commonly used in some Anglo-American jurisdictions as a means of asset recovery, does not exist in Japan. In this seminar, I look forward to hearing precious examples

of successful operations and information on good practices that we may share among each other, about how the investigators and prosecutors have overcome the challenges they have faced.

Successful international asset recovery requires a thorough study on the systems and practices of the concerned countries, starting from the basics of international legal assistance, such as reciprocity, dual criminality and so on, and going all the way to the advanced issues of whether the wanted procedure really exists in your counterpart country or not, or what can be substituted for a non-existing system or practice. If you resort to civil proceedings, even the laws on the conflict of laws may come into question. Viewed the other way around, it is a matter of what measures you can offer or recommend to your counterpart authorities when they would like to pursue their goals of retrieving money or property, be it stolen assets or proceeds from bribery, from your country. During this seminar, we have an opportunity to share information about our own systems and practices, think together about what can and what cannot be done, and build the necessary interfaces for cross-border assistance. If you are requested by a foreign authority to assist with asset recovery, or any international investigation activity, please do not simply say, "Oh, we're sorry, we don't have that system", but be ready to offer your friend an alternative way to reach the target.

IV. PUBLIC–PRIVATE PARTNERSHIP

I doubt that anyone here will dispute the importance of private-sector involvement in anti-corruption movements and initiatives. Also, there is common understanding that, in the process of investigating corruption cases, the importance of cooperation and assistance from the private sector and the general public has become more vital than ever. In other words, the investigators, the prosecutors and the judiciary cannot do their jobs by themselves. They need help from the people. Once they lose public confidence and become isolated, they will be paralyzed.

Indeed, pubic trust is what counts. Just recently, Mr. Sai Chiu Wong, a former Deputy Commissioner of the Independent Commission Against Corruption (ICAC) of Hong Kong was kind to come to our training course on anti-corruption issues conducted at UNAFEI and to tell us about the establishment and development of ICAC, which we regard as one of the most successful anti-corruption agencies in the region. I was very much impressed with efforts made by ICAC to gain public trust, which eventually enabled them to mobilize resources in the community by way of a carefully planned strategy implemented since its founding. In this seminar, Mr. Tony Kwok, our visiting expert with extensive experience at ICAC, can tell you about the keys to successful public participation from ICAC's point of view. Learning from him will definitely be one of the most important parts of this seminar, and I would like to thank Mr. Kwok in advance.

On the premise of public confidence, investigators become able to utilize various tools for obtaining crucial information leading to prosecution and punishment of the perpetrators. Here, I look forward to proactive discussion about, among other things, the proper use of whistle-blower and witness protection systems, plea bargaining etc., which directly benefit investigation and prosecution. Also, I would like to learn how the information acquired from the citizens by the investigators is treated and further processed. I would imagine that, normally, such information is recorded in the form of an interview protocol (or, recently, an audio-visual recording) or a police officer's report, and after examining the truthfulness or

reliability, it becomes an affidavit or the like, or if that is not admissible in court, the person who gave the story will be summoned to the court as a witness. If this kind of process is used, how do you secure the trustworthiness of such information? What do you do when a witness suddenly changes his/her story or becomes suddenly uncooperative? How is it done in your jurisdiction? Or, some of the information may be too sensitive to treat it as evidence in court, or it may be necessary to conceal the source. What measures can be taken in such situations in your jurisdiction? I suppose that in every country, there must be certain practical measures to cope with such situations. Please share them with us.

When it comes to prevention in general, there seems to be a wide variation of activities that can be conducted or promoted. The precious articles that were kindly submitted to UNAFEI from the participants tell me that we can expect information sharing as to the anti-corruption campaigns and activities conducted in various countries of the Southeast Asian region. An impressive example for me was what had been done by our co-organizer of last year's seminar in Kuala Lumpur, the Malaysian Anti-Corruption Commission, MACC, in collaboration with Petronas, the world famous petroleum company of Malaysia. The alliance between the Petronas officers and the MACC officers seemed to have gained tremendous progress under the "Zero-Tolerance Policy" in terms of spreading the notion of integrity, good corporate governance and compliance with laws and rules. Although the incumbent officer told me that they are still facing challenges, this effort made by Petronas and the MACC looked very promising — something you can really call a "good practice". I would be very glad if our Malaysian friends here can, even if very briefly, give us an update about Petronas' anti-corruption campaign and programme.

V. CONCLUSION

As you may already be aware, matters pertaining to investigation including international assistance and the issues of public participation are interrelated to each other. Good investigation needs help from the people, and the people will be more cooperative when there is good investigation. That also applies to international investigation. If an investigation or prosecution agency, or the judiciary of one country, engages in effective, fair and successful investigation and adjudication, then the general public and the private business sector, especially multi-national businesses, will not only seek to avoid being investigated or prosecuted, but will also cooperate with anti-corruption investigations, knowing that, after all, good investigation and prosecution ultimately preserves a clean business environment for international trade and industry. Moreover, some major international corporations have taken significant steps towards integrity and proper corporate governance, as well as the eradication of corruption. Just as an example, it is now quite common in international transactions to insert anti-corruption provisions in contracts. Again, I may be criticized for being too optimistic, but I believe that the big businesses know how much being free of corruption and wrongdoing contributes to their reputations, and at the end of the day, to their own prosperity. And once a company is truly committed to being corruption-free, it surely will try to maintain good relationships in a true sense (instead of in corrupt ways) with the authorities by strict compliance with laws and rules and will, in general and in individual cases, cooperate with law enforcement and the judiciary. Then, law enforcement and the judiciary become able to engage in efficient and effective investigation and prosecution, which will lead to greater public trust. This favourable, not vicious, cycle is what we would like to see, isn't it?

This seminar may only be one small effort towards such goal. Still, experts from 11 countries being together at one venue sharing insights and valuable information is surely something. And that something makes a difference, one step again towards the elimination and eventual eradication of corruption. Let us take firm steps, one by one, but not too slowly. Praying for the realization of a truly corruption-free Asia, I would like to conclude my keynote speech and have our distinguished participants proceed to the next stage, the core part of this seminar.

Thank you for your kind attention.