

## CHAIR'S SUMMARY

### FIFTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES Tokyo, Japan (Online) 20 – 22 December 2021

#### OPENING CEREMONY

1. Mr. Morinaga Taro, Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), welcomed the participants to the Fifteenth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Ministry of Justice of Japan (MOJ) and UNAFEI. Officials and experts from the following jurisdictions attended the seminar: Brunei Darussalam, Cambodia, Hong Kong, Indonesia, Japan, Lao PDR, Malaysia, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam. The seminar was chaired by UNAFEI Professor OKUDA Yoshinori (Mr.).

#### VISITING EXPERT'S LECTURE

2. Ms. KATE CHEUK, Principal Investigator, Operations Department, Independent Commission Against Corruption (ICAC), Hong Kong, China, delivered her lecture on the theme of *Effective International Cooperation for Combating Corruption*. Noting the consensus among criminal justice practitioners that corruption has become transnational, there is a growing need for mutual legal assistance (MLA) to obtain evidence from foreign jurisdictions to investigate and prosecute corruption cases. Hong Kong has bilateral MLATS with 31 jurisdictions and is a State Party to UNCAC and the United Nations Convention against Transnational Organized Crime (UNTOC). Under the United Nations Convention against Corruption (UNCAC), State Parties have a duty to assist one another to combat corruption. Hong Kong's legal framework establishes the Department of Justice (DOJ) as the Central Authority to handle MLA requests. To ensure speedy assistance, the MLA Unit of the DOJ has committed to providing responses within 10 days of receipt of a request. The types of assistance that can be provided include the taking of oral evidence, the production of tangible items, search and seizure, service of process, etc. Also, restraint orders and the enforcement of external confiscation orders have become increasingly important, as well as providing live video-link evidence – a practice that has increased during the COVID-19 pandemic. To facilitate MLA, a template for MLA requests is available online. In line with UNCAC, political offences, ulterior (i.e. discriminatory) purpose, double jeopardy, impairment of sovereignty and military offences are all mandatory grounds for denying requests. Ms. Cheuk shared an example of a case in which Hong Kong failed to receive MLA when dual criminality was not satisfied in a case involving private corruption. She also raised the importance of informal requests to obtain information (suspect whereabouts, corporate information, real property information) without the need to submit formal MLA requests. This information can be used for intelligence but cannot be admitted as evidence in court. Ms. Cheuk introduced three cases that demonstrated: (1) the importance of conducting parallel investigations and using agency-to-agency cooperation to gather evidence and intelligence; (2) the potential value of using civil actions to facilitate the recovery of damages

by injured parties; (3) the ability to use MLA to secure video-link testimony of witnesses located in other jurisdictions; and (4) the use of MLA to restrain assets and trace and recover the proceeds of crime. The ICAC engages in capacity-building activities to enhance international cooperation by creating teams dedicated to training and offering customized training programmes both in person and online. The benefits to Hong Kong include protecting Hong Kong's businesses from corruption threats by enhancing anti-corruption skills and awareness in neighbouring countries. These capacity-building activities, staff exchanges, etc. facilitate information sharing, the coordination of investigations and the building trust among agencies and practitioners.

3. Mr. SEKI Yoshitaka, Director General of the International Affairs Division of the Criminal Affairs Bureau, Ministry of Justice, Japan, presented on the topic of *Key issues on practical and effective MLA – importance of communication*. He began by introducing the basic framework for MLA in Japan, under which the Ministry of Justice (MOJ) serves as the Central Authority for receiving requests for assistance from treaty partners; non-treaty partners must submit requests through formal diplomatic channels, i.e. through the Ministry of Foreign Affairs (MOFA). By its nature, MLA is time consuming, but the speed of responding to MLA requests can be accelerated through the use of bilateral or multilateral treaties (UNCAC, UNTOC, etc.) as a basis. Despite the increased need for MLA, there are a number of barriers to providing assistance – communication being one of the primary examples. Given that most crime is domestic, criminal justice practitioners are often ill-equipped and unwilling to handle cross-border investigations. Thus, MLA practitioners must assume the burden to overcome challenges. Mr. Seki stressed the importance of using communications in English to supplement non-English MLA requests to overcome language issues. To avoid translation issues, he suggested drafting the original text of requests in one's native language and keeping the sentences short and vocabulary simple. Thus, careful MLA request writers can actively take steps to improve the quality of translations. Knowing the system of the requested State is also important to overcome potential differences, such as which authority is responsible for conducting investigations, the need for sworn testimony, knowing what can and cannot be provided on a voluntary basis, when warrants are necessary, when suspects must be notified of requests for documents, etc. Mr. Seki called on all of the participants to take an active role in facilitating more direct communication with their counterparts in other countries.

## **COUNTRY PRESENTATIONS**

4. BRUNEI DARUSSALAM: The Mutual Assistance in Criminal Matters Order (MACMO) of 2005 establishes the legal framework for MLA in Brunei, under which the Attorney General serves as the Central Authority, and the Corrupt Asset Recovery Order (CARO) of 2012 establishes the legal framework for asset recovery and applies to serious crimes, including bribery and money-laundering. A criminal breach of trust and money-laundering case was introduced to demonstrate MLA successes and challenges. While the challenges included lengthy response times, bureaucratic rules and lack of familiarity with foreign laws, utilizing informal channels before submitting a formal request can improve effectiveness and save time. Brunei also introduced its Interagency Working Group with Malaysia on intelligence, investigative matters and joint operations. The Working Group began in 2002 to facilitate informal and formal MLA requests in the areas of intelligence, investigation, training, and obtaining testimony in court, and annual meetings present statistics and review pending requests. The traffic-light concept (green, yellow, red) is used as a monitoring mechanism to track whether requests are being managed in a responsive and timely manner. The successful outcomes of the Working Group

demonstrate the value of pursuing closer forms of cross-border cooperation on a sustained basis.

5. CAMBODIA: Despite having acceded to UNCAC in 2007, Cambodia had no comprehensive framework on MLA. However, on 27 June 2020, Cambodia enacted three new laws to strengthen its legal framework for MLA, including the new Law on Mutual Legal Assistance in Criminal Matters. The law establishes the Ministry of Justice as the Central Authority for receiving requests and identifies the types of assistance that can be provided, the procedures for handling incoming requests and the languages in which they may be submitted (Khmer and English). Most corruption-related requests to Cambodia seek the identification of bank accounts or property or the securing of testimony. Requests are prioritized based on treaty status, type of offence, the level of complexity of the request and the deadline for implementation. The Anti-Corruption Unit (ACU) investigates and provides intelligence on corruption cases and is also involved in promoting Cambodia's three-pronged national strategy to promote anti-corruption education, lead prevention and obstruction efforts in the public and private sectors, and enhance law enforcement through professional skills training.
6. INDONESIA: The “all-hands-on-deck” strategy (multi-agency approach) to countering corruption involves three institutions: the Attorney General's Office, the Indonesian National Police and the Commission on Eradication of Corruption (KPK). Using UNCAC, UNTOC and Law No. 1/2006 on Mutual Assistance in Criminal Matters as a legal basis, Indonesia engages in formal cooperation (MLA and extradition) and informal cooperation based on mutual understanding and reciprocity. The presentation introduced Indonesia's principles of providing MLA, the scope of assistance in criminal matters, the process for executing incoming requests, etc. The “Garuda Affair” – a case involving bribery, other forms of gratification and money-laundering that dissipated the assets of a state-owned enterprise – was introduced as a case study on the use of MLA to investigate and prosecute multijurisdictional corruption. The investigation involved six jurisdictions, several formal requests and numerous informal requests, resulting in the imprisonment of the perpetrators, the recovery of millions of dollars, and the imposition of nearly 4 billion Euro in fines levied on the private sector companies involved in the corruption scheme.
7. LAO PDR: While the Anti-Corruption Law criminalized corruption and related acts in 2012, Lao PDR did not have a clear legal framework for MLA. With the increasing number of transnational crimes, including all forms of illicit trafficking, corruption and money-laundering, the Law on International Cooperation in Criminal Matters was enacted in 2020 to establish clear regulations and procedures for MLA. Under the new law, the Office of the Supreme People's Prosecutor (OSPP) serves as the Central Authority and directs the execution of requests. The most common forms of assistance include document certification, taking testimony, identifying bank accounts, providing documents, collecting evidence, and seizing, freezing and confiscating assets. As Viet Nam and Thailand account for most of Lao PDR's received MLA requests, the importance of enhancing cross-border cooperation with neighbouring countries was emphasized. To fight corruption domestically, the Law on State Inspection empowers the State Inspection Authority (SIA) to conduct investigations and audits of government agencies, officials and state-owned enterprises, as well as promoting the National Anti-Corruption Strategy among the general public. Importantly, the SIA was declared an independent organization in 2021 and now reports directly to the President of the State.
8. MALAYSIA: The formal process for incoming and outgoing MLA requests in Malaysia is established under the Mutual Assistance in Criminal Matters Act (MACMA), under which the

Attorney General is designated to serve as the Central Authority. MACMA applies to “serious offenses” punishable by one year or more of imprisonment. A number of successful cases were introduced, demonstrating the value of inter-agency cooperation and team-based approaches in conducting investigations and engaging in asset recovery. Likewise, the importance of utilizing informal channels to enhance MLA was stressed, and Malaysia actively pursues the MOUs with agencies to facilitate communication and cooperation. Despite Malaysia’s many successes, challenges to MLA remain, such as a lack of an effective legal basis for cooperation, language barriers, insufficient responses, traditional grounds for refusal, etc. To overcome these challenges, practitioners are encouraged to build strong networks and relationships, improve request-writing skills, enhance the use of informal channels, and create mechanisms to effectively monitor the status of requests.

9. PHILIPPINES: While the Philippines has no organic law on MLA, it has a variety of laws that establish the principles relating to international cooperation. The Department of Justice serves as the Central Authority and is responsible for the handling of all requests. The Office of the Ombudsman is an independent agency that plays the role of watchdog in order to detect, investigate, prosecute and prevent corruption. The Priority Development Assistance Fund (PDAF) scam was introduced to demonstrate how the Ombudsman’s office investigates and disrupts large-scale corruption in the Philippines and uses both informal and formal channels to trace the flow of proceeds transferred to foreign countries. Despite successes, many challenges to MLA remain, including misunderstandings that delay and duplicate work. Other challenges include the lack of a domestic law, differences in legal framework, language barriers, lack of resources and lack of familiarity with MLA. The Philippines works to overcome these challenges primarily through training. Thus, enhancing capacity-building and multi-sectoral cooperation to combat corruption were recommended as key efforts to enhance MLA.
10. SINGAPORE: The primary legislation governing MLA in Singapore is the Mutual Assistance in Criminal Matters Act, and Singapore has a bilateral MLAT with the United States and is a party to the ASEAN MLAT. The key actors in the field of MLA are the Attorney General’s Chambers (the Central Authority), the Ministry of Law and other operational and law enforcement agencies (including the Corrupt Practices Investigation Bureau (CPIB)). Over the last three to four years, the number of incoming and outgoing requests has increased by roughly 46 per cent. As a measure to enhance efficiency of handling requests, the AGC has templates available online to facilitate request writing, and Singapore is now looking into using software to create an automated process to handle requests. The presentation also introduced informal assistance, agency-to-agency cooperation and parallel investigation, as well as the voluntary repatriation of assets from foreign jurisdictions, and as useful forms of assistance.
11. THAILAND: The legal basis for MLA includes a number of laws, particularly the Act on Mutual Assistance in Criminal Matters (MLA Act), under which Thailand may provide assistance with or without an MLAT. The Attorney General or his or her designee serves as the Central Authority. While this seems flexible, it can complicate and delay the MLA process due the increased need for paperwork, translation etc. to confirm that the Attorney General has duly designated a subordinate to serve as the Central Authority in certain cases. Language was also presented as a challenge due to the high cost of preparing translations. In Thailand, criminal investigations are, in principle, conducted by the Royal Thai Police; prosecutors only have jurisdiction to conduct investigations in certain complex cases. However, Thailand has established specialized anti-corruption prosecutors at the Office of the Attorney General (OAG). Thailand endeavours to apply a flexible approach to dual criminality in which this element will be deemed fulfilled if the conduct is criminalized in Thailand. In addition to

stressing the value of informal consultations, requesting States are encouraged to send a draft request for informal review before submitting the formal request.

12. TIMOR-LESTE: The Anti-Corruption Commission was established in 2009 to prevent and combat corruption. A fraud case and an embezzlement case were introduced to demonstrate the challenges Timor-Leste faces in dealing with corrupt actors who flee the country to evade justice, particularly among individuals who have dual citizenship. While Timor-Leste's constitution permits extradition, Timor-Leste is not a party to any bilateral or multilateral treaties other than UNCAC. To enhance its anti-corruption activities, Timor-Leste embraces cooperation with foreign jurisdictions through anti-corruption, investigation and training agencies., Domestically, efforts need to be enhanced to take a national teamwork approach to preventing and combating corruption.
13. Viet Nam: The legal basis for MLA in Viet Nam is based on the 2007 Law on Mutual Legal Assistance, the 2015 Criminal Procedure Code (and the 2014 Law on Organization of People's Procuracy. These laws regulate the principles, duties and procedures relating to international cooperation and mutual legal assistance. The Supreme People's Procuracy (SPP) is designated as the Central Authority for MLA. The presentation reviewed principles, grounds for refusal, required contents and procedures for submitting MLA requests. Regarding language, if a treaty exists, requests may be submitted in the language specified in the treaty, whereas non-treaty-based requests must be accompanied by a Vietnamese translation. Viet Nam received 549 requests for assistance in criminal matters in 2021, an increase of 12% over the previous year. Recent trends in MLA include the presence of the competent person of the Requesting county in the process of the request's execution in the Requested country, requests for confiscation of proceeds or instrumentalities of crime and the use of videoconferencing. Recommendations for strengthening the effectiveness of MLA include strengthening direct contact among Central Authorities, ensuring that requests contain sufficient information and promptly sending requests so that the requested State has sufficient time to resolve the case and participating in international training courses and seminars to share best practices.

## **CONCLUSIONS AND RECOMMENDATIONS**

14. As corruption has become increasingly transnational in nature, effective MLA practices have become urgently necessary to ensure that those who engage in corruption do not evade justice and that their illicit proceeds are traced, confiscated and recovered. Since entering into effect in 2005, UNCAC has played a vital role in improving the global standard for MLA frameworks and practices, disseminating good practices, and promoting capacity-building to enhance knowledge and skills. As seen during this seminar, the success of UNCAC is reflected in Cambodia's and Lao PDR's persistent efforts leading to the adoption of their first domestic laws on MLA procedures.
15. However, in the field of MLA, many practical obstacles and challenges remain. These include, among others: (i) the lack of clear MLA frameworks, albeit in a declining number of jurisdictions; (ii) underutilization of informal channels, consultations and agency-to-agency cooperation; (iii) the time-consuming nature of MLA, (iv) language barriers; (v) issues of dual criminality; (vi) lack of knowledge about the MLA-related laws and procedures of requested States.
16. During the meeting, the participants shared ideas on overcoming the challenges that hinder or

reduce the effectiveness of MLA. To enhance the effectiveness of MLA, States Parties are invited to consider the following recommendations:

- A. Cognizant of the obligation imposed on States Parties to cooperate in criminal matters (Art. 43) and to provide the “widest measure of mutual legal assistance” (Art. 46), create or continually review and improve the foundational legal bases for MLA;
- B. Utilize informal channels to share leads and intelligence;
- C. Enhance the efficiency and effectiveness of MLA requests through the use of informal consultations and sharing the draft request *before* submitting a formal request;
- D. Actively seek out opportunities for cross-border, agency-to-agency cooperation through methods such as parallel investigations, joint investigations and permanent working groups;
- E. Explore options to overcome language barriers, including bilateral translation arrangements, the use of technology and the use of online MLA forms and request-writing tools;
- F. Explore cooperation in civil and administrative matters relating to corruption;
- G. In line with Article 43 of UNCAC, apply the concept of dual (double) criminality as broadly as possible by deeming it fulfilled when the same conduct is criminalized in the requested State, regardless of the name or category of the offence;
- H. Enhance international and domestic efforts aimed toward capacity-building and knowledge sharing and building strong professional networks among MLA practitioners.

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