

UNAFEI NEWSLETTER



ASIA AND FAR EAST INSTITUTE
FOR THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS

No. 101
February 2000

Established
1961

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Giving due consideration to the above rationale, this Seminar purports to explore the ways and means of strengthening and improving international cooperation in the fight against transnational organized crime, particularly through effective implementation of the mechanisms of mutual legal assistance and extradition. Sharing practical information and experiences on how other countries tackle our common issues will facilitate our efforts in the fight against transnational organized crime.

In the discussion of this seminar, focus will be placed to the following elements:

1. Specific problems and solutions that arise and have arisen from cases involving international mutual legal assistance or extradition, with respect to the following issues:
 - (1) Assurance of reciprocity
 - (2) Dual criminality
 - (3) The scope of offences that can be the basis for mutual legal assistance, or the scope of extraditable offences
 - (4) Refusal of rendering mutual legal assistance or extradition upon the following grounds:
 - (a) The principle of non-extradition for political crimes
 - (b) The principle of non-extradition for its nationals
 - (c) Existence of death penalty in the requesting state
 - (d) Insufficiency in establishing the alleged case that is the basis for the request for mutual legal assistance or extradition.
2. The scope of assistance to be rendered to the requesting state in the framework of mutual legal assistance. In particular, analysis of cases where difficulties arise and have arisen in relation to the feasibility of granting mutual legal assistance through new investigative methods or technologies, such as controlled delivery, electronic surveillance, taking testimony or statements via video link (closed circuit TV), etc.
3. Feasibility of and modality for sharing the assets confiscated by a state upon a request by another state, among the states concerned.
4. Advantages or disadvantages in concluding mutual legal assistance treaties.
5. Structure and function of a central authority for the purpose of mutual legal assistance or extradition.

I would like to offer my sincere congratulations to all the participants for their successful completion of the Seminar, made possible by their strenuous efforts. My heartfelt gratitude goes to the visiting experts and *ad hoc* lecturers who contributed a great deal to the Seminar's success. Furthermore, I appreciate the indispensable assistance and cooperation extended to UNAFEI by the various agencies and institutions which helped diversify the programme.

A warm tribute must be paid to the Japan International Cooperation Agency (JICA) for its immeasurable support throughout the Seminar. At the same time, I must express great appreciation to the Asia Crime Prevention Foundation (ACPF) and its branch organizations for their substantial contributions. Lastly, I owe my gratitude to all the individuals whose unselfish efforts behind the scenes contributed significantly to the successful realization of this Seminar.

Upon returning to their home countries, I genuinely believe that, like their predecessors, the strong determination and dedication of the participants will enable them to contribute significantly to the improvement of their respective nation's criminal justice systems, and to the international society as a whole.

Finally, I would like to reiterate my best regards to the participants of the 114th International Seminar. I hope that the experience they gained during the Seminar proves valuable in their daily work, and that the human bonds fostered among the participants, visiting experts, lecturers and UNAFEI staff will continue to grow for years to come.

February 2000

A handwritten signature in black ink, appearing to read 'Mikinao Kitada', with a stylized, cursive script.

Mikinao Kitada

Director, UNAFEI

THE 114TH INTERNATIONAL SEMINAR
“INTERNATIONAL COOPERATION TO COMBAT
TRANSNATIONAL ORGANIZED CRIME - WITH SPECIAL EMPHASIS ON
MUTUAL LEGAL ASSISTANCE AND EXTRADITION”

Seminar Rationale

Transnational organized crime is a growing threat to the security of the international society and the stability of sovereign states. It undermines the integrity of legitimate national economies, global financial systems, the rule of law and fundamental social values. It is of particular concern that transnational organized crime breeds corruption, and weakens emerging democracies and developing countries around the world.

Drug trafficking, money laundering, use of violence and extortion, acts of corruption, trafficking in women and children, illicit manufacturing of and trafficking in firearms, and the illegal trafficking and transportation of migrants, perpetrated under the influence of criminal organizations, have been serious problems in various countries in the world including Asia and the Far East.

In recognition of the gravity of the above-mentioned situation, the United Nations has given special attention to the issue of transnational organized crime. Initiatives were taken by the United Nations Ministerial Conference on Organized Transnational Crime, which was held at Naples, Italy in 1994. The Conference adopted an international document entitled the “Naples Political Declaration and Global Action Plan against Organized Transnational Crime”, which was subsequently endorsed by the United Nations General Assembly (General Assembly resolution 49/159 of 23 December 1994).

Furthermore, pursuant to the General Assembly resolution 53/111 of 9 December 1998, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime was created, for the purpose of drafting a comprehensive international convention on transnational organized crime, and for discussing the elaboration, as appropriate, of international instruments addressing: trafficking in women and children; combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition; and illegal trafficking in and transporting of migrants, including by sea. An intensive drafting exercise is ongoing in the Ad Hoc Committee, with the goal of completing its work by the year 2000. During the debates of the Committee, it has been generally understood among participating countries that mutual legal assistance and extradition are two major weapons for the international society to effectively combat transnational organized crime.

Taking this into consideration, UNAFEI, as a regional institute (affiliated with the United Nations) for the prevention of crime and the treatment of offenders, decided to undertake a series of international training courses and seminars for the coming few years under the general subject of “transnational organized crime”. This seminar will be the first of those to be conducted. It should be noted that discussions at the seminar will focus on mutual legal assistance and extradition rendered mainly through diplomatic channels or central authorities.

Within the framework of the United Nations, the Model Treaty on Extradition (General Assembly resolution 45/116 of 14 December 1990) and the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117 of 14 December 1990) have been serving as important bases for the national legislation of the UN member countries in the respective fields.

Furthermore, in the above-mentioned draft Convention, a number of outstanding proposals are presented with a view to strengthening the relevant existing mechanisms of mutual legal assistance and extradition. Similar efforts were already made in connection with the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drug and Psychotropic Substances of 1988, articles 6 and 7.

Although there has been a long history of study and experiences in the field of mutual legal assistance and extradition, law enforcement and prosecutorial authorities, as well as the judiciary, are still facing a number of crucial issues in discharging their mandates.

First of all, it is considered that the existence of treaties for mutual legal assistance or extradition will facilitate and expedite the process of mutual legal assistance and extradition between the countries concerned. However, international cooperation should also be promoted between countries without such treaties.

Secondly, our past experience reveals that examination on dual criminality, one of the traditional prerequisites for rendering mutual legal assistance and extradition, is often a difficult and time-consuming task for both the requesting and requested states. Up-to-date information on the pertinent law and its interpretation by both states is essential for conducting examination of the dual criminality requirements. However, such information is not always fully available to the states. Requiring dual criminality rigidly may sometimes undermine the efficiency and effectiveness of the mutual legal assistance and extradition procedure. Upon these observations, the draft Convention is proposing, with reference to mutual legal assistance, that state parties may not decline to render mutual legal assistance under the article, on the grounds of absence of dual criminality; unless the assistance required involves the application of coercive measures.

Another proposal is made by the draft Convention that state parties shall permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication. This Convention will be of particular importance to criminal justice in the coming century, since it corresponds with recent developments in scientific technology throughout the world.

Difficulty may be further encountered when the request for extradition is refused on various grounds, including the principle of non-extradition for political crimes, the principle of non-extradition for its nationals, existence of death penalty in the requesting state, etc. Some of these grounds for refusal are well established in the international society. However, it would be unreasonable and intolerable if certain wrongdoers could flee from justice as a result of those principles. Therefore, another principle *aut dedere aut judicare* (extradite or punish) has to be employed, where necessary and appropriate.

LETTER FROM THE DIRECTOR

It is my privilege to inform readers of the successful completion of the 114th International Seminar on "International Cooperation to Combat Transnational Organized Crime - with Special Emphasis on Mutual Legal Assistance and Extradition" from 17 January to 18 February 2000. In this Seminar, we welcomed 6 Japanese and 20 overseas participants: 11 from Asia, 1 from Oceania, 2 from South America, 2 from the Newly Independent States and Europe, 2 from the Middle East and 2 from Africa. They included police, public prosecutors, judges and other high-ranking public officials. As this newsletter demonstrates, this Seminar was extremely productive. It consisted of Individual Presentations, General Discussion Sessions, visits to relevant criminal justice agencies, and presentations by visiting experts and *ad hoc* lecturers.

During the five-week period, the participants diligently and comprehensively examined measures to strengthen and improve international cooperation in the fight against transnational organized crime. This was accomplished primarily through comparative analysis of the current situation and problems of mutual legal assistance and extradition in the participating countries. Our in-depth discussions enabled us to put forth effective and practical solutions to emerging problems in the changing international society.

Transnational organized crime, including drug trafficking, money laundering, trafficking in women and children, illicit manufacturing of and trafficking in firearms, and the illegal trafficking and transportation of migrants, is a growing threat to the security of the international society and the stability of sovereign states. Its perpetration, under the influence of criminal organizations, has been a serious problem in various countries in the world, including the Asia-Pacific region.

In recognition of the gravity of this situation, the United Nations has given special attention to the issue of transnational organized crime. In 1998, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime was created, *inter alia*, for the purpose of drafting a comprehensive international convention on transnational organized crime - with the goal of completing its work by the year 2000. During the debates of the Committee, it has been generally understood that mutual legal assistance and extradition are two major weapons for effectively combating transnational organized crime.

Taking this into consideration, UNAFEI decided to undertake a series of international training courses and seminars in the coming years under the general subject of "transnational organized crime". This seminar was the first of those to be conducted. During the Seminar we explored possible solutions to common problems through frank discussions in the General Discussion Sessions. I have no doubt that the outcome produced in this Seminar will enable all of us to face such challenges more resolutely.

Seminar Summary

Lectures

In total, 8 lectures were presented by visiting experts, 2 by *ad hoc* lecturers, 1 by the Director of UNAFEI. Five distinguished criminal justice practitioners from abroad served as UNAFEI visiting experts. They lectured on issues relating to the main theme, and contributed significantly to the Seminar by encouraging discussions after their own lectures, participating in the discussions of other programmes, and conversing with the participants on informal occasions. Additionally, *ad hoc* lectures were delivered by distinguished senior officials of the Government of Japan. The lecturers and lecture topics are listed on page 7.

Individual Presentations

During the first three weeks, each Japanese and overseas participant delivered a forty-five minute or one-hour Individual Presentation respectively, which introduced the actual situation, problems and future prospects of his/her country. These papers were compiled into a book entitled "COUNTRY REPORTS FOR THE INTERNATIONAL SEMINAR IN CRIME PREVENTION" and distributed to all the participants. The titles of these Individual Presentation papers are listed on pages 8 and 9.

General Discussion Sessions

General Discussion Sessions, held in the conference hall, further examined the subtopics of the main theme. In order to conduct each session effectively, the UNAFEI faculty selected individuals to serve as 'board members' for the sub-topics, based on their response to a questionnaire previously distributed. Selected participants served as chairpersons, co-chairpersons, rapporteurs or co-rapporteurs; and faculty members served as advisers.

Each board's primary responsibility was to explore and develop their designated topic and its corresponding sub-topics in the General Discussion Sessions. The participants and UNAFEI faculty seriously studied the topics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. After the General Discussion Sessions, reports were drafted based on the discussions in the conference hall. These reports were subsequently presented in the Report-Back Session, where they were endorsed as the reports of the Seminar. Summaries of the General Discussion reports are provided on pages 10 through 21.

Visits and Special Events

Visits to various agencies and institutions in Japan helped the participants obtain a more practical understanding of the Japanese criminal justice system. In addition to the Seminar's academic agenda, many activities were arranged to provide a greater understanding of Japanese society and culture, with the assistance of various organizations and individuals, including the Asia Crime Prevention Foundation (ACPF). For more detailed descriptions, please refer to pages 21 through 25.

Lecture Topics

Director's Lecture

Mr. Mikinao Kitada, Director, UNAFEI

- International Cooperation to Combat Transnational Organized Crime

Visiting Experts' Lectures

- 1) Mr. Severino H. Gana Jr. (Philippines)
 - Extradition and Legal Assistance : The Philippine Experience
- 2) Dr. Michael Plachta (Poland)
 - Contemporary Problems of Extradition : Human rights, Grounds for Refusal and the Principle of *Aut Dedere Aut Judicare*
 - International Co-operation in the United Nations Convention against Transnational Organized Crime
- 3) Mr. Hans G. Nilsson (Sweden)
 - Merits of Multilateral Treaties on Extradition and on Mutual Legal Assistance in Criminal Matters; Theory and Practice
- 4) Mr. Sirisak Tiyanpan (Thailand)
 - Extradition and Mutual Legal Assistance in Thailand
- 5) Mr. John E. Harris (United States of America)
 - International Co-operation in Fighting Transnational Organized Crime : Special Emphasis on Mutual Legal Assistance and Extradition

Ad Hoc Lectures

- 1) Mr. Yuuki Furuta
Director General of the Criminal Affairs Bureau, Ministry of Justice
 - Current Situation and Issues in Prosecution in Japan
- 2) Mr. Toshinori Kanemoto
Director General of International Affairs Department, National Police Agency
 - Combating Transnational Organized Crime in the Framework of the G8 – with Special Focus on the Activities of the Lyon Group

Individual Presentation Topics

Overseas Participants

- 1) Mr. Md. Abdur Razzaque (Bangladesh)
 - Crime Prevention : International Cooperation to Combat Transnational Organized Crime - with Special Emphasis on Mutual Legal Assistance and Extradition
- 2) Ms. Miranjela Maria Batista Leite (Brazil)
 - Crime Prevention : International Cooperation to Combat Transnational Organized Crime - with Special Emphasis on Mutual Legal Assistance and Extradition
- 3) Mr. Wei Wang (China)
 - Crime Prevention : Current Situation of China's Crackdown on Transnational Crimes, and Legal Assistance and Extradition
- 4) Mr. Jese Vukinagauna Marovia (Fiji)
 - International Cooperation to Combat Transnational Organized Crime
- 5) Mr. Shyam Sundar Prasad Yadav (India)
 - Crime Prevention : International Cooperation to Combat Transnational Organized Crime - with Special Emphasis on Mutual Legal Assistance and Extradition
- 6) Mr. Salahudin (Indonesia)
 - Narcotics and Psychotropic Substances in Indonesia
- 7) Mr. Sh. Mutlaq Odeh Mutlaq Sulaymaniyin (Jordan)
 - Crime Prevention : the Drugs Problem in Jordan
- 8) Mr. Eugenijus Usinskas (Lithuania)
 - International Cooperation to Combat Transnational Organized Crime - with Special Emphasis on Mutual Legal Assistance and Extradition (situation in the Republic of Lithuania)
- 9) Mr. Md. Abdul Jalal Bin Yunus (Malaysia)
 - International Cooperation in Criminal Matters on Extradition and Mutual Legal Assistance in Malaysia
- 10) Mr. Raj Narayan Pathak (Nepal)
 - International Cooperation to Combat Transnational Organized Crime (with Special Emphasis on Mutual Legal Assistance and Extradition): Nepalese Perspective
- 11) Mr. Sotonye Leroy Wakama (Nigeria)
 - Extradition and Mutual Legal Assistance Treaties as a Panacea for Organized Crime
- 12) Mr. Sh. Ahmad Farooq (Pakistan)
 - International Cooperation to Combat Transnational Organized Crime - with Special Emphasis on Mutual Legal Assistance and Extradition

- 13) Mr. Fakhari Salama El Nabris (Palestine)
 - International Cooperation to Combat Transnational Organized Crime : Mutual Legal Assistance and Extradition
- 14) Ms. Luz del Carmen Ibanez Carranza (Peru)
 - Country Report from Peru
- 15) Mr. Geronimo Cepillo Datinguinoo (Philippines)
 - Country Report
- 16) Mr. Chun Taek Lim (Republic of Korea)
 - Extradition and Mutual Legal Assistance to Combat Transnational Organized Crime in the Republic of Korea
- 17) Mr. Parana Widaneralalage Daya Chandrasiri Jayathilake (Sri Lanka)
 - Necessity of Mutual Legal Assistance and Extradition to Combat Transnational New Criminality
- 18) Mr. Jumpol Pinyosinwat (Thailand)
 - The Extradition Act in Thailand and the New Draft Extradition Bill
- 19) Mr. Asan Kasingye (Uganda)
 - International Cooperation to Combat Transnational Organized Crime - with Special Emphasis on Mutual Legal Assistance and Extradition
- 20) Mr. Afzal Nurmatov (Uzbekistan)
 - International Cooperation to Combat Transnational Organized Crime - with Special Emphasis on Mutual Legal Assistance and Extradition

Japanese Participants

- 21) Mr. Masafumi Nishiguchi (Japan)
 - International Activity of the Japanese Maritime Safety Agency (JMSA)
- 22) Mr. Yasuhiro Sanada (Japan)
 - How to Combat Transnational Organized Crime - with Special Emphasis on Visiting Foreigners in Japanese Prisons
- 23) Mr. Kazumitsu Suzuki (Japan)
 - Deportation in the Parole System and the Problem of Probationary Supervision for Foreign Offenders
- 24) Mr. Makoto Tamura (Japan)
 - Two Precedents regarding Extradition in Japan
- 25) Mr. Satoru Yoshimatsu (Japan)
 - Case Study on Extradition of the Offender who Hijacked an Air China Aircraft
- 26) Mr. Masaaki Yoshiura (Japan)
 - Some Issues Concerning International Mutual Assistance and Extradition in Japan

General Discussion Sessions

The following section summarizes the General Discussion Session reports. The full text of the reports will be included in UNAFEI Resource Material Series No. 57.

Topic 1 SPECIFIC PROBLEMS AND SOLUTIONS THAT ARISE FROM CASES INVOLVING INTERNATIONAL MUTUAL LEGAL ASSISTANCE OR EXTRADITION

Chairperson	Mr. Sh. Ahmad Farooq	(Pakistan)
Co-Chairperson	Mr. P.W.D.C Jayathilake	(Sri Lanka)
	Mr. Makoto Tamura	(Japan)
Rapporteur	Mr. Jumpol Pinyosinwat	(Thailand)
Co-Rapporteur	Mr. Jese Vukinagauna Marovia	(Fiji)
	Mr. Masafumi Nishiguchi	(Japan)
Advisers	Deputy Director Masahiro Tauchi	(UNAFEI)
	Prof. Akihiro Nosaka	(UNAFEI)
	Prof. Shinya Watanabe	(UNAFEI)

Report Summary

I. INTRODUCTION

In general, both "mutual legal assistance" and "extradition" are essentially a process of intergovernmental legal cooperation for investigation, prosecution and punishment of criminal offenders. Concisely, mutual legal assistance is the cooperation or assistance regarding investigations, prosecutions and judicial proceedings in relation to crimes; while extradition is a formal process by which a person is surrendered by one state to another. The primary difference between mutual legal assistance and extradition is that extradition involves "body" and consequently, extradition needs more serious consideration and urgent action, since fundamental human rights should be carefully thought about.

II. ASSURANCE OF RECIPROCITY

Generally, "assurance of reciprocity" means the assurance that a requested state will comply with the same type of request from the requesting state in the future. In practice, the principle of reciprocity has some degree of uncertainty because it will depend on the domestic laws and practice of each state. Accordingly, the assurance of reciprocity for mutual legal assistance and extradition will relate to many factors, for instance; the domestic laws of both countries, dual criminality requirements, previous practices, policies and politics. Owing to this uncertainty, a better alternative may be multilateral agreements, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 or the Draft United Nations Convention against Transnational Organized Crime.

Compared to that of extradition, the assurance of reciprocity of mutual legal assistance seems much more flexible. However, no commonly accepted standard for this assurance has been developed in this respect. Sufficiency of assurance is examined and evaluated by the

requested state in according to its own standards or on a case-by-case basis. With regard to practice, the concept of "trust" or "mutual trust" may play the most important role in cooperation for mutual legal assistance.

According to the general discussion, we observed that a better alternative may be the multilateral agreement, in order to decrease the uncertainty of the assurance of reciprocity. It is also recommended that states should give more consideration to multilateral agreements for better cooperation in combating serious crime. Furthermore, bilateral treaties amongst states also should be promoted with regard to the United Nations Model Treaty. Simultaneously, the United Nations may help the member states to modernize and harmonize their domestic laws by providing necessary information through sending written materials and organizing Seminars and conferences. Besides this, the need to relax interpretation of reciprocity to secure efficient and effective cooperation amongst states will be most essential.

III. DUAL CRIMINALITY

Dual Criminality refers to the characterization of an offence as constituting an offence under the laws of the two respective states. It is a reciprocal characterization of criminality that is deemed among the substantive requirements for granting extradition.

The difference in legal systems and interpretation of dual criminality gives rise to many problems. Relating to extradition, the United Nations Model Treaty on Extradition, Article 2 Paragraph 2, proposes that states look at the totality of the conduct to decide whether any combination of those acts and/or omissions would constitute an offence against a law in force in the requested state. An outstanding example from the Tokyo High Court in Japan, the requested state, received a request to surrender an offender in a case relating to a conspiracy offence but Japan's Criminal law had no offence of conspiracy. Even then, the Court ordered extradition of the offender on the grounds of actual action, holding that "When we apply the Japanese laws to these facts, it is obvious the Person A is subject to at least being an accessory to a crime of heroin import." In other words, the decision mainly focused on the actual action behind the crime.

Regarding mutual legal assistance, the interpretation by related authorities seems much more broad because the nature of this assistance may not necessarily infringe upon a person's liberty or freedom. Some states are now rendering mutual legal assistance even without the requirement of dual criminality. Furthermore, this principle has also been relaxed in some MLATs, for example; the MLAT between the United States and Canada, specifying that assistance shall be provided without regard to whether the alleged conduct constitutes an offence in the requested country or not.

According to the general discussion, it is recommended to interpret dual criminality requirements flexibly for extradition. In other word, the relevant authority in the requested state should be required to look at the totality of the conduct, focusing on the criminality of the conduct, whatever its label. Furthermore, it is recommended to promote mutual legal assistance without regard to whether the alleged conduct constitutes an offence in the requested country, unless the assistance required involves the application of coercive measures. In addition, the harmonization of domestic criminal law is also recommended. This could be achieved through elaborating and ratifying specific international instruments.

IV. THE SCOPE OF OFFENCES WHICH CAN BE THE BASIS FOR MUTUAL LEGAL ASSISTANCE, OR THE SCOPE OF EXTRADITABLE OFFENCES

Generally, the offence must be either enumerated among the list of extraditable offences or found according to the minimum imprisonment offences for ascertaining extraditability in the applicable treaty. The listing approach offers a list of specific offences and also excludes unnecessary offences. Therefore, the parties could focus on the specific scope of offences as they agree. The main problem of this approach arises from the fact that the list can omit certain offences, and the subsequent inclusion by supplementary treaty may prove too cumbersome. Also, the list might not cover newly emerging and future crimes. To lessen the difficulties mentioned above, a proposed technique of designating extraditable offences in treaties is to list non-extraditable offences and to designate extraditable offences by type and category.

On the other hand, the minimum imprisonment approach will decrease disputes relating to dual criminality. Moreover, this approach eliminates the problem of the listing's coming burdensome and it could also cover any new crimes. The disadvantage of this approach is the disparity in penalties amongst states and legal systems. The different cultural attitudes may also cause problems for minor crimes. Nonetheless, due to the broadening scope of offences and the troublesome practice of the list approach, the minimum imprisonment approach is considered a modern concept giving a general formula adopted by the United Nations Model Treaty of Extradition, the European Convention on Extradition and many other countries. Therefore, a consensus on the minimum imprisonment approach for extraditable offences may be recommended. For mutual legal assistance, the concept of expansion of mutual legal assistance as much as possible is recommended. This same concept also can be seen in Article 1 of the United Nations Model on Mutual Assistance in Criminal Matters.

According to the general discussion, we observed that the minimum imprisonment system should be adopted by all states to make the scope of extraditable offences more extensive and dynamic. In addition, it is recommended that the scope of offences for which mutual legal assistance can be granted be made as wide as possible. Nevertheless, a more restrictive approach should be adopted with regard to coercive measures.

Topic 2 REFUSAL OF MUTUAL LEGAL ASSISTANCE OR EXTRADITION

Chairperson	Ms. Luz del Carmen Ibanez Carranza	(Peru)
Co-Chairperson	Mr. Shyam Sundar Prasad Yadav	(India)
	Mr. Masaaki Yoshiura	(Japan)
Rapporteur	Mr. Asan Kasingye	(Uganda)
Co-Rapporteur	Mr. Chun Taek Lim	(Republic of Korea)
	Mr. Yasuhiro Sanada	(Japan)
Advisers	Prof. Keiichi Aizawa	(UNAFEI)
	Prof. Hiroshi Tsutomi	(UNAFEI)
	Prof. Shoji Imafuku	(UNAFEI)

Report Summary

I. INTRODUCTION

Transnational crime is a global problem. States world over are concerned about the increase in the level and sophistication of transnational crime. To facilitate international efforts to combat this problem, mutual legal assistance and extradition procedures have been emphasized. However in practice, extradition or mutual legal assistance may be refused by the requested state. The rationale for refusal varies from state to state.

II. REFUSAL OF EXTRADITION BASED UPON NON-EXTRADITION FOR POLITICAL CRIMES

Among the mandatory grounds for refusal of extradition in many states is the principle of non-extradition for political offences. If the offence for which extradition is requested is regarded by the requested state as an offence of a political nature, then extradition is denied. The UN Model Treaty on Extradition, Article 3 sub-paragraph (a), stipulates that extradition shall not be granted "if the offence for which extradition is requested is regarded by the requested state as an offence of a political nature." This principle has been incorporated in most of the bilateral and multilateral agreements signed between and among nations all over the world.

The implicit and explicit definition of what constitutes a political offence is complex, and no consensus has been reached about its definition. Through the use of so-called negative definition, the scope of a political offence has been delineated by specifying conduct, or behavior that is not considered as constituting a political offence. Various international conventions have been elaborated and signed to specify acts that shall not be regarded as offences of a political character. Prominent among these are the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, and the 1997 International Convention for the Suppression of Terrorist Bombings, amongst others. As a result, some countries have, on the basis of the above conventions; explicitly stated in their treaties what does not constitute a political offence.

III. THE PRINCIPLE OF NON-EXTRADITION FOR NATIONALS

The United Nations Model Treaty on Extradition, Article 4 (a), enables a requested state to refuse extradition of its nationals, but includes a "prosecution in lieu" alternative as an optional ground. However, international treaty practice is that the nationality of the requested person is grounds for optional refusal in some treaties, but mandatory in others. There is a firmly held belief that many countries do not want to extradite their nationals. The exception of non-extradition for nationals jeopardises international efforts to fight transnational organised crime. However, it is important to note the following.

- (i) States should take giant strides towards enacting laws that allow their nationals to be extradited.
- (ii) States can extradite their own nationals for trial abroad on the condition that once convicted, the fugitive offenders will serve their sentences in their respective countries.
- (iii) Extradition of a national can be allowed with the consent of the offender.
- (iv) Surrender of nationals can be considered as a new form of bringing fugitives to face justice.
- (v) The principle of *aut dedere aut judicare* (extradite or prosecute) should be implemented to bring fugitive offenders to justice.

IV. EXISTENCE OF DEATH PENALTY IN THE REQUESTING STATE

Article 4 sub-paragraph (d) of the UN Model Treaty provides an optional ground for refusing extradition. This arises when the offence for which extradition is being sought carries the death penalty; unless the requesting state undertakes not to impose the death penalty or not to carry it out if it is imposed. While some countries have capital punishment, other countries have abolished it. In order to harmonise extradition requirements between the two, the former countries should provide an adequate assurance that the death penalty, if imposed, would not be carried out. This involves:

- (i) Making use of the executive authority to commute the sentence, by taking advantage of the prerogative of mercy or pardon available in their legal system.
- (ii) Amending their domestic laws to accommodate the requirement of not imposing capital punishment in extradition matters.
- (iii) Applying the principle of *aut dedere aut judicare* in cases where extradition is denied as a result of the refusal to assure the requested state that capital punishment would not be imposed.

V. INSUFFICIENCY OF CASE THAT IS THE BASIS OF THE REQUEST FOR MUTUAL LEGAL ASSISTANCE OR EXTRADITION

Article 3 of the UN Model Treaty stipulates mandatory grounds for refusal of an extradition request. However, countries are free to add to this article the following further mandatory ground for refusal that "...if there is insufficient proof, according to the evidential standards of the requested state, that the person whose extradition is requested is a party to the offence." Inherently, this means that a requested country can refuse an extradition request on the grounds that the evidence accompanying the request is insufficient.

In the past, common law countries required that extradition requests sent to them show proof of apparent guilt, while civil law countries only required a minimum amount of evidence. In contemporary extradition practices, there are no sharp distinctions between the two legal systems. However, extradition procedures are different in different countries, therefore it is difficult to determine how much evidence would be required in order to grant an extradition request. The UN Model Treaty does not specifically define how much evidence is required and who should decide on such an issue. However, if the request concerns a fugitive that is sought for trial, it should only be required that some evidence be adduced that he/she committed the offence. Extradition jurisprudence should only require just enough evidence to issue an arrest warrant and not to establish the totality of the evidence.

As far as mutual legal assistance is concerned, theoretically, there should be no requirement imposed on the requesting country to provide evidence in its request. However, in practice, evidence may be required in certain requests such as seizure of assets, searches, and obtaining copies of bank records, which are secret. Various countries require some evidence before mutual legal assistance can be granted.

**Topic 3 THE FRAMEWORK OF MUTUAL LEGAL ASSISTANCE
AND EXTRADITION: SCOPE, ADVANTAGES/DISADVANTAGES,
AND THE STRUCTURE AND FUNCTION OF A CENTRAL AUTHORITY**

Chairperson	Mr. Md. Abdul Jalal Bin Yunus	(Malaysia)
Co-Chairperson	Mr. Raj Narayan Pathak	(Nepal)
	Mr. Satoru Yoshimatsu	(Japan)
Rapporteur	Mr. Sotonye Leroy Wakama	(Nigeria)
Co-Rapporteur	Mr. Geronimo Cepillo Datinguinoo	(Philippines)
	Mr. Kazumitsu Suzuki	(Japan)
Advisers	Prof. Hiroshi Iitsuka	(UNAFEI)
	Prof. Chikara Satou	(UNAFEI)

Report Summary

I. INTRODUCTION

This group was assigned three topic areas to consider:

- (i) The scope of assistance to be rendered to the requesting state in the framework of mutual legal assistance.
- (ii) The advantages or disadvantages in concluding mutual legal assistance treaties.
- (iii) The structure and function of a Central Authority for the purpose of mutual legal assistance and extradition.

This paper presents a brief summary of the following issues that were raised and discussed with respect to the utility of extradition and mutual legal assistance treaties in the fight against organised transnational crime:

- (i) the structure and function of the 'central authority' for the purpose of mutual legal assistance;
- (ii) the confiscation of the proceeds of crime and the modalities for sharing;
- (iii) the feasibility of granting mutual legal assistance through new investigative methods and technologies; and
- (iv) the structure and function of the central authority for the purpose of mutual legal assistance and extradition

The Seminar observed that most countries present the Department of Justice or the Office of the Attorney General as the central authority. It noted however, that a few countries have more than one central authority, which varied dependant on the content of the request. The purpose and function of the central authority was reduced to three essential duties:

- (i) It is to be accessible and visible as a contact point. This means it should have a clear, unambiguous reference (name), which should also include an address(es), telephone and facsimile numbers, e-mail address(es) and any other information that will enable easy communication access to the authority in normal or urgent times.

- (ii) It is to oversee the administrative and executive processing of all requests referred to it. It is thus not to exist merely as a mailbox, but is expected to actively follow up on all requests, giving directives and information as is necessary. It should thus be staffed with competent personnel versed and experienced in this field, and with the requisite logistics to accomplish its duties with the minimum of inconvenience.
- (iii) The Seminar also sought to make a clear distinction between the 'central authority' on the one hand, and the 'competent authority' on the other. While the former refers to the individual or institution through which requests are made and received, and directives given with respect to their execution, the latter refers to the agencies or departments assigned the legal authority to carry out, enforce and implement the execution.

On the question of the number of central authorities appropriate in a given state, the Seminar felt it best to leave this to the discretion of the state, as this is an issue of domestic policy upon which international consensus would be difficult to achieve. It was rather advocated that treaties should concentrate on ensuring the availability, as quickly as practicable, of all information on the chosen central authority, to facilitate expeditious communication. The Seminar also stressed that in as much as the structure of a central authority could not be dictated, each state should nonetheless endeavour to ensure its functionality by staffing it with adequate personnel and equipment, and ensuring the same for all competent authorities. The Seminar thus concerned itself more with the functionality of the central authority, than with its number or structure.

II. CONFISCATION OF THE PROCEEDS OF CRIME AND MODALITIES FOR SHARING

The Seminar unanimously agreed that criminal proceeds should be subject to confiscation by order of the court, and that in states where this legal provision does not exist (if any), the state or states concerned should be encouraged to so legislate. The Seminar also sought to make a clear distinction between confiscation and disposal, as confiscation refers to the legal process of permanently depriving a person of their assets in favour of the government; whereas disposal refers to a decision on its subsequent use.

Participants were of the opinion that the sharing of assets between participatory states to an investigation, particularly of organised transnational crime, recognised and acknowledged the co-operation necessary to fight organised crime, and the efforts of other states and their respective law enforcement agencies. In this respect therefore, the Seminar recommended that the most appropriate avenues for asset sharing are through bilateral treaties, since this problem is insufficiently addressed in the domestic legislation of most states. These bilateral treaties would thus provide the legal basis for sharing the proceeds of crime between the participating states.

As opposed to bilateral treaties, multilateral conventions are not well suited to regulate all the substantive and procedural problems associated with asset sharing. The most that negotiators of these conventions are able to agree on is a clause that encourages the state parties to conclude bilateral agreements and arrangements to this effect.

Before the issue of the modalities for sharing was broached, the Seminar cautioned that legitimate third party interests in confiscated assets should be acknowledged, and that part of the confiscated assets be excluded from sharing.

The actual modalities or criteria for the sharing would have to be agreed upon by the states on a case by case basis, as the variables involved make the issue too complicated for the presentation of a single formula. Where illegitimately acquired assets have been intermingled with legitimate investments, the proportion that can be traced and identified to the satisfaction of the courts should be subject to confiscation and disposal. Finally, not all confiscated assets should be subject to disposal without careful evaluation of the other states' interests, as some may have a cultural, national or even spiritual significance and cannot be subject to monetary evaluation. In these instances, it would be appropriate to return the asset in question, in the greater interest of mutual co-operation and understanding.

III. FEASIBILITY OF GRANTING MUTUAL LEGAL ASSISTANCE THROUGH NEW INVESTIGATIVE METHODS AND TECHNOLOGIES

The Seminar identified the following technologies that have been employed to some degree in modern law enforcement and the criminal justice process:

- Audio Tape Recordings
- Video Tape Recordings
- Telephone Conferencing
- Still and Movie Photography
- Video Conferencing (Satellite Link)
- Close Circuit Television
- Electronic Surveillance
- Satellite Surveillance
- Electronic Bugging
- Fingerprint Analysis
- DNA Analysis
- Controlled Delivery

The list is not considered exhaustive, however each of these methods or techniques of investigation has, at one time or another, particularly in developed countries, been applied in granting or obtaining mutual legal assistance in:

- Recording of evidence – oral and physical
- Searches, seizures and confiscation
- Examination of objects and sites
- Provision of information
- Locating and identifying persons and objects
- Other types of assistance

Having acknowledged the problems, the advantages of these modern investigative techniques are as many as the techniques are varied. Firstly, these techniques can be and have been (under certain conditions) successfully employed in investigations and court proceedings. Secondly, being purely scientific methods they are verifiable through other scientific methods of

analysis and therefore the authenticity of the evidence is ascertainable. This means thirdly, that their utility is both effective and pro-active. In the case of court proceedings, and in certain investigations, some of these techniques have the capability to reduce the risk, time and expense associated with travel, and consequently limit the time and cost of the entire judicial process. They also can where necessary, particularly where organised crime is concerned, afford protection to witnesses who may be in danger when testifying. Finally, modern scientific technology supports and protects the rights of the individual by ensuring, through indisputable means, that the right person is committed to prison, where older more overbearing methods of investigation left a margin of doubt. In this respect, science furthers the interests of democracy.

The legal problems associated with these new techniques were best illustrated in the use of controlled delivery and video link technology. Controlled Delivery was noted as one of the major outcomes of the 1978 United Nations Convention on Drug Trafficking held in Vienna, Austria. It is the process of allowing prohibited narcotic substances to be transported through various territories, under covert surveillance and 'supervision' of law enforcement agents. The objective is to identify trafficking routes, volume of traffic, the means employed and the traffickers themselves, with the ultimate aim of devising strategies to prevent further trafficking of these substances. This technique has over the years proven an extremely effective way of combating the drug trade, and as a result the technique has been applied to other crimes with equal success.

However, the technique has not been without its birth pangs. Because of the differences hitherto mentioned in legal systems, policies and approaches to crime resolution reflected in nations the world over; controlled delivery has met with some 'opposition'. This perhaps principally extends from a legal notion that "...he who comes for justice must come with clean hands". The point often made is that since the law enforcement agents knew of the trafficking of drugs, but did nothing about it, they have (by their omission) committed a crime. Therefore perhaps, the value of their testimony and indeed the evidence (drugs) is questionable.

A further example of the legal problems that have to be resolved with new investigative techniques was illustrated by the increasing use of video link (via satellite) technology in obtaining testimony and information. The question here is one of admissibility in the courts as in most countries there exist no legislation in this respect, and the courts have not adopted it as part of their 'judicial practice'. Furthermore, most courts for the preservation of justice demand the physical appearance of witnesses and not matrix imagery, no matter how impressive it may seem.

In addition to the above, some of these techniques constitute an infringement of the rights of the individual, particularly where electronic surveillance is deployed in investigations. As opposed to the four fundamental human rights recognised as non-dirigible (the right to life; the prohibition on torture and other forms of cruel, inhumane and degrading treatment and punishment; the prohibition on slavery; and freedom from *ex post facto* or retroactive criminal laws), governments may impose some restrictions as necessary in a democratic society on other rights; such as the right to privacy.

One of the practical issues raised by the new investigative techniques bordered on technical and financial problems. Some of these techniques involve infrastructure and equipment, the cost of which cannot reasonably be expected to be met by some law enforcement agencies or their governments, as resources are limited and their priorities different. This of

course could be overcome if governments are willing to dedicate a percentage of confiscated criminal proceeds to the fight against crime.

Another practical problem discussed bordered on the training and technical competence of personnel to handle the sort of equipment used in these investigations. It is obvious that training would have to be provided in the spirit of international co-operation by countries whose understanding of these new methods factored in its implementation. Again, the issue of cost would have to be addressed, but could be overcome if nations co-operate in the interest of a crime free world. This desire has been expressed in the draft Convention against Transnational Organised Crime (TOC), which provides that states parties shall assist one another in planning and implementing research and training programmes designed to share expertise in various areas. These areas include the collection of evidence, modern law enforcement equipment and techniques, methods used in combating transnational organised crimes committed through the use of computers, telecommunications networks or other forms of modern technology, detecting and monitoring of the methods used for the safe transfer, concealment or disguise of proceeds derived from such offences.

The feasibility of their use must therefore depend on the respective laws of the states involved, which (if not compatible) may necessitate provisions governing the acquisition of evidence by these means in the respective mutual legal assistance treaties. As a recommendation, consideration could be given to the organising of a forum or seminar, where technologists, judicial officers, law enforcement personnel and others could meet and discuss the problems associated with new technologies in investigation and prosecution, with a view to increasing the 'comfort level' of the more conservative minded professions. Ultimately, the fight against organised crime will require sacrifices – academic and physical.

IV. ADVANTAGES AND DISADVANTAGES OF BILATERAL MUTUAL LEGAL ASSISTANCE TREATIES

One of the advantages of Mutual Legal Assistance Treaties (MLATs) lies in the fact that they place international co-operation on a firm footing by providing predictable areas of co-operation between countries. MLATs acts as a vehicle of co-operation between consenting countries, regardless of their individual legal systems. Mutual legal assistance treaties assist individual states to cope more effectively with criminal cases that have transnational criminal characteristics. Such treaties facilitate the receiving and rendering of assistance by way of 'compulsory orders'. This would mean that by signing and ratifying a treaty, the parties to it undertake an express obligation to render each other assistance as defined in the treaty, unless the requested state invokes a ground for refusal. They also provide a mechanism for evaluating the application of these treaties in relation to crime resolution.

These treaties also allow for methods and procedures which ordinarily may not have been acceptable to the judicial systems involved. In addition, many of these treaties allow for direct contact, thus avoiding the formal diplomatic and cumbersome channels of communication. This speeds the process of criminal justice and the ultimate effectiveness of crime management.

Finally, in an era when almost each law enforcement agency (police, customs, immigrations, drug law enforcement agencies etc) has some form of agreement or another with a counterpart agency in another country, MLATs reduce the legal basis for co-operation to one document, which inevitably simplifies the process, and opens the requesting agency to the benefits and co-operation of all the other agencies. It must be stated however that MLATs are not the only basis for co-operation in mutual legal assistance, as the domestic laws of some states, reciprocity and the notion of comity have served similar, though slightly more constrained, roles in this respect.

On the other hand, it is noticed that there are some faults with mutual legal assistance treaties. The first of these is that ratification can take years after the actual treaty has been signed, and for as long as the ratification is held in abeyance, the treaty will be ineffectual. It must be mentioned however, that usually there exists some form of co-operation between countries prior to their entering into formal agreements, which reflects to a large degree the pre-existing levels of co-operation. Such formal agreements are usually accompanied by 'Executive Agreements' on co-operation, which forms the basis of continued interaction before the treaties are formally ratified.

These treaties can also lead to an inequality in terms of benefits and obligations. One of the states is more likely to make more requests than the other, which means the requested state seemingly does more work. However, the more bilateral treaties entered and signed, the greater the probable general benefit from their usage. Similarly, the opening of borders through these treaties can itself lead to security implications, which may ultimately be more problematic than the actions of those criminals which led to the treaty in the first place. The question of the utility of mutual legal assistance and extradition treaties in relation to the problems discussed above are, in the final analysis, to be dealt with by individual states. It perhaps may be useful to mention that with the growth of transnational organised crime it has become imperative that governments focus their attention in these areas.

Observation Visits

<u><i>Date</i></u>	<u><i>Agency/Institution</i></u>	<u><i>Main Persons Concerned</i></u>
Jan 24	National Research Institute of Police Science	<ul style="list-style-type: none"> • Dr. Takehiro Takatori President • Mr. Hitoshi Tabayashi Vice President • Dr. Takahiro Murata Director, General Affairs Department
Jan 27	Tokyo District Public Prosecutors Office	<ul style="list-style-type: none"> • Mr. Junichi Nakayama Deputy Director, General Affairs Department
Jan 27	Ministry of Justice	<ul style="list-style-type: none"> • Mr. Hideo Usui Minister of Justice • Mr. Keigoh Tabira Director, Office of International Affairs, Secretarial Division • Mr. Shunichi Sekiguchi Secretarial Division, Ministry of Justice
Feb 1	Supreme Court	<ul style="list-style-type: none"> • Judge Tsugio Kameyama Supreme Court Justice • Judge Takumi Suzuki Judge attached to the Criminal Affairs Bureau • Mr. Junichi Shirakura Liaison Officer, Secretariat Division, General Secretariat

Group Study Tours

<u><i>Date</i></u>	<u><i>Group</i></u>	<u><i>Agency/Institution</i></u>	<u><i>Main Persons Concerned</i></u>
	Hiroshima-Kansai	<ul style="list-style-type: none"> • 6th Regional Maritime Safety Headquarters • Kyoto Prison 	<ul style="list-style-type: none"> • Mr. Kaoru Kuwabara Commander • Mr. Masanori Yoshimoto Special Assistant to the Chief Guard Division • Mr. Toshiaki Otomo Warden

Special Events

January 17

Welcome Party

January 20, 21 & 25

Japanese Conversation Classes

The overseas participants attended Japanese conversation classes provided by JICA. They learned practical Japanese expressions. The Sensei (teacher) was Ms. Kazue Suzuki. *Iroiro Arigato Gozaimashita.*

January 27

Courtesy Visit to the Minister of Justice

Minister of Justice, Mr. Hideo Usui greeted the participants during their visit to the Ministry of Justice.

Reception by Vice-Minster of Justice

After visiting the Ministry of Justice, a reception was held by Vice-Minister of Justice, Mr. Kunihiro Matsuo at the Lawyers Club, Tokyo.

February 1

Courtesy Visit to Supreme Court Justice

During their visit to the Supreme Court, the Honorable Justice Kameyama received the participants in his private chambers.

ACPF Nangoku-kai Party

Asia Crime Prevention Foundation (ACPF) Nangoku-kai Branch, affiliated with ACPF Headquarters, hosted a dinner party at the Keio Plaza Hotel, Shinjuku, in honor of the participants.

February 2

UNAFEI-ACPF International Bowling Tournament

Asia Crime Prevention Foundation (ACPF) Fuchu Branch sponsored the thirteenth UNAFEI-ACPF International Bowling Tournament. The participants enjoyed bowling and socializing with members of ACPF Fuchu Branch.

February 4

JICA Friendship Party

A friendship party was held to introduce the overseas participants to the residents of the Hachioji community and to other JICA participants based at the JICA International Training Center. An enjoyable evening was had by all.

February 5 & 6 *Hokkaido Trip*

Sponsored by Asia Crime Prevention Foundation (ACPF) Sapporo Branch, Mr. Severino H Gana Jr. (Senior State Prosecutor, Philippines Department of Justice, the Philippines) conducted a public lecture on the “History and Current Activities of the ACPF Philippine Branch” for distinguished guests, ACPF members and the participants of the 114th International Seminar.

After the lecture, the participants attended a dinner hosted by Mr. Takashi Yamane, Chief of ACPF Sapporo Branch, at the Hotel Renaissance. They also enjoyed sightseeing during their stay, including visits to the Sapporo Snow Festival (*Yuki Matsuri*), Hitsuji-ga-oka park and Sapporo Beer Garden.

February 10 *Public Lecture Programme*

The Public Lecture Programme is conducted annually to increase social awareness of criminal justice issues through comparative international study. The Programme, sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI, was held in the Grand Hall of the Ministry of Justice and was attended by distinguished guest, UNAFEI alumni and the participants of the 114th International Seminar.

This year, Dr. Michael Platcha (Professor, Faculty of Law, Gdansk University, Poland) and Mr. John E. Harris. (Acting Director, Office of International Affairs, Criminal Division, US Department of Justice, the United States of America) were invited as speakers to the Programme. They delivered lectures respectively entitled “The Lockerbie Affair: When Extradition Fails, are the United Nations Sanctions a Solution? The Role of the Security Council in the Enforcing of the Rule *Aut Dedere Aut Judicare*” and “Mutual Legal Assistance Treaties: Necessity, Merits and Problems arising in the Negotiation Process”.

February 10 *UNAFEI Alumni Reception*

A reception was held to introduce the participants to UNAFEI Alumni residing in Japan, hosted by the UNAFEI Alumni Association at the Lawyers Club, Tokyo.

February 13, 14, 15 & 16 *Hiroshima-Kansai Study Tour*

Hiroshima: On their first day, the participants visited Peace Memorial Museum and Peace Memorial Park in Hiroshima. Participants were also escorted by two Maritime Safety Agency vessels to Miyajima Island, located in the Seto Inland Sea near Hiroshima.

Kyoto: On their fourth day, the participants went on a guided bus tour to Nijo Castle, Kinkakuji Temple and the Kyoto Imperial Palace.

February 17 *Farewell Party*

Reference Materials Distributed

Combating Transnational Organized Crime: Efforts by the United Nations and G8

- (1) Naples Political Declaration and Global Action Plan against Organized Transnational Crime (Naples, Italy, 23 November 1994, World Ministerial Conference on Organized Transnational Crime).
- (2) United Nations General Assembly resolution 49/159 of 23 December 1994, entitled "Naples Political Declaration and Global Action Plan against Organized Transnational Crime".
- (3) United Nations General Assembly resolution 51/60 of 12 December 1996, entitled "United Nations Declaration on Crime and Public Security".
- (4) P8-Senior Experts Group 40 Recommendations to combat Transnational Organized Crime (Paris, April 1996).
- (5) United Nations General Assembly resolution 53/111 of 9 December 1996, entitled "Transnational organized crime".

Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

- (1) Background paper for the workshop on extradition and international cooperation: exchange of national experiences and implementation of extradition principles in national legislation (A/CONF.169/8).
- (2) Report of the Chairman of the Committee II on the workshop on topic (a): Extradition and international cooperation: exchange of national experiences and implementation of relevant principles in national legislation (A/CONF.169/L.23).

Elaboration of the draft United Nations Convention against Transnational Organized Crime

- (1) Revised draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.5).
- (2) Reports of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime.
 - a. First session (A/AC.254/9).
 - b. Second session (A/AC.254/11).
 - c. Third session (A/AC.254/14).
 - d. Fourth session (A/AC.254/17).
 - e. Fifth session (A/AC.254/19).
 Proposals and contributions received from governments (A/AC.254/5, A/AC.254/5/Add.1-8 and 14-16).
- (3) United Nations Economic and Social Council resolution 1999/20 of 28 July 1999, entitled "Draft United Nations Convention against Transnational Organized Crime and the draft protocols thereto".
- (4) Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (United Nations Publication, Sales No. E.98.XI.5), Articles 6 and 7.

United Nations Model Treaties

- (1) United Nations Model Treaty on Mutual Assistance in Criminal Matters
 - a. Model Treaty on Mutual Assistance in Criminal Matters (United Nations General Assembly resolution 45/117 of 14 December 1990, ANNEX).
 - b. Report of the Intergovernmental Expert Group Meeting on Mutual Assistance in Criminal Matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998 (E/CN.15/1998/7, ANNEX).
 - c. Complementary provisions for the Model Treaty on Mutual Assistance in Criminal matters (United Nations General Assembly resolution 53/112 of 9 December 1998, ANNEX).
- (2) United Nations Model Treaty on Extradition
 - a. Model Treaty on Extradition (United Nations General Assembly resolution 45/116 of 14 December 1990, ANNEX).
 - b. Report of the Intergovernmental Expert Group Meeting on Extradition, held at Siracusa, Italy, from 10 to 13 December 1996 (E/CN.15/1997/6, ANNEX).
 - c. Complementary provisions for the Model Treaty on Extradition (United Nations General Assembly resolution 52/88 of 12 December 1997, ANNEX).
- (3) Manual on the Model Treaty on Extradition and Manual on the Model Treaty on Mutual Assistance in Criminal Matters; An implementation guide (International Review of Criminal Policy, Nos. 45 and 46, 1995).

Regional Arrangements (Council of Europe, European Union)

- (1) Mutual Assistance in Criminal Matters
 - a. European Convention on Mutual Assistance in Criminal Matters, ETS No. 30, (Strasbourg, 20 April 1959).
 - b. Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, ETS No. 99, (Strasbourg, 17 March 1978).
 - c. Draft Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (1999/C 251/01).
- (2) Extradition
 - a. European Convention on Extradition, ETS No. 24, (Paris, 13 December 1957).
 - b. Additional Protocol to the European Convention on Extradition, ETS No. 86, (Strasbourg, 15 October 1975).
 - c. Second Additional Protocol to the European Convention on Extradition, ETS No. 98 (Strasbourg, 17 March 1978).
 - d. Convention on simplified extradition procedure between the Member States of the European Union (95/C 78/01).
 - e. Convention on simplified extradition procedure between the Member States of the European Union; Explanatory Report (96/C 375/03).
 - f. Convention relating to extradition between the Member States of the European Union (96/C 313/02).
 - g. Convention relating to extradition between the Member States of the European Union; Explanatory Report (97/C 191/03).

Legislation and Treaties of Japan

- (1) Law for International Assistance in Investigation (Law No. 69 of 1980), Criminal Justice Legislation of Japan 303.
- (2) Law of Extradition (Law No.68 of 1953), *id.* at 291.
- (3) Treaty on Extradition between Japan and the United States of America (Treaty No. 3 of 1980).

Books and Periodicals

- (1) Kitada, *International Cooperation in Criminal Matters - Extradition and Mutual Legal Assistance*, UNAFEI Resource Material Series No.51, at 297 (1997).
- (2) Plachta, *(Non-)Extradition of Nationals: A Neverending Story?*, 13 Emory Int'l L. Rev. 77 (1999).
- (3) Bassiouni, *Policy Considerations on Inter-State Cooperation in Criminal Matters*, in 2 International Criminal Law 3 (2d ed. 1999).
- (4) Wise, *Aut Dedere Aut Judicare: The Duty to Prosecute or Extradite*, *id.* at 15.
- (5) Bassiouni, *Law and Practice of the United States*, *id.* at 191.
- (6) Poncet and Gully-Hart, *The European Approach*, *id.* at 277.
- (7) Müller-Rappard, *Inter-State Cooperation in Penal Matters within the Council of Europe Framework*, *id.* at 331
- (8) Spinellis, *Securing Evidence Abroad: A European Perspective*, *id.* at 359.
- (9) Mulder and Swart, *Sub-Regional Arrangements: The Benelux and the Nordic Countries*, *id.* at 393.
- (10) Ellis and Pisani, *The United States Treaties on Mutual Assistance in Criminal Matters*, *id.* at 403.
- (11) Zagaris, *Gathering Evidence from and for the United States*, *id.* at 457.

Publications about the Japanese Criminal Justice System

- (1) Summary of the White Paper on Crime 1998
- (2) Criminal Justice in Japan : various publications
- (3) Prison Administration in Japan
- (4) The Community-Based Treatment of Offenders System in Japan

UNAFEI Publications

- (1) UNAFEI Resource Material Series No. 51
- (2) Adult Probation Profiles in Asia
- (3) Criminal Justice Profiles of Asia
- (4) UNAFEI Pamphlet

Others

- (1) 114th International Seminar lectures and presentation papers
- (2) Pamphlets, leaflets, etc from various criminal justice institutions

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THAILAND-UNAFEI JOINT SEMINAR

The Thailand-UNAFEI Joint Seminar was held in Bangkok under the theme of “Community and Victim Involvement in Criminal Justice Administration” from 13 to 16 December 1999. The Government of the Kingdom of Thailand, through the Office of the Attorney General, and UNAFEI organized the Joint Seminar.

The Joint Seminar was attended by high-ranking Thai government officials, representing all sectors of the criminal justice system. The UNAFEI delegation comprised of the Director, Deputy Director, four professors and an officer of the National Police Agency of Japan.

The Joint Seminar consisted of the below-mentioned sessions, subdivided into presentations by UNAFEI and Thai representatives, and panel discussions.

Session 1	Community and Victim Involvement in Crime Prevention
Session 2	Community and Victim Involvement in Investigation
Session 3	Community and Victim Involvement in Prosecution
Session 4	Community and Victim Involvement in Trial
Session 5	Community and Victim Involvement in Corrections
Session 6	Community and Victim Involvement in Rehabilitation

The Joint Seminar concluded with a summary of each session and an oral presentation of the resulting recommendations for the betterment of the Thai criminal justice system, as formulated by each session.

INFORMATION ABOUT FORTHCOMING PROGRAMMES

Training Programmes

1. The 115th International Training Course

The 115th International Training Course entitled “Current Issues in Correctional Treatment and Effective Countermeasures” is scheduled to be held from 8 May to 9 July 2000. The shortened duration of this Course is a result of UNAFEI’s participation in the Tenth United Nations Congress for the Prevention of Crime and Treatment of Offenders in Vienna, Austria, from 10 April to 17 April 2000. The 115th International Training Course will examine current trends and issues in correctional treatment, including the improvement of prison conditions and the effective transfer of prisoners through the development of bilateral and multilateral treaties.

Rationale

Correctional administration in the world has been developing and attaining good results. However, in recent years, it is true that many countries are confronted with important issues such as overcrowding in correctional facilities, improvement of prison conditions, increase of drug-related offenders and a shortage of effective treatment programmes.

In this connection, these issues facing correctional treatment are not necessarily the same for each country, and are always changing. Those who are involved in correctional administration should pay attention to the changes in such issues, and must examine quick and effective countermeasures for them. When effective countermeasures against such issues are discussed, analyzing problems at the stage of their implementation in correctional facilities is required. It is considered important that countermeasures be examined integrally; rehabilitating offenders at each stage from policing to prosecution, trial and reintegration into the community.

Reviewing current issues in the correctional treatment of Asian-Pacific countries, the following issues are deemed important. First, there is the problem of overcrowding faced by many countries. In exploring any solution to this problem, analyzing its cause and studying countermeasures towards reducing overcrowding are required. However, as longer terms of detention for unsentenced inmates, and ineffective options for non-institutional treatment, can be considered two of the major causes of overcrowding, countermeasures such as speedy criminal procedures and effective use of alternative measures to imprisonment need to be discussed.

Second is the problem of improvement of prison conditions. On this point, the Standard Minimum Rules for the Treatment of Prisoners (hereinafter called the Rules) adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, defines the standard of institutional treatment (including prison conditions) to be satisfied by each country. However, many countries are confronted with problems which hinder the fulfillment of this standard. In this connection, it is important to analyze what are the factors which impede the implementation of the Rules and to examine effective

countermeasures for them. In addition, as how to control the health of inmates (including HIV positive inmates) has become an important issue, this point should also be discussed.

Third is the problem of the treatment of convicted prisoners. Recently, it has been recognized that the development and promotion of effective treatment methods for problematic prisoners is becoming more and more necessary. With the international tendency towards borderless crime, foreign prisoners are increasing in number; with different life customs, languages and difficulty in communication becoming significant treatment issues. In addition to the development and promotion of treatment methods, bilateral or multilateral conventions on the transfer of foreign prisoners is one solution to this problem in institutional treatment. Therefore, issues concerning the ratification and implementation of such conventions should also be discussed in this context.

The treatment of drug related prisoners is still a significant problem requiring address. Similarly, gender differences in the treatment of prisoners requires equal attention. Thus, in order to implement the effective treatment of prisoners who are often found to have problems in their treatment, such as foreign, drug related or female prisoners, it is necessary to analyze their characteristics and needs, and examine effective treatment methods in accordance with them.

Giving due consideration to the above rationale, this International Training Course purports to explore the promotion and development of correctional administration in each of the participating countries. By clarifying the actual situation of and problems in the current issues faced in the Asia-Pacific region, and examining their effective countermeasure, we can work towards a solution. Accordingly, the following items will be among the major topics to be discussed:

- (1) Actual situation and problems of overcrowding and their countermeasures
 - a) actual situation of overcrowding and analysis of its causes
 - b) countermeasures for alleviating the long-term detention of unsentenced inmates
 - c) effective use of alternative measures to imprisonment
- (2) Actual situation and problems of prison conditions and their countermeasures
 - a) implementation of the Rules in each participating country in regard to food, clothing and housing
 - b) factors impeding satisfaction of the Rules and their effective countermeasures
 - c) actual situation of health control for inmates and measures for improvement
- (3) Current trends of prisoners and their problems; countermeasures for their treatment
 - a) foreign prisoners and issues of their transfer
 - b) drug-related prisoners
 - c) female prisoners
 - d) others

2. The 116th International Training Course

The 116th International Training Course tentatively entitled “Countermeasures against Transnational Organized Crime - with Special Emphasis on New Investigative Methods” is scheduled to be held from 29 August to 18 November 2000. The 116th International Training Course will examine current trends and issues in investigating transnational organized crime, particularly the expansion of investigative techniques in the areas of electronic surveillance, controlled delivery, undercover operations and tracing crimes.

Other Activities

1. Fifth Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China

The Fifth Special Seminar for Senior Officials of Criminal Justice in the People’s Republic of China, “Participation of the Public and Victims in Criminal Justice Administration”, is scheduled to be held at UNAFEI from 29 February to 16 March 2000. Around ten senior criminal justice officials and UNAFEI faculty will discuss contemporary problems faced by China and Japan in relation to the above theme.

ADMINISTRATIVE NEWS

Overseas Trips by Staff

Mr. Mikinao Kitada (Director), Mr. Masahiro Tauchi (Deputy Director), Mr. Hiroshi Iitsuka (Professor), Mr. Chikara Satou (Professor), Mr. Shinya Watanabe (Professor) and Mr. Shoji Imafuku (Professor) represented UNAFEI at the Thailand-UNAFEI Joint Seminar on "Community and Victim Involvement in Criminal Justice Administration", in Bangkok, Thailand, from 13 December to 16 December 1999.

Mr. Masahiro Tauchi (Deputy Director) and Mr. Hiroshi Tsutomi (Professor) represented UNAFEI at the "8th Regional Training Course on Effective Countermeasures against Drug Offenders and the Advancement of Criminal Justice Administration" convened by the Office of the Narcotics Control Board (ONCB), Thailand. Mr Tauchi and Mr. Tsutomi presented expert lectures on the role of the UNDCP in narcotics law enforcement, and the work of the ONCB in this regard. The Training Course was held in Thailand from 16 January to 29 January 2000.

Mr. Keiichi Aizawa (Professor) and Mr. Shoji Imafuku (Professor) presented at a conference on "Cooperation in Community-based Corrections in 2000", held in Pattaya, Thailand, 21 February to 22 February 2000. Mr. Imafuku then traveled to Singapore to conduct research on community-based treatment systems in the field of corrections between 23 February to 25 February 2000. The results of this research will be published by UNAFEI at a later date.

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