

# UNAFEI NEWSLETTER



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FOR THE PREVENTION OF CRIME  
AND THE TREATMENT OF OFFENDERS

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## LETTER FROM THE DIRECTOR

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It is my privilege to inform the readers of the successful completion of the 111th International Seminar on, "The Role of Police, Prosecution and the Judiciary in the Changing Society" from 18 January to 19 February 1999.

In this Seminar, we welcomed 19 overseas and 6 Japanese participants: 13 from Asia, 3 from Latin America and 3 from Africa. They included police officials, public prosecutors, judges and other high-ranking officials.

As this newsletter will demonstrate, this Seminar was definitely 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 this five-week period, the participants examined most diligently and comprehensively recent manifestations of crime which have been transformed by social development such as industrialization, urbanization and advancements in science and technology. This was accomplished primarily through the comparative analysis of the current situation and problems in the participating countries. Our in-depth discussions enabled us to put forth effective and practical solutions to emerging problems in the changing society.

Many countries recently have seen an increase in and aggravation of traditionally recognized crimes such as economic crimes, drug crimes, firearms related crimes, corruption and juvenile delinquency. The threat of such crimes has become even greater in light of the increasing tendency of internationalization and links with organized crime. Moreover, newly recognized manifestations of crime, such as computer crime and environmental crime, further complicate the present-day nature of crime.

While crime control is an issue concerning society as a whole, the criminal justice system, particularly the police, prosecution and the judiciary, is vested with a particular duty in this regard. In short, issues of prime importance include more readily identifying the commission of crimes; clearing cases without fail; conducting prompt and appropriate investigations; collecting and securing sufficient evidence for prosecution; ensuring fair and efficient judicial proceedings; and punishing offenders appropriately.

This Seminar provided a forum for the exchange of information and views on how the changes presented by modern society have transformed significantly the nature of crime as well as the response required from the criminal justice system. We have found that there are many common problems at investigation, prosecution and trial stages though legal frameworks and systems vary from country to country. We then explored possible solutions for these common problems through frank and deep discussions in the general discussion sessions. As a result, we were able to produce a number of valuable and meaningful recommendations with regard to the role of police, prosecution and the judiciary.

Our common interest in dealing with the challenges of the changing society motivated our

in-depth study and produced results beneficial to us all. I have no doubt that the outcome produced in this Seminar will enable all of us to face such challenges more resolutely.

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 hearty 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 their society as a whole.

Finally, I would like to reiterate my best regards to the participants of the 111th 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 continue to grow for years to come.

February 1999



*Toichi Fujiwara*

Director, UNAFEI

**THE 111TH INTERNATIONAL SEMINAR**  
**“THE ROLE OF POLICE, PROSECUTION AND THE JUDICIARY IN THE**  
**CHANGING SOCIETY”**

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**Seminar Rationale**

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The phenomenon of crime is intricately related to every element of society: social, economic and cultural. Recent manifestations of social development such as urbanization, industrialization and advancements in science and technology have transformed further the nature of crime. Of course, from country to country, the impact of such factors differs. Nonetheless, many countries have seen recently an increase in and aggravation of traditionally recognized crimes such as economic crimes, drug crimes, firearms-related crimes, corruption and juvenile delinquency to cite a few. The threat of such crimes has become even greater in light of the increasing tendency of internationalization and links with organized crime. Moreover, newly recognized manifestations of crime, such as computer crime and environmental crime, further complicate the present-day nature of crime.

While crime control is an issue concerning society as a whole, the criminal justice system, particularly the police, prosecution and the judiciary, is vested with a particular duty in this regard. In short, the role of the criminal justice system is twofold: control and prevention. As to the former, it is needless to say that issues of prime importance include more readily identifying the commission of crimes; clearing cases without fail; conducting prompt and appropriate investigations; collecting and securing sufficient evidence; ensuring fair and efficient judicial proceedings; and punishing offenders appropriately.

The criminal justice system in every nation is exerting the utmost effort to counter the aforementioned crimes. However, many problems still remain. For instance, the very nature of such crimes impairs detection. Moreover, even when identified, many countries experience a low clearance rate of offenders, particularly as to complex crimes. Additionally, difficulties in collecting evidence, thereby preventing exhaustive investigations; trial delays; and uncooperative witnesses further frustrate the criminal justice process and contribute to low conviction rates. Furthermore, regarding international crimes, international cooperation mechanisms, such as the transfer of offenders and mutual assistance in criminal investigations, are not always implemented in a timely and reliable manner. As a result of such circumstances, a considerable number of offenders evade justice. One cannot say, therefore, that the criminal justice system is meeting fully its expected functions.

In addition, newly recognized manifestations of crime pose a serious problem to the criminal justice system of many countries as proper legislation is not yet in place to tackle such crime and investigation methods are insufficient. Thus, these criminal justice systems are not always able to effectively counter such crime.

Therefore, discussion is necessary for the development of practical and feasible countermeasures which would enable the realization of the following: enhancing investigative systems; conducting exhaustive investigations; effective prosecution; more speedy investigations and trials; appropriate sentencing; cooperation from the citizenry; promoting international cooperation; promulgating new legislation and/or amending existing laws; and improving such

sanctions as confiscation and divestiture of interests.

The criminal justice system also has a significant responsibility towards the prevention of crime. Thus proactive factors as legislative reform and enhancing public cooperation schemes should also be given due consideration in this regard. For example, regulation on the possession of firearms would contribute significantly to curtailing firearms-related crime. Similarly, police activities rooted in the community which fortify collaboration between families and schools and provide guidance for juveniles on the streets would assist in tackling juvenile delinquency before it even begins.

As evidenced above, the changes presented by modern society have transformed significantly the nature of crime as well as the response required from the criminal justice system. It is, thus, imperative for relevant agencies, particularly police, prosecution and the judiciary, to address these ever changing issues from a reactive, as well as a proactive, approach.

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## Seminar Summary

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### **Lectures**

In total, 10 lectures were presented: 7 by visiting experts and 3 by *ad hoc* lecturers.

Five distinguished criminal practitioners from abroad served as UNAFEI visiting experts for an average of one week. They lectured on issues relating to the main theme. They also contributed significantly to the Seminar by encouraging discussions after their own lectures, participating in the discussions of the other programmes, and conversing with the participants on informal occasions. Additionally, 3 *ad hoc* lectures were delivered by senior officials of the Government of Japan.

The lecturers and lecture topics are listed on page 6.

### **Individual Presentations**

During the first two weeks, each participant delivered a one-hour Individual Presentation, 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 GROUP TRAINING COURSE IN CRIME PREVENTION" and distributed to all the participants. The titles of these Individual Presentation papers are listed on pages 7 and 8.

### **General Discussion Sessions**

Group Discussion Sessions held in the conference hall examined the subtopics of the main theme. In order to conduct each session effectively and smoothly, the UNAFEI faculty selected individuals to serve as Board Members for the subtopics based on their responses to a questionnaire previously distributed. Three "Boards" were established. They comprised Seminar participants and faculty members. Selected participants served as chairpersons, co-chairpersons, rapporteurs, or co-rapporteurs; and faculty members served as advisors.

The Board's primary responsibility was to explore and develop further their designated topic and its corresponding sub-topics in the General Discussion Sessions. In the conference hall, all the participants and the UNAFEI faculty seriously studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth.

After the General Discussion Sessions, each group drafted a report concerning the discussions conducted 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 listed on pages 9 to 19.

### **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 20 through 21.

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**Lecture Topics**

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***Visiting Experts' Lectures***

- 1) Dr. M. Enamul Huq (Bangladesh)
  - The Role of Police, Prosecution and Judiciary in the Changing Society
- 2) Judge Suriakumari Sidambaram (Singapore)
  - The Role of Police, Prosecution and the Judiciary in the Changing Society-The Singapore Approach
- 3) Mr. Suchart Traiprasit (Thailand)
  - Public Prosecutor in the Changing Society
- 4) Judge Rya W. Zobel (United States)
  - An Overview of the Right to Speedy Trial in Criminal Cases in the United States
  - An Overview of the United States Sentencing Guidelines
- 5) Judge Lilia C. Lopez (Philippines)
  - Towards a Responsive Criminal Justice System in the Philippines
  - Management of a Criminal Trial: The Philippine Experience

***Ad Hoc Lectures***

- 1) Mr. Fumitaka Horiuchi (Japan)
  - The Guideline of the “Countermeasures for Strengthening Investigation Competency in Recent Times”
- 2) Judge Yasuro Tanaka (Japan)
  - Toward a More Effective and Efficient Administration of Criminal Justice: Speedy Trial
- 3) Mr. Kunihiro Matsuo (Japan)
  - Criminal Justice Issues

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### Individual Presentation Topics

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#### *Overseas Participants*

- 1) Ms. Mansouri Djahida (Algeria)
  - The Criminal Justice System in Algeria
- 2) Ms. Rebeka Sultana (Bangladesh)
  - The Role of Police, Prosecution and the Judiciary in the Changing Society
- 3) Mr. Carlos Antonio Guimaraes de Sequeira (Brazil)
  - Crime in a Changing Society: An Overview of the Situation in Sao Paulo
- 4) Mr. Chen, Wen-Xing (China)
  - On Prevention of Corruption in China
- 5) Mr. Ocampo Eljaiek Libardo Augusto (Colombia)
  - The Role of Police, Prosecution and the Judiciary in the Changing Society
- 6) Ms. So Chit-Kwan, Isabel (Hong Kong)
  - The Role of Police, Prosecution and the Judiciary in the Changing Society
- 7) Mr. Paramvir Singh (India)
  - Glimpses of Crime and Criminal Law in India: The Role of Police, Prosecution and the Judiciary in the Changing Society - The Indian Perspective
- 8) Mr. Mangasi Situmeang (Indonesia)
  - Strategic Position of the Prosecution Service in the Integrated Criminal Justice System of Indonesia
- 9) Mr. Deng Phomsavanh (Laos)
  - Some Aspects of Crime Prevention: A perspective from the Office of the Prosecution in the Lao PDR
- 10) Mr. Selvanathan Shanmugham (Malaysia)
  - The Role of Police, Prosecution and the Judiciary in the Changing Society
- 11) Mr. Dias Francisco Balate (Mozambique)
  - Crime Prevention in Mozambique
- 12) Mr. Karki, Mohan Bahadur (Nepal)
  - The Role of Police, Prosecution and the Judiciary in the Changing Society
- 13) Mr. Muhammad Arif Chaudhry (Pakistan)
  - Problems/Difficulties for Better Detection of Crime and More Thorough Investigation
  - The Role of Police, Prosecution and the Judiciary in the Changing Society
- 14) Ms. Fuentes Rivera, Ana Maria (Peru)
  - The Role of Police, Prosecution and the Judiciary in the Changing Society
- 15) Mr. Lee, Hong-Hoon (Republic of Korea)
  - The Initiative for Safe Schools in Korea: The Action for Juvenile Protection of the Korean Prosecutor's Office
- 16) Mr. Maurice Benoit Tyte Morin (Seychelles)
  - The Criminal Justice System



- 17) Mr. Thabrew Mahadura Thilak Ravindra (Sri Lanka)
  - The Role of Police, Prosecution and the Judiciary in the Changing Society
- 18) Mr. Chalernsak Pattarasumantg (Thailand)
  - The Role of Criminal Justice System in Control and Prevention of Narcotic Crimes in Thai Changing Society
- 19) Mr. Ho Trong Ngu (Viet Nam)
  - Overview of Criminal Situation: Reasons and Preventative Measures in Viet Nam Today

***Japanese Participants***

- 20) Mr. Morio Kubota (Japan)
  - The Trend of Crimes Committed by Visiting Foreigners and the Role of the Public Prosecutor
- 21) Mr. Hideharu Arimitsu (Japan)
  - The Role of Police, Prosecution and the Judiciary in the Changing Society
- 22) Ms. Takako Naomoto (Japan)
  - Probation and Parole in Japan
- 23) Mr. Kazunori Nakada (Japan)
  - The Discretionary Power of Prosecution and the Prevention of its Abuse
- 24) Mr. Yoshihisa Denda (Japan)
  - The Role of Police, Prosecution and the Court in the Fluctuating Society: The Current Situation of Court Interpretation of Foreigners' Cases in Japan
- 25) Mr. Shigeru Kawarazuka (Japan)
  - Police Activities in Japan

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### General Discussion Sessions

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The following section summarizes the General Discussion Session reports. The full text of the reports will be included in UNAFEI Resource Material Series No. 55.

#### Topic 1      **EFFECTIVE MEASURES FOR BETTER DETECTION OF CRIME AND MORE THOROUGH INVESTIGATIONS**

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<b>Chairperson</b>	Mr. Muhammad Arif Chaudhry	(Pakistan)
<b>Co-Chairperson</b>	Mr. Maruice Benoit Tyte Morin	(Seychelles)
<b>Rapporteur</b>	Mr. Paramvir Singh	(India)
<b>Co-Rapporteur</b>	Ms. So Chit-Kwan, Isabel	(Hong Kong)
<b>Other Board Members</b>	Mr. Shigeru Kawarazuka	(Japan)
	Ms. Rebeka Sultana	(Bangladesh)
<b>Advisers</b>	Professor Tomoko Akane	(UNAFEI)
	Professor Ryosuke Kurosawa	(UNAFEI)
	Professor Kayo Konagai	(UNAFEI)

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#### *Report Summary*

### **I.      ENHANCING INVESTIGATIVE SYSTEMS**

#### **A.    General Problems of Police Investigation:**

- 1. Political and Administrative Influence**
- 2. Sub-standard and Inadequate Investigative Personnel**
- 3. Lack of Equipment and Scientific Aids in Investigation**
- 4. Lack of Co-operation and Co-ordination amongst Investigative Agencies**

#### **B.    Recommended Solutions:**

##### **1.    Political and Administrative Influence:**

- a) Adoption of a police model whereby the political executive does not have unhindered/direct control over police organizations and where institutionalized safeguards exist to insulate police organizations from undue political/administrative influence. The Japanese model is a good example of the foregoing and is structured so that the National Public Safety Commission and National Police Agency operate at the national level to oversee/monitor the functioning of the police and the Prefectural Public Safety Commissions perform the same function at the prefecture level.
- b) The police chiefs of a state/province should have fixed tenure so that they don't have to work under the threat of transfer.
- c) Promotions and disciplinary matters relating to higher ranking police officers should be under the control of such bodies as recommended in sub-para a) above.
- d) Establishment of specialized independent or autonomous investigative organizations which should be immune from political/administrative influence.

**2. Sub-standard and Inadequate Investigative Personnel :**

- a) Sub-standard investigative personnel:
  - (i) Attractive conditions of service and salaries must be ensured for police personnel. A recruitment system which does not reduce opportunities for promotion, demoralize the service and offer poor service conditions should be sought. The minimum educational qualifications should be gradually increased even for the lowest police officers. Independent/ autonomous Police Recruitment Boards should be established with a mandate to make quality recruitment strictly on merits.
  - (ii) Modern training institutions must be established in sufficient numbers to provide good quality training at the time of joining service, through in-service training/ refresher courses etc. Attractive training allowances must also be granted.
- b) Inadequate Investigative personnel:
  - (i) Police-public ratio must be constantly upgraded through periodic sanctions of new posts and through systematic annual recruitment.
  - (ii) Separate crime investigative wings must be established at every police station level, district level etc. so that investigative staff are not diverted to other police duties.
  - (iii) The services of civilian volunteers for assisting in multifarious police duties must be harnessed, so that police manpower can be saved and diverted for investigative functions.
  - (iv) Work-loads of investigative officers must be constantly assessed and a system for measuring same implemented.

**3. Lack of Equipment and Scientific Aids to Investigation:**

- a) The system of Annual Modernization Schemes must be introduced and strengthened so that comprehensive assessments of equipment required by police forces are made every year, and ear-marked funds released for the same annually.
- b) Adequate number of Forensic Science Laboratories and Mobile Forensic Science Laboratories must be established.

**4. Lack of Co-operation and Co-ordination amongst Investigative Agencies:**

- a) Establishment of Co-ordination Committees wherein all investigative agencies are represented at meetings, at regular intervals.
- b) Establishment of joint training programs amongst different investigative agencies.
- c) Exchange of data on crimes and criminals amongst different investigative agencies.

**II. ENHANCING DETECTION OF CRIME AND MORE THOROUGH INVESTIGATIONS**

**A. General Problems on Better Detection and Thorough Investigation of Crimes:**

- 1. Insufficient Development/Use of Available Data /Measures
- 2. Problems related to Interrogation in Eliciting Confessions and Unearthing Leads for Investigation etc.
- 3. Lack of Co-operation from General Public and Witnesses
- 4. Internationalization of Crime as a Hindrance to Investigations

**B. Recommended Solutions:**

**1. Insufficient Development/Use of Available Data /Measures**

a) Lack of systematically organized data/record and intelligence on crimes and criminals:

- (i) To have campaigns launched to have exhaustive classified documentation relating to criminals and their crimes.
- (ii) To have suitable computer software designed to analyze criminal records and intelligence data.
- (iii) To strengthen intelligence organizations so that they are able to provide well organized information about important criminals, criminal organizations and their activities.

b) Insufficient use of available investigative methods/measures:

- (i) To have suitable in-service refresher courses devised with regard to the usefulness of the existing investigative methods/measures.
- (ii) To associate investigators with expert investigators/investigating organizations that are making optimal use of existing investigative methods/techniques, for training.
- (iii) To have comprehensive handouts of various investigative methods distributed to investigative officers.
- (iv) To have periodic lectures delivered by experts in different fields to investigative officers to bring them up to date on different methods.

**2. Problems related to Interrogation Skills in Eliciting Admissible Confessions and Unearthing Leads for Investigation, etc.:**

- (i) To improve skills by training and to enforce criminal and disciplinary actions on officers who have used any third degree methods/torture on accused.
- (ii) Implement safeguards to ensure voluntariness of confessions by using video-taped interviews, issuing detailed and clear instructions to investigative officers for interrogation purpose.
- (iii) Investigators should be deployed to verify the facts confessed to during the interrogation and to collect corroborative evidence.

**3. Lack of Co-operation from the General Public/witnesses**

- (i) Undue political and administrative influence must be avoided to ensure the independent, fair and impartial functioning of the police, thereby inspiring confidence in the public.
- (ii) Every effort must be made to improve the quality of police personnel and its performance. Developing interrogation skills is one measure which can improve police image.
- (iii) An attitudinal change must be brought about in the police through refresher courses and through on-the-job instructions and effective supervision by superior officers to adopt a humane/helpful attitude towards the public.
- (iv) The electronic media and the press must be effectively used to highlight the good deeds/achievements of the police.
- (v) Enhanced contact of the police with people at different levels will inspire confidence in the police.
- (vi) Systems must be established whereby complaints against police

- personnel are effectively heard and acted upon.
- (vii) A fair administration of the police must be ensured whereby, while the wrong-doers are not spared from punishment, those who excel in their work are rewarded etc.
  - (viii) Witness Protection Programs must be established whereby suitable protection is provided to witnesses. Victim Assistance Committees may be set up to extend psychological /other support to victims of crime who may also be the prime witnesses in a case.
  - (ix) In case of any attack on a witness by a criminal, it must be ensured that exemplary punishment is imparted.
  - (x) Adequate transportation, boarding and lodging charges must be provided to witnesses.
  - (xi) It must be ensured that witnesses are treated with sensitivity by the police, keeping in mind the time constraints which a witness may have. Mass media must be effectively used to raise awareness amongst the public that their co-operation is needed to combat crime.

#### **4. Internationalization of Crime as a Hindrance to Investigations:**

- a) Difficulties in gathering information/background data from overseas on criminals and crimes:
  - (i) Interpol must be put to effective use for obtaining data on crimes and criminals from foreign countries.
  - (ii) Liaison officers posted abroad may be made optimal use of to collect required bona fide information on crimes and criminals.
  - (iii) To maximize participation of police officers in international conferences on crimes/criminals.
- b) Difficulties in collecting evidence from overseas:
  - (i) The available treaties on Mutual Assistance in criminal matters must be put to optimal use.
  - (ii) Active efforts must be made by police agencies to have necessary diplomatic/ legislative initiatives taken by their governments to conclude bilateral/multilateral treaties with different countries regarding mutual assistance in criminal matters.
  - (iii) To constantly endeavor to extend maximum co-operation to the execution of "Letters Rogatory" received from different countries
  - (iv) To utilize professional experience acquired during international conferences to facilitate matters and encourage co-operation.
  - (v) Necessary amendments in the law of evidence should be considered in order to make admissible the evidence collected by foreign officials.
- c) Difficulties in securing extradition of accused:
  - (i) The available extradition laws, treaties and diplomatic channels must be made optimal use of to achieve extradition of offenders.
  - (ii) Necessary extradition acts must be enacted by countries so that the concerned country can extradite an offender to the requesting State.
  - (iii) All countries facing the problem of internationalization of crime must conclude extradition treaties with all such countries with which they have frequent problems of extradition.

**Topic 2 THE ROLE OF PROSECUTION IN THE CHANGING SOCIETY**

<b>Chairperson</b>	Mr. Morihiro Kubota	(Japan)
<b>Co-Chairperson</b>	Ms. Fuentes Rivera, Ana Maria	(Peru)
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*Report Summary*

**I. INTRODUCTION**

The group comprising prosecutors were asked to deliberate on the topic mentioned above in the general discussion involving the participants of the 111<sup>th</sup> International Seminar of UNAFEI.

The criminal justice system comprising the police, prosecution, judiciary and correctional authorities play an important role in the changing society. The prosecution plays a pivotal role. As we move into the 21<sup>st</sup> century, the prosecution must overcome its existing problems and focus its attention on newly emerging crimes.

**II. LOW CONVICTION RATE**

One of the measurements of an effective and efficient prosecution system is the conviction rate. Countries attaining a low rate of conviction face serious difficulty in the changing society. In order to improve quality in prosecution and the conviction rate, the following proposals were introduced:

**A. Screening**

The adoption of screening was proposed in this seminar. Screening is a process where available evidence in a case is evaluated from the viewpoint of whether there is a reasonable chance of conviction. If there is not, the case is dropped or withdrawn before filing the charges or during trial. Screening should be done for the following reasons:

- (a) to overcome existing problem of low rate of conviction
- (b) to avoid unwarranted prosecution
- (c) to ensure that society's trust in the criminal justice system is not diminished by acquittals ; and
- (d) to ensure convictions

**B. Advice by Prosecutors**

Even though investigation is in the domain of the police, it cannot be disputed that prosecutors can advise the investigators as to the necessity for further investigation. The prosecution and police should show a high degree of cooperation with the aim to combat crime.

**C. Admissibility of confession**

It has come to light that in some jurisdictions confessions from suspects obtained by

investigators are not admissible at trial as evidence to prove guilt. This is arguably a hindrance to fact finding and conviction. Investigators such as police should be allowed to obtain confessions from suspects. However, as a safety measure, such confession should only be admitted if proved to have been made voluntarily.

**D. Appearance of witness**

Non-appearance of witnesses is a serious obstacle to obtaining conviction of defendants in some jurisdictions. To encourage witnesses to appear, the government should make provisions for an allowance to be paid to witnesses. It is also proposed that a witness protection program and immunity for accomplices be introduced in order to obtain testimony against the mastermind.

**III. OVERLOADING OF COURTS AND PROSECUTORS**

**A. Summary proceeding**

As regards this issue, the introduction of summary procedures was proposed for offences which can be dealt with by punishment of less than fine thereby dispensing with the need for formal court proceeding, and dealing with such matters with documents alone.

**B. Administrative measures**

The use of administrative measures for offences such as traffic violations was also proposed. In this regard, fines can be paid in an administrative process and only when the offender fails to pay the fine are criminal procedures instituted.

**C. Plea bargaining**

Plea bargaining between prosecution and defense counsel can be introduced so as to avoid conviction on multiple charges. Prosecution and defense can negotiate for the accused to plead guilty in respect of one charge on the understanding that all other charges will be withdrawn.

**D. Discretionary suspension**

Prosecutors can drop cases even where there is enough evidence to secure conviction before indictment. In the exercise of discretion, prosecutors must consider the offender's character, age, situation, criminal record, the gravity of the offence, the circumstances under which the offence was committed, and conditions subsequent to the commission of the offence.

**E. Discretionary withdrawal**

Prosecutors can withdraw cases from trials even when there is enough evidence to prove guilt if criminal punishment is not necessary for the defendant in view of conduct subsequent to the indictment.

**IV. LACK OF EFFECTIVE COUNTERMEASURES AGAINST NEWLY EMERGING CRIMES**

Newly emerging crimes such as organized crime, economic crime and computer crime need careful attention because conventional law and prosecution methods will not effectively deal with these crimes.

**A. Special legislation**

Since organized criminal groups commit crimes, special legislation criminalizing such groups as well as their membership should be enacted to fight against organized crime.

**B. Anti-money laundering legislation**

With respect to newly emerging crimes, the main purpose is to gain economic benefits. In order to conceal the illicit nature of proceeds of crime, offenders often try to launder their money. Accordingly, anti-money laundering legislation is important so as to track the movement of money and disallow criminals to enjoy their ill-gotten gain.

**C. Confiscation of illicit proceeds**

With the aim to disallow criminals from enjoying the ill-gotten proceeds, laws should be also enacted to confiscate proceeds of crime of both a tangible and intangible nature. To ensure confiscation, a system to freeze such proceeds should be employed.

**D. Presumption against accused – shift of burden of proof**

Laws should be enacted with provisions placing the presumption on the accused to rebut particularly where certain offences are only done with the knowledge of the accused characteristic of proceeds of drug traffickers.

**E. Admissibility of evidence gathered by electronic surveillance**

Since offences can be committed through telecommunication lines, laws should be enacted to allow provisions for electronic surveillance and the admissibility thereof under some conditions. In this context, the interest of the society is more important than the interest of the accused.

**F. Admissibility of evidence gathered by under cover operations**

Laws should be enacted allowing such operations. Further, laws should also be enacted to do away with the need for corroboration because crimes can be committed in secrecy in such cases.

**IV. LOW QUALITY OF PROSECUTORS**

The criteria for appointment of prosecutors should be reconsidered. Individuals employed must be of good quality and recruitment procedures should also be transparent.

On-the-job training not only in substantive law but also in investigation and criminal procedure is necessary.

Treatment for prosecutors should be improved to make their job more attractive.

**V. CONCLUSION**

Concerted effort must be made to improve the prosecution. Failure to do so would cause injustice to the society on behalf of which the public prosecutor acts.



<b>Topic 3                      EFFECTIVE COUNTERMEASURES FOR SPEEDY TRIAL</b>		
<b>Chairperson</b>	Mr. Thabrew Mahadura Thilak Ravindra	(Sri Lanka)
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<b>Advisers</b>	Professor Hiroshi Iitsuka	(UNAFEI)
	Professor Shoji Imafuku	(UNAFEI)

*Report Summary*

## **I.            INTRODUCTION**

In some countries trial delays have reached alarming proportions and this phenomenon has had far reaching consequences. The consequences of a delayed trial are numerous. If the trial is delayed, there is a danger that the real culprit may escape justice due to scattered evidence and consequently the innocent will suffer unnecessary pain. If the defendant is under detention, the damage is more irreparable. Furthermore, a delayed trial will deprive the criminal judgment of the deterrent effects on the offender. The sense of retribution loses its significance when the judgment is delivered after a long passage of time. Additionally, trial delay will increase the number of remand prisoners and cause overcrowding.

The reasons and causes of delay are manifold. Various parties are responsible for the delay: the court, prosecution, defence counsel or the criminal justice system itself. These factors are interrelated.

## **II.        HEAVY CASELOAD ON THE JUDGES/MAGISTRATES**

### **A. Problem**

An increase in crime leads to a considerable number of new cases in the courts at all levels adding to the existing onerous caseload of the courts. An insufficient number of judges, coupled with their dual role of dealing with both civil and criminal cases, creates an inadequate situation for processing criminal matters.

### **B. Countermeasures**

#### **1.        Increase of Judges and Courts**

In order to reduce the heavy caseload on judges, the number of judges and courts should be increased.

#### **2.        Reduction of Cases- Diversion**

The judges' caseload will decrease if the number of cases are reduced. Proper consideration should be given to utilizing alternatives to litigation such as conciliation and mediation in criminal proceedings. In fact, various forms of conciliation and mediation are applied in different countries, either before cases are filed with the courts or with the courts' permission, when they are already pending trial.

#### **3.        Introduction of Arraignment**

Some countries like Britain and the United States have an arraignment system. Under this system, if the accused pleads guilty in the opening proceedings, the facts are admitted and

a sentence can be rendered immediately. This saves a lot of the court's time.

### **III. LACK OF KNOWLEDGE AND EXPERIENCE OF JUDGES**

#### **A. Problem**

Incompetence, ignorance of the law and lack of experience of some judges/magistrates are considered factors in trial delay.

#### **B. Countermeasures**

##### **1. Appointment- High Qualifications and Standards for Appointment**

Various conditions should be taken into consideration in the appointment of judges to improve the quality of judges. The candidate judges should pass a qualifying examination and the qualifying standards should be set fairly high.

##### **2. Training**

Basic training is essential to induct all persons appointed as judges into the profession including those selected from the Bar. Additionally, to keep judges abreast of jurisprudence, they should undergo periodic training programmes. Joint seminars of police, prosecutors and judges should also be held periodically for better cooperation and mutual understanding

### **IV. LACK OF RESOURCES IN THE COURT**

#### **A. Problem**

Because of a tremendous increase in crime and backlog of cases, there has been an enormous rise in the number of criminal cases. However, there has not been a corresponding increase in court personnel, and court facilities.

#### **B. Countermeasures**

##### **1. Adequate Support Services**

Adequate support services for judges should be provided by increasing the number of court clerks, court stenographers, court interpreters and research officials should be provided.

##### **2. Modern Office Equipment**

Modern office equipment such as tape recorder, computer, fax and copy machine should also be available to the court.

### **V. SPEEDY TRIAL PROCESS—FREQUENT ADJOURNMENTS**

#### **A. Problem**

In many countries, cases are generally tried on a piecemeal basis. This means that the trial proceedings are conducted in sessions spread out over a period of time. Hearing is set on one day and continued or postponed to another day until each party completes presenting their respective positions. Consequently, particularly in complicated cases in which many witnesses must be examined, it takes long time to complete the trial.

#### **B. Countermeasures**

##### **1. Continuous Trial**

The court should make appropriate schedules for trials by seeking the cooperation of the parties concerned. More than one court session should be allocated in advance and most desirably on consecutive trial dates.

##### **2. Strict Non- adjournment Policy**

A party might request the adjournment of a hearing based on improper reasons, such as insufficient preparation. The court should carefully examine motions and not easily grant adjournment of a trial date without strong grounds.

##### **3. Time Limits for Completing Trial**

Providing a time limit for completing trial is a more straightforward method to a speedy trial. However, the difficulty lies in the fact that not all cases have the same level of complexity. Some cases are extremely complicated and need a large amount of time to examine witnesses.

## **VI. LENGTHY PRELIMINARY HEARING (INQUIRY)**

### **A. Problem**

In some countries, there is a preliminary hearing or preliminary inquiry by a magistrate before the case is referred to the trial court. Its purpose is to determine whether the Crown has sufficient grounds for putting the accused on trial. However, some problems can be pointed out. The hearing takes a long time amounting to about one to two years to complete. The preliminary hearing creates a lot of unnecessary work, which is duplication to the trial.

### **B. Countermeasures**

1. Disallowing Cross-examination at the Stage of Preliminary Hearing
2. Restricted to Complicated or Controversial Cases
3. Abolition

## **VII. INADEQUATE PREPARATION BY THE PROSECUTOR AND DEFENCE COUNSEL**

### **A. Problem**

Heavy caseload of prosecutors and defence counsels will lead to inadequate preparation for trial, which results in adjournments.

### **B. Countermeasures- Pre-trial Conference**

The pre-trial process in criminal proceedings has drawn much attention recently. At pre-trial conferences, the prosecution and defence are urged to disclose their respective cases and evidence, and are urged to agree on facts which are not in dispute. By conducting the conferences, the courts as well as both parties can identify real factual and legal issues, and will have reasonable prospects for the trial.

## **VIII. DILATORY TACTICS OF DEFENCE COUNSEL**

### **A. Problem**

In many countries, some defence counsel use dilatory tactics by filing unnecessary motions for the review of court orders, prolong the cross-examination of a material witness, and present corroborative witnesses to prove matters that have already been established, etc.

### **B. Countermeasures- Sanctions against Defence Counsel**

In addition to the utilization of above mentioned pre-trial conference, sanctions against defence counsel should be considered. For dilatory tactics the court can award costs against the defence counsel and also can take steps for cancellation of license in intervention with the Bar council.

## **IX. DELAY OF EXPERT REPORT**

### **A. Problem**

In cases where a trial is based on chemical or medical reports, a trial can be delayed if it takes time for these reports to be supplied. Delay of these experts reports occur quite often in some countries.

### **B. Countermeasures-Time Limits for Submitting the Report**

Time limits for submitting the medical report except where the analyst/chemical reports required.

## **X. CONCLUSION**

The role of judges in dispensing justice is a sacred one demanding that justice is meted out to everyone concerned in the legal process as speedily as possible. It is often said that justice delayed is justice denied. However, for the sake of achieving speedy justice, the quality of justice should not be sacrificed. There is a need to maintain a balance between speedy trial and fair trial.

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**Observation Visits**

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<i><u>Date</u></i>	<i><u>Agency/Institution</u></i>	<i><u>Main Persons Concerns</u></i>
Jan. 25	Traffic Control Center and Tokyo Metropolitan Police Department	• Mr. Hirosaburo Ohtomo Assistant Advisor, Liaison Officer Public Relations Division • Mr. Shinsuke Saiki Liaison Officer, Public Relations Division
Jan. 28	Ministry of Justice	• Mr. Shuji Kitaoka State Secretary for Justice
Jan. 28	Tokyo District Public Prosecutors Office	• Mr. Akihiro Kubota Deputy Director, General Affairs Department
Feb. 2	Supreme Court	• Mr. Tsugio Kameyama Justice • Mr. Naoto Otani Chief of the 1 <sup>st</sup> Division Criminal Affairs Bureau, General Secretariat
Feb. 15	Hiroshima-Kansai Study Tour	

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**Special Events**

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- Jan. 18 *Welcome Party*
- Jan. 27 *End of I.P.s*  
The participants celebrated the completion of their Individual Presentations in Lounge B.
- Jan. 28 *Courtesy Visit to Minister of Justice*  
State Secretary for Justice Mr. Shuji Kitaoka greeted the participants during their visit to the Ministry of Justice.
- Jan. 28 *Reception by Vice-Minister of Justice*  
After visiting the Ministry of Justice, a reception was held by Vice-Minister of Justice, Mr. Akio Harada at the Lawyers Club.
- Jan. 21, 26, 29, *Japanese Conversation Classes*  
The overseas participants attended Japanese conversation classes provided by JICA. They learned practical Japanese expressions. The Sensei (teacher) was Ms. Hiroko Nakatani. Iroiro Arigato Gozaimashita.
- Feb. 1 *VPOs' International Training*  
Ten Volunteer Probation Officers visited UNAFEI for an International Training Program. It was jointly organized by UNAFEI and the Rehabilitation Bureau of the Ministry of Justice of Japan. A discussion session and friendship party were arranged to exchange views between VPOs and the participants.
- Feb. 2 *Courtesy Visit to Supreme Court Justice*  
During their visit to the Supreme Court, the Honorable Justice Kameyama received the participants in his private chambers.
- Feb. 2 *ACPF Tokyo Minoru-kai Party*  
ACPF Tokyo Minoru-kai Branch, affiliated with ACPF Headquarters, hosted a dinner party at the 59<sup>th</sup> floor of the Sunshine 60 Building in Ikebukuro in honor of the participants.
- Feb. 10 *Reception by UNAFEI Alumni Association of Japan*  
The participants were invited to a dinner party hosted by the UNAFEI Alumni Association of Japan at the Lawyers Club.
- Feb. 15-17 *Hiroshima-Kansai Study Tour*  
Hiroshima: On their first day, the participants visited Peace Memorial Museum and Peace Memorial park in Hiroshima.  
Kyoto: On their third day, the participants went on a guided bus tour to Nijo Castle, Kinkakuji Temple and the Kyoto Imperial Palace.
- Feb. 18 *Farewell Party*

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**Reference Materials Distributed**

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**Statutes of Japan**

- (1) Criminal Justice Legislation of Japan

**Publications about the Japanese Criminal Justice System**

- (2) Summary of the White Paper on Crime 1997
- (3) Prison Administration in Japan
- (4) The Community-Based Treatment of Offenders System in Japan
- (5) Ministry of Justice

**UNAFEI Publications**

- (6) Extracts from UNAFEI Resource Material Series Nos. 37,38,42,49 and 53
- (7) Criminal Justice Profiles of Asia

**Others**

- (8) 111th International Seminar lecture and presentation papers
- (9) Pamphlets, leaflets, etc., from various criminal justice institutions

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## INDIA-UNAFEI JOINT SEMINAR

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The India-UNAFEI Joint Seminar was held in Delhi under the theme of “Crime Prevention and Control Strategies in the Fight against Organized Crime” from 14 to 17 December 1998. The Government of the Republic of India through the National Institute of Criminology and Forensic Science of the Ministry of Home Affairs and UNAFEI organized the Joint Seminar.

The Joint Seminar was attended by high-ranking Indian government officials, representing the criminal justice system. The UNAFEI delegation comprised the Director, Deputy Director, four professors and the First Secretary of the Embassy of Japan in India.

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

- |           |   |
|-----------|---|
| Session 1 | An overview of Organized Crime  |
| Session 2 | Effective Investigation and Prosecution against Organized Crime                                 |
| Session 3 | Effective Trial against Organized Crime   |
| Session 4 | Effective Treatment a against Organized Crime   |
| Session 5 | Countermeasures against Drug-related Crime  |
| Session 6 | Countermeasures against Organized Crime relating to Firearms, Explosives, and Economic Offences |

The Joint Seminar concluded with the adoption of draft recommendations for the betterment of the Indian criminal justice system, as formulated by each session.

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## INFORMATION ABOUT FORTHCOMING PROGRAMMES

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### *Training Programmes*

#### **1. The 112<sup>th</sup> International Training Course:**

The 112<sup>th</sup> International Training Course, "Participation of the Public and Victims for More Fair and Effective Criminal Justice Administration", is scheduled to be held from 12 April to 4 July 1998. Participants are expected to explore measures to enhance participation of public and victims in all aspects of criminal justice administration from crime prevention, to community-based treatment of offenders, to develop a more fair and effective criminal justice administration.

#### **Rationale**

In recent years, society has been gravely threatened by crimes which have been rapidly increasing in number and seriousness. Notably, they are becoming more complex and sophisticated in many countries. In such circumstances, it is indispensable for the sound development and prosperity of a country to effectively prevent and control crimes through fair and effective administration of criminal justice. It should be noted, however, that it can not be achieved solely by the government's efforts, but requires public participation and cooperation. Public participation and cooperation play an important role in all aspects of criminal justice administration including crime prevention (e.g., community policing and activities for enhancing public awareness); investigation and prosecution (e.g., witness and public participation in the review of non-prosecution decisions); judiciary (e.g., trial by lay judge); institutional treatment (e.g., board of visitors, chaplain and cooperation of business sector in prison labor), and community-based treatment (e.g., volunteer probation officer and halfway house). Regrettably, many countries have not successfully obtained such participation and cooperation due to little public confidence in the criminal justice administration, community disorganization following rapid urbanization, and lack of policies relating to public participation and cooperation.

In order for the criminal justice administration to be fair and effective and obtain public confidence and cooperation, the protection and promotion of rights and interests of victims of crime (hereinafter called victims) in the criminal justice process are very important, not to mention the importance of fair and humane treatment of offenders. It is said, however, that rather little attention is given by the criminal justice system to the protection of rights and interests of victims. In this regard, there are growing concerns that the administration of the criminal justice system results in unfair treatment of victims.

Assistance and protection of rights of victims are, in some jurisdictions, provided at all stages of the criminal justice process from pre-trial to post-trial as the following examples illustrate: a right to make a complaint, private prosecution, inquest of prosecution, mental assistance after an incident, victim compensation programme, victim-offender mediation programme, protection of and support to victim as a witness, special arrangement for minors and victims of sex crimes in terms of criminal procedure, notification of information about imprisoned offenders, participation in decision-making of early release, and a programme to



prevent offenders from contacting victims. Although some countries in Europe, North America and other regions have taken initiatives in this field, measures for assistance and protection of victims are still lacking in many countries including Asian and African countries.

Public participation and cooperation have been discussed extensively at the national, regional, and international levels. The United Nations has also produced several minimum standard rules emphasizing the significance of public involvement. Moreover, in 1985, the General Assembly of the United Nations adopted "the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" aimed at developing comprehensive assistance services for victims. In addition, community involvement in crime prevention as well as fairness to victims and offenders in the criminal justice process are expected to be substantive agenda items and workshop topics of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders which will be held in 2000. Notably, the United Nations instruments mentioned have not been embraced fully in the policies and practices of many countries. Thus, it is important for countries to take into account the fruits of international efforts and develop policies and practices to enhance participation of the public and victims in the criminal justice administration.

## **2. The 113<sup>th</sup> International Training Course:**

The 113<sup>th</sup> International Training Course, tentatively entitled "Effective Countermeasures against Corruption" is scheduled to be held from August 30 to November 19, 1999. The prevalence of corruption in many countries and severe difficulties encountered by criminal justice officials in tackling and deterring effectively such crime prompted the selection of this theme. Thus, the 113<sup>th</sup> Course will examine the current situation regarding corruption in each of the participating countries and analyze the causes and dynamics of corruption in order to seek concrete and practical countermeasures.

### ***Other Activities***

#### **1. Preliminary Survey for Costa Rica Regional Seminar**

In February 1999, the Preliminary Survey for the Regional Seminar on Effective Measures for the Improvement of Prison Conditions and Correctional Programmes was held in San Jose', Costa Rica. The Government of Costa Rica through the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD) will organize and host the Costa Rica Regional Seminar if the results of the Preliminary Survey are positive, with the support of JICA and UNAFEI. This seminar will be held annually for five years and will target correctional officers in Latin America.

#### **2. Fourth Special Seminar for Senior Criminal Justice Officials of the People's Republic of China**

The Fourth Special Seminar for Senior Officials of Criminal Justice in People's Republic of China, "Rational Structure of Criminal Justice and Relationship between the Different Agencies of Criminals Justice," is scheduled to be held from 1 to 19 March 1999. Ten senior criminal justice officials and UNAFEI faculty will discuss comparatively contemporary problems faced by China and Japan in the realization of criminal justice.

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## ADMINISTRATIVE NEWS

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### Overseas Trips by Staff

Mr. Toichi Fujiwara (Director), Mr. Masahiro Tauchi (Deputy Director), Mr. Hiroshi Iitsuka (Chief of Training and Professor), Mr. Ryosuk Kurosawa (Programming Officer and Professor), Ms. Tomoko Akane (Professor), Mr. Chikara Satoh (Professor), and Mr. Wataru Okeya (staff) and Mr. Tomohiro Tatsumi (staff) represented UNAFEI at the India-UNAFEI Joint Seminar held in Delhi under the theme of "Crime Prevention and Control Strategies in the Fight against Organized Crime" from 14 to 17 December 1998.

Mr. Shinya Watanabe (Professor) participated in an International Conference with the theme of "Present and Future Perspective of Police Sciences" held in Sharjah in the United Arab Emirates from 13 to 16 December 1998.

Mr. Chikara Satoh (Professor) and Mr. Ryosuk Kurosawa (Professor) represented UNAFEI at the Seventh Regional Training Course on "Effective Countermeasures against Drug Offences and Advancement of Criminal Justice Administration" hosted by the Office of the Narcotics Control Board in Bangkok from 18 to 29 January 1999.

Ms. Kayo Konagi (Professor), Mr. Shinya Watanabe (Professor) and Mr. Toshio Hirai (JICA) visited the Republic of Costa Rica from 14 to 27 February for the purpose of formulating an International Training Course on the Improvement of Prison Conditions and Correctional Programmes.

Mr. Chikara Satoh (Professor) participated in the ACPF Working Group Meeting on "The Role of Public Prosecutors in the Changing World" in Bangkok from 15 to 18 February 1999.

### UNAFEI Home Page

Towards the goal of widening the scope of its target audience and disseminating quickly contemporary criminal justice information, UNAFEI is pleased to announce the opening of the UNAFEI Home Page on 1 July 1998. This site carries such information as training programme results and alumni listings. Additionally, the full texts of UNAFEI publications will be printed, including the Resource Material Series and the UNAFEI Newsletter. You are cordially invited to visit our home page at the following address:

<http://www.unafei.or.jp/>

### UNAFEI E-mail Address

Please note that UNAFEI's e-mail address has changed to the following:

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«AS OF 19 FEBRUARY 1999»