

KEYNOTE ADDRESS

Taro Morinaga^{*}

Your Excellencies,

Honourable guests,

Distinguished Participants,

Ladies & Gentlemen,

I. INTRODUCTION

It is indeed a great privilege for me to be here on this extraordinary occasion and to be given the chance to deliver the keynote address. I would like to take this opportunity to express my heartfelt gratitude to our Malaysian hosts, especially the Malaysian Anti-Corruption Commission, our counterpart and co-organizer of this Good Governance Seminar. Also, I would like to thank the Malaysia Anti-Corruption Academy for its kindness, hospitality and dedicated efforts towards the realization of this event. My sincere thanks also go to our distinguished participants from all over Southeast Asia, who are actively contributing to the success of this gathering aimed at further improving the situation in this region in terms of eliminating corruption, to which task, I am sure, they all are making steady progress in their home countries. I am quite confident that, with all the expertise and experiences that you have brought with you, we will have dense and fruitful discussions during the next couple of days and will produce an outcome which will benefit all of us, and ultimately, the people of our countries.

II. CORRUPTION AS A SOCIAL PHENOMENON — WHAT IS HAPPENING?

In the presence of so many experts in this field, I would like to refrain from preaching about the evil, damaging nature of corruption and from shouting aloud that corruption must be eliminated. We all know that. For us as professionals, the issue is always “how” to eliminate corruption, that is, developing and implementing effective measures for prevention and punishment. Nevertheless, it may sometimes be worth revisiting the basics, because re-examining the “what” and “why” helps us answer the question of “how”. If you can characterize your version of corruption and identify the causes, then, maybe, you can identify a suitable remedy. So, I would like us all to consider, discuss and compare the characteristics of corruption in each of our countries in order to understand why each form of corruption bears its specific character.

^{*} Deputy Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

To start with such diagnosis, analysis in the indigenous context may be helpful. What category of corruption is plaguing your country — “petty”, “grand” or “systemic”? What are the types and patterns of corruption? Where do they take place most frequently? Public procurement? Official permission, approval or consent procedures? Policing, prosecution or adjudication? School education? State-owned enterprises? Foreign trade? The private sector? Well, the list may go on. And then, the difficult question — why do people become corrupt? Several interrelated causes may be found: tradition, culture, poverty, greed, vanity, bad wage structure, too much discretion, lack of professionalism or sense of duty, insufficient education, lack of transparency, low risk of being caught, low exposure to public criticism, lenient punishment, poor performance of law enforcement, insufficient or inadequate laws, and undue political interference. A deep and well-streamlined analysis here is a crucial step towards the next issue — how to prevent corruption. It is clear that if you do not know exactly what is happening and why it is happening, then you’ll never find a way to prevent and eliminate corruption.

III. PREVENTION

Once the causes of corruption are, even vaguely, identified, there may be ways to remove such causes, or, at least, disconnect the conduct from such causes. Although I realize that this Seminar puts much emphasis on investigation, prosecution and adjudication of crimes of corruption, I would expect the participants to allocate a little time to discuss issues relating to prevention. Some of them may be too clear and simple to discuss; for example, if there is no doubt that the cause is underpayment (when it comes to “petty corruption”, we know that underpayment is a major cause if not the only one), then the solution will be to raise the salary for the officials to a reasonable level — but this discussion is better suited for treasury officials, the ministry of finance or the personnel authority, not law enforcement officials.

Thus, we might have to consider ways to disconnect the underpayment and the behaviour or conduct of officers who otherwise would be inclined to cross the line. Numerous methods are conceivable, such as methods that raise public awareness as to the perilous nature of corruption; nourish the pride of officials for their cleanliness; increase transparency in the field of public service; increase the risk of being detected, caught and punished; on and on it may go. And how? National campaigns? Proper education programmes? Strengthening codes of conduct and disciplinary actions? Disclosure of assets of public officials? Whistleblowers? Ombudsmen? Sharing information with respect to these issues will surely be valuable. What do we have in common, and what is unique to a specific country? If one country is trying something unique, can other countries learn something from that experience and adapt it to their own situations? Having an opportunity to think about these issues together is, I believe, one of the positive features of this international forum.

IV. THE CRIMINAL JUSTICE RESPONSE TO CORRUPTION

Now, let me move on to the criminal justice response to corruption, which is the main topic of this seminar. Although punishing offenders can be regarded as being

merely symptomatic treatment of the disease of corruption, there seems to be little doubt that prosecution and punishment can be effective tools to deter corrupt acts — if they are done properly. Imminent and realistic risk of being prosecuted and punished, being deprived of the proceeds, and losing employment as a consequence is what everyone will think of when tempted to commit corrupt acts. So, “the best defence is a good offence” — no prevention measure is better than active prosecution, is what many prosecutors would believe. At least I was told so by my seniors in my younger days.

But making a criminal justice system function properly is not an easy task, especially in the area of crimes of corruption. There is so much to consider. In the context of the criminal justice response to corruption, who should do what? Who should investigate or prosecute? What are the advantages and disadvantages to set up a special investigative or prosecutorial body? In what environment should they work? What are the laws they should rely on? How should substantive laws and procedural laws be structured? What are the investigative techniques? How can they obtain clues and evidence? How can we effectively build the capacity of investigators, prosecutors and judges? What resources do they need? How should investigators, prosecutors and judges be protected from undue influences? There may be a broad range of topics starting from the very basic, but broad issues range from the independence of the judiciary all the way down to the details such as how to properly obtain testimonial evidence admissible in court, including the techniques of interrogation.

I do realize that it is impossible to talk about everything. Still, important topics and issues will be covered by presentations and discussions on “good practices” which many of the participants may be able to talk about, citing actual cases and lessons learned therefrom. In some countries, there may be examples where an independent, special anti-corruption unit successfully uncovered, investigated and prosecuted a high profile state-property-embezzlement case and recovered the stolen assets. From others, we may hear about the tremendous efforts made by a conventional investigation force such as the police overcoming several obstacles and achieving the goal of bringing a bribe-taking official to justice. Or, we may also hear about cases in which something went wrong or which resulted in failure. These stories we hear from our learned experts will definitely become a precious source of knowledge.

V. INTERNATIONAL COOPERATION

These days, we hear so much about crimes becoming borderless. Corruption crimes are no exception. Corporations bribing foreign officials, corrupt politicians stashing misappropriated state assets away in bank accounts far overseas, offenders fleeing abroad — these crimes do not surprise us anymore. In order to cope with such situations, it is quite reasonable to think that investigators, prosecutors and judges should also go international. But we all realize that it is very difficult to do so. There are walls and gaps — the walls of “jurisdiction” and “sovereignty”, the gaps between different laws, systems and legal infrastructure.

Now, I am not an idealist who would dream that, someday, the world becomes united and there will be only one single jurisdiction, although I love the songs of John

Lennon. We have to live with these walls and gaps, don't we? But I would like to draw your attention to the "psychological" walls and gaps which, in my personal view, are making us hesitant to pursue investigation, prosecution and adjudication of cases involving international elements. Ask yourself, isn't there always a feeling of reluctance whenever you have a case before you which needs international assistance? Haven't you ever seen a highly capable, active investigator or prosecutor suddenly turning negative or discouraged after finding out that an important piece of evidence is somewhere outside your country? Why is it so? Where does such hesitation come from?

I suspect that the culprits here are ignorance and prejudice. The concern that has grown in me as a legal professional in Japan, having first worked in a domestically focused job and thereafter having been exposed to an international environment, is that the people in our prosecution service might not have sufficient knowledge about international cooperation schemes, such as mutual legal assistance, and, because of that, may be unreasonably skeptical about the effectiveness of such schemes. And worse, there seems to be in general a certain unwarranted mistrust as to the legal systems of other countries and their performance. I have to confess that, in my younger days, I was one of them. I think that I have luckily overcome such prejudice with the help of some experience being involved in investigations which required international assistance.

Once I was very much surprised and then ashamed of myself when I went on a trip to a country in Latin America in connection with a drug offence investigation which was my responsibility as an investigating prosecutor. We received information that two Japanese nationals had been arrested by the local police at an international airport of the capital of that country for the possession of 18 kilograms of cocaine hydrochloride hidden in their suitcases. Domestic investigation led us to the conclusion that the mastermind of this drug-trafficking attempt was present in Japan, and since we wanted to prosecute this mastermind, we had to obtain testimony from those two Japanese held in that country and the lab results and expert testimony that the seized substance was indeed cocaine. Although I sent a formal request for legal assistance via the diplomatic channel, I was not sure whether any response would come back at all, because all that I knew about that country was that it was a very poor developing country with an unstable political and social situation. I was not even sure if the prosecution or judiciary there was actually functioning or not. But all that concern proved to be merely my ignorance and prejudice. The response came, and the highest court of that country allowed me to be present at the interrogation of the two arrested offenders and the interview of four experts who independently examined the substance in question, all of which were conducted by an experienced high court judge — he actually was the chief justice of the high court of the capital city. From a procedural point of view, these interrogations and interviews were perfect, and I had no doubt whatsoever that the official protocols of these interrogations and interviews would be admissible in any Japanese court as exceptions to the hearsay rule. Moreover, I was impressed by their drug-lab procedures. Because of financial difficulties, they did not have the latest, sophisticated equipment such as GC-MS (gas chromatography – mass spectrometry) machines available for drug testing, and were relying on the old method of paper chromatography and Scott-Wilson reagent. Still, in order to secure the reliability of the test results, they had a rule that requires the performance of double-check testing by two

independent chemical laboratories, two experts each, plus the sworn testimony of the examining chemical experts before the court. Unless the testimony of these four experts matched each other, they explained to me, the court would not recognize the lab results as admissible evidence. Having witnessed all that, I was really ashamed that I had mistrusted the performance of another country's judiciary simply because of my ignorance and prejudice. It was really an eye-opening experience. Later on, we were successful in bringing the mastermind to justice. Yes, the Tokyo District Court ruled that the protocols were all admissible as evidence.

To my relief, the Japanese prosecution recently has become increasingly aware of this kind of problem and has established a system within the prosecution to cope with international affairs, appointing experienced prosecutors as "prosecutors in charge of international matters" in a number of mid- to large-sized district offices. We still have to wait for the results of the performance of these prosecutors, but I hope things develop in a positive way and wipe out the ignorance and prejudice which used to overshadow our investigation forces in the past.

So, once you get rid of such psychological barriers, your path will become clearer, and if you acquire proper knowledge of international cooperation schemes, then you will find out that many channels and tools are available to support your investigation, prosecution and adjudication. Further, if you become familiar with the systems and practice of your foreign counterparts, then you may be able to perform your duties even more effectively and efficiently. Of course, I am not saying that you should become experts of foreign criminal law. What you simply need is clues – clues as to where to find the leads; which door you should knock on. This is one of the most important pieces of information that I expect the participants of this seminar to exchange with each other. The door does not necessarily have to be a formal one. Informal communication and exchange of information can sometimes be of great help. During the discussions in this forum, I hope that you will revisit the basics of international cooperation, such as mutual legal assistance, identify what concrete methods can be taken under such international scheme in terms of collecting necessary evidence, identifying offenders and their hidden assets, or, bringing the absconded offender back to your country, and share with each other knowledge about the most efficient and effective way to make use of such methods within the legal system and culture of your respective countries. And after you go home, please be helpful to your international colleagues. In the future, if you receive an inquiry from abroad asking for advice about, say, how an investigator of your counterpart country can effectively obtain evidence from your country, please do not terminate the conversation by merely saying "oh, sorry, that is beyond my authority" or "I'm not in charge of that", even if the matter is beyond the scope of your work. You could at least offer a suggestion as to where to look, or whom to contact; if you exert a little more courtesy such as introducing your criminal justice counterparts to the right person in your organization or your government, or doing a little research on how to deal with the issue and share your views, that would be a tremendous help. And then, your counterpart will be ready and happy to respond in the same cordial way whenever it is your turn to ask for assistance. "Reciprocity" is not just a legal term in international procedural law. It becomes real in such occasions.

VI. THE GENERAL PUBLIC — WE NEED THEIR TRUST AND HELP

Lastly, let me briefly touch upon another issue that I am very interested in — the involvement of the general public in the prevention and punishment of corruption. Implementation of any policy cannot be realized without the understanding and cooperation of the general public. If the public is aware of how serious and damaging corruption is, the citizens' eyes will be the most powerful weapon to fight corruption. Public perception on corruption and the public trust in anti-corruption officers and institutions are the most crucial elements.

It is my personal opinion that, however rampant corruption may be in a country, a country can still be saved when the general public maintains the notion that corruption is a bad, evil phenomenon and that it is something to be ashamed of. The worst scenario would be when the citizens are not only fed up with corruption but become used to it. This is the scariest thing about systemic corruption. Corruption spreads like an epidemic, turns itself into a culture, and people will not think that it is a big deal anymore, because it becomes embedded in daily life. So, prevention by raising and maintaining public awareness is crucial. In this regard, what I am personally concerned about is that I hear rumors about corruption in the education sector in some countries. How can you expect children and the younger generation to grow up with sound minds if there is corruption spreading among teachers? What if children get used to watching their parents paying bribes for good test scores? If such rumors prove to be true, elimination of such corruption must be the top priority and the state must do everything possible to stop it.

With respect to punishment, the trust and support of the general public is indispensable. Even if an anti-corruption agency, or an equivalent institution that maintains a high moral standard, is equipped with sophisticated investigation skills and devotes every resource and effort to its noble job, it will end up being powerless and isolated if it does not have citizens' support and assistance. Especially, for a newly established institution or organization, gaining public trust is crucial for the rationale of its existence and good work. Some of our distinguished participants, I believe, must be quite experienced in this matter, so I'd be glad to hear from them how they have built and maintained public trust and confidence in their respective institutions. As far as my homeland is concerned, I imagine that our predecessors must have exerted pious efforts to gain public trust in the white-collar-crime investigation units at some district prosecutors' offices — the “special investigation departments” — and have achieved a fair amount of success, although some recent shameful events seriously affected the public trust in prosecution; the entire prosecution service in Japan is now desperately trying to regain and restore that trust by implementing a comprehensive reform programme, because everyone knows that, without the support from the people, the function of the prosecution will definitely be paralyzed.

VII. CONCLUSION

There may be other issues as well that our participants would like to talk about during the sessions. Please do not hesitate to bring your “burning questions”, proactive recommendations and inspiring examples to the floor. Bringing different opinions,

views and experiences together, sorting them out, and making comparisons is what this kind of international workshop is all about. I truly hope that the GG Seminar this year will, with your valuable contributions, achieve wonderful results which will be quite informative and useful not only for all of us, but also for those who learn about the outcome of this seminar afterwards.

Thank you for your kind attention.