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Japan

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Japan

Mutual cooperation between Japan and the United States of America has been rapidly developing. For instance, at present, Japan is detaining two fugitives from the United States for extradition. One is a Japanese national, who stole twenty expensive vehicles (estimated \$800,000) by false pretense and exported them to Japan. The other is a Malaysian who kidnapped the housewife of a wealthy restaurateur in New York and extorted \$50,000 for ransom by overseas telephone calls from Tokyo. As soon as judicial hearings on extradition in these two cases are finished, both of them will be extradited to the United States.¹

Probably the best known example of mutual assistance between Japan and the United States is the so-called *Lockheed Aircraft* case.² We could not have prosecuted former Premier Tanaka, who is still believed by a lot of people to be the most powerful person in Japan, without the sincere cooperation given by the government of the United States. We received testimony from the transnational corporation's chief executive, and from the manager, who had bribed the then-premier, from the United States through letters rogatory. The testimony was vital to the prosecution of ex-Premier Tanaka and other defendants. Mr. Tanaka was sentenced to four-years imprisonment in October, 1983.

I. Cooperation in Criminal Matters

I would like to give you a very brief explanation on the framework for international cooperation in criminal matters in Japan. We have three laws

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1. Since Mr. Koroyasu's presentation, the Japanese national was extradited to the U.S. (on March 30, 1984) and the Malaysian was extradited to the U.S. (on May 29, 1984).

2. See Procedures for Mutual Assistance in Administration of Justice in Connection with the Lockheed Aircraft Corporation Matter, March 23, 1976, United States/Japan, 27 U.S.T. 946, T.I.A.S. No. 8233.

to cope with transnational crimes, which we define as crimes for which we need international cooperation to punish—namely to investigate, prosecute, try, sentence or enforce criminal judgments.

A. LAW OF EXTRADITION

First, there is the *Law of Extradition*. Under this law, Japan can extradite a fugitive even in the absence of a treaty of extradition, except its own national, so long as he committed such an offense as is punishable by death, or by imprisonment for life, or for a maximum term of three years or more by both of the laws of Japan and a requesting country. In this context, “punishable by the law of Japan” does not necessarily mean that Japan has jurisdiction over the offense committed by the fugitive. It means that the act could be punished if it were committed in Japan. A Japanese fugitive, however, may be extradited to a country only when it has a treaty of extradition with Japan. Japan has entered a treaty of extradition with only one nation, that is, the United States. Therefore, we may extradite even a Japanese national to your country.

In case of urgency, we can provisionally detain a fugitive if a foreign country notifies us that a warrant of arrest has been issued or a sentence imposed, and assures a request for extradition will be issued. While extradition requires a time consuming procedure, provisional detention takes a very short time. According to the experience of a recent case, we need only one or two days before we provisionally detain the fugitive if he has been located in advance.

B. INTERNATIONAL ASSISTANCE IN INVESTIGATION

Second, we have the *Law for International Assistance in Investigation*. This law gives assistance to foreign investigative and prosecutorial agencies. When we receive a request for assistance from foreign agencies through diplomatic channels, we can gather any necessary evidence by voluntary or compulsory measures. Compulsory measures include taking testimony, executing search and seizure of real evidence, or undertaking compulsory inspection. While such assistance is given in the absence of treaty, assurance of reciprocity and dual criminality are necessary. Under the term dual criminality, the act constituting the offense for which assistance is requested could be punished by the laws of Japan if it were committed in Japan. For instance, Japan does not punish conspiracy with a few exceptions. Therefore, generally speaking, we cannot provide the United States with assistance as far as conspiracy cases are concerned. *The Law for International Assistance in Investigation* only applies to investigative and prosecutorial agencies and only concerns criminal matters.

We do not have any bank secrecy laws. Therefore, we can give you bank records or any other necessary evidence where serious crimes such as drug trafficking, are concerned.

C. JUDICIAL ASSISTANCE

Third, let me explain the *Law for Judicial Assistance to Foreign Courts*. This law stipulates the means and ways to respond to letters rogatory. Japanese courts may serve documents and take evidence, both in criminal and civil matters, on the basis of reciprocity. Assistance under the *Law for Judicial Assistance to Foreign Courts* is rendered by Japanese court only when the following requirements are fulfilled. The request must be made through diplomatic channels; reciprocity must be guaranteed by the requesting countries; reimbursement of expenses must be guaranteed by the requesting country; and if the originals are not in Japanese, translation of the original and orders and documents annexed thereto must be attached.

We clearly distinguish judicial assistance from assistance in investigation. Judicial assistance means the assistance rendered by Japanese courts to foreign courts. Assistance in investigation means the assistance by Japanese investigative and prosecutorial agencies to their foreign counterparts. Each kind of assistance has its own law.

II. Summary and Future

The significant feature of the Japanese mutual assistance is that we can provide assistance without a treaty. That is one of the reasons why we have had no bilateral treaty of mutual assistance except the *Treaty on Extradition between Japan and the United States of America*. The other reason is that Japan is an isolated island in the Far East and it has been very rarely confronted with transnational crimes up to this time.

The situation, however, is likely to change. As the recent technological developments in the field of transportation and communication have made the transfer of persons between Japan and other countries easier, the need for mutual cooperation is rapidly increasing even in my country. Maybe it means that Japan is now approaching a time in which it should consider entering into mutual assistance treaties with other countries. Although Japan can provide foreign countries with assistance in the absence of treaty on a case-by-case basis, the presence of such a treaty might give a certainty to cooperative efforts in the enforcement and prosecution of transnational crimes.

