KEYNOTE SPEECH

YANG BERHORMAT

DATIN SERI PADUKA HAJAH HAYATI BINTI PEHIN ORANG KAYA SHAHBANDAR DATO SERI PADUKA HAJI MOHD SALLEH

ATTORNEY GENERAL

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Prof. Câo Jiâming, the Prosecutor General of China

My fellow Attorney & Prosecutor Generals

Esteemed Senior Officials, Distinguished Guests

Ladies & Gentleman, Nî Hâo and Good Morning.

May I begin by expressing my heartfelt gratitude and appreciation to the office of the Supreme People's Procuratorate of the People's Republic of China for hosting this Conference and affording us with their utmost generosity and excellent hospitality in this beautiful 'Green City' of Nanning. My delegation and I also look forward to visit the city of Guilin. I am told that there is a popular Chinese saying "*Guilin shan shui jia tien xia*" [which I dare not say in Chinese] but in English, I am informed that it means "*Guilin mountain and water scenery is the best among all under heaven*".

<u>"International Cooperation on Fugitive Repatriation and Asset Recovery"</u>

Dear Colleagues

We convene today to discuss a very relevant theme centered around ***"International Cooperation on Fugitive Repatriation and Asset Recovery".*** The topic is indeed a timely one and allows ASEAN and China to come together to discuss not only the best practices and experiences of each jurisdiction in the use of such international cooperation tools but for us to learn from one another, the way forward in ensuring that criminals do not treat our nations as safe havens for their illicit activity.

The State of the Problem and International Instruments

In the increasingly globalized world we live in, characterized by greater connectivity brought about by advancing technology and increased flows of funds as a result of freer trade between nations, we face greater threats from transnational crime than ever before.

Criminals have become increasingly sophisticated in their methods and more importantly are not limited by domestic borders in their pursuit of illegal profit. The Washington Think Tank, *Global Financial Integrity* estimates that in 2012, the volume of transactions involving illegal money being transferred around the globe out of developing countries amount to approximately US $991.2 billion. This is of alarming concern because not only does this "dirty" money reproduce more crime and continue the vicious cycle but that it results in lost opportunities, subjugated societies, poorer governments and victimized individuals.

It is no secret that while transnational crime like money laundering, human trafficking and people smuggling are allowed to operate without any borders, the capabilities of Governments and Law Enforcement Agencies to pursue cross border crime remain limited and hampered by numerous obstacles such as gaps in legislation, sovereignty issues and diversity in legal systems.

Nevertheless, I am pleased to note that great strides have been made to foster greater international cooperation through various multilateral treaties such as the United Nations Convention against

Transnational Crime and the United Nations Convention against Corruption which have specific chapters dedicated to setting the minimum standards countries have to adhere to concerning mutual legal assistance, extradition and asset recovery. This is supplemented by “soft law” approaches such as the Financial Action Task Force 40 recommendations which represent the “gold standard” in combatting money laundering and terrorism financing, which now goes as far as to assess a country’s effectiveness in terms of international cooperation. It is therefore important that we utilize the standards set by these conventions and recommendations in order to further strengthen our own domestic systems in terms of international cooperation.

Extradition and Fugitive Repatriation

Let me first turn to the issue of fugitive repatriation or extradition. In 2006, Brunei Darussalam passed a new Extradition Order, replacing our old Extradition Act of 1915. The order creates clearer processes and procedures governing how foreign states can request the extradition of fugitives found in Brunei’s jurisdiction.

Under our Extradition Order, the Attorney General as the Central Authority for extradition can extradite a fugitive even in the absence of a treaty as the Attorney General can designate a country for the purposes of completing an extradition request.

Another notable feature under our Order is that there is no requirement for the request to be sent through diplomatic channels, which can sometimes amount to delay in responding to a request. Our legislation therefore allows us to approach extradition in a more open, direct and flexible manner.

So far, under our new Extradition law, Brunei Darussalam has yet to receive any requests for extradition from any jurisdiction. I'd like to take this as a good sign as it means criminals have realized that they cannot hide in our country and that we are prepared to hand them over to the relevant authorities.

To carry out the provisions of the Extradition Order, my office have set up a Mutual Legal Assistance and Extradition Secretariat to perform the functions of the Central Authority for these international cooperation mechanisms. Such commitment of resources and manpower is necessary if Brunei Darussalam is to carry out its international cooperation obligations effectively.

The extradition process however often suffers from being cumbersome, time consuming and costly. As such, countries need to work closer together, not only in ensuring clear procedures are placed under their law to facilitate transfer of fugitives but where possible take steps between regional neighbours to break down the barriers commonly associated with extraditing criminals.

I would like to share that Brunei Darussalam have simplified extradition mechanisms amongst our two neighbours, Malaysia and Singapore having enacted the Extradition (Malaysia and Singapore) Act and Summonses and Warrants (Special Provisions) Act where the operation of a backed warrant and summons system allows for the easy transfer of any fugitives found in any of our jurisdictions between each other, without having to go through formal extradition processes. The implementation of these laws and the corresponding legislation in Malaysia and Singapore have been proven to be effective and have certainly served us well.

On a regional scale, my office is also involved in discussions with other ASEAN member states in discussions under the auspices of the ASEAN Senior Legal Officials Meeting (ASLOM) on the ASEAN Model Extradition Treaty. It is hope that the progress from this meeting and this new instrument will forge closer better working level cooperation through a legal framework to promote greater cooperation on the issue of extradition. Brunei Darussalam most definitely welcomes this.

Asset Recovery

Turning now to the issue of asset recovery, it is evident that our fight against crime has to take a two-pronged approach. Not only must we send the message that criminals cannot hide in our jurisdictions but we must ensure that they are prohibited from profiting from their criminality. The modern criminal is no longer deterred by a lengthy jail sentence if he knows that he will still have access to his ill-gotten funds at the end of his stint in prison.

In 2012, Brunei Darussalam enacted the Criminal Asset Recovery Order to better enable authorities to go after the proceeds of criminal activity and to successfully take action against those who intend to make illicit use of Brunei's financial system. To ensure criminals within our jurisdiction do not benefit from their crime, the law introduces a variety of orders that can be applied for to recover assets such as restraining orders, conviction based confiscation orders and benefit recovery orders.

In addition to this, our asset recovery law has also introduced a system of Non-Conviction Based Forfeiture Orders, which allow assets to be seized from a person without him being charged or convicted of the offence upon proof that property is ***"tainted".*** Unless contrary to the interests of justice, the Courts in Brunei Darussalam must order the forfeiture of such tainted property.

In order to enhance international cooperation for asset recovery, our Criminal Asset Recovery Order has enabled the Attorney General to enter into assets sharing agreements with other competent authorities of foreign countries as well as to enter into arrangements for coordinating seizure, freezing, restraint and confiscation proceedings. This is an integral step to ensuring that Brunei

Darussalam has the necessary mechanisms to share any assets with foreign counterparts on an equitable basis.

I am pleased to announce that our Criminal Asset Recovery Order has been used successfully, especially where international cooperation is concerned. In July 2014, through close cooperation with my counterpart, the Attorney General of Singapore, Brunei Darussalam was able to recover a substantial amount of proceeds of corruption that a Defendant had placed in various bank accounts in Singapore through a benefit recovery order.

The success of this case marks the first time the government of Brunei Darussalam has successfully enforced an asset recovery order for foreign funds through mutual legal assistance. The successful enforcement of the Benefit Recovery Order is also testament to the strong and robust international cooperation framework that Brunei Darussalam possesses as well as well as the strong and longstanding working relationship between the Attorney General's Chambers of Brunei Darussalam and Singapore.

I would like to therefore put on record my personal thanks to the Attorney General of Singapore and the relevant authorities in Singapore for the recent return of these assets.

On the Way Forward I would like to stress that the recovery of illegal assets however is not one that can always be confined to local circumstances. After all, criminals have proven themselves mobile and increasingly complex in their methods such as hiding proceeds of crime within complex corporate ownership structures that are often located in other jurisdictions, away from the reach of local law enforcement. We cannot view asset recovery in isolation or merely a domestic exercise. We need to be flexible and work closer with one another and approach the problems we face in a collaborative manner in order to produce successful criminal justice outcomes. We know that this can work.

Another point I would like to underscore is that strong legal frameworks governing the areas of extradition and asset recovery need to be supported by capable human capital and resources. We need to cultivate experts in our jurisdictions in these areas more than ever before and continuously train our authorities to increase their knowledge in order to better implement the provisions of our laws.

Gaps in legislation is also another area that needs to be addressed. It is not enough that one country has beautifully written laws on any area if it is unable to obtain the necessary assistance from another country whose laws don’t render similar reciprocal arrangements. This was experienced by Brunei Darussalam recently where prisoners serving jail sentences in Brunei Darussalam could not be returned to their respective countries to serve the remainder of their sentences because of lack of enabling legislation in the countries concerned.

Similarly, if one country does not have the power to enter into any asset sharing agreements, the opportunity for international cooperation and closer bilateral relationships is therefore lost. We can therefore improve our coordination mechanisms in these areas.

Conclusion

In conclusion, I would like to state that conferences like this provide a vital opportunity for our nations to forge closer connections amongst prosecutors, to share expertise and to agree on practical steps to improve international cooperation. We all share a growing understanding of the difficulties faced in securing our jurisdictions from the scourge of crime in today's complex world and we need to agree how to develop a more well-coordinated response on an international level. I am proud to say that the holding of this conference in itself is another substantial demonstration of regional and international cooperation and determination of our efforts to eradicate transnational crime.

I would like to end on a positive note by stating that the principal that underpins international cooperation is the bridging of differences between legal systems. We can together achieve this goal if we all ask the authorities entrusted with execution to approach international cooperation requests with a view to overcoming the differences and not entrenching them.

I wish all delegates a fruitful conference and I look forward to meeting and learning from all of you. Thank You!