
REPORTS OF THE COURSE

GROUP 1

EFFECTIVE INVESTIGATIVE AND PROSECUTORIAL MEASURES TO DETECT, PROSECUTE AND PUNISH LEADERS OF CRIME ORGANIZATIONS AND HIGH VALUE TARGETS

Rapporteur: Mr. Asghar ALI (Pakistan)

Co-Rapporteurs: Mr. Rashmi SINGAPPULIGE (Sri Lanka)

Mr. AMAYASU Ryo (Japan)

<i>Chairperson</i>	Ms. Yasmine Nagnouma KEITA	(Cote d'Ivoire)
<i>Co-Chairperson</i>	Mr. Khurshed Iskandar ISOZODA	(Tajikistan)
<i>Members</i>	Mr. Maurice Kouadio N'DRI	(Cote d'Ivoire)
	Ms. TSHIBOLA Mulumba Annie	(D.R. Congo)
	Mr. Augustus Apelis Mathew BRAY	(PNG)
	Mr. FUKUSHIMA Yoshihiko	(Japan)
	Mr. Valentyn SHMITKO	(Ukraine)
<i>Advisers</i>	Prof. Masahiro YAMADA	(UNAFEI)
	Prof. Hidenori OHINATA	(UNAFEI)

I. INTRODUCTION

This group workshop commenced on 23rd May 2018 under the guidance and advice of Professor Masahiro YAMADA and Professor Hidenori OHINATA. Group 1 unanimously chose Ms. Yasmine Nagnouma KEITA as chairperson and Mr. Khurshed Iskandar ISOZODA as co-chairperson, Mr. Asghar ALI as Rapporteur and Mr. AMAYASU Ryo and Mr. Rashmi SINGAPPULIGE as co-rapporteurs.

Drug trafficking is a global crime and it has distinctive characteristics. Drug-related organized crime cannot ordinarily be investigated by conventional investigative methods alone. For example, it is a victimless crime in most cases. Moreover, the witnesses in drug-related crimes do not feel safe while testifying against the drug traffickers. Therefore, special investigative methods are needed to detect and prevent drug trafficking.

Group 1 was assigned the thematic topic: "Effective investigative and prosecutorial measures to detect prosecute and punish leaders of crime organization and high value targets". The Group worked in a structured manner and produced with consensus the following report analysing the pros and cons of the special investigative techniques used for detection and prevention of drug-related crimes, both domestically and internationally. The report discusses in detail the techniques and use of controlled delivery, informants, electronic surveillance, undercover operation, and use of protection of witnesses and immunity in exchange for testimony.

II. USE OF INFORMANTS

A. Introduction

Although drug crime is done systematically in that there are no victims and it is conducted secretly, because relationships between each other are weak and the organization is also complicated, we obtain evidence from the organizers concerned who have been arrested, it is characterized by hardship and it has characteristics different from other crimes. Therefore, in order to clarify the whole picture of the organization, to identify the members of the organization, to arrest and prosecute the leaders of the organization, it is important to obtain information from an informant who is familiar with the actual circumstances of the organization. The use of informants is also very effective to develop leads for the investigation. The term "informant" refers to a person who is not a member of the investigating institution. In many cases, the informants may be citizens who are offenders, such as members of the organization.

B. Current Situation in Each Country

In all countries, investigative agencies obtain information on criminal organizations from informants and use them for investigation. However, in the provincial areas of Papua New Guinea, the population is small, and the residents are familiar with each other, so if the residents provide information to the investigation agencies, this is known to the other residents. For this reason, residents are unwilling to provide information to investigation agencies, and there are circumstances in which investigating agencies are unlikely to obtain information. This is not limited to Papua New Guinea; as long as communities are closely knit, such circumstances will be common to all countries.

Regarding informants, countries such as Pakistan, Tajikistan and Ukraine have legislation in this regard. In these countries, provisions for protecting informants and provisions on remuneration for informants are stipulated. Particularly in Pakistan, information on informants is restricted so that personal information, such as the name and address of the informants, is protected. This information can only be known to investigators who have directly contacted the informants. Even the investigators' superiors cannot learn the identities and other personal information of the informants. In this way, since informants are thoroughly protected, investigation institutions are more likely to obtain information from informants.

In other countries such as Sri Lanka, Cote d'Ivoire, Congo and Japan, there are no laws on informants. However, even in these countries, investigative agencies give remuneration to informants in return for information. In addition, the investigative agency does not disclose the identity of the informants and protects them so as to make information easier to obtain.

C. Common Issues and Problems

In general, information on drug crime organizations is unknown to the outside. Thus, it is more desirable to obtain information from insiders. But, the informants themselves are criminals and sometimes tell lies. Sometimes these lies make it impossible for investigators to achieve the purpose of the investigation.

In addition, the information provided may be fragmentary. Initially, they may deliberately wait for the response of the investigative authorities with only fragmentary information in order to seek more beneficial return from investigation authorities. This seems to be caused by ulterior motives of providing information. Their motives include money, retribution, immunity, greed, and so on. But it is not a problem that their motives are impure. It is important for investigators to firmly identify the motivation of the informants.

In this regard, even if they initially cooperate with law enforcement agencies, informants sometimes betray investigators. This is the case where the informants think that it is more attractive to the high value targets of the drug crime organization.

This will cause more serious damage than just a lie. In other words, if the investigator cannot grasp this situation in advance, in the worst case the investigators may face difficulty. On the other hand, regarding informants, once a drug crime organization knows the existence of informants, the members of the drug crime organization add various adverse activities including murder. Therefore, we must conceal them from the drug crime organization without fail, but it is not easy. Most countries have no legal system to protect them. There are also concerns that investigators will let them do illegal actions or dangerous things. In some cases, investigators may bear legal responsibility.

In addition to these, informants are used as a starting point for investigation, because it emphasizes confidentiality and difficulties in collecting other evidence. In other words, at the trial, it is not customary to make informants testify. Also, when using information obtained from the informants to prove the crime in court, the prosecutor needs to disclose the information on the informants at least to the accused and the judge. Otherwise, the information will not be admissible in a court of law.

Finally, there is also the problem of corruption of the investigators when using the informants. When an investigator contacts an informant alone by emphasizing the confidentiality of informants, it may cause corruption and the like. Also, when giving money to an informant as compensation, it may be paid from a budget separate from the normal budget. In such cases, there is no need to make a record, which may encourage corruption of investigators.

D. Solutions

Members of Group 1 recognize that it is important to use informants to arrest high value targets of drug crime organizations. But if law enforcement agencies make a mistake in using the informant, the investigation will fail.

First, it is important to strongly manage informants. Also, in advancing the case, law enforcement should refrain from making decisions with information from an informant alone. Considering information obtained from other investigation methods, such as undercover operations, the accuracy of the information from the informant should be ascertained. It is also important to confirm certain related information from multiple informants. In other words, it is necessary to collect information not only passively but also actively.

In addition, a legal framework to protect informants is also necessary. It may be something similar to the witness protection system. On the other hand, unlike witnesses, long-term relationships with informants will continue, so it should be kept in mind that informants are not necessarily on law enforcement's side indefinitely.

There are several ways to prevent corruption of investigators related to informants, such as using multiple investigators when contacting informants. Also, if money is provided as remuneration, then it must be properly accounted for in regard to informants. The informant's name can be a number or a codename. By keeping records, the authorities can check whether the payment was legally justified.

It is thought that as a method of paying appropriate compensation to informants, payment should be made after the investigation. This is because we can adjust the amount to pay according to the investigation result.

Finally, it must be reiterated that a trustworthy informant is extremely useful for arresting high value targets of a drug organization. On the other hand, if an investigation that relies only on the informant is continued, the investigation sometimes may not lead to arrest of the high value target. Therefore, it is necessary to use informants actively by combining other investigation methods and investigation results.

In other words, we need to sublimate, or distil, "the information" provided by the informant to "intelligence" and use it to investigate the high value targets.

III. ELECTRONIC SURVEILLANCE AND COMMUNICATION INTERCEPTION

A. Introduction

There is no concrete definition of this investigative technique. However, it is recognized that some types of electronic devices, such as audio recording, visual recording or wiretapping, will be employed in the course of investigation. Utilization of electronic surveillance and communication interception are very useful measures for obtaining information of the existing criminal activities and also being able to identify future offences. It is one of the best methods of collecting critical evidence with low risk since the operator and investigator can monitor from a remote distance. The evidence will be admissible and reliable for prosecution and trial. Nonetheless, the application of this method is a very sensitive issue due to the concern with abusing individual privacy rights.

The goals of electronic surveillance are:

- (i) To gather strong and precise evidence with low risk.
- (ii) To expose the nature of a criminal offence (organizational structure, network, process, activity and so on).

B. Current Situation

Almost all countries of Group 1 use electronic surveillance and communication interception as investigative techniques, although some countries have legal frameworks for these techniques. Electronic surveillance and communication interception are used in Tajikistan by law enforcement agencies, and there is a legal provision for this process. Similarly, Ukraine, Pakistan and Japan have legislation for electronic surveillance and communication interception. However, there are no legal frameworks for electronic

surveillance and communication interception in Sri Lanka, Cote d'Ivoire, Democratic Republic of Congo and Papua New Guinea. Nonetheless, Papua New Guinea and Democratic Republic of Congo, where electronic surveillance and communication interception are not covered by legislation, law enforcement agencies do conduct electronic surveillance and communication interception.

In Japan and Pakistan, prior permission is not required for the use of electronic surveillance in public places. In Pakistan the Superintendent of police may authorize electronic surveillance. Besides the legal issues, other general constraints that every country is now facing are the infrastructure and technology issues. Even though electronic surveillance is very effective, the government has to invest a lot of money in order to employ high technology devices. In addition, new communication technologies are introduced to the world market many times a year, particularly multifunction wireless phones, which are used by the organized crime groups.

C. Common Issues, Problems and Solutions

The hurdles in the use of electronic surveillance and communication interception are as follows:

1. Prior Approval

In order to protect the rights of privacy of people, it is absolutely essential that permission is obtained from a judge before starting the process of communication interception. Generally, the request of an investigator to use this method is strictly scrutinized by a judge or other authority before granting permission. In most cases, the interception of either a mobile or fixed-line phone shall be equally subject to the prior approval criteria. With regard to the interception of electronic communications, like e-mail or website tracing, prior permission is also required.

2. Scope of Criminal Offence

Electronic surveillance and communication interception does affect privacy rights, so this method should be executed only when necessary. In other words, it should be conducted in critical criminal investigations such as when other investigation techniques have not worked or appear unlikely to succeed or would be too dangerous to try. In addition, it shall be applied to investigations in only serious crimes or offences related to organized crime groups. Japanese law provides details of crimes for detection of which this method can be used, such as offences relating to drugs, firearms, and human smuggling.

3. Duration

The available period for conducting electronic surveillance and communication interception varies from country to country. We found the range to be from ten days at the first stage in Japan up to a maximum 30 days. However, in Pakistan, there is no limit on the number of days for electronic surveillance.

4. Approach to Non-relevant Information

Another problem with the use of electronic surveillance and communication interception is risk of misuse and disposal of irrelevant information. When carrying out communication interception, it is very important to analyse the information received as to whether it is useful and can be used as evidence or not. On the one hand, there will be a lot of non-relevant information in the case, *i.e.* social talk or private discussions. This information should be deleted or cut off since it is generally not admissible in court. The disclosure of such information, even when not related to the case, is prohibited in order to protect privacy rights. However, if, during electronic surveillance and communication interception, the investigator unexpectedly found information about other crimes or a plan to commit imminent crimes outside the scope of the permission, for example, to commit some serious crimes such as murder or firearms trafficking, using such information can be a difficult decision for investigators. The official may opt to interfere to safeguard a person's life but this action may tip-off the suspect and make him aware of the communication interception. On the other hand, such information gathered under the permission of one case may be not be admissible in another case subject to the law of each country. The best solution in such a situation may be to establish a legal framework or guidelines which the investigators must follow.

5. Post-interception Requirements

The post-interception process is very complicated. In addition to sorting out the non-relevant information, harmonizing the relevant information and making records, there are still some points of concern. We categorize them as follows:

(a) Preservation of Evidence

For preserving the evidence, the following steps are required:

- Wiretapping: Creation of a transcript and a summary report (Pakistan and Japan - submitting a transcript to the court after the processing)
- Sealing the record: The sealing of the material evidence (audio recordings, visual recordings, etc.) after use.
- Creation of a report and submission to a court—wiretapping and other devices

(b) Slang or Encoded Language

Yet another problem or difficulty in the use of electronic surveillance and communication interception is use of slang or encoded language used by criminals. Even when investigating officers listen to the conversation of the criminals, it is hard to understand their conversation as they use encoded words to convey to each other. Similarly, the problem of interpretation of other language may crop up in interception of international communication. In such situation, the appropriate experts will be required for decoding encrypted messages or translating foreign languages by expert interpreters.

(c) Cooperation of Communication Companies

Unless the provisions of laws clearly specify the authority for communication interception and electronic surveillance, the communication companies, such as telephone companies or webmasters, will be reluctant to cooperate with law enforcement. In Pakistan, all the telecommunication companies are under the authority of the PTA (Pakistan Telecommunication Authority), and these companies are legally bound to cooperate with law enforcement agencies. But in the countries where there is no specific law for electronic surveillance, the telecommunication companies always try to avoid access to their customers' communications since they are afraid of probable litigation and losing customers. In Japan, the representatives of telecommunications companies are always present with investigators when communication interception is taking place.

6. Further Action

Group 1 recognizes that electronic surveillance and communication interception is an important tool for law enforcement to get reliable information and evidence to combat serious crime. With the different situations in each country, it is indispensable to explore such tools for further effective use and each country may broaden the scope of their legal framework to facilitate such techniques while paying heed to privacy rights. From a technical point of view, the respective governments should consider allocating a sufficient budget for buying state-of-the-art electronic gadgets to keep abreast with the criminal groups. Investigators and relevant officials should also learn and be trained in cutting-edge technology for communication interceptions and surveillance. Additionally, officials who are engaged in wiretapping should be highly sensitized to privacy rights of citizens.

IV. UNDERCOVER OPERATIONS

A. Definition

Undercover operations consist of surveillance of persons suspected of committing offences, carried out by specialized officers acting as participants to those offences. To that end, designated officers are authorized to use an assumed identity. They cannot act in a way that instigates the commission of offences. (Model Legislative Provisions against Organized Crime, UNODC) In other words, it is a planned investigative and surveillance process in which police officers use disguises and subterfuge to gain evidence and intelligence against criminal offenders who have become resistant to traditional policing methods.

An undercover operation must be differentiated from entrapment. When the agent induces a person to commit a criminal offence that the person would have otherwise been unlikely or unwilling to commit, this kind of behaviour amounts to entrapment. As a matter of fact, this agent is an *agent provocateur*. This evidence collected is not admissible in court.

Undercover operations can be classified as simple or complex. Simple undercover operations usually last less than six months, have a limited budget, and have no sensitive issues that would elevate the operations to

a higher level of review within the investigating agency.

A simple undercover operation might include the undercover officer who buys drugs from a local drug seller on two or more occasions with the investigative goal of identifying and successfully searching and seizing the drug dealer's supply, or that of the supplier.

A complex undercover investigation is usually long term and more sophisticated in both the use of specialized techniques and the creativity of the investigation itself. Complex investigations can include investigations of public officials, even if the investigation is of short duration.

B. Current Situation in Each Country

Only three countries represented in this group have legal provisions on undercover operations: Pakistan, Tajikistan and Ukraine. In the other countries (Cote d'Ivoire, DRC, Japan, Papua New Guinea, Sri Lanka), it is not stipulated in the law. However, simple undercover operations are carried out by law enforcement agencies. In the countries where undercover operations are not covered by legislation, the law enforcement officers still do simple undercover operations. For example, if police officer(s) get information that there is a drug dealer selling drugs, they use an informant to confirm the information and then the police officer will approach the drug dealer and purchase drugs and then arrest the drug dealer and charge him.

In Papua New Guinea, the use of the police officer to actually purchase the drugs will be unsuccessful as everyone knows who the policemen are. The actual purchase of the drugs will have to be made by an informant or civilian, and then the police can arrest the drug dealer.

In Pakistan, law enforcement agencies do not need a warrant from the court before undertaking an undercover operation. This authority has been delegated to the police superintendent and, in the case of the Anti Narcotic Force (ANF), to the Director General of the ANF.

In Tajikistan and Ukraine, undercover operations are also performed within the safeguards of legal provisions.

Japan does not have special provisions concerning undercover operation. Nevertheless, article 58 of the Narcotics and Psychotropic Control Law provides that "with the authorization of the Minister of Health, Labour and Welfare, a narcotics agent can receive a narcotic drug from any person". Based on this provision and on paragraph 1 of article 197 of the Code of Criminal Procedure, undercover operations are conducted mainly against subordinates of crime syndicates.

C. Main Issues

Group 1 pointed out the following as the main issues and problems in the use of undercover operations. To begin with, several countries of Group 1 lack legal frameworks for the authorization of undercover operations. Secondly, many countries do not have access to the use of modern technology which is necessary for conducting undercover operations. Thirdly, the concerned members of law enforcement authorities are not sufficiently trained in the use of undercover operations. Fourthly, the dearth of sufficient manpower is also one of the challenges faced by countries of Group 1. Another problem in the use of undercover operations is the high risk and threat to the life of the officer involved. Lastly, another problem in conducting undercover operations is the lack of sufficient and adequate funding, as undercover operations require a great deal of money.

D. Recommendations

- Enactment of special legislation in the countries where there is no legal framework for undercover operations;
- Recruitment of sufficient police personnel for undercover operation is required;
- Specialized training of the concerned officers for undercover operations is necessary;
- Cutting-edge equipment required for undercover operations must be provided to law enforcement agencies;

- Undercover agents and their families must be protected (revelation of their identity or any harm perpetrated against them must be harshly punished, such as in France);
- Specialized accounts for undercover operations, such as in Thailand, must be created to cover the expenses involved in undercover operations.

V. CONTROLLED DELIVERY

A. Definition

Controlled delivery is commonly recognized as the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more states, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence. (See Article 2 (i) of the UNCTOC Convention.) The UNCTOC requires State Parties to use the necessary techniques to allow for the appropriate use of controlled delivery, if permitted by the basic principles of the State Party's domestic legal system (paragraph 1 of Article 20).

1. The Goals of Controlled Delivery

The goals of controlled delivery are to: (i) broaden the investigation to higher levels of the criminal organizations, (ii) get additional evidence in cases concerning organized smuggling, (iii) get proof that the violations of law are intentional, (iv) discover storage places for smuggled goods and seize additional contraband, and (v) detect the final destination of smuggled goods. The controlled delivery method could be utilized inside one country's jurisdiction, or it could be conducted with international cooperation by allowing controlled transportation of smuggled goods over the borders of one or more countries. In the first case, it is known as domestic or internal controlled delivery while in the later case it is called international controlled delivery.

Controlled delivery can be carried out by:

- (i) Recruiting a cooperative suspect after initial recovery of the illicit substance.
- (ii) Using a "blind courier", by covert surveillance of the smuggled goods without the cooperation of the suspect, in which case the suspect does not know that the contraband was discovered by customs officials or the contraband is smuggled by a courier company that has not been informed of the controlled delivery.
- (iii) Using the cooperation of the courier company for conducting the controlled delivery operation.

2. Current Situation in Participating Countries

Several participating countries of the 169th UNAFEI International Training Course have utilized controlled delivery successfully, bringing to justice the leaders of criminal groups rather than merely arresting couriers or seizing drugs which unknown persons own. In Japan, controlled delivery has been used by law enforcement agencies and there is a legal framework for this process. Similarly, Pakistan and Tajikistan and Ukraine also have legislation in place allowing for controlled delivery. However, there is no specific legal provision for controlled delivery in Sri Lanka, Cote d'Ivoire, Democratic Republic of Congo and Papua New Guinea. Controlled delivery has been used not only domestically but also internationally in cases where the consignments are delivered to other countries. However, each country has somewhat different laws and approaches in this matter. For example, there are two types of controlled delivery, namely live controlled delivery, which allows the original contraband to be moved to its final destination under the control of law enforcement officers, and clean controlled delivery, in which law enforcement agencies remove and substitute drugs with a harmless substance before allowing the consignments to be delivered. Also, the scope of controlled delivery is different from one country to another. In some countries, beyond drug trafficking, this technique is used to investigate other types of crimes such as illegal firearms trafficking and money laundering.

3. Common Issues, Problems and Solutions

Live operations and clean operations: The members of Group 1 recognized that controlled delivery is a useful method for arresting suspects and seizing illicit drugs. We also discussed the differences between the use of live and clean controlled delivery operations. In other words, we sought to determine which operation

would be more effective. With regard to both operations, we analysed the advantages and disadvantages as follows:

(a) Advantages of live controlled delivery operations

- (i) Possibility of obtaining indefensible evidence that the suspects have conducted drug smuggling, in particular the chance of disclosing the transaction of drug trafficking and of annihilating organized criminal groups.
- (ii) Reduction of the risk of controlled delivery operations being exposed by the suspects, especially in cases in which the final destination of the delivery was unclear.

(b) Disadvantages of Live Controlled Delivery Operations

- (i) Burden of carrying out the surveillance.
- (ii) Hazardous aspect of the disappearance of the drugs and the suspects.

(c) Advantage of clean controlled delivery operations

- (i) Prevention of risk of the disappearance of the drugs or other smuggled items.

(d) Disadvantages for clean controlled delivery operations

- (i) Risk of disclosing the controlled delivery operation.
- (ii) Risk of losing the evidence of the suspect's drug smuggling.

4. Solutions

Our Group reached the consensus that it is always necessary to consider the checks and balances before law enforcement agencies decide to launch controlled delivery operations. In addition, before performance of such operations, it will be necessary to collect and evaluate all available information on whether the delivery situation is part of a systematic smuggling operation, if the recipient is a member of a criminal group, and whether he has a prior criminal record. Utilization of informants should also be considered. Before arresting or approaching the offender, law enforcement agencies should analyse information about the offender, including his or her contacts, means of communication and address to evaluate the possibility of recruiting the suspect after arrest. At this point, it is to be decided if the offender can be recruited for controlled delivery or if the controlled delivery should be carried out by covert surveillance of the offender to the final destination of the smuggled goods.

5. How to Use the Results of Controlled Delivery as Admissible Evidence at the Trial Stage

Controlled delivery is mostly conducted in the investigative stage of a criminal case for collecting information to reach the criminal networks. Nevertheless, the officers who employ this technique must carefully plan and prepare the operation in order to guarantee the success of the seizure and arrest and ensure that such evidence is securely used at the trial stage. When law enforcement officers detect contraband, it is essential to mark the evidence, packages, containers, etc. to be able to identify them after seizure at the final destination. The contraband should be tested, weighed and evaluated by credible experts. The parcel or container should be photographed or videotaped before and after the search and after its preparation for controlled delivery. Each country's procedural law should be applied in order to guarantee the admissibility of the evidence. In this phase of planning of the operation, the law enforcement officers should consult prosecutors to avoid misinterpretation of legal details and conduct the controlled delivery in a way such that it can be used as admissible evidence in court. All necessary warrants to conduct electronic surveillance or searches and seizures etc. should be obtained before carrying out the actual operation.

6. Cooperation at the National and International Levels

Controlled delivery may be conducted within the country where the drugs are detected or with the cooperation of countries from where the drugs are originated, transited and where they are delivered to the receiver. The major concern is that, in order to get good results, the controlled delivery should often be done promptly and without any delay to prevent the awareness of targeted offenders. Therefore, cooperation of all concerned authorities is required.

On the international level, cooperation may be achieved through bilateral or multilateral agreements between countries, effective and fast contacts between law enforcement agencies and by regular information exchanges. It should be pointed out that in order to conduct successful controlled delivery, the concerned countries should have already established good relations before starting the process. It would be useful to have mutual understanding treaties or guidelines beforehand for smooth cooperation among the concerned countries. The same approach can be applied to domestic operations as well. Many authorities may be involved in conducting a controlled delivery operation, *i.e.* the police, customs office, narcotics office, border guard, port officers, courier services, telecommunication companies. Therefore, these authorities will have to cooperate with each other. One way to organize smooth operations is to set up fundamental guidelines and Standing Operating Procedures for the concerned authorities to be followed in a controlled delivery situation.

7. Utilization of Cooperative Offenders for Controlled Delivery

The cooperation of an offender to carry and deliver the detected drugs to his criminal network under supervision of law enforcement officials is also recognized as one method of controlled delivery. However, comprehensive prior arrangements among competent authorities will be needed before starting this process. One of the difficulties in employing this technique is to negotiate with the offender for their cooperation. Some countries may provide an immunity system subject to their laws to facilitate such cooperation. For example, in Pakistan, the law provides for the pardon, or mitigation of punishment, of the accused if he or she provides useful information to the investigating officer or prosecution. But in other participating countries, there is no such legal framework for pardon or mitigation of punishment. In such cases, law-enforcement officers have to rely on so-called “gentlemen’s agreements” in negotiations with the offender. Usually the operating officers may not be able to give any promises to the offender. In this case it is essential for investigators to cooperate with prosecutors who have first-hand knowledge of the sentencing system and who can influence the sentencing at the trial stage. If the country has a plea-bargaining system, the prosecutors could directly inform the offender of the difference in imposed penalties in case of refusing or accepting cooperation. In the absence of a plea-bargaining system, the prosecutors may still indirectly influence the court proceedings. If the offender agrees to cooperate, investigators have to evaluate his or her ability to carry out orders and whether his or her unusual behaviour could jeopardize the operation. Law enforcement officials should undertake this kind of operation only when they are confident of the offender’s reliability, because otherwise there is a significant risk of losing track of the offender as well as of the controlled item. This is one reason why investigators often prefer clean controlled delivery.

8. Combination of Controlled Delivery with Other Investigation Techniques

Besides being an independently recognized investigative method, controlled delivery is actually conducted with a combination of different investigative and surveillance methods that are utilized to control the movement of the item in question. The process of controlled delivery may be initiated on the information provided by the informants. The informants or undercover agents may also be used to accompany the delivered item or the cooperating offender. Physical covert surveillance of the delivered item or the criminal is often used. Electronic surveillance should also be an essential part of the delivery. For example, if an electronic device attached to the delivered item could be used to determine the location of the item or notify the investigators of the disclosure of the item, it would make the controlled delivery almost perfect. In such cases, the officials would know the appropriate time to enter the offender’s house, office or other respective location and arrest him with the evidence. However, in most of the countries, regular investigators are not qualified to operate electronic surveillance equipment, and, therefore, experts or special units should participate in carrying out the operation.

9. Appropriate Timing to Enter the Targeted Location

The most difficult point of controlled delivery operations is to decide on the appropriate time to arrest the offender along with the controlled item in order to create strong evidence. If the law enforcement agency enters into the targeted house/location before the parcel is opened, the offender may raise an excuse or plea that the parcel was delivered by mistake, and he or she intended to return it to the courier service. In addition, early arrest may cut off the offender from the criminal network or alert the higher levels of the criminal organization that the operation is intended to reach by employing controlled delivery. On the other hand, the delay of arrest will increase the probability of the criminal’s escape or losing track of the offender and the controlled item. Appropriate timing of entering the house/location to make the arrest or seizure, therefore, is of utmost importance. Nevertheless, officers should not enter the suspect’s house/location before he/she has completely opened the parcel. When the parcel has already been opened, he or she cannot deny

being the recipient. As aforementioned, law enforcement agencies may have to rely on an advanced electronic device to inform them of the right time to enter the offender's house/location and arrest him with the incriminating evidence.

10. Limitations on the Usage of the Controlled Delivery Method

Controlled delivery, especially live CD, is an investigative method involving a high level of risk and requiring vast professional skill and knowledge on the part of the investigator. When controlled delivery is employed, we should consider the cost-effectiveness and the time frame constraints for this method compared to other investigative techniques in advance. Nevertheless, Group I recognizes that it ought to be a beneficial technique to establish a link between the illicit drugs exposed and high-level criminals to achieve the goal of combating organized crime. In order to conduct a controlled delivery operation effectively, we need to combine it with other appropriate techniques such as utilization of informants, undercover agents and electronic indicators for opened parcels, and to fully conduct the follow-up investigation to gain the evidence which can identify it as an organized crime. It is also critical to conduct skills training by sharing best practices before launching the operation and to establish a close relationship with the related authorities for the realization of a speedy and smooth operation.

VI. PROTECTION OF WITNESSES AND IMMUNITY IN EXCHANGE FOR TESTIMONY

A. Introduction and Definition

The cooperation of drug offenders is crucial in dismantling drug trafficking organizations since they know the structure, activities and functioning of these groups. However, criminal organizations have the means to prevent potential witnesses from collaborating with law enforcement and judicial authorities by threatening them and their relatives.

To overcome the unwritten "rule of silence", national authorities have to ensure witnesses' protection at every step of the proceedings. On the other hand, as they might have committed offences, such informants / witnesses may be reluctant to cooperate with law enforcement and prosecution authorities.

According to article 24 of the United Nations Convention against Transnational Organized Crime, each State Party has to take appropriate measures to provide effective protection from potential retaliation or intimidation for witnesses who give testimony and for their relatives and other persons close to them.

The protection of witnesses may consist of physical protection such as:

- (i) Police escort to and from the court;
- (ii) Close protection;
- (iii) Re-location;
- (iv) Non-disclosure or limitations on the disclosure of information concerning their identities and whereabouts;
- (v) Changing identity.

Several measures may also be adopted to provide psychological safety:

- (i) Keeping the witness fully informed of the proceedings;
- (ii) Allowing expert counsellors to accompany him/her to the court;
- (iii) Providing a room where the witness can wait before testifying, so that he/she is not in physical contact with the accused or his relatives during the trial.

Also, procedural or in-court measures can be set up to allow the testimony to be given in a manner that

ensures the witness' safety, *e.g.* by providing testimony through communications technologies such as video links or other appropriate means.

The choice of the form of the protection—from basic and affordable measures to more complicated ones—has to be made on a case-by-case basis, depending on the completeness of the testimony, the role of the witness in the criminal group and the level of threat he or she may be facing.

Another means to encourage witnesses' cooperation is to reward their testimony by a limited or total immunity, which may consist of stopping the prosecution or promising not to prosecute them for a specific offence related to the case for which they are about to give testimony. Immunity is different from plea bargaining as the latter usually aims to obtain leniency in the sentence.

The UNCTOC encourages States Parties to “consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention” (article 26, para. 3).

B. Current Situation in Each Country

1. Witnesses Protection

Although most countries have no specific witness protection programmes, all of them have a general legal framework that ensures witness security during the trial stage.

In Pakistan, under the general provisions, female witnesses who fear for their security can be offered protection within a “shelter house” for an unlimited period. Special legislation addressing the issue of witness protection is in process.

In Côte d'Ivoire, the Democratic Republic of Congo, Japan and Papua New Guinea, the police escort and protect witnesses who testify in the court.

In 2015, Sri Lanka adopted an act to provide assistance and protection to any witness who might need it¹. Under the provisions of this Act, a victim of an offence or a witness who has reasonable grounds to believe that any harm may be inflicted on him or her due to his or her cooperation in criminal proceedings shall be entitled to seek protection from such harm. Therefore, the authority established for protection of the victims and witnesses or any Court may grant a request to provide relevant protection measures.

Tajikistan and Ukraine have specific legal frameworks that guarantee protection by the police and/or public prosecutor to any witness who feels unsafe. Several measures are available, such as personal escort, bodyguards, protection of property, and concealing or changing of identity.

2. Regarding Immunity in Exchange for Testimony

With the exception of Pakistan and Japan, none of the participating countries represented in Group 1 have specific legislation dealing with immunity in exchange for testimony. However, in Côte d'Ivoire, DRC, and PNG, general legislation authorizes public prosecutors to refrain from prosecuting a person who gives useful information for the investigation.

In Pakistan and Sri Lanka, an informant or potential witness who has taken part in the offence may agree to plea bargain. When an accused person becomes an “approver” or “state witness”, judges in Pakistan may grant the witness complete immunity or leniency while in Sri Lanka the Attorney-General may only grant the witness leniency. In this case, the statement has to be made in open court, without any compulsion. In Japan, a new act came into force on 1st June 2018 regarding leniency and immunity for the suspect or accused in exchange for testimony regarding an organized crime, but so far no cases have been dealt with under this law.

¹ Parliament of the Democratic Socialist Republic of Sri Lanka, *Assistance to and Protection of Victims of Crimes and Witnesses Act*, No. 4 of 2015.

C. Common Issues and Problems

In addition to the significant resources that are required to implement effective protection of witnesses, extreme precautions are required, and protection cannot be provided in every case. Moreover, the credibility and accuracy of a witness's testimony can be diminished by his or her fear of reprisals by the members of the criminal organization. It also can lead the witness to change his or her testimony and/or refuse to make a statement in open court. When a programme is set up, psychological and practical barriers can be encountered that compromise its success:

- (i) High expectations;
- (ii) Lack of cooperation and/or discipline of the protected witness;
- (iii) Lack of ability to refrain from using an old identity and contacting old acquaintances;
- (iv) Insufficient psychological training;
- (v) Insufficient social capacity to cope with the drastic change in lifestyle the programme requires;
- (vi) Factors related to the witnesses' frequent criminal background.

In countries that allow police officers to appear in court as witnesses, there is no specific protection. As regards immunity in exchange for testimony, the main concern is about ethical issues, as the practice may be perceived as inciting impunity.

D. Solutions

- (i) Since witness protection measures may be considered as affecting the defendant's rights to a fair trial, a specific legal framework is required;
- (ii) Define who may be a protected witness and the general type of protection that may be provided;
- (iii) Set out the factors to determine admission to a protecting programme;
- (iv) Settle a witness protection authority in charge of deciding on the type of measures to be applied and applying such measures;
- (v) When necessary, amend the rules of evidence to permit the use of video link systems during trial;
- (vi) Amend mutual assistance agreements in criminal matters to address the issue of international relocation.

VII. CONCLUSION

After threadbare and thorough deliberations, Group 1 reached consensus on the following conclusions. The current paper mainly emphasizes and explores the utilization of special investigative techniques in the battle against organized crime. These techniques, if used in a calculated and professional manner, could prove to be very successful in order to broaden the investigation to higher levels of criminal organizations. On the other hand, no judicial decision can be based only on a single piece of evidence. Therefore, it is important to realize that one successful operation of controlled delivery, electronic surveillance etc. might not be sufficient to secure the conviction of the offenders. Special investigative techniques should always be supported by effective utilization of conventional investigative tools. It is also obvious that the scope of special investigative techniques covered by this paper is not final, and the arsenal of law enforcers must always be creatively supplemented by new methods in accordance with the trends and developments of the criminal world.