

**GROUP 1**  
**PHASE 2**

**SPECIAL INVESTIGATIVE TOOLS TO COMBAT  
TRANSNATIONAL ORGANIZED CRIME (TOC)**

---

<b>Chairperson</b>	Mr. Mustafa Abdullah	(Malaysia)
<b>Co-Chairperson</b>	Mr. Ruy Gomes Silva	(Brazil)
<b>Rapporteur</b>	Mr. John Kamyá	(Uganda)
<b>Co-Rapporteur</b>	Mr. Satomi Konno	(Japan)
<b>Members</b>	Mr. Xue Qin Wang	(China)
	Mr. Genot Hariyanto	(Indonesia)
	Mr. Yoshihiko Hatanaka	(Japan)
	Mr. Masashi Shibata	(Japan)
	Mr. Tetsuji Tamagoshi	(Japan)
	<b>Visiting Expert</b>	Mr. Bruce G. Ohr
<b>Advisors</b>	Prof. Chikara Satou	(UNAFEI)
	Prof. Hiroshi Tsutomi	(UNAFEI)
	Prof. Mikiko Kakihara	(UNAFEI)

---

**I. INTRODUCTION**

Transnational Organized Crime (TOC) has become a great concern to the world community as it poses a threat to the safety and security of sovereign states. It has manifested itself in many ways, prominent amongst which are drug trafficking, money laundering, trafficking in women and children, illicit manufacturing of and trafficking of firearms, the smuggling of migrants etc. The result of the above is the emergence of serious problems in various countries of the world.

The use of traditional investigative methods to combat TOC has proved to be very difficult and ineffective. This state of affairs therefore calls for the use of special investigative tools such as controlled delivery, undercover operations and electronic surveillance (wiretapping, communications interception etc) by law enforcement agencies to effectively control TOC.

However, there is controversy surrounding the use of these techniques and thus, to a certain extent, discouraging the law enforcement agencies to utilize them. Their use potentially undermines the rule of law, may lead to infringement on human rights and involves government agencies in the use of deceitful means. There is a fear that governments may use them to oppress citizens under the guise of national interest. Their use therefore often spark off politically sensitive debates.

The biggest question therefore is how to use these techniques consistent with the rule of law and respect of human rights. The answer to this cannot be universally obtained and this will depend on the legal system, practice and culture of each country. There is a need therefore, to strike an agreement as to what extent the privacy rights of individuals can be respected at the same time keeping them (people) safe from the effects of TOC.

116TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

In that vein, this paper seeks to analyze these tools with emphasis on the current situation, common issues and problems as well as proposed solutions. It will also analyze the legal framework existing in countries of focus and the trial admissibility of evidence obtained using the above-mentioned investigative tools.

## II. CONTROLLED DELIVERY

### A. Current Situation

Controlled delivery is recognized to be one of the most effective investigative tools in fighting TOC, particularly illicit drug trafficking. It is defined 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.<sup>1</sup>

Under the controlled delivery system, the shipments of such goods are monitored closely by law enforcement officers and may delay arrests in order to identify as many members of a trafficking network as possible and to arrest them at a point where legal proof is most readily available. This innovative technique of investigation can be very effective in trapping the managers of crime syndicates. However the methods employed may not be acceptable to many countries in view of considerations of their domestic laws, because it produces offences which could be otherwise prevented.

Since the endorsement of its application vide Article 11 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (herein after

called the 1988 UN Convention), this investigative technique has been frequently utilized by law enforcement agencies in dealing with drug offences, both domestically and internationally. Obviously this tool has become one of the most effective weapons in combating illicit drug trafficking as it enables the law enforcement agencies to specifically identify, arrest and prosecute not only the carriers and couriers but also the principals, organizers and financiers of such illicit activities. Apart from drug trafficking, the usage of this technique has been extended to other type of organized crimes such as trafficking of firearms, trafficking of stolen vehicles etc...

In reality, almost all the participating countries have adopted the tactics of controlled delivery in tackling mainly drugs and firearms trafficking. Three of these i.e. Italy, Japan and Pakistan, have some special laws or regulations pertaining to conducting controlled delivery while others have conducted the operation based on discretion of the law enforcement agencies in accordance with the regulations or some departmental guidelines of relevant authorities such as police, prosecution, customs etc... In countries where this investigative tool has been utilized, evidence collected during investigations is admissible upon court decisions in accordance with the existing criminal laws of respective countries. However, in Brazil, despite of the technique being provided under the Organized Crime Law, the tool has not been utilized by the law enforcement agencies because the legal provisions are found to be insufficient. Efforts are underway to strengthen the law to this effect.

In Italy, the provisions of some laws allow controlled delivery operations in respect of illicit drug trafficking, money laundering and illicit trafficking of firearms

---

<sup>1</sup> Article 2 (i), The Draft UN Convention against Transnational Organized Crime (A/AC. 254/36).

and explosives. However, this technique is only to be applied when any other investigative methods are proven to be unsuccessful or insufficient. The same laws also call for delayed action by the enforcement officers in respect of arrests and seizures during such operations.<sup>2</sup>

In Japan, since the enactment of the Law on Special Provisions for Narcotics<sup>3</sup> in 1992 until October 2000, about 160 operations of controlled delivery were conducted by the Japanese law enforcement agencies.<sup>4</sup>

## **B. Common Issues and Problems**

The use of controlled delivery usually becomes a very pertinent issue especially when the laws of a particular country do not explicitly provide for its use. How then could an agency apply it? On this question, it was felt that the laws of most countries do not specifically designate the use of this technique as illegal. It is often just found out that such a method as a means of investigation and detection of criminal activity had not been considered when the laws were promulgated. It can therefore be presumed that while this methodology is not explicitly sanctioned by law, it cannot be said to be unlawful. Controlled delivery is often a mean to an end and a good method of catching the sender and receiver of illicit consignments. The question is however whether it is really effective? Whether it is worthwhile employing? What its merits and demerits are - Is it an effective tool from investigative point of view? Can it lead to arrests? What are

<sup>2</sup> Article 97 & 98 of Republic President Decree (DPR) 309/90 and Article 12-4 DPR 306/92.

<sup>3</sup> Law Concerning Special Provisions for the Narcotics and Psychotropics Control Law, etc, and other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances Through International Cooperation.

<sup>4</sup> Isamu Ikenoue, UNAFEI lecture, 2 October 2000.

the legal provisions and what is the sentencing policy?

While discussing all these issues, it was found that controlled delivery has both advantages and disadvantages. On the positive side, it is the most effective method of arresting a whole network of a particular illicit trafficking syndicate, not just the sender and the receiver. On the negative side, it is very dangerous because if it fails, the illegal goods or substances enter the market.

In practice, the operation of controlled delivery is very difficult and complicated, particularly when it involves many countries. Worse still when there is a difference in legal systems and practices of the countries concerned, as well as the lack of cooperation and coordination among various law enforcement agencies.

In utilizing this tool, enforcement agencies are often haunted by fears that the illicit consignments may end up lost in the process. Even worse, is the case of firearms, their loss is directly linked with danger. In Japan therefore, the law accordingly provides that controlled delivery of firearms should be conducted only under clean controlled delivery (CCD) operations.

## **C. Proposed Solutions**

In regard to the solutions for these problems, we can derive our lessons from successful precedents. One classic example was the case of successful CCD operation conducted jointly by 3 countries i.e. the US Republic of Korea - Japan in 1998 whereby 6 kg of "fake-cocaine" was ferried from the United States to Japan via Republic of Korea resulting in an arrest of a receiver in Japan.<sup>5</sup> In this particular case, the Drug Enforcement Administration (DEA) had

<sup>5</sup> Mune Ohno, UNAFEI lecture, 2 October 2000.

116TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

decided to change the real cocaine with fake one because of security reasons and the receiver was indicted in accordance with Japanese law. The success of this operation was as a result of proper planning, close cooperation and coordination between countries concerned.

We can draw several lessons from this particular experience:

- (i) The establishment of close contact and cooperation with countries in relation to controlled delivery operation leads to successful results. In this vein, law enforcement agencies in each country should establish and maintain intelligence and information exchange mechanisms and networks, so as to get timely and accurate information, both at the domestic and international level. Legislation or policy designed to promote international cooperation and harmonization in accordance with the 1988 UN Convention forms the basis of establishing smooth information exchange mechanisms. Needless to say, the success of controlled delivery hinges upon domestic cooperation and coordination among law enforcement agencies, as well as international coordination and cooperation. Each law enforcement agency in each country has to set up a system of exchanging intelligence and information and these intelligence and information units should be closely linked and cooperating with each other. Then, a multi-agency task force may be organized whenever deemed necessary. In case of practical law enforcement on international mutual assistance, these intelligence and information units shall fulfill the

function of acting as a contact point. This contact point should promote communication with the country concerned in accomplishing international controlled delivery.

- (ii) Controlled delivery carried out in conjunction with the undercover operation produces good results in that the fear of losing consignments and the escape of suspects will diminish with timely gathering of accurate information.
- (iii) It is necessary to develop new technologies to re-enforce the use of this tool, such as sophisticated monitoring devices (tracing transmitters, response senders and receivers, thermo imaging cameras etc).

It is expected that these countermeasures may lead to solving the problems mentioned above in the controlled delivery operations.

In order to overcome the fear that CCD may weaken the court case, we need a law or regulations to conduct CCD. In Japan, the Law on Special Provisions for Narcotics approves judicial authorities to punish violators who with intent to commit any offence, import, export, transfer, receive or possess any drug or other article as a controlled substance. Japanese law enforcement officers can invoke this law to engage in CCD.

In addition to these measures, effective application of the controlled delivery tool in any country requires policies and countermeasures that are fast, flexible, easy to adapt to new situations and both technically and conceptually commensurate with the ever-growing complexity of the evolving global TOC problems. There might also be a need for

interdisciplinary research and conceptualization, experimentation with entirely new concepts and approaches and increased international cooperation. In that context, the establishment of the information network system would also produce good results so that many countries could share among themselves their knowledge, expertise, and develop information on the various available approaches to solving the problems in controlled delivery operations. There is no doubt that an approach which is successful in one country may not always be successful in another, because the idea of the law and the criminal procedure depends upon the social, cultural and historical background of each country and their policies. Therefore, the measure should be suitable and in conformity with the situation in any country, and exact measures should be selected out of information available, with given regard to the fundamental idea that we have to combat TOC.

It is therefore clear that controlled delivery, though a simple concept, it demands a high level of skill and professionalism, teamwork and cooperation between agencies. How successful the operation of controlled delivery will thus depend on how close the cooperation, coordination and monitoring is between the involved agencies, both domestically and internationally. It is also expected that accomplishing the controlled delivery as part of the international cooperation against trafficking of illicit consignments other than drugs will have a great impact on combating TOC.

### **III. UNDERCOVER OPERATIONS**

#### **A. Current Situation.**

Undercover operation is another effective investigate tool against TOC and in many cases, it is employed hand-in-hand

with controlled delivery. The law enforcement agencies in some countries employ undercover agents to gather information and collect evidence about criminal gangs, study their modus operandi and evaluate their future plans and strategies. This information is used both for preventive and investigative purposes. This technique inherently involves an element of deception and may require cooperation with persons whose motivation and conduct are open to question, and so should be carefully considered and monitored.

Undercover operation means an investigation involving a series of related undercover activities (investigative activities involving the use of an assumed name or cover identity) by an undercover employee (agent) over a period of time.<sup>6</sup> It may be of very short duration, lasting only a few hours, or may be quite lengthy, lasting a few years. It may be directed at only a single crime incident, or a long term criminal enterprise. Through such undercover operations, law enforcement agents are able to infiltrate the highest levels of organized crime groups by posing as criminals when real criminals discuss their plans and seek assistance in committing crimes.<sup>7</sup>

Undercover operations are extremely sensitive and pose the danger of luring otherwise innocent people into criminal activity. Because this technique carries the potential for problems, it requires exceptional preparation. In most drug cases, the undercover agents are officers from law enforcement agencies where they act as buyers of drugs. This method of investigation is very dangerous as it puts the life of the law enforcement officer at

<sup>6</sup> US Attorney General Guidelines on *FBI Undercover Operations* Revised 11/13/92

<sup>7</sup> Bruce G. Ohr, UNAFEI lecture, 24 October 2000.

116TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

risk if he is identified by the syndicates and as such it has' to be carefully planned, by using officers who have some experience in conducting such investigations.

All the participating countries except Brazil and India have employed the technique of undercover operation for investigating crimes which includes drug and firearms trafficking, money laundering, stolen properties trafficking, woman trafficking, etc, of which 6 countries; China, Germany, Italy, Japan (for narcotics and firearms trafficking only), Malaysia and, Pakistan have some special laws or regulations pertaining to conducting undercover operation while other countries have conducted the operation according to the guidelines formulated by the relevant authorities. In these countries, some sort of consent or permission to conduct the operation is required, for example, the consent of a prosecutor and judge in Germany, the consent of agency supervisor and prosecutor in the United States, authority of a prosecutor in Italy, and in case of Japan, and authority of the Minister of Health and Welfare for drug trafficking and by the Prefectural Public Safety Commission for firearms trafficking respectively.

The use of this investigative tool has proven to be very effective in combating TOC. It is evident in the undercover operations carried out in most countries which employed the tool. The classic examples are the Operation Dinero (1994) and Operation Green Ice II (1995) in the United States, whereby DEA undercover agents set up front business that offered money laundering services to drug traffickers. Both operations were hugely successful and disabled sophisticated drug trafficking organizations. Operation Dinero resulted in the seizure of three valuable paintings and US\$90 million and

the arrest of 116 suspects in the United States, Spain, Italy and Canada. Whereas Operation Green Ice II, which involved over 200 agents from 27 different law enforcement agencies, resulted in over 80 indictments. Another most successful undercover operation by DEA is Operations Pipeline and Convoy which were conducted since 1984 in New Mexico and New Jersey, resulting in seizures of Marijuana (1,199,855 kg), Cocaine (133,419 kg), Crack Cocaine (896 kg), Heroin (487 kg), Methamphetamine (4,617 kg) and currency US\$604 million between the period of January 1986 to September 2000.<sup>8</sup>

In Thailand, recently the Thai police announced that they seized 2 million methamphetamine tablets in early October 2000 from a 28-year-old man trying to sell them to an undercover agent.<sup>9</sup>

#### **B. Common Issues and Problems**

The justification of an undercover operation demands establishment of criminal liability of the action of the accused person, failure of which often raises issues challenging the legality of the operation. In the USA for example, for the undercover operation not to give rise to successful claims of entrapment or related defenses, all law enforcement officers must consider the following three points before conducting undercover operation: First, while reasonable suspicion is not legally necessary to initiate an undercover operation, officers should nonetheless be prepared to articulate a legitimate law enforcement purpose for beginning such an investigation. Secondly, law enforcement officers should, to the extent possible, avoid using persistent or coercive techniques, and

<sup>8</sup> US Department of Justice, Drug Enforcement Administration, Internet Site <[www.usdoj.gov/dea/programs/money.htm](http://www.usdoj.gov/dea/programs/money.htm)&[www.usdoj.gov/dea/programs/pipecon.htm](http://www.usdoj.gov/dea/programs/pipecon.htm) as at 10/19/00>.

<sup>9</sup> The Daily Yomiuri, 11 October 2000.

instead, merely create an opportunity or provide the facilities for the targeted criminal to commit the crime. Thirdly, officers should document and be prepared to articulate the factors demonstrating that a defendant was disposed to commit the criminal act prior to Government contact. Such factors also include a prior arrest record, evidence of prior criminal activity, a defendant's familiarity with the circumstances surrounding a particular criminal event, and a defendant's eagerness to engage in the criminal activity. The most convincing evidence of predisposition will typically occur during the initial Government contacts, which officers should carefully document to successfully defeat the entrapment defense. In Japan, some judicial precedents by courts<sup>10</sup> point out the following as justification for carrying out the undercover operation:

- (i) Due to the complexity of cases involving drug trafficking and difficulty in their investigation, employment of the tool is legally acceptable.
- (ii) The general guiding principle to use this tool should be consonant with public interest, order and morals. A law enforcement officer should not induce a person who has no prior intention of commission of crime to commit an illegal act.

It is obvious that such a principle in Japan and the United States lies at the basis of the undercover operation so that the operation is not legally approved unless the principle is secured. It is accordingly essential to conduct a conclusive pre-investigation and keep a detailed record with regard to words spoken between the

<sup>10</sup> Supreme Court, 1st Petty Bench, 5 March 1953, 7 Sai-han Keishu 3-482, Tokyo High Court, 3 April 1997, Koken Sokuho 3065-37 & Tokyo High Court, 16 March 1953, 3 To-ko-jihō 3-120.

official and the suspect, and to preserve them in good condition, for evidence. Meanwhile, in employing the undercover operation, there are a few underlying common problems:

- (i) The risk of disclosure of the true identity of an undercover agent puts his life at considerable danger. The physical safety of the agent must therefore be considered.
- (ii) At times new members of the groups have to undergo unlawful "tests of innocence" by being required to commit criminal acts such as abuse of illicit drugs, homicide, stealing, causing injury etc yet, as a matter of principle, the agents are not allowed to commit any criminal offences.
- (iii) The work of an undercover agent is stressful, demands a full-time pretence and often expose to temptation of committing crimes. Thus, it requires a close monitoring by controlling officers and back-up crews to support the operation.
- (iv) Sometimes countries refuse to cooperate in the use of this investigative tool. This prevents undercover agent from operating in more than one country, especially if a crime is of a transnational in nature.

### C. Proposed Solutions

To prevent the disclosure of his/her identity, the undercover agent must:

- (a) Be provided with a fully substantiated past history, referred to as "backstopping" and careful briefing concerning the criminal targets.
- (b) Consider in advance every conceivable scenario that may induce suspicion of, or hostility towards the agents.
- (c) Undergo careful testing, often

116TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

including psychological profiling, to ensure that he/she possesses the intangible qualities to ensure that he/she will “fit” comfortably into the new identity.

With respect of the use of undercover operation in a serious case, to balance Committee consisting of prosecutors and investigators exists in the United the merits and demerits to the agent and the public, The Undercover Review States. The committee is responsible for reviewing, approving, and controlling all sensitive undercover operations. To be approved, an undercover proposal must be in writing, containing a full factual description of the suspected criminal activity and the participants therein, set out, in detail, the proposed undercover scenario, the expertise of the undercover team, the duration of the project, the anticipated legal issues, and it must evaluate the risk to the agents and the public. Establishment of such a committee may be a useful measure.

In an event where undercover agents were required to commit any violent act, the operation may be stopped immediately. In the United States, whenever an undercover operation reveals that a crime of violence is about to take place, law enforcement authorities are required to take necessary steps to prevent the violence from occurring. This may include warning the potential victim, arresting the subjects who pose a threat, or ending the undercover operation altogether. There is also a need, for decriminalization of participation in the commission of crimes to a certain extent, by undercover agents. In considering this, the officer who has skills of dealing with any unexpected contingency should be selected and permitted to engage in the undercover operation. Acquiring training and experience is the first principle for undercover agents.

It is important that countries which have succeeded in using this tool should share their experiences and expertise with others in close international cooperation. Cooperation at the regional and sub-regional level is the most important because to be effective undercover operations must often involve more than one country in the region. Such cooperation is often hampered by a lack of understanding between countries.

#### **IV. ELECTRONIC SURVEILLANCE**

##### **A. Current Situation**

The use of electronic surveillance such as wiretapping, communications interception etc. is a very sensitive issue and the topic is commonly surrounded by controversies. Questions of the constitutionality and violation of human rights expressed by rights activists have in many jurisdictions restricted or aborted the use of this investigative tool because it is generally an illegal practice. However, the law often comes in to legalize its application under given circumstances so as to protect the rights of other people from being violated by criminals. In order to harmonize its application and respect the right to privacy, several conditions must be followed depending on the requirement of each country concerned. These always include obtaining permissions from competent authorities (judge, prosecutor, minister etc), making effort not to interfere with the private affairs/conversations, making progressive reports, close supervision of the tapping etc. However, this method should only be applied if other means have failed, are impracticable or insufficient.

Electronic surveillance represents the single most important law enforcement weapon against organized crime. There is nothing as effective as proving a crime through the defendant's own words. Its

evidence provides reliable, objective evidence of crimes through the statements of the participants themselves. Additionally, electronic surveillance enables law enforcement agencies to learn of conspirators' plans to commit crimes before they are carried out. This allows them to survey the criminal activities, such as delivery of contraband and conspiratorial meetings, or to disrupt and abort the criminal activities, where appropriate, making electronic surveillance particularly helpful in preventing the occurrence of violent crimes.<sup>11</sup>

Telephone interception and monitoring of all electronic communications are the most controversial aspects of electronic surveillance, yet very useful in assisting law enforcement agencies in combating TOC. Wiretapping or telephone interception is defined simply as the interception of a telephone conversation between parties without their knowledge, using equipment that is inserted into the electronic circuit between the transmitter and receiver. It is meant for obtaining information and intelligence on various illegal activities, and only a handful of agencies are authorized to use this facility. A screening process is normally carried out before permission to intercept is granted. This means that the agency has to justify the action by placing for scrutiny before the competent authority the reasons why tapping of a particular number is required, and also the antecedents and activities of the suspect. It requires handling in a very professional manner.

Wiretapping can be effective against crimes such as drug trafficking, money laundering, prostitution, gambling, kidnapping etc committed by the organized criminal groups which frequently employ

the use of telephone to perpetrate the offence. For example, if an order of drugs is received from a buyer, whereby the parties designate a secret rendezvous for the transfer of drug to be carried out. Only the parties to the telephone conversation know the transfer point. Therefore, it is very difficult for investigating authorities to obtain pertinent information which will assist in their investigation and clarify the substance of the crime committed, except through tapping the communication.

Wiretapping has been used to locate or trace the movement of the drugs in order to arrest the trafficker whilst in possession of such drug's. By employing such a method, not only the carrier of the drugs can be apprehended but also most of the members of the syndicate, resulting in the extermination of the syndicate.

In an attempt to analyze the situation of electronic surveillance among the participating countries, two categories were identified: countries which have no legal provisions allowing the use of the technique and those which have. Among countries with no legislation are Fiji, Laos, Nigeria, Papua New Guinea, Tanzania and Thailand. It is, however, noted that some of these countries go ahead to employ the wiretapping technique under guidelines internally issued by the relevant authorities for purposes of intelligence gathering instead of court evidence.

On the other hand, Hong Kong, Indonesia, Pakistan and Uganda have legal provisions allowing the employment of the tool, and the power granting authority is the police head. In India, the Telegraph Act of 1885 permits communication interception in case of public emergency, and so Pakistan's Telecommunication (Re-organization) Ordinance of 1996 and the Wireless Telegraphy Act of 1933 under which the authorizing power belongs to the

<sup>11</sup> Bruce G. Ohr, UNAFEI lecture, 24 October 2000.

116TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

Interior Minister. In Malaysia, the Dangerous Drug Act 1952, the Dangerous Drugs (Forfeiture of Properties) Act 1988, the Anti-Corruption Act 1997 and the Kidnapping Act 1951 all provide for the use of telecommunication interception under the authority of the public prosecutor.

There are countries, however, which have legal provisions for the employment of the technique, after obtaining a warrant from a court judge. These include Brazil, China, Germany, Italy, Japan, the Philippines and the US. In most of these countries, the offences, where the tool can be used is as prescribed by the law, must be serious in nature, and only if it can be shown that other investigative techniques are either impractical or insufficient. The proposal for interception in the US Passes through a stringent procedure before approval by the judge, via the public prosecutors office and after approval from the department of Justice in Washington. However, there is a provision that allows wiretapping without the judge's approval, in case of emergency, but approval must be sought within 48 hours of the tapping. Even after permission is granted, submission of periodic progress reports to the courts is required. In 1998, a total number of 1329 cases of wire, oral and electronic communications interception were authorized by the courts in the US<sup>12</sup>.

In Japan, the law authorizing the use of the tool was enacted in 1999 and came into effect on August 15,2000, whereas in Germany, the 1968 Code of Criminal Procedure permits the use of wiretapping.

#### **B. Common Issues and Problems**

The main issues and problems in the use of this investigative tool are as follows:

- (i) The main problem hampering the

use of this technique is lack of legislation allowing it to apply in many countries. Even where legislation exists, it often imposes stringent conditions such as limited time of communication interception, time consuming approval procedures and sorting of private conversations from crime related ones. In cases where authority have been obtained to intercept communication related to a particular crime, it has often become an issue whether tapping should continue when the criminals are discussing a new crime that is not contained in the warrant. The question always is whether the tapping authority should go ahead and tap the circumstantial crime or stop the tapping until a new approval is granted. In Italy, basically all crimes which are punishable by minimum imprisonment of 4 years under Criminal Procedure Code, can be wiretapped after obtaining a warrant. However, in the case of serious crimes which include Mafia-related crimes, wiretapping can be continued even if such a crime is not listed in the original warrant. In Japan on the other hand, even though wiretapping is authorized for only 4 categories of crime (drug related cases, trafficking of firearms, illegal immigrants trafficking and organized homicide), the tapping can be allowed to continue if the information being discussed relates to a crime punishable by a minimum imprisonment of 1 year. Similarly in the US and Germany, the laws give some leeway in the continuation of wiretapping related to other crimes but authority should be sought

---

<sup>12</sup> Administrative Office of the U.S. Court, 1988 Wiretap Report.

- immediately after the tapping.
- (ii) Lack of funds to purchase the right equipment, which is often very expensive.
- (iii) The persistent public debates and controversies surrounding the people's right to privacy *vis-a-vis* telecommunications interception.
- (iv) Persistent lack of voice experts to prove in courts of law that the voices tapped are of the accused persons.
- (v) The emergence of new technologies e.g. mobile phones, pre-paid phones, internet communications, etc which are often difficult to intercept or to tie to a particular owner.
- (vi) There is often a problem of telephone companies/vendors refusing to cooperate with the investigating agencies in carrying out wiretapping, giving various reasons such as protection of confidentiality and privacy of their customers etc.
- (vii) It is noted that in some instances there are countries which refuse to cooperate in carrying out the use of this tool, especially during investigation of TOC.

### C. Proposed Solutions

To overcome the above problems, there should be enabling laws that make the use of the tool practicable and useful. Such laws should provide ample time for carrying out the surveillance or applying the interception, reduce the time consuming procedure of obtaining permission to use the tool, cover a wide range of electronic surveillance methods such as telephone and oral communication interceptions etc so as to effectively fight TOC. In countries where it is not possible to enact an independent law on electronic surveillance, the provisions should be embedded in other laws that address TOC

related matters.

Secondly, the laws should compel the telephone vendor/companies to cooperate with investigating agencies in the use of this tool. Thirdly, there is a need for countries to strike a balance in the use of the tool so as to effectively overcome the differences existing in relation to which type of crimes the tool should be used. Lastly, there should be international cooperation in the use of this tool. This should be accompanied with exchange of expertise between countries that have succeeded in using the tool with those that have not.

### V. CONCLUSION

In conclusion, employment of the new investigative tools is highly necessary to fight against the ever growing threat of TOC. Undercover operations, controlled delivery and electronic surveillance stand out as the most effective investigative tools against TOC given the fact that where they have been used, they have exhibited a high level of ability to deliver good results. However, like all new innovations, the use of these tools have to overcome a lot of problems, ranging from lack of or ineffective legislation, lack of trained manpower, challenges from civil society and admissibility of evidence obtained through their application.

The ultimate solution for the success of the use of these tools lies in avoiding the misuse of these tools. Governments and enforcement agencies therefore need to establish proper guidelines and controls on their application by agents to avoid abuse. International cooperation and recognition of the effects of TOC and the sharing of experience and support between nations in using the tools to fight TOC are equally important. Regional police bodies such as "ASEANAPOL" in ASEAN "EUROPOL" in

116TH INTERNATIONAL TRAINING COURSE  
REPORTS OF THE COURSE

Europe and “EAPCCO” in Eastern Africa to re-enforce ICPO/INTERPOL can contribute greatly to strengthening the necessary level of cooperation.