

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

**TOOLS FACILITATING THE INVESTIGATION  
OF ILLICIT DRUG TRAFFICKING**

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**I. INTRODUCTION**

The use of traditional investigative methods to combat illicit drug trafficking 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 illicit drug trafficking.

However, there is controversy surrounding the use of these techniques and thus, to a certain extent, discouragement for the law enforcement agencies to utilize them. Their abuse may affect the rule of law, may lead to infringement of human rights. There is a fear that governments may use them to oppress citizens under the guise of national interest. Their use therefore

often sparks 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 and at the same time keeping people safe from the effects of transnational organized crime.

The use of these techniques varies from country to country, for this reason the group had to focus on them individually. However the group has adopted the definition of controlled delivery that is contained in Article 2 of the United Nations Convention Against Transnational Organized Crime, 2000.

The Electronic Surveillance investigative method was the theme of a lot of discussions in the group, since every country has its own methods and devices, but one thing that all the participants are aware of is the fact that criminal investigations are becoming increasingly more difficult as criminal techniques become even more sophisticated. The challenge for criminal investigators is to keep pace with crime *modus operandi*; by using increasingly sophisticated investigative techniques. One of them that has been extremely successful is the electronic surveillance, including both silent video surveillance and interception of wire, oral, or electronic communications.

Although the concept of undercover operations is the same but the practice is quite different in foreign countries *vis-a-vis* the concept represented by the group from Japan. In foreign countries, undercover operations mean an investigation involving a series of related undercover activities over a period of time by an undercover employee.

In that vein, this paper seeks to analyze these tools with emphasis on the current situation, problems as well as proposed solutions, in every participant country.

## II. CONTROLLED DELIVERY

CD, as an anti-drug trafficking technique, has been divided into 3 categories in our group, namely:

- A. Country in which it is stipulated by law; (Japan)
- B. Country in which it is in the process of being stipulated by law; (Honduras)
- C. Country in which it is not stipulated by law; (Cameroon, Kyrgyzstan and Pakistan)

### A. Country in Which Anti-Drug Trafficking Technique of CD is Stipulated by Law

#### 1. Current Situation

Japan signed the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on December 20, 1988 at the United Nations Drug Committee Treaty Conference. In order to enforce this treaty in Japan, a special law concerning narcotics was enacted on July 1, 1992. This law enabled law enforcement officers to utilize transnational live/clean CD.

The number of CD cases carried out is 24 cases in 1995, 19 in 1996, 19 in 1997, 29 in 1998, and 19 in 1999.

#### 2. Problems and Solutions

LCD has a risk of losing control and spreading drugs into civil society. On the other hand, CCD involves the risk of failure in arresting the receiver, because exchanging contents may cause a change of the appearance of the drug container. Also, delay of delivery of drugs may make drug traffickers nervous and cautious. That means investigators that do not have enough time. If investigators try to arrest the receivers too fast, they tend to deny realization of the contents. On the other hand, if it is too late, it gives them a chance to conceal the drugs or to run away. In addition, it is important to identify the sender and receiver, to analyze the breakdown of bank accounts used by these traffickers, telephone calls from or to them, etc.

So it must be encouraged to train staff members and cooperate internationally.

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**B. Country in Which Anti-Drug Trafficking Technique of CD is Semi-Stipulated by Law**

Honduras has adopted a definition of controlled delivery as given in Article 2 of the United Nations Convention Against Organized Crime.

The technique is used for 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.

1. Current Situation

Honduras uses the investigative technique as a very useful tool against illicit drug trafficking.

Most of the time, this technique involves the Central American countries, such as El Salvador and Nicaragua, but also with the United States, when people from Honduras take some amount of drugs inside the United States, under the supervision of the authorities, to identify all the people involved.

2. Problems

To use this investigative technique, police agencies must have some budget, because investigators have to travel out of the country and with the help of the Police of the destination country make the surveillance and also conduct further investigation.

That is one of the problems that Honduras is facing right now, because this technique is not contemplated in the Honduran Law.

3. Solutions

Honduras had received a lot of help from the U.S. government, more specifically from the Drug Enforcement Administration (DEA), and with their help Honduras has successfully conducted some investigations.

In the new Penal Procedures law this kind of Investigation is included as “special investigative methods” and it will be held under the supervision of the Judge.

**C. Countries in Which Anti-Drug Trafficking Technique of CD is Not Stipulated by Law**

1. Current Situation

Cameroon, Pakistan and Kyrgyzstan do not have a specific law to deal with controlled delivery and in that sense CD there is not formalized or institutionalized by law. CD is used as a part of the normal police practical work including all other investigation/detection techniques.

All these countries are not destination but transit countries for other nations, e.g. Pakistan is mainly a transit for Afghan opiates and Cameroon is a transit mainly for cocaine from Asian countries, and through Kyrgyzstan opiates from Afghanistan is the main transit drug. In Pakistan, under the law, CD can be used by the Intelligence Bureau (IB) and Inter Services Intelligence (ISI) and this has been sanctioned under an ordinance. But the main mandate of these agencies is the responsibility for the internal and external security of the state and hence they seldom deal with CD cases.

In the case of Pakistan however it is signatory to many bilateral and regional agreements in which it has agreed to support the signatory countries to help in

CD operations if they are through Pakistan territory if requested.

## 2. Problems and solutions

The problems being faced and the viable solutions for the three countries are as follows:

- (i) There is no specialized training imparted to custom and especially police officers which they can implement in the workplace efficiently and effectively. A change in training curriculum including the teaching of these techniques at length including CD is a viable solution for this problem.
- (ii) Secondly, the biggest problem confronting the three countries and probably all developing and underdeveloped countries is inadequate finances for affording these latest anti-drug trafficking techniques. The solution to this problem is obviously provision of optimum finances to the pertinent agencies. This will enable them to utilize the money for new training initiatives, purchase/procure the inevitable technology and equipment for CD operations and other latest techniques like electronic surveillance, etc.
- (iii) Thirdly, the main problem is that these practices, including CD, have up till now not yet been formalized or institutionalized. By doing so it would become easier, from the legitimacy perspective, for all pertinent agencies to use them without fear or favour as is the case now in Japan.

## III. ELECTRONIC SURVEILLANCE

With the exception of wire-tapping, which has been stipulated by law in Japan, Japanese law enforcement officers

like their counterparts in Cameroon, Honduras, Kyrgyzstan and Pakistan generally carry out electronic surveillance as part of their practical work in the course of investigations.

### A. Cameroon

#### 1. Current Situation

The use of electronic devices to track down or watch or record the activities of criminals may well be described as electronic surveillance. This anti-drug trafficking technique is also used by the law enforcement officers in Cameroon as part of their normal routine duty in the criminal investigation process.

The law enforcement officers may resort to wire-tapping to secretly follow up or monitor unlawful arrangements, between criminals on target telephones. The instant case calls for the indispensable assistance of the Posts and Telecommunications Department. The phone or the location would require to be monitored 24 hours a day, seven days a week and, perhaps even much longer. Equipped with micro cameras, video cameras and micro tape recorders of all sorts, the law enforcement officers equally obtain or record vital information from criminals without alerting them.

#### 2. Problems and Solutions

- (i) Wire-tapping improperly used would amount to an unlawful interference with the constitutional protection of an individual's communications. Similarly, the abusive use of spy cameras would violate the citizen's constitutional rights to his privacy.
- (ii) Lack of adequate trained personnel to conduct electronic surveillance for the process requires manpower intensive operation. Such personnel should have people who can speak

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- many languages and also have the skills to interpret coded language.
- (iii) Lack of adequate finances to train the required personnel and to purchase sophisticated equipment.
  - (iv) No legislation in force to tightly control the use of this and other tools of anti-drug trafficking to avoid abuse of the techniques and to protect individual privacy, as constitutionally required.

### **B. Honduras**

The police agencies in Honduras, mainly those that investigate illicit drug trafficking, have a series of electronic devices that are indispensable tools for the electronic surveillance, among them we can mention:

#### 1. Tools Used

- (i) Intervention of phone conversations (wire tapping)
- (ii) Micro video cameras (pencils, calculators, sun glasses, wallets, etc.)
- (iii) Wireless microphones in miniature
- (iv) Night vision

#### 2. Problems

The big problem that the police of Honduras now face is that electronic surveillance is not contemplated in legislation and so for a video or a recording to have probatory validity the judge should authorize it previously.

In addition, these agencies have scarce equipment, since enough microphones, cameras, etc. are not available. In addition the whole personnel are not trained to use this equipment. Another important thing is that these tiny devices have high costs which the concerned agencies cannot afford within their limited budgets.

Using these devices implies the investment of time and of human

resource and the scarcity of personnel and the great quantity of cases is another problem.

### 3. Solutions

Next February, the new penal procedure will come into force which includes the use of this type of equipment when it refers to the special procedures of investigation.

It is hoped that the government will lend adequate economic support. This would solve in great measure the logistical problems and with the requisite recruitment of personnel in the concerned agencies the problem of lack of human resources is expected to be overcome soon.

### **C. Japan**

#### 1. Tools Used

In Japan, interception of telephone or other electric communications (wiretapping including e-mail tapping, etc.), video taping and audio tapping using microphones are the main tools of electronic surveillance.

The Law Concerning Interception of Communications came into effect in August 2000. Before this law was enacted, the interception of electronic communications was conducted on the basis of the interpretation of the Code of Criminal Procedure. By enacting the above law, strict requirements, procedures, etc., for the interception of electronic communications related to the perpetration of offenses have been stipulated. In this law, "communication" means telephone or other electronic communication made in whole or in part through the use of wire between the point of origin and the point of reception, or communication using a switching station between the point of origin and the point of reception. In this law, "interception"

means the reception of live communication between third parties, conducted for the purpose of acquiring its contents without the consent of either party. If one member of a party agrees, investigators can conduct wiretapping or e-mail tapping etc., of course, but it is not based on this law. This law covers particular crimes, such as drug-related offences, firearm-related offenses, smuggling of immigrants in groups, and organized homicide. But there is no actual case carried out that is based on this new law yet as of October 2001.

Video taping and audio tapping using microphones are not governed by a specific law but by interpretation of the Code of Criminal Procedure Law. These methods are often conducted to gather information or to collect evidence.

## 2. Problems and Solutions

- (i) Interception of telephone or other electronic communications  
The new law covers only particular types of crime. As mentioned above. There should be continuous examination on coverage and best practice of this new law.  
Also, training staff to conduct this new method is important.
- (ii) Audio tapping by using micro phones, video taping  
These methods have to be carried out suitably according to necessity because they may cause an invasion of privacy.

## D. Kyrgyzstan

### 1. Current Situation

In wire tapping the bugging of rooms and living space takes place.

These measures are realized in two ways:

- (i) Listening to the crime plan via instruments.
- (ii) Listening is also used for gathering evidence. The difference between these two forms is,
- Information received by the first method could not be used as evidence in the court.
  - Secondly, by sanction of the district procurator. The information received can be used as evidence in the court. These methods of electronic surveillance help operative units of law enforcement agencies with the technical support of special units.

## E. Pakistan

### 1. Tools Used

The following tools are used for conducting electronic surveillance in Pakistan.

- (i) Wire tapping or phone bugging  
(ii) Video camera  
(iii) Audio tapping  
(iv) Laser beams for bugging  
(v) Still camera while following the suspects  
(vi) Mobile surveillance of the suspects  
(vii) Electronic bugging by plugs, pens etc.

### 2. Problems

- (i) Financial constraints  
The problem in the main is inadequate funds for electronic surveillance (ES). All the equipment is costly and sometimes cannot be repurchased when old and obsolete.
- (ii) Labour Intensive  
Wire tapping is quite labour intensive and we have a shortage of operating staff.
- (iii) Video camera and audio aids  
This is again costly equipment and enough of these equipment is not

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available. In addition there is always the chance of it being abused.

- (iv) Mobile surveillance and still camera  
Both of these ES techniques are labour intensive and time consuming. In addition there are not enough incentives for the employees who operated them.
- (v) Decoding and language problems  
Often the traffickers use coded language or some foreign language. It is very difficult for staff to decode the coded language or understand the foreign languages.

3. Solutions

- (i) There should be adequate budget and if possible some reserves also for the ES infrastructure.
- (ii) Shortage of strength of staff etc. should be fulfilled by recruitment.
- (iii) There must be sufficient motivation/incentives for the staff/employees.
- (iv) If abuse of ES is detected, an exemplary punishment should be awarded to deter others and make the work job-oriented and not for fulfillment of personal needs.
- (v) Experts in requisite languages are needed who can also translate them into the desired language.
- (vi) Staff or employees dealing with decoding should be sent for specialized training in established institutions at home and abroad.

**IV. UNDERCOVER OPERATIONS**

All countries represented in this group do not have any special legislation on Undercover Operations. Notwithstanding, their law enforcement officers, use the Undercover Operations as an essential investigative tool.

**A. Cameroon**

1. Current Situation

Law enforcement officers are known to use trickery and deception to arrest persons involved in a criminal activity. Undercover operations embrace both trickery and deception. This anti-crime control and prevention technique is used in cases involving big organized criminal operations. For example, the technique may be used in drug controlled delivery operations.

Undercover operations are commonly used by the law enforcement officers in Cameroon for a wide variety of offences. Frequently, a civilian agent is used to cover up the criminal activities of the criminal group. In some cases, a trained officer is used as an agent. The agent gets into the organized crime group with the primary intention to study its operations and to furnish all relevant and vital information to the law enforcement department. To do this, he gets to be identified by the members of the crime group as one of theirs; live and behave like them. This role apart, he may be used generally by the low enforcement department as an agent provocateur.

When satisfied that sufficient information has been received from the agent, officers of the law enforcement department would arrest the criminals and would pretend to arrest the agent if, at the time of carrying out the arrest, he was amongst the gang. At the hearing of the case against the criminals, the agent is used as a prosecution witness.

Undercover operations demand a sizeable number of law enforcement officers and are generally time consuming. A complex and sophisticated crime network may take quite a reasonable amount of time to investigate,

using, besides, a large number of officers and agents. Equally, it is worth mentioning the risk to life posed by these operations involving very dangerous crime groups.

## 2. Problems and Solutions

- (i) Inadequate personnel. Undercover operations need more personnel and are time consuming.
- (ii) Improperly used undercover operations may assist a criminal design. Here a case built from such operations is likely to collapse on the ground of entrapment and other related defenses.
- (iii) Risk to life. Some of these operations involve very high risk to the lives of the officers and their agents, during and, even after the hearing and conviction of the offenders. Hence, they need protection.
- (iv) Legislation. There is need for special legislation in this country to define, lay down general procedure of, protection of officers, agents and, the rights of individuals under the constitution.

## B. Honduras

### 1. Current Situation

In Honduras, the undercover operations mean a police agent or investigator getting inside of an organized group to identify the suspects and also getting to know all the illegal activities that the organized group is actually involved in.

In Honduras, the police agencies use this technique, but only in big cases or when it is extremely necessary, because it involves a lot of resources, a lot of time and it is also very dangerous.

### 2. Problems

One of the biggest problems is that it takes a lot of time, because the

undercover agent has to become a member of the group, and he/she needs time to get to know the whole operation and also try to gain the suspects confidence, so most of the time the operation takes weeks and even months.

The undercover agent has to be very well trained with a lot of experience, and having the ability of acting or responding properly in any dangerous situation, that is why police agencies do not have enough agents to do this kind of job. Because after an undercover agent has finished his job, he can not continue doing the same job, so only if the new case is in a different city, far away from the first and in a different organized group, but this is also highly risky.

In addition, another agent has to work from outside and take care of the personal security of the undercover agent.

### 3. Solution

Police agencies are now training new agents to do this kind of job. Honduras is getting a lot of assistance from neighboring countries, and also from the United States, in training investigators and exchanging, concerned personnel.

## C. Japan

### 1. Current Situation

Japan does not have general provisions concerning undercover operation. However, article 58 of the Narcotics and Psychotropics Control Law provides that a narcotics agent can receive a narcotic drug from any person "under the permission of the Minister of Health, Labor and Welfare". There is a similar regulation in Article 45 of the Opium Law, and also, Articles 27-3 of the Firearms and Swords Control Law which provides that, under the permission of the Prefectural Public Safety Commission, a



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police officer or a Coast Guard officer can receive or borrow guns or their parts, or receive live cartridges of guns from any person. According to judicial precedent, the courts have decided each case of undercover operations whether it was legitimate or not according to the degree of necessity and suitability.

Generally speaking, offering the chance to commit an offense to the person who has already had the intention to commit it may be legal, but that implanting an idea to commit an offense in the mind of an innocent person and inducing him/her to commit the offense may be illegal.

**2. Problems and solutions**

In order to conduct undercover operations, masterful skills in investigative techniques are required and since the investigator must play an undercover role, there is significant danger involved. Training of investigators is needed.

**D. Kyrgyzstan**

Undercover operations in the Kyrgyzstan Republic have no legislative basis. Therefore, undercover operations are regulated by secret departments in every law enforcement organization, for example in national security service, that is the ministry of internal affairs. Information acquired through undercover operations is not legal evidence and cannot be used in court.

**E. Pakistan**

**1. Current Situation**

The technique's common uses are to collect information about criminal gangs, their methods of operation and their future plans for drug smuggling. Through such operations the law enforcement

agencies are able to infiltrate the highest levels of organized groups.

Nevertheless we visualize that the Afghan internal war with the Northern Alliance and the air attacks on Afghanistan by the U.S.A. may increase illegal drug trafficking by organized gangs to a considerable extent. Therefore the Taliban followers involved in this lucrative trade will try to smuggle out their stockpiles of drugs to generate funds for the on going internal and external war. Such a large scale of expected smuggling may be difficult to handle by our agent due to resources and other constraints.

**2. Problems**

- (i) Understaffing  
Enough staff is not present to comprehensively handle undercover operations so consequently, there is shortage of strength.
- (ii) Lack of incentives  
Inadequate financial and other incentives which motivates the workers.
- (iii) Dangerous for agents and their families  
These operations can be fatal if the agent is exposed, due to versatile reasons e.g. lack of proper training etc. and most probably his family would be in danger too.
- (iv) Inadequate budget  
As with all other techniques insufficient finances is the main and most crucial issue. This hinders the operations from every aspect.

**3. Solutions**

- (i) Recruitment  
Adequate recruitment on merit is probably the best solution for understaffing.
- (ii) Provision of incentives  
Sufficient and attractive benefits

should be given to the personnel to instill motivation and diligence, which are one of the keys to success.

(iii) **Specialized training**

The pertinent personnel must be given specialized training in these techniques to enable them to achieve maximum results without being exposed or putting their families at risk. The standardized, recognized and required level of training can be imparted in domestic and overseas institutions.

(iv) **Allocation of budget**

The allocation of requisite budget for undercover operations, which are quite costly, is the only way to remove the titanic obstacle to smooth, effective and efficient working.

(v) **International co-operation**

To overcome the problems, for the present, international co-operation with Pakistan in the form of assistance is inevitable. The assistance can be in the form of overseas training of our concerned personnel, provision of requisite equipment, sending experts to transfer skills etc. This assistance can be rendered more effectively by the developed/affluent and also affected countries.

## V. GROUP VISION

From the foregoing presentation it is important to note that all three investigative tools pose common problems and require common solutions for the countries represented in the group.

1. **Problems**

- (i) Lack of adequate trained personnel
- (ii) Inadequate finances to train and equip their personnel
- (iii) Labor intensive and time consuming
- (iv) No existing legislation

- (v) No efficient international cooperation, especially with regard to CD.

2. **Solutions**

- (i) Countries to train specialized personnel
- (ii) Provision of optimum finances to train and agencies that will provide adequate equipment.
- (iii) Formulation of special legislation to define all terms, lay down general procedure of protection of officers agents, and the rights of individuals.
- (iv) Encourage international cooperation.

## VI. 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 and 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 has to overcome a lot of problems, ranging from lack of ineffective legislation, lack of trained manpower, challenges from civil society and admissibility of evidence obtained through their application. Governments and enforcement agencies therefore need to establish proper guidelines and controls on their application by agents to avoid abuse.

We emphasize the relevance and effectiveness of these techniques, we need our states to review domestic arrangements for these techniques and to facilitate international cooperation in these fields, taking account of human rights.