Group 2

COUNTERMEASURES AGAINST ORGANIZED CRIME

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I. INTRODUCTION

Organized crime is profit orientated and thus drug trafficking has become one of the fundamental sources of income for a large number of criminal organizations. At the same time criminals are interested in being able to enjoy their illegal proceeds without interference from law enforcement agencies, so the issue of money laundering is also increasingly becoming an international concern. Competent authorities of most countries have recognized that in order to cope with these global threats a new level of international cooperation has to be reached, but different legal systems based on different cultural and historical backgrounds have made this task difficult to accomplish. In order to coordinate international efforts to battle organized crime the United Nations passed the Convention against Transnational Organized Crime (hereinafter referred to as "UN TOC Convention") in the year 2000. Besides other suggestions this convention also encourages countries to allow the appropriate use of special investigative techniques as controlled delivery, electronic and other forms of surveillance and undercover operations. The UN TOC Convention also requires criminalization of participation in an organized criminal group and obstruction of justice as well as points out the necessity for transfer of criminal proceedings, protection of witnesses or victims and the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by the Convention. It can be said that the UN TOC Convention manifests the bare fact of reality that conventional investigative tools are not sufficient to dismantle powerful criminal syndicates that have a strong infrastructure and effectively enforced rules of their own.

This report tries to approach the problem of transnational organized crime in the guiding light of the UN TOC Convention by at first collecting and analyzing information on the nature of organized crime in participating countries and after that researching the possibilities to use special investigative techniques under the conditions prescribed by each country's domestic law. The paper mainly focuses on the aspect of following proper procedure to secure admissibility of evidence in court. It is vital to acknowledge that joint efforts of different law enforcement agencies both domestically and internationally and especially close cooperation between investigators and prosecutors are inevitable in order to convict organized criminals. Every sub-topic of the report also addresses the issue of balance between the fundamental rights such as privacy of individuals and the efforts of law enforcement to protect the society against the

menace of organized crime. Unfortunately the utilization of special investigative techniques introduces a higher level of risk for law enforcement officers, but as criminals constantly take risks in their operations, counter operations must also involve taking calculated risks in order to achieve satisfactory results. While tackling organized crime investigators and prosecutors have to maximize their personal commitment and creativity and not merely follow the law but explore every possibility to interpret the boundaries of the law to the limit in order to match the attempts of the criminals to use the rules of legal procedure as a protective shield.

II. SITUATION OF ORGANIZED CRIME IN PARTICIPATING COUNTRIES

We have surveyed and gathered information from the participants in this training course regarding the situation of organized crime in their countries. The result shows that each country has a different experience facing the organized crime groups as follows:

Bhutan, Malaysia and Maldives

They have no information about organized crime or transnational crime.

Egypt

Organized crimes in their traditional form are unknown in Egypt. Crime in Egypt is mainly of an individual nature, or is in a form of gangs consisting of several members formed to commit a crime or crimes, which subsequently disperse.

Estonia

The Estonian Penal Code, which codifies all criminal offences, has a special provision for organized crime that makes membership in, or the forming of criminal organizations or recruiting members thereto or leading such organizations or parts thereof punishable. Unfortunately during its period of validity there has been only one case when a leader and members of an organized criminal group were actually convicted by virtue of this provision. That particular group was engaged in organized car theft and smuggling of stolen cars to Estonia. So from a strictly legal point of view the involvement of organized criminal groups in drug trafficking and money laundering has not been officially detected. On the other hand the information provided by agencies that deal with analysis of criminal intelligence indicates that drug trafficking is almost completely controlled by criminal organizations. One reason for the lack of actual criminal cases is that due to the small size and population of the country the use of several effective investigative methods is seriously handicapped. The structure and methods of organized criminal groups in Estonia are similar to those of the so-called Russian mafia because many leaders and members of criminal organizations are of Russian or other former soviet republics' origin, some of the groups have strong ties with Russian organized crime. Estonian organized crime is also expanding its turf to Finland, Scandinavia and Germany. The so called "white collar" trend in organized crime has become more obvious during the last few years and according to The Estonian Central Criminal Police criminal organizations are currently seeking new possibilities to invest their illegally acquired money into legal business. Unfortunately to this day not a single scheme of laundering drug money has been actually detected and nobody has been indicted for such a crime.

India

The organized crime scenario has not been studied in depth so far. A typical hierarchical structure or syndicate of large scale has not come to notice as far as drug trafficking is concerned. Crime involving real estate operators has to a certain extent been influenced by organized gangs in its facilitation. Organized gangs in the real estate sector and extortion in the movie making industry do generate

sufficient money which requires laundering. The real estate sector and the movie industry can at times border on criminal activity if extortion or threats come into play otherwise they are mainly cases of tax evasion. However, there is no clear link established between these crimes and drug trafficking.

Indonesia

Organized crime groups of West African origin are heavily involved in drug trafficking into Indonesia. In many instances, these traffickers use female Indonesians as couriers. The presence of Nigerian crime enterprises, considered one of the international drug syndicates, has seemingly influenced a number of local communities in Jakarta to support their drug trafficking activities as a means of livelihood. The geographical location of Indonesia, the porous borders, inadequate customs personnel and other forms of law enforcement make it an attractive business location for drug traffickers.

Japan

Japan is a demand country for methamphetamines from the South East Asia region and has not recognized the existence of clandestine laboratories yet. In this situation, Japan has "organized criminal groups" involved in drug trafficking and smuggling. These groups can be categorized as some local criminal groups called *Boryokudan* and some foreign criminal groups such as "Iranian traffickers groups", "Chinese traffickers groups", "Nepalese traffickers groups" and so on. In fact, both types of criminal groups certainly create network links in the process of drug distribution. For example, Chinese traffickers groups distribute stimulants to Iranian traffickers groups via *Boryokudan* groups and Nepalese traffickers groups distribute cannabis resin to Iranian traffickers groups. Moreover, there was a case of a *Boryokudan* group that knowingly received drug offence proceeds from an Iranian trafficker group. In addition, the connection between these groups might be more complicated because of the establishment of a network among some groups in the global market.

Laos

Laos has no information about classical structure organized crime groups but group commission of crime does exist.

Pakistan

Pakistan is a victim country being used as a transit route for drug trafficking from Afghanistan to the European markets. The drug trafficking organized crime groups exist in Pakistan: however, they do not have a clear identity like in some countries.

Philippines

In recent years, domestic production of methamphetamine has become a growing problem, but most of the supply is smuggled into the Philippines from surrounding countries, primarily the Peoples Republic of China as well as the origin of the precursor chemical. The Philippines also serves as a transhipment point to further export methamphetamine to Japan, Australia, South Korea, the U.S., Guam, and Saipan.

Based on the results of the Intelligence Workshop conducted by the Philippine Drug Enforcement Agency (PDEA) in 2002, 11 transnational drug syndicates were identified to operate in the country while the number of local organized drug groups was pegged at 215.

Tanzania

There are organized criminal groups committing major frauds, illegal firearms dealings, poaching, corruption, violent crimes, financial and economic crimes, illicit drug trafficking, money laundering and terrorism. They are defined as being involved in a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain, directly or indirectly, a financial or other material benefit. Before 1985, organized

criminal groups operated locally. But now the scene has changed. They are becoming more sophisticated and international especially in illicit drug trafficking, frauds and terrorism.

Thailand

Due to its location close to the golden triangle, where large supplies of drugs are made for the world market, organized groups of drug producers and smugglers are dominant and have network links to many countries. In addition, since the country has a policy of welcoming tourists in order to help their economy, many international criminal groups use such channels to enter into Thailand and spread over the country. Bangkok has become a hub for global organized crime syndicates, which use the city to transport drugs, people and firearms, and to set up international prostitution rings. Related crimes such as false documents, fraud and money laundering increase their volumes consequently. In the tourist areas, for example, Pattaya, Russians and Japanese criminal networks are established and link to groups in their own countries. Human traffickers from China also use Thailand as the transit place to get false documents for their customers before transporting them to a third country.

III. SITUATION AND PROBLEMS OF NEW INVESTIGATION TECHNIQUES

A. Controlled Delivery

1. Definitions and Essence of Controlled Delivery

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 UN TOC Convention.)

The UN TOC Convention requires State Parties to use the necessary techniques to allow for the appropriate use of controlled delivery, if permitted by the basic principle of its domestic legal system (paragraph 1 of Article 20).

The goals of controlled delivery are:

(i) To broaden the investigation to higher levels of the criminal organizations
(ii) To get additional evidence in cases concerning organized smuggling
(iii) To get proof that the violations of law are intentional
(iv) To discover storage places for smuggled goods and seize additional contraband
(v) To 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.

Controlled delivery could be carried out by:

(i) Recruiting a cooperative suspect after initial recovery of the contraband
(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

Several participating countries of the 125th 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. Controlled delivery has been used, not

only domestically but also internationally, in cases where the consignments aere 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 that allows the original contraband to be moved to its final destination under control of law enforcement officers and clean controlled delivery, in which case law enforcement agencies remove and substitute drugs with a harmless substance before allowing the consignments to be delivered. In this connection, some countries such as Egypt, Malaysia and Indonesia will allow only the live controlled delivery operations while some, such as Japan and Estonia, can accept clean and live operations. Thailand, which is in the front line in the fight against drug crimes, has just had controlled delivery provisions incorporated into her laws last year and is in the process of using this method. 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. When the controlled delivery technique is employed for money laundering investigations, it appears that, in some cases, a money remittance is allowed under the supervision of the authorities. The purpose is to get a clear picture of the final destination of the money and the crime network.

3. Common Issues, Problems and Solutions

(i) Live operations and clean operations

As mentioned above, the members of the group recognized that controlled delivery is one of the good methods 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 analyzed the advantages and disadvantages as follows:

Advantages for live controlled delivery operations

- 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
- 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 unclearDisadvantages for live controlled delivery operations
- Burden of carrying out the surveillance
- Hazardous aspect of the disappearance of the drugs and the suspects Advantage for clean controlled delivery operations
- Prevention of the disappearance of the drugs or other smuggled itemsDisadvantage for clean controlled delivery operations
- Risk of disclosing the controlled delivery operation
- Risk of losing the evidence of the fact that the suspect is conducting drug smuggling

As a result, 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 analyze information about him/her including their, 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 the controlled delivery or the controlled delivery should be carried out by covert surveillance of the offender to the final destination of the smuggled goods.

(ii) How to use the results of controlled delivery as admissible evidence in the trial stage

Controlled delivery is mostly conducted in the investigative stage of a criminal case for assembling 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 the evidence can be 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 respective countries procedural law should be applied in order to guarantee the admissibility of the evidence. In this phase of planning of the operation the customs- or police 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.

(iii) The cooperation of concerned law enforcement agencies at the international level and national level

Controlled delivery may be conducted within only 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, the cooperation may be achieved through bilateral or multilateral agreements between countries, good contacts between law enforcement agencies and by regular information exchange. 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. 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 guideline for the concerned authorities to be followed in a controlled delivery situation.

(iv) 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. On the other hand, many countries do not have such a system and officers have to rely on the so-called "gentleman's agreement" 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 respective country has a plea bargain 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 bargain system the prosecutors may still indirectly influence the court proceedings.If the offender agrees to cooperate, investigators have to evaluate his/her characteristics as to his/her ability to carry out orders and whether his/her unusual behaviour could jeopardize the operation. Law enforcement officials should undertake this kind of an operation only in cases that 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.

(v) 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 position 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 case 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.

(vi) Appropriate timing to enter the targeted house/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 that the parcel is delivered as a mistake and he/she has an intention 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 his/her organizations, which 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 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/she cannot decline 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.

(vii) 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, we recognize 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 operate controlled delivery effectively, we need to combine it with other appropriate techniques such as utilization of the informant, the undercover agent and an electronic indicator for a parcel opened, 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 the skill-up training with sharing the best practice before launching the operation and to establish a close relationship with the related authorities for the realization of a speedy and smooth operation.

B. Electronic Surveillance and Communication Interception

1. 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 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 the prosecution and trial. On the other hand, the application of these methods 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).

2. Current Situation

All countries of our group members cover electronic surveillance and communication interception as an investigative technique within their legal framework. Nevertheless, every country, except Egypt, has few cases of conducting wiretapping. One reason may be the safeguard of privacy rights so strict conditions are applied. In concrete terms, all countries are able to use this technique but subject to various conditions. For example, electronic surveillance in a private place such as a residence in the Maldives and Japan is disallowed. However, Egypt, Estonia and Thailand allow it upon permission from a judge while in Indonesia the investigator in a drug case may conduct the surveillance and then submit a report to a court for approval later. In public places, Indonesia, the Maldives, Thailand and Japan do not require prior permission, but Egypt and Estonia require a warrant by a judge.

Beside the legal issues, another general constraint that every country is now facing is 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 multi-function wireless phones, which are used by the organized crime groups. The cyber world and Internet makes money movement easily and can facilitate money laundering as well. The interception of international electronic mail carriers such as Hotmail and Yahoo will need extra cooperation at the international level. Therefore, it is difficult for law enforcement agencies to keep up with the criminals due to lack of expertise and a shortage of budget.

3. Common Issues, Problems and Solutions

(i) 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. In this case, Indonesia has a special provision that grants the Chief of the National Police or the Prosecutor General to issue such permission. In addition, for the drug cases the investigators can wiretap telephones without warrant for a maximum of 30 days and then submit a request to court for approval. In general, the request of an investigator to use this method will be 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 communication like e-mail or website tracing, prior permission is also required. However, in Estonia and Maldives this method is unavailable because of the infrastructural issue. On the other hand, Thailand has faced a technical problem regarding interception of pre-paid phones since there is no ownership registration for such phones.

There are some different approaches among countries regarding electronic surveillance with the consent of persons, such as an audio recorder or wireless microphone attached to an informant or undercover agent, who will participate in the communication with an offender. Indonesia, Thailand and

Japan do not require a prior warrant to do it in public places while Egypt and Estonia always need a warrant issued by a judge regardless of the location.

(ii) Scope of criminal offence

As mentioned, electronic surveillance and communication interception does affect privacy rights, this method should be executed 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 a clear framework of applicable crimes in which this method can be used such as offences relating to drugs, firearms, human smuggling and organized homicide. Thailand currently can only use this method for offences under the narcotic control law and the anti-money laundering act. Indonesia applies this method to only serious crime cases (imprisonment over 5 years) and drugs cases.

(iii) Duration

The available period for conducting electronic surveillance and communication interception varies from country to country. We found the range from ten days at the first stage in Japan up to a maximum of 90 days in Thailand. Mostly, the average available period is not over 30 days. In a particular case where electronic surveillance is conducted in a public place and no prior permission is required there would be no time limit.

(iv) Approach to non-relevant information

When carrying out communication interception, it is very important to analysis the information received as to whether it is useful and can be used as evidence or not. On the other 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 not related to the case, is prohibited to protect privacy rights. However, during electronic surveillance and communication interception, if the investigator unexpectedly found information involving 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. In this situation, there will be a hard decision for the investigators to make. The official may opt to interfere to safeguard a person's life but this 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 can follow. However, it will depend on case-by-case situation.

(v) Post-interception requirement

The process of post-interception 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:

Preservation of evidence

For keeping the eternal evidence, it should be required:- Wiretapping

- Creation of a transcript and a summary report
  (Thailand and Japan - submitting a transcript to the court after that; Egypt - submitting a summary report to the court after that)
- Sealing the record
  - Other devices (audio recording, visual recording)

- Creation of a report and submission to a court
  - Wiretapping and other devices
- Identification by voice analysis

Analysis of the record

Regarding the evidence acquired by those activities, officials should take the necessity action to facilitate its use in a trial. The following action should be taken:

- Translation of foreign languages (Introducing a system to secure competent translators)
- Analysis of slang expressions by appropriate experts
- Analysis of encryptions by appropriate experts

(vi) Cooperation of communication carriers

Unless the provisions of laws clearly specify, the communication carriers such as Telephone Companies or Webmasters will be reluctant to cooperate with the law enforcement. The carriers always try to avoid access to their customers since they are afraid of probable litigation and losing customers. The cooperation of the carriers will help reduce the time it takes to connect the intercepting device to the phone operating device. In Japan, particularly, an observer from the phone company is required to attend the wiretapping with the investigator all the time. In the case of international electronic message carriers e.g. hotmail or yahoo, cooperation may be sought from the local providers who subsidize the service from such carriers.

(vii) Further action

From our discussion, we recognize 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 government should consider allocating a sufficient budget to employ any useful electronic devices to keep up with the criminal groups. Investigators and relevant officials should also learn and be trained in these high technology techniques. Additionally, officials who are engaged in wiretapping should be respectful of human rights, no matter when, where and what he/she does.

C. Undercover Operations

1. Definitions and Essence of Undercover Operations

Undercover operations are the actions that are undertaken by law enforcement to infiltrate criminal organizations, to disclose the mystery of the crime, and to arrest criminals by disguising themselves in civilian clothes, using fake IDs and engaging in criminal activities.

There are various types of undercover operations; for example, one of the simple undercover operations is where an officer pretends to be a customer and buys drugs from pushers or drug traffickers, and accordingly arrests them with search and seizure powers. Of course, there is a type of deep involvement case, where undercover officers infiltrate criminal groups and become a member of the group in a more sophisticated manner and for an extended period, and gather information and evidence. This type of operation enables the police to obtain information even about future criminal activities.

Undercover operations cover a wide range of the investigation area from intelligence-gathering to evidence-collecting.

The initial targets of this investigative technique are usually the “big dealers or criminals”. Then, the officer(s) usually start going after the “small” fries, accumulating suspects and case materials as they go. The police supervisor, and sometimes, prosecutors make a decision early on about whether enough “big” cases will likely be revealed.

One of the main purposes of undercover operations is to gather enough information to enable a successful prosecution. This technique is useful to obtain physical evidence (by purchasing drugs or other contraband). However, it is believed that undercover operations are effective in combating crime especially committed by members of organized criminal groups who conspire in secret. Therefore, Article 20 Para 1 of UN TOC Convention encourages State Party to use undercover operations. In such cases, without cooperation of the conspirator or insider, it is difficult to prove the clandestine criminal activities.

2. Current Situation

Most countries have recently experienced a significant expansion in the use of undercover police tactics as well as technological means of surveillance, especially in drug trafficking cases.

The variety of undercover operations is diverse. For example, in Egypt, the usual pattern is to bring the undercover officer in as the girlfriend or boyfriend of an informant. Once it is clear to all the parties involved that the officer is single again, another undercover officer is brought in the same manner. The undercover officers use false names, false identifications, false household registration certificates and other false identification documents.

Most of the participating countries of the 125th UNAFEI Course use undercover operations. However, as far as the countries of Group two are concerned, such a deep involvement of undercover officers has not been experienced. One of the reasons is that such involvement is risky and dangerous for officers. Another reason is the difficulty in proving the legality of the operation in case of such involvement.

In Japan, in general, organized criminal groups called *Boryokudan* are tightly structured based on personal trust, and therefore it is extremely difficult for undercover officers to infiltrate such strongly united organizations.

Regarding money laundering investigation, storefront operations have been successfully conducted in some countries. In those cases, the undercover officers act on behalf of the criminals in placing or layering the dirty cash, usually by collecting the cash from the suspects and moving it through the undercover channels to the bank account or other destination designated by the criminal. Even in sting operations, the agencies set up a fake bank or firm, and they send money to destinations designated by the criminal, until they finally determine the money laundering scheme and the location of the proceeds of crime.

3. Common Issues, Problems and Solutions

(i) Legal issues

It is a common understanding that undercover officers are prohibited from inducing any plan to commit a crime. The violation of this rule constitutes an entrapment defence.

The Supreme Court in the U.S. in 1992 held that law enforcement officers "...may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the government may prosecute". Therefore, there are two questions: the first one is whether undercover officers induced the defendant to commit the crime. The second one is, assuming the government improperly induced the defendant to commit the crime, whether the defendant nevertheless was predisposed to commit the criminal act prior to first being approached by government agents. In the U.S., inducement focuses on the government conduct, while predisposition focuses on the defendant's actions and statements. Therefore, the mere presentation of the opportunity to commit the crime does not constitute entrapment. Inducement now requires more than merely establishing that an officer approached and requested a defendant to engage in criminal conduct. The defendant must prove he/she was unduly persuaded, threatened, coerced, harassed or offered pleas based on sympathy or friendship by the police.

On the other hand, the liability of undercover officers is also an issue. However, irrespective of the

reasons, undercover officers should not be liable for their conduct, provided that the conduct is permitted under the rules or regulations. If necessary, it is a must to give undercover officers immunity from civil and criminal liability for actions undertaken in the course of undercover operations.

(ii) How to ensure appropriate operations

Although undercover operations can lead to a successful prosecution, there are various risks and heavy demands on officers. Undercover operations are one of the most notable exceptions to uniformed duty and the most problematic area of law enforcement. There is always a risk that the officer's identity will be disclosed. Of course, he/she may face unexpected situations at any time; for example, he/she may be placed in a situation where they are compelled to break laws, even kill someone, by the demands of the criminals. Especially in the case where the undercover officer is deeply involved in a criminal group for a long period of time, he/she has to manage the numerous stresses inherent in this sensitive task.

Undercover operations require the officers to obtain special skills and experiences. In addition to that, careful and well-organized planning and preparation is indispensable for ensuring successful operations. In this context, it is essential to establish an appropriate guidelines for the use of undercover operations, like the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. What is allowed and what is not allowed for them should be instructed precisely, including the use of government money. For example, in a situation where an officer needs to maintain his/her credibility and covert identity, he/she may be justified in participating in certain categories of criminal activities, although the scope of such justification differs among countries. Needless to say, all situations cannot be predicted; nevertheless, guidelines are still valuable for undercover officers by highlighting various situations.

The authorization to initiate undercover operations is an important issue. In some countries, certain types of sensitive undercover operations are required to obtain high level or even the highest level approval of the Justice Department, or the approval of a judge in advance.

It is also imperative that the undercover operations are closely monitored by the head of the agencies and prosecutors to prevent any possible risks and problems. At the same time, it is the most crucial factor to ensure the safety of the undercover officers. The other supporting officers always have to assist them and to be ready for action. The agent may reincarnate as a criminal or eventually become a double agent if he/she is long and deeply involved in undercover operations. It is often pointed out that it may be difficult to reintegrate the undercover officers into the law enforcement agency because his/her lifestyle has been totally changed.

Appropriate care should be provided not only during the operations but also after the operations. Adequate training should be provided to undercover officers. This could give them the necessary skills, as well as advice, to cope with highly stressful situations.

Recruitment is one of the major challenges. In some cases, the authorities need someone bold and a new recruit may fit the bill. Recruits from out of town are sometimes preferred, as are ethnic-looking recruits with foreign language skills and attractive females. The reason why new and inexperienced officers are used is that someone who thinks, looks and acts like a police officer is not suitable.

It is important to consult with prosecutors and relevant agencies before stating undercover operations in order to accomplish their mission.

In the U.S. any complex undercover operations are subject to review by an Undercover Review Committee, which is a good tool to screen and monitor the undercover operations from both the legal and practical point of view.

(iii) Combination of other techniques

The use of reliable informants in collaboration with undercover operations to reveal and to identify criminal activities is very useful. In addition, the attachment of a listening device, a transmitter or any other form of electronic surveillance, where it is not possible to be identified by the offender during

undercover operations can be useful. Such recording devices can demonstrate not only strong evidence to prove the fact but also legality of the operation itself.

D. Immunity System

1. Definition and Goals

The concept of immunity deals with an agreement binding prosecutors/competent authorities to terminate a present prosecution or to undertake not to conduct a future prosecution in respect of a specified offence or offences, in return for giving testimony in court. This system compels a person to testify in return for the promise that he/she may not be prosecuted in the future. There are a variety of types of immunity: in some countries such as the U.S., cooperation agreements between prosecutors and suspects is available, in which if the suspect agrees to plead guilty, to truthfully cooperate with the prosecution and to testify in court, the court will reduce the sentence based on a request by the prosecutors.[1]

Immunity is one of the successful tools to enhance the potential of witness cooperation for combating organized crime, including drug trafficking and money laundering. Without the testimony of witnesses, we cannot always convict a person in court proceedings. If we obtain the cooperation of key witnesses in return for granting immunity, we can then identify other criminals, and even reach persons of greater culpability in organized criminal groups. When a co-accused is willing to cooperate and testify, it will significantly contribute to reveal the whole story of the crime committed. Since the motivation for cooperation by a criminal is, in reality, to get lenient punishment or non-prosecution for his/her crime, a grant of immunity can facilitate the cooperation.

2. Current Situation

Some participating countries of the 125th UNAFEI Course such as Indonesia, Egypt, India, Pakistan, Philippines and Thailand, have an Immunity System.

As for Indonesia, Law No. 15/2002 - Section 43 stipulates that the government has to guarantee that a reporter who reported the money laundering crimes cannot be prosecuted because of their reports or their testimony.

Regarding India, NDPS Act 1985 section 64 (1) provides that the Central Government or the State Government may, if it is of the opinion that with a view to obtaining evidence of any person appearing to have been directly or indirectly concerned in or privy to the contravention of any of the provisions of this act or of any rule or order made there under it is necessary or expedient to do so, tender to such person immunity from prosecution for any offence under this act or under the Indian Penal Code condition of his making a full and true disclosure of the whole circumstances relating to such contravention.

In the U.S., immunity is often utilized. In the U.S., there are two types of immunity: one is "transactional immunity" which protects a person from subsequent prosecution for any offence involved. Another is "use and derivative use immunity" which provides that a person's testimony shall not be used against him/her; however, he/she may be prosecuted for any crime based on other evidence. In the case of use and derivative use immunity, it is required that the evidence that the prosecution proposes to use is derived from a legitimate source wholly independent of the compelled testimony. As far as federal criminal procedure is concerned, it is required to seek a court order to compel testimony when immunity is granted. In the U.S., the immunity system has proved to be effective in detecting organized criminal groups.

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[1] Article 26 Para 3 of UN TOC Convention suggests "Each State Party shall 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".

Immunity from liability for crimes committed is not available in the Republic of Estonia. This rule does not apply only to crimes that have been committed on the basis of the permission issued by the court to imitate a crime. Imitation of a crime is an investigative tool provided by the Surveillance Act and is utilized mainly as a legal basis for undercover operations or controlled delivery. Prior to September 1, 2002 section 501 of the Criminal Code applied in which prosecutors could apply to the court for the release of a convicted offender from punishment if important evidence provided by him/her resulted in the discovery of the truth and the conviction in a criminal case or cases of another person/persons. This provision can still be used, if the offender provided important evidence before September 1, 2002. One possible measure to secure cooperation of offenders is the utilization of the plea agreement system provided by the Estonian law of criminal procedure. Namely prosecutors can take into consideration the offender's cooperation while proposing a sentence during the process of plea bargain negotiations or to reach a plea agreement with one offender and afterwards summon that offender as a witness at the trial of other perpetrators of the same crime.

On the other hand, some countries such as Japan and the Maldives, have no immunity system or any other similar system. For example, in Japan, according to the precedent, a confession is not admissible if it was induced by a promise offered by the police officers or prosecutors that they would not be prosecuted, and therefore an immunity system is deemed inconsistent with this rule.

3. Common Issues, Problems and Solutions

Although an immunity system could be utilized to effectively tackle organized crime, there are still some concerns for the introduction of immunity.

(i) Principle of equality

Under an immunity system, real criminals are actually immune from prosecution and punishment in some cases. This may raise an issue of whether this is unfair or not, or this is acceptable or not from the standpoint of realizing justice.

(ii) Public perception

With an immunity system it is recognized that the state makes a deal with criminals. In countries where plea-bargaining is not available, such kinds of deals may not be acceptable for the citizens. Since criminal justice systems are different from one country to another because of each country's history, culture and concepts, any particular system should be consistent with their citizens' attitude toward crime and punishment.

(iii) Possibility of abuse of the power

If prosecutors are careless or rely too much on immunity, people may lose confidence in the criminal justice system and dilute the deterrent effects which criminal laws have.

Even though immunity is introduced or utilized, it is important to carefully review whether public interests of justice derived from granting immunity to a person outweigh the mere prosecution of such a person or not. The major factors to be considered in measuring the relevant interests should be as follows; (a) the seriousness of the offence, (b) the importance of the evidence or assistance, (c) the culpability of the person seeking immunity and his/her criminal history, (d) the credibility of the testimony of the person seeking immunity, (e) whether protection of the public generally would be better achieved by the proffered assistance or by prosecuting the person seeking immunity, (f) whether the person seeking immunity is an accomplice who will be obliged to testify while charges against him/her are pending, and (g) the perceived interests of any victims.

In this connection, it could be also better to establish clear guidelines and regulations for granting immunity in order to ensure its fair and appropriate application, like the United States Attorney Manual.

In addition to immunity, Article 26 Para 2 of the UN TOC Convention states that each state party shall

consider providing for the possibility of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention. Even though immunity or a cooperation agreement is not used, due consideration to such substantial cooperation is of course fair and encouraged, and it will be beneficial to secure cooperating witnesses as well.

E. Witness Protection Programme

1. Introduction

It is recognized that a witness is an essential factor to severely punish the members of an organized criminal group. As a result of the successful proof of the facts by a witness's testimony in court, it could positively eradicate them. Therefore, witness protection is indispensable to protect a witness in the process of criminal investigation and trial.

For example, there are many types of threats against witnesses: threatening letters sent by the organized criminal group, stalking around his/her house, and drive-by shooting at the witness's house. Ultimately the group may try to murder the witness.

It is therefore, necessary to completely protect the witness and his/her family from fear of reprisal at the hands of the organized criminal group.

The style of witness protection is different between each country. We recognize that in some countries witness protection programmes are provided for all crimes and in other countries it is available only for specified serious crimes.

2. The Existing Picture of Witness Protection Programmes

There are various types of witness protection programme. The typical measures of witness protection are as follows:

- Concealing identity
- Changing identity
- Relocation
- Escort and protection by police
- Social psychological and medical assistance
- Providing suitable shelter
- Financial aid, support and assistance
- Helping the witness find a job

The measures in the trial stage are as follows:

- Witness attendants
- Screen to make witnesses invisible to defendant and spectators
- Video link system

Each measure has some advantages and disadvantages. For example, concealing identity may be an effective measure to prevent threats and violence to the witness, but it may be unfair to the rights of the defence. The important point to note is to balance the necessity of witness protection and the rights of the defence. Some countries make use of changing identity and relocation as proficient methods of witness protection, but it cannot be utilized in small communities or if the witness doesn't want to do so. For example, in some countries like Thailand, people have strong family and community bonds and most witnesses may not wish to relocate to another area. Some measures such as relocation are expensive and a police escort requires manpower. With regard to financial support, it might happen that a witness will give false testimony to enjoy the benefits of protection. So we need to consider whether or not the case is worth taking such measures and how long assistance should be given.

Another significant aspect of witness protection is whether or not it should be extended to the witness's family members or persons in a close relationship with the witness.

3. Current Situation

(i) Thailand

In Thailand, the Witness Protection in Criminal Case Act will be effective by the end of 2003. Under this Act, the responsibility of witness protection will be vested in the Witness Protection Office, Ministry of Justice (pending establishment). This Act will provide general and special measures for witness protection. In general cases, the investigator, prosecutor, court or the Witness Protection Office, at the request of a witness or related person that they may not be safe, will provide suitable protection to such persons. The protection includes police escort and other measures. Moreover, in some specific cases i.e. (1) offences relating to drugs, anti-money laundering, anti-corruption, customs, (2) offences against state security, (3) offences relating to sexual exploitation, (4) offences relating to organized criminal groups, (5) offences which have an imprisonment term of at least ten years or more and (6) any case which the Witness Protection Office deems fit, a witness may receive special protection. The Minister of Justice may order the use of special measures for witness protection. The measures include relocation of a witness' residence, changing the witness' identity and record, providing living allowances for up to one year and may be extended but for no longer than two years, and job training or education. An important point to note in this Act is that both general and special measures can be extended to the witness's spouse, parents, children and persons in a close relationship with such witness, subject to their consent.

(ii) Estonia

In Estonia, with its small area and population, it is almost impossible to implement a classical model of witness protection where a key witness is given a new identity, relocated and provided with a new job inside the country. With relocation to other countries the language issue could become an obstacle. Currently negotiations are being held with neighbouring countries to set up a joint witness protection system or provide possibilities for relocating witnesses on a bilateral basis. Also a law is being drafted to provide the necessary legal framework for witness protection. Estonian law does not currently include special provisions for physical police protection of witnesses, safe houses or any other forms of supporting witnesses. In practice it is left up to the goodwill and creativity of law enforcement agencies and officers, as to how they can guarantee the safety of people whose testimony is essential for successful prosecution. In this respect it is vital for police officers and prosecutors to work together and decide which precautions are necessary to take. It is becoming more and more usual for police officers to accompany important witnesses to trial, to drive them to the courthouse and back in case of a possible threat to their safety. Often plain clothes policemen just casually watch the court proceedings as common spectators or move around in the lobby of the court building where witnesses are waiting to be called to testify, to detect and prevent any attempts on the part of criminals and their associates to approach and influence the witnesses before giving their testimony. Police safe houses and apartments also exist in reality and 24- hour physical protection is possible but not often applied because of the lack of manpower and financial resources. More commonly witnesses are advised to stay with their friends or relatives before trial and are instructed to contact investigators or prosecutors immediately in case of any suspicious activities.

The most useful tool of witness protection in Estonia is the provision that allows a witness to remain anonymous if he/she has a justified reason to be afraid for him/herself or the well being of his/her relatives. The interrogation record (witness statement given at the preliminary investigation) of an anonymous witness is enclosed in the criminal file under a fictitious name and does not bare the signature of the witness. A sealed envelope with information concerning the name and contact information of the witness declared anonymous is safely located in the vault of the investigator and later in that of the court. In practice the envelope also contains the original interrogation record that is signed by the witness, so the court can make sure that the statement enclosed in the case file has actually been given by the witness and has not been manipulated by the police. Interrogation of an anonymous witness in the court is conducted separately, in the presence of only the panel of the court. This usually takes place on a different date than

the main court session and often not even in the court building. Defence attorneys and prosecutors may question the anonymous witness in writing through the court. The court has the right to refuse to ask the witness any questions that might reveal his/her identity. After the new Code of Criminal Procedure enters into force on July 1, 2004 the questioning of anonymous witnesses at trial will be done by telephone by the court and the competing parties will still have to submit their questions to the court for evaluation and selection. There have been several problems implementing the anonymous witness system and currently higher courts are trying to limit the exploitation of anonymous witnesses relying on the precedents of the European Court of Human Rights. The basic limitation is that a guilty verdict cannot be based exclusively on statements of anonymous witnesses. The courts have also made it clear that even in the interest of protecting the witness the police cannot create several anonymous witnesses out of one person, also it is prohibited for a witness to give different statements under his/her own name and as an anonymous witness.

(iii) Other Countries

Egypt does not have specific laws including provisions for a witness protection programme and guidelines on how to utilize and coordinate witness protection, but in practice witness protection has been carried out, for example, the witness' home has been watched, they have been escorted to the court by police and the Ministry of Social Affairs has helped them find a job and so on. However, changing someone's identity cannot be used even in the interest of witness protection.

In Indonesia, they have witness protection programmes concerning terrorism crime and human rights crime. Protection is given to witnesses, victims, investigators, prosecutors and judges, and also can be extended to their families. The protection includes protection of life and property, securing their identity and mental care if necessary[2]. Under Law No. 15/2002 Sec. 42 concerning Money Laundering crimes, protection will also be given to witnesses.

In Japan, the Code of Criminal Procedure was amended in 2000 to employ a new witness protection programme at the trial stage. The aim of the amendment is to reduce the mental burden of a witness. The outline of the amendment is below.

a) An attendant of the witness may be allowed in the course of examination (Art.157-2).
b) The setting up of a screen between a witness and an accused or/and between a witness and spectators may be allowed in the course of examination (Art. 157-3).
c) A video linked method of examination, where the witness (being out of the courtroom) testifies to the questioner (being in the courtroom) through a video link, may be allowed in the course of examination (Art. 157-4).

In the Maldives, there is no special provision for witness protection, and actually there are few cases in which witness protection is needed. But the Maldives is now exploring witness protection programmes in order to make provisions for the future.

4. Conclusion

Witness protection covers a wide range of arrangements from formal witness protection programme to informal or temporary assistance such as police escort to and from trial. The methods of protection will depend on the degree of the fear and apprehension of witnesses as well as the level of the possibility of any types of violence or threat against them in each case. In addition, situations in this regard are different among countries.

It is necessary to make guidelines for witness protection including the scope of the persons to be protected and the methods available, because the issue of unfairness may arise without such guidelines.

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[2] PERPU NO.1/2002 Sec.33-34 concerning terrorism crime and under Government Regulation No.2/2002 Sec. 2-7 concerning protection of victim and witness method in Human Rights Crime.

In addition, it may be necessary to establish a committee that decides who should be protected and which kinds of methods should be taken, and then checks the procedure. This system will also be useful in terms of preventing the abuse of power.

Since witness protection is crucial to addressing organized crime, it should be carried out as much as possible in accordance with the needs of each witness, taking into account the above-mentioned factors. It should be noted that close communications with the witnesses are essential not only in ascertaining their needs but also in obtaining and maintaining their cooperation.

F. Shifting the Burden of Proof

1. Introduction

There are two interpretations regarding the burden of proof in general: one is the legal burden of proof, which means the legal obligation of a party to meet the requirement of a rule of law that a particular fact must be proved either by a preponderance of the evidence or beyond reasonable doubt. This burden is known as the burden of persuasion in which a party must persuade a judge or jury that the alleged fact occurred. Another is the evidential burden, which means the actual obligation to produce some evidence to support an argument in relation to the existence or non-existence of a particular fact. The evidential burden may shift back and forth between the parties as the trial progresses; however, such a shift does not affect the legal burden of proof. We here focus our discussions on the shift of the legal burden of proof.

Even, as for the legal burden of proof, the shift of the burden of proof covers various kinds of rules [3]. One example is a rule that the burden of proof concerning a particular element (i.e., mens rea) constituting an offence is placed on the defendant by law. Another example relating to such a shift is a rebuttable presumption that shifts the burden of proof, in which in case the basic fact is proved, the other relevant fact is then presumed by law and this presumption imposes on the party against whom it operates the burden of proof as to the non-existence of the presumed fact. In this context, article 5 para. 7 of Vienna Convention of 1988 requires State Parties to consider the possibility that the onus of proof is reversed regarding the lawful origin of alleged proceeds liable to confiscation, to the extent that such action is consistent with the principles of its domestic law. The UN TOC Convention Article 12 Para 7 also provides similar content.

2. Current Situation

The fundamental principle in the constitution of many countries underlines the right of a suspect or defendant to be presumed innocent unless he/she is proved guilty. Among the participating countries in our group, the Maldives is the only one country that does not have such a presumption in its laws. When the prosecutor indicts the defendant in the Maldives, the prosecutor will submit all the evidence to the court and then leave it to the court to conduct a hearing from the defendant, who has to prove his innocence. In other countries, the due process of law makes the burden of proof in criminal cases vest on the public prosecutor. Nevertheless, some countries have a provision of shifting the burden of proof in particular criminal cases to the defendant. For example, in Estonia, judges in court proceedings concerning tax fraud offences have been of the opinion that in certain cases the burden of proof lies with the accused at trial. Indonesia has similar provisions (Section 35 Law No. 15/2002 concerning money laundering crimes and Section 74-75 Law No. 22/1997 concerning narcotics crimes). India also has provisions in some laws to shift the burden of proof [4]. In Japan, it is exceptionally permitted by the laws

[3] According to Black's Law Dictionary, the shifting of the burden of proof means transferring it from one party to the other, or from one side of the case to the other, when he upon whom it rested originally has made out a prima facie case or defence by evidence, of such a character that it then becomes incumbent upon the other to rebut it by contradictory or defensive evidence.

to shift the burden of proof onto the defendant only if there is a reasonable ground to do so. Article 14 of the Special Narcotics Law provides for a presumption where any property obtained during a period of drug trafficking or smuggling conducted repeatedly and continuously shall be presumed to be illicit proceeds if the value of such property is deemed to be unreasonably large in the light of the offender's occupation or the offender's receipt of any benefit under any law or regulation during such period. Prosecutors have to prove that the defendant was repeatedly and continuously involved in drug trafficking over a certain period, the particular property was obtained during that period, the amount of his/her legitimate income during that period and such property is unreasonably large from the viewpoint of his/her working situation; the defendant then has to prove that such property was derived from legitimate origins. There is a reasonable ground to presume that such unreasonably expensive property obtained during such period is derived from drug trafficking and therefore this rule does not put too heavy a burden on the defendant because he/she can easily explain the origin of his/her own property. This rule is applicable to the offence of money laundering.

3. Common Issues, Problems and Solutions

(i) Unconstitutional controversy

Shifting the burden of proof to the defendant is still a highly controversial subject. We have discussed and found that, in the main criminal cases where the punishment is imprisonment or more severe, shifting the burden of proof is nearly impossible except in the unique systems in some countries, as mentioned above. However, in the case of criminal or civil forfeiture of proceeds of crimes derived from drug offences or transnational organized crime, it is possible to apply this concept as the Vienna Convention 1988 and the Palermo Convention 2000 have recommended. This concept has been transferred into the domestic laws of many countries such as India (Section 68-J of the Narcotic Drugs and Psychotropic Substances Act 1985), Thailand (Section 29 of the Act on Measures Against Narcotics Offence), and Japan (Article 14 of Special Narcotics Law).

(ii) Level of Proof

Generally the standard of proof in criminal cases must be beyond reasonable doubt. Unless the burden of proof is shifted, the prosecutor will have to prove the criminal case for the purpose of punishing the defendant and confiscating the proceeds of crime up to the same level. When the laws accept the shifting burden of proof in the case of the confiscation of the proceeds of crime to the defendant, the prosecutor will be relieved to some extent; however, he still needs to prove a *prima facie* case.

G. Conclusion

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 investigations to higher levels of criminal organizations. On the other hand no judicial decision can be based on only 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

[4] - Narcotic Drugs & Psychotropic Substances Act 1985, Sec.35 "In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
-The Prevention of Money-Laundering Act 2002, Sec. 24 "when a person is accused of having committed the offence under Section 3 (money laundering), the burden of proving that proceeds of crime are untainted property shall be on the accused".

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.