GROUP 2

MEASURES TO COLLECT KEY EVIDENCE WHICH SUBSTITUTES FOR OR CORROBORATES WITNESS STATEMENTS

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I. INTRODUCTION

The Group was assigned to discuss the above topic and agreed an agenda as follows:

1. Enhancement of traditional measures:
   a) Search and seizure;
   b) Examination of objects and sites;
   c) Expert evaluation;
   d) Access to bank, financial, commercial and government records;
   e) Taking evidence through other non-coercive or coercive measures.
2. Use of special investigative techniques and the use of evidence obtained through them at trial:
   a) Undercover operations;
   b) Electronic surveillance;
   c) Controlled Delivery;
   d) Others.
3. International Co-operation:
   a) Mutual Legal Assistance;
   b) International Co-operation for special investigative techniques;
   c) Exchange of information between law enforcement authorities.

II. TRADITIONAL METHODS

The starting point of the discussion was a description by each participant of the reality of their respective countries regarding the matters under discussion.

Concerning the four first topics, all participants made a detailed description of their respective countries' legal systems.

In fact, after discussion, there was consensus in the Group that there are no crucial necessary changes to take effect in participant countries' legislation in order to improve the application of these measures. Search and seizure, examination of objects and sites, expert evaluation and access to bank, financial, commercial and government records are measures already very well executed in all the countries during investigation, prosecution and trial of ordinary criminality.[1]

Concerning search procedures, the Japanese, Brazilian and Tunisian systems are ruled by the "*jurisdiction clause*", meaning that it is necessary to obtain a warrant from a judicial authority in order for law enforcement authorities to obtain evidence in this way. The Brazilian legal system has an exception for flagrant cases, when the police forces can enter anywhere to collect evidence related to the crime under

[1] The expression 'ordinary criminality' was adopted in this paper in opposition to organized crime and transnational organized crime.

investigation.

As noted by Mr. Kadhem, the Tunisian criminal procedure system comprises an investigating judge. The latter shall undertake in accordance with the law any investigative step he or she deems useful for the discovery of the truth. He or she seeks out evidence of innocence as well as of guilt. Mr. Kadhem pointed out that in his capacity, and as an independent investigating judge, he can seize everything he considers necessary to find the truth. In Tunisia, searches may be carried out in any place where elements of evidence are likely to be found. Searches in private houses are the exclusive competence of the investigating judge. Some exceptions are stipulated and concern cases of flagrant wrongdoing. The investigating judge may undertake in person all the investigative steps or give an express Letter Rogatory to the judicial police officers to have them perform the necessary investigative steps under his supervision. He chooses and charges the police department that he considers the most efficient for the case, for example, when dealing with a case of drug trafficking he may designate the rogatory act to the anti-drug police division etc. The judicial police officers appointed to carry out the Letter Rogatory exercise all the powers of the investigating judge within the limits set by the letter.

In contrast, as asseverated Mr. Zhu, in China there is no necessity of a warrant from judicial authority for the police to conduct searches and seizures, that is, the law enforcement authorities, including prosecutors, can take these measures at their discretion.

A question brought to the floor by Professor Naito was the seizure of computers and other devices that can store data information. Mr. Kikawa said that in practice the extraction of data stocked in a PC, hard-disks, compact discs, etc. apprehended during the investigations is not easy. Mr. Kikawa remembered a case involving a large Japanese company and said that ways of seizing computers and other devices, especially concerning the damage that an apprehension of computers can cause in big companies by way of halting activities due to the seizure, were discussed in this case. The solution reached was to make a copy of the hard disks in order to do not disturb company activities.

Concerning this matter, Mr. Costa said that the same procedure is in place in Brazil, and also commented that the problems related to defendant questions are not common in Brazil because the extraction and evaluation of the data information from apprehended devices is a duty of in-house police experts called Technical Police, who have a *jure et de jure* presumption of truth in everything they do. So, in that country, the burden of proof belongs to the defendant when he or she alleges during a trial that the data extracted by the law enforcement authorities and brought as evidence was not in his or her apprehended device or computer. The same aspect was commented upon by Mr. Kikawa, who said that the same presumption does not exist in Japan, even though the extraction and evaluation of the data is also done by in-house experts.

At this moment, Mr. Kadhem commented on the experts' evaluation in Tunisia saying that they belong to a special police division called the Scientific Police (with responsibility, for example, for fingerprinting expertise etc.). In addition, he said that in Tunisia other judicial experts are involved in the collection and evaluation of evidence, for example experts who analyse handwriting or doctors specialized in forensic medicine.

Continuing the discussion about the institutions of seizure, some comments were made in relation to money laundering and financial crimes, and once more, the members agreed that the pieces of legislation under analysis have very similar statements. As related by Mr. Kikawa, prosecutors and police officers during investigations and trials can request directly from financial institutions information regarding bank movements of the people under suspicion while in Tunisia and Brazil there is a necessity of a preceding warrant.

Mr. Kikawa and the Visiting Expert Mr. Juergen Kapplinghaus said that in Japan and Germany financial institutions are very co-operative with prosecutors and law enforcement authorities, providing all the financial information requested during the investigations. This fact was the object of comments from the Visiting Expert Mr. Juergen Kapplinghaus in the second session, who demonstrated, during his intervention, the German legal system and brought to the floor some questions introducing the theme of international co-operation just to relate to the members some experiences of Eurojust in these two areas.

Mr. Kadhem reported that in his country, whenever the necessity of investigation required access to a bank's data, the investigating judge may request from the financial institution required information of the account of any offender and may afterwards, if necessary, ask experts to analyse the obtained data.

At this point some questions about money laundering repression were brought to the floor. The Brazilian member said that as signatory to the UN Convention the Brazilian legal framework established mainly by Federal Law 9,613, provides an effective system of administrative and financial controls. The mentioned legislation brings to the Brazilian legal system (a) the criminalization of this practice (Art. 1 establishes a penalty from three to ten years' imprisonment); (b) the institution of seizure enabling the apprehension and deprivation of goods, merchandise or real property acquired as a product of crime; (c) the *confiscation* (permanent deprivation of property) of the chattels seized during the investigation and prosecution, in favour of the Federative Republic, and, the most importantly, (d) the *shifting of the burden of proof* of the illegal origin of the seized objects; no longer a duty of the prosecutor, but a burden of the indicted, who must demonstrate the licit origin of the properties in his or her name, personally, in the presence of the judge.

Moreover, the same legislation created two departments to deal with the matter: (a) the Brazilian financial intelligence unit called the Council of Financial Activities (COAF) and (b) the Department for the Combat of Financial and Exchange Illicit Acts (DEAFI) as a unit of the Central Bank of Brazil, designated to be in charge of the general monitoring of financial market activities. The first department (COAF) receives information, examines and identifies suspect occurrences of illicit activities related to money laundering and also exchanges information inside and outside the country which could provide quick and efficient actions in the combat of money laundering, while the second department, DEAFI, receives information and allegations by the COAF in relation to the financial system, in order to apply administrative sanctions to the financial institutions which do not comply with the legal statements related to money laundering prevention.

In Tunisia, in order to combat money laundering and deter criminals, law No. 75 of 10th December 2003 related to the fight against terrorism and the suppression of money laundering has imposed upon financial institutions and banks operating in that country the obligation to report any suspicious or abnormal transaction to the Tunisian Financial Analysis Commission. Failing to comply with the said obligation, the concerned legal persons and their directors and managers incur prison sentences and fines.

A report by a financial institution or any concerned person involves the automatic immediate temporary suspension of the transaction and the Tunisian Financial Analysis Commission examines the case. The funds or assets are deposited in a waiting account where they shall remain until the end of investigations. In the event of absence of unlawful transactions, The Tunisian Financial Analysis Commission is required to notify without delay the concerned institution and authorize it to remove the freeze. In all cases the said commission is required to close its investigations within a deadline of two days, renewable once. In the event of reasonable suspicion the Commission shall bring the file with the result of the investigation before the competent public prosecutor, the public prosecutor of Tunis, who alone has jurisdiction to rule on this kind of crime. The freeze of the account shall continue and shall be removed only if the public prosecutor decides that there is no matter to prosecute due to the absence in the file of evidence. If the public prosecutor decides to prosecute and try the concerned offender he submits the case to the criminal court and the freeze shall continue unless otherwise decided by the court ruling on the case.

Mr. Zhu said that the Chinese legal system criminalizes laundering the proceeds of crime, and provides for their forfeiture, including measures that allow law enforcement authorities to confiscate criminal assets. The Chinese Penal Code has prohibited acts of money laundering since its amendment in 1997. Nowadays Article 191 of that Code punishes money-laundering activities with a maximum of ten years' imprisonment when the precedent crime is related to smuggling, drug trafficking, terrorism, corruption, financial and mafia crimes. In addition, on 17 September 2002, the Chinese Central Bank created an Anti Money-Laundering and Large Amount and Suspicious Current Transaction Report Rule that provides for control and punishment of suspicious financial transactions.

III. SPECIAL INVESTIGATIVE TECHNIQUES

During the second session, with the participation of Mr. Juergen Kapplingaus, discussions of the special investigative techniques illustrated in the United Nations Convention against Transnational Organized Crime were initiated.

Concerning undercover operations, the system introduced in Brazil in 1995 (seven years before the ratification of the United Nations Convention Against Transnational Organized Crime, signed in Palermo, Italy in 2002) by Federal Law 9034 of 3 May 1995 (modified by Federal Law 10,217 of 11 April 2001) was described; despite the fact that there is no doubt that it is a very complicated investigative technique, it is also one of the most effective ways of supplying information useful for evidentiary purposes on matters such as the identity, nature, composition, structure, location or activities of organized criminal groups, as well as offences that organized criminal groups have committed or may commit. As shown, the Brazilian system requires that this measure must be preceded by a judicial order and it is also covered by an inviolable secrecy that is broken just after the formal *accusation*. Otherwise, the Brazilian system allows only infiltration by police officers and intelligence agents, and does not include in its statements the use of informers or other non-governmental persons.

As exposed by the members, Tunisia and Japan do not have any statements about this matter in their respective legal systems. The Japanese members, Mr Kikawa, Mr. Hisaki and Ms. Kawamata, clarified that undercover operations and infiltration techniques are not addressed by the Japanese legal system. Moreover, Ms. Kawamata said that she does not think that undercover operations are useful for investigations related to the Japanese Mafia, the *Boryokudan* ("the violent ones") because these organizations are very closed, and moreover, Japan is a small country without a federal police force where the prefectural police departments are charged with all investigation activities in each prefecture, meaning that police officers attempting to infiltrate activities might be easily noticed by the criminals. However, the necessities of supplying information useful for obtaining evidence about the activities of criminal organizations are covered by other methods such as the collaboration of members of the Japanese *Boryokudan* during the prosecution and trials.

Mr. Kapplinghaus made some comments about the principles under conflict in this matter. As he said, the *principle of legality* inherent in the civil law system must be mitigated in order to allow the introduction of this investigative and evidence obtaining technique that is a typical instrument adopted by countries that have common law systems.

During his intervention, Mr. Kapplinghaus also asseverated the difficulties of the practical use of undercover operations, related to questions of the nature of eventual offences that the police officer or intelligence agents acting undercover may have to commit, the personal safety of the infiltrated agents and the control of execution of the procedures by the law enforcement authorities or judges and prosecutors during the investigation. He finished by stating that one of the most complete legislative responses to this matter is the Spanish system, which could be copied by other countries in its outlines. He also commented that in England, such kinds of operations are a duty of the intelligence agencies and the information obtained can be used in the courts as evidence.

In the following session the Group restarted the discussion about undercover operations by listening to the description of the Chinese situation. Mr. Zhu related that it is very common to use this investigative tool in cases of drug trafficking, although there is a lack of statements in Chinese criminal procedural law on the matter. The Chinese participant asseverated that there are some rules about undercover operations which have been enacted by the Chinese National Public Security Agency and the Supreme Attorney's Office.

The Japanese participants, Mr. Kikawa and Ms. Kawamata, asseverated that their domestic legal system does not rule this method an investigative technique, and that there is no consensus about the necessity of introducing this technique among prosecutors, police officers and judges. The Japanese members also said that the use of informers has been executed with relative success in organized crime repression investigations, as well sting operations in investigations related to drug trafficking activities.

Visiting Expert Mr. Kapplinghaus brought to the floor the concept of undercover operations - called

covert investigations – for Eurojust, and asseverated that this technique is used *ultima ratio* in investigation activities in the European Union with regard to Articles 14, 15 and 16 of the Mutual Legal Assistance Convention. As Mr. Kapplinghaus said, there is an urgent necessity to define this institute and its outlines; or example, if it recognizes the use of non-governmental agents or not, or recommends punishment for the offences eventually committed by undercover police officers during the investigation.

The use of informers was discussed by the Group. The Brazilian member related that this technique can compromise the evidence obtained, by the fact that informers do not have the legal duty, as undercover police officers do, to tell the truth to law enforcement authorities, judges and prosecutors, and for this reason are used just as an auxiliary method during the investigations.

Changing the focus of the discussion, the Group started the analysis of electronic surveillance tools. The Brazilian system was described by the statements of Federal Laws 9034/95 and 9296/96, which allow the use of phone call and computer communications interception for serious crimes, as well interception of *on-site* conversations in the investigation and prosecution of organized crime.

Mr. Zhu from China described the system in that country, saying that there is a lack of explicit statements on electronic surveillance in criminal procedures. However, as he said, there might be some statements of this investigative tool in laws governing serious crimes. He also asseverated that judges cannot introduce the results of phone calls alone to trials as public evidence.

In 2000, after a long controversy, the Japanese legislature introduced as an investigative tool ruled by the law on telephone call interceptions, for ten days in principle, which can be extended only up to 30 days and for investigation of severe organized crimes, such as organized murders, organized drug trafficking activities, organized trafficking of firearms etc. Such interceptions must always be preceded by a warrant. In spite of the fact of the existence of the law, it is not used as a rule during investigation, prosecution and trial. This is particularly due to the difficult procedures described by the National Law on Communications Interceptions during Criminal Investigations, which requires (i) a daily report to the judge; (ii) the necessity of a witness from the telephone company during the interception; and (iii) the obligation for the investigators to inform the suspect about the interception after 30 days, in principle, of its conclusion. Despite these difficulties, police officers are really encouraged to use this method in investigations related to national and transnational organized crime.

Mr. Kadhem reported that in Tunisia there are no legal statements ruling this special investigative technique; however the investigating judge may in his or her capacity as an independent judge order such kind of measures when he or she considers it a useful means to discover the truth.

Continuing the discussion, the Group started an analysis of practical procedures related to phone call interceptions, as well eventual compensation for innocent persons who had their privacy invaded by such an investigative technique. The Brazilian member asseverated that, in Brazil, all the conversations are recorded and presented to the judge who signed the warrant and to the prosecutor, who will decide if the material obtained that does not concern the offences under investigation should be destroyed. He also commented that in the Brazilian legal framework there is no obligation to notify the person whose telephone secrecy was broken by a judicial order.

At this moment, Mr. Kikawa made a intervention and said that according to the already mentioned Japanese National Law, after 30 days of the conclusion of the interception, the object of this measure must be notified. Mr. Kapplinghaus explained that Germany has the same obligation, and related that in some cases innocent people have obtained an indemnity for moral damage from the State because of the use of this kind of evidence obtaining procedure by prosecutors and law enforcement authorities. In his comments Mr. Kapplinghaus also asseverated that Germany's Constitutional Court stated the unconstitutionality of the law pertaining to on-site interception, that is the conversations taking effect in private buildings (houses, offices, etc.).

Later, the participants restarted the discussion of the investigative techniques mentioned in the UN Convention, and decided to begin with the analysis of the definition of 'undercover operations'.

First of all, the Chairman, Mr. Kadhem, brought to the floor an idea that *controlled delivery* may be classified an undercover operation, and read the statements of the Hungarian legal system. Mr. Costa made some comments about the Brazilian system which defines undercover operations as "to infiltrate a police officer or a intelligence agent into a criminal organization to gather evidence about the crimes perpetrated by the gang". Mr. Zhu noted the differences between those measures, and Professor Naito noted that during an undercover operation it is necessary to have contact between police officers that do not reveal their identities as police officers nor the identities of the criminals under investigation. That situation is not inherent to controlled delivery cases. All the members agreed that this contact exposed by Professor Naito is the starting point to define undercover operations, in a wide or strict sense.

In the ensuing session, the members of the Group also agreed that the period of time for infiltrating a criminal organization, the procedures to guarantee the safety of the infiltrated agent, and statements about eventual crimes perpetrated by the undercover agent must be ruled by law, as well as the necessity of a preceding warrant. All the members also agreed that as a very complicated technique which in most cases demands a very long time to prepare the agents involved, large numbers of police officers just to guarantee the safety of the infiltrated agent and the inherent risk involved, undercover investigations must be used *ultima ratio*, even in criminal investigations related to organized crime activities.

In order to finalize the discussion about undercover operations the admissibility of the evidence obtained by this investigative tool was questioned by Mr. Kadhem, when it was said by Mr. Zhu that, even in China, where there is no law about the matter, such evidence is accepted by judges. However from a judge's perspective, Mr. Zhu pointed out that it is very difficult to examine the credibility of evidence obtained by this method because Chinese Police Officers are reluctant to give their testimony at open trials. Only one case occurred in 2005, in which two police officers that worked in an undercover operation were brought to court as witnesses. As undercover operations are ruled by law in Brazil, there is no problem in admitting the evidence obtained during the investigation at trial.

Controlled delivery was the object of study by the Group, and the analysis started with the description of the Chinese system. Mr. Zhu said that the Chinese legal system does not provide explicit rules about this kind of investigative technique, but if necessary, police officers adopt this tool freely, and they do this not only on drug cases but also in the investigation of other crimes such as firearms trafficking and currency counterfeiting.

Mr. Zhu also asseverated during his intervention that this technique is very complicated and sometimes creates some problems such as the decision about the right moment to relinquish control and to apprehend the drug or other objects of the crime, as well as the fact that sometimes the use of the controlled delivery procedure alone does not give law enforcement authorities possibilities to identify the ringleaders of the criminal organizations.

Concerning the Japanese system, Mr. Kikawa said that controlled delivery is provided for in Article 4 of the Narcotics Provision Law which provides a special statement for customs procedures. Normally, when the controlled drug is found by inspection of a cargo pursuant, the director-general of customs has to seize this. However, when there is a request from a public prosecutor or a police officer by this provision, the director-general of customs can issue permission to control the delivery of such cargo. In this case, it is required that sufficient surveillance systems should be established before permission. Concerning the importing of controlled goods, live controlled delivery (LCD) is allowed only for illegal drugs. In Japanese law there is no provision for live controlled delivery of firearms and counterfeit currency, etc.

On the other hand, concerning clean controlled delivery (CCD), there is no special provision ruling how to carry this out. This is because clean controlled delivery can be carried out without special provision. However, in order to increase the effectiveness of a clean controlled delivery, to punish the carrier who remains involved after the prohibited items are extracted, special legal statements are provided in Articles 8 and 17 of the Firearms and Swords Control Law. Even if the carriers handle empty baggage after the drug extraction he or she will be punished by Japanese law.

Mr. Kikawa said that a legal standard to select clean controlled delivery (CCD) or live controlled delivery

(LCD) does not exist in Japan. It is at the investigator's discretion in each case, and an important point is comparison of the risk and the necessity. CCD will be selected when the amount of the drug is huge and the risk of failure is too large. Moreover, when the drug brought in with luggage is discovered at customs, the technique of controlled delivery will not be possible because a sufficient surveillance system can not be established.

Mr. Kikawa outlined an actual case where the police used LCD. In this case, the drugs were sent from the Philippines to a flat in Japan in which five or six Filipinos lived together. Using LCD in this case, the police forces caught all of the cohabitants in the act of drug possession. Similarly, quite a lot of elements are related to the selection of LCD and CCD.

Moreover, controlled delivery is executed without using special regulations when drug dealing is done domestically. Mr. Kikawa outlined another case where drug dealing was conducted by mail order from Tokyo to Okayama, and investigators utilized controlled delivery with total success.

Mr. Zhu commented that it is necessary to combine traditional techniques with new methods to oppose transnational organized crime. He said that it is important to use other methods such as electronic surveillance, in addition to controlled delivery.

Mr. Hisaki commented on the application of controlled delivery for investigating human trafficking activities, and an effective case was considered for illegal migrants, where it would be completely safe for the person involved, though it was later deemed inappropriate. However, in Japan there is no legislation that allows a person to enter the country when the police force knows it is illegal. International co-operation is indispensable in these cases.

Ms. Kawamata brought to the discussion a case related to drug trafficking from Hawaii to Japan in which the drug dealers utilized packages containing bottles of peanut butter with cannabis inside. The police forces decided to use controlled delivery in this case, but the use by the drug dealers of false addresses and names, and a pre-paid cellular phone gave the police the possibility of arresting just the man who had come to the post office box to receive the packages. This man was identified as a companion of a *Boryokudan*, however the smuggling of the cannabis could not be proven by this method to be an organized crime committed by the *Boryokudan*.

Ms. Kawamata also asseverated that the *Advanced Passenger Information System (APIS)* in which each airline ought to send information to law enforcement authorities (in Japan the relevant authorities are the National Police Agency, the Immigration Bureau and Customs), is very useful for controlled delivery purposes. In Japan there is no obligation upon the companies to send the information, but they do this co-operatively.

The use of international information about delivery of drugs in order to get a warrant to use investigative techniques such as search and seizure was brought to the floor by Professor Naito, and all the participants agreed that it is possible, and as Professor Senta said, Japan has an advantage because after obtaining a warrant for searches and seizures in order to support a controlled delivery for example, this information can remain closed.

The Brazilian system of controlled delivery was demonstrated as a great advance for combating organized crime in Brazil, as before it, the constitutional and penal laws principles were interpreted in a form that avoided the usage of the method of controlled delivery. It was said that once the police had the duty of arresting any person caught in the act of committing a crime or who was found attempting to commit, committing or right after committing the crime, if the arrest did not follow immediately, the police agents would be committing a crime named "*Prevaricação*", which consists in not doing what a public servant is supposed to do according to law. Such interpretation was finally overruled, with the help of new legal statements, which brought a new light to studies on the matter.

As demonstrated by Mr. Costa, Federal Law 10,409 stipulates in Article 33 detailed norms regulating this investigation technique, such as the statement that the request is a duty of the police authorities, and ought

to be preceded by a judicial order after the prosecutor's opinion; demonstrations that the most likely itinerary of the drug transportation is previously known; and, in the case of transnational transportation, a previously issued warrant of the foreign authorities to assure the arrest of people involved and the seizure of the drug. Practical experience in combating organized drug trafficking has demonstrated that controlled delivery resulted in a great increase in drug apprehensions worldwide but it is a technique that must be used in combination with other investigative tools such as wire-tapping and electronic surveillance.

Concerning international co-operation during controlled delivery activities, Mr. Kadhem brought to the floor the necessity of agreements about the matter between the countries involved in a situation like this. At this point, Deputy Director Senta said that very detailed agreements bring difficulties to the use of this technique, and asseverated that the most important aspect is mutual trust between the persons acting in this situation. All the participants agreed with Professor Senta, who emphasized the differences between *smuggling of migrants* and *trafficking in persons*. Professor Senta also commented on the difficulties of the admission of controlled delivery for such kind of crimes, since this technique can risk the victims' safety. Moreover, as Professor Senta noted, in cases of trafficking in persons the evidence of the related crimes comes after entry.

During a later session the Group initiated the discussion of other methods of investigation. Mr. Costa mentioned the investigative tool known as controlled action, created in Brazil by Federal Law 9,034 of 3 May 1995, as a retarding action for arresting people at a better moment for obtaining evidence, after obtaining a judicial warrant for doing so.

Ms. Kawamata, Mr. Kikawa, Mr. Hisaki and Professor Naito agreed that this is usually utilized by the law enforcement authorities of Japan without prescriptions of the legal system and without any problems at trial related to evidence obtained by this method.

IV. INTERNATIONAL CO-OPERATION

Afterwards, the discussion moved onto 'International Co-operation and Mutual Legal Assistance' as recommended by Article 27 and others of the UN convention.

Mr. Kadhem introduced this subject as following:

(i) The traditional measures of judicial co-operation in the penal field are still used. However the principles that are at the basis of these measures have to be interpreted in order in order to enhance the effectiveness of fighting transnational organized crime; and
(ii) A wide and open interpretation of the principle of *dual or double criminality* is required.

Once more, Mr. Kadhem commented on the necessity of agreements related to the matter, and Mr. Kikawa in addition said that agreements alone do not guarantee the collaboration of other countries during investigations into organized crime. Mr. Kikawa asseverated that it is essential to create a situation in which other affected countries become interested in repressing the crime in question.

Some problems about the validity of the evidence produced abroad were raised by Professor Naito, especially when the evidence was obtained by one resource that is not permitted or ruled by the legislation of the other country, or when the dual or double criminality criterion is not presented in the case. Concerning this matter, all the participants agreed that this is one of the reasons the UN Convention had included in its articles all investigative tools, even if some of them are already controversial.

Mr. Costa said that the UN convention outlined the necessity of improving the exchange of information between law enforcement authorities from all the signatories. In particular, Mr. Costa asseverated that it will be possible only when there is mutual trust between the parties involved, which is increased by entities like the UN and UNAFEI with their respective activities such as training courses, seminars, international meetings and events in which the authorities of several countries can establish contacts and professional relationships.

In further discussions, Mr. Costa elaborated on the importance of the UN Convention and asseverated

that the adoption of its outlines by all the signatory countries will create in the near future similarities between their legal systems, decreasing the difficulties for mutual legal assistance and extradition.

About this matter, Professor Uryu said that the experience of Eurojust can be taken as a good example of one measure that enhances mutual legal assistance. Regional organizations at international level with the authority to facilitate mutual legal assistance between different countries can be very useful for these purposes.

The subject of co-operation between law enforcement authorities was brought to the floor. Mr. Costa said that in a country like Brazil, where the police forces are organized primarily at the state level, rather than the national or local level, and these state police forces have responsibility for investigating the vast majority of criminal activities, contacts with Interpol as a duty of Federal Police sometimes damages investigations into criminal organizations by breaching the secrecy of the investigation, and increasing the time needed to obtain information and give co-operation.

Ms. Kawamata said that in Japan, the National Police Agency co-ordinates the activities of Interpol in Japan, and the prefectures' police departments must request Interpol co-operation through the NPA.

V. CONCLUSION

After detailed deliberations, members of the Group came up with the following recommendations to enhance measures to collect key evidence which substitutes for or corroborates witness statements:

1. In order to combat transnational organized crime, the use of traditional techniques, which are still very useful methods to gather evidence of any kind of crime, should be enhanced and must be combined with new investigation techniques as outlined by the United Nations Convention;

2. Undercover operations are one of the most effective ways to supply information useful for evidentiary purposes on such matters as the identity, nature, composition, structure, location or activities of organized criminal groups, as well as offences that organized criminal groups have committed or may commit. However there is no doubt that it is a very complicated and dangerous investigative technique that should be followed by measures to ensure the safety of the undercover officers, as well as rules to guarantee the control of execution of the procedures by the law enforcement authorities during the operation;

3. The interception of several different systems of telephone and data communications (Internet: MSN Messenger, e-mails, Voice upon Internet Protocols, etc.) and on-site interceptions (where deemed appropriate) must be used as an important tool in collecting evidence of organized crime activities. However, as these measures can interfere with the exercise of certain fundamental freedoms, each country should adopt rules about the matter to guarantee both the effectiveness of those measures and the protection of human rights;

4. The practical experience in combating organized drug trafficking has demonstrated that controlled delivery has resulted in a great increase in drug apprehensions worldwide. However, it is a technique that shall be used in combination with other investigative tools such as wire-tapping and undercover operations in order to gather useful information about the structure and activities of criminal organizations under investigation;

5. International co-operation is crucial for repressing transnational organized crime. States should actively take measures to revise domestic legislation to avoid legal obstacles to Mutual Legal Assistance. Therefore, agreements and conventions shall be established bilaterally and regionally in order to make effective the outlines of the UN Convention concerning international experience. International co-operation will also be enhanced by the establishment of regional international organizations with powers to facilitate the effectiveness of this measure;

6. Concerning exchange of information, it is important to maintain close relationships and co-operation among law enforcement authorities through international training courses, seminars and meetings, which will increase mutual trust between them. This exchange of information will also improve the use of techniques to gather evidence of organized crime activities, even in the absence of bilateral or

multilateral agreements;

7. Finally, it is important to note that the adoption of the UN Convention by all the signatories will create in the near future similarities between all the legal systems, decreasing the difficulties for mutual legal assistance, international co-operation and even extradition. It will also create a worldwide inhospitable environment to criminal organizations, in order to achieve some effectiveness in the struggle against this menace.