



Tool 5.8 Special investigative techniques

Overview

This tool describes the provisions of article 20 of the Organized Crime Convention, relating to special investigative techniques, and introduces the use of informants, surveillance and undercover operations.

Proactive law enforcement strategies and complex investigations often involve special investigative techniques. When a case requires international cooperation, differences in the laws regulating the use of these techniques can become a source of difficulty. Major efforts are made in the process of implementing the Organized Crime Convention and other international initiatives to identify and remedy these difficulties. The effectiveness of techniques such as electronic surveillance, undercover operations and controlled delivery cannot be overemphasized. Technological advances make it possible to conduct investigations of sophisticated, often transnational criminal organizations, without the physical presence of foreign investigating officers (for example, through interception of telephone calls and satellite surveillance).

Article 20 of the Organized Crime Convention

Special investigative techniques

Article 20, paragraph 1, of the Organized Crime Convention specifically endorses the investigative techniques of:

- Controlled delivery (although for ethical reasons and the primary concern of the safety of actual and potential victims, controlled delivery is not appropriate in cases of trafficking in persons)
- Electronic and other forms of surveillance
- Undercover operations

Article 20, paragraph 2, encourages States to conclude appropriate bilateral or multilateral agreements or arrangements for using special investigative techniques in the context of international cooperation.

Article 20, paragraph 3, states that in the absence of such an agreement or arrangement, decisions to use special investigative techniques at the international level should be made on a case-by-case basis and take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by States parties.

These techniques are useful in particular when dealing with sophisticated organized criminal groups, because of the dangers and difficulties inherent in gaining access to their operations and gathering information and evidence for use in prosecutions domestically and (through the provision of mutual legal assistance to other States parties) internationally. In many cases, less intrusive methods simply will not prove effective, or cannot be carried out without unacceptable risks to those involved.



A key consideration in using special investigative techniques in operations relating to trafficking in persons is the risk posed to the victim(s) by those techniques. There must be an intervention plan in the event that evidence emerges that a victim is being harmed or is likely to be harmed.

Use of informants

An informant is a person who provides information to the police about a crime. An informant may be a member of the public, a victim of crime, a criminal or a police officer. In investigations of trafficking in persons, informants can be used to provide information about:

- The structure and nature of the criminal organization
- Whether potential trafficking victims are at certain premises
- When victims are being moved and where they are being moved to
- The money trail of trafficking in persons (how much money is being paid, where is it being paid from and to, what is the money being used for?)
- Other matters relating to the crime of trafficking

The process of trafficking involves many people—networks are often large and traffickers may come into contact with many people; each one of these people is a potential informant.

Special considerations apply to the use of each type of informant. Some informants are able to provide information from the heart of a criminal organization and can be given specific tasks to find specific information which they can provide efficiently and cost effectively. However, in recruiting and using informants, consideration must be given to the safety of the informant and any threat posed to actual and potential victims of trafficking in using them. Protection of the informant's identity is essential. In selecting and using informants, consideration must also be given to the motives for providing information to law enforcers; some of those motives may be unethical, unlawful or even prejudicial to the success of law enforcement operations. Some motives may lead to informants and the information they provided being discredited in court, thereby undermining the prospect of successful prosecutions.

The use of informants must be carried out in compliance with national laws. The transnational nature of trafficking in persons means that investigators should be familiar with any relevant legislation in their own jurisdiction and in the jurisdictions with which they are cooperating.

Surveillance

Electronic surveillance in the form of listening devices or the interception of communications performs a similar function to that of undercover operations and is often preferable where a close-knit group cannot be penetrated by an outsider or where physical infiltration or surveillance would represent an unacceptable risk to the investigation or the safety of investigators. Given its intrusiveness, electronic surveillance is generally subject to strict judicial control and numerous statutory safeguards to prevent abuse. Investigators should always bear in mind that traffickers are often aware of surveillance techniques. Surveillance should always be conducted carefully and creatively.

Where investigators become aware through surveillance that victims are being harmed, they are obliged to intervene.

When might surveillance be used in trafficking investigations?

- To develop intelligence
- In proactive investigations
- To assist in the planning and monitor the impact of disruptive investigation
- In some circumstances, in reactive investigation
- When a victim is being interviewed, surveillance may be appropriate to prevent the flight of suspects before their arrest, to corroborate what the victim is saying or to find out whether others are at risk

Considerations before commencing surveillance operations

- What are the potential risks?
- What tactics will be used?
- Have specialists and local law enforcers been briefed? Should local law enforcers be briefed? Is there a risk that they are corrupt and will jeopardize the operation? What if there are no specialists?
- Are targets likely to be aware of surveillance?
- What languages are spoken by the targets of surveillance?

Undercover operations

Undercover operations may be used where it is possible for a law enforcement agent or other person to infiltrate a criminal organization to gather evidence. Undercover operations should only be carried out by well-managed and properly trained staff. Staff should have training which extends to:

- The definition of trafficking in persons in the relevant jurisdiction (so that undercover operatives can identify and obtain evidence)
- Other laws relevant to trafficking
- Defences which have been successfully used in relation to trafficking (so undercover operatives can find evidence which substantiates or disproves defences)

- Commercial purposes of trafficking (to help plan objectives for the operation and to guide the reporting framework to identify new objectives)
- Mechanisms used by traffickers to control victims (so operatives understand that force or threats may not always be present, that control mechanisms may change and that a person may have been trafficked even though they were only partially deceived)

The purpose of undercover policing is to:

- Determine the nature and extent of criminal activities
- Identify the people involved
- Obtain evidence that allows offenders to be prosecuted

The safety of undercover agents is a paramount principle in planning and conducting undercover operations. As with all investigative techniques, the risks posed to agents, victims and their families must be considered in planning operations and throughout their execution.



For more information on special investigative techniques, see the UNODC operational training manual to combat trafficking in persons, forthcoming in 2008, at:

www.unodc.org