I. BACKGROUND AND PURPOSE OF THIS REPORT

A Paris Pact Expert Working Group (EWG) meeting was held on 21-22 June 2011 in Islamabad, Islamic Republic of Pakistan, where 63 experts from 25 countries and organization shared their opinions on legal and operational challenges and gaps in controlled deliveries. A particular focus of the meeting was on the countries of Central Asia, Afghanistan, Iran and Pakistan because these countries border Afghanistan, which is the source of opium trafficked through these countries. Experts from these countries made presentations on both the legal frameworks and gaps as well as the operational challenges they face and successes they have had in conducting controlled deliveries.

The immediate outcome of the meeting was the proposal of a set of 10 practical recommendations which will be reviewed and endorsed by the Paris Pact Policy Consultative Group in December 2011 (see Annex A). If endorsed, they will require follow-up from both UNODC and from Paris Pact partners.

However, since two days is insufficient time to fully examine the legal and operational situation in conducting controlled deliveries, UNODC as Secretariat of the Paris Pact, determined it would be beneficial to draft a more analytical report that can be used by all Paris Pact Partners to improve their own practices as well as to improve international cooperation through a better understanding of the practices and limitations of these countries. An additional objective of the report is to provide further background for and justification to the recommendations that were made at the meeting.

It is intended that this report will be shared with partners for comments, clarification and to provide further information.

II. ANALYSIS OF THE REPORT OF THE PARIS PACT EXPERT WORKING GROUP

The present report was drafted on the basis of the report of the Expert Working Group (EWG) as well as the drafters’ notes of the meeting, and answers to the Questionnaires. UNODC provided a short questionnaire to the Central Asian countries as well as to Afghanistan, Iran and Pakistan on controlled deliveries aimed at identifying legal gaps and operational challenges in
implementing controlled deliveries in their countries as well as in cross border operations. This same questionnaire was also given to all countries present at the expert group meeting. Of the countries relevant to this report, there were 6 responses. Also reviewed were the laws related to controlled deliveries. It should be noted that it is not the purpose of this report to conduct a through legal and comparative analysis of the relevant countries’ laws. Instead, the legal analysis focuses primarily on whether the domestic legislation of the countries in question complies with the standards established by the two relevant UN Conventions, the Vienna Convention of 1988 (the 1988 Convention) and the UN Convention against Transnational Organized Crime (UNTOC) of 2000 and issues raised at the meeting.

III. CHALLENGES

It seems useful to begin the analysis with a review of some of the gaps and challenges that were identified by the experts during the EWG. For example, the delegate of Afghanistan shared his concerns about the following issues:

- Once the controlled delivery took place, the countries do not share information about the development of the case, including information about arrests or seizures.
- Lack of agreements between Afghanistan and neighbouring countries on operational cooperation and especially for implementation of controlled deliveries.
- Insufficiency of drug or border liaison officers in Afghan embassies in the neighbouring countries to facilitate the exchange of intelligence or operational information in real time.
- Frequently the controlled delivery is stopped after the arrest of involved persons or seizure of substance.
- Poor cooperation with embassies of the states involved in controlled delivery.

It is noteworthy that the main points of the delegate of Afghanistan relate to a lack of information sharing (including in real time) and need for better international cooperation. Both these issues might be improved or addressed by having liaison officers in Afghan embassies in neighbouring countries. (points 1, 3 and 5).

The representative of Islamic Republic of Iran shared the following problems that his colleagues face during the controlled delivery operations:

- Cooperation at regional and international level shall be enhanced, especially taking into consideration the existing capacities of regional organization such as JPC, CARICC and international organization such as UNODC, Interpol, etc.
- Information flow between countries is slow and for this reason, it is key to establish channels that would help to exchange information in real time.

Iran also noted the importance of international and cross-border cooperation and the need for real-time information exchange and hence the need to enhance capacities of organizations such as JPC, CARICC, UNODC and INTERPOL.

The representative of Pakistan shared some challenges faced during implementation of controlled deliveries especially at the cross-border level:
• Differences in legal requirements and procedures with other states may pose a difficulty in carrying out controlled deliveries. Obviously, it is a problem when the legal regulation in the country of origin differs drastically from that of the transit or destination state.
• Differences in legislation referring to informants entails problem with obtaining legal testimonies because in some states there is law on protection of informants while in others they are obliged to appear in court. Also it was mentioned that legal differences may result in rejection of controlled delivery if for, for example if the persons involved (presumably the suspects) already have criminal record.
• Lack of border liaison officers may cause difficulties at identifying the right focal point for controlled deliveries, especially when several law enforcement agencies are legally authorized to carry out this type of investigation technique.
• Corruption of law enforcement officials is a serious problem for the success of controlled delivery and there are cases when due to the lack of integrity the operational information leaks and in these cases the consignment reaches its point of destination.
• Lack of trust among states in cases of undercover operation results in a poor exchange of information on seizures and on operational issues which in turn merely hampers operations.
• There are problem with weighing the substances due to the type of concealing.
• In case of smuggling through parcels, the identification of the recipient depends on the quality of information shared by the involved states.
• Cooperation with states where Islamic law is applied may be challenging due to fact that controlled delivery is contrary to Islamic law.

The representative of Kyrgyzstan mentioned also delay in responses to initiating requests that may slow down the whole operation or affect its result and the lack of technical equipment and devices for implementation of controlled deliveries

The representative of Turkmenistan mentioned that controlled delivery is not fully recognized as a joint investigative technique.

Some of the issues noted above as well as others faced during the implementation of controlled deliveries in the region (as well as elsewhere) that were identified by participants of the EWG this report has tried to group into different categories.

1. NEED FOR STRENGTHENING OF LEGAL FRAMEWORKS

It was mentioned several times by participants during the EGM that differences in the way controlled deliveries are regulated at the national level continues to provides difficulties in their operation. In some states, controlled delivery is a special investigation technique that can be applied for a number of crimes, not only for drug related crimes. In others the so-called counter narcotics law specifically regulates it. Moreover, the replacement of substances is allowed in some countries, but not in others; the same can be said regarding participation of foreign law enforcement officials in investigation.

Drug trafficking investigations, as well as other forms of organized crime investigations, tend to be complex, requiring more than just the use of one form of special investigative technique and lend themselves to joint investigations. Where the joint investigation involves a chain of countries and incorporates cross border use of special investigative techniques such as surveillance and controlled deliveries problems can issues arise if the countries concerned
regulate these techniques differently and have different regimes in relation to the use of undercover officers on a cross border basis, use of civilians in undercover operations, protection of informants/under cover officers or telephone interception.

Recommendation number 1 from the meeting attempts in a general way to address these limitations.

Recommendation 1: Where no legal framework exists for special investigative techniques including, controlled deliveries under the drug and UNTOC Conventions, the Paris Pact partners should develop and enact related legislation

For the legal analysis our points of reference were the Vienna (1988) Convention and the UNTOC and the UNTOC. The Vienna (1988) Convention and the UNTOC establish a legal basis for implementation of special techniques/means of investigation, including the use of controlled delivery. Importantly, these Conventions may serve also as a legal ground for mutual legal assistance so that countries may cooperate during either the investigation or prosecution phases. All the countries acknowledge that as Parties to the UN Drug and Organized Crime conventions that they are bound to cooperate with others and they recognize the use of these Conventions as a basis for formal legal cooperation.

It should be noted that there are other Conventions and regional and bi-lateral Treaties that provide also a legal basis for international cooperation, such has the Treaty on Cooperation of Participant States of the Commonwealth of Independent States in Combating Illicit Trafficking of Narcotic Drugs, Psychotropic Substances and Precursors (Minsk Treaty of 2000), and the CIS Convention on Legal Assistance and Legal Cooperation on Civil, Family and Criminal Matters (Chisinau Convention, 2002).

The 1988 Convention defines a controlled delivery as a:

“...technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1 of the Convention”;

The principles of a controlled delivery are elaborated in Article 11 of the 1988 Convention as follows:

1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

1 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 1 g)
2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances **intact or removed or replaced in whole or in part**.

The above articles assist us to identify certain criteria for assessment of local legislation of the states in question. Based on those criteria the table below indicates if local legislation on controlled delivery complies with the 1988 Convention.

**COMPLIANCE WITH VIENNA CONVENTION 1988** (table 1)

<table>
<thead>
<tr>
<th></th>
<th>Definition</th>
<th>International controlled deliveries</th>
<th>Use of controlled deliveries on a case-by-case basis</th>
<th>Replacement or substitution of drugs or psychotropic substances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>✔ LAIDD, Article 5</td>
<td>✔ LAIDD, Article 5</td>
<td>✗</td>
<td>-</td>
</tr>
<tr>
<td>Iran</td>
<td>✗ ADL, Article 43</td>
<td>✔ ADL, Article 43</td>
<td>✗ ADL, Article 43</td>
<td>✔ ADL, Article 43</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>✔ LDPSP, Article 28 LOIA, Article 1</td>
<td>✔ LDPSP, Article 28</td>
<td>✗ LDPSP, Article 28</td>
<td>-</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>✔ LOIA, Article 2 Customs Code, Article 387, sec. 1 LDPSP, Article 29</td>
<td>✔ Customs Code, Article 387, sec. 2 LDPSP, Article 29</td>
<td>✗ LDPSP, Article 29</td>
<td>✔ Customs Code, Article 388</td>
</tr>
<tr>
<td>Pakistan</td>
<td>✔ CNSA, Chapter I, section 2 (i)</td>
<td>✔ CNSA, Chapter VIII, section 59</td>
<td>✔ CNSA, Chapter VIII, section 59</td>
<td>✗</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>✔ LOIA, Article 1 LDPSP, Article 14 Customs Code, Article 507, sec. 1</td>
<td>✔ LDPSP, Article 14</td>
<td>✗ LDPSP, Article 14</td>
<td>✔ Customs Code, Article 508</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>✔ LDPSP, Article 44</td>
<td>✔ LDPSP, Article 44</td>
<td>✔ Customs Code, Article 41</td>
<td>✗</td>
</tr>
</tbody>
</table>
Only Afghanistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan have defined a controlled delivery in accordance with the article 1 of the UN Convention. It is worth mentioning that in some States there are several definitions, for instance in Kyrgyzstan a controlled delivery was defined in Law on Operational and Investigative Activities in general terms (applied not only to drug related investigation), while Law on Drugs and Psychotropic Substances defines controlled deliveries of drugs, psychotropic substances or precursors and the Customs Code has two definitions: one for general operations and the other for drug related cases. These definitions may create conflict in application of this technique. However, the definition of a controlled delivery in the legislation of Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan is the same to that of Kyrgyzstan. The only difference is that in Kazakhstan, Tajikistan and Kyrgyzstan the controlled delivery is defined in the anti-drug law, while in Turkmenistan and Uzbekistan it is found in the Customs Code.

In other States, such Pakistan, a definition of a controlled delivery is the same as the text of the 1988 Convention. And in Iran the new Anti-Drug Law while allowing for controlled deliveries does not seem to provide a definition.

The second element of assessment is that the 1988 Convention establishes an obligation of the participating states to take all measures to allow the application of controlled deliveries at international level, for example through MLA agreements.

All states in question regulate application of controlled delivery operations at international level. For example, the laws in the Central Asian countries all stipulate that for the prevention and prosecution of international drug and psychotropic substance trafficking and identification of persons involved, authorities on case by case basis upon agreement with other competent authorities of a foreign state or in accordance with international treaties may carry out a controlled delivery operations that is permit a controlled import, export or transit through its territory of narcotics, psychotropic substances or precursors that are out of licit circulation².

In Pakistan, Chapter VIII of the CNSA establishes regulation for mutual legal assistance, including evidence gathering in drug related case. In Iran the article 43 of the new Anti-drug Law establishes that controlled delivery operations may be carried out in the framework of bilateral or multilateral agreements.

---

² Cfr. Article 28 of the Law on Drugs, Psychotropic Substances and Precursors of Kazakhstan, Article 29 of the Law on Drugs, Psychotropic Substances and Precursors of Kyrgyzstan, Article 14 of the Law on Drugs, Psychotropic Substances and Precursors of Tajikistan, Article 41 of the Customs Code of Turkmenistan, Article 127 of the Customs Code of Uzbekistan.
The third element established by the 1988 Convention is the decision of application of controlled delivery shall be taken on case-by-case basis. As mentioned above, the legislation of the Central Asian countries establishes that controlled delivery operations are carried out on a case-by-case basis. In Pakistan, according to CNPA, Chapter VIII, Section 59 stipulates cases for international assistance and Chapter III section 24, sub-section 2 regulates cases when controlled delivery cannot be approved. The legislation of Iran requires an operational plan for each controlled delivery operation.

The last criterion for evaluation of the domestic legislation on it is compliance with the Vienna Convention is the possibility to replace or substitute the narcotic drugs or psychotropic substances. In this regard, in the legislation of Iran, Kyrgyzstan and Tajikistan it is stipulated that in the course of carrying out a controlled delivery operation through the customs border of the goods, which circulation is prohibited or restricted, these goods may be partially or completely seized or replaced in accordance with the law.\(^3\)

The UNTOC defines a controlled delivery as\(^4\),

(i) ...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.

Regarding special investigative techniques, Article 20 states:

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

Given the logical link between the UNTOC Convention and the 1988 Convention, the definitions of controlled delivery, established by article 1 and article 2, respectively are similar. Therefore the evaluation of the definition of controlled delivery in the laws of the relevant countries with respect to compliance with that of the UNTOC has similar results as for the Vienna (1988) Convention.

On the other hand, the UNTOC is a global instrument in the fight against organized crime and therefore broader than just drug trafficking. In this connection, a controlled delivery is regulated as a special technique of investigation with certain requirements to be fulfilled before a controlled delivery operation is authorized. For instance, in Iran “the controlled delivery operations within the national territories and outside the country shall be carried out through an operational plan at the request of Chief of Police authorized by the General Prosecutor”. In Pakistan there is also approval (by the Chief of Police or senior management) for implementation of this type of investigation technique, which may not exceed a period of three

---

\(^3\) Cfr. Article 388 of the Customs Code of Kyrgyzstan, Article 508 of the Customs Code of Tajikistan and Article 43 the New Anti-Drug Law of Iran.

\(^4\) UNTOC, Article 2(1)

\(^5\) Cfr. article 43 of the New Anti-Drug Law
In Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan there is prosecution control over the investigation phase and especially in cases where special techniques of investigation are applied.

As far as replacement or substitution is concerned, available information only referred to Iran, Kyrgyzstan and Tajikistan, where the laws authorize this operation. However, see the more detailed discussion on replacement or substitution in section 5 infra.

**COMPLIANCE WITH THE UN TOC CONVENTION (table 2)**

<table>
<thead>
<tr>
<th></th>
<th>Definition</th>
<th>Special investigation technique – controlled delivery</th>
<th>Replacement or substitution of drugs or psychotropic substances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>LAIDD, Article 5</td>
<td>LAIDD, Article 5</td>
<td></td>
</tr>
<tr>
<td>Iran</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>ADL, Article 43</td>
<td>ADL, Article 43</td>
<td>ADL, Article 43</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>LDPSP, Article 28</td>
<td>LDPSP, Article 28</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LOIA, Article 1</td>
<td>LOIA, Article 1</td>
<td></td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>LOIA, Article 2</td>
<td>LOIA, Article 7</td>
<td>Customs Code, Article 388</td>
</tr>
<tr>
<td></td>
<td>Customs Code, Article 387, sec. 1</td>
<td>Customs Code, Article 387, sec. 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LDPSP, Article 29</td>
<td>LDPSP, Article 29</td>
<td></td>
</tr>
<tr>
<td>Pakistan</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td></td>
<td>CNSA, Chapter I, section 2 (i)</td>
<td>CNSA, Chapter III, section 24</td>
<td></td>
</tr>
<tr>
<td>Tajikistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>LOIA, Article 1</td>
<td>LOIA, Article 6</td>
<td>Customs Code, Article 508</td>
</tr>
<tr>
<td></td>
<td>LDPSP, Article 14</td>
<td>LDPSP, Article 44</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Customs Code, Article 507, sec. 1</td>
<td>Customs Code, Article 507, sec. 1</td>
<td></td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td></td>
<td>LDPSP, Article 44</td>
<td>LDPSP, Article 44</td>
<td></td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td></td>
<td>LDPSP, Article 39</td>
<td>LDPSP, Article 39</td>
<td></td>
</tr>
</tbody>
</table>

---

6 Cfr. CNSA, Chapter III, section 24, sub section 3: the approval may not exceed 3 months
7 Supra note 2
For the analysis of the domestic legislation on controlled deliveries of the participating states, there were identified several criteria, including authorized agencies, whether judicial authorization is required, whether notification to a prosecutor is required, exemption of criminal liability, participation of foreign law enforcement, and replacement or substitution. The table below confirms that in participating states the legislation on controlled delivery is not homogeneous.

**LEGAL ISSUES RELATED TO A CONTROLLED DELIVERY**

<table>
<thead>
<tr>
<th></th>
<th>Authorized agencies</th>
<th>Judicial authorization</th>
<th>Notification of a prosecutor</th>
<th>Exemption of criminal liability</th>
<th>Participation of foreign law enforcement</th>
<th>Replacement or substitution of consignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>CNPA</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>✓</td>
<td>-</td>
</tr>
<tr>
<td>Iran</td>
<td>Police</td>
<td>✓</td>
<td>✗</td>
<td>-</td>
<td>-</td>
<td>✓</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>National Security Committee, Ministry of Interior, Customs Committee, etc.</td>
<td>✗</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>-</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>National Security Committee, Ministry of Interior, Customs Committee, State Drug Control Service, etc.</td>
<td>✗</td>
<td>✓</td>
<td>-</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

--

8 Cfr. LOIA, Article 18: “1. Competent authorities of foreign states that are entitled for performance of the operational and investigative activities interact and carry out operational and investigative activities within the territory of the Republic of Kazakhstan in accordance with the present law, corresponding treaties and agreements. 2. Authorities of the Republic of Kazakhstan that carry out operational and investigative activities cooperate and perform operational and investigative measures on the territory of foreign States in accordance with the present law and legislation of those States on the ground of corresponding treaties and agreements. LOIA Article 19: “Cooperation of authorities that carry out operational and investigative activities with international law enforcement organization is performed in accordance with treaties and agreements on legal assistance and in the framework of the present law”.

---

---
As far as authorization procedure is concerned, only in Afghanistan and Iran the judicial authorization is required (in Iran the authorization is granted by the General Prosecutor who form part of the judicial system)\(^9\), while in other states a controlled delivery operation is authorized by the head of the corresponding law enforcement agency\(^10\). In the states where the judicial authorization of controlled delivery operations is not required, the prosecutors exercise the supervision of the legality and it is obligatory to notify the General Prosecutor about authorization of the controlled delivery\(^11\).

It appears that only in Pakistan the law enforcement agent is not criminally liable for committing an offence during participation in a controlled delivery operation\(^12\). In Kazakhstan, there is no criminal liability unless during performance of operational and investigative activities acts are performed that, “endanger life, health and property of citizen, except cases of extreme necessity or self-defense” or “provoke citizens to commit crimes.”\(^13\)

Given the fact that in most cases a controlled delivery is related to international drug trafficking, the close cooperation of law enforcement agencies at operational level is crucial. However, not every country authorizes foreign law enforcement to carry out an operational or investigative activity and in those where it is authorized, this participation is exceptional or is mostly informal in nature.

The issue of replacement or substitution is dealt with separately in section 5 infra.

---

\(^9\) Cfr. Afghanistan: LAIDD, Article 5; Iran: ADL, Article 43.

\(^10\) Cfr. Tajikistan: LOIA, article 8.

\(^11\) Cfr. Kazakhstan: LOIA, article 25; Kyrgyzstan: the Customs Code, article 387; Tajikistan: LOIA, article 21 and the Customs Code, article 507; Turkmenistan: LOIA, article 20 and the Customs Code, article 41; Uzbekistan: the Customs Code, article 127.

\(^12\) according to CNSA Chapter III, section 24, sub-section 5, “…. an authorized participant in an undercover operation or a controlled delivery shall not incur any criminal liability by taking part in it in accordance with the terms of approval”

\(^13\) Cfr. LOIA, article 15
<table>
<thead>
<tr>
<th>Pakistan</th>
<th>ANF</th>
<th>✓</th>
<th>-</th>
<th>✓</th>
<th>✓</th>
<th>✓</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tajikistan</td>
<td>National Security Committee, Ministry of Interior, Customs Committee, Drug Control Agency, etc.</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>✓</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>National Security Committee, Ministry of Interior, Customs Committee, State Drug Control Service, etc.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>National Security Committee, Ministry of Interior, Customs Committee, etc.</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>✓</td>
</tr>
</tbody>
</table>

### 2. CLARIFICATION AND/OR SIMPLIFICATION OF ROLES AND RESPONSIBILITIES

The regulation of a controlled delivery could be divided into four groups, which are indicated in the table below. In some states such as Afghanistan, Iran and Pakistan only the anti-drug law, regulates a controlled delivery. In Uzbekistan there are two laws that regulate controlled delivery, namely anti-drug law and the Customs Code. In Kazakhstan, Kyrgyzstan and Tajikistan a controlled delivery is an operational investigative technique and therefore is regulated by respective laws on operational and investigative activities and at the time is regulated by anti-drug law and by the Customs Code.

---

14 LOIA Article 15: “Performance of operational and investigative activities by foreign law enforcement agencies within the territory of Turkmenistan is prohibited. In exceptional cases law enforcement agencies of foreign states that received permission of Turkmenistan to carry out certain operational and investigative activities, may perform them in accordance and within the limits established by the present law, international treaties and agreements and in cooperation with competent authorities of Turkmenistan”.

11
LEGISLATION THAT REGULATES A CONTROLLED DELIVERY

<table>
<thead>
<tr>
<th>Country</th>
<th>Law on operational and investigation activity</th>
<th>Anti-Drug Law</th>
<th>Customs Code</th>
<th>International treaties and agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>✗</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Iran</td>
<td>✗</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Pakistan</td>
<td>✗</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

As observed in the table above, a controlled deliveries may be authorized in different laws and therefore used by different agencies (such as border, customs, drug control or other agencies within the Ministry of Interior). Therefore, roles and responsibilities of different agencies/actors can be unclear both within a country but especially to other States. This situation can lead to delays in responses to operational requests by countries as well as to the possibility that inconsistent information is provided to requesting countries.

In this regard it is interesting to note the time required to obtain all the permissions for a controlled delivery. It was indicated that in Afghanistan it depends on the case; in Iran it is 48 hours; in Kazakhstan it is 24 hours; in Kyrgyzstan it is up to 7 days; in Pakistan it is from 3 to 7 days; and in Tajikistan it is from 3 to 10 days. These times may be increased where more than two countries are going to be involved in a controlled delivery operation. Hence, the participants of the EGM advocated for a single focal point within a country for controlled deliveries to facilitate regional and international cooperation.

The UNODC questionnaire attempted to obtain information related specifically to roles and responsibilities by asking the following questions: i) Who is the person you contact in order to arrange a Controlled Delivery?; ii) Who is the person (s) that has to give their permission before a controlled delivery can take place in your country?; iii) Who is the person that coordinates a controlled delivery in your country?; iv.) Who are the people that have to be informed about a controlled delivery in your country?

The first question refers to Agency/person that authorizes and coordinates a controlled delivery in respective country. For instance in Afghanistan the agency/person to contact for arrangement of a controlled delivery is the CNPA, namely the Deputy Minister of Interior for Counter Narcotics; in Iran it is Chief Commander of Islamic Republic of Iran Police; in Kazakhstan it is Minister of Interior, in Pakistan it is Joint Director of Anti Narcotics Force.

The second question is regarding Agency/person that authorizes a controlled delivery and it is important to underline that there is a great difference in this aspect. Hence, in Afghanistan the Agency/person that authorizes a controlled delivery is a competent court; Iran it is Chief Prosecutor General who is a part of judiciary system; in Kazakhstan and Tajikistan it is Minister of Interior; and in Kyrgyzstan it is Chief or Deputy Chief on operational work of the State Drug Control Service.
As far as coordination of a controlled delivery is concerned, in Afghanistan the responsible Agency/person for this task is Ministry of Interior, while in Iran it is Secretary General of the Drug Control Headquarter and Police Chief Commander; in Kazakhstan it is Drug Control Committee and Ministry of Interior; in Kyrgyzstan it is State Drug Control Service; in Pakistan it is Joint Director of the Anti-Narcotics Force; in Tajikistan it is the Agency that initiated the operation.

For the success of a controlled delivery it is important to maintain balance between the secrecy of the operation and coordination with other law enforcement agencies. In this connection, it was inquired about Agencies/persons that have to be informed about a controlled delivery and in Afghanistan it is the Ministry of Interior; in Iran it is Secretary of the Drug Control Headquarter, Chief Prosecutor General, Police Chief Commander; in Kazakhstan it is National Security Committee, Border Service and Customs Control Committee; in Kyrgyzstan it is State Drug Control Service, Customs Service and Prosecutor’s Office; in Pakistan it is Director General of the Anti-Narcotics Force; and in Tajikistan it is all competent authorities and Prosecutor’s Office.

In some countries such as Afghanistan, Iran, Kazakhstan, Kyrgyzstan and Tajikistan there are cases when the contact Agency/person for arranging a controlled delivery may not be available. In such cases, it would be expected that an alternate point of contact could be made available.

In order to enhance coordination which can be complicated by different roles and responsibilities, the participants of the EGM made a recommendation that partners should establish a single focal point for controlled deliveries. This issue also has bearing on sections 3 below on enhancing inter-institutional cooperation as well as on section 4 on international cooperation and information sharing.

**Recommendation 4:** Based on existing initiatives, each Paris Pact partner, including regional and national law enforcement coordination centres (CARICC, JPC), should nominate a single focal point (cell number / email address) to deal with cross border cooperation, and the focal point network should be maintained and regularly updated on the ADAM secured 24/7 website to be accessible by all interested bodies. Countries should ensure that the focal points are properly trained.

Moreover, to better enable countries to have easy access to the different legal and operational requirements in their countries, the EGM proposed Recommendation 5:

**Recommendation 5:** On the ADAM 24/7 website each country should maintain and regularly update information related to legal and operational requirements needed to initiate a controlled delivery.

### 3. ENHANCING INTER-INSTITUTIONAL COOPERATION & CAPABILITIES

It is vital to strengthen relations among law enforcement and judicial authorities. In this regard involvement of prosecutors in early investigation stages can resolve issues with formalizing evidence for an eventual trial. The role of the prosecutor is to support law enforcement officers in taking proper legal steps at the time of collecting evidence that can be used in courts. In some countries, MLA requests may be processed more quickly when prosecutors have already been involved in the case. In Pakistan, for instance, prosecutors are working as a...
team and special courts deal with particular types of cases.

There are two additional measures that worth mentioning, namely: setting up a common format for controlled deliveries and establishing a task force or coordination centres at national level that will be in charge of collection and intelligence analysis from all national law enforcement authorities.

All the respondents confirmed that they have standard operating procedures for a controlled delivery which they are willing to share. In Iran these procedures can be shared at the time of cooperation in implementing a controlled delivery based on the subject of the case.

The participants at the EGM deemed that it would be helpful also if countries could elaborate a check list for controlled deliveries as this could be a useful tool both nationally as well as for international partners. In addition, it was noted that further training of law enforcement, prosecution and judicial officers on backtracking investigation would be beneficial.

The issue of the need for a check list was dealt with by the participants of the EGM in the following recommendation:

Recommendation 2: Under the good auspices of the UNODC, CARICC, JPC, INTERPOL and interested regional and international organizations, Paris Pact partners should organize a technical working group to prepare standard operating procedures, templates for documentation, model requests and debriefing procedures to facilitate the cross border cooperation for controlled deliveries within the region at large. This technical working group should report to the Policy Consultative Group Meeting of the Paris Pact.

4. ENHANCING INTERNATIONAL LAW ENFORCEMENT COOPERATION AND INFORMATION SHARING

For successful implementation of a cross-border controlled delivery, it is key to have direct contact in real time with officers from other countries involved in the operation. Once necessary authorizations have been obtained, in all countries, except Afghanistan, officers involved in a controlled delivery can contact directly the operational officers in cooperating countries. In Iran this communication takes place through the Centre for International Cooperation of the Anti-Narcotics Police.

The ability to trace continuously a target vehicle may ensure the success of a controlled delivery. In this regard it was inquired if participating states share details of radiolocation beacon with operation officers from other countries. The participants from Afghanistan, Iran, Kazakhstan, Pakistan and Tajikistan responded that in their countries they do share such details. In Kyrgyzstan this device is not available. However, it is worth mentioning that only in Afghanistan they share radio frequencies with agencies from neighbouring countries, but not in Iran, Kyrgyzstan, Pakistan and Tajikistan (there was no response from Kazakhstan).

The following recommendation was aimed at strengthening cross-border cooperation, especially direct real time contact:

Recommendation 9: Countries are encouraged to make the best use of the coordination capacities of CARICC, JPC, INTERPOL, and other regional and international organizations in
simultaneous operations and for sharing information. CARICC and JPC should establish secure communication links to ensure real time sharing of information.

Afghanistan had noted two specific issues during the EGM - lack of agreements between it and neighbouring countries on operational cooperation and an insufficiency of drug or border liaison officers in Afghan embassies in the neighbouring countries to facilitate the exchange of intelligence or operational information in real time.

In order to strengthen interregional cooperation UNODC extended a proposal to Afghanistan and Pakistan to place their liaison officer in CARICC. This measure will essentially improve information flow as well as it will contribute to building of trust among participating states. Additionally, it was also noted in recommendation 3 that MoUs can facilitate cooperation between countries.

Recommendation #3: When and if needed to facilitate practical implementation, Paris Pact partners may consider entering into an MOU outlining bilateral or multilateral cooperation.

During the EGM, the importance of backtracking investigations was emphasized as a necessary step in finalizing the case. At times when efforts are lacking in backtracking investigations, only the couriers are arrested.

Often the destination country does not send any feedback to the source or transit countries which inhibits the latter to prosecute their case. A lack of information can also lead to problems with acceptance of the evidence collected in a foreign country, which results in nullification of the investigation in the source or transit country, respectively. This problem can also be caused by not knowing all the requirements which goes to the need to have prosecutors or magistrates involved at an early stage. The sharing of information by source, transit and destination countries needs to be more consistent and improved so that each country can conduct their own investigations/prosecutions, as required.

Another problem, which arises during a controlled delivery, is that countries generally want to make a seizure to receive the credit and many times, the transit countries do not receive any credit. The criterion of a successful investigation should be based on the identification and dismantling of the criminal organization, but not on the number of arrested person or quantity of confiscated drug.

Recommendation 7 addresses the point about parallel investigations by reminding that the ultimate goal of countries involved should be to conduct investigations that dismantle and not merely disrupt a criminal organization.

Recommendation 7: In order to dismantle the entire chain of criminal actors, including the highest levels of the criminal organizations, and increase the likelihood of successful prosecutions, all countries involved in cross border cooperation are strongly encouraged to develop coordinated and parallel investigations. They are requested to facilitate the exchange of evidence collected through mutual legal assistance instruments pertaining to the investigations conducted in the other countries.

Sometimes information is not fully shared because one country does know who in another country information will or must be shared with. Sometimes a lack of trust between countries results in poor exchange of operational information and therefore causes the rejection of a
controlled delivery request. Another problem that goes hand in hand with a lack of trust is a lack of integrity due to corruption.

In some countries foreign law enforcement officers are authorized to take part in a controlled delivery operation and in others unfortunately not. According to the responses to the questionnaire, foreign law enforcement officers may participate in a controlled delivery in Afghanistan, Kazakhstan, Kyrgyzstan and Tajikistan, but not in Iran and Pakistan.

In order to encourage information sharing in general, Recommendation 6 provides that:

Recommendation 6: Given the sensitivity of the information provided by the requesting country, each involved country should treat all information shared with the utmost care and within the limitations requested by the providing country.

As noted above, it was proposed that there should be developed a common format for controlled deliveries that might assist in improving the cooperation and information sharing among states. Recommendation 8 suggests that countries go beyond the mere development of procedures and test them in practice.

Recommendation 8: In order to test and adjust standard operating procedures for controlled deliveries, countries should consider conducting table top exercises on controlled deliveries under the auspices of CARICC and JPC in coordination with INTERPOL and other regional and international law enforcement organizations.

5. REPLACEMENT / SUBSTITUTION OF SUBSTANCE

This issue of replacement or substitution of consignment was raised several times during the meeting. The chart below provides further information of the legal requirements of the countries.

<table>
<thead>
<tr>
<th>Objects of a Controlled Delivery</th>
<th>Narcotics</th>
<th>Psychotropic Substances</th>
<th>Precursors</th>
<th>Tools or Equipment for Production</th>
<th>Prohibited Goods and Objects or Goods and Objects with Restricted Circulation</th>
<th>Proceeds of Crime</th>
<th>Objects with Traces of Crime or Tools and Means of Crime</th>
<th>Other Things</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Iran</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
<td>✗</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Pakistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
</tbody>
</table>
In some countries the replacement or substitution of a substance is obligatory. In some transit
countries, if the shipment is replaced, it is not accepted, as there is no physical evidence of an
illegal substance. In Afghanistan and Tajikistan it is required by law to substitute narcotics; in
Iran, there can be substitution in case of urgency and through judicial cooperation. In
Kazakhstan narcotics can be replaced if necessary. In Kyrgyzstan and Pakistan there is no such
legal requirement.

A similar question was posed regarding the legal requirements to replace precursor chemicals
before a controlled delivery. Obviously, the responses were similar as above- that is in
Afghanistan it is necessary to substitute precursor chemicals, while in Kyrgyzstan and Pakistan it
is not; and in Iran and Kazakhstan precursor chemicals can be replaced if necessary

It is important to keep in mind that it is not only narcotic drugs (or psychotropic substances
that can be the object of a controlled delivery- precursors, equipment for production and
proceeds of crime, etc..

For instance, in Afghanistan an object of controlled delivery could be also laboratory
equipment.15 In Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan any good or object, which
circulation is prohibited or restricted can be object of controlled delivery.16 The law of Pakistan
allows any property or other thing in or on the conveyance to be delivered or collected in the
course of controlled delivery operation. Only in Iran the new anti-drug law refers only to
narcotic drugs and psychotropic substances. One important issue in combating drug trafficking
is undermining the financial structure of organized crime and in this regard a controlled delivery
of proceeds of crime could be considered as best international practice. The above-mention
practices are stipulated in the legislation of Afghanistan, Kyrgyzstan, Tajikistan and
Uzbekistan.17

6. TECHNICAL AND HUMAN RESOURCES AVAILABLE

To conduct sophisticated investigations, including for controlled delivery, it is crucial to ensure
that law enforcement agencies have access to sufficient human resources and to equipment.
There was not much discussion on the issues of resources. However, the questionnaire
inquired about operational resources required before a controlled delivery can be authorized.
This question was interpreted differently by the respondents, for instance in Afghanistan the
required operational resources are technical surveillance devices, GPS, passport, visa; in Iran it
is Anti Narcotics Police or Intelligence Service; the was no response from Kazakhstan; in
Kyrgyzstan it is formalization of the operational information; in Pakistan it depends on the type
of a controlled delivery and capability of the informer; in Tajikistan it is availability of reliable
operational information.

Another set of questions asked, whether for a controlled deliver, the agency has access to
seven types of resources. The questions and responses are as follows:

15 Cfr. Afghanistan: LAIDD, Article 5
16 Cfr. Kazakhstan: LOIA, article 1; Kyrgyzstan: LOIA, article 2; Tajikistan: LOIA, article 1; Uzbekistan: the
Customs Code, article 127.
17 Supra note 14 and 15
<table>
<thead>
<tr>
<th>Country</th>
<th>Human surveillance team</th>
<th>Unmarked surveillance vehicle</th>
<th>Covert audio surveillance</th>
<th>Photographic surveillance</th>
<th>Radiolocation beacons</th>
<th>Drones</th>
<th>Other air supported surveillance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Iran</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>✓</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Pakistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
</tbody>
</table>

**IV. CONCLUSIONS**

The recommendations of the EGM directly address the main issues raised at the meeting, and in particular those of an operational nature. This report has tried to look generally at both the operational issues raised at the meeting as well as some of the legal issues that impact operational capabilities.

It should be noted that the UNODC Regional Office for Central Asia has a Manual on Organizing and Implementing Controlled Deliveries that covers the issues raised in this report as well as others and is a useful reference document.

Despite all challenges and difficulties that law enforcement officers face in their daily task, controlled delivery is a working investigative tool in participating states. Representatives of the participating states provided some figures on controlled deliveries carried out their respective countries: in 2011 Iran had 8 successful operations, Kazakhstan – 12, Kyrgyzstan -7, Tajikistan – 4 and Pakistan 92, between the period 2003-2011 (approximately 9 per year).

Finally, this report also would like to emphasize the interest, hard work as well as good will shown by Paris Pact Partners during the EGM and for this reason to promote the final recommendation of the EGM which is:

*Recommendation 10: On a yearly basis, through the offices of CARICC and JPC, countries shall report to the Paris Pact Policy Consultative Group Meeting on progress made on controlled delivery and cross border cooperation.*
Annex A

RECOMMENDATIONS

The participants of the expert group meeting proposed the following recommendations that will help to strengthen regional capacities in the area of controlled delivery.

1. Where no legal framework exists for special investigative techniques including, controlled deliveries under the drug conventions and the convention against transnational organized crime, the Paris Pact partners should develop and enact related legislation.

2. Under the good auspices of the UNODC, CARICC, JPC, INTERPOL and interested regional and international organizations, Paris Pact partners should organize a technical working group to prepare standard operating procedures, templates for documentation, model requests and debriefing procedures to facilitate the cross border cooperation for controlled deliveries within the region at large. This technical working group should report to the Policy Consultative Group Meeting of the Paris Pact.

3. When and if needed to facilitate practical implementation, Paris Pact partners may consider entering into an MOU outlining bilateral or multilateral cooperation.

4. Based on existing initiatives, each Paris Pact partner, including regional and national law enforcement coordination centers (CARICC, JPC), should nominate a single focal point (cell number / email address) to deal with cross border cooperation, and the focal point network should be maintained and regularly updated on the ADAM secured 24/7 website to be accessible by all interested bodies. Countries should ensure that the focal points are properly trained.

5. On the ADAM 24/7 website each country should maintain and regularly update information related to legal and operational requirements needed to initiate a controlled delivery.

6. Given the sensitivity of the information provided by the requesting country, each involved country should treat all information shared with the utmost care and within the limitations requested by the providing country.

7. In order to dismantle the entire chain of criminal actors, including the highest levels of the criminal organizations, and increase the likelihood of successful prosecutions, all countries involved in cross border cooperation are strongly encouraged to develop coordinated and parallel investigations. They are requested to facilitate the exchange of evidence collected through mutual legal assistance instruments pertaining to the investigations conducted in the other countries.

8. In order to test and adjust standard operating procedures for controlled deliveries, countries should consider conducting table top exercises on controlled deliveries under the auspices of CARICC and JPC in coordination with INTERPOL and other regional and international law enforcement organizations.

9. Countries are encouraged to make the best use of the coordination capacities of CARICC, JPC, INTERPOL, and other regional and International organizations in simultaneous
operations and for sharing information. CARICC and JPC should establish secure communication links to ensure real time sharing of information.

10. On a yearly basis, through the offices of CARICC and JPC, countries shall report to the Paris Pact Policy Consultative Group Meeting on progress made on controlled delivery and cross border cooperation.