A Different Approach to Organized Crime

Answers of Japan

1. New investigative measures and gathering of evidence

In serious crimes, such as organized murder, illegal drug and gun trafficking, etc., telephone calls or other means of communication are often used to prepare for and execute those crimes, and to give instructions for concealing of evidence, etc. Therefore, in August 1999, the Law Relating to Wiretapping for Criminal Investigation ("Wiretapping Law") went into effect. As a method of investigation of certain organized crimes, this law enables wiretapping of communication on telephones, the Internet, etc. after preliminary examination by a judge.

Under the Wiretapping Law, wiretapping is permitted only under the following conditions: (1) there is a high degree of suspicion of a serious crime set forth in the qualified list of the law; (2) there is a recognized probability that the communication will contain matters relating to commission of the crime; (3) it is recognized that it would be extremely difficult to investigate the case by any other means; and (4) the means of communication to be wiretapped is specified to those means through which it is probable that the communication to be wiretapped takes place. Through these conditions, it can be said that restrictions on the confidentiality of communication and the freedom of the people in their private lives are limited to the necessary areas.

2. Protection of individual liberties in criminal cases

As will be explained later, legislation has been enacted in Japan relating to “new terrorism” and other organized crime. However, perpetrators of such organized crime are not treated in criminal proceedings differently from other suspects, but are guaranteed with those same rights as have been guaranteed for the accused in Japan, such as the right to request defense counsel and the right to remain silent.

Also, for persons who are required to appear before the court as witnesses in organized crime cases, consideration is given so that they can testify without undergoing any mental pressure, for example through examination by a video-link method. Besides, law enforcement agencies pay such attention that witnesses shall not get any physical injury or loss of life in this relation.

3. Physical arrangements of the court room

In trials involving organized crime, bulletproof panels can be used at the time of examination of witnesses, etc. Also, an inspection takes place using gate-type or
stick-type metal detectors when people enter the courthouse building and its premises.

4. Problems related to illegal immigrants

Recently, in Japan, there has been an increase in crimes by foreigners belonging to international criminal organizations. For this reason, the need has become apparent to deal severely not only with the foreigners who perpetrate the crimes but also with malicious foreign brokers. Therefore, the Immigration Control and Refugee Recognition Law was revised to tighten up causes of landing permission and deportation. For example, the law makes it possible to deport foreigners who have perpetrated certain crimes and received suspended imprisonment in Japan.

Also, there was a tendency for illegal immigrants, including group stowaways, to be organized by assembling together and by tying up with foreign criminal organizations, Japanese criminal gangs, etc. Therefore, in August 1999, the Law Relating to the Punishment of Organized Crime and Restrictions on Criminal Profits, Etc. was put into force with the aim of stiffening penalties and expanding the confiscation and penalty collection of criminal profits for certain organized crimes, including these types of crimes.

5. Problems related to “new terrorism” (establishment of domestic legislation since September 11, 2001)

(1) Previous international framework against terrorism

Previously, conventions relating to the prevention of terrorism formulated by the United Nations or other international organizations were established through repeated efforts to build frameworks for the punishment of criminals, etc. every time a serious incident occurred, such as a hijacking or terrorist bombing. At present there are 12 antiterrorist conventions, all of which have been valid. The international framework against terrorism was further strengthened in the 1990s. At the Paris ministerial conference of the G8 countries in 1996, the “Agreement on 25 Measures” was approved on “Adopting Internal Measures to Prevent Terrorism” and “Strengthening International Cooperation to Fight Terrorism”. The International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism were adopted by the General Assembly of the U.N. in December 1997 and December 1999, respectively.

As of September 11, 2001, Japan had concluded 10 of these 12 antiterrorist conventions, although Japan had signed but not concluded the International Convention for the Suppression of Terrorist Bombings and had not signed the International Convention for the Suppression of the Financing of Terrorism. Then, on September 20, 2001, in cooperation with the other G8 leaders, Japan issued a statement requesting countries to conclude and implement all the antiterrorist

(2) In order to implement the contents of the International Convention for the Suppression of Terrorist Bombings domestically, Japan has enforced the Law Relating to the Establishment of Related Legislation Following Conclusion of the International Convention for the Suppression of Terrorist Bombings since December 2001. Revising the seven existing domestic laws and ordinances, the main contents of the said law are (a) establishment of new definition of crimes such as crime of using biological weapons and toxic weapons, crime of releasing toxic substances, etc.; (b) expansion of some penalties; and (c) consolidation of regulations on the punishment of overseas crime.

In order to implement the contents of the International Convention for the Suppression of the Financing of Terrorism domestically, Japan has put into force Law to Criminalize Financing of Offenses of Public Intimidation since July 2002. The main contents of this law are (a) the criminalization of the act of supplying or collecting funds for or through acts intended to cause death or serious injury to people for the purpose of causing public intimidation, etc., as well as for or through crimes as set forth in the existing antiterrorist conventions (imprisonment of up to 10 years or a fine of up to ¥10 million); (b) the freezing and confiscation of funds, etc. to be used for the execution of the above-mentioned crimes; and (c) the consolidation of regulations on the punishment of overseas crime relating to the above-mentioned crimes.