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Interpol 'Red Notices': their use and abuse – a call for reform*

International mutual legal assistance in accordance with the international rule of law has evolved enormously during the 20th century, notwithstanding that fundamental disagreements as to approach have emerged.[1] Bilateral mutual legal assistance and extradition treaties have proliferated. International organisations and networks such as the Financial Action Task Force ('FATF'), the Egmont Group of Financial Intelligence Units ('EGFIU') and the Organization for Security and Cooperation in Europe ('OSCE') have emerged. The establishment of the International Criminal Court ('ICC') crowns these developments. This article proposes the extension of these achievements to international law enforcement's principle arm: the International Criminal Police Organization, Interpol. This summary discussion examines the current operation of Interpol, asks questions as to whether it effectively balances its law enforcement and individual liberty objectives, notably with regard to the issuance of a 'Red Notice', which in effect and substance is a multilateral global arrest warrant, and suggests modest proposals for reform. More detailed examination of these issues is encouraged.

The organisation and operation of Interpol

Interpol was created in 1923 by founding national police agencies in order to facilitate cross-border police cooperation so as to prevent and combat crime. It is primarily financed by its 190 member nations and carries out its work from headquarters in Lyon, France, through regional bureaus, and through the National Central Bureaus ('NCBs') of its member countries. Interpol is governed by a general assembly on a 'one country, one vote' basis. Day-to-day governance is managed by an executive committee of the general assembly composed of the president, three vice-presidents and nine delegates selected on a regional basis. The executive committee of the general assembly supervises the work of the secretary general, which acts as the chief administrative officer of Interpol's general secretariat.

Interpol is not part of any other international body and has not been established by treaty. Instead its operations are governed by its own Constitution, the current version of which came into force on 13 June 1956.[2]

Laudably, by virtue of Article 2 of its Constitution, Interpol has committed itself to the court access and fair trial provisions required by Article 10 of the Universal Declaration of Human Rights. Vitally, Article 3 of the Constitution also provides that 'it is strictly forbidden for this Organization to undertake any interventions or activities of a political, military, religious or racial character'. One of Interpol's current articulated priorities is to have itself recognised by the United Nations. An additional central goal is the enhancement of its 'neutrality and independence'.

The primary means by which Interpol's standards are maintained is by virtue of the requirement that all NCB's comply with Interpol's own rules. This member initiated self-regulatory model is described on Interpol's own website as follows:

> 'The National Central Bureaus (NCBs) are responsible for any information they provide to INTERPOL's databases or information system. They should ensure that the information is accurate, relevant and up to date, and that its processing is in conformity with the Organization's Constitution as well as with their national legislation.
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> In addition, the NCBs are also responsible for the entities and persons they have authorized to consult the police information in their country. Therefore, any national authorities outside the NCB using or accessing INTERPOL information are under the supervision of their respective NCB.
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> Finally, the NCBs have a supervision role with regard to other NCBs, i.e. whenever they have a doubt that the rules might not have been respected by another

> NCB, they may signal it to the General Secretariat, which will take appropriate measures to rectify the situation.'[3]

The processing of information within Interpol is regulated by Interpol's Constitution and General Regulations ('Constitution') and Interpol's Rules on the Processing of Data ('RPD').[4] As will be apparent, the design of the management of the Interpol system is almost exclusively member initiated 'from the bottom up' with Interpol itself providing few meaningful supervisory checks and balances.

For example, Article 131(4) of the RPD entitled 'Corrective Measures Applicable to National Central Bureaus and International Entities' mandates that whenever necessary, and at least once a year, the general secretariat shall remind the NCBs of their role and responsibilities connected with the data they process in the INTERPOL Information System. Interpol's rules make it clear that the NCBs are at all times responsible for the information that they provide the organisation. In particular, Article 10(3) of the RPD states that 'the National Central Bureaus, national entities and international entities shall be responsible for determining the purpose of processing their data and for performing regular reviews, particularly once this purpose may have been achieved'. Article 11(2) of the RPD states that 'the National Central Bureaus, national entities and international entities shall be responsible for ensuring lawfulness of the collection and entry of their data in the INTERPOL Information System'. Article 12(2) of the RPD states that 'the National Central Bureaus, national entities and international entities shall be responsible for the quality of the data they record and transmit in the INTERPOL Information System'.

Further, the combined operation of Articles 12(4) and 63 of the RPD mandates that prior to acting on any information obtained through the organisation, an NCB must check with the source of that information to ensure that the information is still accurate and relevant. Article 46 of the RPD requires NCBs to update recorded data regularly, and to delete data when the purpose for which it has been recorded has been achieved unless a new purpose justifies its continued publication.

Finally, Article 79(1)(c)of the RPD requires that all NCB forward to the general secretariat any information that may give rise to doubts about the conformity of a notice with the present rules. As indicated previously, the rules mandate that the processing of data conforms with Article 3 of Interpol's Constitution. Article 3 of Interpol's Constitution prohibits the publishing of information which is political, military, religious or racial in nature.

The existing apparatus for the protection of individual rights

It is obvious that the issuance by Interpol of a 'Red Notice', which announces to the world that an individual is subject to arrest at the request of a member state, has devastating consequences for that individual. International mobility is compromised, personal reputation is diminished, business is affected, and bank accounts may be closed. The individual becomes subject to arrest or deportation; at every level liberty is impaired.

The use of Red Notices has grown exponentially. In 2005 Interpol issued 2,343 Red Notices. In 2011 it issued 7,678. In 2011, 7,958 persons were arrested or detained following the publication of a Red Notice.[5]

Notwithstanding the very significant impact that its actions have, Interpol vigorously resists all efforts by affected individuals to seek judicial review of its actions in the domestic courts of its member nations.[6] Instead, as a result of litigation between Interpol and France, Interpol created an internal administrative review agency entitled the 'The Internal Commission for Control of Interpol's Files' ('CCF') in November 1982. Article 36 of the Interpol Constitution now describes the CCF 'as an independent body which shall ensure that the processing of personal information by the Organization is in compliance with the Regulations…' and that the CCF 'shall provide the Organization with advice….'

Unfortunately, the CCF is made up of five part-time members with apparently limited staff. Accordingly the CCF offers limited relief in that its activities are neither transparent nor timely. There is no right to disclosure, to a hearing, or to a reasoned response to complaints. Critically, any recommendation that the CCF may make to the general secretariat is merely advisory and although generally followed, recommendations of the CCF can be overturned by a mere majority of the general assembly whose proceedings are private.

The case for reform

The scope of the problem

Notwithstanding Interpol's best intentions, its rules and the limited non-binding internal oversight provided by the CCF mean that the Interpol system is subject to abuse by its members.

The assembly of statistics related to the activities of an opaque international police organisation will always be challenging but a relatively clear picture emerges from investigations conducted by NGO's and a limited number of interviews given by Interpol administrative officials.

In July, 2011 the International Consortium of Investigative Journalists ('ICIJ')[7] analysed the 7,622 Red Notices issued in that year and found that 2,200 of such Notices had been issued at the request of countries that do not adequately safeguard human rights including Russia, Belarus, Iran and China.

Also in 2011, the US based NGO, The Center for Public Integrity,[8] analysed the ICIJ's data and found that nearly half of the 2010 Red Notices emanated from countries listed as the most corrupt as defined by Transparency International's global index including from countries such as from Indonesia, Iraq, Russia, Venezuela and Libya. The Public Integrity study detailed a large number of instances wherein Interpol had accepted and maintained Red Notices in the face of findings by governments and judicial bodies that the underlying domestic arrest warrants were either politically motivated or without foundation. Illustrations included China's use of Interpol to target the Uighur political leader Dolkum Isa, whom Germany had designated a political refugee, Pakistan's use of Interpol against its former Prime Minister Benazir Bhutto, Tunisia's use of Interpol against its political opposition and Russia's use of Interpol against political opponents associated with the Yukos enterprise, many of whom have now been granted asylum by the UK based upon a finding that the underlying Russian criminal charges were politically motivated.

In 2012, the UK NGO Fair Trials International,[9] which advocates for Interpol reform, reported that in 2010 the CCF recommended to Interpol that it delete 21 Red Notices from its database. Fair Trials continued by documenting the now notorious cases of Benny Wenda, wanted by Indonesia, and Napoleon Gomez Urrutia, wanted by Mexico, both of whom have been granted permanent residence status in the UK and Canada, respectively, notwithstanding the existence of obviously politically motivated outstanding criminal prosecutions against each of them in Indonesia and Mexico. The report by Fair Trials details the uncommunicative and unresponsive nature of the CCF process.

The origins of the problem

As its rules permit, Interpol receives and posts all NCB Red Notice requests pursuant to a presumption that the information upon which the request is based is both accurate and not politically motivated. In consequence, Interpol simply does not impose any meaningful admissibility or sufficiency preconditions to the acceptance of a request for the posting of a Red Notice.[10] Indeed, since Interpol's introduction in 2009 of its 'i-link' system, the NCB's of member countries are now permitted to register 'draft' Red Notices themselves directly into the Interpol system even before the Interpol general secretariat has itself accepted the request.

The cumulative effect of a presumption of accuracy and validity, the absence of meaningful general secretariat intake review and the relative ineffectiveness of CCF internal review process results in a system that is susceptible to, and is, abused.

Three modest proposals for substantive reform

Meaningful pre-issuance review

When a requesting state seeks the arrest of an individual pursuant to a bilateral extradition treaty it fully accepts that, in most cases, it must provide the requesting state with a comprehensive description of the offender, the offence and an accurate and full description of the prima facie case said to support the arrest of the individual in the requesting state. It is also fully accepted by the requesting state that the laws of most requested states require that a judicial officer of the requested state assess the sufficiency of the information so provided before an arrest warrant will be issued in accordance with the laws of the requested state.

Why is the issuance of what is in substance and effect a multilateral 'global arrest warrant'[11] not subject to the same

requirements, namely an independent evaluation of whether or not a prima facie case supports the allegations?[12] The only justifications that could possibly be advanced are the requirements for urgency and the lack of resources.

Urgency is already addressed by the existence of the 'i-link' system which allows NCB's to unilaterally post draft Red Notices directly to the Interpol system. Such urgent 'i-link' postings should remain valid for a maximum of seven days, or only until a reformed general secretariat pre-issuance review can be performed.

Nor can lack of resources be a material obstacle. The premise of the issuance of an Interpol Red Notice is the valid issuance of an arrest warrant in the requesting state based upon a properly conducted criminal investigation and the existence of a reasonable prospect of conviction in relation to an identified offence. Accordingly it cannot possibly be said that the provision of an appropriate summary of the legal grounds for the issuance of a multilateral arrest warrant would impose an undue burden upon requesting states.

Nor could pre-issuance general secretariat review impose a meaningful burden upon Interpol itself. Interpol's 2012 budget is approximately 60m, it has just completed the construction of a new 'command and control' centre in Rio de Janeiro and it is in the midst of constructing a vast new futuristic 'Global Complex for Innovation' in Singapore.

The imposition of a requirement that a requesting state NCB articulate a prima facie case in support of the issuance of a Red Notice, and that Interpol dedicate appropriate resources to the prior assessment of such grounds, will not impose any significant burdens on either requesting states or Interpol itself. Instead, the reliability and reputational dividends that would accrue to Interpol and to international law enforcement would outweigh any incremental costs that might accrue.

Meaningful access to effective internal review

If Interpol is to continue to maintain its position that it should not be made subject to the control of the domestic courts of the jurisdictions in which it operates through the national NCB's of its members then it must adopt effective internal measures to provide those impacted by its actions access to meaningful, prompt and effective relief.[13]

The existing CCF could be easily staffed to permit it to promptly respond to and investigate complaints and to order the secretariat to provide effective relief in the event that it concluded that a Red Notice was without foundation or was politically motivated. There is no reason why natural justice standards should not be made available to complainants. Oversight by the general assembly could easily be restricted to error of fact or law so as to depoliticise the entire review process.

Sanctions for failure to adhere to minimal standards

Although national membership in Interpol is voluntary, any effective voluntary organisation necessarily requires that its members abide by its rules of conduct. Interpol, like all voluntary organisations, must adopt meaningful sanctions against member NCB's who submit unfounded or politically motivated requests for international assistance. Article 131 of the newly enforceable Rules for the Processing of Data now entitles the general secretariat to take corrective action against NCBs that do not fulfill their obligations under the rules. These actions include the correction of processing errors, assessment and/or re-training of the NCB, supervision of the NCB and suspension of access rights. Any long-term suspension of the processing rights of the NCB is a matter to be determined by the executive committee. In the absence of meaningful pre-issuance review and access to effective post-issuance remedies, it is unclear how Interpol will ensure that meaningful sanctions are imposed pursuant to Article 131 when a member NCB violates the principles and purposes upon which Interpol was founded.

Conclusion

The long term effectiveness of Interpol, like all police agencies, depends upon public confidence that it will fairly carry out its functions in support of law enforcement in accordance with the minimal requirements of the rule of law. This central truth, fully accepted in the domestic context of most countries, operates with equal or enhanced force in the international context. Interpol's own interim and long term interests will be served by embracing change.