International Law Roundtable Summary

Policing INTERPOL

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INTRODUCTION
This is a summary of a roundtable discussion held at Chatham House on 5 December 2012.

The event addressed the issue of the accountability of INTERPOL and its national organs. The participants included practising lawyers, academics and representatives of government and of business and NGOs.

This event was held under the Chatham House Rule.

THE UNITED KINGDOM AND THE INTERPOL COMMUNITY
The United Kingdom has been working with INTERPOL since 1928. However, the world – and law enforcement – has changed considerably since then and today there is an even greater need to work with INTERPOL. The changes affect the working environment of the police and the types of crimes and criminals that the police encounter today.

Technological development and the introduction of telecommunication systems such as the internet have accelerated change and made the operational environment international in nature. A few decades ago, the idea of working internationally was a remote idea and international cooperation was hardly used. However, these days law enforcement in the United Kingdom, as in many parts of the world, often relies on international cooperation.

There is also a change in the nature of crime, which affects the communities in which the crimes are committed as well as those who commit crimes. Organized crime planned and resourced from overseas affects UK communities. Foreign nationals coming to Britain are also a significant source of criminality.

The nature of the service provided by INTERPOL and the capabilities that it offers
INTERPOL comprises 190 member states, which gives each of them access to almost every country around the world. INTERPOL has no police powers and is unable to act in any kind of law enforcement capacity. It is not a police force but an international police organization, whose role is to facilitate cooperation between member states in line with strategic priorities.

The first and most vital priority of INTERPOL is to secure a global communication platform. A second priority is data services. There are a
number of different databases hosted by INTERPOL that enable member states to exchange information. Such databases include biometric information, fingerprints, and information on DNA, firearms ballistics, stolen and lost travel documents etc. During 2011, there were nearly a billion searches by member states across these various databases. INTERPOL’s third priority is capacity-building in order to ensure a level playing field to enable its 190 member states to work effectively together as far as possible. This includes the assurance of a secure platform to do that, the existence of mutual law and order language in terms of procedures etc., and the assurance that queries and concerns are handled in a systematic way by all member states. A fourth priority is to provide direct support to individual member states around a particular threat or a particular major event (e.g. the 2012 London Olympic Games) as well as coordinating a range of operational activity.

The nature of the UK engagement with INTERPOL and the United Kingdom National Central Bureau

Although there is no express reference to INTERPOL in UK domestic law, sections 33 and 34 of the Serious Organised Crime and Police Act 2005 enable the sharing of information for purposes of investigation and prevention of crimes. Accordingly, these provisions allow the sharing of information with other countries and the sharing of information received from overseas in the UK. The United Kingdom National Central Bureau (UKNCB), which is hosted by the Serious Organised Crime Agency, works in cooperation with INTERPOL and is the UK organ in charge of sharing intelligence with other police forces and law enforcement bodies around the world.

While doing so, the UKNCB is bound by a number of INTERPOL requirements, as laid out in INTERPOL’s constitution and the NCB Service Standards. In addition, INTERPOL’s Rules on the Processing of Data govern not only the UKNCB’s activities but also the activities of different UK partners that use any information that was sourced through INTERPOL’s channels. The UKNCB is also bound by the Data Protection Act 1998 and by the Human Rights Act 1998. In addition, it has a set of risk assessment tools that it applies to each case as it arrives in the United Kingdom. Part of that assessment concerns prioritization where the underlying focus is on public protection within the country. Furthermore, due diligence undertaken in respect of all enquiries received from overseas is calibrated according to the nature of the country of source.
Extradition

Most outgoing UK requests for extradition are to EU countries and are made through the issue of a European Arrest Warrant (EAW).

Red Notices and EAWs from other countries are communicated to the United Kingdom using INTERPOL’s channels. EAWs are handled by the UKNCB, while the Metropolitan Police execute any requests for extradition from outside the EU. As to Red Notices, many member states recognize the notice itself as the means and basis on which to arrest. However, the United Kingdom does not consider Red Notices as a basis for arrest. Thus when the UKNCB identifies an individual subject to a Red Notice, it will undertake a risk assessment and advise the Metropolitan Police of cases outside the EU. If the case originates within the EU, the UKNCB will trace the individual if he or she is or may be within the United Kingdom, and work with local police to ensure that individual’s arrest and subsequent extradition if appropriate.

More broadly, the aims and institutional character of INTERPOL in its international context were described. Its aims are outlined in Article 2 of INTERPOL’s constitution. They are, first, to ensure the widest possible cooperation between all criminal police authorities and second, to establish and develop institutions in order to suppress ordinary crimes. INTERPOL’s mandate is also subject to some limitations. First, all operations must be within the limits of the domestic law of the relevant country. Second, all activities must be carried out within the spirit of the Universal Declaration of Human Rights and third, according to Article 3 of INTERPOL’s constitution, it is strictly forbidden to undertake any intervention or activities of a political, military, religious or racial character.

Institutional questions related to INTERPOL

Both academics and practitioners have raised questions concerning INTERPOL’s status under international law.

It is the view of INTERPOL that it is an independent and autonomous international organization established by international law. It has its own organs and its own rules of operation; it has headquarters agreements on privileges and immunities with several countries, and also has agreements with other international organizations. In addition, INTERPOL is party to the UN Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, and its
tools and channels are mentioned in international conventions related to transnational organized crime. It is also subject to the jurisdiction of the International Labour Organization Administrative Tribunal (in relation to cases concerning INTERPOL staff). It is recognized as an international independent organization in many decisions by national courts around the world. Member states fund it from their national budget. And finally, in the annual meeting of the INTERPOL General Assembly, each delegate presents official credentials provided by its state.

Nevertheless the United Kingdom is one of a small number of states that still do not consider INTERPOL as a fully-fledged international organization. However, this does not affect the daily dealings of INTERPOL with the UK authorities, nor the way it perceives itself, i.e. as an international organization that is bound by international law.

The role of the National Central Bureaus
National Central Bureaus (NCBs) are part of the INTERPOL system although they are not organs of INTERPOL. According to Article 32 of INTERPOL’s constitution, each member state is required to designate a contact point in the country. The NCB’s role is threefold: to liaise with the General Secretariat of INTERPOL, to liaise with other NCBs and to liaise with national departments within member countries (e.g. courts). The NCB is staffed by the national police.

Red Notices
INTERPOL’s notices are a notification system. The Red Notice is not an international arrest warrant, nor a request from INTERPOL, but rather a notification that an arrest warrant was issued by one of the member states and is being circulated to the international community. It is a general request (as it is circulated to all 190 countries) but it does not of itself carry any enforceable legal obligation to act on it.

The notice will carry the name of the issuing country; how to act on it is a decision for the recipient countries. Thus, the legal value of the Red Notice varies significantly from country to country depending on the countries’ national laws and their international obligations vis-à-vis the requesting state, for example based on the extradition arrangements between the countries in question.
INTERPOL also publishes and circulates Red Notices based on arrest warrants issued by international criminal tribunals. Such notices may carry a legal obligation upon countries to act, though this does not derive from the Red Notice itself but rather from the fact that the requesting entity was created by the UN Security Council operating under Chapter VII of the UN Charter – for example, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda.

**Diffusion**

As opposed to INTERPOL Notices, which are sent first to the INTERPOL General Secretariat, and are published and circulated by INTERPOL only following a review, diffusion is a request for police cooperation that is sent directly between countries and subject to the discretion of the sending country. Diffusion requests may or may not copy in INTERPOL. Where they do, the information will also be recorded in INTERPOL’s database following the regular process of review.

The main purpose of using diffusion is expediency; in order to make sure that individuals do not cross the borders of states undetected. Another potential purpose of diffusion is its use when INTERPOL’s conditions for publication of a Red Notice have not been fulfilled. For instance, INTERPOL has set out official conditions for publication in order to ensure Red Notices are not issued for petty crimes. However, it should be emphasized that, if INTERPOL concludes that a case does not comply with INTERPOL rules (e.g. where it is conceived to be a political case within the meaning of Article 3), its channels cannot be used, either for notices or for diffusions.

**The review of notices and diffusions**

The review of Red Notice and diffusion requests is both substantive and procedural.

According to the substantive rules, member states are required to observe their own national legal requirements (e.g. the arrest warrant must be valid under the relevant national system) as well as to comply with their international obligations including with the spirit of the Universal Declaration of Human Rights.

In this respect, and as to the review conducted by INTERPOL, it should be noted that INTERPOL tries to identify those human rights standards that are relevant to its work and that are well recognized on the international level.
(e.g. that expected penalties comply with international human rights standards). INTERPOL also often uses Article 2 of INTERPOL’s constitution and refers to the Universal Declaration of Human Rights in the context of Article 3 review, since many of these cases concern civil and political rights such as freedom of expression or freedom of association. Article 3 has been a very useful and important provision in INTERPOL’s practice over the years for two main objectives. The first is to protect INTERPOL as a technical organization dealing with police matters and to ensure that it is not pulled towards discussions of a political nature or used for political ends, the underlying rationale being that it must maintain its neutrality and independence. The second is to reflect extradition principles aimed to protect individuals’ rights and to avoid situations where individuals become subject to persecution by the requesting countries.

The review by INTERPOL’s General Secretariat looks only at whether the request conforms to the organization’s rules, which depends on the information that it possesses at the time of review. INTERPOL conducts ex ante review, i.e. prior to the publication of the notice. As part of such review it monitors the media to make sure it is familiar with the relevant information. INTERPOL has also a watch-list that is updated on a regular basis to ensure that cases that might lead to questions on Article 3 are being reviewed in advance. In addition, during the process of review, INTERPOL takes provisional measures. Accordingly, it may sometimes go back to the requesting country to ask for clarification and additional information and during this period it will flag the information received under a caveat that such information is subject to further legal review. INTERPOL also has an obligation to review the files following the publication of a notice when further information, brought to its attention by the requesting state, other member states, the media and general public or the individual concerned, justifies the reopening of the file.

**Developments in Article 3 interpretation**

Over the years there have been two interesting developments concerning the interpretation of Article 3. The first is the narrowing of the scope of Article 3 vis-à-vis the nature of the offence to reflect the development of international criminal law and international extradition law. Until 1984, for example, INTERPOL declined any cooperation in cases related to terrorism as these were considered to be political cases. This policy has changed and INTERPOL has become very much involved in the field. Another example is that until 1994 it refrained from engagement in the field of serious
international crimes based on Article 3. This policy has also changed, and in the past two decades INTERPOL has issued over a thousand Red Notices regarding genocide, crimes against humanity and war crimes upon the request of both international tribunals and member countries.

At the same time, there was a broadening of the scope of Article 3 review to include any relevant information related to a particular case, including, for example, the general context of the case. This ensures a comprehensive review of cases. In this regard, in addition to the requirements mentioned above as part of the substantive review, states are required to observe general principles of international law when submitting Red Notice requests or sending diffusions (for example, they should comply with international principles regarding immunity of heads of states).

**Ways in which individuals can challenge a notice or diffusion**

Besides the possibility of challenge at the national level in the issuing state, another avenue is through the Commission of Control of INTERPOL Files. This is an independent body whose role is to review requests by individuals concerning information recorded in INTERPOL databases against them. A third way, which is not used very often, is through an application by one of the member countries against a request from another country based on the claim that the request violates INTERPOL rules.
Q&A

In discussion after the presentations it was asked how INTERPOL approaches a request for the issue of a Red Notice against a head of state. It was explained that INTERPOL seeks to follow the international standards regarding immunity. Accordingly, it will not issue a Red Notice that is requested by one country against the head of state of another country. However, if the International Criminal Court asks INTERPOL to issue such a notice, in principle and from a legal standpoint there should be no problem in complying with such request and publishing a Red Notice. Thus INTERPOL had issued Red Notices against both Liberia’s Charles Taylor and Serbia’s Slobodan Milošević. However, there might be other policy considerations affecting compliance with such requests.

The question of compliance with human rights standards when issuing Red notices was raised. It was explained that it is sometimes difficult to identify the international agreed standard. For example, when requested to publish a Red Notice in relation to a crime over which the maximum penalty is death, INTERPOL will not decline such request as there is no internationally agreed standard on the matter of the death penalty. However, if the Red Notice concerns a minor, and the maximum penalty is the death penalty, INTERPOL will decline the request since it has concluded that there is an international agreed standard that is based on the UN Convention on the Rights of the Child 1989. In general, when deciding upon such safeguards, INTERPOL will usually take note of the views of the UN Human Rights Committee, the International Law Commission and any other body that can point to international agreed standards.

It was further explained that a heightened level of due diligence is employed by the UKNCB in the case of certain countries’ notices.

In answer to a question about some controversial cases, it was explained that there had been instances where the INTERPOL system had been used, or attempts had been made to use it, unjustly and for political ends. The key safeguard is due diligence. INTERPOL adheres to due diligence principles and in recent years there has been a tremendous advance in this regard. In the past, there was no Commission of Control of INTERPOL Files and there were no data protection rules. Rules on the processing of information were introduced in 2003 and replaced in 2012 with the current rules on the processing of data. The latter were acknowledged by objective observers as corresponding with the highest standards of data protection rules.
Furthermore, in many cases, the attempts to use INTERPOL channels for political ends derive from a lack of education and training of the relevant practitioners in the requesting country, who are unaware that certain requests (e.g. for treason) are perceived as political and thus do not comply with INTERPOL’s rules. While there are in fact attempts to use INTERPOL channels in order to persecute political rivals, these are a very small proportion of the 30,000 Red Notices published. INTERPOL is taking measures to ensure that requests are genuine and comply with its rules by adhering to due diligence standards of review, by requesting more information from the requesting state and by welcoming any information – from other member states or individuals – that can clarify the issues at hand.