Remedies against INTERPOL: role and practice of defence lawyers

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Ladies and gentlemen,

Introduction

1. What is the role and practice of defence lawyers before INTERPOL? That is the question that I have been invited to address at this prestigious gathering.

2. To answer this question, I deem it useful to first briefly describe the origins, structure and functions of INTERPOL. Thereafter I will discuss how INTERPOL's actions can affect defence lawyers' clients. Subsequently, I shall describe the exclusive competence of the Commission for the Control of INTERPOL's files, which is the body before which defence lawyers should present claims on behalf of their clients. Next I will dwell on how to obtain answer to the question about whether INTERPOL has processed information on a particular client, as well as how modification, blocking and destruction of items of such information could be accomplished.

INTERPOL

3. Created in 1923, INTERPOL facilitates cross border police co-operation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat crime. Its headquarters is in Lyon, France. INTERPOL also has five regional bureaus, in Harare, Abidjan, Nairobi, Buenos Aires and San Salvador, plus liaison offices in Bangkok and New York.

4. Article 32 of INTERPOL's Constitution prescribes that in order to ensure constant and cooperation of INTERPOL's members, "each country shall appoint a body which will serve as the National Central Bureau" (NCB). According to the same provision the NCB, which is listed in Article 5 of the Constitution as pertaining to the structure of the Organization, shall ensure liaison with the various departments in the country, with those bodies in other countries serving as NCB, as well as with the Organization's General Secretariat.

5. INTERPOL is primarily financed by the members who pay annual contributions. The General Assembly is INTERPOL's supreme governing body. Article 7 of the Constitution states that each "member may be represented by one or several delegates; however, for each country there shall be one delegation head, appointed by the competent governmental authorities

of each country"[1]. Each country has one vote, and all votes have equal standing.

6. The Executive Committee is INTERPOL's select deliberative organ. Its role, as stated in Article 22 of the Constitution, is to supervise the execution of the decisions of the General Assembly, prepare the agenda for sessions of the General Assembly, submit to the General Assembly any programme of work or project which it considers useful, supervise the administration and work of the Secretary General.

7. In accordance with Article 15 of the Constitution, the Executive Committee shall be composed of the President of the Organization, three Vice-Presidents and nine Delegates, due weight being given to geographical distribution.

8. The President and the three Vice-Presidents must come from different continents. The President is elected for four years, and Vice-Presidents and Delegates for three. Article 20 of the Constitution dictates that, in the exercise of their duties, all members of the Executive Committee shall conduct themselves as representatives of the Organization and not as representatives of their respective countries.

9. The Secretary General – who is appointed by the General Assembly upon a proposal of the Executive Committee - is the organization's chief administrative officer.

How INTERPOL's actions may affect a defence lawyer's client

10. How then can the activities of the organization that I have just described affect the interests of defence lawyers' clients?

11. The Organization provides four principal services, referred to as its core functions[2]:

    1) *Secure global police communications services* - the fundamental condition for international police co-operation is for police forces to be able to communicate with each other securely throughout the world.

    2) *Operational data services and databases for police* - Once police can communicate internationally, they need access to information to assist in their investigations or help them to prevent crime. INTERPOL has therefore developed and maintains a range of global databases, covering key data such as names of individuals, wanted persons, fingerprints, photographs, DNA, stolen and lost identification and travel documents, and INTERPOL notices. Other projects deal with sexually exploitation of children on the Internet, stolen vehicles, and

[1] See B. Babovic, *A propos de l'article 7 du statut de l'OIPC-INTERPOL*, 542/543 Revue Internationale de Police Criminelle, 1995, pp. 5-6.

[2] See U. Kersten, *Enhancing International Law Enforcement Co-operation: a global overview by INTERPOL*, in K. Aromaa & T. Viljanen, ENHANCING INTERNATIONAL LAW ENFORCEMENT CO-OPERATION, INCLUDING EXTRADITION MEASURES (Monsey, NY, 2005), pp. 40-50.

stolen works of art, bio-terrorism, police training, victim identification, and co-operation with other international organizations.

3) *Operational police support services* - INTERPOL currently prioritises crime-fighting programmes on fugitives, terrorism, drugs and organized crime, trafficking in human beings, financial and high tech crime, and corruption.

4) *Training*.

12. A further function – perhaps it's most important - is to alert all police authorities about wanted persons via INTERPOL notices. The most widely known of these is the Red Notice, which is an *erga omnes* request for the provisional arrest of an individual, pending extradition[3].

13. This pre-judicial 'police' phase makes it possible to 'immobilize' an individual once he has been located and prevent him from escaping before the extradition procedure has been implemented.

14. The pre-extradition procedure is conditioned by the powers conferred on the national police in application of the country's extradition laws. On receipt of a wanted notification, the police authorities may themselves decide to take certain measures: tracing the individual, carrying out identity checks, placing in police custody, questioning, placing under surveillance. In most states, measures of a more serious nature can only be taken if letters rogatory have been issued by a judge: this would be the case for a measure such as detention, but also for searching persons or premises, provisional seizure of property, documents or money, restrictions on freedom of movement.

15. The use of INTERPOL channels in this context generally proceeds as follows.

16. A magistrate or the Ministry of the Interior in a country asks its National Central Bureau to circulate an arrest warrant internationally. A wanted notification is circulated over the Interpol network to all or some of the National Central Bureaus, or the National Central Bureau transmits a request to the General Secretariat for a red notice to be issued - the notice is transmitted to all the National Central Bureaus once the request has been examined and checked by the General Secretariat. The National Central Bureau circulates the red notice or the wanted notification to the departments concerned in its state. If the person is found, the police department which located him informs the National Central Bureau and takes the steps it is authorized to take. The National Central Bureau in the state in which the individual was located informs the General Secretariat and the National Central Bureau which requested the red notice, which then informs the magistrate who issued the arrest warrant.

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[3] See IPSG, *Les notices rouges d'INTERPOL*, 468 Revue Internationale de Police Criminelle, 1999, pp. 8-14.

17. Since 2000, the Organization's role has not been restricted to relaying requests. In fact, a specialized sub-directorate and a command can control has been created within the General Secretariat to provide specific help to the National Central Bureaus in this field and to actively co-ordinate searches.

18. It is easy to imagine how the activities, just described can affect the interests of any individual leading to need for defence lawyers to intervene before INTEPOL on their behalf.

19. The availability of INTERPOL's files and notices to police of 186 countries around the world means that anyone whose personal information is processed by INTERPOL is likely to

- see lucrative business deals thwarted,
- be stopped and checked at control points,
- be refused entry or visa,
- be deported, or
- even be arrested and extradited.

20. With the explosive growth over INTERPOL's data bases in recent years and the extended availability to police through the roll out of INTERPOL's I-24/7 global communications, the likelihood that any such events happens to a client has increased exponentially.

<u>The exclusive competence of the Commission for the Control of INTERPOL's Files</u>

21. As technology evolved and INTERPOL became more and more effective the need for remedies against the Organization increased[4]. Cases were filed against INTERPOL in Ireland, Germany, Sweden, France and the United States.

22. However, these attempts at obtaining redress against INTERPOL in national courts have proven fruitless. Indeed, domestic courts consistently refused to adjudicate cases concerning the operations of INTERPOL. The only exception for a case where the national court was ready to adjudicate a civil case against Interpol is found in the U.S. case of *Steinberg v. INTERPOL* (U.S Court of Appeals), where the Court reversed the decision of the District Court, concluded that personal jurisdiction exists in this case based on the Long Arm Statute, and remanded the case back to the District Court. Nonetheless, the District Court never discussed the merits of the case or even addressed other preliminary objections raised by INTERPOL (e.g. lack of subject-matter jurisdiction). In any event, the ruling of the U.S. Court of Appeals and the ostensible ambiguity of the status of Interpol in the U.S., as expressed by the Court, led to the issuance of the 1983 U.S. Executive Order which removed all doubts in that reference[5].

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[4] See R. Riegel, *Internationale bekämfung von strafaten und datashutz*, JZ 1982 and also Chr. Eick & A. Tritel, *Verfassungsrechtliche bedenken gegen deutsche mitarbeit bei INTERPOL*, EurGRZ 1985/Seite 81 (12. Jg. Heft 4)

[5] See W.R. Slomanson, *Civil Actions Against INTERPOL – A field compass*, 55 Temple Law Review, 1984

23. An attempt to have the French Data Protection Authority to assert juridisction over INTERPOL's files lies at the origin of the creation of the Commission for the Control of INTERPOL's Files

24. The CCF or Commission came into being when INTERPOL renegotiated its *Headquarters Agreement* with the French Government: it was then that a solution was found to the problems concerning INTERPOL's files. France claimed that the Law of 6 January 1978 concerning information technology, files and freedoms was applicable to the nominal data stored in INTERPOL's premises.

25. As a result, France argued that people should have access to data concerning them, a right which could be exercised through the French *Commission Nationale de l'Informatique et des Libertés* , which was set up in application of the above-mentioned law and given powers to control computerized files in France. INTERPOL argued that this law should not be applicable to the police information processed by the General Secretariat for the following two reasons. Fist, information sent in by member countries does not belong to INTERPOL, which merely acts as a depository. Second, applying the Law of 1978 to INTERPOL's files in France could hamper international police co-operation, since certain countries would prefer not to communicate police information which could be disclosed to French bodies.

26. Acknowledging these powerful arguments, France was nevertheless unwilling to strengthen INTERPOL's status on its territory without some kind of guarantee concerning the processing of personal data protected by the Law of 1978, and the Organization was keen to ensure the smooth functioning of international police co-operation through its channels.

27. These conflicting aims were reconciled as a result of both parties' commitment to data protection, both in order to protect international police co-operation and to protect individual rights[6]. The agreement was made official on 3 November 1982 with the signing of a new Headquarters Agreement between France and INTERPOL, which came into force on 14 February 1984 and to which an Exchange of Letters is appended. These texts form the basis of the system for the control of INTERPOL's files.

28. By entering into this agreement, France accepted the obvious, which is that the Law of 1978 cannot apply to INTERPOL's files. The Agreement guarantees the inviolability of INTERPOL's archives and official correspondence (Articles 7 and 9 of the Headquarters Agreement), and also provides for internal control of INTERPOL's archives by an independent body rather than by a national supervisory board (Article 8).

29. In accordance with the Exchange of Letters between INTERPOL and the French authorities, which invites INTERPOL to set up a Supervisory Board

[6] Article 2 of INTERPOL's Constitution states that its actions are carried out in the spirit of the Universal Declaration of Human Rights

and define its function, the Organization adopted the Rules on International Police Co-operation and on the Control of INTERPOL's Archives in 1982. The purpose of these Rules, as stated in Article 1(2), is '… to protect police information processed and communicated within the ICPO INTERPOL international police co-operation system against any misuse, especially in order to avoid any threat to individual rights.' It has been replaced in 2003 by the *Rules on the Processing of Information for the purposes of International Police Co-operation* and by the *Rules on the Control of Information and Access to INTERPOL's Files*.

Getting to know whether INTERPOL has processed information about a client

30. It should be obvious that for any defence lawyer to be able to decide on whether to ask INTERPOL to either block, modify or suppress information on his client, he should first know if and what information is processed on his client in INTERPOL's files. Indeed, lawyers regularly file requests on behalf of their clients with INTERPOL requesting access to INTERPOL's files.

31. However, generally, INTERPOL and the police authorities that have provided such information share an interest in not disclosing either whether there is any information at all or the contents such information. Needless to say that the disclosure of either fact can negatively impact any ongoing investigation.

32. On the other hand, the right of privacy entitles individuals to be assured that public institutions respect their privacy. This is acknowledged in INTERPOL's Constitution, which states that the Organization shall respect the Universal Declaration of Human Rights. The fundamental right to privacy in enshrined in Article 12 of said Declaration and has been effectuated in the various human rights conventions.

33. Therefore, one of the main tasks of the Commission for the Control of INTERPOL's Files is to decide on the request of individuals to access information about them that might be registered in INTERPOL's files.

34. Several principles are taken into account when deciding on such requests. I should like to mention two.

1. The principle of the control of source over the information

35. The first principle concerns the national sovereignty over information provided to INTERPOL. Article 5.4 of the Rules on the Processing of Information subscribes to the rule that information sources shall retain control over the processing rights to the items of information they entrust to INTERPOL.

36. This means that before answering to any request by or on behalf of an individual the Commission for the Control of INTERPOL's files will have to ascertain whether the source of the information has any objection against the disclosure of the fact that information has been processed, and if so, whether that fact and or its contents can be disclosed to the individual.

37. There are of course exceptions to this principle. Particularly, there is no objection to disclosure when the information has come into the public domain. Also, disclosure without having obtained prior authorization from the source of the information if it is necessary in order to "defend the interests of the Organization, its Members or its agents" (Article 17.1(d) RPI). Of course, as these are exceptions, they are interpreted restrictively.

2. The principle of non-interference with (potential)l police investigation

38. It may also happen that a request for access concerns information that is not processed in INTERPOL's files. Contrary to what one might assume, even the fact that there is no information in INTERPOL's files is in itself a police information.

39. When asked by the Commission for the Control of INTERPOL's Files whether or not to disclose the fact that no information is recorded with INTERPOL, the General Secretariat takes the view that the fact that no information is recorded does not necessarily mean that the person is not of interest to any of the members of the Organization. As a voluntary organization, members do no have to share information with INTERPOL ongoing investigations. Thus INTERPOL should avoid to inadvertently interfering with an investigation by disclosing the fact that no investigation is recorded in its files. Also, the General Secretariat believes that it should avoid being instrumental zed in fishing expeditions by defence lawyers.

Modification, blocking and destruction of items of information

40. In addition to requests for access to files, defence lawyers very regularly file complaints on behalf of their clients seeking the modification, blocking and destruction of items of information.

41. I should like to observe that very often such requests are motivated by the lawyers concerned with the argument that there is no evidence that their clients have committed the crime of which they are accused or are being sought.

42. This argument, I must say, is not the right argument to submit to INTERPOL.

1. Applicable law

43. This because INTERPOL's functional activities are mainly governed by the *'Rules on the processing of information for the purposes of international police co-operation'*, which were adopted by the General Assembly at its 72nd session (Benidorm, Spain, 2003) in Resolution AG-2003-RES-04, and entered into force on 1 January 2004.

44. They were lastly amended by Resolution AG-20054-RES-15 adopted by the General Assembly at its 74th session (Berlin, Germany, 2005). These Rules abrogate Articles 1 to 14 of the *'Rules on International Police Co-operation*

and on the Internal Control of INTERPOL's Archives[7], the *'Rules on the deletion of police information held by the General Secretariat'* (Resolution AGN/55/RES/2) and the *'Rules governing the database of selected information at the ICPO INTERPOL General Secretariat and direct access by NCBs to that database*[8].

45. The *'Rules governing access by an intergovernmental organization to the INTERPOL telecommunications network and databases'* – originally an appendix to the abrogated *'Rules on International Police Co-operation and the Internal Control of INTERPOL's Archives'*, - constitute a *lex specialis* regime governing access by an intergovernmental organization to the INTERPOL telecommunications network and databases was adopted by the INTERPOL General Assembly during its 70th session, which came into force on 28 September 2001[9].

46. The modification, blocking and destruction of items of information recorded in INTERPOL's files or notices published by INTERPOL are governed by those rules.

47. In other words, for a request for modification, blocking and destruction of items of information to be successful it must by supported by arguments derived from those rules.

2. The presumption of accuracy and relevance

48. When considering filing such requests it is also important to keep in mind that the aforementioned rules establish a presumption of consistency in favour of the National Central Bureaus that have provided the information to the General Secretariat (Article 10.1(b) RPI).

49. This presumption entails that information processed by INTERPOL's General Secretariat on the request of a National Central Bureau is considered, a priori meets the general conditions prescribed by the General Assembly (Article 10.1(a) RPI).. The item of information must be:

- Consistent with the INTERPOL's Constitution;
- Consistent with the purposes for which information may be registered;
- Relevant and connected with cases of specific international interest to the police;
- It is not such that it might prejudice INTERPOL's aims, image or interest, or confidentiality of the information; and,
- It is carried out by the source in the context of the laws existing in its country and in conformity with the international conventions to which it is a party.

3. Burden of proof

[7] Resolution AGN/51/RES1)
[8] Resolution AGN/59/RES/7
[9] 2001, Budapest - Resolution AG-2001-RES-08

50. It follows from the foregoing that, in order to prevail, a defence lawyer must present the arguments and supporting information that would overturn the presumption of consistency.

51. Defence lawyers are helped in this regard by the provision which requires the General Secretariat to undertake a legal review of the information whenever there is a doubt that the criteria for processing of information are being met (Article 10.1(c) RPI).

52. For example, if information has been recorded about the fact that someone is suspected of having committed a certain crime and the lawyers submits evidence stating that the person has been acquitted, the General Secretariat will have to verify this with the National Central Bureau concerned, and cancel the information it if is found that the person gas been acquitted.

53. Another example is where the lawyers informs INTERPOL that a particular procedure or the type of national court itself from which the information emanated has been found to be inconsistent with an international convention.

54. In those case that the information supplied by the defence lawyer does trigger a doubt, the full burden of proof remains with the complaining party.

4. Precautionary measures

55. While a case is pending before the Commission for Control of INTERPOL's Files, precautionary measures can be adopted.

56. Such measures are called for when necessary to *inter alia* respect the basic right of the individuals concerned (Article 10.1(d) RPI).

57. Typically, defence lawyers request such measure when for instance the extract of an INTERPOL notice regarding their client appears on the Organization's public website. In those cases the lawyers often ask that the extract is withdrawn pending the review of the case.

58. I must stress that then when a request for such precautionary measure is conceded, that does not necessarily mean that the international police cooperation with regard to the person concerned is suspended.

5. Excursus: Article 3 of INTERPOL's Consitution

59. I should like now to pay special attention to one of the grounds for requesting modification, blocking, or suppression of information and or notices. It concerns Article 3 of INTERPOL's Constitution.

60. As early as 1946, INTERPOL defined its action as being limited to preventing and combating ordinary-law crimes. This reflected the Organization's wish to guarantee its neutrality while respecting the sovereignty of States. This legal framework is referred to in Article 2(b) of the Constitution.

61. Article 3 of the Constitution, which echoes a provision dating from 1948, adds a certain number of restrictions:

> *"It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character".*

62. However, INTERPOL was soon prompted to determine a framework for interpreting Article 3 as a result of the development of international law (particularly extradition proceedings, in which politically motivated individuals may now be extradited in certain circumstances) and the increase in terrorist offences:

- Resolution AGN/20/RES/11 (Lisbon, 1951) introduced what is known as the theory of predominance, according to which the Organization does not consider itself bound by whether the requesting country categorizes an offence as an ordinary-law crime, but examines requests on a case-by-case basis to assess whether the political or the ordinary-law element is predominant.

- Resolution AGN/53/RES/7 (Luxembourg, 1984) made it possible for the Organization to process requests concerning terrorist cases under certain conditions.

- Resolution AGN/63/RES/9 (Rome, 1994) enabled INTERPOL to process requests concerning violations of international humanitarian law under certain conditions, hence the Organization's active co-operation with the International Criminal Tribunals for Former Yugoslavia and Rwanda.

63. The restriction laid down by Article 3 applies both to the General Secretariat and to Member States. The former must refrain from providing assistance when Article 3 forbids it, while member countries undertake to comply with the Constitution when they join INTERPOL.

64. The Organization therefore checks that requests from NCBs (National Central Bureaus), which circulate on INTERPOL's network and are stored in its databases, comply with the Constitution. This monitoring means that INTERPOL may refuse to process a request on the basis of Article 3 or decide to delete information and cancel notices on the same ground.

65. In order to determine whether a request contravenes Article 3 of the Constitution, INTERPOL makes a distinction between:

- Cases based on offences which are, by nature, political, military, religious or racial, and which are therefore automatically covered by Article 3. This would be the case of a person wanted for violation of the press laws, desertion or practising a religion, and,

- Requests studied casuistically to determine the predominant nature of the offence(s). The Organization takes into account whether there are links between the aims of the accused and their victims, and bases its analysis on the following three criteria determined by the General Assembly: the place where the action was carried out (area of conflict), the status of the victims, and the seriousness of the offence.

66. The same criteria are applied to requests sent in by National Central Bureaus or international criminal tribunals with a view to extraditing those accused of violations of international humanitarian law (subject of the 1994 Resolution). In practice, Article 3 therefore does not prevent those accused of torture from being traced with a view to their arrest and extradition, regardless of whether the offences were committed in a political context or whether the perpetrator is a public official or a person holding public office. However, it would appear that forced enlistment of prisoners or civilians in enemy armed forces could be considered as a military offence.

67. As far as requests by international terrorism are concerned, INTERPOL makes a distinction between requests for the purposes of prevention and those for the purposes of prosecution:

- Requests aimed at prosecuting terrorists are processed in strict conformity with the above rules, particularly in terms of applying the predominance theory. In practice, Article 3 does therefore not prevent those accused of serious, violent terrorist offences (such as serious attacks against human life or physical safety, hostage-taking and kidnapping, serious attacks against property (bomb attacks, etc.), unlawful acts against civil aviation (hijacking of aircraft)) from being located with a view to their arrest and extradition.

- As far as preventing terrorism is concerned, INTERPOL does not apply the theory of predominance. However, the decision to circulate the information must be based on intelligence indicating that the individual might be involved in the perpetration of a terrorist offence, rather than simply on his membership of a political movement for instance.

Evolving law of effective remedies against international organisations

68. Under the various headquarters agreements it has concluded, INTERPOL is exempted from the jurisdiction of domestic judicial and administrative authorities and therefore are not subject to suits, claims or enforcement proceedings in such domestic. The exemption from domestic jurisdiction extends to all official functions of INTERPOL, including the processing of police information and the publication of notices.

69. Developments in the case law of international human rights courts indicate, however, that the exemption must be counterbalanced by a concomitant international legal obligation of each organisation to provide or arrange

lternative modes and procedures for the settlement of disputes or claims of a private law character involving the organisation.

70. In this regard, the case law of the European Court of Human Rights has been of particular influence, as it impacts the country where INTERPOL has its seat.

71. In its decisions of 18 February 1999 in the parallel cases of Waite and Kennedy v. Germany and Beer and Regan v. Germany, the European Court of Human Rights has pronounced itself on the criteria to be applied in order to resolve the conflict that may arise in concrete cases between the right of everyone of access to a court, granted by Article 6.1 of the European Convention, and the immunity from jurisdiction enjoyed by an international organisation, i.e. the European Space Agency ("ESA"), under the ESA Convention and agreements between ESA and its host country, Germany.

72. In both cases the applicants had for several years performed services for ESA, but in the legal capacity of employees of firms with which ESA had contracted. The applicants had instituted proceedings before the Labour Court of Darmstadt, Germany, arguing that pursuant to German law they had acquired the status of employees of ESA. The Labour Court dismissed for lack of jurisdiction due to the immunity of ESA under the ESA Convention of 30 October 1980.

73. The European Court of Human Rights, however, relied on its decision of 21 February 1975 in Golder v. the United Kingdom and found that the Court, notwithstanding its consideration of the immunity question "must next examine whether this degree of access limited to a preliminary issue was sufficient to secure the applicants' 'right to a court', having regard to the rule of law in a democratic society." The European Court of Human Rights, on the one hand, recognized that Article 6.1 of the Convention "secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal" and, on the other hand, that this right "may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court"

74. As criteria to be applied by the Court in making this decision, the European Court of Human Rights stipulated the following three:

a) that the limitations are not so extensive "that the very essence of the right is impaired" ;
b) that the limitations "pursue a legitimate aim", and
c) that there is a "reasonable relationship of proportionality between the means employed and the aim sought to be achieved".

75. In its further analysis, the European Court of Human Rights found that while "where States establish international organisations….and where they attribute

to these organisations certain competencies and accord them immunities, there may be implications as to the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention, however, if the Contracting States were thereby absolved from their responsibility under the Convention in the field of activity covered by such attribution"

76. Additionally, by virtue of Article 2 of its Constitution INTERPOL must respect the spirit of the Universal Declaration of Human Rights. Especially pertinent for today is Article 10 of the Universal Declaration of Human Rights, which reads: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

77. Therefore, in order to respond adequately to this development, the Commission for the Control of INTERPOL's Files is currently reviewing its procedures of in order to ensure that they are consistent with the demands regarding effective remedies for individuals against international organisations.

78. The result of this exercise will be laid down in operating rules for the Commission pursuant to Article 5 (d) of the Rules on the Control of Information and Access to INTERPOL's Files.

Final remarks

79. It would seem platitudinous to say that crime has become ever more international, as borders fade, illicit money and goods course through the world's financial arteries and streams of commerce, and criminals are more mobile, organized, and connected than ever before. Consequently, more than ever before, the world now faces a tangled global web of interlocking criminal networks. In this new era of globalized crime, it has become essential for law enforcement to work together in international cooperation.

80. Furthermore, not only is it the case that crimes are now spanning borders more so than ever before, but, in addition, new forms of crime have appeared that are inherently extraterritorial in nature. Crimes perpetrated through the internet, such as child pornography, financial, high-tech, and cyber crimes, are ready examples. The perpetrator may be located in one country, but the crime is actually being committed in numerous countries throughout the world. Counterfeiting of pharmaceuticals and other products is another example. Products manufactured in one country are distributed throughout the world. Terrorism is also a crime form that has become almost inherently extra-territorial these days. Terrorists usually plot their crimes throughout numerous countries, often using the internet and other international modalities, and then move people and materials to the country where the attack is to occur, and then, after the attack, they flee to other countries.

81. Consequently, particularly the pre-judicial international or inter-country cooperation in criminal matters has become an indispensable component of effective law enforcement covering a multitude of areas such as: (1) issuing

international criminal notices and populating international criminal databases, (2) checking and acting upon the information contained in these notices and databases, (3) gathering evidence, (4) conducting criminal analysis & intelligence, (5) coordinating investigations and operations, (6) executing arrests and extraditions, and (7) providing testimony and other evidence for trial.

82. For example, the extra-territorial effect of arrest warrants and the related extraditions stand out as key topics that raise several legal, policy, and practical issues because whether there can be an arrest and extradition depends upon whether there is a relevant treaty between the two countries, as well as the facts and circumstances of the particular case. Some countries will not arrests and extradite a person if he/she is a national of that country, or if he/she may face a potential death penalty in the other country, or if the case is perceived to be political in nature, or for any number of other procedural or substantive reasons.

83. Dealing with those issues requires communication facilities, data bases, operational assistance, and international and national pre-judicial consultation between police, judicial, and other government authorities.

84. Created in 1923 and reconstituted in 1956, the essential function of INTERPOL is to provide an organised and coordinated response to this demand.

85. The increasing effectiveness of INTERPOL therefore brings more and more to the fore the need for defence lawyers to involve actions against INTERPOL in their defence strategies.

86. With this presentation I hope to have made clear that representing clients effectively before INTERPOL requires familiarity with INTERPOL's rules and procedures.