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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW  
(CAHDI)**

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**Item 7a: Questions dealt with by offices of the Legal Adviser which are of wider interest and related to the drafting of implementing legislation, foreign litigation, peaceful settlements of disputes, and other questions of relevance to the Legal Adviser**

**ENHANCING LEGAL CO-OPERATION ON  
EXTRADITION-MATTERS THROUGH INTERPOL**

Document presented by INTERPOL

## **Enhancing legal co-operation on extradition-matters through INTERPOL**

### **A. INTERPOL's role in matters of extradition**

1. Extradition procedures are key instruments of international cooperation which contribute effectively to the prevention and suppression of ordinary law crimes. They enable the competent national authorities of one State to surrender an individual found on its territory to another State where he is wanted either to stand trial for an offence he is alleged to have committed, or to serve a penal sentence already pronounced against him.
2. This mechanism requires secure and efficient means of communication which allow for the rapid and reliable exchange of information. Besides, it can only be deployed if the alleged offender has been localized and if necessary detained.
3. According to Article 2 of INTERPOL's Constitution, one of the organization's main aims is to promote international mutual assistance in law enforcement matters. The international search of individuals through INTERPOL's communication network and in particular on the basis of Red Notices plays a crucial role in the pre-extradition stage. It enables the competent national authorities to "immobilize" an individual once he has been located and prevent him from escaping before the extraditions procedure has been implemented.
4. In a second step national authorities may then transmit requests for extradition or any other documentation. The ability of police to exchange crucial data quickly and securely is a cornerstone of effective international law enforcement and judicial co-operation. By providing a safe and virtually global communication system INTERPOL enables 188 Member States to circulate information related to extradition proceedings, including requests for extradition twenty four hours a day and seven days a week.
5. The processing of information through INTERPOL's communication network is channeled through a streamlined network of National Contact Bureaus (NCB) which act as single point of contact in each of INTERPOL's Member States. They serve as focal points for domestic authorities while ensuring liaison with the organization's General Secretariat.
6. Any information related to extradition procedures can be 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 which is then communicated to all other National Central Bureaus. The National Central Bureau circulates the Red Notice or the wanted notification to the departments concerned in its national administration. If the person is found, the police department which located the individual 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.
7. 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 and other restrictions on freedom of movement, but also for searching persons or premises and provisional seizure of property, documents or money.

8. Subsequent to the localization and possible detention of the individual the competent authorities of the requesting country may then proceed to the communication of the request for extradition. Whereas information in relation to matters of extradition can be transmitted by various means of communication, the use of INTERPOL's communication network creates an added value in that it:
  - a. allows for the processing of information in real-time
  - b. through an already existing secure communication system
  - c. which serves as a unique tool for co-operation between 188 member states irrespective of any multilateral or bilateral agreements and including those which do not entertain diplomatic relations with each other
  - d. by means of an efficient network of clearly designated, standardized national contact points.
9. At the same time the processing of information through INTERPOL's channels is subject to its compliance with INTERPOL's rules and regulations and notably Article 3 of the Constitution which prohibits the Organization from undertaking any intervention or activities of a political, military, religious or racial character. It is for the General Secretariat to ensure that the applicable Rules and Regulations are observed during any operation to process information through the Organization's channels.

## **B. Ongoing activities**

### **a. Amendment of the European Convention on Extradition of 1957**

10. By communication of 9 February 2010 the Secretariat of the Council of Europe Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC) informed INTERPOL about ongoing negotiations with a view to amending the European Convention on Extradition of 1957.
11. In its current version Article 16 of the European Convention on Extradition opens up the possibility to circulate requests for provisional arrest to the competent authorities of the requested party through INTERPOL's channels.
12. As some Parties to the Convention consider INTERPOL channels as a practical and useful means for the communication of all kinds of information relating to extradition, suggestions were made as to which a more general reference to INTERPOL should be included.
13. In its 58<sup>th</sup> meeting (4-6 May 2010) the PC-OC adopted the following draft version of Article 12bis which shall be included in a future draft instrument amending the European Convention on Extradition

#### *"Article 12bis – Channels and means of communication*

*1. For the purpose of this Convention, communications may be forwarded by using electronic or any other means affording evidence in writing, under*

*conditions which allow the Parties to ascertain their authenticity, as well as through the International Criminal Police Organization (Interpol) channel. In any case, the Party concerned shall, upon request and at any time, submit the originals or authenticated copies of documents. The use of the diplomatic channel is not excluded.”*

14. INTERPOL endorses the current draft version which leaves it for the Parties to forward communications through INTERPOL or any other channels. It therefore invites the Council of Europe Member States to adopt the proposed wording and to make ample use of this mechanism.

#### **b. Enhancing the status of Red Notices**

15. The majority of regional conventions on extradition or bilateral extradition treaties provide for a clause which - in case of urgency - allows the competent authorities of the requesting party to request the provisional arrest of the person sought. The provisional arrest therefore constitutes a temporary measure on the basis of a multilateral, bilateral instrument and/or domestic legislation prior to the submission of a request for extradition.
16. For the time being no universal convention on extradition exists. Neither is there a globally applicable instrument which would govern international co-operation concerning provisional arrests pending extradition.
17. At the same time INTERPOL's Red Notices which allow for the international circulation of arrest warrants to national police authorities of any of the organization's 188 Member States are widely considered as a formal request for provisional arrest of the individual pending extradition, although the actual legal value attached to Red Notices varies from one Member State to another.
18. A recent survey conducted by the General Secretariat indicates that depending on national legislation and international obligations, Red Notices may serve different purposes: alerting law-enforcement agencies, authorizing certain preventive measures (such as surveillance) or implementing extradition procedures (value of a request for arrest pending extradition – systematically or on a case-by-case basis) – see Appendix 1.
19. Red Notices are thus at the interface of international police and judicial co-operation. They are the only type of notice which is addressed to both judicial and police authorities. Red Notices, on the basis of which requests for provisional arrest with a view to extradition are circulated, make up (to some extent) for the absence of a universal instrument regarding the request for provisional arrest.
20. In this regard the INTERPOL General Assembly, on the occasion of its 78<sup>th</sup> session from 11-15 October 2009 adopted a resolution (Resolution AG-2009-RES-11) in which it decided to establish a working group tasked with defining ways and means so as to enhance the legal value of Red Notices.
21. During the first meeting of the working group on enhancing the international status of Red Notices at the INTERPOL General Secretariat on 10-11 May 2010, delegations examined the conditions for issuing Red Notices, the means for identifying and detaining wanted persons as well as the role of Red Notices in the extradition process.

22. While it is too early to predict the outcome of this process, the next meetings will see further discussions on the various means to enhance the status of Red Notices at the international level and provide a forum in which to consider the merits and value of an international convention on Red Notices to achieve the stated objective of enhancing their legal value.