

## **The International Law Commission (ILC) Draft Articles on Crimes against Humanity: INTERPOL's contribution**

### **Introduction**

This note refers to the study conducted by the International Law Commission (ILC) on the topic of Crimes against Humanity. It provides a general overview of INTERPOL's activities in combating such crimes as well as preliminary observations on the Draft Articles.

### **Summary of INTERPOL's activities in combating Crimes against Humanity**

Created in 1923, INTERPOL-the International Criminal Police Organization, is mandated by its Constitution to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights", and to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes. INTERPOL's Constitution also provides that it is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character.

Deriving from its mandate and its broad membership - INTERPOL has currently 192 member countries - the Organization is in a unique position to lead and reinforce ongoing efforts to assist law enforcement authorities in preventing and combating serious international crimes including crimes against humanity.

INTERPOL's engagement in the field of serious international crimes dates back to 1994, when INTERPOL's General Assembly, its supreme organ, approved cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). This opened the way to cooperation with other tribunals, notably the International Criminal Tribunal for Rwanda (ICTR), the Special Tribunal for Sierra Leone, the International Criminal Court (ICC), and the Special Tribunal for Lebanon. Upon the request of the Tribunals, INTERPOL has published Red Notices, seeking the location and arrest of individuals sought by the Tribunals.

In 2004, INTERPOL's General Assembly adopted Resolution AG-2004-RES-17 on "Increased ICPO-Interpol support for the investigation and prosecution of genocide, war crimes and crimes against humanity". In 2014, a dedicated unit was created within INTERPOL's General Secretariat to focus on war crimes, genocide and crimes against humanity.

In addition to the publication of INTERPOL Notices on behalf of member countries and international tribunals, INTERPOL facilitates cooperation through the use of its communication system (the I-24/7 system), and providing targeted training and expert investigative support. In addition, the following two projects are noteworthy:

- (i) The Rwandan Genocide Fugitives Project: set up in 2004 with the Rwandan National Prosecution Service and the ICTR to target the outstanding fugitives wanted by these two bodies. Since then, more than 40 fugitives who were the subjects of INTERPOL Red Notices have been arrested.
- (ii) In the framework of Project BASIC (Broadening Analysis on Serious International Crimes), INTERPOL cooperates with national authorities and international institutions to investigate, locate, and arrest individuals wanted for genocide, war crimes and crimes against humanity.

### **Preliminary observations on the ILC Draft Articles and the use of INTERPOL's policing capabilities**

The ILC initiative is timely and important. INTERPOL supports this undertaking and the current drafting of the Draft Articles. In particular, it supports the reference made to the use of INTERPOL's channels to circulate, in urgent circumstances, requests for Mutual Legal Assistance (MLA). The wording proposed is based on existing conventions, notably the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the United Nations Convention against Transnational Organized Crime (UNTOC), and the United Nations Convention against Corruption (UNCAC).

In that regard, it is suggested to consider introducing a broader reference to the use of INTERPOL's policing capabilities. Indeed, various international and regional conventions mention the possible use of INTERPOL's channels for the purpose of information exchange beyond the circulation of MLA requests. Some examples include:

1. **The International Convention for the Suppression of Terrorist Financing, Article 18(4):**  
"States Parties may exchange information through the International Criminal Police Organization (INTERPOL)."
2. **The Rome Statute on the International Criminal Court, Article 87 (b)(1):**  
"When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization - INTERPOL [...]"
3. **The European Convention on Extradition, Article 16 (3):**  
"A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organization (INTERPOL) [...]"
4. **The ECOWAS Convention on Extradition, Article 22(3):**  
"The request for provisional arrest shall be transmitted to the competent authorities of the requested State either through the diplomatic channel, or direct by post or telegraph, or through the International Criminal Police Organization (INTERPOL) [...]"
5. **The Commonwealth Scheme for the Rendition of Fugitive Offenders, Clause 4(1):**  
"Where a fugitive offender is, or is suspected of being, in or on his way to any part of the Commonwealth but no warrant has been endorsed [...] or issued [...], the competent judicial authority in that part of the Commonwealth may issue a provisional warrant for his arrest on such information and under such circumstances as would, in the authority's opinion, justify the issue of a warrant if the returnable offence of which the fugitive is accused has been an offence committed within the authority's jurisdiction and for the purposes of this paragraph information contained in an international notice issued by the International Criminal Police Organisation (INTERPOL) in respect of a fugitive may be considered by the authority, either alone or with other information, in deciding whether a provisional warrant should be issued for the arrest of that fugitive."

Additional examples of conventions mentioning the use of INTERPOL's channels can be found on INTERPOL's website at <https://www.interpol.int/About-INTERPOL/Legal-materials/Conventions-mentioning-INTERPOL>.

The use of INTERPOL's channels for sending requests for provisional arrests is also referenced in the **United Nations model treaty on extradition** (Article 9(1) of the model treaty) and was incorporated in a number of extradition agreements, for example in the 2010 Convention on Extradition between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Democratic Republic of Algeria. Article 8(2) of the Convention reads as follows:

"The request for provisional arrest shall be transmitted by the International Criminal Police Organization (INTERPOL), or by post, telegraph or any other means affording a record in writing."

As evidenced by the aforementioned examples, the use of INTERPOL's network and policing capabilities is especially relevant for sending requests for a provisional arrest, including through the publication of an INTERPOL Red Notice, as well as extradition requests. However, it is also noteworthy that INTERPOL's channels are regularly used by member countries to exchange information related to investigations. A general reference to the use of INTERPOL's channels to facilitate communication in the prevention and investigation of crimes against humanity may therefore be useful for States.

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