Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 14277
29 March 2017

Abusive use of the Interpol system: the need for more stringent legal safeguards

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

The Committee on Legal Affairs and Human Rights stresses the importance of Interpol as an efficient instrument for international co-operation in the fight against transnational crime, including terrorism. Interpol is constitutionally required to act in the spirit of the Universal Declaration of Human Rights and barred from any intervention or activities of a political, military, religious or racist character. But in recent years, Interpol's Red Notice system has been abused by some member States to persecute political opponents beyond their borders.

Targeted persons cannot successfully challenge Red Notices before any national or international courts. Such jurisdictional immunity can only be justified to the extent that an internal appeals mechanism provides an effective remedy in line with human rights standards. Interpol's Commission for the Control of Files has been criticised for being ill-equipped to deal with the large and growing number and complexity of complaints.

The committee welcomes the recently adopted reforms as so many steps in the right direction and stresses the importance of their implementation in practice. Interpol is invited, in particular, to boost resources for checks of Red Notices and to focus on Notices emanating from National Central Bureaus which have abused the system in the past.

1. Reference to committee: Doc. 13566, Reference 4074 of 3 October 2014.

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A. Draft resolution[2]

1. The Parliamentary Assembly stresses the importance of Interpol as an efficient instrument for international co-operation in the fight against transnational crime, including terrorism.

2. Interpol is based on mutual assistance among national law-enforcement authorities and should function in full neutrality and with respect for the human rights of suspects.

3. The International Notice System allows police in member countries to share critical crime-related information. Police can use notices to alert law-enforcement bodies in other countries of potential threats, or to ask for assistance in solving crimes. “Red Notices”, in particular, are used to seek the location and arrest of a person wanted by a national jurisdiction or an international tribunal, with a view to extradition. The number of Red Notices increased dramatically over the last decade.

4. Article 2 of its Constitution requires Interpol to act in the spirit of the Universal Declaration of Human Rights and Article 3 strictly prohibits any intervention or activities of a political, military, religious or racist character. But in a number of cases in recent years, Interpol and its Red Notice system has been abused by some member States in the pursuit of political objectives, in order to repress the freedom of expression of or persecute members of the political opposition beyond their borders.

5. Red Notices have a serious negative impact on the human rights of targeted persons, including the rights to liberty and security and the right to a fair trial. Red Notices should therefore be requested by National Central Bureaus (NCBs) and circulated by Interpol only when there are serious grounds for suspicion against the targeted person. These grounds should be verified following procedures designed to minimise the possibility for abuse, without hindering international police co-operation in the vast majority of legitimate cases.

6. Targeted persons cannot successfully challenge Red Notices before any national or international courts. Such jurisdictional immunity can only be justified to the extent that an internal appeals mechanism provides an effective remedy within the meaning of applicable human rights standards. In this respect, Interpol’s Commission for the Control of Files (CCF) has been criticised for being ill-equipped to deal with the large and growing number and complexity of complaints.

7. The Assembly notes that Interpol has reacted to these criticisms by engaging in a dialogue including civil society. Interpol’s Working Group on the Processing of Information submitted a number of reform proposals adopted at Interpol’s General Assembly in Bali (Indonesia) in November 2016. Recent improvements, including those decided in Bali, include:

7.1. further strengthening Interpol’s internal vetting procedures before Red Notices are published, by setting up a task force consisting of lawyers, police officers and analysts;

7.2. appointing a Data Protection Officer within Interpol’s Secretariat General;

7.3. strengthening the CCF, whose new Statute will enter into force in March 2017, in particular by separating its advisory function from its appeals function, increasing the number of members of the appeals chamber to five, setting clear timetables for its work, making its findings binding on Interpol, and increasing the resources at its disposal.

8. The Assembly welcomes these reforms as so many steps in the right direction. It stresses the importance of their implementation in practice and calls on Interpol to continue improving its Red Notice procedure in order to prevent and redress abuses even more effectively, including by:

8.1. further strengthening the preventive checks before Red Notices are circulated; in particular by:

8.1.1. increasing the capacity of Interpol’s task force entrusted with such checks by bolstering the resources placed at its disposal;

8.1.2. ensuring that information on relevant cases made available by international or regional intergovernmental human rights bodies (in particular the United Nations High Commissioner for Refugees, the United Nations High Commissioner for Human Rights and the competent bodies of the Council of Europe) and, if appropriate, by non-governmental human rights organisations is duly taken into account;

8.1.3. publishing sufficiently detailed, authoritative interpretations (“repositories of practice”) of Articles 2 and 3 of the Constitution and of Interpol’s policy in refugee and asylum cases;

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2. Draft resolution adopted unanimously by the committee on 7 March 2017.

8.1.4. re-examining Red Notices periodically so as to ensure that they are deleted when they have not given rise to successful extradition within a reasonable amount of time;

8.1.5. examining with particular care repetitive Red Notice requests emanating from the same NCB targeting the same person after earlier requests were either rejected by Interpol or their deletion ordered by the CCF;

8.2. strengthening the CCF as an appeals mechanism by:

8.2.1. making it fully independent from Interpol, in particular by continuing to ensure that staff members dealing with preventive checks are not involved in assessing complaints against Red Notices which had passed these checks;

8.2.2. increasing its capacity, in particular by making sufficient staff available with expertise in the fields of human rights and criminal law and procedure;

8.2.3. ensuring that the CCF fulfils minimum procedural standards, in particular by enabling the targeted persons and their lawyers to be informed of and to comment on the reasons for the Red Notice request given by the requesting NCB;

8.2.4. ensuring that the CCF responds to and resolves appeals within a reasonable time, taking into account the gravity of the consequences of a Red Notice for a targeted person;

8.2.5. ensuring that the CCF publishes its decisions, provided the applicants agree; the decisions shall be sufficiently motivated in order to contribute to the development of consistent and predictable case law;

8.3. dealing appropriately with NCBs which have repeatedly requested the publication of abusive Red Notices, in particular by:

8.3.1. keeping statistics on Red Notices filtered out upstream by Interpol's preventive mechanism and downstream by successful challenges before the CCF;

8.3.2. subjecting new Red Notice requests by NCBs with a high number of abusive requests to more intensive *ex ante* scrutiny;

8.3.3. giving priority to complaints against Red Notices requested by NCBs with a high number of abusive requests also for *ex post* scrutiny by the CCF;

8.3.4. charging NCBs with a high number of abusive requests for the additional budgetary costs generated by more intensive scrutiny of their requests required both *ex ante* and *ex post*;

8.4. setting up a fund for compensation of victims of abusive or otherwise unjustified Red Notices financed by member States in proportion to the number of unjustified Red Notices emanating from their NCBs.

9. The Assembly calls on all member States of the Council of Europe to:

9.1. set a positive example by ensuring that their own NCB's Red Notice requests clearly specify the targeted persons, the suspected crime and the elements of proof linking the targeted person to the alleged crime;

9.2. swiftly communicate to Interpol relevant information on persons targeted by Red Notices (for example the granting of political asylum and judicial decisions refusing extradition);

9.3. refrain from carrying out arrests on the basis of Red Notices when they have serious concerns that the Notice in question could be abusive;

9.4. make use of their influence within Interpol to ensure the implementation of necessary reforms so that Interpol respects human rights and the rule of law whilst remaining an effective tool for legitimate international police co-operation.

B. Explanatory memorandum by Mr Bernd Fabritius, rapporteur

1. Introductory remarks

1. The internationalisation of (serious) crime alongside globalisation and increased mobility in general have made international co-operation between law-enforcement bodies essential in order to ensure that suspects cannot escape prosecution or a prison sentence by hiding abroad.

2. The International Criminal Police Organization (Interpol)'s main goal is to help combat international crime. Arresting fugitives with a view to extraditing them to the country where they are wanted for prosecution or to serve a sentence can make an essential contribution to that goal.[3] Interpol has set up highly efficient channels for mutual assistance between national law-enforcement authorities and should function in full neutrality and with respect for human rights.

3. The International Notice System allows police in member countries to share critical crime-related information. Police can use notices to alert law-enforcement bodies in other countries to potential threats, or to ask for assistance in solving crimes. Notices can also be used by the United Nations Security Council and the International Criminal Court and other international criminal tribunals to inform the authorities that certain individuals or entities are subject to United Nations sanctions or sought by international tribunals. Over the last decade, thanks to advances in information technology, the International Notice System has become far more efficient and also far more widely-used. Between 2005 and 2015, the annual number of Red Notices alone increased almost five-fold, from 2 343 to 11 492.[4] In 2016, a total of 12 787 Red Notices (see paragraph 10 below) were issued.

4. Whilst it is "strictly prohibited for Interpol to undertake any intervention or activities of a political, military, religious or racial character",[5] over recent years, there have been numerous alleged cases of abuse of the Red Notice system by some member States in the pursuit of political objectives, repressing the freedom of expression or persecuting members of the political opposition beyond their borders.[6] It would appear that legal safeguards have indeed been lagging behind technological advances and increased usage.

5. The motion for a resolution[7] underlying this report defines the parameters of my mandate so as to "study the issue more profoundly and provide conclusions in the form of a report on the issue of misuse of the Interpol system for political aims". Law-enforcement bodies around the world should co-operate to prevent or elucidate serious crimes and bring perpetrators to justice. Interpol's main objective is to enable and facilitate this co-operation. Therefore, I should like to make it clear that the purpose of my mandate is to assist Interpol in improving the effectiveness of its procedures aimed at ensuring respect for human rights. Improving the prevention of human rights violations serves to strengthen the credibility of Interpol and thus its effectiveness as a tool in the fight against international crime. I have resisted any attempts to abuse this report for promoting or legitimising impunity in any way.

2. Interpol's international notices system

6. Interpol's main objectives are 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".[8]

7. Interpol allows for a wide exchange of information by maintaining different databases with information on lost and stolen travel documents, data on known offenders, missing persons and dead bodies etc.

8. The proper functioning of this system relies on mutual trust between the various actors and the belief that member States would only use Interpol in good faith, solely for the purposes for which the Organisation was established. Those who abuse Interpol's infrastructures for the persecution of their adversaries undermine the very foundations of international police co-operation.

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3. Interpol General Assembly, Resolution AGN/66/RES/7, adopted during the 66th Interpol General Assembly – New Delhi, India, 15-21 October 1997.
4. Interpol, Annual Report 2015, p. 17.
5. Article 3 of the Interpol Constitution, I/CONS/GA/1956(2008).
6. See Herta Däubler-Gmelin, "How rogue regimes have weaponised Interpol", *Wall Street Journal,* 28 June 2016; see also, Strengthening respect for human rights; strengthening INTERPOL, Fair Trials International, November 2013, p. 14.
7. Doc. 13566, Reference 4074 of 3 October 2014, election of rapporteur on 30 October 2014.
8. Article 2 of the Interpol Constitution, I/CONS/GA/1956(2008).

2.1. Processing of International Notices and Diffusions

9. Notices are international alerts used by police to communicate to their counterparts around the world information on crimes, criminals and security threats. Such notices are circulated by Interpol to all member countries at the request of a country or an authorised international body. The information disseminated via notices concerns individuals wanted for serious crimes, missing persons, unidentified bodies, possible security threats, prison escapes and criminals' *modi operandi*. Notices increase international visibility for serious crimes or incidents.[9] They are colour-coded according to their functions: black, purple, blue, orange, yellow, green and red.

10. Of particular interest in the context of allegations of abuses of Interpol procedures are "Red Notices", used "to seek the location and arrest of a person wanted by a judicial jurisdiction or an international tribunal with a view to his/her extradition".[10]

11. International notices are regulated by Interpol's Rules on the Processing of Data,[11] adopted by its General Assembly in 2011, which introduced a major revision of the legal framework governing the functioning of its police information system. Article 73.3 of these rules states that "the conditions for publishing notices are defined for each category of notice or special notice".

12. Notices are distributed by Interpol's General Secretariat at the request of National Central Bureaus (NCBs) and other authorised entities in Arabic, English, French or Spanish. All notices are distributed through Interpol's secure website. Extracts of notices may also be published on the Organisation's public website if the requesting entity agrees. Red Notices may only be distributed if the request concerns a serious ordinary-law crime and is of interest for the purposes of international police co-operation. When submitting their requests, NCBs should also provide Interpol with a summary of the facts of the alleged crime, and specify the offence in question, the relevant laws creating that offence and the maximum sentence, or the actual sentence imposed if the person has already been convicted. The request must also include identifiers for the person: his or her name, photograph, nationality and other elements, including biometric data such as fingerprints and DNA profiles. In addition to "notices", member countries can send requests for the same purposes directly to countries of their choice. These so-called "diffusions" are also recorded in Interpol's police databases. In 2014, Interpol published a total of 21 922 notices and diffusions, 10 718 of which were Red Notices. A total of 60 187 notices and 74 625 diffusions were in circulation at the end of 2014.[12]

2.2. Levels of control

13. It must be recalled that Interpol's objective is to assist in international police co-operation in order to fight serious crimes. Nevertheless, in pursuing its activities, situations may arise where human rights and individual freedoms are affected. Therefore, it is of paramount importance that appropriate safeguards prevent any abuses and ensure the respect of Interpol's commitments to human rights and political neutrality.

14. Three levels of control have been established in order to ensure compliance with general standards of international law and fundamental rights.

15. Firstly, the NCBs set up for liaison with Interpol in each member State are responsible for the accuracy, relevance, and conformity with Interpol's rules of any information provided to Interpol for inclusion in its databases or information system. Moreover, any national authorities accessing Interpol's information are under the supervision of their own respective NCBs. NCBs may also exercise control over requests submitted by other NCBs, which can be referred to Interpol's General Secretariat whenever they suspect that Interpol rules may have been violated.[13] Prior to requesting the publication of a notice, the NCB or, as the case may be, the authorised international body[14] shall ensure: a) the quality and lawfulness of the data it provides in support of its request; b) that the conditions for publication attached to its request are met; c) that the data are of interest for the purposes of international police co-operation; d) that its request complies with Interpol's rules, in particular with Articles 2.1 and 3 of Interpol's Constitution, as well as with the obligations imposed on the requesting entity under international law.[15]

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9. Interpol Fact Sheet, International Notices System.
10. Ibid.
11. Interpol's Rules on the Processing of Data, Interpol General Assembly, III/IRPD/GA/2011(2014).
12. The factual information in this paragraph comes from Interpol's Fact Sheet (*supra* note 9).
13. www.INTERPOL.int/en/About-INTERPOL/Legal-materials/Compliance-with-the-rules.
14. Such as the United Nations Security Council, the International Criminal Court or similar bodies.
15. See Rules on the Processing of Data (note 11), Article 76.2, p. 32.

16. Secondly, Interpol's General Secretariat is responsible for processing the information it receives or collects and for ensuring that Interpol's rules are observed during any operation to process information through the Organisation's channels. In case of doubt, the General Secretariat may take all appropriate steps to prevent any direct or indirect prejudice that might be caused by processing of incorrect information, including by deleting information provided or temporarily restricting access to it.[16] Given the high number of requests for notices and diffusions, it is important that these preventive controls are adequately resourced. I was informed by Interpol that one of the changes put in place in 2016 was the creation of a dedicated "task force" which comprises multidisciplinary teams of lawyers, police officers and analysts. In addition, extra support and expertise is provided as and when needed, so the number of people conducting reviews, or providing assistance as part of a review, fluctuates (around 30-40 professional staff).

17. Thirdly, a check is carried out by the Commission for the Control of Interpol's Files (CCF), responsible for verifying that information is obtained, processed and stored in accordance with Interpol's rules and regulations. The CCF is an independent monitoring body with three main functions: a) monitoring the application of the Organisation's data protection rules to personal data processed by Interpol; b) advising the Organisation with regard to any operations or projects concerning the processing of personal information; and c) processing requests for access to Interpol's files.[17] It can, for example, conduct spot checks or provide advice on issues it considers in need of improvement. The CCF is also competent to receive requests from persons wishing to exercise their right of access to information about them recorded in Interpol's databases. This right of access includes the right to have information corrected or deleted, as the case may be.[18] This appeals function is examined more closely below.

3. The Commission for the Control of Files – Interpol's appeals body

3.1. Origin and composition

18. The Commission for the Control of Interpol's Files[19] was set up in 1984 after Interpol renegotiated its agreement with the French Government regarding Interpol's headquarters. The French authorities asserted that a 1978 law concerning information technology, files and freedoms was applicable to the nominal data stored in Interpol's premises in Saint-Cloud, France, and that individuals should have access to data concerning them. From Interpol's point of view, this law was not applicable as information was made available by member countries and did not belong to Interpol; and international police co-operation could be threatened if information were to be disclosed by application of the French 1978 law. An agreement was reached when France accepted to refrain from applying the 1978 law to Interpol's files, guaranteeing the inviolability of its archives and official correspondence, provided that Interpol's archives would be subjected to internal controls by an independent body: the Commission for the Control of Interpol's Files.[20]

19. As of 11 March 2017 (entry into force of the CCF's new Statute), the Control Commission will have seven members. Since September 2014, Ms Nina Vajić, former Judge and Section President of the European Court of Human Rights in respect of Croatia, chairs the Commission. As part of the reform package adopted in Bali, the CCF has been divided into two chambers, separating its advisory from its appeals function. The appeals chamber will have five members; two other members will fulfil the advisory and supervisory functions.[21] The reform package also includes setting clear timetables for the CCF's work, making its findings binding, and increasing the resources at its disposal. In 2015, seven staff members were assisting the CCF.[22] Currently, a staff of eight (six lawyers and two administrative staff) is assisting the CCF.

3.2. Supervisory role

20. The Control Commission is responsible for checking that the information stored by the General Secretariat is obtained, processed and stored in compliance with Interpol's rules and regulations, which are part of Interpol's internal legal order. For this purpose, it also carries out spot checks.

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16. Ibid., Articles 78 and 81.
17. The Commission's roles are explained in greater detail in the newly adopted Statute of the CCF, which will enter into force on 11 March 2017 (https://www.interpol.int/About-INTERPOL/Legal-materials); see also the Operating rules of the Commission for the Control of Interpol's files [II.E/RCCF/CCF/2008], which entered into force on 1 November 2008.
18. www.INTERPOL.int/en/About-INTERPOL/Structure-and-governance/CCF/Commission-for-the-Control-of-INTERPOL%27s-Files.
19. It was then known as the Supervisory Board for the Control of Interpol's Archives.
20. www.INTERPOL.int/About-INTERPOL/Structure-and-governance/CCF/History.
21. Interpol website.
22. Activity Report of the CCF for 2015 (1986-2016), CCF/96/12/d461, paragraph 33.

21. As part of its supervisory role, the Control Commission examines individual requests. Accordingly, Article 9 of the Rules on the Control of Information and Access to Interpol's Files states that "any person who so wishes may, freely and free of charge, exercise the right of access to personal information concerning him which has been recorded in Interpol's files".

22. However, specialised lawyers and non-governmental organisations (NGOs) expressed concerns with regard to the fairness of the proceedings before the CCF, and its ability to provide an effective remedy for individuals. Indeed, the outcome of such a request remains uncertain, as disclosure of relevant personal information, let alone substantive redress by the CCF is not automatic. According to the principle of "national sovereignty", Interpol's data remain, as a rule, under the control of the NCB which supplied it, and whose authorisation is required before any information is released. In some cases, national authorities will allow disclosure. In other cases they will refuse to even confirm or deny whether any information exists about the person.

23. In 2013, when the motion underlying this report was launched, the CCF was widely criticised for the ineffectiveness of the recourse it offered:

> *"its proceedings took years; its members had insufficient expertise; its decisions were insufficiently reasoned – literally one-page, cryptic letters with no substantive reasoning at all – and not formally binding on INTERPOL; and, perhaps the worst feature for the practising lawyer, the evidence put forward by countries seeking to justify maintaining their Red Notices was not disclosed to the individuals challenging them."*[23]

24. During the exchange of views with the Committee on Legal Affairs and Human Rights, in December 2016, the Secretary General of Interpol argued that the very nature of police work requires that disclosure of information to suspects must remain a case-by-case decision. But in my view, when restrictive measures are taken against individuals that have a serious impact on their fundamental rights, human rights law requires that the individuals are given a minimum of information on the grounds for these measures so that they can defend themselves. Such a requirement was strongly supported by the Assembly in its Resolution 1597 (2008) on United Nations Security Council and European Union blacklists, and relevant reforms have indeed been implemented regarding the sanction procedures of both the United Nations Security Council and the EU Council.[24] How much information must be disclosed depends on the circumstances of each case. The right to defend oneself against unfounded accusations must be balanced against the legitimate interest in the integrity of the ongoing investigation and in particular the protection of witnesses.

25. The CCF has therefore rightly, in my view, developed a number of exceptions to the principle of national sovereignty and claimed for itself the authority to disclose information from Interpol's files even without the consent of the State concerned in certain circumstances. For example, if the NCB decided to have an extract of the Red Notice placed on Interpol's public website, the Commission will, in principle, disclose to the person copies of any other documents held by Interpol, unless the NCB can demonstrate why this should not be done. The CCF has also granted requests to access information whenever the person can prove that Interpol possesses information on them. But according to specialised lawyers, such proof is seldom possible in practice.[25]

26. In addition, legal practitioners have denounced the length of these control proceedings. Indeed, in theory, if an NCB fails to respond to a request for permission to disclose information before the deadline fixed by the CCF, the latter will presume that the NCB is not opposed to disclosure. But in practice, proceedings were kept pending for over a year, prolonging the negative effects that a Red Notice alert has on the person concerned's life.[26]

27. In parallel, the CCF examines individual requests to delete information or notices. The procedure resembles that applicable to requests for access to information, including the absence of an explicit provision giving an individual the possibility to challenge information concerning them held by Interpol. More generally, the proceedings before the CCF were found to lack transparency, fairness and effectiveness, endangering in particular the right to a fair trial and to an effective remedy as set forth in Articles 6 and 13 of the European Convention on Human Rights (ETS No. 5). This could create a problem for the continued jurisdictional immunity of Interpol.

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23. Alex Tinsley, Echoes of Kadi: reforms to internal remedies at INTERPOL, with further references.
24. See also the explanatory report, with references to the case law of the European Court of Human Rights (Doc. 11454, rapporteur: Mr Dick Marty, Switzerland, ALDE).
25. See Fair Trials International (note 6), p. 55, paragraphs 198-199.
26. Ibid., paragraph 200.

28. As independent legal experts have pointed out, Interpol's activities fall outside the scope of national courts as Interpol is protected by jurisdictional immunity. Interpol has immunity agreements with the countries in which it has a physical presence, including France and the United States (and more recently, Singapore). Fair Trials International replied to my question that they are unaware of any countries in which victims are able to challenge Interpol over Red Notices before a domestic court of law; similar challenges lodged against NCBs before domestic courts have also failed because of the lack of a sufficient connection between the NCBs and Interpol. As pointed out by Mr Alex Tinsley (one of the experts who addressed the Committee in May 2015 in Yerevan) in his recent article,[27] the individual who is subject to a Red Notice can attack some of the effects of the Notice before national courts when they are brought about by a national authority. But the ongoing effect of a Red Notice as such (for example inability to travel without a serious risk of being arrested at border points; distress of being "wanted"; reputational harm) is attributable to Interpol, which is alone competent for issuing and maintaining Red Notices.

29. The Secretary General of Interpol noted at the hearing in December 2016 that technically, jurisdictional immunity is foreseen only in the seat agreements with the small number of countries where Interpol has a physical presence. Its legal director specified that Interpol maintains its position that as an international organisation it enjoys immunity and that the CCF has exclusive jurisdiction to address requests from individuals and therefore no national court or other tribunal may attempt to exercise jurisdiction, or otherwise intervene in cases related to notices/diffusions or other data processed via Interpol's channels.

30. According to the case law of the European Court of Human Rights[28] as well as of the European Court of Justice,[29] such immunity is only acceptable, and an international organisation may escape the jurisdiction of national courts only when it offers an alternative system ensuring access to justice. The question is therefore whether the CCF, which is *(de facto* or *de jure)* the only redress available for an individual trying to ward off an abusive Red Notice, can be seen as an effective remedy, or, in the words of the European Court of Human Rights, a "reasonable alternative means to protect effectively their rights". It is thus in the interest of Interpol itself that the CCF fulfils the criteria to be recognised as an effective remedy. The CCF's main function is to provide effective redress to anyone targeted by an abusive Red Notice – which would then also justify Interpol's judicial immunity.

31. Whether or not the CCF can be seen as an effective remedy, or a reasonable alternative means ensuring access to justice, depends on a number of factors, including the CCF's independence, the fairness of its proceedings (in particular the right of the applicant to be heard and to be informed of the grounds of suspicion against him or her) and the effectiveness of the relief granted by the CCF (in terms, for example, of the length of proceedings, the possibility of interim relief, and the binding effect of the CCF's findings on Interpol).

32. In my view, the CCF could hardly be considered an effective remedy before the reforms decided in Bali in November 2016. As regards independence, the CCF had made some progress by 2015 in that the Secretariat General was no longer a party in the review of the cases, which was undertaken by the Commission alone. Regarding effectiveness of the redress granted, the General Secretariat "usually" implemented the Commission's conclusions.[30] But in 2015, the CCF was in session for just 12 days and had a staff of seven persons assisting it – to deal with a total of 552 individual requests introduced in 2015 alone, on top of the general supervisory and advisory functions the same members of the CCF had to fulfil. The CCF, in its 2015 annual report, indicates itself that

> *"The profile of the requesting parties has changed over the years. The Commission used to deal directly with individuals wanted for offences of murder, drug trafficking, or other ordinary law crimes. Now the Commission frequently processes requests from politicians, former Heads of State or Government, or businessmen wanted for fraud offences, who are represented by law firms specialised in data protection and/or in requesting deletion of data registered in INTERPOL files based on Articles 2 or 3 of INTERPOL's Constitution. Recent requests tend to be more complex and often involve the submission of extensive legal arguments, and large volumes of documentation, that require more back and forth communication with NCBs."*[31]

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27. Note 23 above.
28. *Waite and Kennedy v. Germany*, Application No. 26083/94, judgment of 18 February 1999 (Grand Chamber), paragraphs 68-69); *Nada v. Switzerland*, Application No. 10593/08, judgment of 12 September 2012 (Grand Chamber), paragraph 211.
29. Kadi and Al Barakaat v. Commission and Council, judgment of the European Court of Justice (Grand Chamber) of 3 September 2008.
30. See Activity Report of the CCF for 2015 (note 22 above), paragraphs 110-113.
31. Activity Report 2015, paragraphs 76 et 77; see also paragraph 84.

33. In view of these developments, and of the very rapidly increasing number of Red Notices, the resources available to the CCF, at least until 2015, were simply insufficient. The previously mentioned complaints by lawyers handling such requests about long delays and insufficient reasoning provide ample anecdotal evidence for this conclusion.

34. The question is whether the above-mentioned reforms adopted in Bali in November 2016 are sufficient to ensure that the CCF can henceforth provide an effective remedy to putative victims of abusive Red Notices. In my view, much will depend on how these reforms will be implemented in practice. This concerns, firstly, the resources in terms of meeting time of the CCF and the staff that will be placed at the disposal of the Commission. Regarding staff, the CCF has its own secretariat (six lawyers and two administrative staff members). I was assured by Interpol's legal director that the CCF's secretariat is completely separate from the task force that conducts the *ex ante* review. It is indeed important that an effective "firewall" exists between staff members who carry out the checks "upstream", before issuing a Red Notice, and those who work on the applications to the CCF challenging the earlier decisions of the former.

35. Secondly, the creation of a separate Requests Chamber whose members are lawyers with relevant backgrounds is definitely a step in the right direction; so are the new rules placing stricter limits on time frames, mandating reasoned decisions, making them binding on Interpol and providing for the possibility of interim relief. The procedure before the reformed CCF should become truly adversarial, allowing both sides to present their arguments, and in particular allowing the person concerned by the notice to comment on the information presented by the requesting NCB in support of the notice. Very importantly, the procedure should lead to a decision within a reasonable period of time – the standard should be analogous to that set by the European Court of Human Rights in its case law on the length of criminal proceedings, which have similarly harsh consequences for the daily lives of suspects.[32] It must therefore be welcomed that the new Statute of the CCF lays down in its Article 32 that a decision on admissibility of a complaint must be taken within one month of its receipt and that an explanation must be given in case of a finding of inadmissibility. Under Article 40, a request for access to data must, as a rule, be decided within four months and one for correction or deletion of data within nine months of the admissibility decision.

36. Thirdly and lastly, it will be crucial how the Commission will apply its new Statute in practice, in particular Article 35. This article provides some guidance for balancing the conflicting interests of the applicant and the requesting NCB regarding disclosure of information. The first paragraph of this article states the principle of mutual access to evidence both for the applicant and for the NCB having requested the Red Notice. But the second paragraph reiterates the need for consultation prior to disclosure. The third paragraph clarifies on which basis NCBs may object to disclosure (including, understandably, the need to protect the confidentiality of an ongoing investigation). The fourth paragraph of Article 35 attempts to strike a balance when an objection to disclosure is raised by the NCB. The CCF could then disclose a summary instead of the actual evidence. Article 35.4 also notes that "the failure to establish a justification [author's note: for objecting to disclosure] will not lead to the disclosure of the evidence, but may be taken into account by the CCF in deciding on the request". This could be read as meaning that the CCF may continue to rely on evidence undisclosed and unseen (and uncommented) by the applicant if an NCB can convince the CCF that it has acceptable reasons for objecting to disclosure. This would be less protective of the applicant's procedural rights than the case law of the Court of Justice of the European Union on disclosure of evidence in security-related cases. Article 35 thus leaves gaps for the CCF to fill in by interpretation and practice.[33]

4. Substantive standards: Articles 2 and 3 of Interpol's Constitution and its refugee policy

37. Respect for human rights is enshrined in Article 2 of Interpol's Constitution, which mandates the Organisation to ensure and promote international police co-operation "in the spirit of the Universal Declaration of Human Rights". It is also emphasised in Article 2.*a* of Interpol's Rules on the Processing of Information for the purposes of international police co-operation, which provides that information is to be processed by the Organisation or through its channels "with due respect for the basic rights of individuals in conformity with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights". In 2014, the Secretariat of Interpol was invited by its General Assembly to develop and publish a "Repository of Practice"

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32. See, for example, *Dimitrov and Hamanov v. Bulgaria*, Applications Nos. 48059/06 and 2708/09, judgment of 10 May 2011, paragraph 70, and case law cited; *Pimentel Lourenço v. Portugal*, Application No. 9223/10, judgment of 23 October 2012, paragraph 32; *Ardelean v. Romania*, Application No. 28766/04, judgment of 30 October 2012, paragraph 82; see presentation of the case law of the European Court of Human Rights by Marc Henzelin and Héloïse Rordorf, "When does the length of criminal proceedings become unreasonable according to the European Court of Human Rights?".

33. See Tinsley (note 23), *in fine*, with reference to relevant judgments.

on Article 2,[34] which is eagerly awaited by civil society. This document should explain, *inter alia*, how Interpol takes into consideration extradition refusals by States on human rights grounds, and how it interprets and applies the prohibition of torture and of the use of evidence obtained by torture.

38. An important aspect of the duty to respect human rights is spelt out in Article 3 of Interpol's Constitution, according to which:

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

39. This rule should protect individuals from political, religious or racial persecution and ensure Interpol's independence and neutrality. It also reflects international extradition law, thus stressing the required purposive link between Red Notices and extradition. When extradition was never requested, was refused or is otherwise impossible, the Red Notice has no more (legitimate) reason to exist and must therefore be deleted. This should be verified at regular intervals in order to prevent Red Notices, with all their negative consequences for the individual, from "lingering" indefinitely.

40. One difficulty for the implementation of Article 3 is that there are not only offences that are political, military, religious or racial *per se* (so-called "pure" offences), i.e. acts criminalised solely due to their political/military/religious/racial nature, directed against the State and affecting exclusively the public interest – for example, the crimes of treason, espionage, apostasy, or provisions criminalising the violation of apartheid rules; but also ordinary law crimes with a political/military/religious/racial background (so-called "relative" offences), i.e. acts that also contain ordinary-law elements and also affect private interests. In the presence of "relative" offences, Interpol applies the so-called "predominance test" (Resolution AGN/20/RES/11), on a case-by-case basis. Article 34 of Interpol's Rules on the Processing of Data indicates that the following elements should be taken into account:

– the nature of the offence, namely the charges and the underlying facts;

– the status of the person concerned;

– the identity of the source of data;

– the position expressed by another country or another international entity (such as an international tribunal);

– obligations under international law;

– implications for the neutrality of the Organisation;

– the general context of the case.

41. These elements are very general and provide little guidance for the assessment of individual cases. In line with proposals by representatives of civil society, Interpol has therefore developed a "Repository of Practice" on Article 3. According to Interpol's website, "[t]he Repository provides guidance on the evolution and development of Interpol's practice in application of Article 3 in a variety of circumstances, including offences committed by politicians and former politicians; offences committed in an unconstitutional seizure of power; offences with military, religious or racial aspects and offences against the security of the state". This repository could be an important resource for putative victims of abusive Red Notices and their lawyers – but it is still not published on Interpol's website.[35] This is particularly regrettable as the CCF's decisions (to date) lack meaningful justifications and are in any case not available to the public. This means that the "Repository of Practice" is really the only possible source to access Interpol's "case law" as to the interpretation of Article 3.

42. Interpol's new refugee policy was made public during a series of meetings in 2015, including at our committee hearing in Yerevan (Armenia) on 19 May 2015.[36] The Office of the United Nations High Commissioner for Refugees (UNHCR) also indicated to me that it is aware of this policy. But it can unfortunately still not be found on Interpol's website. [Secretariat note: see footnote 35 *in fine*: text published after the adoption of this report.]

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34. Resolution No. 18, AG-2014-RES-18, and Article 34.4 of Interpol's Rules on the Processing of Data.

35. It is not available on Interpol's website (as at 19 January 2017); but an older version is available on the internet in the form of a Council of Europe document (CAHDI (2011) Inf 3, distributed at the 41st meeting of the Committee of Legal Advisers on Public International Law (CAHDI) in Strasbourg on 17-18 March 2011 (Contribution from Interpol, "Repository of Practice: Application of Article 3 of Interpol's Constitution in the Context of the Processing of Information via INTERPOL's Channels"). Factual update: on 16 March 2017, Interpol published the Article 3 Repository of Practice on its website.

43. In substance, the new refugee policy implies that a Red Notice or diffusion will generally be withdrawn if the wanted person's status as a refugee or asylum seeker is confirmed by the country of asylum, the notice/diffusion has been requested by the country where the individual fears persecution, and the granting of refugee status is not itself a political act directed at the country that initiated the Red Notice/diffusion. Also, if the country of asylum, in confirming the wanted person's refugee status, requests not to be named in communications with the country of origin, Interpol does not reveal the country of asylum.

44. This revised policy is seen among specialised practitioners as clear progress in relation to the earlier practice of maintaining the Red Notice and merely attaching a "note" or "caveat" on the wanted person's refugee status.[37] By leaving the assessment of the accusation directed at a refugee to the country of asylum, which is best placed to assess all the circumstances of the case, this policy also contributes to safeguarding the integrity of the institution of asylum in those cases where wanted persons may be hiding behind their refugee status to escape accountability for their crime.[38] The policy clearly deserves to be properly publicised so that it can develop its full potential.

45. It should finally be noted with appreciation that in 2015, the CCF decided to put in place special procedures for refugees and gave a specially designated "rapporteur" authority to deal with such cases in the interval between the CCF's meetings.

5. Allegations of abuse of the Interpol system

46. In recent years, there have been allegations that in a number of cases Interpol and the "Red Notices" system in particular was abused by some member States in the pursuit of political goals, including repressing the freedom of expression or persecuting members of the political opposition abroad.

47. Cases of suspected abuses of Interpol for political purposes, including the persecution of human rights activists, political opponents and journalists, were documented by a number of NGOs, including Fair Trials International and the Open Dialogue Foundation, whose representatives spoke before the committee during the hearings in Yerevan in May 2015 and in Paris in December 2016.

48. For instance, Mr Akhmed Zakaev, President of the so-called Chechen Republic of Ichkeria (the unrecognised secessionist government of Chechnya) was arrested in Denmark on a Red Notice on the basis of allegations of terrorism. After a month in custody, he was released for lack of evidence supporting the extradition request. He was arrested again in the United Kingdom on the strength of the same Red Notice. In 2003, he was granted asylum by the United Kingdom after Russia's extradition request was dismissed by the British courts because it was found to be politically motivated.[39]

49. In 2011, Mr Benny Wenda, the leader of the West Papuan independence movement, recognised as a political refugee in the United Kingdom, discovered that he was subject to a Red Notice seeking his arrest.[40]

50. Mr Baran Kimyongür, a Belgian-Turkish activist, had disturbed an exchange of views between the European Parliament's foreign affairs committee (AFET) and the Turkish Foreign Minister, in 2000. Years later, the Turkish authorities circulated via Interpol an arrest warrant alleging that this action evidenced his membership of a "terrorist organisation". As a result, Mr Kimyongür was arrested three times in three different countries, spending over 100 days in detention. Three courts, in the Netherlands (2006), Spain (2014) and Italy (2014), refused his extradition on the ground that the Turkish authorities did not provide any proof of participation in a terrorist organisation and bearing in mind Mr Kimyongür's right to freedom of expression. Following an intervention by Fair Trials International on his behalf, Interpol duly deleted the alert. But in April 2015, Mr Kimyongür and his family were stopped at Zurich airport on the way to a family holiday in Thailand, on the basis of "very old" facts, in the words of the border agent. The arrest was not made on the basis of a new Red Notice, but it is assumed to have taken place because of traces of the previous Red Notice remaining in the system.

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36. See the declassified minutes of the hearing and https://www.fairtrials.org/INTERPOL-announces-new-asylum-policy-at-council-of-europe-meeting/.
37. See, for example, https://www.fairtrials.org/guest-post-INTERPOLs-new-political-refugee-policy-is-already-affecting-lives-for-the-better/.
38. For general information on the UNHCR's position, see the 2008 "Guidance Note on Extradition and International Refugee Protection".
39. Fair Trials International report (note 4), p. 78.
40. Ibid., p. 6.

51. Mr Azer Samadov left Azerbaijan for fear of political persecution after having supported a candidate opposing President Aliyev in 2003. He was first arrested in Georgia, accused of "participating in public disorder" under Article 220 of the Azerbaijani Criminal Code. He was later recognised as a refugee by the UNHCR and granted protection by the Netherlands. But in 2009 he was again detained, at Amsterdam airport, due to an Interpol alert issued by Azerbaijan. His application to the CCF in 2010 did not receive any answer. In 2014, the Chief of the Dutch National Police Central Unit contacted the CCF, reminding them that they had been silent for over four years and pointing out that Mr Samadov was considered as welcome in the Netherlands. Having still not received an answer, Mr Samadov remained unable to travel, including to receive crucial medical treatment in Germany, because of the Red Notice. The notice was finally removed in 2015, eight years after it was first issued, on the basis of Interpol's refugee policy.[41]

52. Mr Djamel Ktiti, a French national, was arrested first in Morocco and then in Spain on the basis of an Interpol Red Notice issued at the request of Algeria. He spent a total of two and a half years in detention. On both occasions, his extradition was refused on the basis of a finding by the United Nations Committee against Torture (UNCAT) in 2011 that his extradition would present an unacceptable risk of his being exposed to torture and being prosecuted on the basis of evidence obtained by torture. An application to the CCF by Fair Trials International and Redress was made in January 2015, and the Red Notice was removed later that year.[42]

53. Captain Paul Watson, a Canadian environmental activist, was arrested in Frankfurt on the basis of a Red Notice requested by Costa Rica 10 years after an incident in 2002, when his vessel belonging to the Sea Shepherd Conservation Society intervened against a poaching (shark-finning) Costa Rican fishing boat in Guatemalan waters at the request of the Guatemalan Government. Shortly after the incident, he was acquitted by a Costa Rican court of charges first of attempted murder, then of assault (against the Costa Rican fishermen). The Costa Rican court was clearly convinced of Mr Watson's innocence by the extensive film footage of the incident, which was later also shown in the documentary "Sharkwater".[43] But according to his lawyer, Captain Watson is still, or again, subject to a Red Notice based on the same facts.

54. In some cases, Interpol has rejected requests when suspecting that charges were politically motivated, for example in the case of Mr William Browder. Mr Browder, a British businessman and financier, had successfully lobbied for the adoption of th "Magnitsky Law" in the United States, which imposed sanctions on Russian officials involved in the killing of Mr Browder's former Russian lawyer, Sergei Magnitsky and in the cover-up of the crime Mr Magnitsky had denounced, which was subsequently blamed on Mr Browder. Mr Browder is now lobbying governments and parliaments across Europe to pass similar legislation.[44] In May 2013, the CCF ruled that the Russian Federation's request to seek the location of William Browder was predominantly political in nature and therefore recommended that all data relating to the Russian Federation's request concerning Mr Browder be deleted.[45] In July 2013, Interpol dismissed another request from Moscow's NCB seeking to locate and arrest Mr Browder with a view to his extradition on a charge of "qualified swindling" as defined by the Russian Penal Code.[46] Nevertheless, the Russian authorities continued to pursue Mr Browder, and allegations were made that President Putin himself tried to influence Interpol during a meeting with Mr Ronald Noble, Interpol's outgoing Secretary General, in October 2014.[47] In January 2015, Russia's third attempt to have a Red Notice issued against Mr Browder was rejected, the CCF ruling once again that the request was ill-founded because it was "predominantly political".[48]

55. Here are some more recent examples, in brief:

– Mr Nikita Kulachenkov, a Russian national recognised as a refugee in Lithuania for his links with a prominent anti-corruption activist, was arrested in Cyprus in January 2016 on the basis of a Russian Interpol Red Notice. His extradition was sought over the alleged theft of a drawing valued at a little

41. More detailed information on the case of Mr Samadov.
42. More detailed information on the case of Mr Ktiti.
43. See www.sharkwater.com/.
44. On 28 January 2014, the Assembly adopted Resolution 1966 (2014) "Refusing impunity for the killers of Sergei Magnitsky".
45. www.INTERPOL.int/News-and-media/News/2013/N20130528.
46. Law and Order in Russia, "Russia Ignores INTERPOL's Ruling and Re-Applies to INTERPOL for a Red Notice for William Browder to Block Magnitsky Justice Campaign", 5 June 2013.
47. www.rednoticelawjournal.com/2015/01/INTERPOLs-third-decision-on-russias-red-notice-request-for-william-browder-no-red-notice/; see also www.telegraph.co.uk/news/worldnews/vladimir-putin/11240371/INTERPOL-must-not-collude-with-Vladimir-Putins-thugs.html and the item on INTERPOL's website covering the meeting between Mr Noble and Mr Putin at: https://www.interpol.int/News-and-media/News/2014/N2014-208.
48. Law and Order in Russia, "INTERPOL Definitively Rejects Russia's Request to Issue an International Arrest Warrant for Bill Browder", 26 January 2015.

more than one euro made by a street sweeper, who reportedly had no objections that the artwork was taken by someone. Mr Kulachenkov was detained for nearly three weeks before the Cypriot authorities decided to refuse extradition and release him;

– Mr Mehdi Khosravi was arrested in northern Italy in August 2016 on the basis of an Iranian Interpol Red Notice. Mr Khosravi had fled Iran following political protests in 2009, and had successfully claimed asylum in the United Kingdom. Mr Khosravi's arrest was subject to intense international criticism, including from Reza Pahlavi, before he was released, and his Red Notice was deleted further to a request made by his lawyer to the CCF;

– Mr Oleg Vorotnikov is a leader of a street art collective, who has been living in exile since 2011 due to fears of reprisals in Russia against his controversial public works. He was detained in the Czech Republic on the basis of a Russian Red Notice in September 2016. Although he has since been released, his Red Notice has yet to be withdrawn;

– Mr Dolkun Isa is an award-winning activist and Secretary General of the World Uyghur Congress who was granted refugee status in Germany, where he has in the meantime been naturalised as a citizen. He has been subject to a Red Notice requested by China since 2003. As a result, Mr Isa has faced difficulties travelling abroad to carry out his advocacy activities promoting Uyghur self-determination, and most recently in April 2016, his visa to India was revoked, preventing him from attending a conference organised by the Tibetan Government in exile;

– Ms Aysen Furhoff is a Turkish national who was naturalised as a Swedish citizen after having been granted human rights protection on the basis of the risk that she could be tortured if she returned to Turkey. She was arrested in Georgia on the basis of a Red Notice requested by Turkey in 2015, and had to stay there for over a year due to delays in her extradition proceedings. In December 2016, she left Georgia and made her way back to Sweden, before any conclusion could be made on her extradition proceedings, but her Red Notice remains;

– Ms Natalya Bushueva was stopped in transit at an airport in Moscow on the basis of a Red Notice requested by Uzbekistan in July 2016. She had previously been a correspondent for the German international radio service Deutsche Welle and fled Uzbekistan after covering the events of the Andjian massacre in 2005. She was subsequently granted refugee status in Sweden, where she was naturalised. Although she managed to avoid arrest, Ms Bushueva remains at risk of arrest and extradition to Uzbekistan due to the Red Notice that has still not been deleted;[49]

– Mr Mukhtar Ablyazov is a Khazak opposition leader and businessman who was granted political asylum in the United Kingdom in 2011. Despite the fact that Interpol was promptly informed of this, he was subjected to Red Notices issued following requests by Kazakhstan and, upon this country's request, by the Russian Federation and Ukraine, between 2010 and 2013. He was arrested in France in July 2013 and released on 9 December 2016, the day of the final refusal of the extradition request by the French *Conseil d'Etat*. Dozens of family members and supporters of Mr Ablyazov are still being persecuted, including through Red Notices;[50]

– Mr Alexander Lapshin, a "travel blogger" holding Russian, Ukrainian and Israeli nationality, was arrested in Minsk in mid-December 2016 on the strength of a Red Notice requested by Azerbaijan on the basis of visits to Nagorno-Kharabakh in 2011 and 2012, which he had commented on in his blog;[51]

– last but not least, I have also been informed of a number of cases in which Kurdish refugees from Turkey have been targeted through the use of Interpol Red Notices by Turkey. These cases appear to be increasingly common following the political unrest in Turkey last year.

56. These – recent – cases have me worried about the practical effectiveness of the policies put into place by Interpol, in particular the refugee policy, which should have prevented cases such as those of MM. Kulachenko, Khosravi and Isa as well as those of Ms Furhoff and Ms Bushueva.

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49. See also the database collated by John Heathershaw at the University of Exeter (www.centimedia.org/excas/exiles/), which contains information about political activists in exile from Central Asia. One of the individuals included in the database is Muhiddin Kabiri, the leader of Tajikistan's Islamic Renaissance Party, who is currently in exile in an undisclosed country.

50. See Open Dialog, Report: Kazakhstan pursues former top managers of BTA Bank in order to obtain their testimonies against Mukhtar Ablyzazov, 10 February 2017.

51. See "The blogger jailed for visiting a country that 'doesn't exist'", BBC, 7 February 2017. Note by the Secretariat: on 15 March 2017, Interpol indicated (as an exception from the policy not to confirm or deny the existence of red notices) that neither a red notice nor a diffusion were issued in this case. In fact, a red notice request was reviewed and denied (*ex ante)* based on Interpol's rules.

57. As part of my fact-finding efforts concerning possible abuses of the Interpol system, I also followed up the European Commission's reply to a question in the European Parliament in which the Commission declared that it "stands ready to assist the Parliamentary Assembly of the Council of Europe in the preparation of its report, and is available to share its findings on the issue of possible abuses of Interpol's system for politically motivated purposes as part of the planned consultation of the PACE AS/Jur Committee".[52] I was informed that no written document reflecting the results of the survey carried out by the Commission exists. Its results were presented to the Council's Law Enforcement Working Party in October 2015. According to the summary by the competent service of the Commission[53] of the replies collected from the relevant authorities of EU member countries (replies received from 22 of the 28 member States), a significant proportion of respondents had signalled problems with the reliability of Interpol Red Notices – mostly in terms of lack of sufficient information and clarity. About one half of the replies submitted by the EU member States' NCBs mentioned that they had experienced unlawful Red Notices. Only a minority of the NCBs who replied to the questionnaire accept and act on Red Notices without further checks. The others do not consider a Red Notice as such as a valid reason to arrest someone. In reply to the question of what possible improvements could be made, proposals included the suggestion that Interpol tighten its own rules and allocate more resources to checks and that Interpol should sanction NCBs from which numerous abusive requests emanated. A number of respondents also said they are concentrating checks on Notices emanating from certain countries. But it should be recalled that the objective of the Commission's survey was not to collect information on possible politically motivated abuses of the Red Notice procedure, but "to contribute to Interpol's further work in the field of data protection, notably by providing it with an overview of how EU Member States currently use Interpol's notices and diffusions and how these tools could be further improved, in particular in the field of data protection".[54]

6. Weaknesses of the existing system and possible remedies – application of the "principle of causal responsibility"

58. Given the damage abusive Red Notices can do to the lives of innocent people, it is important that weaknesses of the system are identified and remedied. The examples of actual abuses show that weaknesses exist both with regard to preventing abuses and remedying abuses that have already occurred. The weakness residing in the limited resources available to Interpol concern both *ex ante* checks to filter out possible abuses and *ex post* relief by the CCF. Red Notice requests need to be assessed prior to publication by appropriately qualified staff members who have the time to take into account information available from open sources on the cases in question and to ask requesting NCBs for supplementary information. Complaints before the CCF must be examined in such a way that all relevant information is collected from both sides and that it is assessed in light of applicable legal rules, including Interpol's own Constitution and all relevant legal and human rights standards. The exponential growth in the number of Red Notices in recent years has not been matched with a similar increase in the resources available for *ex ante* and *ex post* scrutiny.

59. So the first measure that needs to be taken is to give Interpol the resources needed to cope with the increased use made of its services. But in today's budgetary landscape, as in all international organisations, it is not likely that sufficient extra funds will be allocated any time soon. It is therefore vital that existing resources are used efficiently. One approach would be to implement the "principle of causal responsibility", making those users (NCBs) pay for the cost of extra scrutiny made necessary by a higher case-count of abusive requests introduced by them. The "principle of causal responsibility" was first recognised in environmental law ("polluter pays"), and it would have the same beneficial effects – incentivising a reduction in damaging behaviour and at the same time generating additional resources for prevention and *ex post* redress. In my view, such an approach, if based on solid statistical data, would not violate the fundamental principle of the equality of all member States. Differentiated treatment based on different facts is not a violation of the principle of equality. In addition to "causal responsibility" for the budgetary costs generated by abusive requests, the efficiency of *ex ante* and *ex post* scrutiny of Red Notices could also benefit from a concentration of available resources on requests emanating from NCBs with a high case count of Red Notices found abusive in the past. "Profiling" is a widespread police technique. It is not a violation of the equality principle as long as the profiling criteria are non-discriminatory and applied on the basis of solidly established, verifiable facts.

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52. Link to the question and the reply: www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2015-002608+0+DOC+XML+V0//EN.
53. In the form of a telephone conference at working level on 20 December 2016.
54. Commission reply (note 52).

60. A good start would be for Interpol to make more intensive use of the facilities available to it under Articles 130 and 131 of its Rules on the Processing of Data.[55] These include the possibility, for Interpol's Secretariat, to invite NCBs to suspend or withdraw access rights, or to do so itself, and even to take one or more of the corrective measures listed in Article 131. According to the information received from Interpol, these facilities are indeed not used very frequently. Again, the use of these facilities, which can be resource intensive (such as dispatching an assessment team to the NCB), could be concentrated on NCBs with a high case count of past abuses.

61. Interpol is in effect a police organisation that is not subject to any direct judicial or parliamentary controls. In my view, such a privileged status can only be accepted if all participating States, or more precisely Interpol's national interlocutors, the NCBs, are in turn subject to such controls. This is surely the case in many member States of Interpol, but unfortunately not in all, as numerous examples of abuses show. It is precisely in those countries which have a high case count of abuses of the Interpol system that the national courts also tend to lack independence and/or professionalism. It would therefore not be very helpful for victims to grant them judicial recourse against Red Notices before the courts of the requesting country.

62. For this reason, an international recourse mechanism for putative Red Notice victims, such as the CCF, makes good sense. This mechanism must fulfil the minimum standards laid down in Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights. These minimum standards include the independence of the "tribunal" and that it is empowered to actually adjudicate the cases before it, and not merely express recommendations – an issue that has now been settled in the reform package adopted in Bali, which makes the CCF's decisions binding on Interpol. The separation of the CCF's advisory functions from its adjudicatory role decided in Bali will allow Interpol to ensure that members and staff of the future advisory and adjudicatory bodies will be appropriately qualified in their respective fields – namely criminal law and procedure and human rights law for the adjudicatory body and information technology and data protection for the advisory body.

63. In order to create and maintain a sound factual basis for policy decisions aimed at minimising abuse, the Interpol secretariat, in co-operation with NCBs, should collect statistical information on the total number of alerts issued, broken down by country; the number of CCF complaints, by country of origin of the Notice; the number of deletions (including reasons for the deletions); and the number of Red Notices that have given rise to extradition (or not). A summary of this information should be made public at regular intervals, in order to improve the accountability of Interpol vis-à-vis its member States and vice versa, and in order to give member States an objective basis to assess the reliability of alerts coming from different NCBs. Weaknesses that become apparent from these statistics can then be addressed in a targeted manner, with a view to correcting them through co-operation measures such as training and technical assistance. As a last resort, these statistics can also serve as an objective, non-discriminatory basis for appropriate sanctions, targeted resource allocation ("profiling") or the application of the principle of causal responsibility ("polluter pays", see paragraph 59).

64. Even the best possible *ex ante* and *ex post* checks cannot prevent all (intentional) abuses of Red Notices, and bona fide errors also happen, as in any human activity. In the fight against transnational crime, speedy action can be essential, but it increases the risk of mistakes. As at the national level, some risk of innocent people finding themselves arrested and imprisoned on remand for some time must be accepted as the price to be paid for efficient law enforcement, which is in turn needed to keep many more innocent people safe from crime. This is also accepted at the national level. But at the national level, innocent people who were imprisoned are entitled to financial compensation. Such compensation is in principle also available to people who were held in detention following an abusive or erroneous Red Notice, according to the laws of the arresting country. The mere existence of a Red Notice does not exonerate the arresting authorities when the person arrested turns out to be innocent. But the mere existence of a Red Notice, even without an arrest, can also cause much damage in itself, in particular when the target is a businessperson whose livelihood depends on international mobility. The best remedy is of course the speedy deletion of unjustified notices. But if there are delays, especially when the CCF is overwhelmed by a large number of complaints, or when the requesting NCB fails to answer requests for additional information in good time, it would only be fair to provide pecuniary compensation for losses that can be established with reasonable certainty, as well as for the aggravation and anguish caused by Red Notices that turn out to be unjustified. As it would be impractical for victims to sue the requesting NCB before the courts of the country concerned, it would make sense to establish a fund for the compensation of victims of abusive Notices located at Interpol. In accordance with the principle of causal responsibility ("polluter pays"), this fund should be fed by contributions from States proportionately to the number of unjustified notices requested by their NCBs.

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55. Available at: www.INTERPOL.int/fr/About-INTERPOL/Legal-materials/Fundamental-texts.

7. Conclusion

65. There is no doubt that Red Notices can cause serious human rights violations when they are abused, or "weaponised", as a former German Federal Minister of Justice recently wrote in the *Wall Street Journal*,[56] by oppressive regimes in order to persecute their opponents even beyond their borders. Even unintentional mistakes, for example due to haste or lack of professionalism, can cause much damage. They impede an individual's freedom of movement, restrict employment possibilities and business activities and, more generally, they damage an individual's reputation. Sometimes people are arrested and extradited to countries where they cannot expect a fair trial, or where they are threatened by torture or inhuman and degrading treatment, without even knowing that they were the subject of an Interpol notice.

66. By contrast, when the suspect of a crime is arrested in conformity with relevant human rights standards, such as those laid down in Articles 5 and 6 of the European Convention on Human Rights, any unavoidable interference with the suspect's rights to liberty, property etc. is not a human rights violation, though it should give rise to compensation when an innocent person has been targeted due to a bona fide mistake.

67. As we have seen in the course of the fact-finding for this report, Interpol Red Notice procedures have been abused by certain member States, and Interpol has been unable to prevent many such abuses or provide relief in good time, despite considerable efforts made to strengthen *ex ante* and *ex post* scrutiny. A number of reforms have therefore been decided, and more are needed in my view, in order to further strengthen the credibility of Interpol for the sake of protecting its important mission in the fight against serious transnational crime, including terrorism. This would in turn strengthen the protection of fundamental rights and freedoms not only of the targets of abusive or otherwise unjustified Red Notices, but also of the victims of criminals walking free because of malfunctioning international police co-operation.

68. This report assesses the principal weaknesses of the existing system and ways and means of remedying them. Targeted individuals must be able to challenge Red Notices following fair procedures that are in conformity with national and international human rights guarantees – in particular, the rights to an effective remedy and to a fair trial, adapted as needed to the context of international co-operation. The principle of causal responsibility ("polluter pays"), applied on the basis of sound statistics, can justify a more targeted use of limited resources available for review purposes and incentivise States or NCBs to reduce unjustified notice requests. Unchecked abuses of Interpol's procedures clearly raise issues of judicial accountability, both of States involved in abuses, either by making abusive requests or by executing them, and of Interpol, to the extent that its responsibility is engaged for providing assistance to States violating human rights.[57] It is therefore very much in both Interpol's and its member States' interest that the CCF continues to successfully grow into the "effective remedy" within the meaning of relevant international human rights standards in order to justify the continued judicial immunity of the Organisation.

69. In light of Professor Nina Vajić's speech as Chair of the CCF at Interpol's General Assembly in Bali in November 2016, I trust that the CCF will indeed ensure that it provides such an "effective remedy". As part of my follow-up mandate after the adoption of this report, I will not fail to observe the evolution of the CCF and the interpretation it gives to its new Statute in actual practice. The draft resolution includes a number of constructive proposals and recommendations designed to promote our common goal to further strengthen Interpol as a key tool in the fight against international crime, including terrorism.

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56. See Herta Däubler-Gmelin (note 6).

57. See the report by José Maria Beneyto (Spain, EPP/CD) on "Accountability of International Organisations for human rights violations", Assembly Doc. 13370, pp. 8-9; see also Resolution 1979 (2014) and Recommendation 2037 (2014). In his report, Mr Beneyto referred to some issues regarding Interpol which were taken up in the motion underlying the present report (see paragraphs 56 and 57 of the explanatory memorandum).