

# **INTERPOL: Red Notices**

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### INTERPOL

### RED NOTICES

#### *Executive Summary*

*Red Notices issued by INTERPOL facilitate the provisional arrest of internationally wanted individuals as part of pre-extradition procedures. Although it seems in general that INTERPOL must depend on its member countries for a Red Notice request being legitimate and that its chief role in verification of a request is to make sure that all the required sets of information have been provided, there are certain mechanisms through which it may further assess a request's legitimacy. For example, before publishing a notice to the National Central Bureaus (law enforcement contact points in each country) concerned, INTERPOL's General Secretariat will consider the necessity and advisability of such action; it must also ensure that the conditions attached to a given type of notice (e.g., for a Red Notice, issuance of an arrest warrant or court decision) have been met. Moreover, INTERPOL may not undertake "any intervention or activities of a political, military, religious or racial character." To determine whether there is an Article 3 violation, INTERPOL distinguishes between offenses that by their nature are of such a character on the one hand, and offenses whose predominant nature must be more carefully examined to determine the constituent components. INTERPOL will analyze the latter types of offenses based on their seriousness, the place where the actions occurred, the status of the victims, and the seriousness of the offense. This appears to be an internal process.*

*As for transparency in terms of publication of notices via INTERPOL, the General Secretariat makes an assessment of whether or not to include the sets of information as relevant. Publication is also subject to restrictions attached to them by the source and to the consent of the requesting entity. Before the General Secretariat publishes a notice on its own initiative, it must ensure that it has the information source's consent. Disclosure to the public of a notice is subject to various types of restrictions as well.*

*The treatment of Red Notices varies according to the jurisdiction and the circumstances of a case. In general, civil law countries of Europe will carry out provisional arrests based on a Red Notice and mutual adherence to a bilateral or multilateral treaty, while common law states like Australia, the United Kingdom, and the United States will not make such arrests. However, individual states that typically enforce Red Notices may choose, based on the circumstances, not to take action on a Red Notice even if the treaty conditions are met.*

## I. Background

Red Notices issued by the International Criminal Police Organization (INTERPOL) are one of seven types of notices (five other color-coded ones and one special notice) distributed to share critical information related to crime among police in INTERPOL's 188 member countries.<sup>1</sup> Each type of notice contains two types of information: particulars of identity, such as physical description, photograph, fingerprints, occupation, and languages spoken, and judicial information, such as the offense with which the person is charged or references to an arrest warrant or court-imposed sentence.<sup>2</sup> The notices are issued by INTERPOL's General Secretariat, "either on its own initiative, or based on requests from National Central Bureaus (NCBs) or international organizations and entities with whom INTERPOL has special agreements."<sup>3</sup> NCBs are located in each member country; typically, an NCB is "a division of the national police agency or investigation service and serves as the contact point for all INTERPOL operations."<sup>4</sup> In January 2002, INTERPOL moved from paper to electronic issuance of notices on its restricted-access website, thereby permitting member states to access the notices directly.<sup>5</sup>

Red Notices are used "[t]o seek the provisional arrest of a wanted person with a view to extradition based on an arrest warrant or court decision."<sup>6</sup> Of 7,290 notices issued by the General Secretariat in 2009, 5,020 were Red Notices.<sup>7</sup> At the beginning of 2009, Interpol introduced a new electronic Red Notice form (as part of "Project I-link"). At the same time, a consultation process on the legal value of Red Notices was initiated with the organization's member countries.<sup>8</sup>

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<sup>1</sup> INTERPOL was created in 1923. It "is the world's largest international police organization" and it "facilitates cross-border police co-operation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat international crime." *About INTERPOL*, INTERPOL, <http://www.interpol.int/public/icpo/default.asp> (last visited July 12, 2010).

<sup>2</sup> *Notices*, Fact Sheet COM/FS/2010-01/GI-02, [http://www.interpol.int/pv\\_obj\\_cache/pv\\_obj\\_id\\_CEB7F028E24FF3DF61A368DD6489359090710300/filename/GI02.pdf](http://www.interpol.int/pv_obj_cache/pv_obj_id_CEB7F028E24FF3DF61A368DD6489359090710300/filename/GI02.pdf) (last visited July 8, 2010).

<sup>3</sup> *Id.*

<sup>4</sup> *What Is an NCB?*, INTERPOL, National Central Bureaus, <http://www.interpol.int/Public/Icpo/NCBs/default.asp> (right hand column) (last visited July 9, 2010). NCBs are provided for under Articles 31-33 of the ICPO [International Criminal Police Organization] – INTERPOL Constitution, in force on June 13, 1956, *as amended*.

<sup>5</sup> *See, e.g., Interpol's International Notices System*, McNabb Ferrari, P.C., <http://www.federalcrimes.com/interpol-international-notices-system.html> (last visited July 9, 2010).

<sup>6</sup> *Notices*, *supra* note 2.

<sup>7</sup> *Id.*

<sup>8</sup> COUNCIL OF EUROPE, OFFICE OF LEGAL AFFAIRS, REPORT NO. 13: ENHANCING THE INTERNATIONAL STATUS OF RED NOTICES, AG-2009-RAP-13 (July 29, 2009), INTERPOL General Assembly, 78<sup>th</sup> Session, Singapore, Oct. 11-15, 2009, [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/transnational\\_criminal\\_justice/2\\_PC-OC/agn78r13.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/transnational_criminal_justice/2_PC-OC/agn78r13.pdf). For a sample electronic form, *see, e.g., Red Notice Application Form*, Indian Central Bureau of Investigation, [http://www.cbi.gov.in/interpol/rcn\\_applicationform.pdf](http://www.cbi.gov.in/interpol/rcn_applicationform.pdf) (last visited July 12, 2010).

## II. Red Notice Issuance Process

According to INTERPOL, the arrest warrant or court order issued by the judicial authorities in the requesting state is the legal basis for a Red Notice, and “many” INTERPOL member countries consider the Red Notice a valid request for the provisional arrest of a fugitive. Furthermore, a number of bilateral and multilateral extradition treaties—including the European Convention on Extradition, the Economic Community of West African States (ECOWAS) Convention on Extradition, and the United Nations Model Treaty on Extradition—recognize INTERPOL “as an official channel for transmitting requests for provisional arrest.”<sup>9</sup>

INTERPOL describes as follows the use of Red Notices as a means of locating and arresting wanted individuals as part of a pre-extradition procedure. After a magistrate or the Ministry of the Interior in a country asks its NCB to circulate an arrest warrant internationally, the NCB may transmit a request to the INTERPOL General Secretariat for a Red Notice to be issued. Once the General Secretariat has examined and checked the request, the Red Notice is transmitted to all the NCBs. Each NCB then circulates the notice to the departments concerned in its state. If a police department locates the individual being sought, it informs that state’s NCB and takes the necessary authorized measures, while the NCB informs the General Secretariat and the original requesting NCB. The latter then informs the magistrate who issued the arrest warrant.<sup>10</sup>

In general, pre-extradition procedures depend on the powers each state confers on its national police in applying that state’s extradition laws. Thus, upon receiving an (ordinary) wanted notice, the police authorities may decide to trace the individual, carry out an identity check, place the person in police custody, question him or her, or place the person under surveillance. However,

In most states, measures of a more serious nature can only be taken if letters rogatory have been issued by a judge: this would be the case for a measure such as detention, but also for searching persons or premises, provisional seizure of property, documents or money, restrictions on freedom of movement.<sup>11</sup>

In the case of ordinary general wanted notifications issued through INTERPOL, magistrates in requested countries can only grant a provisional arrest if the requesting country’s request “complies with the conditions of substance and form laid down in international conventions or bilateral treaties.”<sup>12</sup> In practice, moreover, according to INTERPOL, the process will entail additional correspondence between the requesting and requested states,

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<sup>9</sup> *Notices, supra* note 2. For a non-exhaustive list of international conventions that refer to INTERPOL, see *International Conventions in Which the INTERPOL’s Transmission Role Is Mentioned*, INTERPOL, <http://www.interpol.int/Public/ICPO/LegalMaterials/conventions/Default.asp> (last visited July 12, 2010).

<sup>10</sup> *Interpol’s Role in Tracing Wanted Individuals with a View to Their Extradition* [an INTERPOL Legal Fact Sheet] (last updated Mar. 3, 2004), <http://www.interpol.int/Public/ICPO/LegalMaterials/FactSheets/FS13.asp> (last visited July 9, 2010).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

because the requesting state magistrate must transmit a request for provisional arrest in the appropriate form via the NCB and confirm, often within a short interval, that extradition will be requested. “The risk is that, in the meantime, the individual might have been able to take refuge in another state or have been released from custody.”<sup>13</sup>

Red Notices, however, as instruments of police and judicial cooperation, facilitate provisional arrests of wanted individuals, because they already contain key prerequisites for provisional arrests to be made; they “are formatted documents which cannot be issued unless they contain the elements enabling the wanted person to be identified, legal information relating to the offence concerned, and reference to a valid arrest warrant or conviction.”<sup>14</sup>

### A. INTERPOL Rules Relevant to Processing of Red Notices

The screening process for Red Notices is governed by a number of INTERPOL Regulatory documents. In general, under the ICPO-INTERPOL Constitution, the aims of INTERPOL 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.’”<sup>15</sup> Under its Article 3, the ICPO-INTERPOL Constitution also strictly forbids INTERPOL from undertaking “any intervention or activities of a political, military, religious or racial character.”<sup>16</sup> Since 1998, INTERPOL has had a formal set of guidelines in place that more explicitly address the relationship between counterterrorism efforts and Article 3. “The key aspect is that terrorist incidents are broken down into their constituent parts, the criminal elements of which can then be identified and subjected to police investigations.”<sup>17</sup>

INTERPOL’s Rules on the Processing of Information for the Purposes of International Police Co-operation (hereinafter RPI)<sup>18</sup> provide for INTERPOL’s (or its channels’) processing of information “in order to prevent, investigate and prosecute ordinary-law crimes” and to assist in

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> ICPO-INTERPOL Constitution art. 2(1). The Constitution was adopted in 1956 and last amended in 2008. *ICPO-INTERPOL Constitution and General Regulations*, INTERPOL, <http://www.interpol.int/Public/ICPO/LegalMaterials/constitution/constitutionGenReg/constitution.asp#amd> (last visited July 13, 2010).

<sup>16</sup> ICPO-INTERPOL Constitution art. 3.

<sup>17</sup> Mathieu Deflem & Lindsay C. Maybin, “Interpol and the Policing of International Terrorism: Developments and Dynamics since September 11,” in *TERRORISM: RESEARCH, READINGS, & REALITIES* 175-91 (Lynne L. Snowden & Brad Whitsel eds., Pearson Prentice Hall, 2005), available at <http://www.cas.sc.edu/socy/faculty/deflem/zinterpolterror.html> (citing Malcolm Anderson, “Interpol and the Developing System of International Police Cooperation,” in *CRIME AND LAW ENFORCEMENT IN THE GLOBAL VILLAGE* 95 (William F. McDonald ed., Anderson Publishing, 1997)). The Guidelines are called *INTERPOL Guidelines for Co-operation in Combating International Terrorism*.

<sup>18</sup> Rules on the Processing Information for the Purposes of International Police Co-operation (adopted by the Interpol General Assembly in 2003, by Resolution [AG-2003-RES-04](#), and in force on January 1 2004, as amended by Resolution [AG-20054-RES-15](#) adopted by the General Assembly in 2005 and in force on January 1, 2006), INTERPOL, <http://www.interpol.int/Public/ICPO/LegalMaterials/constitution/info/default.asp> (last visited July 9, 2010).

the investigation for, among other reasons, conducting “a search for a person with a view to his arrest.”<sup>19</sup> In regard to the processing of all notices, the RPI state:

- a. . . .
- b. Before publishing and circulating a notice, in particular to entities other than the National Central Bureaus, the General Secretariat shall assess whether it is necessary and advisable to do so, in the light of [Articles 2](#) and [3](#) of the present Rules and the required security measures, bearing in mind the risks run to international police co-operation, the Organization, its staff, and its member countries.
- c. The conditions and methods of processing notices shall be laid down in implementing rules, in conformity with [Article 23](#) (c,5) below [providing for implementing rules on the processing of notices to be submitted to the General Assembly].<sup>20</sup>

The Implementing Rules for the RPI<sup>21</sup> set forth the conditions for publishing Red Notices, as well as other types of notices. The Implementing Rules provide that before an NCB or authorized international entity requests the publication and circulation of a Red Notice, it must ensure that:

- ii. . . .
  - the person sought is the subject of criminal proceedings or has been convicted of a crime, and references to an enforceable arrest warrant, court decision or other judicial documents are provided;
  - assurances have been given that extradition will be sought upon arrest of the person, in conformity with national laws and/or the applicable bilateral and multilateral treaties;
  - sufficient information is provided to allow for the co-operation requested to be effective.<sup>22</sup>

The Implementing Rules further stipulate that “[b]efore publishing and circulating a notice at its own initiative, the General Secretariat shall ensure that the conditions attached to the given notice are met.”<sup>23</sup>

## **B. Verification of Conformity with Rules on Processing Notices**

Under its provisions on the methods of processing notices, the Implementing Rules state that the General Secretariat must verify that the process has conformed to the rules and that the

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<sup>19</sup> *Id.* art. 3.1(a)(1).

<sup>20</sup> *Id.* art. 10.5(b), (c).

<sup>21</sup> Implementing Rules for the Rules on the Processing Information for the Purposes of International Police Co-Operation [hereinafter Implementing Rules], INTERPOL, [http://www.interpol.int/pv\\_obj\\_cache/pv\\_obj\\_id\\_7ECEf13061C8D78EFDC854DEF9ABA2BFCB2E0100/filename/rulesRPI09.pdf](http://www.interpol.int/pv_obj_cache/pv_obj_id_7ECEf13061C8D78EFDC854DEF9ABA2BFCB2E0100/filename/rulesRPI09.pdf) (last visited July 9, 2010).

<sup>22</sup> *Id.* art. 37(a)1(ii).

<sup>23</sup> *Id.* art. 37(b).

requesting entity has provided all the required sets of information, although there does not appear to be a process for independent verification of the information itself:

The General Secretariat may only publish a notice once it has verified that the processing required conforms to the rules in force and once the National Central Bureau, authorized national institution or authorized international entity which requested its publication, has communicated to it all the required sets of information.<sup>24</sup>

As was noted above, INTERPOL has guidelines explicating the relationship between Article 3 of its Constitution and acts of terrorism. INTERPOL also issued a policy document on the “Legal Framework Governing Action by INTERPOL in Cases of a Political, Military, Religious or Racial Character.” It indicates that Article 3 applies to both the General Secretariat and INTERPOL’s member agencies. Some requests submitted by individuals or NCBs may concern cases that violate Article 3, and to determine whether there is such a violation, INTERPOL makes a distinction “between offenses which are by their very nature considered to be of a political, military, religious or racial character, on the one hand, and offenses of which the predominant nature must be more carefully studied to determine its constituent components [the theory of predominance].”<sup>25</sup> In the latter types of cases, INTERPOL considers “whether there are links between the aims of the accused and their victims, and bases its analysis on three criteria: the place where the action was carried out; the status of the victims; and the seriousness of the offense.”<sup>26</sup> The same principles underlie INTERPOL’s distinction between prevention requests and prosecution requests: “1) requests aimed at prosecuting terrorists are processed in strict conformity with the above rules; but 2) with regard to preventing terrorism, Interpol does not apply the theory of predominance.”<sup>27</sup>

Since November 18, 2003, Red Notices can be issued for the arrest and extradition of suspected members of terrorist groups, if “strong evidence of such membership” is provided.<sup>28</sup> Justification for the policy change was based on the increasing number of countries that had come to consider membership in a terrorist organization a criminal offense. Before the change was made, INTERPOL’s policy was that “the decision to circulate information via the Interpol headquarters always had to be based on intelligence indicating that an individual might be involved in a terrorist offense, rather than that the individual merely was a member of some particular group.”<sup>29</sup>

In its Annual Activity Report (2007-Jan. 2008), INTERPOL’s Commission for the Control of INTERPOL’s Files noted that checks conducted on the processing of information to verify compliance with the organization’s rules “had raised recurring questions.” Some of these questions concerned: the validity of arrest warrants issued by police authorities, conformity of

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<sup>24</sup> *Id.* art. 38(b).

<sup>25</sup> Deflem & Maybin, *supra* note 17.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

cases with Article 3 of the INTERPOL Constitution, the recording of information on a person's political refugee status, retention of information after cancellation of a search request, and the quality of information and the need to consult its source when the information was challenged, "to obtain a copy of the arrest warrant in question when it had not been provided and to check that the information was accurate and was still of specific international interest to the police."<sup>30</sup> In regard to the Article 3 issue, the report stated:

The Commission considered that when the elements provided by the National Central Bureau (NCB) which was the source of the information did not make it possible to rule out the predominantly political nature of proceedings against a requesting party, the NCB in question should provide copies of judicial documents giving a precise description of the charges against the individual and demonstrating, firstly, his active participation in the offence charged and, secondly, the predominance of ordinary-law aspects over the political aspects of the case.

It recommended, pending receipt of the required documents, that the red notice issued against the requesting party be suspended. However, the Commission stated that it would not object, on the one hand, to the NCBs still being informed that the requesting party was the subject of proceedings, provided that no arrest request had been issued on the basis of the information disclosed, or to the publication of a blue notice instead of a red one, on the other.<sup>31</sup>

There are cases where INTERPOL has refused to issue a Red Notice; for example, in connection with the extradition of fugitive blogger Raja Petra Kamarudin ("RPK") from the United Kingdom, sought at the request of Malaysia. Raja Petra is viewed as a "political fugitive" in the UK, not a hard-core criminal. RPK was reportedly detained twice under Malaysia's Internal Security Act and in their Red Notice request the police may have stated that he was being sought in connection with cases of defamation and sedition.<sup>32</sup>

### C. Transparency Issues

The General Secretariat is to assess, prior to publishing a notice at the request of an NCB or other authorized entity, whether or not to include the sets of information recorded in the police information system identified by the General Secretariat as being of possible relevance to the notice's publication. Publication of the sets of information is subject to restrictions attached to them by the source and to the consent of the entity that requested the notice, and if they are included in the notice, the General Secretariat must attribute the additional information to the source entity.<sup>33</sup> Before it publishes a notice on its own initiative, the General Secretariat is

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<sup>30</sup> COMMISSION FOR THE CONTROL OF INTERPOL'S FILES, ANNUAL ACTIVITY REPORT – 2007 AND JANUARY 2008, Reference No. CCF/71/12/d118-2, INTERPOL, [http://www.interpol.int/pv\\_obj\\_cache/pv\\_obj\\_id\\_249/ABFDC3872239A0961F7E2D4D5101EDD7F0100/filename/ccf2007.pdf](http://www.interpol.int/pv_obj_cache/pv_obj_id_249/ABFDC3872239A0961F7E2D4D5101EDD7F0100/filename/ccf2007.pdf) (last visited July 12, 2010).

<sup>31</sup> *Id.* § 5.5.

<sup>32</sup> *RPK Unlikely to Be Extradited from UK*, MALAYSIA TODAY, July 7, 2010, [http://malaysia-today.net/index.php?option=com\\_content&view=article&id=32947:rpk-unlikely-to-be-extradited-from-uk&catid=19:news-commentaries&Itemid=100131](http://malaysia-today.net/index.php?option=com_content&view=article&id=32947:rpk-unlikely-to-be-extradited-from-uk&catid=19:news-commentaries&Itemid=100131).

<sup>33</sup> Implementing Rules, *supra* note 21, art. 38(c).

obliged to ensure that the sources of the above-mentioned sets of information have consented to their being published in a notice.<sup>34</sup> The Implementing Rules provide, in regard to making notices public:

- (f) Disclosure to the public of a notice and of all or part of the information contained in that notice shall be subject to:
  - 1. the prior approval of the source of that information, and to
  - 2. the General Secretariat's agreement to proceed with such disclosure, it being understood that the General Secretariat shall determine which sets of information contained in the notice may be disclosed to the public.<sup>35</sup>

INTERPOL's Commission for the Control of INTERPOL's Files has detailed rules on its operating procedures in connection with granting access to the files. The rules were issued on October 31, 2008, and came into force on November 1, 2008.<sup>36</sup>

### III. Treatment of Red Notices by Different Recipient Jurisdictions

It is difficult to pinpoint the number of INTERPOL member countries that consider a Red Notice to be a valid request for a provisional arrest. Some sources say many of the countries consider it to be so, others say some or a few. If the requesting and the requested countries have a bilateral or multilateral treaty or convention in force with each other, however, according to one commentator, it is "particularly true" that the Red Notice is considered valid for purposes of provisional arrest, and "even more so if the treaty or convention allows for the use of Interpol channels to forward such requests."<sup>37</sup>

According to an article published in 2001, seventy-two of the then 178 INTERPOL member countries treated a Red Notice as a formal request for provisional arrest with a view toward extradition, provided the requesting and requested states had a bilateral extradition treaty covering the offense.<sup>38</sup> The U.S. NCB website states "[a]pproximately, one third of INTERPOL member countries (not including the U.S.) consider a Red Notice to be a valid request for

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<sup>34</sup> *Id.* art. 38(e).

<sup>35</sup> *Id.* art. 38(f).

<sup>36</sup> Operating Rules of the Commission for the Control of INTERPOL's Files, INTERPOL, <http://www.interpol.int/Public/ccf/Regles.asp> (last visited July 12, 2010).

<sup>37</sup> *Interpol's International Notices System*, McNabb Ferrari, P.C., <http://www.federalcrimes.com/interpol-international-notices-system.html> (last visited July 12, 2010).

<sup>38</sup> Mike Muth, *Interpol, Your Best Resource for International Investigations*, 76 CALEA UPDATE (June 2001) [reprinted], <http://www.calea.org/online/newsletter/No76/interpol.htm>.

provisional arrest and will detain” its subject.<sup>39</sup> For most European civil law countries, according to a 1989 source, an INTERPOL Red Notice was sufficient for the arrest.<sup>40</sup>

Some of the cases in which various countries have apparently taken immediate action to make a provisional arrest based on a Red Notice are:

- France: arrest of a wanted Rwandan national (2008);<sup>41</sup>
- Germany: arrest of a wanted Rwandan national (2008);<sup>42</sup>
- South Africa: arrest of a wanted Tunisian national (2010);<sup>43</sup>
- Tanzania: arrest of Rwandan (2008);<sup>44</sup>
- Thailand: arrest of a wanted Canadian national (2007).<sup>45</sup>

Poland is also among those jurisdictions that generally will take action on Red Notices to make provisional arrests. Detailed procedures in Poland for the application of the European Arrest Warrant and corresponding surrender procedures between European Union Member States are described in a 2007 report published by the Council of the European Union.<sup>46</sup>

The United States is one of the jurisdictions that will not carry out a provisional arrest on the basis of a Red Notice and a relevant bilateral or multilateral treaty. Reportedly, “[t]he United States cannot recognize a Red Notice as a request for provisional arrest, but does enter other countries’ Red Notice fugitives in NCIC [the National Crime Information Center] if the U.S. has an extradition treaty with the requesting country and if the Red Notice itself contains all information that NCIC requires.”<sup>47</sup> Australia, too, will not arrest a person on the basis of receipt

<sup>39</sup> U.S. Department of Justice, U.S. National Central Bureau of Interpol, *Programs: INTERPOL International Notice Program*, [http://www.justice.gov/usncb/programs/international\\_notice.php](http://www.justice.gov/usncb/programs/international_notice.php) (last visited July 12, 2010).

<sup>40</sup> Paul Lansing & John D. Bailey, *The Farmbelt Fuehrer: Consequences of Transnational Communication of Political and Racist Speech*, 76 NEB. L. REV. 653 n.39 (1997) (citing MALCOLM ANDERSON, *POLICING THE WORLD: INTERPOL AND THE POLITICS OF INTERNATIONAL POLICE COOPERATION* 188 (1989)).

<sup>41</sup> *Fourth Rwandan Genocide Fugitive Subject of INTERPOL Red Notice Arrested In France*, INTERPOL (Feb. 28, 2008), <http://www.interpol.int/Public/News/2008/Rwandan20080228.asp>

<sup>42</sup> Press Release, INTERPOL, German Police Arrest Rwandan Genocide Fugitive Subject of INTERPOL Red Notice (July 9, 2008), <http://www.interpol.int/public/ICPO/PressReleases/PR2008/PR200834.asp>.

<sup>43</sup> Jonathan Clayton & Dominic Kennedy, *Mohamed Ali Harrath, Islamic TV Chief, Is Held over Terror Claims*, THE TIMES (London), Jan. 10, 2010, [http://www.timesonline.co.uk/tol/news/world/middle\\_east/article7002273.ece](http://www.timesonline.co.uk/tol/news/world/middle_east/article7002273.ece).

<sup>44</sup> *Tanzanian Police Arrest Rwandan Genocide Fugitive Subject of INTERPOL Red Notice*, INTERPOL (Feb. 21, 2008), <http://www.interpol.int/Public/News/2008/TanzanianArres20080221.asp>.

<sup>45</sup> *10 Days After INTERPOL’s Global Appeal Christopher Paul NEIL (Aka Vico) Arrested by Royal Thai Police*, INTERPOL (Oct. 17, 2007), <http://www.interpol.int/public/News/2007/Vico20071019.asp>.

<sup>46</sup> COUNCIL OF THE EUROPEAN UNION, *EVALUATION REPORT ON THE FOURTH ROUND OF MUTUAL EVALUATIONS, ‘THE PRACTICAL APPLICATION OF THE EUROPEAN ARREST WARRANT AND CORRESPONDING SURRENDER PROCEDURES BETWEEN MEMBER STATES’: REPORT ON POLAND*, Doc. No. ST 14240/1/07 REV 1 Restreint UE (Dec. 14, 2007)/ 14240/2/07 REV 2 (Feb. 7, 2008), <http://www.statewatch.org/news/2009/apr/eu-council-eaw-evaluation-rep-poland.pdf>. See in particular pp. 17-19.

<sup>47</sup> Muth, *supra* note 38.

of a Red Notice. Australian law enforcement officers generally are only authorized to arrest those who have committed an offense against Australian law; their powers of arrest do not extend to taking action on a Red Notice. Law enforcement must carry out procedures set forth under the Extradition Act 1988 to obtain an arrest warrant from an Australian magistrate for the arrest of a person at a foreign country's request, if Australia has an extradition agreement with that country. Moreover,

Australia will only arrest a person for the purpose of extradition where another country makes a "provisional arrest request," or where Australia has decided to accept a formal extradition request and has arranged for a magistrate to issue an arrest warrant. Similar procedures are followed in other countries, including the United Kingdom.<sup>48</sup>

In some instances, countries that might typically make a provisional arrest in connection with a Red Notice may choose not to take action on the alert. Thus, although INTERPOL had issued a Red Notice for World Uyghur Congress (WUC) secretary-general Dolkun Isa, German authorities did not respond to the request for his extradition that had been made via INTERPOL by China. In another case, Swedish police, on the basis of a Red Notice, had already arrested Uzbek dissident Mohammad Solih at the Stockholm Airport, but released him the next day; Solih had political refugee status in Norway.<sup>49</sup>

Thus, some countries authorize their law enforcement agencies to arrest fugitives based on a Red Notice alone; others require a request for an official provisional arrest or for formal extradition before they will make an arrest;<sup>50</sup> and in some instances, even though the police have the authority to make the provisional arrests based on a Red Notice, they may choose not to exercise it.

#### IV. Concluding Remarks

A 2009 report on enhancing the international status of Red Notices reviewed some of the limits on the effectiveness of the alerts in terms of international cooperation. It noted that the in-house rules (chiefly related to data protection concerns) to which they are subject are of limited scope and not sufficiently stringent, and that the legal value attributed to Red Notices varies considerably from one country to another. The INTERPOL General Secretariat recommended two courses of action:

- 1) Examine the requirements for enhancing the legal value of Red Notices. While the Red Notice "currently provides recipient countries with a guaranteed level of quality

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<sup>48</sup> International Crime Cooperation Division, Attorney General's Department, Australian Government, Fact Sheet 5—Extradition and Provisional Arrest at 19, [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/%288AB0BDE05570AAD0EF9C283AA8F533E3%29~fact+sheet+5+-+extradition+and+provisional+arrest.pdf/\\$file/fact+sheet+5+-+extradition+and+provisional+arrest.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/%288AB0BDE05570AAD0EF9C283AA8F533E3%29~fact+sheet+5+-+extradition+and+provisional+arrest.pdf/$file/fact+sheet+5+-+extradition+and+provisional+arrest.pdf) (last visited July 12, 2010).

<sup>49</sup> Celia Llopis-Jepsen, *Why Did the NIA Bar Dolkun Isa?*, TAIPEI TIMES, July 22, 2009, at 8, <http://www.taipeitimes.com/News/editorials/archives/2009/07/22/2003449242>.

<sup>50</sup> USDOJ, REVIEW OF THE OFFICE OF INTERNATIONAL AFFAIRS' ROLE IN THE INTERNATIONAL EXTRADITION OF FUGITIVES App. I, "Process for International Extradition Requests" (Rep. No. I-2002-008) (Mar. 2002), available at <http://www.justice.gov/oig/reports/OBD/e0208/app1.htm>.

with regard to the information provided,” the report states, “it is not sufficient to allow States to grant a notice a status guaranteeing the requesting country that specific action will be taken if the wanted person is located.” Therefore, the Red Notices should “be modified to provide INTERPOL Member States with minimum judicial guarantees for initiating proceedings in the event of a wanted person being located on their territory.”<sup>51</sup>

- 2) Begin the process of drawing up an international convention on Red Notices. According to the General Secretariat, “[t]he convention should provide for mechanisms flexible enough to bring together the largest possible number of States in the use of this tool, whilst leaving each of them free to define what it considers to be binding on it.”<sup>52</sup>

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<sup>51</sup> REPORT NO. 13, *supra* note 8.

<sup>52</sup> *Id.* at 2-3.