

Rome Diplomatic Conference
Adoption of the Statute for the International Criminal Court

How Interpol can assist the International Criminal Court

Paper submitted by the ICPO-Interpol

The International Criminal Police Organization - Interpol¹, an intergovernmental organization which has had Observer status in the United Nations General Assembly since 1996², would like to inform the States attending the Rome Diplomatic Conference of the assistance it can lend the International Criminal Court and propose certain amendments to the draft Statute.

During the meeting of the UN Preparatory Committee on the Establishment of an International Criminal Court in April 1998, the ICPO-Interpol had an opportunity to examine the final version of the draft Statute for the International Criminal Court, as approved on 3rd April 1998 for submission to the Rome Diplomatic Conference.

This draft provides for the co-operation machinery established by Interpol to be used in cases falling within the jurisdiction of the Court, insofar as the Court wishes to do so and the States concerned give their consent. In this connection, Interpol is pleased to see that the Court's jurisdiction has been extended to include specific offences related to terrorism, drug trafficking and aggression in addition to the list of international offences already provided for in the Statutes of the two *ad hoc* International Tribunals, and is also pleased that the draft Statute makes reference to the use of Interpol channels for the Court to transmit requests for co-operation to State Parties.

Nevertheless, uncertainty remains about the scope of the Court's jurisdiction, composition and independence, about its relations with States and United Nations agencies and about the type of criminal procedure it will follow. These questions are by no means new and were being asked when Baron Descamps' project was submitted to the League of Nations Council and Assembly in 1920: at that time the Member States were unable to find appropriate answers to these questions.³ There has subsequently been considerable progress towards establishing a permanent international criminal court and this is reflected in the draft Statute for the Court. The fact remains that finding definitive answers to these questions will depend upon the political determination of the States participating in the Rome Diplomatic Conference.

¹ Hereinafter referred to as "the ICPO-Interpol" or "Interpol".

² The ICPO-Interpol's Observer status is a result of UN General Assembly Resolution 51/1 (15th October 1996) which includes a summarized description of international police co-operation to counter ordinary law crime.

³ At the time, the League of Nations Assembly considered that the project of the Hague Committee of legal experts to establish a permanent international court of law was premature. The discussions on this issue and the role of the League of Nations Council were very similar to those on the role of the UN Security Council (Cf. Minutes of the First International Congress on Penal Law, 1926 [original French p. 382 *et seq.*]).

Since the ICPO-Interpol itself was also established by States, it does not intend to try to answer all these questions (which still divide some of its Members), but will restrict its contribution to those aspects appropriate to its special role and falling within its field of competence, as enshrined in its Constitution and reiterated in its Agreement with the United Nations.

The support that Interpol proposes to offer the International Criminal Court derives from the fact that the objectives of the two institutions are naturally complementary. This support is expressed in article 1 (d) of the Co-operation Agreement concluded with the United Nations in 1997, in which Interpol undertook to co-operate "[...] in the implementation of the mandates of international judicial institutions, such as the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, which have been or may be established by the United Nations".

Interpol's co-operation with the International Tribunals of The Hague and Arusha is expressly provided for in their Rules of Procedure and Evidence. For example, in the case of the Tribunal for Former Yugoslavia, article 39 states that "In the conduct of an investigation, the Prosecutor may [...] seek, to that end, the assistance of any [...] international body including the International Criminal Police Organization (Interpol)".

This provision is regularly implemented, as borne out by the ICPO-Interpol General Secretariat's circulation of some sixty international arrest warrants issued by the Tribunal for Former Yugoslavia. This was the first time in Interpol's history that a truly international arrest warrant became a concrete reality in the context of active police co-operation aimed at tracing and arresting persons accused of the most serious human rights violations. This co-operation between the existing *ad hoc* tribunals and Interpol (acting as an international police organization serving an international criminal court) marked a point of no return and has established a precedent in international law which, in the interests of the international community as a whole, must be retained and developed as part of the project to establish a permanent international court.

The ICPO-Interpol, with 177 member countries and a wealth of experience in international co-operation in the fight against crime, including the prevention of international human rights violations, expresses its full support for the proposed establishment of an International Criminal Court and intends to work alongside the Court in investigating the crimes referred to in its Statute and bringing offenders to justice.

The process of establishing an International Criminal Court is in the final, critical stage during which every State and international organization will have a crucial role to play in ensuring that the Rome Diplomatic Conference does not fail, and that the last opportunity to establish a new permanent international criminal court is not wasted. Proposals which are *too* bold and sweeping (even those which have a sound basis in reason) not only have no chance of succeeding, but run the risk of undermining the concepts behind them and halting the progress they hope to achieve.

Consequently, no matter how noble or just the ambitions may be, a measure of restraint will have to be exercised so that limited but immediate reforms can be made to the draft Statute for the Court. These reforms will serve as milestones on the long road down which the international law enforcement community will have to travel to establish a genuine international criminal justice system.

With these considerations in mind, Interpol wishes to express its views on certain provisions, particularly those in Part 9 of the draft Statute for the Court which deals with international co-operation.

This paper is intended to stimulate discussion and provide the participants at the Diplomatic Conference with food for thought, with the aim of improving the wording of certain provisions in Part 9 with regard to Interpol's activities.

A second document contains a series of Interpol General Assembly resolutions relating to the Organization's position on serious violations of international humanitarian law, and written statements in support of applying these resolutions to those crimes coming within the jurisdiction of the future Court.

These documents (and their appendices) are the ICPO-Interpol's initial contribution to the work of the Diplomatic Conference. If the participating States and Conference Bureau so wish, Interpol's representatives are also prepared to work directly with the Working Group on Part 9 of the draft Statute for the Court.

Once the Rome Diplomatic Conference has ratified the Statute establishing the International Criminal Court, the ICPO-Interpol intends to put forward a proposal to its General Assembly (made up of representatives from the Organization's 177 Member States) to conclude a co-operation agreement with the future Court. Such an agreement would govern procedural issues of law enforcement co-operation between the two institutions with regard to the identification, tracing, and arrest of individuals and to the hearing of testimony and the production of evidence.

Comments on Part 9 of the draft Statute:
International Co-operation and Judicial Assistance

The ICPO-Interpol is particularly interested in the content of Part 9 of the draft Statute for the Court because the Organization's main task is to promote police and judicial co-operation between its Member States by sharing criminal intelligence which is essential in the fight against international crime. It is worth recalling that, under the terms of article 2 of its Constitution, Interpol's aims 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' [... and to] establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes".

Similarly, the States Parties to the draft Statute for the International Criminal Court wish "to further international co-operation to enhance the effective prosecution and suppression of crimes of international concern, and for that purpose to establish an international criminal court"⁴.

Within these two systems for international co-operation between States, it is primarily the States concerned which have the right and the duty to pursue and arrest individuals to be brought before a national or international court. The Court obviously has its own prerogatives for investigating and prosecuting (which can be expanded by the States Parties), but the idea that the Court's actions will complement those of national criminal justice systems permeates the entire draft Statute - including its Preamble. It would therefore appear that the Court is destined to play a vital role in cases where criminal justice procedures are not available or not effective in a particular country.

In this respect, Interpol's Member States have already established their own procedures for providing mutual assistance in combating and preventing crime through Interpol, by using the National Central Bureaus⁵ (NCBs). Our common objectives mean that Interpol's Member States should also provide the Court with the same assistance that Interpol itself offers national judicial authorities.

States are free to either accept or reject the obligation to co-operate with the Court, which is set out in article 77 of the draft Statute. However, since States will undertake to fulfil this obligation (when they ratify the Court's Constitution), how can limiting the use of Interpol channels be justified for co-operation with the International Criminal Court if there are no restrictions on using Interpol channels for co-operation with national courts?

This is why Interpol considers that in Rome, the wording of some of the provisions in Part 9 of the draft Statute for the Court should be amended, particularly those⁶ which give secondary importance to the transmission of co-operation requests through Interpol channels.

Interpol believes that the very success of the Court depends on the effectiveness of the provisions governing co-operation between States and intergovernmental or non-governmental organizations whose assistance may be required. The ICPO-Interpol therefore calls on all the delegations attending the Diplomatic Conference - and which are Interpol Members - to propose or support any amendments aimed at making Interpol's machinery for international co-operation available to the Court under the same conditions as those that Interpol offers the States for their judicial and police co-operation requirements.

⁴ Taken from the Preamble to the draft Statute.

⁵ An NCB is designated by the appropriate government authority when the country joins Interpol. The Bureau oversees day-to-day police co-operation between its country and the General Secretariat, and co-operation with other Member States. The NCB is part of each country's national administration and is an official authority. Interpol simply stores criminal intelligence provided by NCBs and may not in any way communicate confidential information without the authorization of the State which owns the information or is responsible for its use. This same rule will be applied to confidential Court information.

⁶ This refers to Articles 78, 80, 81 and 82 which contain virtually identical provisions (with various options), some of which should be harmonized, as recommended in the Preparatory Committee's document A/AC.249/1998/CRP of 1st April 1998.

Examination of the following provisions of Part 9 of the draft Statute demonstrates the sound basis of the above remarks:

Article 78: Requests for co-operation: general provisions

1. Authorities competent to make and receive requests/Channels for communication of requests

- (a) The Court shall have the authority to make requests to States Parties for co-operation. The requests shall then be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, accession or approval. Such designation and subsequent changes shall be done in accordance with the Rules of Procedure and Evidence.***
- (b) When appropriate, without prejudice to the provisions of paragraph 1 (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.***

The ICPO-Interpol appreciates the reference in article 78 (1) (b) of the draft Statute to the use of Interpol channels for transmitting requests for co-operation from the Court to States Parties. Although the draft Statute contains several provisions referring to the assistance of intergovernmental organizations, article 78 (1) (b) is the only one to make explicit reference to the ICPO-Interpol which, along with the UN, is the only organization mentioned by name in the draft.

Article 78 (1) does however pose a problem of interpretation. The words "*without prejudice to the provisions of paragraph 1 (a)*", could imply that the transmission of requests through Interpol channels must have already been provided for by the States Parties upon ratification, accession or approval. [The French "*sous réserve de*" is even more restrictive.] This interpretation is, however, contradicted by the word "*also*", which implies that Interpol channels are another means of transmitting requests, in addition to those ways referred to in paragraph 1 (a).

As it stands, the text limits the Court's right to use Interpol channels (if the State concerned has not specified this at the ratification stage) and obliges States to make their choice upon ratification, accession or approval, whereas it ought to be possible to offer a more flexible way of designating channels for co-operating with the Court.

Also, paragraph 1 (b) of the French version refers to the ICPO-Interpol or "*toute autre organisation régionale appropriée*", which means "any **other** appropriate regional organization", thereby wrongly implying that Interpol is itself a regional organization (easily refuted by the fact that it has 177 member countries). The original English text avoids such ambiguity with the wording "*any appropriate regional organization*".

Lastly - and this is the main problem - the current wording seems to make the use of Interpol channels subordinate to other means of transmission, and subject to a condition that is somewhat vague, namely "*When appropriate*". This wording may render the whole of paragraph 1 (b) irrelevant.

Interpol therefore regrets that the wording of paragraph 1 (b) does not go as far as the provisions in certain conventions or treaties on mutual assistance in criminal matters or on extradition, where provision is made for a more systematic use of Interpol channels since they offer one of the fastest means of transmission, a major advantage in investigating crime and bringing offenders to justice.

One such example is the model treaty on extradition drafted under the auspices of the United Nations in 1990, which is intended to help countries conclude bilateral extradition agreements and which acknowledges Interpol's prime position in transmitting requests for provisional arrest⁷.

Bearing in mind the above considerations, the ICPO-Interpol would like to propose the following wording for article 78 (1):

Proposed amendment

Article 78(1): Authorities competent to make and receive requests/Channels for communication of requests

- (a) *The Court shall have the authority to make requests to States Parties for co-operation. The requests shall then be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, accession or approval. Such designation and subsequent changes shall be done in accordance with the Rules of Procedure and Evidence.*
- (b) *In urgent cases, requests may also be transmitted through the International Criminal Police Organization-Interpol or through an appropriate regional organization.*

If this proposal is not adopted by the Working Group on International Co-operation, the ICPO-Interpol would urge the Working Group to encourage States Parties to designate Interpol channels as a means of transmission (as referred to in article 78(a) (1)) upon ratification, accession or approval.

Interpol is able to offer its Member States and the Court a rapid, reliable and secure telecommunications network which can ensure the best possible transmission of requests for co-operation. Furthermore, Interpol channels have often been recommended by the United Nations in international meetings aimed at promoting the various international instruments of mutual assistance in criminal matters.

⁷ Article 9 (1) from the model treaty on extradition reads: *"In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing."* Mention could also be made (in a by no means an exhaustive list) of the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (see Appendix 1).

Interpol Member States have a responsibility to put forward proposals designed to ensure that full use is made of transmission through Interpol channels, bearing in mind that non-members communicate with Interpol through diplomatic channels.

Article 78: Requests for co-operation: general provisions

5. Co-operation of intergovernmental organizations

The Court may ask any intergovernmental organizations to provide information or documents. The Court may also ask for other forms of co-operation and assistance as may be agreed upon with such organizations and in accordance with their respective competencies and/or mandates.

Interpol is willing to provide the Court with the following assistance:

- Use of its telecommunications network (as stated earlier)
- Production and circulation of documents to member countries at the request of the Court (see comments below on articles 81 and 82)
- Access to information in the various databases which make up the "Interpol Criminal Information System" (ICIS) (the practical arrangements could form the subject of a special agreement with the Court)
- The expertise of the General Secretariat's specialized staff (analysis of criminal information to be used by investigators and prosecutors, links between different criminal cases, etc.)
- Any other service which Interpol can provide the Court (such as training, meetings or documentation services).

In addition, information received from the National Central Bureaus may lead Interpol to forward details to the Prosecutor so that he or she may decide whether or not to open proceedings (in application of articles 10 ter and 10 quater in Part 2 of the draft Statute).

Interpol is also prepared to offer the Court the services of its own agents, as provided for in article 37 bis (document A/AC.249/1998/WG.7/CRP.2/Add.3), paragraph 4 of which states: "Any State Party, intergovernmental organization [or non-governmental organization] may offer to detail personnel to assist with the work of any of the organs of the Court and to be considered for such work....".

If this provision (which is in square brackets) is not retained, mention could be made of seconded personnel in article 78(5)⁸, so that it would read:

⁸ This amendment could be easily inserted because Article 44 (Part 4) of the draft Statute (the Preparatory Committee's document A/AC.249/1998/L.13 of 4th February 1998) authorizes the Prosecutor to "request a State Party to make persons available" to assist with a case. These individuals "shall serve at the direction of the Prosecutor and shall not seek or receive instructions from any Government or source other than the Prosecutor".

Proposed Amendment

Article 78(5): Requests for co-operation: general provisions

The Court may ask any intergovernmental organizations to provide information, documents and to second personnel to assist in a case within the jurisdiction of the Court. The Court may also ask for other forms of co-operation and assistance as may be agreed upon with such organizations and in accordance with their respective competencies and/or mandates.

This proposed amendment is based on the fact that the Court will not have its own international criminal police force and as a result, will have to rely on international or regional police organizations and peace-keeping forces in the territory where the Court is carrying out investigations. The background to the link between Interpol (as an international criminal police organization) and the idea of an international criminal court is given in the document describing Interpol's position on serious violations of international humanitarian law.

Article 81: Provisional arrest

1. *In case of urgency, the Court may request the provisional arrest of the person sought pending presentation of the request for [surrender] [transfer] [extradition] and supporting documents under article 80 [53 bis].*
2. *The request for provisional arrest shall [be made by any medium capable of delivering a written record and shall] contain:*
 - (i) *a description of the person sought and information regarding the probable location of such person;*
 - (ii) *a brief statement of the essential facts of the case, including, if possible, the time and location of the offence;*
 - (iii) *a statement of the existence of a warrant of arrest or a judgement of conviction against the person sought, and, if applicable, a description of the specific offence or offences with which the person has been charged or for which he has been convicted; and*
 - (iv) *a statement that a request for [surrender] [transfer] [extradition] of the person sought will follow.*

Many international conventions on extradition provide for the possibility of using Interpol channels to transmit requests for provisional arrest; these include the European Convention on Extradition⁹, the Commonwealth Scheme for the Rendition of Fugitive Offenders, the Convention on Extradition of the Economic Community of West African States, the United Nations model treaty on extradition¹⁰ and many bilateral extradition treaties.

⁹ Article 16(3) states: "A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organization (Interpol) or any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request." See Appendix 1 for the relevant provisions of the other conventions cited.

¹⁰ See Article 9 in footnote No. 7.

The national extradition laws of certain countries make specific mention of Interpol channels for the transmission of requests for provisional arrest¹¹.

Interpol also provides its member countries with *red notices* which are used to send details of a national arrest warrant to other countries, and which ask for the arrest of a fugitive with a view to extradition. Each red notice is published in Arabic, English, French and Spanish by the General Secretariat, at the request of the National Central Bureau and circulated throughout the world in written form, although it is also accessible on computer link-ups. A red notice contains the following information:

Information on identification

- Particulars of the subject's identity: family name, forename(s), alias(es), place and date of birth, parents' names, nationality
- Photographs and fingerprints if available
- Particulars of appearance: height, weight, physical features
- Any other relevant information: occupation, language(s) spoken, identity document numbers, etc.

Judicial information

- Summary of facts of the case
- The offence with which the person is charged
- Law covering the offence (article, section, etc.)
- Maximum penalty incurred
- Date and reference number of the arrest warrant and particulars of the judicial authority by which it was issued
- An assurance that extradition will be requested.

Red notices are necessarily based on an arrest warrant or on a conviction or a sentence (a copy of these documents may in fact be kept by the General Secretariat and made available to the countries concerned).

The International Tribunal for the former Yugoslavia uses red notices to circulate its arrest warrants. Over sixty red notices have been distributed at its request and 46 are still valid (examples are given at Appendix 2).

Interpol is prepared to publish red notices to trace individuals wanted by the Court (at its request) with a view to their provisional arrest. Red notices do in fact contain all the information required under article 81(2) of the draft Statute for such requests.

A 1997 survey involving the Ministries of Justice of Interpol member countries found that over 70% of them considered red notices as a request for provisional arrest, especially if the requesting country was linked to the requested country by a treaty or convention containing provisions on extradition.

¹¹ This is the case for the Andorran law on extradition of 28th November 1996 and the Argentine law on international co-operation in criminal matters of 13th January 1997. Transmission through Interpol channels is also provided for in the United Nations model treaty on extradition.

The Organization is convinced that those Interpol member countries which become States Parties to the draft Statute for the International Criminal Court will have no hesitation in considering red notices issued at the Court's request as requests for provisional arrest.

This being said, specific mention of the use of Interpol channels for transmitting requests for provisional arrest in the draft Statute would go even further to ensure recognition of the legal status of red notices. In this connection, article 81(2) which states (between square brackets) that the request shall "*be made by any medium capable of delivering a written record*", could usefully be changed to specify the medium of transmission. The ICPO-Interpol undertakes to publish the Court's requests for provisional arrest as red notices in four languages, and proposes that Interpol channels be explicitly mentioned in article 81(2).

Proposed Amendment

Article 81: Provisional arrest

2. *The request for provisional arrest shall be transmitted by the International Criminal Police Organization - Interpol or by any other medium capable of delivering a written record and shall contain:*

...

Article 82: Other forms of co-operation

7. Form and contents of the request

(a) *Requests for [judicial and legal] [mutual] assistance shall:*

- (i) *be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that it shall be confirmed [, if necessary,] through the channel provided for in article 78 [52] ; and*
- (ii) *contain the following, as applicable:*
 - (1) *a brief statement of the purpose of the request and the assistance sought, including the legal basis and grounds for the request;*
 - (2) *as much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;*
 - (3) *a brief description of the essential facts underlying the request;*
 - (4) *the reasons for and details of any procedure or requirement to be followed;*
 - (5) *such information as may be required under the law of the requested State in order to execute the request;]*
 - (6) *any other information relevant to the assistance being sought.*

The reference in article 82(7) to the channel of transmission dealt with in article 78, is an indirect reference to the use of the Interpol network for transmitting requests for judicial and legal assistance.

Interpol would once more like to confirm its willingness to assist the Court in transmitting any requests to the States Parties. It is worth reiterating that the use of Interpol channels for the transmission of requests for mutual assistance in criminal matters is mentioned in several international instruments, such as the European Convention on Mutual Assistance in Criminal Matters¹².

Consequently, if Interpol's proposed amendment to article 78(1) is rejected, it would like to propose an amendment to article 87(7), based on similar provisions in certain conventions on mutual assistance in particular matters.

Proposed Amendment

Article 82(7): Form and contents of the request

- (a) *Requests for [judicial and legal] [mutual] assistance shall:*
- (i) *be made in writing. In urgent cases, a request may be made **through the International Criminal Police Organization - Interpol, or by any other medium capable of delivering a written record, provided that it shall be confirmed** [, if necessary.] **through the channel provided for in article 78(1) (a); and ...***

The Organization would also like to draw the attention of the Diplomatic Conference to Interpol's blue notices which ask for additional information about an individual involved in a criminal case.

Blue notices can be used to find out about an individual's location, his criminal record, additional information about his identity, etc. These notices also contain all the information mentioned in paragraph (ii) of article 82(7)(a). They are published in Arabic, English, French and Spanish, circulated worldwide and used by the International Tribunal in the Hague to trace witnesses.

Interpol also publishes yellow notices about missing persons (regardless of the circumstances of their disappearance) and black notices for the identification of dead bodies.

These Interpol notices may be used by the Court in application of articles 78 to 84 of the draft Statute, including those provisions on confidentiality and the protection of witnesses and those dealing with failure to co-operate (if these are retained in the draft Statute).

Appropriateness of a proposed amendment to exclude "political exception"

Part 9 of the draft Statute for the Court attempts to reconcile the obligation laid down in article 77 with the prerogative of States to decide whether or not to co-operate in certain cases (circumstances usually provided for in extradition law or general mutual assistance).

¹² See Appendix 1.

However, the fact that extradition law is incompatible with the procedures enabling States to co-operate with the Court could be an argument in favour of reducing the number of options in articles 79, 80, 81 and 82, which include practically identical provisions. Some of the provisions should be harmonized in order to limit those cases where requests to co-operate with the Court may be refused.

Another possibility would be to take up one of the options proposed one of the paragraphs of articles 79, 80, 81 or 82 of the draft Statute, namely, option No. 1 of article 79(2), which excludes all grounds for refusal to extradite or transfer. Removing the right to deny a request for assistance from the Court would therefore be tantamount to removing the right to claim political exception.

However, this proposal may be criticized by States which have already demanded options authorizing parties to refuse extradition, surrender or transfer in limited cases. Interpol considers that the Working Group on International Co-operation should examine these limited cases - which are options in articles 79, 80, 81 and 82 of the draft Statute - and reduce them to reasonable and exceptional grounds such as: those where executing a request would prejudice the national security or *ordre public* of the requested State, or would violate a treaty the requested State has concluded with other States. However, if such a treaty includes a political exception clause, a refusal to co-operate with the Court could amount to allowing the political element to be taken into account for offences covered by conventions which do not allow political elements to be included as grounds for refusing extradition (terrorism, genocide, etc.); this could give rise to a conflict between conventions which has not yet been provided for in the draft Statute.

If certain cases for refusal to co-operate are retained in the draft Statute, Interpol considers it necessary to add a provision which specifically excludes political elements as grounds for denying a request for co-operation made by the Court. Such a provision could be inserted in one of the articles of Part 9 of the draft Statute and could read as follows:

Proposed Amendment

"Without prejudice to the provisions of paragraph 'x' of article 'y', a State shall not deny a request for assistance from the Court for (surrender) (transfer) and extradition or any other form of mutual assistance, on the grounds that the crimes giving rise to this request are considered to be political crimes."

This addition would also make it easier for Interpol to assist the Court, for reasons connected with the interpretation of article 3 of its Constitution (see the document dealing with Interpol's possibilities for action).

In conclusion, the ICPO-Interpol gives its full support to the establishment of a permanent International Criminal Court, which represents a significant breakthrough in the application of international humanitarian law. Interpol is also convinced that close co-operation between the two institutions should be made official in the interests of the international community as a whole.

Appendix 1: International conventions mentioning Interpol's role in transmitting requests for assistance in criminal matters

Appendix 2: Examples of red notices published at the request of the International Tribunal for the Former Yugoslavia.

International conventions mentioning Interpol's role in transmitting requests for assistance in criminal matters
(non-exhaustive list)

1. Conventions adopted under the auspices of the Council of Europe

- Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1995)

Article 18(2): Where, for any reason, direct communication is not practicable, Parties may agree to use the communication channels of the ICPO-Interpol or of the Customs Co-operation Council.

- European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990)

*Article 24(3): Any request or communication under paragraphs 1 and 2 of this article may be made through the **International Criminal Police Organization - Interpol**.*

- European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (1978)

*Article 9(2): When appropriate the notifications may be sent through the **International Criminal Police Organization (Interpol)**.*

- European Convention on the Transfer of Proceedings in Criminal Matters (1972)

*Article 13(2): In urgent cases, requests and communications may be sent through the **International Criminal Police Organization (Interpol)**.*

- European Convention on the International Validity of Criminal Judgements (1970)

*Article 15(2): In urgent cases, requests and communications may be sent through the **International Criminal Police Organization (Interpol)**.*

- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (1964)

*Article 27(3): In case of emergency, the communications referred to in paragraph 2 of this Article may be made through the **International Criminal Police Organization (Interpol)**.*

- European Convention on Mutual Assistance in Criminal Matters (1959)

*Article 15(5): In cases where direct transmission is permitted under this convention, it may take place through the **International Criminal Police Organization (Interpol)**.*

- European Convention on Extradition (1957)

*Article 16(3): A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the **International Criminal Police Organization (Interpol)** or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.*

2. Conventions adopted under the auspices of the United Nations

- United Nations model treaty on extradition (1990)

*Article 9(1) (Provisional arrest): In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the **International Criminal Police Organization**, by post or telegraph or by any other means affording a record in writing.*

- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)

*Article 7(8): Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the **International Criminal Police Organization**, if possible."*

3. Instrument adopted under the auspices of the Commonwealth

- Commonwealth Scheme for the Rendition of Fugitive Offenders (1966)¹

*Clause 4 (1) (Provisional warrants): Where a fugitive offender is, or is suspected of being, in or on his way to any part of the Commonwealth but no warrant has been endorsed [...] or issued [...], the competent judicial authority in that part of the Commonwealth may issue a provisional warrant for his arrest on such information and under such circumstances as would, in the authority's opinion, justify the issue of a warrant if the returnable offence of which the fugitive is accused has been an offence committed within the authority's jurisdiction and for the purposes of this paragraph information contained in an international notice issued by the **International Criminal Police Organization (Interpol)** in respect of a fugitive may be considered by the authority, either alone or with other information, in deciding whether a provisional warrant should be issued for the arrest of that fugitive.*

¹ In a letter dated 16th January 1998, the Legal and Constitutional Affairs Division of the Commonwealth Secretariat stated "We believe that the information now contained in red notices ought to provide sufficient basis for our member countries to treat red notices, *prima facie*, as requests for provisional arrest"

4. Convention adopted under the auspices of the Economic Community of West African States

- Convention on Extradition (1994)

*Article 22(3): The request for provisional arrest shall be transmitted to the competent authorities of the requested State either through the diplomatic channel, or direct by post or telegraph, or through the **International Criminal Police Organization (Interpol)**, or by any other means affording evidence in writing or accepted by the requested State [...].*

5. Examples of bilateral conventions in which Interpol is mentioned

- Treaty between Canada and France concerning Extradition (1988)

*Article 13(1) (Provisional Arrest): In cases of urgency, the competent authorities of the requesting State may request the provisional arrest of the person sought, through diplomatic channels or directly by post or telegraph, or through the **International Criminal Police Organization (Interpol)**, or by any other method that provides a written record of the request [...].*

- Treaty on Extradition between France and Australia (1988)

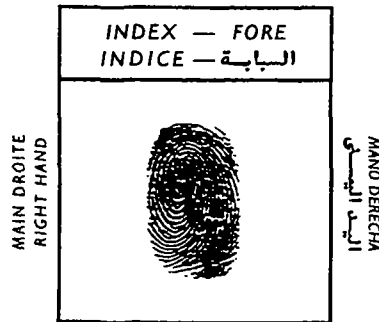
*Article 9(1,b): The application for provisional arrest shall be transmitted by means of the facilities of the **International Criminal Police Organization (Interpol)**, by post or telegraph or by any other means affording a record in writing.*

6. Particular case

- Rules of procedure and evidence (adopted in 1994) of the International Tribunal for the Prosecution for Persons Responsible for Serious Violations of International Humanitarian Law committed in the territory of Former Yugoslavia since 1991 (Tribunal established by UN Security Council resolution 827)

*Rule 39: In the conduct of an investigation, the Prosecutor may [...] seek the assistance of any relevant international body including the **International Criminal Police Organization (Interpol)**.*

ALEKSOVSKI Zlatko
A-689/12-1995



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CAUTION: THIS PERSON IS CONSIDERED TO BE ARMED AND VIOLENT

PRESENT FAMILY NAME: ALEKSOVSKI FORENAME: Zlatko SEX: M
DATE AND PLACE OF BIRTH: 8th January 1960 - Pakrac, Pakrac Municipality, Croatia

FATHER'S FAMILY NAME AND FORENAME: ALEKSOVSKI Tale
MOTHER'S MAIDEN NAME AND FORENAME: STANKO Eva

IDENTITY NOT CONFIRMED - NATIONALITY: CROATIAN (NOT CONFIRMED)

DESCRIPTION: Height 160 cm, stocky build, grey hair, blue eyes.

OCCUPATION:

- Completed studies, at Veljko Vlahovic Faculty of Political Sciences, Department of Sociology in Sarajevo, Bosnia-Herzegovina, on 28th September 1993;
- Counsellor at "Zenica Correction House", Bosnia-Herzegovina, from 23rd February 1987 to 29th January 1993;
- Commander of Kaonik Prison Camp, Busovaca, Bosnia-Herzegovina, from 29th January 1993 to May 1993;
- Head of district of armed forces of the Croatian Defence Council (HVO), "Heliodrom" prison in Mostar, Bosnia-Herzegovina, since May 1993.

COUNTRY LIKELY TO BE VISITED: Bosnia-Herzegovina (Mostar).

LANGUAGE SPOKEN: Serbo-Croat.

MAXIMUM PENALTY POSSIBLE: Life imprisonment.

ACCOMPLICES:

- KORDIC Dario, born on 14th December 1960, subject of red notice File No. 47421/95, Control No. A-684/12-1995;
- BLASKIC Tihomir or Tihofil, born on 2nd December 1960, subject of red notice File No. 47427/95, Control No. A-685/12-1995;
- CERKEZ Mario, born on 27th March 1959, subject of red notice File No. 47592/95, Control No. A-686/12-1995;
- SKOPLJAK Pero, born on 5th June 1943, subject of red notice File No. 47594/95, Control No. A-687/12-1995;
- SANTIC Ivan, born in 1942, subject of red notice File No. 47593/95, Control No. A-688/12-1995.

File No. ~~47951/95~~

47591/95

Control No. A-689/12-1995

PURL: <https://www.legal-tools.org/doc/6ee787/>

SUMMARY OF FACTS OF THE CASE: BOSNIA-HERZEGOVINA:

Serious violations of international humanitarian law took place during the period of May 1992 to May 1993, when the armed forces of the Croatian Defence Council (HVO) of the Croatian Community of Herceg-Bosna attacked the Muslim civilian population in the towns, villages and hamlets of the Lasva Valley area in Bosnia-Herzegovina, specifically in the municipalities of Vitez, Busovaca and the city of Zenica.

BLASKIC, KORDIC, CERKEZ, SANTIC, SKOPLJAK and ALEKSOVSKI individually and in complicity with others, planned, instigated, ordered or aided and abetted the planning and execution of several crimes, and they knew that subordinates were about to do the same, or had done so, but failed to take the necessary measures to prevent such acts or to punish the perpetrators.

Between 1st January and 31st May 1993, BLASKIC, KORDIC, CERKEZ, SANTIC, SKOPLJAK and ALEKSOVSKI planned and ordered inhumane treatment of Bosnian Muslim detainees in the Lasva Valley area.

REASON FOR NOTICE: Wanted on arrest warrant, Case No. IT-95-14-I, issued on 3rd November 1995 by the International Criminal Tribunal for Former Yugoslavia (located in The Hague, Netherlands), for grave breaches of the 1949 Geneva Conventions and violation of the laws or customs of war. If found, please arrest and detain pending transfer to the Tribunal as set out in the arrest warrant, pursuant to Rule 57 of the Rules of Procedure and Evidence of the International Tribunal. Immediately inform the International Criminal Tribunal for Former Yugoslavia, The Hague (Reference ICTY of 28th November 1995) and the ICPO-Interpol General Secretariat.

A-689/12-1995

GAGOVIC Dragan
A-420/8-1996



CAUTION: THIS PERSON IS CONSIDERED TO BE VIOLENT AND ARMED

PRESENT FAMILY NAME: GAGOVIC

FORENAME: Dragan

SEX: M

DATE AND PLACE OF BIRTH: 13th June 1960 - Ustikolina, Foca, Bosnia-Herzegovina

FATHER'S FAMILY NAME AND FORENAME: GAGOVIC Milorad

IDENTITY CONFIRMED - NATIONALITY: CITIZEN OF FORMER YUGOSLAVIA (BOSNIAN SERB)

DESCRIPTION: Height 175 cm, dark hair.

DISTINGUISHING MARKS AND CHARACTERISTICS: Described as good-looking.

OCCUPATION: Police Inspector at Foca, Srbinje, Bosnia-Herzegovina. Former Chief of Police of Foca, Srbinje, Bosnia-Herzegovina. Former instructor at "Kazneno-popravni Dom" (prison for men) in Foca, Srbinje, Bosnia-Herzegovina.

COUNTRY LIKELY TO BE VISITED: Ustikolina, Foca, Bosnia-Herzegovina.

LANGUAGE SPOKEN: Serbian.

ADDITIONAL INFORMATION: Trained in martial arts.

MAXIMUM PENALTY POSSIBLE: Life imprisonment.

ACCOMPLICES: Subjects of red notices Control Nos. 420/8-1996 to A-427/8-1996 inclusive.

SUMMARY OF FACTS OF THE CASE: BOSNIA-HERZEGOVINA: On 7th April 1992, elements of the Bosnian Serb army and irregular military units from Serbia and Montenegro began to take over the town of Foca and surrounding villages. From mid-April 1992 until mid-July 1992, Muslim and Croat inhabitants were arrested and many were killed, beaten or sexually assaulted. Civilian men and women were separated and unlawfully confined. Many of the detained women were subjected to humiliating and degrading treatment, beatings and sexual assault during the period from April 1992 to February 1993. In April 1992, when the war began, GAGOVIC was appointed Chief of Police of Foca by the Serbian Democratic Party of which he was a member. In his position as Chief of Police, GAGOVIC was responsible for the detention and deportation of Muslim civilians. From June until August 1992, many civilian Muslim women were detained in the Buk Bijela camp, in the Foca High School and in the Partisan Sports Hall, and were subjected to assault, repeated rape, threats and torture. Two women died after beatings. GAGOVIC was aware of these events and is personally charged with having raped one of the civilian women detainees on 17th July 1992.

REASON FOR NOTICE: Wanted on arrest warrant, Case No. IT-96-23-I issued on 26th June 1996 by the International Criminal Tribunal for Former Yugoslavia (located in The Hague, Netherlands), for grave breaches of the 1949 Geneva Conventions, violations of laws or customs of war, and crimes against humanity.

A copy of the arrest warrant is available from the Interpol General Secretariat.

If found, please arrest and detain pending transfer to the International Tribunal, and immediately inform the ICPO-Interpol General Secretariat.

File No. 28080/96

Control No. A-420/8-1996

PURL: <https://www.legal-tools.org/doc/6ee787/>

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RECTIFICATIF/CORRIGENDUM/تصويب

Les références figurant dans le document présenté par l'O.I.P.C.-Interpol étaient tirées du document A/AC/249/1998/CRP du 01.04.1998 du Comité préparatoire. La numérotation des articles ayant été modifiée dans le document A/CONF.183/2/Add.1 du 14.04.1998, il convient de lire, dans la première partie du document présenté par l'O.I.P.C.-Interpol sur l'assistance que peut apporter Interpol à la Cour criminelle internationale :

- . Article 86 (Demandes de coopération : dispositions générales) au lieu de Article 78.
pages 4 (note n° 6), 5 à 8, 11
- . Article 89 (Arrestation provisoire) au lieu de Article 81.
pages 4 (note n° 6), 8 à 11
- . Article 90 (8) (Autres formes de coopération. Forme et contenu de la demande) au lieu de Article 82 (7)
pages 4 (note n° 6), 10 à 11

The references given in the brochure "Documents submitted by the ICPO-Interpol" were taken from the Preparatory Committee's document A/AC/249/1998/CRP dated 1st April 1998. Since the numbering of the articles was changed in document A/CONF.183/2/Add.1 dated 14th April 1998, the following changes should be made to Interpol's first document ("How Interpol can assist the International Criminal Court"):

- Article 78 (Requests for co-operation: general provisions) has become Article 86
pages 4 (footnote 6), 5-8, 11
- Article 81 (Provisional arrest) has become Article 89
pages 4 (footnote 6), 8-11
- Article 82(7) (Other forms of co-operation. Form and content of the request) has become Article 90(8)
pages 4 (footnote 6), 10-11.

Las referencias indicadas en el documento sobre la asistencia que puede aportar Interpol a la Corte Penal Internacional, presentado por la OIPC-INTERPOL, procedían del documento A/AC/249/1998/CRP del 01.04.1998 del Comité Preparatorio. Dado que la numeración de los artículos ha sido modificada en el documento A/CONF.183/2/Add.1 del 14.04.1998, es preciso corregir la primera parte del documento de Interpol como se indica a continuación:

- Página 4, nota pie de página nº 6:
Donde dice "...Artículos 78, (...), 81 y 82", léase respectivamente "...Artículos 86, (...), 89 y 90".
- Páginas 5, 6, 7, 8 y 11:
Cada vez que aparezca "Artículo 78 (Solicitudes de cooperación: disposiciones generales)", léase "Artículo 86".
- Páginas 8, 9, 10 y 11:
Cada vez que aparezca "Artículo 81 (Detención preventiva)", léase "Artículo 89".
- Páginas 10 y 11:
Cada vez que aparezca "Artículo 82 (7) (Otras formas de cooperación. Forma y contenido de la solicitud)", léase "Artículo 90 (8)".

المراجع المدرجة في الوثيقة التي تقدمها الم د ش ج - انتربول مأخوذة من وثيقة اللجنة التحضيرية المرقمة A/CONF.183/2/Add.1 والمؤرخة 1998/4/1. لكن بما أن ترقيم المواد قد تغير في الوثيقة A/CONF.183/2/Add.1 المؤرخة 1998/4/14 فإن الصواب في القسم الأول من الوثيقة التي تقدمها الم د ش ج - انتربول عن المساعدة التي يمكن للانتربول تقديمها للمحكمة الجنائية الدولية هو التالي :

- المادة 86 (طلبات التعاون: أحكام عامة) بدلا من المادة 78 .
الصفحات 4 (الحاشية 6)، 5 - 8 ، 11
- المادة 89 (التوقيف المؤقت) بدلا من المادة 81 .
الصفحات 4 (الحاشية 6)، 8 - 11
- المادة 90(8) (أشكال التعاون الأخرى. شكل ومضمون الطلب) بدلا من المادة 82 (7) .
الصفحات 4 (الحاشية 6)، 10 - 11

Examination of the following provisions of Part 9 of the draft Statute demonstrates the sound basis of the above remarks:

Article 86: Requests for co-operation: general provisions

1. *Authorities competent to make and receive requests/Channels for communication of requests*
 - (a) *The Court shall have the authority to make requests to States Parties for co-operation. The requests shall then be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, accession or approval. Such designation and subsequent changes shall be done in accordance with the Rules of Procedure and Evidence.*
 - (b) *When appropriate, without prejudice to the provisions of paragraph 1 (a), requests may also be transmitted through the International Criminal Police Organization - INTERPOL - or any appropriate regional organization.*

The ICPO-Interpol appreciates the reference in article 86 (1) (b) of the draft Statute to the use of Interpol channels for transmitting requests for co-operation from the Court to States Parties. Although the draft Statute contains several provisions referring to the assistance of intergovernmental organizations, article 86 (1) (b) is the only one to make explicit reference to the ICPO-Interpol which, along with the UN, is the only organization mentioned by name in the draft.

Article 86 (1) does however pose a problem of interpretation. The words "*without prejudice to the provisions of paragraph 1 (a)*", could imply that the transmission of requests through Interpol channels must have already been provided for by the States Parties upon ratification, accession or approval. [The French "*sous réserve de*" is even more restrictive.] This interpretation is, however, contradicted by the word "*also*", which implies that Interpol channels are another means of transmitting requests, in addition to those ways referred to in paragraph 1 (a).

As it stands, the text limits the Court's right to use Interpol channels (if the State concerned has not specified this at the ratification stage) and obliges States to make their choice upon ratification, accession or approval, whereas it ought to be possible to offer a more flexible way of designating channels for co-operating with the Court.

Also, paragraph 1 (b) of the French version refers to the ICPO-Interpol or "*toute autre organisation régionale appropriée*", which means "any other appropriate regional organization", thereby wrongly implying that Interpol is itself a regional organization (easily refuted by the fact that it has 177 member countries). The original English text avoids such ambiguity with the wording "*any appropriate regional organization*".

Lastly - and this is the main problem - the current wording seems to make the use of Interpol channels subordinate to other means of transmission, and subject to a condition that is somewhat vague, namely "*When appropriate*". This wording may render the whole of paragraph 1 (b) irrelevant.

Interpol therefore regrets that the wording of paragraph 1 (b) does not go as far as the provisions in certain conventions or treaties on mutual assistance in criminal matters or on extradition, where provision is made for a more systematic use of Interpol channels since they offer one of the fastest means of transmission, a major advantage in investigating crime and bringing offenders to justice.

One such example is the model treaty on extradition drafted under the auspices of the United Nations in 1990, which is intended to help countries conclude bilateral extradition agreements and which acknowledges Interpol's prime position in transmitting requests for provisional arrest⁷.

Bearing in mind the above considerations, the ICPO-Interpol would like to propose the following wording for article 86 (1):

Proposed amendment

Article 86 (1): Authorities competent to make and receive requests/Channels for communication of requests

- (a) *The Court shall have the authority to make requests to States Parties for co-operation. The requests shall then be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, accession or approval. Such designation and subsequent changes shall be done in accordance with the Rules of Procedure and Evidence.*
- (b) *In urgent cases, requests may also be transmitted through the International Criminal Police Organization-Interpol or through an appropriate regional organization.*

If this proposal is not adopted by the Working Group on International Co-operation, the ICPO-Interpol would urge the Working Group to encourage States Parties to designate Interpol channels as a means of transmission (as referred to in article 86(a) (1)) upon ratification, accession or approval.

Interpol is able to offer its Member States and the Court a rapid, reliable and secure telecommunications network which can ensure the best possible transmission of requests for co-operation. Furthermore, Interpol channels have often been recommended by the United Nations in international meetings aimed at promoting the various international instruments of mutual assistance in criminal matters.

⁷ Article 9 (1) from the model treaty on extradition reads: *"In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing."*

Mention could also be made (in a by no means an exhaustive list) of the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (see Appendix 1).