Interpol Red Notice: What it Means and the Procedure to Remove Red Notice*

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Introduction

The *News Straits Times*, in an article dated August 9, 2023,[1] reported that at least 25 individuals wanted by the Malaysian authorities are on the International Criminal Police Organisation's ("INTERPOL") red notice list. These individuals are wanted by the Malaysian authorities and are believed to have fled the Malaysian jurisdiction to various countries. Most recently, the Malaysian Anti-Corruption Commission ("MACC") has requested the Royal Malaysian Police to list two more individuals on INTERPOL's red notice.[2]

What is INTERPOL?

What exactly is an INTERPOL red notice? This article will attempt to examine what an INTERPOL red notice is and the procedures involved in removing such notice.

Before we delve further into what an INTERPOL red notice is, let us first examine what INTERPOL is. INTERPOL or the International Criminal Police Organisation is actually an inter-governmental organisation. The aims of establishing INTERPOL are:

(i) to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in different countries and in the spirit of the "Universal Declaration of Human Rights";

* Acknowledgement: The primary sources of this article are extracted from the Constitution of INTERPOL, INTERPOL Rules on the Processing of Data, The Statute of Commission for the Control of INTERPOL Files and INTERPOL's official website at https://www.interpol.int.

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1 Qistina Sallehuddin and Kalbana Perimbanayagam, "Over 25 Individuals Sought By Malaysian Authorities Are on Interpol's Red Notice List", *News Straits Times* (August 9, 2023).

2 "Police Confirm Receiving MACC's Request To List Muhyiddin's Son-in-Law On Interpol Red Notice", *Bernama News Report* (August 15, 2023).

(ii) to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.[3]

To date, there are about 195 member countries that are members of INTERPOL.[4] Malaysia is one of the member countries of INTERPOL since September 4, 1961.[5] Every member country will establish its own National Central Bureau ("NCB"). The NCBs will cooperate and share their data on various crimes and criminals.[6] The NCB shall ensure liaison with various departments in that particular member country or bodies in other countries serving as the NCB and the General Secretariat of INTERPOL.[7]

Operation of INTERPOL

How does INTERPOL operate? INTERPOL is headquartered in Lyon, France.[8] INTERPOL comprises the General Assembly, the Executive Committee, the General Secretariat, the National Central Bureaus, the Advisers appointed under articles 34 and 35 of the Constitution of INTERPOL and the Commission for the Control of Files.[9] The General Assembly is the supreme authority, comprising delegates appointed by members of the organisation or member countries.[10] The functions of the General Assembly among others, include determining principles and laying down general measures suitable for attaining the objectives of the organisation, as given in article 2 of the Constitution of INTERPOL; determining any other regulations deemed necessary; electing persons to perform the functions mentioned in the Constitution; determining the financial policy of the organisation; and examining and approving any agreements made with other organisations.[11]

To ensure the smooth operation of INTERPOL, the General Secretariat is established under the Constitution of INTERPOL. The functions of the General Secretariat shall include, among others:

(i) implementing the decisions of the General Assembly and the Executive Committee;

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[3] Constitution of the International Criminal Police Organization – INTERPOL, art 2.

[4] See https://www.interpol.int/Who-we-are (accessed April 21, 2024).

[5] See https://www.interpol.int/en/Who-we-are/member-countries/Asia-South-Pacific/MALAYSIA (accessed April 21, 2024).

[6] See https://www.interpol.int.

[7] Constitution of INTERPOL, art 32.

[8] *Ibid*, art 1: "The Organization called 'INTERNATIONAL CRIMINAL POLICE COMMISSION' shall henceforth be entitled 'THE INTERNATIONAL CRIMINAL POLICE ORGANIZATION-INTERPOL'. Its seat shall be in France". See www.interpol.int/en/Who-we-are/What-is-INTERPOL.

[9] Constitution of INTERPOL, art 5.

[10] *Ibid*, art 6.

[11] *Ibid*, art 8.

(ii) serving as an international centre in the fight against ordinary crime;

(iii) serving as a technical and information centre;

(iv) ensuring efficient administration of the organisation;

(v) maintaining contact with national and international authorities,

whereas questions regarding the search for criminals shall be dealt with through the National Central Bureaus.[12]

The General Secretariat's functions are primarily supervised and executed by a Secretary-General who is appointed by the General Assembly for a period of five years. The Secretary-General's services can be extended for another term of five years upon him/her having served his/her first five years of service. He/she is to be chosen from among persons highly competent in police matters.[13]

How is a certain colour-coded notice placed in the INTERPOL Information System?

To ensure that member countries of INTERPOL are able to cooperate together, an INTERPOL Information System was created by the organisation.[14] This Information System is available and accessible to the NCBs of member countries. The data processed or contained in the Information System are for many purposes. These purposes include searching for a wanted person with a view to his/her detention, arrest or restriction of movement; locating a person or an object of interest to the police; providing or obtaining information related to a criminal investigation or the criminal history and activities of a person; warning of a person, event, object, or modus operandi related to criminal activities; identifying a person or a dead body; carrying out forensic analyses; carrying out security checks and identifying threats, crime trends and criminal networks.[15] To effectively carry out such functions, INTERPOL has created a notice system. The notice system consists of a set of different colour-coded notices published in the Information System for specific purposes and to alert the police of member countries to potential security threats or that assistance is required in resolving crimes. The data is not publicly available. However, the General Secretariat may publish extracts of notices containing persons wanted by various NCBs on INTERPOL's public website at the request of the relevant NCB.[16]

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12 *Ibid*, art 26.
13 *Ibid*, art 28.
14 INTERPOL's Rules on the Processing of Data.
15 *Ibid*, art 10.
16 See https://interpol.int/en/How-we-work/Notices/Red-Notices.

The NCB plays a vital role in the Information System. According to article 5(4) of INTERPOL's Rules on the Processing of Data, the NCB shall play a central role in the processing of data in the INTERPOL Information System. By way of illustration, if the MACC requests that a certain individual be placed on a red notice or any other coded notice, the request can be made to the NCB at Bukit Aman's Royal Malaysian Police Headquarters. The NCB will then process the request which must be accompanied by data of the persons requested by the MACC. The request must be accompanied by "data" that contains information, irrespective of its source, pertaining to constituent elements of ordinary-law crimes, the investigation and prevention of such crimes, the prosecution of the offenders, the punishment of the offenders, and information pertaining to missing persons and unidentified dead bodies (if applicable).[17] The NCB has to sift through the requests according to article 76(2) of INTERPOL's Rules on the Processing of Data. The NCB has to ensure the quality and lawfulness of the data that the MACC provides in support of its request, that the conditions attached to its request for publication are met, that the data is of interest for the purposes of international police cooperation, and that its request complies with INTERPOL's rules, specifically with articles 2(1) and 3 of Constitution of INTERPOL as well as with the obligations imposed on the requesting entity under international law.

If the request and the data comply with the requirements of article 76(2) of INTERPOL's Rules on the Processing of Data, then the request and data will be sent by the NCB (or known as the requesting NCB) to the General Secretariat for further examination. The General Secretariat has the power not to publish the notice if, the data provided does not meet the conditions for publishing a notice; publication of the notice is not, in the case in point, of interest for the purposes of international police cooperation; or publication of the notice can prejudice the Organisation or its member countries.[18] Once the General Secretariat approves such a request, the notice shall be published by the General Secretariat for the attention of all NCBs of member countries. All the NCBs within the member countries shall then forward the approved notice placed by the General Secretariat in the INTERPOL Information System to their relevant national authorities of member countries.[19]

Duty to ensure the accuracy of data and up-to-date data by NCB

The data processed and kept in the INTERPOL Information System must be accurate, relevant and not excessive in relation to their purpose. The data have to be updated from time to time.[20] Therefore, the requesting NCB shall be responsible for the quality of the data that the requesting NCB records and

17 INTERPOL's Rules on the Processing of Data, art 1, Definition.
18 *Ibid*, art 77.
19 *Ibid*, art 80.
20 *Ibid*, art 12(1).

transmits to the INTERPOL Information System.[21] The requesting NCB that transmits the data to the Information System is obliged to update the information regularly.[22] Apart from the provisions cited in the footnote to support the proposition that the data recorded or transmitted by the requesting NCB is accurate and up-to-date (for example, articles 12 and 16), article 51 requires the requesting NCB to delete the data once it decides not to retain the data in the Information System. Article 80(2) of INTERPOL's Rules on the Processing of Data mandates the requesting NCB to ensure that the data provided in the Information System "remain accurate and relevant". The requesting NCB is further required under article 80(2)(b) "to forward to the General Secretariat any data that would modify the content of the published notice, and assess whether the modifications require the said notice to be withdrawn". Article 128(1)[23] of INTERPOL's Rules on the Processing of Data further emphasises that the data is considered accurate and relevant when it is entered by an NCB. If there are any doubts with regard to the data in the Information System, steps must be taken by the General Secretariat to ensure that the data concerned is correct. Otherwise, the doubtful data shall be deleted from the Information System.[24] The duty to ensure the accuracy of the data by the requesting NCB is further emphasised in article 131[25] of INTERPOL's Rules on the Processing of Data. The General Secretariat has the power to suspend any NCB's right to record data, consult

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21 *Ibid*, art 12(2).

22 *Ibid*, art 16(1).

23 *Ibid*, art 128(1) stipulates:

> (1) Data are, *a priori*, considered to be accurate and relevant when entered by a National Central Bureau, a national entity or an international entity into the INTERPOL Information System and recorded in a police database of the Organization.

24 *Ibid*, art 128(2) to (4) stipulates:

> (2) If a doubt arises regarding compliance with the conditions for data processing, including cases where data have been processed by a national entity, the General Secretariat shall consult the National Central Bureau concerned in order to obtain clarifications or supplementary data which may remove the doubt. The General Secretariat shall also consult any international entity if there is any doubt over compliance with the conditions for processing data.
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> (3) The General Secretariat shall take any other appropriate steps to ensure that these conditions have actually been met.
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> (4) The examination procedure shall be deemed closed if the General Secretariat concludes that the processing of data:
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> (a) complies with the present Rules, and validates the recording of data;
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> (b) does not comply with the present Rules and decides to correct the data processing or to delete the data.

25 *Ibid*, art 131(1) stipulates:

> (1) If a National Central Bureau or an international entity encounters difficulties when processing data in the INTERPOL Information System or does not fulfil its obligations under the present Rules, the General Secretariat shall be entitled to take the following corrective action:-
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> (a) correction of processing errors;
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> (b) supervision, for a period no longer than three months, of the processing operations carried out by the National Central Bureau or international entity;

one or several databases, or interconnection or downloading authorisations if that particular NCB fails to comply with its obligation to comply with the Rules on the Processing of Data.[26] The articles in the Rules on the Processing of Data cited above show how much emphasis is placed by INTERPOL to ensure that the data contained in the Information System is accurate, of quality and up-to-date.

Colour-coded INTERPOL notices

We have previously discussed that INTERPOL has created several colour-coded notices in the Information System. Now, let us discuss what types of notices are available in the INTERPOL Information System.

INTERPOL red notice and threshold

Red notices are published by the requesting NCB or an international entity with powers of investigation and prosecution in criminal matters in order to seek the location of a wanted person and/or their detention, arrest or restriction of movement for the purpose of extradition, surrender or similar lawful action.[27]

The threshold required for a red notice is unfortunately quite low. For persons sought for prosecution and wanted by a requesting NCB, as long as the offence which that person is alleged of, carries a punishment of at least two years' imprisonment or more, they can be placed on the red notice[28] provided of course that other requirements as discussed above and further requirements as imposed in article 83 of INTERPOL's Rules on the Processing of Data have been complied with by the requesting NCB.

For persons who are absconding or fleeing after a conviction, they can be placed on a red notice if they are sentenced to at least six months' imprisonment or he has absconded and there are at least six months of the imprisonment sentence remaining to be served by that person.[29] Additional requirements are as follows:

(i) there must also be an arrest warrant issued by the authority or Judiciary vested with the necessary powers before a red notice can be processed by the NCB for the General Secretariat's approval for placement in the Information System;[30]

(c) suspension of the access rights granted to users of the National Central Bureau or the international entity;
(d) dispatching an assessment team to the National Central Bureau or the international entity.

26 *Ibid*, art 131(3).
27 *Ibid*, art 82.
28 *Ibid*, art 83(1)(a)(ii).
29 *Ibid*, art 83.
30 *Ibid*, arts 84 and 86.

(ii) the request for a red notice must also be for the purposes of international police cooperation.[31]

Red notices, however, cannot be issued if the offences in that country raise controversial issues relating to behavioural or cultural norms, offences relating to family/private matters, or offences originating from a violation of laws or regulations of an administrative nature or deriving from private disputes, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organised crime.[32] Examples where red notices are not allowed to be published include issuance of red notices against persons committing offences of prostitution, offences related to gestational surrogacy, possession of drugs for personal use, adultery, bigamy/polygamy, homosexual acts, defamation, driving under the influence of alcohol or other substances, unless such behaviour led to physical harm to other individual(s) and/or serious damage to property, or issuing unfunded cheques.[33]

If the person who is the subject of a red notice is located, the country where that person is located must immediately detain, arrest or monitor the movements of such person. The country concerned must also inform the requesting NCB of the fact that the person has been located. Upon notification, the requesting NCB must ensure all documentation required for extradition is given to the country arresting or detaining such person under red notice for the purposes of extradition procedures.[34]

INTERPOL blue notice

Blue notices will be published with a view of obtaining information on a person of interest in a criminal investigation and/or to locate a person of interest in a criminal investigation and/or identify a person of interest in a criminal investigation. A blue notice can only be issued if the subject of the notice has been convicted or charged, or if he/she is a suspect, witness, victim in any criminal case.[35] However, there is no similar provision about the steps to be taken if the subject of the blue notice is located by a member country. In light of such lacuna, it is submitted that the country where the subject of the blue notice is found, can apply its existing criminal procedures and laws, among others, to restrict the movements or detain such subject pending any request for extradition by the requesting NCB.

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31 *Ibid*, art 83(1)(a)(iii).

32 *Ibid*, art 83(1)(a)(i).

33 INTERPOL's directive as at January 28, 2020 "List of Specific Offences For Which Red Notices May Not Be Issued".

34 INTERPOL's Rules on the Processing of Data, art 87.

35 *Ibid*, art 88.

INTERPOL green notice

A green notice is published with a view to warn NCBs of a person's criminal activities. A green notice can be issued if a subject is considered to be a possible threat to public safety. The conclusion whether a person is considered a threat to public safety will be drawn by the requesting NCB based on the person's previous criminal convictions or other reasonable grounds.[36] There is no definition of what constitutes "other reasonable grounds" in INTERPOL's Rules on the Processing of Data. In the absence of definition of "other reasonable ground" and which convictions are regarded as a threat to public safety, we cannot rule out that the issuance of such notices can potentially be abused by a requesting NCB. Similar to the blue notice, there is no express provision codified in INTERPOL's Rules on the Processing of Data regarding obligations or steps to be undertaken once the subject of a green notice is located by a country. Therefore, it is submitted that the country where the subject of the blue notice is located can apply its own laws and criminal procedures to restrict the movements or detain such subject pending a request for extradition by the requesting NCB.

INTERPOL yellow notice

The purpose of issuing a yellow notice is to locate a missing person or identify a person who is unable to identify himself/herself. Yellow notices may only be published if a person's disappearance or discovery has been reported to and recorded by the police or if the whereabouts of the missing person or the identity of the discovered person are unknown to the police.[37] The purpose of publishing a yellow notice is to seek the cooperation of other NCBs in locating or identifying the subject concerned.

INTERPOL black notice

Black notices are issued for the purpose of identifying dead bodies. Once a dead body has been recorded by the police and cannot be identified, a requesting NCB can ask for the publication of a black notice in the Information System, in order to seek cooperation from other NCBs in identifying the deceased concerned.[38]

INTERPOL purple notice

Purple notices will be published to warn about *modus operandi*, procedures, objects, devices or concealment methods or hiding places used by offenders and/or request for information and assistance from member countries.[39]

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[36] *Ibid*, art 89.
[37] *Ibid*, art 90.
[38] *Ibid*, art 91.
[39] *Ibid*, art 92.

INTERPOL orange notices

The purpose of publishing orange notices is to notify all member countries of an event, a person, an object, a process or a *modus operandi* representing an imminent threat to public safety and likely to cause serious damage to property or injury to persons. A person will be considered an imminent threat to public safety for the purposes of classification under an orange notice if he is preparing to commit or is about to commit a particularly serious ordinary-law crime (which is defined in article 1 of INTERPOL's Rules on the Processing of Data to mean any criminal offences except those within the scope of article 3 of the Constitution of INTERPOL). In the absence of clearly defined "criminal offences" that can be classified as an "imminent threat to public safety", it is submitted that instances of abuse in issuing such notices cannot be discounted. Even the definition of "serious ordinary-law crime" is not clearly defined in INTERPOL's Rules on the Processing of Data. Thus, prompting a subjective assessment of what constitutes a "serious ordinary-law crime" by the requesting NCB and the General Secretariat.

Other types of notices

The General Secretariat can also publish notices of stolen work of art in order to locate works of art or items of cultural value that are stolen or seek assistance from member countries to identify such objects discovered in suspicious circumstances. To enable such notices to be issued, the work of art or items of cultural value must be involved in a criminal investigation and have unique characteristics and/or be of considerable commercial value.[40]

If an individual or entity is subject to United Nations Security Council sanctions, the United Nations may also seek assistance from INTERPOL to issue an INTERPOL-United Nations Security Council Special Notice.[41]

Procedures for removing a red notice

As discussed earlier, the subject persons/entities of red notices may not be aware that he/she is listed in the INTERPOL red notice. Usually, the subject person is only made aware of being listed in the red notice when detained by the member country where he/she is located. This is because information regarding red notices is confidential between member countries. As such, persons who think they could be on the INTERPOL red notice should seek legal assistance from lawyers who are familiar with the process of determining the existence of a red notice and removing them from such notices.

A request for access to data can be made to the Commission for the Control of Interpol's Files ("CCF"). CCF is a Commission established under article 36 of

[40] *Ibid*, art 94.
[41] *Ibid*, art 95.

the Constitution of INTERPOL. Its functions, according to article 3(1) of the Statute of the Commission for the Control of INTERPOL's Files, are, among others, to ensure that the processing of personal data by INTERPOL is in compliance with INTERPOL's rules and to examine and decide on requests for access to data, and/or for the correction or deletion of data, processed in the INTERPOL Information System. CCF has exclusive power to examine and make decisions regarding requests for access to, or correction and/or deletion of, data processed in the INTERPOL Information System. The decision made by CCF is final and binding.[42] Although the decision of CCF may be final, there is a review avenue available for any aggrieved party.[43]

How to remove a person from a red notice? There are basically two ways of removing a red notice.

The first method is to correspond or liaise with the requesting NCB for the reasons for enlisting the person under a red notice. However, there is a risk here. It will mean that the location of the subject of the red notice will be known by the requesting NCB.

Red notices can be challenged if red notices issued are not in compliance with article 83 of INTERPOL's Rules on the Processing of Data. We have discussed the requirements for issuing a red notice in an earlier part of this article. Further, it is also submitted that if the red notice is issued with a collateral purpose bordering on political, military, religious or racial character in contravention of article 3 of the Constitution of INTERPOL, such notice can also be liable to challenge. For example, if an NCB sends a request to the General Secretariat to place a person alleged to have taken "an active part in attempted *coup d'etat*" under a red notice, such notice, if issued can be challenged. This is because the request for such a red notice falls squarely under article 3 as being political in nature. If the red notice is issued contrary to the aims of the establishment of INTERPOL under article 2 of the Constitution of INTERPOL, the validity of such notice can also be challenged. If the subject of the red notice can prove, for example, that the red notice is issued not in conformity with the Universal Declaration of Human Rights ("UDHR"), e.g., breaching a right to a fair trial under articles 6 and 10 of the UDHR, then an argument can be mounted to challenge the red notice.

If there is a change of circumstances involving the legal status of the subject of the red notice, for example, if a warrant of arrest has been cancelled/lapsed or if a sentence or decision by the court of competent jurisdiction has been set aside by a higher court, then an application can be made directly to the requesting NCB to rectify or correct or delete the red notice. Under the rules discussed above, the accuracy of data in INTERPOL's Information System is of paramount importance, and the requesting NCB is

[42] Statute of the Commission for the Control of INTERPOL's Files, arts 3(2)(c) and 38(1).
[43] *Ibid*, art 42.

duty-bound to rectify, correct or delete the red notice from the Information System. The NCB must immediately inform the General Secretariat of any data for the Secretariat's assessment of whether the notice should be withdrawn. For example, if a red notice was issued by the Malaysian NCB at the request of MACC, premised on the conviction and sentencing of the subject to two years' imprisonment by the Sessions Court or High Court, but the subject subsequently escaped or left the jurisdiction and appealed to a higher court which overturned the decision, the subject can inform the Malaysian NCB, through his lawyers to rectify and/or withdraw the red notice owing to a change in circumstances. The NCB must take the necessary steps to withdraw the data and red notice from the Information System, even if there is objection from MACC. This is because the Malaysian NCB has a duty to ensure accuracy and updated information in INTERPOL's Information System.

Another route is to make an application to the CCF for the correction and/or deletion of data or withdrawal of a red notice.[44] After the application is made, the CCF through the Requests Chamber shall examine whether the application is "admissible" or "inadmissible" within a month from such application or request being made by the applicant.[45] The Requests Chamber shall explain the reasons to the applicant if the application is determined to be "inadmissible".[46] If the application has been determined by the Requests Chambers to be "admissible", the Requests Chambers may decide on any appropriate corrective actions to be taken and may also decide on other appropriate remedies.[47] The time frame for a decision on a request for the correction or deletion of data according to article 40(2) of the Statute of the Commission for the Control of INTERPOL's Files is nine months from the date on which the request is declared admissible. The Request Chamber or CCF will reply to the applicant's lawyers of CCF's decision via email only. Once a decision is made by the Request Chamber, the General Secretariat shall implement the decision within one month from the date it receives the written decision.[48] If the data has been corrected or deleted as a result of the decision made by the CCF, the General Secretariat shall then notify the member countries of such correction or deletion.[49] This route is a time-consuming process but is open to the subjects listed under the red notice. The subjects listed under blue or even green notices can also apply such mode if they wish to have their names deleted from such lists.

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44 *Ibid*, art 29.
45 *Ibid*, art 32.
46 *Ibid*, art 32(3).
47 *Ibid*, art 39.
48 *Ibid*, art 41.
49 *Ibid*, art 41(4).

Conclusion

The process of removing or correcting the data of a person placed in an INTERPOL red notice may be long and technical. Further, the applicant may have to show some merit in the application before the request to remove or correct the data can be approved by the CCF. To compound the matter, the decisions of the CCF are not open to any judicial challenges in any courts of competent jurisdiction. Hence, it is important that a high-risk person(s) should consult legal consultants who are familiar with such a process to confirm whether he is indeed placed under a red notice, the basis of placement under a red notice, and thereafter take appropriate steps in removing the same through proper channels.