

Remarks of Mary D. Rodriguez Executive Director of Legal Affairs

Panel on International Cooperation, Fourth Intersessional consultation with multi-stakeholders
Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the
Use of Information and Communications Technologies for Criminal Purposes

6 March 2023 Vienna, 10:00 am
(Attendance by virtual means)

Good morning, my name is Mary Rodriguez and I am the Executive Director of Legal Affairs at INTERPOL. I have been seconded to INTERPOL from the United States Department of Justice (DOJ) since 2016. Prior to INTERPOL, I worked for 15 years at US DOJ's Office of International Affairs (OIA), which serves as the United States' Central Authority under bilateral and multilateral mutual legal assistance treaties. OIA also plays a central role in the international extradition of fugitives.

I am very familiar with the challenges law enforcement, prosecutors, and judicial authorities face when seeking evidence or fugitives from abroad. And I know how difficult it can be to investigate and secure evidence located in foreign countries or in multiple jurisdictions.

The rampant use by criminals of Information and Communications technologies to commit their crimes has only aggravated the stress on traditional channels of international cooperation which were designed in the 19th and 20th centuries. Police, prosecutors, and judges, struggle to navigate new technologies, often relying only on the good will or voluntary cooperation of private companies that hold critical evidence needed to rescue vulnerable victims or to solve crimes that victimize hundreds of people across multiple jurisdictions.

Mutual Legal Assistance and Extradition when dealing with physical world crimes, are already complex given the multitude of different legal regimes, procedures, and burdens of proof that are involved. These fundamentals of international cooperation are even more challenging for investigations and prosecutions that involve the use of information and communications technologies for criminal purposes.

- Preservation of records: Basic beginnings for investigations, such as ensuring the preservation of electronic communications from private service providers which in the case of investigations of the criminal use of information or communications technologies can already be burdensome for investigators and police, especially when some are

prevented by their national laws from making direct requests for preservation to private companies and must begin the multi-layered and bureaucratic process of seeking preservation by activating the mutual legal assistance machinery.

- **BSI:** Requests for basic subscriber information or traffic data- just to get the basics of an investigation to find out where the messages, texts or images came from, most often require not only that the request be sent through formal mutual legal assistance channels, from Central Authority to Central Authority, but also that the request contain sufficient information to meet the evidentiary standards that exist in the country that holds the data.
- **Content:** Requests seeking the content of communications can be even more difficult because some countries require the requesting country to establish very high evidentiary standards which in some cases mean the same judicial process for a search warrant- and what is known in the United States as “probable cause.”
- Often, the problems and complexities are intensified because evidence may exist in multiple jurisdictions and may involve hundreds of victims; such as in Ponzi schemes using crypto currencies or cases of ransomware.

Mutual legal assistance and extradition in this area is difficult- fraught with delays, bureaucracy, complexity, an extremely high volume of cases and insufficient resources.

This convention is a step in the right direction to address these challenges. **INTERPOL can also help and play an important role:**

INTERPOL is an intergovernmental Organization composed of 195 Member States. It is the largest and oldest intergovernmental organization dedicated to ensuring the widest possible mutual assistance and cooperation among police and law enforcement authorities. In fact, INTERPOL is celebrating its Centennial year this year. INTERPOL is the only international/intergovernmental Organization with a global law enforcement membership that offers concrete operational support to law enforcement authorities of its Member States for the prevention, detection, investigation and disruption of the use of Information and Communications Technologies for criminal purposes. It does so, within the limits of the national laws of its Member States and in the Spirit of the Universal Declaration of Human Rights- principles that are fundamental to INTERPOL’s activities.

INTERPOL is not just an intergovernmental organization of 195 Member States- that meets each year to discuss crime trends. It provides concrete support to all of its members through its unique and secure communications network that connects its members in real-time to communicate and cooperate on law enforcement and police matters with the I/24-7 communications system/platform.

INTERPOL also has unique tools to assist in the location, and provisional arrest of fugitives, to **initiate the extradition process**. INTERPOL's notices and diffusions -requests for location and arrest – of fugitives can be sent through the I/24-7 communications platform to one, several, or all INTERPOL members. Its Member States can act or not on these notices in accordance with their national laws.

A recent example from last year is the involves two red notice fugitives wanted by South Korea for orchestrating a global Ponzi scheme using crypto currencies, were arrested in Greece and Italy after embezzling 28 million EUR from 2000 Korean victims. The arrests followed a tip concerning a crypto wallet belonging to one of the fugitives and coordination facilitated by INTERPOL and law enforcement authorities in Greece, Italy, Poland, and Korea.

✓ Mutual Legal Assistance

In the area of mutual legal assistance INTERPOL's 195 Member States rely on the INTERPOL's I/24-7 secure communication platform as one of the main channels for law enforcement communications to enable rapid responses and to minimize loss of critical evidence. INTERPOL can play a key role in the exchange of information, and the transmission of international cooperation requests such as for provisional arrest and Mutual Legal Assistance (MLA).

INTERPOL's secure communication network is an effective tool at the disposal of all 195 member countries allowing the real-time and secure transmission of MLA requests and is an effective alternative in the absence of an MLA treaty or other pre-existing bilateral channels between States Parties. As such, both UNTOC (art. 18 Mutual legal assistance para 13) and UNCAC (art. 46 Mutual legal assistance para 13) recognize and call on the use of INTERPOL's channels for the exchange of MLA requests in urgent circumstances.

✓ e-Extradition and e-MLA initiatives:

Recognizing the critical importance of extradition and mutual legal assistance to advance international law enforcement cooperation, a few years ago INTERPOL launched the e-Extradition and e-MLA initiatives.

- **INTERPOL's e-MLA program**, would provide a direct and secure electronic transmission capability for Central Authorities to make requests for legal assistance and evidence and to receive evidence through this channel as well. INTERPOL would facilitate the availability of an exclusive channel of communication for Central Authorities to enable them to exchange MLA requests and evidence. This capability would capitalize on the existing INTERPOL I-24/7 communications platform that currently connects INTERPOL's 195 Member States.

There is a wide consensus that current mutual legal assistance (MLA) processes are too slow and inefficient among the international community.

Current MLA processes are not fit to deal with the volume of cross-border demands for data that law enforcement agencies need in their investigations and they are far too slow for law enforcement investigations, especially in the digital era.

By connecting Central Authorities to each other with e-MLA, INTERPOL would enhance tremendously their ability to cooperate and to address transnational crime and reduce delays in transmission of requests to one, several or many Central Authorities connected to the system.

INTERPOL developed the e-MLA concept in 2018 and conducted an assessment through several working groups and member countries to make sure the idea was feasible. All participants agreed that such a channel was needed. Challenges with funding have delayed the implementation of the initiative at INTERPOL.

- **INTERPOL's e-Extradition Initiative** - will allow electronic transmission of extradition requests, replicating the traditional process of transmission via the competent authorities (such as Ministries of Justice and Ministries of Foreign Affairs).

INTERPOL's General Assembly represented by its 195 Member States has mandated INTERPOL to facilitate international law enforcement cooperation. This mandate has been recognized in over 70 United Nations General Assembly resolutions and a cooperation agreement between INTERPOL and the UN (dating back to 1997). INTERPOL's importance in facilitating law enforcement cooperation is explicitly acknowledged in the UNTOC and in the UNCAC which both support the use of INTERPOL channels for urgent MLA requests as well as the International Convention for the Suppression of the Financing of Terrorism.

Cooperation between the UN and INTERPOL was strengthened in 2016 with UNGA Resolution 71/19 which called for greater coordination and cooperation particularly concerning counter-terrorism, transnational crime, cybercrime, corruption and financial crime, and environmental crimes. This resolution was reviewed and unanimously adopted as Resolution 73/11 in November 2018; and as Resolution 75/10 in November 2020 with added operational language on cybercrime. The resolution was reviewed and adopted by consensus for a third time in November 2022 (current reference is A/RES/77/20) with new language on new and emerging technologies; cybercrime; financial crime and corruption.

- [UNGA Resolution 77/20 \(2022\)](#) on the cooperation between the UN and INTERPOL encourages in particular:

Para. 17. "Encourages increased cooperation between the United Nations and INTERPOL to assist Member States, upon their request, in effectively using (...) the INTERPOL I-24/7 global police secure communications system, Databases, Notices and diffusions, Criminal information analysis, INTERPOL's operational support"

INTERPOL can help reduce delays, connect Central Authorities, and facilitate and expedite the transmission of MLA requests and digital evidence.

Please review our written contribution that includes comments and suggestions for the second consolidated negotiating document.

Thank you.

App: INTERPOL written contribution on the second part of the Consolidated Negotiating Document in advance of the 5th formal session of the AHC



20230228_INTERPOL
Written Submission A