



LAW opinion

Are all INTERPOL activities acceptable?

SHAMSUDDIN CHOUDHURY MANIK

ANSWER to the above question lies in the undistorted revelation of the status of the body.

Contrary to general perception, the International Criminal Police Organisation (INTERPOL) is neither a creation nor an agency of the United Nations. It is not even a creation of any international Convention or treaty. Although in 1971 it received United Nation's Consultative status, like Amnesty International, Jurists International and many other international NGOs, INTERPOL is also nothing more than an international NGO.

This is to be appreciated that the United Nations Organisation can not have any police force because maintenance of such a force would be in derogation to that provision of its Charter which ordains that the UNO shall unequivocally respect the sovereignty of its members. No sovereign country would tolerate transgression by an alien police force in her domestic matters.

While INTERPOL has, as of today, 186 members and its role in tracking and tracing cross country fugitives can not be undervalued, and it stands cited as an information and request conduit in some international instruments like the Statute of the International Tribunal for the Former Yugoslavia, the Rome Statute of the International Criminal Court, International Convention for the Suppression of the Financing of Terrorism, UN Model Treaty on Extradition, Commonwealth Scheme for the Rendition of Fugitive Offenders, it is essential for all concerned not to be oblivious of the fact that INTERPOL, being a purely private association of the police forces of the world, does not stand on any statutory basis in Bangladesh or other countries and hence it operates in the same manner that a private detective body can act without flouting the laws of the host country. Contrary, again, to bizarre media publication, as a non statutory NGO INTERPOL can not have any power to issue any warrant of arrest and its red coloured notice, by which it intimates its members about high profile fugitives, is frequently designated as 'Red Warrant' by ill informed people.

Its creation and progression

In 1923 Dr. Johannes Schobber, the then head of Austrian police convened an informal meeting of some police forces of the world. The congregation was attended by some 20 members and it was that gathering which was the progenitor of an association of the attending forces. The association assumed the name 'International Criminal Police Commission' and set up its headquarter in Vienna. In 1956, as the dust of the aftermath of the war settled down, the organisation moved to Leon in France, adopted its present name and a new



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constitution, devoid of Conventional or Treaty basis. Over the period its membership proliferated, it received various recognitions, it expanded and modernised its modus operandi, but it has, nevertheless, remained a private body, an international NGO to be precise.

Its prime role

As a private, non governmental body its main task is exchange of information, which job, because of its global web-net, it performs quite proficiently. It does, as it can without breaking the law of the host country, keep track, follow the movement of and gather information about cross country fugitives and these information quite often pave ways for extradition proceedings. Now a days it also maintains a data bank storing DNA profile of international criminals.

Its constitution and obligation to respect the laws of the host country

As no country would allow a foreign body

to interfere in her internal matters, Interpol in Article 2 provides that it would act within the limits of laws existing in different countries and in the spirit of the Universal Declaration of Human Rights.

Article 30 stipulates that the Secretary General and the staff shall neither solicit nor accept instruction from any government or authority outside the organisation.

Evidence of advent of diametrical trend in Bangladesh

I was alarmed and, indeed pensive, as I came across a case recently. Although it may look like a single isolated case, I sensed rat in it because it may very well herald the beginning of a new trend by INTERPOL personnel in Bangladesh to flout our laws and disregard our sovereignty.

The history of the case, in nutshell, is that a Bangladeshi citizen, who established himself in business in Abu Dhabi, was sued by the Abu Dhabi branch of Janata Bank in an Abudhabi Court claiming recovery of a loaned amount. It was a

civil case and the court decreed the suit. The decree was, obviously a civil one. As a recent move the court, at the instance of Janata Bank, issued a warrant of arrest for the apprehension of the judgment debtor in order to retrieve the decreed amount. In legal jargon the warrant would be described as a civil warrant as it stemmed from a civil decree.

Janata bank procured a copy of the warrant and the bank's managing director addressed a request to Bangladesh police with a request, obviously out of ignorance about the status and the function of INTERPOL, and the relevant laws of Bangladesh, that the INTERPOL representative be asked to round up the judgment debtor on the strength of the Abu Dhabi warrant. Surprisingly enough, an Assistant Inspector General of the police, identifying himself as the National Central Bureau (NCB) of the INTERPOL in Bangladesh and purportedly acting in that capacity, wasted no time to direct his subordinates to arrest the judgment debtor without giving heed to the fact that no law of Bangladesh empowers him or anyone else to apprehend a person, decreed as a judgment debtor by an overseas court in a civil suit.

Police power of arrest on the strength of a foreign warrant

The following information are worthy of Reckoning-

Firstly, as stated above, INTERPOL's representative in Bangladesh, in that capacity has no power whatsoever even to stop a person, let alone arresting him as it would be tantamount to breaking Bangladeshi law and encroachment upon her sovereignty. Indeed the perpetrator would be guilty of the offence of unlawful confinement in such an event. Secondly a Bangladeshi police can arrest an individual if the latter is convicted or accused of or is suspected of an offence in Bangladesh or if a warrant of arrest issued by a Bangladeshi Court is in subsistence against him.

Bangladeshi police, not INTERPOL, can also arrest a person under the provisions of our Extradition Act 1974, if and only if, the person concerned has been convicted by a foreign court of an extraditable criminal offence (some serious criminal offences listed in our Extradition Act 1974) or if he stands accused of such a criminal offence. In other words to attract and engage Extradition Act, under which alone a person can be arrested and surrendered to a foreign country, the conviction or the accusation must be of an extraditable criminal offence. Civil decree or claim has no place in extradition law and there is no law under which a person proclaimed judgment debtor by a foreign court can be arrested or extradited, whatever the amount of claim may be. Thirdly, there has to be request for extradition through diplomatic channel and there are also host of other criteria, such as

extradition treaty or dispensation with treaty requirement, which are to be satisfied before the provisions can be invoked. So ex-facie the said Assistant IG's order was, whether he acted as the INTERPOL's man or as a Bangladeshi police personnel, from top to toe an illegal order because no law of the land authorises or empowers him to do so.

The enigmatic question

In the backdrop of the fact that the order for arresting the person concerned was totally illegal and devoid of powers, the question that would petrify any conscious person is what the police would have done in the event of their success in executing the unlawful arrest order.

Since the judgment debtor is not convicted or accused of any offence in Bangladesh or abroad, the arrest would have been illegal and without legal authority and hence, he could not be produced before a magistrate in Bangladesh in accordance with the provisions of our criminal procedural law. As the arrest would have been unlawful lawful, the judgment debtor could file a habeas corpus application in the Hon'ble High

Court and the AIG concerned must have been aware of it and yet he proceeded with the illegal design. The core question is what was the clandestine agenda and what goal could the author of the order achieve if he could implement his vacuous and unlawful order in the context of the above stated scenario.

The possible answer is that the police officer concerned, the INTERPOL's representative in Dhaka, would have put the judgment debtor on board an Abu Dhabi bound air in fast tracking manner in order to torpedo the chances of a habeas corpus application and that would have been the beginning of a tragic episode for our nation. If a citizen can be forced out of the country illegally, without legal sanction, surely the foundation of the Rule of Law would be infernally jettisoned. It is, therefore, imperative on the part of the authorities to act now, to thwart strong handedly, such horrendous designs which are aimed to violate our sovereignty, erode the Rule of Law we adore and cherish as our most precious endowment.

It is also about time that the executive committee of the INTERPOL acts to prevent such high handed and unscrupulous occurrences. After all INTERPOL, for its commendable services, has succeeded to portray itself as a revered body. Its image as such should not be allowed to be tarnished by loathsome acts of a few members who show insolent indifference to the laws of the host country.

The author is a Barrister, a former Judge and Presently an Advocate, Supreme Court and as a former Director of the UK's official immigration watchdog body, specialises in extradition law.

RIGHTS monitor



Business travellers against trafficking

A campaign to help business travellers join the fight against human trafficking was recently launched by non-profit Stop the Traffik. In parallel to raising awareness on the issue, the initiative provides business travellers with a means to report any exploitation incident they may have witnessed.

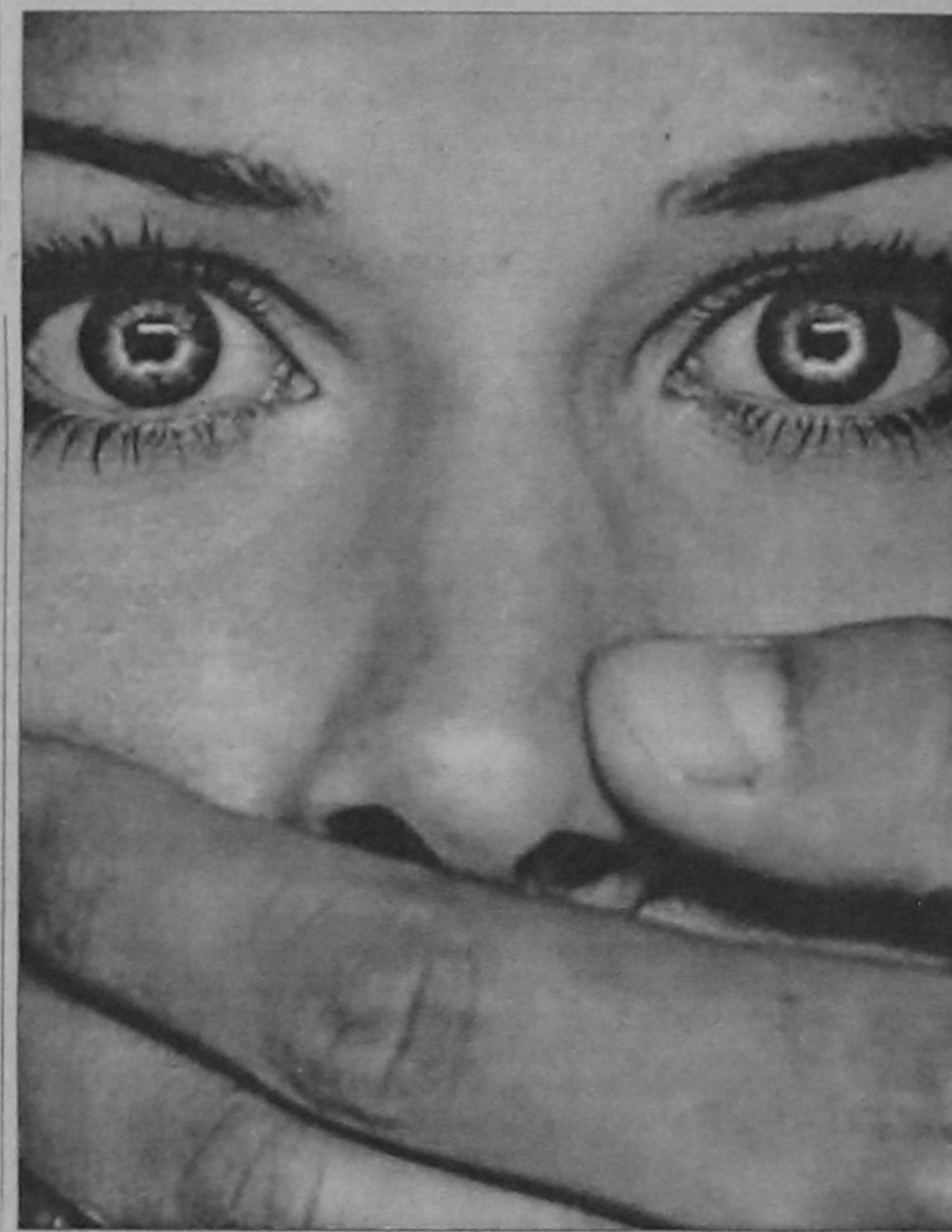
"We know that trafficking victims are offered to business travellers and we know that the latter are often horrified by what they see but don't take action because they don't want to get involved with the local police or don't have the time," says Steve Chalke, founder of Stop the Traffik. "With the launch of our website we are offering business people an easy way to report incidents and to change the situation." The website - www.businesstravellers.org - informs business travellers on what human trafficking is, how they can recognize it and how they can act against it. Moreover, it offers a low-key, anonymous way of reporting suspicions or incidents of exploitation, which the NGO then follows-up on. A blog features updates and news items on human trafficking worldwide.

Business travel and tourism are not responsible for trafficking, but the presence of foreigners in large numbers does create opportunities for organised crime to try to capitalise on the influx of money that business travellers bring. In the majority of cases, women and children are trafficked for business travellers to use as prostitutes. The campaign was launched at the European Union's Parliament in Brussels, Belgium, with the endorsement of over 200 European Parliamentarians. The initiative is administered from Belgium and the US and in the near future in South Africa.

The initiative is already achieving results and generating a positive response from the business community. In Spain, shortly after the campaign was featured on national television, a tour operator contacted the NGO with details of business trips abroad that were regularly arranging visits to under-age trafficked prostitutes. Stop the Traffik referred the matter to the police. In another incident, a business traveller who came into contact with a trafficked woman forced into prostitution in the Middle East, rescued her and reported the matter to the local police. The woman was arrested and deported back to her country. The man contacted the campaign and Stop the Traffik was able to connect the woman to assistance services in her country.

"Everyone, in whatever walk of life, should be able to play a part in the fight against human trafficking. Business travellers can either fuel the problem, or they can become part of the force to end it," notes Chalke. "We hope this campaign will also encourage hotels and other tourism facilities to adopt ethical codes of conduct on exploitation."

Source: UNODC.



BUSINESS TRAVELLERS INSIDE

FOR YOUR information

PROCEDURAL JUSTICE IN THE SUPREME COURT

A concern for new lawyers

BARRISTER MD. ABDUL HALIM

Working on behalf of a Respondent in a Writ Matter

On behalf of the respondent or respondents you have two routes to take steps in a writ matter:

1. Filing a CMP (Civil Miscellaneous Petition for Leave to Appeal) or CP (Civil Petition for Leave to Appeal) to the Chamber Judge of the Appellate Division with a prayer to stay the direction, rule, status quo etc. This is because you have the right to file appeal against any order or decision of the High Court Division within 30 days to the Appellate Division.
2. Filing an application for vacating the order of stay/direction/status quo and also filing an affidavit-in-opposition in the same court which issued rule and gave direction.

The First Route: In the Appellate Division

This route is exceptional and I better discuss it on another occasion. My main focus would be on the second route.

The Second Route: Steps to be taken in the High Court Division

This second route is usual and should be a regular course of action. In other words, to prepare, file and then move an application for vacating the order of direction/stay/status quo granted by the court, following steps are to be

followed:

(i) Filing Power: To vacate an order of direction or stay you have to file the application/petition in the same court which issued the rule and stay/direction. The first thing you need for this is a complete power signed by the respondent/respondents on whose behalf you will work. Then you need to file the power in the section.

(ii) Drafting: Now you need to prepare four copies of application exactly in the same manner as a writ application. However, a very important thing is swearing affidavit. If you are working for more than one respondent, all the respondents need to sign and swear affidavits. However, this can be done by any one of the respondents if that respondent is given a letter of authority by other respondents (letter of authority and power are not the same thing). Remember, if this is the case, then you need to annex the relevant letter of authority with the application so that the Commissioner of Affidavit is satisfied that the respondent swearing and signing affidavit has authority to do the same on behalf of the other respondents.

(iii) The Stage of Affidavit: Like the main petition all affidavits-in-opposition will have to be verified by the Commissioner of Affidavit and the same hassle you will be facing there as



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mentioned in my preceding article.

(iv) Filing in the Section: Once drafting of application for vacating stay is complete, you pass through all stages of a writ petition with regard to its filing. However, remember that even you have filed the application in the

section and got a number, still the main task remains to be done. After filing in the section, the section will give you back the original copy of the application. Now you need to serve a notice to the Petitioner's advocate. Until you do this, you cannot file the application in

the court.

(v) Serving a notice copy to the Petitioner's Lawyer: Now you have to serve the copy of the application to the Petitioner's lawyer. How do you do this? You or your clerk will take both the original copy and notice copy to the advocate of the petitioner or his clerk. The advocate or his clerk will write on the top sheet of the original copy, e.g. "received dated 24.04.2008".

(vi) Filing in the Court: Once this is done, you can file the application in the open court. You do this during mention hour.

(vii) Tadbir: You will see that the irony of procedural justice in the Supreme Court will start here and most of us (I mean advocates, senior or junior) gradually become very competent in exercising these bad practices. Even if the court accepts your application to come up in the list, you will see that it is not on the list. But without bringing it on to the list you cannot get it heard and unless it is heard in the open court you cannot expect to get any substantive justice. When you ask the Bench Officers the reason of it, they will simply state that "some tadbir will bring it on to the list". You will see this very open secret affair in every Bench. Thus if you can manage them, only then you will see that your matter is in the list; otherwise it may take ages to

appear in the list.

(viii) Tadbir Again: Even if you have managed or persuaded the Bench Officers to bring it on to the list, still you may see that your application is at the very bottom of the long list and it remains every day at the very bottom of the list. In such a case it may not be possible for you to move the matter. What can you do? Give some handsome amount of baksis to those Bench Officers and you will see next day that your matter is on top of the list and now you wait and when your item is called, get it heard. There is another caution for you. Even if your matter is on top of the list, still the file may not be available and in that case your application will not be heard. Not only that, if there is any printing mistake like wrong year name or wrong party name, then file will not be available and you cannot get your application heard on the day and more importantly, this sort of mistake may be deliberately done by the Bench Officers. Remember, it is your responsibility to see if there is any printing mistake or if files for your application are available or not by asking the bench officers. You must do it before the court starts in the morning. If you find that the file is not available, make a search in the section with your clerk. Give some baksis to the people in the section and your file will come to the court.

(ix) Tadbir fails and mentioning in the Court: It might happen that even if you have given tips/baksis to bench officers, still you see that your application remains at the bottom of the list. This may be because your opponent has given yet bigger amount of baksis to the bench officers and they are not acting on your side. It might also happen, and don't be surprised, that the file of your application cannot be found in the section; it has just disappeared; cannot be found either in the section or in the court. How could this happen? This happens because of giving bribes to those bench officers or section people. They will do it deliberately and there would no point to wonder about. If your opponent gives some money to bench officers or section people, they will do this so that you cannot get the application heard and stay vacated. It is because of these bad practices done by bench officers and/or section people at the instigation of some lawyers and moneyed clients that you cannot keep commitment to your client; you cannot give justice to your clients; you and your clients will be thrown into endless sufferings. It is because of these bad practices that justice in the Supreme Court has been a very costly affair; justice is not meant for the poor.

The writer practices in the Supreme Court.