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Wither Sovereignty

Executive Order Amended to Immunize INTERPOL In America - Is The ICC Next?

By Steve Schippert, Clyde Middleton

Last Thursday, December 17, 2009, The White House released an Executive Order "[Amending Executive Order 12425](#)." It grants INTERPOL (International Criminal Police Organization) a new level of full diplomatic immunity afforded to foreign embassies and select other "International Organizations" as set forth in the United States International Organizations Immunities Act of 1945.

By removing language from President Reagan's 1983 Executive Order 12425, this international law enforcement body now operates - *now operates* - on American soil beyond the reach of our own top law enforcement arm, the FBI, and is immune from Freedom Of Information Act (FOIA) requests.

For Immediate Release December 17, 2009
Executive Order -- Amending Executive Order 12425

EXECUTIVE ORDER

 AMENDING EXECUTIVE ORDER 12425 DESIGNATING INTERPOL
 AS A PUBLIC INTERNATIONAL ORGANIZATION ENTITLED TO
 ENJOY CERTAIN PRIVILEGES, EXEMPTIONS, AND IMMUNITIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and in order to extend the appropriate privileges, exemptions, and immunities to the International Criminal Police Organization (INTERPOL), it is hereby ordered that Executive Order 12425 of June 16, 1983, as amended, is further amended by deleting from the first sentence the words "except those provided by Section 2©, Section 3, Section 4, Section 5, and Section 6 of that Act" and the semicolon that immediately precedes them.

BARACK OBAMA

THE WHITE HOUSE,
 December 16, 2009.

After initial review and discussions between the writers of this analysis, [the context was spelled out plainly](#).

Through EO 12425, President Reagan extended to INTERPOL recognition as an "International Organization." In short, the privileges and immunities afforded foreign diplomats was extended to INTERPOL. Two sets of important privileges and immunities were withheld: Section 2© and the remaining sections cited (all of which deal with differing taxes).

And then comes December 17, 2009, and President Obama. The exemptions in EO 12425 were removed.

Section 2c of the United States International Organizations Immunities Act is the crucial piece.

Property and assets of international organizations, wherever located and by whomsoever held, **shall be immune from search**, unless such immunity be expressly waived, **and from confiscation**. The **archives** of international organizations **shall be inviolable**. (Emphasis added.)

Inviolable archives means INTERPOL records are beyond US citizens' Freedom of Information Act requests and from American legal or investigative discovery ("unless such immunity be expressly waived.")

Property and assets being immune from search and confiscation means precisely that. Wherever they may be in the United States. This could conceivably include human assets - Americans arrested on our soil by INTERPOL officers.

Context: International Criminal Court

The importance of this last crucial point cannot be understated, because this immunity and protection - and elevation above the US Constitution - afforded INTERPOL is likely a precursor to the White House subjecting the United States under the jurisdiction of the International Criminal Court (ICC). INTERPOL provides a significant enforcement function for the ICC, just as our FBI provides a significant function for our Department of Justice.

We direct the American public to paragraph 28 of the ICC's [Proposed Programme Budget for 2010](#) (PDF).

29. Additionally, **the Court will continue to seek the cooperation of States not party to the Rome Statute** and to develop its relationships with regional organizations such as the Organization of American States (OAS), the Arab League (AL), the African Union (AU), the Organization of the Islamic Conference (OIC), ASEAN and CARICOM. We will also continue to engage with subregional and thematic organizations, such as SADC and ECOWAS, and the Commonwealth Secretariat and the OIF. This will be done through high level visits, briefings and, as appropriate, relationship agreements. **Work will also be carried out with sectoral organizations such as IDLO and INTERPOL, to increase efficiency.**

The United States is not a party to the Rome Statute - the UN treaty that established the International Criminal Court. (See: [Rome Statute of the International Criminal Court](#))

President George W. Bush rejected subjecting the United States to the jurisdiction of the ICC and removed the United States as a signatory. President Bill Clinton had previously signed the Rome Statute during his presidency. Two critical matters are at play. One is an overall matter of sovereignty and the concept of the primacy of American law above those of the rest of the world. But more recently a more over-riding concern principally has been the potential - if not likely - specter of subjecting our Armed Forces to a hostile international body seeking war crimes prosecutions during the execution of an unpopular war.

President Bush in fact went so far as to gain agreement from nations that they would expressly not detain or hand over to the ICC members of the United States armed forces. The fear of a symbolic ICC circus trial as a form of international political protest to American military actions in Iraq and elsewhere was real and palpable.

President Obama's words have been carefully chosen when directly regarding the ICC. While President Bush outright rejected subjugating American armed forces to any international court as a matter of policy, President Obama said in his 2008 presidential campaign that it is merely "premature to commit" to signing America on.

However, in a [Foreign Policy in Focus round-table](#) in 2008, the host group cited his former foreign policy advisor, Samantha Power. She essentially laid down what can be viewed as now-President Obama's roadmap to America rejoining the ICC. His principal objections are not explained as those of sovereignty, but rather of image and perception.

Obama's former foreign policy advisor, Samantha Power, said in an early March (2008) interview with *The Irish Times* that many things need to happen before Obama could think about signing the Rome Treaty.

"Until we've closed Guantánamo, gotten out of Iraq responsibly, renounced torture and rendition, shown a different face for America, American membership of the ICC is going to make countries around the world think the ICC is a tool of American hegemony.

The detention center at Guantánamo Bay is nearing its closure and an alternate continental American site for terrorist detention has been selected in Illinois. The time line for Iraq withdrawal has been set. And President Obama has given an abundance of international speeches intended to "show a different face for America." He has in fact been roundly criticized domestically for the routinely apologetic and critical nature of these speeches.

President Obama has not rejected the concept of ICC jurisdiction over US citizens and service members. He has avoided any direct reference to this while offering praise for the ICC for conducting its trials so far "in America's interests." The door thus remains wide open to the skeptical observer.

CONCLUSIONS

In light of what we know and can observe, it is our logical conclusion that President Obama's Executive Order amending President Ronald Reagan's 1983 EO 12425 and placing INTERPOL above the United States Constitution and beyond the legal reach of our own top law enforcement is a precursor to more damaging moves.

The pre-requisite conditions regarding the Iraq withdrawal and the Guantanamo Bay terrorist detention facility closure will continue their course. Meanwhile, the next move from President Obama is likely an attempt to dissolve the agreements made between President Bush and other states preventing them from turning over American military forces to the ICC (via INTERPOL) for war crimes or any other prosecutions.

When the paths on the road map converge - Iraq withdrawal, Guantánamo closure, perceived American image improved internationally, and an empowered INTERPOL in the United States - it is probable that President Barack Obama will once again make America a signatory to the International Criminal Court. It will be a move that surrenders American sovereignty to an international body whose INTERPOL enforcement arm has already been elevated above the Constitution and American domestic law enforcement.

For an added and disturbing wrinkle, INTERPOL's central operations office in the United States is within our own Justice Department offices. They are American law enforcement officers working under the aegis of INTERPOL within our own Justice Department. That they now operate with full diplomatic immunity and with "inviolable archives" from within our own buildings should send red flags soaring into the clouds.

This is the disturbing context for President Obama's quiet release of an amended Executive Order 12425. American sovereignty hangs in the balance if these actions are not prevented through public outcry and political pressure. Some Americans are paying attention, as can be seen from some of the earliest recognitions of this troubling development [here](#), [here](#) and [here](#). But the discussion must extend well beyond the Internet and [social media](#).

Ultimately, a detailed verbal explanation is due the American public from the President of the United States detailing why an international law enforcement arm assisting a court we are not a signatory to has been elevated above our Constitution upon our soil.

By Steve Schippert on December 23, 2009 3:00 AM

Notes

[The White House: Executive Order - Amending Executive Order 12425](#)

[Patriot Room: Obama exempts INTERPOL from search and seizure on US lands](#)

[ICC: Proposed Programme Budget for 2010 \(PDF\)](#)

[UN Rome Statute of the International Criminal Court](#)

[Foreign Policy in Focus: Global Cooperation: The Candidates Speak](#)

[Pierre Legrand's Pink Flamingo Bar: Executive Order 12425 What The Hell Is This? What Did Obama Just Do?](#)

[Brutally Honest: Did Obama give INTERPOL more power last week?](#)

[NoisyRoom.net: Of Executive Orders and Trojan Horses](#)

[Twitter / Steve Schippert: Can someone please explain ...](#)