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SYMPOSIUM ON INTERPOL AT 100: IMPROVING THE ORGANIZATION'S LEGAL FRAMEWORK

INTERPOL AS AN INTERNATIONAL ORGANIZATION

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Introduction

Whatever may have been thought in the past, including within the United Nations (UN), there is now no reason to doubt the status of the International Criminal Police Organization (INTERPOL) as an international organization.[1] That is important for many reasons, including its status under international and national law, which is fundamental for its dealings with states and other international organizations, not least the UN, and for immunities and other international privileges.

Some rather technical questions concerning INTERPOL's nature and the terms of its constitution seem to have puzzled observers over the years.[2] Was INTERPOL established by international agreement? Who are its members? How are they represented within the Organization? How does the United Nations regard INTERPOL? The centenary conference that gave rise to the present symposium was an opportunity to address such matters and take stock of the legal foundations of INTERPOL, hopefully laying to rest some lingering doubts. The conference was timely, given the greater clarity that nowadays exists as to international institutional law generally and the greater understanding of INTERPOL's role and structure, among both its members and others working with and within INTERPOL, as well as at the UN. An important development since the Lyon conference is the move toward a General Agreement on the Privileges and Immunities of ICPO-INTERPOL, discussed in the contribution of Benjamin Katzenberg and Ananya Kuthiala.

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[1] According to its 1956 Constitution, the organization is formally referred to as the International Criminal Police Organization—INTERPOL. *See* Constitution of the ICPO–INTERPOL, Art. 1 (1956). From its establishment in 1923 to the entry into force of its 1956 Constitution, it was known as the International Criminal Police Commission (ICPC).

[2] For an account of some of the debates, see RUTSEL SILVESTRE J. MARTHA, COURTNEY GRAFTON & STEPHEN BAILEY, THE LEGAL FOUNDATIONS OF INTERPOL 1–4, 9–175 (2d ed. 2020). In the foreword to the book, Judge Gaja writes that "[w]hat seems to me most significant is the way the Organisation operates when it acts in the international community. INTERPOL does not generally conduct itself as a common organ of its Member States, but rather as an independent entity."

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INTERPOL as an International Organization

There is no single definition of "international organization" for the purposes of international law,[3] or indeed of terms such as "intergovernmental organization"[4] or "public international organization."[5] The UN International Law Commission (ILC), for example, has adopted several definitions of "international organization," for various purposes.[6] A recent and rather elaborate example refers to "an entity possessing its own international legal personality, established by a treaty or other instrument governed by international law, that may include as members, in addition to States, other entities, and has at least one organ capable of expressing a will distinct from that of its members."[7]

Past uncertainties as to the status of INTERPOL were hardly surprising since in 1923 the law of international organizations was undeveloped; indeed it remained rudimentary until some years after 1945.[8] And some of the mysteries may have resulted from nothing more than strange drafting in INTERPOL's constituent instruments or the difficulty, in the past, of accessing first-hand information about the organization.

Changing attitudes within the UN between 1947 and 1982 and thereafter, together with the terms of the current INTERPOL Constitution, adopted in 1956, have largely settled the debate over the status of INTERPOL in international law. What is perhaps surprising is that doubts continued, especially among certain writers, even after the UN Office of Legal Affairs opined in 1982, following an in-depth analysis, "that the present constitutional provisions of INTERPOL fully justify the decisions of the Economic and Social Council to consider INTERPOL as an intergovernmental, rather than a non-governmental, organization."[9]

A question frequently raised in the past was whether INTERPOL's 1956 Constitution was an international agreement governed by international law.[10] It is, and it is regarded as such by INTERPOL's members and General Secretariat. But this is not the central question, for there is no requirement in international law that an international organization be established by treaty. The central question is whether states have agreed to establish an international organization, and while this is most often done by treaty, it can come about in other ways.[11]

There no longer seems to be serious doubt over INTERPOL's status as an intergovernmental organization. This is so among states and within the UN, and also among writers—though some apparently find past legal

[3] Henry G. Schermers & Niels M. Blokker, International Institutional Law, §§ 29–47 (7th revised ed. 2025).

[4] The term found in the Vienna Conventions on the Law of Treaties of 1969 and 1986, and in certain other texts emerging from the work of the International Law Commission.

[5] *See, e.g.*, Statute of the International Court of Justice, Art. 34.3.

[6] Schermers & Blokker, *supra* note 3, § 29A.

[7] Report of the International Law Commission on the Work of Its Seventy-Fourth Session, UN GAOR, 78th Sess., Supp. No. 10, 40–48, UN Doc. A/78/10 (2023). The reference to being "capable of expressing a will distinct from that of its members," which is also found in some writings, does not seem to add a great deal to the accepted notions of international legal personality or "establishment under international law." *See* Schermers & Blokker, *supra* note 3, § 44–44A, 45.

[8] Henry G. Schermers, *The Birth and Development of International Institutional Law*, 1 Int'l Org. L. Rev. 5–8 (2004).

[9] UN Secretary-General, Letter to the Secretary-General of the International Criminal Police Organization (INTERPOL), Annex, Status of INTERPOL with the United Nations (Dec. 14, 1982), *reprinted in* 1982 UN Jurid. Y.B. 179, 179–80.

[10] Constitution of the ICPO–INTERPOL, *supra* note 1. The other key document is INTERPOL's General Regulations, I/GREG/GA/1956 (2024).

[11] As the UN Office of Legal Affairs said in 1982, "[e]ven if its constitution does not qualify as a formal international treaty, an international organization may well be called intergovernmental as a result of the role which its constitution ascribes to Governments with regard to such matters as membership, representation, financing etc." UN Secretary-General, *supra* note 9. *See* Martha, Grafton & Bailey, *supra* note 2, Ch. 5; and, more widely, Schermers & Blokker, *supra* note 3, §§ 34–43.

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questions sufficiently intriguing to maintain critical engagement.[12] The INTERPOL General Secretariat has a clear position:

> A number of scholars have raised doubts about INTERPOL's legal status. However, there should be little doubt today that INTERPOL is an independent international organization and that its Constitution is a product of an agreement establishing an international organization under international law.[13]

The current position has evolved over the last sixty years, and it is now clear, as is demonstrated by the practice of states, of the UN, and of other international organizations. In 1949, at a time when UN practice on such matters was not well-defined, INTERPOL was granted consultative status as a non-governmental organization by the Economic and Social Council (ECOSOC), the UN's principal organ responsible for economic and social matters, acting under Article 71 of the UN Charter. That decision was based on the view that INTERPOL's membership consisted not of states but of police bodies. Yet whether the police are organs of the state for the purposes of international law is not determined by internal law and arrangements, which vary greatly, mostly for constitutional and historical reasons. Whatever their position within the internal legal order, persons and entities engaged in law enforcement, including the police, exercise elements of governmental authority. Because they exercise governmental or sovereign authority, their conduct is that of the state for the purposes of international law,[14] for example, as regards state responsibility[15] and state immunity.[16] There is no reason why law enforcement agencies cannot represent states within an international organization.

Various policy concerns may have led to questions about the status of INTERPOL under international law. On a policy level, these seem to have included a desire to protect law enforcement activities from external (governmental/diplomatic) political interference. This is consistent with the aim of securing the independence and neutrality of INTERPOL, which are among its foundational principles. But it is far from obvious that this would have been seriously affected by the status of INTERPOL.

In 1975, ECOSOC changed its position and designated INTERPOL an intergovernmental organization in accordance with ECOSOC's rules of procedure. The legal correctness of ECOSOC's decision was supported by Reuter's 1980 advice,[17] and, most importantly, it was upheld by the UN Office of Legal Affairs' 1982 legal opinion.[18]

[12] *See* SCHERMERS & BLOKKER, *supra* note 3, § 36. Unlike earlier entries in the *Max Planck Encyclopedia of Public International Law*, and its predecessor, the *Encyclopedia of Public International Law*, the current entry on INTERPOL is somewhat more positive in this regard, considering that "Today Interpol is recognized as an international organization *sui generis* .... Interpol has transformed into a *de facto* international organization." There would seem to be no justification for the Latin qualifications. Sabine Gless, *INTERPOL*, MAX PLANCK ENCYC. PUB. INT'L L., para. 35 (2019).

[13] REPOSITORY OF PRACTICE, APPLICATION OF ARTICLES 2 & 3 OF INTERPOL'S CONSTITUTION IN THE CONTEXT OF PROCESSING OF DATA VIA INTERPOL'S INFORMATION SYSTEM 2 n. 5 (3d ed. 2024).

[14] Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, UN Doc. A/56/10 (2001), Y.B. INT'L L. COMM'N, 2(2), 40–43 (2001).

[15] *Id.* at 43 ("While the powers of an entity and its relation to other bodies under internal law will be relevant to its classification as an "organ," internal law will not itself perform the task of classification .... In [some legal systems], the police have a special status, independent of the executive; this cannot mean that for international law purposes they are not organs of the State.").

[16] *See* Propend Finance Pty Ltd v. Sing, [1997] 111 ILR 611, 617 (Eng. & Wales C.A.).

[17] P. Reuter, *Problèmes juridiques relatifs au statut de l'OIPC-Interpol*, *reproduced in* INTERPOL–LES TEXTES FONDAMENTAUX DE L'ORGANISATION INTERNATIONALE DE POLICE CRIMINELLE, 45–67 (2001).

[18] UN Secretary-General, *supra* note 9.

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In 1996, the UN General Assembly granted INTERPOL observer status,[19] less than two years after it had decided that such status would henceforth be granted only to states and intergovernmental organizations.[20]

In 1982, France (INTERPOL's host state) entered into a headquarters agreement, explicitly recognizing INTERPOL's intergovernmental character.[21] On June 16, 1983, the United States president designated INTERPOL an international organization entitled to privileges and immunities under the U.S. International Organizations Act.[22] In 2023, the United Kingdom (UK) entered into an Agreement with INTERPOL, which states in its preamble "that ICPO-INTERPOL is an international organization governed by public international law."[23] The Agreement accords INTERPOL privileges and immunities under powers which are conferred in UK law by the UK's International Organisations Act 1968.[24]

Who May Be Members of INTERPOL and Who Represents the Members?

These two questions were sometimes discussed together, leading to some confusion. The wording of the 1956 Constitution may be to blame. The confusion begins with Article 4 of the Constitution, which reads: "Any country may delegate as a Member of the Organisation any official police body whose functions come within the framework of the activities of the Organisation."

As of October 2025, INTERPOL has 196 member countries.[25] The membership comprises 190 states members of the UN,[26] two entities with UN observer state status,[27] and the four constituent parts of the Kingdom of The Netherlands.[28] Thus, despite the term "country" in Article 4 (a usage that is in fact not consistent throughout the Constitution), the overwhelming majority of members are states.

The fact that the Constitution did not refer to member states but to member countries led to suggestions that INTERPOL was not an intergovernmental organization.[29] Yet, "country" is in fact a word that is sometimes

[19] GA Res. 51/1 (Oct. 15, 1996) (adopted without a vote).

[20] GA Dec. 49/426, OXIO 368 (Dec. 9, 1994).

[21] The current headquarters agreement with France was signed on April 14 and 24, 2008, and entered into force on September 1, 2009, replacing that of November 3, 1982. The 2008 agreement was amended by an exchange of notes in 2016.

[22] Exec. Or. No. 12,425, 48 Fed. Reg. 28,069 (June 16, 1983).

[23] Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Criminal Police Organization – INTERPOL on the Privileges and Immunities of INTERPOL on the Territory of the United Kingdom of Great Britain, signed in London on Feb. 2, 2023 and at Lyon on Feb. 20, 2023, *entered into force* August 31, 2023: UK Treaty Series No. 36 (2024).

[24] With a very limited number of specific exceptions (not including INTERPOL), those legislative powers apply only in respect of international organizations of which the United Kingdom is a member: see HALSBURY'S LAWS OF ENGLAND, VOL. 61, para. 299 (5th ed. 2018). Article 3 of the International Criminal Police Organisation (Immunities and Privileges) Order 2023 (SI 2021/873) provides that "The International Criminal Police Organisation is an organisation of which the United Kingdom and other sovereign Powers are members." The Explanatory Memorandum to the draft of the Order submitted to Parliament includes the following: "The INTERNATIONAL CRIMINAL POLICE ORGANISATION – INTERPOL ("INTERPOL") is a global law enforcement organisation, whose objective is to facilitate transnational police cooperation in the fight against crime. The UK is a member of INTERPOL, and in order to enable increased collaboration with the organisation, it is necessary to grant INTERPOL a set of privileges and immunities covering their activities in the UK."

[25] A useful account of membership issues may be found in: Int'l Criminal Police Organization [INTERPOL], *INTERPOL Membership – Historical Perspective* , Doc. GA-2017-86-REP-01 (2017).

[26] All UN Member states except the Kingdom of the Netherlands, the People's Democratic Republic of Korea, and Tuvalu.

[27] Vatican City, State of Palestine.

[28] Aruba, Curaçao, Sint Maarten, and the Netherlands.

[29] For details of the debates, see MARTHA, GRAFTON & BAILEY, *supra* note 2, Ch. 4.

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used interchangeably with "state," though it has the advantage of potentially embracing other territorial entities such as overseas territories, and as such was appropriate in the case of INTERPOL in particular given the participation of the four Dutch countries and, until its reincorporation into Germany from January 1, 1957, the post-World War II Saar Territory.

As for representation, the Assembly is "the body of supreme authority" in INTERPOL. It is "composed of delegates appointed by the Members of the Organisation."[30] The delegation head is "appointed by the competent governmental authority."[31] Members should attempt to include in their delegations, among others, "[h]igh officials of departments dealing with police matters."[32] None of this is unusual for a specialized intergovernmental organization; indeed, such arrangements emphasize the governmental nature of INTERPOL's members.

In September 2017, INTERPOL's General Assembly adopted Resolution No. 1, which aimed to remove any remaining doubts by confirming that the word "country" in Article 4 of the Constitution is to be interpreted as "state" and that, as of September 27, 2017, the INTERPOL membership shall be open to "states" as members of the Organization.[33]

The participation of the four countries of the Kingdom of the Netherlands as Members of INTERPOL is not an obstacle to INTERPOL being regarded as an international intergovernmental organization. While the members of such organizations are usually sovereign states, there are many cases where international organizations have included and still include as members territories that are not sovereign states.[34] The League of Nations,[35] the UN,[36] and the World Trade Organization[37] are prominent examples.

Conclusion

This short contribution has shown that, whatever may have been thought in the early days of INTERPOL, when international institutional law was in its infancy, there is today no reason to doubt the status of INTERPOL as an international organization. It is an organization established by states by international agreement; the great majority of its members are states; its principal organ, its Assembly, is composed of representatives of states; and it enjoys a range of international privileges and immunities.

[30] Constitution of the ICPO–INTERPOL, *supra* note 1, Art. 6

[31] *Id.* Art. 7

[32] *Id.* Art. 7(a) second para.

[33] GA-2017-86-RES-01-1. The resolution has been questioned, apparently on legal policy grounds; it seems that MARTHA, GRAFTON & BAILEY, *supra* note 2, would have preferred "country" not to have been clarified.

[34] *See* SCHERMERS & BLOKKER, *supra* note 3, at 85–87.

[35] League of Nations Covenant Article 1(2), provided that "[a]ny fully self-governing State, Dominion or Colony … may become a member of the League ...."

[36] While only states may be admitted to the United Nations, the original members of the United Nations in 1945 included the Byelorussian SSR, India, Philippines, and the Ukrainian SSR. *See* Ulrich Fastenrath & Donald Riznik, *Article 3*; *Article 4*, *in* THE CHARTER OF THE UNITED NATIONS. A COMMENTARY 485–94, 495–525 (Bruno Simma et al. eds., 4th ed. 2024); *see also* SCHERMERS & BLOKKER , *supra* note 3.

[37] As of 2025, the WTO had 166 members, which includes Chinese Taipei (the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu).

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Since 2016, the UN General Assembly's biennial resolutions on Cooperation Between the United Nations and the International Criminal Police Organization (INTERPOL) leave no doubt. In each of them, the General Assembly

> [*r*]*ecogniz*[*es*] that INTERPOL, in accordance with the Constitution of INTERPOL, is an apolitical and neutral international organization entrusted with the mandate of ensuring and promoting mutual assistance among criminal police authorities, in full respect of the sovereignty of Member States and consistent with their obligations under international law and the domestic laws and regulations of each Member State, and in accordance with the rules and regulations of INTERPOL.[38]

[38] *See*, GA Res. 79/136, pmbl. para. 5 (Dec. 6, 2024). The first such resolution was GA Res. 71/19 (Nov. 21, 2016).

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