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2024-05-07

What's the future of Interpol?

Giulio Calcara *School of Society and Culture*

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PEARL

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Publication date:

2024

Document version:

Publisher's PDF, also known as Version of record

Link:

[Link to publication in PEARL](#)

Citation for published version (APA):

Calcara, G. (2024). *What's the future of Interpol?*. Paper presented at What's the future of Interpol.

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INTERPOL

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Introduction to INTERPOL

- ▶ With 196 members, INTERPOL is the foremost entity promoting and facilitating international police cooperation at the global level.
- ▶ Since its creation, it has provided a platform for domestic police institutions to communicate directly rather than relying on diplomatic channels.
- ▶ INTERPOL is endowed with significant discretionary powers, while enjoying limited accountability.
- ▶ Among the most famous tools used by INTERPOL are red notices.
 - ▶ They are *sui generis* tools of transnational policing, often seen as the closest possible thing to an international arrest warrant.

The Legal Status of INTERPOL

- ▶ To a certain extent, questions concerning the legal status of INTERPOL still elude a straightforward answer.
- ▶ **Why?**
 1. Lack of a constitutive treaty,
 2. Uncertainty concerning the nature of INTERPOL's membership.
- ▶ **Why does this matter?**

For matters of accountability and immunity.



INTERPOL

A) Is INTERPOL an IGO?

- ▶ **INTERPOL was created in an unconventional manner**
- ▶ It was founded on September 7, 1923, in Vienna at the International Police Congress under the name International Criminal Police Commission (ICPC).
- ▶ It was formed by way of resolution by police officers from different countries.
 - ▶ Avoiding the use of a constitutive treaty appeared to be a deliberate choice.
 - ▶ The delegates of the congress wished to create a police entity capable of operating transnationally, as free as possible from legal restraints.





B) Is INTERPOL an IGO?

- ▶ During the Second World War, the ICPC was hijacked by Nazi authorities.
- ▶ After the war ended, the organisation was reformed and later renamed International Criminal Police Organization (ICPO-INTERPOL).
 - ▶ During the second half of the twentieth century, INTERPOL actively sought official recognition to gain the status of intergovernmental organisation.
 - ▶ INTERPOL managed to be recognised as an IGO by other international organisations and entities.
 - ▶ It signed treaties with states and other IGOs.
 - ▶ An agreement signed with France in 1982, the country where the headquarter of INTERPOL is located, finally granted the organisation privileges and full immunities typical of an intergovernmental organisation
- ▶ **The Constitution of 1956 remains the legal basis of INTERPOL**

C) Is INTERPOL an IGO?

- ▶ Who are the real members of the INTERPOL? States or domestic police bodies?
- ▶ The reason for such doubts is once again rooted in history.
 - ▶ For an extensive period after its creation, INTERPOL appeared to be some sort of private club of policemen.
- ▶ The 1956 Constitution does not provide much needed clarification with its unusual wording.
 - ▶ Article 4 states: *'Any country may delegate as a Member to the Organization any official police body whose functions come within the framework of activities of the Organization.'*



End of the Debate?

El Omari v. The International Criminal Police Organization, United States Court of Appeals for the Second Circuit 21-1458-cv (2022)

- ▶ The United States Court of Appeals for the Second Circuit explored several issues (i.e., whether police bodies or governments are the true members of INTERPOL, the legal status of INTERPOL, and its immunity).
- ▶ Notably, the Court affirmed: *‘That the United States acts through a specific government agency does not alter the fact that it is still the United States, subject to Congressional authorization and Executive control, that participates in Interpol. Similarly, the “official police bod[ies]” designated by the other participating nations are, for all relevant purposes, agents of their respective nations.’*



The Functions of INTERPOL

- ▶ Article 2
 - ▶ Its aims are:
 - ▶ (1) To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the “Universal Declaration of Human Rights”;
 - ▶ (2) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of **ordinary law** crimes.
- ▶ Article 3
 - ▶ It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character.

Structure of INTERPOL

- The General Assembly

is the plenary organ of INTERPOL. Among its many functions, the General Assembly has the power of taking decisions and making recommendations.

- The Executive Committee

is the executive body of INTERPOL. It supervises the implementation of decisions made by the General Assembly and oversees the work of the Secretary General. The committee consists of thirteen members who represent the organisation, not their country of origin, while on duty.

- The General Secretariat

is composed by the Secretary General and the technical and administrative staff and coordinates all policing and administrative activities of the organisation. It has extensive discretionary powers, including initiating cooperation.

- National Central Bureaus

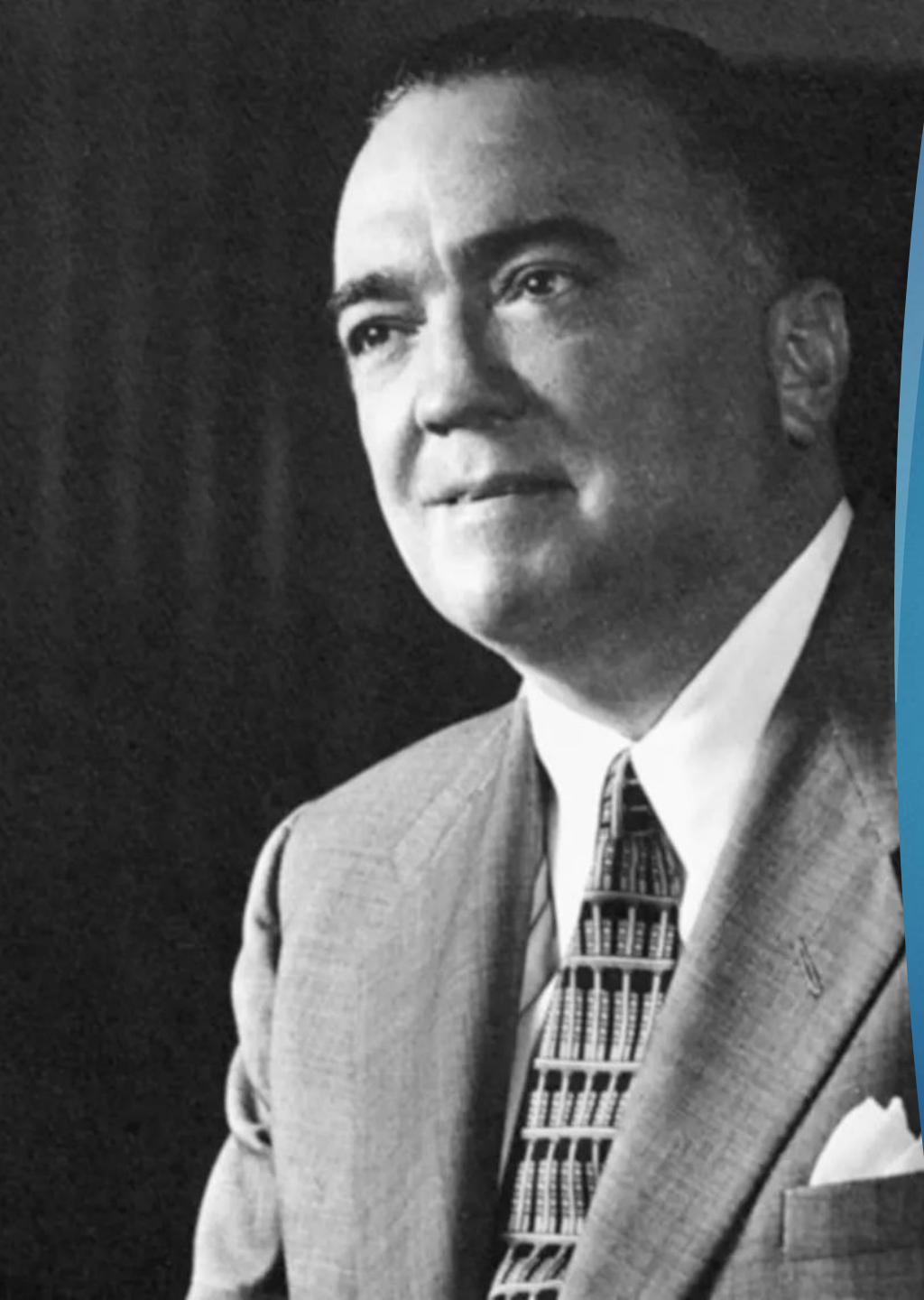
serve as the connection points between INTERPOL and the countries. They are bodies of INTERPOL but are subject to the domestic laws of their respective countries.

- The Advisers

are individuals that assume an advisory function for INTERPOL on scientific matters.

- The Commission for the Control of Files

is the most recent body of INTERPOL. It is an independent entity in charge of ensuring the compliance of the processing of data with INTERPOL's regulations.



INTERPOL's *Modus Operandi*

- ▶ Exchange of criminal data and police information *sensu lato* is the key component of international police cooperation.
- ▶ INTERPOL's most well-known tools for cooperation are the system of notices and the system of diffusions.
 - ▶ They are regulated in the INTERPOL's Rules on the Processing of Data (RPD).
- ▶ The system of notices was first developed in 1946 by Jean Nepote, a French national known also for becoming in 1963 the Secretary General of INTERPOL.
 - ▶ The system took inspiration from the work of J Edgar Hoover, who in the 1930s shared the iconic 'Wanted Man' sheets through the old ICPC.

Notices and Diffusions

NOTICES PUBLISHED PER YEAR

RED NOTICE	YELLOW NOTICE	BLUE NOTICE	BLACK NOTICE	GREEN NOTICE	ORANGE NOTICE	PURPLE NOTICE	INTERPOL
2019							
13,410	3,193	3,375	256	761	33	92	15
2020							
11,094	2,554	3,966	391	509	39	130	9
2021							
10,776	2,622	3,604	118	1,072	45	107	13
2022							
11,282	2,916	4,073	167	607	43	101	6
2023							
12,260	2,687	3,546	282	473	17	72	10

▶ Notices are defined in Art. 1(13) RPD as ‘... any request for international cooperation or any international alert published by the Organization at the request of a National Central Bureau or an international entity, or at the initiative of the General Secretariat, and sent to all the Organization’s Members’.

▶ Most INTERPOL notices are identifiable by specific colours, which are meant to rapidly signal the recipients about their content and type.

▶ Diffusions are defined in Art. 1(14) RPD ‘... as any request for international cooperation or any international alert from a National Central Bureau or an international entity, sent directly to one or several National Central Bureaus or to one or several international entities, and simultaneously recorded in a police database of the Organization’.

▶ The system of diffusions provides INTERPOL’s members with a less formal way of cooperating through the platform of the organisation.

Red Notices



**RED
NOTICE**

- ▶ Articles 82-87 of the RPD regulate red notices.
 - ▶ According to Art. 82 RPD, red notices are published for the purpose of seeking the location of wanted individuals and their detention, arrest, or restriction of movement '*... for the purpose of extradition, surrender, or similar lawful action.*'
 - ▶ Prior to publication, red notices need to undergo a legal review of the General Secretariat to ascertain whether they are compliant to the entire body of laws of INTERPOL, with particular reference to Articles 2 and 3 of INTERPOL's Constitution.
 - ▶ Unlike other notices, red notices cannot be published at the initiative of the General Secretariat of INTERPOL.

Legal Effects of Red Notices

- ▶ Although states are not obligated to enforce red notices, they tend to enjoy high compliance rates from INTERPOL members.
 - ▶ INTERPOL '*The red notice system*' Res AG-2011-RES-06 (31 October–3 November 2011) – The organisation encourages appropriate authorities to recognise red notices as a valid request for provisional arrest.
 - ▶ There are specific instances where a state could be under an international obligation to enforce a red notice:
 - ▶ Certain treaties and conventions mention INTERPOL as a valid channel to circulate judicial requests. Among them, it is possible to cite the European Convention on Extradition and the ECOWAS Convention on Extradition,
 - ▶ If INTERPOL has signed agreements with international entities, such as the Co-operation Agreement between the Office of the Prosecutor of the International Criminal Court and the International Criminal Police Organization.
 - ▶ In this case, if a red notice is published at the request of the Office of the Prosecutor of the International Criminal Court (ICC-OTP), all the parties to the Rome Statute, who are also members of INTERPOL, might potentially be under obligation to enforce that notice.



Legal Issues Affecting the System of Notices and Diffusions

The system of notices and diffusions allows for direct and continuous cooperation among police institutions of countries with different legal systems and belonging to diverse legal traditions.

Police institutions exchange criminal intelligence and legal documents of different kinds, which might be recognised as possessing legal status only in a limited number of the cooperating states.

Then, there are cases of misuse of INTERPOL's tools at the hands of NCBs (particularly red notices and diffusions, but not only). While some cases of misuse can occur due to human errors, others are intentional. Authoritarian countries have been shown to target non-aligned members of the media and political dissidents.

Effects of Misuse

Individuals
wrongly
accused
may:

End up being arrested on multiple occasions for the same wrongful notice or diffusion,

Lose the ability to rent properties, to apply for jobs, or to open bank accounts,

Suffer violations of human rights.

A) INTERPOL's Legal Safeguards

The General Secretariat of INTERPOL is mandated to perform a general review before publishing a notice, to assure its compliance with the RPD.

- Under Art. 86 RPD, red notices need to undergo a more specific legal review.
- However, INTERPOL is hardly in a position to perform effective examinations, both on the factual or on the legal level.

The General Secretariat has a duty of cancelling a notice if:

- The notice has achieved its purpose,
- The conditions for publication are no longer met,
- The NCB or international entity requesting the notice remains inexplicably inactive when they could instead move forward with further required actions.

Diffusions can also be deleted by the General Secretariat following the procedure presented in Art. 128 RPD.

B) INTERPOL's Legal Safeguards

Under Art. 135 RPD, members of INTERPOL can challenge the validity of notices issued by INTERPOL through the process called Settlement of disputes.

The Commission for the Control of Files works *inter alia* as an appeal body for individuals and entities who are subjects of notices or diffusions in case they wish to access them, and/or have them corrected or deleted.

- Decisions of the Commission are binding both to INTERPOL and to the individual.
- The system provided by the Commission is not impeccable and has indeed received a considerable amount of criticism:
 - According to Art. 42 Statute CCF, individuals are not allowed to appeal decisions, and they can only ask for a revision in limited circumstances,
 - According to Art. 35 of the Statute CCF, the Commission might be incapable of providing communication to the applicant when they apply to access, correct or delete notices or diffusions. The NCBs who requested or circulated the aforementioned documents can in fact refuse to disclose information,
 - The Commission has also been criticised for its lack of transparency on how it applies its own rules, and for the excessive length of the proceedings

Further safeguards include simple corrective measures and suspending the right a state from using the INTERPOL Information System, and they are regulated in Art. 17(5) and 131 RPD.

C-505/19 - Bundesrepublik Deutschland (Notice rouge d'Interpol)

Ne Bis in Idem, Right to Free Movement, and Red Notices.

- The Court of Justice of the European Union (CJEU) decided that: “Article 54 of the CISA and Article 21(1) TFEU, read in the light of Article 50 of the Charter, must be interpreted as not precluding the provisional arrest, by the authorities of a Contracting State or by those of a Member State, of a person in respect of whom Interpol has published a red notice, at the request of a third State, unless it is established, in a final judicial decision taken in a Contracting State or in a Member State, that the trial of that person in respect of the same acts as those on which that red notice is based has already been finally disposed of by a Contracting State or by a Member State respectively.”



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