

**SPECIAL ISSUE:  
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*Thematic Studies*

## **The Administration of Information in International Administrative Law - The Example of Interpol**

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### **A. Introduction**

The photos of the presumed child abuser were published all around the world and resulted in the arrest of the wanted person in no time. Within only a few months, Interpol has twice issued public searches for wanted persons on its own initiative. The immediate success seemed to justify the measures. Does Interpol evolve into a veritable international criminal police? Since Interpol's competences for operational measures are still limited, it seems more appropriate to qualify Interpol as an agency with purely coordinative and providing functions and, accordingly, as an example for international administration.

Within the international administration, Interpol assumes a special role. This international police organization has developed only gradually from a loose association of police authorities into an intergovernmental international organization. Repressive and preventive actions against crime, thus administrative tasks at least in part, have always been central functions of this organization. At the same time, Interpol, in contrast to other administrative authorities, is limited, in principle, to acts of support. Interpol provides a platform and infrastructure for cooperation between national administrative authorities. Interpol itself does not have the competence to decide in particular cases, although such competence is a typical element of administrative work. This restriction can be explained by the wish to preserve national sovereignty. Nevertheless, the work of Interpol can be characterized as informational administrative activity<sup>1</sup> being a traditional area of administrative law.<sup>2</sup>

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<sup>1</sup> Interpol as "a modern bureaucratic police organization," see Mathieu Deflem & Lindsay C. Maybin, *Interpol and the Policing of International Terrorism: Developments and Dynamics Since September 11*, in

## B. Interpol's Relevance for the International Administrative Law

### I. The Subject Area: Police Activity in Danger and Crime Prevention

Interpol is the name of the International Criminal Police Organization (ICPO) with currently 186 members<sup>3</sup> and headquarters in Lyon (France). Regarding the number of member states, it is the second largest international organization after the United Nations. Nonetheless, Interpol has only 450 employees, one third of them delegated by the member states. With an annual budget of approximately € 45 million, the Organization is funded by the annual contributions of its member states.

According to Article 2 of the Interpol Constitution, the organization's aim is "to ensure and promote the widest possible mutual assistance between all criminal police authorities" and "to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes."<sup>4</sup> Both aims describe primarily repressive police work. Notwithstanding, the prevention of crime is inseparably connected to Interpol's tasks.

At the same time, the activity of Interpol in criminal prosecution as well as in maintaining public safety is functionally limited: Interpol has no competence to conduct own investigations or to intervene on its own. This task remains with national police authorities, which can use the organization as a platform for international co-operation.

Another functional limitation is the prohibition of "any intervention or activities of a political, military, religious or racial character" (Article 3 of the Constitution). The non-interference with national political matters is an important premise for the willingness of member states to cooperate on a broad transnational level. The rule, however, gives rise to problems in the fight against international terrorism which is

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TERRORISM: RESEARCH, READINGS, & REALITIES 175, 191 (Lynne L. Snowden & Bradley C. Whitsel eds., 2005).

<sup>2</sup> EBERHARD SCHMIDT-AßMANN, DAS ALLGEMEINE VERWALTUNGSRECHT ALS ORDNUNGSDIEE, chapter 6, note 7 (2nd ed., 2004); Armin von Bogdandy, *Information und Kommunikation in der Europäischen Union, in VERWALTUNGSRECHT IN DER INFORMATIONSGESELLSCHAFT* 133, (Wolfgang Hoffmann-Riem & Eberhard Schmidt-Aßmann eds., 2000).

<sup>3</sup> Information available on the official website of the organization at: [www.interpol.int](http://www.interpol.int). Germany became a member in 1952.

<sup>4</sup> The Constitution of the ICPO (Interpol), 13 June 1957, last amendment at the General Assembly's 66th session (New Delhi 1997).

often motivated by political or religious reasons.<sup>5</sup> It is only recently that the member states of Interpol have agreed on granting the Organization a competence in the combat against international terrorism. To this end, the term 'terrorism' has been depoliticized, which permits Interpol to fight against terrorism qualified as a crime.<sup>6</sup>

Interpol's principal task lies in the field of administration of information and of data bases. Interpol provides the infrastructure for international police co-operation, offering a global communication system, compiling databases and distributing wanted notifications. Moreover, it offers technical support or projects of continuing education to national police officers.

According to the statistics of the Commission of the European Union, Germany is one of the main users of Interpol. About 150.000 operations are guided from Germany annually, 4.800 Germans are searched for worldwide and 14.000 inquiries from Interpol concerning wanted foreigners arrive at the *Bundeskriminalamt* (Federal Criminal Police Office) in Germany.<sup>7</sup>

## *II. Interpol's Development towards an International Organization*

Originally, Interpol was a mere co-operation of public authorities organized as an association of private law.<sup>8</sup> On the initiative of the chief of police of Vienna, an international criminal police commission was founded in 1923. Inglorious misappropriation in the time of National Socialism required a re-establishment of Interpol in 1946, initially based in Paris. In 1989, Interpol's headquarter was moved to Lyon.<sup>9</sup> The present statutes of the organization, called Constitution, were drafted in 1956. At the same time the organization was renamed into International Criminal Police Organization. From a loose association of police authorities, Interpol

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<sup>5</sup> For background information on terrorism see ULRICH SCHNECKENER, *TRANSNATIONALER TERRORISMUS* (2006).

<sup>6</sup> Deflem & Maybin (note 1), at 175. On the problems of diverging legal or political competences see Raymond E. Kendall, *Zentralstellen im Wandel: Interpol*, in *KRIMINALITÄTSBEKÄMPFUNG IM ZUSAMMENWACHSENDEN EUROPA* 79, 82 (Bundeskriminalamt ed., 2000).

<sup>7</sup> Commission staff working document from 21 April 2006 – Annex to the Report from the Commission on the Operation Council Common Position 2005/69/JHA (no longer published in the internet).

<sup>8</sup> More details on the development and sociologic importance of Interpol in MATHIEU DEFLEM, *POLICING WORLD SOCIETY* 124 (2002); on its legal status see Christian Hoppe, *Internationale Kooperationsmaßnahmen*, in *FESTSCHRIFT FÜR HORST HEROLD* 209, 210 (Bundeskriminalamt ed., 1998).

<sup>9</sup> On Interpol's history see MARC LEBRUN, *INTERPOL* (1997).

gradually evolved into an independent organization with its own tasks and competences.

Interpol's legal status remains, however, unclear.<sup>10</sup> The organization is not based on a treaty between states. The Constitution was adopted only by Resolution of the General Assembly. The United Nations initially granted Interpol the status of an observer as NGO. According to Article 4 of the Constitution, members of the organization are not only states but also national authorities.<sup>11</sup> Nevertheless, both the profile of the organization and its recognition by a series of states and other International Organizations support the qualification as an international organization with legal personality in public international law: Even if member states can have several delegates in the General Assembly<sup>12</sup>, each member state has only one vote. The contribution to the financing of the organization is also an indication for a membership of states. In Headquarters Agreements, France and other states have granted immunities and privileges. Interpol is, for these reasons, at least partly recognized as an International Organization with its own legal personality in public international law.

### *III. The Relevance of the Interpol Legal Regime for International Administrative Law*

In contrast to the notion of global administrative law, which characterizes the general part of a universally applicable administrative law<sup>13</sup>, international administrative law is qualified as the law of international administrative relations.<sup>14</sup> Apart from global principles of law, it also covers specific areas of international administrative law, which can include particular rules of administrative procedure. Thus, the purpose of the doctrine of international administrative law is to analyze

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<sup>10</sup> See Albrecht Randelzhofer, *Rechtsschutz gegen Maßnahmen von INTERPOL vor deutschen Gerichten?*, in STAATSRECHT – VÖLKERRECHT – EUROPARECHT 531, 539 (Ingo von Münch ed., 1981); Sabine Gless, *Interpol*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (EPIL) (Rüdiger Wolfrum ed., 2008-2010 [forthcoming]), marginal numbers 1, 5; Michel Richardot, *Interpol, Europol*, POUVOIRS 77, 79 (2002).

<sup>11</sup> According to Art. 45 of the Constitution, all members of the preceding organization, not necessary states, were deemed to be members of Interpol unless express objection.

<sup>12</sup> Art. 4 § 1 of the Constitution: "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."

<sup>13</sup> Benedict Kingsbury, Nico Krisch & Richard Stewart, *The Emergence of Global Administrative Law*, IILJ Working Paper 2004/1; for another approach to this notion concerning international administrative standard setting JOSÉ E. ALVAREZ, *INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS* 244 (2005).

<sup>14</sup> Eberhard Schmidt-Aßmann, *Die Herausforderung der Verwaltungsrechtswissenschaft durch die Internationalisierung der Verwaltungsbeziehungen*, 45 DER STAAT 315, 335 (2006).

the rules governing the activity of international administrative instances as well as the internationalization of national administrative law and, thirdly, to develop principles and standards for the international administrative co-operation.<sup>15</sup>

Several aspects of Interpol claim importance from the perspective of international administrative law: Interpol's subject area are repressive criminal prosecution and preventive danger defense. Danger prevention in particular is a typical administrative activity and, thus, forms a point of reference for research on administrative law. Beyond that, both activities belong to the core of national sovereignty.

This first premise influences the institutional structure of Interpol: the decentralized allocation of competences requires the co-operation of all actors involved. Interpol represents an institutional co-operation of public authorities with a network character administered by a central General Secretariat. The organization itself does not dispose of external decision-taking powers; co-operation is characterized by the lack of hierarchy and the voluntary participation of its members.<sup>16</sup> The idea of a co-operation of public authorities, however, has not changed since the foundation of Interpol and does not change with its recognition as a International Organization. It is the direct contact of police officers beyond the intergovernmental, diplomatic and political exchange, which pledges for expert knowledge, acceleration and efficiency in the international combat of crime.

The primary function of Interpol is the administration, the exchange and the processing of information on the international level. The rules of co-operation between Interpol and its members or between Interpol and other international organizations deriving from contractual agreements or the organization of Interpol itself are part of an international administrative law on information (*Informationsverwaltungsrecht*).

The regulatory technique (*Steuerung*) is primarily normative<sup>17</sup>: the organization has created an administrative system through international resolutions and contracts, defining methods and standards of informational co-operation. The binding or non-binding character of the provisions is not always evident and has to be analyzed rule by rule.

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<sup>15</sup> *Id.* at 336.

<sup>16</sup> On the notion of network in security law see Bettina Schöndorf-Haubold, *Sicherheitsnetzwerke im Europäischen Mehrebenensystem*, in NETZWERKE 149, 151 *et seq.* (Sigrid Boysen et. al. eds., 2007).

<sup>17</sup> On the modalities and effects of the idea of regulation by law see Claudio Franzius, *Modalitäten und Wirkungsfaktoren der Steuerung durch Recht*, in GRUNDLAGEN DES VERWALTUNGSRECHTS I, § 4 esp. note 42 (Wolfgang Hoffmann-Riem, Eberhard Schmidt-Aßmann & Andreas Voßkuhle eds., 2007).

From a perspective of administrative co-operation, Interpol acts on different levels: Firstly, the General Secretariat of the organization conducts its own international administrative activity. The major part of this activity provides the basis for the international administrative co-operation of national police authorities connected by Interpol. These national police authorities – like the *Bundeskriminalamt* (Federal Criminal Police Office – BKA) in Germany – can be, on a further subordinate level, a central contact point in a network of national administrations. Finally, the international connections of Interpol through international treaties and agreements link the organization to other international organizations.

### C. Administration of Information by Interpol - Legal Analysis

#### I. Interpol's Institutional Setting

Three different levels characterize the organizational structure of Interpol: its internal organization, the network of National Central Bureaus founded by Interpol and the organization in the context of a global security administration. Interpol connects different players on and between different levels in the combat of crime around the world.

##### 1. Interpol's Internal Organization

The main bodies of Interpol are the General Assembly, the Executive Committee and the General Secretariat. In addition, Interpol runs a number of regional offices. A so-called Commission for the Control of Interpol's Files is holding a special position constantly surveying Interpol's handling of personal data.

The *General Assembly* – composed of the delegates appointed by member states<sup>18</sup> – is regarded as the highest institution of Interpol, according to article 6 of the Constitution. It is the “legislative body” of the organization deciding by simple or qualified majority voting.<sup>19</sup> Decisions on fundamental issues such as the budget or the exchange of information are taken in resolutions. The Appendices of the General Regulations of the General Assembly contain the Organization's actual legal administrative regulations on information.<sup>20</sup>

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<sup>18</sup> According to Art. 7 of the Constitution, any member state can appoint one or several delegates to represent it. Most of the delegates are not members of their governments but police officers. Thus, Interpol preserves its character as an inter-administrative agency.

<sup>19</sup> Every member state has one vote.

<sup>20</sup> See *infra* note 37.

The *Executive Committee* consists of one president elected by the General Assembly, three vice-presidents as well as nine delegates, whose appointment is based on geographical proportional representation. According to Article 22 of the Constitution, the Committee, which meets three times a year, shall supervise the execution of decisions of the General Assembly as well as the administration and work of the Secretary General.<sup>21</sup>

The actual administration is done by the *General Secretariat* as a permanent institution of Interpol. This office is headed by the Secretary General who is appointed by the General Assembly upon nomination by the Executive Committee. With around 450 employees, the General Secretariat is responsible for the communication and information within the organization. One third of the employees is delegated to Interpol by national police authorities. The Secretariat coordinates the exchange of information between the National Central Bureaus, maintains the databases of the organization and issues wanted notifications.

The *Commission for the Control of Interpol's Files* is not mentioned in the Interpol Constitution. It was established on the basis of the Headquarters Agreement and a concretizing *Échange de lettres* with France in 1982. Its establishment was further "legalized" by a resolution of the General Assembly.<sup>22</sup> The Commission consists of five persons: three data protection experts, one computing science expert and one member of the Executive Committee. For their nomination, regard is had to their expertise and independence. The experts are chosen by the General Assembly from candidates, who are named by the member states and preselected by the Executive Committee. The Control Commission elects its own chairman.<sup>23</sup> Having its own procedural rules it gets together for at least three meetings per annum. The Commission performs its tasks independently, and it is not bound by instructions. It has to protect the official secrets. It exercises an important and – for the

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<sup>21</sup> Further details in the Rules of Procedure of the Executive Committee, appendix Nr. 11.1 to the General Regulations, adopted by the General Assembly, entered into force 1 January 1995.

<sup>22</sup> See the Rules on International Police Co-operation and on the Internal Control of Interpol's Archives, adopted by the General Assembly as Resolution Nr. AGN/51/RES/1 entered into force on 14 February 1982. These provisions will be replaced by the Rules on the Control of Information and the access to Interpol's data files (infra note 37) after an amendment of the Headquarters Agreement. See now the revised Headquarters Agreement which was signed in April 2008.

<sup>23</sup> Art. 2 of the Rules on the Control of Information and the access to Interpol's data files. With the new Resolution of the General Assembly, the complex mechanism, according to which the French government also had the right to appoint the chairman, and according to which the Permanent Court of Arbitration had to be consulted in case of a conflict, has been abolished. Yet, it remains valid until the Headquarters Agreement will be amended accordingly.

legal protection of individuals – indispensable administrative control over the Organization, even though it does not possess a real instrument of enforcement. In contrast, there is no jurisdictional legal protection to be found on the international level.

Furthermore, Interpol has created its own administrative sub-structures through an internal diversification of competences.<sup>24</sup> Interpol disposes for example of a couple of regional offices and recently established an Anticorruption Academy.<sup>25</sup>

## 2. *Network of National Central Bureaus*

The National Central Bureaus (NCB) serve as operational centers and linking platforms between the national and the international level. Each member state appoints a National Central Bureau for the international police co-operation within the framework of Interpol. In Germany, the *Bundeskriminalamt* assumes this role. The national police authorities in their function as Central Bureaus are seen as forming part of Interpol<sup>26</sup> without being bound by instructions of the General Secretariat.

The National Central Bureaus cooperate with other authorities of their member states, with the National Central Bureaus of other member states as well as with the General Secretariat of the Organization (Article 32 of the Constitution). Thus a three-dimensional network connecting different intra-governmental with international levels has emerged.

Apart from personal contacts, the interconnection of the network takes place through the communication structure offered by Interpol. This infrastructure consists of a global communication system and several databases. The National Central Bureaus cooperate with each other through general bilateral collaboration agreements as well as upon request in particular cases. Interpol arranges the necessary contacts and provides the technical background. National Central Bureaus guarantee the transmission of information and requests in the respective

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<sup>24</sup> This differentiation and diversification is a general phenomenon, see José Alvarez, *International Organizations: Then and Now*, 100 AMERICAN JOURNAL OF INTERNATIONAL LAW 324, 334 (2006).

<sup>25</sup> Resolution of the General Assembly of Interpol Nr. AG-2006-RES-03.

<sup>26</sup> See Art. 5 of the Constitution according to which Interpol comprises the General Assembly, the Executive Committee, the General Secretariat, the advisers and the NCB.

state by their own information exchange systems. In this network, Interpol's role is similar to a spider in its web.<sup>27</sup>

### 3. *Interpol's Role in the Global Network of International Organizations*

On the international level, Interpol has the authority to sign agreements and thereby establish permanent relations with other inter- or non-governmental organizations (Article 41 of the Constitution). The informational network is thus extended to the international level by bilateral consensus.<sup>28</sup>

Interpol maintains permanent co-operation relations not only with regional organizations of police co-operation, but, above all, with other International Organizations, that have a specific interest in using Interpol's information system. The co-operation is based on agreements under Public International Law and is furthermore reflected by provisions of the respective organization which subordinate the information flow under the Interpol legal order. Examples for such co-operation relations are the agreements with the United Nations<sup>29</sup> with Europol<sup>30</sup> or with the Office of the Prosecutor of the International Criminal Court<sup>31</sup> as well as with the WIPO, with the European Central Bank or with the Council of Europe.<sup>32</sup>

## II. *The Normative Regulation of the Administration of Information by Interpol*

The regulation of Interpol's activities is executed normatively, *i.e.* through legal mechanisms. The legal order of Interpol is based on a cascade of rules containing provisions of different "density of regulation." Apart from these rules, the

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<sup>27</sup> Apart from these basic structures, there are other specific networks, established by sub-divisions of Interpol to fight terrorism, *e.g.* the Fusion Task Force.

<sup>28</sup> Kendall (note 6), at 86.

<sup>29</sup> Co-operation Agreement from 8 April 1997, adopted through Resolution of the General Assembly of Interpol Nr. AGN/66/RES/5. In the wake of 9 September 2001, the co-operation has been extended. In order to give a stronger support to the UN in the fight against terrorism, it has been decided to include the members of Taliban and Al-Qaida listed by the Security Council in the warrant notification system of Interpol.

<sup>30</sup> Joint initiative of the Secretary General of Interpol and the Director of Europol on combating the counterfeiting of currency, in particular the Euro, entered into force on 5 November 2001; *see also* Council Common Position Nr. 2005/69/JI from 24 January 2005 on exchanging certain data with Interpol, ABL. EU 2005 Nr. L 27, 61.

<sup>31</sup> Came into force on 22 March 2005.

<sup>32</sup> *See* list at: [www.interpol.int](http://www.interpol.int).

Organization has signed contractual agreements with states or other International Organizations to implement and complete its legal regime. Even though Interpol's legal order cannot be considered strictly binding in terms of international law, mechanisms of "legalization" (*Verrechtlichung*) and the varying binding effect of its provisions are evidence for the strong normative regulative impact of the Interpol regime.

1. *The Cascade of Rules of Interpol's Legal Order*

The basis of all Interpol regulations are the statutes – the so-called Constitution,<sup>33</sup> which is implemented through procedural rules with appendices issued with a two-thirds majority by the General Assembly. In addition to these primary and secondary norms of Interpol, there are further implementing rules which can be issued by the General Secretariat or the General Assembly.

The national perspective would suggest a comparison of the General Assembly to a democratic legislator and of the General Secretariat to an executive ministerial administration. In the light of its character as an organization of international cooperation of public authorities however, Interpol could also be compared to authorities of functional self-administration, which – although on an entirely administrative level – also have legislative and administrative bodies.

a) *"Primary and Secondary Law": Constitution and Resolutions of the General Assembly*<sup>34</sup>

Interpol in its present form is based on a statute from 1956, which transformed the former International Criminal Police Commission into the current International Criminal Police Organisation.<sup>35</sup> The Constitution regulates all issues of constitutional character, especially the tasks and the aims of the organization, its commitment to neutrality and its respect for human rights as well as its administrative responsibilities and its budget. Amendments to the Constitution are possible on recommendation of a member of the Executive Committee with a two-thirds majority by the General Assembly.

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<sup>33</sup> Entered into force on 13 June 1956.

<sup>34</sup> Apart from the Resolutions listed here, there are other Resolutions of the General Assembly which are referred to in the legal materials; the Rules governing the database of Selected Information and Direct Access by NCGs to that Database or the Interpol Telecommunications Regulations are an example therefore. As far as can be seen, they are not available to the public.

<sup>35</sup> Constitution of the ICPO-Interpol, adopted by the General Assembly at its 25th session in Vienna 1956, entered into force on 13 June 1956.

The Constitution is implemented through the so called *General Regulations*<sup>36</sup> adopted by a two-thirds majority of the General Assembly. These rules comprehend technical provisions which first and foremost relate to the activities and sessions of the General Assembly. The actual administrative regime is laid down in its Appendices including, in particular, rules on the exchange of information and the data processing.

The *Rules on the processing of information for the purposes of international police co-operation (RPI)*<sup>37</sup> contain the basic rules and definitions of the exchange of information through Interpol. This Resolution codifies a detailed administrative law of information of Interpol and, above all, sets material and procedural standards for the processing of personal data.<sup>38</sup> These standards apply to all bodies entering data in or using data of the system.

The RPI refer to other rules which are to be issued by the bodies of Interpol. Article 25, for example, provides that the control of information and the access to personal data shall be defined in a separate set of rules. Moreover, Article 23 provides for further implementing regulations on particular aspects of information processing such as the setting up and deleting of databases as well as the regulation of their use and purpose, the determination of the level of confidentiality and the protection and control relating to the processing of particularly sensitive data.<sup>39</sup>

Based on Article 23(c) of the Rules on the processing of information for the purposes of international police co-operation (RPI)<sup>40</sup>, the General Assembly recently adopted general *Implementing Rules* dealing with principles of police co-operation and data protection.<sup>41</sup> Beside a series of provisions on particular facets of information processing concerning the content of databases or single information, these rules concretize the areas of responsibility between the General Secretariat, the Na-

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<sup>36</sup> Rules of Procedure of the ICPO-Interpol General Assembly, adopted at its 65th session in Antalya 1996, amended by the Resolution Nr. AG-2004-RES-11.

<sup>37</sup> Adopted as Resolution Nr. AG-2003-RES-04 by the General Assembly at its 72nd session in Benidorm 2003, amended by the Resolution Nr. AG-2005-RES-15 and entered into force in its amended form on 1 January 2006.

<sup>38</sup> For example retention periods for data or provisions on the amending, freezing or deleting of data.

<sup>39</sup> See Art. 6.2(e), 8(f), 9(e), 10.1(e), 10.2(b) in conjunction with Art. 23 of the Rules.

<sup>40</sup> See note 37.

<sup>41</sup> Rules adopted by the General Assembly at its 76th session in Marrakesh 2007 by Resolution AG-2007-RES-09, entered into force on 1 January 2008.

tional Central Bureaus and the data users, and specify security requirements, the access management or specific forms of co-operation.

Another example for implementing rules are the *Rules relating to the control of information and the access to Interpol's files*<sup>42</sup> which have been adopted pursuant to Article 25 of the RPI. They were, also, issued as an appendix to the General Regulations. These rules contain regulations on the control of Interpol data by the Control Commission, on its composition and functioning as well as on the access to data and to the Commission of individuals which are concerned by the collection of data.

As a reaction to the terrorist attacks of 9 September 2001, Interpol opened its data bases to a wider extent to other international organizations. The respective regulations can be found in the *Rules governing access by an intergovernmental organization to the Interpol telecommunications network and databases*.<sup>43</sup> These rules form part of the appendix to the RPI and can thus be seen as an appendix to the appendix to the General Regulations. The access to data by other international organizations depends on a prior permission by the General Assembly and the signing of a co-operation agreement with Interpol, in which the other organization commits itself to the rules and standards of Interpol.

The original provisions concerning the control of the information administration by Interpol were contained in the *Rules on international police co-operation and on the internal control of Interpol's archives*<sup>44</sup> which were based on the Headquarters Agreement with France. Their first part (Articles 1-14) was abolished and replaced by the general Rules on processing of information (RPI).<sup>45</sup> Their second part (Articles 15-18) has also been replaced by the control rules.<sup>46</sup> These provisions concerning the composition of the Control Commission on Interpol's Data Files, however, will

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<sup>42</sup> Adopted by the General Assembly at its 73rd session in Cancun on 7 October 2004 by Resolution AG-2004-RES-08.

<sup>43</sup> Adopted by the General Assembly at its 70th session in Budapest on 28 September 2001 by Resolution AG-2001-RES-08.

<sup>44</sup> Adopted by the General Assembly at its 51st session in Torremolinos on 14 February 1982 by Resolution AGN/51/RES/1, amended by the control rules (note 42).

<sup>45</sup> See note 37.

<sup>46</sup> See note 42.

remain valid as long as the corresponding article in the Headquarters Agreement remains unmodified.<sup>47</sup>

Budgetary matters are addressed in the Financial Regulations, currently redefined by the General Assembly. In addition to the matters of revenues and expenditure and the preparation of the budget, they include regulations on the tenders and public contracts by Interpol and on internal and external auditing.<sup>48</sup> They also belong to international administrative law. But since they form part of the internal law of international organizations they shall not be examined here.

*b) Administrative Implementing Rules*

These primary and secondary rules may be specified and completed through further *implementing rules*, which apparently the Organization does not always issue or at least does not publish. Article 23 of the Rules on the processing of information for the purposes of international police co-operation (RPI) does not indicate who may be the author of such implementing rules. In its paragraph (c) however, the provision states that certain topics shall be submitted to the General Assembly.<sup>49</sup> This might suggest – as a conclusion in reverse – that the General Secretariat should be competent to issue the implementing rules. In fact, at least the implementing rules which concern the matters referred to in Article 23(c) are issued by the General Assembly after a statement of the Control Commission. This does not resolve the question whether there is still room for the making of general and abstract rules by the General Secretariat.

*c) Administrative Setting of Standards*

Interpol not only sets the rules which are of direct relevance for the entities involved in the information exchange<sup>50</sup>, but also indirectly coordinates the

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<sup>47</sup> In contrast to its future version, the present regulations still provide for a complex procedure to appoint the five members of the Commission. Under these regulations, a member of the Executive Committee and a computing expert are appointed by the president of the Commission, one member is appointed by Interpol, one by the French government and one by both of them together. If the latter fail to reach an agreement, the member is appointed by the Secretary General of the Permanent Court of Arbitration.

<sup>48</sup> On the Financial Regulations, specified by implementing rules of the Executive Committee and by practical instructions of the Secretary General, which apparently are not published, *see* internet pages [www.interpol.int](http://www.interpol.int).

<sup>49</sup> Art. 23(c) of the Rules (note 37).

<sup>50</sup> On the question of legal commitment see subsequently C.II.3.

transnational operative police co-operation between individual member states through models for bilateral co-operation agreements. The Model (bilateral) Police Co-operation Agreement contains not only clauses concerning data protection but also rules on cross-border pursuit and observation<sup>51</sup> and is made available to the member states by Interpol in an annotated version. Since the Model Agreement explicitly refers to the legal regime of Interpol, this regime is, indirectly, applied to the relations between the member states as well. Thereby, Interpol provides a legal framework of which the member states can make use for intensifying their co-operation in police matters.

For the international administrative law, the Model Agreement is of a double importance: On the one hand, it is an instrument of normative regulation without itself being legally binding. It regulates the administrative relations between states, *i.e.* legal entities distinct from itself. On the other hand, by its reference to the system of Interpol regulations, these regulations are “legalized” (*verrechtlicht*) through voluntary mutual accord.

## 2. *Bilateral Regulations: Treaties and Co-Operation Agreements*

The Interpol legal regime is completed by a series of treaties with constitutional and/or administrative character: Firstly, the organization concluded a Headquarters Agreement with France already in 1982. This agreement addresses essential “constitutional” issues. France acknowledges Interpol’s status as an international organization with legal personality, and grants immunity and privileges on French territory. Moreover, this Agreement defines essential prerequisites for the administrative procedure and submits Interpol’s data to an internal control, which are specified by an *Échange de lettres* between the French government and Interpol. These stipulations correspond to a large extent to the Rules on international police co-operation and on the internal control of Interpol’s archives.<sup>52</sup>

The co-operation agreements with other international organizations are rather of an administrative nature. They are implied by Article 41 of the Constitution and specified by implementing rules. They are concluded as treaties or memoranda of understanding by the General Secretariat, which however needs an authorization from the General Assembly. When the exchange of personal data is concerned, an

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<sup>51</sup> Nadia Gerspacher, *The Role of International Police Cooperation Organizations*, 13 EUROPEAN JOURNAL OF CRIME, CRIMINAL LAW AND CRIMINAL JUSTICE 413, 427 (2005). Another example for an instrument for the setting of standards is the *Guide de préparation et de réponse à un attentat bioterroriste*, published by Interpol in 2007. It comprehends guidelines on administrative procedures for its member states.

<sup>52</sup> See note 44.

opinion by the Control Commission is required in addition. The Executive Committee can object to a co-operation of this kind.

### 3. *The Question of Legal Bindingness*

#### a) *The Principles of Legal Bindingness under International Law*

The majority of Interpol's rules has not been adopted through legally binding treaties under public international law. The actual diversification of the Interpol legal order is mainly taking place in the area of so-called soft law.<sup>53</sup>

With respect to guidelines or model provisions, this already becomes apparent from Interpol's intention to issue soft regulating mechanisms without legally binding character. However, the same must apply to the majority of resolutions adopted by the General Assembly, which do not share the legal nature of treaties under public international law. These resolutions contain compliance advices regarding its own provisions and, thereby, acknowledge not to be legally binding in a formal sense.<sup>54</sup> According to Article 9 of the Constitution the "members shall do all within their power, in so far as is compatible with their own obligations, to carry out the decisions of the General Assembly." These decisions are neither directly applicable, nor are they formally binding for the member states.

It is a different matter only with those agreements which Interpol concludes with individual members or other international organizations or NGOs respectively, when the legal commitment depends on the will of the parties and has to be established in individual cases.

This explains Interpol's effort to substantiate and confirm the commitment to its own positive law in every new act of law, especially on a contractual basis. Moreover, the concession of new access rights depends on commitment to the

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<sup>53</sup> Concerning soft law see Alan Boyle, *Soft law in international law making*, in INTERNATIONAL LAW 141 (Malcolm D. Evans ed., 2006); LINDA SENDEN, *SOFT LAW IN EUROPEAN COMMUNITY LAW* 107, 219, 235 (2004).

<sup>54</sup> Art. 5.1 of the RPI (note 37) illustrates the relatively weak effect of the legal commitment within the legal framework, which predominantly depends on voluntary participation: "Whenever necessary, and at least once a year, the General Secretariat shall remind the National Central Bureaus and the entities with which it has concluded a co-operation agreement of their role and responsibilities connected with the information they process through the Organization's channels, particularly with regard to the accuracy of that information and its relevance to the purpose for which it is provided."

system of rules.<sup>55</sup> But even the general rules set by Interpol do possess at least certain legal regulatory effects.<sup>56</sup>

*b) Creation of Legal Regulatory Effects*

A certain “hardening” or “legalization” (*Verrechtlichung*) of Interpol’s rules is caused by a clear hierarchical structure of the norms and by supporting mechanisms, which create legal regulatory effects.

The texts themselves are put into a vertical relation to each other<sup>57</sup>: the highest position of the regulation system is the Constitution. The resolutions of the General Assembly follow in this order. They are divided into General Regulations, rules of procedure and implementing measures. To be precise, the Constitution is followed by the General Regulations with their Appendices, consisting of other resolutions of the General Assembly, which in turn have appendices and implementing resolutions of their own. The implementing measures of the General Secretariat (with and without consultation of the Control Commission) are placed below the level of resolutions. Depending on the degree of participation of Interpol’s other bodies, they have a higher or lower position. This ranking and differentiation between Constitution, General Regulations, Appendices and Implementing Rules result in an internal hierarchy of the norms. This hierarchy does not give the answer to the question whether or not norms have an external binding effect. Accepting a general “rule of law,” however, it binds the bodies of the organization themselves to obey the self-edicted laws and procedures. Of an even greater importance is the question of the commitment of the member states to the Interpol law regime.

Even according to the rules of international law, soft law can, to a certain extent, be legally binding<sup>58</sup>: Some forms of full or limited self-commitment, *e.g.* through the necessity to provide reasons and justification for deviations from the provisions, create soft binding effects. This is the case with the internal law concerning the

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<sup>55</sup>See Art. 10.1(a)(1) or Art. 20.1(a) of the RPI (note 37).

<sup>56</sup> For general information on legal regulatory effects of administrative soft law see Alvarez (note 24), at 326; CHRISTOPH MÖLLERS, *GEWALTENGLIEDERUNG* 303 (2005); Jan Klabbers, *The Changing Image of International Organizations*, in *THE LEGITIMACY OF INTERNATIONAL ORGANIZATIONS* 221, 227 (Jean Marc Coicaud ed., 2001); see also ALVAREZ (note 13), at 257, 596, 599.

<sup>57</sup> On this aspect, see HENRY G. SCHERMERS & NIELS M. BLOCKER, *INTERNATIONAL INSTITUTIONAL LAW* §§ 1340-1343 (2003); Sabino Cassese, *Global Standards for National Administrative Procedure*, 68 *LAW AND CONTEMPORARY PROBLEMS* 109, 121 (2005).

<sup>58</sup> SCHERMERS & BLOCKER (NOTE 57), at §§ 1196-1200.

functioning of the organization, but can also be applied to the information administration “law,” including the control regime, which is set to have external effects.<sup>59</sup>

The information exchange through Interpol is based on the voluntary participation of the respective national or international actors. Hence, the confidence in the respect for data protection standards is of special importance. All member states therefore have a great mutual interest in the protection of the legal administrative framework set by Interpol. This interest can not be equated with a true legal commitment, but the rules contain clauses which postulate their own validity and demand a certain commitment.

The mechanisms of such a limited “legalization” are, above all, provisions establishing the duty to observe the Interpol legal order as a condition for the access to, and participation in, the information exchange system of the organization. Their wording can be weaker or stronger. The use of Interpol’s communication systems, for example, is explicitly bound to the respect of its rules: Article 10.1 of the Rules on the Processing of Information establishes general conditions for the processing of data and permits it only if it “complies with the Constitution and relevant provisions of the Organization’s rules.”<sup>60</sup> The creation and the assignment of the Control Commission with the duty to supervise the compliance with a part of the Interpol legal order strengthens the enforcement and, by this, the effectiveness of the rules.<sup>61</sup>

To some extent, legally binding effects may also result from general principles of law, especially from the Human Rights. Although the right to informational self-determination is partially accepted by international law, Interpol’s data protection regime in its entirety cannot be considered a specification of such generally accepted law.<sup>62</sup>

Regardless of the question of legal bindingness, Interpol’s rules represent a thorough codification of administrative regulations comprising material standards of information exchange, like data security or confidentiality, as well as procedural and organizational rules, like the rules on competence, supervision or control. This

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<sup>59</sup> In some provisions the self-commitment is explicitly laid down, *see* Art. 4.3(d) of the RPI (note 37).

<sup>60</sup> Other examples to illustrate this are Art. 2(c), 5.3(b), 10.1 of the RPI (note 37).

<sup>61</sup> Other indications of a partial “hardening” can be provisions concerning liability, sanctions, possibilities to file objections, provisos, etc.

<sup>62</sup> On warrants under European Law in particular *see* MARION ALBERS, INFORMATIONELLE SELBSTBESTIMMUNG 288 (2005).

mirrors the concern for normative regulation on one hand and for commitment to the rule of law on the other hand, whereas the latter may anyway be required with regard to its relevance for fundamental rights.

### *III. The Administration of Information as the Key Function of Interpol*

Interpol's core function is to support and facilitate the transnational and international police co-operation.<sup>63</sup> In contrast to bilateral co-operation of police authorities, this means not only operative measures like common pursuit and observation, but first and foremost the exchange of information. Competences for operative actions are neither transferred to Interpol nor to member states which act within the framework of co-operation through Interpol, because operative police actions form an important part of national sovereignty. The actual administrative measures from the perspective of national administrative law, such as extradition, determination of identity and other standard police measures of crime prevention or prosecution, remain within the responsibility of individual states.

Hence Interpol's functions are limited to the administration of information.<sup>64</sup> It has, in principle, no authority to collect data. National competences are also preserved when it comes to the responsibility for data archives and the access to them. Interpol's actual administrative activity thus consists of providing different channels and means of information exchange (1.) within the framework of its own procedures and standards. The protection of such standards is also one of Interpol's tasks (2.). Interpol has therefore two tasks: firstly, to provide the technical infrastructure for communication and, secondly, to secure its own formal reliability and external integrity. The latter is necessary to establish a basis of confidence which goes beyond simple bilateral relations. This twofold warranty and providing function is a major characteristic of international administration, at least in the area of public order and safety (3.).

#### *1. Providing Informational Infrastructure*

Interpol offers to all police authorities involved ways and means for direct cross-border information exchange outside the intergovernmental and diplomatic

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<sup>63</sup> The list of international agreements, which refers to Interpol's communication system, also indicates Interpol's service function, see at: [www.interpol.int](http://www.interpol.int).

<sup>64</sup> Including its own analysis activity. Concerning this limitation see Paul Higdon, *Interpol's Role in International Police Cooperation*, in *INTERNATIONAL POLICE COOPERATION, A WORLD PERSPECTIVE* 29, 31, (Daniel J. Koenig & Philip K. Das eds., 2001).

channels.<sup>65</sup> This informational structure is based on Interpol's communication system. Several data bases and the instrument of international search warrants complement it.

*a) Starting Point: Limited Competences*

Outside of its providing function, Interpol has only very limited competences: According to Article 26 of the Constitution, the investigations are conducted by national authorities. The General Rules on the Processing of Information<sup>66</sup> grant Interpol only clearly defined competences in data processing.<sup>67</sup> The main responsibility for information, its content and its distribution remains with its respective source, *i.e.* the National Central Bureau or an authorized national or international office.<sup>68</sup> The General Secretariat administrates the data bases and regulates the access to information with respect to possible access restrictions imposed by its respective source.

One important condition for the distribution of data via Interpol, according to Article 10.1a) of the Rules on the Processing of Information<sup>69</sup>, is to respect the terms of use set by Interpol and the Human Rights. Furthermore, the information processing must be motivated by a specific international police interest; moreover, the aims, reputation or other interests of the organization must not be compromised; the information must be processed by the source according to the respective national law including the international duties as well as in accordance with Interpol's rules.

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<sup>65</sup> On Interpol's major achievement, its special information exchange structure, *see* Hoppe (note 8), at 212.

<sup>66</sup> *See* note 37.

<sup>67</sup> Although Art. 4.1(b) of the RPI (note 37) contains a general authorization ("the General Secretariat is also empowered to take any appropriate steps which may contribute effectively to combating international ordinary-law crime"), it is limited to the tasks transferred to Interpol. Art. 7(a) which refers to "information [...] obtained by the General Secretariat," has to be interpreted systematically from the regulatory context. Hence, the data obtained by Interpol, can only be secondary data resulting from primary data provided by other entities; *cf.* Art. 8 and 9 of the RPI which do not speak of Interpol as a data source. Art. 8(c) of the RPI speaks instead of the value added by the analysis work ("the value it adds to an item of information, notably when it carries out analysis work or issues a notice").

<sup>68</sup> Art. 5.3 of the Rules (note 37): "The National Central Bureaus, authorized national institutions and international entities shall continue to be responsible for the information which they provide through the police information system and which may be recorded in the Organization's files." According to Art. 5.4, the data source is also entitled to issue restrictions on the access to data.

<sup>69</sup> *See* note 37.

In cases where the compliance with these general conditions for the processing of data via Interpol is not clear, the General Secretariat together with the NCBs can take "all necessary measures" to ensure that the criteria for the processing of data are actually met. Only in urgent cases, i.e. in special situations of immediate physical danger, the General Secretariat is allowed to transfer relevant information to all National Central Bureaus after having informed the source of the information and on the condition that it has had no objection against the transfer of information.<sup>70</sup>

*b) I-24/7: The Global Interpol Communication System*

The infrastructure for the communication is provided by the communication system I-24/7, run by the General Secretariat. Since the beginning of the new millennium it serves as a communication basis for over 90% of Interpol's member states.

With regard to the communication network, Interpol plays a special role, which enables the member states to communicate safely. The technical requirements to access the network lie within the responsibility of the member states. However, within the framework of the technical support Interpol, if necessary, also supports states whose communication systems are below Interpol's standards.

*c) Interpol Data Bases*

Another element of the Interpol information system are the general and specific data bases. They have been established in accordance with Interpol's basic rules on processing of information (RPI) concretized by the Implementing rules for the RPI.<sup>71</sup> The Interpol regime offers several types of data bases for the Organization<sup>72</sup>: a general central data base for the processing of information available at the General Secretariat as well as specialized data bases, which are either connected to the central data base over an indexing system, e.g. analysis data bases, or which reasons are run autonomously for security.

Interpol runs data bases to search for persons and objects. Under the abbreviation ASF (automated search facility), Interpol runs a data base for stolen motor vehicles and stolen and lost travel documents. Another data base, with presently

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<sup>70</sup> Art. 17.1(c) with Art. 22 of the RPI (note 37).

<sup>71</sup> See note 41.

<sup>72</sup> Art. 6 of the RPI (note 37).

approximately 8 Mio. data sets, is used in the search for lost or forged identity cards. A data base for DNA profiles is planned for the nearest future. Moreover, a data base for missing people and unidentified bodies will also be established to be used in cases of natural catastrophes or terrorist attacks.

*d) Interpol's Wanted Persons Notifications*

The so called Notices, wanted persons notifications issued in Interpol's four official languages, are the best known instrument of the organization.<sup>73</sup> They constitute a schematic persons search and alarm system. Interpol uses six different searching criteria and colours:

On the highest search level are the so called *Red Notices*. They are issued for persons, against who a national or international court has issued an arrest warrant. The Notice itself has not the effect of an arrest warrant. It is solely a request of the issuing entity to provisionally or finally arrest the wanted person for extradition. Red Notices can be issued either before a trial or to be able to execute a sentence.

Blue Notices are used to gain additional information on people, who are connected to a crime. Green Notices are used to issue warnings against or police information on individuals who have committed crimes and are likely to commit them again in other states. Yellow Notices are used to find missing persons or to identify people who are not capable of identifying themselves. Black Notices are used to gather information on unidentified bodies. Orange Notices are warnings against possible assaults on public security through terrorist attacks or crimes.

Implementing the resolution Nr. 1617 of the UN Security Council<sup>74</sup>, a new wanted notification has been established to fight terrorism: the so-called Interpol-United Nations Special Notice. With this type of Notices, the individuals listed by the Security Council of the UN can also be searched for worldwide via Interpol<sup>75</sup>.

The Notices consist of information about items to identify the wanted person and of legal information on the charges brought against the person, as far as they are available. An alternative to the rather formal Notice is the so-called "Diffusion."

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<sup>73</sup> 4556 Notices were issued in 2006, including 2804 Red Notices, *see* at: [www.interpol.int](http://www.interpol.int).

<sup>74</sup> The Resolution requests the UN-Secretary General to cooperate with Interpol in order to assist the Committee 1267 of the Security Council in the best possible way at its work.

<sup>75</sup> MATHIEU DEFLEM, GLOBAL RULE OF LAW OR GLOBAL RULE OF LAW ENFORCEMENT? INTERNATIONAL POLICE COOPERATION AND COUNTERTERRORISM, THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE (ANNALS, AAPSS) 240, 245 (2006).

This is a message, sent from a National Central Bureau via I-24/7 to several or all other member states, with the request to find or arrest a person or to provide additional information.<sup>76</sup>

*i) Legal Requirements*

According to Article 10.5 of the RPI<sup>77</sup>, Notices are issued by the General Secretariat either at the request of an authorized entity or on its own initiative. Usually, the National Central Bureaus are the author of a Notice. Interpol itself can issue only Green and Orange Notices.<sup>78</sup>

Before issuing or distributing Notices, especially to other offices than the NCBs, the General Secretariat has to evaluate, whether the issue is necessary and advisable with regard to the aims and tasks of the organization, the respect of Human Rights and the required security measures against possible menaces to the police cooperation, to Interpol itself or to the member states. If a Notice does not meet the formal requirements of the Constitution and other Interpol regulations, it has to be prohibited by the General Secretariat. The implementing rules, which are not accessible to the public, shall define the exact requirements and procedures for the issue. Particularly with respect to the Red Notices, the General Secretariat has been authorized by the General Assembly to forbid the issuing of a Notice, if it does not meet the requirements of a request for provisional arrest.<sup>79</sup>

A reference to the presumption of innocence of the wanted person is not part of the published rules and regulations. Only the corresponding pages of the internet appearance of the organization contain explicitly highlighted warnings of this kind.

*ii) Legal Nature of the Notices: Are They International Administrative Acts?*

The Notices issued by Interpol cannot be considered as administrative decisions on individual cases with transnational effect in the sense of an "international administrative act." They lack a character of regulation. Neither do they constitute an international arrest warrant nor are they in any other form legally binding for

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<sup>76</sup> 12.212 Diffusions were published in 2006. At the end of the year, 18.170 Notices and 35.385 Diffusions were in circulation; see at [www.interpol.int](http://www.interpol.int).

<sup>77</sup> See note 37.

<sup>78</sup> However, this does not result from the RPI of Information. It is just stated on a Fact Sheet on the Notices on Interpol's websites; see at: [www.interpol.int](http://www.interpol.int).

<sup>79</sup> Information from: [www.interpol.int](http://www.interpol.int).

the individuals concerned. They, however, gain *de facto* a special relevance to the Human Rights through the multiplication of its recipients. Yet, this is not enough to cause a regulatory character of this measure.<sup>80</sup>

At the same time they do not entirely lack external effects. A number of states recognizes the Red Notices, because of their formality and their formal supervision by the General Secretariat, as a official request for the arrest of a person. However, such a request does not require the action of national police authorities and can neither provide a legal basis for it. The national authorities have to decide in accordance with their national law, how they proceed with this request. Recognizing this request as a basis for an arrest, could operate an internationalization or trans-nationalization of a foreign administrative decision. The author of such a "trans-nationalized" decision, however, is not Interpol itself but the original author of this Notice. The formal admission procedure by Interpol cannot be the single cause of internalization. It is just a precondition for the recognition by the other states. The trans-nationalization takes place through the membership in the organization, through the supervision proviso of the General Secretariat and the recognition of the transnational effect of the information.

A successful search does not result in Interpol's further operative involvement, either. Concerned authorities or the public are supposed to contact the local police office, which then gets in touch with the issuing authority and initiates the necessary steps. Therefore, the member state usually gives the initiative for a Notice, and cooperates with one or several other member states in order to find and arrest the wanted person. *Id est*: Existing information is just distributed through a special communication channel. Interpol's role is limited to that of a service agency.

But the Notices that are distributed by Interpol on its own initiative must have the same effect: Although the General Secretariat takes a decision that is relevant for the individuals affected by the warning, it affects only the person's right to informational self-determination. It has no impact on his or her general rights and legal status, because the warning does not provide a legal basis for further police actions.

*e) The Special Case of Public Searches*

Coming back to the initial example of the public searches of persons suspected to have committed serious crimes: This kind of measure is not mentioned in the Inter-

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<sup>80</sup> On the legal character of requests for mutual assistance, see FLORIAN WETTNER, DIE AMTSHILFE IM EUROPÄISCHEN VERWALTUNGSRECHT 175 (2005).

pol legal regime. Neither Interpol disposes of a special authorization to use this instrument, nor are there any procedural requirements or guaranties for legal protection. In contrast to the strict requirements for such measures in domestic law<sup>81</sup>, their success and effectiveness alone are not at all a sufficient basis for Interpol's activity. The public searches initiated by Interpol are not in conformity with basic requirements for criminal or administrative procedures affecting individual rights.

### 2. *Preserving the Normative Infrastructure*

Apart from this providing function, Interpol also has a normative warranty function (*Gewährleistungsfunktion*). The technical infrastructure as a basis for international administrative co-operation only works within a normative frame, which ensures a minimum level of the standards which the cooperating member states would otherwise have to maintain themselves. Of main interest are: the criteria of the information treatment concerning data security, accuracy and responsibility. From the perspective of the administrative law, Interpol has given itself an extensive system of regulations<sup>82</sup>, and the organization has committed itself to ensure the respect of the member states for this system.

### 3. *Administration of Information as an (a-)typical International Administrative Activity*

The core functions of Interpol are addressed to the authorities of its member states. In contrast to traditional measures under public international law, the Organization goes beyond the conventional scheme of international actors, who are neither national authorities nor individuals. The orientation on national authorities or directly on individuals is one of the main characteristics of international administration.

The direct impact on individuals is, however, not necessary. Such individual-oriented activity is in fact not Interpol's task: it has no transnational or international powers with regard to the individual. Nevertheless, its activity is directly relevant to the fundamental rights, through the multiplication of access to, and processing possibilities of, personal information.

From the national perspective, this administration seems to be atypical because it is not based on "administrative decisions". In areas where national sovereignty is strictly observed, this apart could, on the other hand, be a typical characteristic of

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<sup>81</sup> See § 131 - § 131 c of the German *Strafprozessordnung* (Code of criminal procedure - *StPO*).

<sup>82</sup> See C. II.

international administration. If the enabling and facilitating function for other administrative activity is predominant, the administration can not be described from the decision based perspective, but has to be analyzed with regard to this particular guarantee and providing function. The fact that Interpol has created a general administrative procedural system, which does not only focus on a single procedure but takes Interpol's entire activity into account, also speaks for this.

#### *IV. Supervision and Control*

The control perspective is relevant for Interpol for two reasons: On the one hand, the question arises whether the warranty and providing function ("*Gewährleistungs- und Bereitstellungsfunktion*") of Interpol includes any control or supervision functions regarding the authorities which participate in the exchange of information. In other words, the question is whether Interpol controls the information transfer not only formally but also substantially with respect to its content. A different matter is the control of Interpol's international administration, *i.e.* the mechanisms which are used to control Interpol's own activity. Both aspects of control mechanisms are typically based on co-operation and voluntary participation. Like in the case of co-operation within a network, the control perspective rather depends on mutual confidence than on strict enforcement of positive law.

##### *1. Interpol as a Control Instance*

As an institution with a predominantly supporting and facilitating function, Interpol has no central, extensive control or supervision powers with regard to information exchange between authorities. In order to preserve territorial police competences, and in the end national sovereignties, the basic competence for the respective information and its content remains with the authorities involved.<sup>83</sup>

The warranty and providing function is not limited to making available the technical infrastructure, which, as such and without a normative frame, would not be sufficient to establish a confidence basis for police co-operation. This legal framework itself has to be protected. By administrating data bases, granting access and distributing Notices, the organization can influence the effectuation and implementation of its law. Nevertheless, the opportunities to exercise control are

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<sup>83</sup> See Art. 5.3 and 5.4 of the RPI (note 37).

usually limited to an external, rather formal control.<sup>84</sup> Before issuing a Red Notice, the General Secretariat checks for example whether the formal application contains all information required. Nonetheless, the source remains responsible for the content; there is no control of an application's substance by Interpol.

Article 10.1b) of the General Rules on the Processing of Information (RPI)<sup>85</sup> underlines this by stating: "The information is considered, *a priori*, to be accurate and relevant, if it has been provided by a National Central Bureau, an authorized national institution or authorized international entity."

This fact, however, does not answer the question whether a material control by Interpol would be excluded entirely. Even if such a competence is not explicitly granted in the regulations, it could for once arise from the reiterated duty to respect the Human Rights. The presumption of correctness would also not contradict such competence. On the contrary, it can be argued that this presumption may be refuted in particular cases. Even if an obligation to control the content does not exist, such a control by the General Secretariat as well as by the Control Commission is not precluded in principle. An enforceable right of the concerned person, state or authority to control substance is however not adherent. Interpol's regulations are generally based less on enforcement and coercion – which the Organization could not justify anyway because of the lack of legal commitment – and more on co-operation and voluntary participation. Being part of a comprehensive network, "the General Secretariat shall remind the National Central Bureaus" "whenever necessary, and at least once a year" "of their role and responsibilities connected with the information they process through the Organization's channels, particularly with regard to the accuracy of that information and its relevance in relation to the purpose for which it is provided<sup>86</sup>." Similarly, Interpol's other control instruments are also established to provide amicable settlement of disputes.<sup>87</sup>

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<sup>84</sup> See Art. 9(a) of the RPI (note 37): "The General Secretariat shall take all necessary measures to protect the security, i.e. the integrity, and confidentiality of information provided and processed through the police information system."

<sup>85</sup> See note 37.

<sup>86</sup> Art. 5.1 of the RPI (note 37).

<sup>87</sup> See Art. 4.2 of the RPI (note 37) relating to requests for information and Art. 24 concerning the dispute settlement: "Disputes that arise between National Central Bureaus, authorized national institutions, [...] or between one of these entities and the General Secretariat in connection with the application of the present Rules and the implementing rules to which they refer, should be solved by concerted consultation. If this fails, the matter may be submitted to the Executive Committee and, if necessary, to the General Assembly in conformity with the procedure to be established."

The question of Interpol's competence for control of substance arises especially in the case of the Terrorism Notices. Even if, according to Article 25 of the UN Charter, the decisions of the Security Council, *i.e.* the lists issued in Security Council resolutions, are binding only the members of the UN, it could be argued that Interpol as an international organization is bound in the same way, so that it would be precluded from a control of these lists. Such hierarchy of international administrative law could emerge, firstly, from the international obligations of the organization, or secondly, from a possible self-commitment resulting from the recognition of law regimes of other international organizations or through the commitment of Interpol's member states.

## *2. Control of Interpol's International Administration*

With regard to Interpol's international administrative activity, there are several soft enforcement and supervising mechanisms. The Commission for the control of Interpol's files thereby assumes a special role. Judicial control is not envisioned.

### *a) Instruments of Internal Control*

The Interpol legal order includes a number of report obligations of the General Secretariat vis-à-vis the General Assembly or the National Central Bureaus and other entitled entities. E.g. a list has to be issued annually naming all international organizations that have access to Interpol's data files; another list covers the access of national authorities. Other reporting requirements relate to the establishment and management of Interpol data bases.

A further control mechanism are prior consultation and approval obligations: The General Secretariat, particularly before issuing implementing measures, has to consult the Commission for the Control of Interpol's data files. In special cases, it must ask the General Assembly for permission. To establish new data bases the General Secretariat has to consult the Control Commission as well as the Executive Committee. The latter has the possibility to demand the abolishing or correcting of a data base.<sup>88</sup>

### *b) Procedures of the Commission for the Control of Interpol's Data Files*

Strictly speaking, the control executed by the Commission for the Control of Interpol's data files is neither an entirely internal nor actual external surveillance. In

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<sup>88</sup> See Art. 6.2 or 21(b) of the RPI (note 37).

its composition established in the original Headquarters Agreement from 1982, the Commission is appointed from experts and one member of the Executive Committee by the General Assembly and the French government. According to the future regulation, France's appointment competence is abolished, so that Interpol alone is responsible for the composition of the Commission. Consequently, it will be more difficult to preserve its independence.

According to Interpol's Control Rules<sup>89</sup>, the Control Commission has a threefold function: Firstly, it is entrusted with the constant surveillance of the informational administration and information exchange within the framework of Interpol with a special regard to the processing of personal data and the respect for Human Rights. It can address advices to the General Secretariat. The advices are not binding but have to be acknowledged in so far as the Secretary General has to justify a non observance. The Commission can, in these cases, inform the Executive Committee which then takes the necessary steps.

Secondly, the Commission exercises a consulting function and has to be consulted for example when the organization establishes new data bases or issues implementing rules relating to data protection.

Thirdly, from the perspective of individual rights the most important function of the Commission is the *processing of individual requests* and complaints which refer to accessing, correcting and deleting data. Interpol rules define this procedure as an administrative procedure of legal remedy.<sup>90</sup> The individuals who are directly affected by the data processing procedure at Interpol have free access to the data. The Control Commission has to confirm and process every request as fast as possible. If the Commission finds an infringement of the data protection rules, it is however not allowed to take a decision on its own, for example delete data, but has to give a recommendation to the Secretary General. Nevertheless, the Commission can issue information concerning the data and inform the requester that it has exercised the controls, as requested. Regarding subjective rights, concerned persons have a right to have the request processed and examined, but there is no right to a substantial treatment or to a specific decision of the Commission that could be enforced by legal action. Subjective rights like for example to have data deleted are not granted by the legal regime. Under objective law the Commission is a soft instrument to ensure the data protection standards and thus the informational basic rights of an individual.

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<sup>89</sup> See note 42.

<sup>90</sup> See especially Art. 9-11 of the Control Rules (note 42).

To fulfill its tasks, the Commission has free access to Interpol's data bases and is allowed to consult the General Secretariat as well as the National Central Bureaus. With the approval of the Executive Committee it can also address the General Assembly. The Commission is not limited to the control of Interpol's legal order, but according to Article 1a) of the Control Rules<sup>91</sup> explicitly authorized to investigate fundamental breaches of the basic rights of the people concerned or the general principles of data protection. The framework of individual complaints affirms this obligation: accepted requests are examined with regard to their accordance to information processing conditions which must be respected by the Organization (Article 10 a) of the Control Rules)<sup>92</sup>.

From the perspective of international law of administrations, the Commission embodies a mechanism to enforce Interpol's legal order, which however like the regime itself, cannot take any legally binding decisions.

#### **D. Assessment and Conclusion: Contribution to the Emergence of an General International Administrative Law**

The analysis shows that Interpol exercises international administrative activity. In contrast to national administrations, its tasks do not focus on decisions in individual cases and cannot be systemized according to specific schemes of administrative procedure. Interpol rather assumes technical as well as normative functions in order to assist the international police co-operation between police authorities on different levels of the international multi-level-system. With its broadly codified legal system, it is an example for a specific field of International Administrative Law. The analysis of both, the legal regime and the administrative activity, reveals, that this specific international administration reverts to principles, which can be generalized for a doctrine of International Administrative Law. Similarly, the multi-level-dimension and the question of legitimacy are typical general issues of International Administrative Law.

##### *I. Principles and Standards*

There are three kinds of standards and principles which bind or at least concern Interpol's activity: the first refer to states, the second to individuals and the third to administrative procedure.

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<sup>91</sup> See note 42.

<sup>92</sup> See note 42.

### 1. *Standards Relating to States*

Interpol's activity and the administrative co-operation within Interpol's framework are characterized by the respect for state sovereignty. Without being regulated expressly, this principle is reflected in the Interpol regime in different ways: In contrast to other information systems, *e.g.* the Schengen Information System, the co-operation via Interpol is based on *voluntary participation* of states and authorities.<sup>93</sup> Therefore, the Organization does not possess any externally effective decision-taking powers and relies on voluntary obedience, self-commitment and soft enforcement mechanisms<sup>94</sup>. Consequently, the responsibility is also divided between the General Secretariat and the National Central Bureaus.<sup>95</sup> A further consequence is the basic principle of political, military, religious and racial neutrality<sup>96</sup> which protects on the substantial level national and political integrity and prevents Interpol's involvement in politics.

### 2. *Individual Standards*

Although Interpol faces the individual only on a secondary level of the complaint procedure via the Control Commission, the administrative legal actions with respect to the processing of information are of particular importance to the Human Rights, for they concern the nationally and internationally accepted right to informational self-determination.<sup>97</sup> Hence, Interpol's legal regime considers itself bound to individual-related standards.

At the top are the basic Human Rights in general to which the Interpol Constitution and other rules repeatedly refer.<sup>98</sup>

In addition, Interpol's legal regime provides a number of informational administrative principles especially on data protection, data accuracy and

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<sup>93</sup> From a practical point of view, *see* Hoppe (note 8), at 215; on the voluntary participation as a characteristic of the co-operation of authorities in networks *see* Schöndorf-Haubold (note 16), at 152.

<sup>94</sup> Evidence provides the procedure for the settlement of disputes according to Art. 24 of the RIP (note 37).

<sup>95</sup> *See* Art. 2 and 3 of the implementing rules for the RPI (note 41).

<sup>96</sup> Art. 3 of the Constitution (note 35).

<sup>97</sup> *See* ALBERS (note 62), at 288; WETTNER (note 80), at 315.

<sup>98</sup> *See* only Art. 2(a) of the Constitution (note 35): "in the spirit of the 'Universal Declaration of Human Rights'; Art. 2(a), 10.1(d) and 10.3(b) of the RIP (note 37).

confidentiality, which have direct effects only on the co-operation of authorities, but contribute indirectly to the protection of the individual.<sup>99</sup>

In contrast, effective legal protection is not granted within the Interpol legal system: The complaint procedure of the Control Commission, in particular, is not satisfactory with regard to the standards of rule of law. There are not granted any substantial rights for control and correction of inaccurate data nor are established any effective enforcement measures.

The lack of rules which would guarantee the presumption of innocence forms another gap in Interpol's legal order. It is only information on the Organization's internet website which gives some indication that this principle is normally respected. Since the Notices and other direct decision-taking powers in individual cases do not have regulatory character, a normative fixation seems not to be obligatory. But the declaratory and clarifying effects of an explicit rule would be desirable considering the relevance to fundamental individual rights.

### *3. Administrative and Procedural Principles*

The major part of the principles of Interpol's international administration belongs to the area of the administrative law on information. The legal regime provides an entire catalogue of standards on the processing of data. Apart from the ultimate responsibility of the data source for an information Interpol commits itself to the protection of data security, precision and to a limited extent to data accuracy.<sup>100</sup>

Apart from this data protection terms relating to public authorities the Interpol regulations are based on the principle of proportionality which - when the exchange of information is concerned - becomes a principle of relevance: data must not be collected, Notices issued only if "it is relevant and connected with cases of specific international interest to the police."<sup>101</sup> Outside the data processing standards of the Interpol regime the cooperating authorities act according to their national law. These national administrative procedures are not regulated by Interpol.

Interpol, however, provides a number of legal administrative standards for its own activity. The Control Commission in particular is submitted to the principle of good

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<sup>99</sup> See only Art. 1(f), 5(a) Nr. 2 or 10.2 of the RIP (note 37).

<sup>100</sup> See Higdon (note 64), at 36.

<sup>101</sup> See Art. 10.1(a) Nr. 3 of the RIP (note 37).

administration: it shall ensure a processing of the requests “at the earliest opportunity,” is bound “by professional secrecy” and “shall take all appropriate steps to exercise its duties” (Article 5 e of the Control Rules.)<sup>102</sup>

## *II. Multi-level and Network Dimension*

In organization and function Interpol is multi-dimensional and has a network dimension: it is organized as a network of national and international police authorities and other entities with police tasks. Within this network Interpol itself is the central service unit. The mediating function of the NCBs, which link the different national police information networks to Interpol, gives the organization a three-dimensional orientation. An additional dimension is added through Interpol’s co-operation with other international organizations. The organization therefore comprises all possible dimensions of police co-operation.<sup>103</sup> This network dimension is mirrored in the basic principles of the organization: the necessary non-hierarchical character results from the fact that individual contributions to the co-operation are made voluntary and from the spreading of competence and responsibility between the bodies involved.

Not only Interpol’s organization but also its function is based on a multi-level structure: as an assisting institution, the organization’s added value does not stem from the centralization of administrative decisions, which remain within the competence of the participating police authorities, but from the globalization and central provision of information. Without Interpol’s communication system, a much bigger co-operation and organizational effort would be needed to make this information be available. Interpol provides the technical and normative infrastructure and serves as a connecting point linking the participating authorities with each other.

## *III. Legitimacy of International Administrative Activity*

The legitimacy of Interpol’s international administrative activity cannot be found in traditional administrative patterns of the legitimacy structure of the nation state.<sup>104</sup>

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<sup>102</sup> See note 42.

<sup>103</sup> See Philip K. Das & Peter C. Kratcoski, *International Police Cooperation: A World Perspective*, in Koenig & Das (note 64), at 3, 4.

<sup>104</sup> On the alternative legitimacy patterns of international administrations, see Daniel C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 YALE LAW JOURNAL 1490, 1515 (2006); MICHAEL BARNETT & MARTHA FINNEMORE, *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS* 156 (2004); Rüdiger Wolfrum, *Legitimacy of International Law from a*

Only the member states can transfer *democratic* legitimacy.<sup>105</sup> From the perspective of the German administrative law, legitimacy also seems desirable for an international administrative activity which is, although not oriented on, but with relevance to individuals. The Organization itself does not possess a democratic basis which could provide such legitimacy, even though it takes majority-based decisions in the General Assembly. The state consent as the most important source of legitimacy in international law reaches its limits when it comes to single administrative measures and individuals concerned thereof.<sup>106</sup>

Nevertheless, Interpol does not lack any basis of legitimacy. Given the fact, that the national actors in the organization are not the governments but the police authorities, Interpol gets one part of its legitimacy not over institutional but expert-based mediation, *i.e.* the expertise of acting persons and participating entities. The direct contact of the respectively responsible national authorities results in greater efficiency in international co-operation. This efficiency can also create a legitimating effect.<sup>107</sup>

Interpol's position in the world also contributes to a greater legitimacy.<sup>108</sup> Largely accepted as an international organization under international law, committed to political, military and religious neutrality, the Organization encounters a lot of acceptance around the globe. Appointing staff to its bodies according to geographical proportional representation system it pays attention to a well-balanced representation.

Furthermore, its legitimacy is achieved through procedures and normative standards. These standards aim at the consensus of the participating authorities, establish a certain level of data security as a precondition for communication or provide some legal protection, however limited it may be, for the individual. An essential part of Interpol's acceptance is therefore based on its legal order, in which

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*Legal Perspective*, in LEGITIMACY IN INTERNATIONAL LAW, 1, 24 (Rüdiger Wolfrum & Volker Röben eds., 2008).

<sup>105</sup> On the "Tragedy of Democracy," see Joseph H.H. Weiler, *The Geology of International Law – Governance, Democracy and Legitimacy*, 64 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 547, 561 (2004).

<sup>106</sup> See Allen Buchanan & Robert O. Keohane, *The Legitimacy of Global Governance Institutions*, in LEGITIMACY IN INTERNATIONAL LAW (note 104), at 25, 35.

<sup>107</sup> On the importance of efficiency and expertise for global law enforcement, see DEFLEM (note 75), at 248; Gerspacher (note 51), at 414.

<sup>108</sup> See Alvarez (note 13), at 332.

such legitimating elements as neutrality, proportional representation, expertise, consensual procedures, material principles etc. are laid down, protected by soft enforcement mechanisms and to which the Organization commits itself. Even if Interpol's legal regime does not formally bind its addressees, the organizations legitimacy depends in a large part on the legality of its actions.<sup>109</sup> Legitimacy deficits appear exactly where the existing standards fall short of the standards required under the rule of law.<sup>110</sup>

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<sup>109</sup> On the relation between legitimacy and legality, see Daniel Bodansky, *The Concept of Legitimacy in International Law*, in LEGITIMACY IN INTERNATIONAL LAW (note 104), at 309, 311.

<sup>110</sup> On the question of a global rule of law, see Sabino Cassese, *The Globalization of Law*, 37 JOURNAL OF INTERNATIONAL LAW AND POLITICS 973, 991 (2005); Sabino Cassese, *Administrative Law Without the State? The Challenge of Global Regulation*, 37 JOURNAL OF INTERNATIONAL LAW AND POLITICS 663, 689 (2005).