



THE LEGAL FOUNDATIONS OF INTERPOL

RUTSEL SILVESTRE J MARTHA

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THE LEGAL FOUNDATIONS OF INTERPOL

The present work is a study of the legal aspects of the birth and development of an international organisation, using the example of INTERPOL as a detailed case study. It is not a constitutional manual for INTERPOL, but an organisational study, and does not seek to be exhaustive in terms of its description of INTERPOL's operations. Its main focus is the examination of the question whether an international organisation, in this case INTERPOL, can be created without a solemn and formally celebrated treaty. At the same time the book sets out the legal foundations for extrajudicial international police enforcement cooperation and explains the creation, structure and operation of INTERPOL, the organisation that promotes that cooperation. For practitioners who, for whatever reason, have to deal with INTERPOL, it provides a much-needed explanation of the legal foundations of the Organisation, its legal status and some basic guidance on its operations. It also includes information relevant for lawyers litigating issues with INTERPOL about how their clients can challenge the way the Organisation has processed information concerning them, or has alerted police forces worldwide about them.

While the book will appeal primarily to scholars, students and practitioners of law—as well as to campaigners and interest groups—it also offers political and socio-legal insights which will be of interest equally to non-specialists.

To Petra and Olivia

Foreword

By Ronald K Noble
Secretary General of INTERPOL

In this study, Dr Martha provides the ultimate legal opinion on the question of whether the act of a group of senior police officers back in 1923 to establish what has grown to become INTERPOL—the world's largest international police body—qualifies as a treaty or its legal equivalent under international law. The work is to be welcomed not only because of its thorough research and main conclusions, but primarily because it submits known facts about INTERPOL to a rigorous legal analysis from the perspective of public international law.

In the process it demystifies INTERPOL and its legal origins by confronting the question of the permissibility of and conditions for extrajudicial international police enforcement cooperation under international law. One must recall that this question has not received much scholarly attention from public international law experts, other than from the perspective of human rights law, since the Arrest and Repatriation of Savarkar dispute between France and Great Britain decided by the Permanent Court of Arbitration in 1911.

Starting from the premise of the freedom of action of sovereign States, Dr Martha's study sets out the legal foundations for extrajudicial international police enforcement cooperation and explains why the same freedom enabled the creation of the organisation that promotes that cooperation, without a solemnly concluded treaty. The practical, as well as theoretical importance of the study needs to be underlined. The study provides practitioners who for whatever reason have to deal with INTERPOL, with the much needed explanation about the legal foundation of the Organisation, its legal status and some basic guidance on its operations. It is fundamental that lawyers litigating issues with INTERPOL are well informed about how their clients can challenge the way the Organisation has processed information concerning or has alerted police worldwide about them.

At the theoretical level, Dr Martha tackles the issue of the legal and administrative process through which an international organisation is created under international law. This dimension of the study provides useful insights that are relevant for the many other international bodies and networks of governmental departments or officials, such as the Financial Action Task Force (FATF), the Egmont Group of Financial Intelligence Units (EGFIU), the Organisation for Security and Co-operation in Europe (OSCE) etc, which have been created without a formal treaty adopted at a diplomatic conference.

On a more personal note, the study also bears testimony to how Dr Martha approached legal issues during his tenure as General Counsel and Director of

Legal Affairs of INTERPOL (2004–08). I learned from him the importance of not promulgating new rules or amendments to existing rules unless it is established that no acceptable solution can be obtained through the interpretation and construction of the existing rules. Accordingly, on the specific issue of the need for INTERPOL to be reconstituted on the basis of a formal treaty, his advice was ‘It’s not necessary’. This book explains why!

Lyon, July 2009

Preface

The present exercise is a legal study of the birth and development of an international organisation, utilising the story of INTERPOL as a detailed case study. It is not a constitutional manual for INTERPOL, but an organisational study and does not seek to be exhaustive in terms of description of INTERPOL's operations. Its main focus is the examination of the question of whether an international organisation, in this case INTERPOL, can be created without a solemn and formally celebrated treaty.

When I assumed my duties as General Counsel and Director of the Office of Legal Affairs of INTERPOL in the summer of 2004, I was immediately confronted with the fact that the continuous increase of the relevance of the Organisation over the recent years brought to the fore the need to understand the legal foundation and structure of the Organisation. The Organisation's profile has been rising since 2001, triggering an increased interest in its legal status, including those who would rather have the Organisation not be as effective. This is not the first time this has happened. During the second half of the 1970s and throughout a significant part of the 1980s, the Organisation experienced the same, including law suits that questioned its legal legitimacy, which led to the creation of the Commission for the Control of INTERPOL's Files in 1982.

Aside from containing an interesting theoretical question, which by itself would justify a dedicated study, the issue concerning the legal status of INTERPOL is of significant practical consequence. The status of an international organisation or not determines the success of the Organisation in fencing off attempts of persons, who are the subject of its files or its notices, to interfere with the operations through law suits filed in national courts or by mobilising concerns about the control over the Organisation in political circles. As the Organisation organises its General Assemblies and Regional Conferences in differing countries, at least twice each year INTERPOL goes through the process of explaining its status to reluctant and sometimes sceptical national officials who would prefer to apply customs and immigration regulations, as well as other relevant national legislation, to the goods and persons involved in such statutory meetings. It has been the experience of the present author that while INTERPOL is undoubtedly famous, in fact it is unknown. This applies particularly to the circumstances of its creation. In the absence of a solemnly celebrated treaty establishing the Organisation to point at when there is a need to explain the status of INTERPOL, explaining the legal origins and nature of the Organisation is a regular assignment at the headquarters in Lyon.

The INTERPOL General Assembly previously acknowledged the need to address the issue of the legal foundation and structure of the Organisation and

sought to remedy the situation by exploring the possibility of an INTERPOL Convention like the Europol Convention. Most recently—by Resolution AG-2002-RES-17 ('INTERPOL Convention: Setting up a Working Group')—the General Assembly during its seventy-first session (October 2002, Yaoundé) established a Working Group with the task of assessing the legal obstacles to cooperation within the INTERPOL system, both at the level of the Organisation and of the members, in particular, those which may also constitute a hindrance to the development of the Organisation and to the efficiency of its cooperation system, particularly with regard to the exchange and processing of police information. Subsequently, having studied the report by the Yaoundé Group, the INTERPOL Executive Committee noted that it had hoped that the Group would focus on whether a convention constituted the way forward for the Organisation. It requested the General Secretariat to complete the work conducted by the Yaoundé Group in order to analyse the legal obstacles to cooperation through INTERPOL and to propose a comprehensive solution and ways to implement this solution. During its one hundred and forty-second session (June 2004) the Executive Committee studied the General Secretariat document entitled 'INTERPOL Convention: Continuation of the Yaoundé Group's Work'. The document set out the considerations and arguments in support of developing an INTERPOL convention that had been identified and the General Secretariat proposed to submit an outline plan for a future convention for consideration by the Executive Committee at its one hundred and forty-third session. However, the Executive Committee expressed reluctance with regard to the course proposed by the General Secretariat for completing the work of the Yaoundé Group, and specifically, requested the General Secretariat to reconsider the idea of proposing a new INTERPOL convention at that stage. It was obvious that the idea of an INTERPOL convention, which would straightjacket the Organisation in the way that Europol is often perceived, was not an attractive option. In other words, the task of developing other options for surmounting the legal obstacles to cooperation through INTERPOL was a main task that awaited me on my desk when I arrived at INTERPOL on 15 July 2004.

My approach was to conduct an extensive legal analysis of how INTERPOL's Constitution came about, the attitudes and practices of the various governments that adhered to the Constitution. Based on that exercise—which turned out to be an in-depth study throughout the next four years on the question of how international organisations are created without a solemn treaty—I concluded that the existing INTERPOL Constitution harbours all the attributes to be recognised as a conventional legal instrument under international law amenable to registration and publication under Article 102 of the United Nations' Charter, rendering it unnecessary to elaborate on a new INTERPOL Convention.

This book reflects the study I undertook and the conclusions that I drew with respect to the need for INTERPOL to embark on a process to reconstitute itself on the basis of a solemn treaty. By discussing the hitherto scarcely available information and by affording a legal analysis of the facts related to the creation and

day to day operations of the Organisation from the perspective of international law, my answer to that question is negative as I consider that it would not add anything legally to the status of the Organisation. It is hoped that the present volume provides the interested parties, be it judges, attorneys, government lawyers and scholars, the information and analysis they need in order to answer questions relating to the status of the Organisation. Rather than pursue a more than likely fruitless effort to arrive at an INTERPOL convention, I would encourage the INTERPOL General Assembly to mandate the registration and publication of the existing INTERPOL Constitution under Article 102 of the United Nations' Charter and seek the status of a specialised agency. Even though such registration (and status) by itself cannot confer on the INTERPOL constituent instrument a status that it does not already have, it would certainly help to eliminate the doubts about the legal nature of the said instrument.

Acknowledgments

In the process of preparing the present study I benefited from discussions with many of my contemporary colleagues in the INTERPOL Office of Legal Affairs, in particular Sandrine Capsalas, Olivier Foures, Estelle Martin, Yaron Gottlieb, Wuiling Cheah and Caroline Goemans. I also wish to acknowledge the input of the attendants to a special meeting of selected Legal Advisors of Ministries of Foreign Affairs of Austria, Cameroon, France, Ivory Coast, Kenya, Salvador, United Kingdom and the United States of America, that was held at the INTERPOL Headquarters on 3–4 May 2007. The meeting was chaired by His Excellency Dr Maurice Kamto, Minister Delegate at the Ministry of Justice of Cameroon and member of the United Nations' International Law Commission. Professor Stéphane Doumbé-Billé, professor of International law at Université Lyon III acted as expert. In the course of the preparation of this volume I also benefited from the views of colleagues, acquaintances and friends. The INTERPOL Secretary General Ronald K. Noble, who is a professor of law on leave at New York University, proved to be an avid sparring partner (including when we co-taught a course at the National University of Singapore), not accepting any truism familiar to general international lawyers, but demanding that it is explained. This is particularly true for my assertion that for the question of whether the INTERPOL Constitution is an agreement under international law, it is not necessary to deal with the issue of membership in the Organisation, but that it would suffice to identify who should be deemed to be the contracting party. I am most grateful to Sir Michael Woods who carefully read the manuscript and provided invaluable comments. I am also indebted to Puhazh G. Parvathybai, Sorena Vakilian, Brian Adungo, Faith Kamau and Danila Ronchetti who at various stages kindly volunteered to proofread the manuscript. I remain responsible for the end results, particularly for continuing to tinker with the text afterwards.

Finally, I owe much gratitude to my spouse and my daughter who were not always given the quality time they deserve, but also because of their support and encouragement.

Abbreviations

AFDI:	Annuaire français de droit international
AJIL:	American Journal of International Law
ASR:	African Security Review
BIS:	Bank for International Settlements
BKA:	Bundeskriminalamt
BYIL:	British Yearbook of International Law
CCC:	INTERPOL Command and Co-ordination Centre
CCF:	Commission for the Control of INTERPOL's Files
CJLS	Canadian Journal of Law and Society
DEA:	United States Drugs Enforcement Agency
ECOSOC:	United Nations Economic and Social Council
GLJ	German Law Journal
HYIL:	Hague Yearbook of International Law
IJIL:	Indian Journal of International Law
I-24/7:	INTERPOL 24 hours/7days Global Police Communications System
IATA:	International Air Transport Association
ICCPR:	International Covenant on Civil and Political Rights
ICJ:	International Court of Justice
ICLQ:	International and Comparative Law Quarterly
ICPC:	International Criminal Police Commission
ICRC:	International Committee of the Red Cross
IJSL	International Journal of the Sociology of Law
ILC:	International Law Commission
ILOAT:	International Labour Organisation Administrative Tribunal
ILR:	International Law Reports
INTERPOL:	International Criminal Police Organisation
IOLR:	International Organisations Law Review
IPSG:	INTERPOL Secretariat General
ISIA:	Irish Studies in International Affairs
NCB:	INTERPOL National Central Bureau
NILR:	Netherlands International Law Review
NJIL:	Nordic Journal of International Law
OLR:	Oregon Law Review
OPCW:	Organisation for the Prevention of Chemical Weapons
OSCE:	Organisation for Security and Cooperation in Europe
PCA:	Permanent Court of Arbitration
PCIJ:	Permanent Court of International Justice
RdC:	Recueil des cours de l'Académie du Droit International de la Haye

RCMP:	Royal Canadian Mounted Police
RGDIP:	Revue Générale de Droit International Public
RIPC:	Revue Internationale de Police Criminelle
RPI:	INTERPOL Rules on the Processing of Information for the Purposes of International Police Cooperation
UN:	United Nations Organisation
UNRIAA:	United Nations Reports of International Arbitral Awards
UNJY:	United Nations Juridical Yearbook
USNCB:	United States National Central Bureau
WBAT:	World Bank Administrative Tribunal
WTO:	World Trade Organization
YILC:	Yearbook of the International Law Commission

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