

# BACKGROUND

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## Necessary Reforms Can Keep Interpol Working in the U.S. Interest

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### Abstract

*Participation in Interpol is in the U.S. national interest. However, Interpol's practice of allowing its members to transmit diffusions without systematic prior review by Interpol raises serious concerns. The U.S. should work with other democracies to reform Interpol's diffusion system and require the U.S. National Central Bureau to report annually on information provided to or received from Interpol about U.S. citizens. Because many Interpol members are not law-abiding democracies, the U.S. should further limit the nations that can access data that it provides to Interpol, protect U.S. citizens and individuals with a U.S. nexus from baseless or politicized Interpol notices and diffusions, and emphasize that continued U.S. support for Interpol depends on Interpol's scrupulous adherence to its 1956 constitution.*

On April 23, 2012, the International Criminal Police Organization (Interpol) denied an Egyptian request to issue a Red Notice—often incorrectly described as an international arrest warrant—for 15 personnel from nongovernmental organizations (NGOs) that receive U.S. funding, whom the Egyptian government accused of illegally operating pro-democracy programs.<sup>1</sup> Several months later, the issue arose again when Egypt announced that it would seek Interpol's cooperation in securing the arrest and extradition of seven individuals associated with the production of a controversial Internet video.<sup>2</sup> Again, Interpol refused to act, noting that its constitution prohibited it from becoming involved in religious controversies.<sup>3</sup>

### KEY POINTS

- U.S. membership in Interpol is in the national interest.
- Interpol's 1956 constitution prohibits it from involvement in activities of a "political, military, religious or racial character." Interpol should abide scrupulously by this prohibition.
- Like too many other international organizations, Interpol does not have meaningful standards for membership. The U.S. should be careful that its involvement in these organizations is compatible with its values and sovereignty.
- The U.S. should further limit the nations that can access the data it provides to Interpol so that these data are not available to Interpol's non-democratic members.
- The U.S. should act to protect U.S. citizens and individuals with a U.S. nexus who are unjustly targeted by an Interpol notice or diffusion and should seek to reform Interpol's diffusion system.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2861>

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These incidents illustrate the substantial strengths and potential weaknesses of Interpol. Among Interpol's strengths is its awareness that it must respect its constitution as it facilitates international cooperation against crime and that redefining political or religious disputes as criminal would violate its constitution and destroy the organization.

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## Efficiency is not an end in itself. It is a means to an end, and that end can be evil.

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But Interpol's potential weaknesses are serious: Like most international organizations, Interpol requires neither democracy nor respect in practice for the rule of law as a condition of membership. Interpol's high name recognition and global reach encourage its autocratic member nations to exploit that recognition and reach and to use them as instruments of repression. In an era when many nations are seeking to criminalize speech and accusations of financial crimes have become a favorite weapon of autocracies against political opponents, Interpol faces the difficult challenge of remaining true to its constitution.

U.S. participation in Interpol serves U.S. national interests. It should continue and even be enhanced. However, Interpol is not without problems, and it is in the interest of both the U.S. and Interpol to address these faults before they lead to the persecution of innocent people and thereby damage Interpol's reputation in and usefulness to the United States and other law-abiding democracies.

More broadly, Interpol offers an example of a dilemma that the U.S. confronts regularly. Some international organizations or initiatives are so useless and dangerous that the U.S. should withdraw from them.<sup>4</sup> Yet many international organizations, although flawed by the inclusion of autocratic regimes, nevertheless benefit the United States. This is the case with Interpol.

With these organizations, the best long-term solution for the U.S. is to seek to exclude the autocrats or to establish new organizations that require democracy, or at least respect for the rule of law, as a condition of membership. In the short term, the U.S. must decide how to work within the existing organization in ways that protect U.S. interests and

advance American values. In this broader context, Interpol is a case study in the problems inherent for the U.S., as a sovereign and law-abiding democracy, in a world in which international organizations have too readily given membership to autocratic regimes.

## Interpol's Vulnerability to Totalitarian Abuse

In 1914, Prince Albert I of Monaco convened a conference in Monte Carlo to discuss international cooperation against crime. The idea was revived after World War I by Johann Schober, the police chief of Vienna, Austria, who in 1923 convinced police agencies from 20 nations to join his new International Criminal Police Commission (ICPC).<sup>5</sup>

From the start, the ICPC emphasized respect for national sovereignty. It was also designed to ignore political differences, include police organizations from nations such as Fascist Italy, and concentrate on international cooperation against such crimes as counterfeiting. Then as now, the ICPC's mantra was that it was apolitical and concerned only with improving police efficiency.<sup>6</sup>

But efficiency is not an end in itself. It is a means to an end, and that end can be evil. Regrettably, the ICPC's commitment to efficiency did not protect it from totalitarian abuse. Shortly after the Nazis came to power in Germany in 1933, Nazi supporters began to infiltrate the ICPC, which was always headed by the chief of the Vienna police.<sup>7</sup> After Germany annexed Austria in March 1938, ICPC President Michael Skubl was thrown in prison and replaced by Otto Steinhausl, a reliable Nazi.<sup>8</sup> Shockingly, this did not stop the U.S. Congress from authorizing U.S. participation in the ICPC in June 1938.<sup>9</sup> The Federal Bureau of Investigation (FBI) did not cut off contact with the ICPC until three days before Pearl Harbor.<sup>10</sup>

After Steinhausl died in June 1940, he was replaced by the notorious Reinhard Heydrich, Chief of the German Security Police, who moved the ICPC headquarters to Berlin.<sup>11</sup> The ICPC files contained information on the religious affiliation and sexual orientation of suspects and convicts that the Nazis used to locate and arrest Jews and homosexuals.<sup>12</sup>

The Nazis found it easy to take over the ICPC precisely because it was apolitical. As scholar Mathieu Deflem notes, the ICPC "machinery ... could be used by any police—loyal to whatever political purpose and ideological persuasion—that participated in, or had taken control of, the organization."<sup>13</sup> The ICPC's

emphasis on apolitical efficiency and failure to require that member police agencies be democratically accountable made it “amenable to be politicized by whoever had control of the organization.”<sup>14</sup>

After World War II, the ICPC was refounded at a conference in Brussels.<sup>15</sup> By 1950, it had 20 full-time employees supplied by the French Interior Ministry.<sup>16</sup> Productivity was low. According to its annual report in 1950, the ICPC in the previous year had circulated 207 notices, indexed the names of 92 international criminals, reported on 52 drug cases, and circulated descriptions of 26 drug criminals. The result had been a mere 20 arrests and the identification of seven other individuals through the ICPC “fingerprint club.”<sup>17</sup>

The FBI joined the postwar ICPC but proceeded with caution. While the USSR did not participate in the ICPC, several Communist regimes in Eastern Europe—Czechoslovakia, Yugoslavia, Poland, Hungary, and Bulgaria—maintained the memberships of their previous non-Communist governments.<sup>18</sup> The FBI ignored all communications that the ICPC transmitted from these dictatorships and discontinued participation in the ICPC radio network.<sup>19</sup>

The FBI was right to be cautious. In March 1950, 10 Czechoslovakian dissidents hijacked a plane and flew to West Germany, where they were granted political asylum.<sup>20</sup> At the request of the Czechoslovak government, the ICPC put out a Red Notice—a formal notification by the Czechoslovak government that the Czechs were criminal fugitives and would be extradited if apprehended—on the dissidents. In response, FBI Director J. Edgar Hoover ordered the FBI to withdraw from the ICPC.<sup>21</sup> As a result of the furor, Czechoslovakia and the other Communist regimes dropped out in 1951–1952.<sup>22</sup>

### **The 1956 Constitution**

The loss of the U.S. was a disaster for the ICPC. As a result, the ICPC adopted a new constitution in 1956, which changed the name of the organization to the International Criminal Police Organization—INTERPOL. Article 2 of this constitution requires Interpol to comply with the spirit of the Universal Declaration of Human Rights, and Article 3 forbids it from “undertak[ing] any intervention or activities of a political, military, religious or racial character.”<sup>23</sup>

The adoption of the 1956 constitution, particularly Article 3, was and continues to be vital to Interpol.

If Interpol had not adopted this constitution, the U.S. would likely not have rejoined as rapidly as it did, and support in the U.S. for Interpol membership would not be strong today. By the same token, the 1956 constitution establishes a baseline against which Interpol should be assessed. It is neither radical, wrong, nor judgmental to expect Interpol to avoid involvement in cases that are political: Interpol’s own constitution obliges it to avoid such cases.

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Nor is calling for respect for Article 3 an assault on the sovereignty of Interpol’s member nations. Rather, it is intended to hold this international organization accountable. Interpol was established for clear and limited purposes, and all member nations agreed to respect these purposes when they joined. As Interpol correctly notes, “INTERPOL may refuse to process a request on the basis of Article 3, but States alone have the sovereign right to determine whether an offence is political.”<sup>24</sup> In other words, Interpol cannot make decisions for its member nations about whether to prosecute or extradite because of a supposed offense or prevent those nations from using any other channels at their disposal. It can only govern its own conduct by abiding by the requirements set out in its constitution and subsidiary rules.

For Interpol, governing its conduct is not merely a matter of its need to comply faithfully with its constitution. It is essential to Interpol’s survival and to future U.S. cooperation and support.

### **Membership, Structure, Databases, and Training Services**

Interpol has 190 member nations. It is led by a Secretary General, who acts as its chief executive officer, and an Executive Committee of 13 members, including its President. Interpol is autonomous, and the only significant checks and balances on it are those that it imposes on itself through its General Assembly.<sup>25</sup>

The Interpol General Assembly is like the U.N. General Assembly: Every country has one vote, even though only a few countries, including the U.S., carry most of the financial burden. Regrettably, the balance of power in the Interpol General Assembly, as in the U.N. General Assembly, rests with the Non-Aligned Movement, the Organization of Islamic Cooperation, and the world's autocracies and dictatorships.<sup>26</sup> Since Interpol has no counterpart to the U.N. Security Council, the Interpol General Assembly is the organization's final authority.

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### By 2011, Interpol's operating budget exceeded 60 million euros (approximately \$86 million).

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Interpol's worst feature is that it includes almost all of the world's nations and therefore has no meaningful membership standards. Nations that do not pay their dues can be suspended as Cuba, Guinea, Cambodia, and Laos were in the mid-1980s. However, by canceling the unpaid dues owed by member nations in 2001, the Interpol General Assembly made it clear that Interpol was unlikely to apply suspension as a serious threat.<sup>27</sup> Interpol's constitution also has no provision for the expulsion of a member, although in 1984, paralleling a similar action in the U.N. in 1971, the Interpol General Assembly removed recognition from Taiwan, a member since 1962, and transferred it to the People's Republic of China.<sup>28</sup>

In 1958, Interpol convinced the U.S. Department of the Treasury—which was then responsible for the U.S. Secret Service and the criminal enforcement of federal laws on alcohol, tobacco, and firearms—to join Interpol, thus re-establishing American participation in the organization.<sup>29</sup> In 1969, as required by Interpol of all member nations since 1956, the U.S. established its National Central Bureau (NCB).<sup>30</sup> The NCB is the primary point of contact between the member nation and Interpol.<sup>31</sup> It is based in the member nation and staffed by employees of its national government.

In the 1980s, the Reagan Administration decided that the U.S. should work more closely with Interpol. This led to the election of John R. Simpson as the first U.S. president of Interpol in 1984, a substantial increase in U.S. contributions to Interpol and spending on the U.S. NCB, U.S. displacement of France

as the most influential nation within Interpol, and increased Interpol emphasis on counterterrorism.<sup>32</sup>

Today, the U.S. NCB is a 77-person office (69 of these permanent positions are currently filled) in the DOJ, co-managed with the Department of Homeland Security (DHS). The NCB also employs 24 contractors and has 53 detailees (some part-time) from 29 federal and local agencies. The NCB also has sub-bureaus in San Juan, Puerto Rico, and in American Samoa.<sup>33</sup>

The U.S. NCB is the largest and best-financed of the NCBs, with a \$30 million budget for fiscal year (FY) 2011.<sup>34</sup> Every U.S. state has a liaison office for state and local police to contact Interpol via the NCB.<sup>35</sup> The NCB also works closely with other executive agencies. While it is the primary U.S. point of contact for Interpol, the NCB does not originate U.S. requests to Interpol, which are made by the various U.S. law enforcement agencies that work through it.

During the postwar years, the Secretary General of Interpol was always French until the election of Raymond Kendall of Britain in 1985.<sup>36</sup> Ronald K. Noble, an American, has led Interpol since 2000. Since 1989, Interpol has been headquartered in Lyon, France.

In parallel with growing U.S. support, Interpol's budget has risen tremendously in the postwar era. In 1948, it totaled less than 100,000 Swiss Francs. By 2011, Interpol's operating budget exceeded 60 million euros (approximately \$86 million).<sup>37</sup> The organization then had a staff of 673, comprised of both permanent employees and national law enforcement officials who are seconded to work at Interpol.<sup>38</sup> The use of seconded employees can result in Interpol benefiting from the expertise of outstanding officers who want to share their knowledge internationally, although Interpol has little control over the quality of those who are seconded to work for it.<sup>39</sup>

Traditionally, all contacts between NCBs (and thus between law enforcement agencies in different nations) took place through Interpol and with the assistance of its staff, but under Secretary General Noble, this hub-and-spoke model has been supplemented by other approaches. One of his most significant projects is I-24/7, Interpol's global telecommunications network, which was established in 2003. I-24/7 allows an NCB to contact other NCBs and directly query a number of databases maintained by Interpol without routing the query through its staff.<sup>40</sup>

The I-24/7 network has been extended through MIND/FIND, a system that allows local law enforcement officers to query several of these databases without sending their query through their nation's NCB. As a result, more than 18,000 U.S. law enforcement agencies can access the Interpol "Dashboard."<sup>41</sup> The MIND/FIND system does not allow access to all databases maintained by Interpol. For example, the database of child sexual exploitation images is available only to select investigators under carefully controlled conditions.<sup>42</sup>

The I-24/7 and MIND/FIND systems have facilitated international police communications. They transmit about 16 million messages annually. As of 2010, only 4 percent of these messages were to or from Interpol headquarters. The rest of the communications were bilateral or multilateral. Thus, the majority of the message traffic on these Interpol systems is not regularly monitored by Interpol. These systems allow member states to communicate law enforcement information to each other in a direct and structured way that is more likely to get a response.

This Interpol service is particularly valuable to local U.S. law enforcement agencies and especially to poorer Interpol member nations because it is sometimes their only form of communication with law enforcement agencies in other nations. Not all communication is between nations: Databases maintained by Interpol are also available—after approval by its Executive Committee and subject to any restrictions imposed on national data by the nations that provided it—to selected international organizations.<sup>43</sup>

Interpol does not collect or own the information in the databases it maintains. These databases contain information submitted by NCBs. This information is national property, and Interpol will delete it on request from the NCB that submitted it. The submitting NCB can also delete it directly via Interpol's I-Link system, an online system that works without intervention by Interpol's staff.

Interpol maintains databases on a number of subjects, including maritime piracy, stolen works of art, stolen motor vehicles, and child sexual exploitation images, the last of which as of 2011 had helped to rescue 2,511 victims.<sup>44</sup> The oldest and most important database maintained by Interpol is the Nominal Database, which contains the names of and other information about 162,525 criminals and suspected

criminals.<sup>45</sup> As of 2010, approximately 59,000 of these individuals were fugitives.<sup>46</sup> Thanks to MIND/FIND, local law enforcement agencies can search the Nominal Database directly without going through their NCBs.<sup>47</sup> Increased access has led to more hits, with database matches rising from 49,902 in 2005 to 202,807 in 2011.<sup>48</sup>

Interpol's fingerprint database has prints for 171,000 individuals.<sup>49</sup> Of these, as of 2010, 4,300 came from the U.S.<sup>50</sup> This is only a small fraction of the 70 million criminal fingerprints in the FBI's Integrated Automated Fingerprint Identification System, which indicates that the U.S. has exercised good judgment in providing Interpol with fingerprints only when necessary.<sup>51</sup> The fingerprint database yields about five hits per day, for a total of 1,817 hits in 2011.<sup>52</sup> Interpol urges countries to submit fingerprints for non-citizens arrested for serious crimes, even if they are not subsequently convicted. This raises potential privacy issues.<sup>53</sup> The U.S. does not allow Cuba, the International Criminal Court (ICC), Iran, Sudan, or Syria to access fingerprints it has provided to the database maintained by Interpol.<sup>54</sup>

Interpol began to create a DNA database in 2002. By 2011, it had accumulated DNA profiles for 116,695 people.<sup>55</sup> As of 2009, this database had DNA information on 4,300 individuals from the U.S.<sup>56</sup> As with all databases maintained by Interpol, a nation submitting DNA information can limit access to particular countries or for specified purposes.<sup>57</sup> In 2011, 51 positive DNA matches were made, a marked increase from the single match in 2003.<sup>58</sup> The DNA database contains no names and no information about cases. Each entry in the database is a code that links back to the providing NCB. If there is a match on the DNA database, the providing NCB can choose whether to reveal further information about the entry that produced the hit to the NCB that searched the database.

The Interpol database that includes the most Americans is likely its record of Stolen and Lost Travel Documents (SLTD). As of 2011, this database held records of more than 31 million documents, most of them passports reported as lost or stolen by the owner.<sup>59</sup> If a lost passport is found, the owner can report this to his or her government, which can then remove the passport from the database. For border control officers, Interpol's MIND/FIND system allows a one-second passport scan against the SLTD database.<sup>60</sup>

In January 2009, the U.S. began using passenger manifests for all international air and sea passengers entering the U.S. to screen the passport numbers of those passengers against the SLTD database. If a passenger is using a lost or stolen passport, U.S. Customs and Border Protection officials will know about it before that individual steps off the airplane or ship. In 2012, the U.S. conducted more than 220 million queries of the SLTD database.<sup>61</sup>

Secretary General Noble has asked airlines to provide Interpol with passenger passport numbers for all international flights and hopes to expand SLTD checks to international trains and passenger ships.<sup>62</sup> One of his highest priorities has been to expand the number of nations that provide details on cancelled travel documents and that check passports against the SLTD database. As of 2011, only 44 nations regularly conducted such scans.<sup>63</sup>

In 2011, the SLTD database produced 47,025 hits.<sup>64</sup> Interpol has acknowledged that most of these hits involve passports that the passport holder reported as lost and then later found and used in error.<sup>65</sup> While the detection of people who really are who they claim to be contributes nothing to controlling crime, some hits are significant. For example, when the SLTD database was used in 2007 for the ICC Cricket World Cup, Caribbean host countries conducted nearly 500,000 searches that resulted in 126 database hits, including at least one individual using a stolen passport.<sup>66</sup>

Interpol noted in 2011 that the SLTD database was growing “exponentially,” with 10,000 new records added every day for the preceding five years.<sup>67</sup> While this growth makes it inevitable that regular searches of the SLTD database will produce more false positives, the database plays a useful role in limiting the ability of criminals and terrorists to travel on stolen documents and thereby contributes to U.S. security.

Interpol also maintains a terrorism database, which as of 2013 contains information on 11,000 persons with suspected links to terrorist activities.<sup>68</sup> Interpol takes the names on the list—which can include monikers such as “Muhammad Muhammad”—and attempts to add further identifying information, such as photos or a date of birth.<sup>69</sup> In addition to helping to identify individuals affiliated with al-Qaeda or the Taliban, the additional information reduces the frequency with which innocent individuals with the same name as a suspect are falsely identified as terrorists.

Interpol also assists U.N. peacekeeping missions and supports counterterrorism efforts in Iraq and Afghanistan. In one case, Interpol sent several telephone numbers to Belgium and Italy that had been found on a cell phone captured from a terrorist. This information resulted in the destruction of terrorist cells in those nations.<sup>70</sup> As of 2010, the U.S. had supplied information on 1,065 terrorist suspects or affiliates to this database, and it has restricted access to this information to selected nations.<sup>71</sup> Secretary General Noble has described Interpol as “irrelevant” to the fight against terrorism before 9/11, but under his leadership, Interpol has become an increasingly important clearinghouse for international information on terrorism.<sup>72</sup>

Interpol also plays a role in facilitating international cooperation on humanitarian matters, although most cooperation is bilateral and not conducted through Lyon. For example, from December 2012 through June 2013, the U.S. NCB processed 94 death notifications (76 originating in requests from foreign NCBs) and 57 health and welfare inquiries (43 originating in requests from foreign NCBs). It also dealt with 43 suicide inquiries, including 32 from foreign NCBs.<sup>73</sup>

The Internet has made it much easier for individuals on social media in other nations to notice when an American is threatening to commit suicide and to alert their NCB, which then contacts the U.S. NCB, which in turn alerts local U.S. law enforcement agencies to check on the safety of the U.S. individual in question. It may be argued that this sort of activity has little relationship to the fight against crime, but it is clearly part of the work of police authorities around the world. Since Interpol’s primary form of involvement is to allow its member nations to use its I-24/7 network for humanitarian purposes, there is good reason to regard these activities as a largely unpublicized side benefit of Interpol’s existence.

Finally, Interpol holds, operates, and produces a wide variety of conferences, programs, and publications for law enforcement officers at its headquarters, in regional bureaus, and around the world, including training and standards programs on disaster victim identification (guidance for identifying victims of mass casualty events such as a tsunami);<sup>74</sup> a manual of best practices for investigation of computer crime;<sup>75</sup> Global Standards to Combat Corruption in Police Forces and Services; and the Interpol Bioterrorism Prevention Resource Centre.<sup>76</sup> It can

also dispatch an Incident Response Team to assist national agencies during a crisis, such as a major terrorist bombing or natural disaster.<sup>77</sup> Finally, Interpol International Major Event Support Teams (IMESTs) provide assistance at major events such as the Olympics.<sup>78</sup> Interpol's training programs have attracted little attention and, to date, no controversy.

### The Interpol Notice System

Contrary to media reports, which frequently credit Interpol with making arrests, it is the law enforcement agencies of Interpol's member nations that are responsible for arresting individuals.<sup>79</sup> As an international organization of law enforcement agencies, Interpol facilitates international cooperation against crime. It is not a police force.

### Interpol's member nations are also free to decide how to act on a notice. Some members treat a Red Notice as an actionable request for an arrest. The U.S. does not.

Interpol does, however, have a system of "wanted" notices. Indeed, its most well-established function is sending out international notices about criminals or crime. According to Interpol, 7,958 individuals were arrested in 2011 based on Interpol notices or diffusions (which are discussed in the next section). Most Interpol notices are Red Notices, which are sometimes inaccurately described as Interpol arrest warrants. In reality, Interpol does not issue arrest warrants. By asking Interpol to publish a Red Notice, an NCB affirms that it has a valid arrest warrant or court order for the named individual and that it will seek the extradition of the individual in question if he or she is apprehended.

Before Interpol publishes a notice, the legal staff of the Interpol Secretariat General (IPSG), in its Office of Legal Affairs, reviews the notice request to ensure that a valid arrest warrant exists. This amounts to ensuring that the requesting nation has checked the appropriate box on the form, as nations are only encouraged, not required, to provide an actual warrant.<sup>80</sup> Unwisely, Interpol makes notice requests visible to all NCBs before this review process is complete, although requests are identified as

provisional.<sup>81</sup> An NCB can allow Interpol to make a redacted version of the Red Notice that it requested public, but it is not required to do so.

Interpol's member nations are also free to decide how to act on a notice. Some member nations treat a Red Notice as an actionable request for an arrest. The U.S. does not.<sup>82</sup> Other Interpol communications, including diffusions and messages, also are not actionable requests in the U.S.

The varying legal statuses of Interpol's communications around the world and the exigencies of particular cases mean that the U.S. NCB plays an important role in choreographing the timing and type of U.S. requests to Interpol. The arrest in Colombia of four men who were the subject of Interpol Red Notices in connection with the murder of U.S. Drug Enforcement Administration (DEA) agent James Watson is a recent case in point.<sup>83</sup>

In 2011, Interpol published 10,747 notices, of which 7,678 were Red Notices.<sup>84</sup> It also published:

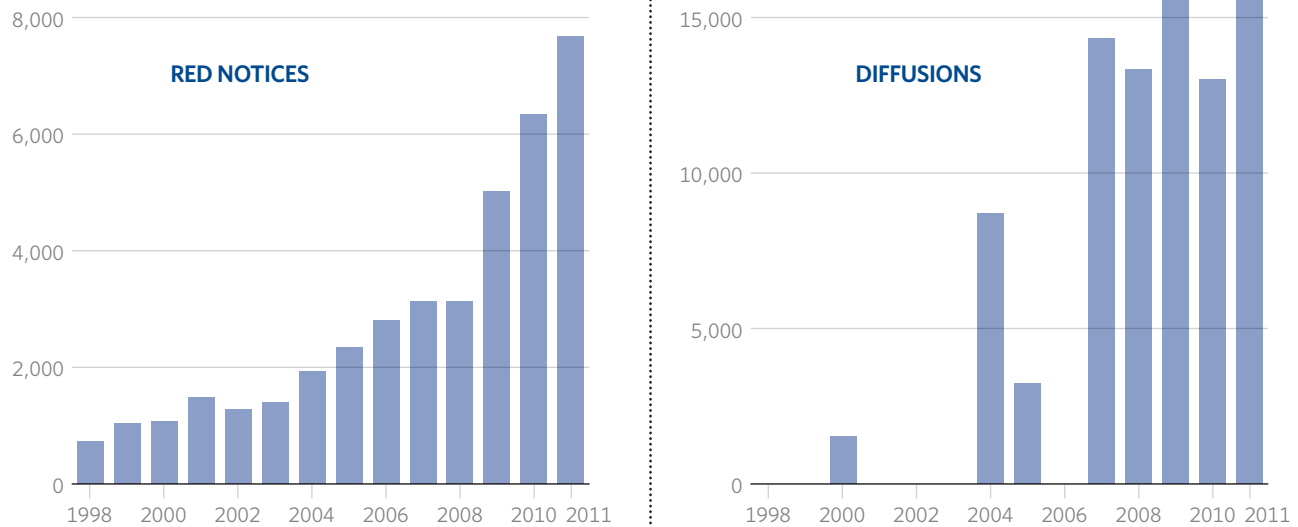
- 705 blue notices ("individuals of interest in relation to a crime");
- 1,132 green notices ("warnings and intelligence about serious criminals");
- 1,059 yellow notices (missing persons);
- 104 black notices (unidentified bodies);
- 31 orange notices ("dangerous materials, criminal acts or events that pose a potential threat to public safety");
- 8 purple notices ("objects, devices or concealment methods used by criminals"); and
- 30 special notices ("individuals associated with Al-Qaeda and the Taliban, as listed by the 1267 Committee of the UN Security Council").<sup>85</sup>

At the end of 2011, Interpol had 40,836 valid notices in circulation.<sup>86</sup> As shown on Chart 1, the number of notices published annually rose substantially after the launch of the I-Link system in 2009.<sup>87</sup> As recently as 1998, Interpol published only 737 Red Notices per year, compared with 7,678 in 2011.<sup>88</sup>

The U.S. Department of Justice estimated that in FY 2010, Interpol published 1,429 notices of all

CHART 1

## Interpol Red Notices and Diffusions



Source: Interpol, publications, <http://www.interpol.int/News-and-media/Publications> (accessed September 10, 2013).

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types and transmitted 431 diffusions at the request of the United States. In the same year, 143 arrests, extraditions, or deportations on an Interpol notice or diffusion had a U.S. nexus.<sup>89</sup>

Currently, Interpol’s understanding of Article 3 is governed by the “predominance” test, which requires only that Interpol avoid cases that are predominantly political, but the proper application of Article 3 has a long and contested history.<sup>90</sup> Interpol properly refused the Castro dictatorship’s request for Red Notices on police officials of the Batista regime, and it has refused to help China investigate the Falun Gong.<sup>91</sup> Less admirably, it also refused to issue Red Notices for the Palestinian terrorists who attacked the Olympic Games in Munich in 1972.<sup>92</sup> This decision reflected the fact that for many years, Interpol shied away from counterterrorism out of concern that it could be considered political, a concern that was accentuated by the blowback from the 1950 Czechoslovakian hijacking.

Then, in 1984, Interpol adopted the principle of the “conflict area.”<sup>93</sup> A terrorist act outside a “conflict area” (for example, an al-Qaeda bombing in London), especially if it targeted civilians or was particularly large, would be considered a crime that Interpol could work to investigate or prevent.<sup>94</sup>

Interpol has since become active in counterterrorism with enthusiastic U.S. support.

The application of Article 3, however, is not free from controversy. Recent years have witnessed an increasing number of troubling cases, including:

- **General Augusto Pinochet (1998).** Augusto Pinochet, former dictator of Chile, was arrested in Britain in 1998 because of an Interpol Red Notice issued at the request of a notoriously political Spanish judge. This case is particularly troubling because Spain had no connection to the events in Chile, and Spain’s request rested on a claim of universal jurisdiction—a controversial assertion of the right to prosecute supposed crimes anywhere in the world, regardless of accepted jurisdictional boundaries—which Interpol endorsed by issuing the Red Notice.

In discussing this case, former Interpol Secretary General Kendall stated that “if the British had said they didn’t agree, that this action shouldn’t involve Interpol, then I would have never made the decision” to issue the Red Notice.<sup>95</sup> This is a troubling statement both because it implies that Interpol considers the sentiments of the nation



in which a supposed fugitive is residing before it issues a Red Notice and because it implies that Interpol is willing to act on a claim of universal jurisdiction unless that nation objects to it. On the other hand, since nations are not required to act on a Red Notice and since it had the opportunity to pre-empt the publication of the notice in question, Britain is also to blame for acceding to this politicized request.

- **Former Kazakh Prime Minister Akezhan Kazhegeldin (1999, 2000, and 2002).** In 1999 and 2000, Interpol issued a Red Notice on former Kazakh Prime Minister Akezhan Kazhegeldin, a presidential challenger who was accused of corruption and embezzlement.<sup>96</sup> This was a controversial action, and Interpol rescinded the Red Notice in 2001 on the grounds that it did not comply with Article 3. In 2002, the Interpol General Assembly made a final decision to issue a new Red Notice by a vote of 46–38, with 23 abstentions. In commenting on this case, Secretary General Noble stated that “Interpol is a democratic organization, and when our members have expressed their will through the democratic process, the general secretariat moves promptly—as in this case—to implement the member states’ decision.”<sup>97</sup>

- **Ilya Katsnelson (2008).** Ilya Katsnelson is a U.S. citizen residing in Copenhagen, Denmark. He is the managing director of VTMS ApS, a Danish ship management company, which worked closely with the Russian firm Volgotanker from 2001 to 2006. In 2008, while driving through Germany to his home, he was detained by German police after a routine document check as the result of an Interpol Red Notice issued at the request of Russia. He was held for almost two months in a maximum security prison in Lübeck, Germany.

It soon became apparent that Katsnelson was a victim of the Russian government’s politically motivated assault on Mikhail Khodorkovsky’s YUKOS oil company, which had previously spun off Volgotanker. Because the Russian allegations against Katsnelson were rapidly revised to include the charge of “fraud and money laundering,” they made it difficult for him to use Western banks or travel. Katsnelson continues to protest

the ongoing Russian abuse of Interpol in his and other cases.<sup>98</sup>

- **Shahram Homayoun (2009).** Homayoun is an Iranian exile now living in Los Angeles. He owns Channel One TV, a Persian satellite television network that broadcasts into Iran. In 2009, at the request of an Iranian prosecutor, Interpol issued a Red Notice on Homayoun, charging him with terrorism. Senator Jeff Sessions (R-AL) raised concern about the case in a letter to U.S. Attorney General Eric Holder in March 2011.<sup>99</sup> The U.S. has promised not to extradite Homayoun but has noted that it cannot protect him if he travels abroad.<sup>100</sup> Thus, while the Red Notice has not silenced Homayoun or resulted in his extradition, it has limited his freedom of movement. Cases like Homayoun’s led Kyle Parker, a policy adviser to the U.S. Helsinki Commission, to argue that “A Red Notice can be even more effective than the judicial system, with none of the safeguards. It doesn’t prosecute you. It persecutes you.”<sup>101</sup>

The Homayoun and Katsnelson cases point out the wide-ranging consequences of abuse of the Interpol system. Even after Interpol rescinds a notice, it can linger on in national systems around the world, meaning that it is nearly impossible to fully protect an individual from the consequences of such abuse.

- **Benny Wenda (2011).** In 2011, at Indonesia’s request, Interpol published a Red Notice on Benny Wenda, a West Papuan political activist who had been granted asylum in Britain. After an intervention by the British NGO Fair Trials International in 2010 and after the case was raised in the House of Commons in late 2011, Interpol rescinded the notice in 2012 and deleted the relevant information from the databases it maintains when it decided that the notice was not “in compliance with Interpol’s rules and regulations.”<sup>102</sup>

- **Iraqi Vice President Tariq al-Hashemi (2012).** In 2012, Interpol published a Red Notice on behalf of Iraq on Vice President Tariq al-Hashemi, a Sunni who fled Baghdad in 2011 and had allegedly planned bomb attacks on and assassinations of Shi’ite politicians.<sup>103</sup> Analyst Max Boot notes that, while “it is quite possible that Hashemi is guilty

of the killings attributed to him ... [T]he fact that the [Iraqi] courts ... [are] not in any credible way independent” has created the widespread perception that the case against Hashemi is a “political vendetta.”<sup>104</sup>

- **Eerik-Niiles Kross (2013).** Kross is an Estonian politician. He is a supporter of Estonia’s NATO membership, and as a director of Estonia’s intelligence service, he helped Georgia combat Russian cyber-attacks during the 2008 Russo-Georgian War. On August 8, 2012 the fourth anniversary of the start of the War, Russia asked Interpol to issue a Red Notice on Kross. Russia claimed Kross had masterminded the hijacking of a Russian ship in 2009, a claim that Kross forthrightly described as “idiotic.”<sup>105</sup> On June 21, 2013, almost a year later, Interpol refused the request, stating that complying with it would be a “violation of the organization’s constitution and rules.”<sup>106</sup>

Kross appeared to have won a significant victory. But on October 18, 2013, twenty-four hours before local elections in Estonia, when Kross’s IRL Party appeared poised to make sizable gains from the Russian-aligned Center Party, Interpol suddenly published a Red Notice on Kross. Marko Mihkelson, a leading member of IRL, noted that he could not “remember an election with this much Russian interference,” and Kross himself stated that the “most recent official position from Interpol is that [Russia’s action] has an unequivocally politically motivated intention. The only difference since the first Russian action taken against me is that I am threatening a Russian partner party’s position of power in the Tallinn elections.”<sup>107</sup> Estonia’s interior minister, Ken-Marti Vaher, described the Red Notice as “clearly politically motivated.”<sup>108</sup>

Interpol’s decision in this case is extremely difficult to defend, and is particularly troubling because it was announced almost simultaneously with its decision on the case of Petr Silaev, described below. It thus appears to be part of a concerted move by Interpol to placate Russia in the aftermath of its well-publicized decision in the case of William Browder, also described below.

On one hand, given the number of Red Notices and other kinds of notices that Interpol publishes, the number of troubling cases is low. In complaints about Interpol, the same cases tend to be mentioned regularly. Of course, this is no reason to dismiss concerns relevant to those cases, but it does suggest that there may not be many more troubling cases waiting to be revealed.

This is certainly Interpol’s contention. The five-member Commission for the Control of Interpol’s Files (CCF), which monitors the application of Interpol’s data protection rules, noted in its 2010 annual report that in that year, it received only 201 requests from individuals named in Interpol’s files and only 123 complaints, including 15 from the U.S. Of the requests, only 32 gave rise to concerns relevant to Article 3. Of the 170 requests processed by the CCF in 2010, only 46 percent—approximately 78 requests—resulted in any alteration in Interpol’s files or website.<sup>109</sup> Interpol has estimated that only about 3 percent of cases are referred to the IPSG legal staff in the Office of Legal Affairs for a full review.<sup>110</sup>

On the other hand, the cost and complexity of obtaining legal representation with sufficient expertise to challenge an Interpol notice effectively may prevent additional troubling cases from coming to light. Interpol’s procedures for reviewing notice requests that may raise Article 3 concerns are also unclear.

In 2010, the Law Library of Congress published a report on Red Notices that summarized their publication process and legal status in various jurisdictions. The Law Library noted that “it seems in general that Interpol must depend on its member countries for a Red Notice request being legitimate,” although “certain mechanisms” exist to assess the legitimacy of a request. The Law Library did not explain what these mechanisms are. It concluded only that assessing whether a request would violate Article 3 “appears to be an internal [Interpol] process.”<sup>111</sup> While Interpol’s reliance on internal processes is neither surprising nor wrong, the opacity of these processes does not build confidence in Interpol’s assertion that the number of troubling cases is only a tiny fraction of the overall total.

Furthermore, Interpol itself clearly has qualms about the rising number of politically motivated requests for Red Notices it is receiving. In 2010, the Interpol General Assembly adopted a resolution noting that it was “concerned about the increase

in the number of requests ... concerning genocide, crimes against humanity and war crimes, which raise doubts as to their compliance with Article 3 of the Constitution.” In response, Interpol decided to accept such requests only from international tribunals and entities established by the U.N. Security Council. If a member nation makes such a request concerning a national of another member country, the other member nation has 30 days to protest the request before the notice is issued.<sup>112</sup>

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**The problem is not enunciating the need to respect the rule of law or to uphold Interpol’s constitution, but deciding how to apply these needs when Interpol has many autocratic member nations.**

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This was a reasonable step, but it concerned only requests related to the most serious offenses. It leaves open the obvious risk that there might be more numerous politically motivated requests involving less serious supposed offenses.

Even apart from the opacity of its internal processes, the sheer number of notices that Interpol now publishes makes it difficult for anyone to assess whether Interpol is abiding fully by the letter and spirit of Article 3. A 2011 study by the International Consortium of Investigative Journalists found that more than 2,200 of the 7,622 Red Notices that it examined were published as a result of requests from nations that did not respect human rights and that nearly half were from countries that Transparency International ranks as among the most corrupt in the world.<sup>113</sup> In short, the fact that critics tend to raise the same cases regularly may indicate only that most Red Notices are not publicly summarized and that, in any case, the number of notices Interpol does publish is too large to assess.

Interpol is well aware of the need to abide by its constitution. As Joël Sollier, General Counsel of Interpol, concisely put it in 2011, “If we don’t, we are dead.” But Sollier also noted that “[it’s] really tricky.... You receive [a request for a notice] from a country where human rights are not respected.... I would love to have only requests from Switzerland,” but “[t]he world is not like that....”<sup>114</sup> Indeed, Interpol

mirrors the world: Both contain many nations that do not respect human rights.

As Sollier implies, the problem is not enunciating the need to respect the rule of law or to uphold Interpol’s constitution, but deciding how to apply these needs when Interpol has many autocratic member nations. Billy Hawkes, the Irish chairman of the CCF, has implied that it is difficult to separate political and criminal activity because “One man’s terrorist is another man’s freedom fighter.”<sup>115</sup> This is a dangerous sentiment, and any hint of sympathy with it from anyone connected with Interpol is troubling because it implies a lack of commitment to the counterterrorism efforts in which Interpol has increasingly engaged and, fundamentally, to Interpol’s constitution.

Yet the underlying problem is not that Interpol systemically disregards Article 3. The underlying problem is that Interpol operates on the basis of the sovereign equality of all of its members, and thus on the assumption that all of their notice requests should be presumed to have equal validity. As Interpol Senior Counsel Yaron Gottlieb said:

We assume that what we receive here is accurate and relevant, that an arrest warrant is issued by a judge that is not corrupt, and, of course, that the case is not political. But then, if we receive information or if we have our own information that in fact, the case is different from what it seems to be, we engage in a full review.<sup>116</sup>

This assumption would make sense if all of Interpol’s member nations met a minimum standard of respect for the rule of law, but too few members of most international organizations, including too few members of Interpol, in fact meet this minimum standard. The underlying problem is thus that, while Interpol is a democratic organization committed to promoting the rule of law, a majority of its members are autocracies that are not fully committed to the rule of law.

To its credit, Interpol is more aware than many other international organizations of the existence of this problem. Interpol’s efforts to ameliorate it are regular and apparently sincere, but the problem persists and will persist as long as Interpol is rightly based on the sovereign equality of its member nations and wrongly has undemanding standards for continued membership.

Interpol's very success in building a modern communications system has made this underlying problem more serious. When Interpol was issuing hundreds of notices a year on paper, as it was in the 1990s, and all NCBs worked through Lyon, Interpol's very inefficiency offered some protection against autocratic abuse.

Today, Interpol is still based on the presumption that all of its member nations are equally law-abiding, but its modern system has vastly expanded both the number of notices and diffusions that are published and transmitted and the speed with which this is done. In 2011, for example, assuming it worked 24 hours a day, seven days a week, Interpol issued an average of 21 Red Notices every day—almost one every hour.

Interpol has acknowledged that approximately 97 percent of notice requests are not reviewed in depth. Such a review appears to be undertaken only if a request is particularly controversial or becomes so after the relevant notice is issued. The efficiency of the system has made it easier to abuse, while the volume of traffic makes abuse harder to detect. Interpol seems not to have anticipated that creating an efficient and modern communications system posed risks in addition to offering real benefits.

Even apart from the problem inherent in its autocratic membership, there is an obvious danger that Interpol will libel or harass an innocent individual by publishing a Red Notice that incorrectly describes that individual as a wanted criminal. If an individual believes that a notice or diffusion is politicized or otherwise in error, he can take up the issue with the CCF. If the CCF rejects the complaint, Interpol will consider redress only if an NCB formally files a protest. At that point, the IPSG and then the Secretary General review the case.<sup>117</sup> If the dispute is not resolved through this process, the protesting NCB can ultimately refer the matter to the General Assembly.

One disadvantage of this redress system is that the General Assembly makes the final decision, and as the Kazhegeldin case illustrated, that decision may be controversial. A less obvious flaw in the system is that the CCF is also an imperfect instrument. Because Interpol member nations choose the CCF members, there is no guarantee that they will come from democratic and law-abiding nations. Currently, the CCF members come from Ireland, France, Canada, Mauritius, and Jordan, with all

but Jordan being widely recognized as law-abiding democracies.<sup>118</sup>

Until Interpol's rules are changed to make it impossible for autocracies to be represented on the CCF, the U.S. should work closely with other democracies inside Interpol to ensure that CCF appointees come exclusively from democratic nations and that there is always a U.S. citizen on the CCF. Moreover, under the current system, the CCF can take more than a year to conclude its investigations. The U.S. should seek to speed up the operation of the CCF and to create a procedure for expedited CCF review, if necessary by providing the CCF with additional resources in Interpol and by requiring NCBs to respond to CCF inquiries within a reasonable time period.

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### **The Diffusion System**

Interpol's diffusions are less well-known than its notices, but they are just as if not more troubling. (For a summary of the differences between notices, diffusions, and messages, see Table 1.) Unlike notices, diffusions are not systematically reviewed in any way by the IPSG legal staff before publication or even published by Interpol.<sup>119</sup> Instead, they are automatically recorded in Interpol's database and distributed on its I-Link network after transmission by an NCB. In 2011, Interpol was responsible for the distribution of 15,640 diffusions.

One difference between diffusions and notices is that diffusions can be sent to nations of the sending NCB's choosing: Diffusions, unlike notices, are not sent automatically to all Interpol member nations.<sup>120</sup> This is useful because it allows the U.S., for example, to request assistance in pursuing a terrorist suspect without alerting nations such as Iran that may be working in league with the suspect.

On the other hand, the utility of this aspect of the diffusion system should not be exaggerated. Nations

TABLE 1

## Three Forms of Interpol Communication

	RED NOTICE	DIFFUSION	MESSAGE
Sent by	Published by the Interpol Secretariat General (IPSG), at the request of an Interpol member nation or an international organization.	An Interpol member nation (through their NCB) or an international organization, using the IPSG's electronic submission system.	An Interpol member nation (through their NCB).
Requirements for transmission	Compliance with Interpol's Rules on the Processing of Data (RPD); statement that valid arrest warrant or court order exists; commitment to extradite individual named in Notice.	Compliance with Interpol's RPD.	Compliance with Interpol's RPD.
Systematically reviewed by IPSG prior to distribution?	Yes.	No. An NCB can request such a review.	No. An NCB can request such a review.
Must abide by Interpol's Article 3?	Yes.	Yes, but no systematic IPSG review process prior to transmission.	Yes, but no systematic IPSG review process prior to transmission.
Recorded in an Interpol database?	Yes, without restriction.	Yes, with sender able to restrict access to selected Interpol member nations.	No, unless sender requests it.
Visible in Interpol databases by other national authorities prior to IPSG review?	Yes.	Yes. No systematic IPSG review.	No. Message transmitted to recipients (which may include Interpol) as selected by sender.
Time required for distribution	Depends, but as little as two hours.	Electronic transmission is practically instantaneous.	Electronic transmission is practically instantaneous.
Recipients	All Interpol member nations.	One, some, or all Interpol member nations (through their NCB), as chosen by sender, as well as Interpol itself.	One, some, or all Interpol member nations (through their NCB), as chosen by sender. Not normally seen by Interpol unless sender elects to copy to the IPSG.
Visible to public?	Summary version visible, if nation requesting notice allows it, and if summary is not withdrawn from public view at a later date.	No. Authorized law enforcement personnel only.	No. Authorized law enforcement personnel only.
Actionable request for an arrest?	In the U.S., no; in some other countries, yes, depending on the circumstances of the case and other factors.	In the U.S., no; in some other countries, yes, depending on the circumstances of the case and other factors.	In the U.S., no; in some other countries, yes, depending on the circumstances of the case and other factors.
Expiry date	Five years after publication, unless requesting nation asks for notice to remain open.	Five years after transmission unless requesting nation asks for diffusion to remain open.	If recorded in Interpol database, five year retention period. Not normally relevant.
Reviewable by Interpol's CCF?	Yes.	Yes.	Yes.
Can be challenged by	Prior to publication, reviewed for compliance by the IPSG legal staff. Pending and following publication, by member countries (through their NCB to the IPSG, and ultimately the Interpol General Assembly), the IPSG legal staff, the CCF, and international organizations. By individuals through petition direct to the CCF or via the IPSG.	No challenge before transmission. After transmission, by member countries (through their NCB to the IPSG, and ultimately the Interpol General Assembly), the IPSG legal staff, the CCF, and international organizations. By individuals through petition direct to the CCF or via the IPSG.	No challenge before transmission. After transmission, by member countries (through their NCB to the IPSG, and ultimately the Interpol General Assembly), the IPSG legal staff, the CCF, and international organizations. By individuals through petition direct to the CCF or via the IPSG.

**Note:** All processing of data in Interpol's Information System (including notices, diffusions, and messages) is subject to Interpol's Rules on Processing Data (RPD), which require all entities using the system to comply with the RPD as well as with Interpol's Constitution and other governing regulations.

have many ways of communicating with each other, and the diffusion system is merely one such channel. Moreover, since the U.S. can use Interpol's I-24/7 system to send messages directly and privately with nations of its choosing, the limits that can be placed on the circulation of diffusions are not unique inside the Interpol system. It is therefore difficult to regard this aspect of the diffusion system as particularly significant or valuable.

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### This system of Interpol notices and diffusions practically invites nations which anticipate that a requested notice will not be granted to back up their request through the diffusion system.

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While diffusions are required to respect Article 3 of the Interpol constitution and other applicable rules, in practice, no safeguards prevent autocracies from transmitting diffusions on political opponents, racial or religious minorities, or individuals for whom there is no valid arrest warrant. This was illustrated in April 2012 when Interpol transmitted a diffusion from Egypt requesting the arrest of the 15 NGO workers even though Interpol had refused to publish a Red Notice on the same individuals.<sup>121</sup> One scholar has therefore concluded that diffusions “are not in conformity with basic requirements for criminal or administrative procedures affecting individual rights.”<sup>122</sup>

Interpol encourages member nations to transmit a diffusion when “its request does not justify or does not qualify for the publication of a notice.” It notes that “all international alerts,” both Red Notices and diffusions, can be submitted “in a matter of seconds” with “the information recorded instantly into the Organization’s central database and immediately accessible to police around the world.”<sup>123</sup> In short, it is easy—and even encouraged—to request a Red Notice from Interpol and simultaneously to transmit a diffusion directly to all law enforcement agencies around the world that participate in Interpol. This system of Interpol notices and diffusions practically invites nations which anticipate that a requested notice will not be granted to back up their request through the diffusion system.

In spite of the lack of safeguards in the diffusion system, there appear to be fewer controversial diffusions than Red Notices. The reasons for this are unclear. One may be that the press tends to describe everything published by Interpol as a Red Notice—or in even less exact terminology—so it is not easy to know when the legal instrument in question was actually a diffusion. Another may be that diffusions simply attract less attention than Red Notices, which can be described in catchy if inaccurate terms as international arrest warrants. A third may be, paradoxically, that as Interpol has begun to improve its procedures for issuing and retracting Red Notices, particularly through its 2012 Rules on the Processing of Data and the CCF, which was formally integrated into Interpol in 2008, autocracies have started to resort to diffusions to achieve their ends.

Some circumstantial evidence suggests that this is occurring: A number of the most controversial cases in recent years have apparently centered on diffusions, including the Egyptian one noted above and the two described below. If this is so, these controversial cases are signs that Interpol’s reforms in the Red Notice system are having a positive effect. Of course, this does not mean that problems in the diffusion system should be ignored.

- **Petr Silaev (2010).** Silaev, a Russian environmental and political activist, fled Russia after he was accused of “hooliganism” for participating in a demonstration against a new highway in Moscow in July 2010. Finland recognized him as a political refugee, but he was arrested and detained in Spain on the strength of a request by Russia through Interpol’s channels. Spain eventually refused to extradite Silaev and recognized that Russia’s request was political. Fair Trials International intervened with Interpol through the CCF on Silaev’s behalf, but in late October 2013, the CCF rejected this intervention, stating that “there is no reason to believe that the retention of information [relating to Silaev] in INTERPOL’s files would not be in compliance with INTERPOL’s rules.”<sup>124</sup>

It is difficult to believe that the CCF’s decision in this case is compatible with Joël Sollier’s statement that “his personal instruction is to simply cancel a Red Notice when there’s a doubt.”<sup>125</sup> Nor

is Interpol's failure to recognize that charges of "hooliganism" are often political limited to the Silaev case. In a nearly simultaneous decision, Interpol announced that it will send an IMEST to protect the 2014 Ice Hockey World Championship, to be held in the dictatorship of Belarus, from "hooliganism." Like Russia, Belarus has a record of using charges of "hooliganism" for political purposes.<sup>126</sup>

- **William Browder (2013).** Interpol's action in this case was correct, but it still sheds light on the efforts of some member nations to use Interpol for political purposes. On April 17, 2013, Russia used Interpol in a farcical effort to "locate" William Browder, the co-founder of Hermitage Capital.<sup>127</sup> Browder, who is not in hiding, has played a leading role in exposing Russian corruption and fighting for justice in the death of his former lawyer, the late Sergei Magnitsky.<sup>128</sup> Interpol has recently issued Red Notices for other individuals sought by Russian authorities, often on grounds that are seemingly political.<sup>129</sup>

Because of Browder's prominence, the Russian request attracted considerable public comment and prompted a defensive response by Secretary General Noble, which in turn drew a reply from Jago Russell, Chief Executive of Fair Trials International.<sup>130</sup> Browder challenged the Russian action through Interpol. Before Interpol announced its decision, the German Justice Ministry preemptively rejected the Russian request and stated that "it will not grant in future this request or similar Interpol red notices, Interpol blue notices or diffusions of the Russian Federation."<sup>131</sup> On May 24, Interpol "deleted all information" related to Browder from its files after the CCF determined that the case was of "a predominantly political nature."<sup>132</sup>

The day after this decision, Russia announced that it would continue to seek Browder's arrest through Interpol. A Hermitage Capital representative pointedly argued that "[i]f Russian authorities continue in their non-compliance with Interpol's constitution and abuse Interpol's systems for the purpose of political persecution, their access to Interpol databases must be suspended under the Interpol rules."<sup>133</sup> On July 26, Inter-

pol received a Russian request for a Red Notice against Browder, which it immediately rejected.<sup>134</sup>

While the outcome to date in the Browder case is a good one and to Interpol's credit, Browder has substantial resources, is well-known, and is leading a campaign that has won justified applause from many democratic governments and Western NGOs. A less prominent and well-represented individual would be fortunate to have this backing, which may well have encouraged Interpol to arrive speedily at the correct decision in the Browder case. Moreover, Interpol's decisions in the cases of Kross and Silaev have the appearance of being intended to compensate Russia for Interpol's refusal to cooperate with Russia's attempts to persecute Browder.

Interpol argues that it does not endorse diffusions, but rather is simply distributing the words of an NCB. In briefings, Interpol has analogized itself to a newspaper, which might publish an accurate report that someone has been indicted even if the indictment is later found to have been based on a false affidavit.<sup>135</sup> Yet by allowing its systems to be used to transmit diffusions, Interpol is complicit in this transmission, and, of course, Interpol is not a newspaper: It is an organization of law enforcement agencies. Moreover, even if the First Amendment would shield a newspaper in such a case from civil liability, responsible newspapers do not publish grave accusations against individuals without checking the facts.

Finally, Interpol itself takes credit in its annual reports for arrests made on the basis of diffusions.<sup>136</sup> This is the best evidence that diffusions do carry Interpol's stamp of approval, are viewed by Interpol as a tool equivalent in effect to a notice, and are acted upon as such by many Interpol member nations. This would be less problematic if diffusions were subject to the same protections as the notice system. As they are not, diffusions have the endorsement inherent in notices but without equivalent safeguards.

It is true that diffusions do serve one important purpose. Occasionally, an urgent situation—such as a fugitive seeking to flee from one nation to another—does not give the notice system time to work. The diffusion system, by contrast, is virtually instantaneous. But at the request of an NCB, Interpol can clear an appropriate a notice request in advance. Even without advance clearance, Interpol now

publishes Red Notices resulting from U.S. requests in two to three hours.<sup>137</sup> In short, while emergencies do occur, the notice system normally works fast enough to meet the needs of all but the most exceptional cases.

Given their practical equivalence to notices, there is no reason why diffusions should not—like notices—be subject to systematic IPSP review. Regrettably, this is not Interpol’s practice. Instead, a diffusion is transmitted directly to other NCBs, normally without any IPSP review. Interpol keeps the diffusion active for five years, after which it asks the issuing NCB whether it has new information. Even if there is no new information, the NCB can keep the diffusion active indefinitely.<sup>138</sup> The same five-year procedure applies to Red Notices, but Red Notices are subject to the more formal IPSP review process. Thus, in practice, a nation can use the diffusion system to evade the protections that, albeit imperfectly, exist in the Red Notice system.

As Chart 1 shows, while statistics for every year are not available, the number of diffusions transmitted has risen in parallel with the increasing number of Red Notices published. There is reason to believe that this is in part a result of NCBs simultaneously requesting a Red Notice and transmitting a diffusion on the same case.

### The Problem of Information Security

Interpol holds a large and growing collection of data about wanted and convicted criminals around the world, including individuals wanted on charges of terrorism. Authoritarian regimes can use the Interpol system to harass innocent individuals or political opponents, but the system could also be of use to authoritarian regimes and supporters of terrorism in other ways.

For example, if an agent working for the Iranian regime perpetrated a terrorist attack in Iraq, the Iranian state might want to know whether the agent left behind any evidence of his identity. The Iranian NCB could query the Interpol database to compare the terrorist’s fingerprints with those held by Interpol. If the query did not produce a hit, Interpol would have been used in effect to vet the agent, who could now be safely employed again in future terrorist attacks. A regime might also seek to poison the Interpol system by flooding it with large amounts of irrelevant or incorrect data, or to infiltrate an agent into Interpol headquarters to frustrate the

identification of particular individuals or to alert them that they are being sought or have been identified. In short, the number of ways that authoritarian regimes, perhaps in alliance with terrorist organizations, could use Interpol’s data and systems for mischief is substantial.

It is true that data coming into and out of Interpol are not easily identified by anyone other than the submitting NCB. Thus, for example, an intelligence agent in Interpol’s headquarters would not automatically know that a particular fingerprint search was related to a terrorist he was seeking to protect. But it would be unwise to assume that, just because such an abuse of the Interpol system would be technically challenging, it would therefore not be attempted.

Interpol points out that a nation can hide its data from any other nation unless the data relate to a notice requested by the first nation.<sup>139</sup> For example, the U.S. does not allow Iran, Syria, Sudan, or the International Criminal Court to access any data supplied by the U.S., except data related to a U.S. notice request. This is a wise precaution, but a foreign agent in Interpol or an agent working for a third country could seek to circumvent that precaution. For example, an Iranian spy in the Iraqi NCB could query U.S. data on behalf of his handlers. Interpol simply has no way of knowing whether officials in NCBs are corrupt or collaborating with terrorists.

Concern about intelligence penetration of Interpol is not new. In a 1975 Senate hearing, then-Secretary General Jean Nepote blandly asserted, “We have never encountered this problem, and we have never had any reason whatsoever to suspect any employee of being an intelligence agent.” He further noted that employees were required to sign an agreement promising to maintain professional secrecy.<sup>140</sup> This response was absurd, as it implied that Nepote believed—or claimed to believe—that an intelligence agent would never violate a signed confidentiality agreement. In light of Nepote’s willful blindness, it was hardly surprising that Interpol had “never encountered” a problem of intelligence penetration.

By 1990, the London Metropolitan Police were not so optimistic. They stated that “Interpol staff are not experienced in affording the proper protection to classified material, do not possess the requisite security clearances, and [their] politics and motives are, to say the least, questionable in this context.”<sup>141</sup> A decade later, in 2001, a *Foreign Policy* interviewer stated to outgoing Secretary General Raymond



Kendall that “a former senior U.S. Intelligence official told me with certainty that Interpol had been compromised.” Kendall responded that “Interpol is secure” and acknowledged only occasional instances of corruption, but he also admitted that, as “a fact of international political life,” he was reluctant to share money-laundering information with Russian authorities because of concern that it might end up in the wrong hands.<sup>142</sup>

In recent years, Interpol has shown greater awareness of the problems associated with data protection. In 2009, for example, its General Assembly passed a resolution calling for the “enhancement of measures to protect Interpol’s reputation and the integrity of its police information system.” This resolution alluded to unspecified events at an NCB that evidently constituted a “serious incident.”<sup>143</sup>

By formalizing the CCF’s role and producing its Rules on the Processing of Data in 2012, Interpol has again demonstrated that it is one of the world’s more responsible international organizations. Yet in the end, given that the purpose of Interpol is to facilitate international cooperation on law enforcement, it is not possible to design a system that is completely immune from the risks associated with intelligence penetration, especially given the fact that so many of Interpol’s members are not democracies.

For the U.S., cooperation with Interpol is a question of balancing the risks and rewards, and the balance is very much in favor of U.S. cooperation. But as long as nations such as Iran have any access to Interpol, the U.S. should be aware that they can use Interpol’s system for their own purposes. Accordingly, the U.S. should continue to withhold particularly sensitive data from Interpol and expand the restrictions on the nations and organizations that are allowed to access U.S. data.

### **Sound Policies and Projects on Firearms**

Because of the Second Amendment, the U.S. recognition of the right of individual self-defense, the popularity of the recreational use of firearms in the U.S., and concerns raised by negotiation of the U.N. Arms Trade Treaty, it is important to assess whether Interpol could infringe on freedoms protected by the U.S. Constitution.<sup>144</sup> Interpol currently has three firearms projects.

*First*, the Interpol Firearms Reference Table (IFRT) went into operation in 2008.<sup>145</sup> The IFRT is

a database of 250,000 types of firearms with 57,000 pictures that can be accessed through the I-24/7 network. If a police officer in Colombia confiscates what appears to be an Eastern European weapon from a FARC terrorist, the officer can access the IFRT to determine the make and model of the gun. The IFRT can be searched in English or French by a variety of criteria.<sup>146</sup> The IFRT is merely an extensive directory of various models of guns, not a registry of individual firearms.

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### **For the U.S., cooperation with Interpol is a question of balancing the risks and rewards, and the balance is very much in favor of U.S. cooperation.**

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*Second*, Interpol operates a Firearms Tracing Instrument. A tracing request is normally transmitted from nation to nation. Thus, if a gun of Belgian manufacture is seized in Canada, the Canadian police can submit a trace request to the Belgian NCB on the I-24/7 network. Nations can also submit queries to the database of stolen or crime guns maintained by Interpol. In order to submit such a query, the requesting agency must fill in a number of mandatory fields, including the make, model, and caliber of the firearm; its country of manufacture and serial number; and the offense alleged to have been committed. Optional fields include proof marks, rifling type, possessor information, and alterations made to the firearm.

It is significant that “offense” is a mandatory field. As long as the requesting NCB is honest, this mandatory field means that Interpol does not assist in tracing guns that are not involved in crimes. Interpol has no direct access to the national registries of law-abiding gun owners that some countries maintain.<sup>147</sup>

*Third*, the Interpol Ballistic Information Network (IBIN) contains ballistics information. IBIN has received more than 134,000 ballistics records from Denmark, the Netherlands, Norway, Portugal, Sweden, Spain, the former Yugoslav Republic of Macedonia, Britain, and Ireland.<sup>148</sup> In the U.S., one jurisdiction—Maryland—collects ballistic information about all new handguns that are lawfully sold, but Interpol does not receive this information. The

only U.S. ballistics information in the IBIN is from guns involved in crimes.

More than 50 nations collect ballistics information, and Interpol hopes to receive data from all of them. The data would be shared not only with the collecting nations, but also with regional entities such as CARICOM (a group of Caribbean nations) in the hope that the data will identify trends in firearms trafficking. In the long term, as of 2010, Interpol plans to connect national ballistics labs directly so that queries do not need to be routed through Lyons.<sup>149</sup>

As long as Interpol focuses exclusively on guns involved in the commission of crimes, the tracing programs and the IFTR are useful crime-fighting tools that do not infringe on U.S. constitutional freedoms. An analogy to the SLTD may be helpful: Interpol does not have a database of all passports, just those that have been reported as lost or stolen. Likewise, Interpol should continue to collect information only on firearms involved in a crime and to provide information about firearms only when the request is part of a *bona fide* criminal investigation.

Indeed, the Interpol approach to firearms crime offers a commendable contrast to the U.N.'s efforts. The U.N. provided political assistance to a gun prohibition referendum in Brazil, promotes registries of law-abiding gun owners and gun confiscation programs, denies the existence of the individual right of self-defense, and has declared gun control to be a "human right."<sup>150</sup> By contrast, Interpol has remained appropriately apolitical and has done nothing to denigrate or interfere with the rights of non-criminal gun owners or the right of democracies such as the United States to define their own policies on the ownership and use of firearms.

Moreover, after the murder of at least 67 people at the Westgate Mall in Nairobi, Kenya, by Islamist terrorists, Secretary General Noble spoke out forcefully about the importance of an armed citizenry to resist terrorist attack:

How do you protect soft targets? That's really the challenge. You can't have armed police forces everywhere.... Ask yourself: If that was Denver, Colorado, if that was Texas, would those guys have been able to spend hours, days, shooting people randomly?... What I'm saying is it makes police around the world question their views on gun control. It makes citizens question their

views on gun control. You have to ask yourself, "Is an armed citizenry more necessary now than it was in the past with an evolving threat of terrorism?" This is something that has to be discussed. For me it's a profound question.... People are quick to say "gun control, people shouldn't be armed," etc., etc. I think they have to ask themselves: "Where would you have wanted to be? In a city where there was gun control and no citizens armed if you're in a Westgate mall, or in a place like Denver or Texas?"<sup>151</sup>

In the United States, Noble's views are well within the standard norms of political debate, but in many other countries, such views are shocking. With his comments, Noble constructively expanded the scope of the global discussion on firearms; given the anti-gun animus of many Interpol member states, his words were courageous.

### **Interpol's Legal Immunities in the U.S.**

During the mid-1970s, Interpol came under public attack in the U.S. in a campaign orchestrated by the Scientology organization, which charged Interpol with—among other sins—links to Nazism. As one scholar notes, while this campaign did raise "issues concerning not only the administration of international criminal justice, but also the theory and practice of international law-enforcement cooperation," it was based on "a combination of skilled research and showmanship" that produced "misleading and distorted resource materials." The campaign successfully stirred up hearings in the U.S. Senate and House of Representatives and an investigation by the U.S. General Accounting Office.<sup>152</sup> These investigations led to recommendations for modest reforms in the administration of the U.S. NCB but found no major abuses. The entire affair was heavily colored by the political environment of the 1970s and the conspiratorial flavor of politics in the post-Watergate era.

Since the hearings in the 1970s, Interpol has been controversial in the U.S. primarily because of the legal immunities it has received from several U.S. Administrations. Interpol was formed as an organization of police organizations and thus could be characterized as a nongovernmental organization rather than an international organization because under international law, an international organization is created only by an agreement between national

governments. Nevertheless, in 1971, the U.N. recognized Interpol as an international organization.<sup>153</sup>

In 1972, a headquarters agreement between Interpol and the French government gave Interpol formal French recognition as an international organization.<sup>154</sup> This agreement, which was followed by subsequent agreements in 1982 and 2009, gave Interpol full diplomatic immunity for its headquarters, thus immunizing its employees from French criminal prosecutions and civil suits related to actions taken in the course of their official duties.<sup>155</sup>

Over several decades, the U.S. has taken similar steps. The process began in 1945, when Congress enacted the International Organization Immunities Act (IOIA).<sup>156</sup> The act provides some legal immunities to international organizations and their staffs, but not the full diplomatic immunity that is enjoyed by foreign diplomats in embassies and consulates. The President decides whether a particular international organization will receive immunity and may limit the immunities granted.

The primary reason why international organizations receive these immunities is that they are intended to be independent bodies, outside the jurisdiction of any one member nation. The immunities protect the independent functioning of the international organizations and shield them from vexatious litigation. By agreeing to become a member of such an organization, and by agreeing to its presence on U.S. soil, the U.S. implicitly accepts the obligation to accord it the relevant privileges. As a practical matter, international organizations would be reluctant to maintain a presence in the U.S., or any other country, if these immunities were not granted.

The IOIA became relevant to Interpol in 1981, when the D.C. Circuit held in *Steinberg v. International Criminal Police Organization* that Interpol could be sued in federal courts.<sup>157</sup> Leon Steinberg, the plaintiff, pleaded a strong case for defamation:

Steinberg's complaint identifies an Interpol document, titled "Blue International Notification 500/59-A3674," describing him as a wanted international criminal who used the alias "Mark Moscowitz." Interpol widely communicated the Notification, Steinberg alleges, to its liaisons, among them, the United States National Central Bureau (USNCB), now located in the Department of Justice, this country's liaison with Interpol. In the summer of 1975, on

learning of the document and Interpol's transmission of it to liaisons, Steinberg asserts, he notified Interpol and twice offered proof that the Notification was erroneous. Despite the proof he offered, Steinberg further states, Interpol continued to publish the Notification and other statements associating Steinberg with "Mark Moscowitz." It did so, according to Steinberg, until late July 1976, when Interpol finally conceded Leon Steinberg was not "Mark Moscowitz." Steinberg seeks general and punitive damages for the substantial injury he alleges he has suffered as a result of the Blue International Notification.

Now vulnerable to U.S. lawsuits, Interpol asked the Reagan Administration to grant it selected IOIA immunities. In the context of its burgeoning focus on working more closely with Interpol, it is not surprising that President Ronald Reagan signed Executive Order 12425 in 1983, designating Interpol as an international organization for purposes of U.S. law.<sup>158</sup> In 1995, President Bill Clinton extended additional IOIA immunities to Interpol relating to customs duties, foreign agent registration, import taxes, and protection of its official communications.<sup>159</sup>

Neither of these executive orders granted Interpol full IOIA immunities because Interpol had no office in the U.S. and therefore had no need for the IOIA's protections of international organization property and files, a business exemption from business taxes, or employee exemption from U.S. income taxes. But in 2004, Interpol opened a five-employee office in New York City that works with the United Nations. The primary work of this office revolves around supporting sanctions issued by the U.N. Security Council, including those on al-Qaeda and the Taliban. Interpol's New York office also works with the Security Council's Counter-Terrorism Committee, promotes the use of the SLTD database through the U.N., and supports the deployment of police officers as part of U.N. peacekeeping missions.<sup>160</sup>

Thus, during President George W. Bush's second term, Interpol requested that it be granted the remaining IOIA immunities to protect its U.S. property and employees from searches, seizures, and taxes. The Department of State reviewed the request and forwarded it to the White House, but President Bush did not act on the request.

On December 17, 2009, President Barack Obama signed an amendment to the 1983 Reagan executive order, granting Interpol the remaining IOIA immunities.<sup>161</sup> Interpol now has the same legal status in the U.S. as approximately 75 other international organizations, including the United Nations, the World Meteorological Organization, the World Trade Organization, and the Pacific Salmon Commission.

Interpol is an organization for the international distribution of crime-related information. It is not a law enforcement agency that has the power to arrest or detain a person, search someone's property, or do anything else that only law enforcement officers can do legally. Interpol employees have no law enforcement powers and do not carry firearms. If an Interpol employee in the U.S. ever purported to arrest someone, illegally conducted a search, or did anything else for which criminal or civil liability should attach, the proper course for the President would be to seriously consider revoking the executive orders granting Interpol its IOIA immunities. There have to date been no instances of such conduct by Interpol in the U.S.

The immunities Interpol has been granted by successive U.S. administrations are identical to those possessed by many other international organizations. The U.S. may ultimately find it necessary to amend the 1983 executive order to end Interpol's immunity for libelous diffusions until such time as Interpol ceases to allow circulation of diffusions that do not expire rapidly or are not promptly reviewed by Interpol's staff. However, that would be a very significant step, and the U.S. should exhaust other approaches for reforming Interpol's diffusion system before considering whether to take it.

### What the United States Should Do

The United States should:

- **Continue to support and work through Interpol.** As long as Interpol remains scrupulously committed in word and deed to its 1956 constitution, reforms its use of diffusions, and continues its sensible approach to firearms crime and increased awareness of the importance of data protection, the U.S. should not fundamentally alter its relationship with Interpol.

The U.S. should, however, recognize that all bureaucracies tend to engage in empire-building.

To the extent that future growth makes Interpol more effective and useful, the U.S. should support it, but the U.S. should not unquestioningly accept the institutional growth of an organization that it funds but does not control. By the same token, Interpol should recognize that continued U.S. support depends not on any further expansion but on remaining committed to its core mission and performing its current functions responsibly and capably.

### The immunities Interpol has been granted by successive U.S. administrations are identical to those possessed by many other international organizations.

- **Continue to promote greater interagency cooperation with the U.S. NCB.** In September 2009, the Audit Division of the Office of the Inspector General in the U.S. Department of Justice submitted a report which found that the NCB "has not fully made international criminal information ... available to appropriate law enforcement agencies in the United States.... This has increased the potential that high-risk, violent criminals can enter [the U.S.] undetected." The report further found that of the 52 foreign-source notices and diffusions examined, approximately 87 percent did not have a corresponding record in the FBI's National Crime Information Center.

Even more surprisingly, 14 of the 32 "most-wanted" fugitives sought by the FBI, the DEA, and Immigrations and Customs Enforcement were not subject to Red Notices. The FBI Assistant Director for International Operations did not know why, against the FBI's policy, the FBI's 10 Most Wanted fugitives were not all named in Red Notices.<sup>162</sup> This was regrettable because, while some nations may not be willing to act against an individual on the basis of information provided directly by the U.S., they may be willing to act on the basis of a Red Notice that derives from a U.S. request.

The NCB has responded to the 2009 report by emphasizing interagency cooperation, and the

number of detailees currently serving at the NCB is evidence that this emphasis has produced results. This reform deserves support and continued enhancement by executive agencies and Congress.

In addition to continuing to improve this form of interagency cooperation, the NCB should systematically cross-check the U.S. Treasury's List of Specially Designated Nationals to ensure that every individual on it who is the subject of a U.S. arrest warrant or court order is named in an appropriate Interpol notice or diffusion.<sup>163</sup> Finally, the U.S. should support the U.N. Counter-Terrorism Committee in its recently announced intention to improve cooperation with Interpol, and the U.S. should seek to ensure that the individuals and organizations that the committee identifies as associated with terrorism are also designed appropriately by Interpol.<sup>164</sup>

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## Defenders of American sovereignty and supporters of civil liberties therefore have no reason for concern about the 2009 executive order issued by President Obama.

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- **Report on information about U.S. citizens provided to or received from Interpol.** There are a number of actions that the U.S. can take within Interpol to exercise its prerogatives more effectively. The number and size of the databases maintained by Interpol and the number of notices and diffusions that it issues or transmits have grown steadily over the past decade. By itself, this is not a cause for concern, but given the rising volume of usage, the increased number of U.S. and foreign agencies that can access the Interpol system, and the new ease with which all agencies can access and modify data and issue provisional Red Notices through Interpol's I-24/7 and I-Link systems, the U.S. should not rely solely on the unaccountable members of Interpol's CCF to protect U.S. citizens.

Congress should require the U.S. NCB to publish an annual public report providing a summary total—without revealing private informa-

tion or prejudicing ongoing investigations—of the records on U.S. citizens that it made available to Interpol and of the notices and diffusions that it received, requested, or transmitted related to U.S. citizens. This report should also categorize the NCB's activities by the type of criminal offense (or other cause) that led it to take these actions.

- **Limit by statute the data that the U.S. submits to Interpol.** The low number of U.S. fingerprint records in the database maintained by Interpol implies that the U.S. has taken a responsible approach to providing data to Interpol, but Congress should enact a statute limiting the U.S. NCB to submitting fingerprints, DNA, or other identifying information only in cases relevant to one of Interpol's notices, including those in which an individual is wanted for a felony offense, a felony has been committed by an unknown perpetrator, or an individual is missing.

Consonant with Interpol's rules on data retention, Congress should also require the NCB to review at least monthly all outstanding notices, diffusions, and records it has requested, transmitted, or provided on U.S. citizens and to cancel or delete those that are related to cases where the individual sought is in U.S. custody, the information is no longer relevant to an ongoing investigation, or the individual has been cleared of the relevant charges.<sup>165</sup> The U.S. NCB should be required to include a summary of this activity in its annual public report to Congress.

- **Promote greater openness in Interpol.** While Interpol can never be completely transparent because this would prejudice the rights of the accused and hamper ongoing investigations, it should be more open about the notice requests it receives, its review process, and the occasions on which it rejects notice requests on the grounds that they do not comply with Article 3 or other relevant rules. Interpol is committed to compiling a "repository of practice on the application of Article 3," but this is currently supposed to be made available only to NCBs and other national and international entities.<sup>166</sup> Interpol should publish the criteria that it uses to assess whether a case violates Article 3.

Even more important, Interpol should publish more data about the requests it receives and rejects. Interpol occasionally issues a press release when it decides a particularly controversial case. This is welcome, but it also highlights the fact that most cases receive no publicity at all.<sup>167</sup> By rejecting notice requests without making any regular public report, Interpol in effect encourages nations that seek to misuse its system to try again.

Secretary General Noble has asserted that the idea that nations that abuse Interpol's rules should not be allowed to use its channels is "one of the most dangerous proposals I have heard," even though Article 131 of Interpol's Rules on the Processing of Data clearly states that this is a possible sanction for abusive behavior.<sup>168</sup> Noble argues that even rogue regimes such as Gaddafi's Libya have criminals who need to be pursued. This is certainly correct, but law enforcement agencies do not exist merely to pursue criminals: They must also protect the rights of the innocent and the accused.<sup>169</sup>

Noble's assertions strongly imply that Interpol is not inclined to apply the sanctions created by its own rules. This illustrates today's reality: Abusive behavior goes largely unpublicized, carries no sanction, and is too readily justified by the argument that even abusive states have criminals. This is unacceptable. The U.S. should press Interpol to adopt a policy of annually publishing a summary report, sorted by individual nation, of the number of notice requests received from each nation, the outcome of Interpol's internal review of these requests, and the number of the notices rejected on Article 3 or other specified grounds. The report should not name any individuals.

The U.S. also should promote greater openness in the CCF and encourage it to publish precise procedures and an indicative timetable for use by individuals challenging Interpol notices and diffusions, its decision criteria, and a redacted form of its decisions in all cases. This would establish a body of case law for use by applicants and so the public can evaluate whether the CCF is working as intended.

Until Interpol's rules are changed to make it impossible for autocracies to be represented on the CCF, the U.S. should work closely with other democracies inside Interpol to ensure that CCF appointees come exclusively from democratic nations. The U.S. should seek to ensure that there is always a U.S. citizen on the CCF, expanding the size of that body modestly if necessary. The U.S. also should seek to speed up the operation of the CCF and to create a procedure for expedited CCF review, if necessary by providing the CCF with additional resources in Interpol and by requiring NCBs to respond to CCF inquiries within a reasonable time period. Under the current system, the CCF can take more than a year to conclude its investigations. When an autocratic regime is using Interpol to target an individual unjustly, this procedure is too leisurely.<sup>170</sup>

Finally, while an individual who may be named in a notice or diffusion can apply to the CCF for the "right of access to personal information," the CCF can supply this information only "subject to the agreement of the source"—the source being the nation that provided the information.<sup>171</sup> This means that autocracies can accuse an individual through the notice or diffusion system and then forbid Interpol from revealing the information justifying the accusation, or even the fact that a notice or diffusion exists at all, unless the complainant can provide "proof that he knew of the existence of information about him in Interpol's files." In other words, an individual with a complaint must prove to Interpol that the complainant knows that Interpol knows something before Interpol will admit that they know it.<sup>172</sup>

It is important to maintain the principle that nations own the data they provide to Interpol, but the current procedure is unduly burdensome. On a domestic level, sealed arrest warrants exist primarily to avoid alerting fugitives that they are wanted. When an individual voluntarily contacts Interpol and inquires about the existence of a notice, any element of surprise in the case has obviously been lost. The U.S. should press Interpol to adopt, in all cases where the named individual or the individual's legal representative applies to the CCF, a policy of revealing the existence of a notice or diffusion, the

nation that requested or transmitted the relevant instrument, and the nature of the charge that justified or occasioned the notice or diffusion.

Applicants should not be required to prove that they know Interpol has information on their cases. Instead, they should be required to demonstrate that they have a reasonable basis for believing that Interpol has relevant information. This requirement would shield Interpol from the legal need to reply to repetitive communications from unbalanced individuals while still requiring it to reply to legitimate inquiries. This change would not allow fugitives to evade capture by obtaining information from the CCF. Applicants would need to reveal their location, and would still need to show persistence and take time to demonstrate a reasonable basis for their inquiries.

- **Protect U.S. citizens unjustly targeted by an Interpol notice or diffusion.** The overwhelming majority of Interpol notices and diffusions appear to raise no concerns, but the cases of Shahram Homayoun and Ilya Katsnelson, among others, show the need for action on the small minority of Interpol notices and diffusions that unjustly target U.S. citizens, particularly because the consequences of unjust targeting are severe.

Acting in collaboration with other executive agencies, the U.S. NCB reportedly assesses some Red Notices as politically motivated, although the NCB has not confirmed this report.<sup>173</sup> Congress should empower and require the NCB to issue a formal and public assessment when the NCB determines, as informed by consultation with other executive agencies, that a particular notice or diffusion is unjust and politicized, is based on a theory of universal jurisdiction, is an effort to criminalize speech, or constitutes a violation of Article 3 or other applicable Interpol rules.

In such cases, Congress should require the NCB to work with the State Department, the Treasury, and other executive agencies to protect the rights and freedoms of the targeted individual, including the individual's ability to travel abroad and use the banking and financial system. Congress should both empower and require the State Department to liaise with the

NCB to inform the NCB of cases that deserve interagency review with the clear understanding that it is Congress's intent to protect all U.S. citizens—not merely selected or prominent individuals—from such notices or diffusions.

Congress should require the NCB to request the annotation of the Interpol record of any U.S. citizen sought by a nation with which the U.S. does not have an extradition treaty. This annotation should note that the U.S. will not extradite a U.S. citizen in the absence of such a treaty and that the U.S. will regard extradition by another nation as an unfriendly act.<sup>174</sup> Congress should also create a legal pathway for U.S. citizens to supply information directly to the NCB to initiate a formal interagency review of a potentially problematic case and should require the NCB to issue an annual report to Congress on the actions it has taken in confirmed instances of abuse of the Interpol system to protect U.S. citizens.

If these practices prove insufficient, the U.S. should consider adapting the precedent of its Article 98 agreements—bilateral non-surrender agreements that protect American citizens from the International Criminal Court—to the Interpol context.<sup>175</sup> The U.S. could conclude bilateral agreements with fellow democracies agreeing that neither nation will surrender nationals from the other nation to a third party on the strength of an Interpol notice or diffusion without mutual consultation and agreement and that, if extradition is refused, they would work together to protect the liberties of the individual concerned.

Such agreements would not prevent Interpol notices and diffusions from operating, but they would allow the U.S. and other democracies to protect their nationals from abuse of the Interpol system. They would establish a network of democracies that are mutually pledged both to surrender justly requested criminals and to uphold the standards underlying Article 3 of Interpol's constitution.

- **Require the U.S. NCB to challenge unjust notices and diffusions.** The U.S. cannot assume the responsibility of reviewing and assessing all Interpol notices and diffusions; other democrat-

ic governments and U.S. and foreign NGOs also have a vital role to play in monitoring Interpol. Indeed, the case for the establishment of an NGO that focuses exclusively on monitoring Interpol is strong. Moreover, Interpol has the primary responsibility for living up to its own standards.

But Congress should require the U.S. NCB, working with the State Department and other executive agencies, to request an IPSG review when Interpol publishes a notice or distributes a diffusion on an individual who is not a U.S. citizen but who has a personal or business nexus with the U.S. that the NCB has credible reason for believing is unjust and politicized, is based on a theory of universal jurisdiction, is an effort to criminalize speech, or constitutes a violation of Article 3 or other applicable Interpol rules. Congress should also empower and require the State Department to liaise with the NCB to inform the NCB of cases that deserve interagency review. Finally, Congress should create a legal pathway for U.S. citizens to supply information directly to the NCB to initiate a formal process of interagency review of a potentially problematic case.

If Interpol decides after review not to rescind the notice or diffusion, the NCB should be empowered and required to issue a public assessment that the notice or diffusion is abusive. The NCB should be required to request the annotation of the relevant Interpol file to note the U.S.'s assessment and its determination not to extradite the individual in question. The NCB should be legally mandated to work with the State Department, other executive agencies, and other democratic governments to protect the individual's rights insofar as the individual's nexus with the U.S. brings them under U.S. jurisdiction.

The broader point is that the U.S. should not complacently accept the fact that Interpol treats autocracies as the equal of democracies. It should exercise its rights within the Interpol system, as should other democracies. As Secretary General Noble pointed out, not one Interpol member nation exercised its right to challenge Russia's use of Interpol's channels to locate William Browder. Only Browder himself issued a challenge.<sup>176</sup> Browder is a British subject, but public

comments by leading British officials while Interpol was considering Russia's abusive request were complacent.<sup>177</sup> This is unsatisfactory. U.S. cooperation with Interpol should be pragmatic, and like other democracies, the U.S. should make full use of its right to challenge problematic notices and diffusions through Interpol's channels.

- **Announce a formal policy of refusing to act on Interpol notices or diffusions from dictatorships that are not allowed access to U.S. data supplied to Interpol.** The U.S. decision to ignore Interpol notices published at the request of Communist dictatorships in the late 1940s is a useful precedent. The U.S. should announce formally that it will not act on any notices or diffusions that are published at the request of or transmitted by anti-U.S. dictatorships, that are published at the request of or transmitted by the ICC, that are based on a claim of universal jurisdiction, or that attempt to criminalize speech. At a minimum, the list of dictatorships should include the regimes that are not allowed to access U.S. data supplied to Interpol. It is extremely unlikely that the U.S. would wish to extradite any individual to Iran, Sudan, or Syria, and the U.S. should not support transnational institutions such as the ICC, lend support to theories of universal jurisdiction, or extradite individuals for exercising rights protected under the U.S. Constitution.
- **Expand the list of nations and organizations that cannot access U.S. data.** Currently, the list includes Iran, Sudan, Syria, and the ICC.<sup>178</sup> The U.S. should add Cuba and Venezuela to this list: They are anti-American dictatorships, and Venezuela, in particular, has been credibly described as one of Interpol's most abusive member nations.<sup>179</sup> It should also carefully monitor Egypt's actions, as under the now-deposed Morsi regime, Egypt demonstrated its desire to use Interpol to target U.S. citizens for political purposes. Russia's ongoing and serious pattern of abuse of the Interpol system raises the serious question of whether it should also be added to the list. Other nations should be added to or removed from the list as their actions in Interpol and elsewhere merit.



The U.S. should announce that it will terminate the access other nations have to U.S. data if they abuse the Interpol system. The U.S. should exercise particular caution about allowing continued foreign access to U.S. data when a change of government or regime or the widespread nationalization of private property is followed by a sudden increase in notices or diffusions alleging financial crimes, which appear (as in the Katsnelson case) to be a particular favorite of autocratic regimes. This declaratory policy would help to deter abuse of Interpol and U.S. citizens in the future.

Congress should prohibit ICC access to U.S. data by statute and should require congressional authorization before U.S. data are shared with any other international tribunal. The U.S. could still cooperate on a case-by-case basis with international tribunals, but only after congressional authorization ensures that the U.S. does not lend support to transnational institutions such as the ICC.

- **Resist efforts to standardize the international legal status of Red Notices.** In 2009, the Interpol General Assembly passed a resolution noting that “the legal value attributed to red notices varies from one country to another,” citing “the lack of a universal convention on mutual legal assistance and extradition,” and “wishing to see international legal status attributed to red notices.” The resolution did wisely ask Interpol’s member nations to “examine the minimum judicial guarantees necessary for the publication of a red notice.”<sup>180</sup>

Yet even if all Interpol member nations reliably reach a minimum judicial standard at some distant future date, the U.S. should not support any effort to give Interpol Red Notices an international legal status or to turn them into binding international arrest warrants. Today, since many of Interpol’s member nations are far below this minimum standard, the effort to give Red Notices an international legal status is particularly unwise because it flies in the face of Interpol’s acknowledgement that many notice requests come from nations that do not respect human rights and the regrettable reality that a number of notices and diffusions fall short of the standards set in the 1956 constitution.

- **Promote reform of Interpol’s diffusion system.** The U.S. should build support within Interpol for reform of the diffusion system. This system will likely continue to be abused, thereby running the serious risk of discrediting Interpol. The rapid increase in the number of diffusions transmitted by Interpol since 2003, and especially since 2008, coupled with the fact that Interpol member nations can transmit diffusions through Interpol’s network without any systematic preliminary review by the IPSG, has made it more important for the U.S. and other democracies to ensure that the diffusion system does not allow autocracies to evade the protections built, albeit imperfectly, into the notice system.

The U.S. should seek support from other democracies for a reform that would create a two-class diffusion system. Class A diffusions would automatically expire in 72 hours with no possibility of renewal and would not be systematically reviewed by the IPSG before transmission, although they would be subject to review after transmission by the IPSG and the CCF as time allowed and any evidence required. They would be recorded in the Interpol database, but upon expiration they would be completely deleted from the database, Interpol would formally and publicly announce their expiry, and NCBs would be requested to delete them from all national databases. Class A diffusions would be intended primarily for temporary use in emergencies.

Class B diffusions would be automatically reviewed by the IPSG within 72 hours of transmission for compliance with Interpol’s standards, including Article 3. If the diffusion was acceptable, it would be retained for five years (the existing standard) in the Interpol database and at national discretion in national databases. If it was not acceptable, it would be completely deleted from the Interpol database, Interpol would formally and publicly announce that it had been rejected, NCBs would be requested to delete it from all national databases, and it would appear in Interpol’s annual reporting as a request that was rejected on Article 3 or other relevant and separately specified grounds. Although the additional reviews required would appear to be a burdensome require-

ment for the IPSG, it is likely that a more thorough scrutiny of diffusions would substantially reduce the number of diffusions transmitted because Interpol's autocratic members could no longer use them as a way to evade entirely the imperfect protections of the notice system.

This reform will probably be resisted on the grounds that it infringes on the sovereign rights of Interpol's member nations, but that claim is wrong. Those nations are free to use other forms of communication if they are denied access to Interpol's diffusion system. Interpol's system exists only to communicate information that complies with Interpol's constitution and rules, and Interpol—subject to its General Assembly, which is where nations exercise their sovereign powers within Interpol—is responsible for making that determination.

A complaint will also likely be made that requiring any review of diffusions would make it more difficult for poorer countries, in particular, to use them to aid in apprehending fugitives. This complaint is also without merit. Interpol is based on national respect for commonly agreed rules. Interpol cannot stop—and should not try to stop—nations from making their own decisions about how to define crime or communicate with other nations. Interpol can only uphold its own standards for its own systems. If nations are persistently unwilling to abide by these standards, that is their problem, not Interpol's. There is no excuse for persistent misconduct by national law enforcement agencies.

- **If necessary, consider changing Interpol's 1983 IOIA immunities.** The President, if necessary, should consider revising the immunities granted by President Reagan in 1983 by rescinding Interpol's immunity in the U.S. from lawsuits for libelous diffusions that do not expire rapidly or are not promptly reviewed for compliance with Interpol's standards, including Article 3. Although this change would protect Americans from libel by diffusions, its primary intent is instead to motivate Interpol to reform its diffusion system by making Interpol vulnerable to lawsuits in the United States. The U.S. should exhaust other approaches for reforming Inter-

pol's diffusion system before considering whether to take this step.

- **Build support for suspending the least law-abiding states from Interpol and create a mechanism allowing for national expulsions from Interpol.** The fact that the Interpol General Assembly includes virtually every nation in the world is troubling. Only nations that respect the rule of law should be members of Interpol, an organization based on promoting the rule of law. In practice, too many of Interpol's member nations do not respect the rule of law, and there is no way to expel them. Furthermore, because Interpol's General Assembly operates by majority rule with one vote per nation and is numerically dominated by nations that are not reliably law-abiding, it is not bound in practice by its constitutional requirement to avoid "undertak[ing] any intervention or activities of a political, military, religious or racial character."

The U.S. should build support for using Interpol's existing rules to suspend nations that abuse its rules. The U.S. should seek to supplement these rules with a new mechanism that would allow the full expulsion of persistently abusive nations from Interpol. It may be argued that this would create a "safe haven" problem, as these nations would be outside Interpol and beyond the reach of a Red Notice. Yet there are many safe havens in the world for terrorists and criminals today, and since Interpol is not an international police agency and must work with and through national law enforcement agencies, it can do nothing to reach into the safe havens that exist today. Suspending or expelling the nations that abuse Interpol would not create safe havens; it would be an act of institutional self-respect and self-preservation.

- **Exercise caution in supporting admission of nations into Interpol.** Precisely because it should seek to limit Interpol's membership to law-abiding nations, the U.S. should consider carefully before supporting the admission of an applicant nation into Interpol. Interpol membership should not be awarded as a way to encourage a nation to become law-abiding; it should be given only after a nation has firmly achieved that status. The U.S. should not support the admission of any

nation that is unwilling or unable to live up to the responsibilities that explicitly come with Interpol membership.

## What Interpol Should Do

Interpol should:

- **Abide scrupulously by its 1956 constitution.**

Interpol is aware of the necessity of abiding by its constitution, but it has become involved in a number of cases that raise serious questions about whether it has fully upheld this mandate. As Interpol has grown and has made it easier for NCBs to transmit diffusions, publish provisional Red Notices, and access Interpol-held data directly, the number of troubling cases has increased. Absent further reforms, this increase will likely continue.

If Interpol distributes diffusions or publishes notices seeking the location or the extradition of dissidents in the U.S. or other democracies, if it engages in programs that raise Second Amendment concerns, if it supports institutions that do not respect national sovereignty, if it lends support to theories of universal jurisdiction or seeks to extradite individuals for exercising rights protected under the U.S. Constitution, or if its General Assembly politicizes the notice process or the definition of a conflict area, the U.S. and other democracies will be pressured to withdraw from Interpol or limit their participation in it. Interpol's future rests in its own hands. If it is responsible, it will continue to deserve and receive U.S. support.

- **Reform the diffusion system.** Interpol's notices are reviewed by the IPSPG before they are published and can be challenged pending and following publication by member nations. After publication, they can also be challenged by the IPSPG, by member nations, and by the CCF either directly or on petition from individuals. In contrast, diffusions are normally reviewed only after transmission. Interpol is thereby allowing its member nations, including many that are not law-abiding, to use its channels to designate individuals as wanted criminals without the fuller, if imperfectly applied, protections that apply to the notice system. Interpol should not be allowed to evade responsibility for this practice. There is good reason for Interpol to allow the use of dif-

fusions in emergency situations, but the diffusion system should be reformed to prevent member nations from using diffusions to circumvent entirely the imperfect protections of the notice system.

- **End the practice of removing controversial Red Notices from public view.** One of Interpol's ways of dealing with Red Notices that arouse controversy—sometimes on Article 3 grounds—is to remove the summarized contents of the notice from the public Internet.<sup>181</sup> Yet such notices remain active and visible to law enforcement authorities. Interpol should end this practice. If information received after publication of a notice gives grounds for believing that it should not have been published, the notice should be retracted immediately and fully, not merely withdrawn from public view.
- **Stop publishing notices on a provisional basis.** Interpol should not allow member nations to publish notices on a provisional basis, even if these notices are visible only to other law enforcement agencies and are clearly identified as provisional. Only notice requests that have been received, reviewed, and found to be fully compliant with Interpol's standards should receive the endorsement inherent in publication in any form over Interpol's system. Since a provisional notice is by definition not guaranteed to meet Interpol's standards, Interpol should not allow its publication in any form. This will not hamper cooperation in emergency situations because member nations will remain free to send and receive diffusions and messages through Interpol's system. Member nations will also still be able to alert Interpol in advance if they foresee the need for the rapid review by the IPSPG of a requested notice.
- **Admit Taiwan as a full member.** Taiwan is developed country of 23 million people. Anything less than full membership and participation makes no practical sense.

## Conclusion

In many respects, Interpol is a very successful international organization. It has an annual budget of less than \$90 million, of which the U.S. contributed only 14.9 percent in FY 2011.<sup>182</sup> It is based on

national sovereignty. Its constitution is designed to limit Interpol to strictly criminal matters, and Interpol has demonstrated that it seeks—not always successfully—to take this constitution seriously. The vast majority of its work is not controversial. To the extent that controversy exists—as in the case of the 2009 executive order by President Obama—it is sometimes based on misconceptions. Interpol serves a purpose that is demonstrably necessary, and U.S. Administrations of both parties have expanded cooperation with it since the early 1980s.

However, Interpol is not perfect. Nor should the U.S. relationship with Interpol remain completely unaltered. Both the U.S. and Interpol should change their approach in certain areas. These changes should seek to preserve and enhance the credibility and utility of an international organization that works broadly in the U.S. national interest. Over the long run, Interpol's support and credibility in the U.S. and other democracies will be badly damaged if the organization is perceived as allowing its institutions and procedures to serve autocracies.

An Interpol that adhered strictly to its constitution might be a slightly less effective tool for the United States, but such an Interpol would still function well. On the other hand, an Interpol that continues to be subject to autocratic abuse, thanks to its worldwide membership, its improved communications systems, and its reluctance to apply the sanctions that its own rules allow, runs the risk not only of stigmatizing innocent people for political reasons, but also of losing credibility in the world's democracies. As noted above, Interpol's future rests in its own hands. If Interpol is responsible, it will continue to deserve and receive U.S. support.

Interpol's relative success also offers lessons in how the U.S. should deal with other international organizations.

*First*, the U.S. made it clear early in Interpol's modern existence that U.S. tolerance was limited. By withdrawing from Interpol in 1950, the U.S. induced Interpol to adopt a constitution that prohibited it from undertaking activities of a political character. Even more importantly, the U.S. withdrawal made it clear that Interpol not only had to adopt a new constitution, but also had to abide by that constitution in practice. In short, the U.S. should recognize that withdrawal from international organizations is not a negative act of isolationism. It is a way to defend American

principles and encourage reform, which in the case of Interpol laid a foundation for future and greater U.S. participation in the reformed organization.

*Second*, throughout its history, Interpol has been led by secretaries general from France (1946–1985), Britain (1985–2000), and the U.S. (since 2000). While not all of Interpol's officials are from democracies, law-abiding states hold more of Interpol's top positions than one might expect given its worldwide membership. For example, as of September 2013, nine members of the 13-person Interpol Executive Committee are from law-abiding states, including the U.S., France, Japan, Finland, Canada, and Chile. They outnumber the four representatives from Algeria and Qatar, which are not committed to the rule of law, and Rwanda and Nigeria, which are not fully committed to it.

The contrast with the U.N. Human Rights Council is striking. In 2011–2012, the council had only 20 free members compared with 27 partly free or not free members.<sup>183</sup> The lesson for the U.S. is that, in assessing whether an international organization is worthy of U.S. respect and participation, it should begin by examining who is selected to run it. An organization led and governed by democracies is more likely to respect U.S. values.

*Third*, Interpol does useful work. Its members—at least its leading democratic members—value it for what it actually accomplishes, not as a way to declare their commitment to a cause or to achieve propaganda victories. This does not immunize Interpol from all misuse, but it has incentivized the democracies to take Interpol more seriously than they take organizations such as UNESCO, which does little and is notoriously unable to assess its own performance.<sup>184</sup> The underlying lesson is that the U.S. should not participate in organizations or negotiations merely to demonstrate its good faith or fine intentions. It should participate to advance a clear aim that is genuinely shared by other law-abiding nations. This offers the best practical assurance that the organization or negotiation in question will not devolve into politicized publicity-seeking.

Interpol is not perfect, but the challenges it confronts are essentially not the result of contemporary, day-to-day errors of judgment. Interpol was refounded after World War II in an era when mass terrorism was unknown, and its constitution was drafted during the early Cold War, when there was a reasonably bright line between democracies that

respected the freedom of speech and Communist dictatorships that did not.

Today, mass terrorism for political ends is common, and restrictions on speech that make the so-called defamation of religion illegal are widespread. Interpol has been challenged—and will increasingly be challenged—by nations that seek to smudge or erase the line between criminal acts and political conduct that is enshrined in its constitution. Interpol is dedicated to an apolitical approach, but as the 1930s showed, an apolitical approach must rest on foundational values or risk serving evil ends.

Thus, Interpol's underlying problem is inherent in the fact that it has no meaningful standards for membership and has therefore been far too indiscriminating in admitting nations as members. Precisely because Interpol is rightly based on national sovereignty, those member nations, many of which are not law-abiding, have been given an equal voice in Interpol's General Assembly.

Secretary General Noble describes Interpol as a democratic organization because it takes its direction from the decisions of its member nations, but this is a problematic definition of democracy in an organization supposedly governed by a constitution, for a constitution is supposed to protect the minority from the unrestrained will of the majority. The fact that Interpol's General Assembly can decide by majority vote to act contrary to its own constitution is not fully satisfactory, although it is true that the General Assembly is only manifesting the ultimate control that Interpol's sovereign member nations have over it. The only answer to this dilemma is for Interpol's member nations to remember that pressing Interpol to violate its own constitution will damage the organization's utility and reputation in the long term.

The problem, however, is not that Interpol regularly ignores Article 3. The problem is that the number and importance of the autocratic members in Interpol makes it difficult to apply the Article 3 standard effectively to the increasing volume of activity in the Interpol system. This encourages everyone involved with Interpol to make the easy assumption that all Interpol member nations are practically as well as formally equal.

Thus, Secretary General Noble states that "Interpol proudly believes each call for assistance by any of its 190 member countries deserves the same respect." He simultaneously argues that "the

overwhelming majority of requests by member countries ... raise no issues" and that "every request for Interpol notices requires an independent, case-by-case assessment."<sup>185</sup> It is difficult to believe that Interpol can make such an assessment effectively, given the number of notices it issues annually and the Secretary General's own belief that all member nations are worthy of equal respect and that most requests are not problematic.

It is in Interpol's own interest to ensure that it complies fully with the letter and spirit of the Article 3 standard and other applicable rules before the rising volume of press, NGO, and international criticism permanently damages its reputation and utility.<sup>186</sup> Interpol has made a start with the CCF and the Rules on the Processing of Data, but the recent cases of Silaev and Kross, in particular, are extremely troubling. Interpol needs to do better, and the U.S. should encourage it to undertake further reforms. It is indeed important not to politicize Interpol, but by seeking to ensure that Interpol lives up to its own standards, the U.S. would not be politicizing Interpol. The U.S. would in fact be upholding Interpol's constitution in the face of efforts by Interpol's autocratic member nations to politicize it.

It would have been better if Interpol had acknowledged that its apolitical mission cannot exist outside of broader national respect for the rule of law and that only law-abiding democracies that respect fundamental freedoms can meaningfully aspire to meet the standards in Interpol's constitution and therefore merit Interpol membership. Regrettably, that was not done. The U.S. thus faces an Interpol numerically dominated by nations that do not share its values.

In that respect, Interpol is typical of most international organizations. Unlike too many of these organizations, however, Interpol does useful work. Interpol thus exemplifies a dilemma common to a number of international organizations that promote cooperation on substantive or technical issues. The U.S. would damage its interests if it withdrew from these organizations, but it cannot immediately expel the member nations that do not deserve to be there and that can work mischief of their own through their membership.

In these cases, the U.S. should take the long-term approach of founding new organizations or reforming the existing ones while in the interim working in the existing organizations to the extent that they

advance U.S. interests and respect U.S. values. If Interpol remains scrupulously committed in word and deed to its 1956 constitution, it will live up to that challenge.

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## Endnotes

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7. Fooner, *Interpol*, p. 49, and Mathieu Deflem, "The Logic of Nazification: The Case of the International Criminal Police Commission ('Interpol')," *International Journal of Comparative Sociology*, Vol. 43, No. 1 (2002), p. 21, <http://deflem.blogspot.com/2002/02/logic-of-nazification-case-of.html> (accessed August 8, 2013). In 1934, Interpol decided that through 1942, the Police President of Vienna would automatically be President of the ICPC. Consequently, when the Nazis took over the Vienna police, they also captured control of the ICPC. Ironically, this rule was apparently intended to prevent a Nazi from becoming the head of the ICPC.
8. Deflem, "The Logic of Nazification," p. 21.
9. 22 U.S. Code § 263a. The bill was signed into law on June 10, 1938. Fooner, *Interpol*, p. 53.
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24. Interpol, "Neutrality (Article 3 of the Constitution)," <http://www.interpol.int/layout/set/print/About-INTERPOL/Legal-materials/Neutrality-Article-3-of-the-Constitution> (accessed June 26, 2013).
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31. *Ibid.*, p. 71.
32. Fenton Bresler, *Interpol* (London: Sinclair-Stevenson Ltd., 1992), p. 177.
33. Sheptycki, "The Accountability of Transnational Policing Institutions," p. 125; U.S. Department of Justice, "General Legal Activities: INTERPOL Washington," FY 2012 budget request, p. 1, <http://www.justice.gov/jmd/2012summary/pdf/fy12-usncb-bud-summary.pdf> (accessed August 8, 2013); and Interpol, "Samoa," <http://www.interpol.int/Member-countries/Asia-South-Pacific/Samoa> (accessed February 13, 2013). A 2010 memorandum of understanding explains the institutional relationship between the DHS and the DOJ in relation to the U.S. NCB. U.S. Department of Homeland Security and U.S. Department of Justice, "Memorandum of Understanding Between the U.S. Department of Homeland Security and the U.S. Department of Justice Pertaining to U.S. Membership in the International Criminal Police Organization (Interpol), Management of the Interpol-U.S. National Central Bureau, and Related Matters," July 19, 2010, <http://www.justice.gov/oip/dag-memo-07172010.pdf> (accessed July 8, 2013). Information on the current size, structure, and budget of the U.S. NCB came from a personal communication from the U.S. NCB to Ted R. Bromund on July 2, 2013. The agencies with detailees at the NCB are the U.S. Marshals Service; Immigration and Customs Enforcement (ICE) Homeland Security Investigations; ICE Enforcement and Removal Operations; FBI; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; Secret Service; Customs and Border Protection; Border Patrol; Citizenship and Immigration Services; Diplomatic Security; Postal Inspection Service; IRS; Food and Drug Administration; Naval Criminal Investigative Service; Bureau of Prisons; Export-Import Bank Inspector General; Fish and Wildlife Service; Environmental Protection Agency; National Oceanic and Atmospheric Administration; DHS Inspector General; Health and Human Services Inspector General; District of Columbia Metropolitan Police; Department of Defense Wounded Warrior Program; U.S. Capitol Police; New York City Police Department; Los Angeles County Sheriff's Office; and Pinellas County Sheriff's Office.
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70. Angelo Bani, briefing, Interpol, January 12, 2010.
71. Louboutin, briefing.
72. Pearson, "Making Interpol Relevant Again."
73. U.S. National Central Bureau, personal communication to Ted R. Bromund, July 2, 2013.
74. Tim Wilson, "Applying the Science," in Brown, ed., *Combating International Crime*, pp. 222-223.
75. Steven David Brown, "The Cyber Side of Crime," in Brown, ed., *Combating International Crime*, p. 233.
76. Cameron-Waller, "Interpol," p. 48.
77. Interpol, "Incident Response Teams," <http://www.interpol.int/INTERPOL-expertise/Response-teams/Incident-Response-Teams> (accessed March 1, 2013).
78. Interpol, "Major Events Support Teams," December 26, 2012, <http://www.interpol.int/INTERPOL-expertise/Response-teams/Major-Events-Support-Teams> (accessed March 1, 2013).

79. For example, see Ryan Villarreal, "Interpol Launches Crackdown on Global Timber Trafficking in Latin America," *International Business Times*, February 21, 2013, <http://www.ibtimes.com/interpol-launches-crackdown-global-timber-trafficking-latin-america-1098372?fs=6f1cd> (accessed March 14, 2013). Secretary General Noble has wisely stated that the creation of an Interpol antiterrorist squad "would be a bad idea. Virtually no country would want that, and they shouldn't want that." See Pearson, "Making Interpol Relevant Again." For a classic example of the Hollywood treatment of Interpol, see Christopher Snow Hopkins, "A Look Inside Interpol in Washington," *National Journal*, May 30, 2013, <http://www.nationaljournal.com/daily/a-look-inside-interpol-in-washington-20130306> (accessed August 14, 2013). For another example, see Brendon Connelly, "Muppet Sequel Interpol Role Goes to Modern Family's Ty Burrell," December 7, 2012, <http://www.bleedingcool.com/2012/12/07/muppet-sequel-interpol-role-goes-to-modern-familys-ty-burrell/> (accessed September 30, 2013).
80. For Interpol's rules specific to Red Notices, see Interpol Office of Legal Affairs, "INTERPOL's Rules on the Processing of Data," arts. 82-87.
81. *Ibid.*, art. 76(3).
82. U.S. Department of Justice, "About INTERPOL Washington: Frequently Asked Questions," October 2012, <http://www.justice.gov/interpol-washington/faqs.html#thirteen> (accessed March 1, 2013). Press reporting on cases involving Interpol too frequently features assertions by government officials that they comply with Interpol notices "in keeping with their international obligations." This is incorrect. Every nation is free to decide what standing it wishes to give to Interpol notices (and diffusions), and no nation is compelled to extradite an individual sought through Interpol. For an example of this disturbing trend, see Rodney Muhumuza, "In Uganda, A Rwandan Exile Goes Missing," Yahoo News, August 22, 2013, <http://news.yahoo.com/uganda-rwandan-exile-goes-missing-173103443.html> (accessed October 1, 2013). A similar and equally disturbing assertion is that Interpol's (supposed) decision to issue a Red Notice proves that the authorities of a nation were correct to charge an individual. This is also incorrect: Interpol's decision demonstrates only that the nation that requested the Red Notice has (to that point) been held by Interpol to meet the standards required of it, which require a proof of a charge, not proof of guilt. See Belarusian Telegraph Agency, "Interpol's Decisions on BPC Case Proves the Correctness of Belarus Law Enforcers' Actions," August 29, 2013, <http://news.belta.by/en/news/society?id=724717> (accessed August 29, 2013). On this case, see also Radio Free Europe/Radio Liberty, "Interpol Denies Issuing Warrants for Belarus's Potash Arrests," September 12, 2013, <http://www.rferl.org/content/interpol-belarus-potash-russia/25103613.html> (accessed September 30, 2013). This denial suggests that Belarus transmitted a diffusion and did not request a notice. The willingness of some nations to lie about the requests they have made to Interpol, or Interpol's actions on these requests, would appear to offer *prima facie* evidence that they are abusing the Interpol system for political reasons.
83. TVNZ (New Zealand), "Colombia Captures Suspects in Killing of Agent," June 26, 2013, <http://tvnz.co.nz/world-news/colombia-captures-suspects-in-killing-agent-5477196> (accessed July 10, 2013).
84. Interpol, *Annual Report 2011*, p. 34.
85. *Ibid.*, pp. 34-35.
86. Interpol, "International Notices System," *Fact Sheet*, January 2012, p. 2, [http://www.interpol.int/content/download/786/6291/version/18/file/Factsheets\\_EN\\_mars2013\\_GI02%20web.pdf](http://www.interpol.int/content/download/786/6291/version/18/file/Factsheets_EN_mars2013_GI02%20web.pdf) (accessed March 15, 2013), and Interpol, *Annual Report 2011*, p. 24.
87. Interpol, *Annual Report 2009*, p. 33.
88. Interpol, *Annual Activity Report 1999*, p. 6, <http://www.interpol.int/content/download/776/6171/version/5/file/agn69r01.pdf> (March 15, 2013).
89. U.S. Department of Justice, National Central Bureau, "FY 2012 Performance Budget," p. 9, <http://www.justice.gov/jmd/2012justification/pdf/fy12-usncb-justification.pdf> (accessed May 15, 2013).
90. For an interpretation of the application of Article 3, see Yaron Gottlieb, "Article 3 of Interpol's Constitution: Balancing International Police Cooperation with the Prohibition on Engaging in Political, Military, Religious, or Racial Activities," *Florida Journal of International Law*, Vol. 23, No. 2 (August 2011), pp. 135-186, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2325891](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325891) (accessed September 30, 2013). For a summary of the predominance test, see Interpol, "Neutrality (Article 3 of the Constitution)."
91. "Meet the World's Top Cop," *Foreign Policy*, January 1, 2001, [http://www.foreignpolicy.com/articles/2001/01/01/meet\\_the\\_worlds\\_top\\_cop](http://www.foreignpolicy.com/articles/2001/01/01/meet_the_worlds_top_cop) (accessed March 14, 2013), and Sheptycki, "The Accountability of Transnational Policing Institutions," p. 129.
92. Sheptycki, "The Accountability of Transnational Policing Institutions," p. 129.
93. Interpol General Assembly, "Application of Article 3 of the Constitution," AGN/53/RES/7, September 4-11, 1984, <http://www.interpol.int/Media/Files/General-Assembly/Resolutions/1984/AGN-1984-RES-7-Application-of-Article-3-of-the-constitution> (accessed May 15, 2013). This resolution elaborated on the "predominance test" from international extradition law, which held that extradition should not proceed if the "predominance of evidence" indicated that extradition was being sought for political, not criminal, conduct. An offense occurring outside the "conflict area," by extension, was predominantly criminal. This is one example of the way that Interpol's rules have adapted over time.
94. Sheptycki, "The Accountability of Transnational Policing Institutions," pp. 131-132, and Mathieu Deflem and Lindsay C. Maybin, "Interpol and the Policing of International Terrorism: Developments and Dynamics Since September 11," in Lynne L. Snowden and Brad C. Whitsel, eds., *Terrorism: Research, Readings, and Realities* (Upper Saddle River, NJ: Prentice Hall, 2004). For a thoughtful review of the shifting interpretations of Interpol's Article 3 in the context of terrorism, see Kyle René, "The Shifting Interpretations of INTERPOL's Article Three," *Bepress*, 2012, [http://works.bepress.com/kyle\\_rene/1/](http://works.bepress.com/kyle_rene/1/) (accessed July 8, 2013).
95. "Meet the World's Top Cop."

96. Charles R. Both, "International Police Force or Tool for Harassment of Human Rights Defenders and Political Adversaries: Interpol's Rift with the Human Rights Community," *ILSA Journal of International and Comparative Law*, Vol. 8, No. 2 (Spring 2002), p. 357.
97. Libby Lewis, "Are Some Countries Abusing Interpol?" CNN, July 18, 2011, [http://articles.cnn.com/2011-07-18/world/interpol.red.notices\\_1\\_interpol-red-notices-transparency-international](http://articles.cnn.com/2011-07-18/world/interpol.red.notices_1_interpol-red-notices-transparency-international) (accessed October 19, 2012), and press release, "Interpol Re-Issue of Red Notice on Former Kazakhstan PM," Interpol, October 24, 2002, <http://www.interpol.int/News-and-media/News-media-releases/2002/PR031> (accessed July 10, 2013). For Interpol's response to Lewis's piece, see Rachael Billington, "Interpol Reacts to ICIJ Story," Center for Public Integrity, January 11, 2012, <http://www.publicintegrity.org/2011/07/20/5280/interpol-reacts-icij-story> (accessed July 18, 2013).
98. See Ilya Katsnelson, "The Medvedev Thaw: Is It Real? Will It Last?" statement before the U.S. Helsinki Commission, June 23, 2009, [http://www.csce.gov/index.cfm?Fuseaction=Files.Download&FileStore\\_id=1330](http://www.csce.gov/index.cfm?Fuseaction=Files.Download&FileStore_id=1330) (accessed June 12, 2013), and Alexander Alexandrovich, testimony before the U.S. Helsinki Commission, November 9, 2010, [http://www.csce.gov/index.cfm?Fuseaction=Files.Download&FileStore\\_id=1934](http://www.csce.gov/index.cfm?Fuseaction=Files.Download&FileStore_id=1934) (accessed August 14, 2013). For a survey of the "abuse of the legal system [which] has become a central technique in various fraudulent and extortionate schemes in Russia" by the then-Resident Legal Advisor in the U.S. Embassy in Moscow, see Thomas Firestone, "Armed Injustice: Abuse of the Law and Complex Crime in Post-Soviet Russia," *Denver Journal of International Law and Policy*, Vol. 38, No. 4 (Fall 2010), <http://djilp.org/wp-content/uploads/2011/08/Firestone.pdf> (accessed June 12, 2013).
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101. Lewis, "Are Some Countries Abusing INTERPOL?"
102. Jago Russell, "Application to the Commission on Behalf of Wenda, Benny," letter to Commission for Control of Interpol's Files, Fair Trials International, April 24, 2010, <http://www.fairtrials.net/publications/legal-interventions/benny-wenda-ccif-application/> (accessed April 22, 2013); Andrew Smith, statement in debate on "UK Extradition Arrangements," U.K. House of Commons, December 5, 2011, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111205/debtext/111205-0003.htm#11120526001079> (accessed October 18, 2012); Leah Hyslop, "Benny Wenda Removed from Interpol 'Wanted' List," *The Telegraph*, August 7, 2012, <http://www.telegraph.co.uk/expat/expatnews/9458223/Benny-Wenda-removed-from-Interpol-wanted-list.html> (accessed October 18, 2012); and Catherine Heard and Alex Tinsley, "The Power of the Interpol Red Notice," Fair Trials International, 2012, <http://www.fairtrials.net/publications/lectures-and-articles/the-power-of-the-interpol-red-notice-2/> (accessed March 15, 2013).
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112. Interpol General Assembly, "Co-operation with New Requests Concerning Genocide, Crimes Against Humanity and War Crimes," Resolution AG-2010-RES-10, November 8-11, 2010, <http://www.interpol.int/content/download/4410/40204/version/4/file/AGN79RES10%5B2%5D.pdf> (accessed June 26, 2013).

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115. Lewis, "Are Some Countries Abusing Interpol?"
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117. Michael Olmsted and Joyce Eaton, briefing, Interpol, January 12, 2010.
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131. Law and Order in Russia, "German Justice Ministry Rejects Russian Interpol Request for William Browder," May 23, 2013, <http://lawandorderinrussia.org/2013/german-justice-ministry-rejects-russian-interpol-request-for-william-browder/> (accessed June 26, 2013).
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133. Law and Order in Russia, "Russia Ignores Interpol's Ruling and Re-Applies to Interpol for a Red Notice for William Browder to Block Magnitsky Justice Campaign," June 5, 2013, <http://lawandorderinrussia.org/2013/russia-ignores-interpol-s-ruling-and-re-applies-to-interpol-for-a-red-notice-for-william-browder-to-block-magnitsky-justice-campaign/> (accessed June 26, 2013). In this and other outlets, the claim has been implied that Russia sought a Red Notice in May. However, Secretary General Noble stated, "Russia neither sought his [Browder's] arrest nor asked Interpol to issue its own formal notification seeking member countries' assistance to locate Mr. Browder. Russia did everything under the name of the Russian Federation." Noble, "Interpol Makes the World a Safer Place." This implies that Russia circulated a diffusion and did not make a request for a Red or Blue Notice. William Browder confirmed this in a personal communication to Ted R. Bromund on July 12, 2013. In July, by contrast, it seems that Russia sought a Red Notice. The assertion by the Heritage Capital representative that Russian authorities "must" be suspended under Interpol's rules likely stems from Article 131 of Interpol's "Rules on the Processing of Data," which states that the IPSG can issue a "suspension of the access rights granted to users of the National Central Bureau" if an NCB "does not fulfill its obligations under the present Rules." (Article 123 contains broadly similar provisions.) However, Article 131 also requires the IPSG to submit to the Executive Committee "all proposals to take corrective measures which may result in the long-term suspension" of an NCB. In short, it is not clear that the NCB itself (as opposed to particular users within it) can be suspended without reference to the Executive Committee. It is clear, though, that all suspensions occur only on the voluntary initiative of the IPSG: There is no "must" about it. See Interpol Office of Legal Affairs, "INTERPOL's Rules on the Processing of Data," art. 131.
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138. Ibid. See also Interpol Office of Legal Affairs, "INTERPOL's Rules on the Processing of Data," art. 49(2).
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141. Sheptycki, "The Accountability of Transnational Policing Institutions," p. 126.
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145. Interpol, *Annual Report 2008*, p. 27.
146. Interpol, *Handbook on the Collection and Sharing of Ballistic Data*, 2nd ed., 2012, pp. 9-10, <http://www.forensictechnology.com/ibin-handbook-2nd-edition> (accessed August 15, 2013; registration required).
147. Vasileios Theofilopoulos, briefing, January 12, 2010.
148. Press release, "Interpol Outlines Key Firearms Initiative at United Nations," Interpol, August 30, 2012, <http://www.interpol.int/fr/Centre-des-m%C3%A9dias/Nouvelles-et-communiqu%C3%A9s-de-presse/2012/N20120830> (accessed May 15, 2013).
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151. Josh Margolin, "Exclusive: After Westgate, Interpol Chief Ponders 'Armed Citizenry,'" ABC News, October 21, 2013, <http://abcnews.go.com/Blotter/exclusive-westgate-interpol-chief-ponders-armed-citizenry/story?id=20637341&singlePage=true> (accessed November 4, 2013).
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153. Sheptycki, "The Accountability of Transnational Policing Institutions," p. 119. The U.N. acted through a resolution of the Economic and Social Council: U.N. Economic and Social Council, "Special Arrangement Between the International Criminal Police Organization and the Economic and Social Council," E/RES/1971/1579(L), May 20, 1971, [http://www.unodc.org/unodc/en/Resolutions/resolution\\_1971-05-20\\_4.html](http://www.unodc.org/unodc/en/Resolutions/resolution_1971-05-20_4.html) (accessed August 15, 2013). In 1996, the U.N. granted Interpol Permanent Observer status, which allows Interpol to participate in aspects of the day-to-day work of the U.N., including its conferences. See Interpol, "United Nations," <http://www.interpol.int/About-INTERPOL/International-partners/United-Nations> (accessed March 14, 2013).
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165. Interpol Office of Legal Affairs, "INTERPOL's Rules on the Processing of Data," arts. 51 and 52.
166. "Interpol's Rules on the Processing of Data," art. 34(3).
167. For example, see press release, "Interpol's Rules Prohibit Publication of Red Notices Requested by Egypt for NGO Workers," Interpol, April 23, 2012, <http://www.interpol.int/News-and-media/News-media-releases/2012/PR034> (accessed July 16, 2013). The strikingly defensive tone of this press release—which blames the circulation of "misleading and erroneous" information on "individuals and organizations looking to further their own agenda or raise their profile on the back of false allegations"—suggests that Interpol has little experience with and little interest in the kind of public scrutiny that it is increasingly encountering.
168. Noble, "Interpol Makes the World a Safer Place."
169. Ronald K. Noble, "Strong Safeguards Underpin Interpol's Mission for a Safer World," *EUobserver*, August 30, 2013, <http://euobserver.com/opinion/121262> (accessed September 30, 2013).
170. Fair Trials International, "Interpol: Cases of Injustice," p. 6.
171. Interpol General Secretariat, "Rules on the Control of Information and Access to Interpol's Files," art. 11(a), February 15, 2010, <http://www.interpol.int/Media/Files/Legal-material/Reference-Documents/Rules-on-the-Control-of-Information-and-access-to-INTERPOL%27s-Files-RCI> (accessed March 15, 2013).
172. Commission for the Control of Interpol's Files, *Annual Activity Report of the CCF in 2009*, February 15, 2010, § 6.5, Para. 35, <http://www.interpol.int/content/download/9635/70291/version/7/file/ccf2009.pdf> (accessed April 22, 2013).
173. Lewis, "Interpol's Red Notices Used by Some to Pursue Political Dissenters, Opponents."
174. The term "unfriendly act" is a term of art, denoting an act that falls below the accepted standards of international behavior that will be met by a protest or complaint. See John P. Grant and J. Craig Barker, eds., *Encyclopaedic Dictionary of International Law*, 3rd ed. (Oxford, U.K.: Oxford University Press, 2009), s.v. "Unfriendly Act."
175. Georgetown Law Library, "International Criminal Court—Article 98 Agreements Research Guide," [http://www.law.georgetown.edu/library/research/guides/article\\_98.cfm](http://www.law.georgetown.edu/library/research/guides/article_98.cfm) (accessed June 26, 2013).
176. Noble, "Interpol Makes the World a Safer Place."
177. Osborne, "Is Interpol Fighting for Truth and Justice, or Helping the Villains?"
178. As noted above, Interpol has stated that the U.S. has blocked Cuban access to U.S. fingerprint data. This statement has not been verified from other sources, and Interpol has not asserted that the U.S. has blocked Cuba from accessing all U.S. data.
179. Lewis, "Interpol's Red Notices Used by Some to Pursue Political Dissenters, Opponents."
180. Interpol General Assembly, "Enhancing the International Status of Red Notices," Resolution AG-2009-RES-11, October 11–15, 2009, <http://www.interpol.int/content/download/5278/44081/version/4/file/AGN78RES11.pdf> (accessed June 26, 2013).

181. The *Annual Activity Report of the CCF for 2010* notes that Interpol did this as a result of 2 percent of the 170 requests processed by the CCF in 2010. This implies a total of at least three to four such cases per year.
182. U.S. Department of Justice, "FY 2012 Performance Budget," pp. 4-5. The DOJ submission also notes, however, that the U.S. contribution will rise steadily to 20.8 percent of Interpol's budget in FY 2014 and that dues in that year will be at least 11.303 million Euros, or approximately \$15.29 million at exchange rates current in late September 2013. The DOJ also expects U.S. Interpol dues to continue to increase faster than the rate of inflation as a result of post-9/11 needs.
183. Brett D. Schaefer, "The U.N. Human Rights Council Does Not Deserve U.S. Support," Heritage Foundation *Issue Brief* No. 3717, September 5, 2012, <http://www.heritage.org/research/reports/2012/09/the-un-human-rights-council-does-not-deserve-us-support>.
184. Brett D. Schaefer, "The U.S. Should Withdraw from UNESCO," Heritage Foundation *Issue Brief* No. 3760, October 19, 2012, <http://www.heritage.org/research/reports/2012/10/the-us-should-withdraw-from-unesco>.
185. Noble, "Strong Safeguards Underpin Interpol's Mission for a Safer World."
186. Interpol was the subject of two carefully worded resolutions in the Twenty-Second Annual Session of the Parliamentary Assembly of the Organization for Security and Co-Operation in Europe (OSCE-PA), held June 29-July 3, 2013. The resolutions were initially supported by delegates from Britain, Latvia, Ireland, and Sweden and were adopted as paragraphs 146 and 147 of the "Istanbul Declaration." See Organization for Security and Co-Operation in Europe Parliamentary Assembly, "Final Declaration," July 3, 2013, <http://www.oscepa.org/meetings/annual-sessions> (accessed July 8, 2013). The number of press stories critical of Interpol also appears to be increasing. In addition to those cited throughout this paper, see Rettman, "Interpol Open to Abuse by 'Criminal States,'" and Anna Koj, "Kazakhstan Using Interpol to Chase Dissidents in EU," *EUobserver*, September 4, 2013, <http://euobserver.com/opinion/121311> (accessed September 30, 2013).