Articles 2 & 3

"To ensure and promote the widest possible mutual assistance between all criminal police authorities [...] in the spirit of the 'Universal Declaration of Human Rights'"

"It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character."

INTERPOL

REPOSITORY OF PRACTICE

Application of Articles 2 and 3 of INTERPOL's Constitution in the context of the processing of data via INTERPOL's Information System.

THIRD EDITION – NOVEMBER 2024

CONTENTS

Note: chapters not updated in November 2024 were last updated in February 2013.

SECRETARY GENERAL'S FOREWORD

Since its creation in 1923 INTERPOL has significantly enhanced its policing capabilities to facilitate international police cooperation in combating crimes.

INTERPOL's Constitution defines two important qualifications in relation to the Organization's activities: They must be carried out in the spirit of the Universal Declaration of Human Rights (Article 2(1)), and must not be of a political, military, religious or racial character (Article 3).

Indeed, as an international organization uniquely placed to support its member countries in preventing and combating crime, it is of the utmost importance that our activities follow well-established human rights principles and transcend domestic and international politics.

In parallel with developments under international law and emerging geo-political realities, the interpretation and application of Articles 2(1) and 3 have evolved over the years. This endeavour has not been without challenges. Our response in areas such as terrorism, which by its very essence often include political, military, religious or racial elements, has required the guidance of the Organization's governing bodies. And, as INTERPOL has grown, the task of identifying the norms recognized by INTERPOL's now 196 member countries has become more complex.

The application of Articles 2(1) and 3 is particularly relevant to the processing of data via the Organization's channels, especially INTERPOL Notices and Diffusions. Given that our activities involve the processing of personal data, it is imperative that we respect the rule of law.

To ensure consistency and transparency in INTERPOL's practice, the General Secretariat has compiled a Repository of Practice. It is meant to serve as a reference guide, providing a general historical and contextual overview of Articles 2(1) and 3 as well as addressing specific topics and illustrating with real-life examples from INTERPOL's practice.

The first edition, dedicated to Article 3 of the Constitution, was last updated in 2013. Since then, the world – and transnational crime – has evolved significantly. So have INTERPOL's efforts in ensuring that the data processed through its channels comply with its Constitution and rules. This revised and updated version of the Repository of Practice now includes guidance on the interpretation and implementation of Article 2(1).

I would like to thank everyone who contributed to this valuable publication, which should be considered as a living and dynamic document, reflecting the continuous evolution of our understanding, interpretation, and application of Articles 2(1) and 3 of INTERPOL's Constitution.

Jürgen Stock
INTERPOL Secretary General

1. INTRODUCTION *(updated: November 2024)*

1. The processing of data of interest for police work around the world lies at the very heart of the International Criminal Police Organization's (INTERPOL) activities. To that end, INTERPOL provides to its member countries a variety of tools and policing capabilities that include the publication of INTERPOL Notices,[1] the circulation of Diffusions[2] and Messages[3] through INTERPOL's secure communication network, and the recording of data in INTERPOL's databases including Crime Analysis Files.

2. INTERPOL's regulatory framework governing the processing of data consists of the following:[4]

(a) The Constitution.[5]

(b) The Rules on the Processing of Data (RPD).

(c) General Assembly Resolutions.

3. The INTERPOL General Secretariat ("General Secretariat"), serving as an "international centre in the fight against ordinary crime" and as a "technical and information centre",[6] ensures that the processing of data is carried out in accordance with the above regulatory framework.[7]

4. When checking whether particular data have been processed in conformity with the rules, the General Secretariat assesses whether all the conditions for the processing of data have been met. A primary condition is that the processing of data complies with INTERPOL's Constitution,[8] in particular Articles 2 and 3.[9]

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1 "Notice" means any request for international cooperation or any international alert published by the Organization at the request of a National Central Bureau or an international entity, or at the initiative of the General Secretariat, and sent to all the Organization's Members. See Article 1(13) of INTERPOL's Rules on the Processing of Data (RPD).

2 "Diffusion" means any request for international cooperation or any international alert from a National Central Bureau or an international entity, sent directly to one or several National Central Bureaus or to one or several international entities, and simultaneously recorded in a police database of the Organization. See Article 1(14) of the RPD.

3 "Message" means any request for international cooperation, any international alert or any data that a National Central Bureau or international entity with powers of investigation and prosecution in criminal matters chooses to send directly to one or several National Central Bureaus or to one or several international entities through the INTERPOL Information System but that it chooses, unless otherwise indicated, not to simultaneously record in a police database of the Organization. See Article 1(15) of the RPD.

4 Extracts from the relevant rules are given in the Appendix.

5 A number of scholars have raised doubts about INTERPOL's legal status. However, there should be little doubt today that INTERPOL is an independent international organization and that its Constitution is a product of an agreement establishing an international organization under international law. See, *inter alia*, Schermeres and Blokker, who concluded that while formally, INTERPOL is not based on an agreement between States, an agreement of this kind may in fact be deduced from a number of factors such as the designation of INTERPOL by ECOSOC as an intergovernmental organization and INTERPOL's Headquarters Agreement with France – see HG Schermeres and NM Blokker, International Institutional Law, 4th Revised edn. (Boston/Leiden, 2003), para. 36.

6 Article 26(b) and 26(c) of INTERPOL's Constitution.

7 Articles 22, 74, 77, 86, 125 and 128 of the RPD. See also Articles 129-131 of the RPD.

8 Article 5(1) of the RPD.

5. Article 2 of the Constitution defines INTERPOL's mandate in broad terms as follows:

(1) To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights";

(2) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.

6. According to Article 3 of the Constitution: "It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character."

7. These Articles set out three important restrictions to INTERPOL's mandate. First, it is performed "*within the limits of the laws existing in the different countries*". Second, it is conducted "*in the spirit of the 'Universal Declaration of Human Rights'*" (UDHR). Third, it concerns the prevention and suppression of ordinary-law crimes,[10] to the exclusion of matters of a "*political, military, religious or racial character*".

8. These restrictions introduce the three applicable legal frameworks governing any communication sent via INTERPOL channels: first, national legislation of the sending country and of the receiving country in relation to acting on such a request; second, international human rights law that reflects the spirit of the UDHR; and third, INTERPOL internal legislation, namely Article 3 of the Constitution.[11]

9. INTERPOL must refrain from any activity that contradicts one or more of those restrictions. For example, INTERPOL may not publish a Red Notice if (1) there is no valid arrest warrant issued by the competent national authorities of the requesting country (first restriction); (2) it would entail a violation of the individual's human rights (second and possibly also third restriction); or (3) it would compromise the Organization's neutrality or otherwise adversely affect INTERPOL's mission to assist its Membership in combatting ordinary-law crimes (third restriction).

10. The interpretation of the Constitution's provisions, including Articles 2 and 3, is guided by general rules of interpretation under international law, specifically the principles enshrined in the 1969 Vienna Convention on the Law of Treaties (VCLT). In particular, Articles 2 and 3 are construed in light of the principle that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its objects and purpose".[12] The discussion below concerning the guiding principles of the Article 2 and 3 compliance review should therefore be understood within this general legal framework.

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9 Articles 5(2), 34(2), 76(2)(d), 86, and 99(2)(d) of the RPD.

10 "Ordinary-law crime" means any criminal offences, with the exception of those that fall within the scope of the application of Article 3 of the Constitution and those for which specific rules have been defined by the General Assembly. See Article 1(1) of the RPD.

11 As will be explained in this Repository of Practice, the interpretation and application of Article 3 has also been influenced by developments under international law and State practice. However, in essence it remains an internal rule governing INTERPOL's activities based on the decision of INTERPOL's organs, whereas the reference to the spirit of the UDHR serves as a means of incorporating international law norms.

12 See Article 31(1) of the VCLT.

11. As an overarching principle governing the review of data compliance with Articles 2(1) and 3 of the Constitution, INTERPOL does not weigh evidence or assess and determine the culpability or criminal responsibility of an individual. Such tasks are for national or international courts and tribunals competent in criminal matters.

12. Considering the importance attached to compliance with Articles 2(1) and 3 of the Constitution, as well as the extensive experience developed by the Organization with regard to the implementation of these important provisions, Article 34(4) of the RPD provides that "the General Secretariat may compile repositories of practice on the application of Articles 2 and 3 of the Constitution, and make them available to the National Central Bureaus, national entities and international entities".[13] This Repository of Practice was therefore compiled in light of the case law developed by the General Secretariat in relation to compliance with Articles 2 and 3 of the Constitution of data processed via INTERPOL's channels.[14]

13. This Repository of Practice comprises two parts. First, a general discussion of the interpretation of Articles 2(1) and 3 of the Constitution as relevant to the compliance review of data. Second, a discussion of a series of specific topics raising questions under Articles 2(1) and/or 3 of the Constitution, which INTERPOL has faced in practice. Each topic is dealt with in a chapter, which provides a background for the particular question, explains the current practice, and includes a number of examples of cases reviewed by the General Secretariat for compliance with Articles 2(1) and/or 3 of the Constitution.

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[13] See Article 34(3) of the RPD. See *infra* paras 32, 55 for further discussions of the pertinent elements listed in Article 34(3).

[14] The most common application of Articles 2 and 3 in INTERPOL's day-to-day practice is in the field of processing data. However, Articles 2 and 3 apply to all INTERPOL functions and activities. Hence, the principles identified in this note also apply, *mutatis mutandis*, to analysis concerning activities other than the processing of data. For example, the general principles will apply when the Organization examines possible cooperation with another international organization.

2. GENERAL BACKGROUND *(updated: November 2024)*

1. This part will discuss compliance review under Article 2(1) of the Constitution (section 2.1), under Article 3 of the Constitution (section 2.2), and under both Articles simultaneously (section 2.3).

2.1 Article 2(1) of the Constitution: compliance with the spirit of the UDHR

2. The part of this Repository relating to Article 2(1) of the Constitution was developed on the basis of the experience of the General Secretariat in assessing requests for international police cooperation, the *travaux préparatoires* of Article 2(1) of INTERPOL's Constitution,[1] the UDHR, as well as the evolution of international human rights law.

3. In ensuring and promoting the widest possible international police cooperation between member countries, INTERPOL is bound to act "*within the limits of the laws existing in the different countries and in the spirit of the 'Universal Declaration of Human Rights'*".[2]

4. Reference to the spirit of the UDHR is repeated in various provisions of the RPD.[3] In other RPD provisions, the obligation for both the Organization and member countries to abide thereby is implicit.[4] As the spirit of the UDHR is a key point of reference for the Organization's mandate and, in particular, its processing of data, it is necessary to clarify the meaning and effect of this expression.

5. This section will provide a brief overview of the UDHR (2.1.1), followed by an examination of the context of the adoption of Article 2(1) of the Constitution (2.1.2), what is meant by the reference to the spirit of the UDHR in the Constitution (2.1.3), the scope of INTERPOL's obligations to abide by the spirit of the UDHR (2.1.4), and the consequences for compliance assessment under Article 2(1) of the Constitution (2.1.5).

2.1.1 The Universal Declaration of Human Rights

6. The UDHR was adopted in 1948 by the United Nations (UN) General Assembly, as a response to the mass atrocities and gross violations of human rights experienced during World War II. There was a pressing need to develop a comprehensive, widely agreed upon, foundational human rights framework that would operate as a universal standard to respect, protect and promote dignity, equality and justice for all. The UDHR was intended as a source of guidance for legal and policy development.

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1 The "*travaux préparatoires*" refer to the preparatory work involved in the drafting of a legal document.
2 Article 2(1) of the Constitution.
3 See, e.g., Articles 2, 5 (2), 11 (1), 34, 86 of the RPD.
4 See, e.g., Articles 5 (1), 8 (2), 10 (1) and (4), 74 (2), 77 (1), 129 (1) of the RPD.

7. The *travaux préparatoires* of the UDHR demonstrate those foundational principles which underpin the spirit of the UDHR. These include the (i) recognition of the inherent and equal dignity of all individuals, (ii) universality,[5] non-discrimination[6] and indivisibility[7] of human rights, and (iii) pursuit of justice, freedom, and equality. There were significant efforts to protect the rights of minorities and vulnerable populations. Special attention was dedicated to ensuring equal rights and opportunities for women. The UDHR emphasizes solidarity and international cooperation for the protection of human rights.[8]

8. It is well accepted that the UDHR reflects, in the majority of its provisions, general principles of law and/or international custom.[9] The UDHR has been implemented, or partially reproduced, in a large number of international and regional treaties, as well as national constitutions and statutes around the world. It has also been widely resorted to as a basis for providing interpretative guidance to courts and decision-makers.[10]

2.1.2 Historical background: the adoption of Article 2(1)

9. The first known reference in INTERPOL's texts to compliance with human rights and more specifically with the UDHR was made in 1949, shortly after the UDHR was adopted. During the 18th session of the General Assembly of the International Criminal Police Commission (ICPC), as the Organization was known at the time, it was acknowledged that the suspicion of police officers' involvement in, or tolerance vis-à-vis, violations of human rights of persons suspected or accused of having committed a crime may have damaging effects on the reputation and work of criminal police forces.[11] It was further underlined that, while in most instances State structures effectively address any acts of violence perpetrated or condoned by the police, there are cases in which human rights violations may indeed occur.

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5 Universality emphasizes that human rights are not contingent on cultural, social, or political factors and are applicable to all individuals.

6 Protection shall be extended to all individuals, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

7 The indivisibility principle asserts that civil, political, economic, social, and cultural rights are interrelated and mutually reinforcing, and therefore, cannot be treated as isolated or secondary.

8 See Preamble of the UDHR.

9 See Article 38 of the Statute of the International Court of Justice (ICJ), which defines the sources of international law to be applied by the ICJ. The ICJ has acknowledged the UDHR as a source of legal obligations. See, e.g., *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, ICJ Reports 1980, 42, in which the ICJ deemed that unlawful detentions were "*manifestly incompatible* (…) *with the fundamental principles enunciated in the Universal Declaration of Human Rights*". See also, e.g., *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, ICJ Reports 1949, 22.

10 See for details, e.g., the appendix to H. Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law", 25 *Georgia Journal of International and Comparative Law* 289 (1995-1996). See also *supra* note 9.

11 Such allegations and/or suspicion "*undermines the confidence that good citizens should have in these services, and lessens the esteem which the authorities should show towards the police; besides this, it enervates the activity of members of the latter, who see themselves unjustly and continually suspected*", ICPC's 18th session, (Berne, 10-15 October 1949), Report No. 3 on "illegal and inhuman acts with respect to accused persons". This state of affairs had led the General Assembly, in its session held in Paris, in 1931, to adopt a Resolution protesting against the "*unmerited reproach*" regarding assertions that police investigative methods involved "*illegal and inhuman practices*", giving "*very strict orders that such methods should not be used*" and that, in the event they were, "*the policeman at fault should be severely dealt with*".

Thus, the General Assembly emphasised its utmost condemnation of any police methods or procedures that breach the human rights of suspects or the accused.[12]

10. As a result, the General Assembly adopted Resolution No. 3 on "illegal and inhuman methods with respect to accused persons". In the preamble of the Resolution, the General Assembly considered that "*it is necessary to protect against statements which tend to spread the belief that the criminal police employ, or at least tolerate systematically, with regard to persons suspected of an infringement of the penal law or other persons, means of pressure, privations or acts of violence contrary to the different legislations and to the Universal Declaration of Human Rights*" (emphasis added).[13] The General Assembly decided that "*The ICPC representatives will remind the criminal police that their enquiries, investigations and cooperation with judicial proceedings should be conducted in accordance with the improved methods of scientific or technical police; and (…) all acts of violence or inhuman treatment committed by a policeman in the course of his duty (…) must be exposed to the Law*".[14]

11. During the 24th session of the General Assembly (Istanbul, 5-9 September 1955), delegates highlighted the importance of clearly defining the role and aims of the Organization as well as the manner in which it intended to attain them.[15] The Report of the General Secretariat presented during the session in 1955 stressed that a reform of the Organization's statutes was rendered necessary in view of the "*events that took place between 1939 and 1945*" and "*the profound changes that have occurred between 1946 and* [1955]*, both in international life in general and within ICPC itself*".[16] Among the limitations of the statutes of INTERPOL at the time, it was pointed out that they "*say nothing about the conditions of permanent cooperation or national bases of operation*".[17] The new amendments – which gave rise to INTERPOL's Constitution – considered the core operational principles of the Organization, i.e. "*independence and technicality*", and were meant "*to meet new requirements while remaining within the sphere of present possibilities*".[18]

12. The Constitution of INTERPOL in force was adopted by the General Assembly at its 25th session (Vienna, 7-13 June 1956). The 1956 Constitution includes Article 2, and it was the first time a reference to human rights was made in the Organization's statutes.[19] It was pointed out that Article 2 was one of the provisions that "*defined the character of the*

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12 Report No. 3 specifically refers to previous works of ICPC entitled "*Criminal Police: Tactics and Technique*" and "Psychology and Criminality".

13 In the original French text: "*il y a lieu de s'élever contre les informations tendant à faire croire que la police criminelle emploie, ou sinon tolère systématiquement à l'égard des personnes soupçonnées d'infraction à la loi pénale ou d'autres personnes, des moyens de pression, de privations ou de violences contraires aux législations diverses et à la Déclaration Universelle des droits de l'homme*" (emphasis added).

14 In the original French text: *"les représentants de la C.I.P.C. rappelleront aux polices criminelles que leurs enquêtes, investigations et collaborations à l'instruction judiciaire doivent être menées selon les méthodes fournies par les progrès de la police scientifique ou technique (…); que tout acte de violence ou inhumain, c'est-à-dire contraire à la dignité humaine, commis par des policiers dans l'exercice de la police judiciaire ou criminelle doit être dénoncé à la justice".*

15 Meeting of the Sub-Committee on Statutes, Istanbul, 5-9 September 1955.

16 INTERPOL General Assembly, 24th session, Istanbul, 5-9 September 1955, *Proposed reform of the ICPC statutes*.

17 Ibid.

18 Ibid.

19 The first Constitution of INTERPOL (at the time called the International Criminal Police Commission - ICPC) was adopted when the Organization was established in 1923. A new Constitution was adopted in 1939 and then again in 1946, when the Organization was recreated following WWII.

Organisation",[20] which would bestow upon it a higher status among the various norms and rules composing the statutes of INTERPOL. It was further noted, in respect of core provisions of the Constitution, that "*evolution was a characteristic feature of law and that nothing prevented the Organisation making innovation*".[21]

13. The drafters of the 1956 Constitution intended to address, in the legal framework of the Organization, the challenges and developments emerging from World War II. This reflects the recognition that INTERPOL should adapt to the evolution of the international order, while ensuring both the independence of the Organization vis-à-vis member countries and the quality of its operations. This approach is aligned with the object and purpose of the UDHR to which Article 2(1) of the Constitution explicitly refers, as addressed below.

14. Notably, the reference to the spirit of the UDHR in Article 2(1) of the Constitution, which defines the Organization's mandate, reflects the importance attributed by member countries to incorporating internationally recognized human rights standards as an integral part of the Organization's activities.

2.1.3 The spirit of the UDHR under Article 2(1)

15. The "*spirit of the law*"[22] refers to the aspiration of the law.[23] The spirit of the law is a point of reference for interpreting it, known in international law as its "object and purpose".[24] The spirit of the UDHR means that the processing of data through INTERPOL's channels must be consistent with the UDHR and its goals and principles.

16. The *travaux préparatoires* of the 1956 Constitution do not a reveal a specific discussion on the scope of the spirit of the UDHR. However, they indicate that the drafters of the Constitution aimed to enable the Organization to adapt to the evolving demands and circumstances of both the international order and INTERPOL's operations.[25]

17. Over the ensuing years, the scope of the spirit of the UDHR evolved with the development of international human rights law, notably:

(a) The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted to give binding effect to the UDHR by rendering its provisions more concrete. The ICCPR has proven particularly relevant to the General Secretariat's compliance review.[26]

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20 INTERPOL General Assembly, 25th session, Vienna, 11 June 1956, *Afternoon Session*.
21 Ibid.
22 Coined by Montesquieu in his book *The Spirit of Law*, published in 1748.
23 See, e.g., Black's Law Dictionary, 2nd Edition, available at https://thelawdictionary.org/?s=%22spirit+of+the+law%22. See also Merriam-Webster Law Dictionary, available at https://www.merriam-webster.com/dictionary/the%20spirit%20of%20the%20law.
24 See Article 31 of the VCLT. This principle of interpretation is also applied to United Nations resolutions such as the UDHR. See, e.g., *Prosecutor v. Dusko Tadic aka "Dule"* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction), IT-94-1, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 October 1995, para. 71. See also *supra* para. 10.
25 See *supra* paras 11-12.
26 See *infra* para. 28.

(b) Several conventions followed intending to further develop specific human rights emanating from the UDHR (and its "spirit"). Treaties of relevance in this respect include the (i) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), (ii) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), (iii) Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), (iv) Convention on the Rights of the Child (CRC), and (v) Convention on the Rights of Persons with Disabilities (CRPD). The 1951 Convention Relating to the Status of Refugees is particularly relevant to the General Secretariat's compliance review. The level of ratification of these instruments is significant as it reveals their degree of acceptance and/or acknowledgment of their mandatory nature that is necessary to elevate a certain norm to international custom or general principle of law, hence binding all subjects of law independent of the ratification of specific treaties.[27]

(c) The human rights instruments referenced above established specific bodies to monitor the implementation of States' obligations deriving from the respective treaties. They issue interpretative comments, recommendations, observations and/or carry out inquiries or investigations. Their acts (opinions, communications, recommendations, comments) may provide authoritative interpretations of the provisions of these conventions and consequently of the spirit of the UDHR.

(d) The acts of the so-called UN Charter-based human rights bodies and mechanisms (e.g. Human Rights Council, special procedures, Universal Periodic Review and independent investigations) should also be taken into account in accordance with the authority and legitimacy with which these structures are vested.

(e) Relevant resolutions, statements and declarations of authoritative bodies (e.g. UN General Assembly and Security Council), which have the legitimacy to express the will or consensus of the international community.

(f) Jurisprudence of national, regional[28] and international[29] courts and tribunals.[30]

18. In considering the (non-exhaustive) list of sources of international human rights law indicated above, the General Secretariat takes into account the extent to which they are applicable to the source of data.

19. The provisions of the UDHR and other international human rights conventions are binding on INTERPOL and its members in relation to the use of the INTERPOL Information System to the extent that they have attained the status of generally accepted norms of the international community, in the form of general principles of law or international custom. The norms

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[27] At the time of writing, the ratification status of the mentioned human rights treaties is as follows: ICCPR – 174 States; ICERD – 182 States; CEDAW – 189 States; CAT – 174 States; CRC – 196 States; CRPD – 191 States. The Refugee Convention has 146 States Party. As such, they have been formally accepted by a clear majority of INTERPOL's 196 member countries, which covers nearly all States in the world.

[28] For example, European Court of Human Rights, Inter-American Court of Human Rights, African Court on Human and Peoples' Rights.

[29] Notably the International Court of Justice (ICJ).

[30] Article 38(1)(d) of the Statute of the ICJ acknowledges "… *judicial decisions…, as subsidiary means for the determination of rules of law*". See also Article 31(3)(b) of the VCLT.

contained in these provisions may also be applicable to member countries in light of their national legislation[31] and/or applicable international obligations.[32]

20. On the other hand, for the purpose of implementing the spirit of the UDHR under Article 2(1) of the Constitution, the jurisprudence of national or regional tribunals will not be considered binding as such on countries that are not subject to the jurisdiction of such tribunals. However, such jurisprudence in enforcing treaty obligations may be considered for general guidance and indication of the evolution and development of a human rights norm for the purpose of considering its possible universal application.

21. Human rights are to be applied alongside criminal law. Human rights are a guide for police activities including international police cooperation by defining certain limits aimed at creating a balance between the interests of enforcing criminal law, on the one hand, and of protecting individuals' rights, on the other.[33]

22. At the same time, as reflected by the UDHR and various international and regional human rights conventions concluded in recent decades, the primary purpose of human rights law is to protect individuals against abuses of the State (or other similarly powerful authority). It is not a main goal of human rights law to protect individuals against criminal activities of other private individuals, which is rather one of the goals of criminal law.

23. It is important to note that the spirit of the UDHR has been incorporated into extradition law and practice. Extradition denials on human rights grounds are not uncommon. This is reflected, for example, in the United Nations Model Treaty on Extradition, which includes several mandatory grounds for refusal of extradition that are rooted in human rights, for instance "[i]f the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings".[34] Hence, similar to Article 3 of the Constitution, which has been interpreted and applied while taking into consideration international extradition law, developments related to the spirit of the UDHR and its implementation in the context of extradition, for instance in relation to the "non-refoulement principle", are relevant for the interpretation and application of Article 2(1) of the Constitution.

2.1.4 The scope of INTERPOL's obligations to abide by the spirit of the UDHR

24. INTERPOL's activities are focused on facilitating international police cooperation, in respect of ordinary-law crimes, including via the processing of data through the Organization's channels. The consequences of these operations on individuals may be considerable. Thus, in view of the specific circumstances of each case, the General Secretariat will need to assess the extent to which the use of its channels is in compliance with human rights as reflected by the spirit of the UDHR.

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31 See Article 2(1) of the Constitution.

32 Article 5(3) and 34(1) of the RPD.

33 See, e.g., Article 9 of the ICCPR, which recognizes lawful arrest as an exception to the human right to liberty and security of person.

34 United Nations Model treaty on Extradition, Article 3(f).

25. The General Secretariat neither conducts independent evaluations of human rights situations in member countries nor attempts to develop new human rights norms or pronounce on the emergence of such norms. Rather, when ensuring compliance of data processing with the spirit of the UDHR, the General Secretariat relies on the relevant findings by competent bodies as mentioned above (tribunals, human rights bodies, etc.). Thus, when applying the spirit of the UDHR, the General Secretariat will not act as an adjudicator regarding member countries' compliance with human rights. It will ensure compliance with its own legal obligations, notably Article 2(1) of the Constitution.

26. The Organization is limited in examining allegations of human rights violations, which should usually be conducted by courts and competent authorities, whether during extradition proceedings or the criminal case itself. Thus, for example, INTERPOL is neither mandated nor competent to conduct an independent assessment on allegations that confessions were extracted through torture or that evidence was illegally obtained, for instance through wiretapping conducted without a valid court order. In relation to such allegations, the General Secretariat may only rely on findings by bodies competent to assess them, for example a finding by the UN Committee Against Torture that the individual concerned was tortured during police interrogation or a conclusion by a national court that wiretapping was illegally conducted in the given case.

27. When assessing an authoritative finding, typically from a competent court, that the requesting State violated the human rights of the individual, the General Secretariat will examine the facts that the court found to constitute a human rights violation to determine to what extent the violation is relevant to the processing of data through INTERPOL's channels. For instance, an authoritative finding that a judgment convicting the individual was based on a confession extracted by torture would not allow the processing of data based on that judgment. On the other hand, an excessive pre-trial detention, though regrettable and constituting a human rights violation, might not undermine the compliance of the data. In such a situation, the General Secretariat would examine whether the State addressed the violation identified by the court, for instance by abiding by the judgment and fulfilling the remedy ordered by the court. If the identified human rights violation was adequately addressed data may in principle be processed. Otherwise, a compliance issue would remain.

28. Consistent with INTERPOL's mandate and based on the Organization's long-standing experience in ensuring data compliance with the spirit of the UDHR, civil and political rights such as the rights to freedom of expression, assembly or association would often be relevant for the compliance review. Yet, this does not exclude the application of other rights such as those of minors, women or minorities, nor mean that other rights including economic, social and cultural ones are irrelevant. Rather, it means that INTERPOL, in light of its mandate, is more likely to address certain rights when assessing compliance of data.

2.1.5 General guidance for compliance assessment under Article 2(1)

29. The assessment of compliance with the spirit of the UDHR should always be conducted bearing in mind the Organization's mandate and hence taking into consideration all relevant elements from the law-enforcement perspective and in consideration of the interest of international police cooperation.[35]

[35] Article 2(1) of the Constitution.

30. Whilst INTERPOL's General Assembly adopted over the years a number of Resolutions concerning the interpretation and implementation of Article 3 of the Constitution, to date no dedicated interpretative Resolution has been adopted in relation to the obligation to abide by the spirit of the UDHR.

31. Nonetheless, the overarching guidelines for the review of data in light of Article 3 of the Constitution would appear applicable to the review in light of the spirit of the UDHR. Notably, the review is conducted on a case-by-case basis with due consideration for the specific context.[36]

32. Additionally, a number of elements listed in Article 34(3) of the RPD in relation to the application of Article 3 of the Constitution [37] may be relevant to the review in light of the spirit of the UDHR. In practice, when assessing cases calling for review under Article 2(1) of the Constitution, the General Secretariat applies Article 34(3) of the RPD, in particular the following elements:

(a) The nature of the offence, specifically whether the underlying offence for which the individual is sought curtails his/her human rights;

(b) The status of the person concerned by the data, for instance whether he/she obtained refugee status;[38]

(c) The identity of the source of data, for instance if the source of data is the NCB of the country from which the individual concerned by the data fears persecution. In addition, the General Secretariat takes into account the record of the requesting country concerning the use of INTERPOL's channels and compliance with the Organization's rules, including with Article 2(1) of the Constitution. Naturally, past compliance issues would not automatically trigger the denial of any new request. However, it should be taken into account in the assessment of probability of human rights violations in a given case and bearing in mind similar requests from that country in the past;

(d) Obligations under international law. The General Secretariat may consider the nature of the relevant human right, for example whether it allows for derogations in time of public emergency.[39] The General Secretariat may also consider whether data processing such as the publication of a Notice would entail a violation of the individual's right from the outset as opposed to entailing only a possible violation in the future if certain conditions are fulfilled (e.g. if the individual is eventually arrested and extradited). The former scenario raises more concrete, and thus greater, compliance concerns than the latter scenario. However, it would be necessary to take into account how serious and potentially irreversible a potential future violation would be;

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36 See General Assembly Resolution AGN/53/RES/7 concerning the "application of Article 3 of the Constitution". See also *infra* para. 40.

37 Article 34(3) of the RPD provides a non-exhaustive list of elements to be considered in assessing compliance with Article 3.

38 On INTERPOL's refugee policy, see INTERPOL General Assembly Resolution GA-2017-86-RES-09 and https://www.interpol.int/Who-we-are/Legal-framework/INTERPOL-Refugee-Resolution.

39 See, e.g., Article 4 of the ICCPR.

(e) The general context of the case. General information regarding a country's overall human rights situation may not in itself lead the General Secretariat to deny a request for international police cooperation. Nonetheless, general information on the political, social and human rights situation of the requesting country may be considered for the purpose of understanding the context of the request or identifying aspects to further scrutinize for the purpose of assessing its compliance. For instance, the fact that a person is a member of a minority group will not in itself lead to the denial of the request since members of a minority group may commit ordinary-law crimes for which they should be held accountable in a court of law. Yet, if in view of the specific circumstances of the case, there are solid grounds to suspect that members of a minority group are systematically subjected to persecution and that the particular request may serve the government as part of the persecution campaign, this circumstance would be taken into consideration by the General Secretariat.

33. Regarding the outcome of compliance assessments under Article 2(1) of the Constitution, four scenarios are conceivable:

(a) The request for international police cooperation entails human rights violations that affect the entire case (i.e. the human rights obligation breached is so essential that it taints the request as a whole) thus preventing the use of INTERPOL's channels. This would apply, for instance, to a request from the "country of origin" in relation to a refugee protected vis-à-vis that country or in which it is concluded, by a competent national body, that extraditing or delivering a person to the requesting State would amount to a violation of the principle of non-refoulement.

(b) The request for international police cooperation encompasses human rights violations or concerns, which may prevent a specific form of communication/recording but allow for others. For example, the General Secretariat may conclude that there is a serious risk of breach of fundamental human rights if the individual is extradited to the requesting country and hence a Red Notice should not be issued. Yet, it may deem that recording data about the individual in a Crime Analysis File in relation to possible links to an organized criminal group might be permitted in the given case.

(c) The violation impacts only one aspect of the request, which is otherwise compliant. Addressing the vitiated portion of the request is possible and will make the processing of data compliant. For example, this could be the case of a request using discriminatory terminology or exposing unnecessary personal details. Removal of such references would address compliance concerns and enable data processing in such cases.

(d) There is no violation of Article 2(1) of the Constitution. This includes cases in which some human rights concerns were present but ultimately not found to lead to non-compliance with Article 2(1) of the Constitution.

2.2 **Article 3 of the Constitution**

34. This section will provide a historical background to Article 3 of the Constitution (2.2.1), an overview of its primary objectives (2.2.2) and an examination of the guiding principles of Article 3 compliance review when processing data (2.2.3).

2.2.1 Historical background

35. From its early days, the Organization focused its activities on combating ordinary-law crimes. Furthermore, as a technical organization focusing on promoting international police cooperation, it adopted a position of neutrality. The Organization has therefore consistently refused to become involved in cases not relating to ordinary-law crimes, such as political cases.[40]

36. In 1930, the ICPC adopted a Resolution concerning the publication of warrants and similar documents in the ICPC's official publication known as "International Public Safety". In that Resolution, the ICPC recommended that "wanted notices to be published in 'International Public Safety' apply solely to crimes and misdemeanours which have no political character."

37. In 1948, the phrase "to the strict exclusion of all matters having a political, religious or racial character" was added to the end of Article 1(1) of the Organization's statutes, which defined the Organization's purposes.

38. In 1951, INTERPOL's General Assembly adopted Resolution AGN/20/RES/11. The Resolution applied the predominance test under international extradition law by recommending to member countries to see that:

> "… no request for information, notice of persons wanted and, above all, no request for provisional arrest for offences of a predominantly political, racial or religious character, is ever sent to the International Bureau or the NCBs, even if – in the requesting country – the facts amount to an offence against the ordinary law." (emphasis added)

39. The predominance principle was not challenged when the new Constitution, which included Articles 2 and 3, was adopted in 1956. The main change made was the broadening of the scope of the original provision to include "military" undertakings or activities under Article 3.

40. With the evolution of police work as well as international law, INTERPOL's practice has evolved in relation to the application of Article 3. The first significant change was in 1984, when the General Assembly adopted Resolution AGN/53/RES/7, which defined guidelines for the Organization's involvement in combating terrorism. The 1984 Resolution recalled the predominance test established by the 1951 Resolution and emphasized that each request requires a review on a case-by-case basis with due consideration for the specific context. Notwithstanding this general approach, the Resolution set out a number of offences considered by their very nature to be of a political, military, religious or racial character.

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[40] This was also discussed during the 1914 Congress of Monaco that preceded the Organization's creation. It was proposed to exclude political or military convictions, violations of administrative or local laws, convictions for crimes against the press and generally speaking, any crimes falling under the competence of special courts. (« Les condamnations prononcées pour crime ou délit politique, pour crime ou délit militaire, pour infractions aux lois et règlements administratifs ou locaux, pour infraction aux lois sur la presse et, en général, pour toute infraction de la compétence des juridictions d'exceptions, ne seront pas portées à la connaissance du casier central international. » Premier Congrès de Police Judiciaire Internationale, Rapports et Communications, Troisième Section, Rapport sur La Création d'un Casier Central International, M. Maurice YVERNES Chef du bureau de la statistique et des cassiers judicaires au Ministère de la Justice, Monaco 1914, p. 58.)

41. Another important principle established by the Resolution concerns refusals of one or more countries to act on a request. The Resolution determined that this does not mean that the request automatically comes under Article 3; rather, it will be reported to other NCBs in an addendum.[41]

42. The second significant change was introduced in 1994, when the General Assembly (Resolution AGN/63/RES/9) approved cooperation with the newly established International Criminal Tribunal for the Former Yugoslavia (ICTY), thereby allowing cooperation in cases concerning serious international crimes (genocide, crimes against humanity and war crimes), which were previously considered to fall under Article 3. The Report, endorsed by that Resolution, further elaborated on the interpretation of Article 3 and clarified certain points such as the review of cases concerning crimes committed by former politicians.

43. Another General Assembly Resolution pertinent to the interpretation of Article 3 was adopted in 2004. This Resolution endorsed the interim measures taken by the General Secretariat to enable cooperation in relation to the charge of membership of a terrorist organization (Resolution AG-2004-RES-18).

44. In conclusion to this brief historical review, the following points are noteworthy:

(a) INTERPOL, as an independent international organization, has developed its own rules and practices concerning the application of Article 3.[42]

(b) The Organization has adopted the predominance test in application of Article 3.

(c) Each case has to be assessed separately, taking into account its particular context. Thus, while the Resolutions concerning the interpretation of Article 3 generally focused on the nature of the offence (e.g. pure political offences such as treason), the requirement of evaluating the overall context of the case introduces other relevant elements to be assessed.

(d) The general trend of Article 3 interpretation by the General Assembly clearly points to the narrowing of its application in relation to the nature of the offence. This also corresponds to the general evolution under international extradition law.[43]

2.2.2 The primary objectives of Article 3

45. The historical background provided above shows that Article 3's primary objectives may be defined as follows:[44]

(a) To prevent the compromising of INTERPOL's neutrality or otherwise adversely affecting its mission to assist its membership to combat ordinary law crimes;

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41 This principle continues to apply in current practice, although the underlying reasoning for the extradition denial are taken into consideration in the review process.

42 See the 1994 Report AGN/63/RAP No. 13, adopted by Resolution AGN/63/RES/9.

43 Ibid, which states: "For many years, the general trend of Interpol's practice, as well as of developments in international law, has been to progressively restrict the application of provisions which could ensure that those who commit certain crimes are treated more favourably because of the political context of the act."

44 See Document GTI5-2008-05 prepared for the Ad Hoc Working Group on the Processing of Information.

(b) To reflect international extradition law;

(c) To protect individuals from persecution.

46. These objectives have been further confirmed by other acts of the Organization and instruments concerning its activities. For example, in Resolution AG-2006-RES-04 ("Statement to reaffirm the independence and political neutrality of INTERPOL"), the General Assembly mentioned Article 3 as one of the constitutional provisions attesting to the Organization's independence and neutrality.

2.2.3 Guiding principles of Article 3 review in the context of the processing of data

47. The predominance test adopted by the 1951 Resolution focused on the nature of the offence committed by the wanted persons.

48. Specifically, the nature of the offence is examined along principles established in inter-State extradition practice, such as those concerning the exception for political and military offences.[45]

49. The Organization's practice has been to follow the general distinction between two categories of offences:

(a) **Pure** offences: Acts criminalized solely due to their political/military/religious/racial nature. These offences do not have any ordinary-law element. They are usually directed against the State and exclusively affect the public interest and cause only public wrong.[46]

(b) **Relative** offences: Acts that also contain ordinary-law elements, and therefore also affect private interests and cause, at least in part, a private wrong.[47] Such offences are analysed based on the predominance test.

50. General Assembly Resolutions such as AGN/53/RES/7 (1984) listed a number of examples of pure offences – e.g. treason and espionage – that by their very nature fall within the scope of Article 3.

51. Nonetheless, the Article 3 Working Group, established in 2003, correctly concluded that the list may not be up to date and that it would be impractical to adopt an exhaustive list of pure offences.[48]

52. Also noteworthy is that the practice of the Organization indicates that the charges as provided in requests for police cooperation may not necessarily reflect the true nature of the

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[45] A political offence, as understood in inter-State extradition practice, is one which has been criminalized due to its political content or implications. A military offence is one which has been criminalized due to its implications for national security or military matters. According to Article 3 of the UN Model Treaty on Extradition, extradition shall not be granted: "(a) If the offence for which extradition is requested is regarded by the requested State as an offence of a political nature;" and "(c) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law."

[46] See M. Cherif Bassiouni, International Extradition: United States Law and Practice (fifth edition), p. 660-662.

[47] Ibid.

[48] See Document CE-2005-2-DOC-22.

offence and could therefore not serve as the sole basis for determining that a given request falls under Article 3.[49]

53. Thus, while the distinction between pure and relative offences still applies, each request that raises a doubt concerning its conformity with Article 3 will require an assessment based on the underlying facts of the case and, as applicable, policies and guidelines developed in relation to cases of a similar nature.

54. In addition, considering that Article 3 refers to the "character" of the relevant activity, elements other than the nature of the offence ought to be taken into consideration, particularly in light of Resolution AGN/53/RES/7 (1984), which provided that "each case has to be examined separately, with due consideration for the specific context."

55. Accordingly, in assessing data in light of Article 3, all relevant information should be evaluated. The rule adopted with regard to the creation of the Repository of Practice[50] further provides for the main pertinent elements to be considered in the context of Article 3 review, namely:

(a) The nature of the offence, namely the charges and underlying facts;

(b) The status of the persons concerned;

(c) The identity of the source of the data;

(d) The position expressed by another National Central Bureau or another international entity;

(e) The obligations under international law;

(f) The implications for the neutrality of the Organization;

(g) The general context of the case.

56. The need to evaluate all relevant information and pertinent elements, as provided by the rules, represents a comprehensive interpretative approach. Moreover, this approach provides for – indeed requires – the examination and consideration of pertinent facts beyond those explicitly supplied in the request for police cooperation, such as information concerning the background for the request or how it relates to other requests. Thus, for example, it might be relevant to assess a Red Notice request together with similar requests concerning other individuals wanted by the same country, or to consider the fact that those similar requests have been denied in the past.

57. The examples below show how the above-mentioned elements set out in the rules may be relevant, taken either in isolation or in combination:

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[49] See, in this connection, the 1994 Report endorsed by Resolution AGN/63/RES/9, which underscores that "the question of predominance has to be settled by examining the facts, even if, as the 1951 Resolution says, "in the requesting country the facts amount to an offence against the ordinary law."

[50] Article 34(3) of the RPD.

- **Scenario A:** If NCB X seeks the publication of a Red Notice for person Y on a charge of "treason" and the summary of facts states that the individual gave military secrets to the enemy, the General Secretariat would usually conclude, on the basis of the first element listed (nature of the offence) that Article 3 applies. The rationale for such a determination is that this act is considered to be a pure political crime in extradition practice.

- **Scenario B:** If NCB X seeks the publication of a Red Notice for person Y on a charge of "undermining State security" and the summary of facts states that the individual has participated in the bombing of a religious site and caused the death of a number of civilians, the General Secretariat would usually conclude, also on the basis of the first element listed (nature of the offence) that Article 3 does not apply in this case. The rationale for such a determination is that the data relates to an offence which is predominantly an ordinary-law crime, since the seriousness of the crime and the status of the victims prevail here over the political or religious motivation of the individual (application of the predominance theory introduced in General Assembly Resolution AGN/20/RES/11 (1951) and developed by General Assembly Resolution AGN/53/RES/7 (1984)).

- **Scenario C:** If NCB X seeks the publication of a Red Notice for person Y on a charge of "causing mass riots" and the information available to the General Secretariat indicates that the individual is the head of an opposition group involved in demonstrations following contested elections, the General Secretariat would usually conclude, on the basis of other elements identified (status of the persons concerned, general context of the case), that Article 3 applies.

- **Scenario D:** If NCB X seeks the publication of a Red Notice for the head of state of country Y, the General Secretariat will likely decline the request on the basis of various elements identified (status of the person concerned, obligations under international law). The rationale for such a determination is that under international law, and as reflected in the Yerodia case before the International Court of Justice, Heads of State benefit from immunity while in office and cannot therefore be prosecuted before national courts of another country during that time. Conversely, if the request is issued by the individual's country, namely country Y, the outcome of the review might be different since the principle of immunity under international law would not apply.

- **Scenario E:** If NCB X seeks the arrest with a view to extradition of person Y, a national of country Z, on a charge of "corruption", and country Z protests against the publication of the Notice, arguing that it is a political case, the General Secretariat may conclude, on the basis of another element (the position expressed by another National Central Bureau or another international entity) that Article 3 applies. The rationale for such a determination will depend on the specific arguments raised in the particular case, such as political elements identified by country Z.

- **Scenario F:** If NCB X seeks the publication of a Red Notice for person Y on a charge of "exporting controlled commodities without a licence" and the summary of facts states that the products illegally exported had both civilian and military applications, particularly in the case of nuclear weapons, the General Secretariat would usually conclude, on the basis of another element (obligations under international law) that Article 3 does not apply. The rationale for such a determination is that the

international community, by means of various international instruments, has undertaken to effectively control and combat the illegal transfer of weapons and dual-use goods/technology that pose a particular risk to international security (e.g. United Nations Security Council Resolution S/RES/1540 adopted under Chapter VII of the United Nations Charter, calling upon States to "adopt and enforce appropriate effective laws which prohibit any non-State actor to [*sic*] manufacture, acquire … nuclear, chemical or biological weapons …"). Data on such illegal transfers would thus not be considered to be of a predominantly political or military character by virtue of the above obligations under international law.

- **Scenario G:** If NCB X seeks the publication of a Red Notice for an individual sought for a terrorist act committed in the country of NCB X by secret agents of country Z, and country Z has recognized its responsibility in the matter and negotiates with country X the consequences of such responsibility under international law, the General Secretariat may conclude, on the basis of another element (implications for the neutrality of the Organization) that Article 3 applies. The rationale for such a determination would be similar to the solution adopted in the Rainbow Warrior case, where the Organization ceased to cooperate further once the dispute became a matter for negotiation and settlement by the two States involved under international law, with appropriate compensation for the damage caused to property and for the injuries to persons.

- **Scenario H:** If NCB X seeks the publication of a Red Notice for a person wanted for murder and the summary of facts states that the individual was the pilot of an aircraft in country Y's air force, which bombed an area occupied by soldiers belonging to country X, resulting in the deaths of soldiers of country X, the Organization would usually conclude, on the basis of another element (the general context of the case) that Article 3 applies. The rationale for such a determination is that although the crime (murder) is considered to be an ordinary-law crime, the underlying facts and the general context of the armed conflict mean that the case falls within the scope of Article 3.[51]

58. In conclusion, an Article 3 compliance review requires an assessment of a variety of elements based on the facts of the given case, taking into consideration the general principles discussed above.

2.3 **Compliance review under both Articles 2(1) and 3 of the Constitution**

59. Compliance review based on Article 2(1) differs from that based on Article 3. While the interpretation and application of both provisions have been influenced by developments under international law (e.g. extradition law), Article 2(1) serves to incorporate into INTERPOL's practice well-established norms defined by competent bodies and legal instruments other than INTERPOL's. Conversely, Article 3 is a provision unique for INTERPOL and is thus subject to the norms and standards developed by the Organization itself. Consequently, a conclusion on non-compliance with Article 2(1) will inevitably refer to international law norms, whereas a conclusion on non-compliance with Article 3 often refers only to INTERPOL's instruments (e.g. Resolutions) or INTERPOL's practice developed over the years, without necessarily pointing to a corresponding international norm. Furthermore, while introducing the reference

[51] Note: If the act committed is considered a serious international crime or if the attack by country Y was against a United Nations peacekeeping operation, such elements may tip the balance towards the non-application of Article 3.

to the spirit of the UDHR in Article 2(1) was meant to ensure respect of individual rights in the context of INTERPOL's work, Article 3 was also meant to protect the Organization. By ensuring that the Organization is not drawn into political affairs, Article 3 enables it to focus exclusively on its technical mission of promoting international police cooperation.

60. Some cases may raise compliance issues under only one of these two provisions. For example, persecution on the basis of gender or sexual orientation will prevent the processing of data based on Article 2(1) of the Constitution but not Article 3 (unless such persecution is based on religious grounds). Conversely, cases involving INTERPOL's neutrality will raise concerns of compliance with Article 3 but not with Article 2(1) of the Constitution.

61. Other cases, however, raise compliance issues under both Articles. This is the case, for example, of violations of civil and political rights such as freedom of expression, association, or assembly, which concern both human rights under Article 2(1) and the "political" aspect of Article 3.

62. In such cases, the General Secretariat will conduct a compliance review under each of these Articles, as explained in sections 2.1 and 2.2. above. In some cases, it may conclude that neither of these Articles prevents the processing of data. If, however, it concludes that the data are not compliant, the General Secretariat's practice has been to apply Articles 2(1) and 3 in one of the following manners, depending on the applicable scenario:

(a) The first scenario is when the case raises distinct compliance issues under both Articles 2(1) and 3, and at least one of them suffices, on its own, to deny the request to process data. In this situation, the General Secretariat will explain to the source of the data the issues under each of these Articles, and why the data are not compliant.

(b) The second scenario is when the doubts on compliance with Article 2(1) do not suffice, on their own, to deny a request to process data; however, they may support a conclusion of non-compliance with Article 3. In this situation, the General Secretariat will address the doubts on compliance with human rights obligations as part of applying the predominance test and through the relevant elements such as the "obligations under international law" or the "general context of the case".[52]

63. The application of the above-mentioned general principles in analysing certain requests for police cooperation, which raise doubts as to their conformity with Articles 2(1) and/or 3 of the Constitution, is discussed below.

[52] See *supra* paras 32, 55.

3. SUBJECT-MATTER ANALYSIS

3.1 Offences committed by (former) politicians / (former) high-level civil servants *(updated: November 2024)*

The question – may data be processed about (former) politicians / (former) high-level civil servants and their families and close associates?

Background

1. INTERPOL's position concerning the application of Article 3 of the Constitution in cases concerning politicians or former politicians has evolved over the years. Resolution AGN/53/RES/7 (1984) distinguished between offences committed by such individuals in connection with their political activities, on the one hand, and offences committed in their private capacity, on the other. The Resolution concluded that the former case is covered by Article 3. General Assembly Report AGN/63/RAP No. 13, adopted by Resolution AGN/63/RES/9 (1994), concluded differently: it found that the 1984 Resolution was based on a faulty concept and that "offences committed by politicians must therefore be assessed to determine whether the political or the ordinary criminal law aspect is predominant, in the same way as offences committed by other people".

2. The latter position has been applied in INTERPOL practice since 1994. Each case is therefore examined on its merits, similar to other cases where political elements exist. However, considering that the involvement of politicians or former politicians may raise questions concerning relations between the Organization's member countries, a distinction is made between two scenarios:

Scenario A – (former) politicians / (former) high-level civil servants wanted by their own countries

Scenario B – (former) politicians / (former) high-level civil servants wanted by other countries

3. Some of the considerations below are relevant not only for politicians and high-level civil servants, but also for their families and close associates.

Current practice

Scenario A – (former) politicians/ (former) high-level civil servants wanted by their own countries

4. In general, and as indicated, these cases are evaluated in the same way as other cases, namely by applying the predominance doctrine. However, three points may require consideration, as they would weigh against compliance under Article 3 of the Constitution:

(1) The individual may enjoy immunity from prosecution in his/her own country. If such a doubt arises (e.g. on the basis of open-source information), the requesting NCB may be required to clarify the matter.[1]

(2) The individual may have committed the acts in the exercise of his/her political mandate. A failure by politicians to comply with administrative or political procedures would generally not be considered as an ordinary-law crime. Accordingly, the requesting NCB may be required to provide evidence, such as personal gain[2] by the individual, that the offence comes under ordinary law.

(3) The general context of the case may provide an indication that the request is politically motivated, for example following a coup d'état or unrest in the requesting country,[3] or where a request is received in the context of elections.

Scenario B – (former) politicians / (former) high-level civil servants wanted by other countries

5. This scenario may raise a number of difficulties such as possible application of immunity under international law.[4] Based on INTERPOL practice, the following criteria are to be examined:

(1) The position of the wanted person and whether the person is in office at the time of the Notice/Diffusion request. Being in office, especially one that is politically sensitive in light of the facts of the case, would usually weigh against compliance under Article 3 of the Constitution.

(2) Whether the individual is sought for acts allegedly committed in his/her official capacity. If so, this may require the application of the principle of immunity under international law. Moreover, even if immunity does not apply, this would usually weigh against compliance under Article 3 of the Constitution since INTERPOL's involvement in the matter may compromise its neutrality.

(3) The identity of the source of data, i.e. whether it was an NCB or an international entity such as an international tribunal. International entities are usually considered to be neutral sources, which weighs in favour of compliance. Conversely, certain NCBs, depending on the general context (such as a war between two member countries), may not be considered a neutral source, which would weigh against compliance.

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1 Amnesties that purport to apply to war crimes, genocide, crimes against humanity or gross violations of human rights may be considered invalid under international law.

2 The term "personal gain" is to be understood in the context of the United Nations Convention against Corruption (UNCAC), which, among other things, calls for the criminalization of embezzlement, misappropriation or other diversion of property, public or private funds or securities or other thing of value entrusted to a public official by virtue of his/her position, by public officials, when this is done for his/her benefit or for the benefit of another person or entity.

3 See further discussion in Chapter 3.5 (unconstitutional seizure of power and unrest).

4 Questions of immunity and how these may or may not affect the processing of data are outside the scope of this repository. In principle, however, INTERPOL strives to follow the established standard under international law.

(4) Whether the country where the individual serves or served as a politician objects to the processing of data. Such objections may lead to the application of a settlement of disputes procedure.[5]

Examples

Scenario A – (former) politicians/ (former) high-level civil servants wanted by their own countries

Case 1: A Diffusion was circulated concerning an individual who was the wife of the country's former president. She was also the president and founder of a political party. She was wanted for unlawful intervention in the assignment of an apartment that resulted in financial prejudice to the government. It was concluded that this charge was of an ordinary-law nature and that the data could be recorded since nothing in the file suggested that the case was linked to her political activities.

Case 2: A Red Notice was published at the request of an NCB for the former president of the country on charges of corruption and illicit enrichment. It was concluded that the individual had committed the offence not for political gain, but rather to personally enrich himself, hence publication was approved.

Case 3: A Red Notice was published at the request of an NCB for "embezzlement". In his capacity as former minister of energy, the individual had concluded a contract without the authority to do so. The NCB was therefore requested to provide information showing personal gain or other elements of ordinary-law crimes.

Case 4: A Red Notice was requested for an individual charged with "misappropriation". While serving as president of the country, the individual had issued an emergency decree in order to award a contract without putting it out to tender. In response to a request for further information, the NCB indicated that the individual had personally benefitted from the illegal activities as the excess charges in the contract amounted to several million dollars. The Red Notice was published.

Case 5: A Red Notice was requested by an NCB for the former president of the country, on charges of embezzlement. The individual was accused of approving a series of economic decisions that severely undermined the national treasury. The General Secretariat denied publication after concluding that the measures taken by the individual were of a political nature, adopted in the context of a difficult economic situation. This conclusion was reached after considering the general context of the case (e.g. previous occurrence of a coup d'état which deposed the individual and the support of international financial institutions for the measures he adopted) and the fact that the individual derived no personal benefit.

Case 6: A Red Notice request and a global Wanted Person Diffusion were sent by an NCB seeking the arrest and extradition of an individual wanted for financial crimes. The individual concerned was the former prime minister of the country, who had recently lost the election to the presidency and remained a major opponent to the current regime. In addition, at the time when the data were processed, the political situation in the country was volatile and

[5] Article 135, RPD.

demonstrations for and against the government were common. Considering the status of the individual concerned and bearing in mind the general context of the case, notably the ongoing political situation in the country, it was concluded that the case was of a predominantly political nature as understood in Article 3 of the Constitution.

Case 7: An NCB requested the publication of Blue Notices concerning four of its nationals, all of whom were linked to the former president of the country, who had been arrested in a third country. One of the individuals, the son of the former president, made known his intention to participate in the country's next presidential elections. The individuals were sought for being members of a criminal organization. Allegedly, they were behind the concealment of medical supplies destined for several hospitals as well as the award of overpriced contracts, using the country's social security organization, to parties who did not meet the official requirements. It was concluded that although the individuals were wanted for ordinary-law crimes, other elements indicate that the Blue Notices were politically motivated, including the family links to the former president and their involvement in politics as members of oppositional political parties. The Blue Notices were denied.

Case 8: A Red Notice was requested for an individual sought for receiving significant bribes while having served as the municipal head of the city district several years earlier. The General Secretariat took into account the following elements: a) the status of the person, who was the head of a municipal district of the city and openly opposed to the ruling party; b) the position expressed by an international organization on the case, highlighting its political dimension; and c) the general context of the case, which revealed that four criminal cases had been previously initiated against the individual, two years after the criminal conduct alleged in the underlying the Red Notice, following the individual's refusal to resign from his position. It was concluded that these considerations outweighed the ordinary-law nature of the offence and consequently, the Red Notice was declined.

Case 9: A Red Notice was requested by an NCB for an individual wanted for "forced disappearances and crimes against humanity". He was one of the top advisers to the former president and the co-founder of the political party of the former president. The individual, while holding a senior rank in the country's army, in the context of the internal armed conflict applied a military doctrine that characterized even the non-combatant civilian population as "internal enemy". He participated in the elaboration of a strategy to control, neutralize and kill people considered "internal enemies", even if civilians. He also directed the tactical and strategic interrogation procedures carried out through acts of torture, cruel, inhuman or degrading treatment, and sexual violence against persons belonging to the non-combatant civilian population. The NCB confirmed that he had been stripped of his immunity. Due to the seriousness of the offences, the applicable international law and case law, the fact that the wanted person was a national of the requesting country and the fact that he no longer enjoyed immunity, it was determined that there was no legal impediment to declaring the Red Notice compliant.

Case 10: Four Wanted Person Diffusions were circulated by country X for individuals sought to be prosecuted for several financial crimes including bribery, money laundering, embezzlement of public funds and concealment of embezzlement of public funds, in connection with the illegal funding of a presidential campaign in the requesting country. Three of the individuals were businessmen, one from the requesting country and two from country Y. The fourth individual was a former public official of country X, which also sought him for prosecution under a Red Notice that had been deemed compliant by the CCF. In

accordance with the predominance principle, while it appeared that there were political elements surrounding the general context of the case due to the involvement of high-profile politicians, all other elements lead to the conclusion that the requests were of a predominantly ordinary-law nature. These factors included the serious ordinary-law nature of the offences; the status of the persons concerned, namely three private persons acting in their private capacity and a former foreign public official wanted by a third country and his country of nationality; and the absence of implications for the neutrality of the Organization.

Scenario B – (former) politicians / (former) high-level civil servants wanted by other countries

Case 11: Wanted Person Diffusions were circulated by an NCB for former high officials of four other governments. The individuals were charged with serious crimes, such as murder of citizens of the country that issued the Diffusions. These crimes took place in the context of an operation, which was carried out against political dissidents by the regimes of the countries. It was concluded that there was *a priori* no legal impediment to the data being recorded. Since no objections were raised, the data were recorded in INTERPOL's databases.

Case 12: A Blue Notice request was sent by an NCB concerning the former minister of defence of another country for conducting, planning, coordinating and ordering a military operation carried out in the territory of the country that sought the publication of the Blue Notice. It was determined that the case was predominantly political and military and therefore within the scope of Article 3 of the Constitution, since the request pertained to acts allegedly committed by a former minister of defence in his official capacity, and due to the nature of the case, namely the ordering of a military operation on the territory of another country.

Case 13: The NCB of country A requested a Wanted Person Diffusion for an individual, a former government official and director of the military intelligence of country B, as well as the former consul of country B in country C. The individual was sought for drugs-related crimes allegedly committed while holding office as the director of military intelligence. Six months after the individual was appointed consul in country C, he was arrested in country C based on country A's warrant despite the asserted diplomatic immunity, which resulted in a diplomatic crisis between country B and country C. The foreign minister of country C subsequently recognized the individual's diplomatic immunity but declared him *persona non grata*, upon which the individual left country C. Notwithstanding those political elements, the General Secretariat concluded that the request did not fall within the ambit of Article 3 of the Constitution, considering in particular the nature of the offence (a serious ordinary-law offence).

Case 14: The NCB of country A sent a Wanted Persons Diffusion in respect of five foreign nationals, one of whom was a senior official in the ministry of agriculture of country B. All five individuals were wanted for prosecution on charges of illegal wildlife trafficking and smuggling into country A. The smuggled wildlife was protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Another person, also serving in a senior position in country B, was arrested in country A in relation to this case. Country B protested the arrest publicly and through diplomatic channels. It was concluded that the Diffusion did not fall within the ambit of Article 3 of the Constitution considering the neutral basis of the charges, namely a widely ratified international convention, the significance of the individual's position for the impact of his actions and the fact that

protest from country B was not likely to ignite a major political crisis between countries A and B.

Case 15: The NCB of country A circulated a Wanted Person Diffusion for the former prime minister of country B, indicating that the individual was wanted for prosecution for participating in a militia group and for the attempted murder and the intentional murder of two or more persons pursuant to a conspiracy by the militia group. It was alleged that the individual participated in military actions as part of the militia group against country A's forces on the territory of country A. The case was widely publicized. It was concluded that the request was predominantly of a military and political character, falling within the ambit of Article 3 of the Constitution, based on the nature of the offence, the status of the person (former prime minister of country B), the source of data (NCB of country A), the position expressed by the NCB of country B, which protested against the use of INTERPOL's channels in relation to the individual, and the general context of the case (military action against country A's military forces). Recording of the Diffusion was therefore denied.

Case 16: The NCB of country A circulated two Wanted Person Diffusions for two nationals of country B, who were wanted for prosecution for money laundering of proceeds from bank accounts in country A. The Diffusions were restricted to country B. Both individuals had previously held high-level ministerial and military positions under the then and current president of country B. Neither individual was involved in politics at the time the Diffusions were circulated. There were strong political tensions between country A and country B, the former having imposed sanctions on the latter and on the wanted persons. Country A issued statements about the case criticizing and associating the individuals with the then and current president of country B. The General Secretariat concluded that although the individuals were sought for ordinary-law crimes, the political elements prevailed, particularly in view of the status of the individuals (former government officials) and the general context (offences committed during their functions as members of the government, fraught diplomatic relations, sanctions, politically tinged official statements on the case) and the implications for the neutrality of the Organization. Recording of the Diffusions was therefore denied.

Case 17: Green Notices and a Green Diffusion were requested by country X for six country Y politicians or their associates for having committed offences related to organized crime, namely fraud, money laundering, tax evasion, blackmail, human trafficking, kidnapping and assassination of foreign-based crime bosses. Upon request of its parliament, the NCB of country Y protested that the requests were politically motivated as their goal was to intimidate and influence presidential elections in its country, and therefore requested their deletion. Due to the status of the persons concerned, namely politicians or their associates, the position expressed by the protesting NCB and implications to INTERPOL's neutrality, the general context of the case with the reception of requests intervening shortly before presidential elections in country Y, the lack of consultation with the protesting NCB, and its exclusion from the list of recipients of the Green Diffusion, it was concluded that the matter was political within the meaning of Article 3 of the Constitution.

Case 18: An NCB sent numerous Red Notice requests for senior officials of another member country, including that country's president, minister of foreign affairs and high-level military officials, all sought for "Abetment in intentional murder", "Terror act (assassination)" and "Acting against the requesting country's national (internal and international) security". The individuals were wanted in relation to their role in ordering an attack which killed a senior military person of the requesting country. The requests were declined in application of Article

3 of the Constitution, notably in consideration of the fact that the requests related to an inter-State political dispute over State activities (a military operation); the charge of "acting against the country's national (internal and international) security", which reflects the very nature of the case as a political and security issue rather than an ordinary criminal law matter; and the general context of the case, namely the heightened tensions between the countries before and following the event. The status of most of the individuals sought by the requests and the immunity they may enjoy under international law further supported the overall conclusion of non-compliance.

Case 19: An international criminal tribunal/court circulated Blue Diffusions for a former senator and a government official in order to identify, locate and obtain information in connection with an investigation into crimes against humanity involving a widespread and systemic attack against a civilian population that opposed the ruling party following the candidacy announcement of the then president. The Diffusions were restricted to the country in question, and neighbouring countries. While taking into account the political context surrounding these requests, the Diffusions were found compliant with Article 3 of the Constitution, bearing in mind in particular the role of the tribunal/court in adjudicating cases of this nature.

3.2 Offences concerning freedom of expression

The question – May data be processed about an individual who is charged with offences concerning freedom of expression?

Background

1. Offences related to freedom of expression require assessment in light of Article 3 and also in view of the possible application of international human rights standards in the context of Article 2(1) of the Constitution (the "spirit of the Universal Declaration of Human Rights").[1]

2. However, the right to freedom of expression is not an absolute right and may be subject to certain necessary restrictions provided for under the law, including those required for the protection of national security, public order, public health, or public morality.[2] Accordingly, processing of data will generally be permitted where the forbidden speech amounts to hate speech (e.g. distribution of neo-Nazi propaganda)[3] or incitement to violence.[4] It is also noteworthy that the imposition of restrictions on the right to freedom of expression will generally require a close link to be established between the alleged incitement and the risk of ensuing violence.

3. The conclusion of the assessment may vary depending on the object/target of the "illegal speech" as in the following scenarios:

Scenario A – The "illegal speech/statement" is directed at the State, State officials and/or State institutions.

Scenario B – The "illegal speech/statement" is directed at private individuals or non-political/non-State entities.

Current practice

4. **Scenario A – The "illegal speech/statement" is directed at the State, State officials and/or State institutions:** the general rule is that Article 3 will apply. Resolution AGN/53/RES/7 (1984)

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1 See Article 19 of the UDHR and Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR).

2 See Article 19(3) of the ICCPR.

3 This conforms to international standards against racial discrimination – see Article 4 of the 1965 Convention on the Elimination of Racial Discrimination. In a case brought before the European Court of Human Rights (Lehideux and Isorni v. France, ECHR, Judgement of 23 September 1998), the Court found that negation or revision of clearly established historical facts – such as the Holocaust – is not protected by the right to freedom of expression enshrined by Article 10 of the European Convention on Human Rights. The Court stated that "[T]here is no doubt that…the justification of a pro-Nazi policy could not be allowed to enjoy the protection afforded by Article 10."

4 See, for example, Article 5 of the 2005 Council of Europe Convention on the Prevention of Terrorism, according to which "public provocation to commit a terrorist offence" should be criminalized by Member States. Such "public provocation" is defined as: "The distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed." UN Security Council Resolution 1624 (2005) calls upon States to prohibit and prevent incitement to commit terrorist acts.

states that offences concerning "[the] expression of certain prohibited opinions" and "insulting the authorities" are among those that by their very nature fall within the scope of Article 3.

5. A decision not to enable the processing of data in such cases may be based also on the fundamental right to freedom of expression, protected under the Universal Declaration of Human Rights (UDHR) and other international human rights instruments, while bearing in mind the possible restrictions on this right as mentioned above.

6. **Scenario B – The "illegal speech/statement" is directed at private individuals or non-political/non-State entities,** and where it is apparent that the individual does not have a political motive in making the speech: the "illegal speech/statement" in question would generally not fall within the scope of Article 3 or be in violation of the UDHR.[5]

Examples

Scenario A:

Case 1: Illegal speech against a former president of the requesting State
A Diffusion was issued for the offence of "insulting the former President of the State." The data were not recorded in INTERPOL's databases since the charge was considered a pure political crime within the meaning of Article 3.

Case 2: Defamatory statements against a politician
A Red Notice request was submitted by an NCB based on charges of defamation. The individual concerned, a politician, had publicly accused another politician, belonging to the ruling party, of corruption and embezzlement. Publication was denied on the basis of several factors: (i) no personal gain had resulted from the declarations made; (ii) in view of the specific circumstances of the case, the actions attributed to the subject of the Red Notice request were considered to come within the scope of his professional activities as an opposition leader; (iii) the alleged insults were directed at a public authority via the media; (iv) the statements were considered to be within the legitimate exercise of the person's freedom of expression.

Case 3: Producing and broadcasting offensive film material
Red Notice requests and global Wanted Person Diffusions were sent by an NCB seeking the arrest of individuals wanted for allegedly having produced film material deemed offensive to Islam. According to the information provided by the NCB, the alleged actions were viewed as infringing the security of the State, which implied that the charges were of a political nature as understood in Article 3 (General Assembly Resolution AGN/53/RES/7). Furthermore, the broadcasting of the footage was an expression of an opinion related to a religious matter. According to the long-standing practice in the application of Article 3, "the expression of certain prohibited opinions" is a pure offence falling within the scope of Article 3 (General Assembly Resolution AGN/53/RES/7). Though the right to freedom of expression is not absolute, in the present case there was insufficient information evidencing that the expression could be considered as amounting to hate speech or incitement to violence. In addition, the riots and violence that followed the broadcasting of the video were the result of the protest against the footage itself, rather than against the subject matter of the footage. Accordingly, the requests were denied and the information deleted from the Organization's databases.

[5] A restriction on freedom of expression is sanctioned under international human rights law "for respect of the rights or reputations of others" [Article 19(3) of ICCPR]. Accordingly, criminal defamation does not a priori violate the right to freedom of expression.

Scenario B:

Case 1: Criminal defamation

A Diffusion issued for an individual for “criminal defamation” against “a mayor of a town.” The data was registered since the court decision determined that the statements were not directed against the State or its institutions (a mayor is not considered as a State official). As no other political elements were identified, it was concluded that the case fell outside the scope of Article 3.

3.3 Offences concerning freedom of assembly and freedom of association *(updated: November 2024)*

This chapter has been divided into two sub-chapters – one regarding offences concerning freedom of assembly (3.3.1) and the other about offences concerning freedom of association (3.3.2).

3.3.1 Offences concerning freedom of assembly

The question – May data be processed about an individual who is charged with offences relating to the right of freedom of assembly?

Background

1. Offences relating to the right of freedom of assembly are assessed in light of Article 3 and international human rights standards in the context of Article 2(1) of the Constitution (the "*spirit of the Universal Declaration of Human Rights*").[1] Freedom of assembly often intersects with freedom of association,[2] freedom of expression[3] and freedom of religion.[4]

Article 2(1) of the Constitution

Scope of Protection

2. The freedom of assembly protects individuals' right[5] to participate in temporary and peaceful gatherings[6] for specific, though varied, purposes.[7] It extends to the vindication of

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1 See Article 20 of the UDHR, Article 21 of the ICCPR, Article 11 of the European Convention on Human Rights (ECHR), Article 15 of the American Convention on Human Rights (ACHR), and Article 11 of the African Charter on Human and People's Rights (ACHPR).

2 See Chapter 3.8 on offences concerning freedom of association.

3 See Chapter 3.2 on offences concerning freedom of expression.

4 See Chapter 3.11 on religious / racial elements.

5 Everyone, independent of his or her legal status, has the right to peaceful assembly, thus including foreign nationals, migrants (documented or undocumented), asylum seekers, refugees and stateless persons. See HRC, General Comment No. 37 on the right of peaceful assembly (Article 21), para. 5.

6 Participating in an "assembly" includes organizing or taking part in a gathering of persons. Such gatherings may take place outdoors, indoors and online, in public and private spaces. It includes demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected whether they are stationary, such as pickets, or mobile, such as marches. See e.g., ECtHR, *Kudrevičius and Others v. Lithuania* [GC], 2015, para. 91; *Djavit An v. Turkey*, 2003, para. 56. Lengthy occupation of premises that is peaceful, even though clearly in breach of domestic law, may be regarded as a "*peaceful assembly*", ECtHR, *Cisse v. France*, 2002, paras. 39-40; *Tuskia and Others v. Georgia*, 2018, para. 73; *Annenkov and Others v. Russia*, 2017, para. 123. Importantly, freedom of assembly does not entail freedom of forum. That is, it does not automatically create a right to occupy private property or publicly owned property such as government buildings, universities or courtrooms (ECtHR, *Appleby and Others v. the United Kingdom*, 2003, para. 47; *Taranenko v. Russia*, 2014, para. 78; *Tuskia and Others v. Georgia*, 2018, para. 72; *Ekrem Can and Others v. Turkey*, 2022, para. 91). See also African Commission on Human and Peoples' Rights (ACommHPR), *Guidelines on Freedom of Association and Assembly in Africa*, paras. 68-70.

7 The purposes of the assembly may range from political or public engagement, expressing oneself, conveying a position on a particular issue or exchanging ideas, to affirming group solidarity or identity. In addition, assemblies may have a social, cultural, religious or commercial scope. See e.g., ECtHR, *Emin Huseynov v. Azerbaijan*, 2015, para. 91, concerning police intervention in a gathering at a private café; *The Gypsy*

controversial ideas – however shocking or unacceptable they may appear to authorities – as long as they do not amount to incitement to violence, hatred or discrimination.[8]

3. The right to freedom of assembly refers to organizing, or participating in, a peaceful assembly. If the assembly is peaceful, its participants benefit from this right even if some domestic requirements regarding its organization have not been met,[9] such as prior notification or authorization under national law.[10]

4. Violent assemblies (including, e.g., riots) are not protected. These are characterized by participants' use of physical force that is likely to result in injury or death or serious damage to property.[11] The conduct of specific participants may be deemed violent if authorities hold credible evidence that (i) before or during the event, those participants incited others to use violence, and such actions are likely to cause violence, (ii) the participants have violent intentions and plan to act on them, or (iii) violence on their part is imminent.[12] An assembly tarnished with isolated acts of violence is not automatically considered non-peaceful. By the same token, an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour. In other words, acts of violence can be attributed only to those participants inciting or carrying them out, not to other participants in the assembly.[13] The use by participants of

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Council and Others v. the United Kingdom (dec.), 2002 regarding cultural gatherings; and *Barankevich v. Russia*, 2007, para 15, concerning religious and spiritual meetings. Official meetings, notably parliamentary sessions, also fall within the scope of freedom of assembly (ECtHR, *Forcadell i lluis v. Spain* (dec.), 2019, para. 24). In *Navalnyy v. Russia*, the ECtHR considered that a group of activists outside a courthouse for the purpose of attending a court hearing in a criminal case of a political nature fell within the notion of "assembly" on the basis that by their attendance they meant to express personal involvement in a matter of public importance. See M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel, Kehl, 1993) [hereinafter "Nowak"], 373; The International Covenant on Civil and Political Rights – cases, materials, and commentary (Joseph, S, J. Schultz and M. Castan, eds) (2nd edition, 2004) 568-9 [Hereinafter "ICCPR Commentary"]. See also HRC, Kivenmaa v. Finland (CCPR/C/50/D/412/1990), para. 7.6; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 9.3; and *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 8.5.

8 See ECtHR, *Kudrevičius and Others v. Lithuania* [GC], 2015, para. 145; *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, 2001, para. 97). See also ACommHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 70; *Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt*, Comm. No. 323/06 (2011), paras. 239-256; Pen and Others (on behalf of Ken Saro-Wira) v. Nigeria, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), para. 110. As noted by the HRC in its General Comment No. 37, "*peaceful assemblies can sometimes be used to pursue contentious ideas or goals*"; yet, they "*may not be used for propaganda for war (art. 20 (1)), or for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 (2))*". See HRC, General Comment 37, paras. 7 and 50. See also HRC, General Comment No. 34 on freedom of expression, para. 11.

9 ECtHR, *Frumkin v. Russia*, 2016, para. 97. The ACommHPR held that organizers shall not be subject to sanctions or dispersal merely for failure to notify. ACommHPR, Malawi African Association and others v. Mauritania, Comm. Nos. 54/91, 61/91, 98/93, 164-196/97 & 210/98 (2000), paras. 108-11.

10 ECtHR, *Navalnyy v. Russia* [GC] 2018, paras. 98, 108; *Kudrevičius and Others v. Lithuania* [GC], 2015, para. 91.

11 See HRC, General Comment 37, para. 15.

12 HRC, General Comment 37, para. 19. See also ECtHR, *Gülcü v. Turkey*, 2016, para. 97; *Shmorgunov and Others v. Ukraine*, 2021, para. 491; *Agit Demir v. Turkey*, 2018, para. 68; *Navalnyy v. Russia* [GC], 2018, paras. 109-111; *Zulkuf Murat Kahraman v. Turkey*, 2019, para. 45; *Obote v. Russia*, 2019, para. 35; *Kazan v. Türkiye*, 2023, para. 56.

13 ECtHR, *Ezelin v. France*, 1991, para. 53; *Frumkin v. Russia*, 2016, para. 99; *Laguna Guzman v. Spain*, 2020, para. 35. The possibility of persons with violent intentions, not members of the organizing association, joining the demonstration cannot as such take away the right to freedom of assembly. ECtHR, *Primov and*

objects that are or could be viewed as weapons or protective equipment (e.g. gas masks or helmets) is not necessarily sufficient to label participants' conduct as violent.[14] Likewise, mere pushing and shoving do not amount to "violence".[15] Civil disobedience manifested without force is likely to be protected by the right to freedom of assembly.[16]

5. Violence from law enforcement or opponents of the assembly towards participants – or even from individuals infiltrating the assembly with the purpose of making it violent – does not classify the gathering as "violent". If the initially peaceful assembly escalated into violence and both sides – demonstrators and police – became involved in violent acts, it is relevant who started the violence.[17]

6. The burden of proving violent intentions on the part of the assembly organizers lies with the authorities.[18] Even if there is a real risk that an assembly might result in disorder because of developments outside the control of those organizing it, the freedom of assembly still applies and, as explained below, any restriction placed on it must be shown to be "necessary" and "proportional" and "pursue a legitimate aim".[19]

Others v. Russia, 2014, para 155. Isolated acts of violence attributed to some participants should not be made accountable to other participants, the organizers or the assembly itself. See IACtHR, *Women Victims of Sexual Torture in Atenco v. Mexico*, 2018, para. 175. See also ECtHR, *Frumkin v. Russia*, para. 99; *Kudrevičius and Others v. Lithuania* [GC], 2015, para. 92. See furthermore ACommHPR, *International Pen and Others (on behalf of Ken Saro-Wira) v. Nigeria*, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), paras. 105-06.

14 The qualification must occur on a case-by-case basis, according to, among others, "*domestic regulation on the carrying of weapons, local cultural practices, whether there is evidence of violent intent, and the risk of violence presented by the presence of such objects*", HRC, General Comment 37, para. 20.

15 Hence, a participant in a demonstration that may cause some inconvenience to social organization (e.g., stopping the traffic) shall not, in principle, be the subject of data processed via INTERPOL channels.

16 Nowak, *supra* note 7; ICCPR Commentary, *supra* note 7, at 569. See also, HRC, *Concluding observations on the initial report of Macao, China, adopted by the Committee at its 107th session (11–28 March 2013*), 2013 [CCPR/C/CHN-MAC/CO/1], para. 16.

17 See e.g., ECtHR, *Primov and Others v. Russia*, 2014, para 157; *Çiçek and Others v. Türkiye*, 2022, paras. 137-141. For example, the ECtHR dismissed the complaint of an applicant found guilty of deliberate acts contributing to the onset of clashes in a previously peaceful assembly (he was leading a group of people to break through the police cordon), noting the significance of this particular event among other factors causative of the escalation of violence at the assembly venue (ECtHR, *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, paras. 282-285).

18 The HRC clarified that "violence" can be demonstrated "*if authorities can present credible evidence that, before or during the event, those participants are inciting others to use violence, and such actions are likely to cause violence; that the participants have violent intentions and plan to act on them; or that violence on their part is imminent*", HRC General Comment No. 37, para. 19. See also, e.g., ECtHR, *Christian Democratic People's Party v. Moldova (no. 2)*, 2010, para. 23.

19 See HRC, General Comment 37, para. 27, according to which "*The possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly*". In para. 52, the HRC adds that "*An unspecified risk of violence, or the mere possibility that the authorities will not have the capacity to prevent or neutralize the violence emanating from those opposed to the assembly, is not enough*" to restrict the right of freedom of assembly. See also, ECtHR, *Schwabe and M.G. v. Germany*, 2011, para. 103. This reasoning applies to the possibility of counter-demonstrations. The mere existence of a risk of confrontation or violence is insufficient for banning the event. Authorities must produce concrete estimates of the potential scale of disturbance in order to evaluate the resources necessary to neutralize the threat of violent clashes (ECtHR, *Fáber v. Hungary*, 2012, para. 40; *Barankevich v. Russia*, 2007, para. 33). For further details see also ECtHR, *Guide on Article 11 of the European Convention on Human Rights – Freedom of Assembly and Association* (updated 31 August 2023).

7. The eventual disruption that can result from the scale and nature of assemblies (for example in traffic and daily and economic activities) does not automatically justify restrictions on assemblies.[20] Occupation of public buildings is generally regarded as peaceful conduct, despite its unlawfulness and the disruptions it may cause.[21] However, physical conduct purposely and unnecessarily obstructing traffic and the ordinary course of life to seriously disrupt the activities carried out by others is likely to be excluded from the scope of protection of freedom of assembly.[22]

Restrictions on Freedom of Peaceful Assembly

8. Freedom of assembly is not an absolute right. It may be subject to restrictions "*in conformity with the law*" or "*prescribed by law*"[23] and "*necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*".[24] Restrictions include measures adopted prior to, during or after the gathering, e.g. punitive sanctions.[25] The State needs to justify that the restrictions imposed were necessary to serve

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20 HRC, General Comment 37, para. 7, in the terms of which the "*scale or nature* [of peaceful assemblies] *can cause disruption, for example of vehicular or pedestrian movement or economic activity*. *These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy*". See also HRC, *Concluding observations on the fourth periodic report of the Republic of Korea* (CCPR/C/KOR/CO/4), para. 26. In keeping with this view, the ECtHR considered e.g., that the almost complete obstruction of three major highways in disregard of police orders and of the needs and rights of road users constituted conduct which, even though less serious than recourse to physical violence, was "*reprehensible*", ECtHR, *Kudrevičius and Others v. Lithuania* [GC], 2015, para. 173-174. See also ECtHR, *Barraco v. France*, 2009, paras. 46-47.

21 The HRC has noted that States should avoid qualifying public buildings as spaces in which peaceful assemblies are prohibited and that "[a]*ny restrictions on assemblies in and around such places must be specifically justified and narrowly circumscribed*", HRC, General Comment No. 37, para. 56. See also HRC, *Ernst Zündel v. Canada*, Communication No. 953/2000 (CCPR/C/78/D/953/2000), para. 8.5. See also, ECtHR, *Cisse v. France*, 2002, paras. 39-40; *Tuskia and Others v. Georgia*, 2018, para. 73; *Annenkov and Others v. Russia*, 2017, para. 126. In *Makarashvili and Others v. Georgia*, 2022, the ECtHR held that putting in place a blockade of the Parliament building with the intention of disrupting the legislative process should not necessarily be regarded as a rejection of the foundations of a democratic society and may fall within the ambit of freedom of assembly, as did a protest against the legislator's failure to reform the electoral system paras. 89-94).

22 In this sense, see ECtHR, *Kudrevičius and Others v. Lithuania* [GC], 15 October 2015, para. 97 with further references and examples.

23 Article 21 of the ICCPR refers to restrictions imposed "*in conformity with the law*". Law-enforcement measures applied with reference to legal provisions that had no connection to the intended purpose of those measures could be characterized as arbitrary and unlawful. Thus, the ECtHR considered that penalties for non-compliance with the lawful order of a police officer, or for hooliganism, imposed to prevent or to punish participation in an assembly, did not meet the requirement of lawfulness. See e.g., ECtHR, Hakobyan and Others v. Armenia, 2012, para. 107; Huseynli and Others v. Azerbaijan, 2016, para. 98. The African Court on Human and Peoples' Rights has stated that limitations on the rights protected by the African Charter on Human and Peoples' Rights must take the form of "law of general application", see ACtHPR, *Tanganyika Law Society and the Legal and Human Rights Centre v. Tanzania*, Judgement of 14 June 2014, para. 107.1. As noted by the IACtHR, the law must be accessible to the persons concerned and allow them to foresee the consequences that an action may entail. IACtHR, *Fontevecchia and D'Amico v. Argentina*, Judgment of 29 November 2011, para. 90.

24 Articles 21 ICCPR, 11(2) ECHR, and 15 ACHR. Similarly, see Article 11 of ACHPR.

25 See ECtHR, *Ezelin v. France*, 1991, para. 39. In *Bączkowski and Others v. Poland*, 2007, paras. 66-68, the Court held that a prior ban can have a chilling effect on the persons who intend to participate in a rally and thus amounts to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities. The ACommHPR held that the proscription of politically driven meetings or assemblies without prior governmental permission "disproportionate to the measures required by the government to maintain public order, security, and safety. ACommHPR, *Amnesty International and Others v. Sudan, African*

those interests, otherwise the limitation will be disproportionate and, consequently, unlawful.[26]

9. Invoking "*public order*" to validate overbroad restrictions on the right to freedom of assembly should not be accepted.[27] Expressing support for unlawful activity can, in many cases, be distinguished from disorderly conduct. Therefore, restrictions on the grounds of ensuring public order should be applied with caution.[28] Where the suppression of human rights is the reason why national security[29] is deemed to have deteriorated, this cannot be used to justify further restrictions, including on the right to freedom of assembly.[30]

Commission on Human and Peoples' Rights, Comm. No. 48/90, 50/91, 52/91, 89/93 (1999), para. 82. The same conclusion was reached regarding measures taken by authorities during a rally, such as its dispersal or the arrest of those taking part in it, and penalties imposed for having taken part in it (ECtHR, *Kasparov and Others v. Russia*, 2013, para, 84; *Gafgaz Mammadov v. Azerbaijan*, 2015, para. 50). A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction (ECtHR, *Akgöl and Göl v. Turkey*, 2011, para. 43), especially to deprivation of liberty (ECtHR, *Gün and Others v. Turkey*, 2013, para. 83). Police applying force against peaceful participants during the dispersal of an assembly or for maintaining public order constitutes an interference with the freedom of peaceful assembly (ECtHR, *Laguna Guzman v. Spain*, 2020, para. 42; *Zakharov and Varzhabetyan v. Russia*, 2020, para. 88). See also ACommHPR, *Guidelines on Freedom of Association and Assembly in Africa*, para. 102 (b), according to which requirements for organizers or participants to arrange for the costs of policing, medical assistance or cleaning are, in principle, inconsistent with freedom of assembly.

26 See HRC, General Comment No. 37, para. 36, according to which "*While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions*" and "*Where this onus is not met, article 21 is violated*". See also, HRC, *Mecheslav Gryb v. Belarus*, Communication No. 1316/2004 (CCPR/C/103/D/1316/2004), para. 13.4; HRC, *Chebotareva v. Russian Federation*, Communication No. 1866/2009 (CCPR/C/104/D/1866/2009), para. 9.3; IACtHR, *Ricardo Canese v. Paraguay*, Judgment of 31 August 2004, para. 96.

27 "*Public order*" refers to the rules that ensure the proper functioning of society and or the fundamental principles on which society is founded, which also entails respect for human rights and the rule of law. The ECtHR did not accept, in particular, the aim of prevention of disorder in relation to events where the gatherings were unintentional and caused no nuisance (ECtHR, *Navalnyy v. Russia* [GC], 2018, §§ 124-126). Likewise, the Court deemed that calls for autonomy or secession do not automatically justify derogations on freedom of assembly (ECtHR, *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, 2001, para. 97). See HRC, *Consideration of reports submitted by States parties under article 40 of the Covenant Concluding observations of the Human Rights Committee, Kazakhstan* (2011), CCPR/C/KAZ/CO/1, para. 26; and *Concluding observations on the fourth periodic report of Algeria* (2018), CCPR/C/DZA/CO/4, paras. 45–46.

28 The HRC noted that "*Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. 'Public order' and 'law and order' are not synonyms, and the prohibition of 'public disorder' in domestic law should not be used unduly to restrict peaceful assemblies*", HRC, General Comment No. 37, para. 44. In line with this view, the ECtHR, in *Christian Democratic People's Party v. Moldova* (No.2) (2010), para. 27, rejected the government's assertion that that the slogans "*Down with Voronin's totalitarian regime*" and "*Down with Putin's occupation regime*", even when accompanied by the burning of a picture of the President of the Russian Federation and a Russian flag, amounted to calls to violently overthrow the constitutional regime, to hatred towards the Russian people, and to an instigation to a war of aggression against Russia.

29 HRC, General Comment No. 37, para. 42. See also, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex), para. 29. The "*interests of national security*" may serve as a ground for restrictions if such limitations are necessary to preserve the State's capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force. It is unlikely that this threshold will be met by assemblies that are peaceful. See HRC, General Comment No. 37, ibid.

30 HRC, General Comment 37, para 41. Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, para. 32. See also IACtHR, *López Lone et al v Honduras*, 2015.

10. The protection of "*public health*" may exceptionally permit restrictions to be imposed, for example where there is an outbreak of an infectious disease and gatherings are dangerous (e.g., the COVID-19 pandemic).[31]

11. The protection of "*morals*" should not be used to safeguard understandings of morality deriving exclusively from a single social, philosophical or religious tradition,[32] and any such restrictions must be understood in the light of the principle of non-discrimination.[33]

12. The protection of "*the rights and freedoms of others*" (including those not participating in the gathering) may dictate limitations on freedom of assembly. This notwithstanding, assemblies are a legitimate use of public and other spaces. They may entail by their very nature a certain level of disruption to ordinary life. Such disruptions must be accommodated, unless they impose a disproportionate burden, in which case the authorities must provide detailed justification for any restrictions.[34]

13. Restrictions shall, in principle, be content neutral, not being related to the message conveyed by the assembly.[35] Public events related to political life, both at national and local level, benefit from enhanced protection.[36] Criticism of government or state officials should never, in and of itself, constitute a sufficient ground for imposing restrictions on freedom of assembly.[37]

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31 This may in extreme cases also be applicable where the sanitary situation during an assembly presents a substantial health risk to the general public or to the participants themselves. See ECtHR, *Cisse v. France*, 2002.

32 HRC, General Comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 8. The ECtHR considered that incompatibility with religious beliefs of others as such, as alleged by the Government, did not pass the test of being "*necessary in a democratic society*" (ECtHR, *Centre of Societies for Krishna Consciousness in Russia and Frolov v. Russia*, 2021, para. 55).

33 HRC, General comment No. 34, para. 32. Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity. See e.g., HRC, *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), paras. 10.5–10.6; and *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6. In the context of restriction on LGBT stationary demonstrations the ECtHR has rejected the reliance on the "*protection of morals*" as discriminatory (ECtHR, *Bayev and Others v. Russia*, 2017, paras. 66-69).

34 HRC, *Stambrovsky v. Belarus* (CCPR/C/112/D/1987/2010), para. 7.6; and *Pugach v. Belarus* (CCPR/C/114/D/1984/2010), para. 7.8. Hence, *a contrario*, it would appear that, for example, preventing others from entering an election tent would likely not be protected under freedom of assembly since it would interfere with other individuals' rights to vote and participate in political affairs.

35 HRC, *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6. See also ECtHR, *Alekseyev v. Russia*, 2010, para. 81; *Barankevich v. Russia*, 2007, para. 31. The Court considered unacceptable that the exercise of rights by a minority group were made conditional on it being accepted by the majority.

36 See Chapter 3.2 on offences concerning freedom of expression. "*The Government should not have the power to ban a demonstration because they consider that the demonstrators' "message" is wrong. It is especially so where the main target of criticism is the very same authority which has the power to authorize or deny the public gathering*", ECtHR, *Guide on Article 11 of the European Convention on Human Rights – Freedom of Assembly and Association* (updated 31 August 2023). See also ECtHR, *Navalnyy v. Russia*, [GC], 2018, para. 136; *Primov and Others v. Russia*, 2014, paras. 134-135; *Centre of Societies for Krishna Consciousness in Russia and Frolov v. Russia*, 2021, para. 52). See also Nowak, *supra* note 7.

37 See e.g., HRC, *Concluding Comments on Belarus* [1997] [CCPR/C/79/Add. 86], para.18; IACtHR, *Baena Ricardo et al. v Panama*, 2001. See also ACommHPR, *Kenneth Good v. Botswan*a, Comm. No. 313 (2010), para. 198

14. The obligation to secure the effective enjoyment of the right to freedom of assembly is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimization.[38]

15. The freedom of assembly may not be used for propaganda of war, or for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.[39] Yet, the definition of the aforementioned conduct – including terrorism and related offences – must not be overbroad or discriminatory and must not be applied so as to curtail or discourage peaceful assembly. The mere act of organizing or participating in a peaceful assembly does not, in principle, fall under the scope of counter-terrorism laws.[40] Similarly, the use of symbols in gatherings will only justify restrictions on freedom of assembly to the extent that they call for or incite violence or discrimination.[41]

16. Finally, in assessing requests for international police cooperation, it is important to consider indirect restrictions to freedom of assembly.[42] For instance, restrictions on liberty and freedom of movement[43] can prevent or seriously delay participation in an assembly.[44] Similarly, restrictions that impact a State's obligation to hold free elections[45] such as the detention of political activists or the exclusion of particular individuals from electoral lists can also indirectly curtail the right to freedom of assembly.

Article 3 of the Constitution

17. Inter-State extradition practice has held that the political offence exception would only excuse an ordinary-law crime incident if the alleged offence was committed "in furtherance" of the individual's political objective, which in turn should be legitimate in nature.[46] Moreover, State practice in this regard has consistently held that the political offence exception would only allow justification of an offence in such a context if the methods employed by the individual in furtherance of his political objective were proportionate in nature to the offence committed. For example, the infringement of private rights is only

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38 ECtHR, *Bączkowski and Others v. Poland*, 2007, para. 64. See also IACtHR, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001; *Plan de Sánchez Massacre v. Guatemala*, 2004.

39 See Article 20 ICCPR.

40 HRC, *Concluding Remarks on Swaziland in the Absence of a Report*, 2017 [CCPR/C/SWZ/CO/1], para. 36; and *Concluding Observations on the Initial Report of Bahrain*, 2018 CCPR/C/BHR/CO/1, para. 29. See also HRC, *Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders - Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, 2019 [A/HRC/40/52].

41 As noted by the HRC, "*the use of flags, uniforms, signs and banners is to be regarded as a legitimate form of expression that should not be restricted, even if such symbols are reminders of a painful past. In exceptional cases, where such symbols are directly and predominantly associated with incitement to discrimination, hostility or violence, appropriate restrictions should apply*", HRC, General Comment No 37, para. 51.

42 See OSCE, *Guidelines of Freedom of Peaceful Assembly* (Second Edition), 2010, para. 107 and references cited therein.

43 Article 12 of the ICCPR, Article 5 of the ECHR and Article 2 of Protocol 4 of the ECHR.

44 A "*massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest*", IACtHR, *Servellón García et al. v. Honduras*, Judgment of 21 September 2006, para. 93. See also, ACommHPR, *Law Offices of Ghazi Suleiman v. Sudan*, Comm. No. 228/99 (2003).

45 Article 25 of the ICCPR and Article 3, Protocol 1 of the ECHR.

46 In re Castioni [1891] 1 QB 149 (1890).

justifiable by reference to a sufficiently important or urgent political objective, as judged through the eyes of a reasonable person in the position of the offender.[47]

Current practice

18. Offences relating to the freedom of assembly often occur in the context of elections or other political unrest.[48] Accordingly, particular attention should be given to reviewing such cases to avoid compromising the Organization's neutrality by drawing it into matters involving domestic politics. Offences relating to the freedom of assembly may also be associated with terrorist activities.[49] In such cases, it is necessary to check whether restrictions to the right to freedom of assembly are justified.

19. Under Article 3 of the Constitution, the predominance test will have to be applied where there are elements of both a political nature (e.g., where the incident occurs in the context of unrest surrounding an election) and an ordinary-law crime nature (e.g., offence of causing damage to property during demonstrations).

20. INTERPOL's current practice is therefore to examine the facts of the particular request for police cooperation to determine the predominant nature of the case, taking into account the above principles and the need to strike a balance between, on the one hand, the rights of the individual concerned – namely the right of freedom of assembly and possibly also related rights such as the rights to freedom of expression and religion – and, on the other hand, the rights of other persons that may be affected.

Examples

Compliant Cases

Case 1: Diffusions were sent by an NCB. Two individuals in a group, acting "with the aim to impede [the] election campaign", used obscene words and "struck blows by feet and hands to different parts of body" against activists from a different political faction, and destroyed a tent being used as a polling station. It was noted that while the use of obscene or offensive language is, in principle, protected under freedom of expression and assembly, violent action against persons and property are not. In addition, the destruction of a polling station amounts to disproportional interference with the right of others to vote and take part in political life. Furthermore, the individuals' political objectives could have been achieved in a non-violent fashion. The infliction of personal injury and the destruction of property as ordinary crimes were therefore disproportionate to the individuals' political aims and were predominantly of an ordinary-law nature. The data were therefore recorded.

Case 2: A Diffusion was sent by an NCB. The individual concerned was in a group of people who injured three journalists with the intention of preventing them from entering a polling station. Attacking journalists can in no way be seen as being "in furtherance" of the individual's political objective, nor can it be seen as proportionate to the individual's support

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47 Ktir case 34 ILR 143 (Federal Tribunal 1961, Switzerland).

48 In accordance with Articles 18, 19 and 22 of the ICCPR, provision is made for religious and family assemblies and assemblies of associations. Offences that occur during any such assembly will be assessed in the same way as those occurring in the more common political assemblies.

49 See Chapter 3.6 on offences related to acts of terrorism or membership in a terrorist organization.

of a political party. The acts of hooliganism allegedly committed by the individuals undermined the right of others to participate in free and fair elections. Furthermore, the individuals sought were not protected under freedom of peaceful assembly given the violent nature of their actions. The data were therefore recorded.

Case 3: A Diffusion was sent by an NCB, seeking the arrest of two individuals on a charge of "mass disorder". According to the data provided, the individuals were involved in the organization of violent mass riots that took place as part of a political dispute surrounding national elections. The riots involved homicide, arson, use of firearms against public agents, and other serious violations of public order, resulting in 10 deaths including the deaths of two police officers. The individuals charged were supporters of the political opposition. In addition, the first individual was a Member of the National Assembly at the time. In keeping with INTERPOL's practice, the organization of mass riots that resulted in violence, casualties and serious damage to property could not be justified by claiming a right to freedom of assembly or expression. The data were therefore recorded.

Non-compliant Cases

Case 4: A Red Notice request and a global Wanted Person Diffusion were sent by an NCB concerning an individual who was wanted for "participation in mass riots". According to the facts provided, the subject took part in an unauthorized political demonstration, during which he allegedly caused "destruction of public property" valued at about EUR 4,000. The subject was initially arrested and sentenced to three years' probation. However, he fled to another country. It was noted that criticism of authorities does not, in and of itself, justify restrictions on freedom of assembly and that the unauthorized nature of the demonstration did not set aside the protection under the right of freedom to peaceful assembly. By the same token, it was concluded that the case was of a predominantly political nature since the demonstration aimed to criticize the political authorities. While property damage may lead to classifying an assembly as 'violent', it was also considered that the damage allegedly caused was not serious. Accordingly, the Notice was not published and the data was not recorded.

Case 5: An NCB circulated a Wanted Person Diffusion for an individual accused of "use of violence against a representative of the power" at an "unauthorized rally" in the capital city. The (prohibited) protests called for the elections in that country to be free and democratic and were characterized in the media as generally being peaceful, although excessive police violence was reported. In this regard, it was concluded that unauthorized peaceful gatherings are protected under the right to freedom of assembly. Furthermore, the use of force by law enforcement does not automatically qualify the assembly as violent. Conversely, in view of the general context (generally peaceful protests, and international condemnation of excessive police force and the conduct of criminal proceedings) and the status of the individual (protester), it was concluded that the political elements prevailed over the ordinary-law crime elements, and given the media coverage of the events, publication may have a negative reputational impact on the Organization. The Diffusion was therefore found not compliant.

Case 6: A Wanted Person Diffusion was circulated for an individual under charges of creation of/participation in an extremist formation and criminal organization, hooliganism, desecration of structures, damage to property and organization of public order violations with clear disobedience of governmental demands, in connection with activities committed as part of an anarchist organization. This group actively participated in protests against the results of

the presidential election in the requesting country, which were reported as peaceful and for which its members faced criminal organization-related charges. In this context, charges such as hooliganism (with no clear relation to the conduct of the wanted person) raised concerns regarding its lawfulness. The case was found to raise serious issues concerning the freedom of expression, assembly and association, and the Wanted Person Diffusion was denied.

Case 7: A Red Notice request was submitted against an individual who was a "student and blogger", a national of the country source of data, and sought to be prosecuted for the offence of "mass disorders". From outside the country source of data, the individual allegedly organized mass disorders accompanied by violence, rampages, arson, property destruction and armed resistance to the authorities. He posted information on the Internet in publicly available online channels of social media, appealing to take part in mass disorders at different places in the capital city and other localities of the country during and after the day of the presidential election. He indicated places and time for gatherings of participants, their action plan and other information coordinating their activities. It was found that the information about the alleged violence lacked detail and contrasted with independent reports about a crackdown on peaceful protestors. Considering the individual's status as a political activist critical of the government and the ongoing protests in the country, the Notice request was found non-compliant with Articles 2 and 3 of INTERPOL's Constitution.

Case 8: A Red Notice was requested for an activist national of the country source of data, who was sought to be prosecuted for incitement to violent demonstrations, for broadcasting videos filmed during the demonstrations and for participation in riot activities inside the country source of data. When asked, the NCB source of data provided information showing that the individual was filming the demonstrations and had communicated with international news agencies, but it was not able to provide any information in support of the alleged violence or incitement to violence. The case was found non-compliant with Articles 2(1) and 3 of the Constitution, with reference to freedom of expression and freedom of assembly.

Case 9: A Red Notice was requested for an individual under the charge of causing public disorder for gathering persons with a view to expressing an opinion against the non-recognition by a provincial religious union of an individual as a monk. The gathering led to the momentary closure of a primary school. The facts did not describe any use of force or other offence, despite entailing causing some inconvenience to the school. It was therefore concluded that the activities fell within the individual's right to freedom of assembly. The Red Notice was denied.

Case 10: Two Red Notice requests were submitted for individuals alleged to have encouraged hundreds of young people to participate in a riot in front of local authority premises where they chanted terms such as "Freedom" and "God is greater", and to have entered the premises to verbally express dissatisfaction to the head of district regarding a prohibition on growing beards. The individuals were charged with incitement to hatred and public calls for extremist activities and the violent overthrow of the constitutional system. The requests were found to implicate Article 2(1) of the Constitution as the subjects were sought for participating in an event aimed at criticizing authorities. The Notice requests were therefore denied.

Membership in a terrorist organization and related offences

Case 11: A Red Notice request was sent by an NCB concerning an individual wanted for "membership in a terrorist organization". However, according to the summary of facts, the subject in fact only participated in an unauthorized demonstration in favour of the said organization. According to the information provided, the subject did not cause any damage during the demonstration and was not wanted for any other ordinary-law crime. The Red Notice was denied as the right to take part in a peaceful assembly is protected by the freedom of assembly, even if the formalities for its realization were not fully performed in advance and if the message supported is unacceptable for authorities (as long as it does not amount to incitement to violence). Moreover, INTERPOL General Assembly Resolution AGN/53/RES/7 (1984) clearly states that "the expression of certain prohibited opinions", such as praising certain individuals or groups, is protected by the freedom of expression and therefore falls under Article 3 of INTERPOL's Constitution.

Case 12: A Red Notice was requested against an individual on charges of "being a member of armed terrorist organization", as he allegedly organized activities for university students to raise awareness about the terrorist organization and took them to celebrations of an ethnic festival, visited cemeteries with members of the terrorist organization and organized family visits to members in prison. It was decided that the case was not compliant on the basis of the absence of an active and meaningful link with the terrorist organization,[50] taking into account that the actions carried out by the individual were related to freedom of expression and assembly, in light also of the principle of non-discrimination and the importance of freedom of assembly for ethnic minorities.

Case 13: A Red Notice request was submitted for an individual wanted to serve a sentence, based on charges of making propaganda on behalf of the terrorist organization. The request indicated that a group of students including the individual marched in a university and chanted slogans, carried banners and sang songs supporting the terrorist organization, its members, and its leader and humiliating national security forces. There was no act of violence. This Notice request was found non-compliant with Articles 2 and 3 of INTERPOL's Constitution.

Case 14: A Red Notice was requested for an individual for membership in a terrorist organization. He took part in several demonstrations during which he shouted slogans supporting the terrorist organization, including an event to commemorate the leaders of the terrorist organization. It was found that his acts fell within the freedom of expression and assembly and therefore did not suffice to meet INTERPOL's requirements for publishing a Notice for membership in a terrorist organization. Consequently, this Notice request was found non-compliant.

Case 15: A Red Notice request was submitted for an individual under the charge of committing crimes in the name of an alleged terrorist organization without being a member of said organization. The individual led and directed a protest of the organization in the requesting country where protestors wore the organization's signature uniform and waved its flags. This protest disrupted traffic flow in the area in question, which created an inconvenience for other persons. However, since no violence was involved, and INTERPOL's requirements for publishing a Notice for membership in a terrorist organization were not met,

[50] See Chapter 3.6 on offences related to acts of terrorism or membership in a terrorist organization.

the activities were analysed under the individual's right to freedom of assembly, and the request was found to be non-compliant.

Case 16: A Red Notice request was submitted for an individual charged with being a member of a terrorist organization. Following a call from that organization's media, the individual alongside accomplices gathered to block traffic flow, burn tires, throw Molotov cocktails at a bank building and fire stones at security forces. Noting that the allegations regarding the participation of the individual in the violent acts described were general and vague, it was found that INTERPOL's requirements for publishing a Notice for membership in a terrorist organization were not met. Consequently, the request was deemed non-compliant in accordance with the individual's right to freedom of assembly and the fact that the information available did not show the involvement of the persons sought in – or their incitement to – violence.

Case 17: A Red Notice was requested regarding an individual wanted for prosecution on charges of being a member of a terrorist organization. The individual attended the birthday celebration of the founder of a terrorist organization, where he sang the march of the terrorist organization. No information was provided on any other acts that could demonstrate the individual's active and meaningful involvement in the terrorist organization's activities or in any violent action in the course of the gatherings the individual joined. Additionally, the individual had publicly expressed opinions that indicated his status as an activist and political opponent. The case was found non-compliant based on Article 3 and raised concerns in view of the rights to freedom of expression and assembly.

3.3.2 Offences concerning freedom of association

The question – May data be processed about an individual who is charged with offences relating to the right of freedom of association?

Background

1. Offences relating to the right of freedom of association need to be assessed in the light of Article 3 and in view of the possible application of international human rights standards in the context of Article 2 (1) of the Constitution (the "*spirit of the Universal Declaration of Human Rights*"). According to universally accepted human rights provisions, everyone shall have the right to freedom of association with others.[1] Freedom of association often intersects with other rights, especially freedom of expression and freedom of religion.[2] Importantly, freedom of association frequently overlaps with freedom of assembly. Both these freedoms protect the collective exercise of rights.[3]

2. The freedom of association permits people to formally join together to pursue common interests,[4] e.g. via political parties, non-governmental organizations, religious and cultural entities and trade unions.[5] This right is likely to be limited to groups that are formed for public purposes. Groups constituted for private interests will in principle be protected under other guarantees, such as the right to family and private life.[6]

3. Freedom of association is not an absolute right. It may be subject to restrictions "*prescribed by law*" and "*necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*".[7] Accordingly, banning a party that promotes racial supremacy, for example, would probably be a permissible limitation to freedom of association.[8] To be protected by this freedom, associations must hold a private-law

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1 See Article 20 of the UDHR, Article 22 of the ICCPR, Article 11 of the ECHR, Article 16 of the American Convention on Human Rights (ACHR), and Article 10 of the African Charter on Human and Peoples' Right (ACHPR).

2 See Chapter 3.2 on offences concerning freedom of expression and Chapter 3.11 on religious / racial elements.

3 See Chapter 3.3 on offences concerning freedom of assembly.

4 Freedom of association protects the organization of individuals in political parties as well as for pursuing other aims, e.g., protecting cultural or spiritual heritage, furthering various socio-economic objectives, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness. See ECtHR, *Gorzelik and Others Poland* [GC], 2004, para. 92; *Association Rhino and Others v. Switzerland*, 2011 para. 61. In a similar sense, see also ACommHPR, Guidelines on the Freedom of Association and Assembly, para. 25. See also UN General Assembly (UNGA) Resolution 15/21, preambular para. 8.

5 The International Covenant on Civil and Political Rights – cases, materials, and commentary (Joseph, S, J. Schultz and M. Castan, eds) (3rd edition, 2013) [hereinafter also referred to as ICCPR Commentary], 652.

6 Ibid.

7 Article 22(2) of the ICCPR. The list of permissible restrictions in Article 22(2) ICCPR mirrors those in Articles 12, 18, 19 and 21. The interpretation of such restrictions is identical. See, accordingly, Chapter 3.3 on offences concerning freedom of assembly in this Repository. See also Article 8(2) of the Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights (San Salvador Protocol).

8 See ICCPR Commentary, *supra* note 7, 652. See also HRC, *M.A. v. Italy*, Communication No. 117/1981 (21 September 1981), U.N. Doc. Supp. No. 40 (A/39/40) at 190 (1984), para. 13.3. The ECtHR noted that associations which engage in activities contrary to the values of the Convention cannot benefit from the protection of freedom of association by reason of Article 17 (prohibition of abuse of rights). See ECtHR, *Hizb ut-Tahrir and Others v. Germany* (dec.), 2012, paras. 73-74, concerning a ban on the activities of an

character.[9] Given the critical importance of political parties in a democratic society, States are held to stricter respect of the freedom of association in their respect than other associations.[10] The same is true for groups involved in human rights monitoring, reporting and promotion.[11] Freedom of association may be particularly important for minorities to maintain their identity and uphold their rights.[12] The right to strike is an important component of freedom of association.[13]

Islamist association for advocating the use of violence; *W.P. and Others v. Poland* (dec.), 2004, concerning the prohibition on forming an association whose memorandum of association had anti-Semitic connotations; *Ayoub and Others v. France*, 2020, concerning the dissolution of two extreme right-wing associations. See also *Zehra Foundation and Others v. Turkey*, 2018, paras. 55-56, in respect of the dissolution of an association whose activities were aimed at establishing a Sharia State. The Court has also found justified the dissolution of an association (i) linked with a terrorist organization (*Herri Batasuna and Batasuna v. Spain*, 2009); (ii) involved in anti-Roma rallies and paramilitary parading (*Vona v. Hungary*, 2013); (iii) engaged in repeated acts of violence related to football matches (*Les Authentiks and Supras Auteuil 91 v. France*, 2016); and (iv) with the characteristics of a private militia involved in violence and public-order disturbances (*Ayoub and Others v. France*, 2020).

9 Under the jurisprudence of the ECtHR, the following are elements that may assist in determining if an association holds private or public law character: whether it (i) was founded by individuals or by the legislature; (ii) remained integrated within the structures of the State; (iii) was invested with administrative, rule-making and disciplinary power; and (iv) pursued an aim which was in the general interest (ECtHR, *Mytilinaios and Kostakis v. Greece*, 2015, para. 35; *Herrmann v. Germany*, 2011, para. 76; *Slavic University in Bulgaria and Others v. Bulgaria* (dec.), 2004). As such, professional associations and employment-related bodies fall outside the scope of protection of freedom of association. See e.g. ECtHR, *Popov and Others v. Bulgaria* (dec.), 2003. The compulsory membership in such associations does not constitute an interference with the freedom of association.

10 See ECtHR, *Vona v. Hungary*, 2013, para. 58; *Les Authentiks and Supras Auteuil 91 v. France*, 2016, paras. 74 and 84. The Court noted that minorities' freedom of association must be protected even if it causes social tensions, ECtHR, *Ouranio Toxo and Others v. Greece*, 2005, para. 40. See also IACtHR, *Manuel Cepeda Vargas v. Colombia*, Judgement of 26 May 2010, paras. 172, 176-177. See also African Commission on Human and Peoples' Rights, *Lawyers for Human Rights v. Swaziland*, Communication 251/02, May 2005. The ACommHPR held that Swaziland's Proclamation of 1973, which abolished and prohibited the existence and formation of political organizations or parties, was inconsistent with Article 11 of the Charter on the right to assemble.

11 IACtHR, *Kawas-Fernández v. Honduras*, Judgement of 3 April 2009, para. 146. See also IACtHR, *Escher et al. v. Brazil*, Judgement of 6 July 2009, paras 188-180. The Court considered that there had been a violation of freedom of association based on the fact that the State surveyed the communications of the members of the association (without meeting the legal requirements to the effect) and made public declarations that created fear of individuals regarding the association and eventual participation thereto. See also ACommHPR, *Guidelines on Freedom of Association and Assembly*, paras. 27-28, and 58. See also HRC, General Comment No. 37, paras 34 and 101. Referring to NGOs dedicated to the protection, promotion and monitoring of human rights, the ECtHR ruled that "*the implementation of the principle of pluralism is impossible without an association being able to express freely its ideas and opinions, the Court has recognised that the protection of opinions and the freedom to express them* (…) *are objectives of freedom of association*", ECtHR, *Ecodefence and Others v. Russia* - 9988/13, 14338/14, 45973/14 et al., Judgment 14.6.2022 [Section III].

12 ECtHR, *Gorzelik and Others v. Poland* [GC], 2004, para. 93); *Zhdanov and Others v. Russia*, 2019, para. 163; *Tourkiki Enosi Xanthis and Others v. Greece*, 2008, para. 51. The African Commission on Human and Peoples' Rights held that any blanket restrictions on those who may form associations – e.g. based on age, nationality, sexual orientation and gender identity or other discriminatory categories – is inherently unlawful, ACommHPR, *Report of the African Commission on Human and Peoples' Rights Study Group on Freedom of Association* 2014, 31, para. 13. As noted by the Human Rights Council, the right to freedom of association "*is indispensable* (…) *particularly where individuals may espouse minority or dissenting religious or political beliefs*", Human Rights Council, Resolution 15/21, October 2010, 2. Similarly, "*Particular effort should be made to ensure equal and effective protection of the rights of groups or individuals who have historically experienced discrimination. This includes (...) members of ethnic and religious minorities*", Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary

4. Limitations to the ability to establish (and maintain) a legal entity to act collectively in pursuance of common aims should be reasonable and proportional. Procedural formalities may not be so burdensome as to amount to substantive limitations on this right.[14]

5. The right to freedom of association allows for "*lawful restrictions on members of the armed forces and of the police in their exercise of this right*".[15] Therefore, the State is allowed more flexibility in applying the freedom of association to the military, police and administration personnel.[16] Nonetheless, absolute bans on forming trade unions are, in principle, inconsistent with the freedom of association.[17]

6. Finally, the right to freedom of association also comprises the freedom *not* to join associations.[18]

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executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016. See also, HRC, General Comment 37, para. 28.

13 The HRC and the Committee on Economic, Social and Cultural Rights (CESCR) "*recall that the right to strike is the corollary to the effective exercise of the freedom to form and join trade unions*", CESCR and HRC, Joint Statement on freedom of association, including the right to form and join trade unions (E/C.12/66/5-CCPR/C/127/4), para. 4. See also, ECtHR, *Schmidt and Dahlström v. Sweden*, 1976, para. 36; *Wilson, National Union of Journalists and Others v. the United Kingdom*, 2002, para. 45; *Gorzelik and Others v. Poland* [GC], 2004, para. 91; *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, 2014, para. 78. The Court noted that strike action is, in principle, protected by freedom of assembly and association only insofar as it is called by trade union organizations and considered as being effectively – and not merely presumed to be – part of trade union activity (*Barış and Others v. Turkey* (dec.), 2021, para. 45). See also IACtHR, *Advisory Opinion OC-27/21 requested by the Inter-American Commission on Human Rights, Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and their Relation to Other Rights, with a Gender Perspective*, 2021.

14 See ICCPR Commentary, *supra* note 7, 652, and the case law discussed therein. In Boris Zvozskov et Al. v. Belarus (CCPR/C/88/D/1039/2001), the HRC considered that the requirement on registration for non-governmental organizations was in breach of Article 22 (para. 7.4). Similar findings were reached in Katsora et al v Belarus (CCPR/C/100/D/1383/2005) and Kungurov v Uzbekistan (CCPR/C/102/D/1478/2006). In the same sense, the ECtHR has found that the refusal by the domestic authorities to grant legal-entity status to an association of individuals amounts to an interference with the exercise of their right to freedom of association (ECtHR, *Sidiropoulos and Others v. Greece*, 1998, para. 31; *Koretskyy and Others v. Ukraine*, 2008, para. 39; *Özbek and Others v. Turkey*, 2009, para. 35). Onerous "registration procedures" for non-governmental organizations and trade unions, for instance, raise serious concerns vis-à-vis the freedom of association. ECtHR, *Ramazanova and Others v. Azerbaijan*, 2007, para. 60; *Aliyev and Others v. Azerbaijan*, 2008, para. 33. In *Taganrog LRO and Others v. Russia*, 2022, the ECtHR considered that the impermissibly broad definition of "*extremism activities*" in national law, coupled with a lack of judicial safeguards, did not provide a sufficiently foreseeable legal basis for the forced dissolution of Jehovah's Witnesses religious organizations (paras. 159 and 242).

15 Article 22(2) ICCPR; Article 16(3) ACHR. See also ECtHR, *Enerji Yapı-Yol Sen v. Turkey*, 2009, para. 32. According to the case law of the ECtHR, restrictions may be imposed on the right to strike of workers providing essential services to the population; yet, a complete ban requires solid reasons from the State justifying its necessity (ECtHR, *Ognevenko v. Russia*, 2018, paras. 72-73, *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.), 2002).

16 Accordingly, a prohibition on members of the police and armed forces joining political parties is not incompatible with freedom of association. See e.g., ECtHR, *Rekvényi v. Hungary* [GC], 1999, paras. 41 and 61; *Matelly v. France*, 2014, paras. 62 and 67; *Engel and Others v. the Netherlands*, 1976, para. 98.

17 See Article 22(2) of the ICCPR; ECtHR, *Tüm Haber Sen and Çınar v. Turkey*, 2006, paras, 36 and 40; *Demir and Baykara v. Turkey* [GC], 2008, para. 120; *Adefdromil v. France*, 2014, para. 60; *Matelly v. France*, 2014, para. 75. See also Article 9 of the Convention Nº 87 of the International Labour Organisation (ILO Co87) on Freedom of Association and Protection of the Right to Organise, of 17 June 1948 (158 ratifications); Article 8(2) and (3) of the Covenant on Economic, Social and Cultural Rights.

18 Article 20(2) of the UDHR; ICCPR Commentary *supra* note 7, 661. See also e.g., ECtHR, *Sigurður A. Sigurjónsson v. Iceland*, 1993, para. 35; *Vörður Ólafsson v. Iceland*, 2021, para. 45. See furthermore Article 10 (2) of the African Charter on Human and Peoples' Rights.

(i) Freedom of association and counter-terrorism

7. The "*restrict*[ion] *or prohibit*[ion] *of the formation or registration of associations*" as a consequence of the enforcement of counter-terrorism legislation has been one of the most frequent means of striking down freedom of association.[19] This has the potential to be especially damaging to the rights of minority groups. For instance, "[u]*nder the guise of fighting terrorism or extremism, associations comprised of minorities, including religious, linguistic or ethnic minorities, may be subjected to delays in registration, denial of registration, harassment and interference*".[20] Without prejudice to States' legitimate need to protect national security and public safety, there remains the concern that limitations may be used "*to silence critical or diverse voices* (...) *including through reliance upon criminal laws and penal sanctions*".[21] Against this background, the application of counter-terrorism legislation imposing stricter requirements on the creation and status of associations raises additional concerns in countries which have adopted very broad definitions of terrorism and related activities. This can have a chilling effect on lawful associations, limiting or even preventing the pursuit of their legitimate aims.[22] Hence, the State has the burden of demonstrating that any restrictions on freedom of association respect the legal criteria.[23] This exercise requires a balancing act between the interests of the affected individual(s) and the general public. Any limitation is to be based on fact rather than presumption or suspicion, e.g. that a group or an association's founding document specifies terrorist objectives or methods. Designations of organizations as "terrorist" must be subject to review by or appeal to an independent judicial body.[24]

8. The financing of terrorism, including through money laundering, is generally prohibited as a matter of international law.[25] Ensuring that associations pursuing legitimate objectives are not targeted by funding restrictions that impede their ability to pursue statutory activities is all the more important given that such limitations "*constitute an interference with* [the right to freedom of association]".[26]

9. The Special Rapporteur on human rights while countering terrorism has advocated that, where belonging to a terrorist organization is made a criminal offence (i.e. without the

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19 UNGA, HRC, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 2014, A/HRC/26/29, para. 59. See also UNGA Resolution 50/17 of 20 July 2022, in which the UNGA states to be "*Deeply concerned* (…) *that, in some instances, domestic legal and administrative provisions, such as national security and counter-terrorism legislation, and other measures, such as (...) registration or reporting requirements, or emergency measures* (…) *have sought to or have been misused to hinder the work and endanger the safety of civil society*", 2, (A/HRC/RES/50/17).

20 *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, supra* note 19.

21 *Ibidem*, paras. 59-60.

22 UNGA, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, 2006, A/61/267, paras. 23-24 and 27. See also UNGA Resolution A/RES/61/171, in which the UNGA "*takes note with appreciation*" of the afore-mentioned report.

23 See *supra*, note 7.

24 *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, supra* note 22, para. 26, stating that an organization should not be described as "*terrorist*" unless such legal safeguards are present. On membership in a terrorist organization, see Chapter 3.6 on offences related to acts of terrorism or membership in a terrorist organization.

25 For instance, the funding of terrorist organizations is prohibited by various UN Security Council (UNSC) Resolutions. See e.g., UNSC Resolution 1373 (2001), and UNSC Resolution 2170 (2014).

26 UNGA, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 2013, A/HRC/23/39, para. 16.

prosecution having to prove participation in a terrorist act), the following safeguards should apply: (i) the determination that the organization is "terrorist" is made based on factual evidence of its activities; and (ii) the determination that the organization is "terrorist" is made by an independent judicial body; and (iii) the term "terrorist" or "terrorism" is clearly defined.[27] This will not absolve an individual from his or her own criminal responsibility for the preparation of terrorist acts. Organizations should not be considered terrorist for pursuing unpopular causes (including those opposing State policies) – for example, self-determination for a minority group – if the support is peaceful and lawful. It is only when an association supports or calls for the use of serious violence that it can be characterized as a terrorist group, and its rights or existence can be limited.[28]

Current practice

10. INTERPOL examines the facts of the particular request for police cooperation to determine the predominant nature of the case, taking into account the principles above including the right of freedom of association and its lawful restrictions. Notably, this is reflected in the practice of the INTERPOL General Assembly, which has determined that offences concerning membership of a prohibited organization fall, by their very nature, within the scope of Article 3 (See General Assembly Resolution AGN/53/RES/7). Nonetheless, where the case concerns membership in a terrorist organization, processing of data via INTERPOL's channels may take place subject to certain conditions.[29]

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[27] See *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, *supra* note 22, paragraph 26. For relevant case law, see *supra* notes 8 and 13.

[28] The HRC held that the reference to "*democratic society*" under Article 22(2) protects the existence and functioning of a plurality of associations, including those that promote – peacefully – ideas not favourably received by the government or the majority of the population (*Jeon-eun Lee v. Republic of Korea* (CCPR/C/84/D/119/2002, para. 7.2). See also, Human Rights Council, Resolution 15/21, preambular para. 9; Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions, on the proper management of assemblies (A/HRC/31/66), para 33; HRC, General Comment 37, para. 7. See also HRC, General Comment 34, para. 11, according to which freedom of expression encompasses ideas that may be "*deeply offensive"*, though subject to the restrictions established per Articles 19 (3) and 20. As noted by the CESCR and the HRC, "*The exercise of* [freedom of association is] *both* (..) *closely linked to freedoms of opinion and expression and the right of peaceful assembly, protected respectively under articles 19 and 21 of the ICCPR*", CESCR and HRC, Joint Statement on Freedom of association, including the right to form and join trade unions, para. 2. See also, OSCE, *Countering Terrorism, Protecting Human Rights: A Manual*, 2007, 248 *et seq.* The ECtHR has ruled that a political party may campaign for a change in the law or the legal and constitutional basis of the State on two conditions: (1) the means used to that end must in every respect be legal and democratic; (2) the change proposed must itself be compatible with fundamental democratic principles, ECtHR, *Case of Refah Partisi (The Welfare Party) and Others v. Turkey*, Judgement of 31 July 2001, para. 47. See, furthermore ACommHPR, Guidelines on the Freedom of Association and Assembly, para. 28: "*The right to freedom of association protects, inter alia, expression; criticism of state action; advancement of the rights of discriminated-against, marginalized and socially vulnerable communities* (…); *and all other conduct permissible in the light of regional and international human rights law*".

[29] See Chapter 3.6 on offences related to acts of terrorism or membership in a terrorist organization.

Examples

Non-compliant cases

Case 1: Red Notice requests were submitted by an NCB for foreign individuals on charges of: (i) establishing and managing NGOs without the required license under domestic law, and (ii) receiving foreign funding, again without being authorized to do so by the competent domestic authorities. The General Secretariat denied publication, since the above-mentioned offences do not have the typical features of ordinary-law crimes, but rather amount to violations of an administrative nature. Additionally, the alleged charges were akin to "membership of a prohibited organization", considered by INTERPOL as a pure political offence (see General Assembly Resolution AGN/53/RES/7). Furthermore, publication was denied also in view of a number of aspects that triggered the application of Article 3 of the Constitution, namely allegations that the acts committed by the wanted persons were a threat to the sovereignty of the State, and the dispute that may have arisen between the requesting country and other countries that protested against the processing of the data. Importantly, the decision to not publish the Notices was also based on concerns vis-à-vis Article 2(1) of the Constitution and the right to freedom of association. Specifically, the individuals were wanted for establishing and managing NGOs that were pursuing clear public interests such as "researches, studies, workshops and political training programs" in the requesting country. The administrative registration procedures were highly onerous, which per se raises significant concerns vis-à-vis the right to freedom of association.

Case 2: The individual was sought for involvement with two entities whose activities were criminalized by the authorities of the country source of data. The request indicated that the subject was sought for prosecution on charges of "financing activity of an extremist formation", namely of the two allegedly extremist entities. However, no information was provided to demonstrate any specific acts of terrorism/extremism allegedly carried out by those entities. In addition, the purpose of those groups seemed to be providing financial aid to victims of repression in the country source of data. This Notice request was found non-compliant with Articles 2 and 3 of INTERPOL's Constitution.

Case 3: A Wanted Person Diffusion was circulated regarding an individual charged with "Organizing the Activity of an Extremist Community, Organizing the activity of religious association" for sharing the ideas of a religious organization in country A and organizing member meetings, sharing extremist literature and collecting money to finance the activities of the organization in a city in country A. The religious association had been recognized as extremist and banned in country A three years prior. The Diffusion was denied based on the exclusion of offences of a religious character (Article 3) and on concerns regarding freedom of association (Article 2).

Compliant cases

See Chapter 3.6 on offences related to acts of terrorism or membership in a terrorist organization.

3.4 Offences against the security of the State

The question – May data be processed about a person wanted for offences committed against the security of the State?

Background

1. Offences committed against the internal or external security of the State, such as the offences of treason, sedition, and espionage, have traditionally been viewed as pure political offences under extradition law.[1] INTERPOL has therefore consistently considered that such crimes fall within the scope of Article 3 of the Constitution.[2]

Current practice

2. As a general rule, and in accordance with INTERPOL's practice, data relating to cases of offence against the security of the State may not be processed via the Organization's channels. Nonetheless, analysis on a case-by-case basis is required to ascertain that the facts of the case are purely political in nature.

3. INTERPOL's practice shows that, while in a requesting country an offence may be defined as "espionage" or an "act against the security of the State", the facts of the particular case may include aspects of ordinary-law crime – such as violence against persons or property – which may lead to a conclusion that the case is of a predominantly ordinary-law nature in the context of Article 3.

Examples

Pure political offence: treason/espionage/disclosure of government secrets

Case 1: A Diffusion was issued by an NCB, seeking the arrest of the individual for "treason in a particularly aggravated case". The individual worked in the department of counterespionage and eventually became the head of the group handling the country's intelligence services. He was suspected of disclosing information regarded as State secrets, which should have been kept secret to avoid the risk of causing severe damage "to the external security of the country". It was decided not to record the data in INTERPOL's databases since the crime was considered a pure political offence.

Case 2: A Diffusion was issued by an NCB, seeking the arrest of a national of another country, for "high treason". By using publicly accessible websites, he "fomented agitation within the country", which included urging his country's government to invade the country. It was concluded that the case was purely political within the meaning of Article 3, considering the nature of the offence, and that the relevant penal provision and facts indicated that the crime was committed against the security of the country and did not involve harm to individuals or property. This conclusion was further supported by the protest submitted by the individual's country of nationality (arguing that the case was political), and by open-source

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1 See M. Cherif Bassiouni, International Extradition: United States Law and Practice (fifth edition), p. 660.
2 Resolution AGN/53/RES/7 (1984); Resolution AGN/63/RES/9 (1994).

reports, according to which international organizations of a political nature were paying special attention to the case. It was therefore decided not to register the data.

Case 3: A Diffusion was issued by an NCB, seeking the arrest of an individual for "disclosure of government secrets". As a member of a military unit in the country, he took keys used for encrypting and decrypting messages and tried to sell them for money to foreign entities. It was determined that the case was of a purely political nature within the meaning of Article 3. The fact that the individual requested a monetary reward did not affect the political nature of the case, since crimes such as treason and espionage are often conducted for pecuniary gain. Accordingly, the data were not registered.

Case 4: A Red Notice request was sent by an NCB. The individual was alleged to have engaged in espionage. As a former high-ranking official, he disclosed classified information on subjects likely to affect the security and foreign relations of the country. He then fled the country using a false passport provided by an official of another country. It was concluded that the case was of a purely political nature and thus fell within the scope of Article 3. Accordingly, the Red Notice was not published.

Case 5: A Red Notice request was sent by an NCB. The individual was charged with espionage. According to the facts, the individual – a national of another country – was alleged to have revealed State secrets concerning the requesting country, as well as confidential information about international organizations affiliated with that country. It was concluded that the charge and facts provided were of a purely political nature. The case therefore fell under Article 3 and the Red Notice was not published.

Case 6: Red Notice requests were sent by an NCB for a group of individuals on charges of terrorism and armed uprising against the security and sovereignty of the State. The subjects were accused of being part of a regional secessionist group striving for the independence of a specific region of the State. The NCB provided data on the case, from which it arose that there was a lack of evidence connecting the individuals to an alleged bomb attack. Conversely, the data provided showed the individuals' involvement in the political separatist activities of the secessionist movement. It was therefore concluded that the case was akin to an attempt of unconstitutional seizure of power, or an attempted attack against the security of the State, rather than terrorism. Hence, the Red Notices requested were not published.

3.5 Offences committed in the context of an unconstitutional seizure of power and/or situations of social/civil/political unrest *(updated: November 2024)*

The question – May data concerning offences committed in the context of an unconstitutional seizure of power and/or situations of social/civil/political unrest be processed?

Background

1. Unconstitutional seizures of power (such as a coup d'état) encompass any change of power within a country that does not happen according to the procedures foreseen by the fundamental laws of that country.[1] By nature, they involve a power struggle within the country. Their context is highly politically charged and may involve military action.

2. A successful unconstitutional seizure of power may lead to certain measures being taken against the country concerned and against the de facto government that resulted from the seizure, and may also lead to criminal proceedings in the country against individuals who were part of or linked to the previous government. Inversely, a failed unconstitutional seizure of power may lead to criminal proceedings against those allegedly involved in the attempt to seize power.

3. Situations of social, civil and/or political unrest (which include disorder and other similar situations) in countries occur in relation to tension or dissatisfaction over political, economic or social changes/conditions, and may take the form of violent or non-violent collective action, including riots, protests and demonstrations. They may lead to criminal proceedings against the individuals allegedly involved in them.

4. In the context of processing data through INTERPOL channels, the Organization's involvement in cases related to the unconstitutional seizure of power and/or social/civil/political unrest poses challenges vis-à-vis compliance with Article 3 of the Constitution.[2] First, the crimes allegedly committed in such situations necessarily include political (and possibly also military) elements and often relate to offences against the internal and external security of the State;[3] second, the Organization's channels might be inappropriately used to persecute individuals (e.g. the ousted president of the country); and,

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1 See, e.g., Article 25(5) of the African Charter on Democracy, Elections and Governance: "Perpetrators of unconstitutional change of government may also be tried before the competent court of the Union". Article 23 of that Charter defines an "unconstitutional change of government" as follows:
1. Any putsch or coup d'état against a democratically elected government.
2. Any intervention by mercenaries to replace a democratically elected government.
3. Any replacement of a democratically elected government by armed dissidents or rebels.
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or
5. Any amendment or revisions of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

2 Note that situations of unconstitutional seizure of power present a number of difficulties outside the scope of Article 3, for example which government should be deemed to represent the member country at INTERPOL. This chapter, however, will focus only on the aspects concerning the application of Article 3 to such situations in the context of the processing of data.

3 See Resolution AGN/53/RES/7 (1984). See also chapter 3.4 on offences against the security of the State in this Repository.

third, the processing of data might lead to an undesired involvement of the Organization in the domestic politics of the country concerned or its relationship with other countries. This may create neutrality concerns for the Organization.

5. Additionally, concerns may arise in relation to human rights and compliance with Article 2 of the Constitution. Participation in collective action such as protests and demonstrations may be protected under the human rights to freedom of opinion and expression, and to freedom of peaceful assembly and association.[4]

Current practice

6. In light of the above, the Organization's practice may be separated into two general scenarios:

Scenario A: Requests directly related to the unconstitutional seizure of power (be it successful or failed) and/or social/civil/political unrest. In the context of an unconstitutional seizure of power, the requests may be made by the new de facto government, or the original government in case of a failed attempt. In the context of social/civil/political unrest, the request may relate to acts committed by an individual in a riot, protest or demonstration.

Scenario B: Requests related to offences committed without a direct link to the situation of unconstitutional seizure of power (whether successful or failed) and/or social/civil/political unrest, where the acts are unrelated to the political context and are of ordinary-law nature (e.g. an individual kills his neighbour or spouse for personal reasons, or individuals infiltrate riots to rob banks for their own gain).

7. For Scenario A, in light of the risks to the Organization and the compliance issues mentioned above, requests that are directly related to the unconstitutional seizure of power and/or unrest will generally be found non-compliant with Article 3 of the Constitution. However, there may be exceptions. For example, requests may be found compliant if the elements of ordinary-law crime are predominant, or, in line with extradition law, if the crime committed in the context of a coup or unrest involves an attempt on the life of the head of state.[5]

8. For Scenario B, if the review identifies that the elements of ordinary-law crime are predominant, it may be possible to comply the request. A key element to assess is the potential link between the request and the situation in the country. For example, a request issued shortly after a miliary coup for the head of state who fled the country must be carefully assessed to ensure that the request is not primarily driven by political motivation linked to the coup. Requests related to ordinary-law crimes that occur during the unconstitutional seizure of power or unrest but are unrelated to that situation are more likely to be found compliant. This may also include requests that are partially linked to the unconstitutional seizure of power and/or unrest, using it as cover for committing ordinary-law crimes.

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4 See Chapter 3.2 on offences concerning freedom of expression, Chapter 3.3 on offences concerning freedom of assembly and Chapter 3.8 on offences concerning freedom of association.

5 According to a well-established principle of extradition law (known as the "Belgian Clause" or "*clause d'attentat*"), a murder or attempt on the life of the head of a state or a member of his/her family shall not be considered a political offence and may therefore lead to extradition.

Examples

Scenario A:

Non-Compliant Cases

Case 1: An NCB sent a Diffusion and Red Notice request for its former president who had been ousted from power in a military coup. The request was sent immediately following the coup and was based on allegations of misuse of authority, usurpation of public functions, offences against the system of government and treason. The General Secretariat concluded that: (1) "crimes against the system of government" concerned the constitutional order of the country were directly related to his position and affected only the public interest, and were thus official acts of the president; (2) treason is a pure political offence under INTERPOL's rules and international extradition law; and (3) the general context of the case, including the civil unrest in the country as a result of the coup and the inherent political element by virtue of the involvement of the international community (e.g. the UN), could jeopardize INTERPOL's independence and neutrality. The Red Notice was not published, and the data were not recorded.

Case 2: An NCB sent the General Secretariat a request for assistance, requesting information about six individuals who were alleged to have been involved in a plot to commit a coup d'état, as well as information concerning the event itself. It was concluded that, as the alleged facts centred on a planned coup d'état and as the individuals in question were considered by the NCB to be acting in preparation for a coup d'état, it followed that the case was of a clearly political nature. Accordingly, it was concluded that the request fell within Article 3 of the Constitution, and the requested assistance was refused.

Case 3: Red Notice requests were received in relation to individuals for being "involved in destruction toward the security and stability of this State". The cases appeared to be related to an attempted coup d'état. Additional similar requests were later made. It was determined that the facts pointed to an attempted coup d'état without any clear allegations relating to acts directed against the life or freedom of individuals or against property, and that the individuals sought were considered by the NCB to have participated in the preparation of a coup d'état. It was therefore concluded that the alleged offence was of a political nature and that the request for cooperation was incompatible with Article 3 of the Constitution.

Case 4: An NCB issued Diffusions concerning individuals who were alleged to have committed offences against the constitutional order and the existence of the State in question, by attacking the national parliament. It was confirmed that the Diffusions concerned an attempted coup d'état. It was determined that the alleged facts did not set forth any allegations against the life or freedom of individuals or against property, and instead concerned only an attack against the constitutional order of the State. On this basis, it was concluded that the Diffusions concerned an attack of a political nature, and that as such, the case fell under Article 3 of the Constitution.

Case 5: An NCB circulated a Diffusion concerning an individual alleged to have concealed information about a conspiracy to commit a coup d'état. The subject was wanted for "involvement in overthrowing the constitutional formation" and was alleged to have committed the offence by knowing about, actively hiding and failing to inform law

enforcement about an overthrow of the constitutional formation. It was concluded that the facts provided by the NCB, and the arrest warrant relating thereto, did not refer to allegations concerning offences against the life or freedom of individuals or against property, and hence there was no indication that the subject was being accused of an ordinary-law crime. The offence was therefore purely political, and the Diffusion was considered to be in violation of Article 3 of the Constitution.

Case 6: An NCB submitted Red Notice requests for individuals who were sought to be prosecuted for their involvement in various offences, including an assassination attempt on the then town mayor. The individuals were said to be involved in an unregistered religious group purporting to promote patriotic guidance, cultural and educational development and support to ill and socially vulnerable persons. However, the requests described the group as an organized terrorist one, aiming to overthrow the government by force. The individuals were alleged to have assisted the individual who carried out the assassination attempt of the mayor, including by organizing combat training for the said individual in another country. The authorities publicly indicated that the assassination attempt, with the protests that followed, were part of an attempted coup d'état. Two of the individuals were associated with a group that might be targeted by the government for political reasons. Human rights organizations had recognized the leader of the group in question as a political prisoner and his name had been included on a list of political prisoners of an international organization. NGO reports noted unfair trials of individuals linked to the group, who, during their trials, complained of torture. Therefore, despite the serious ordinary-law crime elements, it was concluded that the requests were of a predominately political nature. The Red Notice requests were therefore denied.

Case 7: An NCB circulated Wanted Person Diffusions for individuals wanted for prosecution for "changing the State of law, attack against the Head of State, aggravated homicide and homicide". Summaries of facts allege that a group of soldiers and police attacked the government palace where the Council of Ministers, chaired by the President of the Republic, met. The assailants aimed to assassinate the President of the Republic, the prime minister and all members of the government. The individuals were linked to the former general of the army, who was dismissed from his duties after being involved in a drug trafficking case and arrested in country B. The alleged events occurred against the backdrop of chronic governmental instability. The General Secretariat took into consideration that the offence of "changing the State of law" is considered as an offence committed against the security of the State, the fact that the NCB did not provide any information on the individual's involvement in the other alleged charges of aggravated homicide and homicide, and the general context of the case, specifically the unstable political and military situation in the country, and determined that the case fell within the ambit of Article 3 of the Constitution.

Case 8: An NCB submitted Red Notice requests against former high officials of the country affiliated with the political party X. They were sought for "Attack against the Head of State; Attack against the State's Authority, the Integrity of the State, the Integrity of the territory and Attempt leading to massacre, devastation, and robbery". They allegedly were the primary instigators and organizers of the failed military coup in the country, which resulted in the assassination of the president. This allegedly triggered a genocide and an investigation by the International Criminal Court. The country's current president, from the political party Y, had led the country for an extended period and was sworn in for a controversial third term. Although the individuals were sought to be prosecuted for some offences considered serious ordinary-law offences, they were also sought for offences against the security of the State that

fell within the ambit of Article 3 of the Constitution. Other elements that supported this conclusion were: the status of the persons concerned (former president and high officials from an opposition party); the general context of the case (offences committed in the context of a coup d'état, current reports of arrests/assassinations of political opponents, context of tensions between the regional organization and the country arising from the case); the position of the regional organization favouring a consensual solution and the implications for the neutrality and credibility of the Organization. The Red Notice requests were therefore denied.

Case 9: Within days after a failed coup d'état, an NCB uploaded many thousands of revoked passports into INTERPOL's SLTD database.[6] In light of the concerns that this unusual upload could be linked to the failed coup, the documents were removed from the database as a preventative measure under Article 3 of the Constitution.

Case 10: A Diffusion was issued concerning several individuals based on charges of murder and armed rebellion. Some of the subjects of the Diffusion were militants, but the list also included the former head of the de facto government that seized power following the coup d'état. It was concluded, particularly in light of the fact that those accused included a former head of state, that the case was a priori political and military and, as such, fell under Article 3 of the Constitution.

Case 11: An NCB circulated a Diffusion concerning an individual who was wanted for "illegal capture of power by means of armed attack", which appeared to be equivalent to a coup d'état. The statement of facts also indicated that the then prime minister of the country was involved in the incident, and that he had "forged statements and statuses", but his involvement was not further clarified. The arrest warrant, however, referred to "creation of illegal armed formation or groups" and "illegal making, forging, sale, acquisition or use of official documents, stamps, seals, and blanks". It was concluded that, as the NCB did not allege facts that showed an offence against individuals or property, and since the primary allegation was "illegal capture of power by means of armed attack", the case was considered predominantly political. The Diffusion was therefore not recorded.

Case 12: An NCB sent a message to the General Secretariat regarding a person alleged to have taken "an active part in attempted coup d'état", in another country and enquiring as to "whether he is sought by INTERPOL". It was concluded that, because the facts focused exclusively on a coup d'état, the request fell squarely under Article 3 of the Constitution as political.

Case 13: An NCB submitted a Red Notice request concerning an individual, sought to be prosecuted for terrorism, aggravated theft, embezzlement and criminal association. The individual was a police officer suspected to have piloted the police helicopter that launched grenades and gunfire at two government buildings (no casualties), which had been perceived as an attempt to set off a revolt against the president. In addition to the Red Notice, the NCB also sought 11 Blue Notices against individuals alleged to have assisted the individual subject to the Red Notice and facilitated the attack on the government institutions. The incident occurred against the backdrop of months of anti-government protests, a failing economy and shortages of food and medicines. The protests triggered thousands of arrests and alleged human rights violations such as torture of protestors by the security forces. Taking into

[6] INTERPOL's SLTD database contains information on travel and identity documents that have been reported as stolen, stolen blank, revoked, invalid or lost.

consideration the general context of the case and the implications for the neutrality of the Organization, the political aspects surrounding the request were found to be predominant in this matter. The Red Notice request was therefore denied.

Case 14: An NCB submitted a Red Notice request concerning an individual, wanted for prosecution on charges of "Overthrow of the constitutional order" for having, in his capacity as the defence minister, allegedly given illegal orders to the armed forces to disperse demonstrators during mass protests in the wake of the presidential election, which resulted in 100 injuries, 10 deaths and material damage to the State. The individual was said to have strong ties to the outgoing president/prime minister and his political party. The former president was placed under de facto house arrest. The new president, with the approval of the parliament, declared a state of emergency, banning future demonstrations and censoring the media from broadcasting any political news except that contained in official State press releases. Considering the context of the case, taking into account the predominance principle and neutrality and reputational concerns, the request was considered to be predominantly political within the meaning of Article 3 of the Constitution and denied.

Case 15: An NCB circulated a Wanted Person Diffusion concerning a well-known opponent and critic of the president of the country. The individual was sought for prosecution for "assistance to terrorist activity, organization of a terrorist community and participation in its activity" for allegedly having coordinated an arson attempt against State buildings in the country. The founder of the political movement to which the individual belonged stated that a revolution would occur in the country on a given date. Shortly before the date of the planned revolution, the movement was banned and many of its members were jailed before, during and after street protests that spread out in the country. The criminal proceedings against members of the movement were perceived to be politically motivated among the opposition, political experts and international media. In view of the above, it was concluded that the request fell within the ambit of Article 3 of INTERPOL's Constitution.

Case 16: An NCB requested a Red Notice for an individual wanted for prosecution on charges of membership in a terrorist organization and related activities. The summary of facts alleged that the individual was a political activist who, since the beginning of the protest movement in the country, had incited violence by publishing statements and articles on social media calling to bear arms in order to establish a balance between the people and the State. The individual was the deputy leader and founder of an opposition party. As unprecedented large-scale protests began in the country, the political party called upon its supporters to join demonstrations against the regime. These protests were peaceful and led the military to insist on the former president's immediate resignation, which followed. The government, meanwhile, had been increasing the pressure on the protesters by ramping up the police presence at marches, arresting dozens of demonstrators and also detaining prominent opposition figures. Even though some of the charges could be seen as serious ordinary-law crimes, considering the status of the individual, namely a political activist who actively participated in the activities of the opposition party and called for reforms in the country, as well as the context of the unrest in the country, it was concluded that the case fell within the ambit of Article 3 of the Constitution.

Compliant Cases

Case 17: An NCB submitted a Red Notice request for an individual sought for the attempted assassination of the president of the country and other crimes committed in the context of a failed coup d'état in the country. Whereas Notices requested for other individuals sought in the context of this failed coup were declined, in this case and as an exception to the general approach to data-processing requests related to coup attempts, it was decided to publish the requested Notice. This decision was based on the application of the principle of extradition law known as the "Belgian Clause" or "*clause d'attentat*", according to which the attempt on the life of the head of state would not be considered a political offence. The decision to publish followed the practice developed for previous similar requests from other countries, where in application of the "Belgian Clause", Red Notices were published for individuals sought for the assassination or attempted assassination of heads of state.

Case 18: An NCB submitted a Red Notice request for an individual sought for "attempted murder" and "causing grievous bodily harm with intent" for having thrown flammable liquid on and set fire to a person, who suffered serious injuries. The attack occurred during a heated political argument in a demonstration against a proposed new law. The protests had led to a surge in arrests of protesters, detention and charges including unlawful assembly, rioting, police obstruction and police assault. Despite the context of unrest and the status of the wanted person as a protester, it was found that the infliction of such injury to a private citizen was disproportionate to the individual's political aims, and therefore the seriousness of the crime outweighed the other elements. As a result, the request was found compliant, and the Red Notice was published.

Scenario B:

Case 19: An NCB submitted Red Notice requests for individuals sought for prosecution on charges of "Participation in the mass disorders, organization of mass disorders, accompanied by force, demolition, arsons, destructions, destruction of property, use of firearms, explosive substances or explosive devices, as well as offering armed resistance to the representative of authority" and "illegal imprisonment resulting in the death of an injured person by negligence or other grievous consequences". It was alleged that they had raided a business centre and held 24 civilians as hostages, of whom one died. The requests were related to the mass protests in the country after an increase in gas prices, where protestors stormed government buildings. Hundreds had been injured and some were killed during the clashes. The president of the country declared a state of emergency and dismissed the government. Notwithstanding the political elements, additional information on the case provided by the NCB demonstrated the involvement of the individuals in taking hostages and the death of the victim. The additional information not only demonstrated the individuals' involvement in the events that led to the death of the hostage, but it also clarified that the individuals were reasonably believed to be part of a widely known and confirmed criminal group, leading to the conclusion that the criminal acts were not motivated by political concerns but were ordinary-law crimes. It was therefore concluded that the requests were compliant with INTERPOL's rules.

Case 20: The NCB of State A sent a request to the NCB of State B for mutual legal assistance, copying the General Secretariat. The request concerned a person who had been interrogated in State A in relation to allegations of an attempted coup d'état against the president of State C five years earlier. In analysing the request, it was noted that the judicial authorities in State A, which had jurisdiction as a result of the subject's nationality, had reviewed the facts and categorized them as ordinary-law crimes. Moreover, the elements of the request for assistance in question supported the criminal intent in the allegations against the subject. Based on these facts, it was concluded that the ordinary-law element was predominant and that the use of INTERPOL's channels for this request for mutual legal assistance did not fall under Article 3 of the Constitution and was therefore permissible.

3.6 Offences related to acts of terrorism or membership in a terrorist organization *(updated: November 2024)*

The question – May data be processed about a person on the basis of offences related to acts of terrorism or charges of membership in a terrorist organization?

Background

1. In the past, requests related to terrorism were considered to fall under Article 3 of the Constitution due to the political motivations of the perpetrators and the absence of a universal definition of "terrorism". However, in 1984, INTERPOL's General Assembly invited NCBs, while respecting Article 3 of the Constitution, to co-operate to combat terrorism to the extent allowed by their national laws.[1] Another Resolution adopted the same year specified that the political motives of the perpetrators would not necessarily mean that Article 3 of the Constitution was violated, particularly when the offences constituted a serious threat to personal freedom, life or property.[2] In the aftermath of the terrorist attacks of 11 September 2001, the General Assembly further expanded the scope of cooperation through INTERPOL's channels by allowing data processing based on charges of membership in a terrorist organization.[3]

2. The terms "terrorist" and "terrorism" still lack a universal legal definition and concerns have been raised (including by United Nations human rights mechanisms) that they have sometimes been applied improperly to certain acts and organizations, for political purposes. In accordance with international law, reference may therefore be made to the various international counterterrorism conventions, United Nations Security Council resolutions and jurisprudence of international tribunals on the matter, which, collectively, can provide guidance in addressing requests related to terrorist activity.

Current practice

3. Requests related to terrorism are analysed under this chapter where they fall under the following categories: (i) cases concerning terrorist acts; (ii) cases involving charges of membership in a terrorist or extremist organization; and (iii) cases concerning acts committed by individuals allegedly having links to a terrorist or extremist organization, or a banned group.[4]

Implication of Freedom of Expression, Association, Assembly, and Religion

4. Frequently, cases considered under the present chapter implicate the rights to freedom of expression, association, assembly and religion. For instance, cases on terrorist propaganda hinge on statements or slogans made by the accused, implicating their right to freedom of expression. Similarly, membership in a forbidden organization and/or participation in meetings, gatherings or celebrations/events as evidence of terrorist activity might raise

1 AGN/53/RES/6 (1984).
2 AGN/53/RES/7 (1984).
3 AG-2004-RES-18 (2004).
4 While this chapter focuses on terrorist organizations, it may also apply to other types of organizations in which the country source of data has criminalized membership, regardless of whether they are designated as, e.g., "terrorist", "extremist" or "criminal".

concerns about the rights to freedom of association, assembly and/or religion. The compliance issues relating to speech, association, assembly and religion are discussed in other chapters.[5] Accordingly, when reviewing data concerning alleged terrorist activity, which may include elements of expression, association, assembly and religion, the case should be compliant under both the chapter on terrorism and the chapter(s) related to expression, association, assembly or religion. From a compliance perspective, an individual's speech or acts protected by the freedom of expression, association, assembly or religion cannot, on their own, constitute terrorist acts or establish a link between the individual and the terrorist organization. There must be other, concrete acts undertaken by the individual that could be considered terrorist acts or establish a link between the individual and the terrorist organization.

Terrorist Acts

5. Requests under this chapter relating to acts of terrorism (such as acts and/or offences within the scope of, and as defined in, international conventions and protocols relating to terrorism) may be found compliant with Article 3 of the Constitution based on the predominance test. This includes acts such as the hijacking of aircraft;[6] offences or other acts jeopardizing safety on board aircraft;[7] the taking of hostages;[8] seizing control over a ship or destroying a ship;[9] and carrying out bombings.[10]

6. This is not an exhaustive list. Rather, each case is assessed on its own facts to ascertain whether the acts, as alleged, are terrorist acts or offences relevant to this chapter.

Terrorist Organizations

7. Where the charges relate to membership in a terrorist organization or commission of acts by individuals allegedly having links to terrorist organizations, there are two elements to be satisfied: (i) the organization must be terrorist in nature; and (ii) there must be an active and meaningful link between the individual and the organization.

8. ***Terrorist nature of the organization:*** This element requires that the organization be considered terrorist based on international agreement.

9. The General Secretariat may require information from the source on specific terrorist acts carried out by the terrorist organization and/or in relation to the basis for categorization of a specific group as a branch, related entity or part of an internationally recognized terrorist organization.[11] There must have been some identified instances of violent terrorist acts

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5 See Chapter 3.2 on offences concerning freedom of expression, Chapter 3.3 on offences concerning freedom of assembly, Chapter 3.8 on offences concerning freedom of association, and Chapter 3.11 on religious / racial elements.

6 The 1970 Hague Hijacking Convention (Convention for the suppression of unlawful seizure of aircraft) and amending protocol (2010).

7 The 1963 Tokyo Convention (Convention on offences and certain other acts committed on board aircraft).

8 The 1979 Convention against the Taking of Hostages.

9 The 1988 Convention for the suppression of unlawful acts against the safety of maritime navigation and its amending protocol (2005).

10 The 1997 Convention for the Suppression of Terrorist Bombings.

11 A decision made by the General Secretariat that this requirement was met for compliance purposes in a specific case may not be considered as a legal determination by INTERPOL that a given organization is

claimed by such an organization itself or any known instances of relevant international organizations officially attributing a terrorist act to such an organization. No separate proof would be required if the particular group were included in a list issued by a recognized international entity such as the United Nations.[12] Listing as terrorist by a regional or sub-regional organization may be taken into consideration together with other available information.

10. ***Active and meaningful involvement in the terrorist organization:*** The source is required to provide evidence to demonstrate that the individual's involvement exceeds a mere general support of the political goals of the terrorist organization. Mere mention or ambiguous allegations of activities undertaken by an individual would not suffice to demonstrate the active and meaningful link. Rather, specific information must be provided on concrete acts that were taken or crimes that were committed by the individual on behalf of the terrorist organization.

11. As regards the commission of violent acts by groups of persons, the facts should specifically describe the role of the wanted person in the violent acts, such as a clear description of the individual taking preparatory steps, going to the scene of the crime, and committing the violent act. There must be sufficient information provided to demonstrate that the individual in question engaged in those violent acts himself or herself. Mere participation in a protest or an event where violent acts were committed by other or unspecified individuals would not suffice. Every request is examined to assess whether the request refers to an individual participating in a protest and, therefore, exercising his or her right to freedom of expression and/or assembly, or an individual committing violent acts in the context of the protest.

Different scenarios based on the degree of recognition of the terrorist nature of the organization

12. It is not necessary that both the elements of the terrorist nature of the organization and of an active and meaningful link must be met to the same, or equivalent, extent. Instead, it is possible to distinguish between the following scenarios:

- **Scenario A**: Where there is universal recognition of the terrorist nature of an organization (e.g. Daesh/ISIS),[13] the threshold to establish an active and meaningful link with the organization is the lowest – this may even be met by activities such as travelling to join the organization (for instance, requests in relation to foreign terrorist fighters are generally considered compliant).

- **Scenario B**: Where some countries/regions recognize the terrorist nature of an organization, activities that would not necessarily be criminal in themselves may nevertheless satisfy the requirement of an active and meaningful role. The facts of the case must show that they were committed within the organization, as part of its

indeed a terrorist organization. INTERPOL has no competence to designate any organizations as terrorist organizations.

12 In accordance with Document CE-2004-1-DOC-13.

13 In this respect, it may be recalled that a distinction is made between terrorist organizations included in a list issued by a recognized international/regional organization, such as the United Nations, and other terrorist organizations, including those viewed by member countries as extremist, and whose activities may include terrorist acts. The former are likely to fall under this category.

activities. To illustrate, recruiting new members for an organization would not usually be criminal. However, recruiting new members for a terrorist organization may constitute active and meaningful involvement.

13. The following are examples of acts that would usually constitute active and meaningful involvement in this scenario: recruitment of specific individuals to become active members of the organization; training for terrorist activities in terrorist camps; collecting or providing funds to carry out terrorist acts/support the terrorist activities of an organization;[14] providing shelter to individuals for the purpose of facilitating their involvement in terrorist activities; the provision of supplies supporting the terrorist activities of the organization; attending operational meetings open only to members of the terrorist organization; producing and possessing arms or explosives for use by the terrorist organization; giving orders to other members of the organization to commit specific terrorist acts; and committing violent acts or threatening to commit specific violent acts.

- **Scenario C**: Where only the source of the data, or a few other like-minded States, recognize the organization in question as being terrorist in nature, or the terrorist organization is not identified, the acts committed by the individual have to amount to a crime in itself (such as indiscriminate mass killings or other terrorist acts as set out in widely ratified international conventions[15]).

14. Therefore, when there is strong international consensus about the terrorist nature of the organization, the active and meaningful involvement criterion could potentially be met at a lower threshold. Inversely, where the personal acts or involvement of the individual are of a very serious nature, requests for processing may be considered compliant even where there is little international consensus about the organization in question or it has not been identified. It is therefore essential that the NCB source correctly identify both the terrorist organization that was involved and the acts committed or allegedly committed by the individual.

Examples

Scenario A - Terrorist nature of the organization universally recognized

Active and meaningful link established

Case 1: A Red Notice was sought for an individual who had travelled to a conflict zone to join the Islamic State terrorist organization (also known as ISIS or Daesh). In light of the international consensus and UN position on the terrorist nature of this organization, in addition to legislation in many member countries criminalizing the mere fact of travelling to join this terrorist organization, the request was found to be compliant despite the absence of information on the specific acts of the individual.

Case 2: A Red Notice was requested for an individual who had travelled to another INTERPOL member country to join a branch of the terrorist organization Al-Qaeda. The individual was found to have been physically present at the headquarters of this branch within the country. Considering this branch's intention to launch terrorist acts against the civilian population and the international consensus on characterizing Al-Qaeda as a terrorist

[14] See also, in this respect, the Terrorist Financing Convention of 1999.
[15] See *supra* footnotes 6 to 10.

organization, including determinations by the UN Security Council, the Notice was found compliant.

Case 3: A Diffusion was requested in respect of a businessman, who was wanted for financing a terrorist organization. This individual was the local joint venture partner for a large company and was accused of paying local armed groups, including Daesh, to keep the company's factory open and its staff secure during a civil war. The individual also sold products to terrorist groups when it appeared the factory would fall into their hands. In light of the seriousness of the offence involving a universally recognized terrorist organization, the Notice was deemed compliant.

Lack of active and meaningful link

Case 4: A Red Notice was requested for an individual who was wanted for prosecution on a charge of membership in a terrorist organization. The summary of facts explained that it was "understood from the statements of the victims, tapes and documents prepared by security forces" that the suspect committed the crime of being a member of ISIS. No information was provided describing the specific acts of the individual, and therefore the request was deemed insufficient to establish an active and meaningful link between the individual and ISIS. As the NCB did not provide further information when requested, the Notice was refused.

Scenario B - Terrorist nature of the organization recognized by some countries/regions

Active and meaningful link established

Case 5: A Red Notice was requested in respect of an individual who was charged with being a member of a terrorist organization, and specifically, holding a position of responsibility in the terrorist organization. The individual was involved in directing/organizing the organization and was allegedly responsible for members of the organization. The organization in question had claimed responsibility for a number of assassinations, explosive attacks and suicide bombings against the police, military and government officials of certain member countries, and hostage taking. It was considered a terrorist organization by several INTERPOL member countries, although at that time it had not been designated as a terrorist organization by the UN. In this case, the Notice was deemed compliant.

Case 6: A Red Notice was sought in respect of an individual for membership in a terrorist organization and its youth/sub-branch. The individual had allegedly visited homes of sympathizers of the terrorist organization, sought to recruit participants and carried out propaganda for the terrorist organization. The organization in question was terrorist in nature, and there was sufficient indication of the involvement of the individual in recruitment for the organization. It was also assessed that the freedom of expression of the accused was not undermined by the request. As a result, the request was deemed compliant.

Case 7: An individual and his accomplice were wanted for membership in a terrorist organization. The first individual had allegedly created propaganda to recruit new members to the organization and collected money from students' houses in order to participate in regional celebrations. He had also been chosen as a delegate for the terrorist organization, having a hierarchical role and activities under it. His accomplice had also actively participated in the organization, creating propaganda and recruiting sympathizers for the organization by going

door to door for celebrations and events. In these cases, the Notices were assessed as being compliant as the "active and meaningful link" requirement had been met, particularly in light of the individuals having been involved in recruitment activities for the organization.

Case 8: An individual was wanted to serve a sentence for terrorism-related activities, and a Red Notice was requested in his respect. This individual had allegedly organized a press conference on behalf of a banned organization and made a speech at the conference. He had also made hate speeches and undertaken fundraising activities on behalf of the terrorist organization. The organization in question had functioned as a political party earlier, but had been designated as a terrorist organization by several member countries. Their main motive appeared to be the extermination of a specific religious sub-community in the requesting member country. In this case, the Red Notice request was approved as an active and meaningful link between the individual and the organization had been established.

Case 9: An individual, allegedly a member of a terrorist organization, was charged with damage to property. This individual had allegedly attacked an automated teller machine (ATM), buildings and a motorbike with Molotov cocktails on different occasions and had also attacked a building using burning and explosive substances. This established an active and meaningful link between the individual and the terrorist organization, and the Notice was approved.

Case 10: A Red Notice was requested for an individual who had engaged in multiple demonstrations and resisted law enforcement by throwing stones and Molotov cocktails. He also caused damage to vehicles, houses and workplaces in these demonstrations. The demonstrations had been organized by the terrorist organization, which had ordered its members to destroy property. In this case, an active and meaningful link had been established, and the Notice was deemed compliant.

Case 11: An individual, a member of a terrorist organization, was wanted to serve a sentence. This individual was allegedly responsible for financial affairs for a "military" committee and another committee of the organization. He had also thrown Molotov cocktails on the road, fired his gun in the air with his associates, hung up banners and placed and exploded bombs on ATMs. He had also kidnapped and threatened individuals for ransom/seeking money for the organization, fired into vehicles containing law enforcement personnel and left banners with slogans at the scene. In light of these facts, an active and meaningful link had been established, and the Red Notice request was approved.

Case 12: A Red Notice request was received in respect of an individual who had committed violent acts (bombing a government office, attempting to kill a police officer, participating in the punishment of a citizen for insulting the leaders of the terrorist organization, taking the weapon of a guard at a café), and conducted identity checks on behalf of the terrorist organization. While there were certain human rights considerations in respect of an accomplice of this individual, those same considerations did not apply to the individual. It was assessed that there was an active and meaningful link, and the Notice could be approved.

Case 13: An individual was charged with being a doctor in a terrorist organization. A former member of the organization had identified her and indicated that she was conducting activities in a region of the member country, as a person in charge. He also stated that she occasionally came to that region for control purposes, treated wounded members of the terrorist

organization in a camp, and bore arms and carried ammunition for those weapons. Although treating members of the terrorist organization would have been normal and within the functions and duty of a doctor, it was noted that she bore arms and treated those patients in a terrorist organization camp. As a result, the Notice was deemed compliant.

Case 14: An individual was wanted for conducting terrorist activities. She allegedly provided international coordination for a terrorist organization, arranging seminars and training programmes, providing flight tickets and hotel reservations to organization members towards the recruitment of new members, and helping organization members pass into another country. It was also alleged that she conveyed instructions from the organization to cadres in foreign States. In this case, an active and meaningful link was established, and the Notice was approved.

Lack of active and meaningful link

Case 15: A Red Notice was not published as the only facts provided indicated that the individual was wanted for the preparation and distribution of flyers containing the slogan of the terrorist organization. It was determined that this was insufficient to constitute an active and meaningful link between him and the terrorist organization.

Case 16: A Red Notice was not published as the individual was sought only on the basis of his participation in an unauthorized demonstration in favour of a terrorist organization.

Case 17: A Red Notice was requested in respect of an individual for membership in a terrorist organization. It was alleged that this individual was a member of and/or active in youth and regional committees of the terrorist organization. She attended funerals and visited cemeteries where organization members were buried. She also participated in protests and shouted illegal slogans. The Notice was declined as the activities undertaken by the individual did not meet the "active and meaningful link" requirement.

Case 18: A Red Notice was requested in respect of an individual for membership in a terrorist organization. She had created propaganda for the organization and organized others to do so as well. She had also participated in an event with others, chanting slogans on behalf of the organization. She was also alleged to have left the country, ostensibly to attend a World Peace Day event, but to have chanted slogans on behalf of the organization there. The request was denied as the "active and meaningful link" requirement had not been met. It was also noted that the request raised issues regarding the freedom of expression and assembly of the individual.

Case 19: An individual was charged with membership in a terrorist organization, propaganda for a terrorist organization, praising crime and criminals and participation in unauthorized demonstrations carrying the flag of the organization. This individual was alleged to have shared the flag of a terrorist organization on social media, commented in favour of the organization and its head and sung songs at protests. It was assessed that the requirement of active and meaningful link to the terrorist organization had not been met. Furthermore, the request raised issues regarding the freedom of expression and freedom of assembly. As a result, the request was declined.

Case 20: A Red Notice was requested in respect of an individual who was accused of being a member and leader of a terrorist organization and active in it. The only facts alleged were that the individual had participated in and led several demonstrations on behalf of the organization. This raised issues pertaining to the individual's freedom of expression and assembly and was insufficient to demonstrate an active and meaningful link between this individual and the terrorist organization. It was also noted that a regional court of human rights had found some human rights violations against him during a prison tenure in respect of offences for which he had been convicted and served sentences. As a result, the Notice was declined.

Case 21: An individual was wanted to serve a sentence for creating terrorist propaganda. He had allegedly participated in a peaceful rally in support of a named terrorist organization and sung two songs during the rally (one as a soloist). Further information received from the member country related to books and publications that were confiscated from the individual's home, pictures of the individual with persons considered unfavourably by the member country and other meetings attended by this individual. The request was found to raise issues with regard to the freedom of expression and assembly of the individual and did not demonstrate any active and meaningful link between the individual and the terrorist organization. As a result, the request was denied.

Case 22: A Red Notice was requested for an individual who had allegedly participated in an activity on a university campus, where students lit a fire, formed circles and danced in support of a separatist terrorist organization. They had also shouted slogans containing a particular phrase, which allegedly legitimized and glorified the terrorist organization's methods using force, violence and threat. The accused person allegedly attempted to spread such information systematically, targeting a huge mass of people, by singing these songs within the university campus. In this case, there were issues regarding freedom of expression and freedom of assembly. Furthermore, there was no active and meaningful link between the individual and the terrorist organization. As a result, the request was denied.

Case 23: A Red Notice was sought in respect of an individual who was charged with membership in a terrorist organization. The individual had allegedly attended the burial ceremony of a terrorist, certain celebrations and a memorial ceremony dedicated to the leader of a rebellion, and shouted slogans during such events. The individual had also allegedly read out a journal at a meeting of an association on behalf of a youth branch of the terrorist organization. He was also alleged to have set fire to a vehicle along with other accused persons. However, it was unclear whether the terrorist organization had ordered the individual to burn any car. In this light, it was determined that there was no active and meaningful link to the terrorist organization, and therefore the request was denied.

Case 24: An individual was wanted for prosecution for being a member of, and propagandizing on behalf of, a terrorist organization, and a Red Notice was sought in his respect. The individual had allegedly attacked a member country's embassy in another member country (which entertained good relations with the country source of data) together with others, occupied the premises for a while, performed a sit-in protest, carried banners with photos of the leader of a terrorist organization and affixed stickers to the office entrance door and other glass surfaces. Although the severity of an incursion on embassy premises was noted, it was unclear how violent the attack had been, and the individual had not been pursued by the member country in which the embassy was located and where he resided. It was noted

that the incident had been more of a protest than an attack. The request was therefore denied for lack of an active and meaningful link.

Case 25: A Blue Notice was sought to locate an individual who was charged with membership in a religious extremist and terrorist organization. The emphasis in the request was on the individual's illegal departure from the requesting member country, and mere mention was made of her joining the terrorist organization without explaining her role or any concrete actions by her. The request was denied for lack of demonstration of active and meaningful involvement with the terrorist organization.

Case 26: An individual was wanted to serve a sentence for being a member of a terrorist organization and was allegedly a member of a committee established by the organization in a region of the member country. This individual had participated in an event aimed at recruiting students to the terrorist organization from the region in question. He had also participated in demonstrations where the group sang songs, shouted slogans, and threw stones, resulting in injuries to other students and police officers. It was observed that the allegations on recruitment and membership in a committee were ambiguous. It was unclear whether the individual had been recruiting or recruited, in the recruitment event referred to. As a result, there was no active and meaningful link between the individual and the terrorist organization, and the request was denied.

Case 27: An individual had allegedly left his residence and family to join a terrorist organization. He was photographed wearing the terrorist organization's clothes and carrying a machine gun. Other images of him wearing the clothes of the terrorist organization were discovered in the course of investigations. There being no other allegations, the request was denied for lack of active and meaningful involvement.

Case 28: An individual was charged with being a member of a terrorist organization. She had allegedly left home and was later seen, along with other women, at conferences reported in the news. The conference had been organized by the women's branch of the terrorist organization, and the photo of the leader of the organization was put up on the wall; a rug with the emblem of the organization had been used for the platform's cover. Statements had been made about the women's branch of the terrorist organization at this event. Slogans were also shouted about martyrs of the organization. It was assessed that no active and meaningful link had been established between the individual and the terrorist organization. As a result, the request was denied.

Case 29: A Red Notice was requested in respect of an individual who had participated in illegal celebrations and marches and waved the organization's flag. There were also allegations on throwing rocks, Molotov bombs, barricading a road and causing injuries and financial damage to civilians and security forces. In this case, certain elements were unclear from the facts, such as (i) why the marches and celebrations were illegal; (ii) whether it was alleged that the individual personally threw the rocks and explosive devices or was part of a crowd in which certain persons did so; (iii) if and how the individual had personally injured security forces and civilians; and (iv) whether there was any other information to show the individual's active and meaningful involvement in the organization besides participating in these demonstrations. As a result, the request was denied.

Case 30: A lawyer was wanted for being a member of a terrorist organization and transmitting instructions from the terrorist organization to its members in prison. Twenty lawyers including this individual had been arrested, and some sources alleged that the arrest was to deprive their clients of a proper legal defence. The individual in question worked for a law firm that was involved in defending members of the organization. He had allegedly advised members of the organization on issues such as how to act under custody and given them instructions to break the cameras around them and damage the windows in the lawyer visit room in prison. It was also claimed that he provided information on his activities to a committee of the organization and participated in the organization's activities on a planned death anniversary event. In this case, it was assessed that an active and meaningful link had not been established between the individual and the terrorist organization, considering the status of the individual as a lawyer representing members of the organization. As a result, the Notice was found not compliant.

Case 31: An individual was wanted for membership in a terrorist organization. The only facts in support of this, offered by the member country, were his codename in the organization, his areas of responsibility and operation within the organization including mention of territories within three countries, and that two guards were assigned to him, indicating his senior position within the terrorist organization. It was noted in this case that mere mention of a senior position without concrete information on the individual's acts could not suffice to demonstrate an active and meaningful link. The request was hence denied.

Scenario C - Little or no recognition or non-identification of the terrorist nature of the organization

Acts committed were criminal in themselves

Case 32: Three individuals were sought to be prosecuted for a number of offences arising out of their planting, in a public place, a car bomb intended to kill a candidate in an election, when multiple civilians had died and many more had been injured. The organization to which these individuals were affiliated was a religious cult/sect. It was also involved in political activities, and its leader had been convicted of rape and murder. After the incident in question, different political parties had blamed one another for the incident. There were, therefore, Article 3 elements (context of elections, religious/political group, political target, etc.). However, it was concluded to be of predominantly ordinary-law nature because of the very serious ordinary-law crimes. The request was therefore deemed compliant.

Case 33: A Red Notice was sought for an individual for membership in a terrorist organization. The accused had participated in violent armed robberies for the organization, leaving police officers and civilians dead/wounded. Although the member country did not provide further information on the terrorist nature of the organization when requested, the facts described violent acts and serious ordinary-law crimes committed on behalf of the organization, which sufficed to render the request compliant.

Acts committed not criminal in themselves

Case 34: A Red Notice was requested in respect of an individual who had been involved in financing the activity of an allegedly terrorist organization. The individual was also alleged to have organized and participated in activities relating to the organization after a court decision

prohibiting the same. Noteworthily, regional bodies, including international organizations, described this organization as a political movement and "peaceful" opposition movement. Given the nature of the group (peaceful and political group), status of the individual (active member of a political group) and the general context, it was assessed that the political elements prevailed over the ordinary-law crime elements. The Red Notice request was therefore denied.

Case 35: A Red Notice request was made on terrorism-based charges against a leader of a political opposition group in a member country. Previous requests had also been made for this individual, *inter alia* based on terrorism and related charges. Based on available information, the organization in question appeared to be predominantly a political opposition group although some sub-groups or members may have been engaged in criminal activities. Furthermore, the requesting NCB was aware of the location of the individual and had bilateral cooperation with the member country in which he was located. Extradition proceedings were already ongoing in respect of this individual. In this light, the request was assessed as being predominantly political, and the Red Notice was denied.

Case 36: A Red Notice was requested for an individual who had allegedly contributed to the activities of an "extremist organization", an opposition movement within the member country. The individual had also posted photos and videos of an extremist and terrorist nature, promoting the killing of persons of other religions and the creation of a separate State, but these were aligned with a different terrorist organization (and not the basis of the request). The opposition movement was, however, a political movement within the country, opposing its leading functionaries on account of corruption and nepotism. In this instance, the Red Notice was declined since the allegations pertaining to the opposition movement's involvement in terrorist or extremist activities, or links to other terrorist or extremist groups, remained unsubstantiated.

Case 37: A Red Notice was requested for an individual on charges of leading and financing a terrorist organization. The individual was the manager of an institution, which was under investigation for its link to the terrorist organization. He also held a bank account in a bank that was active on behalf of the terrorist organization. The General Secretariat noted that the request was made following an attempted coup d'état in the requesting country, whose authorities accused the organization of being behind the coup. Other than the alleged involvement in the attempted coup, no information was provided by the NCB to demonstrate any terrorist activity by the said organization. Consequently, the Notice was denied.[16]

[16] See also chapter 3.5 on offences committed in the context of an unconstitutional seizure of power and/or situations of social/civil/political unrest.

3.7 Violation of sanctions *(updated: November 2024)*

The question – May data be processed when the offence concerns a violation of an embargo or sanctions law?

Background

1. Sanctions are restrictive measures taken by a State, international organization or regional organization, against another State, group or individual, in pursuit of political, foreign policy, national security or military objectives, or towards the maintenance of international peace and security or protection of human rights. Sanctions are frequently deployed in military, economic, or diplomatic relations contexts.

2. An embargo, a type of sanction, is a prohibition on trade with (particularly export to)[1] a specific country of all or certain specific products.

3. This chapter applies to all types of sanctions, including embargoes and restrictive measures against individuals, groups, organizations or States.

Current practice

Types of Sanctions

4. For the purposes of analysis under Article 3 of the Constitution, a distinction may be made between three types of sanctions: (1) **"UNSC Sanctions"** – sanctions established by a United Nations Security Council (UNSC) resolution or those imposed by a country in implementation of a UNSC resolution; (2) **"Sanctions under Multilateral Treaties"** – sanctions which are imposed based on obligations established under multilateral treaties; and (3) "**Regional/Unilateral Sanctions"** – sanctions imposed by a country in implementation of a decision of a regional or a sub-regional organization or unilaterally by that country.

UNSC Sanctions

5. Sanctions imposed by the UNSC by a resolution based on Article 41, Chapter VII of the UN Charter, are multilateral sanctions considered to reflect the consensus of the international community. UN Member States are obliged to implement such sanctions by adopting national implementation measures.[2] In addition, INTERPOL cooperates with the UNSC Sanctions Committees by publishing the INTERPOL-UNSC Special Notices.

6. Accordingly, where sanctions are based on national legislation or measures taken to implement such UNSC resolutions, requests following from violations of such sanctions would in principle not raise neutrality or other concerns under Article 3 of the Constitution. Nevertheless, each case should be evaluated independently to ensure that the national

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1 The export, re-export, transit and transfer of goods or technology is generally controlled under export control regimes of various types.

2 Article 41 of the UN Charter states: "*The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures*." [emphasis added] See also Articles 25 and 39 of the UN Charter.

implementation of the UNSC resolution and the particular request comply with INTERPOL's rules.

Sanctions under Multilateral Treaties

7. Member countries may decide to impose sanctions based on multilateral treaties which reflect customary international law (e.g. non-proliferation of weapons of mass destruction)[3] or the stance of a significant number of countries from different regions (e.g. transfer of dual-use goods or military and strategic goods to entities and countries subject to UNSC sanctions).[4] Accordingly, there is a higher likelihood that requests related to the application of such sanctions would not violate Article 3 of INTERPOL's Constitution.

8. There may be scenarios where sanctions are imposed on a country that is not party to a multilateral treaty. Such cases must be independently evaluated, contextually, to assess whether Article 3 of the Constitution would apply.

Regional/Unilateral Sanctions

9. Sanctions may be imposed by (a) a regional organization (e.g. the European Union or the African Union) or by a sub-regional organization (e.g. ECOWAS); (b) a member state of that regional or sub-regional organization in implementation of a decision of the organization; or (c) unilaterally by a country. When it does not fall under either UN-imposed sanctions or multilateral sanctions (as discussed in (1) and (2) above), it is necessary to identify the objective of the sanction and apply the predominance test under Article 3 of INTERPOL's Constitution.

10. The assessment of the underlying objective of the sanction should also consider whether the sanctions are triggered by events such as an ongoing conflict initiated or participated in by the sanctioned State(s) or sanctioned persons or groups linked to such participating State(s). When the position does not align with the consensus of the international community, this would likely raise significant neutrality implications for INTERPOL.

11. If the sanctions are aligned with the stance of the international community or reflect the consensus of the international community, the sanctions may comply with Article 3 of INTERPOL's Constitution.

12. Where sanctions are based on non-proliferation arrangements, such as the Wassenaar Arrangement, which address weapons and dual-use goods/technology,[5] they are more likely to reflect the consensus of the international community. In such cases, a related element to

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3 Non-proliferation is an important element of several export control regimes, seeking to limit illegal trade in goods and technology which have military or dual uses.

4 Depending on the applicable export control regime, trade with specific (often, UNSC-sanctioned) countries and/or trade in goods/technologies included in control lists, particularly in the absence of licenses, permits or authorizations, could be considered illegal trade.

5 Dual-use goods can be used for both civilian and military purposes. The Wassenaar Arrangement was established *inter alia* to promote greater responsibility in exports of weapons and dual-use goods and to prevent "destabilizing" accumulations. Participating states attempt to ensure that transfers of such goods and technologies do not contribute to the development or enhancement of military capabilities which undermine these goals and are not diverted to support such capabilities. The Wassenaar Arrangement incorporates control lists in respect of munitions and dual-use goods and technologies.

consider is the classification of goods/technology as being weapons, military, or dual-use in nature. Where such goods/technology are referred to in multilateral or international instruments as having military or dual-use, there is a stronger basis to consider them as dual-use goods/technology. In other cases, further explanation may be needed from the requesting country to determine whether the request is predominantly of a political and/or military character.

Assessment of Underlying Objectives

13. When assessing the underlying objectives behind sanctions to determine whether compliance concerns arise under Article 3 of INTERPOL's Constitution, certain factors are taken into consideration:

(i) Article 3 concerns would generally not be raised where the request flows from:

   a. UNSC sanctions, or

   b. national/regional legislation in implementation of UNSC sanctions/multilateral treaty obligations, and

   c. the sanction is otherwise aligned with the stance of the international community.

(ii) Article 3 concerns would generally not be raised where there is a consensus of the international community or the stance of the international community is in support of such sanctions, even where:

   a. the sanctions are unilaterally imposed by a State, regional or sub-regional organization, or

   b. the sanctions are imposed in implementation of a decision of such a regional or sub-regional organization.

(iii) Article 3 concerns would generally arise where the sanctions in question are not aligned with the stance of the international community. This applies both where:

   a. the sanctions are unilaterally imposed by a State, regional or sub-regional organization, and

   b. the sanctions are imposed in implementation of a decision of such a regional or sub-regional organization.

14. This includes situations where the underlying legislation is based on sanctions imposed bilaterally due to political, diplomatic or strategic or foreign policy considerations.

15. The examples below are laid out based on the classification of the types of sanctions as UNSC Sanctions, Sanctions under Multilateral Treaties and Regional/Unilateral Sanctions.

Examples

Cases involving UNSC Sanctions

Case 1: An INTERPOL-UN Security Council Special Notice was sought in respect of an individual who had played an instrumental role in spreading Islamic State of Iraq and the Levant's (ISIL a.k.a. Daesh) violent ideology, glorifying and justifying terrorist acts, as ISIL-K's spokesperson. The concerned individual had also claimed responsibility for terror attacks, assassinations and violent terrorist activities conducted by ISIL. As a result, the individual was designated by the UN Security Council Sanctions Committee, and the Notice was published in respect of this individual.

Case 2: Wanted Person Diffusions were requested by an NCB for a number of individuals, sought for conducting currency wire transactions through one country to purchase commodities (which were not dual-use in nature) on behalf of customers in another country, which was subject to several UNSC-imposed sanctions. The concerned individuals had been implicated in evasion of UNSC-imposed sanctions by their association with certain companies used for this purpose and the activities they conducted through these companies. As a result, it was assessed that the Diffusion was compliant with Article 3 of the Constitution.

Case 3: A Wanted Person Diffusion was requested by an NCB for an individual, sought for exporting dual-use goods from one country to another, specifically, certain end-user companies, without the requisite national licenses and authorizations. Sanctions had been imposed by the UN on those end-user companies due to their involvement in the missile activities of the country of import. There was only a partial overlap between the period of imposition of sanctions against the end-user companies and the activities carried out by the individual in question. These sanctions had also subsequently terminated, and this individual and these end-user companies had specifically been named in the termination. The concerned individual and companies had also been subjected to sanctions by a number of other countries and regional organizations, some of which were maintained even after termination of the UN sanctions. In this light and given the dual-use nature of the goods, it was assessed that the Diffusion request was compliant with Article 3 of INTERPOL's Constitution.

Case 4: An NCB requested a Wanted Person Diffusion for an individual. The defence organization of his country had been subjected to UNSC-imposed sanctions. A company in that country had also been designated by the UNSC as a branch of the defence organization, for a duration. The individual had allegedly exported certain dual-use goods from another country to this company, without the requisite national licenses or authorizations. The UN sanctions against the company had been in place during the initial period of the alleged illegal activities, but had been terminated by the time the charges were formalized against the individual. However, this demonstrated that there was, for some time, a consensus of the international community in respect of sanctions against that company. In addition, as the goods in question were dual-use goods (that had weapons/missile applications), it was determined that the offence in question would constitute a serious ordinary-law crime despite a tense political climate between the countries involved. It was therefore concluded that the Wanted Person Diffusion was compliant with Article 3 of the Constitution.

Cases involving Sanctions under Multilateral Treaties

Case 5: Wanted Person Diffusions were sought in respect of certain individuals who had exported goods from one country into another. Some of the goods in question were dual-use goods and were included in multilateral controls in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The exporting country was a party to such treaty; however, the importing country was not. As a result, exporting these goods from the exporting to the importing country required certain national licenses which had not been obtained. The activities in question had been conducted in violation of the laws of the first country, and in violation of the NPT. In this light, it was assessed that the Diffusions were compliant with Article 3 of INTERPOL's Constitution.

Case 6: A Wanted Person Diffusion was sought in respect of an individual who had exported certain dual-use goods listed under the Wassenaar Arrangement from one country into another in violation of export regulations in the first country. The individual appeared to have acted for profit, and there were no apparent links to the State in the importing country, nor any other indications of neutrality issues. In light of the goods being dual-use in nature, and given the absence of any neutrality issues, it was assessed that the Diffusion was compliant with Article 3 of INTERPOL's Constitution.

Case 7: A Wanted Person Diffusion was sought in respect of an individual who had attempted to export certain dual-use goods from one country into another, in violation of export control laws, controls placed by an international organization, and pursuant to multilateral arrangements. However, the exporting country's officials had made public statements claiming that the alleged acts were carried out to aid the efforts of, and to benefit, the importing State. In light of these official allegations, serious issues were raised pertaining to the principle of neutrality under Article 3. As a result, the Diffusion was found not compliant.

Cases involving Regional/Unilateral Sanctions

Compliant Cases

Case 8: Wanted Person Diffusions were sought in respect of two individuals who had allegedly exported defence goods that were on the defence munitions lists of a country, into another, in violation of the first country's export control laws. There was no indication that the alleged acts were carried out to aid the efforts of, or to benefit, a specific State, nor that the subjects were working for or had been contracted by another State, nor that the conspiracy to export these products was of benefit to another State. In this light and given that the goods in question fell under the category of weapons/dual-use goods, the illegal export of such goods constituted a serious ordinary-law crime. The Diffusion was therefore found compliant with Article 3 of the Constitution.

Case 9: Wanted Person Diffusions were sought in respect of certain individuals who had conspired to export dual-use goods and technology from one country into another. They had been charged with violating legislation in the exporting country aimed at dealing with threats to its national security, foreign policy and economy. A press release had also been issued by officials in the exporting country, stressing the need to prevent sensitive technology from falling into the hands of the exporting country's adversaries. Another official had remarked

about the importing country attempting multiple times to obtain access to the exporting country's sensitive technology. However, the exporting country had made no outright accusation of State involvement by the importing country. In these circumstances, it was determined that these were not significant political statements to implicate Article 3 of INTERPOL's Constitution. As a result, it was determined that the case was compliant.

Case 10: A Wanted Person Diffusion was sought in respect of an individual who had conspired to export certain dual-use goods/technology from one country into another, in violation of export control laws. Some of these goods/technologies were controlled for anti-terrorism and nuclear non-proliferation reasons. Since the goods/technologies were dual-use in nature and given that international documents and State practice clearly showed that INTERPOL's member countries have undertaken to effectively control and combat the illegal trade in these products, it was determined that offences relating to the export of such goods/technology would not contradict Article 3 of the Constitution. As a result, the Diffusion was found compliant.

Case 11: An individual was sought to be prosecuted for smuggling large quantities of military-grade, dual-use goods having significant military applications, from one country to another. There were no indications of any links to the State in the country of import, including with respect to the specific companies mentioned in the request. As a result, the Diffusion was found to be compliant with Article 3 of the Constitution.

Non-Compliant Cases

Case 12: Wanted Person Diffusions were sought in respect of certain individuals who had conspired to operate an international procurement network to obtain goods for export from one country into another, in violation of the exporting country's export control laws. These individuals allegedly obtained funding from entities in the importing country that were involved in its nuclear programme. Furthermore, an official press release by the exporting country described the case as constituting a threat to its national security and foreign policy interests, including the delicate balance of power among nations in a certain region. Although the goods in question had military application, the official linking of the case to the nuclear programme of an INTERPOL member country and to a regional power balance between INTERPOL member countries raised serious issues pertaining to the principle of neutrality in Article 3 of INTERPOL's Constitution. As a result, the Diffusion was found not compliant.

Case 13: A Wanted Person Diffusion was sought in respect of an individual who had attempted to export dual-use goods from one country to another, without the requisite national licenses or authorizations. This individual had exchanged several emails with a person whose IP address was located at the atomic energy agency of the importing country, part of the importing country's government, regarding the sale/purchase of those goods. The link to the importing country's atomic energy agency and its atomic energy policy, and the application of the exporting country's criminal laws, which are specific to the importing country, touched upon bilateral relations between two member countries. It was therefore assessed that serious issues arose under Article 3 of the Constitution, and the Diffusion was found not compliant.

Case 14: Wanted Person Diffusions were sought in respect of certain individuals who had been charged with computer hacking in order to undermine elections that had been held for the head of state in a country. These individuals had also been sanctioned by the affected

country. The official press release issued by the sanctioning country in this respect noted that these individuals had been sanctioned due to their role in the State-sponsored, cyber-enabled intrusions by another country, meant to interfere with the sanctioning country's elections. In light of the official allegations that the offences were committed against one INTERPOL member country on behalf of another INTERPOL member country, serious neutrality issues were raised. As a result, the Diffusions were found not compliant with Article 3 of the Constitution.

Case 15: A Wanted Person Diffusion was sought in respect of an individual who had allegedly facilitated the provision of a number of non-dual-use goods and services from one country to a recipient who headed a business conglomerate in another country. This individual had been designated under the exporting country's sanctions legislation after the importing country commenced certain activities having political and military implications. This prohibited the individual in question from obtaining or providing funds, goods or services from the exporting country to the recipient in the importing country without a license from authorities in the exporting country. Furthermore, the recipient was identified as a prominent person in the importing country, having links to several of its governmental functionaries. The recipient had also been independently sanctioned by the exporting country since earlier on. In light of the unilateral nature of the sanctions and the linking of the case to the importing country by the exporting country, issues were raised pertaining to the Organization's neutrality. As a result, the Diffusion was found not compliant with Article 3 of the Constitution.

Case 16: A Wanted Person Diffusion was sought in respect of an individual who had caused financial services and currency to be transmitted from one country to another, offering money-exchange services as well in the importing country, without the appropriate licenses or approvals from the exporting country. Its officials referred to the case in the context of unilateral sanctions against countries such as the importing country; however, there was no consensus in the international community at the time on sanctions against the importing country. It was determined that the official linking of the case to the political situation between the exporting and importing country raised serious neutrality issues for the Organization. It was therefore assessed that the Diffusion was not compliant with Article 3 of the Constitution.

Case 17: A Wanted Person Diffusion was sought in respect of an individual who had been charged with exporting certain goods out of one country, with the goods being destined for a certain enterprise in an end-use country. The charges concerned arose from unilateral sanctions imposed by the exporting country. The goods in question were not dual-use goods. Furthermore, the exporting country's officials had issued a press release referencing an executive order finding that the importing country's actions and policies constituted an unusual and extraordinary threat to the national security, foreign policy and economy of the exporting country. However, there was no international consensus on sanctions against the importing country. As a result, it was determined that the Diffusion raised serious neutrality issues under Article 3 of the Constitution and was not compliant.

Case 18: Wanted Person Diffusions were sought in respect of certain individuals who had allegedly conspired to use the financial system of one country to provide services to another country, which was attempting to purchase certain machinery. There was no consensus in the international community on the matter of sanctions against the importing country, at the time. The exporting country's official websites linked these activities to unilateral sanctions

imposed by it on the importing country, and to a branch of the importing country that it had designated as a terrorist organisation. It also referred to "evil activities" of the importing country's regime. It was therefore determined that the official linking of the case to the political situation between the countries raised serious neutrality issues for the Organization. As a result, the Diffusions were found not compliant with Article 3 of the Constitution.

Case 19: A Wanted Person Diffusion was sought in respect of an individual who had been sanctioned by a country for providing financial support to separatists in another country, under an executive order. The legislation on which the order was based was not a national implementation of treaty obligations (i.e., reflecting the consensus of the international community) but was part of a unilateral sanctions package. Only one count of the charges against the individual related to acts committed by him prior to his designation under the legislation. This rendered the criminal case and the sanctions inextricable. As a result, this amounted to a violation of a bilateral sanction, which did not reflect the consensus of the international community. As a result, the Diffusion was found not compliant with Article 3 of the Constitution.

Case 20: Wanted Person Diffusions were sought in respect of certain individuals who had been charged with violating export controls and sanctions instituted by one country against another, for exporting a number of basic industrial goods (which the exporting country claimed could be used for military purposes). However, the sanctions in question were unilateral, these goods were not clearly dual-use goods, and there was no international consensus on the imposition of sanctions against the country of import. On this basis, it was assessed that the Diffusions violated Article 3 of INTERPOL's Constitution.

Case 21: Wanted Person Diffusions were sought in respect of two individuals, managers of international trading companies, who were wanted for violating export laws and sanctions in place against the country of destination. The individuals had exported dual-use goods without the requisite national licenses. One of the two end-users of the goods had been subject to secondary sanctions in the country of export for proliferation-sensitive nuclear activities in the country of destination, or the development of chemical, biological or nuclear weapons or their delivery systems. The end-user was closely linked to the regime in the destination country. Furthermore, there was no international consensus on sanctions against the destination country. It was therefore concluded that the case related to bilateral relations between two INTERPOL member countries and as such, violated the principle of neutrality of the Organization provided for in Article 3. As a result, the Diffusions were found not compliant with Article 3 of the Constitution.

Case 22: A Wanted Person Diffusion was sought in respect of an individual who had unlawfully exported dual-use technology from one country to another, in violation of the exporting country's laws. The individual had also smuggled embargoed oil from another country to the importing country. Several other countries, an international organization and the UN had imposed sanctions on the country from which the oil had been smuggled. The exporting country had also imposed sanctions on this country; however, the sanctions imposed by the exporting country had been condemned by the UN Human Rights Council.

The overall investigation and indictment appeared to be related to an ongoing conflict in a third country, involving the importing country. A press release had separately been issued by the exporting country referencing this conflict. Statements were also made referencing the

exporting country's intention to hinder the importing country's acts of aggression in the third country.

In light of the context of the conflict between the importing country and third country and the exporting country's involvement, and the statements made by the exporting country in this regard, INTERPOL's neutrality was implicated under Article 3 of the Constitution. Additionally, the lack of international consensus in relation to certain sanctions against the country from which the oil was smuggled, resulted in the case being non-compliant in that respect as well. The case was hence found non-compliant under both pillars.

3.8 Election crimes

The question – May data be processed when the crimes committed took place in the context of national or municipal elections?

Background

1. For the purposes of Article 3 analysis, "**election crimes**" mean crimes conducted with a view to influencing, directly or indirectly, the outcome of national or municipal elections. As such, they frequently include political elements that require an Article 3 review. A distinction may be made between two scenarios of election crimes: (1) Election crimes of a "**mixed nature**", namely where an ordinary-law crime was committed in the context of elections; (2) "**Pure election crimes**", namely, where the crime does not contain elements of another typical ordinary-law crime.

Current practice

2. **Scenario A:** Election crimes of "**mixed nature**" are in fact relative offences and the predominance test should be applied accordingly. For example, where a person was involved in murder with the purpose of creating disorder during elections, the predominance test will clearly lead to the case being considered as of a predominantly ordinary-law nature.

3. **Scenario B:** Examination of **pure election crimes** may be more complex. One example is a case where valid election ballots are intentionally destroyed to promote a certain candidate.

4. Nevertheless, the primary objective behind criminalizing election crimes is to protect individual rights, namely the right to vote and be elected in genuine elections. Hence, an infringement of these rights is to be considered a priori as an ordinary-law crime rather than a crime committed against the State as a whole, its national authorities or its constitutional structure. This premise is also supported by the fact that election crimes have not been listed as pure political offences in the context of extradition law. It is also noteworthy that the importance of genuine elections is explicitly mentioned in the UDHR [Article 21(3)], thus providing grounds, in application of Article 2(1) of the Constitution, for INTERPOL's involvement in such cases.

5. As a general rule, therefore, the nature of election crimes does not call for the application of Article 3. This conclusion does not, however, exclude the need to review such cases in light of Article 3 and the UDHR, in particular in the following instances: (1) Where INTERPOL's political neutrality may be affected; (2) where the alleged crime was committed as part of a lawful protest against the State with no or relatively little harm to persons or property; and (3) where a doubt exists over possible misuse of INTERPOL's channels for the purpose of persecuting political dissidents or improperly influencing the elections process or the elections outcome.

Examples

Scenario A:

Case 1: Diffusions were sent out for individuals wanted for committing acts of hooliganism during elections. According to the facts provided, the first individual was with others who injured three journalists with the intention of preventing them entering a polling station. The other two individuals were with others who, acting "with the aim to impede [the] election campaign", used obscene words and struck "blows by feet and hands to different parts of body" against activists from a different political faction, and destroyed an election tent. It was concluded that the data should be maintained since, in the context of the ongoing election proceedings, it could not be said that the individuals' political objectives could not have been achieved in a non-violent fashion. The infliction of personal injury and destruction of property as ordinary crimes are therefore disproportionate to the individuals' political aims. Further, the acts of hooliganism undermine the right of others to participate in free and fair elections.

Case 2: A Diffusion was issued for an individual wanted for "complicity in a Mafia-type criminal organization". According to the summary of facts, the individual, as a "national politician", sought agreements with a Mafia-type organization to control the votes for political elections and for other purposes. It was concluded that the data could be registered in light of the above analysis of election crimes and since the connection between the individual and the Mafia demonstrated the ordinary-law nature of the crime. The fact that the individual was a former politician does not change the conclusion, bearing in mind the 1994 Resolution. [See also Offences committed by former politicians].

Scenario B:

Case 1: A Red Notice was published for an individual wanted for election fraud, extortion and abuse of political position. According to the facts provided, he allegedly directed local officials and their subordinates to vote for a particular presidential candidate on the eve of the presidential election. It was concluded that while the alleged illegal act was motivated by political objectives, it was carried out in his private capacity.
Furthermore, despite its political elements, election fraud is recognized as an ordinary-law crime by the majority of INTERPOL member countries.

Case 2: A Red Notice was published for an individual wanted, *inter alia*, for preventing his subordinates from voting. It was concluded that the Red Notice could be published in application of the principles identified in an analysis of election crimes (as described in the "current practice" above).

3.9 Illegal emigration

The question – May data be processed about a person wanted for illegal emigration (e.g. on charges of "illegally leaving the country")?

Background

1. For the purposes of Article 3 analysis, the offence of illegal emigration is addressed in one of the following scenarios:

Scenario A: It is the only crime committed by the individual.

Scenario B: It is one of the offences committed separately by the individual.

Scenario C: The offence was committed in connection with other offences.

Current practice

2. **Scenario A:** In general, processing of data will not be allowed. Although not mentioned as such in General Assembly resolutions, the Organization has consistently viewed the offence of illegal emigration as a pure political offence since it does not involve any ordinary-law-crime aspects. According to some accounts, the genesis of Article 3 lies in a case for which INTERPOL's channels were used to pursue individuals on charges of illegal emigration. In application of "the spirit of the Universal Declaration of Human Rights" (Article 2(1) of the Constitution), consideration should also be given to a person's right "to leave any country" (Article 13(2), UDHR),[1] bearing in mind that this right is not an absolute one and is subject to certain restrictions. In line with this view, attention should also be given to requests for the processing of data other than Red Notices and Diffusions – for example Yellow and Blue Notices – as they may lead to the individual being located in order to be subsequently persecuted.

3. **Scenario B:** On reviewing the facts and concluding that the offence of illegal emigration is not related to other offences, the analysis for Scenario A will apply to that offence, while the other offences will be analysed separately (see analysis of "separation of charges").

4. **Scenario C:** If an ordinary-law crime is committed in furtherance of, or in connection with, the offence of illegal emigration, separating the charges will not be feasible. In such cases, the overall predominance of the case has to be evaluated in the same way as relative offences, i.e. by examining factors such as the seriousness of the other crime(s) committed.

Examples

Scenario A:

Case 1: Red Notices were requested by an NCB on charges of "illegally crossing the border." After assessing the data provided, it was decided: (1) not to publish the Red Notices where the only crime committed was illegally crossing the border (Scenario A); (2) to publish those Red

[1] See also Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention against Organized Crime, according to which migrants shall not become liable to criminal prosecution under the Protocol.

Notices where the illegal crossing of the border was committed for the purpose of committing ordinary-law crimes, such as drug trafficking (Scenario C).

Case 2: A Yellow Notice was requested by an NCB for a member of a national sports team who had disappeared during an exhibition abroad. It was reported that the person was wanted on the basis of illegal emigration only. After requesting additional information from the NCB, it was considered that there was no likelihood of political persecution and the Yellow Notice was published.

Scenario B:

Case 1: Two Red Notices were requested for the charges of "embezzlement", "illegal enrichment", and "illegal emigration". It was concluded that the last offence was not connected to the first two. Accordingly, it was decided to issue the Red Notices only in connection with the first two offences, which are ordinary-law offences (i.e. "separation of charges"). An explanation concerning the General Secretariat's decision was added to each Notice in the "additional information" section.

Case 2: A Diffusion was issued for "illegally leaving the country". The General Secretariat enquired about the existence of any accompanying ordinary-law aspects. The NCB replied that the individual had also been sentenced following a breach of a business agreement. It was concluded that data could not be registered because the alleged ordinary-law crime that accompanied the offence of illegal emigration falls outside Article 2 of the Constitution.

Case 3: A Red Notice was issued for an individual only for the offences of deception, swindling, fraud and soothsaying, as they are considered to be ordinary-law crimes. Data were not published with respect to the offence of illegal emigration, as it is considered to be a pure political offence. A caveat was added to the Notice indicating the non-registration of the offence of illegal emigration.

Scenario C:

Case 1: Two Red Notices were not issued because, firstly, the offence of illegal emigration is a purely political one and the offence of "personating and abetment" was committed in furtherance of, and to facilitate, the commission of the former offence.

Applying the predominance test, the General Secretariat concluded that this case was predominately political in character and that the offence of "personating and abetment" did not tip the balance in favour of publication as it was not considered a serious crime (i.e. there was no damage to persons or property).

Case 2: A Red Notice was published for "participation in an illegal organization", "illegal crossing of state borders" and "mercenary activities". It was concluded that the offence of "illegal crossing of state borders" was committed in connection with, and to engage in, terrorist and mercenary activities on behalf of terrorist groups.

Both terrorist and mercenary activities are viewed as serious offences by the international community and it was therefore decided to publish the Notice.

3.10 Military aspects

The question – May data be processed in cases with military aspects?

Background

1. Article 3 of INTERPOL's Constitution forbids the Organization from undertaking any intervention or activities of a military character. Accordingly, for cases with military aspects, an analysis on a case-by-case basis will be required.

2. The following scenarios may apply:

Scenario A – Purely military offences

Scenario B – Involvement of a military tribunal

Scenario C – Ordinary crimes committed in a military context, or processing of data containing military elements

Scenario D – Acts committed in an armed conflict

Scenario E – International crimes containing military elements

Current practice

Scenario A – Purely military offences

3. In application of international extradition law, the Organization has consistently held that processing of data will not be allowed in cases of purely military offences, namely for acts punishable under military law that do not constitute: (1) a crime under ordinary law; or (2) a violation of the laws of war.[1] Typical examples of such crimes include desertion and draft evasion.

Scenario B – Involvement of a military tribunal

4. The involvement of a military tribunal does not automatically call for the application of Article 3. It is generally the ***nature*** and ***context*** of the offence that determines its military character. In order to determine the implications of the involvement of the military tribunal in a given case, the General Secretariat requests the source of data to indicate the reasons the case was brought before a military judge/court. In cases where the nature or the context of the crime points to the predominance of the ordinary-law nature of the matter, the General Secretariat will publish the Notice and register the data in its databases.[2]

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1 See M. Cherif Bassiouni, International Extradition: United States Law and Practice (fifth edition), p. 676.

2 As with all cases of processing of data, however, publication and registration of data may raise doubts concerning conformity with other rules. For example, rulings by State Security Courts may require assessment of conformity with the ''spirit of the Universal Declaration of Human Rights'' (Article 2(1), Constitution) and also with extradition principles such as the circumstances in which a person "would not receive the minimum guarantees in criminal proceedings" as set out in the ICCPR (Article 14).

Scenario C – Ordinary crimes committed in a military context

5. INTERPOL's practice has been to follow international extradition law, according to which the "military character" exception does not apply where the acts charged constitute a crime under the ordinary laws of the requesting State. Thus, where an ordinary crime has been committed in the military context (for example, a soldier murders a fellow soldier in a peace-time setting), the processing of data will generally be allowed.

6. An example of data not connected to an ordinary crime, but which nonetheless contains military elements, would be a request to publish a Yellow Notice for military personnel. Although the person's occupation is not a criterion for the publication of a Yellow Notice, it is necessary to assess the compliance of such a request with Article 3. Specifically, the following questions require consideration:

(1) Was the disappearance of the individual connected with an armed conflict or a military operation?
(2) If the individual is found, will his extradition be requested for any political or military crime connected with his military service (e.g. espionage or desertion)?

7. If the answer to either question is affirmative, any processing of data is likely to violate Article 3.

Scenario D – Acts committed in an armed conflict

8. In general, data concerning acts committed in an armed conflict, unless related to international crimes (Scenario E below), may not be processed via INTERPOL channels. First, where no indication is provided that the acts were committed in violation of the laws of war, such acts would not necessarily constitute a crime and as such would fall outside the scope of INTERPOL's work (Article 2 of the Constitution). For example, if a soldier of one party to a conflict kills an enemy soldier in battle, in accordance with the laws of war, this is not considered a crime. Alternatively, even if such acts are considered crimes by the requesting country, these crimes would generally be viewed as being committed against the external or internal security of the State and therefore within the scope of Article 3.

Scenario E – International crimes with military aspects

9. Report AGN/63/RAP No. 13, adopted by Resolution AGN/63/RES/9, allowed for cooperation in cases of serious international crimes (genocide, crimes against humanity, and war crimes). The report however calls for application of the predominance test to assess each offence. Moreover, it suggests that the crime of compelling a prisoner of war or a civilian to serve in the forces of a hostile power may be considered an "essentially military offence". This may require an assessment of requests related to international crimes, particularly taking into account the following:

- International crimes did not originate from military law (in comparison to desertion, for example) but rather from international humanitarian law.
- International crimes are considered extraditable offences.[3]

[3] Indeed, as with the approach taken regarding the non-application of the political offence exception to war crimes, the UN Model Treaty on Extradition excludes war crimes from the military offence exception to

- The significant development of international criminal law since 1994 (e.g. establishment of more international tribunals), which indicates the seriousness ascribed to such offences by the international community.
- Similarly, the increased involvement of INTERPOL in this field as indicated by General Assembly resolutions and cooperation agreements concluded since 1994.[4]
- The identity of the source of data.[5] For example, where the source is an international tribunal established by the UN Security Council acting under Chapter VII of the United Nations Charter (e.g. ICTY, ICTR) or an international tribunal acting on behalf of the international community in a similar manner (e.g. ICC acting upon a referral from the Security Council), it would be difficult to argue that the case is predominantly political or military.
- The position expressed by another National Central Bureau or another international entity. This factor has become particularly relevant following the adoption by the General Assembly of a special procedure to be implemented with regard to new requests concerning serious international crimes (Resolution AG-2010-RES-10 on "Cooperation with new requests concerning genocide, crimes against humanity and war crimes"). Accordingly, cases that fall within the scope of Scenario E should be assessed also in light of this special procedure.

Examples

Scenario A – Purely military offence

Case 1: An NCB sent a message requesting additional information about persons who had refused military service, a criminal offence under the national penal code. The General Secretariat replied that the offence of refusing military service falls within the scope of Article 3 due to its political, military and possibly religious character (e.g. cases of conscientious objection), regardless of whether it is considered an offence under national law. Accordingly, the NCB was informed that it could not use INTERPOL's channels in order to obtain information on those individuals.

Case 2: Red Notice request sent for an individual, a soldier in the country's armed forces, who was wanted for "absence without leave, theft and unauthorized use of computer". It was concluded that the charge of absence without leave applied to a member of the armed forces is by nature a military offence. The offences of theft and unauthorized use of a computer were considered to be political as their purpose was to steal national security information. It was therefore concluded that all three charges come within the scope of Article 3 and the Red Notice was therefore not published.

Case 3: Diffusion sent by an NCB for an individual who deserted from the armed forces by forging certain documents. It was concluded that the offence was predominantly military rather than criminal as the ordinary crime of document forgery did not result in any personal

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extradition – see Revised Manual on the Model Treaty on Extradition, para. 49. See also M. Cherif Bassiouni, International Extradition: United States Law and Practice (Fifth edition), p. 676.

[4] Most notably, Resolution AG-2004-RES-16 (2004) on the Cooperation Agreement with the International Criminal Court clearly states in its preamble that "the crimes which come within the jurisdiction of the International Criminal Court also fall within the aims of the Organization as defined in Articles 2 and 3 of the Constitution." Thus, by adopting this resolution, the GA acknowledged the special status of international crimes and in fact rejected the underlying reasoning of the 1994 report.

[5] See Article 34(3)(c) of the RPD, according to which the identity of the source of data is one of the relevant factors in an Article 3 examination.

injury to third persons or significant pecuniary damage. Therefore the data were not recorded in INTERPOL's databases.

Case 4: Diffusion sent by an NCB. The individual was wanted for the crime of desertion. According to the summary of facts the individual was a police inspector who "untruthfully announced that he was sick and left with his service weapon the territory of the [country] with [the] intent to evade further active service". Although the individual was a police inspector, and hence not a member of the military, the judgment concluded that the individual satisfied "all the elements of [the] crime of desertion" by failing to report to police service, giving untrue information about being sick, and leaving the territory with items given to him for purposes of his service including his weapon and cartridges. According to the court "because [a] police inspector's job assignment … is necessar[il]y consider[ed] as military service when he failed to duly commence his police service and he left the territory … this means desertion and he performed this fact with his service weapon that was allocated to him". It was thus concluded that the crime was a pure military offence that fell within the scope of Article 3 and that data may therefore not be registered in INTERPOL's databases.

Scenarios A and B – Pure military offence and involvement of a military tribunal
A Diffusion, later replaced by a Red Notice request, was sent by an NCB. The individual was wanted for "robbery with violence, stealing arms, and desertion". The arrest warrant was issued by a court martial. The NCB clarified that the military court was involved because the individual was a cadet at a military institute and had committed the ordinary crime at the military institute. It was concluded that the first two charges came under ordinary law and emanated from a different set of facts from the purely military charge of desertion. The Red Notice was therefore published on the basis of the charges of "robbery with violence and stealing arms". [See also "separation of charges"]

Scenario C – Ordinary-law crime committed in a military context
Data concerning the killing of a former leader of the military police was sent by an NCB. The General Secretariat was of the opinion that while the targeting of military personnel in situations of armed conflict may fall within the scope of Article 3, the situation in question was not recognized by the international community as being one of armed conflict. Further, targeting a member of the armed forces does not in itself prevent a case from being registered in INTERPOL's databases with respect to Article 3, because murder is considered an ordinary crime. The data were therefore registered.

Scenario C – Yellow Notice request for disappearance during military service
An NCB requested the publication of a Yellow Notice for a soldier in its country's military forces who had disappeared during his military service. The General Secretariat asked the NCB to explain: (1) whether the disappearance was connected with an armed conflict or a military operation, and (2) whether, if found, the individual's extradition would be requested for any political or military crime connected with his military service. The NCB replied that the individual was doing his compulsory military service but that his disappearance had no connection to a military conflict or military operation and that, if found alive, no measures would be taken against him. It was therefore concluded that Article 3 was not violated and the Yellow Notice was published.

Scenario D – Acts committed in an armed conflict

Case 1: Red Notice requests were sent by an NCB where the individuals were wanted for aggravated murder. In the context of a situation internationally recognized as an armed conflict, they set an ambush for members of an opposing army and killed two individuals. No evidence was provided as to the violation of the laws of war or an international crime.
The Red Notices were therefore not published and the data were not recorded.

Case 2: Diffusions were sent by an NCB for individuals wanted for murder, attempted murder, and destruction of other people's property. They participated in an attack by the army on a site occupied by soldiers who were nationals of the country that sent the Diffusions, as a result of which many of the soldiers were killed and wounded. It was concluded that Article 3 applied because the Diffusions sent related to military clashes between military forces of the country that conducted the attack and the country whose soldiers were the subjects of the attack. The data concerning two individuals who were subject to the Diffusions were therefore not recorded.

In a third Diffusion, it was nonetheless later considered that, since the soldiers attacked were stationed at the site as part of a particular operation following a United Nations Security Council Resolution, the case should not be considered as an armed conflict between two INTERPOL member countries and as such did not fall within the scope of Article 3. The third Diffusion was therefore recorded.

Case 3: Red Notice request sent by an NCB. The individual was wanted for "armed rebellion" and "desecrating a corpse". In the context of a situation internationally recognized as an armed conflict, the individual, who belonged to the Ministry of Interior of one of the countries involved in the armed conflict, was the commander of a paramilitary group that shot a soldier belonging to an opposing military group, and later burned his body. The arrest warrant was issued by a military tribunal. It was concluded that both crimes were committed in the context of an armed conflict and as part of a dispute over the sovereignty over territory. The crimes were not considered serious international crimes. The political and military aspects were therefore predominant and the data were not recorded.

Scenarios D and E – International crimes committed in an armed conflict

Diffusions were sent by an NCB seeking the arrest of individuals, nationals of another country, for intentional homicide and crimes against the international community allegedly committed in an armed conflict while they were serving as soldiers. Regarding the first charge, it was considered that the context of the crime, a military attack in the middle of an armed conflict, demonstrated that the crime fell under Article 3. Regarding the second charge, after clarification of the meaning of the charge was requested and received, it was concluded that this crime falls within the general category of war crimes. The policy on war crimes (Resolution AG-2010-RES-10) was applied, which dictated that where a request for police cooperation based on war crimes was sent by one member country with regard to a national of another member country, the data may not be recorded in INTERPOL's databases if the latter member country protested against the request. Since a protest was submitted, it was concluded that none of the data for either charge could be recorded in INTERPOL's databases.

Scenario E – International crimes containing military elements

A Diffusion was sent by an NCB. The individual was wanted for the crime of genocide which was allegedly committed in his capacity as commandant of the military police and with the political motive of exterminating part of the population as a national and ethnic group. Considering the nature of the crime and its gravity, the data were recorded in INTERPOL's databases.

3.11 Religious/racial elements *(updated: November 2024)*

The question – May data be processed when they contain religious or racial elements?

Background

1. Article 3 of INTERPOL's Constitution prohibits the Organization from undertaking "any intervention or activities of a religious or racial character". This prohibition was first included in the Constitution in 1946, in the aftermath of the Second World War.[1] The exclusion of offences of a religious and racial character corresponds to fundamental principles of international human rights, notably the right to freedom of religion[2] and the prohibition on racial discrimination.[3] This position also reflects international extradition law.[4] INTERPOL's General Assembly Resolutions have referred to a number of examples of pure religious and racial offences: practising a prohibited religion, recruitment or propaganda for particular religions, membership of a racial association,[5] and belonging to a banned religious group.[6]

2. The existence of religious and racial elements, however, does not entail the immediate application of Article 3 of the Constitution. Indeed, restrictions prescribed by law on the freedom of religion deemed "necessary to protect public safety, order, health or morals of the fundamental rights and freedoms of others"[7] do not contravene an individual's right to religion and will not be considered as pure religious offences. Thus, for example, hate speech is not considered as a pure religious/racial offence,[8] and States are encouraged to criminalize such acts.[9]

3. With regard to the term "racial", the 1994 General Assembly Report refers to a distinction between "race" and "ethnic group", pointing to the wording of the 1948 Genocide Convention, which implicitly distinguished between ethnic groups and racial groups by enumerating them as different groups for the purposes of the Genocide Convention.

4. Notwithstanding the apparent distinction in the Genocide Convention, for the purposes of Article 3 of the Constitution, a broader interpretation of the term "racial" is desired. To that end, the more comprehensive definition of the term "racial discrimination" in the 1965 Convention on the Elimination of All Forms of Racial Discrimination appears to be

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1 See the Minutes of the 15th session of the General Assembly, 3-5 June 1946, Brussels, Belgium, page 4.
2 Article 18 of the Universal Declaration of Human Rights (UDHR); Articles 2(1) of the International Covenant on Civil and Political Rights (ICCPR). See also the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
3 Article 2 of the UDHR; the 1965 Convention on the Elimination of All Forms of Racial Discrimination.
4 See UN Model Treaty on Extradition, listing among the mandatory grounds for refusal of extradition, the following: "If the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons"(Article 3(b) of the Model Treaty).
5 1984 Resolution AGN/53/RES/7.
6 1994 Report adopted by Resolution AGN/63/RES/9.
7 See Article 1(3) of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.
8 See Chapter 3.2 on offences concerning freedom of expression.
9 See, e.g., Article 4 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination. See also Article 20(2) of the ICCPR.

appropriate.[10] Indeed, this definition includes discrimination based on "national or ethnic origin".

5. In this respect, it is worth noting that one of the core purposes of the United Nations is the achievement of "international cooperation in promoting and encouraging respect for the human rights and fundamental freedoms for all without distinction as to **race**, sex, language, or **religion**".[11] The principle of non-discrimination and the freedom of religion are so firmly entrenched under international law, having acquired the status of customary international law, that even in states of emergency, they permit of no derogation.[12]

6. Consequently, the prohibition on INTERPOL engaging in interventions of a religious or racial character also implicates Article 2 of INTERPOL's Constitution, which requires INTERPOL to carry out its activities in the spirit of the UDHR. Specifically, any act which would further or contribute to the prosecution or punishment of a person on account of that person's race, religion, or national or ethnic origin, would infringe the entitlement of all to equal protection of the law without discrimination,[13] as well as contravene every major extradition instrument, which dictate the mandatory refusal of extradition requests in such circumstances,[14] and thus contradict Article 2 of the Constitution.

7. The universality of the principle of non-discrimination on the basis of race is reflected in the prohibition of racial profiling on the part of law enforcement as articulated by the Committee on the Elimination of Racial Discrimination (CERD) in the context of the International Convention on the Elimination of All Forms of Racial Discrimination.[15] CERD describes racial profiling as the practice of police and other law enforcement of subjecting persons to investigatory activities or determining whether an individual is engaged in criminal activity on the basis of the person's race, colour, descent or national or ethnic origin and notes that this kind of racial discrimination often intersects with other grounds, including religion.[16] Thus, processing of data which amounts to racial profiling is likely to violate both INTERPOL's rules (Articles 2(1) and 3 of the Constitution) and national laws.[17]

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10 According to Article 1(1) of the 1965 Convention on the Elimination of All Forms of Racial Discrimination, 'the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'.

11 Article 1(3) of the United Nations Charter (emphasis added).

12 Article 4 of the ICCPR.

13 Article 7 of the UDHR; Article 26 of the ICCPR.

14 Section 5 UNODC Model Law on Extradition (2004); Clause 13 London Scheme for Extradition within the Commonwealth (2002); Article 4(5) Inter-American Convention on Extradition (1981); Article 3(2) European Convention on Extradition; Article 4(1)(e) Draft Model ASEAN Extradition Treaty (2018).

15 Committee on the Elimination of Racial Discrimination, General Recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, CERD/C/GC/36 adopted by the Committee at its 102nd session (16-24 November 2020), para 21.

16 CERD General Recommendation No. 36, *supra* note 15, at para 18.

17 See, in this respect, the holding of the European Court of Human Rights (ECHR), according to which "no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principle of pluralism and respect for different cultures". (ECHR, 13 December 2005, Timishev v Russia, para 58). The use of such grounds as ethnic or national origin may be justified, however, for "very weighty reasons" (EHCR, 16 September 1996, Gaygusuz v Austria, para 42), i.e. the pursuance of a legitimate aim which outweighs the discriminatory character.

8. In INTERPOL's practice, questions concerning the possible application of Articles 2 and 3 due to religious and racial elements have arisen in the following scenarios:[18]

Scenario A – Pure religious/racial offences, such as membership in a prohibited religious organization or speech/expression which does not rise to criminal hate speech or expression.[19]

Scenario B – Existence of religious/racial elements in the crime committed (e.g. murder with religious motives) or in the wider context of the case (e.g. in violation of the prohibition of racial/ religious persecution under international extradition law).

Scenario C – Existence of religious/racial elements in the context of police work (e.g. police operations addressing criminal networks identified on the basis of religious/racial characteristics).

Current practice

9. **Scenario A** – Pure religious/racial offences fall within the scope of Articles 2 and 3 of the Constitution; therefore, the processing of data would not be in conformity with INTERPOL's rules.

10. **Scenario B** – Similar to cases where political or military aspects exist, where the facts present both ordinary-law crime elements and religious or racial elements, INTERPOL will apply the predominance test taking into account relevant elements under Article 34(3) of the RPD, including the seriousness of the crime and whether it "constitute(s) a serious threat to personal freedom, life or property".[20]

11. **Scenario C** – Personal data revealing racial or ethnic origin is considered "particularly sensitive data."[21] Such data may be processed via INTERPOL channels only if: (1) they are relevant and of particularly important criminalistic value for achieving the aims of the Organization and the purposes of the processing of data; (2) they are described objectively and contain no judgment or discriminatory comments.[22]

12. Accordingly, cases falling in this category will require analysis to evaluate in particular the necessity and proportionality of processing the particular item of data, as well as conditions put in place to ensure objectivity and non-discriminatory requirements. Consideration should also be given to the terminology used.

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18 Note that cases may raise questions under both scenarios. For example, a Red Notice may be requested for a person charged with hate speech (Scenario A), and his description may include identifiers (e.g. tattoos) unique to a certain ethnic group.

19 See Chapter 3.2 on offences concerning freedom of expression.

20 1984 Resolution AGN/53/RES/7.

21 Article 1(18) of the RPD.

22 Article 42 of the RPD.

Examples

Scenario A – Pure religious/racial offences

Case 1: A Red Notice request was sent where the individual was wanted for a number of offences including the "creation, leadership, participation in religious-extremist, separatist, fundamentalist or other forbidden organisation". It was concluded that the data submitted did not suffice to qualify the group as a terrorist organization. Rather, the group concerned was a religious organization, and the charge was therefore considered as membership in a prohibited religious organization which, in accordance with INTERPOL General Assembly Resolutions, is considered an offence of a religious character by its very nature. Accordingly, the Red Notice was not published.

Case 2: An NCB sent a Red Notice request for a national of its country, who was wanted on charges of "Publicly Provoking Hatred or Hostility in the Public", "Publicly Degrading a Section of the Public on Grounds of Social Class, Religion, Sect, Gender or Religious Differences", and "Publicly Degrading the Religious Values of a Section of the Public". According to the facts provided, the individual posted videos on social media in which he tore pages out of the Quran and made offensive remarks about the Prophet Mohammed and Islam. It was concluded that the alleged crimes were committed in furtherance of an anti-religious intent, which indicated that the religious aspect predominated over the ordinary-law crime element. In addition, the charges and underlying facts raised issues with regard to freedom of expression as the insults did not amount to hate speech or incitement to violence. Additionally, there was no apparent close link between the alleged acts and the risk of ensuing violence against Muslims. The case was denied on the basis of Article 2 (freedom of expression) and Article 3 (religious nature of the case).

Case 3: An NCB submitted a Red Notice request concerning a national of the country source of data, sought for prosecution on charges of "publicly assaulted and insulted religious beliefs". The individual was wanted for having insulted the Holy Quran, burning it and posting the videos of these acts on his social media pages. These acts were committed in a different country from the source of data, where the individual lived. Based on the review of all available information, even though the burning of the Quran, or any other holy book, could be an offensive and disrespectful act, no elements were identified to suggest that the acts committed by the individual were intended to incite hatred and violence against Muslims. Such conduct concerns the expression of an opinion related to a religious matter, which is protected by the right to freedom of expression. The request was found to infringe Articles 2(1) and 3 of INTERPOL's Constitution and the request was therefore denied.

Case 4: A Wanted Person Diffusion was sent for an individual wanted for prosecution for "organization of extremist community". The subject was a follower and adherent of the organization Jehovah's Witnesses. This organization was recognized as extremist in country A. The individual was a leader of a division of the organization. The subject and his accomplices organized the collection of money and donations for the needs of the organization, organized meetings of its members, received and stored its literature, and promoted the organization. The activities of the individual described in the case were in furtherance of religious interests. Therefore, the request was found non-compliant with Articles 2(1) and 3 of INTERPOL's Constitution.

Scenario B – Religious/racial elements in the crime committed

Compliant Cases

Case 5: A Diffusion was sent by an NCB for an individual for "racism, minimization and approval of the genocide committed during the Second World War". According to the facts provided, the individual had sent documents inciting hatred against Jews and denying the Holocaust. It was concluded that racial hatred was an ordinary-law crime condemned by various international instruments and the data were registered accordingly.

Case 6: Red Notices were requested by an NCB. The charges against the individuals included murder with religious motives. It was concluded that the murder of individuals who merely supported a religious policy was not reasonable, proportionate or "in furtherance" of any legitimate objective. In addition, the murders were aimed at terrorizing supporters of the policy into changing their religious affiliations, which is contrary to Article 18 of the UDHR, according to which everyone has "the right to freedom of thought, conscience and religion …". Consequently, the Red Notices were published.

Case 7: A Red Notice request was submitted for an individual sought to be prosecuted for "conspiracy, culpable homicide not amounting to murder, causing explosion likely to endanger life or property, causing explosion, or for making or keeping explosive with intent to endanger life or property, making or possessing explosives under suspicious circumstances". The facts indicated that he conspired with others to kill an individual by suicide bomber, and one of the bombs exploded, killing one of the accomplices. The motive was the aspiration of the wanted individual to be the head of the sect. Additionally, according to information available to the General Secretariat, the sect concerned was an offshoot of the Sikh religion and there were no links to the regional separatist movement. Although there were religious elements (i.e., rivalry for a religious position) the serious ordinary law elements prevailed, specifically the offences and the conspiracy to murder someone, and explosive charges. Therefore, the request was found compliant.

Case 8: Two Red Notices were requested concerning senior members of a Church of a third country, who were sought for fraud, membership in a criminal organization and money laundering. They stood accused of using the structure of that Church for the commission of these offences. These requests formed part of both a national and a wider regional police project. Other Notices and Diffusions concerning members of the relevant criminal organization had previously been published/recorded. In consideration of the general context of the presence of a regional police operation, the serious ordinary-law nature of the offence, and the status of the persons concerned who did not hold public influence or stature, the requests were held to be compliant with Article 3 of the Constitution.

Non-compliant Cases

Case 9: An NCB requested a Blue Notice for an individual sought for providing money to fund terrorism. He had previously been charged under anti-conversion laws. The NCB explained that he had financed a terrorist group that had circulated messages, literature, audio, and video, which instigated communal unrest and violence. Its members had been charged, among other offences, with stirring religious outrage and converting others from one religion to another. Their activities had led to many demonstrations in various parts of the country.

The NCB provided no information about the identity of the terrorist group or the content of the messages, literature, audio, and videos circulated by the group. The General Secretariat found that the Notice was not compliant with the prohibition on the Organization undertaking "any intervention or activities of a religious […] character" in Article 3 of INTERPOL's Constitution. The Notice request was therefore denied.

Case 10: A Red Notice published upon request of the source of data concerning one of its nationals, wanted for incitement of enmity and public appeal for terrorism, was reviewed when information was brought to the attention of the General Secretariat indicating that this prosecution was linked to the religious speeches and studies of the wanted person. It was concluded that the published Notice no longer complied with Articles 2 and 3, and it was deleted.

Case 11: Publication of a Red Notice was requested in respect of an individual sought for the organization of terrorist activities as part of a nationally designated religious organization. Following correspondence with the requesting NCB with regard to the organization in question, for which no links to terrorism were detected, it was concluded that the request was based solely on the fact that the individual was part of a religious community. Hence, the request was denied under Article 3 of the Constitution for concerning a purely religious offence.

Case 12: A Red Notice request was submitted concerning the leader of a local religious NGO, who was sought to be prosecuted for murder for having made a hateful speech immediately after the bombing of a church, which incited a crowd to kill two persons. No information suggested that the individual's acts contributed to the extrajudicial killings of the two persons. In consideration of this absence of information, along with the status of the person and the general context of tensions between two religious communities in the requesting country, the request was held to fall within the ambit of Article 3 of the Constitution. The Notice was therefore denied.

Case 13: A circulated Wanted Person Diffusion implicated an individual in organizing and financing the activities of an extremist organization in relation to his membership in a religious community. The designation of this religious community as a terrorist organization in the requesting country was criticized as religious discrimination by several countries and human rights groups. An extradition denial in respect of the individual by a third member country for non-fulfilment of the dual criminality requirement was also noted, as well as the individual's asylum seeker status in that member country. Despite the ordinary-law nature of the offence, in consideration of the status of the individual as an active member of a religious community and as an asylum seeker, of the general context of the extremist designation in the requesting country, and of the position of another NCB, it was concluded that the religious elements prevailed over the ordinary law elements. The data were accordingly deleted under Article 3 of the Constitution.

Case 14: An individual subject to a Wanted Person Diffusion was charged with participation in the activities of a religious extremist organization in a leadership role for having appealed to followers to reject State authorities and to refuse medical services including in emergency situations. Due to the organization in question not being internationally recognized as an extremist organization, and to the described activities not constituting an active and meaningful involvement with regard to the alleged criminal activities of the organization, the

Diffusion was denied based on Articles 2 (freedom of religion) and 3 (religious matter) of the Constitution.

Case 15: Upon review of previously published Notices concerning individuals sought to serve sentences for their complicity in forging and using official documents, i.e. passports and marriage certificates, the General Secretariat noted that the forgery of said documents aimed to facilitate an interfaith marriage between two of the aforementioned wanted persons. Interfaith marriages were prohibited in the requesting country. In view of the statuses of the individuals at hand, as an interfaith couple and witnesses to their marriage, and the general context of prohibition of interfaith marriages in the requesting country, it was concluded that the religious elements of the offence prevailed over the ordinary-law crime elements in violation of Article 3 of the Constitution. In addition, it was concluded that the request raised issues under Article 2 of the Constitution, as Article 16 of the UDHR enshrines the right to marry and found a family. Therefore, the data were deleted.

Scenario C – Religious/racial elements in the context of police work

Case 16: An NCB sent a research paper with the purpose of "examining the European perspective on gypsy crime", suggesting that a seminar should be held on the subject. It was concluded that such activity may take place, but it was recommended that the term "gypsy" be replaced with neutral terminology such as "travellers/itinerant people".[23] It was further noted that, in general, any indication of a racial nature in the context of searching for fugitives (e.g. Red Notices) was forbidden unless it was intended to facilitate the searches.

Case 17: An NCB wanted to record data in INTERPOL's databases concerning terrorists using terms such as "black Muslim extremism" or "extremists of African origin believing in Islam". It was concluded that both terms were contrary to Article 3 of the Constitution since a category of suspects cannot be identified by the association of a racial characteristic and a religious one.[24] It was therefore suggested that the individuals be identified by their belonging to a given terrorist organization.

Case 18: Data sent by an NCB about arrested members of a terrorist organization linked to the MJIM (*Mouvement de la Jeunesse Islamique Marocaine*) were recorded in INTERPOL's database. It was concluded that Article 3 of the Constitution did not allow individuals to be classified by political, religious or racial categories; however, there was no legal obstacle to recording the full name of a terrorist organization regardless of its religious reference.

Case 19: The term "race" is mentioned on the Disaster Victim Identification (DVI) form, which raised the question of its compatibility with Article 3 of the Constitution. It was concluded that the term "race" did not violate Article 3, given that the DVI form was adopted by the General Assembly for the purpose of identifying victims after a disaster and facilitating searches for missing persons.

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[23] In November 2009, the European Commission against Racism and Intolerance (ECRI) brought to the attention of the General Secretariat that 80 per cent of the Roma population in the Council of Europe countries was sedentary. The use of the term "nomads and travelers" would therefore presuppose that the groups in question had a certain lifestyle, which was in violation of the ECRI's General Policy Recommendation No. 3 on combating racism and intolerance against the Roma.

[24] This position appears to be in accordance with the ECRI's position as brought to the attention of the General Secretariat in November 2009. The ECRI stated that in many country reports, it had taken a firm stance against attempts to link ethnicity to certain types of crime, which would amount to stigmatization.

Case 20: An NCB sent a message to INTERPOL asking whether its statistics indicated a "share of the gypsy community or a number and/or volume of offenders of gypsy origin in committing crime". A reply was sent stating that the term "gypsies" should not be used and it was suggested that a generic term be used which had no ethnic connotation, such as "nomads" or "itinerant people", to avoid any confusion and to assure other NCBs that the information was to be used solely for identification purposes or to conduct a crime study. It was concluded that it would not be possible to request information on such persons simply because they belonged to a given ethnic group, as this would be in violation of Article 3 of the Constitution.

Case 21: An NCB sent a Black Notice request to identify a dead body. In the Notice, the body was described as being of "negroid race". The NCB was informed that this term should not be used, and the term was replaced with a reference to the body being of "African descent".

3.12 Separation of charges

The question – May data be processed where the request for police cooperation is based on separate charges, some of which are ordinary law in nature while others are of a political, military, religious or racial nature?

Background

1. Notices/Diffusions may be sent for persons on the basis of different charges. A distinction may be made between the following scenarios:

Scenario A – The individual is wanted on at least two charges; at least one of the charges falls under Article 3; the charges emanate from separate sets of facts; separate arrest warrants have been issued for each set of facts.

Scenario B – Similar to Scenario A, but only one arrest warrant has been issued.

Scenario C – The individual is wanted on at least two charges; at least one of the charges falls under Article 3; the charges emanate from one set of facts or are otherwise connected; only one arrest warrant has been issued.

Current practice

2. **Scenario A –** The charges should be treated as if emanating from separate requests. Accordingly, in the case of a Notice request, the Notice may be published solely on the basis of the arrest warrant(s) issued with reference to the ordinary-law charge(s). If a Diffusion contains references to all the charges and data on all the arrest warrants, only the data concerning the ordinary-law charges may be recorded, the relevant NCBs (i.e. the source and the recipients of the Diffusion) should be informed of the decision, and a caveat be added indicating this decision.

3. **Scenario B –** If it is concluded that the charges indeed emanate from different sets of facts, the data may be processed on the basis of the arrest warrant containing both types of charges, with an indication that publication/recording was made only in respect of the ordinary-law charges. In the case of a Notice, such data may be added in the "additional information" field. In the case of a Diffusion, the relevant NCBs should be informed and a caveat be added to the file.

4. **Scenario C –** Considering that the charges emanate from one set of facts or are otherwise connected, the overall predominant nature of the case should be evaluated, bearing in mind that it is the facts – rather than the wording of a particular charge – that should generally determine the nature of the case.

Examples

Scenario A – Separate arrest warrants

A Diffusion was issued for an individual for the offences of "insulting a police officer or military servant and insulting the former President of [the country]" and "illegally obtaining weapons". The former charge was clearly considered a political crime within the meaning of

Article 3, while the latter was considered to be ordinary law in nature. Separate arrest warrants had been issued for each event. It was concluded that the data could be recorded only in respect of the latter charge/event, and a caveat was added, stating that: "Information has not been registered in respect of the offences of insulting a police officer or military servant, and insulting the former President of [the country]". The Diffusion was later replaced by a Red Notice request based on the same arrest warrants. The Red Notice was published solely on the basis of the arrest warrant which contained the charge of "illegally obtaining weapons".

Scenario B – One arrest warrant only

Case 1: Red Notices requested by an NCB for the charges of "embezzlement", "illegal enrichment" and "illegal emigration". It was concluded that the last offence was not connected to the first two and fell under Article 3. Accordingly, it was decided to publish the Red Notices with reference solely to the first two offences, which were of an ordinary-law nature. An explanation concerning the General Secretariat's decision was added to each Notice in the "additional information" section.

Case 2: A Diffusion, later replaced by a Red Notice request, issued by an NCB. The individual was wanted for "robbery with violence, stealing weapons, and desertion". It was concluded that the first two charges were of an ordinary-law nature and emanated from a set of facts different from the pure military charge of desertion. The Red Notice was therefore published with the charges of "robbery with violence and stealing weapons".

Case 3: A Red Notice was published for an individual only for the offences of deception, swindling, fraud and soothsaying, as they were considered to be ordinary-law crimes. Data were not recorded with respect to the offence of illegal emigration as it was considered to be a pure political offence. A caveat was added to the Notice indicating that the offence of illegal emigration had not been recorded.

3.13 Coherence between the charges and supporting facts

1. The Organization's experience shows that the charges as stated in requests for police cooperation may not necessarily reflect the true nature of the offence and may therefore not serve as the sole basis for determining that a given request falls under Article 3.[1] Accordingly, each case requires a review based on the facts provided.

2. It is therefore essential to verify: first, that the underlying facts match the charges in the particular case; and secondly, that the facts link the individual concerned to the charges. For example, providing general information about the crime and stating that the individual "was involved in this crime" is insufficient. Rather, the activities or role of the individual in the crime should be explained. Similarly, Notice requests or Diffusions for several individuals involved in the same criminal activity should each include the summary of the crime, followed by a succinct description of the role played in that crime by each individual in question.[2]

3. While this assessment is not limited to an Article 3 review but is rather a general prerequisite for ensuring the quality of data processed via INTERPOL's channels, it is particularly important for determining the predominance of the case and, potentially, other related questions (e.g. regarding separation of charges). When, in this review process, questions arise regarding the link between the facts and the charges, the source of data must be requested to provide clarifications.

Examples

Case 1: A Diffusion was circulated by an NCB for an individual on charges of participating in a criminal organization and murdering a police officer. However, the summary of facts stated that the person had disseminated leaflets "*promoting public disorder*" and calling for "*a change of the constitutional system*". Because these elements were considered to be of a political nature and not reflected in the charges, the NCB was invited to re-circulate the Diffusion without reference to the political allegations.

Case 2: Shortly after a country's president was deposed, the NCB of the country sent a series of Diffusions for him and close members of his family on corruption-related charges. The summary of facts was identical in all Diffusions. The NCB was therefore asked to provide further information regarding the role of each individual in the criminal activity.

Case 3: Red Notice requests sent by an NCB for four individuals on charges of terrorism, and of being linked to a number of terrorist attacks against diplomatic targets in different countries. The requests explained the crime context but omitted any details about the direct participation of the persons in the offence. The NCB was therefore requested to provide additional information that would make it possible to determine the participation or

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1 See, in this connection, General Assembly report AGN/63/RAP No. 13 of 1994, endorsed by Resolution AGN/63/RES/9, which underscores that "the question of predominance has to be settled by examining the facts, even if, as the 1951 Resolution says, 'in the requesting country the facts amount to an offence against the ordinary law'."

2 See, in this regard, the message sent by the General Secretariat on 5 April 2012 (Ref: LA/36653-119/5.2/YGO/lb/vp concerning "Red Notices and Diffusions: the importance of providing facts linking the wanted individual to the charges."

involvement of the individuals in the terrorist attacks and link the facts with the charges. Once the NCB had submitted these elements, the Red Notices were published.

Appendix

MAIN RULES APPLICABLE TO ASSESSING DATA PROCESSED VIA INTERPOL'S INFORMATION SYSTEM IN LIGHT OF ARTICLES 2 AND/OR 3 OF THE CONSTITUTION

Constitution

Article 2

[INTERPOL's] aims are:

(1) To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the 'Universal Declaration of Human Rights';

(2) To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.

Article 3

It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character.

Rules on the Processing of Data (RPD)

Article 1: Definitions

(1) "Ordinary-law crime" means any criminal offence, with the exception of those that fall within the scope of application of Article 3 of the Constitution and those for which specific rules have been defined by the General Assembly.

Article 2: Aim

The aim of the present Rules is to ensure the efficiency and quality of international cooperation between criminal police authorities through INTERPOL channels, with due respect for the basic rights of the persons who are the subject of this cooperation, in conformity with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers.

Article 5: Compliance with the principles of governance and responsibilities associated with the processing of data

(1) International police cooperation through INTERPOL channels shall take place in accordance with the basic rules governing the Organization's operations, in particular its Constitution.

(2) The processing of data in the INTERPOL Information System shall be performed in conformity with, in particular, Articles 2, 3, 26, 31, 32, 36 and 41 of the Constitution.

Article 11: Lawfulness

(1) Data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the National Central Bureau, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers.

Article 34: Compliance with the Organization's Constitution

(1) In conformity with Article 5 of the present Rules, prior to any recording of data in a police database, the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 2 of the Organization's Constitution, and also that it is authorized to record such data pursuant to applicable national laws and international conventions and to the fundamental human rights enshrined in the Universal Declaration of Human Rights to which the said Article refers.

(2) In conformity with Article 5 of the present Rules, prior to any recording of data in a police database, the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 3 of the Organization's Constitution.

(3) To determine whether data comply with Article 3 of the Constitution, all relevant elements shall be examined, such as:
   (a) nature of the offence, namely the charges and underlying facts;
   (b) status of the persons concerned;
   (c) identity of the source of the data;
   (d) the position expressed by another National Central Bureau or another international entity;
   (e) obligations under international law;
   (f) implications for the neutrality of the Organization;
   (g) the general context of the case.

(4) In light of the directives issued by the General Assembly and of developments in international law, the General Secretariat may compile repositories of practice on the application of Articles 2 and 3 of the Constitution, and make them available to the National Central Bureaus, national entities and international entities.

Article 76: Requests for the publication of notices

(2) Prior to requesting the publication of a , the National Central Bureau or international entity shall ensure:
(…)

(d) that its request complies with INTERPOL's rules, specifically with Articles 2(1) and 3 of the Constitution, as well as with the obligations imposed on the requesting entity under international law.

Article 86: Legal review by the General Secretariat

The General Secretariat shall conduct a legal review of all red notices prior to their publication to ensure compliance with INTERPOL's Constitution and Rules, in particular with Articles 2 and 3 of INTERPOL's Constitution.

Article 99: Circulation of diffusions

(2) Before circulating a diffusion, the National Central Bureau or international entity shall ensure:
(…)

(d) that its request complies with INTERPOL's rules, specifically with Articles 2(1) and 3 of the Constitution, as well as with the obligations imposed on the requesting entity under international law.

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