

# **International Police Organizations: Interpol and Europol Overlap and Interaction**

**Nancy Gergis**

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Prof. Dr. Mustafa Tümer  
Director

I certify that this thesis satisfies the requirements as a thesis for the degree of Master of Arts in International Relations.

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Prof. Dr. Erol Kaymak  
Chair, Department of Political Science and  
International Relations

We certify that we have read this thesis and that in our opinion it is fully adequate in scope and quality as a thesis for the degree of Master of Arts in International Relations.

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Assoc. Prof. Dr. Wojciech Forysinski  
Supervisor

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Examining Committee

1. Assoc. Prof. Dr. Wojciech Forysinski \_\_\_\_\_

2. Asst. Prof. Dr. Nuray Vasfieva Ibryamova \_\_\_\_\_

3. Asst. Prof. Dr. John Albert Turner \_\_\_\_\_

## **ABSTRACT**

The purpose of this thesis is to explore the correlation between the International Criminal Police Organization (Interpol) and the European Police Office (Europol) structurally, operationally, and functionally. to scrutinize the proposition that a distinction between these two organizations is not just about the extent of membership but also about the functions, roles, and the degrees of homogeneity and autonomy of the organizations. The methodological approaches employed are the fragmentation of international organizations and international law, regime theory, and bureaucratization theory of policing. Interpol and Europol perform dissimilar roles in the international system being instruments, arenas, and actors. At the same time, they do perform significant functions by providing international standardized norms and rules, responsible for rule application and exchange of information. This represents respective international regimes and different models of governance and administration in the field of combating transnational crimes.

**Keywords:** International Police Organizations, Interpol, Europol, Regimes, Fragmentation, Bureaucratization, Autonomy and Homogeneity

## ÖZ

Bu tezin esas amacı uluslararası polis teşkilatları İnterpol ve Europol'ü incelemektir. Bu teşkilatların çakışmaları ve etkileşimleri yapısal; işlevsel; ve fonksiyonel olarak araştırılmıştır. Bu tezde uluslararası teşkilatların ve uluslararası hukukun ayrışma teorisi, ve polisliğin bürokratikleşme ve rejim teorisi kullanılacaktır. Kullanılan kıyaslama araçları İnterpol ve Europol vasıtalarının, alanlarının ve aktörlerinin rolleridir. Ayrıca İnterpol ve Europol'ün bu çalışmada incelenen fonksiyonları kurallar, kural-koyuculuk, kuralların uygulanması, ve karşılıklı bilgi alışverişidir. Bu yüzden bu çalışmanın birincil odak noktası İnterpol ve Europol'ün kurumsal ayrışma, rejim karmaşaları, otonomi, ve homojenlik elementleridir. Bu tez birincil ve ikincil bilgilerden yararlanıp daha çok yayınlanmış kitaplar, Europol sözleşmesi, İnterpol'ün anayasası ve esasen çok yönlü ve iki yönlü anlaşmalar, gazete ve dergi makaleleri içermektedir.

**Anahtar Kelimeler:** Uluslararası Polis Teşkilatları, İnterpol, Europol, Rejimler, Ayrışma, Bürokratikleşme, Otonomi, Homojenlik

# **DEDICATION**

To My Family

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## **LIST OF ABBREVIATIONS**

AMERIPOL	Police Community of the Americas
AFRIPOL	African Police Office
ASEANPOL	Inter-Asean Police
AFSJ	Area of Freedom, Security, and Justice
CCF	Commission for the Control of Interpol's Files
CEPOL	European Police College
EC	European Commission
ECOPOL	European Police College
EDU	European Drug Unit
EEC	European Economic Community
EIS	Europol Information System
ENU	Europol National Unit
EPE	Europol Platform for Experts
EU	European Union
EUROPOL	European Police Office
GCCPOL	Cooperation Council for Arab States of the Gulf
ICPC	International Criminal Police Commission
ICPO	International Criminal Police Organization
IGO	Intergovernmental Organization
INGO	International Non-Governmental Organization
ILO	International Labor Organization
INTERPOL	International Criminal Police Organization

JIT	Joint Investigation Team
PJCCM	Police and Judicial Cooperation Criminal Matters
RPD	Rules on the Processing Data
SIENA	Secure Information Exchange Network
TEC	Treaty Establishing the European Community
TEU	Treaty of the European Union
TNO	Transnational Organization
TGO	Trans governmental Organization
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNESCO	United Nations Economics and Social Council
UNODC	United Nations Office on Drugs and Crime
WCO	World Custom Organization

# Chapter 1

## INTRODUCTION

International organizations and institutions are becoming increasingly common in the contemporary international system. The proliferation of international organizations, the increase in treaty arrangements between states, and the expansion of regional integration efforts in Europe as well as in other parts of the world make international politics more and more institutionalized over time. New international organizations, universal and regional have been set up in practically every field of international affairs. The process of institutionalization has added a new dimension to the field of international police cooperation as well. For instance, in March 2016, a dialogue on an effective multilateral policing architecture took place to tackle global threats; this dialogue included senior representatives from several regional police organizations, such as African UnionAFRIPOL, the police community of the Americas AMERIPOL, ASEANPOL, the Gulf Cooperation Council's GCCPOL, the Economic Cooperation Organization ECOPOL and European Union Europol.<sup>1</sup>

Cooperation through international organizations has become an essential element of the international political system and the proliferation of international organizations has resulted in the development of many different forms and levels of international and regional cooperation. Among many different forms of international

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<sup>1</sup> Interpol website, Regional police organizations gather at Interpol meeting to enhance cooperation, March 16, 2016. Available at: <https://www.interpol.int/en/News-and-media/News/2016/N2016-029/>.

organizations, distinct in nature and level of integration determined by states and other actors, are organizations belonging to two broad categories: universal and regional organizations.<sup>2</sup>

Even though the outline of regional and universal organizations varies significantly from one organization to another, they do not exist in isolation and maintain a complex network of relationships. Maximum coexistence, collaboration, and cohesiveness are among the prerequisite to guarantee better governance. The proliferation of both universal and regional organizations resulted in the establishment of distinctive relationship between them. Regional organizations of homogenous character and universal organizations of heterogeneous character both have significant advantages, functions, and roles to perform in order to accomplish common aims. Both forms of international organizations are not mutually exclusive, but there are definite needs for adjustments so that actors in both categories can work together more effectively.

Proliferation of agencies involved in the cooperation process encourages convergence of the channels of communication and sources information. This has created international police cooperation to operate under complicated and hostile conditions to cope with transnational crimes. The aim of this thesis is to explore the relationship between the International Criminal Police Organization (Interpol) and the European Police Office (Europol) structurally, operationally, and functionally. to examine the proposition that a distinction between these two organizations is not just

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<sup>2</sup>L. Boisson de Chazournes, "Interactions between Regional and Universal Organizations: A Legal Perspective", *Koninklijke Brill*, Netherland. (2017).

about the extent of membership but also about the functions, roles, and the degrees of homogeneity and autonomy of the organizations.

In the academic literature, transnational organized crimes are referred to as a security matter. According to MacFarlane and McLennan, transnational crimes are emerging as a serious danger in its own right to the national and international security.<sup>3</sup> Galeotti has referred to transnational crimes as the struggle against international crimes, which are becoming the security concern of the twenty first century.<sup>4</sup> The need to deal with transnational crime led to the rise of international police organizations and their development since the end of the Second World War. Many of them are highly specialized and relatively autonomous institutions. The scopes of their activities and the roles they play in the governance of international affairs have significantly expanded in a globalized environment. The process of globalization has created an increasing concerns over border control, human trafficking, international money laundering, drug trafficking, cybercrimes and terrorism which have in turn influenced and expanded to a great extent the scope of international policing.

Transnational crimes hold threat to both national and international security. In the national security level, transnational crimes have been capable of using institutions of sovereign states in different means to perform their activities away from the reach of the authorities. This has occurred perhaps because of legal loopholes, the deficiency of extradition agreements and other mutual assistance, or because of the complexity of the investigative techniques internationally. In the International

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<sup>3</sup>J. MacFarlane, K. MacLennan, " Transnational Crime: The New Security Paradigm", Strategic and Defense Studies Centre, Australian National University, (1996).

<sup>4</sup>M. Galeotti, "Introduction: Global Crime Today", Global Crime Journal, Volume 6, (2004).

security level, transnational organized crimes have expanded and formed a structure operating on a broad spectrum that harms the functioning of the society and politics internationally. In 2004, the United Nations High Level Panel stated that, "Organized crime is increasingly operating through fluid networks rather than more formal hierarchies."<sup>5</sup>This structure of organization grants criminals flexibility, low discerns ability, and prolonged existence. In 2006, Organized Crime Assessment Europol noted that the transnational organized crimes were increasingly becoming heterogeneous and organized both dynamically and structurally by transforming into more loose networks.<sup>6</sup> In 2008, the United States Department of Justice's Strategy to Combat International Organized Crimes confirmed that international organized crimes were becoming loose networks and no longer traditional hierarchical structures.<sup>7</sup>

International police organizations with permanent multilateral structures such as Interpol and Europol have been established to offer different tactics and techniques in dealing with transnational crimes.

Interpol and Europol have been selected to be the focus of this thesis. Both are among the most important and international police organizations and both attract much academic interest. Interpol with its practically global membership facilitates

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<sup>5</sup> The Threat of Transnational Organized Crime, p.27, Available at:<https://www.unodc.org/documents/data-and-analysis/tocta/1.The-threat-transnational-organized-crime.pdf>.

<sup>6</sup>Europol,"OCTA EU Organized Crime & Threat Assessment", (2006), Available at:<https://www.europol.europa.eu/activities-services/main-reports/octa-2006-eu-organised-crime-threat-assessment>.

<sup>7</sup>U.S Department of Justice, "Overview of the Law Enforcement Strategy To Combat International Organized Crime", (2008), p.10. Available at:<https://www.justice.gov/sites/default/files/criminal-ocgs/legacy/2011/05/20/04-08oic-strategy-english.pdf>

member states collaboration across the globe and Europol with its regional membership coordinates cooperation among European Union member states in the field of combating transnational crime. Both Interpol and Europol do play different roles in the international system being instruments, arenas, and actors. At the same time they do perform important functions by providing international standardized norms and rules, being responsible for rule application and exchange of information. Both are parts of their respective international regimes and represent different models of governance and administration in the field of combating transnational crimes.

Participation in international police organizations facilitates cooperation to tackle transnational crimes. This is achieved when the police and judicial authorities of a single state cooperate with police and judicial authorities of other states. International police organizations offer multiple channels of cooperation, bilateral and multilateral. At the same time, these collaborations may occasionally lead to conflicts between rules and regimes in a way that might undermine their effective implementation.

Interpol and Europol regimes partly overlap and interact. Therefore, the thesis will focus primarily on the elements of institutional fragmentation, regime complexes, and bureaucratization of policing of both organizations in order to assess the question of overlap and interaction, as well as evaluating the degree of homogeneity and autonomy.

## **1.1 Research Questions**

This research will focus on the debate surrounding universalism and regionalism of international organizations. The main aim of this thesis is to undertake qualitative examination of the complex interplay of Interpol and Europol, between a universal

and a regional organization, between two regimes and two models of police cooperation. It concentrates on explaining the ways they overlap and interact while dealing with the same subject matter.

Another aim of this thesis is to compare the two organizations. It pays considerable attention to their roles of instrument, arena, and actor as well as their functions such as norm-making, rule-making, rule application and exchange of information. It also compares the two organizations' institutional structures and decision-making processes. In short, it identifies similarities and differences between Interpol and Europol and explains the reasons the two organizations are similar or different. In particular, it aims to capture the nature of Interpol and Europol and their relationship by reference to their autonomy and homogeneity.

In order to assess the depth and intensity of their relationship the thesis has to address a number of supplementary questions. Why and how do the roles and functions of Interpol and Europol overlap? Are they mutually exclusive? How has the establishment of Europol enhanced the role of regional police cooperation institutions? What is the evidence of regional modes of dealing with transnational crime being more efficient? How hierarchical their relationship is? What is the likelihood of normative conflict between the rules and norms of both institutions? How can such conflict, if it happens, be managed?

## **1.2 Methodology**

In order to achieve the purposes of this thesis and to comprehensively address all the research questions presented above, the interplay of Interpol and Europol will be analyzed using three methodological approaches: fragmentation theory of

international law and international organizations, regime theory, and the bureaucratization theory of policing. The combination of these three interrelated methodological approaches will provide an opportunity to capture the complexity of their interplay.

The fragmentation of international law and international organizations approach helps to explain the proliferation of international organizations in the contemporary era and the complexity of their mutual relationships. In particular, it shades light on how do different organizations and regimes (rules, norms, patterns of behavior) overlap and interact. The usefulness of the regime theory originates from the belief, represented by many regime theorists, including Oran Young, Raymond, Hopkins and Donald Puchala, that regimes may well include or depend upon international institutions. Young, for instance, defines regimes as "sets of norms, decision-making procedures and organizations coalescing around functional subject areas".<sup>8</sup> In addition, according to Jervis, regimes purpose is to facilitate and ease agreements and cooperation.<sup>9</sup>

Finally, bureaucratization theory will help to explain the foundation of international police cooperation and the process when the police agencies secure a degree of autonomy from their political centers in order to carry out international cooperation

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<sup>8</sup>C. Chinkin, F. Baetens, "Sovereignty, Statehood and State Responsibility", Cambridge University Press, (2015), p.74.

<sup>9</sup> Stephen D.Krasner, "Structural Causes and Regime Consequences: regimes as intervening variables", The MIT Press, (1982). Available at: <http://n.ereserve.fiu.edu/010030821-1.pdf>.

actions. Deflem explains that this autonomy means the freedom and lack of restrictions to design and use the suitable resources to counter transnational crimes.<sup>10</sup>

The research will be based on primary data collection and evaluation and analysis of secondary data sources. It will be carried out using methods and techniques of comparative and historical analyses to study the relationships of variant and separate models and regimes in the field of combating transnational crime such as Interpol and Europol. It will begin with a survey of relevant literature and will continue with a comprehensive content and contextual analysis of Interpol's Constitution and Europol's Convention and other official documents such as reports, and speeches of their officials. Particular attention will be given to the interpretation of the cooperation agreement between the two organizations.

### **1.3 The Structure of the Thesis**

This thesis is divided into six chapters. Chapter one explains the importance of the topic, aims, purposes of conducting research on the interaction of Interpol and Europol, research questions, research methodology, conceptual framework, and lastly the structure of the thesis.

Chapter two, literature review, is the comprehensive survey of the literature on different perspectives and classification of international organizations, their institutional complexities: fragmentation and interlinkages, securitization and transfer of authority, and in the fourth section the critical analysis of Europol and Interpol.

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<sup>10</sup>M. Deflem, "Bureaucratization and Social Control: Historical Foundations of International Police Cooperation." Vol.34, No. 3. (2000).

The third chapter focuses on theoretical approaches used to explain the complex interplay of Interpol and Europol, universal and regional international organizations. It concentrates on the concept of institutional fragmentation, regime theory including its development and transformation, lastly the bureaucratization theory of policing.

Chapter four represents a comparative analysis of Interpol and Europol. It focuses on roles and functions of each organization. The roles compared are the instrument, arena, and actor, while the functions compared are norms, rule making, rule application, and information exchange.

The fifth chapter focuses on the role of autonomy and homogeneity in international police cooperation. The degree of autonomy of Interpol and Europol and the elements affect its operational activities are dealt with by looking at financial autonomy, political autonomy, and legal autonomy of each organization whereas, the concept of homogeneity dealt with by addressing the homogeneity in relation to mandate and information-exchange that influence the operational activity of Interpol and Europol. Lastly, the impact of cooperation agreement between Interpol and Europol on its overlap and interaction explained. The sixth chapter is the concluding chapter.

The sixth chapter is the concluding chapter. It provides a summary of arguments presented in each chapter and a number of general concluding remarks addressing research questions outlined in the introductory chapter. The analysis of the complex interplay of universal and regional international organizations and in particular Interpol and Europol permits a few general observations concerning, for instance,

their cooperation, overlap, and potential normative conflict. It calls for better management of mutual relations.

## **Chapter 2**

### **Interpol and Europol: Review of the Literature**

This chapter is reflected on the debated literature reviews of several scholars on different subjects. Clive Archer provided information on international organizations, its development, and significance within the contemporary international political systems. Young, Biermann and colleagues, and Keohane along with other scholars provided useful debatable information on institutional fragmentation and complexities. Ole Waever and Barry Buzan dealt with the concept of securitization and its human and national security aspects. Kinacioglu, da Cruz, Gerspacher, and Thomson provided a comprehensive and very useful analysis of critical studies of Interpol and Europol.

This chapter is divided into four sections; the first section is on theoretical perspectives and classifications of international organizations. It intends to analyze the literature on different views of international organizations and its theoretical approaches through the lens of Pease. These approaches are Realism, Liberalism, Marxism, Feminism, and Constructivism used to show different options of looking at Interpol and Europol based on diverse perspectives of international relations theories. The classification of international organizations based on Archer's literature is utilized to classify different types of organizational arrangements and structures, thus helps to understand the position and structure of Interpol and Europol in the global political system and within the context of international organizations. This allows for

a better analysis and comparison of their roles and functions addressed later in chapter 4 on comparative analysis of Interpol and Europol.

The second section is on Institutional Complexities: Fragmentation and Interlinkages. In the past 20 years, global affairs were becoming progressively more complex due to the proliferation of norms, actors, institutions, and discourses in world politics. This section is addressing the concept of fragmentation by different scholars such as Biermann and colleagues, Young, Raustiala, Victor, and Keohane. Among international relations studies, the most commonly known type of fragmentation is institutional fragmentation, which is described in the work of Young; he explained how the horizontal and vertical interplay as well as the institutional linkages leads to different range of institutional typologies. Young established a typology consisting of four types of institutional linkages, named "embedded, nested, clustered, and overlapping institutions".<sup>11</sup> Each of these four typologies explained to understand the meanings of governance architecture and institutional fragmentation.

The third section is on Securitization and Transfer of Authority. This section aims to explain the concept of securitization theory based on the concept of national/ state security and the human security, in relation to international police organizations to tackle transnational crimes.

The fourth section is on the Critics of Europol and Interpol. In order to effectively compare the two organizations, it is important to address the weaknesses and

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<sup>11</sup>Ronald B. Mitchell, "Oran Young and international institutions", (2012), p.5.

criticisms of Europol and Interpol both structurally and technically. Thus, this section is essential to address to gain clear and wider knowledge of the two organizations.

## **2.1 Theoretical Perspectives of International Organizations**

Conventional and contemporary study on international organizations shows the input of scholars from various and diverse theoretical backgrounds, these backgrounds have shaped their conceptions and perspectives on international relations and the role played by international organizations within those relations. Hence, the identification of what are international organizations stemmed from diverse theoretical orientations explained by scholars of different views. Identifying international organizations are fraction of a complex web of relations that includes sub national, national, international and transnational attachments, therefore, in order to map out the patterns of such complex web, we utilize four theoretical frameworks these are Realism, Liberalism, Marxism, Feminism, and Constructivism to approach the subject of international organizations.

The *Realists* view of the role of international organizations in international relations is very skeptic. For realists, the element of power is the ultimate authority in international relations, therefore, the outcomes expected to always support the states with the maximum power in which the states manage and organize militarily power, the ability to tax and to be provider of world's currencies. International organizations do not share any of these features, they do not have an independent military capabilities or facilities, they do not have the capacity to tax, and they do not have territory. Thus, they rely on states to enforce and implement their rules, to finance them, and depend on states to host them.<sup>12</sup> Therefore, if states fail to contribute and

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<sup>12</sup>J.SamuelBarkin, "International Organizations: Theories and Institutions", Palgrave Macmillan™, (2006), pp.8-9.

accommodate organization's needs, the activities and functions of international organizations will not be fulfilled and effectively achieved. Pease points out, in the international system, international organizations are used by the hegemonic and great powers to advance their interests and powers, whilst other non-great powers states use international organizations in order to gain a voice within the international system and to achieve its goal political goals.<sup>13</sup> Schweller and Priess firstly, refer to international organizations as an instrument for great powers to take advantage from the existing order and having an interest maintaining it, the fact that they are great powers imply that they are performing well under the present rules and institutions. As great powers are permitted to exercise power over other states in international system, for as long as interests of great powers do not collide with one another. Secondly, they referred to international organizations as constructive tools for making slight modification or adjustments within the existing order, while the fundamental underlying principle and norms stay uncompromised. Thirdly, Schweller and Priess noted that international organizations could be driving force of international socialization, by legitimizing the existing arrangement, thus gaining the acceptance and recognition of the status quo by those who dominated.<sup>14</sup>

The *Liberal* view holds extremely dissimilar perspective regarding international organizations and international law. Liberalism supports the possibility of cooperation within international political system through international organizations, as it allows platform and space for international cooperation. Liberalism view

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<sup>13</sup>International Organizations, Available at:<http://internationalrelations.org/international-organizations/>.

<sup>14</sup>Randall L.Schweller, David Priess, "A Tale of Two Realisms: Expanding the Institutions Debate", Wiley, Mershon International Studies Review, Vol. 41, No. 1 (May 1997), pp. 1-32, Available at: [http://www.jstor.org/stable/222801?origin=JSTOR-pdf&seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/222801?origin=JSTOR-pdf&seq=1#page_scan_tab_contents).

international organizations are not established to serve the interest of one state and that there is no need for hegemonic actor in order for an international organization to survive. International organizations are established because of international issues, that needs an international cooperation.<sup>15</sup> For liberals, international organizations are arenas for diplomatic relations, collaboration and international peace. They often refer to the achievements in the areas of human rights, environmental policies, and economic cooperation to show the positive impact and role of international organizations in international relations. According to liberalism, the more the countries are interdependent with one another, the more the need for international organizations to facilitate information sharing, coordination and cooperation efforts. As for international law, liberals view laws and rules as a key factor in establishing four main changes in the progress of international cooperation. Firstly, rules can increase over time the number of states transactions, which discourages mistrust and cheating among states.<sup>16</sup> Secondly, rules create larger interdependence between states in different issue areas. Thirdly, rules can increase the information share and flow available in cooperative agreements and lastly, rules can decrease the costs of transactions of each agreement so to dedicate fewer efforts in negotiating and monitoring cooperative agreements.<sup>17</sup>

The *Marxist* standpoint based on its concentration on the modes of production and the method in which goods and services are produced. The Marxist approach challenges the traditional mainstream perspectives of realism and liberalism by

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<sup>15</sup>M. Barnett & R. Duvall, "Power in Global Governance", Cambridge University Press, (2005).

<sup>16</sup>Haas, Keohane, and Levy, "Institutions for the Earth: Sources of Effective International Environmental Protection" The MIT Press, England, (1993), p.11.

<sup>17</sup>John J. Mearsheimer, "The False Promise of International Institutions", The MIT Press, Vol. 19, (1994-1995), p.18.

offering special perspective on the dynamics of international relations based on economic and political inequality. For the Marxist point of view, the nature of international organizations is determined by economic order, the existing international organizations legitimize and promote global capitalism, and therefore, Marxists believe that international organizations and international laws expand the interests of capitalists, capitalism that enlarges under the excuse of promoting global economic and social welfare.<sup>18</sup>

The *Feminist* approach to international relations based on four main assumptions. The first assumption is that gender matters, international relations and international organizations have undermined the role played by gender and thus assume universality in making masculine issues and behavior universal.<sup>19</sup> The second assumption explained by Lorraine Code is that international relations are conflictual in nature; this conflict is a result of the superior- inferior nature of gender relationship.<sup>20</sup> The third assumption is that the nature of international system is patriarchal; most of the structure of international relations such as firms, international organizations and international laws are essentially patriarch and dominated by men.<sup>21</sup>

The *Constructivist* approach have challenged the primacy of anarchy, and aimed to proclaim and reassert the social context into the comprehending of international

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<sup>18</sup>K.KateS.Pease, " International Organizations: Perspectives on Governance in the Twenty-First Century", *Webster University–St. Louis*, Upper SADDLE River, New Jersey, (2007), pp.9-10.

<sup>19</sup> Ibid.p.89.

<sup>20</sup>T. Ruiz, " Feminist Theory and International Relations: The Feminist Challenge to Realism and Liberalism".

<sup>21</sup> Fernando R. Tesón," Feminism and International Law: A Reply" Florida State University College of Law,(1993). Available at:<http://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1035&context=articles>.

relations.<sup>22</sup> In addition, constructivists put international organizations and institutions in intersubjective social context, which means shared understanding among states whose interaction grounded on common interests, rules, patterns, and assumptions of the world.<sup>23</sup>

Constructivists hold the view that international organizations and institutions determine who the actors or players are in a specific circumstances and how these players define their aims and roles, and thus place restrictions on behavior.<sup>24</sup> Therefore, constructivists ensures that identities and interests of states can be changed or transformed through international organizations and institution, due to states interactions over time in support of sets of rules or within specific organizations that actors diffuse with meaning.<sup>25</sup>

Therefore, understanding of what an international organization is, extremely contested and has been argued by many scholars' ranging from reformist, revolutionary, and radical theorists. In order to understand the nature and arrangement of Interpol and Europol within the context of international organizations, it is necessary to classify international organizations (IGO, NGO, and TGO) in the next section to recognize the structure, functions, roles and operations of Interpol and Europol within their own correct classification within the international political order.

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<sup>22</sup> L. Martin and B. Simmons, "International Organizations and Institutions",(2012), pp.327-351.

<sup>23</sup> S. Guzzini, " A Reconstruction of Constructivism in International Relations", European Journal of International Relations, The Central European University, Budapest.

<sup>24</sup> Ibid,pp.334-335.

<sup>25</sup> T. Dunne, " New thinking on international society", British Journal of Politics and International Relations, Vol. 3, No. 2, June 2001, pp. 223–244.

## 2.2 Classifications of International Organizations

Archer's book on international organizations is particularly useful and informative to address different types of classification of international organizations, but first we need to define what international organizations are to Archer. Archer defines international organizations as an institution with formal system of rules, regulations, and aims, of rationalized administrative apparatus thus, having both formal and technical objects organization.<sup>26</sup> International organizations described as formal arrangement created by an agreement between two or more governmental or nongovernmental members of sovereign states for seeking similar interests of the membership.<sup>27</sup> According to Michel Virally, international organizations are associations of states, created by agreements between its members that owned a permanent arrangement of organs to pursue and practice objectives of similar interest by means of collaboration between its members.<sup>28</sup> Archer's book on International Organizations pointed three classifications in order to identify types of international organizations based on memberships, aims and activities, and structure.

Regarding the first classification that is membership, there are two aspects of this classification, the character of the membership and the scope of the membership. The latter is particularly important in the analysis of Interpol and Europol. There are organizations characterized governmental representatives/member states memberships (IGOs) and other characterized non-governmental representatives/ non-member states memberships (INGOs). The factor of membership determines the type

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<sup>26</sup> C. Archer, "International Organizations", Routledge, London ; New York, third ed. (2001), p.3.

<sup>27</sup> C. Archer, p.35.

<sup>28</sup> Jorge E. Vinuales, "The Secret of Tomorrow: International Organization through the eyes of Michel Virally", The European Journal of International Law, Oxford University Press, Vol. 23, (2012).

of international organization from regionalism to universalism. It generally denotes more than just a geographical proximity; it also indicates economic, social, cultural and political connections.

International organizations consists of members that do not represent states or governmental representatives, but rather groups, associations, organizations or individuals from the state, these are nongovernmental actors in the international stage, in which their activities leads to transnational interaction. Transnational interactions defined by Keohane and Nye as a movement or transfer of substantial and insubstantial objects across state borders, and when at least one actor is not part of a government or an international organization.<sup>29</sup> There are three criteria of transnational organizations TNOs identified in the literature, the first criteria is the *genuine* INGO, the second criteria is the *hybrid* INGO, and the third criteria is the *trans-governmental organization* TGO.

The genuine INGO is an organization with nongovernmental members from more than two countries, representing groups with similar aims, such as, the Salvation Army and the International Olympic Committee.<sup>30</sup> The hybrid INGO is an organization that has both governmental and nongovernmental representatives, which has not been established by a treaty or convention between governments, such as the ILO, which has nongovernmental elements of trade union and management, and governmental element. The trans-governmental organizations have a considerable

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<sup>29</sup> C. Archer, *International Organizations*, Routledge, London and New York, (2001),p.38.

<sup>30</sup>Ibid, p.39.

feature in the new world order and the European Union.<sup>31</sup> According to Keohane and Nye indicated that the trans-governmental relations are sets of direct cooperation and communication between sub units of diverse governments that are not dominated or closely instructed by polices of the ministries or chief executives of those governments.<sup>32</sup>

Intergovernmental Organizations (IGO) provides several roles in the international arrangement. It can contribute to the cooperative activities among states, resolving disputes, forming procedures, enforcing their members to obey rules, and in executing operational activities to resolve main global troubles. Intergovernmental organizations defined as a cooperative relation occurs when states establish permanent and lasting international institutions at the state-to-state level, the share and exchange of information is formalized within the realm of diplomatic practices and strategies along with tactical decision-making process affected by the performance of state in the international relations level.<sup>33</sup>

It is important to understand and distinguish between Intergovernmental relations and Trans-governmental relations, as Europol argued to be consisted of two-third trans-governmental and one-third intergovernmental due to the European Union council direct oversees Europol along with its autonomy in the decision-making and funding process. On the other hand, Interpol considered fully trans-governmental organization.

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<sup>31</sup> Paul W.Thurner., Martin Binder., " European Union transgovernmental networks: The emergence of a new political space beyond the nation-state?", European Journal of Political Research.(2008),p.3. Available at: <https://www.stats.ox.ac.uk/~snijders/siena/ThurnerBinder2008EJPR.pdf>.

<sup>32</sup> Ibid. pp 3-4.

<sup>33</sup> Ibid.pp.334-335.

The second classification is aims and activities of international organizations that display what these organizations meant to achieve and what they in reality execute. The aim of the majority of international organizations is determined in the basic document at the time of its establishment. The activities that the organization is planned to carry out are also laid down in its basic documents and set to be the accomplishment of the stated aims.<sup>34</sup> Charles Pentland noted that several organizations are flexible and multifunctional; therefore, it is best to classify them according to the issues they are regularly and actively involved.<sup>35</sup> There are two ways international organizations can be classified by its aims and activities. The first is to consider the distinct field of activities in which international organizations act and evaluate based on "general-specific" spectrum. The second way is by taking into account the orientation of activities the international organizations are involved in. Some international organizations cooperate among member states, other organizations intending to minimize the degree of conflict between member states through conflict management, and organizations with the purpose to generate confrontation between members of dissimilar opinions or between the member states of the organization and non-member states of the organization.<sup>36</sup>

The third classification takes into consideration the structures of international organization, and divides them into formal and informal arrangements and structures. The formal structure requires organizations to attain its formal formation through establishing an agreement or document so to avoid the control or authority of one

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<sup>34</sup> C. Archer, "International Organizations", Routledge, New York, (2001), p.50.

<sup>35</sup> C. Archer, " International Organizations", Routledge, New York, 2nd Edition, p, 53.

<sup>36</sup> Ibid.pp.57-58.

member state within the organization, thus it creates autonomous structure.<sup>37</sup> While the informal arrangement is commonly refers to systematic influence and impact of unwritten or unrecorded rules, shared expectation and norms in international organizations, this considerably modify or alternate the formal treaty conditions.<sup>38</sup>

### **2.3 Institutional Complexities: Fragmentation and Interlinkages**

The institutional phenomenon in international relations is due to the growing scale of fragmentation. Functional overlaps among actors occur due to the continuing regulations and legalization processes between international institutions. For that reason, the concept of fragmentation focuses generally on the institutional settings, in which distinctive institutions exist, cooperate, and interact. Fragmentation is a result of a continuing proliferation, specialty and diversity of institutions, norms, actors, and issue areas. According to Biermann and colleagues, this leads to "patchwork" of international institutions that are dissimilar in their features regarding their organizational structures, regimes, and norms.<sup>39</sup> Hence, their constituency differs from public to private, spatial range from bilateral to global and subject issue from specific policy concern to universal concerns.<sup>40</sup>

In 2016, Interpol has brought together senior representatives from different regional police organizations to discuss and coordinate ways to tackle transnational crime. It was the first time that Interpol along with regional police organizations have come together to assess and evaluate their current structures and activities, identify

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<sup>37</sup> Ibid.pp.33-34.

<sup>38</sup>Randall W.Stone, "Informal Governance in International Organizations: Introduction to the special issue", *The Review of International Organization*, Vol. 8, (2013).

<sup>39</sup>P. Pattberg, O. Widerberg, M. Isailovic," Mapping and Measuring Fragmentation in Global Governance Architecture" IVM Institute for Environmental Studies, (2014).

<sup>40</sup>Ibid. pp 9-10.

overlaps and develop strategies for prospect cooperative action. Interpol Secretary General Jurgen Stock points out that international crime threats need optimal levels of international police cooperation among regional actors.

Therefore, most of the initial work on the degree of fragmentation has relation to the institutional interaction at an international level. Young established a typology consisted of four types of institutional linkages, named "embedded, nested, clustered and overlapping institutions".<sup>41</sup> The first type observed is issue specific regimes embedded in overall institutional planning with restricted authority and sovereignty over decision-making and membership. The second type represents is linkages, in which smaller institutional arrangements are layered into wider institutional frame dealing with similar problem area but are limited in scope such as GATT. The third type is clustering and takes place when several explicit arrangements form more general framework based on similar concern for a problem issue, such as the law of the sea. The fourth type is overlapping institutions, where individuals' arrangements formed autonomously of each other but interconnect and overlap on a de facto basis, consequently having an importance unintentional impact on each other, such as the world trade organization.<sup>42</sup>

## **2.4 Architecture of Global Governance**

The term governance architecture subjected to numbers of different views, it generally focuses on the overall institutional setting and structure, in which different institutions exist and interrelate. The identification of fragmented governance architecture is important factor in proposing strategies for future institutional

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<sup>41</sup>Ronald B. Mitchell, "Oran Young and international institutions", (2012), p.5.

<sup>42</sup>P. Pattberg, O. Widerberg, M. Isailovic, " Mapping and Measuring Fragmentation in Global Governance Architecture" IVM Institute for Environmental Studies, (2014).p.15-16.

development; it facilitates to explain the general institutional complex in international relations.

Young, MacIntyre, and Hurrell have used the term "global governance architecture", broadly in the literature.<sup>43</sup> It has been used to explain the general institutional complex in international relations, such as international security, finance, trade, environment, and economics. The term governance architecture subjected to several numbers of different perspectives. According to Raustiala and Victor, they use the term regime complex instead of governance architecture, indicating regime complex as sets and arrangements of partly overlapping and non-hierarchical institutions governing specific problem area that are noticeable in number of partly overlapping and non-hierarchical agreements and provisions, established in separated and different environment of different actors.<sup>44</sup> To Biermann and colleagues, the term governance architecture is compatible to a certain degree, defined as an overarching structure or system of public and private institutions that are valid or active in a specified problem area of international politics.<sup>45</sup> This has been clarified by Biermann and colleagues through proposing the "onion model". This model suggests that a specific issue area such as climate is a regime located at the architecture core and surrounded by several layers of multilateral, international and institutional

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<sup>43</sup>F. Biermann, P. Pattberg, H. van Asselt, " The Fragmentation of Global Governance Architecture: A Framework of Analysis", MIT Press, (2009), p.15. Available at: <http://www.unil.ch/gse/files/live/sites/gse/files/seminaireinter/2015/biermann2009.pdf>.

<sup>44</sup>P. Pattberg, O. Widerberg, M. Isailovic, " Mapping and Measuring Fragmentation in Global Governance Architecture" IVM Institute for Environmental Studies, (2014).p.7.

<sup>45</sup> M. Luomi, " Global Governance of the Energy-Climate Nexus: Towards National Engagement Strategies", Emirates Diplomatic Academy, (2016), p.5. Available at: [http://eda.ac.ae/images/pdf/EDA%20Working%20Paper\\_Energy%20Governance.pdf](http://eda.ac.ae/images/pdf/EDA%20Working%20Paper_Energy%20Governance.pdf).

agreements related to the climate energy and climate institutions.<sup>46</sup> According to Orsini, Morin, and Young they have attempted to develop the concept of architecture, by referring to regime complex as a network of three or more regimes that narrate to a common subject matter; displaying overlapping in membership that causes substantive, normative, and operative relations identified as a potential problematic area.<sup>47</sup>

## 2.5 Fragmentation of Governance Architectures

One of the common features of global governance architecture is its high level or degree of fragmentation. The concept of governance architectures permit for the comparative analysis of diverse degrees and types of fragmentation. It helps to analyze several policy domains in international relations that are not controlled or regulated and not dominated by international regime. Policy domains refer to a patchwork of international organizations or institutions that are dissimilar and diverse in character, constituencies, geographical, structural scope, and subject matter. These are defined as fragmented global governance architecture. In 1970s, the concept of fragmentation was related to previous debates on interlocking institutions, which developed recently on studies related to institutional interlinkages, overlaps, and interactions.<sup>48</sup> Fragmentation of global governance architecture focuses

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<sup>46</sup> O. Widerberg, " Mapping institutions and actors in global climate governance: A network approach", Mapping institutions and actors in global climate governance: A network approach, (2014). Available at: <https://webcache.googleusercontent.com/search?q=cache:IKjuL3WKC0kJ:https://www.researchgate.net/file.PostFileLoader.html%3Fid%3D55a6466960614b2ffd8b4580%26assetKey%3DAS%253A273812971556864%25401442293508874+&cd=1&hl=en&ct=clnk&gl=us>.

<sup>47</sup> P. Pattberg, O. Widerberg, M. Isailovic, F. Dias Guerra, " Mapping and Measuring Fragmentation in Global Governance Architectures: A Framework for Analysis", IVM Institute for Environmental Studies, (2014).p.7.

<sup>48</sup> M. Isailovic, O. Widerberg, P. Pattberg, " Fragmentation of Global Environmental Governance Architectures A Literature Review", IVM Institute for Environmental Studies, (2013), p.13.

on the general institutional setting and structure, in which different institutions exist and interrelate.

The concept of fragmentation was used in international legal literature. Some scholars such as Koskenniemi and Leino see fragmentation as a sign of international law expansion to unregulated fields such as human rights, environment, or international commerce. They defined it as "special regimes and new organs that are parts of an attempt to advance beyond the political present that in one way or another has been revealed unsatisfactory".<sup>49</sup> Scholars of international relations and international economics refer to the fragmentation concept as arrangements.<sup>50</sup> Some scholars define fragmentation based on wider socio-cultural view contrary to globalization<sup>51</sup>, or decentralization, multiplicity of global governance,<sup>52</sup> division of labor among international norms and institutions,<sup>53</sup> with a negative or positive implication. According to Biermann, Pattberg, van Asselt, and Zelli, they emphasized that the concept of fragmentation has three important points. Firstly, the concept of fragmentation is a relative term, secondly, all global governance architecture fragmented to some extent and lastly, they consist of different division that are barely ever entirely interlinked and integrated, in contrast to scholars who

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<sup>49</sup> M. Koskenniemi & P. Leino, "Fragmentation of International Law? Postmodern Anxieties", *Leiden Journal of International Law*, (2002), p.578.

<sup>50</sup> F. Biermann, P. Pattberg, F. Zelli, "Global Climate Governance Beyond 2012: Architecture, Agency and Adaptation", Cambridge University Press, (2010), p.17.

<sup>51</sup> Ryan E. Smerek, "Cultural Perspectives of Academia: Toward a Model of Cultural Complexity", *Higher Education: Handbook of Theory and Research*, (2010), Available at: <http://www.sesp.northwestern.edu/docs/publications/158316171651f81e5484492.pdf>.

<sup>52</sup> M. Ivanova and J. Roy, "The Architecture of Global Environmental Governance: Pros and Cons of Multiplicity", (2007).

<sup>53</sup> L. Hooghe, "Several Roads Lead to International Norms, but Few via International Socialization: A Case Study of the European Commission", (2005).

perceive fragmentation as positive or negative concept. We tend to treat it as a descriptive term to expand and enhance our understanding of the institutional and fragmentation complexes in international relations and international law.

## **2.6 Securitization and Transfer of Authority**

Securitization theory is generally interlinked with the Copenhagen school of security studies, developed by Ole Waever, Barry Buzan, and many other scholars. Ole Waever formulated the concept of securitization due to the increase debate between those who claim that threats are objective (what really represent a threat to international security), and those that claim that security is subjective (what is apparent to be a threat).<sup>54</sup> Thus, in order to bypass this debate, the Copenhagen school proposes that security should be viewed as a speech act. It stresses that the major issue is not if threats are real or not, but rather the means used to social construct a specific issue as a threat.<sup>55</sup> Since the Copenhagen school of securitization is about speech act, it thus, needs to follow a precise rhetorical makeup of survival, necessity, threat/danger and defense, originated from war and history. Consequently, the definition of securitization by Copenhagen school has to execute three criteria. The first criteria is when an actor claims that an object survival is threatened, the second criteria when the actor demands the right to deal with the threat by implementing countermeasures strategies, the third criteria is when the actor convinces the objects the breaking the rules behavior is justified to deal with the threat.<sup>56</sup> This is important to understand, since the Copenhagen school offers consistent framework to identify security and to comprehend how a precise issue

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<sup>54</sup> R. van Munster, "Securitization in International Relations", Oxford Index, (2012).

<sup>55</sup> R. van Munster, "Logics of Security: The Copenhagen School, Risk Management and the War on Terror", Political Science Publications, (2005), p.2.

<sup>56</sup> Ibid.p.3.

becomes securitized. Recognizing security based on Copenhagen school of thought on security helps to identify how International police co-operations such as Interpol and Europol deal with security issues in policy making, that related to transnational crimes which has implications on both human security and national security.

Human security identified as both freedom from want and freedom from fear, it can be identified as positive and negative freedoms and rights due to their relation to fundamental individual needs.<sup>57</sup> Human security argues that there is an ethical responsibility to realign security around individuals based on international standards and norms of human rights and governance. In early 1990s, there was an increasing interest of human security in the context of social and historical framework. This has resulted to decrease attention to state centric, militarized national security pattern.<sup>58</sup> Therefore, human security meant to challenge institutions privileging and benefiting from high politics on top of human experience of uncertainty, insecurity and deprivation.

National or state security is not necessarily in conflict with human security, since the state is the main provider of security in best circumstances, however the concept of human security suggests that traditional security characterized by territorial integrity does not essentially link with human security, accordingly an over emphasis on state/national security can damage human interests needs. Hence, traditional security of state is needed but it's not sufficient circumstance for human security and needs.

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<sup>57</sup> E. Newman, "Critical Human Security Studies", *Review of International Studies*, (2010), p.78.

<sup>58</sup> *Ibid.* p.78-79.

To sum up, human security consists more than the constricted cold war agenda that focused on issues of nuclear deterrence, military, interstate diplomacy and war. Human security focuses on broader agenda of security such as environmental degradation, human rights, human health, children, labor, narcotic trafficking, organized crime, arms, civil society, governance and internal conflict.<sup>59</sup>

International organizations were created by states that have delegated some tasks to international organizations in order to compensate for the deficiencies of unilateralism, in carrying out the tasks of states, the international organizations are expected to respect the sovereignty and supremacy of state.<sup>60</sup> The purpose behind the states establishment of international organizations is to facilitate and promote the information exchange and collection by the national police services along with foreign colleagues. International police organizations such as Interpol and Europol are meant to provide support to national police forces activities, but within the context of state governance restrictions.<sup>61</sup> These organizations are not involved with political aspects, to ensure efficient and effective police cooperation, in addition, they have no executive powers and do not own police forces.

Securitization theory of Copenhagen school, human security and state security have provided a clear image of the link between these concept with transnational crimes and the police cooperation role in failed states that are unable to enforce the rule of law. The next section is addressing the criticism of Europol and Interpol to assist in

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<sup>59</sup> William W. Bain, "National Security, Human Security, and the Practice of Statecraft in International Society", University of British Columbia,(2000).

<sup>60</sup> N. Gerspacher , B. Dupont, " The Nodal Structure of International Police Cooperation: An Exploration of Transnational Security Networks "Research Gate, Vol. 13, (2007), p.353.

<sup>61</sup>Ibid.p.353.

comparing and analyzing the functions and roles played by these two organizations in the upcoming chapters.

## **2.7 Interpol and Europol: A Critique**

### **2.7.1 Interpol Critics**

Interpol encountered several criticisms most of which branched from its distinctive legal basis. Although Interpol is recognized by the United Nations, the Council of Europe and by many states, yet, it still suffers from some operational and structural weaknesses. These weaknesses include the lack of Interpol membership criteria, the exchange of information and data collaboration system between member states, lack of external judicial oversight and thus lack of accountability. The lack of Interpol's membership criteria, the twin principle of sovereignty and non-intervention dominate the relationship between the Interpol and its member states.<sup>62</sup> secondly the lack of accountability and transparency, thirdly the exploitation of the alert system such as the Red Notices and the Diffusion system which is part of how member states exchange information and collaborate data within Interpol and fourthly is the lack of external judicial oversight.

The first critique is the lack of membership criteria within Interpol means that the organization does not discriminate in its membership and thus member states that joined Interpol face no burden for the advantages they get. For instance, Interpol benefits from the diverse number of memberships due to the share and exchange of information of each member state from its own network with Interpol, but also each member state is able to decide what information to share. Therefore, Interpol needs

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<sup>62</sup> M. Kinacioglu, "The Principle of Non Intervention at the United Nations: the charter framework and the legal debate, (2005), p.23. Available at: <http://sam.gov.tr/wp-content/uploads/2012/01/Muge-Kinacioglu.pdf>.

to be able to hold into the broadest information variety through largest membership, yet restraint member's behavior through familiar and common participation standards.<sup>63</sup> Interpol represents itself as a democratic entity, simply means a protector and keeper of the law. Contrarily, most member states of Interpol are non-democratic states, constantly using complicated methods of repression and oppression by utilizing Interpol mechanisms in order to ambush the activists, politicians, journalists abroad by restricting their freedom of movement, it is therefore crucial that Interpol not to be exploited by the authoritarian regimes as an instrument for political selective prosecutions.<sup>64</sup>

The second critique is the lack of accountability and transparency within Interpol is related to the inability of the organization to monitor member states or perspective member states. Thus, equal status given to both autocratic and democratic states enabling for equal access to Interpol's information resources and alert systems without inquiry or oversight from Interpol, which can be subject to abuse from the member states, causes lack of accountability held by Interpol.<sup>65</sup>

The third critique is the alert system that eases the exchange and share of information to assist the arrests of transnational criminals. The exploitation of the alert system has been subjected to abuse to collect information on illegitimately targeting non-criminal individuals. There are two notice requests that member states usually

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<sup>63</sup> R. Braga da Cruz, "Interpol's Transnational Challenge How can Interpol be Strengthened?", International Affairs Review,(2016), Available at: <http://www.iar-gwu.org/sites/default/files/articlepdfs/IAR%202016%20-%2006%20Interpol%20-%20Rita%20Braga%20da%20Cruz.pdf>.

<sup>64</sup> I. Savchenko, " The Report: The Interpol System is in need of reform", Open Dialogue, (2015), Available at: <http://en.odfoundation.eu/a/5947,the-report-the-interpol-system-is-in-need-of-reform>.

<sup>65</sup>R. Braga da Cruz, "Interpol's Transnational Challenge How can Interpol be Strengthened?", International Affairs Review,(2016), p.131.

exploit, the red notices and diffusions system. The Red Notices are issued by the General Secretariat of Interpol upon request granted by Interpol member state. The state informs or notifies all member states of an arrest request for individuals banishment, officially the Red Notice is not a request for arrest, but in the majority of the cases, the wanted person is arrested automatically through the Red Notice.<sup>66</sup> The diffusion notice is used by the national police authorities to publish or issue the wanted person in Interpol's global database through the I-Link network, it is less formal notice and are selectively sent to a specific number of states. Both of these notices are used freely and without any restrictions by the member states of Interpol and are not published publicly.<sup>67</sup> This creates considerable impacts on the status of human rights since, those who are targeted by the government's member states of Interpol are political opponents, Political activists, human rights activists, refugees, and journalists.<sup>68</sup>

The fourth critique is the lack of external judicial oversight related to CCF (Commission for the Control of Interpol's Files). According to Article 36 of the Interpol's constitution, The Commission for the Control of Files is an independent entity, its role is to guarantee the processing of personal information by Interpol.<sup>69</sup> However, it is still not achievable to appeal against decisions formulated by the CCF both internally and externally through a judicial mechanism. This raises questions on

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<sup>66</sup> I. Savchenko, " The Report: The Interpol System is in need of reform", Open Dialogue, (2015), Available at: <http://en.odfoundation.eu/a/5947,the-report-the-interpol-system-is-in-need-of-reform>.

<sup>67</sup> Peter M.Thomson, "Interpol's Transnational Policing By "Red Notice" and "Diffusions": Procedural Standards, Systemic Abuses, and Reforms Necessary to Assure Fairness and Integrity", Criminal Law and Procedure, (2015), p.20-21.

<sup>68</sup>Ibid.p.23.

<sup>69</sup>Constitution of ICPO-Interpol, Office of Legal Affairs, (2008).p.6.

the effective the rules of the CCF enforced and the issue of accountability and transparency.

### **2.7.2 Europol Critics**

The leaders of the European Union recognized that an organization such as the EU with large, successful single market and freedom of movement needs an appropriate mechanism of security. Thus, the process of European Union securitization began with the formation of the European Union. It has created two main security policies. The first security policy pillar named "Common Foreign and Security Policy" and the second security policy pillar named, PJCCM "Police and Judicial Cooperation in Criminal Matters" that is also part of the AFSJ.<sup>70</sup> The securitization process in Europe consists of the national level and the European level. On the national level, the legal, practical and procedural aspects are securitized which means, strengthening the national law enforcement agencies. On the European level, the EU acts as an outline for the improvement and development of collaboration between member states, and it does not as a binding force able to impose some regulations on the security strategy of the member states.<sup>71</sup> Therefore, Europol's operational actions are supplementary to the actions taken by the law enforcement agencies.

There are several views and aspects regarding the critics of the AFSJ in broad sense and the European Union securitization in particular. Some of these views criticized specific institutions to point its weaknesses, or underestimating the reason behind its

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<sup>70</sup> H. Hijmans & A. Scirocco, "Shortcomings in EU Data Protection in the Third and the Second Pillars," *Kluwer Law International, Common Market Law Review* 46, (2009), Available at: [http://www.fd.unl.pt/docentes\\_docs/ma/MEG\\_MA\\_12664.pdf](http://www.fd.unl.pt/docentes_docs/ma/MEG_MA_12664.pdf).

<sup>71</sup> B. Sktodowski, "An Analysis of the Criticism of the Area of Freedom Security and Justice of the European Union", (2013), p.88, Available at : <http://oapuw.pl/wp-content/uploads/2013/03/skotowski-b.-an-analysis-of-the-criticism-of-the-area-of-freedom-security.pdf>.

existence, while other criticizes the general makeup of the security policy, highlighting the democratic issues of such a policy.

For instance, social democrats tend to be less Eurosceptic, they are more positive and enthusiastic when it comes to the unrestricted borders of the European Union. Which in social democrats view would make Europe diversify both culturally and instrumentally positive for social transformation. Due to such view, the independence of Europol as agency under the EU umbrella was criticized, because it might lead to the EU exterior borders be less accessible for people, such as asylum seekers and refugees.<sup>72</sup>

The Liberals view the European Union securitization as a limitation on the citizens' individual liberties, as it collects extraordinary quantity of data and information about EU citizens, including citizens whom are not a suspect of having committed any type of illegal acts, this information then exchanged between European member states. In addition, another way of restricting the freedom of individuals is the finger printing technology and CCTV in the European member states.<sup>73</sup> Hence, the liberals criticize the AFSJ in its violations of personal liberties of the citizens, as it justifies the government to apply the pretext or excuse of threats coming from transnational crimes in order to enlarge its control over society as well as above any opposition.

The Realists criticize both the AFSJ, securitization of EU and the very concept of the European Union itself, since for them; the main issue is the loss of nation's states sovereignty. That is because the police and security agencies represent the authority

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<sup>72</sup>Ibid.p.90.

<sup>73</sup> Ibid.p.92.

of the state to implement law and order, therefore let out part of an important competence and power of state to the EU is controvertible. Lastly, the lack of parliamentary control and oversight of the AFSJ, as well as the limited competence of the European Court of Justice in the PJCCM, destabilizes the rule of law in the European Union and reducing the degree of legitimization of some forms and manners of the AFSJ.<sup>74</sup>

Chapter 3 explores the theoretical approaches and its application on Interpol and Europol by addressing the fragmentation of international law, regime theory, and bureaucratization theory of policing.

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<sup>74</sup> Ibid.p.94.

## Chapter 3

### **THEORETICAL APPROACHES: HOW DO INTERPOL AND EUROPOL WORK**

The aim of this chapter is to explain different theoretical approaches and its application on Interpol and Europol international police organizations, this chapter is divided into three sections, the fragmentation theory, the regime theory, and the bureaucratization theory of policing.

The first section is on the Institutional Fragmentation of international law. The significance of addressing this approach is to show that the several factors for increasing fragmentation within international law and the proliferation of international organizations is due to different international activities and regulations occurring in the international political system. These international activities are subjected to international legal regulations and laws, thus, lead to the emergence of specialized and relatively autonomous institutions such as Interpol and Europol, which is sometimes refer to regimes or regimes complexes.

The second section is on the regime theory. Regimes are described as principles, norms, rules and decision-making procedures in which actors' expectations congregate in a given subject area.<sup>75</sup> In this section, the regime theory and its

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<sup>75</sup>Stephen D.Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables", *International Organization*, Vol. 36, No. 2, (1982).

transformation is addressed based on three different perspectives on the issue of regime significance to better understand the theory through diverse views and to observe the element of regime theory on institutional behavior of Interpol and Europol. The third section is on regime development, to show the applicability of regime theory on Interpol and Europol. This occurs through five factors as follows, egoistic self-interest, political power, norms and principles, habit and custom and knowledge, which explains Interpol's and Europol's interactions, cooperation, and overlaps.

In the third section is bureaucratization theory of policing. Applied to policing organizations such as Interpol and Europol, it can be noticed that these organizations are bureaucratic and hierarchically structured, therefore addressing the bureaucratization theory in this section helps to further expand our understanding on the arrangements of police organizations. This section aims to explain what bureaucratization theory is and the conditions required to achieve international collaboration, by addressing the relative independency of police entities, expert system of knowledge, and the forms of international cooperation.

### **3.1 Fragmentation Theory: Institutional Fragmentation of International Law and International Organizations**

Since the end of the Cold War, the system of international law has increasingly become fragmented, including the development of different areas of international activities such as trade, environmental, human rights, technological cooperation, commerce, culture security, and development. Many multilateral organizations, both regional and universal have consequently been established, therefore, any social activities occurring are subject to some type of international legal regulations.

Currently, there is no homogenous system of international law, which is composed of inconsistent and unstable elements such as universal, regional, bilateral subsystems as well as subsystems of different levels of legal integration.<sup>76</sup>

The fragmentation in international political system is getting legal attention and significance as it has led to the emergence of specialized and relatively autonomous legal institutions, regime complexes, and rules. For instance, general international law is becoming a field of specialist systems, for instance the law of the sea, human rights laws, international criminal law, and refugee law each having their own principles, rules, regulations and institutions.<sup>77</sup> According to the International Law Commission, the matter of fragmentation has both positive and negative aspects. On the positive note, fragmentation shows the expansion of international legal activities into new areas as well as diversity of its objects and techniques. On the negative aspect, fragmentation could create negative influence by creating threat of different and incompatible rules, principles, rule systems and institutional practices.<sup>78</sup>

Institutional fragmentation, explained earlier in chapter 2, is referred to the increasing varieties and challenges of coordination between private and public norms, treaties, and organizations that deal with a given subject area of international politics.<sup>79</sup> The concept of institutional fragmentation is increasingly used in relation, or alternative, to regime theory or regime complexes, which are further elaborated in

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<sup>76</sup>Ibid.p.850.

<sup>77</sup>International Law Commission, "Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law", Report of the Study Group of the International Law Commission, (2006), p.3-4.

<sup>78</sup>Ibid.p.5.

<sup>79</sup>F. Zelli, H. van Asselt, "The Institutional Fragmentation of Global Environmental Governance: Causes, Consequences and Responses", Global Environmental Politics, (2013).

the following section. Young has identified regimes as “agreements among some specified groups of actors” that acknowledge rules of power and authority, rights and liabilities, and behavioral obligations.<sup>80</sup>

The different aspects of fragmentation within international law as *lexspecialis* and *lexgeneralis* has led to institutional fragmentation such as universal and regional organizations. In the next section, the differences between universal and regional organizations, as well as the fragmentation of international law addressed to help in understanding different aspects of fragmentation of international law that is applicable to institutional fragmentation.

### **3.1.1 Classification of Universal and Regional Organizations**

The evolution of a complicated network of interrelationships between universal and regional international organizations is due to the progress and expansion of the international legal arrangements in its standardizing/normative and institutional aspects. These relationships between the regional and universal systems are divergent in nature. Relationships of integrality, autonomy, operational cooperation, competitive relationships that concerned with efficiency and comparative advantage between universal and regional organizations can be identified by looking at aims, activities and structure of each organizational system. The area of maintaining peace and security offers particularly remarkable spectrum through which to analyze past and present interactions between universal and regional organizations.

The universal organizations are organizations that are designed to be open in memberships to states from all over the globe. After the World War II, the universal

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<sup>80</sup>Ronald B.Mitchell, "Oran Young and International Institutions", Springer, Vol. 13, No. 1, (2013).

organizations were prevailing model; the most well-known case is the United Nations. UN has specialized agencies consisted of organizations prior to the existence of the UN as well as organizations established afterwards with limited competences associated with the UNECOSOC (United Nations Economic and Social Council) treaty to organize and coordinate agencies' work to evade unnecessary overlapping.<sup>81</sup> Therefore, universal organizations generally focus with issues influencing all countries regardless of their geographical locus.

The connection between universal and regional organizations stated and described in Article 52 para.1 of the UN charter, adds "Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with matters related to the maintenance of international peace and security, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations".<sup>82</sup> There is correlation and cooperation between universal and regional organizations if there is no overlapping in the functions, aims, information shares and the interaction between these two systems are relatively unambiguous.

Rupert Vance, defined the term region as 'any portion of the earth's surface whose physical characteristics are similar'<sup>83</sup>, and Howard Odum (1938) defined region as 'a relatively large degree of homogeneity measured by a relatively large number of purposes or classifications'.<sup>84</sup> Another important aspect of regional organization made

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<sup>81</sup>P. Fischer, "International Organizations", Vienna,(2012),p.23.Available at:<http://www.worldmediation.org/education/io-1.pdf>.

<sup>82</sup> United Nations, Chapter VIII: Regional Arrangements. Available at: <http://www.un.org/en/sections/un-charter/chapter-viii/>.

<sup>83</sup> Ibid.p.46.

<sup>84</sup>Ibid.p.46.

by Wambaugh is that regional organizations and agreements are suppose be carried out in the skeleton or outline of a universal system, for the importance of harmony and effectiveness.<sup>85</sup>The existing expansion of globalization and regionalization formed network of communication and power overlapping between regional and universal organizations.

### **3.1.2 Fragmentation of International Law: *lexgeneralis* and *lexspecialis***

The process of globalization has led to fragmentation of international law, this fragmentation occurs when international law is getting broader. Koskenniemi explained that fragmentation has caused the emergence of autonomous rules and legal institutions. He added the jurisdiction of international public law is no longer general but rather governed under specialists systems such as human rights law, trade law, criminal law, etc.; each of these systems is called special self-contained regimes. Special self-contained regimes are regimes with rules and principles specialized with a particular issue area, these regimes possess its own legal institutions and rules.<sup>86</sup>

In addition, due to increase in conflict and interpretation of public international law, this has resulted to the fragmentation of law to regional specialist institutions. The principle of *lexspecialis* provides that in case of conflict between a general law and a specific law, the specific rule takes precedence over the general rule. According to the principle of maxim *lexgeneralis and lexspecialis* noted that when there are two or more norms that deals with the same subject matter, priority is given to the norm that is more specific. Interpol and Europol are examples of institutional fragmentation, both organizations are international regimes that deal with specific subject matter;

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<sup>85</sup>Robert W. MacDonald, "The League of Arab States: A Study in Dynamics of Regional Organization", Princeton University press, United States, (1965), p.16.

<sup>86</sup>Koskenniemi, Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law, United Nations General Assembly, (2006).

they are specialized regimes with relatively autonomous rules and institutions.<sup>87</sup> In the next section, the regime theory and regime transformation, and regime development are addressed to explain the way Interpol and Europol interact and overlap.

### **3.2 Regime Theory: Regime Transformation and Development**

Regime theory refers to international regimes in which principles, norms, rules and decision-making procedures, around which actors expectations congregate in a given area.<sup>88</sup> Oran Young, Raymond Hopkins, and Donald Puschala, see regimes as a persistent component of the international structure, because no patterned behavior can maintain itself for any duration of time without creating a harmonizing regime, therefore regime and behavior inevitably linked.<sup>89</sup> On other perspective, Susan Strange points out that regime are deceptive concept that complicates essential economic and power relationships, she rejects any importance position for principles, norms, rules and decision-making procedures.<sup>90</sup> There are three different perspectives on regimes, these are the Grotian tradition of regime, modified structural approach, and conventional structural approach, which helps us to understand the definitions of regimes through diverse perspectives and understanding regime transformation and its development is addressed in the following section.

Regimes is expressed as a set of arrangements of ambiguous or unambiguous principles, norms, rules, and decision-making procedures around which actors

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<sup>87</sup>Ibid.pp.30-34.

<sup>88</sup>Stephen.D.Krasner," Structural Causes and Regime Consequences: regimes as intervening variables", International Organization, Vol. 36, No. 2,(1982), Available at: <http://n.ereserve.fiu.edu/010030821-1.pdf>.

<sup>89</sup>Ibid.p.185.

<sup>90</sup>Ibid.p.185.

expectations congregate in a given area of International relations.<sup>91</sup> Norms and principles provide essential and basic identifying characteristics of regimes, norms refer to behavior and actions that are standardized in terms of rights and obligations, while principles refer to set of beliefs. On the other hand, rules mean precise regulations or constraints for action, and decision-making procedures, refer to popular and general practices to make and implement collective choice.<sup>92</sup>

Keohane and Nye describe regimes as "sets of governing arrangements" that consist of complex system of rules, norms, and procedures in order to establish and regulate behaviors to manage its outcome or consequences."<sup>93</sup> Haas argues that a regime include mutually consistent sets of procedures, rules, and norms.<sup>94</sup>Keohane points out that a separation between regime and agreement should be distinguished, since regimes misunderstood as temporary arrangements that alter with each reallocate in power or interest. In fact, the purpose of regimes is to facilitate and ease agreements, while agreements are ad hoc which means "one shot" arrangement.<sup>95</sup>Jervis brings up the concept of regimes as "implies not only norms and expectations that facilitate cooperation, but a form of cooperation that is more that the following of short-run self-interest."<sup>96</sup>

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<sup>91</sup>Ibid.

<sup>92</sup> Ibid.p.186.

<sup>93</sup> Roberts O.Keohane and Joseph S.Nye, the MIT Press, International Organizations, "Power and Interdependence", (1987).

<sup>94</sup>E. Haas, "Technological Self-Reliance for Latin America: the OAS Contribution," International Organization 34, (1980), p.553.

<sup>95</sup>Stephen D.Krasner," Structural Causes and Regime Consequences: Regimes as Intervening Variables", International Organization, Vol. 36, No. 2, (1982), p.186.

<sup>96</sup>Ibid.p.186.

The first approach to understand the meaning and perspectives of regimes, is related to the essays of Oran Young, Raymond Hopkins, and Donald Puchala that focus on Grotian tradition of regimes. The Grotian tradition believes that regimes are constant and general characteristics of any complex pattern of human behavior, regime and behavior are inevitably linked. They see regimes as pervasive phenomena within all political spheres and thus regimes remain in different areas in international relations.<sup>97</sup> The second approach is modified structural approach explained in the essays of John Ruggie, Charles Lipson, and Benjamin Cohen. The approach is based on structural realism, which explains that the nature of international system is identified by principles, anarchy, distribution of power, and maximization of state interests within the international system.<sup>98</sup> Stein points out that the concept of regimes held by modified structural approach originated from the traditional categorization of international political system. Since the relationships between sovereign states rededicated to their own self-preservation and interests, therefore each is able to depend on itself and ready to resort to force.<sup>99</sup>Keohane, sees regimes as a facilitator of international agreements based on rules, norms and principles that assist actors to overcome hurdles or barriers to agreements.<sup>100</sup>The third view on regime significant is completely opposite to the first and second approach that is

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<sup>97</sup>Ibid.p.192.

<sup>98</sup>John J. Mearsheimer, "The Tragedy of Great Power Politics",Norton&Company, (2001).

<sup>99</sup>Stephen D.Krasner," Structural Causes and Regime Consequences: Regimes as Intervening Variables", International Organization,Vol. 36, No. 2, (1982), p.191.

<sup>100</sup>Robert O. Keohane, "The demand for international regimes", International Organization, (1982).

conventional structural approach. In the essay of Susan Strange, she sees regime notion as inadequate, useless and misleading.<sup>101</sup>

Regimes can alter when changes occur in rules and decision-making procedure within regimes, given that principles and norms have not changed. However, if principles and norms change, then the regime itself is changed. The regime weakens when the principles, norms, rules and decision-making procedures within a regime become less consistent or if actual practice or implementation is highly inconsistent with principles, norms rules and procedures, then a regime becomes unsteady and weak.

The five factors explaining regime development are egoistic self-interest, political power, norms and principles, usage and customs, and knowledge. The first factor is egoistic self-interest, the main function of regimes is to coordinate the behavior and manners of the states in order to achieve the best results in specific issue area, but in the world of sovereign states, such coordination is agreeable only under certain circumstances. According to Stein and Keohane, regimes can have an impact when the best outcome in a specific area matter cannot be accomplished through uncoordinated individual calculations (cost-benefit) of self-interest.<sup>102</sup> The first factor is applicable in case of Interpol and Europol. Member states of these organizations agreed to cooperate in specific issue to tackle transnational crimes under certain circumstances. States have agreed to cooperate to tackle transnational crimes after

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<sup>101</sup> S. Strange, "Cave! HacDragones : A Critique of Regime Analysis", *International Organization*, (1982).

<sup>102</sup> Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables", *International Organization*, Vol. 36, No. 2, (1982), p.191.

calculating the benefits to collaborate among member states that outweigh the costs if not collaborating.

The second factor is the political power; there are two different approaches to power. The first approach to power called cosmopolitan and instrumental, such power is to secure the maximum results of the system as a whole. Thus, power used to advance joint maximization, in which the power in the service of common good achieved. The second approach to power called particularistic and potentially, a power that enhances the value of specific actors within the system.<sup>103</sup> Interpol and Europol represent the first approach of power, in which its aim is to maximize the outcome of the police cooperation in tackling transnational crimes.

The third factor is the norms and principles; they are vital elements of any given regime. According to Jervis, for regimes to enlarge and strengthen in the security area, the great powers have to believe that other states share same norms and principles, which the great powers place on mutual security and cooperation.<sup>104</sup> Thus, the security regime referred by Jervis is described as cooperative manners in matters related to the national security of two or more states, administered by either unambiguous or ambiguous norms and rules that permit nations to be restricted in their actions, assuming that others will reciprocate<sup>105</sup>. Interpol and Europol managed by norms and rules that are either explicit or inexplicit, as well as both organization give important attention to the shared norms and principles among states to enhance

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<sup>103</sup>Ibid.p.197.

<sup>104</sup>Ibid.p.201.

<sup>105</sup> H. Haftendorn, "The Security Puzzle: Theory Building and Discipline Building in International Security" *International Studies Quarterly*, Vol.35, No. 1, (1991).

cooperation. In case of Interpol, the lack of membership criteria raises the question of the degree of the norms and principles harmonization among member states, since among the Interpol's member states are autocratic regimes that holds different views than the more democratic regimes.

The fourth factor is the usage and customs. Usage means behavior that based on regular pattern and on actual practices, while custom means long-standing practice.<sup>106</sup> Hopkins, Puchala and Young point out that such regular pattern of behaviors and actual practices are very important to facilitate shared expectations and principles behavior between states.<sup>107</sup> Interpol and Europol seek to standardize norms and principles as well as practices to empower shared expectation between states.

The fifth factor is knowledge, Ernst Haas has defined knowledge as "the sum of technical information and of theories about that information which commands sufficient consensus at a given time among interested actors to serve as a guide to public policy designed to achieve some social goal."<sup>108</sup> Therefore, sharing and exchange knowledge between states in police cooperation can facilitate the role or functions of Interpol and Europol, as well as enhancing common state behavior that is needed to gather and exchange information between states in order to hurdles transnational criminals.

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<sup>106</sup> H. Haftendorn, "The Security Puzzle: Theory Building and Discipline Building in International Security" *International Studies Quarterly*, Vol.35, No. 1, (1991).

<sup>107</sup> Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables", *International Organization*, Vol. 36, No. 2, (1982), p.202.

<sup>108</sup> E. Haas, "Why Collaborate? Issue-Linkage and International regimes." *World politics*, Vol. 32, (1980), pp. 367-368.

### 3.3 Bureaucratization Theory of Policing

Deflem explained the dynamic foundation of international police cooperation through the lens of bureaucratization theory articulated by Max Weber. The theory refers that the police agencies need to secure their autonomy from their political agencies in order to detach and engage in international cooperation actions effectively.<sup>109</sup> Bureaucratization theory concludes that police agencies have the capabilities to achieve their aims only if they attain a relative level of autonomy from political centers, which consequently, will yield parallel implication and outcome at the international level.<sup>110</sup> The theory will further explain in the following chapter the three conditions to achieve international police cooperation.

Bureaucracy in general denotes to the administrative power of offices. The attribution of the German sociologist Max Weber has been influential to bring the concept of bureaucracy and the theories resulting from it, in areas of state, market institutions, and police organizations.<sup>111</sup> Weber has emphasized that the contemporary bureaucracy functions are based on formal rationality, in order to utilize the maximum efficient and proficient implications in a given definite specified objectives.<sup>112</sup> Weber has dedicated attention to the pattern of bureaucratic

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<sup>109</sup> M. Deflem, " International Police Cooperation against Terrorism: Interpol and Europol in Comparison ", IOS Press, University of South Carolina, (2007), Available at: <https://docs.google.com/file/d/0BwJtnhSgn6Ozak9FX21yaHBBSIE/edit>.

<sup>110</sup> Ibid. pp.17-22.

<sup>111</sup> E. Aydinli, " Emerging Transnational Security Governance: A Statist Transnationalism Approach", Taylor & Francis e-Library, (2010), p.156.

<sup>112</sup> Ibid. p.156.

organizations to attain an autonomous position, so that the bureaucracy can work independently from political oversight and popular control.<sup>113</sup>

The bureaucratization theory distinguishes between the structural and operational conditions and motives of policing. The structural condition refers to a situation of relative independence from governmental oversight in order to accomplish a define police work of expertise and professional level and not in political terms.<sup>114</sup> When this structural condition is achieved, police institutions have to identify their areas of expertise so that a formal autonomy becoming operational as well. The operational bureaucracy attained through a system of knowledge created and implemented in terms of the police function.<sup>115</sup> This knowledge system is related as well to the previous section on the five factors of regime development, in which the fifth factor on share and exchange of knowledge between police national states encourages efficient cooperation.

Mathieu Deflem explains the foundation of the international police cooperation through the bureaucratization theory, describing that the police agencies engage in international cooperation should secure their autonomy from their political center and thus depend on their de-politicization of their actions to achieve high level of

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<sup>113</sup> Albert J. Reiss, Jr., "Police Organization in the Twentieth Century", *Crime and Justice*, Vol. 15, (1992).

<sup>114</sup> E. Aydinli, "Emerging Transnational Security Governance: A Statist Transnationalism Approach" Taylor & Francis e-Library, (2010).

<sup>115</sup> Anastasia, "Bureaucratic vs. Matrix Organizational Structures", *CLEVERISM*, (2015), Available at: <https://webcache.googleusercontent.com/search?q=cache:s4Rj1UqKQUIJ:https://www.cleverism.com/bureaucratic-vs-matrix-organizational-structures/+&cd=1&hl=en&ct=clnk&gl=us>.

efficiency that leads to parallel ramifications and implication at the international level.<sup>116</sup>

Historically, police institutions according to the bureaucratization theory have gained relative independence by the executive actors performing their duties based on efficiency and an impersonal calculation of means.<sup>117</sup> In terms of police agencies autonomy, this achieved through developing professional system of knowledge that facilitate police work to control crimes and maintain order. Therefore, bureaucratization assists police institutions to be independent by determining the mechanisms and specifications of their duty and objectives.<sup>118</sup>

The theory of bureaucratization therefore emphasizes the police development both at the intra-national level and international level. In addition, based on the bureaucratization theory, police institutions expected to resist any political influence in order to perform their tasks in a way that is matching and harmonizing with the professional police standards and good practices. For instance, events such as 9/11 terrorist attacks, can push the governments to redirect police efforts against terrorism for the purpose of political objectives, thus the modern police institutions need to resist such politicization and to be more oriented towards professional

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<sup>116</sup> M. Deflem, "International Police Cooperation against Terrorism: Interpol and Europol in Comparison", (2007), p.17.

<sup>117</sup> M. Deflem, "The Policing of Terrorism: Organizational and Global Perspectives "Routledge, (2010), p.19.

<sup>118</sup> Ibid.p.19.

expertise.<sup>119</sup> According to Interpol's constitution Article 3 "Neutrality Clause", it strictly prohibits any political, military, religious, and racial interventions.<sup>120</sup>

There are three conditions to achieve international collaboration. The first condition is the police institutions to gain relative independency from their respective national states. As mentioned earlier, the relative police independency allows the police institutions to arrange and implement strategies autonomously, to control crime and maintain order without an external political influence, which can hinder multilateral cooperation among politically akin states.<sup>121</sup>

When the police agencies form bureaucratic autonomy, the second condition establishes is to develop expert system of knowledge. The knowledge system in case of international cooperation will assist the expertise about the activities of transnational crimes since such knowledge systems shared across the police of national states, therefore it facilitates common understanding about the character and development of transnational crimes to be tackled more efficiently and professionally.<sup>122</sup>

The third condition is regarding the forms of international police cooperation taking place across the national borders, which happens in three ways. The first way is

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<sup>119</sup>Ibid. p.20.

<sup>120</sup> Office of Legal Affairs, Constitution of the ICPO-INTERPOL, Available at: <https://webcache.googleusercontent.com/search?q=cache:v-r9SVZ44vYJ:https://www.interpol.int/Media/Files/Legal-material/Reference-Documents/Constitution+&cd=4&hl=en&ct=clnk&gl=us>.

<sup>121</sup>M. Deflem, " International Police Cooperation against Terrorism: Interpol and Europol in Comparison", (2007), p. 18.

<sup>122</sup>Ibid. p.18.

unilaterally cooperation, occurs through a system of international liaisons in overseas countries, this form of cooperation is not always achievable because police agencies may need more personnel/workforce and effective means of technologies, thus the police institutions of more powerful states are in more advantage in this respect. The second form is bilateral cooperation between the police agencies of two states, and will only sustain temporarily and not permanently for a specific inquisition or investigation. The third form is multilateral cooperation of national police agencies in the international police work that based on collaborative nature and it does not involve the formation of supranational police force, because the idea of supranational police force violates the concepts of state sovereignty and police autonomy. Unlike the collaborative nature of cooperation based on formal regular meetings, shared and exchanged information among national police forces.

Interpol and Europol hold similar stance regarding the type of multilateral collaboration they involved in with other nation states. Interpol emphasizes on smooth and direct coordination between several police agencies from different parts of the world, representing diverse spectrum of political and ideological notions. It also depends on the sharing and exchanging of information and data across the borders in order to help understanding the nature and development of transnational crimes. Lastly, Interpol established based on formal agreements and regular meetings that can be observed as a modern bureaucratic institution.

On the other hand, Europol has been established as a result of decisions taken by political and lawmaking bodies within the EU and its activities are supervised by the

political representatives of the EU.<sup>123</sup> Yet, Europol considered to have degree of autonomy as it also engages in cooperation agreement with other international police organizations such as Interpol and agreements at institutional and national levels with other countries outside the EU. Therefore, Europol and Interpol cover the three conditions of international cooperation that is degree of institutional autonomy, knowledge system of information share and exchange and formal agreements and meetings.

On the basis of the bureaucratization theory of policing, Europol and Interpol are reviewed to demonstrate the institutional autonomy and professional expertise of participating police agencies. This can be expected to determine the course and outcome of counter transnational crimes policing cooperation and operation within Interpol and Europol. This chapter showed the theoretical approaches of institutional fragmentation, regime complexes, and bureaucratization theory of policing that were observed in the organizational theoretical in put (what they meant to do) of Interpol and Europol.

Chapter 4 on Comparative Analysis between Interpol and Europol, shows the historical background, roles, and functions of both organizations addressed based on their written constitution and convention documents. This helps to make further analysis and comparison based on their theoretical and actual practices to expand wider representation on the organizational settings, perspectives, and structure. Therefore understanding the theoretical approaches addressed in chapter 3 crucial to link the theories with the comparative tool used in the following chapter, which will

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<sup>123</sup> Ibid.p.21.

address the link between the elements of norms, rule making, and rule application with the theoretical approaches of fragmentation, regime, and bureaucratization.

## **Chapter 4**

# **COMPARATIVE ANALYSIS: INTERPOL AND EUROPOL**

The primary aim of this chapter is to comprehensively compare Interpol and Europol and to explore the complexity of their regime interaction. Comparative analysis of the two organizations will focus on their roles and functions. In particular, it will concentrate on the functions in establishing norms, rule making, rule application, and exchange of information and their roles instruments, arenas, and actors within Interpol and Europol. The analysis will predominantly be normative, however in order to have a broader perspective and understanding of their operation, it will take into account the practices of both organizations.

The chapter is divided into three sections; the first section illustrates the historical background of Interpol and Europol to briefly highlight their evolution and historical outline. The second section shows the roles of Interpol and Europol by addressing their behavior as instruments, arenas, and actors in the international political system. The third section is on the functions of Interpol and Europol in terms of providing norms, rule making, rule application, and exchange of information.

## 4.1 Historical Background of Interpol and Europol

Interpol is an international police organization with 190 member states. Its purpose is to arrange and promote mutual assistance of and support to the criminal police authorities within the context of national laws and the Universal Declaration of Human Rights. According to Interpol website on its structure and governance, Interpol does not send agents around the world to arrest or investigate but rather the National Central Bureau (NCB) link the national police in each member state with Interpol global network to carry out this function.<sup>124</sup> Interpol acts as a cooperative network established independently between police agencies to strengthen collaboration and offer support and assistance in police work across nations. In order to achieve this collaboration, Interpol connects its central headquarter located in Lyon, France, with the National Central Bureaus (NCB) located in each country of participating police agencies.

The establishment of an international police force started in 1914 when the first International Criminal Police congress took place in Monaco. This congress led to the gathering of police officers and judicial representatives from 24 countries to discuss ways to cooperate on issues related to crimes, arrest, extradition procedures, identification techniques and the design of centralized criminal records.<sup>125</sup> The effort was interrupted by the beginning of World War I, and in 1923, it continued at the second Criminal Police Congress in Vienna in which 138 delegates from 20

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<sup>124</sup> M. Deflem, "International Police Cooperation against Terrorism: Interpol and Europol in Comparison", (2007), p.19.

<sup>125</sup> T. Roufa, "INTERPOL: International Policing: Learn How INTERPOL Encourages and Facilitates International Police Cooperation", the balance, November 09, 2016, Retrieved from: <https://webcache.googleusercontent.com/search?q=cache:KarDp9OuxxUJ:https://www.thebalance.com/interpol-international-policing-974516+&cd=19&hl=en&ct=clnk&gl=us>.

countries gathered and established the International Criminal Police Commission (ICPC) this was Interpol's first communion.<sup>126</sup> During 1930s, the rise of the Nazi party in Germany threatened the legitimacy of the organization and in 1941, the German police director Reinhard Heydrich appointed himself as a president of ICPC and transferred its headquarters from Vienna to Berlin, thus politicizing the organization to the benefits of the Nazi regime.<sup>127</sup>

In 1946, Belgium led the rebuilding of the ICPC after the World War II and reestablished Interpol as an apolitical organization based in Paris, France.<sup>128</sup> United Nations (UN) gave ICPC the status of an NGO in 1971, which helped to legitimize the organization and further allowed an increase of its members.<sup>129</sup> In 1975, the Interpol granted the status of IGO. The ICPC edited its name to International Criminal Police Organization (ICPO) or Interpol. In 1989, its headquarters moved to Lyon in France where it is remained until this day.<sup>130</sup> In 1996, Interpol granted to be an observer status in the UN and thus fully recognized as an international organization.<sup>131</sup> Interpol considered the largest police cooperation body, composed of 190 member states with an annual budget of \$95 million and managed by three

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<sup>126</sup> International Criminal Police Organization (ICPO-Interpol), Department of International Affairs, Available at: [http://www.oas.org/en/ser/dia/institutional\\_relations/Documents/Profiles/INTERPOL.pdf](http://www.oas.org/en/ser/dia/institutional_relations/Documents/Profiles/INTERPOL.pdf)

<sup>127</sup> T. Tullett, Inside Interpol, Frederick Muller, 1 edition,(1963), p .28.

<sup>128</sup> Interpol, Connecting Police for Safer World, Available at: <https://www.interpol.int/About-INTERPOL/History/1914-2014/INTERPOL-1914-2014/INTERPOL-1914-2014>.

<sup>129</sup> Interpol website, History, Available at: <https://www.interpol.int/About-INTERPOL/History>.

<sup>130</sup> Interpol website, History, Available at: <https://www.interpol.int/About-INTERPOL/History>.

<sup>131</sup> R. Braga da Cruz, "Interpol's Transnational Challenge How can Interpol be Strengthened?" (2016), p.123.

bodies: the General Assembly, the Executive Committee and the General Secretariat.<sup>132</sup>

In 1975, Europol was originated from a platform that included internal security cooperation among EEC (European Economic Community) and EC (European Community) in Trevi, with interior and justice ministers.<sup>133</sup> In June 1991, Germany proposed to establish a European Police Office to the European Council meeting in Luxemburg because Germany and its federal organization of police forces were in support of a supranational police organization at European community level.<sup>134</sup> Therefore, the Trevi Group acted as an intergovernmental platform for the European ministries of justice and interior, which created the Ad Hoc Working Group on Europol in August 1991.<sup>135</sup> The purpose of its establishment is to prepare the foundation of a European Drugs Intelligence Unit. The Unit would initiate the National Drug Intelligence Units in the European Union member states to facilitate the exchange of information on drug trafficking and would ultimately be expanded to a full European Police Office that gathers and analyzes data and information on

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<sup>132</sup>R. Shaeffer, "Interpol Red Notices: Towards Due Process and Human Rights Protection," *Georgetown Journal of International Affairs*, (2013). Available at: <http://journal.georgetown.edu/interpol-red-notice-towards-due-process-and-human-rights-protection-by-rebecca-shaeffer/>.

<sup>133</sup>J. Peek, "International Police Cooperation within Justified Political and Judicial Framework", (1994).

<sup>134</sup>Ministerial Agreement on the Establishment of the Europol Drugs Unit, (1993), Available at: <http://ec.europa.eu/dorie/fileDownload.do;jsessionid=Z6j2N2kN80lp9hWtvkfv3pXJ2CnhMB4Sw35T RTtjKfGPy23k8sMH!-79809760?docId=321563&cardId=321563>

<sup>135</sup> T. Bunyan, "Trevi, Europol and the European State", *Statewatching the new Europe*, (1993), Available at: <http://webcache.googleusercontent.com/search?q=cache:vyTX6cMqc2wJ:www.statewatch.org/new/s/handbook-trevi.pdf+&cd=1&hl=en&ct=clnk&gl=us>.

organized crimes, in which the office would not have operational or executive powers.<sup>136</sup>

Europol was established by the Maastricht Treaty in 1992, and came into effect in 1993. Article K.1 (9) of the Treaty, regulated its limited operational powers and a mandate to act as the European Drug Unit (EDU) from 1994.<sup>137</sup> After the Maastricht Treaty came into effect, the Europol Convention was subject to the process of negotiation and ratification. The EDU mandate was extended twice, in 1995 and in 1996 to comprise a variety of trafficking crimes in its main tasks missions, which the information exchange among states could only happen bilaterally.<sup>138</sup> After ratification of the Europol Convention by all 15 European Union national parliaments in 1998, and delays caused by legal controversies regarding judicial supervision and the protection of primarily data, the Europol formally commenced its full activities in 1999.<sup>139</sup> The Lisbon Treaty in 2007 brought the Europol under the EU competency. New Europol Convention was adopted by the Council decision and came into effect in 2009.<sup>140</sup>

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<sup>136</sup>R. Woodward, "Establishing Europol", *European Journal on Criminal Policy and Research*, (1993), Volume 1, *Issue 4*, p.15.

<sup>137</sup> Provisions on Cooperation in the Fields of Justice and Home Affairs, Available at: [http://www.hri.org/docs/Maastricht92/mt\\_title6.html](http://www.hri.org/docs/Maastricht92/mt_title6.html)

<sup>138</sup> History of Europol, Available at: <http://people.exeter.ac.uk/watupman/undergrad/pollard/html/history.htm>

<sup>139</sup>T. Bunyan, "Trevi, Europol and the European State", (1993), Available at <http://www.statewatch.org/news/handbook-trevi.pdf>.

<sup>140</sup> General Secretariat of the Council of the EU, " The Lisbon Treaty's impact on the Justice and Home Affairs (JHA) Council: More co-decision and new working structures", (2009), Available at: [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/111615.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111615.pdf).

## 4.2 Roles of Interpol and Europol

International organizations play different roles in the international system. Clive Archer identifies three major roles international organizations may play instruments, arena, and actor.<sup>141</sup> The aim of this section is to identify roles played by Interpol and Europol and to illustrate how their roles are performed in practice.

Gunnar Myrdal described international organizations, specifically intergovernmental organizations as instruments for each state government's policies and diplomacy that involves limited agreements between states based on institutional structure for multilateral conduct of state activity in a specific field.<sup>142</sup> Another remark based on empirical findings by McCormick and Kihl point out that states use IGOs mainly as selective instruments to expand their foreign policies objectives. It does not apply to INGOs, which reflect the interests and requirements of several unions, such as trade unions, commerce organizations, political parties or religious groups.<sup>143</sup> Thus, the chances of independent actions and decisions made within international organizations are limited due to the fact most powerful states tend to utilize all the means to achieve their foreign policies goals in international organizations. Dag Hammarskjold, for instance, described how intergovernmental organizations have established mechanism of regular multilateral negotiation, agreements and diplomacy

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<sup>141</sup>C. Archer, "International Organizations", Routledge, (2001), p.68.

<sup>142</sup>G. Myrdal, "Realities and Illusions in Regard to Intergovernmental Organizations", Oxford University Press, London, (1955).

<sup>143</sup>McCormick, J.M. and Kihl, Y.W., " Intergovernmental Organizations and Foreign Policy Behavior: Some Empirical Findings", American Political Sciences Review. p 494-504.

for politicians and governments of states to be used as tools benefiting their own interest.<sup>144</sup>

Those observations apply to Interpol and Europol, for instance, China, Iran, Turkey, Japan, and Russia use Interpol red notice alert system as a mean to issue politically motivated warrant arrest against journalists, human rights activists, and dissidents. Another indication of China's influence over Interpol is its continuous and persistent exclusion of Taiwan as China claims its sovereignty over Taiwan and thus it tries to reduce its participation in international organizations, therefore, Interpol has refused Taiwan's proposal to participate in the November 2016 General Assembly.<sup>145</sup>

The Reagan administration has decided that America should cooperate and work with Interpol. This has led to the election of Interpol's first U.S president John R. Simpson in 1984.<sup>146</sup> Under his leadership, U.S contributed financially to Interpol and spent on the U.S National Central Bureau (NCB) that became the best and largest financed NCBs. In parallel with American support, the Interpol increased its emphasis on counterterrorism and its activities have been questionable, if whether U.S uses Interpol to expand its security agenda for its own national interests. Secretary General, Ronald Noble before 9/11 attacks he described fighting against terrorism is irrelevant to Interpol activities as it contradicts Article 3 of its constitution of not involving in any activities that of militarily, politically,

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<sup>144</sup>W. Cordier and Wilder Foote, "Public Papers of the Secretaries-General of the United Nations", American Journal of International Law, Vol. 68, (1972).

<sup>145</sup> Bethany Allen Ebrahimi, "Interpol is Helping Enforce China's Political Purges", April 21, 2017. Retrieved from: <http://foreignpolicy.com/2017/04/21/interpol-is-helping-enforce-chinas-political-purges/>.

<sup>146</sup>John Simpson Police Official, Retrieved from: [https://www.revolv.com/topic/John%20Simpson%20\(police%20official\)&item\\_type=topic](https://www.revolv.com/topic/John%20Simpson%20(police%20official)&item_type=topic).

religiously, and racially nature, however, after 9/11 attacks, under his leadership Interpol became excessively involved in providing international information on terrorism.<sup>147</sup> Another case is the United Kingdom, which is a member of both Interpol and Europol; with each organization cover dissimilar roles, mandates, and memberships.<sup>148</sup> This shows that a state like the UK is able to pursue its interests through both using Interpol and Europol as instruments for its policies.

The instruments used in Interpol are several so to guarantee compliance of the member states to the rules and regulations. The control of the National Central Bureaus by the General Secretariat and by the independent monitoring body known as the Commission for the Control of Interpol's Files is a measure to ensure obedience with the rules.<sup>149</sup> Furthermore, the exchange and processing of data between member states within Interpol achieved through the process of Interpol's Rules on the Processing Data (RPD), while the information related to the control and management of personal data and its access regulated by the Rules on the Control of Information and access to Interpol's files (RCI) under strict guidelines and rules.<sup>150</sup>

Europol operates in partnerships with law enforcement agencies, governmental offices and private sectors. The closest partnership with Europol is the law enforcements agencies of the European Union member states, with each designated

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<sup>147</sup> T. Bromund & D. Kopel, " Necessary Reforms Can Keep Interpol Working in the U.S Interest", The Heritage Foundation, December 11, 2013, Retrieved from: <http://www.heritage.org/global-politics/report/necessary-reforms-can-keep-interpol-working-the-us-interest>.

<sup>148</sup> Ibid. p.48.

<sup>149</sup> Interpol website, Fundamental Texts, Available at: <https://www.interpol.int/About-INTERPOL/Legal-materials/Fundamental-texts>.

<sup>150</sup> Interpol website, Fundamental Texts, Available at: <https://www.interpol.int/About-INTERPOL/Legal-materials/Fundamental-texts>.

Europol National Unit (ENU) to act as a link or connection between the authorities in each European country and Europol. Europol collaborates with a number of EU agencies based on regional agreements. For instance, the VI Treaty on the European Union Council Decision in 2002, aimed to establish the Eurojust to strengthen the fight against transnational crimes.<sup>151</sup> Also in 2005, the Council decided to establish the European Police College (CEPOL) to facilitate coordination between police agencies and to provide trainings and thus encouraging harmonization.<sup>152</sup> On the other hand, Europol has international agreements with international organizations such as UNODC (United Nations Office on Drugs and Crime), Interpol, and the World Custom Organization (WCO) to expand its cooperation and efficiency<sup>153</sup>

Another role of the international organizations is to provide arenas or forums within which actions such as events and procedures take place. Organizations grant meeting spaces for the members of the organization to gather in order to establish decisions, agreements and discussions. Interpol acts as a focal arena through which multilateral police cooperation between the world's police forces takes place, it recognizes the requirement to work in cooperation with other international organizations in order to combat transnational crimes. Therefore, several numbers of international conventions

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<sup>151</sup> Council Decision, setting up Euro just with a view to reinforcing the fight against serious crime, Official Journal of the European Communities, (2009), Available at: [http://webcache.googleusercontent.com/search?q=cache:K\\_mZuLhT3NoJ:www.eurojust.europa.eu/doctlibrary/Eurojust-framework/ejdecision/New%2520Eurojust%2520Decision%2520%2528Council%2520Decision%252002009-426-JHA%2529/Eurojust-Council-Decision-2009-426-JHA-EN.pd](http://webcache.googleusercontent.com/search?q=cache:K_mZuLhT3NoJ:www.eurojust.europa.eu/doctlibrary/Eurojust-framework/ejdecision/New%2520Eurojust%2520Decision%2520%2528Council%2520Decision%252002009-426-JHA%2529/Eurojust-Council-Decision-2009-426-JHA-EN.pd).

<sup>152</sup> Council Decision, On the Information Exchange, Risk-assessment and Control of New Psychoactive Substances, Office Journal of the European Union, (2005), Available at: <http://webcache.googleusercontent.com/search?q=cache:Ybv5wzsTJPYJ:eur-lex.europa.eu/legal-content/EN/TXT/%3Furi%3Dcelex%253A32005D0387+&cd=1&hl=en&ct=clnk&gl=us>.

<sup>153</sup> Agreements with International Organizations, Available at: <https://www.europol.europa.eu/partners-agreements/other-agreements>.

and bilateral treaties has established with Interpol to address sensitive and confidential criminal intelligence, hence, agreements have established with the UN<sup>154</sup>, and regional organizations such as the EU.<sup>155</sup>

Europol also provides arenas for the progress and harmonization of strategies, techniques and methods. It offers a platform for the member states, ministries, police and custom authorities to exchange views, experiences, knowledge and practices. For example, the agreement established between Interpol and Europol created an arena for successful negotiation to ensure their cooperation to further strengthening the sharing of criminal intelligence in combating transnational crimes and thus avoiding duplication of law enforcement efforts and facilitating efficient collaboration.<sup>156</sup>

The third role international organization play is that of an independent actor in the international system. The critical element here is "independent" and Archer identifies two ways to explain its meaning. Firstly, it can mean that international organizations or some of them are able to behave on the world scene independently without any influence by external forces, which small number of international organizations if any fit this criterion. Secondly, independent could mean autonomous in the context of Karl Deutsch, he describes that international organizations that takes action and react unpredictably, as well as possess stable and coherent decision-making machinery within its competences, fits a number of organizations behavior and

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<sup>154</sup> Interpol website, International Cooperation Agreements, Available at: <https://www.interpol.int/About-INTERPOL/Legal-materials/International-Cooperation-Agreements>.

<sup>155</sup> Interpol website, Regional Cooperation Agreements: European Union, Available at: <https://www.interpol.int/About-INTERPOL/International-partners/European-Union>.

<sup>156</sup> Europol, Agreement with International Organization, Available at: <https://www.europol.europa.eu/partners-agreements/other-agreements>.

narratives.<sup>157</sup> According to Wolfers he states that the capability of an international organization depend on the ' resolutions, recommendations, or orders emanating from its organs' obliging some or all governmental member states to take action differently from the way in which they would otherwise proceed.<sup>158</sup> Several international organizations have institutional structure allowing them to accomplish and achieve more than would be the case if their members behaved separately or only cooperated on an ad hoc (temporary agreements) basis. Thus, it shows that these organizations are instruments used by members of the organization to attain their conditions and requirements on the international scene. For example, The International Committee of the Red Cross, Amnesty International, International Confederation of Free Trade and Unions, and the World Confederation of Labor are all well-known INGOs with strong corporate character, displaying that the organization is stronger than the total of its membership and able to act effectively on the world arena.<sup>159</sup> On the other side, IGOs possess different issue since its degree of independency as an actor in the international system is problematic. These organizations were found based on intergovernmental agreements, therefore they can be used as an instrument or forum by member states. However, this can be justified by the existence of certain international organizations such as the International Court of Justice and the European Coal and Steel Community.<sup>160</sup> The structure of these organizations prevents any hindrance and intervention in its effort by the signatories

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<sup>157</sup>C. Archer, "International Organizations", Rutledge, 3rdEdition, (2001), p.79.

<sup>158</sup>Ibid.p.79.

<sup>159</sup>Ibid.p.80.

<sup>160</sup> Ibid.p.80

to its articles, as the decisions taken independently, away from any instruction of their delegate's member states.

The independence of both Interpol and Europol as actors in international system seems to be rather questionable for several reasons ranging from the nature of governmental representation within the system and its institutional operation momentum. Europol did not develop or build up a comprehensive capacity to act independently both formally and informally, but is rather relying on the European Union member states, which preserve most of the power.<sup>161</sup> Interpol is unable to take actions without the consent of the national police of any member state and Interpol does not hold any independent police power to arrest and seizure. The role of actor, which presumes some degree of autonomy is dealt with in detail in the following chapter.

### **4.3 Functions of Interpol and Europol**

Clive Archer identifies a number of functions international organizations may perform in the international system. Some of those functions are articulation and aggregation, normmaking, rulemaking, rule application, socialization and exchange of information. The aim of this section is to identify major functions performed by Interpol and Europol and to illustrate how their functions are performed in practice. It begins with norm and rule making and continues with rule application and exchange of information.

The formation of norms in international relations is becoming an increasingly complicated process which variety of IGOs and INGOs has been added. For instance,

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<sup>161</sup> M. Busuioc, D. Curtin & M. Groenleer, "Living Europol: Between Autonomy and Accountability", (2010), p.5.

the Universal Declaration of Human Rights adopted universal standards and norms for the protection of human rights. Both Interpol and Europol's work are based on this Declaration and thus formalized sets of norms that have established. Functional and operational work of Interpol is based on the Universal Declaration of Human Rights and Interpol's constitution declares compliance with the rules of this fundamental human rights text as well as international law on human rights, for instance in the field of data protection.<sup>162</sup> Europol's functional and operational work is also based on the Universal Declaration of Human Rights, protected exchange and share of information, Europol convention, international law, accountability and transparency.<sup>163</sup>

Although international organizations have helped to establish international norms and principles within international relations, yet, their contributions remain weak and controversial when it comes to for instance individual privacy and share of information. These norms create an institutional culture, identities, norms and practices that help functioning of the organization supported by common and international standards.

Rulemaking is another function of international organizations. Within the international system, there is no central formal rule making institution such as a government or a parliament, therefore the rules in the international forum are further and fragmented. Rulemaking can be based on the recognition of previous practices, *ad hoc* agreements, bilateral legal agreements and it may originate from international

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<sup>162</sup> Interpol Website, Available at: <https://www.interpol.int/About-INTERPOL/Legal-materials/The-Constitution>.

<sup>163</sup> Europol Website, Available at: <https://www.europol.europa.eu/about-europol/our-thinking>.

organizations.<sup>164</sup> As international organizations, both Interpol and Europol are not subjected to any national legislation of their members; however, they are bounded to the general standards of international law as well as to the fundamental individual's rights.

The rule making of Interpol is regulated in Article 8 of its Constitution. It refers to the function of the General Assembly to determine principles, measures, resolutions and recommendation to achieve the objective of the organization.<sup>165</sup> Europol's rule making stated specifically in its regulation 2016/794 , referring to the function of the Management Board to adopt rules to prevent and manage the conflict of interest in respect to its member states and to its declaration to adopt internal rule, procedures and guidelines.<sup>166</sup> Moreover, Article 88(2) of the Treaty on the Functioning of the European Union (TFEU) states that the European Parliament and the Council, obliged to determine and decide on Europol's operations, structure, field of action and tasks.<sup>167</sup> To ease the exchange of information in a cohesive setting, the variety of ad hoc agreements, treaties, and conventions have been drafted to facilitate and promote policies, practices, and processes.

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<sup>164</sup> C. Archer, " International Organizations", Routledge, 3<sup>rd</sup> Edition, (2001), p.102.

<sup>165</sup> Constitution of the ICPO-INTERPOL.(2008). Available at:<https://webcache.googleusercontent.com/search?q=cache:v-r9SVZ44vYJ:https://www.interpol.int/Media/Files/Legal-material/Reference-Documents/Constitution+&cd=1&hl=en&ct=clnk&gl=us>.

<sup>166</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council, (11 May 2016). Available at:<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0794>

<sup>167</sup> Consolidated Version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, (2012), Available at: [http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_2&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_2&format=PDF).

After rule is formulated, rule application is the next step. In the domestic political system, the application of rules implemented through sovereign states or governmental agencies. However, in the international political system, international organizations are supposedly implement rules independently without instructions from the government delegates' member states within the organization. In Interpol constitution Article (15) and (22), the Executive Committee ensures the implementation and administration of the activities of the organization and the decisions taken by the General Assembly.<sup>168</sup> According to Europol Regulation 794/2016 in Article (16) section (2), stating that the Executive Director is responsible for the implementation of the tasks allocated to Europol, to uphold daily administration of Europol and to implement the decisions adopted by the Management Board.<sup>169</sup>

The function of socialization and information exchange between member states became easier due to the globalized approach towards issuing and receiving information that the international organizations have facilitated. Therefore, developing the information share infrastructure is crucial to provide support both operationally and strategically to member states. At Interpol, the member states exchange information voluntarily through Interpol channels to strengthen permanent efficient cooperation. To achieve its mission, it should provide legal guarantees to ensure quality and data protection. According to resolution AG-2011-RES-07, the

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<sup>168</sup> Constitution of the ICPO-INTERPOL, (2008). Available at: <https://webcache.googleusercontent.com/search?q=cache:v-r9SVZ44vYJ:https://www.interpol.int/Media/Files/Legal-material/Reference-Documents/Constitution+&cd=1&hl=en&ct=clnk&gl=us>.

<sup>169</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council, (11 May 2016). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0794>.

Interpol rule on the processing of data has offered the legal framework to govern the functioning of the police information system. In addition, the Commission for the Control of Interpol's Files has established to supervise the information share and data protection.<sup>170</sup>

To ease the exchange of information process between member states within Interpol, the Constitution is the most fundamental legal foundation of the organization. According to Article (2), it specifies that international police cooperation should accomplish within the realm of the Universal Declaration of Human Rights in order to protect and respect human rights and freedom of individuals.<sup>171</sup> Article (3) of Interpol constitution, known as the "Neutrality clause", refers to the firm and strict forbidden of the organization to carry out any activities or operations of a political, military, racial or religious character, therefore ensuring the widest possible cooperation between the police authorities.<sup>172</sup> The legal personality the organization possess in the constitution, allows the organization the right to enter into cooperation and agreements with other entities without any external interference or influence. The socialization and exchange of information within Europol occurs via Europol Operation Network, which link law enforcement agencies in EU member states, non-EU member states, and third parties through cooperation agreements. Europol communicates through three main channels; The Secure Information Exchange

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<sup>170</sup> Legal Materials, A guide to the legal aspects of international police cooperation through Interpol, Available at:<https://www.interpol.int/About-INTERPOL/Legal-materials/Fundamental-texts>.

<sup>171</sup> Interpol website, The Constitution, Available at:<https://www.interpol.int/About-INTERPOL/Legal-materials/The-Constitution>.

<sup>172</sup> Interpol website, The Constitution, Available at:<https://www.interpol.int/About-INTERPOL/Legal-materials/The-Constitution>.

Network (SIENA), The Europol Information System (EIS), and The Europol Platform for Experts (EPE).<sup>173</sup>

This chapter showed that Interpol and Europol share almost similar instruments to ensure compliance of member states, they both provide an arena for the member states of each organization to make decisions and agreements, also these organization are used as an actor by some powerful states to expand their interests and power, thus, they are not fully independent actors. The functions used by Interpol and Europol such as norms, rule making, rule application, and exchange of information are similar structurally but different in application. The following chapter 5 offers an analysis of the actorness of Interpol and Europol focusing on the questions of their autonomy and homogeneity as functions of their operational efficacy.

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<sup>173</sup> Information Exchange, sharing intelligence securely and swiftly, Available at: <https://webcache.googleusercontent.com/search?q=cache:TS96eK8T34gJ:https://www.europol.europa.eu/activities-services/services-support/information-exchange+&cd=1&hl=en&ct=clnk&gl=us>.

## **Chapter 5**

# **THE ROLE OF AUTONOMY AND HOMOGENITY IN INTERNATIONAL POLICE COOPERATION: INTERPOL AND EUROPOL**

The purpose of this chapter is to examine how autonomous and homogenous Interpol and Europol are. The degree of their autonomy and homogeneity determines the level of their efficiency and the degree of international cooperation among their member states.

The concept of autonomy is addressed with respect to financial autonomy, legal autonomy and political autonomy. In addition, the concept of homogeneity is introduced with respect to its mandates and information share, the aim of this chapter is to examine its impact on the cultural, structural and operational activities of each institution.

This chapter is divided into three sections. The first section is on the autonomy of Interpol and Europol. Explaining the financial, political, and legal autonomy is based on the analysis of Interpol's and Europol's constituent documents. The second section focuses on the homogeneity of Interpol and Europol, addressing the impact the homogenous degree has degree on political structure, norms, principles, and values, which effect international cooperation and the organizational efficiency level. The third section deals with the cooperation between Interpol and Europol. It examines

the evolution of cooperation between Interpol and Europol from no cooperation at the beginning to a more organized manner of cooperation, share, and exchange of information.

## 5.1 Autonomy of Interpol and Europol

Entities can be identified as autonomous when they have the capacity to act independently or semi- independently from its members and other actors<sup>174</sup>Autonomy refers to their ability to decide for themselves on their operational activities. Thus, not acting upon their constituent member states government's demands and interests. Formal or *de jure* autonomy refers to the relationship between the organization and its delegate members states, which is regularly dictated in the constituent document and the provisions of the organization indicating the organization's legal mandate and formal tasks.<sup>175</sup>The design or the formation of an organization does not necessarily shows the degree of autonomy of an organization and its development over time,<sup>176</sup>

There is difference between *de jure* autonomy and *de facto* autonomy or actual autonomy which refers to the actual performance reflected by its formal or *de jure* autonomy.<sup>177</sup>It must be kept in mind that the concept of autonomy is strongly interconnected with the concept of accountability, especially autonomy *de jure* which requires high degree of accountability. The degree of autonomy of both Interpol and

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<sup>174</sup>M.Groenleer, "The Autonomy of European Union Agencies", Eburon Academic Publisher, (2009).

<sup>175</sup>Huber, J.D. and C.R. Shipan, "Deliberate Discretion ? The Institutional Foundations of Bureaucratic Autonomy", Cambridge University Press, (2002).

<sup>176</sup>Thatcher, M. and A. Stone Sweet, "Theory and Practice of Delegation to Non-Majoritarian Institutions", West European Politics, (2002).

<sup>177</sup>B. Badie , International Encyclopedia of Political Science, SAGE Publication, (2011).

Europol is identified by looking at its financial autonomy, political autonomy, and legal autonomy.

Regarding the financial autonomy, Interpol Constitution, the General Regulations, and the Financial Regulations form Interpol's legal outline to manage its financial matters. Its major source of funding comes from the yearly contributions given by each of the 190-member state of the organization. Each member state may also make an extra contribution voluntarily.<sup>178</sup> Furthermore, additional funding sources from diverse donors for arranged and agreed activities can be given. These donors are governmental agencies, international organizations, nongovernmental organizations, foundations and private entities, this allows the Interpol according to their website to carry out supplementary activities to preserve and uphold the interest of all parties concerned.<sup>179</sup> In this case, Interpol might suffer from being an autonomous entity.

Unlike Europol, the Interpol financial contributions come from the organization's members states, voluntarily based contributions by member states, governmental agencies, private entities, nongovernmental organizations, and international organizations. These all allow influence over the organization's activities based on safeguard the interest of parties concerned, which not allowing the organization to act independently or autonomously.

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<sup>178</sup>Interpol Website, Available at:<https://www.interpol.int/About-INTERPOL/Funding/Member-country-contributions>.

<sup>179</sup>Interpol Website, Available at:<https://www.interpol.int/About-INTERPOL/Funding/External-funding>.

Regarding the financial autonomy, Europol was initially funded by its European Union member states contributions.<sup>180</sup> This has resulted to member states that have largely assisted financially to demand influence over the agency's activities and actions in informal approach. Thus, the European Union member states were opposing the Commission and the Parliament to make funds available to Europol, in order for each member state to be able to influence Europol through their own financial contribution to the organization, and not to be funded by EU budget.<sup>181</sup> Therefore, the European Parliament played no role in negotiating the Europol convention and was not consulted through the negotiation and drafting phase.<sup>182</sup>

The situation began to change due to regular contact between the European Parliament and the European Commission along with the Europol in 2010 on the procedure for the scrutiny of Europol's activities by the European Parliament.<sup>183</sup> Along with national parliament's oversight over Europol's activities, this created the agency accountable to the Commission and the Parliament. The relationship between the European Commission and the Parliament on Europol can be illustrated by reference to Article 88(2) of the Treaty on the Functioning of the European Union

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<sup>180</sup>M. Busuioc and M. Groenleer, "Beyond Design, the evolution of Europol and Eurojust", Amsterdam Centre for European Law and Governance, (2011-03), p.21.

<sup>181</sup> House of Lords, "Europol's Role in Fighting Crime", Select Committee on the European Union, (2003), 5<sup>th</sup> Report.

<sup>182</sup>Ibid.p.22.

<sup>183</sup>COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the procedures for the scrutiny of Europol's activities by the European Parliament, together with national Parliaments, Available at: <http://webcache.googleusercontent.com/search?q=cache:Up5MAfR6zioJ:eur-lex.europa.eu/legal-content/EN/TXT/%3Furi%3DCELEX%253A52010DC0776+&cd=1&hl=en&ct=clnk&gl=us>.

confirming that the Europol's operation, structure and tasks are determined by the Council and the European Parliament. In this sense, the Europol has relative autonomy and not a full autonomy.

Gerald Gaus refers to the political autonomy as a feature of establishing decisions independently along with the principle of non-intervention within the political framework.<sup>184</sup> Interpol as mentioned in previous chapters, according to Article (3) of its Constitutions, is referred to as independent and neutral, firmly prohibited from carrying out activities that have political, religious, military and racial elements. Moreover, Article (30) refers that the states, Secretary General, and Interpol's staff should not request or allow any instructions or orders from any authority other than Interpol. Contradictorily, the red notices and the diffusion system have created negative consequences on the implication of article 3 and 30. Red Notice is an international alert aimed to communicate information about individuals issued by the National Police Bureau based on arrest warrant or court decision issued by the member country circulated by Interpol. The system of diffusion, according to Interpol's website, is similar to the Red Notice but less formal, used to request for an arrest or detecting the location of an individual.<sup>185</sup> These have been exploited by member states to achieve political aims and interests, which considered as a significant loophole in the structure of Interpol. Therefore, a de jure autonomous exists in the Interpol constituent documents but absent in the de facto autonomous level.

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<sup>184</sup> Internet Encyclopedia of Philosophy, Available at: <http://www.iep.utm.edu/autonomy/>.

<sup>185</sup> Notices, types of notices, Available at: <https://www.interpol.int/INTERPOL-expertise/Notices>.

Europol has several stakeholders such as the European Commission, European Parliament and its EU member states; hence, Europol plays a major role in the EU policy cycle influencing the internal security agenda.<sup>186</sup> To monitor Europol performances and activities, the council receives documents, annual reports, appoints Europol director, and confirms the approval of selecting Europol president and Europol agreements with third countries, other EU bodies, and international organizations.<sup>187</sup> The Europol autonomous behavior, in comparison with other entities, is therefore limited.

On the legal autonomy, Interpol does not allow due process for the legal challenge of misuse or inaccurate of red notices and the diffusion system. Interpol has formed several significant international agreements with subjects of international law. This includes over 40 agreements related to Interpol's privileges and immunities on territories of its member states for establishing national bureaus, for organizing General Assembly sessions, or regional conferences, or for the deployment of personnel in the field for police operations.<sup>188</sup> Interpol has premises in France and United States, yet it has negotiated for formal immunity.<sup>189</sup> An agreement between Interpol and the government of French Republic regarding Interpol headquarters premises, stated Interpol full privileges and immunities for the exercise of its aims

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<sup>186</sup>E. Disley, B. Irving, "Evaluation of the Implementation of the Europol Council Decision and of Europol's activity", (2012), p.44.

<sup>187</sup>Council Decision of 27 March 2000 authorizing the Director of Europol to enter into negotiations on agreements with third states and non-EU bodies; amended by the Council Decision of 6 December 2001 and 2002.

<sup>188</sup> Interpol Website, An organization under international law, The Interpol constitution as an international agreement, Available at: <https://www.interpol.int/About-INTERPOL/Legal-materials/An-organization-under-international-law>.

<sup>189</sup>R. Shaeffer, "Interpol Red Notices: Towards due Process and Human Rights Protection", Georgetown Journal of International Affairs, (2013).

and functions.<sup>190</sup> According to International law, it is known that an organization that has protection from judicial control, should offer an alternative way for effective remedies. The alternative mean provided by Interpol is the Commission for the Control of Interpol's Files (CCF), which is Interpol's oversight entity that is not sufficiently equipped to execute the responsibility due to its lack of the necessary safeguards of technical and practical fairness.<sup>191</sup>

Europol's legal autonomy instruments is addressed in Article (33) of the convention, refers to the establishment of the National Supervisory body to monitor independently the activities and the documents of the respective liaison offices at Europol.<sup>192</sup> Article (2) guarantees Europol legal capacity through its behavior as a legal personality, enjoyment of extensive legal and contractual competence, and attaining movable and immovable properties.<sup>193</sup> Europol has a unique status within the framework of the European Union because Europol is not considered to be part of the EU, it is not mentioned in Article 7 of Treaty Establishing the European Community (TEC) or in Article 6, Treaty of the European Union (TEU), but it is subjected to national proceedings.

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<sup>190</sup> Agreement between the international criminal police organization-INTERPOL and the government of the French Republic regarding Interpol's headquarters in France, 3 November 1982. Available at: <https://webcache.googleusercontent.com/search?q=cache:7RVzliNBkPUJ:https://www.interpol.int/content/download/9747/70868/version/7/file/accordSiegeRevise2008.pdf+&cd=1&hl=en&ct=clnk&gl=us>.

<sup>191</sup> R. Shaeffer, "Interpol Red Notices: Towards due Process and Human Rights Protection", Georgetown Journal of International Affairs, (2013).

<sup>192</sup> Council Decision, Acts adopted under the EU Treaty, April 2009 establishing the European Police Office (Europol) (2009/371/JHA).

<sup>193</sup> Council Decision, Acts adopted under the EU Treaty, April 2009 establishing the European Police Office (Europol) (2009/371/JHA).

The legal system was created under the third pillar of the EU is not adequate to guarantee an effective and consistent practice of EU law as well as judicial control of the legality of EU measures. Article 46(b) and Article (35) of the Treaty on European Union, under the title VI on the provisions on police and judicial cooperation in criminal matters were very limited in content, by removing Europol from the judicial inspection and scrutiny means that the jurisdiction of the court issuing preliminary rulings was voluntarily and not mandatory.<sup>194</sup> Furthermore, declaration no.7 to the EU Treaty refers that the European Court of Justice has no jurisdiction concerning the activities of Europol.<sup>195</sup>

In terms of judicial review, the authority of the court was limited to review merely the legality of agenda and structure of the decisions taken by the Council, the Commission and any action brought by a member state.<sup>196</sup> Thus, binding actions implemented by Europol would fall out the court's jurisdiction and would be deny judicial review. This absence of judicial review has caused a considerable lack in judicial protection that can result to harmful impacts on individuals who are at danger of depriving judicial remedy by Europol's decisions. This have changed in the Lisbon treaty Article 263 on the functioning of the European Union TFEU, which clearly states that the court granted authority over Europol's actions and judicial review by the Court of Justice of the EU over Europol's acts.<sup>197</sup>

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<sup>194</sup>M. Busuioc and M. Groenleer, "Beyond Design, the evolution of Europol and Eurojust", Amsterdam Centre for European Law and Governance, (2011-03), p.24.

<sup>195</sup>European Union Treaty, Declaration number 7.

<sup>196</sup>Ibid.p.24-25.

<sup>197</sup> Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union, Council of the European Union, (2008), Available at: <https://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf>.

Concluding this section, it addressed the difference between *de jure* and *de facto* autonomy, the former means the relation between member states and organizations dictated in the constituent documents, while the latter refers to the actual performance reflected. The autonomy of Interpol and Europol was examined with reference to their financial, legal, and political autonomy. Regarding financial autonomy, Interpol according to its website, is financed or funded by its member countries, private entities, international organizations, NGOs, and IGOs. In contrast, Europol was initially financed by EU member states, however recently, it has become an EU agency and thus funded by the EU budget. On the legal autonomy, Interpol has several issues when it comes to its legal status. Firstly, Interpol has been emphasizing on international immunity from both international courts and national jurisdictions. This means there is no judicial review over Interpol's actions and decisions that might harm individuals, such as its red notices and diffusion system.

Europol lacked judicial review; this means that there was harmful impact on individuals from Europol's decisions. This has changed in the Lisbon Treaty, which granted authority over Europol's actions and decisions to the Court of Justice of the EU. On the political autonomy, Interpol's constitution Article (3) and Article (30) referring to the neutrality and independency of Interpol to involve in any political, religious, military and racial activity, although of its member states misuse and exploitation of Red Notice and Diffusion. Europol has several stakeholders such as the European Commission, European Parliament and its EU member states, hence Europol plays a main role in determining and influencing the EU policy internal security agenda.

## 5.2 Homogeneity of Europol and Interpol

The aim of this section is to deal with the impact of organizational, cultural and arrangement disparities on the operational and co-operational activities of Europol and Interpol. According to Raymond Aron, homogeneity of international system refers to states, which obey and comply with similar principles and values, while the heterogeneous international system refers to states with antagonistic principles and values.<sup>198</sup> Therefore, homogeneity and heterogeneity are based on culture, ideology, moral, and political principles. These principles are either common or shared among states or they are different and hostile. International operation provides distinctive challenges and advantages; this means that the cultural, social and political differences in jurisdiction influence the operational activities of both organizations. The question to address is how these cultural differences and organizational formation are influencing the operational activities of Europol and Interpol, this illustrated through addressing the concept of homogeneity in relation to operational activities of its mandate and information flow.

Homogeneity plays a role in shaping the mandate and sharing information in international police cooperation. Larger mandate of international police cooperation is given to them when their member states are homogenous in terms of norms, principles, and political culture with relative trust among each other. Secondly, since there is trust established among member states, they are more likely be willing to voluntarily share and exchange information in order to achieve their mandates. Thus, harmonization among states is crucial to ease the information exchange and share as well as to expand its mandates.

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<sup>198</sup> J. Moulin, "One International Relations or Many? Multiple Worlds, Multiple Crises", (2013).

The architecture of formalized working of Europol and Interpol differs based on what is suitable and acceptable to the member states of each of these organizations. The larger the organization and more diverse in membership, the more an arranged and condensed structure is required to keep the organization executing and functioning. This occurs due to the lack of consensus and larger variation in membership.<sup>199</sup> Interpol, with 190 member states that vary greatly in terms of political, culture and legal systems has concentrated on achieving a common communication platform to link member countries with each other. Europol, is geographically restricted in membership with similar and not identical larger homogenous degree in political, legal and social aspects, this allows the organization to carry on an extensive and broader joint operational activities.<sup>200</sup>

For example, Interpol brings together a large number of jurisdictions, diverse legal frameworks, concepts and capabilities to fulfill its aim. Therefore, in order to overcome such differences and enforcement problems, Interpol has established a strong governance arrangements and operational procedures in its constitution. Article (3) of the Interpol constitution, prohibits the participation and involvement of its member countries to any activities that is military, political, religious, and racial so to form a platform for collaboration.<sup>201</sup> However, this has raised several issues related to what constitute military, political, religious and racial activities, as those concepts are identified differently across member states causing negative impact on

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<sup>199</sup>B. Bowling, "Transnational Policing: The Globalization Thesis, a Typology and a Research Agenda", Oxford University Press, (2009).

<sup>200</sup>Ibid.p.154.

<sup>201</sup>Neutrality (Article 3 of the Constitution), Available at:<https://www.interpol.int/About-INTERPOL/Legal-materials/Neutrality-Article-3-of-the-Constitution>.

the organizational operation.<sup>202</sup> This can also cause member countries to seek arrangements with other international organizations in order to achieve their needs, creating regimes complexes and possible overlap .For example, the United Kingdom is a member of both Interpol and Europol, with each organization possesses dissimilar role, mandate, and membership.<sup>203</sup> This shows that a state like the UK can seek its interests through both Interpol and Europol, thus creating regimes complexes and overlap.

Interpol's heterogeneity is reflecting on its legal arrangements and its information share and flow, especially when it comes to human rights and rules of law that hurdles police cooperation. For example, the disagreement between the United States and the European States on the US treatment of suspects in Guantanamo and EbuGhareb prisons, the issue of U.S death penalty for extradition, the cooperation with Iran and Saudi Arabia implementing Sharia law, all these can hurdle international police cooperation between member states from different backgrounds and legal systems.<sup>204</sup>

Europol, as a regional organization with more homogenous membership (not identical but similar) is capable of building stronger aims and objectives. This is due to the fact that Europol member states have similar legal frameworks. For instance, they all are signatories to both the EU and the Council of Europe human rights

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<sup>202</sup>I. Henry Messenger, " An Examination of the Dynamics of Multi-Agency Arrangements in Different Cultural and Legal Contexts", (2013).

<sup>203</sup>Ibid. p.48.

<sup>204</sup> I. Saglam, "Regional and Global Approaches to Intergovernmental Security Organizations", University of Essex, (2014), p.31.

legislation.<sup>205</sup> The Joint Investigation Team (JIT) allows further harmonization for Europol to implement broader operational task, it allows fast exchange of information, closer cooperation, and integration of investigating teams. Which can take place if member states desire to cooperate in a specific operation or task.<sup>206</sup> Due to the harmonized nature of the organization, it is easier to operate in a multi-jurisdictional through an intelligence system such as the European Information System; this allows member states to recognize criminal groups operating across diverse jurisdictions.<sup>207</sup>

Interpol's database system and operational arrangement are restricted to some areas, given the geopolitical and trust issues among member states that influence definite member states. In contrast, it is naturally easier to cooperate with 28 members as oppose to 190 members of larger geographical diversity. Europol represents cohesiveness of national legislation of the EU, which allows for a larger degree of cooperation, integration, and services provisions, this eases Europol to carry out broader variety of services with better analytical capacity.

### **5.3 Cooperation between Interpol and Europol**

As mentioned earlier, the international police organization Interpol was established in 1923 with a broader geographic coverage with 190 member states to facilitate international police cooperation, unlike Europol with restricted geographic coverage of 28 European Union member countries.<sup>208</sup> Although Interpol is broader in terms of

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<sup>205</sup> I. Henry Messenger, "An Examination of the Dynamics of Multi-Agency Arrangements in Different Cultural and Legal Contexts", (2013), p.51.

<sup>206</sup> Ibid.p.51.

<sup>207</sup> Ibid.p.52.

<sup>208</sup> O. Costa, K. Erik, "The Influence of International Institutions on the EU: when multilateralism hits Brussels", Palgrave Macmillan, (2012), p.143.

membership and represents more extensive and wider crimes coverage, yet it has complicated the exchange of sensitive information, the analyzing of information and offering instant operational support due to mistrust between some of its member states.

The establishment of Europol may be perceived as a result of an implicit criticism towards Interpol at the time of Europol's establishment, Interpol was not functioning and operating well. It was a highly bureaucratic agency, poorly equipped to deal with increasingly global and transnational challenges and threats.<sup>209</sup> Interpol was concerned that the establishment of Europol would lead to duplication and overlap with its ongoing efforts. Therefore, the relationship between the two organizations was characterized by distrust and lack of cooperation. One of the main arguments between Interpol and Europol was on the issue of data collection and data protection, as it is one of the most important forms for future cooperation between the two organizations. Europol expressed that its convention of data protection are firmer because Interpol's data protection is only subjected to national law, unlike Europol that provides data protection at the national level and provides a second check at the Europol level,<sup>210</sup> this might be an obstacle to share information with Interpol. Another great difference between Interpol and Europol data collection is that Interpol can only assemble data when establishing a project for the purpose of analysis and when trying to begin operation at the national level. In Europol, member states are obliged

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<sup>209</sup>Ibid.p.144.

<sup>210</sup> Data Protection at Europol, Luxembourg: Publications Office of the European Union, 2012, Arts.14-22.

to give information and data that may contribute to combat transnational organized crime.<sup>211</sup>

After several years, the operational cooperation between the two institutions developed and enhanced. Interpol and Europol initiated a guide map to boost their operational cooperation in 2005 until recently 2016 concerning human trafficking, child abuse, terrorism and euro counterfeiting or fraud, thus incorporating initiatives in which the two institutions could work and cooperate.<sup>212</sup> Also, they have established additional provision with Interpol, assuring that Interpol is not allowed to redirect or distribute data made accessible by Europol to other countries or organizations.

Europol's Director Max-Peter Ratzel described once Europol and Interpol as having a friendly football match in which both organizations perform to the maximum of their abilities and considered such competition acceptable. However, he continued, when it comes to daily tasks and missions, the two organizations must put together every effort to avoid challenging and competing with each other in the same field, in order to complement each other to tackle organized crimes without wasting resources and duplicating efforts.<sup>213</sup>

Article (2) of the cooperation agreement between Interpol and Europol explains that the purpose of this agreement is to create and preserve cooperation between the two

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<sup>211</sup>Art. 10, paras.3 and 4 of the Europol Convention.

<sup>212</sup>O. Costa, K. Erik, "The Influence of International Institutions on the EU: when multilateralism hits Brussels", Palgrave Macmillan, (2012),p.144.

<sup>213</sup>Ibid.p.144-145.

institutions in fighting serious international organized crimes, within the range of competence of each party and to their constitutional provisions and the convention. This is accomplished through the exchange of operational, strategic, and technical information as well as through mutual standards, action plans, training, scientific research and secondment of liaison officers.<sup>214</sup> Moreover, under Article (3) on cooperation, coordination and reciprocal representation, it refers to the Europol's Director and the Interpol's Secretary General the obligation to consult one another on issues related to mutual interest, similar policies and joint investigations to avoid duplication and overlapping of activities and to ensure that the provisions of the agreement are achieved and implemented.<sup>215</sup>

The purpose of this chapter is to show the degree of autonomy of Interpol and Europol by briefly explaining the meaning of *de jure* autonomy and *de facto* autonomy as well as addressing the financial, legal and political autonomy. It has been recognized that Interpol is financed or funded by its member states, private entities, international organizations, NGOs, and IGOs. This shows fragmentation and regimes complexes, as each of these actors financing the Interpol has different regimes and different interests. In contrast, Europol is initially funded by its EU member states. Europol recently has become an EU agency with separate Europol budget and not part of the overall EU funds. This unusual arrangement protects the intergovernmental character of Europol. This has considerable influence on the

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<sup>214</sup> Regulation (EU) 2016/794 of The European Parliament and of the Council, Official Journal of the European Union, Clause 35, Article 2, Available at: <http://webcache.googleusercontent.com/search?q=cache:-kkAaBd9zh4J:eur-lex.europa.eu/legal-content/EN/TXT/%3Furi%3DCELEX%253A32016R0794+%&cd=1&hl=en&ct=clnk&gl=us>.

<sup>215</sup> Regulation (EU) 2016/794 of The European Parliament and of the Council, Official Journal of the European Union, Article 3, Clause 72, Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0794&rid=1>.

organizational function and operation, since member states might reflect their interests and demands on the organization, thus influencing negatively its operation and function.

Regarding the legal autonomy, Interpol has several issues when it comes to its legal status. Firstly, Interpol emphasizes on international immunity from both international courts and national jurisdictions, which means there is no judicial review over Interpol's actions and decisions that might harm individuals, such as its Red Notices and Diffusion system. However, since it lacks judicial control, according to international law it should create an alternative mean for effective remedies. The Commission for the Control of Interpol's Files (CCF) that is Interpol's independent oversight entity, is not sufficiently equipped to execute the responsibility since it lacks the necessary safeguards and technical and practical tools to a fair decision. Europol was lacking judicial review, according to its Article (46) and Article (35) of the Treaty on the EU under the title VI, the provisions on police and judicial cooperation in criminal matters were very limited in content, and this means that there was harmful impact on individuals from Europol's decisions. This has changed in the Lisbon treaty in Article 263 on the functioning of the European Union TFEU, stating that the court granted authority over Europol's actions and decisions by the Court of Justice of the EU.

On the political autonomy, despite the fact that Interpol's member countries exploitation of the system, through Red Notices and Diffusion system. Yet, according to Interpol's constitution Article (3) and Article (30) referring to the neutrality and independency of Interpol to involve in any political, religious, military and racial activity as well as emphasizing the Secretary General and the staff not to

accept any request or instructions from any other authority. This has shown fragmentation within Interpol's member states with different political and norms regimes on human rights and rule of law. Europol, on the other hand has many stakeholders such as the European Commission, European Parliament and its EU member states. This means that Europol plays a significant role in shaping and influencing the EU policy internal security agenda.

Considering the homogeneity degree of Interpol and Europol, due to Interpol's broader range of political, cultural and legal systems, it is thus less homogenous. It faces operational hurdles from its member countries due to different interpretation of concepts and rules within the organization, as well as the lack of trust among member countries, which can be a major hurdle for information share and exchange on conducting operational activities.

Europol, on the other hand is limited in membership and has larger homogenous degree politically, legally and socially, although not identical but similar. This helps the organization to conduct extensive and wider joint operational activities.

Lastly, the cooperation agreement between Interpol and Europol has developed and enhanced operational activities after long years of distrust between the two organizations. The agreement therefore has avoided overlapping and duplication of efforts and competences of Interpol and Europol; it thus improved their interaction and cooperation.

## **Chapter 6**

### **CONCLUSION**

Transnational organized crime threatens state national security, including security of national financial systems, as well as civil societies and human security. Its agents, on state actors are even capable of using terrorism to advance their aims and interests. They expand their strength and capabilities across national boundaries. Their activities including, for instance, drug trafficking and money laundering signify threats and challenges to the national sovereignty and integrity of states and threaten the continued existence of governments. Transnational crime influences national states and societies, weaken the credibility of national economies and destabilize social order. Hence, weak societies are highly vulnerable to transnational crimes, the need to combat transnational crime led to the proliferation of international police cooperation organizations of different form, membership, character and structure. Such as African Union AFRIPOL, the police community of the Americas AMERIPOL, ASEANPOL, and the Gulf Cooperation Council GCCPOL, the Economic Cooperation Organization ECOPOL and European Union Europol. Two of international police cooperation are examined in this thesis, Interpol and Europol.

The main purpose of this thesis is to identify and explore the relationship between two regimes and two models of police cooperation, Interpol and Europol. To

paysignificant attention to their roles in terms of instrument, arena, and actor, their functions such as norms, rule making, rule application, and exchange of information. The thesis is focused on the aspects of institutional fragmentation, regime complexes, bureaucratization of policing, autonomy and homogeneity of Interpol and Europol.

The main research question is how Interpol and Europol overlap and interact, while dealing with the same subject matter; do their functions and roles overlap? And are they mutually exclusive? In order to examine the regime overlaps and interactions between the two international police cooperation, the thesis utilized two major routes. The first route is to identify both Interpol and Europol based on three theoretical approaches to recognize their correlations and application. The second route used in this thesis was to identify the roles and functions of Interpol and Europol, roles in terms of instruments, arenas, and actors, and the functions in terms of norms, rule making, rule application, and exchange of information were utilized based on Interpol constitution, Europol convention, and other international and multilateral agreements.

The proliferation of organizations in international relations is due to the increasing amount of fragmentation. Fragmentation theory of international law and international organizations addressed the fact that institutional fragmentation of Interpol and Europol in terms of its implementation of international law and fragmentation among the organization's member states in terms of their interests, demands, political, and structural system of each member country. This have surely led to regimes complexes and behavior within the international political system and the creation of different international and security regimes dealing with the same subject matter,

such as Interpol and Europol police organizations. The concept of fragmentation focuses on the institutional settings, in which distinctive institutions exist, cooperate, and interact. Fragmentation is the outcome of continuing proliferation, specialty and diversity of institutions, norms, actors and issue areas. For instance, Interpol and Europol are international regimes that deal with definite and explicit subject matter; they are specialized regimes with relative autonomous rules and institutions and are highly fragmented from within in terms of member states reflection of their interests and technological development. Institutional fragmentation and regime theory are interlinked, thus it was applicable to address regime theory in relation to Interpol and Europol.

Regime theory showed that both organizations are international regimes with completely different mandates, competences, functional, and structural degrees, although dealing with the same subject matter. This has caused the emergence of specialized and relatively autonomous rules, regimes complexes, overlap, and international institutions. Since both Interpol and Europol are bureaucratic and hierarchical organizations. Weber has dedicated attention to the pattern of bureaucratic organizations to attain an autonomous position, so that organizations can work independently from political oversight and popular control. The theory of bureaucratization of policing was useful in observing the degree of autonomy and the conditions of efficient international police cooperation and efficient technological system

For the comparative assessment, Interpol and Europol are well-known international police organizations, classified under intergovernmental organizations (IGOs), each

established methods and techniques in dealing with transnational crimes. If we compare the two organizations, there are definitely some points of restraints between these organizations. Regarding their scope of activities, Interpol has more general responsibilities than Europol in all areas of crime. Interpol mandate not only focused on criminal organizations but also on other areas such as corruption, environmental crime, financial crime, drugs, firearms, terrorism, pharmaceutical crime...etc. In contrast to Europol in which its mandate is solely set up to repress and tackle organized crime. In respect to its geographical areas of activities, Interpol and Europol territorial operational activities differ significantly. Europol is restricted to the territory of the European Union while Interpol is operationally active nearly all over in the world.

The role of Europol member state liaison officers is a significant element for effective operational activities within Europol. All forms of communication with the member states occur through the Europol Liaison Officers (ELOs) and the national unit in the member states. The ELOs act as the representatives of their sending authorities with high quality and speed of sharing and exchange of information, furthermore, the ELOs are located at Europol, which facilitates and allows for direct communication. Unlike Interpol, which operates through NCBs that established in each member state of Interpol, this means less direct communication. For example, the European liaison officers in Interpol act as a liaison point at Interpol for all European states and not as the representatives of their sending authorities.

Interpol and Europol have been used by several different member states such as Turkey, China, Japan, America, Russia, and the United Kingdom to pursue and

expand their interests and foreign policies agendas. In addition, both organization act as a central arena through which multilateral police cooperation between the world's police forces take place, for the progress and harmonization of strategies, techniques and methods. It this, offers a podium for the member states, ministries, police and custom authorities to exchange views, experiences, knowledge and practices.

Interpol and Europol acting independently within international system is questionable due to several reasons related to the governmental representatives within the organization as well as its institutional operation momentum. Interpol is not capable to take actions without the consent of the national police of any member state; it also does not hold any independent police power to arrest and seizure. Europol did not enlarge or build up a comprehensive independent capability to behave independently both formally and informally, but rather relying on European Union member states, which safeguard most of the power.

The international norms and principles adopted by Interpol and Europol possess lots of weaknesses and contradictories regarding the individual privacy and share of information. Both Interpol and Europol their functional and operational work is based on the Universal Declaration of Human Rights, data protection, secure exchange of information, international law, fundamental texts, transparency and accountability. These norms created an institutional culture, identities, norms, regimes, and practices, facilitating the organization's functions supported by common and international standards. However, several contradictions within Interpol and Europol regarding certain aspects of human rights, such as the issue of privacy and information share have been a major issue especially within Interpol. Interpol is less

restricted in data protection policies, less homogenous due to its lack of membership criteria that led to dissimilar degree among member states in terms of norms, political culture, legal, and social aspects. This led that the autocratic regimes within Interpol exploit the alert system to achieve political aims and interests. Therefore, the design of formalized workings of Europol and Interpol differs based on what is suitable and acceptable to the member states of each of these organizations

In the domestic political system, the application of rules implemented through sovereign states or governmental agencies. However, in the international organizations, the application of rules are supposedly occurs without the guidance or instructions of the governmental representatives within the organizations, therefore act as an independent representative. Therefore, both Interpol and Europol are not subjected to any national legislation of its members; however, it is bounded to the general standards of international law as well as to the fundamental individual's rights.

The information exchange in Interpol occurs voluntarily through Interpol channels to reinforce permanent efficient cooperation. It provides legal guarantees to ensure the quality and data protection. Moreover, the Commission for the Control of Interpol's Files has established to supervise sharing of information and data protection.<sup>216</sup> The exchange of information within Europol occurs via Europol Operation Network that links law enforcement agencies in EU member states, non-EU member states and third parties through cooperation agreements. Europol communicates through three

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<sup>216</sup>Available at: <https://www.interpol.int/About-INTERPOL/Legal-materials/Data-protection>.

main channels; The Secure Information Exchange Network (SIENA), The Europol Information System (EIS), and The Europol Platform for Experts (EPE).<sup>217</sup>

Interpol and Europol encountered several criticisms, each of different elements and views. This has showed the practical side on how these organizations are actually performed and viewed. The criticism of Interpol was mainly on its lack of membership criteria, lack of external judicial oversight, thus lack of accountability, exploitation of Interpol's member states to the Alert system, such as the red notices and the diffusion, which had put many human right activists and journalists in danger. The critics of Europol viewed by the social democrats, the liberals, and the realists are all different but evolved around the issue of transfer of authority from member country to Europol, securitization policies such as boarder control related to immigration flow, and technical aspects of privacy and freedom of EU citizens.

After all the theoretical perspectives and different comparative assessments that have been made, one might conclude that Interpol and Europol are bureaucratic and hierarchical organizations, Interpol is fully intergovernmental organization, while Europol is mix of both intergovernmental and trans-governmental organization, which results to distinct regimes with similar but not identical subject matters as their competences and mandates differs largely.

The diagram below shows briefly the tools and theories used to conduct this thesis through the three theoretical approaches of fragmentation, regime, and

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<sup>217</sup> Available at: <https://www.europol.europa.eu/activities-services/services-support/information-exchange>.

bureaucratization theories. Also, it shows the dimensions of functions and roles used in this thesis.

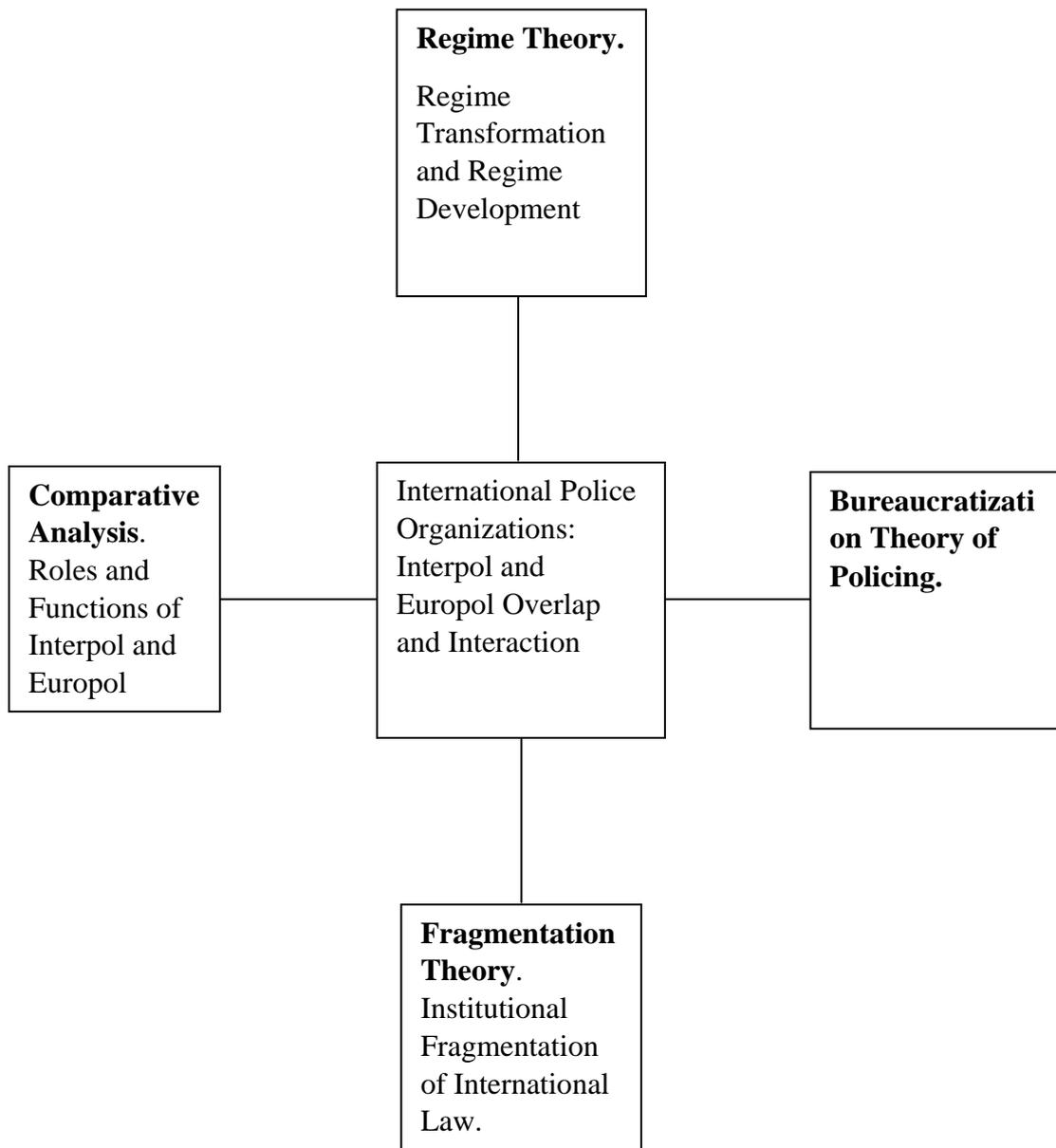


Figure 1: Tools and theories used for the research

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