

# LUISS



Degree Program in Politics: Philosophy and Economics

Course of International Law

## **Beyond Borders: Obligations and Accountability of the International Organization for Migration in International Law**

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*“Non ti allarmare fratello mio,  
dimmi, non sono forse tuo fratello? Perché non chiedi notizie di me?  
È davvero così bello vivere da soli,  
se dimentichi tuo fratello al momento del bisogno?”*

Tesfalidet Tesfom (Segen)

[poesia scritta da un giovane eritreo  
morto di stenti dopo il suo sbarco a Pozzallo]

<b>INTRODUCTION .....</b>	<b>4</b>
<b>1. HISTORY AND MANDATE OF THE INTERNATIONAL ORGANIZATION FOR MIGRATION .....</b>	<b>6</b>
1.2. INTERNATIONAL LAW FRAMEWORK ON MIGRATION.....	6
1.2.1. <i>The Right to Leave and The Right to Enter</i> .....	7
1.2.2. <i>Refugees</i> .....	10
1.2.3. <i>Migrant Workers</i> .....	11
1.3. HISTORY, EVOLUTION, AND GROWTH OF THE IOM .....	12
1.3.1. <i>Founding of the Organization in 1951</i> .....	12
1.3.2. <i>Role of the Organization between 1951 and 2016</i> .....	14
1.3.3. <i>IOM as the new UN's 'Migration Agency': Affiliation with the UN in 2016</i> .....	16
1.3.3.1. <i>Historical Path to the Affiliation</i> .....	16
1.3.3.2. <i>IOM positioning in the UN system and 'UN-related status'</i> .....	19
1.3.3.3. <i>1996 and 2016 Cooperation Agreements Compared</i> .....	22
1.3.3.4. <i>Current Differences between IOM and UN</i> .....	25
1.4. MEMBERS, MANDATE, AND FOCUS OF THE IOM .....	26
1.4.1. <i>Mission and Goals of the Organization</i> .....	26
1.4.2. <i>Member states and their influence</i> .....	28
1.5. CONCLUSION.....	29
<b>2. THE INSTITUTIONAL STRUCTURE OF IOM .....</b>	<b>31</b>
2.1. INTRODUCTION .....	31
2.2. ORGANISATIONAL FRAMEWORK OF IOM.....	31
2.2.1. <i>Decision-Making Bodies and Processes</i> .....	31
2.2.2. <i>IOM's Decentralised Structure</i> .....	34
2.3. LEGAL AND NORMATIVE FRAMEWORK OF THE IOM .....	35
2.3.1. <i>IOM's Constitutional Framework and Internal Rules</i> .....	35
2.3.1.1. <i>Evolution of the IOM Constitution</i> .....	36
2.3.1.2. <i>IOM's Expanding Internal Policy</i> .....	37
2.3.2. <i>Weaknesses of IOM normative framework</i> .....	40
2.4. STATE SOVEREIGNTY AND ITS INFLUENCE ON IOM'S OPERATIONS .....	40
2.4.1. <i>IOM's Cost-Benefit Approach to Migration</i> .....	43
2.4.2. <i>IOM's project-based funding</i> .....	44
2.5. CONCLUSION.....	45
<b>3. CRITICAL ISSUES OF THE IOM AND FUTURE DIRECTIONS.....</b>	<b>46</b>
3.1. INTRODUCTION .....	46
3.2. ASSESSMENT OF IOM'S HUMAN RIGHTS OBLIGATIONS WITHIN THE HUMAN RIGHTS FRAMEWORK.....	46
3.2.1. <i>IOM's Approach to Human Rights</i> .....	46
3.2.2. <i>Achievements of Article 2(5) of UN-IOM Agreement</i> .....	49
3.2.3. <i>IOM's Human Rights Accountability Mechanism</i> .....	50
3.2.3.1. <i>IOM Office of the Inspector General</i> .....	50
3.2.3.2. <i>Domestic Courts</i> .....	51
3.3. IOM'S POTENTIAL TO VIOLATE HUMAN RIGHTS .....	51
3.3.1. <i>Case Study of IOM interventions and their Human Rights Implications</i> .....	52
3.3.1.1. <i>IOM and Australia's 'Pacific Solution': Nauru and Manus Island Migrant Processing Centers</i> .....	52
3.3.1.2. <i>Expulsion of Ethiopians in Saudi Arabia</i> .....	55
3.4. IOM'S RESPONSIBILITIES UNDER INTERNATIONAL LAW .....	58
3.4.1. <i>Evolution in the Accountability of IOs under International Law</i> .....	58
3.4.2. <i>Challenges in holding IOs accountable: matters of Obligation and Attribution</i> .....	60
3.4.3. <i>Challenges in ARIO Application</i> .....	63
3.5. POSSIBILITIES FOR IMPROVEMENT .....	66
3.6. POSSIBLE EVOLUTION OF IOM'S ROLE IN THE SHIFTING WORLD ORDER .....	67

3.7. CONCLUSION.....	69
<b>CONCLUSION .....</b>	<b>70</b>
<b>BIBLIOGRAPHY .....</b>	<b>72</b>

## INTRODUCTION

Migration has become the beating heart of global discourse, fueled by a wave of collective hysteria and continuous media coverage. Nowadays, this buzzword dominates the front pages of newspapers, television news, and social media, weaving a narrative of crisis that is difficult to escape. This pervasiveness is not solely caused by the sheer volume of information shared but by how it is portrayed — often through alarmist and sensationalist rhetoric<sup>1</sup>. The migration phenomenon is mainly depicted as a raging flood, an unstoppable threat that jeopardises internal security, national values, and cultural identities. In this climate of heightened fear, concerns about illegal immigration are strengthening the narrative of a prosperous West under siege by an increasing number of migrants.

However, the media represents just one piece of the narrative's puzzle. Politicians and governments have cleverly manipulated the matter of migration to divert attention from destabilised nation-states' social, economic, and political foundations in the current era of globalisation. Migrants are the perfect scapegoat to project collective blame and fears. As Abdelmalek Sayad notes, '*Nous pensons tous l'immigration [...] comme l'État nous demande de la penser et, en fin de compte, comme il la pense lui-même*<sup>2</sup>': political leaders manage in this way to forge social cohesion based on the nationalist exclusion of 'the other'.

In this highly charged political landscape, the role of the International Organisation for Migration (IOM) is revealed as critically fundamental. IOM is not solely an Organisation that manages the movement of migrants but occupies a central position in mediating between national interests, geopolitical international dynamics, and the human rights of the migrants. This thesis will aim to understand IOM's role in better grasping the context of migration governance and human mobility in the 21st century in the complex framework of international migration law, which intertwines questions of national and global concerns.

The first chapter will provide a comprehensive overview of IOM, detailing its history and mandate in the international legal migration framework. The first section will explore the legal landscape

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<sup>1</sup> Dina Matar, 'Media Coverage of the Migration Crisis in Europe: A Confused and Polarized Narrative' (Centre for Media Studies, School of Oriental and African Studies (SOAS), London)

<sup>2</sup> A Sayad, 'Immigration et "pensée d'Etat"' (1999) 129 *Actes de la recherche en sciences sociales* 5, 7.

of migration governance, focusing on the interplay between national and international law and highlighting the human rights of migrants. Then, the next section will delve into the intricate history of IOM, from the establishment of ICEM in 1951 until the blossoming of the Organisation as it is known today. Lastly, the third section outlines IOM's mandate, its mission and goals, and the influence of the member states on them.

The second chapter explores IOM's institutional structure, focusing on its legal and normative frameworks and organisational and operational dynamics. The introductory section will outline the critical governance structures within IOM, namely its decision-making bodies: the Council and the Administration. After that, the second section will discuss the legal documents that guide IOM's operations: its Constitution and Internal Policy. The influence of state sovereignty over IOM's functioning will be addressed in the fourth section, which discusses the cost-benefit approach of the Organisation and its project-based funding. Ultimately, the gaps and limitations of the normative framework of IOM will be assessed.

The third chapter will delve into the critical issues surrounding IOM and suggest possible future directions for the Organisation. It begins by assessing the human rights obligations to which IOM is bound and analysing the organisation's approach to integrating those rights into its operations. Further, it examines the existing accountability mechanism, namely the Office of the Inspector General and the domestic courts of the member states. Two case studies, the expulsion of the Ethiopians from Saudi Arabia and the management of Nauru and Manus Island Processing Centres, will illustrate how IOM can potentially violate human rights in its operations. Then, IOM's responsibilities under international law will be analysed, particularly concerning the Articles on the Responsibilities of International Organisations (ARIO). Finally, the chapter will explore if balancing the states' interests with human rights imperatives and the potential amendment of the Constitution can improve the *status quo* of IOM, considering its adapting role in the shifting of the global dynamics.

# **1. HISTORY AND MANDATE OF THE INTERNATIONAL ORGANIZATION FOR MIGRATION**

## **1.1. INTRODUCTION**

The history of the International Organization for Migration is peculiarly intertwined with the ebb and flow of human mobility itself. Among the ashes of the Second World War, the organisation emerged in response to the urgent need to resettle millions of displaced persons across a war-torn Europe. Its history, however, extends far beyond its initial purpose and reflects the ever-evolving landscape of human migration over two centuries.

This chapter serves as an introduction to the following chapters, where the first section will navigate the evolving international law framework of migration to grasp the principles and rights governing this complex subject. Then, the IOM's historical path will be explored by tracing its origins, evolutions, and expanding mandate. It delves into the context of its creation, analysing the political and social forces that shaped its initial role as a mere logistics agency facilitating European resettlement. As we delve deeper into this historical narrative, we will gain insight into the evolution of the IOM and shed light on the changing dynamics of international cooperation in addressing the challenges and opportunities presented by human mobility.

In the third section, an analysis of IOM's mandate and areas of operation will provide a deeper understanding of its political role in the complex scenario of international migration governance and how it operates under the influences of its member states.

## **1.2. INTERNATIONAL LAW FRAMEWORK ON MIGRATION**

Over the past years, the increasing attention to migration at the international level has fostered the establishment of the two pillars of the current migration architecture: the Global Migration Group, an inter-agency group to whom IOM is a party<sup>3</sup>, established by the UN Secretary-General in 2006, and aimed at improving the coordination between its members to respond effectively to the

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<sup>3</sup> The other nine organisations are the International Labour Organization (ILO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), the United Nations Department of Economic and Social Affairs (UN-DESA), the United Nations Population Fund (UNFPA), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Office on Drugs and Crime (UNODC), and the World Bank.

challenges of international migration<sup>4</sup>; and the Global Forum on Migration and Development, a state-led process, created in 2007 to discuss opportunities and challenges related to migration and development<sup>5</sup>.

Ambiguity and complexity characterise international law concerning migration due to its dual nature, encompassing domestic and global concerns. If, from one perspective, the admission of non-nationals inexorably interests the domestic jurisdiction of each State, from the other perspective, people on the move carry an international nature with themselves<sup>6</sup>. Indeed, this triangular relationship between the migrant, the state of emigration, and the state of immigration implies different elements, including the powers and duties of states to manage movements of people across borders, the rights of international migrants, and state cooperation in the management of global movements of people.

### 1.2.1. The Right to Leave and The Right to Enter

States possess broad authority to regulate the movement of foreign nationals across their borders, determining generally who is admitted and for how long<sup>7</sup>. States may enact internal laws and regulations on admissions, exclusion, passports, alien expulsion, and frontier control to support this power. Even when States acknowledge the rights of certain foreign nationals to stay, national security concerns often override these rights.

Moreover, States have full authority to apply different laws and regulations, depending on the reason for entry and exit and the nationality of the persons moving across the borders. Those rules fall into four main categories: citizens leaving the State of their nationality, citizens returning to the State of their nationality, aliens leaving a foreign State, and aliens seeking admission to the territory of a foreign State. State authority is more constrained in regulating the movement of its nationals across its borders than non-nationals<sup>8</sup>.

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<sup>4</sup> Global Migration Group, 'Global Migration Group' (UNHCR) <<https://www.unhcr.org/what-we-do/protect-human-rights/protection/partnership-protection/global-migration-group>> accessed June 2024.

<sup>5</sup> Global Forum on Migration and Development, 'Global Forum on Migration and Development' <<https://www.gfmd.org>> accessed June 2024.

<sup>6</sup> Chetail, Vincent, 'International Migration Law' (2019; online edn, Oxford Academic) <<https://doi.org/10.1093/law/9780199668267.003.0001>> accessed September 2024.

<sup>7</sup> 'State Sovereignty and Human Rights' (IOM) <<https://emm.iom.int/handbooks/human-rights-migrants-overview/state-sovereignty-and-human-rights>> accessed September 2024.

<sup>8</sup> Chetail, Vincent, 'The transnational movement of persons under general international law – Mapping the customary law foundations of international migration law' (OHCHR, 2017)



Numerous international and regional treaties acknowledge the right to leave any country. Article 12(2) of ICCPR, currently ratified by 167 States and in line with the Universal Declaration of Human Rights, specify that nationals have the right to leave their countries of origin: ‘[e]veryone shall be free to leave any country, including its own’<sup>9</sup>. ‘[T]he importance of a provision in the covenant on the right to liberty of movement was stressed by many representatives, who regarded such a right as a necessary complement of the other rights recognised in the covenant on civil and political rights and in the covenant on economic, social and cultural rights’<sup>10</sup>. Being the right to leave any country is part of personal liberty; depriving it would limit the exercise of all the other human rights<sup>11</sup>. Finally, the right to leave any country was encapsulated as a ‘fundamental human right’, thus subject to lawful restrictions<sup>12</sup>. In the third paragraph of Article 12, there is a limitation clause which states: ‘[t]he above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, *ordre public*, public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Covenant’<sup>13</sup>. The ICCPR provides a recognised foundation for the right to leave, strengthened by other universal treaties 14, regional treaties 15, and conventions for specific categories of people<sup>14</sup>.

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<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/StudyMigrants/CivilSociety/VincentChetailTransnationalMovement.pdf>

<sup>9</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 12, para 2.

<sup>10</sup> UN Commission on Human Rights, *Report to the Economic and Social Council on the Eighth Session of the Commission*, held in New York, from 14 Apr. to 14 Jun. 1952, 28.

<sup>11</sup> UN Commission on Human Rights, *Summary Record of the Hundred and Fifty-First Meeting*, UN Doc. E/CN.4/SR.151, 19 Apr. 1950, 12 (Lebanon).

<sup>12</sup> UN Commission on Human Rights, *Summary Record of the Hundred and Fifty-First Meeting*, UN Doc. E/CN.4/SR.151, 19 Apr. 1950, 3 (Uruguay). For similar statements, see also: UN Commission on Human Rights, *Summary Record of the Three Hundred and Fifteenth Meeting*, 5 (India), and 8 (Chile); UN General Assembly, Third Committee, Official Record of the Fourteenth Session, UN Doc. A/C.3/SR.954, 12 Nov. 1959, 232 (Belgium); UN Doc. A/C.3/SR.956, 13 Nov. 1959, 237 (France), 238 (Philippines), 240 (Spain); UN Doc. A/C.3/SR.957, 16 Nov. 1959, 241 (Ecuador).

<sup>13</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 12, para 3.

<sup>14</sup> 1961 Vienna Convention on Diplomatic Relations, 1963 Vienna Convention on Consular Relations, 1969 Convention on Special Missions, and the 1975 Convention on Special Missions, and the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. The right to leave is also universally recognized for refugees and stateless persons.

The right to enter can be constrained as states may impose rules on foreign nationals based on the purpose of their entry: different rules can be applied for persons who are working, studying, conducting business, or touring their country. Moreover, States may establish special rules according to treaty relations or traditional or cultural ties that give preference to nationals of other specific States. However, States are limited in applying entry or exit rules based on race, sex, religion, and language.

On the other hand, States have broad authority to exclude and deport foreign nationals for reasons like public health, crime, or national security. Article 13 of the International Covenant on Civil and Political Rights<sup>15</sup> grants lawfully present aliens procedural protections before expulsion, except in national security cases<sup>16</sup>.

States are required to periodically report to treaty monitoring bodies (TMBs) on their compliance with conventions, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These bodies note both concerns, such as discrimination and exploitation, and positive steps, like protective legislation and regularisation of migrant status. Despite these mechanisms, TMBs often provide insufficient guidance on improving migrant protections<sup>17</sup>.

Beyond universal rights, migrants' rights vary by their circumstances, such as being migrant workers, refugees, or trafficked individuals. No comprehensive treaty governs all matters of migration, but seven multilateral treaties — focusing on refugees, migrant workers, and trafficked persons — represent the core instrument of international migration law<sup>18</sup>. This thesis will primarily focus on refugees and migrant workers.

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<sup>15</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 12, para 3.

<sup>16</sup> Susan Martin, 'The Legal and Normative Framework of International Migration' (Global Commission on International Migration, 2005) <[https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy\\_and\\_research/gcim/tp/TP2.pdf](https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/gcim/tp/TP2.pdf)> accessed June 2024

<sup>17</sup> United Nations High Commissioner for Human Rights, *The United Nations Human Rights Treaty System: Fact Sheet No. 30/Rev.1* (United Nations 2012)

<sup>21</sup> <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet30Rev1.pdf> accessed August 2024.

<sup>18</sup> Chetail, Vincent, 'The transnational movement of persons under general international law – Mapping the customary law foundations of international migration law' (OHCHR, 2017)

### 1.2.2. Refugees

The treaty regime of refugee protection is primarily governed by the 1951 Convention on the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees. Ratified by 147 countries, it is based on three different parameters: the refugee definition, status, and *non-refoulement* principle. The refugee definition, considered ‘the cornerstone on which the entire edifice of the Convention rested<sup>19</sup>’, comprises three requirement layers: inclusion, exclusion, and cessation clauses. According to 1951 Convention<sup>20</sup>, a refugee is a person ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country<sup>21</sup>.’

However, the scope of the 1951 Convention is limited, as most modern refugees flee due to natural disasters, famine, extreme poverty, or pandemics. Two regional instruments tried to fill those gaps in the Global South<sup>22</sup>. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa declared that the definition of a refugee: ‘shall also apply to every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of nationality, is compelled to leave his place of habitual residence to seek refuge in another place outside of his country of origin or nationality<sup>23</sup>’; and the 1984 Cartagena Declaration on Refugees included among refugees ‘persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances

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<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/StudyMigrants/CivilSociety/VincentChetailTransnationalMovement.pdf>

<sup>19</sup> Statement of Mr Giraldo-Jamarillo of Colombia in UNGA ‘Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-first Meeting’ (26 November 1951) UN Doc A/CONF.2/SR/21, 8.

<sup>20</sup> IOM employs the same definition.

<sup>21</sup> Convention relating to the Status of Refugees ((adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137) Art. 1A(2).

<sup>22</sup> Chetail, Vincent, ‘International Migration Law’ (2019; online edn, Oxford Academic) <<https://doi.org/10.1093/law/9780199668267.003.0001>> accessed September 2024.

<sup>23</sup> African Union, ‘OAU Convention Governing the Specific Aspects of Refugee Problems in Africa’ (1969) <[https://au.int/sites/default/files/treaties/36400-treaty-36400-treaty-oau\\_convention\\_1963.pdf](https://au.int/sites/default/files/treaties/36400-treaty-36400-treaty-oau_convention_1963.pdf)> accessed 19 September 2024.

which have seriously disturbed public order<sup>24</sup>.’ In contrast, the EU Qualification Directive<sup>25</sup> restate the definition of the 1951 Geneva Convention<sup>26</sup>.

### 1.2.3. Migrant Workers

For what it concerns migrant workers, a significant portion of the total migrant population, ILO has established two treaties: the Convention Concerning the Migration for Employment No. 97 in 1949<sup>27</sup> and the Convention Concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers No. 143 in 1975<sup>28</sup>, and the UN the more general International Convention on the Protection of the Rights of All Migrant Workers and Member of their Families (ICRMW) in 1990.

Article 11(1) of the two ILO treaties states that ‘the term *migrant for employment* means a person who migrates from one country to another to be employed otherwise than on his account and includes any person regularly admitted as a migrant for employment<sup>29</sup>.’ This definition encompasses the majority of migrant workers seeking employment but excludes undocumented migrants, self-employed workers and specific groups – such as frontier workers or short-term professionals.

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<sup>24</sup> Conclusion No 3 of the Cartagena Declaration. Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (adopted 22 November 1984) Annual Inter-American Commission on Human Rights Annual Report, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev.1, at 190–93 (1984–1985)

<sup>25</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011.

<sup>26</sup> Chetail, Vincent, ‘International Migration Law’ (2019; online edn, Oxford Academic) <<https://doi.org/10.1093/law/9780199668267.003.0001>> accessed September 2024.

<sup>27</sup> ILO Convention C097: Migration for Employment Convention (Revised) (Convention concerning Migration for Employment (Revised 1949)) (adopted 32nd Conference Session Geneva 1 July 1949, entered into force 22 January 1952) 120 UNTS 71.

<sup>28</sup> ILO Convention C143: Migrant Workers (Supplementary Provisions) Convention (Convention concerning Migrations in Abusive Condition and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (adopted 60th Conference Session Geneva 24 June 1975, entered into force 9 December 1978) 2220 UNTS 3.

<sup>29</sup> Article 11(1) ILO Convention C097: Migration for Employment Convention (Revised) (Convention concerning Migration for Employment (Revised 1949)) (adopted 32nd Conference Session Geneva 1 July 1949, entered into force 22 January 1952) 120 UNTS 71.

Article 11(1) ILO Convention C143: Migrant Workers (Supplementary Provisions) Convention (Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (adopted 60th Conference Session Geneva 24 June 1975, entered into force 9 December 1978) 2220 UNTS 3.

The first ILO Convention, ratified by forty-two countries, establishes a cooperation framework between states, obliging them to provide accurate information to migrants and facilitate their departure and reception. The second ILO Convention, ratified by eighteen countries, requires states to combat trafficking and irregular migration, targeting smugglers and employers<sup>30</sup>.

Complementing these, the IRCMW seeks to guarantee minimum rights for migrant workers and their families, regardless of legal status. It prohibits torture, forced labour, arbitrary interference with privacy, and collective expulsion and ensures rights to expression, protection against violence, and consular assistance. The convention also guarantees equal treatment in remuneration, trade union participation, social security, emergency healthcare, children's rights, and education<sup>31</sup>. Despite its comprehensive framework, the IRCMW faces challenges in broader ratification, as only twenty-seven states have ratified it<sup>32</sup>.

Over the past decade, significant progress has been made in establishing an international legal and normative framework for managing migration and protecting migrants' rights. Effective migration management requires legal measures to protect migrants' rights, refugee protection, and measures against smuggling and trafficking. A comprehensive legal framework is essential, combining international law with best practices at national and regional levels.

### **1.3. HISTORY, EVOLUTION, AND GROWTH OF THE IOM**

#### **1.3.1. Founding of the Organization in 1951**

The International Organization for Migration was established in 1951 from a joint effort of Belgium and the USA to address primarily the issue of refugee resettlement in the World War II aftermath context. The estimated 11 million displaced people uprooted by the war were perceived

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<sup>30</sup> Chetail, Vincent, 'International Migration Law' (2019; online edn, Oxford Academic) <<https://doi.org/10.1093/law/9780199668267.003.0001>> accessed September 2024.

<sup>31</sup> United Nations High Commissioner for Human Rights, 'International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families' (adopted 18 December 1990, entered into force 1 July 2003) <<https://www.ohchr.org/sites/default/files/cmw.pdf>> accessed June 2024.

<sup>32</sup> Chetail, Vincent, 'The transnational movement of persons under general international law – Mapping the customary law foundations of international migration law' (OHCHR, 2017) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/StudyMigrants/CivilSociety/VincentChetailTransnationalMovement.pdf>>

as a threat to European social, political, and mainly economic recovery<sup>33</sup>. To unfold that in October 1951, the Congress of the United States passed a Mutual Security Act and an appropriation act to urge the need and willingness to support the creation of a new organisation to tackle the issues related to the European surplus of population and migration. This decree allocated 10 million US dollars to boost emigration from Europe, which, however, wasn't made available to any international organisation that has, in its membership, any Communism-dominated or controlled country<sup>34</sup>. Later, the US State Department suggested that the Belgian government organise an international conference, held in Brussels from the 26<sup>th</sup> of November to the 5<sup>th</sup> of December, where twenty-three governments and organisations, including the UNHCR, were gathered. This conference ensued the adoption of Resolution<sup>35</sup> to establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe<sup>36</sup>, charged to *'make arrangements for the transport of migrants for whom existing facilities are inadequate and who could not otherwise be moved from certain European countries having surplus population to countries overseas which offer opportunities for orderly migration, consistent with the policies of the countries concerned'*<sup>37</sup>. Additionally, it was specified that only 'democratic governments' with a 'demonstrated interest in the free movement of person' could have the membership<sup>38</sup>. Consequently, the founding members were Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, France, the Federal Republic of Germany, Greece, Italy, Luxembourg, the Netherlands, Switzerland, Turkey, and the United States.

Ultimately, Cold War politics favoured the founding of the IOM. Initially created to address the massive displacement following World War II, it had a solid Western bias in being associated with

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<sup>33</sup> *IOM History | International Organization for Migration*, International Organization for Migration, available at <https://www.iom.int/iom-history>.

<sup>34</sup> Karatani, Rieko, How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins (2005). *International Journal of Refugee Law*, Vol. 17, Issue 3, pp. 517-541, 2005.

<sup>35</sup> Henceforth, referred to as "Brussels Resolution".

<sup>36</sup> Jerome Elie, 'The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration' (2010) 16 *Global Governance* 345

<sup>37</sup> Resolution to Establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe, Brussels (5 December 1951), adopted by the governments present at the Brussels Conference on Migration, 26 November-4 December 1951.

<sup>38</sup> 'Resolution to Establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe' (n 6); Karatani (n 28) 537.

US leadership and with a homogeneous group of developed, white, and capitalist Western states<sup>39</sup>. Membership was given only to nations which supported the free movement, effectively excluding the Soviet bloc<sup>40</sup>. IOM's focus was not humanitarian because the displacement of millions was seen as a potential ground for social and political instability and for Communism's influence to grow in it. In addition, the approach was eurocentred, further excluding newly independent countries in Asia and Africa<sup>41</sup>.

### 1.3.2. Role of the Organization between 1951 and 2016

The IOM was initially named the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICCME), reflecting its temporary purpose. Its name was changed from PICCME to the Intergovernmental Committee for European Migration (ICEM) in 1952, shedding the 'provisional' element. However, on 19 October 1953, a constitution was adopted defining the ICEM as a non-permanent organisation. The founding states were wary of outsourcing their sovereign right concerning migration control. So, they limited the organisation's role to logistics, agreeing to dismantle it once the European refugee issue was solved. Further, most member states recognised that, before any extension of mandate or lifespan, the Organization had to prove its utility and logistic capacity<sup>42</sup>.

However, this technical mandate did not rule out the increasingly complex activities that PICCME ended up doing, such as identifying migrants, providing for their health, housing needs, and socioeconomic integration by prospecting for opportunities and fostering political agreements between states of departure and arrival.

In such a manner, the IOM filled a gap in the international arena because compared to other already existing organisations, like UNHCR, which focused on asylum and ILO, on temporary labour

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<sup>39</sup> Antoine Pécoud (2018) What do we know about the International Organization for Migration?, *Journal of Ethnic and Migration Studies*, 44:10, 1621-1638, DOI: [10.1080/1369183X.2017.1354028](https://doi.org/10.1080/1369183X.2017.1354028)

<sup>40</sup> Article 2 (b) of the ICEM Constitution mentioned "*governments with a demonstrated interest in the principle of the free movement of persons.*"

<sup>41</sup> Antoine Pécoud (2018) What do we know about the International Organization for Migration?, *Journal of Ethnic and Migration Studies*, 44:10, 1621-1638, DOI: [10.1080/1369183X.2017.1354028](https://doi.org/10.1080/1369183X.2017.1354028)

<sup>42</sup> Who and What Is IOM For? The Evolution of IOM's Mandate, Policies, and Obligations  
Megan Bradley

migration, it tackled the matter of the movement of migrants. This focus on facilitating movement led the IOM to be frequently derided as a ‘*travel agency*’ for migrants<sup>43</sup>.

The IOM facilitated the out-migration of Europeans to other regions—for instance, Latin America, as it was considered underpopulated at the time<sup>44</sup>. During the first years of existence, the national migrants facilitated by the Committee far outnumbered the refugees<sup>45</sup>. Once the large-scale displacement was carried out, IOM, then ICEM, had to restore its role in an evolving geopolitical setting. It then sought to create alternative needs and opportunities for international migration, including programs for refugees as labour migrants, migration of medical cases, labour migration to new countries, and expanded pre- and post-debarkation activities<sup>46</sup>.

In the Cold War context, IOM was found helpful on different occasions. The 1956 Hungarian uprising and the subsequent installation of a pro-Soviet government in Budapest pushed almost 200,000 refugees to head towards the Austrian Border. Several states agreed to support Austria and Yugoslavia, who found themselves overwhelmed by the situation, and the ICEM took responsibility for around 180,000 people, taking care of medical treatments, language courses, and training opportunities<sup>47</sup>.

By the 1970s, ICEM faced limited budgets and institutional decline when it was already clear that its mission was global rather than European. Its traditional areas of operation dried up because emigration from Europe diminished. For that reason, to stretch its mandate outside Europe, IOM operated in many of the natural disasters and man-made crises of the second half of the XX century: Czechoslovakia in 1968, Chile in 1973, the Vietnamese Boat People in 1975, it was also in charge of migrant workers fleeing Kuwait after the Iraqi invasion in 1990 and 1991, Kosovo and Timor in 1999. In 1980, it received the name of the Intergovernmental Committee for Migration. However, until 1989, when IOM was eventually transformed into a perennial and global institution, the period from the organisation's founding onwards was uncertain. After the

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<sup>43</sup> Jerome Elie, 'The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration' (2010) 16 *Global Governance* 354

<sup>44</sup> Pécoud, A. (2018) 'What do we know about the International Organization for Migration?', *Journal of Ethnic and Migration Studies*, 44(10), pp. 1621–1638. doi: 10.1080/1369183X.2017.1354028.

<sup>45</sup> Jerome Elie, 'The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration' (2010) 16 *Global Governance* 351

<sup>46</sup> Feldblum, "Passage-making and Service Creation".

<sup>47</sup> *IOM History* | *International Organization for Migration*, International Organization for Migration, available at <https://www.iom.int/iom-history>.



collapse of the USSR, the IOM underwent a process of self-reinvention. To get that, anything related to migration must be paid attention to to obtain more funds and consent<sup>48</sup>. Notwithstanding, in the decades that followed, IOM has blossomed into a global organisation. With a budget of 1.3 billion US Dollars and a staff of more than 8400 people working in over 150 countries<sup>49</sup>, nine regional offices, and two liaison offices<sup>50</sup>, IOM encompasses 175 member states and eight observer states<sup>51</sup> and is by no means a negligible entity<sup>52</sup>.

### 1.3.3. IOM as the new UN's 'Migration Agency': Affiliation with the UN in 2016

#### 1.3.3.1. Historical Path to the Affiliation

On July 25, 2016, the IOM became a related United Nations organisation. After that, the General Assembly unanimously adopted Resolution 70/296, recognising the IOM as an indispensable actor

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<sup>48</sup> Who and What Is IOM For? The Evolution of IOM's Mandate, Policies, and Obligations  
Megan Bradley

<sup>49</sup> *IOM History* | *International Organization for Migration*, International Organization for Migration, available at <https://www.iom.int/iom-history>.

<sup>50</sup> International Organization for Migration, 'IOM in Brief' (2011) [https://www.iom.int/sites/g/files/tmzbd1486/files/migrated\\_files/about-iom/docs/iom\\_snap\\_en.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/migrated_files/about-iom/docs/iom_snap_en.pdf) accessed [June 2024]

<sup>51</sup> (*IOM members and observers 2024*)

<[https://www.iom.int/sites/g/files/tmzbd1486/files/documents/members\\_observers\\_en\\_2023.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/documents/members_observers_en_2023.pdf)>

**175 Member States:** Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Eswatini, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Honduras, Hungary, Iceland, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lesotho, Liberia, Libya, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Netherlands (Kingdom of the), Nepal, New Zealand, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, South Sudan, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Tajikistan, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Türkiye, Turkmenistan, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela, (Bolivarian Republic of) Viet Nam, Yemen, Zambia, Zimbabwe.

**8 Observer States:** Bahrain, Bhutan, Indonesia, Kuwait, Malaysia, Qatar, San Marino, Saudi Arabia.

<sup>52</sup> International Organization for Migration, 'IOM in Brief' (2011) [https://www.iom.int/sites/g/files/tmzbd1486/files/migrated\\_files/about-iom/docs/iom\\_snap\\_en.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/migrated_files/about-iom/docs/iom_snap_en.pdf) accessed June 2024

in the field of human mobility. It plays a critical role in protecting and supporting migrants and displaced people in migration-affected communities, refugee resettlement, and voluntary returns. The interaction between the IOM and the UN agencies, notably the UN High Commissioner for Refugees (UNHCR), has been at times charged with suspicion and competition but concurrent with being a vital factor in the refugees' assistance framework over the past sixty years<sup>53</sup>.

After the Second World War, two successive UN agencies were created to handle the issue of displaced people in Europe. The UN Relief and Rehabilitation Administration (UNRRA) was established in 1943 and replaced in 1947 by the International Refugee Organization (IRO). However, when the IRO's three-year term finished, the matter wasn't resolved yet, and the need to create another institution was evident.

International negotiations led to the creation of the UNHCR, a new UN agency, and the PICCME, an intergovernmental organisation. Theoretically, the two institutions' mandates could be complementary, opening possibilities for cooperation. Notwithstanding, the UN and ICEM tensions emerged early because of mandates and coordination. While the UNHCR was designed as a non-operational agency with the protection of refugees as a mandate, the ICEM, considered *'the UNHCR's operational, US-controlled counterpart'*<sup>54</sup>, had the task of facilitating the movement of displaced people, including refugees, around Europe, having a logistics and operational role. In a 1953 letter to the first ICEM Director General Hugh Gibson, UN Secretary-General Dag Hammarskjöld flags the *"danger of duplication and overlapping", particularly concerning 'the refugee problem'*<sup>55</sup>.

Beyond overlapping mandates, both institutions were determined to broaden their activities and increase their lifespans<sup>56</sup> and even before the 1996 and 2016 UN-IOM Cooperation Agreements, the UN agencies and IOM had regularly cooperated in practice, finding themselves in

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<sup>53</sup> Jerome Elie, 'The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration' (2010) 16 *Global Governance* 345

<sup>54</sup> Parsanoglou, Dimitris. 2015. "Organizing an International Migration Machinery: The Intergovernmental Committee for European Migration." In *International 'Migration Management' in the Early Cold War. The Intergovernmental Committee for European Migration*, edited by Lina Venturas, 55–85. Corinth: University of the Peloponnese.

<sup>55</sup> Letter from UN Secretary General Dag Hammarskjöld to ICEM Director General Hugh Gibson, 3 August 1953, UN Headquarters Archives File #391 ICEM, S-0369-0030-06.

<sup>56</sup> Jerome Elie, 'The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration' (2010) 16 *Global Governance* 345

complementary situations, especially in the field where the distinction between the two could be more explicit.

Moreover, in the field, from the early 1970s, their relationship was central to a few primary joint operations: Chile (from 1973), Uganda (from 1972 to 1974), Bangladesh (1973), Cyprus (1974), Vietnam (from 1975)<sup>57</sup>, where the ICEM's expert standing regarding international humanitarian transportation was enhanced<sup>58</sup>. Regarding their collaboration, the difference in the definition of a 'refugee' used by the two organisations added a degree of flexibility. It was useful where UNHCR, for constitutional reasons, had very little freedom of action<sup>59</sup>, and ICEM could intervene<sup>60</sup>.

Meanwhile, UN leaders recognised Member States' increasing support for IOM's entry into the UN system; the need for improved operational capacity on migration within the UN system, and the possibility that by bringing IOM into the system, it could be more effectively prevailed on to respect the UN's principles. IOM's entrance into the UN system seemed highly unlikely until 2015, when factors including the perceived global migration crisis started rapid negotiations. However, this change must be situated in the longer history of collaboration and conflict in UN-IOM relations, with cooperation in humanitarian affairs serving as a pivotal foundation for this shift.

The UN General Assembly proposed in 2014 to create a centralised UN agency for migration. At that time, the Director General of IOM, William Swing, wrote to the Council of IOM a warning that 'the UN General Assembly's Second Committee discussions have given substantial momentum to the idea that migration should be institutionalised in the UN system'. Hence, for self-defence, the Council should consider 'the possibility of a more formal association with the UN system' or 'other agencies would duplicate aspects of our mandate to the point where we risked

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<sup>57</sup> Jerome Elie, 'The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration' (2010) 16 *Global Governance* 354-355

<sup>58</sup> Ducasse-Rogier, *The International Organization for Migration*, p. 60

<sup>59</sup> Note on "Relations with ICEM" from Gilbert Jaeger, director of assistance to the high commissioner, 22 October 1974. UNHCR Archives, Folio 795, Fonds 11 Series 1, 11/2/4 ICEM "[Intergovernmental Committee for European Migration] 09-1967/ 02-1973".

<sup>60</sup> Jerome Elie, 'The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration' (2010) 16 *Global Governance* 355

losing our global migration agency status'. This challenged the assumption that the IOM's advantage was its positioning outside the UN system<sup>61</sup>. Compared to the process of becoming a specialised agency, drafting a new cooperation agreement is incredibly faster: it would only require a negotiation, signed by those of authority and adopted by the General Assembly. When the 2016 Agreement was signed, Ban-Ki Moon was at the end of his mandate as Secretary General at the UN. If he waited, there was the risk of not having the new Secretary-General in line with the terms of cooperation. The UN General Assembly adopted the Consensus Agreement Concerning the Relationship between the UN and IOM on the 8<sup>th</sup> of July 2016<sup>62</sup>. Following the approval of the Agreement, IOM issued a press release entitled 'IOM becomes a 'Related Organization' of the UN' and 'part of the UN family'<sup>63</sup>. Later, it changed its Twitter handle to @UNmigration and added 'UN Migration' after its acronym.

### *1.3.3.2. IOM positioning in the UN system and 'UN-related status'*

Until the 2016 Agreement, the UN-IOM relationship was ambiguous. This study will now delve further into the broad structure and components of the UN to gain a deeper understanding of IOM's position in the system.

The United Nations works within a framework, the UN system, which includes different funds, programmes, and specialised agencies. Each of them has a specific mandate, structure, and mechanism. Generally, funds and programmes are established through a resolution of the General Assembly and follow a focused mandate. They mostly rely on voluntary contributions, have a governing body to review their activities, and report to the General Assembly or the ECOSOC. On the other hand, the specialised agencies are autonomous international organisations that collaborate closely with the UN to pursue specific goals, with wide-ranging international responsibilities in various fields. They can receive funding from both voluntary and obligatory contributions. Some existed before, while the UN created others to assist specific needs. Still, all

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<sup>61</sup> Bradley, Megan. "Joining the UN Family?: Explaining the Evolution of IOM-UN Relations". *Global Governance: A Review of Multilateralism and International Organizations* 27.2 (2021): 251-274. <https://doi.org/10.1163/19426720-02702002> Web.

<sup>62</sup> Miriam Cullen, *The Legal Relationship between the UN and IOM: What Has Changed since the 2016 Cooperation Agreement?* (2021)

<sup>63</sup> International Organization for Migration, 'IOM Becomes a Related Organization to the UN' (IOM, 25 July 2016) <https://www.iom.int/news/iom-becomes-related-organization-un> accessed July 2024.

of them are brought into a relationship with the UN through negotiation, and the UN Charter governs this relationship. Once a specialised agency is designated as such, it is obliged to align its activities with those of the UN. Moreover, the organisation must also implement UN recommendations, provide necessary information and assistance, and report to the UN, primarily to ECOSOC and the General Assembly.

On the contrary, related organisations, like IOM, are also independent intergovernmental bodies but are brought into a relationship with the UN through specific cooperation agreements, and they do not refer to Articles 57 and 63 of the UN Charter<sup>64</sup>. They have privileges within the UN system, such as being observers at the meetings, proposing agenda items, and participating in coordination mechanisms. Still, they are not bound to align their activities with the ones of the UN and report to the UN as specialised agencies<sup>65</sup>. However, specialised agencies and related organisations operate similarly, and their relationship agreements with the UN share many similarities<sup>66</sup>. The ‘UN-related organisation’ status is usually given to IOs with cooperation agreements with the UN but are not yet specialised agencies.

For most of those organisations, the institutional distance is logical. Three of the eight such organisations are judicial bodies (the ICC, the International Tribunal for the Law of the Sea, and the International Seabed Authority). For instance, the ICC states on its website that it is not a UN organisation but has a cooperation agreement with the UN<sup>67</sup>. The other three have control of particularly hazardous materials and weapons (the Comprehensive Nuclear Test Ban Treaty Organization, the International Atomic Energy Agency, and the Office for the Prohibition of Chemical Weapons), and the two remaining are the WTO and IOM. The UN-WTO Agreement

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<sup>64</sup> United Nations, ‘Charter of the United Nations, Chapter IX: International Economic and Social Cooperation’ (UN) <https://www.un.org/en/about-us/un-charter/chapter-9> accessed July 2024.

<sup>65</sup> United Nations, *The UN System* (United Nations) <https://www.un.org/en/about-us/un-system#:~:text=The%20UN%20specialized%20agencies%20are,with%20the%20League%20of%20Nations> accessed July 2024

<sup>66</sup> International Organization for Migration, *IOM and the UN System FAQs* (IOM 2022) <https://emergencymanual.iom.int/sites/g/files/tmzbd11956/files/2022-08/IOM%20and%20the%20UN%20system%20FAQs.pdf> accessed July 2024

<sup>67</sup> International Criminal Court, ‘Negotiated Relationship Agreement Between the International Criminal Court and the United Nations’ (ICC, 4 October 2004) <<https://www.icc-cpi.int/news/negotiated-relationship-agreement-between-international-criminal-court-and-united-nations>> accessed July 2024.

was based on the previous agreements between the UN and the GATT, and the WHO continued the pre-existing arrangements.

Overall, the cooperation agreements between the UN and its related organisations are similar. They may form a recognisable set, sharing a common structure and similar provisions, such as coordination, reporting to the UN, meeting representation, and personnel arrangements. None of them include nor suggest the status of UN-related organisations. However, while they typically uphold that the organisation's autonomy remains unchanged, notably, this provision is not present in the 1996 Agreement.

According to a 2007 report by IOM, a 'UN-related agency' is one whose cooperation agreement with the UN shares similarities with that of specialised agencies but does not refer to Art 57 nor 63 of the Charter. Article 57 of the UN Charter defines a specialised agency as having 'wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields'. IOM differs from other UN-related agencies because its main activities fall within the ones that would qualify a UN-specialized agency because it performs services directly to individuals and on behalf of states. Article 63 of the UN Charter regulates the relationship between the UN and the specialised agency. It permits ECOSOC to define the terms of agreements that then need final approval by the General Assembly. *Per* the IOM Council, IOM would not need to amend its Constitution necessarily but solely to finalise a deal with ECOSOC and later the UNGA. Implementing the process could take a year or two, depending on the arrangements' complexity.

However, IOM likely intentionally avoided that form of relationship, even if operating outside the UN system had meant that IOM should have put more effort into gaining recognition, raising funds and acquiring the international legal status of UN agencies. Nonetheless, internal reporting to the UN was one of the disadvantages of becoming a UN-specialized agency. IOM would be required to submit an annual report to the Economic, Social and Cultural Committee and the General Assembly, present its budget to the Advisory Committee on Administrative and Budgetary Questions (ACABQ), and expect periodic visits from them. The General Assembly can also recommend substantive and financial matters to specialised agencies. At the same time, ECOSOC can demand reports on the actions taken by specialised agencies to implement the General

Assembly and ECOSOC recommendations. Although these accountability mechanisms may not be the most stringent, the additional reporting requirements and the need to adapt to the UN's potentially more bureaucratic and less results-oriented work style were perceived as disadvantages of specialised agency status.

The 2016 Agreement achieved many benefits of specialised agency status for IOM while avoiding perceived pitfalls such as centralised reporting and UN oversight. Specifically, it granted IOM enhanced access to UN systems and meetings, privileges associated with the use of the *laissez-passer*, participation in the UN Chief Executives Board for Coordination, its subsidiary bodies, and country teams, and, although this was not expressly provided for under the terms of the 2016 Agreement, a launching point for the adoption of the UN brand.

Therefore, the negotiation timeframe needed to be revised to enable IOM to become a specialised agency. Nevertheless, the 2016 Agreement effectively gave IOM many advantages associated with the related agency status while sidestepping drawbacks of the specialised agency status, suggesting that IOM is unlikely to change its status in the foreseeable future.

### *1.3.3.3. 1996 and 2016 Cooperation Agreements Compared*

The differences between the 1996<sup>68</sup> and 2016<sup>69</sup> UN-IOM Agreements will now be demonstrated to be modest<sup>70</sup>. They are broadly similar in structure and form. The latter is longer, with twenty-five paragraphs at the place of fourteen. Nonetheless, the reason for interest in this matter is that IOM claimed that the 2016 Agreement granted it a new UN-related status<sup>71</sup>. There is no reference in the 2016 Agreement to a change in the status of IOM or the relationship with the UN. However, as demonstrated earlier, it is not remarkable because no previous agreements with other organisations recognised the status of 'UN-related'.

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<sup>68</sup> UN ECOSOC, 'Cooperation Agreement between the United Nations and the International Organization for Migration' (25 June 1996) UN Doc E/DEC/1996/296

<sup>69</sup> UN General Assembly, *Agreement concerning the Relationship between the United Nations and the International Organization for Migration* (19 September 2016) UN Doc A/71/L.1  
<<https://documents.un.org/doc/undoc/gen/n16/234/26/pdf/n1623426.pdf>

<sup>70</sup> This finding is important as the 2016 Agreement has been used to justify a major shift in IOM identity and because legal obligations provide a common language for accountability mechanisms. Since the later Agreement, IOM has taken a new leadership role in migration management and development.

<sup>71</sup> Miriam Cullen, *The Legal Relationship between the UN and IOM: What Has Changed since the 2016 Cooperation Agreement?* (2021)

It is crucial to notice that Article 1 of the 2016 Agreement provides, differently from the 1996 Agreement, that the present Agreement defines the terms on which the United Nations and the International Organization for Migration shall be brought into a relationship. This implies that the UN and IOM are creating new terms for their relationship through this new Agreement. However, the 1996 Cooperation Agreement says differently by solely existing.

Moreover, the 2016 Agreement further weakened the already modest accountability mechanisms, such as transparency, participation, and access to information. Article V of the 1996 Agreement stipulated that the IOM should consider any UN-made formal recommendation and report on actions made according to these recommendations. On the contrary, 2016 Agreement lacks provisions for formal recommendations and mandatory responses to IOM. Article 4 of the 2016 Agreement states that ‘The International Organization for Migration may *if it decides it to be appropriate*, submit reports on its activities to the General Assembly through the Secretary-General’ This wording essentially nullifies the limited accountability mechanisms that existed before. That said, neither the 1996 Agreement nor its 2016 counterpart specifies any process or penalty for non-compliance with its terms. Additionally, there is no record of recommendations from the UN to the IOM under Article V of the 1996 Agreement nor any resulting reports. Nonetheless, it is significant that the possibility for such interaction has been removed by the very agreement intended to integrate the IOM into the UN framework.

While the 1996 Agreement stipulates that the UN and IOM ‘agree to exchange information and documentation in the public domain to the fullest extent possible on matters of common interest’, the 2016 Agreement stipulates that each party, upon request of the other, furnish the other with ‘special studies or information relating to matters within the other organisation’s competence *to the extent practicable*’. As noticed, the language has notably shifted from ‘fullest extent’ to ‘the extent practicable’. Other similar attenuations of the 1996 Agreements are visible elsewhere. The 2016 Agreement states that the UN and IOM ‘agree to cooperate closely within their respective mandates and to consult on matters of mutual interest and concern’. The 1996 Agreement provides that the UN and IOM ‘*shall* act in close collaboration and hold consultation on *all* matters of common interest’ without any reference to respective mandates. Even if the 2016 Agreement is equivalent to its predecessor, it cannot reasonably be described as strengthening cooperation on these points.



The 2016 Agreement recognises IOM's independence from the UN, as the former shall function as 'independent, autonomous and non-normative'. In subparagraph (4) of Article 2, IOM recognises 'the responsibilities of the United Nations under its Charter' and those of its subsidiary organs and agencies. UN recognition of IOM independence and autonomy must be interpreted based on the ordinary meaning of those words and considering the object and purpose of the Agreement itself, which in this case is to strengthen cooperation between the two organisations. Thus, the IOM's independence and autonomy are emphasised by its independence *from* the UN. In other contexts, IOM is constrained from acting independently because its own Constitution requires that in carrying out its activities, IOM 'shall conform to the laws, regulations and policies of the states concerned'.

Adopting the expression 'non-normative', already mentioned in the first chapter, has been controversial. Being the agreement a legal arrangement, it is curious that there has been a focus on the non-normative character of one party, given that the other party, the UN's human rights standards setting, is widely accepted to be its normative role. The fact that IOM is using the expression 'non-normative' to describe itself as not having to comply with human rights standards is quite odd. IOM has expressed that it means that 'the IOM is not a venue for setting binding standards'. Yet, that interpretation contrasts the organisational pursuit of leadership in normative processes such as its involvement in negotiating the Global Compact for Safe, Orderly and Regular Migration and responsibility for its follow-up and review. At least in this respect, Article 3 of the 2016 Agreement gave IOM membership in the UN System Chief Executives Board for Coordination and its subsidiary bodies, as well as the Inter-Agency Standing Committee, the Executive Committee on Humanitarian Affairs, the Global Migration Group, and country-level security management teams. Article 7 permits IOM staff to use the laissez-passer as a travel document, which grants certain privileges and immunities according to the UN's 1946 Convention on Privileges and Immunities. Crucially, the 2016 Agreement preserved the organisation's 'independent, autonomous and non-normative' character as directed by the IOM Council, all previously identified by IOM as being afforded by specialised agency status<sup>72</sup>.

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<sup>72</sup> Miriam Cullen, *The Legal Relationship between the UN and IOM: What Has Changed since the 2016 Cooperation Agreement?* (2021)

#### *1.3.3.4. Current Differences between IOM and UN*

IOM and UN are still vastly different. Analysing the organisation's basic text may help understand their differences. The IOM Constitution mandates it to 'conform' to the policies and laws of states. The IOM does not have a constitutional obligation to work for migrants. The UN is mandated to work in the interests of its member states, but this interest includes protecting the human rights of all people, migrants or citizens. This is the obligation set out in the Universal Declaration. The different focus of the UN and the IOM could thus become a source of tension in the new relationship.

The UN, particularly the UNHCR, and IOM were designed to work side-by-side and have long done that. States established the UN to maintain international peace and security, promote friendly relations between states, and promote international cooperation, including respect for human rights and fundamental freedoms. Human rights standard setting is widely accepted as the UN's principal normative role, enlivened by specific obligations embedded throughout its Charter. The preamble to the UN Charter expresses states' determination 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person'. Article 13 of the Charter provides that the UN General Assembly must make recommendations towards, *inter alia*, 'assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. UN member states make an express commitment in Article 55 of the Charter to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all'. That is not to say that the UN or its member states have always lived up to these commitments. Still, it remains notable that they are an express element of the organisation's purpose, repeatedly referred to throughout the UN Charter, and human rights promotion and protection comprise specific obligations for UN member states by virtue of their membership of the UN.

There are still notable differences in how UNHCR and IOM are funded and how they operationalise their budgets. As a matter of principle, UNHCR seeks to direct funds where the need is greatest, with the priority being to ensure the protection of people. However, there is usually a significant gap between the assessed needs and available funds, and it routinely undertakes funding appeals to address the shortfall. That shortfall leaves noticeable, if potential,

scope for state influence. On the other hand, IOM initiates projects at states' request and is financed predominantly by earmarked contributions for those projects, ideally in line with its constitutional mandate to provide migration services to states<sup>73</sup>.

#### 1.4. MEMBERS, MANDATE, AND FOCUS OF THE IOM

##### 1.4.1. Mission and Goals of the Organization

Article 2 of the IOM's Constitution defines the organisation's purposes, functions, and principles at the core of every IOM activity: 'humane and orderly migration benefits migrants and society'. Working alongside other stakeholders, the IOM operates in the international arena with its *multi-mandated identity in four main spheres: addressing migration management-related challenges, promoting social and economic development through migration, advocating for a greater understanding of migration issues, and safeguarding the well-being and dignity of migrant people*.

As stated in Article 1(3) of the IOM Constitution, the IOM's operations align with the responsibilities of facilitating an '*organised transfer of migrants*' — and similarly refugees, displaced persons, and other individuals in need of international migration services — especially those who lack adequate facilities or would be unable to move without special assistance. Moreover, IOM possesses the expertise in tackling migration challenges, assists states, intergovernmental and NGOs in case of need, providing a broad range of services including recruitment, language training, orientation activities, medical examination, selection, processing, placement, activities, facilitating reception and integration, advisory services on migration questions. The IOM carries on migration-focused programs to assist states in integrating migrants into the countries where they arrive and seek development opportunities.

Moreover, in coordination with states or other IOs, IOM offers assistance for the voluntary return of individuals who choose to return home, including repatriation.

Furthermore, IOM aspires to be a central hub for research, data collection, and best practices on migration and a reference point for a regional and global dialogue on migration, providing an understanding of the opportunities and risks of this complex subject.

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<sup>73</sup> Miriam Cullen, *The Legal Relationship between the UN and IOM: What Has Changed since the 2016 Cooperation Agreement?* (2021)

Finally, IOM supports states in the fight against human trafficking and smuggling while researching and analysing to eradicate the root causes, shaping programmes with its technical expertise, consistent with international law, to ensure a safe international migration<sup>74</sup>.

IOM's multifaceted agenda encompasses a range of activities with the perspective of ensuring that migration happens in a controlled way. Without addressing these underlying factors, IOM would aspire to govern the migration flows stemming from global capitalism, underdevelopment, or inequalities. Migration is not solely driven by the individual choice of the migrant but by other complex and structured matters, such as wars, conflicts, or climate change. Moreover, other factors that may shape migration patterns are economic disparities, political instability, and social inequality, which are characteristics that develop from global capitalism. As a result, focusing on managing migration flows by addressing the symptoms, as IOM does, risks perpetuating them solely. Those efforts may reinforce systems of exploitation and marginalisation for vulnerable people, given that they would require a broader approach<sup>75</sup>.

The Preamble of the Brussels Conference stressed that PICCME was compelled, in the context of intergovernmental cooperation, to move migrants '*to overseas countries where their services can be utilised in conformity with generally accepted international standards of employment and living conditions, with full respect for human rights*'<sup>76</sup>. However, in ICEM's Constitution, adopted in 1953, the acknowledgement of human rights standards is not accounted for, and the organisation's obligations are explicitly to its member states rather than migrants. Thus, the formal mandate does not involve in it the protection of migrant people<sup>77</sup>.

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<sup>74</sup> IOM, Constitution of 19 October 1953 of the Intergovernmental Committee for European Migration (adopted 19 October 1953, entered into force 30 November 1954) as amended by Resolution No 724 by the 55th Session of the Council (adopted 20 May 1987, entered into force 14 November 1989) and by Resolution No 997 by the 76th Session of the Council (adopted 24 November 1998, entered into force 21 November 2013) Article 1(3).

<sup>75</sup> Pécoud, A. (2018). What do we know about the International Organization for Migration? *Journal of Ethnic and Migration Studies*, 44(10), 1621–1638. <https://doi.org/10.1080/1369183X.2017.1354028>

<sup>76</sup> 'Resolution to Establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe' (n 6) Preamble.

<sup>77</sup> Who and What Is IOM For? The Evolution of IOM's Mandate, Policies, and Obligations  
Megan Bradley

#### 1.4.2. Member states and their influence

As an intergovernmental entity, the IOM is governed by its member states. Membership is open to states that accept the Constitution, including two categories of members: those that have formally accepted the Constitution and those that, while not receiving it, demonstrate an interest in the free movement of persons by making a financial contribution<sup>78</sup>. Member States can withdraw by giving notice at least four months before the end of the financial year, with their financial obligations continuing until the end of that year. The IOM's activities are financed by contributions from Member States and other sources, with administrative costs covered by Member States and operational costs funded voluntarily by any contributor<sup>79</sup>.

It is crucial to analyse whether IOM, as an organisation, has a political role independent of the influence of its member states. This autonomy can happen if the organisation achieves some of it in its activities, but some factors may influence it.

For instance, the autonomy of the international organisation could be influenced by the design of the organisation itself. Nina Hall developed a taxonomy for the IOs ranging from normative to functional organisations. On one end of the spectrum, normative organisations possess legal authority to enforce norms compliance. Conversely, functional organisations focus on performing specific tasks and primarily operate as project-based entities. This distinction leads to a different exhibition of behavioural logic: on the one hand, normative organisations adhere to the *logic of appropriateness*, acting in line with the norms they uphold, which theoretically allow them a degree of independence from states. On the other hand, functional organisations will be more inclined to make cost-benefit assessments and choose, according to the *logic of consequence*, what yields the most significant material gain, making them more subject to the interests of member states. According to what is stated in the 2016 UN-IOM Cooperation Agreement, IOM is defined as a non-normative organisation and, therefore, aligns its nature more closely with that of a functional organisation.

Moreover, the framework where IOM operates is a realm of state sovereignty: it does not exist, like in the field of asylum and refugees, based on the 1951 Geneva Convention Relating to the

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<sup>78</sup> *Constitution of the International Organization for Migration* (adopted 19 October 1953, entered into force 30 November 1954) art 2(2).

<sup>79</sup> *Constitution of the International Organization for Migration* (adopted 19 October 1953, entered into force 30 November 1954) art 2(2).

Status of Refugees and the UNHCR, an international regime for migration. Hence, every international organisation that works in the migration field, including IOM, cannot rely on a global political agenda, creating fragility and a lack of legitimacy in the system. In conditions like the one in Europe, where the principle of ‘no man’s land’ governs the legal, political, and normative frameworks concerning migration, most times there is uncertainty or lack of clear legal protection for migrants, which often leads to vulnerabilities and human rights abuses, the IOM has an impact in shaping regional and international migration governance, by participating in negotiations and decision-making processes. Still, IOM positions itself strategically between core donor-developed states, like the ones in the European Union, and the less developed states. By adopting this approach, IOM assists less developed states while conforming with the agendas of donor states, maintaining apparent neutrality and a focus ‘for the benefit of all’ when it tends to promote the interest of Western countries. Andrijasevic and Walters define IOM as a ‘post-imperial’ actor, which disciplines member states to adopt norms or policy changes upon the claim that they are in the interest of all.

Finally, IOM achieves that by fostering a depoliticised consensus that conceals divergences between states, offering policy measures focused on security while masking power imbalances<sup>80</sup>. Additionally, it expands the nature of state sovereignty by shaping migration policies in weaker states on behalf of Western countries. As migration remains a pressing issue, IOM’s role will continue to be both vital and contested, requiring ongoing reflection on how it balances the needs of migrants, states, and broader international norms. While it positions itself as a neutral actor serving the wider global community, its alignment with Western migration agendas, especially in shaping policies in less developed countries, reflects a broader post-imperial influence on international migration governance<sup>81</sup>.

## 1.5. CONCLUSION

IOM has undergone a structural metamorphosis since its foundation in the aftermath of the Second World War, testing its adaptability in global migration management. The first section of this chapter framed the context of the international law framework on migration, where, as discussed

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<sup>80</sup> Bradley, Megan. 2017. “The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime.” *Refuge* 33 (1): 97–106.

<sup>81</sup> Pécoud, A. (2018). What do we know about the International Organization for Migration? *Journal of Ethnic and Migration Studies*, 44(10), 1621–1638. <https://doi.org/10.1080/1369183X.2017.1354028>

in the second section, the Organisation evolved from a tool to manage the displacement of 11 million people in Europe and contain the spreading of communism to a leading player in the migration management field.

The chapter also explored the legal relationship between the IOM and the UN, comparing the 1996 and 2016 Cooperation Agreements to identify changes and disparities. This comparison underscores the evolving nature of the partnership and the distinct operational contexts in which the IOM and UN operate.

Instead, the third section of the introduction chapter analysed the Organisation's mandate outlined in its Constitution. It focuses on managing migration flows and providing essential services to people on the move, including refugees and voluntary return seekers.

However, the organisation's approach has drawn attention to addressing the symptoms of migration — such as displacement — while not fully engaging with its root causes like economic disparities, conflict, and climate change.

## **2. THE INSTITUTIONAL STRUCTURE OF IOM**

### **2.1. INTRODUCTION**

The second chapter of this thesis will delve into the International Organization for Migration's institutional framework. A thorough understanding of its structure, constitutional mandates, decision-making processes, accountability mechanisms, and adherence to human rights standards is essential for assessing its role and effectiveness within the international system.

The first section critically analyses the decision-making processes and bodies, namely the IOM Council and the Administration, within IOM, which are characterised by a well-defined hierarchical structure established in Geneva. This analysis includes exploring the organisation's governance mechanisms and how decisions are taken.

In the second section, the thesis investigates the IOM's legal and normative framework, primarily anchored in its Constitution and further enhanced by the organisation's internal policies, which define its purposes, functions, and governance structure. Nonetheless, it also explores some of the structural weaknesses within this framework.

The third section will delve into the intricate interplay between state sovereignty and IOM operations and further address IOM's project-based funding and cost-benefit approach to migration.

### **2.2. ORGANISATIONAL FRAMEWORK OF IOM**

#### **2.2.1. Decision-Making Bodies and Processes**

Geneva, where IOM Headquarters are based, is the centre for formulating all activities, institutional policies, guidelines, and strategies and overseeing all procedures and standards.

The Director General<sup>82</sup> is the chief executive, supported by the Deputy Directors of Operations and Management and Reform, who handle tasks beneath their leadership. The DG exercises constitutional authority to manage the Organization and formulates coherent policies, ensuring that

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<sup>82</sup> Hereafter referred to as 'DG'.



policy and action development remains consistent with the Organization’s strategic priorities<sup>83</sup>. Moreover, the DG manages the Secretariat at each Council Session. Amy Pope, the current Director General since the 1<sup>st</sup> of October of 2023<sup>84</sup>, is the first woman to hold this post in IOM’s seventy-three-year history<sup>85</sup>. This position – with just one exception – has always been occupied by US officials, often coming from the diplomatic service of the US State Department. The IOM Council elects the DG. It meets twice a year, and each member state has one vote. He reports to the Council and the smaller Executive Committee with 33 member state representatives<sup>86</sup>.

The Deputy Director General for Operations oversees Humanitarian Response and Recovery, Data, Insight and Policy Coordination, Mobility Pathways and Inclusion, Protection, Staff Security, and Climate Action. Meanwhile, the Deputy Director General for Management and Reform supervises Financial and Administrative Management, Staff Health and Welfare, Global Shared Services, Change Management, Information and Communications Technology, and Supply Chain operations.

Furthermore, the Office of the Chief of Staff, the Office of Partnerships, Advocacy and Communications, and the Office of Strategy and Organizational Performance are other components of the leadership structure.

In addition, the independent offices of the Office of Legal Affairs, the Office of Internal Oversight Services, the Office of Ombudsperson, and the Office of Ethics and Prevention of Sexual Exploitation and Abuse and Sexual Harassment (PSEAH) report directly to the Director General<sup>87</sup>.

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<sup>83</sup> ‘IOM Director General’ (*International Organization for Migration*) <<https://www.iom.int/iom-director-general>>

<sup>84</sup> ‘C/Sp/6/RES/1405’ (*International Organization for Migration*, 15 May 2023) <[https://governingbodies.iom.int/system/files/en/council/6th\\_Special/c-sp-6-res-1405-election-of-the-director-general.pdf](https://governingbodies.iom.int/system/files/en/council/6th_Special/c-sp-6-res-1405-election-of-the-director-general.pdf)>

<sup>85</sup> Before joining IOM, DG Amy Pope served as Senior Advisor on Migration to US President Biden and as Deputy Homeland Security Advisor to US President Obama. During her stay at the White House, Ms. Pope developed and implemented comprehensive strategies to address migration issues, including efforts to counter human trafficking, resettle refugees and vulnerable populations, and prepare for climate-related crises.

‘IOM Director General Biography’ (*International Organization for Migration*) <<https://www.iom.int/biography-iom-director-general>> ‘IOM Director General Biography’ (*International Organization for Migration*) <<https://www.iom.int/sites/g/files/tmzbd1486/files/2024-02/dg-biography-en.pdf>>

<sup>86</sup> Fabian Georgi, ‘For the Benefit of Some: The International Organization for Migration (IOM) and its Global Migration Management’ in Martin Geiger and Antoine Pécoud (eds), *The Politics of International Migration Management* (Palgrave Macmillan 2010) 45-72.

<sup>87</sup> ‘IOM Organizational Structure’ (*International Organization for Migration*) <<https://www.iom.int/iom-organizational-structure>>

If necessary, the Council can establish subcommittees, such as the Standing Committee on Programmes and Finance (SCPF). The SCPF, open to all member states, usually convenes twice a year to evaluate and review policies, programmes, and activities, discuss administrative, financial, and budgetary issues, and consider any topic referred to by the Council<sup>88</sup>.

The IOM Council serves as the Organization's highest authority, convening annually for regular sessions and holding special sessions at the request of one-third of its members or under urgent circumstances. Regular sessions are typically held in Geneva unless two-thirds of the Council agree to meet elsewhere, in which case the inviting state is responsible for covering any additional expenses<sup>89</sup>.

The DG prepares the agenda for each session, which includes items proposed by previous meetings, member states, or the DG. The agenda is adopted at the beginning of the session but may be revised by the Council. Member states must communicate their representatives' names as credentials to the DG, who verifies and reports on them. Non-member states and relevant organisations may be invited to participate as observers in debates without voting rights. At the outset of each session, the Council elects its officers, including a chairperson, who all serve one-year terms with the possibility of re-election. The Director General, or a representative, attends all sessions, oversees the Secretariat, and ensures all necessary arrangements are in place. The Secretariat handles interpretation services, manages documentation, and fulfils other administrative tasks. English, French, and Spanish are the official languages; all meeting records and documents are available in these languages<sup>90</sup>.

A show of hands typically conducts voting unless a roll call or secret ballot is requested. Decisions are generally made by a simple majority, except for budgetary matters requiring a two-thirds majority. Most member states constitute a quorum, and the Chairman manages discussions, maintains order, and announces decisions. The Chairman decides points of order that can be

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<sup>88</sup> 'Standing Committee on Programmes and Finance: IOM Governing Bodies' (*IOM*) <<https://governingbodies.iom.int/standing-committee-programmes-and-finance>>

<sup>89</sup> 'Council: Iom Governing Bodies, UN Migration: Governing Bodies' (*IOM Governing Bodies, UN Migration | Governing Bodies*) <<https://governingbodies.iom.int/council>>

<sup>90</sup> 'About Governing Bodies: IOM, UN Migration: Governing Bodies' (*About Governing Bodies | IOM, UN Migration | Governing Bodies*) <<https://governingbodies.iom.int/iom-governing-bodies>>

appealed. The Council has the authority to limit speaking times and the number of interventions, with the Chairman responsible for managing the list of speakers. Representatives or the Chairman's suggestion can move adjournment or closure of debates. Meetings are open to the public unless the Council decide otherwise<sup>91</sup>.

### 2.2.2. IOM's Decentralised Structure

The internal structure of IOM is organised around nine regional offices, which formulate regional strategies and plans of action and provide support to country missions and governments in the regions they are in. These offices are strategically placed in Dakar (Senegal), Nairobi (Kenya), Cairo (Egypt), Pretoria (South Africa), San José (Costa Rica), Buenos Aires (Argentina), Bangkok (Thailand), Brussels (Belgium), and Vienna (Austria). Five country offices — in Canberra, Australia (overseeing the Pacific); Rome, Italy (covering the Mediterranean); Bangkok, Thailand (supervising South Asia); Astana, Kazakhstan (focused on Central Asia); and Georgetown, Guyana (managing the Caribbean) — are tasked with additional coordinating functions: overseeing and managing all migration-related missions and operations within their respective region. Furthermore, the other four country offices in Tokyo (Japan), Berlin (Germany), Helsinki (Finland), and Washington D.C. (United States) have resource mobilisation functions, including *ad hoc* support in fundraising activities, policies, and procedures in the region. Moreover, the two special liaison offices in New York (United States) and Addis Ababa (Ethiopia) collaborate with other actors such as multilateral bodies, diplomatic missions, and NGOs. Finally, like multinational corporations, IOM outsourced part of the Administration to two decentralised service centres in Panama City and Manila.

The entire Organization is notably complex, differentiated and, above all, decentralised across all levels of its structure. This extended decentralisation allows IOM to swiftly address migration needs and donor interests across various locations while maintaining a flexible operational model.

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<sup>91</sup> 'Rules of Procedure of the Council' (*International Organization for Migration*) <<https://www.iom.int/rules-procedure-council>>

By delegating responsibilities to regional and country offices, the IOM ensures efficiency in managing global migration dynamics<sup>92</sup>.

## **2.3. LEGAL AND NORMATIVE FRAMEWORK OF THE IOM**

### **2.3.1. IOM's Constitutional Framework and Internal Rules**

The IOM's legal framework is grounded in its Constitution, which outlines the organisation's purposes, functions, legal status, finance, membership, and other necessary issues.

According to the Constitution, the IOM is a migration-focused intergovernmental organisation governed by its Member States. The current version of the text incorporates several key components: the original Constitution of the ICEM of 19 October 1953, which entered into force on 30 November 1954; the amendments adopted on the 20<sup>th</sup> of May 1987 by the 55<sup>th</sup> Session of the Council through Resolution No. 724, which entered into force on the 14<sup>th</sup> of November 1989; the amendments adopted on the 24<sup>th</sup> of November 1998 by the 76<sup>th</sup> Session of the Council, through Resolution No. 997, which entered into force on the 21<sup>st</sup> November of 2013; finally, the amendments adopted on the 28<sup>th</sup> of October 2020 by the Fourth Special Session of the Council through Resolution No.1385, which took effect on the same date. Hence, the Constitution contains the Constitution of the ICEM and the successive amendments, the Rules of Procedure of the Council, the Terms of Reference of the Standing Committee of Programmes and Finance, the Rules of Procedure for the SCPF and the Agreement concerning the Relationship between the IOM and the UN signed on 19 September 2016, whereby IOM became a related organisation in the UN system.

The IOM has a full juridical personality and enjoys privileges and immunities necessary for its functioning<sup>93</sup>. Disputes over the Constitution are referred to the International Court of Justice. Amendments to the Constitution require approval by two-thirds of the Council and two-thirds of

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<sup>92</sup> Martin Geiger and Martin Koch, 'World Organization in Migration Politics: The International Organization for Migration' in Martin Geiger and Martin Koch (eds), *The International Organization for Migration in Migration Politics* (2018)

<sup>93</sup> "The Organization shall enjoy such legal capacity, privileges and immunities as are necessary for the exercise of its functions and the fulfillment of its purposes." *Constitution of the International Organization for Migration* (adopted 19 October 1953, entered into force 30 November 1954) art 23.

Member States. In contrast, a simple or two-thirds majority makes other decisions depending on the matter<sup>94</sup>.

### *2.3.1.1. Evolution of the IOM Constitution*

As the ICJ recognised in its 1949 Reparations case, an IO's rights and duties must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice<sup>95</sup>. The International Law Commission defines the IO constitution as 'the constituent treaty together with the rules in force of the organisation'<sup>96</sup>. Primarily, the IOs shape the process of interpreting their constitution to help display their ambitions, usually unbothered by formal revisions. In this regard, the formal mandate of this Organization, enshrined in its Constitution, has evolved considerably since its establishment in 1951 as the PICCME, mostly because of the efforts of the organisation to make itself permanent and expand its geographic area and range of activities.

As European migration withered in the 1970s, ICEM faced a diminished budget and institutional decline. When the engagement of the Organization in the various humanitarian operations beyond its European mandate was questioned because of the limited mandate and the positioning outside the United Nations system, ICEM leadership sought constitutional changes to strengthen the organisation amid competition for resources and influence. Hence, legal experts drafted a report suggesting amendments, which was shared with member states before the 39th ICEM Council session in 1976<sup>97</sup>, to reflect the emerging and current humanitarian needs and to ensure that the organisation's actions were aligned with those, to make the organisation more flexible and to broad its mandate. However, member states strongly rejected these suggestions, arguing that negotiating the Constitution would distract the organisation from more urgent practical matters<sup>98</sup>. Moreover,

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<sup>94</sup> *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion*, pp. 79 – 100. DOI: <https://doi.org/10.1017/9781009184175.005>

<sup>95</sup> "Reparation for injured suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949, p. 174."

<sup>96</sup> ILC, 'Report of the International Law Commission on the Work in its 14th Session' (1962) GAOR 17th Session Supp 9 UN Doc A/5209, 7 Art. 3 para 3 Commentary; see also Henry G Schermers and Niels M Blokker, *International Institutional Law: Unity within Diversity* (5th edn, Martin Nijhoff Publishers 2011) 727.

<sup>97</sup> ICEM, 'Suggestions for amendments to the Constitution of the Intergovernmental Committee for European Migration' (1976) MC/1135.

<sup>98</sup> *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion*, pp. 45 – 78. DOI: <https://doi.org/10.1017/9781009184175.005>

member states also admonished the Director General publicly at ICEM Council sessions for initiating the experts' review without their prior consultation<sup>99</sup>.

Nonetheless, ICEM renewed those efforts in the 1980s, leading to a new Constitution in 1989 and a renewal of the organisation's name to the International Organization for Migration, as it is known nowadays. This process was viewed internally as aligning the Constitution with the organisation's evolving roles to meet contemporary migration challenges and provide a robust legal framework for future activities. However, it has been criticised for omitting explicit references to migrants' rights and humanitarian principles and keeping states central in migration decisions. The 1989 Constitution shifted from actively promoting migration to a more permissive approach, outlining potential activities without exhaustive details. That interpretation of its mandate has allowed significant flexibility, suggesting both a humanitarian and a protection role, though these views remain controversial<sup>100</sup>.

### *2.3.1.2. IOM's Expanding Internal Policy*

The Constitution's broad terms have led to challenges balancing IOM's diverse responsibilities with ongoing efforts to navigate its dual humanitarian and development roles<sup>101</sup>.

The broadness of the Constitution has empowered IOM to develop more detailed rules to widen the area of its activities. In this respect, as Schermers and Blokker said, while the Constitution could be defined as 'the skeleton of the legal order of an international organisation, its decisions are its flesh and blood<sup>102</sup>'. Internal rules are the regulations governing an international organisation's operations, deriving from its founding treaty, resolutions by its organs, and established practices.

IOs' internal rules can encompass various matters, including governance procedures, subsidiary organs, budget, finance and administration, operational activities, and responsibility.

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<sup>99</sup> Report of the 39th session of the Council of the Intergovernmental Committee for European Migration, MC/1154, 10 March 1976.

<sup>100</sup> *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion*, pp. 45 – 78. DOI: <https://doi.org/10.1017/9781009184175.005>

<sup>101</sup> 'IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion', pp. 45 – 78. DOI: <https://doi.org/10.1017/9781009184175.005>

<sup>102</sup> Henry G Schermers and Niels M Blokker, *International Institutional Law: Unity within Diversity* (5th edn, Martin Nijhoff Publishers 2011) 727.

Henceforth, analysing internal policies, frameworks, and guidelines developed by the IOM is imperative. Surprisingly, considering the organisation's 'non-normative' reputation, IOM's internal policymaking has expanded significantly. Over the past 20 years, it has covered a wide range of topics, such as migration governance and humanitarian action, but also data monitoring and staff conduct<sup>103</sup>. Since 1998, IOM has produced at least 40 significant institutional policies, adopting 31 since 2012<sup>104</sup>.

Beyond those internal policies, IOM has further developed strategic planning frameworks such as the IOM Strategic Vision: 2019–2023: Setting a Course for IOM<sup>105</sup>, building on the 2007 IOM Strategy Document and the 2010 Strategy Review<sup>106</sup>. These strategic frameworks, which can be approved by the Council or solely discussed, are also crucial elements of IOM's increasing internal policy apparatus.

IOM's Council and Administration are both involved in creating internal rules. The Council reviews policies and programs, while the Director General administers the organisation in accordance with the Constitution and Council decisions and can propose internal regulations to the Council or establish them through organisational practices<sup>107</sup>.

The legal significance of those internal policies lies in their potential to act as binding internal rules alongside the IOM Constitution and key agreements like the 2016 UN–IOM Agreement<sup>108</sup>. Though not an internal rule, the 2016 Agreement between the UN and IOM significantly shapes IOM's legal framework, committing it to UN principles and international migration, refugee, and

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<sup>103</sup> Antoine Pécoud, 'What do we know about the International Organization for Migration?' (2018) 44 *Journal of Ethnic and Migration Studies* 1621; <<https://doi.org/10.26190/unsworks/27319>> <[www.kaldorcentre.unsw.edu.au/publication/brief-and-somewhat-sceptical-perspective-international-organization-migration](http://www.kaldorcentre.unsw.edu.au/publication/brief-and-somewhat-sceptical-perspective-international-organization-migration)>

<sup>104</sup> International Organization for Migration, 'Obligations and Accountability of the International Organization for Migration in an Era of Expansion' (IOM Unbound, 2023) 45-78 <https://doi.org/10.1017/9781009184175.004>

<sup>105</sup> International Organization for Migration (IOM), 2019. *Strategic Vision: Setting a course for IOM*. IOM, Geneva.

<sup>106</sup> 'Guiding Documents' (*International Organization for Migration*) <<https://www.iom.int/guiding-documents#:~:text=The%202007%20IOM%20Strategy%20Document%20identifies%20the%20primary%20goal%20of,undertaken%20in%20achieving%20this%20goal.>>

<sup>107</sup> International Organization for Migration, 'Obligations and Accountability of the International Organization for Migration in an Era of Expansion' (IOM Unbound, 2023) 45-78 <https://doi.org/10.1017/9781009184175.004>

<sup>108</sup> UNGA Res A/70/296, 'Agreement concerning the Relationship between the United Nations 19 and the International Organization for Migration' (25 July 2016) UN Doc A/RES/70/296.

human rights standards. This agreement identifies IOM as a critical protector of migrants and a non-normative organisation. It does not set or enforce binding migration standards on states, a term probably insisted upon by member states to maintain their sovereign control over migration.

Scholars strongly argue that the IOM mandate inherently includes protecting migrants' rights, supported by its Constitution, Council resolutions, and institutional practices. This perspective leverages international law and internal policies to hold IOM accountable for protecting migrants, suggesting a shift from criticising IOM to engaging with its legal commitments to ensure accountability. This approach aligns with the intentions of those who crafted IOM's internal policies to align with human rights and humanitarian standards, emphasising that organisational mandates are both legal and political constructs<sup>109</sup>.

However, this internal policy development presents an intriguing paradox. Historically, IOM has thrived due to its lack of explicit obligations to human rights and humanitarian norms. Yet, it has committed to these standards through various internal policies, some of which may be binding. This shift raises questions about the effectiveness and enforcement of these commitments, often articulated in terms that may need to meet the expectations of some protection advocates. Combined with IOM's entry into the UN system, these policies may superficially align activities that do not fully respect human rights with more acceptable norms, resulting in more reliability to its UN partners<sup>110</sup>.

Notwithstanding, this does not fully resolve the paradox. It is unlikely that these policies are merely a smokescreen for states' migration-control agendas, as many governments already openly oppose migration without IOM's help. These policies shift expectations about IOM's commitments, increase the likelihood of political accountability, and legitimise the organisation<sup>111</sup>.

While adherence to state sovereignty remains central to IOM's legitimacy, the rise of human rights as a global governance framework necessitates new legitimisation strategies. These include policy development efforts that merge protection commitments with deference to member states.

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<sup>109</sup> International Organization for Migration, 'About Migration Law' (IOM, 2024) <https://www.iom.int/about-migration-law> accessed August 2024.

<sup>110</sup> *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion*, pp. 45 – 78. DOI: <https://doi.org/10.1017/9781009184175.005>

<sup>111</sup> Bradley B and Erdilmen M, 'Is the International Organization for Migration Legitimate? Rights-Talk, Protection Commitments and the Legitimation of IOM' (2022) 49 *Journal of Ethnic and Migration Studies* 1



These strategies also respond to changes in IOM's membership and the need for greater organisational coherence. As IOM's membership expands to include more Southern migrant-sending states, there is a growing expectation for the agency to protect migrants' rights. Internal policies help give coherence to IOM's projects and especially satisfy donor agencies' expectations for clearer commitments.

Additionally, the organisation's increasing visibility since joining the UN system highlights the importance of managing tensions between different elements of its mandate and internal policies to help navigate these tensions<sup>112</sup>.

### 2.3.2. Weaknesses of IOM normative framework

The International Organization for Migration is considered weak normatively due to the challenges in international law and practices related to managing international migration. The legal and normative framework of international migration is complex, with a growing body of international law focusing on cooperation in managing migration.

Additionally, the debate often centers on balancing State authority in regulating migration with the fundamental human rights of migrants, creating a rigid framework that may not adequately address the complexities of migration issues. This dichotomy between State interests and human rights can hinder the development of a robust normative framework that effectively protects the rights of migrants while addressing State concerns regarding migration management.

Furthermore, the effectiveness of the normative framework is also influenced by the level of ratification and implementation of international instruments. While some instruments, like the 1951 Convention Relating to the Status of Refugees, have been widely ratified, others, such as the UN Convention on the Protection of All Migrant Workers and Members of Their Families, have limited ratification, impacting the comprehensive coverage and enforcement of migrant rights globally.

## 2.4. STATE SOVEREIGNTY AND ITS INFLUENCE ON IOM'S OPERATIONS

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<sup>112</sup> *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion*, pp. 45 – 78. DOI: <https://doi.org/10.1017/9781009184175.005>

As discussed in the previous chapters, the structure of IOM as an intergovernmental organisation, along with the legal frameworks it is embedded in, shapes its activities.

The realm of migration is thoroughly tied to state sovereignty, yet the IOM, operating among over 400 field sites around the globe, steps right where the limits of state sovereignty are reached. While the Organization is known for its humanitarian work in disaster zones and the reintegration of displaced people, IOM also plays a controversial role in border enforcement and migrant detention. All nation-states, including the IOM's member states, outsource the tasks of restricting human mobility to non-state actors like the IOM. As international laws and human rights conventions constrain them, they are bound to respect and pursue restrictive migration policies without any direct accountability.

As a result, IOM operates in marginal spaces — offshore or between states — where it can engage in practices that contain, and not facilitate, as its mandate would aim to, human mobility. In this context, IOM positions itself flexibly, carrying out activities that states are unable or unwilling to perform. For instance, private military companies and privatised prisons support the neoliberal trend of outsourcing public tasks by governments, even in matters of national security<sup>113</sup>, which outsource the management of migrants to non-state actors that can operate with fewer legal obligations. To that end, IOM uses humanitarian language while contributing to a 'colonialism of compassion'<sup>114</sup>, helping states to enforce restrictionary policies aligning with their interests and maintaining their appearance of compliance with international law<sup>115</sup>.

Ultimately, IOM's member states nominally remain in command, deciding what IOM's services to hire when they need them. Within this framework, the IOM acts like a private contractor with a

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<sup>113</sup> Jan Klabbers, 'Notes on the Ideology of International Organizations Law: The International Organization for Migration, State-Making, and the Market for Migration' (2019) 32 *Leiden Journal of International Law* 383 <<https://doi.org/10.1017/S0922156519000165>>

<sup>114</sup> Jennifer Hyndman, *Managing Displacement: Refugees and the Politics of Humanitarianism* (University of Minnesota Press 2000) *Borderlines* 16.

<sup>115</sup> Ishan Ashutosh and Alison Mountz, 'Migration Management for the Benefit of Whom? Interrogating the Work of the International Organization for Migration' (2011) 15(1) *Citizenship Studies* 21 <<https://doi.org/10.1080/13621025.2011.534914>>

public status, following the instructions of its members, according to the IOM Constitution<sup>116</sup>. Moreover, in picturing itself as supporting member states, IOM deflects the attribution of responsibility for its actions. In this regard, every ‘supporting’ activity is depicted as a partnership: each time, the requesting state works closely with the Immigration and Border Management Team to identify and discuss needs and define the intervention. However, governments are not the sole stakeholders in these partnerships; the private sector is occasionally involved: in collaboration with the private enterprise VFS Global, services referred to as ‘Visa Application Centres’ have been developed for member states, including Canada. The VFS Global in question, headquartered in Dubai, focuses its expertise on criminal and fraud investigations. It is far from safeguarding individuals by providing security services from overzealous governments.

Another notable trend that sees IOM as occupying a distinctive role is the strategic externalisation of border control, which has relocated from traditional national boundaries to other nations that are financially supported to manage migration issues on their behalf. Australian government financing border processing operations in Indonesia and likely Papua Nuova Guinea, which also involved IOM, to handle asylum seekers before they could claim asylum in Australia certainly exemplifies this trend.

Again, through its expertise, IOM serves as an intermediary to implement migration management strategies on behalf of its member states, making it a compelling partner for states wary of engaging in controversial operations. As states seek less contentious ways to handle migration, IOM is expected to play an increasingly pivotal role in implementing migration management strategies.

Thus, while it could be presumed that IOM is primarily influenced by its member states, it is equally recognisable that its member states are, in turn, influenced by IOM policies and activities. The Organization fabricates manuals and collects best practices, including standards and procedures, ultimately impacting how states handle issues like trafficking or general migration

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<sup>116</sup> Jan Klabbers, 'Notes on the Ideology of International Organizations Law: The International Organization for Migration, State-Making, and the Market for Migration' (2019) 32 *Leiden Journal of International Law* 383 <<https://doi.org/10.1017/S0922156519000165>>

management. It shapes the methods employed to address them, resulting in a loop of mutual influence between IOM and its member states<sup>117</sup>.

#### 2.4.1. IOM's Cost-Benefit Approach to Migration

IOM adopted a thorough method of analysing the costs and benefits of migration to enhance its migration governance. This approach, which includes practical tools and frameworks, aims to ensure that migration is, as IOM's slogan states, '*for the benefit of all*'; namely, it is managed effectively for all the stakeholders involved in the process: sending and receiving states and migrants. IOM facilitates evidence-based policymaking by using a cost-benefit analysis, thus quantifying both the costs and benefits linked to migration. Through the valuable insight given by this approach into the economic impacts of migration, IOM can advocate for policies that support migrants' integration after highlighting their role in the labour market and remittances flows, overall contributing positively to host communities and countries of origin<sup>118</sup>.

The Migration Governance Indicators (MGI) serve as a flagship method for the cost-benefit approach. They allow governments to assess their strategies, identifying good practices and spaces for improvement. They align with national policies and international frameworks such as the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Sustainable Development Goals (SDGs) 112. Moreover, IOM researches legal frameworks for migration, migration trends, and migration policies' social and economic impacts<sup>119</sup>.

Furthermore, IOM extends its capacity-building assistance to states to improve their ability to address migration management matters. This assistance entails training government officials on best practices in migration management, supporting the development of policies and legal frameworks, and establishing institutional mechanisms. In addition, at the local level, IOM

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<sup>117</sup> Jan Klabbers, 'Notes on the Ideology of International Organizations Law: The International Organization for Migration, State-Making, and the Market for Migration' (2019) 32 *Leiden Journal of International Law* 383 <<https://doi.org/10.1017/S0922156519000165>>

<sup>118</sup> International Organization for Migration, 'Migration Policy and Governance' (IOM, 2023) <<https://www.iom.int/migration-policy-and-governance>> accessed August 2024.

<sup>119</sup> International Organization for Migration, 'Migration Policy Research' (IOM, 2024) <<https://www.iom.int/migration-policy-research>> accessed August 2024.

commits to community engagement initiatives to foster social cohesion and conducts mapping analysis to understand the effect of migration in specific areas<sup>120</sup>.

However, IOM's commitment to managing migration '*for the benefit of all*' requires a holistic understanding of political, social, cultural, and humanitarian facets alongside economic factors. Focusing solely on economic dimensions, the policies from the cost-benefit approach risk neglecting vulnerable populations while favouring certain groups<sup>121</sup>.

As cited in Section 2.2.2. of this Chapter, IOM's two service centres are in low-wage countries: Manila and Panama City. This highlights the organisation's business acumen and approach to cost efficiency, which allows it to exploit saving factors—low wages in this case—that exist away from IOM Headquarters<sup>122</sup>. IOM permits that because the organisation serves the control interests of the hegemonic forces in its central donor states and its neoliberal version of global migration governance, which subordinates human rights under abstract principles of economic utility.

#### 2.4.2. IOM's project-based funding

Since the mid-1990s, IOM has adopted a financing model with a project-based orientation characterised by a decentralised structure. Individual offices, mainly in major donor countries like the United States, Japan, Finland, and Germany or other relevant as the EU's in Brussels<sup>123</sup>, function independently, securing funds for specific projects and aligning with the interests of the respective donors. Each year, the organisation approves a calculated budget based on projects whose funding has already been secured by donor states before adopting the budget. Then, according to Article 20 of the IOM's Constitution, any contributor to the operational expenditure of the Organization shall be voluntary and may stipulate with IOM terms and conditions, consistent with the purposes and functions of the Organization, under which its contributions may be used<sup>124</sup>.

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<sup>120</sup> International Organization for Migration (IOM), 'Migrant Integration and Social Cohesion' (International Organization for Migration) <<https://www.iom.int/migrant-integration-and-social-cohesion>> accessed August 2024.

<sup>121</sup> International Organization for Migration, Report on the IOM Strategy (MC/INF/276, 2007) <[https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy\\_and\\_research/policy\\_documents/MCINF276.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/policy_documents/MCINF276.pdf)> accessed August 2024.

<sup>122</sup> Geiger, 'World Organization in Migration Politics: The International Organization for Migration' (2018) 3 Journal of International and Global Studies <<https://journal-iostudies.org/sites/default/files/2020-01/3JIOSspr18.pdf>> accessed August 2024.

<sup>123</sup> Even if the EU is a major donor of IOM, the core goal of the Brussels office is to liaise between the IOM field offices and the relevant EU Commission departments.

<sup>124</sup> International Organization for Migration (IOM), 2021. *Constitution and Basic Texts, 3rd edition*.

Subsequently, a revised budget program is adopted, which can exceed the initial estimations as field offices continue raising funds during the fiscal year. The project-based model allows IOM to maintain significant flexibility, enabling it to navigate across different areas of its mandate, including that it may lead to higher income generation. This allows the organisation to function as a humanitarian agency and, at times, operate with characteristics akin to those of a private company.

However, the limited central budgeting allows the donor states to exercise direct control on the projects they fund because IOM ultimately follows their geopolitical priorities<sup>125</sup>. Moreover, as Chapter 1 of this thesis mentions, states' power to increase or decrease their contributions may represent a potent weapon for exercising political pressure on the Organisation.

## 2.5. CONCLUSION

The second chapter of this thesis has provided a needed and comprehensive overview of the institutional structure and normative framework of IOM, shedding light on its organisational dynamics, the legal framework it is into, and its human rights obligations. The chapter detailed the robust development of the IOM Constitution and Internal Policies that followed the adaptation of the Organization to the changing landscape of international migration.

Despite the strides in developing its internal policies, the IOM's normative framework reveals diverse weaknesses, especially challenges related to accountability and compliance with international legal standards. The evolution of IOM's accountability mechanisms under international law was critically analysed, revealing its inappropriateness and the ongoing difficulties in attributing responsibility and ensuring effective oversight.

Overall, the chapter underscores the need for ongoing reforms and improvements in the IOM's institutional and normative structures to address the complexities of international migration better and effectively uphold human rights standards.

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IOM. Geneva. Art 20(3)

<sup>125</sup> Ronny Patz and Svanhildur Thorvaldsdottir, *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective – Drivers of Expenditure Allocation in the IOM: Refugees, Donors, and International Bureaucracy* (International Political Economy Series, Springer 2020) <<https://doi.org/10.1007/978-3-030-32976-1>> accessed August 2024.

### **3. CRITICAL ISSUES OF THE IOM AND FUTURE DIRECTIONS**

#### **3.1. INTRODUCTION**

The third chapter of this thesis explores the critical challenge facing IOM. The first section assesses the obligations IOM is bound to, enshrined in the Human Rights Framework and examines whether the Organisation effectively integrates those human rights into its operations. Through two case studies, Nauru and Manus Island Migrants Processing Centres and the Expulsion of Ethiopians from Saudi Arabia, IOM's responsibility will be emphasised in these interventions that potentially violate human rights obligations.

In the third section, the chapter will deeply explore the IOM's responsibility under international law, focusing on the evolving framework of accountability and the challenges in applying the Articles on the Responsibility of International Organisations (ARIO).

Ultimately, the last two sections of the thesis will reflect on IOM's possible improvement and the evolution of its role in a changing global order.

#### **3.2. ASSESSMENT OF IOM'S HUMAN RIGHTS OBLIGATIONS WITHIN THE HUMAN RIGHTS FRAMEWORK**

##### **3.2.1. IOM's Approach to Human Rights**

Recently, IOM has been urged to increase its own human rights accountability. In the following paragraph, all the human rights obligations IOM is subject to will be identified and their possible violation.

Even if the IOM Constitution does not explicitly mention human rights, human rights-related language can be recognised in the preamble, where the need for cooperation regarding the 'needs of the migrants as an individual human being' 119 is highlighted 120. However, all the parts that may be linked to a human rights lexis are balanced by the operational need to ensure the orderly flow of migrants.

Moreover, like other IOs, IOM is not a party to any human rights treaties, where some human rights obligations may arise. Nonetheless, as cited before, IOs are bound by 'any obligations

incumbent upon them under general rules of international law'<sup>126</sup> Human rights are, in principle, binding upon all the subjects of international law and are most times relevant to the activities and competencies of most IOs. Long debates have been on the methods to identify customary human rights law. The traditional ways rely on state practice and *opinio juris* — which often fail due to inconsistency of the state practice. Alternatively, general principles of law, as defined by Article 38(1) of the ICJ Statute, can derive from common domestic laws or treaties that acknowledge certain norms. Regardless of the approach to identifying them, there is a broad consensus that certain fundamental human rights – such as the right to life, prohibition against torture, and *non-refoulement* – are part of general international law, posing an obligation on IOs.

According to its website, IOM has twelve main strategic areas of focus. What stands out among them is the scarcity of references to human rights. There is only one explicit referent in the second strategic focus: to ‘enhance the humane and orderly management of migration and the effective respect for the human rights of migrants in accordance with international law’. Besides, a footnote reaffirms that IOM does not have a protection mandate but that it acts in a way that contributes to the overall protection of human rights, protecting migrant people<sup>127</sup>.

Over the past years, the IOM Council has implemented policies on human rights and protection. Paragraph 2 of the IOM Human Rights Policy states that the main responsibility for ensuring the respect of migrants’ human rights lies with the States. It further clarifies that each State has the right and duty to protect its nationals abroad and to permit another State to protect its nationals within its territory. It continues that many actors like IOM play a supporting role to ensure the adequate respect of migrants’ human rights<sup>128</sup>.

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<sup>126</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (Advisory Opinion)* [1980] ICJ Rep 73 para 37.

<sup>127</sup> [https://www.iom.int/sites/g/files/tmzbdl486/files/about-iom/iom\\_strategic\\_focus\\_en.pdf](https://www.iom.int/sites/g/files/tmzbdl486/files/about-iom/iom_strategic_focus_en.pdf)

<sup>128</sup> International Organization for Migration, *The Human Rights of Migrants: IOM Policy and Activities* (MC/INF/298, 2009)

<<https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/human-rights-migration-november-2009/MC-INF-298-The-Human-Rights-of-Migrants-IOM-Policy-and-Activities.pdf>> accessed July 2024.



The Human Rights Policy has been prepared mainly for internal consumption. Each statement related to human rights can be linked to an internal IOM document or its Constitution, with scarce reference to the international human rights obligations of the IOM member states.

Additionally, the IOM's Policy on Protection of 2015 reiterates the duty of the IOM to respect migrants' human rights by citing its documents. The policy states:

*“IOM meets its obligation to promote and contribute to the protection of migrants and their rights by supporting States and its other partners in their respective protection responsibilities by having a rights-based approach to all its policies, strategies, projects and activities<sup>129</sup>.”*

This ‘supportive protection’ approach is implemented through a rights-based approach to all activities. The IOM protection ‘focuses on effective implementation of existing norms and standards related to the rights of migrants found at the international, regional and national levels.’

At the same time, one should not unquestioningly accept the IOM's pledges to adhere to human rights. For instance, Human Rights Watch has also raised concerns and outlined how, while the IOM has changed the human rights language in its policies and guidelines, it often disregards these rights in practice. Other scholars warn of a ‘blue washing’ of IOM through its new Cooperation Agreement with the UN, with the IOM presenting itself solely as a humanitarian entity while continuing its core role in conceptualising, proposing, and implementing migration control activities on behalf of states. It is also crucial to remember that the IOM views its humanitarian assistance as part of ‘migration management.’

The gradual integration of protection issues and human rights language into IOM's strategies and policy documents culminated in the 2016 Agreement between the UN and IOM. A vital component of the Agreement is IOM's commitment to conduct its activities *per* the UN Charter's Purposes and Principles and to consider relevant international instruments in the migration and human rights fields. However, this ‘due regard’ clause is seen as a weaker obligation than a

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<sup>129</sup> International Organization for Migration, *IOM Policy on Protection* (2015) C/106/INF/9 <https://governingbodies.iom.int/system/files/en/council/106/C-106-INF-9-IOM-Policy-on-Protection.pdf> accessed July 2024.

binding commitment to act in conformity with these principles because it is open to interpretation, potentially allowing flexibility in implementation.

Overall, the Agreement formalises the close relationship between the UN and IOM while maintaining IOM's independent status. The commitment to human rights is present but not as robust or clearly defined as some advocates had hoped, leading to concerns about the practical implementation of these principles in IOM's work.

One thing that could mitigate some accountability issues related to human rights is the application of the UN Human Rights Due Diligence Policy. The HRDDP, formulated in 2013 and updated in 2015, guides UN support to non-UN forces, ensuring adherence to the UN's principles and international law. It is not binding, but UN entities must report to the HRDDP.

The HRDDP contributes mainly to its procedural approach, requiring a proactive risk assessment to prevent complicity in human rights violations. This involves evaluating risks before and during support, intervening if violations occur, and ceasing support if necessary. However, its scope is limited to preventing 'grave violations' and does not guarantee comprehensive human rights protection. Its impact on IOM's practical work may be modest due to these limitations and the variable interpretation of due diligence across different legal contexts<sup>130</sup>.

### 3.2.2. Achievements of Article 2(5) of UN-IOM Agreement

Article 2(5) of the 2016 Agreement<sup>131</sup> mandates that the IOM operate under the Purposes and Principles of the UN Charter and consider relevant UN policies and international instruments related to migration, refugees, and human rights. Reading this provision in the context of the Agreement, the primary aim of which is to strengthen the cooperation between the two Organizations, the duty of 'due regard' to UN policies and instruments remains ambiguous, more to be interpreted as a requirement to balance competing interests rather than a strict obligation to human rights for IOM. The articles on purposes and principles of the UN, outlined in its Charter,

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<sup>130</sup> United Nations, *Inter-Agency Human Rights Due Diligence Policy on United Nations Support to Non-United Nations Security Forces (HRDDP) Guidance Note* (2015) <https://unsdg.un.org/sites/default/files/Inter-Agency-HRDDP-Guidance-Note-2015.pdf> accessed May 2024.

<sup>131</sup> UN General Assembly, *Agreement concerning the Relationship between the United Nations and the International Organization for Migration* (19 September 2016) UN Doc A/71/L.1 <<https://documents.un.org/doc/undoc/gen/n16/234/26/pdf/n1623426.pdf>

only contain a single provision mentioning human rights, again not establishing substantive human rights obligation for the UN and consequently for the IOM either<sup>132</sup>.

### 3.2.3. IOM's Human Rights Accountability Mechanism

#### 3.2.3.1. IOM Office of the Inspector General

The Office of the Inspector General<sup>133</sup> exercises functions of internal oversight. Among them, in the context of accountability mechanisms, the investigations carried out by the OIG are relevant. The objects of the inquiry are IOM staff members and their eventual misconduct. However, the 'on duty' conduct of staff members is attributable to IOM itself, meaning that every staff misconduct implicates the Organization, but not institutionally. As of 2021, the OIG has fifteen fixed-term investigators, four temporary ones, and twelve consultants on a roster<sup>134</sup>.

Every investigation must be triggered by an allegation submitted from within and outside the IOM. The process involves a preliminary assessment and, if needed, a full investigation. The OIG investigators, who possess extensive powers, later submit the findings of the evaluations and investigations to the Office of Legal Affairs, which then advises on the disciplinary actions to take.

However, the OIG's action is limited to investigating solely staff misconduct, not broader organisational policies. The lack of explicit reference to human rights restricts the possibility of addressing systemic human rights violations.

Moreover, the victims of misconduct of the staff also have limited participation rights in investigations, and they usually remain unaware of the outcomes (unless they regard sexual abuse cases).

Overall, the OIG's impartiality appears robust, but its structural limitations prevent the Office from effectively addressing human rights issues within the Organization<sup>135</sup>.

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<sup>132</sup> [IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion](https://doi.org/10.1017/9781009184175.005), pp. 101 – 136. DOI: <https://doi.org/10.1017/9781009184175.005>

<sup>133</sup> Henceforth, referred to as 'OIG'.

<sup>134</sup> IOM, 'Report on the Work of the Office of the Inspector General' (6 October 2021) IOM Doc S/29/3 para 12.

<sup>135</sup> [IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion](https://doi.org/10.1017/9781009184175.005), pp. 101 – 136. DOI: <https://doi.org/10.1017/9781009184175.005>

### 3.2.3.2. Domestic Courts

Another mechanism of human rights accountability could be domestic courts, which theoretically can hold IOs into account. However, IOM's jurisdictional immunity renders this nearly impossible. There are no known cases where a domestic court has bypassed this immunity, making them ineffective in holding IOM accountable for possible human rights violations. The rare case of waiving this immunity is entirely discretionary, leaving accountability to IOM itself<sup>136</sup>.

To the present day, IOM's human rights accountability needs to be revised<sup>137</sup>; it is one of the weakest among similar organisations despite the high risk of human rights violations in its operations<sup>138</sup>.

### 3.3. IOM'S POTENTIAL TO VIOLATE HUMAN RIGHTS

IOM's provision services should ensure the orderly movement of migrants and contribute to ensuring the human rights of the migrants themselves – being the opposite likely to generate issues like exploitation and mass expulsion of undocumented migrants<sup>139</sup>.

However, the commitment to respect human rights can be defined as something other than consistent throughout the Organization. In practice, IOM's actions often limit, rather than promote, the rights of migrants<sup>140</sup>. The donor-driven model and its dependence on Western states have led IOM to support restrictive migration measures, with the risk of increasing, and not limiting, human

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<sup>136</sup> [IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion](https://doi.org/10.1017/9781009184175.005), pp. 101 – 136. DOI: <https://doi.org/10.1017/9781009184175.005>

<sup>137</sup> Johansen, *The Human Rights Accountability Mechanisms*

<sup>138</sup> [IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion](https://doi.org/10.1017/9781009184175.005), pp. 101 – 136. DOI: <https://doi.org/10.1017/9781009184175.005>

<sup>139</sup> Richard Perruchoud, 'Persons Falling under the Mandate of the International Organization for Migration (IOM) and to Whom the Organization May Provide Migration Services' (1992) 4 *International Journal of Refugee Law* 211–212.

<sup>140</sup> International Organization for Migration, *Promoting the Human and Labour Rights of Migrant Workers in Europe* (IOM, 2022) <[https://eca.iom.int/sites/g/files/tmzbdl666/files/documents/IOM\\_Policy-Brief\\_V3.pdf](https://eca.iom.int/sites/g/files/tmzbdl666/files/documents/IOM_Policy-Brief_V3.pdf)> accessed September 2024

rights violations – flagged by organisations like Amnesty International and Human Rights Watch for the last decades<sup>141</sup>.

### 3.3.1. Case Study of IOM interventions and their Human Rights Implications

IOM has been involved in projects that violated migrants’ rights on multiple occasions. Specific examples of human rights violations will be better examined in the forthcoming sections.

#### 3.3.1.1. IOM and Australia’s ‘Pacific Solution’: Nauru and Manus Island Migrant Processing Centers

IOM played a prominent role in supporting Australia to implement the ‘Pacific Solution’, namely a set of laws and procedures aimed at intercepting asylum seekers *en route* to Australia and transferring them forcibly to Australian-constructed detention facilities<sup>142</sup> in Nauru and Manus Island (Papua New Guinea)<sup>143</sup>. In both Nauru and Papua New Guinea, migrants possessed no legal means to challenge their detention. IOM was in charge of the direct management and administration of the detention centres on Manus Island from 2001 to 2004 and in Nauru from 2001 to 2008, under the supervision of Australia. UNHCR was requested to help Australian immigration officials assess migrants’ claims but refused, arguing that those detention practices violated both human rights and refugee law<sup>144</sup>. Throughout the operations, 1,637 migrants were intercepted by Australian naval vessels and diverted to these processing centres, where 1,153 of these were found to be refugees or in need of protection. At the same time, 483 internees were returned to their countries of origin<sup>145</sup>.

Within the detention facilities, IOM provided ‘security, water, sanitation, power generation, health, and medical services’<sup>146</sup>. The Memorandum of Understanding between IOM and the Nauruan

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<sup>141</sup> Amnesty International, ‘Statement by Amnesty International and Human Rights Watch (Amnesty International, September 2021) <<https://www.amnesty.org/fr/wp-content/uploads/2021/09/ior420062002en.pdf>> accessed August 2024.

<sup>142</sup> Fraenkel, Jon, ‘Australia’s Detention Centres on Manus Island and Nauru: An End of Constructive Pacific Engagement?’ (2016) 51 *The Journal of Pacific History* 278, DOI: 10.1080/00223344.2016.1233802

<sup>143</sup> At that time, neither Nauru nor Papua New Guinea was a Member State of IOM.

<sup>144</sup> UNHCR ‘UNHCR Mid-Year Progress Report’ (UNHCR 2002) <[www.unhcr.org/uk/publications/fundraising/3daabf013/unhcr-mid-year-progress-report-2002-east-asia-pacific-regional-overview.html?query=nauru](http://www.unhcr.org/uk/publications/fundraising/3daabf013/unhcr-mid-year-progress-report-2002-east-asia-pacific-regional-overview.html?query=nauru)> accessed September 2024.

<sup>145</sup> UNHCR, ‘Australia’s “Pacific Solution” Draws to a Close’ (11 February 2008) <<https://www.unhcr.org/news/australias-pacific-solution-draws-close>> accessed September 2024.

<sup>146</sup> Tania Penovic and Azadeh Dastyari, ‘Boatloads of Incongruity: The Evolution of Australia’s Offshore Processing Regime,’ (2007) 13 (1) *Australian Journal of Human Rights* 33.

government is enshrined with the responsibilities of IOM, including the maintenance of order, the regulation of entries and the overview of the movement of asylum seekers<sup>147</sup>.

In managing these detention centres, IOM was perfectly aware of the poor living conditions, characterised by inhumane and degrading treatments. In 2002, IOM's medical staff reported signs of trauma on thirty unaccompanied minors in Nauru<sup>148</sup>; in addition, when an independent medical doctor was hired to investigate the health and hygiene conditions, he wrote a report where it was stated that no amount of mental health support that could mitigate the suffering of migrants detained there. After his report, he resigned in protest because of the detention conditions and because IOM overlooked his professional opinion<sup>149</sup>. On Manus Island, instead, there were protests for the IOM's management, with detainees asking that UNHCR take over<sup>150</sup>.

However, IOM has never formally acknowledged neither its active engagement in detention facilities, defining them as 'migrant processing centres', nor was it transparent to the public attention, making deliberate efforts to limit communication and access to lawyers, journalists, and human rights activists. The Australian government stated that since it would have been against IOM's Constitution to manage a detention centre, Nauru and Manus Island facilities should not be viewed as such<sup>151</sup>. Yet, there was no doubt that those regimes entailed detention and violated human rights, leading to criticism towards both Australia and IOM from human rights organisations, like the UN Human Rights Committee<sup>152</sup> and Amnesty International<sup>153</sup>, who eventually called for the ceasing of the management of those detention centres. In March 2008, IOM officially closed both sites, which were reopened by Australia later that year as part of a new

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<sup>147</sup> Australia Department of Foreign Affairs and Trade, 'Memorandum of Understanding between the Republic of Nauru and Australia for Enduring Regional Processing Capability in the Republic of Nauru' (2013) <<https://www.dfat.gov.au/geo/nauru/memorandum-understanding-between-republic-nauru-and-australia-enduring-regional-processing-capability-republic-nauru>> accessed September 2024.

<sup>148</sup> Human Rights Watch report, *By Invitation Only: Australian Asylum Policy* (Human Rights Watch 2002).

<sup>149</sup> Tania Penovic and Azadeh Dastyari, 'Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime,' (2007) 13 (1) *Australian Journal of Human Rights* 33

<sup>150</sup> Angela Sherwood, Isabelle Lemay, and Cathryn Costello, 'IOM's Immigration Detention Practices and Policies: Human Rights, Positive Obligations and Humanitarian Duties' in Megan Bradley, Cathryn Costello, and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (CUP 2023).

<sup>151</sup> Human Rights Watch report, *By Invitation Only: Australian Asylum Policy* (Human Rights Watch 2002).

<sup>152</sup> UN GA, 'Report of the Human Rights Committee, Volume 1: General Assembly 55th Session Supplement 40' (3 October 1995) UN Doc A/50/40.

<sup>153</sup> Amnesty International, 'Australia Pacific: Offending human dignity – the 'Pacific Solution' (Amnesty International 2002) Index No. 12/009/2002 18.

phase of the ‘Pacific Solution’<sup>154</sup>. Moreover, Australia’s externalisation practices have evolved under new names and arrangements, and the IOM, despite international criticism, now focuses on Assisted Voluntary Returns (AVS), funded by the Australian government, distancing itself from detention facilities *per se*. AVS programs are still controversial because most of the times, migrants may be pressured or forced to return to the unsafe environment they came from, potentially violating the *non-refoulement*<sup>155</sup>.

Within this framework, establishing legal accountability has proved difficult, as Australian courts, having limited judicial review power, generally uphold domestic legislation and view themselves as constitutionally unable to apply international law on detention practices<sup>156</sup>.

The Prosecutor of the ICC has recently stated that the Australian government’s policy of offshore detention in Nauru and Manus Island constitutes ‘cruel, inhuman, or degrading treatment’<sup>157</sup> and that certain conditions of detention constitute the ‘underlying act of imprisonment or other severe deprivations of physical liberty’ under Article 7(1)(e) of the Rome Statute<sup>158</sup>. Yet, the Prosecutor noted that Australian policies were not deliberately designed to lead to this degrading treatment. Thus, this case falls outside the Court’s jurisdiction because the ICC requires a link between state policy and criminal conduct. Moreover, according to the Prosecutor, the transfer of asylum seekers from Australia to Nauru and Manus Island did not satisfy the definition of deportation, as the asylum seekers were not lawfully present in the area where they were taken, the degrading condition within the reception facilities were not sufficiently severe to constitute torture, and the targeting of migrants by the Australian government was not persecution because not committed

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<sup>154</sup> Angela Sherwood, Isabelle Lemay, and Cathryn Costello, ‘IOM’s Immigration Detention Practices and Policies: Human Rights, Positive Obligations and Humanitarian Duties’ in Megan Bradley, Cathryn Costello, and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (CUP 2023).

<sup>155</sup> Fabian Georgi, ‘For the Benefit of Some: The International Organization for Migration and its Global Migration Management’ (2019) 57 *Borders in Globalization Review* 45.

<sup>156</sup> Angela Sherwood, Isabelle Lemay, and Cathryn Costello, ‘IOM’s Immigration Detention Practices and Policies: Human Rights, Positive Obligations and Humanitarian Duties’ in Megan Bradley, Cathryn Costello, and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (CUP 2023).

<sup>157</sup> Katie Kouchakji, ‘Australia’s Pacific Solution for asylum seekers neglects human dignity’ (LSE, 1 September 2020) <<https://blogs.lse.ac.uk/socialpolicy/2020/09/01/australias-pacific-solution-for-asylum-seekers-neglects-human-dignity/>> accessed September 2024.

<sup>158</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) art. 7(1)(e) <<https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>> accessed September 2024.

on discriminatory grounds. Hence, the Prosecutor did not recognise the mistreatment of asylum seekers as lawful yet declined to open a preliminary examination. What is essential to notice is that an ICC Prosecutor's opinion is not binding as a decision made by the judges of the Court: other courts or tribunals could reach a different conclusion<sup>159</sup>.

By contrast, in 2016, Papua New Guinea's Supreme Court of Justice ruled that Australian-funded refugee detention centres were unconstitutional<sup>160</sup>. The court also considered the government's attempts to amend the Constitution to protect these arrangements from legal scrutiny unconstitutional<sup>161</sup>.

### *3.3.1.2. Expulsion of Ethiopians in Saudi Arabia*

In the post-colonial era, IOM concentrated on addressing population displacements in Africa. The enduring impact of its activities remains tangible today due to its substantial influence on the political framework governing migration. Notably, IOM's focus on the return of undocumented migrants had a significant impact on migrants, as well as on both host countries and countries of origin. In the 1990s, IOM facilitated the repatriation of the 'failed' asylum seekers, supporting countries in executing these returns effectively. Since 1983, IOM has implemented programs such as the Return of Qualified African Nationals (RQAN)<sup>162</sup>, concerning the return of highly qualified, qualified, and skilled African workers to the development of their countries of origin. These projects were embedded within the context of the evolving 'IOM migration policy framework for Sub-Saharan Africa' wherein IOM acts as a neutral intermediary fostering the dialogue between

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<sup>159</sup> UNSW, 'Australia's Offshore Detention Determined Cruel, Inhuman and Degrading by ICC Prosecutor' (UNSW Newsroom, 5 March 2020) <[https://www.unsw.edu.au/newsroom/news/2020/03/australia\\_s-offshore-detention-determined-cruel--inhuman-and-deg](https://www.unsw.edu.au/newsroom/news/2020/03/australia_s-offshore-detention-determined-cruel--inhuman-and-deg)> accessed September 2024.

<sup>160</sup> *Namah v Pato* no SC1497 Papua New Guinea Supreme Court of Justice 13 (26 April 2016).

<sup>161</sup> Angela Sherwood, Isabelle Lemay, and Cathryn Costello, 'IOM's Immigration Detention Practices and Policies: Human Rights, Positive Obligations and Humanitarian Duties' in Megan Bradley, Cathryn Costello, and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (CUP 2023).

<sup>162</sup> International Organization for Migration, *Programme for Return of Qualified Nationals (RQAN) - Ethiopia, 2000* <<https://migrantprotection.iom.int/system/files/resources/9a02fc9d-3f0e-45ed-b77e-fa2188f97720/document/B%26amp%3BM%20Development%2C%20Programme%20for%20Return%20of%20Qualified%20Nationals%20%28RQAN%29%20-%20Ethiopia%2C%202000.pdf?type=node&id=185&lang=en>> accessed September 2024.



host and origin countries<sup>163</sup>. This framework promotes a ‘comprehensive package approach’<sup>164</sup>, which aligns the developmental needs of the origin countries, precisely the needs of a skilled workforce, with the restriction of immigration of receiving countries<sup>165</sup>.

Nonetheless, it is not a coincidence that the launch of the first RQAN programmes in the 1970s coincided with a period when most European countries considerably restricted official channels for labour migration, suggesting a considered alignment between these initiatives, the interests of donor countries, and broader European immigration policies. It can be argued that these programs, promoted by IOM, were aimed at addressing the increasing expulsions of African migrants, legitimising them in the name of development. To that end, IOM suppressed the coercive element from these expulsions, giving priority to the AVR programs, using the collaboration with the states of the Global South as an ‘alibi for the exclusion of immigrants’<sup>166</sup> to support Western countries in sending back undocumented migrants<sup>167</sup>.

Through the RQAN programs, the IOM cleverly gained a pivotal role in international migration governance by collaborating with a network of NGOs and the countries of origin of migrants. These partnerships gave legitimacy to IOM, adding a humanitarian essence to the policies designed to standardise deportation practices. The adoption of expulsion measures increased internationally, leading to severe consequences for the expelled migrants, such as health issues and destitution<sup>168</sup>.

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<sup>163</sup> International Organization for Migration, IOM Migration Policy Framework for Sub-Saharan Africa (2000) <[http://governingbodies.iom.int/system/files/jahia/webdav/shared/shared/mainsite/about\\_iom/en/council/80/MC\\_IN\\_F\\_244.pdf](http://governingbodies.iom.int/system/files/jahia/webdav/shared/shared/mainsite/about_iom/en/council/80/MC_IN_F_244.pdf)> accessed September 2024.

<sup>164</sup> The approach of a shared interests policy, promoted by the IOM, paved the way for the Global Approach to Migration (GAM), adopted by the EU in 2005. The GAM aims to engage non-EU countries in migration policies regarding strengthening their legislation and border control through economic incentives. European Council, ‘A Secure Europe in a Better World: European Security Strategy’ (December 2005) ST-15744-2005-INIT <<https://data.consilium.europa.eu/doc/document/ST-15744-2005-INIT/en/pdf>> accessed September 2024.

<sup>165</sup> Clara Lecadet, ‘The IOM’s Crisis Management and the Expulsion of Ethiopians from Saudi Arabia’ in Martin Geiger and Antoine Pécoud (eds), *The New ‘UN Migration Agency’ in Critical Perspective* (Palgrave Macmillan, 2021) 273.

<sup>166</sup> Christophe Daum, ‘La coopération, alibi de l’exclusion des immigrés?’ in Didier Fassin, Alain Morice and Catherine Quiminal (eds), *Les lois de l’inhospitalité. Les politiques de l’immigration à l’épreuve des sans-papiers* (Éditions de la Découverte 1997) 197–216.

<sup>167</sup> Clara Lecadet, ‘The IOM’s Crisis Management and the Expulsion of Ethiopians from Saudi Arabia’ in Martin Geiger and Antoine Pécoud (eds), *The New ‘UN Migration Agency’ in Critical Perspective* (Palgrave Macmillan, 2021) 273–274.

<sup>168</sup> Clara Lecadet, ‘From Migrant Destitution to Self-Organization into Transitory National Communities: The Revival of Citizenship in Post-Deportation Experience in Northern Mali’ in Bridget Anderson, Matthew J. Gibney and Emanuela Paoletti (eds), *The Social, Political and Historical Contours of Deportation* (Springer 2013) 143–158.

Hence, although the IOM has led the way in supporting voluntary return, it has often avoided addressing forced return consequences, thus tacitly backing the sovereignty of states in managing undocumented migrants.

From November 2013 to March 2014, IOM expelled 163,018 Ethiopians from Saudi Arabia at the initial request of the Ethiopian government. This intervention reflected IOM's recognition of the post-deportation distress felt by returning migrants. It involved setting up transit camps around Bole Airport and immediate support for the returnees, particularly for the vulnerable groups.

An example of the IOM's engagement in mitigating the effects of deportation was its operation in Ethiopia from November 2013 to March 2014; with the IOM helping 163,018 Ethiopians, 155 were expelled from Saudi Arabia<sup>169</sup>. This effort, initiated at the request of the Ethiopian government, involved setting up transit camps and providing immediate support to returnees. The total expenditure for the operation amounted to approximately \$15 million, to which IOM contributed \$1.5 million. The surplus was funded by other sources, including the UN's Central Emergency Response Fund (CERF), UNICEF, UNHCR, WFP, IRC, ICRC, the US Association for International Migration (ASAIM), the Ethiopian Red Cross Society, and the Ethiopian Diaspora<sup>170</sup>.

Adopting humanitarian measures to answer to a crisis while remaining silent on the xenophobic mass expulsion from Saudi Arabia, which caused it<sup>171</sup> and without questioning the legitimacy of deportation, echoes the broader trend of expulsion as a standardised method of managing migration. As with all the other emergency operations, the expulsion of the Ethiopians from Saudi Arabia allowed IOM to showcase its operation capabilities and promote its migration management programs, consolidating its role in the international migration arena and securing funding<sup>172</sup>.

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<sup>169</sup> Marina De Regt and Medareshaw Tafesse, 'Deported Before Experiencing the Good Sides of Migration: Ethiopians Returning from Saudi Arabia' (2015) *African and Black Diaspora* 2.

<sup>170</sup> Clara Lecadet, 'The IOM's Crisis Management and the Expulsion of Ethiopians from Saudi Arabia' in Martin Geiger and Antoine Pécoud (eds), *The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan, 2021) 281.

<sup>171</sup> 'Ethiopian Migrant Workers Return from Saudi with Tales of Abuse' (12 December 2013) Bloomberg <<http://www.bloomberg.com/news/articles/2013-12-12/ethiopian-migrant-workers-return-from-saudi-with-tales-of-abuse>> accessed September 2024.

<sup>172</sup> Clara Lecadet, 'The IOM's Crisis Management and the Expulsion of Ethiopians from Saudi Arabia' in Martin Geiger and Antoine Pécoud (eds), *The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan, 2021) 278-279.

Moreover, IOM promoted the idea that migration is a temporary phenomenon, influencing the concept of ‘return’ with the idea that every migrant wants to return home. This culminated in the EU adoption of ‘common standards and procedures in Member States for returning illegally staying third-country nationals’<sup>173</sup>, which normalises deportation by implementing measures aimed at erasing the coercing aspect, such as IOM did in its operation. Once again, this approach does not address the diverse realities and complexities migrants face, reducing human rights considerations to simple procedural formalities and potentially undermining the goals of protection for migrant people<sup>174</sup>.

### 3.4. IOM’S RESPONSIBILITIES UNDER INTERNATIONAL LAW

#### 3.4.1. Evolution in the Accountability of IOs under International Law

Although it is a relatively new topic, the accountability of international organizations under international law has proved a challenging matter.

Since IOs were initially intended to engage with their member states, both legally and theoretically, a vacuum was drawn around the relationship between them and their member states. In this relationship, third parties were seen as the targets of the organizational activities of IOs, rather than as interlocutors or partners. Consequently, IOs were not considered to be held accountable, especially to these third parties. The only exception, even if not immediately related to third parties, was that member states could control their organization if the latter had acted *ultra vires* or violated some internal rules. According to that, if members together disapprove of an action of their IO, then the organization may be compelled to mend its ways.

This exception comes with two obvious drawbacks. First, to optimize its effectiveness, it is crucial that all the members must be on the same page. If even a single member state asserts that the organization conduct is improper, then control would be unattainable.

What can typically occur is that individual members try to exercise political pressure on the organization, by, for instance, ousting the DG, threatening to withdraw from the organization, withholding their contributions or not allowing staff or management into the country. When an

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<sup>173</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>174</sup> Clara Lecadet, ‘The IOM’s Crisis Management and the Expulsion of Ethiopians from Saudi Arabia’ in Martin Geiger and Antoine Pécoud (eds), *The New ‘UN Migration Agency’ in Critical Perspective* (Palgrave Macmillan, 2021) 278-279.

organization is heavily dependent on a single member state, as is the case with IOM and the United State, then this type of political weapon became extremely effective.

Secondly, this form of control still assumes the vacuum hypothesis by demonstrating the limited ability of third parties to advance their accountability claims. Given the assumed vacuum, if an IO breaches a treaty commitment or any other agreement towards a third party, it will not incur accountability. This lack of accountability arises from matters of immunities law, which allow IOs to invoke immunity for their acts. Furthermore, the legal system of IOs does not accommodate third parties, making accountability towards them elusive.

Unsurprisingly, the early academic attempts to address the accountability of IOs remained unsuccessful. The ones by Eagleton in the 1950s and by Ginther, and his concept of '*Durchgriffshaftung*', intended as the responsibility of member states for IO acts, shifted the focus to the potential liability of member states rather than the IOs themselves. The legal framework at the time could not conceive of IOs as independent entities accountable for their actions. This perception changed with the International Tin Council (ITC) litigation in the 1980s<sup>175</sup>, which underlined the inability of the legal system to hold IOs accountable when the ITC defaulted on its debts<sup>176</sup>. As a matter of fact, if IOs are distinct legal entities, also their accountability is distinct of that of their member states. Hence, member states could not be held accountable for the actions of their IOs.

As a result, legal scholars began investigating the accountability of IOs. Attempts were made in searching for administrative precepts which could also be applied to actions of the IOs. However, the Global Administrative Law (GAL) approach, the most preeminent among these, was criticized for its Western-centric view and its narrowness in addressing fundamental accountability issues.

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<sup>175</sup> The International Tin Agreement established the ITC in 1956, mainly to regulate the tin market and stabilize prices. In its operation, the ITC had a legal personality and enjoyed privileges, which allowed it to enter contracts as well as to engage in legal proceedings. Nonetheless, by the end of the 1980s, the ITC faced financial troubles and ultimately became insolvent. That led to a significant litigation which regarded its obligation and immunities under international law. The immunity of ITC complicates efforts by creditors to hold the ITC itself accountable for debts incurred during its operations, raising questions about the enforceability of international treaties for the responsibilities of IOs.

<sup>176</sup> Sandhya Chandrasekhar, 'Cartel in a Can: The Financial Collapse of the International Tin Council' (1989) 10 *Northwestern Journal of International Law & Business* 2.

Between 2001 and 2010, the ILC developed a regime on international legal responsibility of IOs: the Articles on the Responsibility of International Organizations, better known as ARIO<sup>177</sup>. This regime suggested that IOs should be held accountable of internationally wrongful acts if it respects two criteria, both already proven to be difficult to establish: if there has been a violation of international legal obligation incumbent on the organization that is attributable to the organization.

### 3.4.2. Challenges in holding IOs accountable: matters of Obligation and Attribution

Attributing the responsibility for breaching international obligations to IOs may have proven that difficult because the very term ‘accountability’ (and related terms as ‘liability’ and ‘responsibility’) already carries the suggestion that the organization has done something questionable: it already presupposes what needs to be proven, that IOs misconduct.

Moreover, also other questions regarding which standards are more relevant may arise. The ILC focuses on international legal obligations but, as in the specific case of IOM, different constituencies may rely on different standards or responsibility: donors and migrants have differing priorities, which also differ from those of member states and civil society organizations, making it difficult to determine whose preferences weight heavier.

Similarly, even if it is reasonable that IOs should be held responsible for misconduct, most of the times this ‘misconduct’ may lie in acts related to the job of the IOs. For instance, the organization can encounter, while performing a task, on other external standards which may not be bound as a matter of law. This could apply also to IOM, who has publicly stated to commit to human rights, unless one argues that the human rights are *jus cogens*. While this may be applicable to certain human rights standards, as for the prohibition of torture or the principle of non-refoulement, it's unlikely to be the case for most human rights norms, because many other human rights norms may not reach this threshold. Consequently, there arises a conflict of norms, which often poses complex challenges, even when previously external standards become internal rules. Frequently, these rules will need to be balanced against other international regulations.

Another scenario that poses unanswered questions could be where the IO causes damage without violating any international legal obligation.

However, the discussion on accountability reveals deeper ideological themes. Despite tensions between external standards and an organization's mandate, there's a tendency to prioritize the organization mandate. This bias stems from the belief that international cooperation is superior to non-cooperation, with soft law agreements preferred over nothing. As a result, international organizations are often shielded from scrutiny, viewed as vehicles for progress<sup>178</sup>.

Moreover, the principle that 'the end justifies the means' is particularly relevant in the context of IOs. Driven by their mandates, these entities are expected to achieve specific ends, even if it could involve collateral damage<sup>179</sup>. Also IOM benefits from the positive image of the international organizations, putting it less under scrutiny. This mindset contributes to the impossibility in holding international organizations accountable to third parties.

Moreover, also legal proceedings in domestic courts give IOs more immunity. Article 23 of IOM Constitution states that: “[t]he Organization shall enjoy such privileges and immunities as are necessary for the exercise of its functions and the fulfilment of its purposes<sup>180</sup>”, clarifying in the third paragraph of the cited article that those privileges and immunities “shall be defined” in agreement between the organization and the member states<sup>181</sup>. The wording of the last paragraph could imply that, in the absence of such agreements, there are no privileges and immunities, resulting contradictory to the first paragraph.

Therefore, assuming the absence of privileges and immunities suggests IOM may sometimes be impeded in its work, thus more detailed agreements will contribute to legal clarity.

An Italian case-law granting immunity to IOM seem to have rely on the first paragraph of Article 23 of IOM Constitution or on the customary grant of functional immunity of IOs. In the *Ferrini* litigation, which involved claims for reparations for World War II crimes, when some claimants

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<sup>178</sup> C M Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 *International and Comparative Law Quarterly* 850.

<sup>179</sup> Jens Steffek, *International Organization as Technocratic Utopia* (Oxford University Press 2021).

<sup>180</sup> *Constitution of the International Organization for Migration* (adopted 19 October 1953, entered into force 30 November 1954) art 23(1).

<sup>181</sup> *Constitution of the International Organization for Migration* (adopted 19 October 1953, entered into force 30 November 1954) art 23(3).

had sued the IOM seeking the termination of contracts they had entered with the IOM while applying for compensation from the German Foundation ‘Remembrance, Responsibility and Future’, the Tribunal of Turin granted immunity to the IOM. The court reasoned that, as an intergovernmental IO, IOM was entitled to immunity, further asserting that its activities under Germany’s reparation program were intrinsically connected to its institutional functions<sup>182</sup>.

The Tribunal of Turin granted the IOM a customary functional immunity, without examining whether any alternative remedies were available to the claimants in order to challenge the legality of the contracts, concluding with the remark that the plaintiffs were pursuing ‘a breach of contract claim against the IOM (not a claim for compensation for breach of *jus cogens*)’<sup>183</sup>.

In the 19<sup>th</sup> session of the SCPF of the 29<sup>th</sup> of September 2016, the DG called on Member States and Observer States for further agreements to clarify the privileges and immunities given to IOM<sup>184</sup>. Until the present time, ambiguity remains to the extent of the scope of those immunities.

Furthermore, IOs cannot be brought before the International Court of Justice or any other international tribunal, as only states can be parties to proceedings before the Court, making it more difficult to hold them accountable externally.

What endures at this point are internal mechanism that IOs rely on, as compliance mechanisms and ethics offices. However, these may not always align with international legal norms, as they usually test the organization activities according to some internal standards.

Moreover, the question that remain to be asked is how do IOs incur international legal obligation. In *WHO-Egypt Advisory Opinion* of 1980, the ICJ held that there are three different ways through which IOs incur international legal obligations: if the treaties they are part to bound them; their internal rules, that may reflect international law, and the ‘general rules of international law’.

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<sup>182</sup> *Allasio and ors v Germany, International Organization for Migration and ors* (Tribunal of Turin, 20 October 2009 No 7137), para 2.

<sup>183</sup> Ricardo Pavoni, ‘Italy’, in August Reinisch (ed), *The Privileges and Immunities of International Organizations in Domestic Courts* (Oxford University Press 2013) 162.

<sup>184</sup> Standing Committee on Programmes and Finance, Third Annual Report of the Director General on Improvements in the Privileges and Immunities Granted to the Organization by States (Nineteenth Session, 29 September 2016). IOM Doc. S/19/1.

If we focus on the first way in which IOs incur responsibility, namely through the violation of the treaties to which they are parties, it is important to note that among the various treaties concluded by IOs — such as headquarters agreements with host states or operational agreements for their spheres of activity — there is no involvement in multilateral treaties of a quasi-legislative nature. IOs, and so IOM as well, are neither party to human rights treaties, nor to humanitarian treaties or to environmental protection treaties. However, it is not uncommon for IOs to have internal instruments which reflect international law. In this regard, in 2013 the UN adopted a Human Rights Due Diligence Policy, which is ought to be respected by entities related to the UN, including IOM.

What is even more controversial however, is the reference made by the Court in *WHO-Egypt* to the ‘general rules of international law’, viewed by many as a reference to ‘customary international law’ and by others to the ‘secondary rules’, those who address the application of primary rules.

Attribution of responsibility is another challenge, as IOs often rely on member states for implementation and frequently collaborate with various actors in their activities. This interconnectedness makes it difficult to distinguish the responsibilities of different parties involved in an IO activity. An example is the long-lasting cooperation between IOM and UNHCR, with sometimes the involvement of other states or actors. Hence, it is sometimes difficult, if not impossible, to distinguish between the various participants to invoke responsibility.

### 3.4.3. Challenges in ARIO Application

ARIO, as already noted, requires a violation of an international legal obligation incumbent on the organisation and that violation is attributable to the organisation concerned. Both elements are almost impossible to reach alone, even more simultaneously.

Some scenarios seem to engage the responsibility of the organization concerned. In the case of IOM that could be a mistreatment of refugees by the staff running a refugee camp or similar settlements that will *prima facie* engage the organization’s responsibility.



However, scenarios are not unfolded that quickly and easily. ARIO's peculiarity is that its application is based on a classical international law perspective. Articles from 43 to 49 regulates about the possibility for invoking ARIO, limiting it solely to states and other IOs.

Thus, permitting organizations like IOM to make agreements with states or other organizations and be accountable for eventual breaches. ARIO in this way mirrors the classic international law, where claims are generally *inter-state* to those cases where private complaints come to be owned by the state of nationality of the complainant, integrating international organizations into this framework.

The key point missed in this perspective is that, in our current context, the most problematic situation is not merely whether the IOM breaches a treaty with a specific state. Instead, if IOM engages in the exercise of public authority — such as when it operates in a migration processing centre<sup>185</sup>.

In this, way too common, scenario, ARIO are found wanting, merely relying on the savings of Article 50 where is indicated that ARIO is 'without prejudice' to the entitlements private and legal persons may have to invoke ARIO, implying that ARIO retreats when most needed.

If an international organisation make a grievance against a private person, the latter must find another legal basis outside the ARIO to invoke responsibility. This is harmonious with article 33 of ARIO, which suggests that rights may accrue directly to individuals and legal persons. The office ARIO Commentary mentions obligations of international organizations arising out of employment, and the effects of peacekeepers breaches on individuals. However, this leaves out that there is no accountability system neither a judicial mechanism for the latter case, as international organization can quickly invoke immunity<sup>186</sup>.

Apart from the first assumption of ARIO, backed by a classical international law,

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<sup>185</sup> A von Bogdandy and M Steinbrück Platise, 'ARIO and Human Rights Protection: Leaving the Individual in the Cold' (2012) 9 International Organizations Law Review 67-76, available at Brill <https://doi.org/10.1163/15723747-00901014> accessed July 2024.

<sup>186</sup> A von Bogdandy and M Steinbrück Platise, 'ARIO and Human Rights Protection: Leaving the Individual in the Cold' (2012) 9 International Organizations Law Review 67-76, available at Brill <https://doi.org/10.1163/15723747-00901014> accessed July 2024.

which does not account for the public authority exercised by international organizations, there is another problematic assumption involving the issue of attribution, where responsibility for wrongful acts is divided among the actors involved.

Generally, ARIIO extensively addresses attribution, particularly in Articles 6 through 9, which attribute acts to the organizations themselves. Articles from 14 to 19 deal with ‘carved-up responsibility’, where an organization can be held responsible for aiding, assisting, directing, controlling, or coercing another entity in committing a wrongful act. This model suggests that responsibility can be dissected into smaller parts, with each actor responsible for their contribution.

Similarly, Articles from 58 to 63 address the partial responsibility of states for the acts of international organizations. These articles suggest that responsibility can be divided, avoiding shared responsibility by assigning specific parts to different actors.

In a literal sense, there is no ‘sharing’ of responsibility envisaged, as each participant can potentially be held responsible for its own contribution. In other words, a scenario in which IOM helps to run a detention center in Libya and is financed, in part, by the EU, would cause serious difficulties for how to break the wrongful act into manageable parts of activities that might incur the responsibility of every participant.

Hence, parcelled responsibility approach is not that realistic, having its philosophical roots in individualist and liberal principles where each actor is responsible for their actions. However, in practice, such clear divisions are often impractical, and this liberal approach can lead to the artificial assignment of tasks to different entities, complicating the determination of responsibility.

In conclusion, holding IOM accountable under international law is inherently challenging. This difficulty is not solely due to the scarcity of external accountability mechanisms but is deeply rooted in the foundational structure of international organisations law, which inherently resists accountability. This structure, defined by functionalist legal theory and privileges and immunities, creates a systemic incompatibility with accountability frameworks.

Traditional mechanisms, such as more rules, tribunals, or lifting immunity, are insufficient solutions. The problem requires a fundamental rethinking of IO law, recognising these entities as autonomous political actors to facilitate accountability to third parties.

Finally, changes in organisational culture could influence accountability. Organisations that foster a responsible mindset among their leadership and staff are more likely to act responsibly compared to those driven by a competitive or indifferent culture. This insight, drawn from business leadership studies, applies to global governance and organisations like the IOM.

### **3.5. POSSIBILITIES FOR IMPROVEMENT**

As demonstrated in the previous sections, IOM faces a major challenge in aligning its operations with member states' interests and human rights imperatives.

To address this challenge, IOM should adopt a framework integrating human rights imperatives into its decision-making processes. This framework would involve developing and implementing policies ensuring that migration management practices do not lead to human rights violations.

Moreover, a constitutional reform incorporating human rights obligations and humanitarian duties is essential for IOM to align itself with human rights standards better. IOM's constitution reflects a stance of deference to national migration control prerogatives, which can sometimes result in practices that contravene human rights norms<sup>187</sup>. This constitutional amendment could involve clarifying human rights obligations, explicitly stating the organisation's commitment to upholding human rights within its operational framework, institutionalising, and strengthening accountability mechanisms, and setting up independent oversight bodies to monitor the adherence to those standards. Ultimately, the focus of IOM's Constitution should be the respect for the human rights of the migrants as its primary objective, rather than merely serving the interests of the member states. In this way, human rights consideration would remain at the core of the mission of the Organisation<sup>188</sup>.

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<sup>187</sup> International Organization for Migration (IOM), "The Human Rights of Migrants," <[https://publications.iom.int/system/files/pdf/migrants\\_human\\_rights.pdf](https://publications.iom.int/system/files/pdf/migrants_human_rights.pdf)>

<sup>188</sup> International Organization for Migration (IOM), "Mainstreaming a Human Rights-Based Approach to Migration within High-Level Dialogue," <<https://www.iom.int/speeches-and-talks/mainstreaming-human-rights-based-approach-migration-within-high-level-dialogue>>

In light of the above considerations, IOM should move beyond its non-normative stance and embrace an active approach to safeguarding and promoting human rights<sup>189</sup>.

Moreover, while it may seem idealistic, organisational culture plays a primary role in influencing the approach to responsibility. An organisation that promotes a culture of integrity and accountability among its leadership and staff is more likely to act responsibly than one characterised by a harsh, competitive environment. For genuine progress in accountability, the IOM must undergo legal reform and cultivate an organisational *ethos* that prioritises ethical conduct and respect for human rights.

Even though the constitutional amendments suggested above could eventually facilitate improvements for IOM, more is needed to address the organisation's underlying issues.

The path to meaningful change requires a fundamental rethinking of IO law because the underlying legal framework has yet to support accountability to international organisations.

The prevailing 'vacuum assumption' established over a century ago makes discussions on IOs' accountability futile. Discussions can only gain traction when recognised as autonomous political entities within the legal system<sup>190</sup>.

### **3.6. POSSIBLE EVOLUTION OF IOM'S ROLE IN THE SHIFTING WORLD ORDER**

Initially, IOM was established as an organisation closely aligned with the United States and remained tied to US interests for many years, with its leadership typically held by American citizens. However, like the broader decline in US global leadership, that shift is likely reflected in the IOM's internal dynamics. The rise of China as a global economic power and its entry into the organisation in 2016<sup>191</sup> marks a radical shift, being a country interested in promoting its idea of global governance, particularly in fields tied to migration, namely security, humanitarian aid, and

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<sup>189</sup> Angela Sherwood, Isabelle Lemay, Cathryn Costello, *IOM's Immigration Detention Practices and Policies* (Cambridge University Press, 2024) <<https://doi.org/10.1017/9781009184175>> accessed September 2024.

<sup>190</sup> Klabbbers J, 'The (Possible) Responsibility of IOM under International Law' in Megan Bradley, Cathryn Costello, and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2021).

<sup>191</sup> International Organization for Migration (IOM) 2016. *International Organization for Migration Welcomes China's Application for IOM Membership*. <<https://www.iom.int/news/international-organization-migration-welcomes-china-application-iom-membership>>

development assistance. Henceforth, the collaboration between IOM and China will inevitably change the approaches to migration governance. Notably, the candidacy of Antonio Vitorino, the first non-American DG of IOM<sup>192</sup>, was strongly supported by China, signalling a symptom of the decline of US dominance over the organisation.

Over its nearly seventy-year existence, IOM has become, driven by increased conflicts, mass displacement, and globalisation, which amplified migration flows, the dominant global institution for managing migration issues<sup>193</sup>. Throughout these years, the political landscape structurally changed, and migration governance moved from being controlled by states to a regional, multilateral, global, and often privatised field of intervention<sup>194</sup>. Traditional migration governance frameworks, like the GCM and GCR, face challenges, particularly after the US withdrawal from GCM negotiations, another sign of the immediate, profound change in global migration management. Thus, there are increasing uncertainties about the future of international migration cooperation, also fuelled by the rise of populism, evidenced by events like the 2015–2016 European migration crisis, which has led many countries to adopt more restrictive migration policies<sup>195</sup>, further complicating efforts to establish binding global migration frameworks<sup>196</sup>.

IOM may become increasingly powerful as states, wary of committing to binding agreements, rely on it to manage migration flows. This trend could eventually lead IOM to take more restrictive roles, such as enhancing border security. The EU, which has outsourced much of its migration

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<sup>192</sup> International Organization for Migration, 'Antonio Vitorino Begins Term as IOM Director General' (IOM, 1 October 2018) <<https://www.iom.int/news/antonio-vitorino-begins-term-iom-director-general>> accessed September 2024.

<sup>193</sup> Martin Geiger, 'Possible Futures? The New 'UN Migration Agency' and the Shifting Global Order' in Martin Geiger and Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan 2020) 293.

<sup>194</sup> Geiger, M. 2013. *The Transformation of Migration Politics: From Migration Control to Disciplining Mobility*. In *Disciplining the Transnational Mobility of People*, ed. M. Geiger and A. Pécoud, 15–40. Basingstoke: Palgrave Macmillan.

<sup>195</sup> Hinte H and Oltmer J, 'European Asylum Policy Before and After the Migration Crisis' (IZA World of Labor, February 2019) <<https://wol.iza.org/uploads/articles/550/pdfs/european-asylum-policy-before-and-after-the-migration-crisis.pdf>> accessed September 2024.

<sup>196</sup> Martin Geiger, 'Possible Futures? The New 'UN Migration Agency' and the Shifting Global Order' in Martin Geiger and Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan 2020) 293.

management to IOM<sup>197</sup>, may strengthen Frontex, for instance, or maintain the *status quo*, with IOM playing a pivotal role in managing European external borders.

As the global order continues to shift, IOM's role in migration governance will remain critical, but further research is needed to understand its evolving impact on international migration management<sup>198</sup>.

### 3.7. CONCLUSION

The third chapter has critically examined IOM's responsibility under International Law. In the first two sections, assessing IOM's human rights obligations and the potential disrespect of those in IOM's operations highlighted achievements and shortcomings. While notable advancements, such as implementing Article 2(5) of the UN-IOM Agreement, challenges remain in ensuring robust accountability mechanisms, calling for continued efforts to enhance its human rights framework and mechanisms.

Accountability within IOM is a complex and multifaceted theory encompassing internal and external oversight frameworks to ensure transparency and integrity in its operations. The third section explored the legal and structural obstacles to holding IOM, as an international organisation, accountable for wrongful acts under international law.

Specifically, it examines the barriers posed by immunity protections, the complex and fragmented nature of responsibility, and the limitations of existing international legal frameworks, such as the ILC Articles on the Responsibility of International Organization (ARIO), in holding IOs accountable.

Looking ahead, the chapter finally suggested further possibilities of improvement for the Organisation and analysed its possible future development in a changing global landscape.

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<sup>197</sup> International Organization for Migration, 'South-Eastern and Eastern Europe' (Global Office Brussels) <<https://globalofficebrussels.iom.int/south-eastern-and-eastern-europe>> accessed September 2024.

<sup>198</sup> Martin Geiger, 'Possible Futures? The New 'UN Migration Agency' and the Shifting Global Order' in Martin Geiger and Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan 2020) 293.

## CONCLUSION

Amidst the landscape of migration as one of the most pressing global issues, the International Organisation for Migration has emerged as the critical player, navigating between state sovereignty, geopolitical tensions, and the protection of people on the move. This thesis aimed to critically examine the role of IOM within the broader framework of international migration law, unfolding significant gaps in the institutional structure and legal framework in ensuring the organisation's accountability and responsibilities.

The first introductory chapter traced the evolution of IOM from an organisation established after the Second World War to a pivotal player in international migration governance. Its mandate grew increasingly complex, especially after its affiliation with the UN after the 2016 Cooperation Agreement.

The second chapter explored the institutional and legal frameworks that govern IOM, highlighting its adapting Constitution, decentralised structure, and role of state sovereignty. IOM still lacks robust mechanisms to ensure the prioritisation of the rights of the migrants over the interests of the member states. Even more alarmingly, IOM's project-based funding and cost-benefit approach sideline human rights in favour of economic demands.

The last chapter got to the heart of human rights obligations and accountability and responsibility gaps. Despite operating in the 21<sup>st</sup> century — when human rights should be a cornerstone of any international organisation — IOM falls short in this subject. The Nauru and Manus Island Processing Centres and the expulsion of Ethiopians from Saudi Arabia's case studies underscored IOM's absurd complicity in human rights violations.

Moreover, this thesis, which focused on IOM's responsibilities under international law, argued that the lack of accountability is not solely a bureaucratic oversight of the individual organisation but a broad flaw in the international law system. The inability to hold IOM — as well as any other IO — accountable for its human rights violations needs to be urgently addressed, as ARIO and the different accountability mechanisms mentioned in this thesis are limited in their scope and enforcement.

IOM's failure to prioritise human rights and lack of an effective accountability mechanism present different shortcomings: the Organisation risks perpetuating a system where migrants are left unprotected in the spaces established to support them.



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