
Who and What Is IOM For? The Evolution of IOM's Mandate, Policies, and Obligations

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2.1 Introduction

As with many other international organizations (IOs), the mandate and obligations of the International Organization for Migration (IOM) have changed considerably over time. Under its Constitution, IOM's explicit obligations are to its member states, rather than to migrants themselves; the organization has no formal mandate to protect migrants' rights. Its institutional features, in particular its dependence on project-based funding, marked deference to governments and involvement in some 'migration management' initiatives that sit in tension with human rights standards, raise concerns about IOM's obligations and accountability. These concerns are heightened as its profile and power in the international system have grown in recent decades.¹

Integrating legal analysis and insights from international relations (IR) scholarship on the study of IOs, this chapter provides an introduction to the evolution of IOM's mandate and institutional obligations since its creation in 1951, as a foundation for examining the agency's accountability – a task taken up in more detail by other contributors to this volume. Much of the scholarly literature on IOM portrays the organization as devoid of normative obligations and available to unquestioningly advance states' interests in controlling migration, however nefariously.² Many critics charge that 'IOM is indeed not bound by the human rights frameworks that form the basis of the UN's work,' and suggest that the 'underlying issue' that drives IOM's engagement in risky and normatively vexed work such as returning migrants to insecure states is that 'IOM

¹ Megan Bradley, 'The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime' (2017) 33(1) *Refuge: Canada's Journal on Refugees* 97.

² See eg 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).

has no “protection mandate.” Being situated outside the UN system, it is not committed to international human rights law.³ This chapter paints a more complex picture, considering IO mandates and obligations as both a legal *and* political matter. It charts how IOM’s mandate and conceptions of its obligations – legal and political – have shifted inside and outside the organization.⁴ In particular, it examines these changes in relation to IOM’s identity as a ‘multi-mandated’ organization involved in humanitarian aid, development interventions and migration governance efforts, and its creation over the past two decades of a significant set of internal policies, frameworks and guidelines informing its work. Without minimizing the significant gaps and opacity that remain, the chapter explores changes in the organization’s perceived purpose and obligations over time, expanding ideas about who and what IOM is for. IOM has gradually transformed from a logistics agency strapped to US interests to a global organization serving more diverse member states, with a still nascent but growing sense of its obligations, not only to states but also to people on the move – changes that have ultimately advanced IOM’s efforts to secure its own position and accrue more influence in the international system.⁵ Analyses of IOM and its roles in global governance must grapple with these developments, and critically assess their implications.

The chapter begins by situating this discussion in relation to analyses of IO mandates and obligations more generally. It then examines historical developments in IOM’s formally articulated mandate and obligations, focusing on the Brussels Resolution through which the agency was originally established, and the revamping of its Constitution in 1987.⁶

³ Antoine Pécoud, ‘What Do We Know about the International Organization for Migration?’ (2018) 44 *Journal of Ethnic and Migration Studies* 1621, 1625, 1632.

⁴ That is, the chapter examines how notions of IOM’s formal legal responsibilities have changed, as well as the ways in which shifting conceptions of IOM’s mandate and obligations are manifested in broader policy frameworks and in the political positions of key players including the IOM bureaucracy and member states. The chapter thus has implications for understanding legal accountability in relation to IOM, and more wide-ranging political and advocacy efforts to hold IOM to account for its commitments.

⁵ On these themes, see also Bradley, ‘The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime’ (n 1); Megan Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (Routledge 2020).

⁶ ‘Resolution to Establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe’ (Meeting of the Migration Conference, Brussels, 5 December 1951) <https://governingbodies.iom.int/sites/g/files/tmzbdll421/files/council_document/0%20-%20Resolution%20to%20establish%20a%20Provisional%20Intergovernmental%20Committee%20for%20the%20Movement%20of%20Migrants%20from%20Europe%20%28headed%29.pdf> accessed 10 May 2022.

The chapter then maps out key shifts in conceptions of IOM's roles and responsibilities, as manifested in its own policies, examining how, as internal rules, these standards strengthen IOM's formal institutional obligations, particularly vis-à-vis protection.⁷ Last, it draws on the IR literature on IO legitimacy and legitimation to help explain these shifts, and reflects on the implications of this analysis. In developing this account, the chapter draws on archival research and findings from a set of 70 in-depth interviews undertaken between 2015 and 2021 with IOM officials, member state representatives, UN agency staff, human rights advocates, NGO aid workers and independent experts.⁸

2.2 Interpreting IO Mandates and Obligations: Political and Legal Perspectives

Some scholarship on IOM proceeds from the legally incorrect premise that the organization's mandate and obligations are fully encapsulated in the IOM Constitution, and that to understand its responsibilities and the challenges posed by its role in the global governance of migration, one need look no farther than this rather peculiar document. Legally, however, neither IOs' mandates nor their obligations are reducible to the parameters of their constituent instruments. As the International Court of Justice (ICJ) recognized 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.'⁹

⁷ This discussion is broadly informed by the Inter-Agency Standing Committee (IASC) definition of protection as 'all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. International Human Rights Law (IHRL), International Humanitarian Law, International Refugee Law (IRL)).' While the chapter focuses primarily on human rights obligations, it also addresses humanitarian principles and obligations stemming from them. In taking this approach, the chapter builds on the recognition that humanitarianism and human rights protection are intertwined, but not identical, endeavours. However, clear commitments to rights protection are increasingly integral to claiming moral authority on humanitarian grounds. See IASC, 'IASC Policy on Protection in Humanitarian Action' (2016) <www.globalprotectioncluster.org/_assets/files/tools_and_guidance/IASC%20Guidance%20and%20Tools/iasc-policy-on-protection-in-humanitarian-action.pdf> accessed 10 May 2022; Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (Cornell University Press 2011) II.

⁸ Key themes from these interviews were distilled through a grounded coding process. To facilitate open discussion of potentially sensitive institutional concerns, interviewees' identifying details have been removed. Archival research was conducted at UN Headquarters and the US National Archives and Records Administration.

⁹ *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174.

Building on this view, the International Law Commission (ILC) defines IO constitutions broadly, as ‘the constituent treaty together with the rules in force in the organization.’¹⁰ Constitutional developments often do not involve formal revisions to IOs’ founding treaties or other constituent instruments, but instead unfold through IOs’ policies and practices and the ongoing interpretation of their constitutive instruments, particularly through the work of their governing bodies.¹¹ As Schermers and Blokker put it, most IOs have ‘a “constitution,” the interpretation of which changes with the development of society.’¹² As bureaucracies, IOs themselves shape this ongoing process of interpretation, helping to underpin their governance ambitions.¹³

Every IO has a ‘legal order’¹⁴ – even IOM, notwithstanding its vague Constitution and traditional ‘cowboy’ reputation. An IO’s rules include its ‘constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization.’¹⁵ If the constitution is ‘the skeleton of the legal order of an international organization, its decisions are its flesh and blood.’¹⁶ IOs’ constituent treaties typically empower the organization to develop more detailed rules needed for it to work. IOs’ internal rules may address a wide range of issues including governance procedures, the creation of subsidiary organs and delegation of tasks to them, budget, finance and administration, as well as an IO’s operational activities and field of responsibility – issues of particular

¹⁰ 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.

¹¹ Schermers and Blokker (n 10) 954.

¹² Schermers and Blokker (n 10) 734.

¹³ On the evolution of IO mandates and disjunctures between formal legal mandates and the politics of IO practice, see e.g. Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Cornell University Press 2004); Guy Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (Oxford University Press 2017); Niels M Blokker, ‘The Governance of International Courts and Tribunals: Organizing and Guaranteeing Independence and Accountability’ in Andreas Føllesdal and Geir Ulfstein (eds), *The Judicialization of International Law: A Mixed Blessing?* (Oxford University Press 2018).

¹⁴ Schermers and Blokker (n 10).

¹⁵ Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (adopted 21 March 1986, not yet in force) Art 2.1 (j); see also ‘ILC Articles on the Responsibility of International Organizations’ annexed to UNGA Res 66/100 (27 February 2012) UN Doc A/RES/66/100 (ARIO) Art. 2(b) 20.

¹⁶ Schermers and Blokker (n 10) 723.

importance to this discussion.¹⁷ Understanding IOM's internal legal order thus requires looking not only at the IOM Constitution, but also at the resolutions of the IOM Council (IOM's governing body) and decisions of organs such as the Standing Committee on Programmes and Finance, particularly those pertaining to the interpretation of the Constitution and the development and adoption of new policies and frameworks intended to guide its work. It additionally requires examination of important agreements IOM has entered into, such as the 2016 Agreement concerning the Relationship between the United Nations and the International Organization for Migration.¹⁸ Beyond their constitutions and internal rules, IOs also have obligations under general rules of public international law, which arguably include customary international law.¹⁹ Although there is considerable debate over the implications of customary international law for IOs, *jus cogens* norms such as the prohibition of torture and non-refoulement of individuals at risk of torture are 'utterly binding for all subjects of international law,' including IOs, a position that is well-established in international jurisprudence.²⁰

In interpreting IOM's mandate and obligations, particularly from a political or operational perspective, its identity as a 'multi-mandate' organization is especially significant. 'Multi-mandate' is not a legal term of

¹⁷ Schermers and Blokker (n 10) 756–757, 761. Under the principle of speciality of international organizations, the scope of internal rules is limited in that an IO 'may not extend its activities beyond the competences conferred upon it (explicitly or implicitly) by its founders.' See Pierre Klein, 'International Organizations or Institutions, Internal Law and Rules,' *Max Planck Encyclopedia of Public International Law* (2019) <<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e503?prd=MPIL>> accessed 10 May 2022. However, as IOs take significant latitude in interpreting which competencies have been conferred upon them, in practice their internal rules often broach a wider range of issues than would be assumed based on a narrow reading of constituent instruments.

¹⁸ UNGA Res A/70/296, 'Agreement concerning the Relationship between the United Nations and the International Organization for Migration' (25 July 2016) UN Doc A/RES/70/296.

¹⁹ For varying perspectives on the applicability of customary international law to IOs generally and IOM particularly, see Jan Klabbers, 'The (Possible) Responsibility of IOM under International Law', Stian Øby Johansen, 'An Assessment of IOM's Human Rights Obligations and Accountability Mechanisms' and Geoff Gilbert, 'The International Organization for Migration Humanitarian Scenarios' 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 2023).

²⁰ Vincent Chetail, 'The International Organization for Migration and the Duty to Protect Migrants: Revisiting the Law of International Organizations' in Jan Klabbers (ed), *The Cambridge Companion to International Organizations Law* (Cambridge University Press 2022) 261; Klein (n 17) 3.

art, yet it is a vital concept in terms of understanding the different roles assigned to IOs, and the tensions that can arise between them.²¹ Different global governance fields are underpinned and legitimized by particular principles and practices, some of which can conflict with one another; this is most obvious when an IO's work straddles humanitarianism and other sectors such as development. Single-mandate humanitarian organizations such as the World Food Programme focus on providing life-saving aid, whereas multi-mandated agencies such as UNICEF are involved in humanitarian assistance as well as development efforts. Single-mandate humanitarian agencies are often sceptical of close cooperation with national authorities, whereas this is integral to the *modus operandi* of most development actors.²² While humanitarian narratives often present multi-mandated organizations as deviant, such actors are hardly exceptional, with UNICEF again serving as a case in point.²³ Juggling different elements of organizational mandates is a common concern and a defining challenge for IOM, as its work on migration straddles the humanitarian and development sectors, as well as related fields such as security. It is, however, rarely concertedly analysed as a multi-mandate actor.

2.3 IOM's Establishment and Constitutional Developments

According to the 1996 ICJ Nuclear Weapons Advisory Opinion, IOs' constituent instruments are, generally speaking, 'treaties of a particular type; their object is to create new subjects of law endowed with a certain autonomy, to which the parties entrust the task of realizing common goals.'²⁴ IOM is often assumed to have little by way of autonomy or obligations,

²¹ On IO's efforts to legitimize themselves as they navigate such tensions, see e.g. Sarah von Billerbeck, "'Mirror, Mirror on the Wall": Self-Legitimation by International Organizations' (2020) 64 *International Studies Quarterly* 207; Sarah von Billerbeck, 'No Action without Talk? UN Peacekeeping, Discourse, and Institutional Self-Legitimation' (2020) 46 *Review of International Studies* 477.

²² On multi-mandated actors, see e.g. Dorethea Hilhorst and Eline Pereboom, 'Multi-Mandate Organisations in Humanitarian Aid' in Zeynep Sezgin and Dennis Dijkzeul (eds), *The New Humanitarianism in International Practice: Emerging Actors and Contested Principles* (Routledge 2017) 85–102; Hugo Slim and Miriam Bradley, 'Principled Humanitarian Action & Ethical Tensions in Multi-Mandate Organizations in Armed Conflict' (World Vision 2013) <https://interagencystandingcommittee.org/system/files/legacy_files/Slim,%20WV%20Multi-Mandate%20Ethics%20FinalDraft.pdf> accessed 10 May 2022. Although much of the scholarship on multi-mandated agencies focuses on NGOs, similar challenges face multi-mandated IOs.

²³ Hilhorst and Pereboom (n 22) 85–86.

²⁴ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226.

given its vague constitutional mandate, lack of a formal protection role, dependence on project-based funding, and tradition of pronounced deference to its member states. Yet, as an IO with legal personality under its Constitution, IOM, like other IOs, has the ‘capacity to have rights and obligations of its own.’²⁵ And, again like other IOs, the formal parameters of its mandate have evolved since the organization was established in 1951 as the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME). This evolution reflects, in part, the agency of the organization and its staff, who have, over the decades, pushed to make the institution permanent and expand its geographic remit and the range of activities it undertakes. Similar processes have unfolded at other IOs, including those working in the field of human mobility.²⁶ Recognizing this agency is essential to any serious, politically engaged and empirically grounded conversation about IOM’s obligations and accountability as an IO. If the organization were nothing more than an automaton robotically serving states, then it would be fruitless to critique IOM’s own interpretation of its mandate and obligations, including to migrants themselves. Instead, this conversation could only usefully be had with its member states.

After World War II, millions of people were uprooted across Europe, while scores more were impoverished and unemployed, with little prospect of making a living in their communities. Western governments – particularly the United States – were concerned that these populations would be hotbeds for Communist infiltration, and believed international cooperation was needed to support the resolution of Europe’s displacement and perceived ‘surplus population’ problem, including through migration to states in need of labour. Created in 1946, the International Refugee Organization (IRO) facilitated the resettlement of more than a million refugees from post-war Europe, but by the early 1950s it had come to be seen by its main benefactor, the United States, as costly, inefficient and insufficiently attuned to US foreign policy priorities, and was slated to close.²⁷ Although the International Labour Organization (ILO)

²⁵ Schermers and Blokker (n 10) 950. For analysis of the significant structural limitations of international organizations law vis-à-vis attempts to identify and advance the responsibility of IOs, particularly in relation to human rights and humanitarian norms, see Klabbers, ‘The (Possible) Responsibility of IOM under International Law’ (n 19).

²⁶ On the evolution of UNHCR’s mandate, see e.g. Gil Loescher, *The UNHCR in World Politics: A Perilous Path* (Oxford University Press 2001); On the evolution of UNRWA’s mandate, see e.g. Lance Batholomeusz, ‘The Mandate of UNRWA at Sixty’ (2010) 28 *Refugee Survey Quarterly* 452.

²⁷ Loescher (n 26) 41–43.

attempted to take over from the IRO as the main IO working on migration and displacement, their efforts were torpedoed by the United States at the ILO's 1951 Naples Migration Conference.²⁸ (UNHCR had been created in 1950, but as a protection-focused agency without operational capacities.) Washington hastily convened the Brussels Conference of 1951, where PICMME was created with the express purpose of taking over the IRO's operational activities and assets, including its fleet of ships.

Drafted by the United States, the Brussels Resolution formally established PICMME, setting it outside the framework of the United Nations, and specifying that membership was limited to 'democratic governments' with 'a demonstrated interest in the principle of the free movement of persons.'²⁹ These provisions effectively excluded Communist states, and were essential to meeting the demand of the US Congress at the time that any IO working on migration and displacement issues and receiving American financing could not have Communist members – a position that initially impeded UNHCR taking on significant operational roles.³⁰ Signed by 16 states, the Brussels Resolution articulated PICMME's functions, indicating in Article 2 that the organization was

[T]o 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 immigration, consistent with the policies of the countries concerned.³¹

Article 4 of the Resolution stresses, 'among the migrants with whom the Committee will be concerned are included ... refugees for whom

²⁸ Rieko Karatani, 'How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins' (2005) 17 *International Journal of Refugee Law* 517; 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; Megan Bradley and others, 'Whither the Refugees? International Organizations and "Solutions" to Displacement, 1920–1961' (2022) *Refugee Survey Quarterly* <<https://doi.org/10.1093/rsq/hdac003>> accessed 10 May 2022.

²⁹ 'Resolution to Establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe' (n 6); Karatani (n 28) 537.

³⁰ Elie (n 28) 350; Susan Martin, *International Migration: Evolving Trends from the Early Twentieth Century to the Present* (Cambridge University Press 2014) 125. This US position initially impeded UNHCR taking on significant operational roles.

³¹ 'Resolution to Establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe' (n 6) Article 2. The original signatories 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.

migration arrangements may be made between the Committee and the governments of the countries affording asylum.³² The Committee's mandate was geographically focused on the movement of people from Europe, and was set to expire within one year. While the fundamental aim was to enable migration that otherwise would not happen by setting up transportation, the signatories did not rule out PICMME's provision of other, related services, such as language training and settlement support.³³ Strikingly, although the Brussels Resolution does not explicitly mention protection, its preamble stresses that the aim of intergovernmental cooperation through PICMME is to move migrants 'to overseas countries where their services can be utilized in conformity with generally accepted international standards of employment and living conditions, with full respect for human rights.'³⁴ This acknowledgement of employment and human rights standards did not appear in the Constitution adopted by the organization's members only a few years later.

The first meeting of the PICMME governing Council occurred immediately on the heels of the Brussels Conference. Efforts immediately began to alter the new organization's mandate, in particular by extending its operations beyond one year; however, the majority of member states concurred that PICMME needed to demonstrate its utility, efficiency and logistical capacity before any extension could be approved.³⁵ PICMME proved its ability to move large numbers of migrants in short order on a limited budget, and its timeline was extended. Meanwhile, the United States led the drafting of a Constitution for the new agency, which changed its name in 1952 to the Intergovernmental Committee for European Migration (ICEM).³⁶

³² Ibid, Article 4.

³³ Richard Perruchoud, 'From the Intergovernmental Committee for European Migration to the International Organization for Migration' (1989) 1 *International Journal of Refugee Law* 501, 504.

³⁴ 'Resolution to Establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe' (n 6) Preamble.

³⁵ US Department of State, 'Confidential Report on the Conference on Migration Held at Brussels, Belgium from November 26 through December 5, 1951 and the Sessions of the Provisional Intergovernmental Committee for the Movement of Migrants from Europe Held at Brussels from December 6 through December 8, 1951' (January 1952) <<https://history.state.gov/historicaldocuments/frus1951v04p1/d83>> accessed 10 May 2022.

³⁶ On the early history of ICEM, see Lina Venturas (ed), *International 'Migration Management' in the Early Cold War: The Intergovernmental Committee for European Migration* (University of the Peloponnese 2015). On IOM's involvement in colonial migration projects, see Megan Bradley, 'Colonial Continuities and Colonial Unknowing in International Migration Management: The International Organization for Migration Reconsidered' (2022) *Journal of Ethnic and Migration Studies*.

ICEM's first director, Hugh Gibson, consulted with UN Secretary General Dag Hammarskjöld on the draft Constitution, which posed concerns for the UN, given, in Hammarskjöld's words, 'the danger of duplication and overlapping arising out of the growth of activities of non-United Nations organizations,' particularly in relation to 'the refugee problem.'³⁷ Before the Constitution was adopted, and despite clear resistance from ICEM's own member states, senior ICEM officials met with UN leaders to explore 'the possibility of more formal relationships between ICEM and the UN,' and 'promot[ing] a movement within ICEM to request Specialized Agency status with the United Nations or some special form of relationship, giving ICEM United Nations recognition and standing.'³⁸ However, in the assessment of senior UN staff, this would be unlikely and undesirable in light of the 'difficulty of reconciling the [draft] ICEM constitution with the UN Charter, [and] the political objections that would no doubt arise from certain quarters.'³⁹ These 'political objections' were a veiled reference to the exclusive character of ICEM membership. Adopted on US insistence, ICEM's policy of excluding Communist countries reflected the deployment of US refugee and migration policy as a plank in its broader, anti-Communist foreign policy agenda. Whereas the USSR insisted that those who remained displaced in Europe should be repatriated (even involuntarily) and attempted to block emigration from Eastern Europe, western powers favoured resettlement and sidestepped Soviet interference in this process by establishing ICEM outside the UN.

ICEM's Constitution was adopted on 19 October 1953 and came into force on 30 November 1954, preserving the exclusion of Communist countries and entrenching the committee's position outside the UN. As articulated in the 1953 ICEM Constitution, the organization's central objective was

[T]o promote the increase of the volume of migration from Europe by providing, at the request of and in agreement with the Governments concerned, services in the processing, reception and first placement of migrants which other international organizations are not in a position to supply, and such other assistance to this purpose as is in accord with the aims of the Committee.⁴⁰

³⁷ 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.

³⁸ Letter from Martin Hill to UN Secretary General Dag Hammarskjöld, 4 August 1953, UN Headquarters Archives File #391 ICEM, S-0369-0030-06; Megan Bradley, 'Joining the UN Family?: Explaining the Evolution of IOM-UN Relations' (2021) 27 *Global Governance* 251.

³⁹ *Ibid.*

⁴⁰ ICEM Constitution (adopted 19 October 1953, entered into force on 30 November 1954), Article 1.1 (b).

ICEM and its member states understood the Brussels Resolution to establish and underpin a multi-mandate organization straddling humanitarian and development aspects of migration. Reflecting on the organization's first twenty years, Director General John Thomas wrote in 1971 that ICEM's 'founding fathers had two motivations, the one humanitarian on behalf of refugees, the other economic on behalf of nations, but there was no strict dividing line between the two.'⁴¹ This framing suggests that even at its founding, IOM was invested in the notion that the rights and interests of states and individuals can be advanced in tandem, glossing over the ways in which these often conflict. Like the Brussels Resolution, the Constitution indicated that the Committee was to work with migrants and refugees, but did not define either group. Over its first decades of work, the ICEM Council extended the organization's lifespan, the regions in which it worked and the range of activities undertaken, all without formal constitutional modifications.⁴²

In the late 1970s, ICEM faced diminished budgets and institutional decline. Its traditional lines of work dried up as emigration from Europe dwindled, and those migrating did not require the assistance of an international organization. Stretching beyond its mandated focus on Europe, ICEM sustained itself through involvement in various humanitarian operations, but its role in these situations was sometimes questioned owing to its rather esoteric formal mandate and its position outside the UN. ICEM's leadership began to agitate for constitutional changes that could place the organization on stronger footing as it competed for resources and influence. ICEM brought together a group of legal experts to prepare a report entitled 'Suggestions for amendments to the Constitution of the Intergovernmental Committee for European Migration,' which was circulated to member states in advance of the 39th session of the ICEM Council in 1976.⁴³ This report argued that new needs had emerged which differed from those facing the international community when ICEM was

⁴¹ John Thomas, 'ICEM, Yesterday, Today and Tomorrow' in ICEM (ed), *Twenty Years Dedicated to the Free Movement of People* (ICEM 1971) 166.

⁴² See Christian Kreuder-Sonnen and Philip M Tantow, 'Crisis and Change at IOM: Critical Juncture, Precedents and Task Expansion' 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 2023) for an account of how, in more recent decades, IOM has steadily expanded its range of operations, particularly in humanitarian response.

⁴³ ICEM, 'Suggestions for amendments to the Constitution of the Intergovernmental Committee for European Migration' (1976) MC/1135.

created; these 'new needs were essentially humanitarian and called for services that no other organization could provide, but meeting them often meant relying on the good will of Governments to accept a liberal interpretation of the ICEM Constitution, respecting the spirit rather than the letter of its provisions.'⁴⁴ In line with this report, the ICEM leadership brought to the Council 'suggestions relating to possible changes in the Constitution,' which would facilitate bringing new members into the organization; they urged constitutional revisions to describe 'in detail ICEM's purposes and functions so that there would no longer be any question about the legal aspects of its intervention when ICEM was called upon to help in emergencies; dropping the word "European" from its name, and generally strengthening the organization.'⁴⁵ Yet ICEM's member states kyboshed the prospect of renegotiating the Constitution, suggesting that it would be a cumbersome process detracting from more urgent practical matters and the organization's traditional logistical strengths. In public comments at ICEM Council sessions, they also slapped the Director General's wrists for initiating the experts' review without first consulting the member states.⁴⁶

2.3.1 *Constitutional Amendments*

Having been forcefully rebuffed by the member states, the organization's leadership let the question of revamping the Constitution rest for several years before relaunching the conversation in the 1980s, in a process that led to the entry into force in 1989 of a new Constitution and a new name: the International Organization for Migration.⁴⁷ Within the organization, this process was seen as a matter of bringing the Constitution into alignment with the roles it had already assumed in practice⁴⁸ – a view that reflects

⁴⁴ Report of the 39th session of the Council of the Intergovernmental Committee for European Migration, MC/1154, 10 March 1976. The IOM Migration Crisis Operational Framework reflected a similar rationale. IOM Council, 'Migration Crisis Operational Framework' (15 November 2012) IOM Doc MC/2355.

⁴⁵ Report of the 39th session of the Council of the Intergovernmental Committee for European Migration (n 44).

⁴⁶ *Ibid.*, pp. 18–20.

⁴⁷ Over the course of the 1980s, the agency sustained itself through involvement in activities such as refugee resettlement and, increasingly, repatriation operations; in 1981 it had 29 members, growing to 35 by December 1989. Marianne Ducasse-Rogier, *The International Organization for Migration, 1951–2001* (International Organization for Migration 2002) 70–74.

⁴⁸ Perruchoud (n 33) 508–509.

IOM's longstanding entrepreneurial, expansionist ethos and a perception of legal standards as malleable rather than fixed.⁴⁹

Perruchoud argues that the 'ultimate goal' of the constitutional revisions was 'undoubtedly to put the Organization in a position to meet the challenges in the field of international migration, and to provide an adequate legal framework within which to respond to contemporary and future trends and needs.'⁵⁰ The adequacy of this framework has, however, been pointedly questioned as it omits direct reference to migrants' rights, protection, or humanitarian principles.⁵¹ The revised Constitution retains the notion that members should have 'demonstrated interest in the principle' if not the practice 'of free movement of persons' and keeps states firmly at the centre of migration decision-making, indicating that the 'Organization shall recognize the *fact* that control of standards of admission and the number of immigrants to be admitted are matters within the domestic jurisdiction of States, and, in carrying out its functions, shall conform to the laws, regulations and policies of the States concerned.'⁵²

Indeed, IOM's fundamental obligations under its Constitution are to its member states, with Article 1.1 laying out the organization's mandate. It provides that:

The purposes and functions of the Organization shall be:

- (a) to make arrangements for the organized transfer of migrants, for whom existing facilities are inadequate or who would not otherwise be able to move without special assistance, to countries offering opportunities for orderly migration;
- (b) to concern itself with the organized transfer of refugees, displaced persons and other individuals in need of international migration services for whom arrangements may be made between the Organization and the States concerned, including those States undertaking to receive them;

⁴⁹ Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 5).

⁵⁰ Perruchoud (n 33) 508–509.

⁵¹ Significant external critiques of IOM's legal framework emerged in the 1990s as it began to play larger roles in contested areas such as returns. Amongst IOM member states and senior officials, reflections on the inadequacies of the organization's legal framework have gained pace more recently, as it has started to take on increasingly prominent operational and coordination roles.

⁵² 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) (emphasis added).

- (c) to provide, at the request of and in agreement with the States concerned, migration services such as recruitment, selection, processing, language training, orientation activities, medical examination, placement, activities facilitating reception and integration, advisory services on migration questions, and other assistance as is in accord with the aims of the Organization;
- (d) to provide similar services as requested by States, or in cooperation with other interested international organizations, for voluntary return migration, including voluntary repatriation;
- (e) to provide a forum to States as well as international and other organizations for the exchange of views and experiences, and the promotion of cooperation and coordination of efforts on international migration issues, including studies on such issues in order to develop practical solutions.⁵³

Thus articulated, IOM's mandate is in some ways highly specific yet also remarkably vague. IOM sees its Constitution as 'permissive': that is, it identifies some of the activities it may undertake and points to or implies some of the sectors in which the organization may work, but the list is not exhaustive. Similarly, the Constitution identifies (but does not define) some of the groups with whom IOM may work, such as refugees and displaced persons, but IOM is not limited to interacting only with these groups.⁵⁴ While the ICEM Constitution mandated the organization to actively *promote* migration, the 1989 Constitution removes migration promotion from IOM's formal remit.⁵⁵ IOM has taken significant latitude in interpreting its Constitution, suggesting, for example, that the provisions of Article 1 bestow on IOM a humanitarian mandate – an interpretation accepted by its member states in several IOM Council resolutions.⁵⁶ It has also suggested that the Constitution sows the seeds for IOM involvement in the protection of migrants. This is a more controversial interpretation but one that, Chetail argues, is in line with the doctrine of implied powers, which suggests that every IO 'possesses implied powers that are additional to those explicitly granted by its constituent instrument and essential to fulfilling the purposes and functions of the

⁵³ IOM Constitution (n 52) Article 1.1.

⁵⁴ Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 5) 8.

⁵⁵ Perruchoud (n 33) 512.

⁵⁶ IOM Council, 'Migration Governance Framework Resolution' (4 December 2015) Resolution No. 1310 (C/106/RES/1310); IOM Council, 'Migration Crisis Operational Framework' (n 44).

organization.⁵⁷ On this view, IOM is mandated to assist migrants, and assistance worthy of the name must involve protection.⁵⁸ Yet even if this interpretation is accepted, in fundamental ways the IOM Constitution remains a throwback:

The loosely defined terms of its mandate has created a hiatus, if not a gulf, between what IOM can do and what it must do ... The deafening silence of the IOM Constitution about the protection of migrants and their human rights is, indeed, astonishing. It is a historical anomaly that is no longer compatible with the profound transformation of IOM, its new responsibilities as a UN-related organization and, more broadly, the renewed commitment towards the human rights of migrants as acknowledged in the Global Compact for Migration.⁵⁹

The doctrine of implied powers establishes that IOM can appropriately involve itself in migrant-protection efforts. However, the doctrine of implied powers arguably cannot, on its own, undergird a binding obligation for IOM to undertake positive actions to protect migrants' rights, although it is obligated not to actively violate migrants' rights.⁶⁰ Furthermore, it does not speak to the challenge of managing the different elements of IOM's mandate.

As interpreted by the IOM bureaucracy and the organization's member states, the Constitution establishes an overarching 'migration mandate' straddling multiple normative and operational spheres. Reflecting on the revamping of the IOM Constitution in the 1980s, Perruchoud suggests that

In the past, there was sometimes a tendency to label ICM as a humanitarian body, because of its involvement in the migration of refugees and displaced persons; or as a development agency, because of its programmes for the transfer of qualified human resources. This apparent contradiction was potentially detrimental, as it veiled the common denominator of all its activities, namely, the migration of people.⁶¹

⁵⁷ Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 20) 250.

⁵⁸ Ibid.

⁵⁹ Ibid., 247–248. For further commentary on the limitations of the IOM Constitution, particularly in relation to human rights principles see e.g. 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; François Crépeau and Idil Atak, 'Global Migration Governance: Avoiding Commitments on Human Rights, Yet Tracing a Course for Cooperation' (2016) 34 *Netherlands Quarterly of Human Rights* 113.

⁶⁰ Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 20) 250–251.

⁶¹ Perruchoud (n 33) 515–516.

Perruchoud argues that '[u]pdating the Constitution has helped to eliminate this dichotomy.'⁶² However, many inside and outside IOM continue to perceive it as two agencies in one, a divided house that struggles to reconcile the implications of its multiple mandates. Although the 1989 Constitution provides little explicit direction to navigate this challenge, IOM has in recent years significantly expanded its set of internal rules, many of which attempt, with varying degrees of success, to speak to this issue.

2.4 IOM's Internal Policies: Shifting Conceptions of the Organization's Purpose and Obligations

Recognizing that constitutive instruments do not tell the full story of how IOs' responsibilities evolve and are understood in practice, this section maps out some key shifts in conceptions of IOM's mandate and obligations that go beyond the formal ascriptions of its Constitution, focusing on the flurry of internal policies, frameworks, and guidelines that it has developed over the past 20 years (see Table 2.1). IOM's internal policy-making moves are somewhat surprising as the organization has a reputation for shirking normative standards.⁶³ IOM officials have historically been reluctant to, in their view, bog the agency down with standards and protocols that could compromise operational efficiency and responsiveness.⁶⁴ These developments are also surprising because some IOM officials have, in recent memory, publicly rejected the notion that the organization has obligations under international human rights law – standards that are recognized and incorporated into many of IOM's recent internal policies. For example, as Goodwin-Gill points out, IOM representatives argued this point before the UK House of Lords EU Committee in 2004.⁶⁵ After introducing IOM's internal policymaking efforts, this section considers their significance from the perspective of international law and IR theories on the legitimization of IOs.

⁶² Ibid.

⁶³ Antoine Pécoud, 'What do we know about the International Organization for Migration?' (2018) 44 *Journal of Ethnic and Migration Studies* 1621; Guy Goodwin-Gill, 'A Brief and Somewhat Sceptical Perspective on the IOM' (2019) UNSW Sydney, Kaldor Centre Publication <www.kaldorcentre.unsw.edu.au/publication/brief-and-somewhat-sceptical-perspective-international-organization-migration> accessed 22 April 2022.

⁶⁴ Interviews, IOM officials 1, 2 and 6 (2015); IOM official 17 (2019).

⁶⁵ Goodwin-Gill (n 63). This view has been echoed in migration studies scholarship on IOM, but is increasingly questioned by international law scholars, see e.g. Vincent Chetail, *International Migration Law* (Oxford University Press 2019); Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 20) 244–264.

IOM's body of internal policies (including guidelines and frameworks) has ballooned in recent decades, and particularly over the last ten years. Since 1998, at the headquarters level, IOM has developed at least 40 significant, publicly available institutional policies, with 31 of these adopted since 2012 (see Table 2.1). Recent IOM policies, frameworks and guidelines address a wide range of issues including migration governance, humanitarian action, migration crises, AVR, data, monitoring and evaluations, protection, accountability, prevention of sexual exploitation and abuse, and particular populations such as trafficked migrants, evacuees, IDPs and migrant workers.⁶⁶ In addition, IOM has adopted policies focused on management and human resources issues such as staff conduct and competencies, gender equity, risk management, and reporting and investigation of misconduct. Beyond these internal policies, which are to be implemented on an ongoing basis, IOM has additionally developed time-bound strategic planning frameworks, such as the IOM Strategic Vision: 2019–2023: Setting a Course for IOM, building on the 2007 IOM Strategy.⁶⁷ Discussed and in some cases formally approved by the IOM Council, these strategic frameworks are also important elements of IOM's increasingly extensive internal policy apparatus.

Many of IOM's early internal policies acknowledge international human rights law and humanitarian principles, but do not necessarily clearly commit the organization to abide by them. For example, the 2002 IOM Policy on the Human Rights of Migrants indicates that 'In all aspects of its work, IOM is committed to working towards effective respect for the human dignity and well-being of migrants.'⁶⁸ While the scope of the notion of 'working towards effective respect' is unclear, later in the policy IOM more forthrightly 'recognizes its responsibility to ensure that when providing assistance to migrants, its activities must obtain full respect for the rights of the individual, its activities must be

⁶⁶ Several of the chapters in this volume analyse particular IOM policies in detail. For example, on the 2015 Humanitarian Policy, see Gilbert (n 19). On the 2017 IOM Framework for Addressing Internal Displacement, see Bríd Ní Ghráinne and Ben Hudson, 'IOM's Engagement with the UN Guiding Principles on Internal Displacement' 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 2023). On IOM's policies on accountability and misconduct, see Johanson (n 19).

⁶⁷ IOM, 'Strategic Vision: Setting a Course for IOM' (15 November 2019) IOM Doc C/110/INF/1; IOM, 'IOM Strategy' (9 November 2007) IOM Doc MC/INF/287.

⁶⁸ IOM, 'IOM Policy on the Human Rights of Migrants' (13 November 2002) IOM Doc MC/INF/259 Section I para 3.

non-discriminatory and must not diminish the human rights of others.⁶⁹ While the language used in some of IOM's more recent internal policies is still ambiguous, it is more direct in others. The most important of IOM's recent, member state-approved internal policies include the 2012 Migration Crisis Operational Framework (MCOF) and the 2015 Migration Government Framework (MiGOF). The MiGOF lays out 'the essential elements for facilitating orderly, safe, regular and responsible migration.'⁷⁰ 'Adherence to international standards and fulfilment of migrants' rights' is the first of the MiGOF's three foundational principles.⁷¹ The MCOF's goal is to identify the links between IOM's different interventions in emergency settings, such as camp coordination and camp management, the provision of emergency aid and shelter, evacuations and border management.⁷² Considerably more explicit than the MiGOF, the MCOF states that IOM is 'bound and committed to the existing legal and institutional frameworks contributing to the effective delivery of assistance and protection and ultimately to the respect and promotion of human rights and humanitarian principles.'⁷³ Through IOM Council resolutions, IOM's member states unanimously welcomed both the MCOF and the MiGOF, and requested the Director General to apply these frameworks and report regularly to the Council on this process.⁷⁴ These documents have become cornerstones of IOM's subsequent internal policymaking activities, informing the creation of additional standards focused on more specific operational challenges and populations.

Alongside these policies, IOM has produced an extensive series of handbooks, guides, manuals and toolkits, many of which incorporate and address the implementation of these internal policies as well as relevant external standards.⁷⁵ In addition to these handbooks and manuals, briefs

⁶⁹ Ibid, Section II para 4.

⁷⁰ IOM Council, 'Migration Governance Framework' (4 November 2015) IOM Doc C/106/40.

⁷¹ IOM Council, 'Migration Governance Framework' (n 70).

⁷² IOM Council, 'Migration Crisis Operational Framework' (15 November 2012) IOM Doc MC/2355.

⁷³ Ibid, para 11.

⁷⁴ IOM Council, 'Migration Crisis Operational Framework Resolution' (27 November 2012) Resolution 1243 IOM Doc MC/2362; IOM Council, 'Migration Governance Framework Resolution' (n 56).

⁷⁵ See for example IOM, 'IOM Project Handbook' (2011) <https://publications.iom.int/system/files/pdf/iom_project_handbook_6feb2012.pdf> accessed 10 May 2022; IOM, 'IOM Emergency Manual' (2016) <<https://ctic.iom.int/en/resources/iom-emergency-manual>>

such as the IOM Protection Portfolio – Crisis Response map out IOM’s internal policies as well as relevant standards developed by the UN, the International Committee of the Red Cross, and the Inter-Agency Standing Committee on topics such as protection mainstreaming; ‘meeting institutional commitments on human rights’; prevention of sexual exploitation and abuse; counter-trafficking efforts in emergencies; humanitarian evacuations; relocations; resettlement; land, property and reparations; and mental health and psychosocial support.⁷⁶

The breadth of IOM’s internal policymaking efforts reflects IOM’s identity as a multi-mandate agency. The fact that many of the policies address populations and operational challenges associated with IOM’s work in emergency settings reflects the significance of involvement in the humanitarian sector to IOM’s budget and field presence, and the general expectation that professionalized organizations active in humanitarian response should be guided by clear, shared principles and standards.⁷⁷ That said, these policies are certainly not all equally clear or robust, and they do not enjoy equal weight (or even awareness) across the organization. While some of IOM’s internal policies, such as the 2015 Humanitarian Policy, were developed through multi-year processes involving internal and external consultations, others were drafted by consultants with seemingly little institutional engagement or investment in dissemination, implementation and review of the policy.⁷⁸

In addition to these policies related to particular populations and fields of responsibility, it is important to note that significant changes were also recently made to IOM’s internal financing rules. Under Director General Swing, the member states agreed to an increase in the rate of overhead charged on IOM projects. This is significant because, in the absence of robust core funding, IOM relies on funds raised through overheads to undertake otherwise unfunded activities such as internal policy development efforts and related training initiatives, as well as the hiring of protection officers involved in efforts to implement some of these internal standards.⁷⁹

accessed 10 May 2022; IOM, ‘Rights-Based Approach to Programming’ (2016) <<https://publications.iom.int/books/rights-based-approach-programming>> accessed 10 May 2022.

⁷⁶ IOM, ‘IOM Protection Portfolio: Crisis Response’ (2018) <www.iom.int/sites/g/files/tmzbdl486/files/documents/IOM-Protection-Infosheet-19Jan2018.pdf> accessed 10 May 2022.

⁷⁷ Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 5).

⁷⁸ Interviews, independent experts 2 (2016) and 7 (2020).

⁷⁹ Interviews, IOM officials, 1, 17; Interview, member state official 1 (2015).

2.4.1 *Assessing the Significance of IOM's Internal Policies: Legal Perspectives*

What, legally, is the significance of these policies? Arguably, at least some of these policies represent internal rules, which may have binding effects on IOM alongside its Constitution and other key standards such as the 2016 Agreement concerning the Relationship between the United Nations and the International Organization for Migration. An IO's internal law is 'the body of rules governing the functioning of the organization, in the widest sense of the term.'⁸⁰ As discussed above, internal rules stem from an IO's constituent treaty, as well as from resolutions passed by an IO's organs and institutional practices, provided these are 'sufficiently clear and well-established.'⁸¹ Internal rules can in theory bind an IO, although there is little agreement on the form that internal rules must take, with some suggesting that 'Any decision by a competent organ creates binding internal rules, provided that the intention to do so is sufficiently clear.'⁸²

Per its Constitution, IOM has two organs, the Council and the Administration;⁸³ both have constitutionally established roles in the creation of internal rules for IOM. Under the Constitution, the Council's role is *inter alia* 'to determine, examine and review the policies, programmes and activities of the Organization.'⁸⁴ As the head of the IOM Administration, the Director General is to 'discharge the administrative and executive functions of the Organization in accordance with this Constitution and the policies and decisions of the Council and the rules and regulations established by it. The Director General shall formulate proposals for appropriate action by the Council.'⁸⁵ While the Director General can therefore bring proposals for internal rules forward to the Council for formal approval, he or she may arguably also create

⁸⁰ Klein (n 17).

⁸¹ Ibid. On IOs' widely recognized power to create internal rules, see e.g. Schermers and Blokker (n 10) 755; Krzysztof Skubiszewski, 'A New Source of the Law of Nations: Resolutions of International Organizations' in Graduate Institute of International Studies (eds), *Recueil d'études de droit international en hommage à Paul Guggenheim* (Institut Universitaire de Hautes Etudes Internationales 1968) 510; Jorge Eugenio Castañeda, *Legal Effects of United Nations Resolutions* (Columbia University Press 1969); Rudolf Bernhardt, 'International Organizations, Internal Law and Rules' in Rudolf Bernhardt (ed), *Encyclopedia of Public International Law: Volume II* (Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht 1995) 1314–1318.

⁸² Schermers and Blokker (n 10) 758.

⁸³ IOM Constitution (n 52) Chapter III, Article 5.

⁸⁴ IOM Constitution (n 52) Article 6(a)

⁸⁵ IOM Constitution (n 52) Article 13(2).

internal rules by clearly and explicitly shaping the practice of the organization. Many of the policies listed in Table 2.1 have been presented to and approved by the IOM Council itself or the Council's Standing Committee on Programmes and Finance; others have not gone through a formal process of member state approval but have been disseminated within the organization, with some requiring mandatory staff compliance.

While the debate in international law on what constitutes an 'internal rule' is unsettled, at least some of IOM's recently adopted policies, particularly those approved by the IOM Council, plausibly rise to the level of internal rules. As a formal legal agreement with another IO, the 2016 Agreement is not an internal rule for IOM, but it is a critical part of the organization's evolving legal order, and its internal policies should be considered and interpreted in light of this important agreement. The text identifies IOM as 'an essential contributor [...] in the protection of migrants,' and states that IOM 'undertakes to conduct its activities in accordance with the Purposes

Table 2.1 *IOM Internal Policies, Frameworks and Guidelines (selected), 1998–2021*

Document name	Year
Evaluation Guidelines	1998
Human Resources Policy in IOM (MC/INF/242)	2000
IOM Migration Policy Framework for Sub-Saharan Africa (MC/INF/244)	2000
Internally Displaced Persons: IOM Policy and Activities (MC/INF/258)	2002
IOM Policy on the Human Rights of Migrants (MC/INF/259)	2002
IOM Evaluation Guidelines	2006
IOM Data Protection Principles	2009
The Human Rights of Migrants – IOM Policy and Activities (MC/INF/298)	2009
IOM Data Protection Guidelines	2010
Migration Crisis Operational Framework (MC/2355)	2012
Internal Guidance Note on Assisted Voluntary Return and Reintegration for Trafficked Migrants (IN/198)	2012
Internal Guidance Note on Assisted Voluntary Return and Reintegration for Migrants in Detention (IN/199)	2012
Internal Guidance Note on IOM-Assisted Voluntary Returns and Reintegration of Unaccompanied Migrant Children (IN/208)	2013
IOM Standards of Conduct (IN/15 Rev. 1)	2014
Assessing Risks when Assisting Victims of Trafficking (IN/219)	2014

(continued)

Table 2.1 (*cont.*)

Document name	Year
IOM Policy on Protection (IOM Policy on Protection)	2015
IOM's Humanitarian Policy: Principles for Humanitarian Action (C/106/CRP/20)	2015
Gender Equality Policy 2015–2019 (C/106/INF/8/Rev.1)	2015
Migration Governance Framework (C/106/40)	2015
IOM Internal Guidance Note on Immigration Detention and Alternatives to Detention (IN/228)	2015
Internal Guidance Note on Mixed Migration Flows (IN/227)	2015
Framework on the Progressive Resolution of Displacement Situations	2016
IOM General Procurement Principles and Processes	2016
Guidance Note on How to Mainstream Protection Across IOM Crisis Response (IN/232)	2016
Policy and Procedures for Preventing and Responding to Sexual Exploitation and Abuse (IN/234)	2016
Guidance Note on the Inclusion of Protection Considerations when Planning and Implementing International Humanitarian Evacuations for Migrants Caught in Armed Conflict Settings (IN/238)	2016
IOM Framework for Addressing Internal Displacement	2017
IOM Key Principles for Internal Humanitarian Evacuations/Relocations of Civilian Populations in Armed Conflict	2018
IOM Staff Regulations (C/108/INF/2) (updated)	2018
Institutional Framework for Addressing Gender-Based Violence in Crises	2018
Guidance for Addressing Gender in Evaluations	2018
IOM Evaluation Policy (IN/266)	2018
IOM Monitoring Policy (IN/31 Rev. 1)	2018
IOM Competency Framework	2018
IOM Internal Governance Framework	2018
Risk Management Framework (updated)	2019
Reporting and Investigation of Misconduct Framework (IN/275)	2019
Accountability to Affected Populations Framework	2020
IOM Policy on the Full Spectrum of Return, Readmission and Reintegration	2021
IOM Monitoring and Evaluation Guidelines	2021

**Note:* This table focuses on policies, frameworks and guidelines produced at the headquarters level. It includes internal guidance notes produced for IOM staff (often containing mandatory compliance instructions), as well as policies, frameworks and guidelines produced internally and presented to the IOM Council and/or the IOM Standing Committee on Programmes and Finance. It does not include time-limited strategic planning frameworks.

and Principles of the Charter of the United Nations and with due regard to the policies of the United Nations furthering those Purposes and Principles and to other relevant instruments in the international migration, refugee and human rights fields.⁸⁶ On the face of it, these provisions complement the recognition in many of IOM's recent internal policies that the organization has obligations to respect migrants' rights and support their protection. However, the Agreement also identifies IOM as a 'non-normative' organization – a term that is not part of the standard lexicon of international law, but which has understandably generated concern that this may be a way for IOM to evade its obligations and prioritize states' interests over migrants' rights. Senior IOM staff and other officials involved in the negotiation of the 2016 Agreement suggest that in this context, 'non-normative' carries a particular meaning: that IOM would not serve as an arena to set, monitor and hold states legally accountable to binding international standards related to migration.⁸⁷ The term was deployed on the insistence of IOM member states, and assuaged states' concern that upon entering the UN system IOM might retreat from its longstanding, deferential posture, particularly in relation to respect for sovereign control over admissions and membership. However, IOM leaders also mused that the non-normative term reflected the idea that states 'don't want us to be shackled, I think, by norms or standards.'⁸⁸ The perception that adherence to international norms might hinder or even shackle the organization, rather than guide it towards appropriate action, is telling, and points to the need for caution in assuming that the obligations confirmed in the 2016 Agreement and in various internal policies are internalized and warmly welcomed across the organization.

Looking beyond debates on the precise contours of IOM's evolving legal order and which policies might represent internal rules, Klabbers stresses that the *structure* of international law on the responsibility of IOs is such

⁸⁶ For varying perspectives on what this 'due regard' may entail, see the chapters in this volume: Helmut Philipp Aust and Lena Riemer, 'A Human Rights Due Diligence Policy for IOM?' and Miriam Cullen, 'The Legal Relationship between the UN and IOM after the 2016 Cooperation Agreement: What has Changed?'. Relatedly, under the Global Compact on Migration, IOM is designated as the lead agency for the UN Network on Migration (UNNM). The Terms of Reference for the network indicate that it is to 'prioritize the rights and wellbeing of migrants and their communities of destination, origin, and transit.' For discussion of the implications of these provisions, see Janie Chuang, 'IOM and Ethical Labor Recruitment' 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 2023).

⁸⁷ Bradley, 'Joining the UN Family?' (n 38).

⁸⁸ Interview, IOM official 16 (2019).

that it is difficult, if not impossible, to use these standards to leverage formal legal accountability, such as through courts or tribunals.⁸⁹ Others are more optimistic, suggesting that notwithstanding the hurdles to using these standards to uphold accountability, they have significant implications for the interpretation of IOM's mandate and obligations, particularly vis-à-vis protection. In an expansive reading of the IOM Constitution and the duties stemming from IOM Council resolutions, institutional policies and practices, Chetail draws on the International Law Commission (ILC) Articles on the Responsibility of International Organizations (ARIO) to argue that 'protecting migrants is both implicit and explicit to the mandate of IOM. It is inherent to the purposes and functions of this organization under its Constitution and, more importantly, it is an explicit duty deriving from the subsequent practice and interpretation of the IOM governing body.'⁹⁰ Chetail further contends:

The common complaint among scholars about the limits of its Constitution is not only ineffective but also misleading, as it fails to capture the potential of international law in addressing the responsibility of IOM towards migrants ... IOM is legally bound to protect migrants' rights under the current state of international law and, therefore, even without any change in its constituent instrument. The obligation of IOM stems from a threefold legal basis: the internal law of the organization, as informed by the practice of its governing body; the international agreement concluded in 2016 with the UN; and the general rules of international law, including *jus cogens* norms. This insight from the law of international organization may provide, in turn, a new critical step for both scholars and activists to move from a posture of IOM-bashing to a more incisive and efficient engagement with a view to ensuring its accountability on the basis of existing legal commitments.⁹¹

As I have discussed, many of IOM's internal policies, including some approved by the IOM Council, recognize and commit the organization to respect and advance human rights and humanitarian standards. However, they also often hedge these commitments, reflecting continued deference to states and 'pliability' in assisting them.⁹² Chetail's approach is striking because rather than focusing on how this tendency

⁸⁹ See e.g. Klabbers 'The (Possible) Responsibility of IOM under International Law' (n 19).

⁹⁰ Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 20); Chetail, *International Migration Law* (n 65).

⁹¹ Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 20) 261–262.

⁹² Atak and Crépeau (n 59) 135.

limits the effectiveness of IOM's policies and their implications for its mandate, he takes seriously the commitments IOM and its member states have made. Instead of taking the protection-related shortcomings of IOM's legal order as evidence of a hopelessly compromised mandate, he uses IOM's commitments as the foundation for a capacious reading of its obligations. This reading reflects the aspirations of the architects of some of IOM's internal policies, who have sought to gradually shift how IOM's mandate and obligations are interpreted, and to strengthen the organization's position, performance and perceived legitimacy by tying it to international human rights and humanitarian standards – a strategy that underscores the ways in which 'mandates' are both legal and political concepts.

2.4.2 *Legitimation through Internal Policymaking: Perspectives from IR Theory*

IOM's internal policy development activities represent something of a puzzle: IOM has been presumed to thrive precisely *because* it lacks explicitly articulated obligations to human rights and humanitarian norms. Why then would it commit to these standards through numerous internal policies – at least some of which represent binding internal rules? These commitments are difficult if not impossible to enforce, and are expressed in weaker terms than some protection advocates would like. Taken alongside IOM's entry into the UN system, these policies may 'blue wash' some activities that are incongruous with respect for human rights.⁹³ Yet these limitations do not solve the puzzle. It is implausible to suggest that these developments are nothing more than an elaborate smokescreen for states' migration-control agendas – not least because many governments score political points by flaunting their anti-migrant positions, and need no help from IOM in this. Taken as a whole, these policies shift expectations inside and outside IOM regarding the organization's commitments, and increase prospects that IOM may be held to account – politically, if not in a formal legal sense – in relation to these commitments.⁹⁴ A more nuanced

⁹³ Asher Lazarus Hirsch and Cameron Doig, 'Outsourcing Control: The International Organization for Migration in Indonesia' (2018) 22 *The International Journal of Human Rights* 681; Julien Brachet, 'Policing the Desert: The IOM in Libya beyond War and Peace' (2016) 48 *Antipode* 272.

⁹⁴ On the potential role of human rights NGOs in holding IOM to account in relation to these standards, see Angela Sherwood and Megan Bradley, 'Holding IOM to Account: The Role of International Human Rights Advocacy NGOs' in Megan Bradley, Cathryn Costello

explanation is therefore needed, one that does not assume that these policymaking efforts are simply altruistic but that considers the incentives and pressures facing IOM as an IO. In this section, I sketch the contours of such an explanation, drawing on insights from IR scholarship on IOs' legitimation efforts.⁹⁵

Although rarely applied to IOM,⁹⁶ an extensive body of IR research theorizes the sociological legitimacy of IOs – that is, their 'perceived compliance with norms and values' that underpin their claimed authority and exercise of power.⁹⁷ Otherwise put, legitimacy entails a 'generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs, and definitions.'⁹⁸ This literature conceives of legitimacy as a dynamic and contested but essential 'operational resource' for all IOs as they attempt to achieve their governance aims.⁹⁹ If 'legitimacy is the goal' for an IO, 'legitimation is the way to get there.'¹⁰⁰ IOs deploy legitimation strategies to demonstrate their compliance with legitimizing norms to important target audiences such as states and other IOs. In addition to trying to foster a sense of legitimacy in the eyes of external actors, an IO may also engage in self-legitimation efforts 'as a way of developing,

and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023).

⁹⁵ For an extended discussion of this argument, see Megan Bradley and Merve Erdilmen, 'Is the International Organization for Migration Legitimate? Rights-talk, Protection Commitments and the Legitimation of IOM' (2022) *Journal of Ethnic and Migration Studies*.

⁹⁶ For exceptions, see Nina Hall, *Displacement, Development and Climate Change: International Organizations Moving beyond Their Mandates* (Routledge 2016); Oleg Korneev, 'Self-Legitimation through Knowledge Production Partnerships: International Organization of Migration in Central Asia' (2018) 44 *Journal of Ethnic and Migration Studies* 1673.

⁹⁷ von Billerbeck, 'No Action without Talk?' (n 21); Dominik Zaum, 'Legitimacy' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *Oxford Handbook on International Organizations* (Oxford University Press 2016); Jonas Tallberg, Karin Bäckstrand and Jan Art Scholte (eds), *Legitimacy in Global Governance* (Oxford University Press 2018). Notably, this literature focuses on IOs' legitimacy as an *empirical* matter – that is, whether their legitimacy claims are accepted by other key actors – rather than on whether they are morally or legally legitimate.

⁹⁸ Mark Suchman, 'Managing Legitimacy: Strategic and Institutional Approaches' (1995) 20 *Academy of Management Review* 571, 574.

⁹⁹ Suchman (n 98) 576; Jennifer Gronau and Henning Schmidtke, 'The Quest for Legitimacy in World Politics: International Institutions' Legitimation Strategies' (2016) 42 *Review of International Studies* 535, 539.

¹⁰⁰ von Billerbeck, 'No Action without Talk?' (n 21) 479.

defining and (re)confirming its identity,' recognizing that internal legitimacy is often vital to effective external claims to legitimacy.¹⁰¹ Legitimation strategies may be multi-pronged, responding to the priorities and interests of different stakeholders inside and outside the organization. They often involve the strategic use of discourses and narratives that support an IO's claimed role, and institutional reforms including internal policymaking efforts – in other words, a playbook closely followed by IOM in recent years.¹⁰² Legitimation strategies are especially important for multi-mandate IOs such as IOM whose work may result in contradictions, with one 'side' of the organization behaving in ways that corrode the perceived legitimacy of its other sides. In the case of IOM, these contradictions play out in, for example, conflicts between the Department of Operations and Emergencies (DOE), responsible for IOM's humanitarian response work, and the Department of Migration Management (DMM), which runs IOM's more normatively fraught AVR and border management projects.¹⁰³ In such cases, legitimation strategies attempt to rationalize an organization's behaviour, enabling IO staff to feel that their work is appropriate and withstands scrutiny.¹⁰⁴ Through their ongoing legitimation efforts, IOs strive to advance their governance objectives, build up their own power, defend against competition, secure increased material resources, and adapt to changing normative expectations.¹⁰⁵

Viewed as institutional legitimation efforts, the institutional logic motivating IOM's internal policy development efforts (and its attempts to reinterpret its mandate to include humanitarian work and human rights protection) becomes clearer. The IOM Constitution does not explicitly reference legitimizing values such as humanitarian principles or human rights, but it girds the organization's work in a norm that

¹⁰¹ von Billerbeck, "Mirror, Mirror on the Wall" (n 21) 207.

¹⁰² Gronau and Schmidtke (n 99); Zaum (n 97); Tallberg, Bäckstrand and Scholte (n 97); Jens Steffek, 'The Legitimation of International Governance: A Discourse Approach' (2003) 9 *European Journal of International Relations* 249; Dominik Zaum (ed), *Legitimizing International Organizations* (Oxford University Press 2013).

¹⁰³ Although many IOM staff members underscore the significance of intra-institutional conflict, including between DOE and DMM, there is also considerable cooperation between these departments, particularly in the field. In Libya, for example, the framing and operationalization of "assisted voluntary humanitarian returns" of migrants from detention centres characterized by widespread human rights violations subverts DOE-DMM divisions. Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 5) 54–55, 88.

¹⁰⁴ von Billerbeck, "Mirror, Mirror on the Wall" (n 21) 207–219; von Billerbeck, 'No Action without Talk?' (n 21) 477–494.

¹⁰⁵ Zaum (n 97); von Billerbeck, "Mirror, Mirror on the Wall" (n 21) 212.

is, according to states and orthodox (although increasingly challenged) readings of international law, integral to legitimate migration governance efforts: sovereign control of entry and membership. While adherence to this principle remains essential to IOM's legitimacy in the eyes of its members, the organization has had to adjust to the rise of human rights as the predominant legitimizing framework in global governance, especially in relation to fields such as humanitarian response, where IOM is highly active.¹⁰⁶ This has fuelled the need for new legitimation strategies – including internal policy development efforts – that try to fuse protection commitments, human rights and humanitarian principles with deference to member states. This attempt to meld deferential service to states with commitments to human rights and humanitarian principles prompts some sceptics to question IOM's 'protection DNA' – yet this deferential position, and IOM's continued, full-throated recognition of states' rights to control entry and membership, is a source of perceived legitimacy from the perspective of many of its member states. That IOM is perceived as legitimate by some actors and illegitimate by others does not undermine the suggestion that these policies are part of IOM's efforts to legitimate itself, and that IOM may in fact be gaining legitimacy through such efforts. As Zaum emphasizes, 'legitimacy judgements are not universal.'¹⁰⁷ Particularly for multi-mandate organizations, there may be divergent views on how particular norms should be interpreted, what is required for an IO to be legitimate in relation to these norms, and how tensions between different normative frameworks should be managed. IR scholarship on IOs' legitimation efforts stresses that these initiatives are most likely to be effective when they balance different constituencies' concerns¹⁰⁸ – an approach that has been the hallmark of IOM's attempts to shore up its legitimacy.

Beyond needing to respond to the emergence of human rights as the overarching, legitimizing framework for global governance, IOM's deployment of legitimation strategies, such as its internal policymaking efforts, has been motivated by changes in the composition of the IOM membership, and the need to achieve a greater degree of organizational coherence. As one senior IOM official expressed it, 'If you're a collection of 3,000 projects, of course it's difficult to bring a sense of coherence to

¹⁰⁶ Vincent Pouliot and Jean-Philippe Thérien. 'Global Governance: A Struggle over Universal Values' (2018) 20 *International Studies Review* 55.

¹⁰⁷ Zaum (n 97) 1109.

¹⁰⁸ Gronau and Schmidtke (n 99).

what the organization does and represents, particularly as perceptions are ... widely differing, let's say, amongst our partners.¹⁰⁹ The expansion of IOM's membership base to include more large, Southern migrant-sending states has fuelled the agency's need to recalibrate to portray its commitments as encompassing the protection of migrants' rights, as this is a clear expectation of many of these newer members.¹¹⁰ Notably, senior staff involved in the agency's internal policymaking processes distinguish between IOM recognizing that it is a protection actor with protection obligations, and any attempt to recast itself as having a formal, legal protection mandate. Some suggest that 'We're very clear about the fact that we're talking about operational, effective protection' rather than legal protection efforts; 'The fact that IOM is not legally mandated does not mean that IOM does not consider itself bound by international norms and international law.'¹¹¹ Possessing such policies is also, increasingly, an expectation of the donor agencies of IOM's wealthier Western member states; for the agency to secure larger amounts of funding from these donors, a less ad hoc, more systematized approach was seen to be necessary.¹¹² While the desire to bring in more money is thus part of the explanation for the creation of these policies, this is part and parcel of IOM's broader legitimation strategies. Donors are one of the key audiences for IOM's legitimation efforts. IOM's major humanitarian funders, in particular, expect recipients to have relatively clear institutional commitments to the legitimizing principles of the sector – an expectation that is addressed at least in part through IOM's internal policymaking.

While the instigation of these policy development efforts preceded the focused negotiations around IOM's entry into the UN system as a related organization (which began in earnest in 2015), other IOs, particularly in the UN system, were also an important audience for IOM's legitimation

¹⁰⁹ Interview, IOM official 19 (2020).

¹¹⁰ Interview, IOM official 2.

¹¹¹ Interview, IOM official 19. This reflects a certain strategic ambiguity surrounding the concept of 'protection' in relation to IOs. Whereas IOM has attempted to overcome the lack of reference to protection in its Constitution to nonetheless assert a protection role in its operational engagements, in its early years UNHCR worked to expand beyond the legally-focused conception of protection set out in its Statute to also pursue protection goals through field operations. On early notions of protection in the UNHCR Statute, see Antonio Fortin, 'The Meaning of "Protection" in the Refugee Definition' (2000) 12 *International Journal of Refugee Law* 548.

¹¹² Anders Olin, Lars Florin and Björn Bengtsson, 'Study of the International Organization for Migration and its Humanitarian Assistance' (SIDA Evaluations 2008); Interviews, IOM officials 3, 13 (2015), 15 (2016); interviews, member state officials 1 and 7 (2016).

efforts. Although IOM's internal policymaking processes were not *primarily* attempts to pave IOM's way into the UN system, they did enable IOM to cast itself as a more reliable counterpart to its UN partners. Protection advocates within IOM suggest that the agency's entry into the UN system may, in turn, help create pressure for accountability vis-à-vis IOM's protection obligations: 'Not externally, but maybe internally ... there's this sense that it's an argument we can use, right? So for the people within the organization that think that we should be doing better, we have an ability now to say, look, we're part of the system now, you know, and we have these obligations.'¹¹³ In this sense, IOM's entry into the UN system may strengthen the hand of protection proponents within IOM – a constituency that has not traditionally had a strong base of power with the organization.

Internal proponents of IOM's policy development efforts, particularly those related to protection and humanitarianism, argue that these steps were necessary to better serve migrants, and also to achieve greater coherence across the organization, which is in turn essential to bolstering its perceived credibility and continued expansion. These considerations are especially important for IOM as it has become increasingly visible since becoming a related organization in the UN system. Reflecting on IOM's efforts to manage different elements of its mandate, one senior IOM staff member suggested,

the multiplicity of counterparts and accountability lines that we have naturally leads to tensions, well at least challenges, in how you reconcile those different programming areas to ensure that they remain consistent and coherent. But I think over the past decade, the organization has also equipped itself with fairly robust sets of principles and policy frameworks that, even though they may refer to one particular area of work, they're applied to the entire organization.¹¹⁴

As another senior IOM official put it, 'Learning how to play those hats' – that is, how to manage the different elements of IOM's mandate – is a reflection of 'the political maturity of an organization. We are growing up but we are not there yet.'¹¹⁵ IOM's internal policies help to manage and navigate tensions between the 'different sides' of IOM, which some staff still describe as a 'schizophrenic' organization in light of conflicts between departments concerned with humanitarian response and those focused on other aspects of migration management, such as AVR.¹¹⁶ A growing

¹¹³ Interview, IOM official 17.

¹¹⁴ Interview, IOM official 19.

¹¹⁵ Interview, IOM official 2.

¹¹⁶ Interviews, IOM officials 1, 3, 4 (2015), 5 (2015), 13, 17, 19, 21 (2020), 22 (2021).

number of the agency's staff have worked with protection-oriented NGOs or UN agencies before joining IOM, and question IOM's traditional, 'cowboy' approach.¹¹⁷ For these staff, commitments to human rights and humanitarian principles in IOM's internal policies assure them that they share common values with their organization, allowing them to 'look in the mirror and like what they see' – a key consequence of self-legitimation efforts.¹¹⁸

Legitimation is an ongoing process of contestation, not a 'one and done' box-ticking effort. It is thus unsurprising that IOM continues to refine and roll out new policies, and revise its practices in light of evolving demands. IOM still has vocal critics, including partners within the UN system who charge that IOM is still fundamentally motivated by a 'sell, sell, sell' mentality.¹¹⁹ However, many UN officials, human rights advocates, and member state officials concerned with IOM's adherence to human rights standards applaud the changes underway within the organization, emphasizing that IOM has come a long way since the 'bad old days'¹²⁰ of the agency presenting itself as a maximally flexible, unscrupulous contractor willing to 'do anything for money.'¹²¹ Concerningly, however, IOM's legitimation efforts, particularly its adoption of human rights discourses and commitments, may have the effect of making some normatively contentious 'migration management' activities seem more acceptable and in line with human rights standards. This possibility requires careful monitoring, to ensure that IOM is held to account in practice for the commitments it has made.¹²² The preceding discussion and the broader IR literature on IO legitimation focus on sociological legitimacy as an empirical issue – that is, on whether and how IOs come to be accepted as legitimate by key actors. However, this concern points to the need for future analyses of IOs' sociological legitimacy to link to investigations of their legal and moral legitimacy.

¹¹⁷ Interviews, IOM officials 10 (2015), 13, 15, 17, 20 (2020), 22; interview, human rights advocate 5 (2015).

¹¹⁸ von Billerbeck, "Mirror, Mirror on the Wall" (n 21) 207.

¹¹⁹ Interview, humanitarian official 7 (NGO, 2015).

¹²⁰ Interview, human rights advocate 10 (2016).

¹²¹ Interview, member state official 4 (2016); interviews, humanitarian officials 8 (NGO, 2016), 10 (UN, 2019), 12 (UN, 2019); interviews, human rights advocates 7 (2016), 10; interviews, independent experts 2, 3 (2016), 6 (former UN, 2019), 8 (former UN, 2020).

¹²² Bradley and Erdilmen (n 95). On this risk in relation to IOM's entry into the UN system, see Hirsch and Doig (n 93).

2.5 Conclusion: Who and What Is IOM For? Updating Assumptions and Expectations

Conceptions of IOM's mandate and obligations have evolved considerably inside and outside the organization since its creation in 1951. Motivated significantly by a thirst for increased legitimacy, and in turn, influence in global governance, IOM's internal policymaking efforts – alongside broader debates on its mandate – have played an important but to-date under-examined role in shifting ideas of what IOM is for, and whom it should serve. IOM remains a service provider shaped by its projectized funding structure, a set-up that was reinforced in the terms of the 2016 Agreement. However, the internal policies described above provide more direction on what kinds of services the organization should and should not provide, and the principles that are to inform this work. Viewed from a migrants' rights protection standpoint, these policies are far from perfect. Yet they are a critical part of IOM's effort to recast and legitimate itself as having a clear humanitarian mandate as well as broader institutional protection obligations. This reinterpretation brings to the fore tensions between the traditional idea that IOM is first and foremost 'for' its member states, and the notion that it should also be 'for' migrants themselves. The organization has long claimed to serve states and individuals alike, with the introduction to the 1971 volume commemorating the organization's 20th anniversary asserting that its 'sole aim' is to 'serve men and nations.'¹²³ Yet such claims are now a much more routine part of IOM's self-presentation, an interpretation increasingly accepted by its member states despite the conflicts and tensions it entails. In light of these developments, some IOM staff suggest that the organization now uses these internal policies to say 'no,' more often than it has in the past, to requests from states to take on normatively troubling work, while recognizing that it still has a way to go in this respect.¹²⁴

There are ample opportunities to build on these developments to strengthen the extent to which IOM lives up to its claims to serve not only states but also migrants. First, the IOM leadership and the organization's member states should further clarify the content and scope of the agency's protection obligations, including through reforms to the IOM Constitution. Member states concerned with respect for human

¹²³ ICEM (ed), *Twenty Years Dedicated to the Free Movement of People* (ICEM 1971) p ii.

¹²⁴ Interviews, IOM officials 3, 12 (2015), 13, 15 (2018), 17, 19, 22.

rights and humanitarian values should spearhead a move through the IOM Council to more formally recognize IOM's humanitarian mandate and specify its human rights protection obligations. This should include amendments to the IOM Constitution to clearly bind the organization to respect and promote the rights of people on the move internally and across borders. These developments should strengthen IOM's capacity to say 'no' to projects inconsistent with human rights and humanitarian standards. IOM works in many morally, legally and politically vexing contexts characterized by serious, sometimes intractable dilemmas. Such reforms would not do away with these dilemmas, but should provide IOM with stronger scaffolding to reflect on and determine when it should decline involvement in or withdraw from particular, normatively compromised operations. Such high-level, constitutional reforms are admittedly unlikely. Even if they were undertaken, and existing organizational policies committing IOM to respect human rights and humanitarian principles were confirmed to be binding internal rules, in the absence of effective legal mechanisms to ensure compliance, respect for these obligations remains largely a matter of organizational culture, institutional incentives and political will. Legal strategies alone are insufficient to secure institutional change. This points to the need for a second, related set of reforms, focused on institutional, cultural, and the internal operationalization of commitments related to protection, human rights norms, and humanitarian principles. To ensure that these internal policies are used to maximum effect to strengthen IOM's support for migrants and not only member states, they should be widely disseminated inside and outside the organization, with staff training and regular review processes in place to support their effective implementation and revision as necessary. Staff evaluation and promotion exercises should also be tied to systematic and successful implementation of IOM's commitments in terms of human rights protection and respect for humanitarian principles.

Progress also depends on updating assumptions about IOM's obligations and raising expectations of the organization, including among scholars and advocates. Repeating the trope that IOM has no obligations to people on the move simply because it does not have a formal protection mandate in its Constitution is incorrect as a matter of law and policy. But even more concerningly, it impedes efforts to hold this increasingly influential organization to account for its commitments towards those it claims to serve. For IOM's critics, such calls for accountability may seem quixotic, given its history and structural constraints. However,

like other IOs, IOM has changed over time, including in terms of how its mandate and obligations are understood. If these changes are to benefit migrants and not only state interests, they must be taken seriously. That is, they must be carefully analysed, shored up where appropriate, and used to challenge instances in which IOM may undermine the rights of those individuals it now claims to serve.