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Introduction

IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion

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Since its founding in 1951, the International Organization for Migration (IOM) has changed almost beyond recognition. Created with a narrow, time-bound mandate to support emigration from the ruins of post-war Europe, the agency was purposefully established outside the United Nations (UN) with a small membership comprising 16 states. Seven decades later, IOM is now among the largest international organizations (IOs) worldwide, with 175 member states, a budget of more than two billion dollars annually, and over 15,000 staff.[1] IOM became a related organization in the UN system in 2016 by virtue of the 2016 Agreement Concerning the Relationship between the United Nations and the International Organization for Migration ('the 2016 Agreement').[2] It now undertakes a striking range of activities, broadly related to human mobility, from humanitarian relief, emergency evacuations, resettlement, returns, and border management to counter-trafficking, data collection, and policy development. IOM can currently be seen surveying and distributing aid to internally displaced persons (IDPs) in Ukraine, receiving Haitians deported from the United States, renovating and facilitating returns from abysmal detention centres in Libya, coordinating the UN Network on Migration, and supporting the

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[1] IOM, 'IOM Snapshot: Dignified, Orderly and Safe Migration for the Benefit of All' (2021) <www.iom.int/sites/g/files/tmzbdl486/files/about-iom/iom_snapshot_a4_en.pdf> accessed 14 July 2022.

[2] 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 (hereafter 2016 Agreement).

implementation of the 2018 Global Compact on Migration, amongst numerous other roles.

Such activities have a profound impact on the rights and well-being of people on the move, many of whom are refugees and IDPs, and all of whom have human rights irrespective of their legal status. Strikingly, however, IOM has no formal protection mandate under its Constitution, an institutional feature often wrongly characterized as implying that it has no human rights obligations.[3] It also has a long-standing reputation for deference to states. This deference is built into its Constitution, which recognizes admissions decisions as falling 'within the domestic jurisdiction of States', and pledges that 'in carrying out its functions, [IOM] shall conform to the laws, regulations and policies of the States concerned'.[4] IOM's deferential posture is also amplified by its 'projectized' structure, whereby IOM has little core funding and is instead contracted to provide specific migration-related services. These features have propelled IOM's involvement in some migration management interventions in tension with, and indeed at times in clear violation of, human rights norms.[5] Yet in recent years, IOM has more actively integrated protection concerns into some of its field operations, adopted human rights discourses, and expressed commitment to international law.[6]

This is a critical juncture in terms of IOM's development and influence on the global governance of mobility. IOM's diverse and impactful roles raise pressing questions about the drivers and implications of its expansion, especially in terms of its obligations and accountability.

[3] Megan Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (Routledge 2020).

[4] 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.

[5] See, for example, Human Rights Watch, 'The International Organization for Migration (IOM) and Human Rights Protection in the Field: Current Concerns' (November 2003) <www.hrw .org/legacy/backgrounder/migrants/iom-submission-1103.pdf> accessed 21 July 2022; Asher Lazarus Hirsch and Cameron Doig, 'Outsourcing Control: The International Organization for Migration in Indonesia' (2018) 22 The International Journal of Human Rights 68; Azadeh Dastyari and Asher Hirsch, 'The Ring of Steel: Extraterritorial Migration Controls in Indonesia and Libya and the Complicity of Australia and Italy' (2019) 19 Human Rights Law Review 435.

[6] On IOM's discourse, see, for example, Ishan Ashutosh and Allison Mountz. 'Migration Management for the Benefit of Whom? Interrogating the Work of the International Organization for Migration' (2011) 15 Citizenship Studies 21; 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.

However, scholarship on IOM remains limited and has not entirely kept pace with these changes.[7] Most research on IOM comes from the field of migration studies and focuses on IOM's involvement in projects supporting states' interests in controlling movements from the global South to the global North – activities that are of critical importance but which do not on their own tell the full story of IOM's contemporary activities and influence. The fields of international law and international relations (IR) are well positioned to shed light on IOM but have rarely devoted significant attention to the organization, and very few general studies of IOs address IOM in any detail.[8] This book, uniquely, brings together IR and legal scholars with the goal of examining IOM *as an IO*, from both legal and political perspectives.[9] It concertedly addresses a wide range of IOM activities, including under-examined issues such as IOM's work in humanitarian emergencies, data collection, responses to internal displacement, migrant labour recruitment, and mobility related to climate change.

IOM's rapid expansion has raised the stakes in debates on its obligations and accountability. This volume aims to advance understanding of IOM itself as an increasingly powerful actor, while also using it as a prism through which to contribute to scholarship on IOs generally, particularly

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[7] For an overview of scholarship on IOM, see Antoine Pécoud, 'What Do We Know about the International Organization for Migration?' (2018) 44 Journal of Ethnic and Migration Studies 1621. For exceptions engaging with these developments, see, for example, Martin Geiger and Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan 2020); Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 3).

[8] For notable exceptions in international law, see, for example, 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; Vincent Chetail, *International Migration Law* (Oxford University Press 2019); Vincent Chetail, 'The International Organization for Migration and the Duty to Protect Migrants: Revisiting the Law of International Organizations' in Jan Klabbers (ed), *Cambridge Companion to International Organizations Law* (Cambridge University Press 2022) 244–264; Elspeth Guild, Stephanie Grant and Kees Groenendijk, 'IOM and the UN: Unfinished Business' (2017) Queen Mary University of London School of Law Legal Research Paper No 255/2017 <www.academia.edu/40090259/IOM_and_the_UN_Unfinished_Business> accessed 20 July 2022, 1–24. For exceptions in the IR scholarship, see, for example, Nina Hall, *Displacement, Development and Climate Change: International Organizations Moving beyond Their Mandates* (Routledge 2016); Megan Bradley, 'The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime' (2017) 33 (1) Refuge 91.

[9] On IOM as an IO, see also, for example, Martin Geiger and Martin Koch, 'World Organizations in Migration Politics: The International Organization for Migration' (2018) 9 (1) Journal of International Organizations Studies 25.

burgeoning debates on IO accountability.[10] It does so by exploring the intersecting dynamics of institutional expansion, the gradual acknowledgement of obligations, and the key question of accountability mechanisms. The contributors are purposefully diverse in their approaches and perspectives. Some offer empirical explanations of IOM's development, while others offer normative analyses of IOM in relation to particular bodies of law, including international organizations law, international human rights, humanitarian and refugee law. Some authors concertedly bridge empirical and normative analysis, considering how the interplay between law and politics has shaped IOM's evolution and its contested contemporary position. The chapters are linked by a common approach of critical but constructive engagement with IOM's work and its place in the global governance of migration, taking seriously the notion that IOM has responsibilities not only to states but also to individuals. The diverse chapters also reflect the understanding that independent scholarship has a vital role to play in both illuminating institutional dynamics and identifying avenues for improvement. To this end, many conclude with reflections on the implications of the arguments offered for reform.

Much of the existing scholarship on IOM is highly critical, reflecting concerns about the ways in which IOM enables states' restrictive migration management goals. However, this scholarship tends to be unclear about the standards to which IOM can and should be held to account, and rarely grapples with the constraints and dilemmas it faces as an IO that has a distinct legal personality and a capacity for autonomous action, but is still largely governed by powerful states. In contrast, this book explicitly centres and wrestles with normative debates surrounding IOM as an IO. In particular, it refutes the misperception that IOM has no legal obligations simply because it was created outside the UN system and has no

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[10] See generally Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (Cambridge University Press 2011); August Reinisch, 'Securing the Accountability of International Organizations' (2001) 7 Global Governance 131; Gisela Hirschmann, *Accountability in Global Governance: Pluralist Accountability in Global Governance* (Oxford University Press 2020); Monika Heupel and Michael Zürn, *Protecting the Individual from International Authority: Human Rights in International Organizations* (Cambridge University Press 2017); Carla Ferstman, *International Organizations and the Fight for Accountability: The Remedies and Reparations Gap* (Oxford University Press 2017); Kristina Daugirdas, 'Reputation and the Responsibility of International Organizations' (2015) 25 European Journal of International Law 991. On accountability of IOs in the field of migration, see Jan Klabbers, 'The Accountability of International Organizations in Refugee and Migration Law' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (University of Oxford Press 2021) 1157.

formal protection mandate. Admittedly, as many chapters evidence, IOM has certainly sometimes behaved *as if* it is unbound by the legal standards governing the fields in which it operates. Moreover, efforts to hold IOM accountable have been lacklustre, stymied both by deficits in IOM's own systems and by structural limitations on IO accountability generally. However, the notion that IOM has no obligations, particularly in relation to human rights and humanitarian norms, simply because it has sometimes failed to recognize and adhere to them, does not withstand scrutiny. This view also overlooks significant recent changes in IOM's articulated commitments, policy frameworks, field operations and relationship to the UN system. This volume takes these commitments seriously, offering careful analysis and reconsideration of long-standing assumptions.

This introductory chapter sets the stage for this contribution. First, it provides a brief overview of IOM's history and structure. Second, it offers a primer on IOM's entry into the UN system as a related organization in 2016, the consequences of which are examined in several chapters in this book. Third, it situates this collection in relation to the core concepts underpinning it, including IO obligations, accountability, and expansion dynamics. Fourth, it draws out key themes running through the volume, particularly in relation to grounding assessments of IOM in international law; understanding IOM's roles as a norm 'breaker, taker, and shaper'; analysing IOM as a protection actor; and developing more complex accounts of institutional change at IOM. Fifth, it maps out the structure, scope, and limitations of the book. Finally, it reflects on the legal and political implications of this volume, focusing on the need to recast the IOM Constitution to centre not only the organization's obligations to its member states but also to the migrants it claims to serve.

1.1 From Modest Beginnings to an Era of Expansion

IOM was established in Brussels in 1951 as the Provisional Inter-governmental Committee for the Movement of Migrants from Europe (PICMME). Shortly thereafter, its first Constitution was adopted, renaming it the Intergovernmental Committee for European Migration (ICEM).[11] Designed as a temporary, operationally focused institution, its creation was prompted by the need to resolve displacement and perceived overpopulation problems in post-war western Europe by promoting and facilitating the orderly migration and

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[11] ICEM Constitution (n 4).

settlement of 'surplus populations', including displaced persons and refugees, to countries overseas. Its origins were distinctly shaped by US interests. Through ICEM's design, the United States and its allies sought to manage migration flows with full respect of sovereign rights, while delimiting membership (on US insistence) to non-Communist states by requiring that member states have a 'demonstrated interest in the principle of free movement of persons'.[12] As large-scale emigration from Europe declined, ICEM attempted to maintain its relevance by expanding its geographic scope and its portfolio of operational and logistical services. In recognition of its expanded global presence, its Council removed 'European' from its name in 1980.

In 1989, the agency was again renamed, emerging as a permanent institution, the International Organization for Migration (IOM). The IOM mandate, as articulated in its 1989 Constitution, is in some senses highly specific, but also vague and expansive.[13] Under its Constitution, IOM's purposes and functions are 'to make arrangements for the organized transfer of migrants ... refugees, displaced persons and other individuals in need of international migration services'; to provide a range of related 'migration services', including in connection to voluntary repatriation; and to 'provide a forum ... 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'.[14]

As Bradley discusses in Chapter 2, in her examination of the evolution of IOM's mandate and its identity as a 'multi-mandate' organization, the

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[12] Article 2(b), ICEM Constitution (n 4). This provision remains in the 1989 Constitution of the International Organization for Migration, Article 2(b). On IOM's founding, see, for example, L. Lina Venturas (ed), *International 'Migration Management' in the Early Cold War: The Intergovernmental Committee for European Migration* (University of the Peloponnese 2015); Jerome Élie, 'The Historical Roots of Cooperation between the UN High Commissioner for Refugees and the International Organization for Migration' (2010) 16 Global Governance 345; Rieko Karatani, 'How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins' (2005) 17 International Journal of Refugee Law 517. For IOM's own institutional account of its history, see Marianne Ducasse-Rogier, *The International Organization for Migration, 1951–2001* (International Organization for Migration 2002). On the history of 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.

[13] IOM's current Constitution draws from the ICEM Constitution and several amendments adopted in 1987. On the IOM constitutional reforms, see Richard Perruchoud, 'From the Intergovernmental Committee for European Migration to the International Organization for Migration' (1989) 1 International Journal of Refugee Law 501, 504.

[14] IOM Constitution (n 4) Article 1.

IOM Constitution is a 'permissive' document in the sense that it identifies a swath of activities IOM *may* undertake without ruling out other possibilities.[15] Similarly, the Constitution identifies some populations with whom IOM may work, including refugees and displaced persons, but does not legally define these categories or limit IOM's engagement to these groups. In practice, IOM has come to embrace a remarkably broad operational definition of migrants, positioning it to work with a vast array of populations, including many who have never left their home country.[16] The Brussels Resolution through which the organization was founded recognized the significance of human rights norms to the new agency's work, indicating that its goal was to bring 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'.[17] Strikingly, however, neither this reference to human rights nor humanitarian principles appear in the organization's Constitution, although the lion's share of IOM's budget and field staff is related to humanitarian action and 'post-crisis' support for migrants, including IDPs, who now comprise IOM's largest group of 'beneficiaries'.[18] In this way, as Chetail argues, the 'loosely defined terms of its mandate' under its Constitution 'has created a hiatus, if not a gulf, between what IOM can do and what it must do'.[19] Indeed, most of IOM's contemporary activities are not mentioned in the Constitution, at least not explicitly. What has survived is the notion of IOM as a service provider, and deference to states in migration decision-making, with the Constitution providing that IOM '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

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[15] See also Chetail, 'The International Organization for Migration' (n 8) 18–25.

[16] IOM defines a migrant as 'a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons'. Alice Sironi, Céline Bauloz and Milen Emmanuel (eds), 'Glossary of Migration' (3rd edn, IOM 2019) 132 <www.iom.int/glossary-migration-2019> accessed 20 July 2022.

[17] Resolution to Establish a Provisional Intergovernmental Committee for the Movement of Migrants from Europe' (Meeting of the Migration Conference, Brussels, 5 December 1951) Preamble <https://governingbodies.iom.int/sites/g/files/tmzbdl1421/files/council_document/0%20-%20Resolution%20to%20establish%20a%20Provisional%20Intergovernmental%20Committee%20for%20the%20Movement%20of%20Migrants%20from%20Europe%20%28headed%29.pdf> accessed 20 July 2022.

[18] Bradley, *The International Organization for Migration* (n 3) 4.

[19] Chetail, 'The International Organization for Migration' (n 8).

concerned'.[20] This constitutional deference is remarkable when compared to other IO constitutions, which typically explicitly reflect the orthodox international legal position of the binding nature of international norms (and hence their primacy over national laws),[21] or recognize domestic standards only to a limited extent. For example, ILO's Constitution defers to national laws only to the extent that they offer workers higher standards of protection.[22] If these constitutions refer to domestic jurisdiction at all, they do so only in defined fields. For example, the protection mandate of the Office of the UN High Commissioner for Refugees (UNHCR) refers to the need for additional state consent only where private actors are engaged.[23]

IOM's current 'era of expansion' has entailed dramatic growth on numerous levels, including in terms of IOM's membership, budget, employees, offices, activities, 'beneficiaries', and responsibilities. With these changes, IOM's influence has increased, fuelled also by new institutional partnerships, knowledge production activities, policy development efforts, and involvement in convening high-profile international dialogues and negotiations.[24] These developments have intensified dramatically over the last decade, but have their roots in the 1990s, when interest in international cooperation on migration increased, and IOM instituted

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[20] IOM Constitution (n 4) Chapter 1, Article 1(3) (emphasis added).

[21] For example, Article XVI(4) of the 1994 Agreement Establishing the WTO indicates, 'Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.' WTO, 'Agreement Establishing the WTO' <www.wto.org/english/docs_e/legal_e/04-wto.pdf> accessed 20 July 2022.

[22] ILO Constitution (adopted 1919, entered into force 4 June 1934) Article 8: 'In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation'.

[23] UNGA, 'UNHCR Statute: Annex to UN General Assembly Resolution 428 (V)' (14 December 1950) Article 1: 'The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities'.

[24] On these developments generally, see Susan F. Martin, *International Migration: Evolving Trends from the Early Twentieth Century to the Present* (Cambridge University Press 2014) 124–153. On IOM's knowledge production work, see, for example, Pécoud (n 7) and Shoshana Fine, 'Liaisons, Labelling and Laws: International Organization for Migration Bordercratic Interventions in Turkey' (2018) 44 Journal of Ethnic and Migration Studies 1743. On IOM's role in facilitating international dialogues and negotiations on

a series of projectization and decentralization reforms that positioned it to play a growing role on the international stage.[25] Under the projectization model, states contract IOM to provide services in the form of discrete projects, with more than 97 per cent of IOM funds linked to particular projects.[26] This model incentivizes IOM to behave as a highly entrepreneurial jack of all trades, logistically efficient, flexible, and responsive to states' priorities.[27] And yet, IOM is by no means unique amongst IOs in its dependence on donor funds; many other IOs are also highly dependent on earmarked or projectized funding.[28] This system amplifies donors' influence and leaves the agency with relatively modest resources – derived largely from project-based overheads – to support cross-cutting activities such as training, protection, gender mainstreaming, and policy development.[29] Although some reforms are underway to provide more regular funding to the core structure of the organization, IOM's donors generally consider the projectization model a resounding success, one that, in conjunction with its highly decentralized, operationally oriented structure, has kept the agency lean and nimble.[30] IOM clusters its diverse activities under the broad umbrella of 'migration management', a notion that suggests orderly, predictable migration may be 'beneficial for all', that is, for

migration-related issues, particularly the Global Compact on Migration (GCM), see Elizabeth G. Ferris, and Katharine M. Donato, *Refugees, Migration and Global Governance: Negotiating the Global Compacts* (Routledge 2019); Nicholas R. Micinski, *UN Global Compacts: Governing Migration and Refugees* (Routledge 2021).

[25] Martin (n 24).

[26] Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 3) 30–31.

[27] Ibid., 47–52.

[28] Erin R. Graham, 'Money and Multilateralism: How Funding Rules Constitute IO Governance' (2015) 7 International Theory 162, 183–187 (describing growth of restricted voluntary contributions in the UN system between 1990 and 2012); Kristina Daugirdas and Gian Luca Burci, 'Financing the World Health Organization' (2019) 16 International Organizations Law Review 299.

[29] On reforms to the funding of IOM's core structure, see IOM Standing Committee on Programmes and Finances, 'Draft Resolution on Investing in the Core Structure of IOM' (17 June 2022) IOM Doc S/30/L/4. On IO resourcing more broadly, see, for example, Klaus Goetz and Ronny Patz, 'Resourcing International Organizations: Resource Diversification, Organizational Differentiation, and Administrative Governance' (2017) 8 (5) Global Policy 5.

[30] Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 3) 40, 51. On donor dynamics at IOM, see Ronny Patz and Svanhildur Thorvaldsdottir, 'Drivers of Expenditure Allocation in the IOM: Refugees, Donors, and International Bureaucracy' in Martin Geiger and Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave MacMillan 2020).

states, migrants, and sending and receiving communities.[31] Yet, fuelled by a constant thirst for projects and a decentralized approach that leads to significant variation in what IOM does and how it operates in different contexts, IOM sometimes stands accused of undertaking states' 'dirty work' in controlling migration and papering over rights violations, particularly in relation to returns to unstable, insecure situations, and service provision in migrant detention centres.[32]

Critics often point to IOM's history, competitive bent, and institutional design to paint a picture of a Western-dominated, service-driven IO that, without a constitutionally assigned protection mandate, is naturally inclined to prioritize wealthy states' interests over individual rights. On this account, IOM's growth has been achieved on the back of its place outside the UN system, and its lack of obligations in relation to human rights and humanitarian norms.[33] While the ethical concerns underpinning such critiques remain prescient, they struggle to explain important recent developments, including the approval by IOM's governing Council of major institutional policies and frameworks recognizing and fleshing out IOM's normative obligations, the development of its internal policies and frameworks, and the key institutional development of its entry into the UN system in September 2016.[34]

1.2   A Watershed Moment? IOM Becomes a 'Related Organization' in the UN System

Although IOM was created outside the UN system, the organizations have entangled histories, with IOM and the Office of the UN High Commissioner for Refugees (UNHCR) working closely – if uneasily – together, and IOM

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[31] Martin Geiger and Antoine Pécoud, 'The Politics of Migration Management' in Martin Geiger and Antoine Pécoud (eds), *The Politics of Migration Management* (Palgrave Macmillan 2010).

[32] See, for example, Hirsch and Doig (n 5); Ashutosh and Mountz (n 6); Rutvica Andrijasevic and William Walters, 'The International Organization for Migration and the International Government of Borders' (2010) 28 Environment and Planning D: Society and Space 977; Julien Brachet, 'Policing the Desert: The IOM in Libya beyond War and Peace' (2016) 48 Antipode 272; Fabian Georgi, 'For the Benefit of Some: The International Organization for Migration and Its Global Migration Management' in Martin Geiger and Antoine Pécoud, *The Politics of International Migration* (Palgrave MacMillan 2010).

[33] Alexander Betts, 'Institutional Proliferation and the Global Refugee Regime' (2009) 7 Perspectives on Politics 54; Ashutosh and Mountz (n 6).

[34] On IOM's entry into the UN system, see, for example, Megan Bradley, 'Joining the UN Family?' (2021) 27 Global Governance 251. Key IOM policies approved by the IOM Council include the 'Migration Crisis Operational Framework' (15 November 2012) IOM Doc MC/2355 and the 'Migration Governance Framework' (4 November 2015) IOM Doc C/106/40.

often operating in humanitarian emergencies as part of the UN country teams.[35] Since its founding, IOM staff and their UN counterparts have debated if IOM should join the UN system, whether as a specialized agency or in some other form.[36] IOM obtained observer status in the UN General Assembly in 1992, and in 1996 the organizations signed a cooperation agreement through which they pledged to 'strive for the maximum cooperation and coordination to ensure complementary action at headquarters and field levels'.[37] In practice, however, the IOM–UN relationship was often tense, given differences in approaches, normative commitments, and institutional culture. IOM's leadership recognized that it reaped some dividends from its place on the margins of the UN system, but also emphasized to its members the limitations of this liminal position, and suggested avenues to change it.[38] The member states demurred, however, with the United States' traditional position being, 'Never, over our dead body, will IOM join the UN'.[39]

This began to change, and rapidly, in 2014–2015, owing to a combination of timing, turf battles, and shifting perspectives on the value of IOM entering the UN system. Having invested considerably in improving IOM–UN relationships that were antagonized during IOM's aggressive expansion in the 1990s, IOM Director General Bill Swing (himself a former senior UN official) convinced member states to resurrect the dormant Working Group on IOM–UN Relations. At the same time, the perceived refugee and migration 'crisis' was gaining steam, which drew attention to serious gaps in the UN architecture for responding to migration, particularly operationally. Earlier discussions on IOM entering the UN system were stymied in part by the fact that IOM's membership was very limited. By this point, however, the vast majority of UN member states were also part of IOM. These states generally opposed the creation of a new UN migration agency to fill these gaps – a possibility the IOM bureaucracy was also eager to avoid. Instead, in November 2015, IOM's member states

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[35] Élie (n 12); Anne Koch, 'The Politics and Discourse of Migrant Return: The Role of UNHCR and IOM in the Governance of Return' (2014) 40 Journal of Ethnic and Migration Studies 905.

[36] Bradley, 'Joining the UN Family?' (n 34).

[37] UN ECOSOC, 'Cooperation Agreement between the United Nations and the International Organization for Migration' (25 June 1996) UN Doc E/DEC/1996/296, Article V(1) (hereafter 1996 Cooperation Agreement).

[38] Bradley, 'Joining the UN Family?' (n 34).

[39] Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 3) 29. For pre-2016 scholarly arguments on the merits of bringing IOM into the UN system, see, for example Kathleen Newland, 'The Governance of International Migration: Mechanisms, Processes, and Institutions' (2010) 16 Global Governance 331.

authorized Swing to approach the UN to 'develop with it a way in which the legal basis of the relationship between IOM and the United Nations could be improved'.[40] Swing proposed three options to UN Secretary-General Ban Ki-moon: IOM could become a UN specialized agency, a related agency in the UN system, or the agencies could negotiate a sui generis agreement. Historically, IOM leaders tended to argue in favour of IOM becoming a specialized agency of the UN, like UNESCO or the World Health Organization.[41] However, the agreement signed at the September 2016 UN Summit for Refugees and Migrants made IOM a related organization in the UN system. The timing was key to this decision. Member states wanted IOM to play a leading role in supporting the negotiation of the Global Compact for Migration (GCM) stemming from the September Summit. As a UN initiative, this mantle needed to be assumed by actors within the UN system – generating fresh urgency to bring IOM into the fold. Under the UN Charter, specialized agency status must be approved by ECOSOC and then the General Assembly. This was deemed too time-consuming; instead, related organization status was confirmed directly via the General Assembly in time for the September Summit.[42]

What this means, politically and legally, is a matter of some debate.[43] The UN Charter addresses specialized agencies, but it does not discuss the status of related organizations or define the 'UN system'. Addressing this gap, White contends that the 'UN "system" of organizations, organs and subsidiary bodies, agents, experts and employees is vast and diverse' and

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[40] IOM Council Resolution 1309, 'IOM-UN Relations' (4 December 2015) IOM Doc C/106/RES/1309.

[41] Bradley, 'Joining the UN Family?' (n 34).

[42] Ibid.

[43] For differing perspectives, see Miriam Cullen, 'The Legal Relationship between the UN and the IOM after the 2016 Cooperation Agreement: What Has Changed?' 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), as well as 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 20 July 2022; Miriam Cullen, 'The IOM's New Status and Its Role under the Global Compact for Safe, Orderly and Regular Migration: Pause for Thought' (EJIL: Talk!, 29 March 2019) www.ejiltalk.org/the-ioms-new-status-and-its-role-under-the-global-compact-for-safe-orderly-and-regular-migration-pause-for-thought/> accessed 20 July 2022; Martin Geiger and Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave MacMillan 2020); Chetail, *International Migration Law* (n 8) 366–397.

includes specialized agencies as well as related organizations.[44] The UN Chief Executives Board for Coordination (CEB), the highest-level coordination platform in the UN system, states that 'related organization' is 'a default expression, describing organizations whose cooperation agreement with the United Nations has many points in common with that of Specialized Agencies' but does not refer to the relevant articles of the UN Charter.[45] The related organizations include prominent IOs such as the World Trade Organization (WTO), the International Atomic Energy Agency, and the International Criminal Court, as well as several treaty secretariats. Like specialized agencies, related organizations are legally distinct from the UN itself, and are governed and funded autonomously by the principal organs of the UN. In this sense, Chetail argues, the suggestion that IOM has become the 'UN Migration Agency' is 'legally wrong' in that IOM is not technically a UN *agency*, even if it is in the UN *system*.[46] The UN Secretariat recognizes related organizations as functional parts of the UN system,[47] yet related organizations themselves vary considerably in how they interpret and present their relationship to the UN 'family'.

Notwithstanding these ambiguities, the 2016 Agreement establishes IOM as a formal, full member of all UN regional and country teams, as well as high-level UN governance bodies including the CEB, the UN Development Group and the Inter-Agency Standing Committee (IASC), the main platform for humanitarian response coordination.[48] Some suggest that the significance of these changes is limited, as IOM was already highly integrated into many UN mechanisms.[49] However, from IOM's institutional perspective, the Agreement provides the recognition,

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[44] Nigel White, 'Layers of Autonomy in the UN System' in Richard Collins and Nigel White (eds), *International Organizations and the Idea of Autonomy: Institutional Independence in the International Legal Order* (Routledge, 2011) 298, 305. See also Volker Rittberger, *Global Governance and the UN System* (United Nations University Press 2002) 3.

[45] UN CEB, 'Directory of United Nations System Organizations: Related Organizations' (2019).

[46] Chetail, *International Migration Law* (n 8) 366. On this issue, see also Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (4th edn, Oxford University Press 2021) 507–509.

[47] See, for example, UN, 'The United Nations System' (2019) <www.un.org/en/pdfs/18-00159e_un_system_chart_17x11_4c_en_web.pdf> accessed 20 July 2022.

[48] 2016 Agreement (n 2).

[49] Nicholas Micinski and Thomas G Weiss, 'International Organization for Migration and the UN System: A Missed Opportunity' (2016) *Future United Nations Development System Briefing* 42 2 <https://ssrn.com/abstract=2841067> accessed 20 July 2022. See also Cullen, 'The Legal Relationship between the UN and the IOM after the 2016 Cooperation Agreement: What Has Changed?' (n 43).

standing and stability it craved, and removed barriers to its continued expansion. Although some UN officials expressed qualms, the move was vocally supported by member states and top UN officials including the Secretary-General and the heads of UNHCR and the UN Office for the Coordination of Humanitarian Affairs (OCHA).[50] As a practical matter, IOM is now widely recognized as the leading agency within the UN system on migration issues, and member states reportedly have little appetite for re-opening the question of its status.[51] Yet the conversation is not over: in 2017, UN Secretary-General Guterres argued that the IOM–UN relationship should be further consolidated by repositioning IOM as a specialized agency.[52]

The 2016 Agreement expanded IOM's legal obligations, while simultaneously exacerbating its constitutional ambiguities. The IOM's member states insisted that the agency retain its 'essential elements', including the notion that IOM is a 'non-normative organization with its own constitution and governance system, featuring a predominantly projectized budgetary model and a decentralized organizational structure', characterized by its 'responsiveness, efficiency, cost-effectiveness and independence'.[53] Accordingly, the 2016 Agreement noted these attributes, recognizing IOM as an 'independent, autonomous and non-normative international organization', yet also 'an essential contributor in the field of human mobility, [including] in the protection of migrants'.[54] In the 2016 Agreement, IOM also 'undertakes to conduct its activities in accordance with the Purposes 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'.[55]

How, if at all, can these elements be reconciled? Notably, neither the 2016 Agreement nor the IOM Council has defined the term 'non-normative', which is not a legal term of art but was included on member states' insistence.[56] Some participants in the 2016 negotiations suggest

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[50]   Bradley, 'Joining the UN Family?' (n 34).
[51]   Ibid.
[52]   UNGA, 'Making Migration Work for All: Report of the Secretary-General' (12 December 2017) UN Doc A/72/643 para 73; Chetail, *International Migration Law* (n 8) 365.
[53]   IOM Council Resolution 1309 (n 40) Article 2.a.
[54]   2016 Agreement (n 2), Article 2(2).
[55]   Ibid, Article 2(5).
[56]   Bradley, 'Joining the UN Family?' (n 34). On the difficulty of offering a coherent legal interpretation of this term, see Chetail, *International Migration Law* (n 8) 392–397.

that in this context the term carried a particular connotation: that IOM is not a forum for negotiating binding international standards on migration.[57] The reference to 'non-normative' is seemingly unique in major legal agreements pertaining to IOs, with most IOs embracing their normative functions, reflecting on them,[58] and seeking to secure funding to enable them further.[59] IO constitutional documents often specify and delimit some standard-setting role for the IO, whether that be to adopt recommendations or binding measures, develop policies or standards, or advocate for the ratification and effective implementation of particular international instruments.[60] Even IOs, such as the Organisation for Economic Co-operation and Development (OECD), which do not themselves have a role in creating binding international norms, nonetheless have constitutional functions that include the evaluation of domestic policies and practices in light of particular aims, and as such are understood by the IO itself as a 'normative role'.[61] While the IOM Constitution contains no express provisions on the organization's involvement in such processes, the reference in the 2016 Agreement characterising the IO as 'non-normative' is nonetheless rather question-begging in the context of the acknowledgement of its own obligations in the same 2016 Agreement, and the organization's leading role in normative processes, such as the Global Compact. IOM is routinely involved in the development of migration policies that are 'normative' in the sense that they often seek to guide the conduct of actors including IOM itself, states, NGOs, and in some cases private actors (for instance in the context of IOM's work on ethical labour recruitment by private agencies). IOM's recent organizational reform process suggests that it aspires to direct involvement in explicitly normative processes such as standard-setting and advocacy, despite the

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[57] Bradley, 'Joining the UN Family?' (n 34).

[58] See, for example, WHO, 'Evaluation of WHO's Normative Function' (2017) <www.who.int/docs/default-source/documents/evaluation/evalbrief-normativefunction-15jan18.pdf?sfvrsn=bf320621_2> accessed 20 July 2022.

[59] Daugirdas and Burci (n 28) 326–327.

[60] See, for example Article 2 of the WHO Constitution: 'In order to achieve its objective, the functions of the Organization shall be … to propose conventions, agreements and regulations, and *make recommendations with respect to international health matters* and to perform such duties as may be assigned thereby to the Organization and are consistent with its objective' and 'to develop, establish and promote international standards with respect to food, biological, pharmaceutical and similar products' (emphasis added).

[61] To illustrate, in 2019, OECD published 'Better Criteria for Better Evaluation: Revised Evaluation Criteria Definitions and Principles for Use' (updating its 1991 Criteria). The 2019 Criteria are referred to within the document as playing a 'normative role'.

'non-normative' designation. For example, the IOM Headquarters is now identified as having responsibility for 'institutional policy, guidelines and strategy, [and] standard-setting', amongst other functions; the objective of the recently established Migration Protection and Assistance Division is 'to contribute to promoting and upholding the rights of migrants and their communities, including setting standards and advocacy and to manage migration in line with international legal and other internationally agreed standards and effective practices'.[62] Unsurprisingly, however, the use of the term 'non-normative' in such an important agreement has raised concerns that IOM may use this designation to sidestep its human rights and humanitarian obligations. This risk is amplified as the 2016 Agreement establishes no formal accountability mechanisms, leaving it to IOM's discretion whether to report to the UN through the General Assembly.[63] Many of the following chapters probe these and other tensions apparent in the 2016 Agreement, and the implications of this development.

1.3   Core Concepts

This book examines IOM in relation to three core concerns: IOs' obligations, accountability, and expansion dynamics. The chapters engage these concepts in different ways and to different degrees, with some, for example, focusing on IOM's obligations, both legal and political, and accountability structures, and others detailing the drivers of IOM's growth in particular areas. In this section, we do not, therefore, attempt to set out fixed definitions, but rather situate IOM and the collection in relation to ongoing debates on these interlinked issues.

1.3.1   Obligations

This book engages with legal as well as political obligations, looking at IOM's formal obligations as a matter of international law, arising from a variety of sources, including the legal agreements to which it is party, its own Constitution and internal rules, and the pertinent aspects of customary international law. These legal obligations partly overlap with the larger domain of its political obligations, as set out in its policies and programmatic commitments. Some contributors also examine the wider field of

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[62] IOM, 'IOM Organizational Structure' <www.iom.int/iom-organizational-structure> accessed 20 July 2022; www.iom.int/migrant-protection-and-assistance

[63] Article 4 2016 Agreement (n 2).

its ethical obligations, considering the impact of its policies and practices on widely shared principles and values, such as 'ethical recruitment' and 'data responsibility'.[64]

IOM operates in fields regulated by various bodies of international law, including international migration law, human rights law, humanitarian law, labour law, refugee law, disaster law and transnational criminal law (for example as it relates to human smuggling and trafficking). As an IO, IOM has a legal personality and is a subject of international law. As the ICJ held in its 1980 Advisory Opinion on the *Interpretation of the Agreement of 25 Mary 1951 between the WHO and Egypt*, '[i]international organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties'.[65] Too often, however, the literature on IOM implies that the organization's legal obligations and its relationship to international norms can be understood simply in reference to its Constitution and its position outside the UN. The IOM Constitution is undeniably pivotal to understanding IOM's mandate and obligations. However, as Chetail stresses, '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'.[66] A thorough account of IOM's legal obligations also requires careful consideration of all the sources identified in the ICJ 1980 advisory opinion, including *jus cogens* principles and other 'general rules',[67] as well as its internal rules, such as policies and frameworks

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[64] For analysis of IOM's data work in relation to influential conceptions of data responsibility, see Anne Koch, 'The International Organization for Migration as a Data Entrepreneur: The Displacement Tracking Matrix and Data Responsibility Deficits' 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 role in relation to ethical labour recruitment, 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).

[65] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* (Advisory Opinion), [1980] ICJ Reports 73.

[66] Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 8) 244–264.

[67] While debates on the applicability of different principles of customary international law to IOs are ongoing, the notion that IOs are bound by *jus cogens* norms is more widely accepted – although this in turn raises the question of which principles are indeed *jus*

adopted by the IOM Council.[68] Indeed, the notion of the implied obligations of IOs is one ripe for further consideration, given that the doctrine of implied powers is so well established and enables IO expansion.[69] Accordingly, several contributors consider IOM's obligations and responsibility from the vantage point of developments in various bodies of international law, taking into account the implications of the International Law Commission (ILC) Articles on the Responsibility of International Organizations (ARIO) (2011).[70]

Regrettably, much of the existing scholarship on IOM wrongly regards IOM as having no human rights obligations simply because it has no formally articulated protection mandate in its Constitution. What does it mean for an IO to have a protection mandate, and how does this relate to IOM's obligations? The IASC offers an influential conceptualization 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', particularly international human rights, humanitarian and refugee law.[71] As its operational activities may contribute to the protection

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cogens. While we cannot address this issue in full here, there is strong support for the view that the prohibition of racial discrimination and torture, as well as refoulement to risk of torture, represent *jus cogens* norms. These principles are clearly applicable to IOM's field of work, and entail negative and positive obligations for the organization. See Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 8) 244–264. More broadly, see Jan Klabbers (ed), *Cambridge Companion to International Organizations Law* (Cambridge University Press 2022).

[68] On obligations stemming from IOs' internal rules and legal orders, see, for example, 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 20 July 2022; Laurence Boisson de Chazournes and Vassilis Pergantis, 'A Legal Framework on Internal Matters: Please Mind the Gap' in Jan Klabbers (ed), *Cambridge Companion to International Organizations Law* (Cambridge University Press 2022).

[69] Niamh Kinchin, 'With Great Power Comes Great Responsibility: Implied Obligations and the Responsibility to Protect' (2022) International Organizations Law Review.

[70] See Jan Klabbers, 'The (Possible) Responsibility of IOM under International Law' 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). On the obligations, responsibilities, and accountability of IOs from the perspective of the law of international organizations, see Jan Klabbers, *Advanced Introduction to the Law of International Organizations* (Edward Elgar Publishing 2015).

[71] 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 20 July 2022.

of migrants' rights in practice, IOM now regularly asserts that it is a protection actor – a claim recognized in the 2016 Agreement with the UN.[72] The flip side, of course, is that IOM's activities may also undermine or violate migrants' rights. Rhetorically, IOM now recognizes its obligation to integrate protection concerns into its operations and has a bevy of internal policies and frameworks (some formally approved by the IOM Council) that address protection as a cross-cutting concern, and in relation to particular populations and operational issues.[73] Yet this differs from the sense in which some IOs have a formal, constitutionally inscribed mandate for legal protection in relation to particular populations. The most relevant comparison here is of course UNHCR, which serves as the custodian of international refugee law and is charged under its Statute with 'provid[ing] for the protection of refugees falling under the competence of his Office'.[74] When compared to UNHCR, IOM may seem odd in that it is not responsible for a particular convention or legally defined population, nor does it serve as a forum for the negotiation of binding new norms on migration. Whether IOM's Achilles heel is its lack of a formal legal protection mandate is a theme taken up throughout the volume, and addressed in more detail below.

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[72] On IOM's deployment of human rights discourse, see Bradley and Erdilmen (n 6). In 2017–2018, IOM was subject to a major institutional performance assessment by the Multilateral Organisation Performance Assessment Network (MOPAN), a donor initiative that analyses IOs' effectiveness on a cyclical basis, in relation to agreed-upon benchmarks. Considering protection as a cross-cutting concern, the MOPAN assessment pointed to areas for improvement but ranked IOM's protection and human rights promotion performance as 'satisfactory', relative to established benchmarks. A survey of partners in the field conducted as part of the assessment also indicated that IOM's protection work is on balance well-regarded. As an assessment conducted on the behest of donor states, these conclusions should be taken with a grain – if not a spoonful – of salt. Nonetheless, they are noteworthy because they suggest that within important donor and practitioner communities, IOM is no longer seen as a major outlier or highly deficient regarding protection. See MOPAN, 'MOPAN 2017–2018 Assessments: International Organization for Migration' (2018) <www.mopanonline.org/assessments/iom2017-18/IOM%20Report.pdf> accessed 20 July 2022.

[73] For institutional evaluations addressing IOM's attempts to 'mainstream' protection, see, for example, Anders Olin, Lars Florin and Björn Bengtsson, 'Study of the International Organization for Migration and its Humanitarian Assistance' (SIDA Evaluations 2008) 1–96; MOPAN (n 72). On IOM's internal policies, including those related to protection, see Megan Bradley, 'Who and What Is IOM for? The Evolution of IOM's Mandate, Policies and Obligations' 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).

[74] UNHCR Statute (n 23).

As well as being a duty bearer under international law, IOM's policies and practices may also support, or help undermine states' adherence to their international obligations. States often turn to IOM to strengthen their ability to effectively manage different forms of mobility within the parameters of international law but also, arguably, to circumvent their obligations towards vulnerable migrants in need of protection and assistance.[75] States cannot, as a matter of law, evade their own obligations by acting through IOs, and IOM and its member states of course insist that their activities are in line with international and domestic legal requirements.[76] However, IOM's work on issues such as returns and in migrant detention centres is normatively fraught and may result in human rights violations, which are either attributable to states, IOM itself, or more typically a combination of actors. Yet holding IOs responsible for their actions under international law has for the most part been 'eminently theoretical'.[77] Nonetheless, interest in this issue has grown alongside IO misconduct scandals, fiascos such as the UN's role in the cholera epidemic in Haiti, and massive protection of civilian failures in Rwanda and Bosnia.[78] Although criticized,[79] the ARIO represent a significant intervention in legal debates on IO responsibility, reflecting the fact that IOs are 'now seen as "mature" subjects of the international legal order susceptible to the application of a comprehensive regime of responsibility whenever they breach their – sometimes considerable – powers'.[80]

As Klein stresses, IOs 'incur international responsibility whenever conduct attributable to them amounts to a breach of an international

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[75] See, for example, Hirsch and Doig (n 5); Dastyari and Hirsch (n 5) 435–465.

[76] Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 8) 244–264.

[77] Pierre Klein, 'Responsibility' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *Oxford Handbook on International Organizations* (Oxford University Press 2016) 1026.

[78] In relation to protection of civilians failures during UN peace operations in Bosnia and Rwanda, the UN has recognized its responsibility only on the political level. See Klein, 'Responsibility' (n 77) 1026–1047. On other significant cases, such as the UN-initiated cholera epidemic in Haiti, see, for example, Kristina Daugirdas, 'Reputation and Accountability: Another Look at the United Nations' Response to the Cholera Epidemic in Haiti' (2019) 16 International Organizations Law Review 11.

[79] See, for example, Armin von Bogdandy and Mateja Steinbrück Platise 'ARIO and Human Rights Protection: Leaving the Individual in the Cold' (2012) 9 International Organizations Law Review 67.

[80] Klein, 'Responsibility' (n 77). For an introduction to ARIO, see Mirka Möldner, 'Responsibility of International Organizations – Introducing the ILC's DARIO' in A von Bogdandy and R Wolfrum (eds), *Max Planck Yearbook of United Nations Law* (Vol 16, Brill 2012).

obligation *binding upon the organization* concerned'.[81] Determining which international obligations bind IOs is a matter of some contestation, in particular in the case of IOM, as its Constitution refers primarily to sovereign state control over admissions decisions, and does not clearly incorporate human rights and other pertinent international legal standards.[82] Although the 2016 Agreement and IOM's internal rules go some way towards clarifying IOM's legal obligations, the question of the precise scope of IOM's international legal obligations remains unsettled.[83] The crucial provision of the 2016 Agreement, in terms of IOM's international legal obligations, is Article 2(5), which provides that IOM undertakes to 'conduct its activities in accordance with the Purposes 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'. Article 2(5) must be interpreted in light of the surrounding provisions. Article 2(3) provides, *inter alia,* that the UN 'recognizes that the International Organization for Migration, by virtue of its Constitution, shall function as an *independent, autonomous and non-normative* international organization in the working relationship with the United Nations established by this Agreement, noting its essential elements and attributes defined by the Council of the International Organization for Migration as per its Council Resolution No. 1309'.[84] It is notable that the previous cooperation agreement between the organizations, signed in 1996, did not mention the institutional independence of IOM, yet the 2016 Agreement does so expressly as a subparagraph of the same provision said to bring it under the UN umbrella.[85] IOM Council resolution 1309 provided the negotiating instructions for the 2016 Agreement. It directs that any new agreement should be made under the 'explicit condition' that certain 'essential elements' of the organization be preserved. As discussed above, these include that the 'IOM is the global lead agency on migration and is an intergovernmental, non-normative organization with its own constitution and governance system, featuring a predominantly projectized budgetary model and decentralized organizational

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[81] Klein, 'Responsibility' (n 77).

[82] IOM Constitution (n 4) Article 1.3.

[83] On this issue, see Henry Schermers and Niels Blokker, *International Institutional Law: Unity within Diversity* (5th edn, Brill 2011); Klein, 'International Organizations or Institutions, Internal Law and Rules' (n 68).

[84] 2016 Agreement (n 2), Art. 2(3) (emphasis added).

[85] 1996 Cooperation Agreement (n 37).

structure'[86] and that IOM 'must' retain its 'responsiveness, efficiency, cost-effectiveness and independence'.[87] According to some scholars, IOM member states were concerned about potential 'mandate creep', towards a more protection-oriented agenda.[88] Such concerns may explain, at least in part, why the IOM Council insisted that in any new Agreement with the UN, the independence, mandate and efficiencies of IOM must be expressly retained.

Contributors to this volume offer varying interpretations of Article 2(5). Johansen, for example, suggests that the pledge to conduct its activities in line with the purposes and principles of the UN could signify that IOM commits to a wider set of human rights standards than it had previously, insofar as to 'promote and encourage respect for human rights' is among the purposes of the UN.[89] Yet, as others in this volume have also observed, it is unlikely that this clause adds much to pre-existing obligations. Cullen highlights the weakness of the 'due regard' standard, arguing that it merely establishes a procedural obligation requiring IOM to consider and weigh the norms in question. She argues further that in some ways IOM's previous agreement with the UN (that from 1996) entailed stronger obligations. Klabbers notes that 'at least it would seem to suggest that IOM has committed itself to act with a human rights sensibility'. In contrast, Aust and Riemer assume that the 'due regard' standard effectively renders IOM bound to respect human rights. They state that 'IOM must indeed do more than just "consider" these commitments. Instead, it must actively ensure that it acts not only in the interest of states but also of migrants (Article 1) and contributes to the protection of the migrants' rights (Article 2, para. 1)'.[90] In considering the effects of Article 2(5), it must be borne in mind that over the course of the past decade, IOM has advanced its human rights engagement through institutional policies such

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[86] IOM Council Resolution 1309 (n 40) para 2(a).

[87] Other 'essential elements' include that IOM is 'an essential contributor in the field of migration and human mobility' and 'IOM must be in a position to continue to play this essential and experience-based role': IOM Council Resolution 1309 (n 40) para 2.

[88] On 'mandate creep' concerns pre-2016, see Hall (n 8) 100.

[89] Stian Øby Johansen, 'An Assessment of IOM's Human Rights Obligations and Accountability Mechanisms' 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).

[90] Helmut Philipp Aust and Lena Riemer, 'A Human Rights Due Diligence Policy for the IOM?' 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).

as the 2012 Migration Crisis Operational Framework, the 2015 Migration Governance Framework, and since 2016 it has participated in programmes such as the UN Human Rights Up Front Initiative and the Human Rights Due Diligence Policy.[91] Policy is of course not legally insignificant. The internal rules of an organization, such as 'decisions, resolutions, and other acts of the organization adopted in accordance with those instruments, and established practice of the organization'[92] possess the potential to give rise to responsibility under international law.[93]

Like many IOs, IOM often acts jointly with national authorities. The imbrication of IO and member state responsibility raises particularly complex legal questions, with ARIO indicating that an IO 'may in certain circumstances incur responsibility as a consequence of its own conduct *in relation to* an internationally wrongful act of one or several of its members',[94] such as if an IO provides 'aid or assistance' in the conduct of an 'internationally wrongful act'.[95] IOM and its member states would, again, deny that any of their collaborative activities breach their obligations. However, IOM's involvement in activities such as training Libyan coast guard officials who intercept migrant vessels and refurbishing Libyan immigration detention centres raise complex questions about circumventing obligations and enabling rights violations, as these actors and facilities are linked to flagrant rights violations – abuses IOM itself has publicized and denounced.[96]

Beyond ambiguities in the source and scope of IOs' legal obligations, politically and ethically there is little consensus about the proper roles and obligations of IOs working on migration as a highly contested issue.

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[91] Ibid; Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 3) 21–23.

[92] '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).

[93] Ibid Art 10(2).

[94] Klein, 'Responsibility' (n 77); ARIO Articles 14, 58.

[95] ARIO (n 92), Article 58.

[96] Dastyari and Hirsch (n 5). IOM, 'IOM Condemns Recent Violence in Libyan Detention Centre' (*IOM News-Global*, 5 March 2019) <www.iom.int/news/iom-condemns-recent-violence-libyan-detention-centre> accessed 20 July 2022; UNHCR and IOM, 'IOM and UNHCR Condemn the Return of Migrants and Refugees to Libya' (16 June 2021) <www.unhcr.org/uk/news/press/2021/6/60ca1d414/iom-unhcr-condemn-return-migrants-refugees-libya.html> accessed 20 July 2022. Amongst IOs, IOM is the largest recipient of money through the EU Emergency Trust Fund for Africa, which has bankrolled some of these interventions. See EU Emergency Trust Fund for Africa, '2020 Annual Report' 64 <https://ec.europa.eu/trustfundforafrica/sites/default/files/eutf-report_2020_eng_final.pdf> accessed 20 July 2022.

Indeed, while there has been extensive philosophical analysis of states' moral obligations in relation to diverse forms of migration, the duties of IOs such as IOM are remarkably under-examined.[97]

1.3.2　Accountability

Accountability eludes tidy definitions but is associated with the prevention and sanctioning of 'unethical, illegal, or inappropriate behaviour', particularly by authority figures, and ensuring adherence to legitimizing norms, standards and expectations.[98] IOs are subject to a repertoire of 'accountability regimes', which arise from the different ways they are evaluated and called upon to give an account of their actions.[99]

In global governance, the 'magic wand of accountability' is sometimes presented as 'a supervening force able to promote democracy, justice, and greater human decency through the mechanisms of transparency, benchmarked standards, and enforcement'.[100] Although the nebulousness of the concept has elicited scepticism in some quarters,[101] there has been a strong accountability turn in the study of IOs, both in legal scholarship and IR.[102]

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[97] See, for example, David Miller and Christine Straehle (eds), *The Political Philosophy of Refuge* (Cambridge University Press 2020); Sarah Fine and Lea Ypi, (eds) *Migration in Political Theory* (Oxford University Press 2019).

[98] Edward Weisband and Alnoor Ebrahim, 'Introduction: Forging Global Accountabilities' in Alnoor Ebrahim and Edward Weisband (eds), *Global Accountabilities: Participation, Pluralism, and Public Ethics* (Cambridge University Press 2007). The literature on IOs frequently refers to Grant and Keohane's definition of accountability, which implies that 'some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met'. See Ruth Grant and Robert Keohane, 'Accountability and Abuses of Power in World Politics' (2005) 99 American Political Science Review 29.

[99] Jerry Mashaw, 'Structure a "Dense Complexity" Accountability and the Project of Administrative Law' (2005) 5(1) Issues in Legal Scholarship 1.

[100] Ibid.

[101] Peter Newell and Shaula Bellour, 'Mapping Accountability: Origins, Contexts and Implications for Development' (October 2002) 2 <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/3930/Wp168.pdf?sequence=1&isAllowed=y> accessed 20 July 2022.

[102] See, for example Jan Wouters, Eva Brems, Stefaan Smis, and Pierre Schmitt (eds), *Accountability for Human Rights Violations by International Organisations: Introductory Remarks* (Intersentia 2010); Dan Sarooshi (ed), *Remedies and Responsibility for the Actions of IOs* (Brill Nijhoff 2014); Samantha Besson 'International Institutions' Human Rights Duties and Responsibilities for Human Rights: A Quiet (R)Evolution' (2015) 32 (1) Social Philosophy and Policy 244; Kristen E Boon and Frédéric Mégret 'New Approaches to the Accountability of International Organizations' (2019) 16 International Organizations Law

This scholarship emerges against the backdrop of concern that IOs enjoy legal immunities that sit uneasily with their often significant powers, and their involvement in activities that may violate the rights and compromise the interests of states, individuals and communities, often the very entities they purport to serve.[103] IOs are increasingly under pressure to demonstrate their accountability not only to states but also to individuals affected by their actions and to the 'international community' writ large, notwithstanding manifest tensions between what accountability to these different actors might involve.[104] Indeed, doing so has become crucial to the maintenance of IOs' authority and legitimacy, and preserving the notion that IOs serve public interests.[105]

In this connection, there has been widespread concern to ensure the legal accountability of IOs, in the sense of 'jurisprudence and legal sanctioning that is limited to rights that can be subjected to judicial review', particularly but not only for international human rights violations.[106] Yet, IO experiences and their pathways to enhanced accountability are uneven, with significant variation between organizations in how accountability has been understood and embedded institutionally. As currently configured, international organizations law, in particular on immunities, creates a serious gap in legal accountability.[107] Without systemic general reforms,[108] IOs' internal reforms are the main effective route to accountability. These emerge episodically, depending on a number of factors, such as coercion (by their member states); competition (market incentives); learning (changed beliefs); and emulation (of peers).[109] Interventions to

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Review 1; Megan Donaldson and Surabhi Ranganathan, 'Accountability' in Jan Klabbers (ed), *The Cambridge Companion to International Organizations Law* (Cambridge University Press 2022); Pierre Schmitt, *Access to Justice and International Organizations: The Case of Individual Victims of Human Rights Violations* (Edward Elgar 2017); Rishi Gulati *Access to Justice and International Organisations: Coordinating Jurisdiction between the National and Institutional Legal Orders* (Cambridge University Press 2022).

[103] See, for example, Ebrahim and Weisband (n 98).
[104] Klaus Dingwerth and others, 'International Organizations under Pressure' in Klaus Dingwerth and others (eds), *International Organizations under Pressure: Legitimating Global Governance in Challenging Times* (Oxford University Press 2019).
[105] Hirschmann (n 10); Heupel and Zürn (n 10).
[106] Hirschmann (n 10) 5.
[107] See generally August Reinisch (ed), *The Privileges and Immunities of International Organizations in Domestic Courts* (Oxford University Press 2013); Anne Peters and others (eds), *Immunities in the Age of Global Constitutionalism* (Brill 2015), 285–354.
[108] See, for example Gulati (n 103).
[109] See, for example, Heupel and Zürn (n 10); Ferstman (n 10); Stian Johansen, *The Human Rights Accountability Mechanisms of International Organizations: A Framework and Three Case Studies* (Cambridge University Press 2020); Kristen E Boon, 'The United Nations as

achieve improved IO accountability often materialize from a combination of bottom-up and top-down pressure, such as through alliances between civil society groups and governmental actors in a position to exert greater oversight and control.[110] While IOs broadly have struggled or simply refused to establish adequate mechanisms to deal with grievances related to their conduct, scholars have probed the optimal design of accountability mechanisms, taking into account criteria such as transparency, access, participation, fairness and access to justice.[111]

In terms of IOs working on migration and displacement, scholars have probed accountability concerns in relation to UNHCR, particularly in the context of camp administration.[112] IOM has, somewhat remarkably, not been extensively discussed in the accountability literature, despite its roles in several serious and well-documented cases involving human rights violations, such as in relation to its involvement in Australian offshore immigration detention.[113] To the limited extent that the existing literature on IOM broaches accountability, it tends to assume that the only or most pertinent form of accountability at play is vertical accountability of IOM as an agent towards its principals, especially donor states.[114] This book takes a more multi-faceted approach, integrating analysis of various forms and *fora* for accountability. Some chapters focus on formal legal responsibility and accountability, with Klabbers (Chapter 3) probing the ways in which the structure of international law itself limits the (possible) responsibility of IOM under international law. Other contributors consider the potential of internal accountability systems and accountability

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Good Samaritan: Immunity and Responsibility' (2016) 16 Chicago Journal International Law 341.

[110] Jan Aart Scholte, 'Relations with Civil Society' in Jacob Katz Cogan, Ian Hurd, and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press 2016).

[111] Ruth W Grant and Robert O Keohane, 'Accountability and Abuses of Power in World Politics' (2005) 99 American Political Science Review 29, 30; Anne Peters, 'International Organizations and International Law' in Jacob Katz Cogan, Ian Hurd, and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press 2016); Ferstman (n 10); Johansen, *The Human Rights Accountability Mechanisms of International* (n 109).

[112] See, for example, Verdirame (n 10); Johansen, *The Human Rights Accountability Mechanisms of International* (n 109); Kristin Bergtora Sandvik and Katja Lindskov Jacobsen, *UNHCR and the Struggle for Accountability: Technology, Law and Results-based Management* (Routledge 2016).

[113] For a notable exception, see Klabbers, 'The Accountability of International Organizations in Refugee and Migration Law' (n 10). On IOM's role vis-à-vis Australian offshoring, and human rights violations in this regard, see Hirsch and Doig (n 5).

[114] For a valuable discussion of IOM's donor relations, see Patz and Thorvaldsdottir (n 30).

structures within the UN system. Still others concentrate on the potential role of civil society actors such as human rights advocacy NGOs in strengthening IOM's accountability (Sherwood and Bradley, Chapter 15), understood as a socio-political relationship in which accountability holders help establish and uphold standards, including through monitoring and sanctions.[115]

Debates about IO accountability typically unfold in relation to behaviour that is attributable to the organization or its employees, but which the agency clearly opposes as a matter of principle, such as sexual exploitation and abuse by peacekeepers or aid workers. In contrast, debates on IOM's accountability stand out in that they often pertain to activities that the organization actively *decides* to undertake, although they are the subject of more overt normative contestation and raise risks of human rights violations that could evoke accountability claims. For example, as Sherwood, Lemay and Costello discuss (Chapter 13), migrant detention practices generally raise serious human rights concerns, and detention is opposed by many human rights advocates, including within the UN system.[116] IOM encourages alternatives to migrant detention, but it also provides services in detention centres.[117] Should such interventions be welcomed as a means to temper violations associated with detention, or decried as enabling abuse for which IOM should be held to account? Such questions point to the complexity of accountability issues surrounding IOM, and the urgent need for careful attention to them, particularly as IOM continues to grow.

1.3.3 Expansion, Ethos, and Institutional Culture

In its 'era of expansion', IOM has grown in terms of its membership, staff, budget, and operations; it has accrued increased power, influence and stature, alongside heightened expectations, commitments and responsibilities.[118] Although IOM is sometimes presented as a confounding institutional outlier,[119] when viewed through the prism of the extensive IR literature

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[115] Hirschmann (n 10) 5.
[116] Ashutosh and Mountz (n 6).
[117] See, for instance, IOM 'IOM Road Map on Alternatives to Migration Detention' (IOM 2020) <https://reliefweb.int/report/world/iom-road-map-alternatives-migration-detention-tools-series-n-1> accessed 21 July 2022.
[118] Bradley, 'The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime' (n 8).
[119] See, for example, Ashutosh and Mountz (n 6).

on IOs, the patterns, logics, and consequences of IOM's expansion can be apprehended with greater analytical clarity.[120] For example, building on insights from IR scholarship on historical institutionalism, Krueder-Sonnen and Tantow (Chapter 7) show how IOM strategically approached humanitarian crises as opportunities for growth and wielded the 'power of precedent' *ex-post* to formalize and normalize its role in executing new tasks. Relatedly, Hall (Chapter 8) traces how IOM established itself as a key player in migration and climate change, recasting understandings of its mandate and obligations. Bradley (Chapter 2) draws on theories of IO legitimacy and legitimation – that is, the strategies IOs deploy to cultivate the perception that they are compliant with socially requisite norms and values – to explain the puzzle of why IOM would commit to human rights and humanitarian principles when its *lack* of pesky normative obligations was long assumed to be one of its defining institutional advantages.[121]

More indirectly, the book also delves into the relationship between IOM's expansion dynamics, its institutional design and organizational culture,[122] illuminating the diverse ways in which IOM as an institution, its leaders and employees, understand, articulate and enact their own institutional and professional values.[123] Running throughout the book is

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[120] Amongst this expansive IR literature, the project broadly is influenced by the sociological approach to understanding IOs as bureaucracies that are not simply the servants of states, but actors that strategically cultivate different forms of authority as they seek to exert greater influence of diverse aspects of global governance. Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Cornell University Press 2004). Relatedly, see Deborah D Avant, Martha Finnemore and Susan K Sell (eds), *Who Governs the Globe?* (Cambridge University Press 2010); Joel Oestreich (ed), *International Organizations as Self-Directed Actors: A Framework for Analysis* (Routledge 2012); and, from a legal perspective, Guy Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (Oxford University Press 2017).

[121] On this assumption, see, for example, Betts, 'Institutional Proliferation and the Global Refugee Regime' (n 33). On IO legitimacy and legitimation, see, for example, Jonas Tallberg, Karin Bäckstran and Jan Aart Scholte (eds), *Legitimacy in Global Governance: Sources Processes, and Consequences* (Oxford University Press 2018); Dominik Zaum (ed), *Legitimating International Organizations* (Oxford University Press 2013).

[122] For an overview of scholarship on IO culture, see, for example, Stephen C Nelson and Catherine Weaver, 'Organizational Culture' in Jacob Katz Cogan, Ian Hurd, and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press 2016).

[123] On this issue generally, see Jan Klabbers, 'Controlling International Organizations: A Virtue Ethics Approach' (2011) 8 International Organizations Law Review 285, 295; Guy Fiti Sinclair, 'The International Civil Servant in Theory and Practice: Law, Morality and Expertise (2015) 26 *European Journal of International Law* 747. Other relevant case studies include Galit Sarfaty, *Values in Translation: Human Rights and the Culture of the World Bank* (Stanford University Press 2012).

a recognition that IOM is neither static nor a monolith. Thinking about variations within the organization and shifts over time is critical to achieving a more robust and nuanced understanding of how and why IOM has changed – and the ways in which it has failed to do so. While IOM has historically had a reputation of being willing to 'do anything for money', IOM institutionally, and many within the organization, have a strong interest in challenging this view, although attempts to do so are constrained by entrenched ways of working and incentive structures.[124] Broadly, IOM's projectized, decentralized structure, coupled with its imprecise mandate, has cultivated an organizational culture that prizes flexibility, efficiency and entrepreneurialism, and typically devotes less attention to protection and related normative concerns.[125] As Koch (Chapter 9) demonstrates in her examination of IOM's emergence as a leading displacement 'data entrepreneur', these attributes have facilitated IOM's expansion into new and lucrative areas of work, but have sometimes left IOM ill-equipped to systematically and proactively address the ethical questions and normative responsibilities they entail. These tensions are also evident in Chuang's analysis (Chapter 10) of IOM's International Recruitment Integrity System (IRIS). Presented as an ethical labour recruitment framework, IRIS provides a springboard for IOM to expand into another major area of work, and suggests a commitment to migrant welfare and rights protection. Yet, Chuang argues, the initiative favours states' interests in controlling labour market access and perpetuates a trend towards reliance on incremental, soft law approaches rather than more robust and binding protections for migrant workers' rights. In this sense, IRIS reflects broader shifts and persistent tensions in IOM's organizational culture, which increasingly integrates recognition of migrants' rights and protection concerns, but does not yet have a cohesive approach to centring and addressing them in practice.

1.4   Key Themes and Tensions

IOM can be a lightning rod for disagreement. Some observers suggest IOM has served as the 'biggest driver' of international cooperation and recent normative developments on migration, and have urged IOM to

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[124] On these dynamics see, for example, Philippe M Frowd, 'Developmental Borderwork and the International Organization for Migration' (2018) 44 Journal of Ethnic and Migration Studies 1656.

[125] MOPAN (n 72); Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 3) 39.

take on more prominent and powerful roles.[126] Others have dismissed
IOM as largely peripheral to global migration governance.[127] Still others
are unshakably suspicious or decry IOM as an active threat to migrants'
rights and wellbeing.[128] While united by an approach of critical but con-
structive engagement, the chapters in this volume also reflect tensions
and even disagreements on questions ranging from IOM's proper place
in global governance to its relationship with the UN and prospects for
reform. Authors differ on matters such as whether IOM is really a human-
itarian organization, the interpretation of the 2016 IOM-UN Agreement,
and, more broadly, the extent to which international law provides a strong
scaffolding for holding IOM accountable.[129] These divergent perspec-
tives are to be welcomed, as they reflect the unsettled nature of debates
regarding IOM specifically and the state of international law broadly.
Notwithstanding these differences, important themes emerge across
the chapters. This section elaborates on four key areas of convergence:
grounding assessments of IOM in international law; IOM's roles vis-à-vis
norms; its approach to protection; and the need for more nuanced expla-
nations of institutional change at IOM.

1.4.1   Bound, Unbound? Grounding Assessments of IOM in International Law

IOM itself has sometimes suggested that it is not bound by key standards
such as international human rights law.[130] This is no longer its position,
although murkiness remains regarding IOM's interpretation of its legal

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[126] Ferris and Donato (n 24) 70; Martin (n 24) 124–153; Newland (n 39).

[127] See, for example, Alexander Betts, 'Introduction: Global Migration Governance' in Alexander Betts (ed), *Global Migration Governance* (Oxford University Press 2011).

[128] See, for example, Goodwin-Gill (n 43); Georgi (n 32).

[129] For different perspectives on IOM as a humanitarian organization, versus as an IO working in humanitarian situations, contrast Bradley, 'Who and What Is IOM For? (n 73) and Gilbert (n 70). See Aust and Riemer (n 90) and Cullen, 'The Legal Relationship between the UN and IOM after the 2016 Cooperation Agreement: What Has Changed?' (n 43) for diverging perspectives on what 'due regard' requires vis-à-vis UN policies and relevant instruments in the 'international migration, refugee and human rights fields'. For varying perspectives on prospects for IO responsibility and accountability, see for example Klabbers, 'The (Possible) Responsibility of IOM under International Law' (n 70) and Johansen, 'An Assessment of IOM's Human Rights Obligations and Accountability Mechanisms' (n 89).

[130] See, for example, House of Lords European Union Committee, '11th Report of Session 2003–04: Handling EU Asylum Claims: New Approaches Examined' (HL Paper 74, 30 April 2004) paras 121–124, discussed in Goodwin-Gill (n 43).

obligations.[131] Furthermore, as discussed above, IOM, as an IO, is subject to a range of legal obligations. Nonetheless, this mistaken notion persists, hindering understanding of IOM and its duties, as well as opportunities to hold it accountable. One of the key contributions of this book is therefore to put this erroneous view to rest by examining IOM as an IO, from the vantage point of pertinent bodies of law including international organizations law, and international human rights, humanitarian and refugee law. Relatedly, the volume corrects the mistaken perception that IOM has no protection obligations simply because it does not have a legal protection mandate under its Constitution. To be sure, contestation continues over the parameters of IOM's obligations and protection responsibilities, but this conversation needs to move on from binary discussions of whether or not IOM is bound by international law, including in relation to protection, to a more nuanced discussion of the scope and implications of these obligations.

The idea also endures that states can and do use IOM to sidestep their own obligations under international law.[132] Yet, as discussed, while this is practically possible, it is a move international law seeks to thwart. International law may lack strong enforcement mechanisms, but states cannot escape their own obligations under international treaties by outsourcing migration 'dirty work' to IOM, nor can they legitimately contract IOM to provide services incompatible with international law. As Chetail stresses, 'as a matter of principle, the continuing opposability of States' duties under human rights law is well acknowledged in international jurisprudence'.[133] For example, the European Court of Human Rights has found that it 'would be incompatible with the purpose and object' of the European Convention on Human Rights if contracting states could be 'absolved from their responsibility under the convention' by outsourcing to IOs.[134] This again calls for a recalibration of assessments of IOM to

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[131] For instance, IOM recognizes that it is bound by international human rights and humanitarian law in IOM, 'Humanitarian Policy: Principles for Humanitarian Action' (12 October 2015) IOM Doc C/106/CRP/20, welcomed by the IOM Council.

[132] See for example Hirsch and Doig (n 5); Brachet (n 32).

[133] Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 8) 256.

[134] Ibid; *Waite and Kennedy v. Germany*, no 26083/94 (ECtHR, 18 February 1999) 67. As Gulati (n 102) (p 162) reminds us, courts in Latin America anticipated this move. See, for example, *Washington Julio Efrain Cabrera v Comision Tecnica Mixta de Salto Grande* (CSJN, 5 December 1983) CSJN Fallos 305:2150, discussed in Raúl E Vinuesa, 'Argentina' in August Reinisch (ed), *The Privileges and Immunities of International Organizations in Domestic Courts* (Oxford University Press 2013) 19–21 (see for an analysis of Argentinian jurisprudence).

better account for the obligations attendant upon the agency and its member states under contemporary international law. It also calls for reconsideration of *why* states turn to IOM to provide particular, sensitive or controversial migration services, if in doing so they cannot – in principle at least – evade their own legal obligations. Does working through IOM lend a veneer of increased legitimacy to contentious if not overtly proscribed practices? Does it shield the contracting state from scrutiny? By scrutinizing longstanding tropes about IOM and anchoring assessments of the agency in contemporary international law, this work provides a foundation for making these essential shifts, and in turn navigating the new questions they raise.

1.4.2   *IOM as a Norm Breaker, Taker, and Shaper*

Beyond updating assessments of IOM in light of contemporary international law, understanding this increasingly powerful player also requires careful empirical examination of how IOM engages with international norms. The chapters point to how IOM occupies different roles in relation to international norms, operating as a norm breaker, taker, and shaper.

Many IOM staff have historically seen their organization as one that 'gets things done' on behalf of member states by preserving its flexibility and not getting bogged down by principles that are often seen as overly legalistic, academic and constraining.[135] IOM has played fast and loose with norms seen as sacrosanct by IOs such as UNHCR. For example, it has compromised the right to seek asylum by supporting Australia in implementing offshore deterrence policies and detention programmes; it also facilitated US efforts to curtail the exodus from Haiti after the 1991 coup by corralling would-be asylum seekers at Guantanamo Bay and facilitating an in-country processing programme.[136] Although it is now less overt, IOM still provides some services that break international norms – in spirit, if not in ways that would trigger formal legal accountability. This is evidenced, for example, in Gauci's discussion (Chapter 14) of how

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[135] Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 3) 39, 62.

[136] Savitri Taylor 'Australian Funded Care and Maintenance of Asylum Seekers in Indonesia and Papua New Guinea: All Care But No Responsibility?' (2010) 33(2) University of New South Wales Law Journal 337; Elizabeth Ferris, 'Recurrent Acute Disasters, Crisis Migration: Haiti Has Had It All' in Susan F Martin, Sanjula Weerasinghe and Abbie Taylor (eds), *Humanitarian Crises and Migration: Causes, Consequences and Responses* (Routledge, 2014) 81; Ducasse-Rogier (n 12) 140.

IOM's assisted voluntary return (AVR) programmes sometimes fall short of international norms on voluntariness. Gauci traces how definitions and standards of voluntariness have eroded over time; in their analysis of IOM's role in detention scenarios, Sherwood, Lemay, and Costello (Chapter 13) demonstrate how IOM's AVR operational role and programming risks expanding arbitrary detention.

Yet as IOM aspires to occupy a more mature and increasingly visible place on the international stage, it is no longer in its interest to be an *enfant terrible* among IOs. Several chapters examine how IOM has attempted to jettison its reputation as a norm breaker and reposition itself as a dutiful norm taker, embarking on significant internal policy development processes through which it has (to some extent) mapped out its stance and commitments in relation to critical international standards and populations.[137] For example, Gilbert (Chapter 11) examines IOM's 2015 Humanitarian Policy, while Ní Ghráinne and Hudson (Chapter 12) analyse its frameworks on IDPs. IOM's uptake of international norms has been patchy but essential to its expansion, particularly its attempts to recast itself as a reliable and serious organization that can be trusted – not only by states but also by other IOs, NGOs and migrants themselves – to play a leading role in migration governance within and across borders. However, the extent to which such policies and commitments have affected IOM's operations in practice remains an open question. Undoubtedly, in some of its operations, IOM undermines its declared values; IOM is by no means alone amongst IOs in this sense.[138] Indeed, by articulating commitments to foundational international norms, IOM opens itself up to charges of hypocrisy if its behaviour does not match its purported principles. The possibility of organizational hypocrisy represents a counterintuitive sign of progress, at least in comparison to having no clear normative commitments to which it may be held accountable.[139]

IOM does not merely break or take norms. Despite its 'non-normative' designation, it is also extensively involved in shaping how existing norms are interpreted and applied, and advancing new (non-binding)

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[137] For important analyses of IOs' reputational concerns, see, for example, Daugirdas, 'Reputation and Accountability' (n 78).

[138] This may be understood as a form of IO pathology, that is, bureaucratic dysfunctions that lead an 'IO to act in a manner that subverts its professed goals'. See Barnett and Finnemore (n 120) 8.

[139] On IO hypocrisy, see, for example, Avant, Finnemore and Sell (n 120); Catherine Weaver, *The Hypocrisy Trap: The World Bank and the Poverty of Reform* (Princeton University Press 2008).

norms.[140] IOs are often assumed to function as leading 'norm entrepreneurs' who play pivotal roles in introducing and (re)framing norms, and socializing states to accept them.[141] Yet IOM has long been dismissed as an outlier in this regard.[142] This is at odds with the fact that IOM has for decades assertively promulgated migration management norms intended to support states' claim to independent, sovereign control of entry and membership – arguably still the fundamental norm underpinning global migration governance.[143] However, IOM is now tentatively extending into other areas of norm entrepreneurship more closely connected to human rights, humanitarianism, and other norms associated with IOs as a 'force for good' in the world.[144] If promoting 'positive' norms such as human rights is a critical function of IOs, particularly in the UN system,[145] IOM is arguably now behaving something more like a quintessential IO, insofar as it rhetorically urges states to recognize and respect international laws related to displacement and other forms of migration, and shapes perceptions of how this may be achieved by working closely with states to implement interventions in a wide range of areas. IOM has helped consolidate and advance norms on the rights and well-being of migrant populations, such as in the context of the GCM and the Migrants in Countries in Crisis

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[140]   Ferris and Donato (n 24); Micinski (n 24).

[141]   Finnemore and Sikkink identify norm entrepreneurs as 'agents having strong notions about appropriate or desirable behavior in their community' (Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 International Organization 896). UNHCR for examples serves as the key norm entrepreneur in the refugee regime, attempting to socialize states to recognize and adhere to international norms on the protection of refugees. On IOs' assumed leadership roles in norm entrepreneurship and socialization processes, see, for example, Asif Efrat, 'Professional Socialization and International Norms: Physicians Against Organ Trafficking' (2015) 21 European Journal of International Relations 647; Susan Park, 'Theorizing Norm Diffusion within International Organizations' (2006) 43 International Politics 342.

[142]   See, for example, Sandra Lavenex, 'Multi-levelling EU External Governance: The Role of International Organizations in the Diffusion of EU Migration Policies' (2016) 42 Journal of Ethnic and Migration Studies 554.

[143]   See, for example, Andrijasevic and Walters (n 32); Inken Bartels, '"We Must Do It Gently": The Contested Implementation of the IOM's Migration Management in Morocco' (2017) 5 Migration Studies 315.

[144]   As Checkel has pointed out, studies tend to focus on norms that are perceived to be 'ethically good'. (Jeffrey T Checkel, 'The Constructivist Turn in International Relations Theory' (1998) 50 World Politics 324, 339. To be sure, many politicians and citizens consider sovereign control of borders to be ethically good, but many scholars are more sceptical or opposed to this view, which may help explain the limited attention migration management and border control norms have received within the IR literature on international norms.

[145]   Guild, Grant and Groenendijk (n 8) 1–24.

Initiative (MICIC).[146] IOM's Director General now regularly joins with the heads of UN agencies to publicly denounce massive violations of migrants' rights, addressing situations such as mass deportations to Haiti and the 2021 crisis at the frontier of Belarus and Poland.[147] This practice suggests that IOM recognizes some public migrants' rights advocacy as part of its remit, and is acknowledged by UN leaders as a counterpart in these efforts.[148]

These activities underscore that while IOs' roles as norm standard-bearers have often been linked to their formal mandates, neither a designated protection mandate nor custodianship of a particular treaty are *necessarily* requirements for an IO to engage in such activities. Strikingly, little attention has been paid in IR scholarship to the ways in which IOs are themselves socialized in relation to different international norms, particularly if this is not part of the organization's historical or mandated identity.[149] Several chapters shed light on this issue, directly or indirectly, demonstrating how a desire to expand into new areas and be taken seriously as a reputable organization pushed IOM to expand its engagements as a norm taker and shaper – at the same time as its continued deference to states and lack of fully ingrained protection commitments mean it still functions as a norm breaker in some situations. While there is empirical evidence of IOM's shifting roles vis-à-vis international norms, whether these changes are normatively legitimate or desirable is yet another question that remains unsettled. However, many contributors argue that in the absence of constitutional provisions firmly tying the organization to international human rights and humanitarian law, and requiring it to prioritize protection, its interventions may too often dilute migrants' rights, rather than backstop and advance them. Certainly, there is a need for further analysis of these empirical developments in IOM's relationship with international norms, and their consequences, principled and practical.

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[146] MICIC considered the implications of existing norms for assisting and protecting non-refugee migrants in crisis situations.

[147] Bradley and Erdilmen (n 6).

[148] Ibid. IOM's public interventions do not systematically take a migrant-centred, rights-based approach. Some aim for a purported 'neutrality' that shies away from direct criticism of state practices that lead to migrant abuses and deaths. For example, see Yussef Al Tamimi, Paolo Cuttitta and Tamara Last, 'The IOM's Missing Migrants Project: The Global Authority on Border Deaths', in Martin Geiger and Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan 2020).

[149] Efrat (n 141); Park (n 141); Megan Bradley, 'Realizing the Right of Return: Refugees' Roles in Localizing Norms and Socializing UNHCR' (2021) Geopolitics <https://doi.org/10.1080/14650045.2021.1994399> accessed 21 July 2022.

1.4.3   IOM as a Protection Actor

In refuting the notion that IOM has no protection obligations simply because it lacks a formal protection mandate, contributors trace the emergence and evolution of IOM commitments, policies and practices related to protection, and subject them to careful, critical analysis.[150] IOM's approach follows a path worn by other IOs that were also created without statutory protection mandates, but which have subsequently recognized that they have protection responsibilities, including an obligation to tailor their programming to address protection concerns. The World Food Programme and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), for example, were not established with protection mandates although they have come to view themselves as protection actors and have adopted policies to underpin this stance.[151] Likewise, IOM now asserts that it is a protection actor, but to what extent has it gone beyond mere lip service to human rights and humanitarian principles, and created mechanisms to ensure their effective implementation? This volume suggests the record remains mixed, with IOM still struggling to integrate attention to and understanding of protection concerns across the organization and develop internal structures that incentivize and ensure accountability in relation to protection. Some of IOM's member states have pushed the organization to take a more active and reliable role in advocating for protection and integrating protection concerns into its interventions, but insist that IOM does not need a specialized, formal legal protection mandate akin to UNHCR's in order to undertake such work.[152] That said, the IOM Constitution does not securely anchor even

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[150] In this volume, see, for example, Gilbert (n 70) on humanitarianism, Bríd Ní Ghráinne and Ben Hudson, 'IOM's Engagement with the UN Guiding Principles on Internal Displacement'; Cathryn Costello and Angela Sherwood, 'IOM's Practices and Policies on Immigration Detention: Establishing Accountability for Human Rights Violations?'; and Jean-Pierre Gauci, 'IOM and "Assisted Voluntary Return": Responsibility for Disguised Deportations?'.

[151] On WFP, see WFP, 'WFP Humanitarian Protection Policy' (2012) WFP Doc WFP/EB.1/2012/5-B/Rev.1. UNRWA asserts that it now has a formal protection mandate, conveyed upon it by the General Assembly, although the scope and sufficiency of this asserted mandate remain the subject of debate. See Lance Bartholomeusz, 'The Mandate of UNRWA at Sixty' (2009) 28 Refugee Survey Quarterly 452; Damian Lilly, 'UNRWA's Protection Mandate: Closing the "Protection Gap"' (2018) 30 International Journal of Refugee Law 444; Scott Custer, 'UNRWA: Protection and Assistance to Palestine Refugees' in Susan M Akram and other. (eds), *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (Routledge 2010).

[152] For analysis of such member state perspectives, see, for example, Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 3) 23–30.

the pragmatic, operational approach to protection espoused in IOM's discourse, leading many contributors to argue that the Constitution should be overhauled to clarify IOM's normative commitments, particularly its protection obligations.

1.4.4   Towards More Complex Accounts of Institutional Change at IOM

Critiques of IOM have focused primarily on the IOM bureaucracy, and often miss the mark insofar as they fail to consider why IOM behaves as it does, and the levers of power that could be applied to achieve change. This underscores the need for more nuanced accounts of institutional dynamics and organizational change within IOM. The IOM bureaucracy, its leadership, and its staff all have important roles to play in internalizing normative obligations and redressing accountability deficits, as discussed for example by Johansen (Chapter 4) in his assessment of IOM's internal accountability mechanisms. Yet a fulsome account of institutional change dynamics – and the strengthening of IOM's accountability systems – also requires attention to a wider range of actors, including member states, other IOs and civil society. Aust and Riemer (Chapter 5) and Cullen (Chapter 6) provide insight into how IOM's obligations and accountability structures have been shaped by its engagements with the UN system, including under the 1996 and 2016 IOM-UN relationship agreements, and IOM's involvement in UN human rights due diligence processes. Despite IOM's growing prominence, its increasingly explicit normative commitments, and its continued tendency to subvert some of these commitments in practice, IOM has rarely attracted sustained attention and critique from major international human rights advocacy organizations that serve as vital watchdogs for other IOs such as UNHCR.[153] Sherwood and Bradley (Chapter 15) analyse the causes and consequences of this curious disconnect, pointing to the important but underdeveloped role advocacy NGOs have to play in holding IOM to account for the norms it has taken on and encouraging continued institutional change.

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[153] Critics often assume that IOM is routinely scrutinized and reprimanded by major advocacy NGOs. See Angela Sherwood and Megan Bradley, 'Holding IOM to Account: The Role of International Human Rights Advocacy NGOs' 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 evidence to the contrary.

1.5   Structure and Scope

This book is organized into two main parts. Part I considers how IOM's mandate, structure, and its place in the international system – under international law and in relation to the UN – affects its obligations and accountability. Melding historical and legal analysis with insights from theories on IO legitimation, Bradley (Chapter 2) provides a foundation for the following chapters by mapping the evolution of IOM's mandate and obligations, particularly in light of its expanded internal rules. Situating IOM in relation to international organizations law, Klabbers (Chapter 3) argues that difficulties surrounding attempts to hold IOM responsible for potential breaches of its obligations are attributable not only to IOM's own characteristics but even more so to the limitations of international law itself. Turning to questions of accountability from an internal institutional perspective, Johansen (Chapter 4) outlines IOM's current human rights obligations and assesses mechanisms through which IOM may be held to account for possible violations, considering questions of accessibility and claimant participation, neutrality, and potential remedial outcomes. The following pair of chapters grapple with the implications of IOM becoming a related organization in the UN system. Aust and Riemer (Chapter 5) examine how, as a result of the 2016 Agreement, IOM is now bound by the UN Human Rights Due Diligence Policy (HRDDP) and the principles underpinning it. Aust and Riemer warn against overstating the significance of this development, as the HRDDP aims only to avoid 'grave violations' of human rights, but highlights its symbolic significance. Cullen (Chapter 6) questions the legal significance of the shifts achieved through the 2016 Agreement compared to the 1996 Agreement, underscoring how IOM's position as a related organization rather than a specialized agency curtails opportunities to advance accountability, particularly through UN reporting mechanisms.

Chapters in Part II explore 'IOM in Action', examining the empirical dynamics and normative significance of IOM's dramatic expansion in different spheres. The first three chapters in this part trace and explain how IOM became a major player in the areas of crisis operations (Chapter 7), migration and climate change (Chapter 8), and data (Chapter 9). The next chapters offer more normative assessments of IOM's interventions and policy frameworks in relation to its expanded work in the fields of ethical labour recruitment (Chapter 10), humanitarianism (Chapter 11), internal displacement (Chapter 12), immigration detention (Chapter 13), and AVR (Chapter 14). These chapters underscore the significant normative

implications of IOM's expansion, and how IOM's obligations and accountability in these areas may be clarified and strengthened. Sherwood and Bradley (Chapter 15) close the volume by considering the potentially pivotal role of human rights advocacy organizations in this process.

Many of the contributors to this volume break new ground by concertedly analysing IOM in relation to different international legal standards. Yet the law does not and cannot provide comprehensive guidance on all the questions of obligations and accountability facing IOs generally or IOM in particular. Beyond legal obligations, it is also essential to think more broadly, in political, moral and ethical terms, about what IOM should and should not do. Addressing this gap requires further engagement with political theory and philosophy, as well as political analysis of the ways in which moral and ethical values shape institutional behaviour. While this is outside the aims of the present volume, this is an essential next step as debates on IOM's proper role in the global governance of migration continue.

1.6   Implications: Time for Constitutional Reform

As an increasingly influential but still under-examined IO, IOM represents a critical case study for IR and international law theories on IO dynamics and accountability. However, the implications of this project are not only scholarly. Many contributors recommend reforms on the basis of their analyses, ranging from revising IOM's projectized funding structure and recasting it as a specialized agency to shifting IOM's organizational culture to better inculcate human rights values and openness to external critique. Amongst these diverse suggestions, one recommendation stands out as fundamental: it is now time to revamp the IOM Constitution to better reflect and direct its expansive roles in contemporary global governance.[154]

This work suggests that constitutional reforms should achieve three core aims. First, they should update and clarify IOM's mandate. Second, they should clearly recognize that IOM is bound by and in its work must promote respect for international law, including international migration law, human rights, humanitarian and refugee law. Third, they should explicitly acknowledge and direct IOM to uphold its protection

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[154] For related calls for constitutional reform, see, for example, Guild, Grant and Groenendijk (n 8) 1–24; Martin (n 24) 124–153; Chetail, 'The International Organization for Migration and the Duty to Protect Migrants' (n 8).

obligations to all those affected by its operations. This need not entail the establishment of a legal protection mandate for IOM in relation to a particular convention or body of law, in the way that UNHCR is charged with refugee protection and the International Committee of the Red Cross is the champion of international humanitarian law.[155] Rather, these reforms should provide clarity for IOM, its partners and 'beneficiaries' on its approach and commitments, creating greater predictability and reliability. The reform process should also provide clarity on the scope and limits of IOM's engagement in highly sensitive matters such as returns and immigration detention, and the correct interpretation of IOM's 'non-normative' designation. To be sure, constitutional reform would not be a silver bullet to remedy accountability deficits at IOM – a fact made all too clear by the complicity of IOs with more pristine normative mandates in flagrant and unremedied rights violations.[156] Constitutional reform is a high-risk undertaking in a political environment in which xenophobia and aggressive anti-migrant policies are widespread and rewarded. Yet tackling the gross mismatch between IOM's arcane Constitution and its new role as 'the global lead agency on migration' is essential to its continued maturation and meaningful accountability to all those affected by its work – including, most significantly, migrants themselves.[157]

Even without such reforms, IOM has obligations under international law to which it should be held to account – a task that requires strengthening formal mechanisms, looking beyond formal approaches to also reconfigure incentive structures and organizational culture, and encouraging greater engagement with external accountability holders. Recourse to indirect modes of holding IOM to account surely have a role to play also, such as turning to domestic and regional human rights courts, UN Treaty Bodies and indeed other UN mechanisms to indirectly scrutinize IOM's actions. In addition to other IOs and NGOs, researchers also have significant roles to play in holding IOM to account. Although IOM engages

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[155] Linking a protection mandate for IOM to a single agreement is unlikely to be a successful approach because there is presently no overarching, binding international treaty on migration that could serve as a clear touchstone for IOM in this regard. While the Global Compact on Migration is a significant normative development, it is not binding; furthermore, given its focus on cross-border migration, it addresses only a subset of the populations with whom IOM engages, and who often face pronounced protection concerns.

[156] See, for example, Sandvik and Lindskov Jacobsen (n 112); Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Cornell University Press 2012); Nico Schrijver, 'Beyond Srebrenica and Haiti: Exploring Alternative Remedies against the United Nations' (2014) 10 International Organizations Law Review, 588.

[157] 2016 Agreement (n 2).

many researchers in its networks and as consultants, it has often been less receptive or even hostile to independent scholarly critique.[158] Yet another consequence of IOM's era of expansion is that it will receive increased scholarly attention, much like other IOs such as the World Bank[159] and UNHCR.[160] From the perspective of the detached, censorious approach that has dominated past scholarship on IOM, our focus on critical but constructive engagement and organizational reform may seem quixotic. We hope, however, that it is welcomed by IOM as an opportunity for reflection, learning, and increased accountability – all vital aspects of continued institutional growth.

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[158] See for example this exchange: Erlend Paasche, May-Len Skilbrei and Sine Plambech, 'What Happens after Victims of Trafficking Return to Nigeria?' (*Open Democracy,* 16 April 2019) <www.opendemocracy.net/en/beyond-trafficking-and-slavery/what-happens-after-victims-trafficking-return-nigeria/> accessed 21 July 2022; Frantz Celestin, 'Trying to Soften the Landing for Returning Migrants' (*Open Democracy*, 22 May 2019) <www.opendemocracy.net/en/beyond-trafficking-and-slavery/trying-soften-landing-returning-migrants/> accessed 21 July 2022; Erlend Paasche, May-Len Skilbrei and Sine Plambech, 'Do Not Dismiss the Voices of Returned Migrants: A Response to the IOM' (*Open Democracy*, 18 December 2019) <www.opendemocracy.net/en/beyond-trafficking-and-slavery/do-not-dismiss-voices-returned-migrants-response-iom/> accessed 21 July 2022.

[159] On the World Bank, see generally Ibrahim F I Shihata, *The World Bank Inspection Panel: In Practice* (Oxford University Press 2000); Yvonne Wong and Benoit Mayer, 'The World Bank's Inspection Panel: A Tool for Accountability?' in Jan Wouters and others (eds), *The World Bank Legal Review Volume 6: Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability* (The World Bank 2015) 495; Kelebogilo Zvogba and Benjamin Graham, 'The World Bank as an Enforcer of Human Rights' (2020) 19 Journal of Human Rights 425.

[160] On UNHCR, see Sandvik and Lindskov Jacobsen (n 112); Ellen Reichel, 'Navigating between Refugee Protection and State Sovereignty: Legitimating the United Nations High Commissioner for Refugees' in Klaus Dingwerth and others (eds), *International Organizations Under Pressure: Legitimating Global Governance in Challenging Times* (Oxford University Press 2019); and Johansen, *The Human Rights Accountability Mechanisms of International* (n 111) 174.