

PDF hosted at the Radboud Repository of the Radboud University Nijmegen

The following full text is a publisher's version.

For additional information about this publication click this link.

<http://hdl.handle.net/2066/172926>

Please be advised that this information was generated on 2019-11-21 and may be subject to change.



Queen Mary University of London, School of Law
Legal Studies Research Paper No. 255/2017

IOM and the UN: Unfinished Business

**Elsbeth Guild
Stefanie Grant
Kees Groenendijk**

IOM and the UN: Unfinished Business

Elsbeth Guild,¹ Stefanie Grant² and Kees Groenendijk³

Abstract

In July 2016 the UN and IOM entered into an agreement whereby the IOM became a related organisation within the UN system. In September of that year, the UN commenced negotiations towards the Global Compact on Safe, Orderly and Regular Migration to be adopted in Summer 2018. This paper examines the place of UN human rights obligations regarding migrants and the IOM Member states' position that it should remain a 'non-normative' agency even after its inclusion in the UN system. We question whether the primacy given to national law, and the lack of any reference to international law or human rights in the IOM Constitution are compatible with the substantial role assigned to the organisation in the development of the Global Migration Compact which the UN General Assembly has determined is a human rights driven project.

Introduction

On 25 July 2016 the UN's General Assembly adopted Resolution 70/296 entitled an Agreement concerning the Relationship between the United Nations and the International Organisation for Migration (IOM). This is not the first agreement between the parties. They had previously operated together on the basis of a 25 June 1996 agreement of cooperation. Many UN bodies work closely with IOM on joint projects. The innovation of the July 2016 agreement is that the IOM becomes a related agency of the UN and the UN formally recognises the IOM as an organisation with a global leading role in the field of migration.

The purpose of this article is to examine the new relationship of the IOM and the UN from the perspective of human rights obligations. The question we asked ourselves is: how are the human rights of migrants protected and promoted as a result of the UN/IOM agreement?

The question is one of immediate and pressing concern as the UN has launched negotiations on a Global Compact on Safe, Orderly and Regular Migration by a General Assembly resolution on 19 September 2016.⁴ We have examined elsewhere the move towards international migration governance which the Compact proposes.⁵ The UN has given IOM an important role in assisting the negotiations of the Global Compact which is due to be completed in 2018. By placing IOM close to the driving seat of the negotiations, and stating it to be a 'non-normative organisation', the issue of fidelity to the UN's human rights standards must be addressed. In a concurrent document, we look at exactly what

¹ Jean Monnet Professor ad personam, Queen Mary University of London, UK

² Visiting Senior Fellow, Centre for Study of Human Rights, London School of Economics, London, UK

³ Emeritus Professor of Sociology of Law, Radboud University Nijmegen (Netherlands)

⁴ http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1 accessed 7 February 2017.

⁵ Guild, Elsbeth, and Stefanie Grant. "Migration Governance in the UN: What is the Global Compact and What Does it Mean?" (2017).

those human rights are which are critical to the relationship between states and migrants. In this article we examine the agreement between the UN and IOM from the perspective of human rights.

What is the IOM?

IOM was established in 1951⁶ at the initiative of Belgium and the USA with the objective of refugee resettlement from Europe primarily to North America (this included a substantial role in resettlement of Hungarian refugees from the 1956 events in that country). It extended and developed its migration programme in the 1960s to include the recruitment and placement of highly qualified migrants to developing countries in Latin America. Its role changed once again in the 1970s, and was dominated by the resettlement of Jewish refugees from the Soviet Union, East African Asians from East Africa and Indo-Chinese refugees, the fall-out from the end of the Vietnam War in 1975. For IOM, the 1980s were dominated by the issue of resettlement of Indo-Chinese refugees. In the 1990s, IOM was still primarily engaged in resettlement of people caught out by violence and civil war, including by the second Gulf war in 1990 (including resettlement of Iraqi Kurds), the violence and displacement following the disintegration of the former Yugoslavia and, at the end of the decade, Kosovo. However, after the Rwanda massacres, IOM became increasingly involved in return rather than resettlement, assisting Rwandans displaced by the violence to return home from neighbouring states. These return activities extended also to the Kosovars who had been displaced at the end of the decade to neighbouring countries (some of which were reluctant hosts) to assist them to return to Kosovo.

Activities of IOM frequently include a human rights dimension, whether it be assisting refugees to find durable solutions or promoting human rights standards in migration. The experience of the authors, all of whom have worked or had contact, at one time or another, with specific IOM projects, is that human rights compliance is often included in IOM projects. But the centrality of human rights is not reflected in the IOM Constitution, which we discuss below.

As the new millennium dawned, IOM developed its international role as membership expanded and it adopted the principle that humane and orderly migration benefits migrants and society. Its four key objectives became (1) to assist in meeting the growing operational challenges of migration management; (2) to advance understanding of migration issues; (3) to encourage social and economic development through migration and (4) to uphold the human dignity and well-being of migrants. According to its website, it has 12 strategic focuses (see Annex I). What is noticeable about the objectives of the IOM is the paucity of references to human rights. The only explicit reference appears in

⁶ Initially called the Provisional Intergovernmental Committee for the Movements of Migrants from Europe (PICMME). See generally Lina Venturas (ed.), *International Migration Management in the Early Cold War*, University of the Peloponnese, 2015.

strategic focus (2) which is “to enhance the humane and orderly management of migration and the effective respect for the *human rights of migrants* in accordance with international law” [emphasis provided].⁷

It is worth noting that the UN’s Universal Declaration of Human Rights opens, in its first preamble, by placing human dignity at the core of human rights.⁸ For this reason, the first article of the Declaration concerns dignity: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” The articles which follow, forming the foundation of the UN’s human rights acquis, are the result of the duty to respect human dignity. Therefore, the IOM’s fourth objective can be read as an indirect reference to the UN’s human rights standards, though this is not clearly stated.

The IOM’s Constitution contains no reference to human rights.⁹ Its first purpose and function, according to that Constitution, is to make arrangements for the organized transfer of migrants, for whom existing facilities are inadequate or who would not otherwise be able to move without special assistance, to countries offering opportunities for orderly migration – in effect a travel agency for those without the resources to use the private sector and who are no longer welcome where they are (see Annex 2). The lack of an express IOM mandate in the field of human rights has not gone un-noticed by scholars.¹⁰ It is made more problematic by the primacy which the Constitution gives to national law and policies, and the absence of any reference to international law. The Constitution states only that in carrying out its functions, IOM ‘shall conform to the laws, regulations and policies of the States concerned’ (Art. 1(3)).

The language of normativity has been central to the debate about IOM and human rights. In IOM’s Council report of 30 June 2016, at paragraph 16 regarding the IOM-UN relationship, reference is made to IOM’s Resolution 1309, and the overriding need to ensure that IOM remains “a non-normative organization”. This wording would in due course find its way into the agreement between the IOM and UN.

If the term “normative” describes the way something ought to be done, what exactly is meant by ‘non-normative’? This is not a UN term. Human rights are generally accepted to

⁷ <https://www.iom.int/mission> accessed 5 February 2017.

⁸ Universal Declaration of Human Rights preamble 1: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;”

⁹ <https://www.iom.int/constitution#ch1> accessed 5 February 2017.

¹⁰ This has been noted by a number of scholars: Aradau, Claudia. “The perverse politics of four-letter words: risk and pity in the securitisation of human trafficking.” *Millennium* 33.2 (2004): 251-277. Andrijasevic, Rutvica, and William Walters. “The International Organization for Migration and the international government of borders.” *Environment and Planning D: Society and Space* 28.6 (2010): 977-999. Rahel, Kunz, and Schwenken Helen. “Migrantinnen als Hoffnungsträgerinnen in der Entwicklungszusammenarbeit? Geschlechterspezifische Subjektivitäten im migration-development nexus.” *Entwicklungstheorien*. Nomos Verlagsgesellschaft mbH & Co. KG, 2014.

be the normative dimension of the UN standard setting.¹¹ Does the term ‘non-normative’ mean that IOM not required to work in conformity with UN human rights standards?¹²

The UN is a fundamentally normative organisation. The second preamble of the UN’s Charter states that the parties are determined “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”¹³ Article 1(3) of the Charter states that the objective of the UN is “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;”. Article 13 mandates the General Assembly to make recommendations “promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Article 55(c) requires the UN to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Article 62(2) provides that the Economic and Social Council may “make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.” Article 68 authorises the Council to “set up commissions in economic and social fields and for the promotion of human rights”. Article 76(c) regarding the trusteeship system, states that its purpose, *inter alia*, is “to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world.”

Article 103 UN Charter resolves the issue of competing or conflicting obligations in favour of the primacy of the Charter over all other treaty obligations and agreements.¹⁴ The UN Charter must therefore take priority over the IOM Constitution. One final comment on the UN Charter relates to Article 48(2) which does not specifically refer to human rights but rather states that action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the UN or by some of them, as the Security Council may determine and shall be carried out by the Member states directly and through their action in the appropriate international agencies of which they are members. This provision has been claimed by states as the basis for various border control activities as necessary in the interested of peace and security (and specifically to fight terrorism).¹⁵ But, through its resolutions and through

¹¹ Brownlie, Ian. *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations*. Vol. 1. Martinus Nijhoff Publishers, 1998.

¹² IOM does have its own human rights policy see below *Article 3(2): IOM as a non-normative organisation*.

¹³ <http://www.un.org/en/sections/un-charter/preamble/index.html> accessed 5 February 2017.

¹⁴ “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

¹⁵ https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf; accessed 16 February 2017.

the work of its Counter Terrorism Committee, the Security Council has accepted that such measures must be consistent with full respect for human rights.¹⁶

The UN has engaged in a very extensive project of standard setting in the field of human rights, notably through the treaties adopted by its member states, and the work of the Human Rights Council [formerly Human Rights Commission]. Member states have mandated the Secretary-General and the UN system to help them achieve the standards set out in the UN Charter and the Universal Declaration of Human Rights.¹⁷ All the member states of the IOM are also member states of the UN. Thus the activities of the IOM can be read as being bound through the obligations of its member states to the UN human rights standards.¹⁸

There are nine core UN human rights conventions (Annex 3).¹⁹ Each of the nine instruments has a committee of experts to monitor implementation of the treaty provisions by its state parties; many are supplemented by optional protocols. While not all states have ratified all nine core conventions, all IOM member states are parties to at least one, and in many cases all the treaties. The Convention on the Rights of the Child protects the rights of migrant children, and has been ratified by 193 states, all but one of IOM's membership, the Convention on the Elimination of Discrimination against Women, which protects women migrants, has 189 states party.

The convention which has the most direct relevance to migrants, the UN Convention on the Protection of All Migrant Workers and their Families (1990), currently has only 50 states party and 16 signatories.²⁰ However, all but two of the states which have ratified the UN migrant workers convention are also member states of the IOM.²¹ So of the 166 member states of the IOM, 50 are bound by the UN migrant workers convention. Because IOM's member states have ratified many of these conventions, their participation in IOM activities must be consistent with their human rights obligations. IOM's activities must be in conformity with the human rights obligations of its members and IOM's members cannot disregard or circumvent their human rights obligations through the use of IOM.

IOM's Status within the UN

On 5 February 2016, the (then) UN Secretary General, Ban Ki-moon, wrote to IOM's Director General, William Lacey Swing, offering three options for a 'strengthened institutional relationship' between the UN and IOM. One was to become a specialised

¹⁶ 'Beginning with its adoption of resolution 1456 (2003), the Security Council has consistently affirmed that States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights, refugee, and international humanitarian law'. <https://www.un.org/sc/ctc/focus-areas/human-rights/>; accessed 19 February 2017.

¹⁷ <http://www.un.org/en/sections/priorities/human-rights/> accessed 7 February 2017.

¹⁸ Lauterpacht, Hersch. "The Covenant as the Higher law." *Brit. YB Int'l L.* 17 (1936): 54.

¹⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> accessed 7 February 2017.

²⁰ In contrast to the CRC, which protects the rights of migrant children, and has 193 SPs.

²¹ The two exceptions are Indonesia and Syria – parties to the UN migrant workers convention but not Member states of the IOM.

agency, another related agency, and the third a 'sui generis' agreement including membership in key co-ordination mechanisms.²² On 25 July 2016, IOM entered into formal legal relationship with the UN to become a related organization.²³ On its face, this is surprising: other related organisations are concerned with issues of trade, atomic energy, and weapons control; not with the social and economic wellbeing of a defined population. As a related agency, IOM enjoys very considerable independence and autonomy. Unlike the International Labour Office (ILO), which is a specialized agency, IOM does not report to the United Nations Economic and Social Council (ECOSOC see Articles 57 & 63, UN Charter).²⁴ Unlike UNHCR, IOM's executive head is not elected by the General Assembly on the recommendation of the Secretary General.²⁵ Unlike the Office of the High Commissioner for Human Rights (OHCHR), it is not part of the UN Secretariat under overall direction of the Secretary General. Whereas the Statute of UNHCR requires the High Commissioner to report annually to the General Assembly,²⁶ IOM has no equivalent reporting obligation: it '*may, if it decides it to be appropriate*' submit reports on its activities to the General Assembly' [emphasis added].²⁷ This status means that IOM operates with greater independence than other UN institutions in the migration field. The content of the relationship agreement is thus of great significance.

The UN - IOM Agreement

On 25 July 2016, the General Assembly adopted a resolution approving an agreement creating a legal link between the UN and the IOM.²⁸ The negotiating mandate had been authorised by the General Assembly on 27 April 2016;²⁹ much must already have been under discussion and agreement reached so that the formal negotiations could be completed within three months. Further evidence of the degree of convergence of approaches is evidenced by the resolution of the IOM Council of 30 June 2016 approving a draft agreement.³⁰ Signature of the UN-IOM agreement took place on 19 September 2016, the day when the UN General Assembly debated and adopted the resolution calling for a Global Compact on Safe, Orderly and Regular Migration.

The agreement opens with a preambular reference to the UN Charter and to IOM's Constitution. It continues with an acknowledgement that migration and human mobility must be taken into account in the activities of both organisations thus entailing close cooperation. The difference between migration and human mobility is not specified and neither of the terms is defined in the agreement. The preamble makes reference to various contacts between the UN and IOM from 1992 to 2016 and states that one

²² Letter from Ban Ki-moon, UN Secretary General, to William Lacy Swing, Director General, International Organisation for Migration, 5 February 2016; on file with authors.

²³ A/RES/70/296

²⁴ http://www.un.org/en/ecosoc/about/pdf/ecosoc_chart.pdf

²⁵ General Assembly Resolution 428 (V) of 14 December 1950, Annex, Chapter III, para. 13

²⁶ UNHCR Statute, Art.11. <http://www.unhcr.org/3b66c39e1.pdf>; accessed 24 February 2017; GA Resolution A/RES/58/153, 24 June 2004, Para. 10; accessed 24 February 2017.

²⁷ Art. 4, A/RES/70/296.

²⁸ A/RES/70/296.

²⁹ A/RES/70/263.

³⁰ IOM Council Resolution No 1317, 30 June 2016.

objective of the agreement is to establish a mutually beneficial relationship whereby the discharge of respective responsibilities may be facilitated.

In the next section we will examine the provisions of the agreement together with our concerns from a human rights perspective. This approach has the advantage of keeping our analysis directly with the provision under consideration. The full text of the agreement is available on line.³¹

Article 1: the objective fulfilment of two mandates

The first article sets out the objective of the new relationship: to strengthen IOM-UN cooperation and enhance their ability to fulfil their respective mandates in the interests of migrants and their member states. We consider that the interests of migrants, referred to in this provision must include protection of their human rights. In particular, in our opinion, where the interests of states and migrants diverge this includes the right not to be placed in a position of having to relinquish their human rights entitlements in order to be able to remain on the territory of a host state. This situation is among the most common which migrants encounter regarding human rights, as ILO research has shown.³² The use by states of their sovereign right to control their borders and to refuse entry or expel a foreigner frequently places migrants in a situation of vulnerability: having to choose between trying to defend their rights, including those of non-discrimination, and risking rejection at the border or expulsion from the state or abandoning their human rights claims in the interests of obtaining a residence permit or its renewal. Much of the work of the ILO on labour standards for migrant workers hinges on this conundrum. Accepting discrimination in pay and working conditions between nationals and migrant workers, although a breach of the human rights of migrant workers, is the price states extract either overtly or indirectly from migrant workers unwilling to abandon their human rights with the sanction of expulsion. Thus the interests of migrants and states can and frequently do diverge. When that happens, the states' obligation to protect human rights can help resolve disputes.

In our experience, the perceived interests of states can be in opposition to those of migrants particularly where their human rights are engaged. IOM's Constitution mandates it to 'conform' to the policies and laws of states. It does not have a constitutional obligation to work for migrants.³³ The UN is mandated to work in the interests of its member states but this interest includes the protection of the human rights of all people, migrant or citizen. This is the obligation set out in the Universal Declaration. This different focus of the UN and the IOM could become a source of tension in the new relationship.

In the second article the UN recognises the IOM as an organisation with 'a' global leading role in the field of migration. This acknowledgement is augmented by a further

³¹ See footnote 28.

³² ILO General Survey, Promoting Fair Migration 2016
http://www.ilo.org/global/standards/WCMS_453917/lang--en/index.htm accessed 25 February 2017

³³ In its Preamble, the Constitution refers to the 'needs of the migrant as an individual human being'.

recognition that the member states of the IOM regard it (with reference to a resolution of the IOM Council) as 'the' global lead agency on migration. This is quite a convoluted provision. The evident reluctance on the part of the UN to designate the IOM as the lead migration agency reflects the fact that a large number of UN agencies and programmes are also engaged in migration issues.³⁴ IOM members appear to take a different view. The ILO, for instance, has over 50 years of experience working on the protection of migrant workers who form an important part of the Agreement's subject matter. The ILO's tripartite nature, which includes representatives of states, employers and workers, makes it a particularly relevant UN agency in the field of migrant workers.

For instance, ILO has two conventions specifically on the subject of migrant workers. Further, in 2016 the ILO's General Survey concerned promoting fair migration.³⁵ Similarly, the OHCHR has been very active in the field of migration. In 2016 it was working with other Global Migration Group (see below GMG) members to develop *Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations within large and/or mixed movements*.³⁶ The previous year OHCHR produced the *Migration, Human Rights and Governance: Handbook for Parliamentarians*, OHCHR, IPU, ILO, 2015.³⁷ OHCHR's 2014 *Recommended Principles and Guidelines on Human Rights at International Borders*³⁸ deals with a particularly sensitive issue among some states regarding what border practices are in conformity with international human rights standards and which are not. The preceding year it had produced its publication *Migration and Human Rights: improving human rights-based governance of international migration*³⁹ which sets out a programme for migration management which is normatively driven and justified. These activities of the OHCHR have not been taken in isolation. For instance it worked together with the World Health Organisation and IOM on the report *International Migration, Health and Human Rights* published in 2013.⁴⁰ Thus it would not be correct to place the various UN bodies at loggerheads with IOM. This is simply not the case and all the UN agencies engaged with migration issues have worked and continue to work with IOM both in the field and at the UN seats.

Yet, there is sometimes a difference of perspective in the approaches of the UN agencies and the IOM regarding priorities. While there is frequently a convergence of the interests of states and migrants, this is not always the case particularly regarding the state

³⁴ See, eg, statement signed in 2012 by more than 50 UN organisations and departments. http://www.un.org/millenniumgoals/pdf/Think%20Pieces/13_migration.pdf; accessed 19022017.

³⁵ http://www.ilo.org/global/standards/WCMS_453917/lang--en/index.htm accessed 7 February 2017.

³⁶ <http://www.ohchr.org/EN/Issues/Migration/Pages/Draftsforcomments.aspx> accessed 7 February 2017.

³⁷ http://www.ohchr.org/Documents/Publications/MigrationHR_and_Governance_HR_PUB_15_3_EN.pdf accessed 7 February 2017.

³⁸ <http://www.ohchr.org/EN/Issues/Migration/Pages/InternationalBorders.aspx> accessed 7 February 2017.

³⁹ http://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf accessed 7 February 2017.

⁴⁰ http://www.ohchr.org/Documents/Issues/Migration/WHO_IOM_UNOHCHRPublication.pdf accessed 7 February 2017.

sovereign claims around entry, residence and expulsion. Article 2 of the agreement recognises this tension not only in so far as the UN does not accept that IOM is **the** global lead agency on migration but also in its reference to the mandates and activities of the UN, its Offices, Funds and Programmes in the field of migration. This final sentence to the provision reveals another tension in the UN system, regarding the subject of migration. While article 2(1) of the agreement is without prejudice to the mandates and activities of the UN, it is clear that there are a lot of different bodies within the UN involved in the subject as recognised by the wording – UN, its Offices, Funds and Programmes. One of the key weaknesses of the UN in the field of migration is the fragmentation of the work. In 2006, in recognition of this issue, the Secretary General of the UN established the GMG. The participants include: Food and Agriculture Organization of the United Nations (FAO); ILO; IOM; OHCHR; the UN Regional Commissions; the United Nations Environment Programme (UNEP); the UN Children’s Fund (UNICEF); the UN Conference on Trade and Development (UNCTAD); the UN Department of Economic and Social Affairs (UN-DESA); the UN Development Programme (UNDP); UNESCO; UN Women; UNHCR; the United Nations Industrial Development Organization (UNIDO); the United Nations Institute for Training and Research's (UNITAR); UN Office on Drugs and Crime (UNODC); the UN Population Fund; the UN University; the World Bank; the World Food Programme and WHO. Presumably a rather large room is needed every time the GMG meets. The only body, which is part of the GMG, working exclusively on migration is the IOM,⁴¹ yet all the others have a sufficient interest in the subject to be formal members of the GMG.

The agreement with the IOM recognises the diversity of interests and approaches within the UN system. Many of the UN bodies participating in the GMG have fairly targeted interests in the issue of migration, though a substantial number have a development focus. Coordination in approaches is a problem – as in many other areas of UN activity – given the wide range of actors with different mandates and objectives. If one were to transpose this problem to the national framework one might have regard to struggles between interior ministries which are concerned about security as related to border controls, residence and expulsion of migrants and other ministries, such as health with an interest in the assurance of public health irrespective of the nationality of the individual on the territory or social affairs ministries where for instance family unity is a priority.⁴² One of the concerns of academics in European states is the function creep of interior ministries in the field of migration to appropriate and transform into their logic issues which properly belong in the remit of other ministries.⁴³

There is no easy or singular solution to the issue of multiplicity of approaches to migration its benefits and drawbacks. It is perhaps an advantage that international

⁴¹ UNHCR’s mandate is limited to refugees, internally displaced persons and forced migration in general.

⁴² Lutz, Helma, and Ewa Palenga-Möllnbeck. "Care work migration in Germany: Semi-compliance and complicity." *Social Policy and Society* 9.03 (2010): 419-430 ; Bonjour, Saskia, and Betty De Hart. "A proper wife, a proper marriage: Constructions of ‘us’ and ‘them’ in Dutch family migration policy." *European journal of women's studies* 20.1 (2013): 61-76. Baldwin-Edwards, Martin. "Albanian emigration and the Greek labour market: Economic symbiosis and social ambiguity." *SEER-South-East Europe Review for Labour and Social Affairs* 01 (2004): 51-65.

⁴³ Guild, Elspeth. "BREXIT and its Consequences for UK and EU Citizenship or Monstrous Citizenship." (2016).

organisations are informed primarily by the participation of foreign affairs ministries rather than their interior counterparts as the former are much more experienced in balancing (or juggling) the wider interests of the state in the international framework than the latter.

Article 2(2): IOM's assets

At Article 2(2) of the agreement between the UN and the IOM, the UN recognises the IOM as an essential contributor in the field of human mobility, in the protection of migrants, in operational activities, displaced persons and migrant-affect communities including in the areas of resettlement and returns as well as mainstreaming migration in development plans.

This provision needs to be unpacked to understand exactly what is being agreed between the UN and IOM. The first aspect worth noting is that the essential contribution of the IOM is stated to be in the field of human mobility. Once again the concept of human mobility which is not defined⁴⁴ is preferred over migration.⁴⁵ UNDP's 2009 Human Development Report defined migration as internal or cross border movement, and human mobility as the 'ability of individuals, families or groups of people to choose their place of residence'.⁴⁶ Yet the universality among UN bodies of this distinction is not evident. In 2012 IOM-UNDESA published a report examining migration and human mobility in a development context which fails to differentiate clearly between the two concepts or signpost what the intellectual work of having two concepts means.⁴⁷ Some economists tend to use the two terms interchangeably.⁴⁸ Likewise, sociologists have also tended to use the two without differentiation.⁴⁹ One incisive approach is that of Pécoud et al who place human mobility as an issue of border controls and migration as including that aspect but also encompassing what happens to foreigners within the borders of a state as regards residence work etc.⁵⁰

In more straightforward wording, the agreement states that IOM is an essential contributor to the protection of migrants. This is certainly the case as regards a wide range of IOM activities over its existence not least in facilitating resettlement and evacuation in circumstances of human and natural disaster,⁵¹ where the value of IOM's

⁴⁴ Human Mobility is not included in IOM's list of Key Migration Terms: <https://www.iom.int/key-migration-terms>; accessed 19022017.

⁴⁵ Ghosh, Bimal. "a snapshot of reflections on Migration Management. is Migration Management a dirty Word?" *40/2012*. *The New Politics of International Mobility-Migration Management and Its Discontents*. *IMIS-Beiträge* (2012).

⁴⁶ Klugman, Jeni. "Human development report 2009. Overcoming barriers: Human mobility and development." (2009), p.15.

⁴⁹ De Haas, Hein. "Mobility and human development." (2009).

⁵⁰ Pécoud, Antoine, and Paul De Guchteneire. "International migration, border controls and human rights: Assessing the relevance of a right to mobility." *Journal of Borderlands Studies* 21.1 (2006): 69-86.

⁵¹ Perruchoud, Richard. "Persons Falling under the Mandate of the International Organization for Migration (IOM) and to Whom the Organization Services." *Int'l J. Refugee L.* 4 (1992): 205.

work has been widely recognised.⁵² Its 2016 work on migrant border deaths has pioneered a human rights approach calling for states to count and identify the missing as a human rights obligation.⁵³ The role of IOM in some operational activities related to migrants is a more ambiguous claim as regards in whose interests the activities are positive.⁵⁴ The role of IOM in protecting displaced persons and resettlement raises the thorny question of overlap of operational activities with UNHCR which has primary responsibility for refugees and internally displaced persons.⁵⁵ A certain tension between the two agencies has been the subject of academic concern for some time.⁵⁶

Ambiguity returns with force regarding the activities of IOM in enabling expulsion of migrants (as the coercive arm of returns). It is here that the greatest concern regarding conflicts between IOM's constitutional duty to respect the interests and policies of states and the interests and protection of migrants is the subject of most attention and in many case criticisms from the academic community.⁵⁷ The IOM has carried out many activities in the field of expulsion from providing settings for states to discuss (and some would argue legitimate) practices around expulsion of migrants,⁵⁸ to participation in the expulsion process.⁵⁹ IOM insists that it contributes only to voluntary returns (expulsion where the migrant agrees to be expelled). However, a number of actors have expressed concern about the voluntariness of expulsion and the degree of coercion that IOM is willing to accommodate.⁶⁰ The Council of Europe makes specific reference to IOM in its 20 Guidelines on Forced Returns, published in 2005.⁶¹

⁵² Martin, Susan. "Climate change, migration, and governance." *Global Governance: A Review of Multilateralism and International Organizations* 16.3 (2010): 397-414.

⁵³ <https://publications.iom.int/books/fatal-journeys-volume-2-identification-and-tracing-dead-and-missing-migrants>.

⁵⁴ Andrijasevic, Rutvica. "Lampedusa in focus: Migrants caught between the Libyan desert and the deep sea." *feminist review* 82 (2006): 120-125.

⁵⁵ See <http://www.unhcr.org/internally-displaced-people.html> accessed 7 February 2017.

⁵⁶ Byrne, Rosemary, Gregor Noll, and Jens Vedsted-Hansen. "New asylum countries? Migration control and refugee protection in an enlarged European Union." *Refugee Survey Quarterly* 21.3 (2002) ; Andrijasevic, Rutvica, and William Walters. "The International Organization for Migration and the international government of borders." *Environment and Planning D: Society and Space* 28.6 (2010): 977-999.

⁵⁷ Webber, Frances. "How voluntary are voluntary returns?." *Race & Class* 52.4 (2011): 98-107 ; Andrijasevic, Rutvica. "Renounced Responsibilities: Detention, Expulsion and Asylum at the EU's Southern Border of Libya and Lampedusa." (2005). Stančová, Kateřina. "Assisted voluntary return of irregular migrants: Policy and practice in the Slovak Republic." *International Migration* 48.4 (2010): 186-200. Collyer, Michael. "Deportation and the micropolitics of exclusion: The rise of removals from the UK to Sri Lanka." *Geopolitics* 17.2 (2012): 276-292.

⁵⁸ For instance, organising conferences <https://www.iom.int/idmreturnmigration> accessed 7 February 2017 and training <http://www.iom.int/news/libyan-detention-centre-staff-receive-human-rights-training> accessed 3 March 2017.

⁵⁹ <https://www.iom.int/news/detained-ethiopian-migrants-return-home-zambia> accessed 7 February 2017.

⁶⁰ Frelick, Bill. *Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*. Human Rights Watch, 2009.

⁶¹

http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf accessed 16 February 2017; see commentary paragraphs 1, 7 and Appendix.

Expulsion practices raise many human rights issues from the right to protection against refoulement (return to a country where there is a real risk of persecution, or torture),⁶² to fair procedures⁶³ and considerations such as family life, the nature and importance of the reason for the expulsion decision⁶⁴ and the use of detention as a precursor to expulsion⁶⁵ and effective enforcement of rights of migrant workers against their (former) employers. The human rights obligations which apply to forced expulsions have come under scrutiny not least by the UN Committee against Torture.⁶⁶ The engagement of IOM both in 'voluntary' return after an expulsion decision, has raised the question, examined in the academic literature, about how voluntary is the decision of the migrant.⁶⁷ Although there is strong denial at the top of the IOM that it ever engages with processes of forced expulsion, empirical evidence indicates that local offices reliant on raising funds from governments may not be as careful about the principle as head office.⁶⁸

Article 2(3): IOM as a non-normative organisation

According to Article 2(3) of the agreement, the UN recognises that IOM, by virtue of its constitution will function as an independent, autonomous and non-normative organisation in its working relationship with the UN. Reference is made to the essential elements and attributes of IOM as set out in its Council's resolution 1309. These elements and attributes are that 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 a decentralized organizational structure. The IOM document states that "IOM must, in addition to these features, also retain the following attributes to which its Member states attach importance: responsiveness, efficiency, cost-effectiveness and independence."⁶⁹ (see above, *IOM's Status within the UN*).

IOM does have a human rights policy adopted on 12 November 2009 by its Council.⁷⁰ However, at the very start of the document paragraph 2 clarifies that "prime responsibility for ensuring the respect of the human rights of migrants lies with States."

⁶² Sitaropoulos, Nicholas. "The Role and Limits of the European Court of Human Rights in Supervising State Security and Anti-terrorism Measures Affecting Aliens' Rights." *Terrorism and the Foreigner*. Brill, 2006. 85-120.

⁶³ Fekete, Liz. "Accelerated removals: the human cost of EU deportation policies." *Race & Class* 52.4 (2011): 89-97.

⁶⁴ Pattenden, Rosemary. "Admissibility in criminal proceedings of third party and real evidence obtained by methods prohibited by UNCAT." *The International Journal of Evidence & Proof* 10.1 (2006): 1-41.

⁶⁵ Achermann, Alberto, Jörg Künzli, and Barbara von Rütte. "European Immigration Detention Rules." (2013).

⁶⁶ UN Committee against Torture General Comment No 3(2012).

⁶⁷ Lietaert, Ine, Eric Broekaert, and Ilse Derluyn. "From social instrument to migration management tool: Assisted voluntary return programmes—the case of Belgium." *Social Policy & Administration* (2016).

⁶⁸ Kalir, Barak, and Lieke Wissink. "The deportation continuum: convergences between state agents and NGO workers in the Dutch deportation field." *Citizenship Studies* 20.1 (2016): 34-49.

⁶⁹ <https://governingbodies.iom.int/system/files/en/council/106/C-106-RES-1309%20IOM-UN%20Relations.pdf> accessed 7 February 2017.

⁷⁰ <https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/human-rights-migration-november-2009/MC-INF-298-The-Human-Rights-of-Migrants-IOM-Policy-and-Activities.pdf> accessed 16 February 2017.

It continues: “Each State also has the right – and the duty – to defend and protect its nationals abroad, and to allow other States to protect their nationals residing on its territory. Many other international actors, including IOM, have a key supporting role to play in achieving the effective respect of the human rights of migrants.” The relationship of human rights and state sovereign claims to admit or refuse to admit people at their borders is presented as one of state sovereignty over its nationals wherever they are. This approach is premised on the idea that states have a duty to protect only their own citizens, an outdated notion no longer consistent with international human rights law. The document seems to have been prepared primarily for internal consumption. Each statement regarding a human right is referenced back to the IOM’s own documents and Constitution with scant reference to the international human rights obligations of IOM’s member states. The reader is left rather unsatisfied as to the foundation of human rights which seems to be based in the IOM’s Constitution and activities. The policy is flanked by the IOM’s Policy on Protection 7 September 2015⁷¹ which reiterates the duty of IOM to respect human rights of migrants but justifies this by reference to IOM’s own documents. Specifically, as the document clarifies at para 13 “IOM meets its obligation to promote and contribute to the protection of migrants and their rights by supporting States and its other partners in their respective protection responsibilities by having a rights-based approach to all its policies, strategies, projects and activities.”

Is it possible to define the term ‘non-normative’ in a manner which is consistent with the human rights objective of the UN? We do not see exactly how this would be possible bearing in mind the normal meaning of the term non-normative. Another option might be to claim that UN human rights standards are themselves not normative. Yet this would be a strange claim as they are founded in human dignity which is an inherent right of all people and as such normative. One of the human rights which has (arguably) become *ius cogens* is the prohibition on torture.⁷² This is not because torture is ineffective or does not work (depending on what the objective of the torture is – for instance as punishment or to extract information from the victim) but because it is wrong and the international community is agreed that it is wrong. This is a normative position.

Further, it is fairly clear from the wording of the agreement that both the UN and IOM understood the terms ‘normative’ and ‘non-normative’ to be centrally connected to and a way of referring to human rights. If one looks at article 2(4) of the agreement, IOM recognises the responsibilities of the UN under its Charter and the mandates and responsibilities of UN bodies including in the field of migration. The reference to the Charter must be intended to be a reference also to the human rights commitments of the UN. Article 2(5), however, takes the questions somewhat further. In this provision, IOM undertakes to conduct its activities in accordance with the purpose and principles of the UN Charter, which as we set out above, include human rights observance. IOM also engages itself to act with ‘due regard’ to the policies of the UN which further the purposes and principles and to other relevant instruments in the international migration, refugee and human rights fields. Does this acknowledge the primacy of human rights in the UN

⁷¹ <https://governingbodies.iom.int/system/files/en/council/106/C-106-INF-9-IOM-Policy-on-Protection.pdf> accessed 22 February 2017.

⁷² Other human rights such as the right to life may also come within this category.

instruments? While IOM does accept that it must act in accordance with the UN Charter, the provision seems to imply that this goes no farther than having due regard to human rights conventions (as opposed to abiding by them). This uncertainty is reinforced in article 2(6) which states that the UN and IOM will co-operate and conduct their activities without prejudice to the rights and responsibilities of one another under their respective constituent instruments.

Article 3: UN and IOM cooperation of the organisations

This rather cloudy approach to human rights in the agreement is unhelpful. The guiding principles of the collaboration need to be clear before the modalities can be set out, hence the opacity of those principles is problematic. Article 3 entitled cooperation and coordination exemplifies the issue. In this provision the UN and IOM agree to work jointly to achieve mutual objectives. The purpose is to facilitate effective exercise of their responsibilities in accordance with their respective constituent instruments. Does this mean that the UN must cooperate in the pursuit of human rights objectives but IOM participates on a 'non-normative' basis without any obligation to pursue human rights compatible outcomes?

The UN and IOM recognise the desirability of cooperation in the statistical field (within their mandates). This opens the can of worms regarding counting migrants (and possibly human mobility). The issue has been something of a headache for the UN and IOM as the sources of statistical information are varied, held by different ministries and departments at state level and is often highly contested or just simply inaccurate. Yet, policies regarding migrants and human mobility depend on knowledge of how many, where and who migrants are. While at times of humanitarian crisis, people tend to self-identify themselves (for instance for evacuation in the face of a disaster) otherwise migrants tend to be quite shy about self-identification particularly to international organisations. Numbers are often both under and over-reported. In the first instance under-reported as many people do not consider themselves migrants as they are foreign students or expats and so are not always easy to count. In the second instance over-reporting, migrants frequently naturalise but do not necessarily cease to be nationals of their country of origin (in particular in countries where dual nationality is permitted). Thus they are often double counted both as citizens and migrants or rather randomly counted as either one or the other. When a migrant, after being counted, then naturalises the problem is only aggravated. The importance of counting and having control over the counting process is one which has political and practical consequences. Political as can be seen in the tables of the UN's World Population division in respect of a number of countries in the Gulf where over 75% of the population are counted as migrants. Practical as there are a range of funding possibilities open to countries which receive refugees and persons displaced by conflict. Counting, in such circumstances, is also access to resources from the international community.⁷³ We are agnostic on the issue of what body is best placed to

⁷³ The Danish Refugee Council raised the issue of Kenyan nationals living in the Dadaab refugee camp which primarily houses Somali refugees in Kenya which they estimated as 30% of the camp's inhabitants. As a result, biometric cards were issued to the refugees in the camp on the basis of which rations are given out. However, a negative externality of the exclusion of Kenyans from access to rations in the camp

fulfil a mandate to collect and publish independent and viable statistics on migration and population. However, whatever body is given this job needs to be fully independent, properly funded and resourced and compliant with the UN's international standards on statistics. Bad statistics are worse than no statistics at all as they can become the hostages of ideological battles.

The remaining provisions of the agreement cover institutional matters such as reciprocal representation at UN and IOM Council meetings, the right to propose agenda items, exchange of information and documents (which appears to be obligatory but is limited by the extent practicable on both sides), administrative cooperation, expenses, confidentiality etc. Yet we must note that it is disappointing that in the second decade of the 21st century, confidentiality of UN related bodies and organisations is the subject of specific protection but transparency is not.

It is now time to turn to the General Assembly resolution on the Global Compact and to see what the role of human rights obligations is there. On the basis of the position of human rights in this process we will examine what constraints and opportunities there may be regarding IOM's role in the negotiations.

Human Rights in the Global Compact on Safe, Orderly and Regular Migration and the IOM

The UN General Assembly adopted a resolution calling for a Global Compact on Safe, Orderly and Regular Migration and affirming a Global Compact on Refugees on 19 September 2016.⁷⁴ In the section of the document which deals with the Global Compact on Safe, Orderly and Regular Migration, there are 11 references to human rights.⁷⁵ This is in a section of the document which only has 63 paragraphs related to the general framework, commitments to migrants and refugees and commitments to migrants. By comparison, the section on commitments to refugees has only one reference to human rights (at paragraph 64). This is undoubtedly the consequence of the UN Convention relating to the status of refugees 1951 and its 1967 protocol which provides a very solid foundation indeed for the treatment and rights of refugees.

Human rights for migrants are central to the Global Compact on Safe, Orderly and Regular Migration, indeed they are so fundamental that they are referred to many times. Clearly the General Assembly had the human rights of migrants firmly in its sights when it adopted the resolution. With such a clear indication of the intention of the General Assembly to mainstream human rights in the Global Compact in full knowledge of the contents of the UN-IOM Agreement of July 2016, what role has been assigned to IOM in the Compact process? At the end of January 2017, the General Assembly adopted a

was a substantial diminution of national support for the camp and the Somali refugees. The President's decree in 2016 that the camp must be closed and the Somalis sent back to Somalia is also a reflection of the change of the composition of the camp.

<http://webcache.googleusercontent.com/search?q=cache:nuek3So8QhUJ:www.alnap.org/pool/files/socio-economic-environmental-impact-study-of-the-dadaab-refugee-camp-on-the-host-community.pdf+&cd=5&hl=nl&ct=clnk&gl=nl> visited 22 February 2017.

⁷⁴ http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1 accessed 8 February 2017.

⁷⁵ Paragraphs 5, 6, 11, 22, 24, 26, 32, 41, 47, 51, 59.

document entitled Modalities for the intergovernmental negotiations of the global compact for safe, orderly and regular migration. This document sets out how the process of the negotiations should take place and who the actors should be. In the preamble, the Modalities document welcomes the agreement bringing IOM into a closer legal and working relationship with the UN as a 'related organisation'.

The resolution appoints two facilitators to lead the consultations and negotiations towards the Global Compact – the Mexican and Swiss representatives were chosen for this role. The UN Secretariat and IOM are jointly to service the negotiations (paragraph 11). The former is to provide capacity and support, the latter, IOM is to provide technical and policy expertise. This joint servicing of the process is to apply to the entire preparatory process to developing the Compact.

The preparatory process consists of three phases: (a) Phase I (consultations) April 2017 – November 2017; (b) Phase II (stocktaking) November 2017 to January 2018 and (c) Phase III (intergovernmental negotiations) February 2018 to July 2018. In Phase I, IOM is given a specific role, to make its expertise available to organise a series of informal thematic sessions on facilitating safe, orderly and regular migration. All members of the GMG are encouraged to participate with IOM in this activity. The first theme to be addressed in the informal thematic sessions is the human rights of all migrants, social inclusion, cohesion and all forms of discrimination, including racism, xenophobia and intolerance. This session is to take place at the UN Office in Geneva between April and May 2017. However, while human rights is the central focus of the first thematic session, it touches all the others, be they also in Geneva, New York or Vienna.

The second Geneva based thematic session will be international cooperation and governance of migration in all its dimensions, including at borders, in transit, entry, return, readmission, integration and re-integration to be held in June 2017. This is a very wide topic and one with important human rights implications. As we have discussed earlier in this article, border and expulsion practices are among the most human rights sensitive for migrants and states. Much human rights input will be needed in this session to achieve the General Assembly's demand for a human rights consistent Compact.

The third Geneva based thematic session is to be on irregular migration and regular pathways including decent work, labour mobility, recognition of skills and qualification and other relevant measures, which is to take place in October 2017. In earlier drafts of the Modalities document, this theme was entitled decent work and labour mobility. Its transformation into irregular migration is rather unfortunate and does not bode well for a serious reflection on labour migration. The inclusion of recognition of skills and qualifications is a graveyard move – the subject is one which excites so much controversy dressed in highly technical terminology that it almost invariably ends in a stalemate. Yet, the treatment of migrants who have been designated by the host state as irregular is a vital human rights issue. Equality at work is also a core concern of ILO and a normatively determined issue.

Two thematic sessions are to be held in New York. First in May 2017 there is to be a session on drivers of migration, including adverse effects of climate change, natural

disasters and human-made crises, through protection and assistance, sustainable development, poverty eradication, conflict prevent and resolution. Again this is a wide subject with many subthemes within it - every aspect with profound human rights consequences and responsibilities for states towards migrants. The second thematic session to take place in New York will examine the contributions of migrants and diasporas to all dimensions of sustainable development, including remittances and portability of earned benefits planned for July 2017. A difficulty with this thematic session is the possible interpretation of the subject as requiring migrant communities to justify their existence on the basis of their positive contribution to the host community.

One thematic session is planned for Vienna at the UN office there in September 2017. The subject is smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims. It is the presence in Vienna of UNODC which is responsible for the application of the two Palermo Protocols on smuggling⁷⁶ and trafficking⁷⁷ in human beings which has dictated the choice of venue. The subjects of smuggling of migrants and trafficking of human beings have wide human rights implications and impacts which will need to be fully explored in this session.

The IOM is called upon in this first phase to support the Secretary General in submitting inter-agency issue briefs drawing on the expertise of the GMG and other relevant bodies in advance of each informal thematic session.⁷⁸ In light of the importance of human rights throughout all of the six thematic sessions, IOM will have to pay very close attention to the UN human rights acquis to ensure that each of the six inter-agency briefs fully and faithfully addresses the human rights issues relevant to each theme. Further IOM is called upon to assist the Secretary General to develop a work plan for the Member states by March 2017. The place of human rights in this work plan is of utmost importance.

In Phase II, the stocktaking, a specific role is created for IOM in the Modalities document. According to paragraph 26 it is to be in close consultations with the Secretary General regarding input into the zero draft of the Global Compact.⁷⁹ In particular the IOM is requested to present a report that includes facts and figures as well as challenges and opportunities based on the full range of inputs. Further IOM is called upon to provide member states with recommendations before the beginning of Phase III.

⁷⁶ UN General Assembly, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at: <http://www.refworld.org/docid/479dee062.html> [accessed 3 March 2017]

⁷⁷ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at: <http://www.refworld.org/docid/4720706c0.html> [accessed 3 March 2017]

⁷⁸ The UN University in New York has taken a role in this regards as well <https://unu.edu/media-relations/releases/unu-rector-assumes-chair-of-un-interagency-migration-group.html> accessed 3 March 2017.

⁷⁹ UN documents tend to go through four phases – first an Elements paper setting out a rough outline of the issues, followed by Zero Draft which elaborates on the elements, then a First Draft which is a refinement of the Zero Draft followed by a Final Draft which is usually the version which will be adopted.

This will be a key moment in the negotiations as the zero draft will form the basis of the Global Compact – the changes which take place in the negotiations tend to be less important than the framework which is established by the zero draft. The place of human rights in the zero draft will need to take into account the importance of human rights mandated by the General Assembly. Any diminution of the role of the human rights of migrants in the zero draft in comparison with the resolution may be inconsistent with the objective and express will of the General Assembly.

In the third and final stage of the process, according to the Modalities document, there is no express role for IOM. The zero draft will go through the negotiation process to arrive at the final draft for the conference. While there will be informal interactive multi-stakeholder hearings in this phase, there is no express role for IOM in them.

The UN, IOM and Unfinished Business

What does this close engagement of IOM in the process of the Global Compact on Safe, Orderly and Regular Migration mean as regards human rights? One weakness of the manner in which IOM has been brought into the UN has, in our opinion, been the meagre attention to the UN's human rights *aquis*. Was the concern on IOM's part that the phrase 'non-normative' be present a number of times in the agreement intended to signpost a human rights neutral position of the agency? The UN's human rights framework, however, makes this non-normative approach difficult to sustain. We have also pointed out that within the governing documents of the IOM there are references, some overt some indirect, to human rights obligations. The IOM is no stranger to human rights⁸⁰ although its position in the agreement appears agnostic.

The IOM has now been given an important role in the development of a Global Compact on Safe, Orderly and Regular Migration. It will carry out these functions with the Secretary General and UN bodies, many of which have migration dimensions to their work which are carried out in full acknowledgement and respect for the convention-based human rights of migrants. If IOM is to fulfil its role in the negotiations of the Global Compact it will need actively to promote the stated objective of the General Assembly that human rights be central to the Compact. The important job which the IOM has been given in Phase I, assisting in the thematic sessions, will require expert opinion on the impact of UN human rights obligations on migrants, which must then be reflected in the zero draft prepared for negotiation by states.

The process of the Global Compact needs to be embraced as an excellent opportunity for the UN and IOM to move towards a full understanding of the centrality of human rights in respect of migrants. On the side of the UN, human rights norms are clear. The same is not so true for IOM. Although IOM recognises their centrality in statements and policies,

⁸⁰ See, eg, 'Recognition, promotion and protection of the human rights of migrants in the exercise of State sovereignty are issues that have been present in IOM's constituent documents since the Organization's foundation.' <https://governingbodies.iom.int/system/files/en/council/106/C-106-7-Programme-and-Budget-for-2016.pdf>. P.1. Accessed 12 February 2017.

the Constitution still does not reflect today's international human rights legal order. IOM's activities to promote the Global Compact need to have a clear base in its Constitution. So, a change to IOM's Constitution to include a clear commitment to promoting and respecting UN human rights standards would be very valuable. It would evidence IOM's commitment to human rights, a criterion against which its activities should be decided. It would also provide orientation to its operational work, especially in relation to border control and expulsion that respect for international human rights must always be paramount notwithstanding political pressures.

Annex 1

IOM's Strategic Focus

1. To provide secure, reliable, flexible and cost-effective services for persons who require international migration assistance.
 2. To enhance the humane and orderly management of migration and the effective respect for the human rights of migrants in accordance with international law.
 3. To offer expert advice, research, technical cooperation and operational assistance to States, intergovernmental and non-governmental organizations and other stakeholders, in order to build national capacities and facilitate international, regional and bilateral cooperation on migration matters.
 4. To contribute to the economic and social development of States through research, dialogue, design and implementation of migration-related programmes aimed at maximizing migration's benefits.
 5. To support States, migrants and communities in addressing the challenges of irregular migration, including through research and analysis into root causes, sharing information and spreading best practices, as well as facilitating development-focused solutions.
 6. To be a primary reference point for migration information, research, best practices, data collection, compatibility and sharing.
 7. To promote, facilitate and support regional and global debate and dialogue on migration, including through the International Dialogue on Migration, so as to advance understanding of the opportunities and challenges it presents, the identification and development of effective policies for addressing those challenges and to identify comprehensive approaches and measures for advancing international cooperation.
 8. To assist States to facilitate the integration of migrants in their new environment and to engage diasporas, including as development partners.
 9. To participate in coordinated humanitarian responses in the context of inter-agency arrangements in this field and to provide migration services in other emergency or post-crisis situations as appropriate and as relates to the needs of individuals, thereby contributing to their protection.
 10. To undertake programmes which facilitate the voluntary return and reintegration of refugees, displaced persons, migrants and other individuals in need of international migration services, in cooperation with other relevant international organizations as appropriate, and taking into account the needs and concerns of local communities.
 11. To assist States in the development and delivery of programmes, studies and technical expertise on combating migrant smuggling and trafficking in persons, in particular women and children, in a manner consistent with international law.
- To support the efforts of States in the area of labour migration, in particular short term movements, and other types of circular migration.

Annex 2
IOM Constitution, Article 1

Article 1

1. The purposes and functions of the Organization shall be:

(a) to make arrangements for the organized transfer of migrants, for whom existing facilities are inadequate or who would not otherwise be able to move without special assistance, to countries offering opportunities for orderly migration;

(b) to concern itself with the organized transfer of refugees, displaced persons and other individuals in need of international migration services for whom arrangements may be made between the Organization and the States concerned, including those States undertaking to receive them;

(c) to provide, at the request of and in agreement with the States concerned, migration services such as recruitment, selection, processing, language training, orientation activities, medical examination, placement, activities facilitating reception and integration, advisory services on migration questions, and other assistance as is in accord with the aims of the Organization;

(d) to provide similar services as requested by States, or in cooperation with other interested international organizations, for voluntary return migration, including voluntary repatriation; (e) to provide a forum to States as well as international and other organizations for the exchange of views and experiences, and the promotion of cooperation and coordination of efforts on international migration issues, including studies on such issues in order to develop practical solutions.

2. In carrying out its functions, the Organization shall cooperate closely with international organizations, governmental and non-governmental, concerned with migration, refugees and human resources in order, inter alia, to facilitate the coordination of international activities in these fields. Such cooperation shall be carried out in the mutual respect of the competences of the organizations concerned.

3. The Organization shall recognize the fact that control of standards of admission and the number of immigrants to be admitted are matters within the domestic jurisdiction of States, and, in carrying out its functions, shall conform to the laws, regulations and policies of the States concerned.

Annex 3
UN Human Rights Conventions

<i>Acronym</i>	<i>Monitoring Body</i>	<i>Date</i>	
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965	CERD
ICCPR	International Covenant on Civil and Political Rights	16 Dec 1966	CCPR
ICESCR	International Covenant on Economic, Social and Cultural Rights	16 Dec 1966	CESCR
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979	CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984	CAT
CRC	Convention on the Rights of the Child	20 Nov 1989	CRC
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec 1990	CMW
CPED	International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec 2006	CED
CRPD	Convention on the Rights of Persons with Disabilities	13 Dec 2006	CRPD
ICESCR - OP	Optional Protocol to the Covenant on Economic, Social and Cultural Rights	10 Dec 2008	CESCR
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights	16 Dec 1966	CCPR
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	15 Dec 1989	CCPR
OP-CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women	10 Dec 1999	CEDAW
OP-CRC-AC	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	25 May 2000	CRC
OP-CRC-SC	Optional protocol to the Convention on the Rights of the Child on the sale of children, child	25 May 2000	CRC

OP-CRC-IC	prostitution and child pornography Optional Protocol to the Convention on the Rights of the Child on a communications procedure	14 Apr 2014	CRC
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	18 Dec 2002	SPT
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities	12 Dec 2006	CRPD