

---

# The International Organization for Migration in Humanitarian Scenarios

GEOFF GILBERT

## 11.1 Introduction

The International Organization for Migration (IOM) is not explicitly identified in its Constitution as a humanitarian organization,<sup>1</sup> yet a lot of its work now takes place in situations of acute crisis alongside UNHCR, the ICRC and other traditional humanitarian actors.<sup>2</sup> A series of questions arise as to the framework for those activities, IOM's accountability to those with whom it works, its engagement with other actors, and the relationship it has with its member states.<sup>3</sup>

This chapter deals with those, so far, unanswered questions by looking at the nature of IOM and its related organization status with the United Nations. It then moves on to its major focus, the first-ever detailed analysis of the impact of IOM's 2015 Humanitarian Policy – Principles for Humanitarian Action,<sup>4</sup> and related internal policy documents, including the 2012 Migration Crisis Operational Framework, which provides a reference frame for IOM's response to the mobility dimensions of

<sup>1</sup> Megan Bradley, *The International Organization for Migration: Challenges, Commitments, Complexities*, (Routledge 2019); Megan Bradley, 'The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime' (2017) 33 *Refuge* 97.

<sup>2</sup> IOM, 'Director-General's Report to the 111th Session of the IOM Council' (20 November 2020) IOM Doc C/111/11 para 10. See also Anders Olin, Lars Florin and Björn Bengtsson, 'Study of the International Organization for Migration and its Humanitarian Assistance' (SIDA Evaluations 2008) 9.

<sup>3</sup> In 2011, the United Kingdom's Department for International Development produced a report on IOM that found, amongst other things, that 'IOM has a market oriented approach as a reactive project-based organization. IOM's Strategy is a statement of the range and scope of services IOM provides' (document in the possession of the author – see generally, Department for International Development, 'Multilateral Aid Review' (March 2011) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224993/MAR-taking-forward.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/224993/MAR-taking-forward.pdf)> accessed 19 May 2022).

<sup>4</sup> See IOM, 'IOM's Humanitarian Policy – Principles for Humanitarian Action' (12 October 2015) IOM Doc C/106/CRP/20 (hereafter 2015 Humanitarian Policy).

crisis situations.<sup>5</sup> Consideration is also given to humanitarian actions in the context of mixed populations, especially given cross-border movements consequent upon natural disasters.<sup>6</sup> As its work in these scenarios increased, it became evident to IOM and its members that these policies and frameworks needed further development.

The chapter then looks more generally at IOM's engagement with IDPs, referring to the remit of the Guiding Principles on Internal Displacement with respect to all actors,<sup>7</sup> and IOM's involvement with refugees. The chapter addresses IOM's engagement with these populations in light of UNHCR's unique mandate for refugees, including returning refugees, and in the light of the Global Compact on Refugees. While not designed for responding to humanitarian scenarios, the Global Compact for Safe, Orderly and Regular Migration (GCM) also provides a framework that can be applied thereto.<sup>8</sup> Within the GCM, there is a reference to refugees not being a mere subset of migrants, but recognition nevertheless that they might make independent use of migratory pathways to seek their own durable solutions. The final discussion sheds light on the fact that while IOM is an actor in humanitarian scenarios, it is not a humanitarian agency per se: under its Constitution and in its relationship with its member states it has specific functions that often place it in humanitarian situations, but its mandate has not yet developed to turn it into a humanitarian agency like the ICRC or UNHCR,<sup>9</sup> one that

<sup>5</sup> IOM Council, 'Migration Crisis Operational Framework' (15 November 2012) IOM Doc MC/2355; IOM Council, 'Migration Crisis Operational Framework Resolution' (27 November 2012) Resolution 1243 IOM Doc MC/2362. See also OCHA, 'Civil-Military Guidelines & Reference for Complex Emergencies' (1 March 2008) <<https://reliefweb.int/report/world/civil-military-guidelines-reference-complex-emergencies>> accessed 19 May 2022; OCHA, "'Oslo Guidelines": Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief' (Rev 1.1, November 2007) <[www.unocha.org/sites/unocha/files/OSLO%20Guidelines%20Rev%201.1%20-%20Nov%2007.pdf](http://www.unocha.org/sites/unocha/files/OSLO%20Guidelines%20Rev%201.1%20-%20Nov%2007.pdf)> accessed 19 May 2022; IOM Constitution (adopted 19 October 1953, entered into force on 30 November 1954; amended 20 May 1987, 55th Session of the Council (Resolution no. 724); 24 November 1998, 76th Session of the Council (Resolution No. 997); and 28 October 2020, Fourth Special Session of the Council (Resolution No.1385), in force, 28 October 2020); and IOM, 'Annual Report for 2018' (12 June 2019) IOM Doc C/110/4.

<sup>6</sup> UNHCR, 'Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters' (1 October 2020) <[www.refworld.org/docid/5f75f2734.html](http://www.refworld.org/docid/5f75f2734.html)> accessed 19 May 2022.

<sup>7</sup> ECOSOC, 'Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement' (11 February 1998) UN Doc E/CN.4/1998/53/Add.2.

<sup>8</sup> UNGA Res 73/195, Global Compact for Safe, Orderly, and Regular Migration (19 December 2018) UN Doc A/RES73/195 (hereafter GCM).

<sup>9</sup> Any suggestion that 'international protection' in Paragraph 1 of the Statute of the Office of the United Nations High Commissioner for Refugees, UNGA Annex to Res/428(V), 'Statute of the

acts independently of states and gives primacy to the principle of humanity. Bringing together for the first time its 2016 related organization status with the UN with its own 2015 Humanitarian Policy, and providing a framework in international law to understand IOM's obligations and, to an extent, its accountability, this chapter proposes that, even if they are not explicitly in its Constitution, human rights and protection must be accorded priority with respect to all its work in humanitarian scenarios – given its related organization status with the UN and the fact that some of the people with whom it interacts may be refugees, the Constitution needs a further amendment to specifically include references to international human rights law and protection.

## 11.2 The Nature of IOM

*Vis-à-vis* the responsibility of the different organizations in international law, there is little or no distinction.<sup>10</sup> However, UN agencies with humanitarian mandates generally strive to act independently of member states

Office of the United Nations High Commissioner for Refugees' Res 428/V (14 December 1950) UN Doc A/RES/428(V) (hereafter 1950 Statute) was ever limited simply to international protection that the country of nationality would otherwise have offered to the refugee is refuted by the history of refugee protection before 1950 and through reading the Statute as a whole. On the pre-1950 meaning of protection from persecution, see Jane McAdam, 'Rethinking the Origins of "Persecution" in Refugee Law' (2013) 25 *International Journal of Refugee Law* 667, 668; throughout, contradicting the limited understanding put forward by James Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' (1990) 31 *Harvard International Law Journal* 129, 139, 175; Antonio Fortin, 'The Meaning of "Protection" in the Refugee Definition' (2000) 12 *International Journal of Refugee Law* 548; Guy S Goodwin-Gill, *International Law and the Movement of Persons between States* (Clarendon Press 1978) 138–139; Guy S Goodwin-Gill 'The Dynamic of International Refugee Law' (2013) 25 *International Journal of Refugee Law* 651; The Editor-in-Chief and the Members of the Editorial Board, 'Refugee Law and the Protection of Refugees' (1989) 1 *International Journal of Refugee Law* 1. On the reading the Statute as a whole, see Paragraph 8 that sets out that 'The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by', *inter alia*, improving the situation of refugees by agreements with governments (sub-paragraph b), supervising the application of international conventions for the protection of refugees (sub-paragraph a), and facilitating the co-ordination of efforts by private organizations concerned with the welfare of refugees (sub-paragraph i), that has to be read with UNHCR's administration and distribution of funds for assistance to refugees (Paragraph 10). Equally: '9. The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.' The General Assembly has expanded the mandate repeatedly – see Volker Türk and Elizabeth Eyster, 'Strengthening Accountability in UNHCR' (2010) 22 *International Journal of Refugee Law* 159.

<sup>10</sup> See also UNGA, 'ILC Articles on the Responsibility of International Organizations' annexed to UNGA Res 66/100 (27 February 2012) UN Doc A/RES/66/100 (ARIO) Article 2.

of the United Nations, while IOM openly claims to be closely engaged with its member states:

IOM's structure is highly decentralized and this has enabled the Organization to acquire the capacity to deliver an ever-increasing number and diversity of projects *at the request of its Member States*.<sup>11</sup>

On its face, IOM's mandate is about facilitating state objectives while UNHCR's is to protect individuals, but that is too simplistic an approach – it is not enough to look at mandates, but one needs to set them in their practical context. The fact that the source of funding for both IOM and UNHCR states is the unavoidable consequence of the nature of international society: UNHCR is funded by states but it aims to act independently<sup>12</sup> and even earmarked funding is for the protection of individuals, not to promote programmes that states want in order to facilitate migration as those states desire it. Equally, UNHCR has to preserve the 'protection space', which requires cooperating with states where there are persons of concern to ensure access and better protection of assistance to persons of concern. The lack of a Constitutional mandate for IOM to uphold the rights of migrants is pertinent, though, here: whereas the UN Charter promotes and encourages respect for human rights and UNHCR's Statute sets out its mandate as providing international protection to refugees,<sup>13</sup> Article 1 of IOM's Constitution is focused in part on inter-state co-operation to facilitate migration; the lack of a reference to the protection of the human rights of migrants in the Constitution means that there could appear to be a lack of a counterbalance.<sup>14</sup>

As regards operations in humanitarian scenarios, though, there could be a significant difference in approach by IOM and humanitarian actors because of the humanitarian principles of humanity, impartiality, neutrality and independence:<sup>15</sup> the humanitarian principles apply to states

<sup>11</sup> See its decentralized structure, IOM, 'IOM Organizational Structure' (emphasis added) <[www.iom.int/organizational-structure](http://www.iom.int/organizational-structure)> accessed 19 May 2022.

<sup>12</sup> Cf. The United Nations Development Programme (UNDP), like other development actors, has a radically different approach, working through national ownership of Development Plans, rather than the policy of independence of humanitarian actors, although the distinction was never clear cut and could not be given the protracted nature of displacement primarily to low- or middle-income countries.

<sup>13</sup> UNHCR, '1950 Statute' (n 9) para 1.

<sup>14</sup> IOM Council, 'Migration Crisis Operational Framework' (n 5); 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 (2016 Agreement) Art 2.

<sup>15</sup> See UNGA Res 46/182, 'Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations' (19 December 1991) UN Doc A/RES/46/182, and

and international organizations operating in the humanitarian sphere and reflect human rights standards such as non-discrimination, respect for the dignity of everyone, and norms of international humanitarian law, such as neutrality. Their legal status in international law is complex and whether they are binding on international organizations, and, if so, how there could be accountability for breach, are issues touched on below, but some discussion of the basic concepts here will set the context.

By way of corollary, Riedel has argued that there is wide acceptance that Article 55(c) of the UN Charter is binding on the United Nations as an organization and that the UDHR represents the first step by UN organs to realize 'the programme enshrined in Article 55(c)'.<sup>16</sup>

Thus, with respect to the ICRC, the humanitarian principles are binding given that the Movement adopted them at its 20th International Conference in Vienna (1986).<sup>17</sup> A similar argument can be made in relation to the humanitarian agencies of the United Nations following the adoption of UNGA Resolution 46/182 (1991). The Office for the Co-ordination of Humanitarian Affairs (OCHA) stated in 2011 at the time of the twentieth anniversary of Resolution 46/182 that, through long use, it:<sup>18</sup>

remains the common basis for the provision of humanitarian assistance. In the resolution, Member States set out the principles that guide

subsequent resolutions on the subject, especially UNGA Res 58/114, 'Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations' (17 December 2003) UN Doc A/RES/58/114; set out at UN Office for Co-ordination of Humanitarian Affairs' website, OCHA, 'Humanitarian Principles' (2012) <[www.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples\\_eng\\_June12.pdf](http://www.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf)> accessed 19 May 2022. See also International Committee of the Red Cross (ICRC), 'Fundamental Principles of the International Red Cross and Red Crescent Movement' (1986) <[www.icrc.org/en/doc/resources/documents/red-cross-crescent-movement/fundamental-principles-movement-1986-10-31.htm](http://www.icrc.org/en/doc/resources/documents/red-cross-crescent-movement/fundamental-principles-movement-1986-10-31.htm)> accessed 19 May 2022.

<sup>16</sup> See Eibe H Riedel, 'Article 55(c)' in Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary* (Volume 1, 3rd edn, Oxford University Press 2012) 920, 922–923, 925.

'Article 55(c) – With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:  
[...]

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.'

<sup>17</sup> ICRC, 'Fundamental Principles of the International Red Cross and Red Crescent Movement'(n 15).

<sup>18</sup> Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator. Opening remarks for the ECOSOC Humanitarian Affairs Segment, OCHA, 'What is General Assembly Resolution 46/182?' (2012) <[www.unocha.org/sites/unocha/files/dms/Documents/120402\\_OOM-46182\\_eng.pdf](http://www.unocha.org/sites/unocha/files/dms/Documents/120402_OOM-46182_eng.pdf)> accessed 19 May 2022.

humanitarian work, whether it is undertaken by States, the United Nations, or other humanitarian agencies such as the International Red Cross and Red Crescent Movement and non-governmental organizations.

However, does that have any bearing on their applicability to IOM? The 2016 General Assembly resolution to establish IOM as a related organization,<sup>19</sup> provides as follows:

**Article 2: Principles**

5. The International Organization for Migration 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.

6. The United Nations and the International Organization for Migration will cooperate and conduct their activities without prejudice to the rights and responsibilities of one another under their respective constituent instruments.

IOM only agrees to pay 'due regard' to UN policies that further the Purposes and Principles of the Charter, such as the humanitarian principles. Given that the text of the Resolution will have been agreed between the United Nations Office for Legal Affairs and IOM's Legal Department, it can only be assumed that IOM insisted on 'due regard' being the level of obligation, rather than a commitment to 'uphold' which would have equated IOM with UN agencies.<sup>20</sup> IOM and the UN co-operate without prejudice to the rights and responsibilities of each other. Thus, even after 2016 there is no straightforward applicability of the humanitarian principles for IOM. On the other hand, when read with Paragraph III.1 of the 2015 Humanitarian Policy,<sup>21</sup> which endorses the four humanitarian principles, then no-one can say IOM should not pay them due regard in its humanitarian operations, although the glosses IOM adds in the 2015 document may mean that it has not unequivocally internalised them.<sup>22</sup> Given IOM's close relationship with states in its operational activities under its Constitution, closer than that of other humanitarian actors whose mandates focus on individuals, there needs to be a delicate balancing exercise to ensure independence is maintained whilst at the same time acknowledging that states need to co-operate to provide access if protection of the displaced populations is to be effected

<sup>19</sup> UNGA, 2016 Agreement (n 14).

<sup>20</sup> See Riedel (n 16).

<sup>21</sup> IOM, '2015 Humanitarian Policy' (n 4).

<sup>22</sup> See IOM, '2015 Humanitarian Policy' (n 4). IOM is also part of the UN Migration Network that has adopted its own Terms of Reference. The Network is broad including almost 40 UN agencies with their own mandates, so the ToRs cannot be seen as conferring any mandate on IOM or any other member of the Network. Likewise, the ToRs were negotiated by the Network members for themselves, so it is not the same as the protection mandates conferred on UNHCR, the ICRC or OHCHR, for instance.

and effective. What is even more difficult, but here IOM is no different from every other international organization, is to determine how it might be held to account if it were to fail to uphold the humanitarian principles. This aspect is discussed more fully below.

The text of the 2015 Humanitarian Policy is a dry international document without any context or history, so before analysing it, it is useful to look at IOM's fieldwork that led to its adoption.

### 11.2.1 IOM Field Operations

IOM has a large institutional footprint, with over 590 offices and sub-offices in over 100 countries around the world.<sup>23</sup> In many places, it facilitates the return of migrants or carries out the resettlement of refugees to third countries.<sup>24</sup> In other operations, its work in-country has much to do with the protection of persons on the move, some of whom may be international migrants, but many of whom are refugees or IDPs. For example, a recent IOM report details its involvement in assistance and repatriation from Libya, especially for vulnerable persons, but it does not mention once that some of them might be refugees; that said, it does refer to upholding human rights.<sup>25</sup> In contrast to its earlier practice of sometimes referring to the Rohingya in Bangladesh as 'undocumented Myanmar nationals', recent reports on IOM's work in Bangladesh are much more oriented towards recognizing the need for humanitarian protection and that the Rohingya in Cox's Bazar are refugees.<sup>26</sup> As stated, IOM is very decentralized,<sup>27</sup> which can mean that protection and human rights are more to the fore in some operations than in others.

<sup>23</sup> See IOM, 'Where We Work' <[www.iom.int/where-we-work](http://www.iom.int/where-we-work)> accessed 19 May 2022.

<sup>24</sup> For example, with respect to returning migrants, its work in Niger in 2020–2021 included assisting Nigeriens to re-establish themselves despite a deteriorating security situation and COVID-19 restrictions – see IOM, 'IOM Niger Hits Milestone of Supporting the Reintegration of 1,000 Nigerien Migrants' (*IOM News-Local*, 20 April 2021) <<https://niger.iom.int/news/iom-niger-hits-milestone-supporting-reintegration-1000-nigerien-migrants>> accessed 19 May 2022; in Lebanon in 2014, IOM assisted 'with all travel arrangements and airport exit procedures for refugees resettling to the [USA], Canada, Australia and Scandinavian countries including family reunification, in addition to the voluntary return of country nationals', IOM, 'Lebanon' <[www.iom.int/countries/lebanon](http://www.iom.int/countries/lebanon)> accessed 19 May 2022.

<sup>25</sup> IOM, 'Libya' <[www.iom.int/countries/libya](http://www.iom.int/countries/libya)> accessed 19 May 2022.

<sup>26</sup> IOM, 'Bangladesh' <<https://bangladesh.iom.int>> accessed 19 May 2022; IOM, 'IOM to Provide Humanitarian Assistance to Undocumented Myanmar Nationals in Bangladesh' (*IOM News-Global*, 8 January 2015) <[www.iom.int/news/iom-provide-humanitarian-assistance-undocumented-myanmar-nationals-bangladesh](http://www.iom.int/news/iom-provide-humanitarian-assistance-undocumented-myanmar-nationals-bangladesh)> accessed 19 May 2022.

<sup>27</sup> IOM, 'IOM Organizational Structure' (n 11).

### 11.2.2 IOM and Its 'Related Organization' Status with the United Nations

IOM's entry into related organization status with the United Nations in 2016 has consequences for understanding its role in humanitarian scenarios.<sup>28</sup> Related organization status does not mean IOM is legally part of the United Nations itself,<sup>29</sup> and, furthermore, IOM had already worked with the UN for decades before the 2016 Agreement.<sup>30</sup> The related organization status, though, does affect how one must assess IOM's activities in humanitarian scenarios. According to Article 2.5 of the 2016 Agreement, set out above, IOM '*undertakes to conduct its activities in accordance with the Purposes and Principles of the Charter of the United Nations*' (emphasis added).<sup>31</sup> As such, Articles 1 and 2 of the UN Charter are now expressly endorsed as part of IOM's operational practice.<sup>32</sup> Human rights should now be an explicit part of all the agency's operations in order that it acts in accordance with Article 1.3 of the Charter, which also reflects customary international law binding on international organizations that provide services to and interact with individuals.<sup>33</sup> However, there is no reference

<sup>28</sup> UNGA, 2016 Agreement (n 14). For a legal discussion of IOM as a related organization in the UN system, see Miriam Cullen, 'The Legal Relationship between the UN and 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). For a discussion of the political dimensions of the IOM-UN relationship, and the role of cooperation in the humanitarian sector in bringing IOM into the UN system in 2016, see Megan Bradley, 'Joining the UN Family? Explaining the Evolution of IOM-UN Relations' (2021) 27 *Global Governance* 251; Vincent Chetail, *International Migration Law* (Oxford University Press 2019).

<sup>29</sup> UNGA, 2016 Agreement (n 14) Article 2.3.

<sup>30</sup> See UNGA Res 47/4, 'Observer status for the International Organization for Migration in the General Assembly' (16 October 1992) UN Doc A/RES/47/4; UNGA Res 51/148, 'Cooperation between the United Nations and the International Organization for Migration' (4 February 1997) UN Doc A/RES/51/148. IOM-UN cooperation has often focused on facilitating refugee resettlement to third countries, Cullen (n 28).

<sup>31</sup> UNGA, 2016 Agreement (n 14).

<sup>32</sup> Above (n 5) 'The Preamble to the Constitution recognises: 'that there is a need to promote the cooperation of States and international organizations, governmental and non-governmental, for research and consultation on migration issues, not only in regard to the migration process but also the specific situation and needs of the migrant as an individual human being'. This paragraph still does not incorporate human rights standards into IOM's Constitution, but it provides an opening through which to attach general protection duties onto IOM's day-to-day practice.

<sup>33</sup> Kristina Daugirdas, 'How and Why International Law Binds International Organizations', (2016) 57 (2) *Harvard International Law Journal* 325.



to human rights or even ‘protection’ in the IOM Constitution.<sup>34</sup> The 1991 UNGA resolution on the Humanitarian Principles, which expressly mentions IOM as a standing invitee to the United Nations Inter-Agency Standing Committee,<sup>35</sup> should also be seen as integral to all IOM humanitarian operations as a relevant UN instrument in ‘the international migration, refugee and human rights fields’.<sup>36</sup>

IOM’s project-based financing model can implicitly privilege state interests over those of individual migrants.<sup>37</sup> The explicit ‘protection’ *lacuna* in IOM’s constituting document *vis-à-vis* its expanding role in humanitarian situations is even more problematic given that it has the lead for the IASC’s Cluster on Camp Co-ordination and Camp Management (CCCM) in relation to ‘assistance, *protection*, and services’ in natural disaster internal displacement situations.<sup>38</sup> By comparison, UNHCR’s 1950 Statute establishes that its mandate is to provide international protection to refugees.<sup>39</sup> In parallel with its protection mandate, it assists governments to create durable and sustainable solutions through voluntary repatriation, local integration or resettlement; UNHCR’s protection is no longer required when a state provides a solution, dismissing thereby any notion of a protection-solutions dichotomy.<sup>40</sup> IOM

<sup>34</sup> Protection is a broadly understood concept – see generally, ICRC, ‘International Humanitarian Law and Protection’ (Report of the Workshop November 1996); ICRC, ‘Protection: Towards Professional Standards’ (Report of the Workshop March 1998); ICRC ‘Workshop on Protection for Human Rights and Humanitarian Organizations: Doing Something About It and Doing It Well’ (Report of the Workshop January 1999); ‘The Challenges of Complementarity’ (Report of the Workshop February 2000). A summary was produced, Sylvie Giossi Caverzasio (ed), ‘Strengthening Protection in War: a Search for Professional Standards’ (ICRC May 2001) <[www.icrc.org/en/publication/0783-strengthening-protection-war-search-professional-standards](http://www.icrc.org/en/publication/0783-strengthening-protection-war-search-professional-standards)> accessed 19 May 2022; IOM’s understanding, that is broader and includes elements of assistance, can be found in IOM, ‘2015 Humanitarian Policy’ (n 4). See also ‘The Protection of Refugees in Armed Conflict’ (2001) 83 (843) *International Review of the Red Cross* 569, and Global Protection Cluster, ‘The Centrality of Protection in Humanitarian Action Review 2019’ (2019) <[www.globalprotectioncluster.org/wp-content/uploads/GPC-Centrality-of-Protection-Review-2019.pdf](http://www.globalprotectioncluster.org/wp-content/uploads/GPC-Centrality-of-Protection-Review-2019.pdf)> accessed 19 May 2022.

<sup>35</sup> UNGA Res 46/182, ‘Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations’ (n 15) para 38.

<sup>36</sup> Article 2.5 2016 Agreement, above note 19.

<sup>37</sup> Sida Report 2008 (n 2) 23, 45.

<sup>38</sup> Camp Coordination and Camp Management (CCCM) (emphasis added) <<https://ccmcluster.org/about>> accessed 19 May 2022.

<sup>39</sup> UNHCR, ‘1950 Statute’ (n 9).

<sup>40</sup> See Geoff Gilbert and Anna Magdalena Rüsçh, ‘Rule of Law and UN Interoperability’ (2018) 30 *International Journal of Refugee Law* 31, 54–56.

has no such protection mandate for migrants, whom the organization defines very broadly,<sup>41</sup> and that is potentially problematic if it is working in humanitarian scenarios. While assistance to displaced populations is central to their survival, all humanitarian actors must first and foremost ‘protect’ those displaced populations, that is, they must, at minimum, act independently of political, military or economic objectives, uphold their own neutrality and carry out their work impartially and with humanity, not facilitate states’ political objectives.<sup>42</sup> The commitment to promote and encourage respect for human rights, in line with the customary character of the purposes and principles of the UN Charter, also infuses a protection mandate.

On the other hand, since the conclusion of the GCM in 2018, IOM’s mandate needs also to be considered in the light of the Compact’s implications with respect to both human rights and protection.<sup>43</sup> As stated, the GCM is not designed to respond to persons caught up in humanitarian crises. That said, there are frequent references in the GCM to human rights and to protection. As regards protection, the GCM sets out in Paragraph 4 of its Preamble that while refugees and migrants benefit from international human rights law and that those rights must be respected, protected and fulfilled, only refugees ‘are entitled to the specific international protection defined by international refugee law’.<sup>44</sup> In several places, the GCM refers to respecting, protecting and fulfilling human rights,<sup>45</sup> but there are also occasions where protection takes on a broader understanding relevant to humanitarian scenarios and which helps to shape the application of the 2015 Humanitarian Policy. For example, GCM Objective 7(j),

<sup>41</sup> IOM Constitution (n 5) Article 1, which provides no definition of migrants, but is comprehensive in its reach; IOM, ‘About Migration’ <[www.iom.int/about-migration](http://www.iom.int/about-migration)> accessed 19 May 2022. See also Jane McAdam and Tamara Wood, ‘The Concept of “International Protection” in the Global Compacts on Refugees and Migration’ (2021) 23 *Interventions* 191.

<sup>42</sup> The ICRC has been accused of helping Russia move Ukrainian civilians to Russia during the 2022 conflict – see Imogen Foulkes, ‘Why the Red Cross has to be neutral in the Ukraine conflict’ (*BBC News*, 29 March 2022) <[www.bbc.com/news/world-europe-60921567](http://www.bbc.com/news/world-europe-60921567)> accessed 19 May 2022.

<sup>43</sup> GCM (n 8); McAdam and Wood (n 41). At the 2016 New York Summit, States mandated IOM to support the negotiation of the GCM. IOM has subsequently taken on a leading role in facilitating its implementation.

<sup>44</sup> GCM (n 8).

<sup>45</sup> For example, GCM (n 8) Objective 2, paragraph (h) refers to respecting, protecting and fulfilling human rights in the context of ‘natural disasters, the adverse effects of climate change, and environmental degradation’ – yet there is no clear and obvious distinction to be made between protecting human rights and humanitarian protection.

dealing with vulnerabilities in migration, provides that member states of the United Nations shall:

(j) Apply specific support measures to ensure that migrants caught up in situations of crisis in countries of transit and destination have access to consular protection and humanitarian assistance, including by facilitating cross-border and broader international cooperation, as well as by taking migrant populations into account in crisis preparedness, emergency response and post-crisis action;

Unlike refugees, however, there is no international organization with a formal mandate to provide international protection where that consular protection is unavailable to non-refugee migrants.<sup>46</sup> The GCM also discusses the protection of trafficked persons, something that increasingly pertains in humanitarian crises.<sup>47</sup> In interpreting the 2015 Humanitarian Policy, though, it is Objective 2 on minimizing the ‘the adverse drivers and structural factors that compel people to leave their country of origin’ that is the most pertinent.<sup>48</sup>

Taken together, the 2016 Agreement and the 2018 GCM should have the effect of expanding IOM’s mandate beyond its very limited Constitution, and the 2015 Principles for Humanitarian Action should be read in the light of these dynamic developments. The member states of IOM sit in the United Nations General Assembly and endorsed the 2016 Agreement, the New York Declaration and, subsequently, the GCM.<sup>49</sup> Nevertheless, that does not necessarily mean that when sitting in the IOM Council,<sup>50</sup> its member states prioritize those United Nations documents over ‘opportunities for orderly migration’ set out in its own Constitution.<sup>51</sup> Furthermore, the

<sup>46</sup> Regarding international protection in international law, the 1950 Statute has to be read as a whole and UNHCR’s mandate to provide international protection to refugees (paragraph 1) cannot be confined to the simple international law definition that applies to states *vis-à-vis* their citizens but must also include aspects of ‘protection’ as set out in paragraph 8, which clearly overlaps with its work as a humanitarian agency.

<sup>47</sup> IOM, ‘Libya’ (n 25).

<sup>48</sup> See GCM (n 8) Objective 2(g). ‘Account for migrants in national emergency preparedness and response, including by taking into consideration relevant recommendations from State-led consultative processes, such as the Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster (Migrants in Countries in Crisis Initiative Guidelines)’.

<sup>49</sup> UNGA Res 71/1, ‘New York Declaration for Refugees and Migrants’ (19 September 2016) UN Doc A/RES/71/1 (New York Declaration); UNGA, 2016 Agreement (n 14); GCM (n 8).

<sup>50</sup> IOM Constitution (n 5) Art 7.

<sup>51</sup> IOM Constitution (n 5) Art 1.1(a). On the law of international organizations, see Jan Klabbers, *An Introduction to International Organizations Law* (Cambridge University Press 2015). By comparison, UNHCR as a subsidiary organ of the General Assembly

decentralized character of IOM also means that headquarters agreements are not unswervingly implemented at national level. The consequence is that since 2016 and even 2018, there have been situations where the human rights of migrants, some of whom at least were also refugees, were not upheld by IOM.<sup>52</sup> IOM, like any other international organization that deals directly with individuals, has always been bound under customary international law by international human rights norms.<sup>53</sup> The 2016 Agreement and the GCM re-enforce such obligations and its Constitution should be imbued with them shaping all Council decisions.

### 11.2.3 *National Prioritization and the Development Actors*

A criticism levelled at IOM in this field of operations is that it often works more openly and more closely with states than traditional humanitarian actors, such as the ICRC, calling into question its independence and impartiality in relation to both the humanitarian principles and the international law of armed conflict, where pertinent.<sup>54</sup> However, the development actors within the United Nations also operate on the basis of national ownership and leadership. UNDP works with states to develop National Development Plans over which states have ownership. The World Bank's work with states, even the poorest that host so many displaced persons, is based on loans and grants to support the state's development under national leadership.<sup>55</sup> Furthermore, partly in recognition that most situations of forced displacement are protracted

established under Article 22 of the UN Charter automatically incorporated the Global Compact on Refugees, paragraphs 3 and 31–48, especially 33 and 35, UNGA Res. 73/151, 'Office of the United Nations High Commissioner for Refugees' (17 December 2018) UN Doc A/RES/73/151 (GCR).

<sup>52</sup> IOM, 'Bangladesh' (n 26), Libya (note 25); IOM, 'Return of Undocumented Afghans – Weekly Situation Report (13–19 Aug 2021)' <<https://reliefweb.int/report/afghanistan/return-undocumented-afghans-weekly-situation-report-13-19-aug-2021-enpsdari>> accessed 19 May 2022.

<sup>53</sup> See Daugirdas (n 33).

<sup>54</sup> See text at (n 15) to (n 21) above. As for the international law of armed conflict, that is binding on parties to the conflict, but those parties shall allow the delivery of *humanitarian* aid in an *impartial* manner – Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts 1977 (Protocol I) 1125 UNTS 3 Article 70 ('AP 1'); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts 1977 (Protocol II), 1125 UNTS 609 Article 18(2).

<sup>55</sup> See the work of the International Development Association in states affected by fragility, conflict and violence (FCV), see International Development Association (IDA),

and that to deem them ‘humanitarian crises’ throughout their duration was hardly commensurate with reality, the Global Compact on Refugees calls on the international community as a whole, including development actors, to work together to resolve situations of displacement; this is also a major theme in the 2021 report of the UN High-Level Panel on Internal Displacement.<sup>56</sup>

Thus, while humanitarian agencies traditionally acted independently of the states where they operated, the humanitarian-development dichotomy was always false,<sup>57</sup> so IOM’s perceived greater deference to its member states and its closer engagement with states is not necessarily as distinctive as might have first been thought. That said, while all international organizations need the state’s permission to operate within its borders,<sup>58</sup> IOM’s Constitution defers more to its member states and the states in which IOM operates than the 1950 UNHCR Statute, for example.<sup>59</sup>

With this general context set out, it is possible to review IOM’s 2015 Humanitarian Policy, the associated organizational documents, and other international instruments that are pertinent to IOM’s role in humanitarian operations.

### 11.3 IOM’s 2015 Humanitarian Policy on Principles for Humanitarian Action and Related Documents<sup>60</sup>

IOM’s 2015 Humanitarian Policy does not stand on its own but has to be read along with its Migration Crisis Operational Framework and its 1953 Constitution, as amended 2020.<sup>61</sup> In addition, there are several general UN documents that apply to all humanitarian actors and which, especially after the adoption of the UN-related organization agreement of 2016,

‘IDA18 Replenishment’ <<https://ida.worldbank.org/en/replenishments/ida18-replenishment>> accessed 19 May 2022; IDA, ‘IDA20 Final Replenishment Report’ <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/163861645554924417/ida20-building-back-better-from-the-crisis-toward-a-green-resilient-and-inclusive-future>> accessed 19 May 2022.

<sup>56</sup> GCR (n 51); McAdam and Wood (n 41).

<sup>57</sup> Gilbert and Rüsçh (n 40) 5; IOM, ‘2015 Humanitarian Policy’ (n 4) Principle VI.4.

<sup>58</sup> For the purpose of this chapter, the possibility of the United Nations Security Council authorising humanitarian actors to operate under a Responsibility to Protect mandate will not be explored – ‘2005 World Summit Outcome’, UNGA Res. 60/1, paragraphs 138–140 (16 September 2005), and Report of the Secretary-General, ‘Implementing the Responsibility to Protect’, UN doc A/63/677 (12 January 2009) paras 28–48.

<sup>59</sup> IOM Constitution (n 5) especially Article 1.3.

<sup>60</sup> IOM, ‘2015 Humanitarian Policy’ (n 4); see (n 5) (n 38); cf text at (n 74) below.

<sup>61</sup> IOM Council, ‘Migration Crisis Operational Framework’ (n 5); IOM Constitution (n 5).

should apply to IOM, too, although it has added its own glosses.<sup>62</sup> In addition, customary international law can apply to international organizations in certain circumstances.<sup>63</sup> Given that IOM's own instruments were promulgated over a period of time as humanitarian action was developing in the field,<sup>64</sup> it is inevitable that there will be no simple and perfect confluence of policy and operational approach. Therefore, while this section is focused on the 2015 Humanitarian Policy document, if one is to assess it against IOM's long history of practice in humanitarian situations, one must have regard to all these additional and related documents.

The 2015 Humanitarian Policy references international humanitarian, human rights and refugee law, the 2012 Migration Crisis Operational Framework (MCOF),<sup>65</sup> the IASC's Civil-Military Guidelines & Reference for Complex Emergencies, 2008,<sup>66</sup> and the OCHA Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief, the 'Oslo Guidelines'.<sup>67</sup> These provide a firm basis in which to locate the 2015 Principles for Humanitarian Action. As will be seen, much of the 2015 document does reflect the approach of other humanitarian actors, particularly supporting states as the primary duty bearers (Principle IV.2). What needs to be addressed in particular are those occasions where IOM is dealing with more than one scenario within a single document and the different policies it might be applying in parallel for the benefit of migrants (Principle III.7).

According to Principle I.4 of the 2015 Humanitarian Policy, IOM's role as a humanitarian institution with respect to movement by people during a crisis is 'ultimately to save lives, alleviate human suffering and protect the human dignity of the persons affected'.<sup>68</sup> While this is commendable,

<sup>62</sup> See documents cited above in (n 15) and (n 5); GCM (n 8).

<sup>63</sup> Daugirdas (n 33); ECOSOC, 'Report of the Representative of the Secretary-General' (n 7) paragraph 3 of the Introduction and Scope to the Guiding Principles.

<sup>64</sup> Most significantly in the last 15 to 20 years. For the history of the 2015 Humanitarian Policy, see IOM, '2015 Humanitarian Policy' (n 4) paragraphs 1–3, which reveal its organic development and acceptance by IOM's Council. The policy was approved by the Director General and members of the Policy Coordinating Committee in April 2015. It is also a consequence of donor review and pressure to adopt a stronger protection stance given its increasing role in the humanitarian sphere – see also SIDA Report (n 2) and DfID's reports (n 3).

<sup>65</sup> IOM Council, 'Migration Crisis Operational Framework' (n 5).

<sup>66</sup> IASC, 'Civil-Military Guidelines' (7 March 2008) <<https://interagencystandingcommittee.org/other/documents-public/civil-military-guidelines-and-references-complex-emergencies>> accessed 19 May 2022.

<sup>67</sup> OCHA, 'Oslo Guidelines' (n 5).

<sup>68</sup> IOM, '2015 Humanitarian Policy' (n 4).

the lack of any direct reference in this Principle to international human rights law, rule of law and the humanitarian principles as underpinning this role as a humanitarian institution is indicative of an international organization that has no legal protection mandate. Principle II highlights this even more. There is a clear overlap in part with the work of UNHCR,<sup>69</sup> but the 2015 Humanitarian Policy focuses first and foremost on movement, not protection, indicating:

II.1 IOM, as the leading intergovernmental organization dedicated to migration, is guided by the *migration mandate* conferred on it by the IOM Constitution, the Migration Governance Framework and other formal IOM documents.

On the other hand, the rest of Principle II, as will be discussed, is protection focused,<sup>70</sup> drawing on the MCOF,<sup>71</sup> despite protection not being part of the Constitution. Principle II of the 2015 Humanitarian Policy, taken as a whole, therefore, needs to be understood as the foundation for IOM's humanitarian activities, and through which other protection frameworks, whether internal to IOM or courtesy of external commitments and obligations, can be incorporated.<sup>72</sup> This is particularly the case with the humanitarian principles of humanity, impartiality, neutrality, and independence,<sup>73</sup> which are replicated in Principle III, but with a gloss that undercuts them; the gloss IOM puts on the terms in Principle III is generally helpful, but some points do require further analysis, especially in relation to impartiality and independence – Principle III.1(b) and (d). As regards impartiality, IOM explains that '[while] it recognises the importance of balancing the needs and interests of different *stakeholders*, it strives to be strictly non-partisan in its humanitarian action', prioritizing

<sup>69</sup> IOM, '2015 Humanitarian Policy' (n 4) principle II.2 refers to Article 1.1(b) of the IOM Constitution (n 5) that includes the migration needs of 'refugees [and] displaced persons'. In principle II.4, IOM notes that it works as part of the humanitarian response system: 'The humanitarian response system includes any mechanism at the local, national, regional or international level aimed at coordinating the response of humanitarian actors. For instance, in addition to the cluster approach, IOM also contributes to the *refugee response organized by the Office of the United Nations High Commissioner for Refugees*' (emphasis added)

<sup>70</sup> See above (n 34)–(n 46) and associated text.

<sup>71</sup> IOM Council, 'Migration Crisis Operational Framework' (n 5).

<sup>72</sup> IOM, '2015 Humanitarian Policy' (n 4). According to Principle II.3(a), IOM's humanitarian activities include, 'camp management and displacement tracking, shelter and non-food items, transport assistant, health support, psychosocial support, counter-trafficking and protection of vulnerable migrants, and humanitarian communication'.

<sup>73</sup> See above (n 15).

the most vulnerable (emphasis added). The term 'stakeholders' is only used twice in the entire document, the other reference being with respect to humanitarian partnerships (Principle V.2). In that context, other stakeholders are described in Principle V.4:

IOM works to strengthen and build on existing and new partnerships at local, national, regional and global level with States, international and non-governmental organizations, civil society, the persons affected and other relevant actors in all fields relevant to migration crisis response, including humanitarian action, migration, recovery, peace and security, and development.

That states are included as partners and, hence, stakeholders, raises unanswered questions about 'impartiality' in Principle III.1(b). For certain, all humanitarian actors must cooperate with the state where the displaced population now finds itself. However, the language of this sub-paragraph suggests that IOM only *strives* to be 'strictly impartial in its humanitarian action'.<sup>74</sup> For humanitarian action to be effective, it *must* be available to all those affected by humanitarian crises, an approach that also facilitates continued access without hindrance by any actors, particularly in the context of armed conflict. Many humanitarian actors also have a presence in states outside of crises, where they work more closely with national authorities in order to build capacity and reduce the likelihood of future emergencies, but their crisis mode is independent, as discussed below, and it is in this context that impartiality is particularly important. It is a fact that in its Principles of Humanitarian Action, IOM explicitly refers to working with states that questions its impartiality and, as will be seen, independence.

In relation to independence, Principle III.1.d itself is completely aligned with what is expected of humanitarian actors, in that it 'must remain independent of the political, financial or other objectives that any others may have in areas where humanitarian action is being implemented'. On the other hand, most of IOM's funding is project-based.<sup>75</sup> As such, the influence of donors and remaining 'independent of the political, financial or other objectives that any others may have' could prove difficult in practice.<sup>76</sup> This is not to question IOM's objectives or intentions, but to recognize that implementation in the field is always more complex and complicated. Since a lot of funding for humanitarian actors by donor

<sup>74</sup> IOM, '2015 Humanitarian Policy' (n 4).

<sup>75</sup> See Bradley, *The International Organization for Migration: Challenges, Commitments, Complexities* (n 1) 99.

<sup>76</sup> IOM, '2015 Humanitarian Policy' (n 4) principle III.1.d.



governments is earmarked, IOM is not that different, but that is why, in part, humanitarian agencies call for increased unearmarked funding. This issue is a challenge for all humanitarian actors.

According to sub-paragraph 7 of Principle II, IOM endorses states' 'primary responsibility to protect and assist crisis-affected persons residing on their territory, and where appropriate their nationals abroad, in accordance with international and national law, including international humanitarian, refugee and human rights law'.<sup>77</sup> Therefore, by definition, IOM's role arises where there is displacement in a humanitarian crisis or where persons are caught up in a humanitarian crisis during their migration and where the transit state or state of destination is unable or unwilling, either wholly or in part, to provide that protection, unless a different international actor has that mandate, such as UNHCR *vis-à-vis* refugees, conflict-driven IDPs and stateless persons.<sup>78</sup> Likewise, if there is an armed conflict, the ICRC has a protection mandate in relation to all civilians, non-combatants or non-fighters caught up therein as it upholds the international law of armed conflict.<sup>79</sup> While the combination of the 2015 Humanitarian Policy and the MCOF lay down for IOM a framework for engagement in humanitarian crises, it should be noted that the MCOF is not limited to humanitarian activities and the 2015 document occasionally seeks to differentiate the nature of its work, even when dealing with people whose migration might have started during a humanitarian context. For example, Principle II.6 indicates:

These Principles guide IOM's overall response to migration crises when the Organization is also engaged in non-humanitarian activities under the Migration Crisis Operational Framework (Principle II.3). This is particularly relevant when IOM is involved in the progressive resolution of displacement situations [...]

Unlike UNHCR's ongoing protection mandate, Principle II.6 indicates that IOM's Humanitarian Policy is only a guide to activities outside

<sup>77</sup> IOM, '2015 Humanitarian Policy' (n 4) principle II.7.

<sup>78</sup> IOM, '2015 Humanitarian Policy' (n 4) Principle II.4 and .5:

'4. ... IOM is a standing invitee on the Inter-Agency Standing Committee (IASC), which coordinates the international humanitarian response system through the cluster approach.

5. In addition to coordinating its action through the existing humanitarian response system, IOM responds to the migration dimensions of a crisis by taking action within other international, regional and national systems addressing peace and security, migration governance and development issues.' (footnotes omitted).

<sup>79</sup> See ICRC, 'Statutes of the International Committee of the Red Cross' (2018) Art 4 <[www.icrc.org/en/document/statutes-international-committee-red-cross-0](http://www.icrc.org/en/document/statutes-international-committee-red-cross-0)> accessed 19 May 2022.

humanitarian crises, although the policy applies to all activities in countries facing a humanitarian crisis, even if it is not directly related thereto.<sup>80</sup> It would be better if the 2015 Humanitarian Policy were explicitly referenced as a foundational institutional commitment within a revised version of IOM's constitutional framework and applicable in all humanitarian crisis settings for the benefit of all migrants.

Humanitarian Protection and Partnerships, Principles IV and V, need to be read in conjunction. As regards humanitarian protection, IOM adheres to the IASC definition,<sup>81</sup> and as such IOM supports states, as the primary duty-bearers under international law, in meeting their commitments to 'migrants, displaced persons and affected communities' (Principle IV.3). What is really helpful about IOM's approach to humanitarian protection is its focus on the drivers of vulnerability set out in Principle IV.4.

These vulnerabilities and protection risks are the result of the interplay of four principal factors:

IV.4.a individual characteristics (such as age, sex, gender identity, physical condition, ethnic or religious affiliation);

IV.4.b pre-crisis social, economic, environmental and political features of the local context (e.g. patterns of marginalization and exploitation, of access to power and resources);

IV.4.c external disruptive factors induced by, or resulting from, forced migration (such as lack of access to resources and services, family separation, disruption of traditional livelihoods, etc.); and

IV.4.d the specific environments in which the persons concerned are located as a result of migration and displacement (camp, transitional shelters, detention centres, borders, etc.).

By spelling out all these interlinked factors, it provides the humanitarian actors with guidance and direction as to the gaps and failings in the protection regime and the focus for advocacy so as to address and remedy them. Ensuring states and other duty-bearers, including where appropriate IOM and other humanitarian agencies, respect, *protect* and fulfil the rights of displaced persons and ensure non-discrimination is an aspect of humanitarian protection.<sup>82</sup>

<sup>80</sup> IOM, '2015 Humanitarian Policy' (n 4).

<sup>81</sup> IOM, '2015 Humanitarian Policy' (n 4) fn 12: 'The bodies of law referenced in the IASC definition are human rights law, international humanitarian law and refugee law. For the protection of migrants, other bodies of law may be relevant as well, for example labour law, maritime law and consular law, as per IOM Council document MC/INF/298.'

<sup>82</sup> See also IOM, '2015 Humanitarian Policy' (n 4) Principle IV.5 that incorporates the broader operational elements of humanitarian protection, with IOM conducting its 'activities in ways that seek to do no harm, prioritize safety and dignity, foster empowerment and

No humanitarian operation ever involves just one actor, so partnerships are fundamental to protection. Of course, the moment that two organizations are working in tandem, there are greater difficulties in guaranteeing all obligations will be fulfilled because there may be differences in mandates and policies. Accordingly, the policy provides:

V.2 IOM engages in partnerships and cooperates with the stakeholders involved in humanitarian action on the basis of shared principles to promote mutual respect, complementarity, predictability and reliability for a more effective humanitarian response.

Detailed working arrangements need to be agreed, for example, where information and data sharing will take place.<sup>83</sup> According to Principle V.8, IOM will seek to engage more with the private sector in humanitarian scenarios. This is a trend throughout the humanitarian sector.<sup>84</sup> Ensuring that they abide by humanitarian principles, therefore, should be a sector-wide endeavour to guarantee interoperability between different organizations.

Potentially more significant as a threat to protection is the reference in Principle V.9, referring to links with diaspora populations.<sup>85</sup> For certain, diasporas can provide support to people on the move who are outside their country of nationality. On the other hand, many states that have witnessed population outflows are fragmented and stratified in ways that mean that not all elements of the diaspora will be supportive to those presently migrating and within IOM's mandate. Mixed population flows from different ethnic groups from the state in crisis mean that some of

participation, and are non-discriminatory and needs-based'. Generally, see Jan Klabbers, 'Sources of International Organizations' Law: Reflections on Accountability', in Jean d'Aspremont and Samantha Besson (eds), *Oxford Handbook of the Sources of International Law*, (Oxford University Press 2017); Daugirdas (n 33) 331–335.

<sup>83</sup> Nathaniel Raymond, Laura Walker McDonald and Rahul Chandran, 'Opinion: The WFP and Palantir Controversy Should be a Wake-up Call for Humanitarian Community' (*devex*, 14 February 2019) [www.devex.com/news/opinion-the-wfp-and-palantir-controversy-should-be-a-wake-up-call-for-humanitarian-community-94307](http://www.devex.com/news/opinion-the-wfp-and-palantir-controversy-should-be-a-wake-up-call-for-humanitarian-community-94307) accessed 19 May 2022; Privacy International, 'One of the UN's largest aid programmes just signed a deal with the CIA-backed data monolith Palantir' <<https://privacyinternational.org/news-analysis/2712/one-uns-largest-aid-programmes-just-signed-deal-cia-backed-data-monolith>> accessed 29 April 2021.

<sup>84</sup> For example, see GCR (n 51) paragraphs 32 and 42.

<sup>85</sup> GCR (n 51) principle V.9 reads: 'Given the growing links between diasporas and their home communities, IOM engages when appropriate and possible with diasporas, following *ethical verification*, during and after a crisis, to maximize the benefits of their involvement, both directly and through their networks abroad and in the country concerned.' (emphasis added).

the tensions internal to that state may be continued in the context of displacement. Therefore, sharing information about a displaced population with a diaspora community requires even greater care to ensure that humanitarian actors 'do no harm'. The fact that Principle V.9 refers only to 'ethical verification' as the check measure seems weak in this context, especially when there are international human rights law standards, rule of law, and the humanitarian principles which also need to be respected in this context.

Principle V.13 is a useful link between Humanitarian Partnerships and Humanitarian Practice under Principle VI:

V.13 When required to coordinate with military actors for the delivery of relief assistance forming part of a humanitarian response, including the use of military assets, IOM subscribes to the relevant [Inter-Agency Standing Committee guidelines and policy].<sup>86</sup>

Engagement with peacekeeping forces or with parties to a conflict is largely unavoidable in some humanitarian crises. The IASC CivMil Guidelines 2008<sup>87</sup> and the 2007 Oslo Guidelines<sup>88</sup> provide IOM with the standard rules for all humanitarian agencies and, as such, promote interoperability. A careful line needs to be drawn, though, so as to avoid being seen as working with one or more parties to a conflict in order to preserve neutrality and independence, while, at the same time, humanitarian actors need to ensure the safety of staff working in and moving around conflict zones.<sup>89</sup> In sum, IOM's policy in this particular context complies and is fully in line with other humanitarian actors.

<sup>86</sup> That is, IASC, 'Civil-Military Guidelines' (n 66) and OCHR, 'Oslo Guidelines' (n 5).

<sup>87</sup> IASC, 'Civil-Military Guidelines' (n 66).

<sup>88</sup> OCHR, 'Oslo Guidelines' (n 5).

<sup>89</sup> This is particularly the case where peacekeeping forces are working under a UNSC Chapter VII mandate. IASC, 'Civil-Military Guidelines' (n 66) Operating Principle 2 'Military assets should be requested only where there is no comparable civilian alternative and only the use of military assets can meet a critical humanitarian need. The military asset must therefore be unique in nature or timeliness of deployment, and its use should be a last resort.' See also, 'Civil-Military Relationship in Complex Emergencies: An IASC Reference Paper 28, Part 2, Principles and Concepts, paragraph M June 2004. Both references from IASC, 'Civil-Military Guidelines' (n 66); OCHR, 'Oslo Guidelines' (n 5) para 5 and 35 similarly look on utilising military support in a humanitarian crisis as a matter of last resort. As regards the security of humanitarian actors, the Oslo Guidelines expressly provide at paragraph 43 as follows: '43. Under no circumstance will UN [Military and Civilian Defence Assets] be used to provide security for UN humanitarian activities. A separate security force may, however, be used to ensure security in areas where humanitarian personnel may be attacked while delivering humanitarian assistance.'

With respect to humanitarian practice, the 2015 Humanitarian Policy needs careful analysis. It has to be read alongside the MCOF,<sup>90</sup> the 2007 Oslo Guidelines<sup>91</sup> and the 2007 IASC CivMil Guidelines.<sup>92</sup> The latter two documents have been dealt with in part already, but the MCOF needs a fuller discussion. Principle VI.1 provides that 'IOM applies a principled approach to humanitarian action in different operating contexts, integrating humanitarian principles into the Migration Crisis Operational Framework'. The 2012 MCOF is designed to allow IOM to better support its member states, who bear the primary 'responsibility to protect and assist crisis-affected persons'.<sup>93</sup> The MCOF '[supplements] the humanitarian response for migrants caught in a crisis situation' (paragraph 8). The MCOF has two pillars, 'Phases of a Crisis' and 'Sectors of Assistance', and identifies 15 sectors of assistance that apply to the three phases of a crisis, 'before, during and after'. Before looking at the sectors, the approach to the phases does not bear close scrutiny given that humanitarian crises may be at different phases in different parts of the same operation, and distinguishing between the pre-crisis phase and when the crisis is occurring, let alone divining clear dividing lines from the post-crisis phase, suggests a level of naivety that is worrying for an agency operating in conflict zones or disaster operations. It has always been difficult to differentiate phases of a crisis, so to establish that as an integral part of an operational framework may well create false distinctions. For certain, the sectors of assistance that IOM lists all occur where there is displacement at whatever stage of a crisis and their operationalization is central to protecting persons who have been affected, whether that be the people on the move themselves or the communities where they find themselves at any particular time.<sup>94</sup> To take but one example, the IASC has given IOM leadership for camp co-ordination and camp management with respect to persons displaced by disasters. The assistance in relation to camp management during the immediate aftermath of a natural disaster will develop and change if it takes a long time to rebuild homes or relocate affected populations, but the phases tend to be more fluid in practice. For example, after an earthquake, there will

<sup>90</sup> IOM Council, 'Migration Crisis Operational Framework' (n 5).

<sup>91</sup> OCHR, 'Oslo Guidelines' (n 5).

<sup>92</sup> IASC, 'Civil-Military Guidelines' (n 66).

<sup>93</sup> IOM Council, 'Migration Crisis Operational Framework' (n 5).

<sup>94</sup> IOM Council, 'Migration Crisis Operational Framework' (n 5) Annex 1 p 7, 'Diagram for a slow-onset natural disaster: Internal and cross-border movements' – some elements are critical for all phases.

be a need for emergency shelter and other support, but annual storms or other natural events in the region may cause temporary setbacks in progress. This calls into question why IOM felt the need to refer to the phases of a crisis: what is essential is that IOM should provide the most appropriate protection and assistance to those affected by a humanitarian crisis throughout and until a durable and sustainable solution is attained.<sup>95</sup> The phases create a false, unwieldy and ultimately unworkable trichotomy.<sup>96</sup> They also reflect the fact that IOM's Constitution relates to the movement of persons, not their protection or human rights. To that end, it is good that Principle VI.3 refers to embedding the humanitarian principles in its response.<sup>97</sup>

Sub-paragraphs 6–9 of Principle VI raise a question about mandates. IOM operates a very broad definition of migrants that includes notably IDPs<sup>98</sup> and the 2015 Humanitarian Policy sets out how it will work in the context of a crisis scenario. UNHCR, on the other hand, has a unique mandate for refugees and the lead for conflict-driven IDPs and all stateless persons. ICRC's mandate is to uphold the laws of armed conflict.<sup>99</sup> These sub-paragraphs focus on armed conflicts, but also on scenarios where there is no armed conflict but a human-made disaster such as 'internal violence, disorder or conflict'.<sup>100</sup> If this is a case of internal displacement, then UNHCR would have the mandate lead. Equally, since UNHCR issued Guideline No.12 (2016) on claims for refugee status related to

<sup>95</sup> In that regard, Sector 7 on 'Activities to Support Community Stabilization and Transition' (n 5) clearly has relevance at all stages, so there is no need for the phases, simply appropriate implementation.

<sup>96</sup> With respect to the 15 sectors, some will have more relevance at different phases: while 'Disaster Risk Reduction and Resilience Building' is directed to the pre-crisis phase, resilience applies during and after the crisis; whereas '(Re)integration Assistance' targets post-crisis intervention, it nevertheless has bearing on the crisis itself when the displaced population is living alongside a host community outside the immediate disaster or conflict zone. On the other hand, 'Transport Assistance for Affected Populations' is clearly relevant throughout the crisis, from initial evacuation through to return or resettlement, and is the primary activity for which IOM is known. Furthermore, it should never be forgotten that refugees retain the autonomy to resolve their own displacement and may well migrate from their initial country of asylum to find employment in a third state. In that context, they remain refugees until they have a durable and sustainable solution and within UNHCR's mandate, but also might be able to call on the services of IOM in certain situations; see also, complementary pathways set out at GCR (n 51) paras 94–96.

<sup>97</sup> IOM, '2015 Humanitarian Policy' (n 4).

<sup>98</sup> See above (n 41).

<sup>99</sup> ICRC, 'Statutes of the International Committee of the Red Cross' (n 79).

<sup>100</sup> IOM, '2015 Humanitarian Policy' (n 4) fn 22.

armed conflict and violence,<sup>101</sup> based on its Statutory Mandate and Article 35 of the 1951 Convention relating to the Status of Refugees,<sup>102</sup> UNHCR has clearly set out that those who have crossed a border due to armed conflict or violence are generally to be considered refugees under the 1951 Convention because they meet the criteria set out in Article 1A.2.<sup>103</sup> Where sub-paragraphs 8 and 9 of Principle 6 come into play is in the context of some of the people who have crossed the border are not nationals of the state where the conflict is occurring, but are migrants caught up in its effects. They would not be unwilling to avail themselves of its protection, although it is possible that they would be unable to do so. Given that they were able to safely return to their country of nationality, they would not be refugees, but if that were not the case, they could be *réfugiés sur place*. If it is a case of internal displacement, though, then the non-nationals fall under the Global Protection Cluster where UNHCR has the lead for conflict-driven IDPs.

UNHCR is formally mandated to apply the humanitarian principles, and it is important that in those cases where IOM is dealing with migrants displaced across a border, it too will apply those principles in humanitarian crises. For certain, UNHCR fails on occasions, but that is because there has been a failure to carry out its mandate;<sup>104</sup> IOM can fail to protect individuals to whom it is providing migration services and not ‘respect, protect and fulfil’ their human rights, even when it is fulfilling its constitutional mandate to:

transfer ... 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.<sup>105</sup>

The Constitution explicitly prioritizes the interests of the member states and, until that is amended, the danger is that human rights will not be to the

<sup>101</sup> UNHCR, ‘Guidelines on International Protection’ (2 December 2016) HCR/GIP/16/12 <[www.refworld.org/docid/583595ff4.html](http://www.refworld.org/docid/583595ff4.html)> accessed 19 May 2022.

<sup>102</sup> Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

<sup>103</sup> Only if there is no causal link between a person’s well-founded fear of persecution caused by the armed conflict and one of the five grounds (race, religion, nationality, membership of a particular social group or political opinion), would they fail – UNHCR, ‘Guidelines on International Protection’ (n 101) no 12 paras 10, 12–13, 17–20, 21–23, 28–30, and 34–39.

<sup>104</sup> See UNHCR, Reports of the Inspector General’s Office <[www.unhcr.org/52e11b746.html](http://www.unhcr.org/52e11b746.html)> accessed 19 May 2022.

<sup>105</sup> IOM Constitution (n 5) Article 1.1(b) (emphasis added).

fore. For example, in August 2021, after President Ashraf Ghani had fled Kabul and the Taliban took control of the country,<sup>106</sup> IOM was still seeking additional funding to help return undocumented Afghans to Afghanistan.<sup>107</sup> UNHCR issued a non-return advisory on 17 August 2021,<sup>108</sup> but IOM did not immediately withdraw its request for funding for returns from donor governments. Up to August, IOM's return policy may have upheld the rights of returning Afghan nationals and met the needs of refugee hosting states in the region, but that programme should have been suspended pending a new evaluation in the light of the Taliban assumption of control.<sup>109</sup>

Sub-paragraphs 10–14 of Principle VI highlight even more the inappropriateness of IOM's three-phase analysis, 'before, during, after', and the false humanitarian-development dichotomy prevalent in some organizations dealing with crises, not least the United Nations.<sup>110</sup> These sub-paragraphs, taken together with sub-paragraph 4, bring to the fore the evolution of displacement situations over time and the need to bring development actors in from the earliest stage possible:

If economic, social, and cultural rights are fully implemented within a rule of law approach, then the rights to work and shelter must be given prominence alongside freedom from arbitrary detention. Given that the modal average length of a protracted situation [of displacement] is around 20 years, priorities will inevitably change and the humanitarian crisis that prompted flight will become a situation of protracted displacement. The displaced will then need to be seen as part of the development plans for the [hosting state] .... Failure to address the practical reality of situations of protracted displacement has led to the creation of a parallel 'State' on the territory of the [hosting state] that traps the [displaced person] and has no benefit for the hosting government of the local population. ... Rule of law approaches that are underpinned by all human

<sup>106</sup> BBC, 'Afghanistan Conflict: Kabul Falls to Taliban as President Flees' (*BBC News*, 16 August 2021) <[www.bbc.co.uk/news/world-asia-58223231](http://www.bbc.co.uk/news/world-asia-58223231)> accessed 19 May 2022.

<sup>107</sup> IOM, 'Return of Undocumented Afghans' (n 52).

<sup>108</sup> UNHCR UK, 'UNHCR Issues a Non-Return Advisory for Afghanistan' (17 August 2021) <[www.unhcr.org/uk/news/briefing/2021/8/611b62584/unhcr-issues-non-return-advisory-afghanistan.html](http://www.unhcr.org/uk/news/briefing/2021/8/611b62584/unhcr-issues-non-return-advisory-afghanistan.html)> accessed 19 May 2022.

<sup>109</sup> Hugo Williams and Ali Hamedani, 'Afghanistan: Girls Despair as Taliban Confirm Secondary School Ban' (*BBC*, 8 December 2021) <[www.bbc.co.uk/news/world-asia-59565558](http://www.bbc.co.uk/news/world-asia-59565558)> accessed 19 May 2022. Of course, as the consequences of the Taliban takeover became clear, IOM engaged in an in-country and regional response to meet the needs of those displaced and those returning – IOM, 'IOM Comprehensive Action Plan for Afghanistan and Neighbouring Countries, August 2021–December 2024 (updated February 2022)' (2022) <<https://reliefweb.int/report/afghanistan/iom-comprehensive-action-plan-afghanistan-and-neighbouring-countries-august-2021>> accessed 19 May 2022.

<sup>110</sup> IOM, '2015 Humanitarian Policy' (n 4).



rights and whole society participation facilitate this understanding and promote stability and development in the [hosting state] and the State of return. Equally, they promote interoperability between [humanitarian and development actors].<sup>111</sup>

Ultimately, protracted displacement itself is a failure, particularly if the affected group are migrants who fear no persecution in their country of nationality but have been driven out of a state where they were living and working or a transit state by armed conflict or violence; moreover, IOM's work can include IDPs moving because of human-made or natural disasters and refugees may equally have been caught up in that more general population flow.

IOM's work with persons displaced by natural disasters applies whether it is internal or cross-border according to sub-paragraphs 15–17 of Principle VI.<sup>112</sup> The Guiding Principles on Internal Displacement include people who have to move because of natural or human-made disasters and do not cross an international border.<sup>113</sup> Moreover, the Guiding Principles reflect, at least in part, customary international law,<sup>114</sup> and provide guidance to all actors working with IDPs.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

[...]

(d) Intergovernmental and non-governmental organizations when addressing internal displacement.

In 1998, the status in international law of the Guiding Principles was unclear. However, it is now generally accepted that through long use and domestic implementation, they reflect customary international law.<sup>115</sup> As such, IOM must have regard to them and is bound to the extent that

<sup>111</sup> Gilbert and Rüsç (n 57) 53–54. The original text focused on the work of UNHCR with refugees and conflict-driven IDPs, but it is equally applicable to all persons affected by protracted displacement and, thus, Principle VI of IOM, '2015 Humanitarian Policy' (n 4).

<sup>112</sup> See also, CCCM (n 38). For a more detailed discussion of IOM's involvement with IDPs, see Brid Ní Ghráinne and Ben Hudson, 'IOM's Engagement with the UN Guiding Principles on Internal Displacement' in Megan Bradley, Cathryn Costello and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023).

<sup>113</sup> ECOSOC, 'Report of the Representative of the Secretary-General' (n 7) Introduction – Scope and Purpose, paragraph 2.

<sup>114</sup> See Walter Kälin, 'The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool' (2005) 24 (3) *Refugee Survey Quarterly* 27, 29–30.

<sup>115</sup> See generally Jane McAdam, 'The Guiding Principles on Internal Displacement: 20 Years On' (2018) 30 *International Journal of Refugee Law* 187; Megan Bradley, *Durable Solutions*

Paragraph 3(d) of the Introduction and Scope can be read to now attribute them to international organizations as customary international law. Thus, its 2015 Humanitarian Policy should be read in that light.<sup>116</sup> In particular, sub-paragraphs 4 and 5 of Principle III on humanitarian access should be read with Guiding Principles 25.3 and 30.<sup>117</sup>

25.3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

30. All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

IOM can assert this in the context of internal displacement, but it also claims this role with respect to cross-border natural disaster displacement.<sup>118</sup> In this context, there is less applicable international law to guide agencies' engagements. UNHCR's mandate *vis-à-vis* refugees do not apply to those moving because of natural disaster or climate change.<sup>119</sup> Other relevant documents, such as the Sendai Framework<sup>120</sup> and the Nansen

and the Right of Return for IDPs: Evolving Interpretations' (2018) 30 International Journal of Refugee Law 218; Walter Kälin and Hannah Entwisle Chapuisat, 'Guiding Principle 28: The Unfulfilled Promise to End Protracted Internal Displacement' (2018) 30 International Journal of Refugee Law 243; Daniel MacGuire, 'The Relationship between National Normative Frameworks on Internal Displacement and the Reduction of Displacement' (2018) 30 International Journal of Refugee Law 269; Louise Aubin, Elizabeth Eyster and Daniel MacGuire, 'People-Centred Principles: The Participation of IDPs and the Guiding Principles' (2018) 30 International Journal of Refugee Law 287; Nina Schrepfer, 'Protection in Practice: Protecting IDPs in Today's Armed Conflicts' 30 International Journal of Refugee Law 292; Simon Russel, 'The Operational Relevance of the Guiding Principles on Internal Displacement' 30 International Journal of Refugee Law 307; Roberta Cohen and Fancis M Deng, 'Reflections from Former Mandate Holders: Developing the Normative Framework for IDPs' 30 International Journal of Refugee Law 310; Walter Kälin 'Consolidating the Normative Framework for IDPs' 30 International Journal of Refugee Law 314.

<sup>116</sup> IOM, '2015 Humanitarian Policy' (n 4) principle VI.15 'The applicable international legal frameworks and norms IOM applies are contained in human rights law and international disaster response law.'

<sup>117</sup> ECOSOC, 'Report of the Representative of the Secretary-General' (n 7).

<sup>118</sup> See IOM's collaborative work in this field at <<https://environmentalmigration.iom.int>> accessed 19 May 2022.

<sup>119</sup> Although see the UNHCR, 'Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters' (1 October 2020) <[www.refworld.org/docid/5f75f2734.html](http://www.refworld.org/docid/5f75f2734.html)> accessed 19 May 2022.

<sup>120</sup> Platform on Disaster Placement, 'Sendai Framework for Disaster Risk Reduction 2015–2030' <<https://disasterdisplacement.org/portfolio-item/sendai-framework-for-disaster-risk-reduction-2015-2030>> accessed 19 May 2022.

Initiative's Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change,<sup>121</sup> are not legally binding in and of themselves.<sup>122</sup> Therefore, IOM's 2015 Humanitarian Policy provides it with guidance that helps to fill a protection gap when taken with other international frameworks and the work of other international organizations, intergovernmental organizations and NGOs.

Finally with respect to the 2015 Humanitarian Policy, sub-paragraphs 12–17 of Principle II on Humanitarian Accountability deal with the accountability of IOM. IOM has no equivalent of the 1946 Convention on the Privileges and Immunities of the United Nations on which to rely.<sup>123</sup> Nevertheless, it will usually have a memorandum of understanding with all the states where it operates ensuring immunity from the jurisdiction of local courts for all its international staff unless that is waived. Moreover, the International Law Commission's 'Draft Articles on the Responsibility of International Organizations' will, to the extent that they reflect customary international law, be binding on IOM, although that does not guarantee there is any remedy for a breach by IOM before domestic courts.<sup>124</sup> As regards the 2015 document, Principle II.12 provides:

II.12 In its humanitarian response, IOM is accountable to the persons and States concerned, its Member States, donors, and its partners within the humanitarian response system. IOM is committed to strengthening its accountability mechanisms and to keeping them under continuous review.

While all of that is commendable, it does call into question how IOM balances accountability to donors, states where it is operating, and the persons who should be the focus of its 2015 Humanitarian Policy.

<sup>121</sup> The Nansen Initiative, 'Agenda for the Protection of Cross-border Displaced Persons in the Context of Disasters and Climate Change: Volume I' (December 2015) <[https://disasterdisplacement.org/wp-content/uploads/2014/08/EN\\_Protection\\_Agenda\\_Volume\\_I\\_-\\_low\\_res.pdf](https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_-_low_res.pdf)> accessed 19 May 2022.

<sup>122</sup> Their status as customary international law is not clear.

<sup>123</sup> Convention on the Privileges and Immunities of the United Nations (adopted 13 February 1946) I UNTS 15; Article 105 UN Charter. See also HR 13 April 2012 10/04437 (*Mothers of Srebrenica Association v State of The Netherlands and the United Nations*) para 4.3.14. There is not the space here to analyse this issue in full, but see Carla Ferstman, *International Organizations and the Fight for Accountability* (Oxford University Press 2017) generally, and with respect to IOM, specifically 37–38, 82.

<sup>124</sup> International Law Commission (ILC), 'Articles on the Responsibility of International Organizations', UN doc A/66/10 (2011) (ARIO). The General Assembly commended them to governments and international organizations in December 2017, but they have yet to be adopted – UNGA Res 72/122 (7 December 2017). See also sources cited above note 82.

Overall, the 2015 Humanitarian Policy does not stand alone. It has to be read with other IOM documents and with a range of instruments developed beyond the organization. It also has implications for IOM's entire range of activities, not just its humanitarian crisis activities. The obligations fit with those of other humanitarian actors, although there are occasions where more direct reference to the humanitarian principles promulgated by the United Nations and ICRC would be helpful. More often the question is not whether IOM claims to uphold those principles, more whether they have priority over its constitutional focus on assisting states and its project-based financing model.<sup>125</sup>

#### 11.4 Conclusion

IOM is a major actor in humanitarian crises. Given that its Constitution does not set out any protection mandate or embed international human rights law or international humanitarian law standards into its operating policy, there are gaps in protection for persons who do not fall within the mandates of any of the other humanitarian actors. Thus, the 2015 Humanitarian Policy is a positive addition to the frameworks of protection, even if it could never fill the gap left by the lack of an explicit protection mandate set out in a revision to the Constitution that prioritized humanity, neutrality, impartiality and independence over the organized transfer of migrants agreed between IOM and the states concerned. That said, the loose language on occasions and the regular reference to supporting member states and donors in the 2015 document calls into question IOM's commitment to the humanitarian principles, particularly independence and impartiality. As IOM's relationship with the United Nations develops over time, particularly now that it is a related organization, it may be that IOM's operating procedures will reflect more and more fully the humanitarian principles. At the minute, rather than thinking of IOM as a humanitarian agency per se, it may be better to consider it an intergovernmental organization that works in humanitarian scenarios.<sup>126</sup>

The principal issues arising from the 2015 Humanitarian Policy concern not so much what is set out there, but the gaps and its centrality to the organization. IOM still has no protection in its mandate or reference to human rights.<sup>127</sup> The humanitarian actors with whom it will engage in crises have

<sup>125</sup> SIDA Report 2008 (n 2).

<sup>126</sup> IOM, 'Return of Undocumented Afghans' (n 52).

<sup>127</sup> Helmut Philipp Aust and Lena Riemer, 'A Human Rights Due Diligence Policy for IOM?' in Megan Bradley, Cathryn Costello and Angela Sherwood (eds), *IOM Unbound?*

that focus. IOM's Constitution has evolved over the course of the organization's history and the member states may still revise it. The explicit inclusion of a humanitarian mandate in the Constitution, and recognition of the obligations that come along with this identity, would confirm the agency's status and more squarely place it alongside the ICRC and UN humanitarian actors, prioritizing human rights, the humanitarian principles and rule of law. As it stands, the Constitution<sup>128</sup> still reflects its 1953 focus on facilitating migration for the good of its member states and there are several instances where the rights of migrants have not been prioritized.<sup>129</sup> As this chapter has made clear, despite the positive developments seen in the 2015 Humanitarian Policy, its related organization status with the UN and the fact that some of the people with whom it interacts may be refugees, require that the Constitution be further amended to explicitly include references to international human rights law and protection.

*Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023).

<sup>128</sup> IOM Constitution (n 5).

<sup>129</sup> IOM, 'Libya' (n 25); IOM, 'Bangladesh' (n 26); IOM, 'Return of Undocumented Afghans'(n 52).