
Holding IOM to Account

The Role of International Human Rights Advocacy NGOs

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15.1 Introduction

Non-governmental organizations (NGOs), particularly human rights advocacy groups, have played influential roles in recent years in holding international organizations (IOs) to account for their involvement in human rights violations and other harms. NGOs have, for example, brought IO abuses to light and pushed for the creation of stronger policies and mechanisms to ensure that IOs adhere to their commitments and obligations under international law. NGOs have helped catalyse accountability and institutional change at the World Bank and International Monetary Fund in relation to the negative human rights and environmental implications of lending practices and economic reforms, and in UN peace operations involved in trafficking, detainee abuse, and sexual exploitation.¹ While a growing body of research explores the ways in which NGOs affect IO accountability, relatively little high-level, sustained international advocacy has focused on the International Organization for Migration (IOM), and IOM has been under-examined in the literature on NGOs and IO accountability.² This is surprising as IOM is now among

¹ On NGOs and IMF accountability generally, see e.g. Jan Aart Scholte 'Civil Society and IMF Accountability' in Jan Aart Scholte (ed), *Building Global Democracy? Civil Society and Accountable Global Governance* (Cambridge University Press 2011). On accountability in peace operations, see e.g. Gisela Hirschmann, 'Guarding the Guards: Pluralist Accountability for Human Rights Violations in International Organizations' (2019) 45 *Review of International Studies* 20.

² On NGO-IO relations, see e.g. Jonas Tallberg and others, *The Opening Up of International Organizations: Transnational Access in Global Governance* (Cambridge University Press 2013), and Jan Aart Scholte (ed) *Building Global Democracy? Civil Society and Accountable Global Governance* (Cambridge University Press 2011). On IO accountability for human rights violations specifically, see e.g. Gisela Hirschmann, *Accountability in Global Governance: Pluralist Accountability in Global Governance* (Oxford University Press

the largest IOs worldwide, and has a history of involvement in activities such as migrant returns and detention that may threaten or actively violate migrants' rights – activities that call out for careful external scrutiny from NGOs.³ Much of the academic literature on IOM is highly critical of the organization and tacitly assumes that IOM is the target of concerted NGO advocacy.⁴ To be sure, some local NGOs and activist groups have attempted to take on this task. However, closer examination demonstrates that more well-resourced and influential international human rights NGOs that are concerned with migration and displacement have generally eschewed this role vis-à-vis IOM, although they serve as important watchdogs in relation to other IOs, particularly the Office of the UN High Commissioner for Refugees (UNHCR), the largest and most prominent IO focused on human mobility.

This chapter explores the drivers and implications of this puzzling disconnect, and opportunities to overcome it. We map out the limited ways in which international human rights advocacy organizations have engaged with IOM and identify key reasons why advocacy NGOs have not more actively pushed for increased accountability from IOM. International advocacy NGOs have important but under-examined and still under-developed roles to play in advancing accountability for the human rights implications of IOM's work. We suggest that enhancing accountability is a two-way street: there is a need for advocates to devote more attention to IOM, and develop more concerted advocacy strategies vis-à-vis IOM, leveraging commitments made in the extensive set of frameworks, policies and guidelines it has released in recent years. At the same time, IOM should clearly recognize the importance of external advocacy, and engage

2020); Monika Heupel and Michael Zürn (eds) *Protecting the Individual from International Authority: Human Rights in International Organisations* (Cambridge University Press 2017).

³ On IOM's involvement in migrant detention, see Angela Sherwood and Cathryn Costello 'IOM's Practices and Policies on Immigration Detention: Establishing Accountability for Human Rights Violations?' in Megan Bradley, Cathryn Costello and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023). On IOM's returns programs, see Jean-Pierre Gauci, 'IOM and "Assisted Voluntary Return" Responsibility for Disguised Deportations?' 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).

⁴ See e.g. Ishan Ashutosh and Alison Mountz, 'Migration Management for the Benefit of Whom? Interrogating the Work of the International Organization for Migration' (2011) 15 *Citizenship Studies*, 21.

more openly and systematically with human rights advocates, moving beyond traditional postures of defensiveness, dismissal and secrecy. We begin by discussing IOM's accountability deficit and situating this study in relation to the growing body of literature on NGOs and IO accountability. This literature has not yet considered the case of IOM; rather it has focused significantly on 'positive' cases in which NGOs have successfully pushed for greater accountability from IOs. This chapter adds to understandings of IO-NGO relations by shedding light on the curious case of IOM, and the question of why in some instances advocacy NGOs do *not* emerge as key protagonists in efforts to advance IO accountability, even when they may be expected to play significant roles. Second, we analyse past patterns of (limited) engagement between major human rights NGOs and IOM. Building on this discussion, we identify and explain some of the primary reasons why IOM has not been the target of more concerted and sustained international advocacy efforts. We close with brief reflections on how advocacy NGOs' contributions to IOM accountability efforts may be strengthened.

A word on terminology and the focus of this chapter: This discussion looks beyond legal accountability, which focuses on 'accountability through jurisprudence and legal sanctioning that is limited to rights that can be subjected to judicial review'.⁵ Instead, it is informed by a broader, sociopolitical conception of accountability as a relationship in which the accountability holder helps set and uphold the standards for the accountor's actions, including through monitoring and sanctioning deviations from these standards.⁶ On this view, international human rights NGOs, such as those examined in this chapter, may serve as accountability holders in relation to IOs by, for instance, investigating, monitoring, and publicly shaming IOs that transgress human rights principles; providing evidence to support formal accountability mechanisms; supporting victims of IO abuses; recommending policy changes; and lobbying member states to rein in IOs that fail to adhere to appropriate standards. International human rights NGOs (which we also refer to, in shorthand, as 'advocacy NGOs' or 'human rights NGOs') are certainly not the only actors involved in efforts to advance the accountability of IOs including IOM. Member states, grassroots NGOs, affected communities, and IO staff also play pivotal parts. However, the roles of large, international human rights NGOs

⁵ Hirschmann, *Accountability in Global Governance: Pluralist Accountability in Global Governance* (n 2) 5.

⁶ *Ibid.*

vis-à-vis IOM have not been systematically analysed and merit more concerted analysis, with a view to better understanding how these actors may engage and influence IOM. We concentrate on large and medium-sized, internationally active, 'professionalized' and comparatively well-resourced human rights organizations such as Amnesty International and Human Rights Watch (HRW) (arguably the two most prominent and influential transnational NGOs in this field), as well as NGOs that focus specifically on forced migration.⁷ These actors deserve greater attention as they have the potential to orchestrate international advocacy campaigns and influence member states' policies towards IOs working on migration and displacement issues; indeed, as we will demonstrate, these organizations have a long history of critiquing and influencing IOs such as UNHCR but have been much less vocal regarding IOM. This focus on major advocacy groups is not to discount the significance of smaller NGOs and activist networks that have been outspoken about IOM's complicity in human rights violations and may help promote accountability in relation to particular issues such as detention.⁸ Rather, this chapter is an initial if limited contribution to discussions of how NGOs may influence accountability on the part of IOM.

Our analysis draws on 70 in-depth interviews conducted from 2015 to 2021 with human rights advocates, IOM officials, government and UN agency representatives, staff of major humanitarian agencies, and independent experts. Interview data were analysed through a grounded coding process, distilling key themes, insights and arguments.⁹ We additionally incorporate findings from our analysis of a set of more than 850

⁷ This is in keeping with the recognition that while IOM is involved with a wide range of migrants moving within and across borders, the majority of individuals directly affected by IOM programs and interventions are IDPs and other forced migrants. See Megan Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (Routledge 2020) 4. While we focus primarily on accountability in relation to human rights norms, we also consider related principles under international humanitarian and refugee law.

⁸ See e.g. Global Detention Project, 'The Dilemmas of the International Organization for Migration' (2018) <www.globaldetentionproject.org/the-dilemmas-of-the-international-organization-for-migration> accessed 15 May 2022.

⁹ To enable frank discussion of potentially sensitive issues, interview participants were each assigned a number used in lieu of identifying details. With participants' agreement, their institutional affiliations are noted; otherwise, more general designations are used (e.g. human rights advocate). Interviews were conducted with approval from the McGill University Research Ethics Board (File #199-1015) and from the University of Oxford Central University Research Ethics Committee (CUREC) (File #61177/RE001).

reports on migration, refugees and other displaced populations published by Amnesty International and HRW from 1998 to 2020.¹⁰ It is also broadly informed by the first author's experience working on humanitarian affairs at IOM, and as a senior researcher on migrants' rights at Amnesty International.

15.2 Context: IOM's Accountability Deficit and the Potential Roles of Human Rights NGOs in Holding IOs Accountable

In terms of budget and staff, IOM is now among the largest IOs worldwide and is involved in a huge range of activities loosely organized under the banner of 'migration management', from providing humanitarian aid to displaced persons, gathering and disseminating migration data, and facilitating international talks on human mobility, to advising states on migration policies, training border officials, and delivering services to detained migrants. While IOM was created outside the UN, it became a related organization in the UN system in 2016, further increasing its international profile. Its facilitation of the Global Compact for Migration process and its position as the coordinator of the UN Network on Migration reflect the public authority IOM now exercises in the field of migration, alongside the prominent roles it now occupies in the humanitarian regime. As IOM has gained power and prestige, its actions and decisions have increasingly important consequences for vulnerable populations, including precarious migrants, IDPs and refugees.¹¹

Yet IOM suffers from an accountability deficit, fuelled in part by its imprecise mandate, organizational structure and culture, and has lagged behind other IOs in terms of establishing accountability mechanisms sensitive to human rights concerns and accessible to individuals affected by its interventions.¹² IOM's formal mandate, laid out in its Constitution, is

¹⁰ The analysis included all major reports from 1998–2020 that were posted to the websites of Amnesty International (669 reports) or HRW (185 reports), and tagged as focused on migrants, refugees and/or other displaced populations.

¹¹ Megan Bradley, 'The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime' (2017) 33(1) *Refuge: Canada's Journal on Refugees* 97. On IOM's roles in the Global Compact for Migration, see Nicholas Micinski, *The UN Global Compacts: Governing Migrants and Refugees* (Routledge 2021).

¹² On IOM's internal accountability structures, see Stian Øby Johansen, 'An Assessment of IOM's Human Rights Obligations and Accountability Mechanisms' in Megan Bradley, Cathryn Costello and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023).

imprecise and includes no explicitly articulated obligation to protect or promote migrants' rights.¹³ The agency receives almost no core funding from its member states, and is instead reliant on a project-based funding model that can foster competitiveness, undermine transparency, and incentivize IOM to stifle criticism of governments and undertake activities that bring in money needed for the organization to survive, but arguably serve states' interests in controlling mobility over advancing the rights and wellbeing of migrants themselves.¹⁴ IOM has a reputation for operational efficiency, delivering services quickly and cost-effectively even in very challenging environments, sometimes at the expense of careful deliberation about protection and human rights concerns, which are seen by some IOM staffers as overly abstract or academic issues for a definitively action-oriented organization. It is also known for being highly deferential to states, many of whom have looked to IOM as an IO they can turn to in order to have migration 'dirty work' done with little push-back about human rights concerns.¹⁵

That said, IOM's institutional discourse increasingly references migrants' rights and protection concerns, and although the agency is sometimes portrayed as having no human rights commitments or obligations, this is incorrect.¹⁶ In addition to its general obligations under international law as an IO, it has initiated a number of internal policy processes that address (in varying degrees of specificity) IOM's interpretation of, commitments to and obligations regarding key human rights norms and humanitarian principles. These include the development of the Migration Crisis Operational Framework (2012), the Migration Governance Framework (2015), the IOM Humanitarian Policy (2015),

¹³ For discussion of the evolution of IOM's mandate, see Megan Bradley, 'Who and what is IOM for? The evolution of IOM's Mandate, Policies and Obligations' in Megan Bradley, Cathryn Costello and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023).

¹⁴ See Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 7); Asher Lazarus Hirsch and Cameron Doig, 'Outsourcing Control: The International Organization for Migration in Indonesia' (2018) 21 *The International Journal of Human Rights* 681.

¹⁵ Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 7) 2.

¹⁶ See e.g. Antoine Pécoud, 'What Do We Know about the International Organization for Migration?' (2018) 44 *Journal of Ethnic and Migration Studies* 1621. On IOM's 'rights talk', see Megan Bradley and Merve Erdilmen, 'Is the International Organization for Migration Legitimate? Rights-talk, Protection Commitments and the Legitimation of the IOM' (2022) *Journal of Ethnic and Migration Studies*.

and the Framework for Addressing Internal Displacement (2017).¹⁷ The issue is the sufficiency of IOM's policies and rhetoric, and the tensions and contradictions that remain between its evolving discourse and frameworks, and its more controversial (and even sometimes rights-violative) field operations.¹⁸ For example, in countries such as Indonesia, at the behest of the Australian government, IOM has infringed on the rights of people seeking protection, including by limiting their access to territory where they could claim protection.¹⁹ Such activities call into question IOM's claims to be rights-based and 'migrant-centric'.

Human rights advocacy groups could, in theory, make important contributions to assessing IOM's policies and appropriately resolving these tensions, but the critical bent of most scholarship on IOM has not been matched by sustained critical attention from the influential international human rights advocacy organizations that often play important roles in both legitimating organizations and holding them to account for human rights norms.²⁰ What insights does the literature on NGOs and IO accountability offer into this disconnect? Within the international relations (IR) scholarship, rational institutionalists have privileged the actions of states in explaining changes in IO accountability, arguing that member states demand reforms from IOs when the costs of monitoring them or incurring

¹⁷ For analysis of the 2015 Humanitarian Policy, see Geoff Gilbert, 'The International Organization for Migration Humanitarian Scenarios' in Megan Bradley, Cathryn Costello and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023). For examination of IOM's 2017 IDP Framework, see Bríd Ní Ghráinne and Ben Hudson, 'IOM's Engagement with the UN Guiding Principles on Internal Displacement' in Megan Bradley, Cathryn Costello and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023).

¹⁸ On contradictions between IOM's professed support for migration and migrants, and its provision of services to member states to control and limit mobility, see e.g. Fabian Georgi, 'For the Benefit of Some: The International Organization for Migration (IOM) and Its Global Migration Management' in Martin Geiger and Antoine Pécoud (eds), *The Politics of International Migration Management* (Palgrave Macmillan 2010); Ashutosh and Mountz (n 4). For discussion of how IOM's reliance on project-based funding and its institutional incentive structures can prompt it to undertake activities in tension with its privileges, immunities and obligations as an IO, see Jan Klabbers, 'Notes on the Ideology of International Organizations Law: The International Organization for Migration, State-Making, and the Market for Migration' (2019) 32 *Leiden Journal of International Law* 388.

¹⁹ Hirsch and Doig (n 14).

²⁰ On NGOs' roles in legitimizing IOs, see Jan Aart Scholte, 'Relations with Civil Society' in Jacob Katz Cogan, Ian Hurd, and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (Oxford University Press 2016).

liability from their actions are unfavourably high.²¹ On this view, pressure for IO reform, including certain forms of accountability, is driven by states and emerges when it is in their interests. In contrast, various constructivist scholars have broadened and complemented this picture by demonstrating how IOs may be prompted to 'give themselves rules' through processes of normative persuasion and socialization involving social interactions not only between IOs and states but also with civil society.²² While states may direct IO behaviour through hierarchical or contractual relationships, civil society organizations, particularly NGOs, can exert other forms of compulsory power. For some NGOs, this is tied to their claims to representative legitimacy; human rights NGOs also wield normative and symbolic power via their claims to impartiality and the production of objective truth, including through their involvement in investigating and documenting human rights violations.²³ Through normative interpretation, knowledge production, victim support, protest and mobilization, civil society actors may become a force for IO accountability, in part by destabilizing IOs' claims and identities, shaping notions of appropriate conduct, and bringing into question IOs' governing authority.²⁴ Civil society actors' efforts to advance accountability are often most successful when they are able to demonstrate clear examples of harm or show the contradictions between IOs' commitments and their actions on the ground, generating reputational costs.²⁵ These attributes and strategies put human rights NGOs in a potentially powerful position to examine IOM and hold it accountable.

That said, the existing literature offers scant insight into when and why NGOs do *not* push for greater accountability from IOs, even when there is a recognized need for improved accountability, and NGOs could in theory

²¹ Heupel and Zürn (n 2) 10–11.

²² Ibid 11.

²³ Mike Schroeder and Paul Wapner, 'Non-governmental Organizations' in Thomas Weiss and Sam Daws (eds), *The Oxford Handbook on the United Nations* (Oxford University Press 2008). On these dynamics in relation to Amnesty International, see Stephen Hopgood, *Keepers of the flame: Understanding Amnesty International* (Cornell University Press 2013).

²⁴ Margaret Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998); Dingwerth and others, 'International Organizations under Pressure', in Dingwerth and other (eds), *International Organizations under Pressure: Legitimizing Global Governance in Challenging Times* (Oxford 2019).

²⁵ See e.g. Keck and Sikkink (n 24); Jonathan Fox and L David Brown, 'Introduction' in Jonathan Fox and L David Brown (eds), *The Struggle for Accountability* (MIT Press 1998). On the limits of reputation vis-à-vis IO accountability, see Kristina Daugirdas, 'Reputation as a Disciplinarian of International Organizations' (2019) 113 *American Journal of International Law* 221.

make important contributions on this front. Instead, much work on this issue has concentrated on explaining how NGOs have been able to successfully influence change in IOs.²⁶ However, a few additional points do stand out from the growing literature on civil society and IO accountability for the ensuing discussion of IOM. First, human rights principles are increasingly central to how civil society organizations, particularly advocacy NGOs, evaluate, legitimize, and sanction (e.g. ‘shame’) IOs. One consequence of this is that IOs face growing demands to demonstrate their legitimacy and justify their existence and performance. They are vulnerable to normative shifts in the interpretation of what they do and why they are needed, but at the same time, they may affect such normative shifts through their own roles as norm entrepreneurs.²⁷ In the case of IOM, this dynamic translates into multiple ways of evaluating its behaviour that go beyond a cut-and-dry application of legal standards. Second, NGOs may be powerful actors in the push for accountability, but their influence is also starkly limited. A particularly important limitation stems from the fact that many IOs and NGOs exist in mutually dependent relationships that work both for and against accountability.²⁸ Improved interaction and inclusion of NGOs in IO policymaking and programming can help resolve the ‘democratic deficit’ in global governance, while interactions with IOs can bolster NGOs’ own claims of political relevance and representativeness.²⁹ Interdependencies between IOs and NGOs are evident in relation to funding, but also other ‘goods’ such as access to data and policymaking processes. These interdependencies may create closer and more reliable mechanisms for consultation and debate in relation to accountability, but they may also undermine NGOs’ potential roles in advancing accountability by distorting their incentives to call out, pressure or persuade IOs to change their behaviour.³⁰ Third, in terms of civil society strategies and effectiveness in influencing IOs, it is increasingly recognized that NGOs rarely achieve their goals alone.³¹ Rather, to be effective, civil society actors often mobilize broad-based transnational coalitions or

²⁶ See e.g. Scholte, *Building Global Democracy? Civil Society and Accountable Global Governance* (n 2).

²⁷ See Dingwerth and others (n 24).

²⁸ Schroeder and Wapner (n 23).

²⁹ Anderson, Kenneth. “Accountability” as “Legitimacy”: Global Governance, Global Civil Society and the United Nations’ (2011) 36 (3) *Brooklyn Journal of International Law* 843, 855.

³⁰ Scholte, ‘Relations with Civil society’ (n 20)

³¹ Christopher L Pallas and Anders Uhlin, ‘Civil Society Influence on International Organizations: Theorizing the State Channel’ (2014) 10 *Journal of Civil Society* 184.

advocacy networks to engage other levers of institutional power capable of controlling or influencing IOs' policies, practices, and decision-making processes.³² This may include targeting the executive heads of IOs, their member states and donors, and national parliaments and parliamentary networks, amongst other influential actors.³³ In particular, civil society actors looking to influence IOs must be able to strike a chord with states, appealing to their own accountability concerns.³⁴ With these insights in mind, we now examine the limited ways in which human rights NGOs have interacted with IOM over time, and perspectives on IOM held by human rights advocates; this history and these views are important to understand in order to explain the overall lack of sustained, strategic NGO advocacy targeting IOM.

15.3 Interactions between IOM and International Advocacy NGOs: Key Patterns

This section examines past, albeit limited, interactions between IOM and international advocacy groups, as a foundation for assessing their potential contribution to increased IOM accountability. Broadly, IOM's relations with NGOs may be described as traditionally weak, albeit improving. UNHCR relies on NGO 'implementing partners' to deliver many of its programs, is often the target of NGO advocacy campaigns, and has held large, annual civil society consultations since the 1980s. In contrast, IOM implements most of its projects directly, has been less regularly targeted by NGO advocacy, and has been much slower to institutionalize mechanisms for civil society actors to access and influence the organization. Over the last ten to fifteen years, however, this dynamic has shifted somewhat, with IOM taking modest steps towards becoming more actively consultative with civil society, a development prompted by NGO advocacy and especially by senior IOM officials' sense that civil society consultations and engagement processes are expected of 'mature' and serious IOs – a status they aspire to for IOM.³⁵

³² David Wirth, 'Partnership Advocacy in World Bank Environmental Reform' in Jonathan Fox and L David Brown (eds), *The Struggle for Accountability* (MIT Press 1998).

³³ Alnoor Ebrahim and Steven Herz, 'The World Bank and Democratic Accountability: The Role of Civil Society' in Jan Aart Scholte *Building Global Democracy? Civil Society and Accountable Global Governance* (Cambridge University Press 2011).

³⁴ Fox and Brown (n 25).

³⁵ On IOM's attempts to develop the policies and processes expected of 'mature' IOs as part of its organizational expansion, see Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 7).

Increased interactions between IOM and NGOs were influenced by its involvement in the facilitation of migration policy dialogues. For example, in 2001 IOM established and opened up its International Dialogue on Migration to civil society organizations; its lead role in the Global Forum on Migration and Development (GFMD), beginning in 2007, also helped foster more routinized interactions with NGOs through the establishment of 'civil society days'. Looking beyond interactions in the context of such policy dialogues, Amnesty's 2003 statement to the IOM Council stressed the need for IOM to institutionalize mechanisms for consultation with NGOs and suggested establishing an NGO focal point or unit within IOM's structure. These changes were finally made under the institutional restructuring introduced by Director General William Swing in 2010. In 2011, IOM introduced its Annual Civil Society Organization (CSO) Consultation. In addition to participating in the Annual CSO Consultation (and, in some instances, regional consultations), NGOs seeking to influence IOM can apply for observer status to the IOM Council, which allows for some engagement with IOM's leadership and member states, although the agenda is set by IOM itself. During Swing's time as Director General, the number of NGOs with observer status increased considerably. Civil society actors may make public statements during Council proceedings, a channel used by some NGOs.

While IOM-NGO interactions have thus increased in some ways, opportunities for NGOs to contribute their perspectives to IOM policies and practices are still deeply circumscribed.³⁶ For example, civil society groups have been invited to provide feedback on some major IOM policies but not on others, and many decisions with significant human rights repercussions are still taken behind closed doors.³⁷ Whether IOM recognizes an obligation to 'render an account' to civil society thus remains an open question.³⁸

³⁶ For IOM's own description of its engagement with civil society organizations, see IOM, 'Mandate to Engage with CSOs' <www.iom.int/mandate-engage-csos> accessed 15 May 2022.

³⁷ See e.g. IOM, 'IOM-CSO Consultations Protecting and Positively Impacting Migrant Lives IOM Headquarters: Geneva, Switzerland 18 September 2015' (2015) <www.iom.int/sites/default/files/our_work/ICP/CSO/2015/2015-IOM-CSO-Consultations-Final-Report.pdf> accessed 15 May 2022.

³⁸ See Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13(4) *European Law Journal* 447.

15.3.1 *Contrasting Engagement with IOM and UNHCR*

One way of exploring this issue is through comparison of IOM and UNHCR and their relationships with civil society actors, particularly advocacy NGOs. Human rights NGOs generally assume that UNHCR will make itself available to discuss and explain its conduct and decisions concerning the protection and governance of refugees.³⁹ UNHCR's self-identification as an advocate for refugees informs a generally mutual expectation that the agency demonstrate that its actions are in the best interests of refugees, and that this includes being responsive to advocacy NGOs and other civil society actors who also claim to be representing refugees' rights and interests.⁴⁰ UNHCR's specific legitimation needs, in other words, have created openings and opportunities for civil society to influence its policies and accountability.

Although IOM increasingly makes claims to represent and advocate for the rights of migrants, it has not exhibited the same levels of responsiveness or answerability to civil society stakeholders for its actions, in part because unlike UNHCR, IOM's legitimacy claims have not historically been seen to require this. Instead, IOM's value and perceived legitimacy from the perspective of its member states has stemmed from other qualities such as its responsiveness, flexibility, and grounding in field operations.⁴¹ Broadly speaking, international advocacy groups' interactions with IOM have been much more limited, fluid and dependent on individual personalities and relationships.⁴² Given IOM's ingrained deference to states and its 'business model' of attracting and efficiently executing contracted projects, advocacy groups are reportedly met with suspicion, silence, and hostility from IOM representatives in their pursuit of information and accountability from the organization.⁴³ As one leading human rights advocate expressed it: 'If [my organization] flags UNHCR policies, performance, etc. in a report, [we] will get a call or

³⁹ Interview with human rights advocate (HRA) II (December 2016).

⁴⁰ Ellen Reichel, 'Navigating between Refugee Protection and State Sovereignty' in Dingwerth and other (eds), *International Organizations Under Pressure: Legitimizing Global Governance in Challenging Times* (Oxford 2019).

⁴¹ Bradley and Erdilmen (n 16).

⁴² Interview HRA II (n 39); Interview with HRA 9 (November 2016); Interview with HRA 14 (June 2020).

⁴³ Interview, HRA II. See also IOM's defensive response to an evaluation of its work in Erlend Paasche, Sine Plambech and May-Len Skilbrei, 'Response by Erlend Paasche, Sine Plambech and May-Len Skilbrei to IOM's response' Anti-Trafficking Review <http://gaatw.org/ATR/Paasche_Plambech_Skilbrei_Response.html> accessed 15 May 2022.

meeting from a regional director at UNHCR to follow up. But with IOM, they don't engage with NGOs. They don't feel accountable to them'.⁴⁴

A systematic examination of reports from international human rights NGOs demonstrates that while these groups have regularly investigated and issued recommendations to UNHCR, they have not been a reliable force for holding IOM to account in relation to human rights standards. This suggests that the weak accountability relationships between IOM and human rights advocacy NGOs are not only a result of IOM's actions and attitude but also the strategies and priorities adopted by advocacy organizations themselves. For example, in reports on migration and displacement issued by Amnesty International and HRW from 1998 to 2020, IOM's activities are remarkably under-examined, with IOM's work receiving far less scrutiny than UNHCR's. Only slightly more than a quarter (27.8%) of 183 reports on migration and displacement produced by HRW from 1998 to 2020 made reference to IOM. Of these, only 14.2% analysed IOM's role and only 9.1% explicitly referenced IOM in their recommendations. Amnesty International's reports showed even less interest in IOM. Only 13.7% of Amnesty's reports related to migration and displacement directly mentioned IOM; 9.6% analysed IOM's role and 2.4% issued recommendations to the organization. In contrast, between 1998 and 2020, 66.5% of HRW reports and 46.5% of Amnesty reports on migration and displacement mention UNHCR; 47.7% of HRW reports and 21.9% of Amnesty reports analyse UNHCR's role; 44.9% of HRW reports and 46.5% of Amnesty reports make recommendations to improve UNHCR practice. Some discrepancies in the level of attention devoted to these organizations are to be expected: IOM remains a smaller IO than UNHCR (particularly in terms of budget). Neither agency played a major role in all of the contexts addressed in these reports, but UNHCR is specifically mandated to work with refugees, who are often a more high-profile or visible population and may therefore be more likely to attract the attention of international advocacy NGOs. Nonetheless, the difference is striking, particularly as some of these reports neglect IOM even when it was actively involved in the cases at hand, or could potentially have made valuable contributions if urged to do so.

15.3.2 2002–2007: Modest but Increased Attention from Major Human Rights NGOs

A closer, historical reading of statements on IOM issued by Amnesty and HRW suggests that perhaps the strongest period of these NGOs' scrutiny

⁴⁴ Interview HRA 11 (n 39).

of IOM occurred between 2002 and 2007. This timeframe overlaps with significant growth in IOM's roles and budget, renewed conversations on global migration governance, and organizational involvement in programmes such as Australia's Pacific Solution and 'assisted voluntary returns' (AVR) from European countries, which raised major human rights concerns.⁴⁵ Four key issues attracted the interest of Amnesty and HRW, prompting them to more thoroughly investigate IOM's actions in the field and release a series of reports and public statements critiquing IOM. First, these NGOs directly addressed IOM's lack of a formal protection mandate or 'standard of accountability' to orient its actions, arguing that IOM was missing the institutional safeguards necessary to ensure its activities respected international refugee and human rights norms.⁴⁶ The NGOs contended that as IOM expanded, these shortcomings posed particular risks to the ability of refugees, asylum seekers and other migrants to enjoy their fundamental rights. This is linked to their second set of concerns related to IOM's functions within an increasingly restrictive migration policy environment. Amnesty and HRW offered legal arguments on

⁴⁵ Conversations on global migration governance took place in particular through the Berne Initiative, the Global Commission for International Migration (GCIM), the Global Migration Group, and the High Level Dialogue on Migration and Development. See Martin, Philip, Susan Martin, and Sarah Cross, 'High-level Dialogue on Migration and Development' (2007) 45 (1) *International Migration* 7.

⁴⁶ These themes are present for example in the statements of Amnesty to the IOM Council in 2003, 2004 and 2005, and of HRW in 2003, 2004 and 2007. Amnesty International, 'Statement to the 86th Session of the Council of the International Organization for Migration (IOM)' (20 November 2003) hereafter: Amnesty, 'Statement to IOM Council' (2003) <www.amnesty.org/download/Documents/108000/ior300112003en.pdf> accessed 15 May 2022; Amnesty International, 'Statement to the 88th Session of the Governing Council of the International Organization for Migration (IOM)' (30 November – 3 December 2004) hereafter: Amnesty, 'Statement to IOM Council' (2004) <www.ior.int/sites/g/files/tmzbd1486/files/2019-02/amnesty.pdf> accessed 15 May 2022; Amnesty International, 'Statement to the 90th Session of the Governing Council of the International Organization for Migration (IOM)' (1 December 2005) hereafter: Amnesty, 'Statement to IOM Council' (2005) <www.amnesty.org/download/Documents/84000/ior300172005en.pdf> accessed 15 May 2022; Human Rights Watch, 'The International Organization for Migration (IOM) and Human Rights Protection in the Field: Current Concerns' (18–21 November 2003) hereafter: HRW, 'Statement to IOM Council' (2003) <www.hrw.org/legacy/background/migrants/ior-submission-1103.pdf> accessed 15 May 2022; Human Rights Watch, 'Statement to the IOM Governing Council' (30 November–3 December 2004) hereafter: HRW, 'Statement to IOM Council' (2004) <https://governingbodies.ior.int/system/files/jahia/webdav/shared/shared/mainsite/about_ior/en/council/88/humanrights.pdf> accessed 15 May 2022; Human Rights Watch, 'Statement to the IOM Council' (27–30 November 2007) hereafter: HRW, 'Statement to IOM Council' (2007) <www.hrw.org/node/232231/printable/print> accessed 15 May 2022.

why IOM should not perform certain functions – most importantly, the management of offshore detention centres – when state policies clearly infringed upon the human rights of migrants and asylum seekers, and identified serious procedural flaws in how IOM performed such services.⁴⁷ In particular, they argued that IOM's assisted return programmes often involved 'directly and indirectly' coercive methods, which pressured people to prematurely return to situations where their lives were at risk.⁴⁸ In light of this, HRW called upon IOM to cease its involvement in detention as well as in assisted returns, unless it could prove with certainty that returns were voluntary and compliant with international norms.⁴⁹ Third, both organizations were unconvinced IOM provided a suitable forum for global policy debates on migration. This reflected their general unease with migration management as an orientating concept for IOM's work. They worried that the language of 'control and containment' attached to IOM's migration management strategies signalled a practical and rhetorical shift away from the focus on states' human rights obligations.⁵⁰ Finally, both organizations were concerned that IOM was overstepping its mandate at the request of states, effectively moving refugee issues into the migration regime.⁵¹ In particular, IOM's failure to coordinate with UNHCR on matters of asylum and protection fuelled mistrust of the organization. The following excerpt from a joint 2003 statement to the IOM Council brings together some of these different layers of critique:

Amnesty International and Human Rights Watch are also concerned that IOM should not provide an alternative agency for states where they prefer to avoid their human rights obligations or where UNHCR has declined engagement in a given situation on the basis that it sees grave problems or dangers. Even with the best of motives, IOM involvement in such situations can end up unwittingly facilitating abuses and harming migrants, refugees and asylum seekers. IOM's presence should not have the effect of prolonging untenable state policies and practices which themselves

⁴⁷ See e.g. HRW, 'Statement to IOM Council' (2003) (n 46) and HRW, 'Statement to IOM Council' (2004) (n 46).

⁴⁸ HRW, 'Statement to IOM Council' (2003) (n 46) 8; Amnesty, 'Statement to IOM Council' (2004) (n 46); Amnesty, 'Statement to IOM Council' (2005) (n 46); HRW, 'Statement to IOM Council' (2004) (n 46); HRW, 'Statement to IOM Council' (2007) (n 46).

⁴⁹ See e.g. Amnesty, 'Statement to IOM Council' (2004) (n 46); Amnesty, 'Statement to IOM Council' (2005) (n 46).

⁵⁰ See Amnesty, 'Statement to IOM Council' (2004) (n 46) 3.

⁵¹ See e.g. Amnesty, 'Statement to IOM Council' (2003) (n 46); HRW 'Statement to IOM Council' (2003) (n 46), which address IOM's work in returning asylum seekers from offshore detention sites who were prevented from accessing UNHCR.

fail to comply with international human rights standards. Such policies range from certain border control and deterrent measures, to arbitrary and unlawful detention to encouraging premature return to countries of origin. In such circumstances, states should be required to act in their own name and should be held directly accountable for their actions.⁵²

During this period, Amnesty and HRW made several recommendations to the IOM Council, including proposals for strengthening its internal and external oversight mechanisms to ensure greater normative compliance. For instance, they recommended that IOM develop mechanisms to answer abuse allegations; refrain from undertaking protection roles for which it lacked a mandate or expertise; and establish clear criteria to assess the legitimacy of its operations.⁵³ In 2007, HRW further recommended that IOM apply 'strict human rights conditionality' to its migration management projects, specifically those related to border management, to avoid strengthening the capacities of states whose practices breached international law.⁵⁴

It appears that in this early period of comparatively focused engagement and indeed in the years since, leading international advocacy NGOs failed to significantly catalyse IOM reform. Aside from heightening IOM's sensitivities to its reputational vulnerabilities, little substantive impact can be traced from this early period of peak – but still modest – engagement from major international human rights NGOs. Only minimal changes were made in line with some of the observations and recommendations made by Amnesty and HRW, and these mainly pertained to finessing IOM's language around the relationship between migration management and human rights. While analysing why these advocacy efforts were not more fruitful is largely outside the scope of this chapter, a few observations can be made: A key reason why these early analyses and critiques, while normatively strong and well-evidenced, did not impact IOM's behaviour is that they were not backed up by a particularly sophisticated, sustained or effective advocacy strategy that concertedly targeted multiple channels for pressuring and persuading IOM. Leading advocacy groups did not recruit a strong network of other NGOs to the cause, nor did they engage with IOM's donors, domestic parliaments in key member states, or other IOs

⁵² HRW, 'Statement to IOM Council' (2003) (n 46) 16.

⁵³ See e.g. Amnesty, 'Statement to IOM Council' (2004) (n 46); Amnesty, 'Statement to IOM Council' (2005) (n 46); HRW, 'Statement to IOM Council' (2003) (n 46); HRW, 'Statement to IOM Council' (2004) (n 46); HRW, 'Statement to IOM Council' (2007) (n 46).

⁵⁴ HRW, 'Statement to IOM Council' (2007) (n 46).

(e.g. UN actors) capable of exerting leverage against IOM. Nor were there strategic attempts to take advantage of ongoing, piecemeal changes to IOM policies and consultation practices. These factors limited the impact of Amnesty and HRW's advocacy efforts in this period.

15.3.3 2008–2021: Reduced Engagement from Advocacy NGOs

Analysis of Amnesty and HRW reports suggests that these organizations have largely retreated from their brief focus on IOM in the early 2000s, when they attempted to illuminate and constrain some of IOM's most controversial and risky activities, particularly in relation to AVR programmes, such as those run on behalf of Australia. The fundamental logics underpinning these programmes remains largely unchanged, yet there has been a tendency to overlook IOM's responsibility for organizing returns under circumstances that advance states' interests over migrants' rights, and contribute (if indirectly) to deportation and containment systems. For example, Amnesty has not devoted serious attention to IOM in reports on the Central American-US migration corridor, Algerian expulsions of Nigerians, and the externalization of EU migration policy, although IOM has had significant roles in these contexts. Similarly, while HRW offered robust critiques of the IOM-Australia relationship in its 2002 report *By Invitation Only*, more recently it adopted a light touch in commenting on IOM's AVR work in Central America.⁵⁵ Local human rights groups in Greece have condemned the Greek state for pressuring asylum seekers to take up IOM's return assistance, but in its discussion of this issue, HRW stops short of carefully analysing and critiquing IOM's role and obligations in this case.⁵⁶ In another example, an Amnesty report on EU externalization in Libya questions IOM's 'voluntary humanitarian return' programmes and their compliance with the principle of voluntariness, given that many asylum seekers and other migrants are making decisions about returning while being detained in abysmal conditions in Libya, having been prevented from accessing EU territory. While Amnesty's report suggests

⁵⁵ See HRW, 'US Move Puts More Asylum Seekers at Risk' (25 September 2019) <www.hrw.org/news/2019/09/25/us-move-puts-more-asylum-seekers-risk#:~:text=Human%20Rights%20Watch%20concluded%20in,and%20physical%20violence%20in%20Mexico> accessed 15 May 2022.

⁵⁶ HRW, 'Greece: NGOs Decry Policy Limiting Asylum Appeal Rights' (9 May 2017) <www.hrw.org/news/2017/05/09/greece-ngos-decry-policy-limiting-asylum-appeal-rights> accessed 15 May 2022.

that IOM's assisted returns may place migrants and asylum seekers at risk of harm and *refoulement*, it solely targets EU states and the Libyan government to change their policies around detention, pushbacks and asylum, skirting IOM's role and responsibilities in return processes.⁵⁷

On occasion, reports from human rights NGOs do remind IOM of its responsibilities and obligations under international law or apportion blame to IOM for its part in controversial or rights-violative programmes. For example, a 2015 Amnesty report on the right to adequate housing in post-earthquake Haiti explicitly mentions IOM's involvement in events that led to police attacks and violence at a camp where residents resisted enrolling in IOM's rental subsidy programme, which was intended to enable camp closures.⁵⁸ By and large, however, these reports suggest that influential human rights NGOs have not consistently worked to hold IOM accountable, even in cases in which it plays complex and concerning roles. Perhaps most strikingly, major international advocacy organizations concerned with migration and displacement were virtually silent during the negotiation of IOM's entry into the UN system as a related organization in 2016. Arguably, this could have been an opportune moment to press for key reforms related to IOM's mandate and accountability deficits.⁵⁹ Instead, human rights NGOs – admittedly already stretched in responding to the global migration 'crisis' at the time – seem to have bypassed the opportunity to try to shape this watershed moment in IOM's institutional development, despite its considerable long-term impacts on migration governance, humanitarian action, and the rights and wellbeing of migrants.

15.4 Why Are Many Human Rights NGOs Disengaged from IOM?

Having discussed the rather surprising disengagement of major international human rights advocacy organizations from accountability efforts

⁵⁷ See Amnesty, 'Libya's Dark Web of Collusion: Abuses against Europe-Bound Refugees and Migrants' (11 December 2017) <www.amnesty.org/download/Documents/MDE1975612017ENGLISH.PDF> accessed 15 May 2022.

⁵⁸ Amnesty, "'15 Minutes to Leave": Denial of the Right to Adequate Housing in Post-Quake Haiti' (8 January 2015) <www.amnesty.org/download/Documents/212000/amr360012015en.pdf> accessed 15 May 2022.

⁵⁹ See Elspeth Guild, Stephanie Grant and Kees Groenendijk, 'IOM and the UN: Unfinished Business' (2017) Queen Mary University of London School of Law Legal Research Paper No 255/2017 <www.academia.edu/40090259/IOM_and_the_UN_Unfinished_Business> accessed 22 April 2022.

targeting IOM, this section addresses the key question this analysis raises: *why* have major human rights groups not been more involved in pressing for increased accountability from IOM? Our interviews suggest that perceptions of IOM amongst human rights advocates are increasingly nuanced and multi-faceted. Some advocates have followed and welcome institutional developments at IOM over the last decade, such as its attempts to clarify its position on human rights and humanitarian principles, and to better institutionalize knowledge of protection principles amongst its staff. IOM's adoption of human rights language to frame its work has also created the impression in some quarters that protection features more prominently within IOM's goals and priorities as the 'UN migration agency'. Against this backdrop, we identify three issues that have nonetheless limited international advocacy NGOs' engagement with IOM. First, institutional developments at IOM over recent decades and the existence of multiple standards for considering IO accountability make judgements about IOM's performance more 'slippery' and complex. Second, IOM's vague mandate, and its lack of a formal protection mandate have resulted in continued confusion about IOM's role and responsibilities, and have made some NGOs reluctant to make IOM an advocacy target. Third, many organizations are increasingly dependent on IOM for access to particular populations, and for data gathered or managed by IOM, which advocacy organizations use to ground their own analysis, claims, and advocacy functions. This has contributed to the legitimizing of IOM and arguably dissuaded more direct confrontation with the organization.

To be sure, these are not the only factors that have shielded IOM from more targeted advocacy from international human rights NGOs, akin to the ways in which these groups have engaged other IOs such as UNHCR. For example, IOM's expansion is closely linked to its assumption of greater roles and responsibilities vis-à-vis IDPs and international migrants who are not refugees; indeed, IDPs are now the largest group of IOM 'beneficiaries'.⁶⁰ Yet these populations typically receive less attention from the media and advocacy groups than refugees do, which may also help explain why prominent human rights NGOs have been less focused on IOM compared to UNHCR.⁶¹ We focus on these three factors not because they tell

⁶⁰ Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 7) 4.

⁶¹ Amnesty International, for example, has a specific, well-resourced team to conduct research and advocacy on refugee issues, but does not have one for IDPs, and does not prioritize advocacy on IDP issues.

the full story, but because our interviews suggest that they have been particularly influential in shaping this disconnect.

15.4.1 *Implications of Institutional Developments and Diverse Standards of Accountability*

Recent decades have witnessed considerable institutional change at IOM. The organization has, for instance, more actively adopted human rights rhetoric; employed more staff with protection expertise; and taken (tentative) steps to clarify its position on human rights and humanitarian principles through various frameworks and policies, and better institutionalize knowledge of protection principles amongst its staff.⁶² Our interviews suggest that international human rights advocates have varying levels of knowledge of these developments; compared to UNHCR, IOM remains poorly understood among refugee, IDP and migrants' rights advocates. Yet many are broadly aware of these developments and see them as an improvement over the situation in the 1990s and early 2000s, when IOM was reluctant to acknowledge its protection responsibilities and sometimes openly defiant of human rights critiques. As one human right advocate expressed it, IOM 'has definitely become a lot more sophisticated, it's become a lot more mainstream, in the sense of adopting "UNHCR's language" around protection issues'.⁶³ Some influential advocates with longstanding knowledge of IOM suggest that it has reached a turning point in terms of recognizing international norms and its obligation to respect them.⁶⁴ Among many advocates, IOM now seems to be viewed less as an organization that refuses to conform to established rules, and more as one that has diverse roles (including but not limited to protection) and some compliance problems, but perhaps no more so than other international organizations.

While these developments may create the impression that focused advocacy interventions are less necessary today than they were in the past, staff at many prominent NGOs do remain concerned about IOM's practices, accountability deficits, and decision-making processes, although they generally stop short of transforming these concerns into focused advocacy interventions. Many of our respondents criticized

⁶² On these changes, see e.g. Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 7).

⁶³ Interview with HRA 13 (January 2018).

⁶⁴ Interview with HRA 10 (December 2016).

IOM for its continued institutional bias toward serving states over migrants; its weak normative basis; and lack of coherence in its work.⁶⁵ Many saw its managerial style and focus on 'efficiently' running large projects as undermining its claims to be 'solving' migration problems.⁶⁶ For example, one advocate complained that IOM's overriding focus on 'the numbers' – that is, on rolling out interventions and gathering data – has blinded it to the reality that 'if your job is' at least in part 'to protect people, [doing] less may in fact be more'.⁶⁷ Amongst human rights NGOs, IOM also has a lingering reputation for being willing to 'do anything for money', although some argue that IOM's lack of independence from its donors is not necessarily that different from other IOs, such as UNHCR.⁶⁸

Importantly, our interviews underscored that human rights standards are not the only touchstone guiding advocacy NGOs' assessments of IOM's conduct. Benchmarks such as institutional relevance, expertise, capacity, and operational effectiveness also shape impressions of the organization and structure perceptions of its legitimacy, even among human rights NGOs. Whether explicitly or implicitly, advocates use multiple and sometimes competing standards to interpret and assess IOM's role, which can result in contradictory views about the organization and helps explain why human rights advocates may be hesitant or disincentivized to contest behaviours they suspect to be rights-violating or detrimental to respect for migrants' rights. For example, while many of our respondents expressed concerns about IOM's lack of knowledge about or adherence to human rights standards, they also expressed highly favourable views of IOM's operational and 'field-based' characteristics. Many suggested that because of these characteristics, IOM added 'incredible added value', particularly in emergency contexts where it plays critical roles in addressing unmet humanitarian assistance needs, such as in relation to IDPs and vulnerable cross-border migrants who do not qualify for refugee status.⁶⁹ Despite its shortcomings on protection issues, many felt that IOM played a pivotal role in executing tasks that fall between the cracks of UN agencies'

⁶⁵ Interview with HRA 2 (November 2015); Interview with HRA 7 (December 2016); Interview with HRA 8 (December 2016); Interview HRA 9 (n 42).

⁶⁶ Interview HRA 10 (n 64).

⁶⁷ *Ibid.*

⁶⁸ Interview with HRA 3 (November 2015); Interview HRA 7 (n 65); Interview HRA 8 (n 65).

⁶⁹ Interview with HRA 1 (November 2015); Interview with HRA 4 (November 2015); Interview with HRA 12, (October 2017); Interview HRA 7 (n 65); Interview HRA 9 (n 65); Interview HRA 13 (n 63).

mandates and operational competencies.⁷⁰ Illustrating how appeals to managerial standards – such as quantity, efficiency, and effectiveness – can help shape opinions and legitimize IOs, several respondents drew upon such concepts to suggest that IOM had exceeded their expectations or sometimes outperformed other agencies such as UNHCR.⁷¹ While more systematic evaluations of IOM projects would of course be needed to more fully substantiate such impressions, these rather positive observations are noteworthy in part because they contrast strikingly with the censorious tone of much of the academic scholarship on IOM, and help to explain why IOM has not attracted more rigorous critique from international advocacy NGOs.

In terms of accountability, having multiple reference points for evaluating IOM can have the effect of tempering or muting criticism about its adherence to human rights norms – particularly when IOM's involvement in a particular operation results in tangible benefits, such as the provision of emergency aid. This dynamic was evident for instance in the case of the response to the Rohingya refugee crisis in Bangladesh, in which IOM initially took on a leading coordination role. In our interviews, several advocates knowledgeable of the situation criticized IOM for agreeing to the Bangladesh government's request for it to lead coordination efforts in the emergency response, pointing out that this was UNHCR's responsibility. By overstepping its mandate, they argued, IOM endangered the process of recognizing the Rohingya as refugees, diminished the response's focus on protection, and fuelled competition and coordination problems with UNHCR.⁷² However, advocates also conceded that access to refugees and living conditions in some camps improved considerably as a consequence of IOM's operational effectiveness and its relationships of trust with state authorities.⁷³ As one advocate reflected, IOM positioned itself as a 'gate-keeper' to both the population and the government, and arguably undermined the possibility of achieving formal refugee status for the Rohingya. Yet, he suggested, there was broad if grudging acknowledgement that formal recognition of the Rohingya was unlikely in any event, as Bangladesh

⁷⁰ Interview HRA 1 (n 69); Interview HRA 7 (n 65); Interview HRA 8 (n 65). On IOM's gap-filling functions, see Bradley, 'The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime' (n 11).

⁷¹ Interview HRA 1 (n 69); Interview HRA 4 (n 69); Interview HRA 7 (n 65).

⁷² On these dynamics, see also Sebastian Moretti, 'Between Refugee Protection and Migration Management: The Quest for Coordination between UNHCR and IOM in the Asian-Pacific Region' 2021 42 (1) *Third World Quarterly* 34.

⁷³ Interview HRA 12 (n 69); Interview with HRA 15 (June 2020).

is not party to the 1951 Refugee Convention, and that in an incredibly difficult situation IOM enabled small, gradual improvements, 'because the Bangladesh government feels it has a partner it can trust'.⁷⁴

This example reflects the conflicting sentiments often embedded in advocates' perceptions of IOM. Weighing up IOM's performance against competing standards can deflect attention from rights-based concerns about the organization's practices.⁷⁵ Within extremely complex political and operational environments, advocates can sometimes be persuaded by IOM that they should tailor their expectations to the realities on the ground, rather than push for 'unrealistic' human rights goals.⁷⁶ Adopting such perspectives can dilute or divert concerns about IOM's roles and activities that persist despite developments in the organization's discourse, policies and practices on rights protection.

15.4.2 *Consequences of IOM's Mandate and Structure for NGO Accountability Efforts*

Accountability scholars emphasize that accountability processes presuppose certain questions, such as accountability 'for what' and 'towards whom'?⁷⁷ In attempts to hold IOs to account, these questions naturally lead to an examination of the constitutional mandates that guide them, as well as policies or commitments that clarify the rules to which an IO understands itself to be bound in the execution of its functions. Such an exercise can be challenging in relation to IOM, as its formal mandate as articulated in the IOM Constitution is primarily a vague, open-ended list of services it may provide states in managing migration, and it is only in recent years that IOM has started to more concertedly develop publicly available frameworks and policies that begin to clarify the principles it accepts it is bound to respect. Coupled with its highly decentralized structure, IOM's ill-defined formal mandate has offered it substantial leeway to define and expand its activities, but at the expense of confusion and debate about its proper role.

IOM's imprecise mandate and decentralized institutional structure have influenced NGO engagement in holding IOM accountable in three main ways. First, NGO advocates often struggle to comprehend and

⁷⁴ Interview HRA 12 (n 69).

⁷⁵ Interview HRA 9 (n 42); Interview HRA 12 (n 69); Interview HRA 15 (n 73).

⁷⁶ Interview HRA 12 (n 69); Interview HRA 15 (n 73).

⁷⁷ See Bovens (n 38).

critically engage with the breadth of IOM's tasks and responsibilities across different jurisdictions and areas of governance.⁷⁸ As one advocate indicated: 'To keep track of IOM you really have to keep track of different contexts and the changing situations and statuses of people. It is already such a complex situation, and then you have to try to locate what IOM is doing in respect to that'.⁷⁹ IOM's approach and reputation in one area of intervention may not necessarily travel to other areas, giving rise to compartmentalized views of the organization among NGO advocates, depending on the particular fields in which they work (e.g. humanitarian response, labour migration, climate change, etc.). Second, in the absence of a well-defined mandate grounded in a specific body of law, human rights advocates may lack clarity about IOM's legal obligations and the standards to which it can and should be held to account.⁸⁰ Certainly, a lack of sustained interest from civil society actors in IOM and its ongoing policy development processes has compounded this problem, as has IOM's traditional evasiveness about its own legal obligations.⁸¹ It is only recently, following IOM's entry into the UN system as a 'related organization', that IOM's Legal Office confirmed that it recognizes that IOM is obliged to uphold all common laws and principles that bind UN agencies, and even then, many human rights advocates concerned with migration appear unaware of this development.⁸² Last, as IOM lacks a formal mandate to promote human rights or protect a specific group, international human rights advocates have tended to underestimate or dismiss the significance of IOM's activities, and the influence the organization can have on states' policies and practices – for better or for worse.⁸³ This limited recognition of IOM's agency and authority in global governance can inadvertently shield the organization from demands for accountability.⁸⁴

Differences in human rights NGOs' approaches to advocacy targeting IOM and UNHCR (and their comparative neglect of IOM) underscore the importance of organizational mandates and institutional structure

⁷⁸ Interview HRA 1 (n 69); Interview HRA 11 (n 39); Interview HRA 15 (n 73).

⁷⁹ Interview HRA 15 (n 73).

⁸⁰ Interview HRA 1 (n 69); Interview HRA 2 (n 65); Interview HRA 3 (n 68); Interview HRA 4 (n 69); Interview HRA 7 (n 65); Interview HRA 9 (n 42). Determining the applicability of different bodies of international law to particular IOs is, admittedly, a general challenge pertaining not only to IOM.

⁸¹ Interview HRA 7 (n 65).

⁸² Interview with IOM official 17 (December 2019); Interview with IOM official 19 (January 2020).

⁸³ Interview HRA 10 (n 64); Interview HRA 15 (n 73).

⁸⁴ Interview HRA 14 (n 42).

in attracting NGOs' attention and positioning civil society as potentially powerful proponents of IO accountability. Our interviews suggested that UNHCR's recognized authority, its strong protection mandate for a legally defined group, and its explicit legal obligations and policies rendered it a more attractive advocacy target than IOM. Many NGO advocates are well-versed in UNHCR's roles in refugee protection, and are able to point to UNHCR's Statute, which establishes its responsibilities in accordance with refugee law and protection principles, and to the 1951 Refugee Convention which confers supervisory responsibility to UNHCR for its implementation.⁸⁵ From the perspective of NGO advocates, these instruments and related UNHCR policies provide a robust framework for demanding accountability from the organization. Furthermore, advocates can engage with UNHCR's Executive Committee in debates on programming and budgets. In contrast, advocates we interviewed perceived that IOM's Constitution offers little leverage for human rights NGOs to demand accountability, and even generates confusion regarding IOM's role and legal obligations. (IOs have human rights obligations irrespective of their constitutions, but our interviews suggested that explicit, constitutional obligations were significant in garnering NGOs' attention and informing advocacy strategies.) IOM's amorphous mandate makes it more difficult for advocacy NGOs to bring powerful member states on-side in accountability efforts, as there is a lack of consensus around IOM's purpose and proper role. Accountability efforts are further constrained by the fact that IOM does not run large programmes but myriad projects which are difficult to monitor, and follow budgets set outside of the oversight of the IOM Council. Given these differences, UNHCR offers a much better opportunity structure for external scrutiny and activism than IOM. Advocates' preference to scrutinize and engage with UNHCR – as demonstrated by their reports and testimonies – also reflects UNHCR's greater perceived importance. By nature of the role that UNHCR plays in the refugee regime and the weight of its decision-making, monitoring UNHCR's actions and seeking to persuade the organization to acknowledge and address deficiencies is often deemed strategically smart, and vital to advocates' goals. Meanwhile, IOM's nebulous mandate makes it seem like a less important, and less promising, advocacy target.⁸⁶

⁸⁵ UNGA 'Statute of the Office of the United Nations High Commissioner for Refugees' (14 December 1950) UNGA Resolution 428(V); Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

⁸⁶ Interview HRA 7 (n 65); Interview HRA 8 (n 65); Interview HRA 10 (n 64); Interview HRA 15 (n 73).

15.4.3 *Dependency on IOM as a Data Source and Gatekeeper*

IOM's roles as a gatekeeper to particular populations, especially in camps, and as a leading provider of data on migration and humanitarian crises also create challenges for advocacy groups who may be interested in pushing for increased accountability from IOM.⁸⁷ Human rights organizations are increasingly reliant on IOM for access to victims of human rights violations and information about their plight. In migration governance, the quantitative data produced by IOM has become central to many NGOs' assessments of the situation of mobile populations.⁸⁸ That international human rights NGOs now base many of their own claims and analyses on IOM's data is a new dynamic that raises questions about the extent to which the NGO consumers of IOM data are willing to scrutinize and confront the organization.⁸⁹ Organizations such as the Internal Displacement Monitoring Centre (IDMC), for example, have developed formal partnerships with IOM, bringing together their technical, operational, analytical and advisory capacities.⁹⁰ Their partnership involves joint fundraising and aims to produce 'authoritative recommendations for policies to integrate displacement into broader policy agendas', amongst other goals.⁹¹ Amnesty and HRW also rely on and incorporate IOM data into their reports, even as they sometimes disagree with how IOM groups and categorizes populations: between 1998 and 2020, 8.81% of Amnesty reports and 10.9% of HRW reports on migration and displacement drew on IOM data. Reliance on IOM data is increasing: between 2015 and 2020, 13.3% of

⁸⁷ For a discussion of obligations associated with IOM's evolving roles in relation to migration data, particularly in humanitarian contexts, see Anne Koch, 'The International Organization for Migration as a Data Entrepreneur: The Displacement Tracking Matrix and Data Responsibility Deficits' in Megan Bradley, Cathryn Costello and Angela Sherwood (eds), *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023).

⁸⁸ See Stephan Scheel and Funda Ustek-Spilda, 'The Politics of Expertise and Ignorance in the Field of Migration Management' (2019) 37 *Environment and Planning D: Society and Space* 663.

⁸⁹ NGOs also draw on data from other IOs, such as UNHCR, but the longer history of engagement between UNHCR and advocacy groups may temper conflicts associated with reliance on UNHCR-generated data.

⁹⁰ IDMC presents itself not so much as an advocacy organization but as a provider of data and expertise on internal displacement, with the aim of informing policy and operational decisions. In practice, however, this has involved advocacy on the basis of human rights frameworks, including in relation to UNHCR's approach to IDPs.

⁹¹ IOM and IDMC, 'Global Partnership on Internal Displacement: 2019–2023' 2 <www.iom.int/sites/default/files/our_work/DOE/iom_idmc_global_partnership.pdf> accessed 15 May 2022.

Amnesty reports and 14.3% of HRW reports used IOM data. Precisely how these intensifying data and access relationships shape NGOs' willingness and incentives to monitor and speak out about IOM remains to be seen. However, these dependencies are an aspect of the social relations between IOM and advocacy organizations that cannot be ignored when contemplating NGOs' actual and potential role in holding IOM to account.

A final point bears making on why advocacy NGOs have not actively and consistently pushed for IOM accountability in relation to human rights standards. The human rights industry itself thrives off clear narratives and easily identifiable perpetrators to generate moral outrage.⁹² The legal and moral murkiness that often surrounds IOM's practices defies this requirement of much contemporary activism. Many advocates themselves admit that they lack the knowledge and resources necessary to probe the gaps between IOM's institutional rhetoric and its more contentious practices.⁹³ States' abuses of migrants' rights are often much more brazen, making them more immediately pressing targets for NGO advocacy. Thus, even when advocacy NGO staff have moral or legal concerns about what they witness in the field, they are unlikely to pursue specific accountability issues involving IOM unless they can produce a clear-cut case of harm and wrongdoing – one that meets the high thresholds of evidence set by professionalized advocacy organizations. Among the advocates we interviewed, some had documented IOM's involvement in rights violations but, for the reasons discussed above, hesitated to 'go public' with their findings.⁹⁴

15.5 Conclusion: Strengthening Advocacy NGOs' Contributions to IOM Accountability

Enhancing IOM's accountability to human rights standards, to advocacy NGOs working on behalf of victims of rights violations, is a two-way street. Despite longstanding concerns about some IOM programmes, particularly its work on returns and in detention centres, international human rights NGOs have not been at the forefront of promoting organizational learning or institutional change within IOM in relation to respect for human rights norms. Instead, these pressures have largely come from certain member states, and from inside the organization – particularly from

⁹² Keck and Sikkink (n 24).

⁹³ Interview HRA 10 (n 64); Interview HRA 11 (n 39); Interview HRA 15 (n 73).

⁹⁴ Interview HRA 14 (n 42); Interview HRA 15 (n 73).

proponents of rights-based approaches among IOM staff, and from senior officials aware that the organization's continued expansion and entrance into the UN system required a clearer commitment to human rights and protection standards.⁹⁵ This is not to say that human rights groups have been wholly disengaged from processes of institutional reform and efforts to promote increased accountability. While modest, waves of human rights advocacy in the early 2000s helped IOM internalize the sense that failing to be seen to follow international rules and norms can carry reputational risks. Human rights organizations have also encouraged IOM to be more consultative. Yet compared to the role they have played with UNHCR, human rights NGOs have not served as effectively as watchdogs involved in monitoring and calling out IOM's inappropriate practices. As we have shown, this state of affairs is not only the result of particular weaknesses in international human rights advocacy efforts; it is also linked to IOM's own narrow interpretation of its obligation to render an account and justify what it does to civil society. As an organization that has framed its value to the world primarily in terms of providing operational services for states, IOM does not appear to see the information, analysis, methods and advice provided by human rights NGOs as important to the success of its operations, or how it defines success in the first place.

Certainly, international human rights NGOs could do much more to push IOM to be more transparent and accountable to the populations affected by its actions and to the public at large, especially in terms of ensuring that it lives up to its rhetoric and claimed commitments to human rights and related humanitarian principles. For a start, advocacy organizations could better familiarize themselves with IOM's diverse roles, policies and commitments. Some key instruments that may form the basis of analysis include IOM's Migration Governance Framework (2015), Migration Crisis Operational Framework (2012), Humanitarian Policy (2015), Data Protection Policy (2010), and Framework for Addressing Internal Displacement (2017). Understanding how IOM's entanglements with different UN mechanisms and its status as a 'related organization' in the UN system affects its legal and political accountability is also integral to improving the current state of advocacy toward the organization. In the various countries where international advocacy organizations analyse human rights conditions and document violations, there is a need for them to better unpack and scrutinize IOM's discourses on human rights,

⁹⁵ On these dynamics, see Bradley, *The International Organization for Migration: Commitments, Challenges, Complexities* (n 7).

humanitarianism, and accountability that legitimize its activities, and to evaluate what it claims against the interests and powers that are being served by IOM's interventions. Because migration is a such contentious political issue, international human rights organizations will need to form effective alliances between themselves, domestic NGOs and grassroots associations, concerned member states (and their domestic legislators), and like-minded allies inside the organization to achieve greater accountability. Finally, when international human rights NGOs do in fact document IOM's involvement in human rights violations, they should use their position and resources to support victims to submit claims to IOM's mechanisms for internal oversight and redress, with a view to improving access to adequate remedies, and to testing and strengthening IOM's accountability systems. As a starting point, IOM should make a practice of systematically reflecting on and responding to concerns raised by human rights advocacy NGOs; strengthening and expanding fledgling civil society consultation processes; and publicly recognizing the important role that external NGO scrutiny can play in strengthening IO accountability. IOM member states, particularly donor officials, should use their leverage to call attention to recommendations for improved accountability raised by human rights NGOs, and press IOM to respond appropriately. These suggestions certainly do not exhaust the ways in which accountability relationships between IOM and international human rights NGOs may be strengthened, but they hopefully provide a useful starting point.