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# Avoiding Human Rights Violations by IOs

December 2019

Rome

Refugee Studies Centre  
Oxford Department of International Development  
University of Oxford

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# Ref-Mig ERC Project Outputs

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- Edited collection: *IOM: A Legal and Institutional Analysis* – coedited with Megan Bradley and Angela Sherwood
- 10 articles, including a *German Law Journal* Special Issue on Accountability for Human Rights Abuses in Migration Control (with Itamar Mann)
- Co-authored book: *Recognising Refugees*
- Single-Author Monograph: *A Critical Introduction to International Refugee Law*



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# *Legal Obligations and Accountability of IOs*

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# ICJ 'WHO-Egypt' (1980)

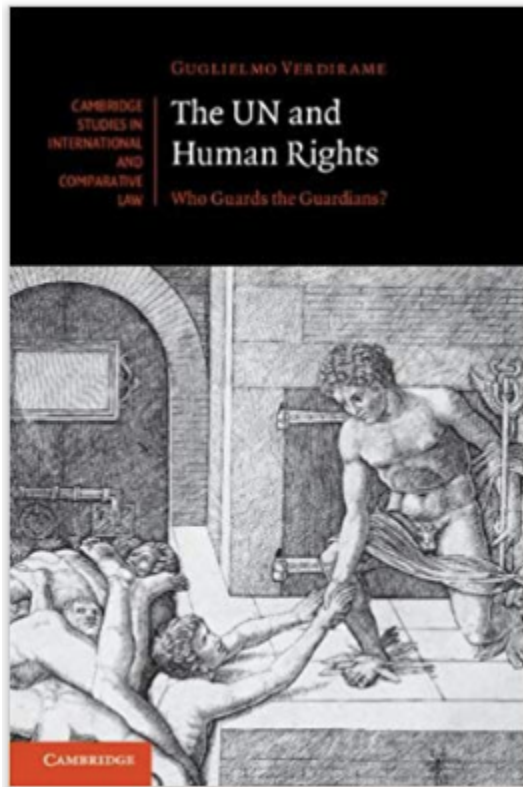
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- IOs are subject to international law and 'as such, are bound by any obligations incumbent on them under general rules of international law, under their constitutions, or under international agreements to which they are parties.'
- BUT –
  - privileges and immunities
  - Enforceability

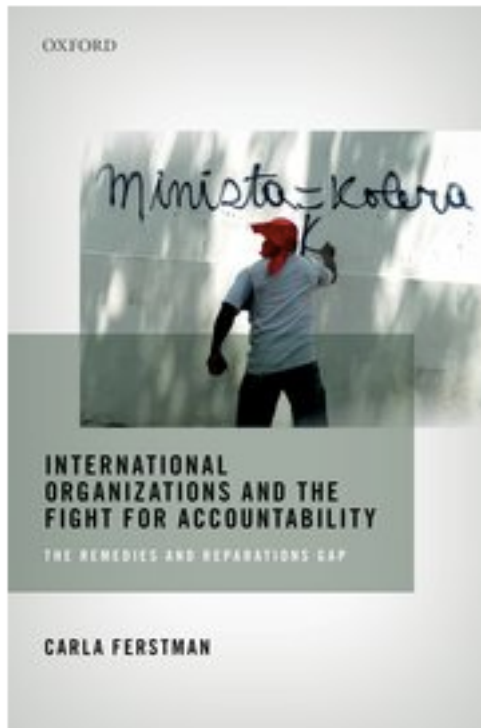
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# The Accountability Turn

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- Verdirame, *The UN and Human Rights: Who Guards the Guardians* (2011)



- Ferstman, *International Organizations and the Fight for Accountability* (2017)

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# Institutional Reform

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- World Bank – Inspection Panel
  - James Wolfensohn, as ‘a bold experiment in transparency and accountability that has worked to the benefit of all concerned’
  - China: Western Poverty Reduction Project Complaint
  - Invoked WB policies
  - Project pulled by WB - continued by China

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- Sinclair, Guy Fiti, *Beyond Accountability? Human Rights, Global Governance, and the World Bank Inspection Panel* (May 21, 2019).



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- Boon and Megret 'New Approaches to the Accountability of International Organizations' (2019) *International Organizations Law Review* 16 1-10



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# *Member State Responsibility*

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# ECtHR – back to basics

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- Bosphorus Hava Yollari Turzim ve Ticaret Anonim Sirketi v Ireland (Bosphorus case) 2005-VI (2006) 42 EHRR 1 para 153;



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*On IOM*

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# Betts (2011)

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- Although there is an International Migration Organization (IOM), it remains outside of the UN framework and has no explicitly normative mandate other than as a service provider to states. The degree of institutionalized cooperation that exists in relation to migration is therefore relatively limited in comparison to many other trans-boundary issue-areas.

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# Klabbers (2018)

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Migration, by contrast, is largely the province of the ...IOM, but this organization's constitution formulates its mandate in terms almost diametrically opposed to a community interest: Its brief is premised on guaranteeing the "orderly flow of migration movements," according to the preamble of the IOM's constitution, and the list of purposes of the organization also speaks predominantly in terms of what the IOM can do for its member states, as opposed to either migrants or the international community.

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# Institutional Features and Ethos

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- Service based – ‘the travel agency’
- Northern State dominated
- Lack of core-funding
- ‘Projectised’ ‘Field based’
- Competing with other IOs, humanitarian and commercial actors
- Internalised Ethos? ‘flexible’
- But policies!
  - ‘Humanitarian’ (2015)
  - Cf. ‘Protection’ (2015)

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# IOM's Structure

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- Office of the Director General
- Department of Operations and Emergencies – main source of funding; main role IDPs, esp disasters
- Department of Migration Management
- Department of International Cooperation and Partnerships



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# UN 'related'

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- International Atomic Energy Agency (IAEA)
- Organisation for the Prohibition of Chemical Weapons (OPCW)
- CTBTO
- WTO

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# Agreement between UN and IOM (2016)

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- Article 2(2)
- ‘independent, autonomous and **non-normative** IO’

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# IOM MCOF

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- [https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/MC2355\\_-\\_IOM\\_Migration\\_Crisis\\_Operational\\_Framework.pdf](https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/MC2355_-_IOM_Migration_Crisis_Operational_Framework.pdf)

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# Para 11

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‘The Operational Framework is based on the understanding that States bear the primary responsibility to protect and assist crisis affected persons residing on their territory in a manner consistent with international humanitarian and human rights law. IOM supports States, upon their request and with their consent, to fulfil their responsibilities.

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# Para 12

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IOM adheres to humanitarian principles and is a formal and full member of the United Nations response and coordination system for humanitarian crises. IOM is further bound and committed to the existing legal and institutional frameworks contributing to the effective delivery of assistance and protection and ultimately to the respect and promotion of human rights and humanitarian principles.

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# Conclusions

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- Lots of work to be done to clarify scope of obligations
- Aim for internal reform within IOs?
- Thinking through risks and opportunities of litigating against states
- Other options?