



IOM International Organization for Migration
OIM Organisation Internationale pour les Migrations
OIM Organización Internacional para las Migraciones

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Contribution of the International Organization for Migration (IOM) to the report of the Secretary General on “Oceans and the Law of the Sea”

UN Inter-Agency Meeting

IOM would like to inform that it works closely with its international partners in these areas, and is an active member of the United Nations inter-agency group on the treatment of persons rescued at sea referred to in paragraph 163 of the report. As you may have been informed, the most recent meeting of the inter-agency group took place in July 2002, chaired by the International Maritime Organization and hosted by UNHCR. At the introductory stage of the meeting, the issues recognized as being at stake were *the need of States to respect and ensure respect for the rights and dignity of the persons rescued at sea regardless of their status; their legitimate interest to maintain effective border and immigration controls and to prevent and combat transnational organized crimes such as the smuggling of migrants and trafficking in human beings; the need to meet the immediate humanitarian requirements of rescued persons and stowaways and the ensure that those who seek asylum are protected from immediate danger and are granted prompt access to fair and efficient*

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*status determination procedures in full compliance with respect to the principle of non-refoulement; and the need to maintain security and stability in international shipping.*¹

Stemming from the inter-agency meeting, a coordinating mechanism has been established to respond in emergencies. A designated focal point has been established in IOM who will communicate with the other focal points in future emergency cases necessitating international action. It is envisaged that the inter-agency group will continue its collaboration in future to develop guidelines for its members to use if such action is necessitated, and also to develop guidelines for the use of governments during rescues at sea involving refugees or asylum seekers.

IOM's Mandate

For IOM, the issues of interceptions or rescue at sea are first and foremost humanitarian; IOM has no role to play in law enforcement. IOM's motivating aims are to uphold the human rights and dignity of the individuals, while also working to assist States in maintaining border integrity through the promotion of orderly migration.

In terms of IOM's mandate and responsibilities concerning rescue at sea, I wish to recall for you that IOM's Constitution defines the categories of persons falling within the mandate of the Organization. Article 1.1(a) makes reference to *migrants*, while Article 1.1(b) refers to *refugees, displaced persons, and other individuals in need of international migration services*.

Strictly speaking, the term *migrant* in Article 1.1(a) is understood as covering migrant workers and other economic migrants and their family members. The categories in Article 1.1(b) cover cases where people had or have to leave their country of origin or habitual residence because of persecution, disasters, violation of fundamental human rights or other compelling factors.²

Under its Constitution, IOM is mandated *inter alia* to:

- *concern itself with the organised transfer of refugees, displaced persons and other individuals in need of international migration services for whom arrangements may be made between the Organization and the States concerned, including those States undertaking to receive them. (Article 1, 1(b));*
- *provide, at the request of and in agreement with the States concerned, migration services such as recruitment, selection, processing, language training, orientation activities, medical examination, placement, activities facilitating reception and integration, advisory services on migration questions, and other assistance as in accord with the aims of the Organization (Article 1.1(c)).*

¹ Report- Record of Decisions on the United Nations Inter-Agency Meeting on the Treatment of Persons Rescued At Sea (Geneva 2 and 3 July 2002)

² *Persons Falling Under the Mandate of the International Organization for Migration (IOM) and To Whom the Organization May Provide Migration Services*, IOM January 1992.

IOM's Activities

The competence given to IOM under its Constitution extends to issues involving irregular migration. One of IOM's Strategic Objectives specifically addresses the Organization's responsibility to help States and migrants find solutions to the problems and causes of irregular migration. Helping individuals and Governments to deal with the effects of irregular migration is now not only a traditional IOM activity but one which the Organization is constantly exploring with the help of its Member States. A wide variety of activities is undertaken by IOM in this regard. Addressing irregular migration is viewed by IOM as necessitating a holistic response. Preventative as well as responsive measures are needed.

In this regard, IOM recognises the significance of promoting dialogue between States, in an effort to promote the identification and sharing of effective practices. In response to an interest expressed by IOM's Member States for IOM to play a leading role in international migration policy and management, the IOM Council has launched a global forum on international migration. Beginning with the first International Dialogue on Migration at IOM's 50th anniversary Council Session of 2001, IOM administration, together with IOM's membership have selected issues of common interest and concern to pursue during Council with the participation of internal (IOM) and external experts including experts from other international organizations.

There is also proven value in consultations at the regional level. IOM actively encourages and facilitates dialogue on regional approaches to migration management through venues such as regional consultative processes (RCP) on migration, which can be found in all regions of the globe. RCPs are ideal fora for pursuing issues of common concern, such as issues arising from rescue at sea and smuggling of migrants, which would best benefit from a common, regional approach.

IOM also serves as the secretariat to the Berne Initiative, another forum appropriate to policy making on such issues. Through this initiative, IOM is working to further understanding of migration, to promote a dialogue on migration on the international level and to support the development of effective practices or guidelines for the management of migration.

Policy-makers frequently comment that there is no comprehensive international legal framework to address migration, as there is, for example, to address the plight of refugees. While it is true that there is no central legal regime, there are many international legal norms relevant to different aspects of migration. In connection with the Berne Initiative, and as a response to the requests of many IOM Member States in the policy dialogue to better understand the international legal framework governing migration, IOM organised and managed an independent expert study on *International Legal Norms and Migration*, which includes chapters on the authority and responsibility of States, the free movement of persons, return, forced migration, and smuggling of migrants. IOM developed the project with T. Alexander Aleinikoff, senior associate of the Migration Policy Institute and professor at Georgetown University Law Center who commissioned 17 expert papers by international legal scholars on

different aspects of migration to identify existing legal norms. The study will be published by Asser Press in early 2003. Mr. Aleinikoff's overview and analytical synopsis (the introductory chapter of the book) is published separately by IOM in the International Dialogue on Migration series in English, French and Spanish.

Specifically addressing trafficking or smuggling of human beings is another of IOM's expanding activities. Its objective in counter trafficking is defined as "to curtail migrant trafficking and to protect the rights of migrants caught up in the practice". IOM's main programmatic strategies for achieving the objective include seminars and fora, information gathering and research, technical cooperation, information dissemination, return and reintegration activities, and counselling and medical services. IOM's responses to trafficking and smuggling are comprehensive and , integrated – to *prevent* the phenomenon through information and awareness-raising, *protect* the victims through immediate assistance, shelter, access to services, return and reintegration etc., and *enable* governments and agencies, through technical cooperation, to manage the problem themselves. In this way, IOM addresses the causes and consequences of trafficking and the lack of resources and capacities of many developing or in-transition countries used by traffickers as transit points to the West or North, or as easy entries because of lax border controls.

Assisted voluntary return (AVR) is another core area of IOM which can have links to the issue of rescue at sea. Assisted voluntary return and subsequent reintegration assistance is seen by IOM as an important example of the support it can offer migrants and Governments. In this regard, I wish to inform you that IOM is in the process of completing an AVR Handbook for its staff, which will specifically address, inter alia, the issues of interceptions and rescue at sea.