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

**INFORMAL BRIEFING  
ON IOM AND INTERNATIONAL  
MIGRATION LAW (IML)**

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**IOM AND INTERNATIONAL MIGRATION LAW  
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# **IOM AND INTERNATIONAL MIGRATION LAW**

## **THE ISSUE**

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1. Orderly and humane management of migration is recognized today as a prerequisite for migration to be beneficial to both societies and migrants. In pursuing this objective, States have the responsibility to protect the rights of migrants and nationals, and to take into consideration the interests of both, within the parameters set by international principles, standards and norms (globally referred to as international migration law).

2. So far, the normative approach to migration has put emphasis on the rights of persons involved in migration. Many conventions exist at the universal and regional levels on rights of migrants, but these instruments are spread across various branches of law (human rights, humanitarian law, migrant workers, refugee law). There is no central point where they all come together or central source where overall information is easily accessible, and there is little attempt to understand the relationship of each of these instruments to the others.

3. Reference is also frequently made to principles and standards deriving from State sovereignty and having a direct bearing on the management of migration: right to protect borders, to confer nationality, to admit and expel foreigners, to combat trafficking and smuggling, to safeguard national security. States' rights and obligations in their mutual relationship (duty to cooperate, to readmit nationals) are less well defined and are treated in isolation.

4. This disparity or dispersion of norms contributes to the widespread belief that there are important gaps in the set of norms protecting migrants and/or regulating migration. Moreover, there is sometimes uncertainty about the exact content or intent of these instruments and lack of knowledge as to the status of their ratification and implementation by States. A further related issue is the still insufficient dissemination of information about the rights and duties to be enjoyed or respected by all migrants and, at all levels in national administrations, of the international norms to be applied by migration officials.

5. To fulfil its role to assist States in the orderly and humane management of migration, as stated in Council Resolution No. 923 (LXXI) of 29 November 1995, IOM intends to strengthen its involvement in the field of International Migration Law (IML) with special emphasis on the following aspects:

- Compilation of IML
- Dissemination and understanding of IML
- Implementation of IML
- Training and capacity-building on IML
- Promotion of IML as part of comprehensive migration management frameworks

## **ANTECEDENTS**

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6. IOM involvement with IML is not new. Over the years, IOM has accumulated an important amount of material and knowledge on IML which it disseminates to Field Offices and externally on request. By way of illustration, it has published research papers and other works on IML-related topics and in 2003, as part of the Berne Initiative, served as the catalyst for, and contributed to the production of “Migration and International Legal Norms”, which draws together in one analytical publication existing international standards and norms on migration. Moreover, the Organization provides review of migration policy and legislation for individual governments at their request.

7. IOM is an active member of the Steering Committee for the Ratification of the Convention on the Rights of All Migrant Workers and Members of Their Families, which is made up of intergovernmental organizations, non-governmental organizations and other members of civil society. In October 2003, IOM took on the role of Convenor of the Steering Committee, whose purpose is to build a global ratification campaign. IOM also cooperates with the Special Rapporteur for the Human Rights of Migrants in the fulfilment of her mandate and is actively involved in a number of inter-agency working groups dealing with various aspects of IML.

8. IOM has recently developed a two-day staff training module on the rights of migrants. The module is focused on IML and examines the various international instruments from which IML is derived. The training has been offered to staff in a number of regions of the world. In the past, the Organization has also conducted training for government officials on various aspects of IML, including the Guiding Principles on Internal Displacement, the Trafficking and Smuggling Protocols, and Migrant Workers Law. All these activities are based on Council Resolution No. 923 stating that IOM acts to uphold the human dignity and well-being of migrants.

9. Finally, at the global, regional and national levels, IOM has organized or been involved in conferences, workshops and seminars over the years which cover the rights and duties of States in the field of migration among other topics.

## **THE RESPONSE**

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10. Notwithstanding the activities of the Organization to date, there is considerable scope, and indeed need, for IOM to consolidate and streamline its involvement in the field of IML. To achieve this purpose, the Organization intends to establish an IML department, expanding on the existing legal capacity within the Organization, to serve as a focal point for IML within and outside the Organization. It is important to underline that there is no intention to engage in a new field of activity or to expand IOM’s mandate, but to strengthen and streamline ongoing activities, in order to better respond to a specific migration need.

11. IOM will accomplish this strengthening of its role by reorienting existing resources within the Administrative Part of the Budget and under Discretionary Income. It will complementarily use specially designed training projects funded by governments or the 1035 Facility in the achievement of IML objectives.

12. The IML department will exercise the following functions:

### **I. Compilation of IML**

13. One objective of the department is to become the internationally recognized repository of IML, drawing together in a comprehensive manner the set of norms regulating migration at the international, regional and national levels.

14. The department will make an inventory of what exists today in IML. It will compile a list of international and regional instruments comprising IML and create a database of IML accessible to users via the Internet. The database will include the following sources of information: international conventions, regional agreements and bilateral treaties; key decisions of international and regional bodies (Human Rights Committee, European Commission, European Council, Inter-American Court of Human Rights, etc); international resolutions/declarations; regional agreements; key decisions/communications of regional bodies; regional resolutions/declarations; information by country on treaty ratifications; relevant national legislation and country information.

15. Journal articles, seminar papers and other commentaries available electronically, and best practices in implementation of IML, will also progressively be added. Periodic updating would have to be organized.

16. This activity will not duplicate that of other agencies or academic institutions; it will put at the disposal of users a tool showing them where to find the information which already exists, in different and unrelated places, and will cover existing gaps.

### **II. Dissemination and understanding of IML**

17. The department will take a lead role in contributing to the understanding and awareness of IML among government policy makers, practitioners, academics, IGOs, NGOs and other partners. Establishing or strengthening synergies with existing or new partners, the department will conduct research, analyse and evaluate the various facets and interplay of existing IML and will produce working papers, studies and other material, regularly distributing Information Notes on developments in IML at the national, regional and international levels.

### **III. Implementation of IML**

18. Various intergovernmental organizations are the custodians of individual treaties, conventions and other instruments which constitute IML. There is sometimes insufficient knowledge of how these instruments complement each other. IOM will seek to encourage greater understanding among these organizations concerning the interplay and impact of the conventions in their respective spheres of responsibility. Through dialogue and information

exchange, the department will seek to establish greater inter-agency cooperation in promoting the ratification and implementation of the various treaties from which IML is derived.

19. The department will be responsible for encouraging and supporting IOM Field Offices in promoting implementation of IML at the national level. It will also provide information to countries considering ratification of the Conventions. In so doing, IOM has no intention publicly to denounce or sanction States for alleged non-compliance of obligations. However, IOM has been engaged for many years now in what could be termed “quiet and constructive advocacy”, encouraging and enabling States to comply with international instruments through programmes implemented by IOM, through insertion in their national legislation of generally accepted international standards, for instance the Palermo Protocols, and by helping to create the administrative structures and tools to give practical effect to legislation.

20. A key consideration is for IOM to encourage States to implement the instruments they have ratified. Time and again, reference is made to an “implementation gap” and IOM is ideally placed to help States fill this gap, without infringing upon the jurisdiction or competence of other bodies which are formally tasked with monitoring implementation. International conventions “belong” to States Parties, not to agencies, and collaborative efforts are needed to ensure optimal efficiency and avoid duplication. The members of the Geneva Migration Group welcomed the proposal for a strengthened IOM involvement in IML when the Director General briefed them on it in February.

#### **IV. Training and capacity-building on IML**

21. The department will seek to undertake a more active role in assisting governments to develop and implement migration policies, legislation and procedures consistent with IML, thereby strengthening their capacity to manage migration more effectively and consistent with international law. The department will consolidate and strengthen the Organization’s existing capacity to provide:

- (a) Advice to governments concerning their migration legislation and legal reforms, based on IML.
- (b) Technical assistance to governments having ratified the conventions on integrating relevant provisions into national legislation, and best practices for its implementation.

22. The department will build on the Organization's existing training capacity and programmes to promote knowledge of IML among government policy makers, practitioners, academics, NGOs and other international organizations, as well as its own staff. The department will provide staff training on IML on a more systematic basis in order to increase awareness of IML within the Organization. It will offer a 2-4 day training programme to government officials dealing with all aspects of IML and how it impacts on migration management, including migration law and policy. It will also offer IML courses on an annual basis open to students, practitioners, NGOs and other interested persons in various regions of the world.

**V. Promotion of comprehensive migration management frameworks**

23. A number of the international conventions from which IML is derived specifically call for greater intergovernmental cooperation in their implementation. As components of its ongoing programmes or as distinct activities, the department will conduct meetings and workshops on IML at both the national and regional level to facilitate and promote interdepartmental and inter-State awareness, dialogue and cooperation in the promotion of comprehensive migration management frameworks, based on the foundation of IML.

24. As a concluding note, the IOM Administration is convinced that this enhanced role of IOM in the field of IML will serve to demonstrate more clearly that IOM is principled and is engaged in contributing to the upholding of international standards. This consideration is particularly important at a time when real or perceived gaps affecting the international institutional architecture in the field of migration are being examined. This initiative to strengthen IOM's role in IML will no doubt contribute to assisting States in the humane and orderly management of migration.