Between refugee protection and migration management: the quest for coordination between UNHCR and IOM in the Asia-Pacific region

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ABSTRACT
This article discusses the role of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) in the context of significant changes in global migration governance. Drawing more specifically on examples from the Asia-Pacific region, it sheds light on the way UNHCR and IOM cooperate in situations where both organisations might claim to have legitimacy to intervene based on their mandate, eg in situations of 'mixed flows' of people and in the context of large-scale movements, especially when people may not be recognised as refugees but may still be in need of international protection. The recent changes in global migration governance, including the entry of IOM into the UN system, have arguably failed to bring clarity on the respective roles and responsibilities of UNHCR and IOM in such situations. While ad hoc arrangements have been established in various contexts, the lack of clear and predictable arrangements to allocate responsibilities and accountability between the two organisations in situations where both are involved is likely to fuel further tensions between them.

1. Introduction
Global migration governance has undergone significant changes over the past 15 years. In 2007, it was still possible to refer to the field of migration as ‘substance without architecture’ (Aleinikoff 2007), insofar as the normative framework was not supported by proper structures. Since then, there has been an impressive proliferation of both normative frameworks and institutions. These developments, however, have taken place in a rather disordered fashion, with global migration governance appearing to be a fragmented tapestry of institutions at various levels with different, and sometimes competing, agendas and priorities. The limits of this approach became most evident in 2015 in the context of the so-called ‘migration crisis’ in the Mediterranean Sea, which was prompted by the arrival of more than one million migrants and refugees on the European shores. The crisis – an institutional and
political crisis as much as a humanitarian and solidarity crisis – led to several initiatives aimed at reforming global migration governance.

Following a call by the Secretary-General of the United Nations (UN) for strengthened collaboration and action to address large movements of people and for the development of new ‘mechanisms’ to respond to such situations ‘more effectively and predictably’ (UNGA 2016a), the United Nations General Assembly (UNGA) convened a Summit for Refugees and Migrants in September 2016, which led to the adoption of the New York Declaration for Refugees and Migrants. The New York Declaration marked a ‘significant detachment from previous UN policy deliberations’ insofar as it sought to address the movements of refugees and migrants under the same umbrella (Thouez 2019, 4). Yet the two issues have remained largely separate ‘as a result of both the mandate-based concerns of key agencies and Member States’ acceptance of existing divisions’ (Betts and Kainz 2017, 12), with the New York Declaration calling for the development of two distinct global compacts, i.e. the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM), both adopted at the end of 2018. Another important milestone was the decision enacted during the UN Summit to bring the International for Migration (IOM) into the UN system as a related organisation to ‘strengthen […] cooperation’ with the UN and ‘enhance [the] ability [of the two organisations] to fulfil their respective mandates in the interest of migrants and their Member States’ (UNGA 2016b) – a move that would hardly have been conceivable a year prior.

Effective coordination between the United Nations High Commissioner for Refugees (UNHCR) and IOM – the two international organisations with a specific mandate on migration and refugee issues – is a critical aspect of the response to populations movements. They are indeed ‘the natural anchors of the UN’s strategy and institutional architecture on international migration (in all its forms) going forward’, as well as the ‘centre of gravity’ around which consultation and coordination are organised (UNGA 2017a). However, while the two organisations have a long history of cooperation, especially at the field level, their relations have mostly been ‘charged with competition and suspicion’, with terms such as ‘conflict’, ‘resentment’ or ‘suspicion’ frequently used to describe their interactions (Elie 2010, 352). Commentators have highlighted the ‘competitive struggle over different sections of the migrant business’ (Koch 2014, 917) between them, which has made cooperation difficult in areas where both have interests. These tensions became even more salient in 2015 during the crisis in the Mediterranean Sea, as well as in other contexts such as the Bay of Bengal and Andaman Sea and in the Red Sea, where people were moving together in large numbers as part of so-called ‘mixed flows’. While some were in search of asylum and safety and others were looking for economic opportunities, many were arguably leaving because of a combination of factors, making it difficult to put them in clear-cut categories (Crawley and Skleparis 2018) and to determine which of the two organisations would be best placed to provide assistance and protection to them.

Amongst other things, the adoption of the global compacts and the entry of IOM into the UN system were supposed to bring clarity and predictability regarding the response of the international community to situations that are somewhat at the crossroads between refugee protection and migration management. These include mixed movements as well as population movements where people have been compelled to flee and are in obvious need of protection, but for various reasons are not recognised as refugees. Yet there have been concerns that those situations which fall somewhere between the GCM and the GCR
have not been adequately addressed, despite many calls to ensure that the two compacts would be ‘complementary’. Concerns have been raised also regarding the real changes brought by the entry of IOM into the UN system as a ‘related’ organisation – a rather loose relationship with the UN – prompting commentators to speak of ‘unfinished business’ (Guild, Grant, and Groenendijk 2017) or a ‘missed opportunity’ (Micinski and Weiss 2016).

While there is a growing literature on the relations between UNHCR and IOM (Elie 2010; Koch 2014; Bradley 2017), there is surprisingly very little research on situations where it falls to the two organisations together to ‘steer the UN’s response’ (UNGA 2017a). More research is also needed on the role that IOM plays with regard to refugees and asylum seekers alongside, or at the detriment of, the refugee agency. This article partially fills this gap. It contributes to the academic and policy debate about international migration governance by analysing the relationship and interplay between UNHCR and IOM as well as the way they collaborate in concrete situations where both organisations need to be involved, ie mixed movements and large-scale influx of people who do not fit the legal definition of a refugee. What is the role of each organisation in such situations? How and to what extent do they divide and coordinate their activities? What are some of the main challenges in this regard?

Building on concrete examples from Asia-Pacific, this contribution identifies some of the main issues that have hampered effective coordination between UNHCR and IOM in the kind of situations described above. More specifically, it argues that the recent changes in the architecture of global migration governance, including the entry of IOM into the UN system, have failed in their objective to strengthen the capacity of the UN to respond quickly and more effectively to large-scale movements beyond the specific case of refugees, for which there were already arrangements in place. The two compacts rightly – albeit somewhat marginally – identify the need to respond to the protection needs of people who fall beyond the traditional category of refugees, such as disaster-displaced persons and other ‘migrants in situations of vulnerability (UN doc. A/RES/73/195 2018)’. Yet they certainly do not offer the ‘predictability’ that was promised and, indeed, needed in terms of assigning responsibilities between UNHCR and IOM in situations of mixed flows, or more generally in situations where both organisations might claim to have legitimacy to intervene.

Many of these issues came to the author’s attention while working with various international organisations and non-governmental organisations (NGOs) on migration and asylum issues, involving significant engagement in the discussions leading to the adoption of the two global compacts. They echoed the experience of the author in the field, most notably in the Asia-Pacific region, where the relations between IOM and UNHCR are even more complex due to the fact that the majority of states are not party to the Refugee Convention Relating to the Status of Refugees (hereafter the Refugee Convention), which results in asylum seekers and refugees being generally considered ‘illegal migrants’. In this context, both IOM and UNHCR might claim to have the legitimacy to intervene (subject to the consent of the governments concerned) based on their respective mandates. This configuration epitomises the risk of tensions and competition between UNHCR and IOM, and as such represents a particularly interesting case study regarding the lack of, and the search for, coordination between the two organisations.

The first section of this paper explores the increasing overlap between the mandates *ratione personae* of UNHCR and IOM as well as the main dividing lines between the two organisations. The second part analyses their cooperation in the context of mixed movements in the Asia-Pacific region. This includes the division of tasks between UNHCR and IOM
in the context of the Regional Cooperation Agreement (RCA) between Australia and Indonesia, as well as the establishment of the Regional Support Office of the Bali Process, which brings IOM and UNHCR under the same structure. While these initiatives reflect a certain degree of cooperation between the two organisations, they also illustrate some of the difficulties faced by UNHCR to ensure the protection of its persons of concerns in such contexts. The third section discusses two case studies of large-scale movements in the region, namely the Bay of Bengal and Andaman Sea crisis in 2015 and the Rohingya refugee crisis, highlighting some institutional obstacles to effective cooperation between UNHCR and IOM. The concluding part argues that tensions and competition will continue to define the relationship between what are arguably the two ‘building blocks’ of international migration governance unless something is done to firmly establish protection as a core part of IOM’s mandate and to hold the migration organisation accountable for its actions.

2. UNHCR and IOM: the two building blocks of global migration governance

UNHCR and IOM were created at the same time. UNHCR was established in 1951 as a subsidiary organ of the UNGA to provide legal international protection and durable solutions for refugees. It was initially conceived as ‘a rather weak and non-operational agency’ (Elie 2010, 346) that would carry out its work in favour of refugees through partnerships with states and other institutions involved in refugee matters, but has since become much more operational. For its part, IOM, first known as the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME) and then as the Intergovernmental Committee for European Migration (ICEM), was established the same year but outside the UN system due to the decision of the United States that communist countries should remain outside this initiative. It was conceived primarily as an operational organisation tasked with arranging the resettlement of millions of Europeans to overseas countries. Even though other considerations prevailed at the time of their establishment, some complementarity existed between the mandates of the two organisations (Elie 2010).

This complementarity has often been visible in the field, and UNHCR and IOM frequently cooperate (Pécoud 2018). Yet their relations have also become increasingly tense over the past few years, mostly due to their tendency to broaden their mandate and because of some fundamental differences that stand out most prominently when the two organisations work with the same groups of people.

2.1. Overlapping mandates and the risk of competition

Amongst various factors put forward in the literature to explain the challenges of effective coordination between international organisations, their tendency to broaden their mandates has been identified as one of the main points of contention. Indeed, as bureaucracies international organisations have agency, and as such they pursue their own agenda out of self-interest (Barnett and Finnemore 2004). They do so inter alia by ‘classifying and organizing’ the social world through the use of (constantly evolving) categories and definitions (Barnett and Finnemore 1999, 710–711; see also Bradley 2017) in an effort to legitimise their involvement in an increasing range of activities and be considered as the best suitable provider of solutions. This phenomenon contributes to
increasing the risk of overlap with other actors over a specific policy area. Considering the tendency of both UNHCR and IOM to broaden their mandates, many commentators have indeed highlighted the risk of ‘competition’ between them (Pécoud 2018; Geiger 2018).

While initially focussing on refugees as defined in both the 1951 Convention and its statute, ie on the basis of a ‘well-founded fear of persecution’, UNHCR’s mandate has been largely broadened over the past few decades by way of successive UNGA resolutions to cover people fleeing violence and armed conflicts, as well as categories of people other than refugees and asylum seekers (eg returnees and rejected asylum seekers under certain circumstances). It has also been given a leadership role in assisting non-refugee stateless persons as a distinct population of persons of concern and authorised by the UNGA to develop activities in favour of internally displaced persons (UNHCR 2013a). In the words of Jeff Crisp, in a relatively short space of time UNHCR ‘has indeed been transformed from the Office of the High Commissioner for Refugees into something which is beginning to resemble an office of the High Commissioner for Forced Migrants’ (Crisp 2009, 74). As for IOM, its mandate has also considerably expanded to cover all kinds of people on the move, whatever their status and reasons for moving (Perruchoud 1992). For IOM, the term ‘migrant’ is extremely broad and reflects ‘the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons’ (IOM 2019, 232–233).

Unsurprisingly, although IOM has always worked with refugees and asylum seekers, the main cause of friction between the two organisations has been the overlap between their mandates and the concerns of UNHCR regarding the fact that IOM has increasingly been covering situations that the refugee agency considers to fall under its mandate. This has become more problematic with IOM growing ‘enormously’ in the last decades in terms of budget, staff, presence, operations and contexts in which it operates (Pécoud 2018, 1625). Against this backdrop, UNHCR has become more defensive in its interactions with IOM and other stakeholders to ensure that its persons of concern are kept separated from the broader category of ‘migrants’ covered by IOM. Hence the insistence of UNHCR on the need to avoid any conflation between migrants and refugees (Crawley and Skleparis 2018) and the increasing use of the expression ‘refugees and migrants’ (or ‘migrants and refugees’ for IOM). While such expressions seem to perpetuate the binary construct between forced displacement and voluntary migration, the distinction is not so clear cut, however; there remains a ‘grey zone’ of people who are not recognised as refugees under international and regional refugee law, but are nevertheless in a vulnerable situation and may not be able to return home. In the Asia-Pacific, ‘labelling’ can be particularly challenging considering the absence of a specific refugee framework in most countries and the fact that refugees are typically referred to as ‘irregular migrants’.

### 2.2. Overview of the main dividing lines between UNHCR and IOM

One of the main differences – and potential causes of friction – between UNHCR and IOM is the existence – or the absence in the case of IOM – of a protection mandate. UNHCR has a strong protection mandate by virtue of its own statute as well as on the basis of the Refugee Convention. As such, the refugee agency not only protects the rights of refugees; it is also
supposed to refrain from engaging in certain actions that may have a negative impact on the situation and well-being of its persons of concern (the ‘do no harm’ principle). The Refugee Convention gives UNHCR a strong authority when it comes to issuing rules or engaging with the authorities on refugee matters. Advocating for a better respect of the rights of refugees (considering that states have the main responsibility in terms of refugee protection) has been a key aspect of UNHCR’s work.

IOM, for its part, has often been criticised for its lack of a protection mandate (Hirsch and Doig 2018; Pécoud 2018), with many commentators considering that it acts as a mere ‘service provider’ to states and that it ‘does not have an inbuilt mechanism to check its actions against a specific normative framework or protection mandate’ (Koch 2014, 913; see also Ashutosh and Mountz 2011; Pécoud 2018). As a matter of fact, many of IOM’s migration management activities are focussed on border control and law enforcement, and more generally on the fight against irregular migration. They may not take sufficiently into consideration human rights and protection aspects, or may even, for example, make it more difficult for people in need of protection to seek safety (Pécoud 2018). As noted by various observers, IOM’s activities may in fact ‘operate in the interest of the protection of states over asylum seekers’ (Ashutosh and Mountz 2011, 28) and the organisation sometimes does the ‘dirty work’ of states under the guise of an ‘independent, or seemingly independent body’ (Abbott and Snidal 1998, 18). The organisation has therefore become ‘an attractive option for states seeking to outsource their migration policies’ (Hirsch and Doig 2018, 681; see also Bradley 2017).

The degree of autonomy of IOM and UNHCR has also been highlighted as a fundamental difference between the two organisations. While UNHCR can claim to have a more independent standing vis-à-vis Western states by virtue of its mandate and on the basis of a funding system that relies to some extent on the ordinary contributions of UN member states, IOM has been criticised for lacking independence due to its essentially project-driven funding system (Geiger and Pécoud 2014; Hirsch and Doig 2018), which not only makes it extremely dependent on its donors but also pushes it to constantly seek to expand the scope of its activities. As a result, IOM has often been portrayed as an opportunistic service provider for states, especially Western states, which ‘can only do what states want (and pay) it to do’ and which ‘mov[es] quickly from one [project] to another, according to opportunities and circumstances’ (Pécoud 2018, 1622). Combined with its lack of a protection mandate, this mode of operation puts the organisation in a situation where it is ‘unlikely to resist implementing projects that would be incompatible with its (non-existent) standards’ (Pécoud 2018, 1629).

While the existing literature offers a rather Manichean picture of IOM and UNHCR, the reality is much more complex. Firstly, UNHCR has evolved largely beyond its initial protection mandate to become a major humanitarian organisation. Secondly, the refugee agency is not as independent from the will of states as has often been claimed: it is also governed by a political body – the UNHCR’s Executive Committee – composed of states. NGOs in the Asia-Pacific region have deplored the fact that UNHCR might at times have privileged the interest of states over those of refugees (Taylor 2014). Secondly, even though this is not explicitly provided for in its constitution, IOM’s mandate has also evolved to include protection. The 2016 agreement concluded between the UN and IOM specified that IOM would have to conduct its activities ‘in accordance with the Purposes and Principles of the Charter of the United Nations and with due regard […] to other relevant instruments in the international migration, refugee and human rights fields’ (UNGA 2016b). Concretely, IOM adopted a protection policy in 2015, and it has increasingly reinforced protection capacities in its
operations. Thirdly, UNHCR is also largely dependent on voluntary contributions – in fact, around 90% of its budget is funded through voluntary contributions (ExCom 2019).

There remain two major differences between the two organisations. On the one hand, UNHCR has an important role to play in terms of elaboration and supervision of international norms, whereas IOM is a so-called ‘non-normative’ organisation. However, IOM has already been involved in the development of non-binding standards, so what being a ‘non-normative’ organisation arguably means is that IOM will neither advocate for the rights of migrants and refugees nor condemn the actions of governments (which is also an important dimension of protection). On the other hand, UNHCR is accountable to the UNGA while IOM reports only to its member states (Guild, Grant, and Groenendijk 2017). Thus, even if IOM violates its obligations in the field of human rights, there is little chance that it would be held accountable. Unfortunately, the 2016 agreement does not address those two issues: according to the agreement, the UN ‘recognizes that [IOM] shall function as an independent, autonomous and non-normative international organisation’ (UNGA 2016b). Considering these limitations, The UN–IOM agreement essentially ‘preserve[s]’ the role of IOM ‘as a subcontractor for member states’ (Micinski and Weiss 2016).

3. UNHCR and IOM in the context of mixed movements in the Asia-Pacific

While IOM might be accused of gradually encroaching upon UNHCR’s territory, the opposite is also true. Indeed, while claiming that it is not a ‘migration organisation,’ the refugee agency has increasingly been involved in migration through the so-called asylum–migration nexus. The publication of the UNHCR’s 10-Point Plan of Action on International Protection and Mixed Migration in 2007 represented a milestone in this regard, yet it came to the great displeasure of IOM (UNHCR 2012), which developed its own migration crisis operational framework in 2012. Both documents nevertheless recognise the importance of partnerships to respond to the challenges posed by such movements.

Mixed movements have been recognised as a particularly important phenomenon in the Asia-Pacific region (UNESCAP 2017). There has been a certain level of coordination between UNHCR and IOM in the context of the movements of migrants and refugees by sea along the ‘Australian route’ between Indonesia and Australia and in the context of the Bali Process. Yet there have been frictions also, primarily due to doubts over the lack of protection concerns on the IOM side and its propensity to follow the agenda of the Australian government, which is the major source of funding for migration programming in the region. The result has been an increasing marginalisation of UNHCR and a tendency to respond to mixed movements – including refugees and asylum seekers – through the prism of migration management.

3.1. Cooperation ‘from above’: the regional cooperation agreement between Australia and Indonesia

The irregular movements of migrants and refugees have been of particular concern to the Australian government. Following the MV *Tampa* incident in August 2001, which involved some 430 refugees rescued at sea while attempting to reach its territory, Australia took increasingly restrictive measures aimed at preventing the irregular arrival of people to its territory, including the development of the infamous ‘Pacific solution.’ As part of this initiative,
the Government of Australia concluded a regional cooperation agreement (RCA) with its Indonesian counterpart, which required Indonesia to intercept and detain individuals attempting to go to Australia in exchange for significant funding, most of which was channelled through IOM.

Under the RCA, IOM is responsible for the refurbishment of Immigration Detention Centres (IDCs) as well as for the provision of assistance to the concerned persons. Those claiming asylum are, however, referred to UNHCR for registration and refugee status determination (RSD). In principle, they should be placed in community housing – managed by IOM – pending a decision on their asylum claim and their subsequent resettlement if found to be refugees. IOM is also responsible for the organisation of the repatriation of irregular migrants under its Assisted Voluntary Return and Repatriation (AVRR) programme, with UNHCR required to give its clearance before registered refugees can be returned. The RCA has been an example of cooperation between IOM and UNHCR based on their respective mandates and some of their specific areas of expertise. The roles of the two organisations in this process were spelled out in various internal directives adopted by the Indonesian government in 2002 and 2010.

Yet the cooperation between UNHCR and IOM under the RCA has not been without problems. As Kneebone (2017) noted, the RCA ‘prioritise[d] the role of IOM’ over that of UNHCR, whose funding was limited, affecting the capacity of the organisation to carry out its mandate. The most important issue, however, has been the manifest disregard of IOM for the impact of its activities on the beneficiaries. In the case of AVRR, presented by IOM as ‘a more humane and dignified approach to return’ for people who might otherwise be forcefully deported (IOM 2016), there have been concerns that IOM and the Indonesian government pressured people coming from countries such as Afghanistan, Iran and Iraq to return to their countries (Hirsch and Doig 2018). Even if they agreed to return, such returns could have been tantamount to constructive refoulement if the concerned persons were not given a decent alternative, other than staying in IDCs for an indefinite period of time or lingering in Indonesia without prospects for a durable solution. There is also evidence that the work of IOM in IDCs encouraged the authorities to resort to detention, and as such contributed to increasing the number of migrants and refugees in detention (Nethery, Rafferty-Brown, and Taylor 2013; Kneebone 2017). In Indonesia, IOM has arguably been a particularly attractive partner for Australia, ‘because of its project-based funding model, lack of a legal mandate, operational flexibility, reputation for effectiveness, and ideological ambivalence about its impact on the rights of asylum seekers’ (Hirsch and Doig 2018, 698).

3.2. The Regional Support Office of the Bali Process – an innovative setting bringing together IOM and UNHCR

Another important development in the region, closely related to the implementation of the Pacific Solution, has been the establishment of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime in 2001. The Bali Process is the main regional consultative process in the region, with 49 members – including IOM and UNHCR – as well as several observers. Although it is officially co-chaired by Australia and Indonesia, it is largely dominated by Australia, which funds most of the projects (Kneebone 2014). As such, the Bali Process has been largely aligned with Australian’s migration priorities, with a focus on the prevention of irregular migration across the region.
UNHCR has engaged with the Bali Process since the very outset, in an attempt to frame migration in the region as ‘mixed movements’ and ensure that refugee protection considerations will be taken into account. While the results of this approach were rather limited, a new momentum emerged in 2009, following an increase in so-called ‘irregular maritime movements’ towards Australia and in the Bay of Bengal and Andaman Sea (Petcharamesree 2016). In these circumstances, the adoption in 2011 of a regional cooperation framework (RCF) was seen as a breakthrough. Promoted initially by UNHCR and in line with its 10-Point Plan, the RCF consisted of a set of principles aimed at providing ‘a more effective way for interested parties to cooperate to reduce irregular movement [by sea] through the region’ while taking into consideration the specific situation of refugees (Co-Chairs’ Statement 2011).

The RCF was accompanied by the establishment of the Regional Support Office (RSO) of the Bali Process – another initiative promoted by UNHCR – the following year. Conceived initially as the ‘implementing arm’ of the RCF, the RSO operates under the oversight and direction of the co-chairs of the Bali Process, namely Australia and Indonesia, in consultation with UNHCR and IOM. At the time of its establishment, the RSO was an innovative initiative aimed at facilitating regional cooperation, including refugee protection, through concrete arrangements, with a clear focus on the movements in the Andaman Sea. The presence of both UNHCR and IOM was supposed to ensure better coordination and complementarity in the work of the two organisations in the context of mixed movements. There have indeed been good examples of collaboration, especially in the development of trainings and guidelines that included refugee protection considerations in broader migration issues.

However, by all accounts the activities of the RSO have increasingly prioritised the traditional fields of interest of the Bali Process at the detriment of refugee issues. IOM has been largely instrumental in this process; funded by the Australian government, it has implemented most of the RSO projects with a focus on border control, migration management and the fight against smuggling and trafficking (Petcharamesree 2016; Bali Process 2017). In just a few years after the adoption of the RCF, expectations regarding a more systematic inclusion of refugee protection considerations into the work of the Bali Process have already been lowered considerably. This led UNHCR to reconsider its level of engagement with the RSO and with the Bali Process more generally. For instance, in 2013 UNHCR worked with the Indonesian government on the organisation of a Special Conference on the Irregular Movement of Persons in Jakarta that somewhat challenged the pre-eminence of the Bali Process. The special conference resulted in the adoption of the Jakarta Declaration, which was much more protection oriented than the traditional approach under the Bali Process (Moretti 2016; Kneebone 2016).

4. The search for cooperation between IOM and UNHCR in the context of large-scale movements

One of the major issues regarding the interplay between UNHCR and IOM is related to their respective roles and responsibilities in the context of large-scale population movements. The notion of ‘large movements’, according to the New York Declaration, is context specific and depends on a number of considerations (UNGA 2016c). The declaration further states that such movements ‘may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes’.
This section analyses the response of UNHCR and IOM to two situations of large-scale movements in the Asia-Pacific: the 2015 Bay of Bengal and Andaman Sea crisis, and the Rohingya crisis that imploded in August 2017. These two case studies demonstrate how difficult the relations between the two organisations can be in the context of emergency situations when there are uncertainties regarding their respective roles and responsibilities. While both UNHCR and IOM try to profile themselves as the best providers of solutions, it appears that IOM is indeed a more attractive option for states due to its lack of a protection mandate and its flexibility as a service provider that does not question states’ policies. These developments appear to have taken place to the detriment of refugees and asylum seekers, to the dismay of UNHCR.

4.1. Refugees and migrants: UNHCR and IOM coordination in the context of the Bay of Bengal and Andaman Sea crisis

In the context of large-scale mixed movements, UNHCR and IOM have traditionally taken separate initiatives, although in recent years there have been efforts to develop more coordinated responses in the form of Refugee and Migrant Response Plans, which set out the strategic direction, the main needs, and the funding requirements of a response. The informal arrangement in such situations is that UNHCR would take a more important role if an influx were composed predominantly of refugees, while IOM would take the lead if the persons were predominantly economic migrants. There are cases, however, where the designation of a lead agency is not so obvious.

According to estimates, more than 150,000 people, essentially a mix of Bangladesh migrants and Rohingya refugees, moved by sea along the ‘Malaysian route’ between 2012 and 2014. The movement continued, with some 25,000 people reported to have followed in early 2015 (UNHCR, IOM, and UNODC 2015). The Bay of Bengal and Andaman Sea crisis erupted fully in May 2015 following a crackdown on trafficking rings by the authorities in Thailand and Malaysia. Migrant smugglers became reluctant to disembark their passengers in Thailand, the traditional transit point to move onward by land to Malaysia, leaving the boats and their passengers stranded in the middle of the sea. Under considerable pressure, Thailand, Malaysia and Indonesia met in Kuala Lumpur on 20 May 2015, where Indonesia and Malaysia accepted responsibility to intensify search and rescue operations and to provide a temporary shelter to the concerned persons – an estimated 7000 people. They also emphasised the responsibility of the international community and made some of their actions subject to the condition of receiving the necessary support. The meeting statement made it clear that the three countries considered these people to be ‘irregular migrants’ – a qualification that laid the groundwork for further engagement of IOM to the detriment of UNHCR.

Unlike in some other contexts, nothing like a Refugee and Migrant Response Plan was developed in the context of the Bay of Bengal and Andaman Sea crisis. This was arguably due to the fact that the two organisations could not agree on who would be leading the response to the crisis considering the more or less equal number of refugees and migrants, as well as the uncertainty around their status. Instead, there was a competition between the two organisations to frame the issue in a way that would give them a more significant role in the response, with UNHCR referring to ‘mixed flows’ including a substantial number of refugees (UNHCR, IOM, and UNODC 2015). The limited cooperation and coordination between the two organisations soon became obvious, as demonstrated by separate funding
appeals, the use of different terminology (‘migrants’ for IOM; ‘refugees and migrants’ for UNHCR) and conflicting figures throughout the crisis.

The lack of a common narrative and framework on the best way to approach such situations was apparent also during the Special Meeting on Irregular Migration in the Indian Ocean, which was organised by the Government of Thailand on 29 May 2015. Both IOM and UNHCR participated, the former to ‘underline the importance of comprehensive migration management’, and the latter to call ‘for innovative solutions to the complex problem and to ensure assistance for those in need of protection’ (Ministry of Foreign Affairs of the Kingdom of Thailand 2015). The Summary of the Special Meeting, which set out a ‘roadmap’ for the resolution of the crisis, contained only one reference to the need to identify ‘those with protection needs’, yet without using the term ‘refugees’ (Ministry of Foreign Affairs of the Kingdom of Thailand 2015). However, the document included a large number of measures aimed at preventing irregular migration, smuggling of migrants and trafficking in persons in a comprehensive way. These are all areas where states can count on the support of IOM.

In practice, IOM was therefore designated as the lead agency by the governments of Thailand and Indonesia (Malaysia is neither a member state nor an observer state of IOM) when it came to providing a broad range of basic services to both the Rohingya refugees and the Bangladeshi migrants (IOM 2015). IOM also contributed to the rehabilitation of detention-like facilities in certain locations and offered AVRR assistance to those who agreed to return to their country, raising the same questions regarding the fact that such measures could lead to an increase in the number of migrants and refugees in detention and the risk of refoulement. For its part, UNHCR was mostly involved in the identification of resettlement options for the Rohingya who were expected to leave the territory within a year (which did not happen). This confirmed the position of IOM as the privileged partner of states that perceive it as an organisation that might operate in their interest over that of asylum seekers (Ashutosh and Mountz 2011). Against this backdrop, one of the objectives behind the changes in the field of global migration governance initiated in September 2016, with the adoption of the New York Declaration and the entry of IOM into the UN system, was precisely to strengthen the response to such situations ‘by a strong IOM–UNHCR tandem working together’ (UNGA 2017a) to ensure the protection needs of migrations and refugees would be identified and addressed adequately.

### 4.2. Refugees or migrants: the competition between IOM and UNHCR to lead the response to the Rohingya crisis in Bangladesh

While the characterisation of the Bay of Bengal and Andaman Sea crisis as a ‘large-scale’ movement could be subject to debate, the influx of some 740,000 people from Myanmar, a large majority of whom were Rohingya, to Bangladesh in late August 2017 led to the worst refugee crisis that the region had witnessed since the end of the Indochinese refugee crisis. The displacement of the Rohingya, an ethnic group that had been the victim of systemic oppression and discrimination from the Government of Myanmar, was prompted by what a UN-mandated Independent International Fact-Finding Mission on Myanmar (Human Rights Council 2018) characterised as ‘a widespread and systematic attack’ on civilians.

Despite the scale of the humanitarian crisis, the response of the international community was hampered by the fact that the Government of Bangladesh, which is not party to the Refugee Convention, does not recognise the Rohingya as refugees; they are thus generally
referred to as ‘illegal migrants’. According to UNHCR, however, a person is a refugee because of the circumstances that he/she fled, and not because he/she is recognised as such by a government (UNHCR 1977). Thus, the Rohingya should be, from UNHCR’s standpoint, considered *prima facie* refugees and should fall under its mandate. According to the arrangements within the UN system, UNHCR should be in charge of, and accountable for, the response to refugee situations. The role and responsibilities of UNHCR in refugee-related emergencies are set out in the Refugee Coordination Model (RCM), which provides that the refugee agency should lead the entire cycle of a refugee response, including inter-agency contingency planning, response, resource mobilisation and finding durable solutions (UNHCR 2013b).

In the context of Bangladesh, however, the government initially selected IOM to coordinate and lead the response, which meant that the international organisation specifically mandated to assist and protect refugees – that is, UNHCR – was largely absent in the first months of one of the largest refugee crises in recent history. To explain this situation, it has been said that IOM benefitted from a close relationship with senior figures in the government9 and that its field presence and expertise were much stronger than UNHCR’s in Bangladesh.10 Despite numerous states calling for greater engagement of UNHCR, IOM accepted the offer without raising a figurative eyebrow;11 it did not even object to the characterisation of the Rohingya as ‘irregular migrants’ rather than as refugees.

From the very outset, there were concerns regarding the way the Bangladeshi authorities would deal with the situation. IOM has considerable experience in responding to humanitarian emergencies, yet it was unlikely to stand up to the Government of Bangladesh to ease some of the restrictions and ensure an adequate level of protection for the Rohingya. As one commentator noted, ‘without putting UNHCR’s experience in protection front and centre, Bangladesh would get away with a security-driven response, with military-style closed camps’,12 which is an accurate description of what happened on the ground; the Rohingya were confined in camps on a ‘temporary’ basis, without freedom of movement and with very limited access to basic services. Things might not have been done differently were UNHCR involved from the beginning, but the refugee agency would have been in a position to invoke a broad range of rules and policies in its dialogue with the Bangladeshi authorities. After all, Bangladesh has been a member of UNHCR’s Executive Committee (ExCom) since 1995, and as such it has endorsed the conclusions adopted by the ExCom.

In the same vein, there were suspicions that IOM’s lack of a protection mandate was deemed more convenient for the Government of Bangladesh, which has officially pushed for the swift return of the Rohingya to Myanmar. For its part, UNHCR would have been in a better position to remind the authorities of their obligation regarding the prohibition of refoulement and to reaffirm the principle according to which repatriation should only take place on a voluntary basis and under conditions of safety and dignity.13 As noted above, it falls specifically to UNHCR, under its statute, to seek permanent solutions for refugees in cooperation with the concerned governments.

Under increased pressure from UNHCR and a certain number of states, it was decided within the UN in late September 2017 that new coordination arrangements would be put in place to offer more space for UNHCR to *de facto* exercise its mandate. While the RCM puts the overall responsibility for the response to a refugee situation on UNHCR, a new coordination model was created to deal specifically with the situation in Bangladesh. At the field level, operational coordination has been ensured through an Inter-Sector Coordination
Group (ISCG), a cluster-like coordination mechanism put in place by IOM prior to August 2017, and which has significantly evolved since then to reflect the ‘refugee’ dimension of the crisis. The ISCG is led by a Senior Coordinator seconded by UNHCR to the Resident Coordinator’s Office, while the Secretariat of the ISCG is managed by IOM and includes other UN agencies and NGOs. An inclusive body called the Strategic Executive Group (SEG) was also established in Dhaka to lead the response. The SEG is co-chaired by the UN Resident Coordinator and the country representatives of UNHCR and IOM; it includes UN agencies and NGOs working on the refugee response and meets at the chief-of-mission level to provide strategic and policy guidance to partners working in Cox’s Bazar and to support broader advocacy and resource mobilisation efforts.

The increasing role of UNHCR in the response to the Rohingya influx led to a significant change in the way the crisis has been framed, as evidenced by the changes between the various iterations of the response plans that have been produced since the beginning of the crisis. For instance, the Preliminary Response Plan published by the ISCG – then led exclusively by IOM – in September 2017 referred to the Rohingya as ‘Undocumented Myanmar Nationals’ – a term used by the Bangladeshi government in line with its national strategy on the Rohingya that not only emphasises the ‘irregular’ dimension of their presence in the country, but also fails to acknowledge their specific vulnerabilities. In comparison, the 2020 iteration of the Joint Response Plan for Rohingya Humanitarian Crisis – made jointly with the Government of Bangladesh – referred at the same time to refugees, ie the language used by the UN system, and to ‘Forcibly Displaced Myanmar Nationals’, the expression chosen by the Bangladeshi government to avoid the use of the term ‘refugee’ while reflecting the specific situation of the Rohingya as uprooted people. It has been recognised in the meantime that the Rohingya situation was essentially ‘a protection crisis’ (ISCG and Government of Bangladesh 2020, 13). These changes have been reflected in the funding requirements, with UNHCR requiring a substantial amount of money for protection-related activities while IOM remains significantly involved in its traditional areas of expertise, such as camp coordination and camp management (CCCM).

Yet it must be noted that the rationale behind this hybrid system – between a traditional cross-border refugee response led by UNHCR according to its RCM and the cluster approach used at the country level in conflict-related humanitarian emergencies and disaster situations – was not the degree of effectiveness of the response, as the ISCG model is an ad hoc arrangement adopted to give a role to both UNHCR and IOM in the crisis response. The set-up also raises some concerns in terms of accountability: while in principle UNHCR should be accountable for the response in such a crisis, in Bangladesh it is the SEG as a group – rather than UNHCR – that is responsible for the overall response. In other words, there is no single agency accountable for the response.

5. Conclusion

UNHCR and IOM are the two most important organisations working in the field of human mobility, and the international community expects them to work together. While there are good examples of cooperation in situations that are somehow at the crossroads between their respective mandates, it is clear also, as evidenced in the case of the Bay of Bengal and Andaman Sea crisis and the Rohingya crisis, that such situations are likely to spur unhealthy competition and fuel tensions between them.
The UN Summit organised in New York in September 2016 was the result of a series of crises, most notably across the Mediterranean Sea, which tragically exposed the limits of the global migration governance in situations of large-scale movements of migrants and refugees. While commending the efforts to ‘forge and strengthen more predictable responses to mixed movements’ through the UNHCR’s 10-Point Plan and the development of the IOM Migration Crisis Operational Framework, the report of the UN Secretary-General published ahead of the summit rightly observed that ‘major challenges remain[ed] both in principle and in practice’ when it came to responding more predictably to mixed movements (UNGA 2016). The UN Summit, the inclusion of IOM in the UN system and the subsequent development of the two global compacts were supposed to address those limitations, yet these initiatives failed to provide much-needed clarity on the respective roles and responsibilities of UNHCR and IOM in situations where both organisations are involved.

As a result, there remain significant uncertainties regarding the coordination arrangements between IOM and UNHCR in response to large-scale and/or mixed movements. Certain mechanisms have been established to strengthen coordination in such contexts, but they remain ad hoc and largely subject to the will of states. While IOM is now part of the UN system, the coordination arrangements in Bangladesh are an institutional aberration that was made possible due to its lack of genuine commitment to the protection of migrants and refugees and its lack of accountability. In the absence of predictable mechanisms, new institutional arrangements have also been established in other contexts to facilitate the work between UNHCR and IOM, for example coordination platforms for refugees and migrants from Venezuela in Latin America. Somewhat ironically, the ‘quest for coordination’ between the two organisations may result in the multiplication of new ad hoc settings and somewhat superfluous mechanisms of varying levels of importance, which will only add to the already growing density and complexity of global migration governance. If the two organisations are indeed the ‘natural anchors’ (UNGA 2017a) of global migration governance, then the foundation of the edifice will remain fragile unless these issues are addressed.

Against this backdrop, in January 2019 UNHCR and IOM published a joint letter that sought to clarify their roles and the coordination arrangements in situations where both might claim to have legitimacy to intervene. Concerning the delimitation of their respective mandates, IOM commits to ‘ensuring that international refugee law is respected’ and states it will ‘appreciate and respect the distinct terminologies and categorizations of persons on the move’, with refugees and those in need of international protection as defined under international refugee law falling under the mandate of UNHCR. UNHCR, for its part, ‘recognizes IOM’s lead in supporting migrants in vulnerable situations’ (UNHCR and IOM 2019). When movements are of a ‘mixed nature’, as was the case in the Bay of Bengal and Andaman Sea, UNHCR and IOM commit to ‘work hand-in-hand in establishing and co-leading Refugees and Migrants Coordination Platforms for effective coordination’ (emphasis added). In the case of large-scale movements that are predominantly composed of refugees, they agreed, in what seems to be a direct reference to the influx of Rohingya into Bangladesh, that ‘the operational response must be one where UNHCR is able to carry out its mandated responsibility – including where others might not wish to have the individual recognized as a refugee or in need of international protection’ (UNHCR and IOM 2019). To date, however, the coordination arrangements put in place in Bangladesh have not yet changed to reflect this commitment.
While the joint letter is already a step in the right direction, what is needed is at the very least a more formal agreement between UNHCR and IOM clearly specifying the coordination arrangements and the division of roles and responsibilities between the two organisations in the type of situations referred to above. An even better option, as suggested by the UN Secretary-General a few years ago, would be to transform IOM into a UN specialised agency (UNGA 2017b). Integrating IOM into the UN rather than bringing it in a closer relationship, as was done in 2016, might indeed go a long way towards consolidating the foundation of global migration governance, including addressing the critical issues related to the non-normative mandate of IOM and its lack of accountability. Failing that, there is a clear risk, as Hathaway (2019, 593) noted, that we will ‘reinvent the proverbial wheel each and every time’ when such situations take place.

**Disclosure statement**

No potential conflict of interest was reported by the author.

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**Notes**

1. UNGA, **New York Declaration for Refugees and Migrants: resolution/adopted by the General Assembly**, UN doc. A/RES/71/1, 3 October 2016.
2. Global Compact on Refugees, UN doc. A/73/12 (Part II), 2 August 2018; Global Compact for Safe, Orderly and Regular Migration, UN doc. A/RES/73/195, 19 December 2018.
3. The notion of ‘mixed flows’ generally refers to irregular movements composed of persons moving for various reasons (including refugees and asylum seekers, migrant workers or victims of trafficking, noting that these categories are not mutually exclusive) using the same routes and means of transportation (UNHCR 2011). Various expressions have been used interchangeably to refer to the same phenomenon, eg ‘mixed migration’, ‘composite flows’ or ‘mixed movements’.
4. UNGA, res. 428 (V), 14 December 1950, Annex.
5. See UNHCR, **The Executive Committee’s Origins and Mandate**, https://www.unhcr.org/executive-committee.html
6. See the IOM Constitution at www.iom.int/constitution
7. See the Bali Process Membership at https://www.google.com/search?q=bali+process+membership&oq=bali+process+membership&aqs=chrome..69i57.3519j0j4&sourceid=chrome&ie=UTF-8
8. Ministers of Foreign Affairs of Malaysia, Indonesia, and Thailand, **Joint Statement** (at the Ministerial Meeting on Irregular Movement of People in Southeast Asia, 20 May 2015).
9. IRIN, Bangladesh Resists Greater UNHCR Role in Rohingya Crisis, 23 October 2017, available at https://www.irinnews.org/news/2017/10/23/bangladesh-resists-greater-unhcr-role-rohingya-crisis

10. Prior to the influx, UNHCR was in charge of two refugee camps hosting 30,000 or so registered refugees who entered the country during a previous influx in the early 1990s, while IOM had been tasked with coordinating humanitarian activities in favour of a much larger number of persons, under the National Strategy on Registered Refugees and Undocumented Myanmar Nationals adopted in 2013.

11. See for instance the IOM Statement Calling for Restraint, More Aid for Civilians Fleeing Myanmar on 30 August 2017, at https://www.iom.int/news/un-migration-agency-iom-calls-restraint-more-aid-civilians-fleeing-myanmar

12. IRIN, Bangladesh Resists Greater UNHCR Role in Rohingya Crisis, 23 October 2017, available at https://www.irinnews.org/news/2017/10/23/bangladesh-resists-greater-unhcr-role-rohingya-crisis

13. See for instance UNHCR, Statement by UN High Commissioner for Refugees on the Repatriation of Rohingya Refugees to Myanmar, 11 November 2018, available at https://www.unhcr.org/news/press/2018/11/5be7c4b64/statement-un-high-commissioner-refugees-repatriation-rohingya-refugees.html

14. The ISCG was established in 2013 following the adoption by the government of its National Strategy for Myanmar Refugees and Undocumented Nationals.

15. See van Rijmsdijk, Marchand and Heins, this issue.

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