IOM and Ethical Labour Recruitment

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In recent years, the International Organization for Migration (IOM) has quietly moved from the periphery of the international system into a central role in global migration governance. IOM's elevation reflects a major shift in the international migration field towards a reluctant recognition by States that international cooperation is needed to address some aspects of cross-border labour migration flows. Citing sovereignty concerns, States had long jealously guarded control over their borders – hence the scarcity of treaties concerning labour migration and the historic lack of an international institution recognized as the lead global migration agency. But growing faith in the potential for labour migration to foster development, combined with the challenges faced in responding to the 2015 mass migrations, prompted States to address labour migration as an issue of international concern. In a bid to assume the institutional lead on these issues, IOM joined the UN system as a 'related organization' in 2016, and rebranded itself as 'UN Migration'. Soon thereafter, IOM assumed a prominent role during the negotiations over the 2018 UN Global Compact on Safe, Orderly, and Regular Migration ('GCM').[1] That instrument ultimately designated IOM to lead UN system-wide efforts to facilitate States' implementation of its provisions – thus reaffirming IOM's role as global lead agency on migration.[2]

From this elevated perch, IOM now enjoys a more powerful platform to promote its approach to global migration, which includes the idea that proper management can make cross-border labour migration 'work for all': for countries of origin and destination, and for

[1] UNGA Res 73/195, *Global Compact for Safe, Orderly, and Regular Migration* (19 December 2018) UN Doc A/RES73/195 (hereafter GCM).
[2] The GCM assigns IOM the role of coordinator and secretariat for a new UN migration network – that network is intended 'to ensure effective and coherent system-wide support for implementation, including the capacity-building mechanism, as well as follow-up and review of the Global Compact, in response to the needs of Member States.' GCM, para 45.

migrants themselves. This approach coincides with a growing faith in the 'migration-development nexus', or the idea that remittance-producing migration can be a solution to poorer countries' development problems. For adherents of this view (i.e. 'migration optimists'), migration offers a 'triple win': countries of origin benefit from remittance revenues generated in foreign labour markets; countries of destination gain access to flexible and cheap labour; and migrants enjoy the opportunity to earn more money abroad than they would back home. Critics (i.e. 'migration pessimists') caution, on the other hand, that migrants do not necessarily emerge as winners from efforts to increase cross-border labour mobility. Not only do they carry the burden of economic development for their home communities, but migrant workers often face substantial risks of abusive recruitment and employment practices, even trafficking and forced labour.

As the lead global migration agency, IOM could help address these concerns by utilizing its extensive networks and soft governance techniques to encourage migrant worker-protective norms and practices be adopted and implemented. IOM's track record provides ample reason to be sceptical that IOM would do so, however. The few studies of IOM's past work on cross-border labour migration reveal that IOM involvement did little to prevent or address rights violations experienced by migrant workers.[3] This is unsurprising, given that, unlike UN agencies (e.g. UNHCR vis-à-vis refugees), IOM does not have a formal protection mandate that would require it to prioritize migrants' rights and well-being in its work, although the 2016 Agreement affirms that it will afford 'due regard' to human rights.[4] IOM's member states insisted that the organization remain 'non-normative' as a condition of it joining the UN system; this has only amplified critics' concerns over IOM's checkered human rights

[3] Pauline Gardiner Barber and Catherine Bryan, 'International Organization for Migration in the Field: "Walking the Talk" of Global Migration Management in Manila' (2018) 44 Journal of Ethnic and Migration Studies 1725; Bruno Dupeyron, 'Secluding North America's Labor Migrations: Notes on the International Organization for Migration's Compassionate Mercenary Business', in Ruben Zaiotti, ed., *Remote Control: The Externalization of Migration Management in Europe and North America* (Routledge 2016); Christina Gabriel and Laura Macdonald, 'After the International Organization for Migration: Recruitment of Guatemalan Temporary Agricultural Workers to Canada' (2018) 44 Journal of Ethnic and Migration Studies 1706.

[4] UNGA Res A/70/296, 'Agreement concerning the Relationship between the United Nations and the International Organization for Migration' (25 July 2016) UN Doc A/RES/70/296; Helmut Philipp Aust and Lena Riemer, 'A Human Rights Due Diligence Policy for IOM?' Chapter 5, in this volume.

record and the potential 'blue-washing' of IOM's more problematic activities if undertaken as 'UN Migration'.[5]

Whether the mantle of 'UN Migration' will incentivize IOM to pursue a more rights-protective trajectory remains to be seen. But, as explored in this Chapter, one aspect of IOM's activities – its work on ethical labour recruitment through its International Recruitment Integrity System (IRIS) – offers some initial insights into the nature and extent of IOM's commitment, as 'UN Migration', to protecting migrant workers' rights. IOM established IRIS to help 'combat modern slavery' by preventing the exploitation of migrant workers at the recruitment stage – hence, this is an area where IOM has articulated a clear goal of protecting migrant workers. Once mediated by governments operating through bilateral labour migration agreements, cross-border labour recruitment is now largely controlled by a highly profitable – and unregulated – private recruitment industry. The lack of regulation enables unscrupulous recruiters to impose exorbitant recruitment fees and exploitative working conditions with impunity, notwithstanding international norms that prohibit such practices.

How IOM approaches the problem of recruitment abuse is thus instructive regarding IOM's level of commitment to (and understanding of) migrant workers' rights protection – especially in the face of States' strong competing interests in border control and labour market access. As the lead global migration agency, IOM is well-situated to work with States to ratify and implement ILO treaties and standards relating to ethical recruitment (e.g. the prohibition on recruitment fees), particularly as these norms are reaffirmed and reiterated in the GCM. This chapter explores IRIS's approach to ethical recruitment. It begins by exploring IOM's past work on cross-border labour migration, and the potential for IOM's future role, as 'UN Migration', given recent developments in norm-setting in the labour migration field. It then turns to a close examination of IRIS's signature initiative – a voluntary programme through which recruiters can be certified as compliant with a set of IRIS ethical recruitment standards. These standards are derived from ILO treaties and guidance and reproduced in the GCM, and for which meaningful

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[5] Hirsch and Doig caution that IOM's joining the UN system as a 'related organization' enables 'blue-washing' of IOM's activities: 'creating the impression of a humanitarian organization while simultaneously carrying out migration control activities on behalf of the donor states of the global north.' Asher Lazarus Hirsch and Cameron Doig, 'Outsourcing Control: The International Organization for Migration in Indonesia' (2018) 22 The International Journal of Human Rights 681.

compliance requires State regulation, labour inspection, and transnational cooperation. Instead, IRIS dilutes these obligations and enables further privatization of this area of governance to a set of unaccountable actors. In so doing, IRIS furthers a trend in transnational labour governance away from binding labour regulations and towards incrementalist, soft law governance,[6] enabling States to abdicate their responsibility to create the necessary structures to prevent and address abuse and exploitation of migrant workers.

10.1   IOM and Labour Migration Governance

With 500 offices and duty stations in over 100 countries, IOM has established a substantial presence in the world, particularly given its tendency to embed itself in local communities. As Geiger and Koch have noted, IOM has successfully cultivated a vast network of partners (NGOs, local governments, businesses, and international institutions), and developed and deployed its expert authority in ways that have shaped States' and non-State actors' approach to migration issues.[7] IOM operates with a decentralized structure, with its many field offices responsible for funding their own operations by undertaking projects for the IOM Member States. This has resulted in IOM operating like a private company, or a 'jack of all trades' 'bureaucratic entrepreneur' whose portfolio of projects has prompted criticism that IOM functions as an 'instrument of Northern foreign policy'.[8] Whether due to projectization or the lack of a protection mandate, IOM projects have drawn a fair amount of criticism for prioritizing States' border control or market goals at the expense of migrants' and refugees' rights.

As discussed below, IOM's past work on labour migration reflects a deep faith in migration as an underutilized solution to the problem of development – but for which rights restrictions unfortunately were treated as an inevitable tradeoff for greater access to foreign labour markets. Growing

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[6] Luc Fransen and Genevieve LeBaron, 'Big Audit Firms as Regulatory Intermediaries in Transnational Labor Governance,' (2019) 13 Regulation & Governance 260.

[7] Martin Geiger and Martin Koch, 'World Organization in Migration Politics: The International Organization for Migration' (2018) 9 (1) Journal of International Organizations Studies 25.

[8] Fabian Georgi, 'For the Benefit of Some: The International Organization for Migration and Its Global Migration Management,' in Martin Geiger and Martin Koch (eds), *The Politics of International Migration Management* (Palgrave Macmillan 2010) 63; Megan Bradley, 'The International Organization for Migration (IOM): Gaining Power in the Forced Migration Regime' (2017) 33 (1) Refuge 97, 103.

efforts to establish rights-protective norms for migrant workers – including most notably in the GCM, for which IOM is designated lead global migration agency – make it all the more critical that IOM prioritize rights protection in the face of competing interests in border control and labour market access.

10.1.1   IOM's Approach to Labour Migration

As Pécoud explains, IOM understands labour migration in a supply–demand framework, in which properly managed labour mobility connects labour surpluses in poorer countries with demand for migrant workers in the Global North.[9] Facilitating labour mobility requires, however, IOM to 'overcome the contradiction between the nationalist/protectionist agenda over border control and the need for a flexible foreign workforce in a globalizing economy'.[10] IOM would need to modify its border control- or market-oriented priorities in order to incorporate policy approaches that benefit migrants themselves. IOM's activities and discourse typically assume, however, that the core features of the world's political and economic organization are unchangeable, and that individuals must adapt to this global macroeconomic context.[11] IOM's interventions thus target individual choices – for example, recruiters (and workers) to participate in voluntary ethical frameworks – rather than pressing for broader structural reforms that would provide more robust labour protections for workers.

IOM's neoliberal approach to migration embraces the growing faith among governments and some civil society actors in the 'migration-development nexus' (MDN), or the idea that cross-border labour migration offers a solution to development problems. Leveraging the MDN has become an established mantra of development institutions and thinktanks.[12] Support for the MDN paradigm –known as

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[9] Antoine Pécoud, 'Introduction: The International Organization for Migration as the New "UN Migration Agency"' in Martin Geiger and Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan 2020) 10.

[10] Pécoud, 'Introduction' (n 9) 11.

[11] Ibid.

[12] Kerry Preibisch, Warren Dodd and Yvonne Su, 'Pursuing the Capabilities Approach within the Migration-development Nexus' (2016) 42 Journal of Ethnic and Migration Studies 2111, 2116; Kerry Preibisch, Warren Dodd and Yvonne Su, *The Transformation of Work: Challenges and Strategies. Irreconcilable Differences? Pursuing the Capabilities Approach within the Global Governance of Migration* (Solidarity Center, 2014).

'migration optimism' – has arisen in response to increased recognition within the international community of the failures of past development policy – specifically, the tendency towards top-down, state-centred macroeconomic solutions, mediated by (sometimes corrupt) government bureaucracies, that are unmindful of the specificity of local contexts.[13] Remittance-generating migration is thus pitched as a cost-effective, bottom-up alternative that gives individuals and their communities direct access to funds and a greater role in promoting development in their country.[14] Migration optimists argue that, in addition to generating increased foreign currency reserves and improved credit ratings for origin countries,[15] migration yields 'social remittances' in the form of new ideas, values, and skills that migrants gain while working abroad and share with their communities.[16] Moreover, increased emigration eventually creates enough economic growth to push the community over the development curve to the point where migration pressures decrease, giving rise, eventually, to a period of stay-at-home development.[17]

IOM shares this development vision, having increasingly allocated resources towards 'migration and development' for projects to encourage and facilitate remittances from diasporas and migrants to contribute to the development process in the country of origin.[18] IOM publications also emphasize the need to create a favourable investment environment and facilitate remittance flows. As critics – 'migration pessimists' – note, however, while migration may offer anti-poverty effects for individual families, there is little evidence that migration generates local investment and employment.[19] If anything, available studies indicate that migration has tended to spur more migration; and that even after decades of

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[13] Martin Geiger and Antoine Pécoud, 'Migration, Development and the "Migration and Development Nexus"' (2013) 19 Population, Space and Place 369; Erin Newmann-Grigg, 'Between Migration and Development: The IOM's Development Fund' (2020) in Martin Geiger and Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan 2020), 103–104.

[14] Geiger and Pécoud, 'Migration, Development' (n 13) 369.

[15] Preibisch, Dodd and Yu, 'Pursuing the Capabilities Approach' (n 12) 2116.

[16] Ezra Rosser, 'Immigrant Remittances' (2008) 41 Connecticut Law Review 3, 9.

[17] Michael Clemens and Kate Gough, 'Unpacking the Relationship between Migration and Development to Help Policymakers Address Africa-Europe Migration' (*Center for Global Development*, 3 April 2019) <www.cgdev.org/blog/unpacking-relationship-between-migration-and-development-help-policymakers-address-africa> accessed 29 March 2022.

[18] Newmann-Grigg, 'Between Migration and Development' (n 13) 99–100, 110.

[19] Hein de Haas, 'The Migration and Development Pendulum: A Critical View on Research and Policy' (2012) 50 (3) International Migration 8, 19.

remittance-producing migration, the promised period of stay-at-home development has yet to occur.[20] Critics argue that relying on migration as *solution* to the need for development fuels States' tendency to overlook features of the political economy that continue to drive people to migrate in the first place – for example, growing inequality between countries and communities, development failures, and poor governance.[21] Moreover, critics caution, migration can produce increased inequality between migrant and non-migrant populations within origin countries, as well as 'brain drain' and 'brawn drain' that reduce the talent available to pursue the reforms necessary to achieve sustainable development.[22] Migration optimism ultimately absolves States of the responsibility to undertake the necessary reforms (e.g. addressing government corruption) to achieve sustainable development, and instead shifts the burden to migrants to engage in 'self-help' development.[23]

That migration optimism continues to dominate development policy despite the lack of evidence of its effectiveness, critics note, suggests other agendas at play, for example, immigration control and neoliberal reliance on migrants and markets as principal drivers of change.[24] In placing the burdens of development on the backs of migrants, however, the model does not sufficiently attend to the negative effects of destination countries' restrictive migration policies on migrant welfare. Guestworker programmes typically impose rights restrictions on participating migrants – the lower the worker's skill level, the greater the rights restrictions as a condition of entry.[25] For migration optimists, rights tradeoffs are an inevitable – and acceptable – cost of increased access to remittance-generating jobs in foreign labour markets. Indeed, some have even cautioned that adherence to international rights standards creates

[20] Kathleen Newland, 'Migration Development, and Global Governance: From Crisis toward Consolidation', (Migration Policy Institute, Policy Briefs, June 2019); Geiger and Pécoud, 'Migration, Development' (n 13) 370.

[21] Preibisch, Dodd and Yu, 'Pursuing the Capabilities Approach' (n 12) 2115–2116.

[22] Rosser, 'Immigrant Remittances' (n 16) 22; Preibisch, Dodd and Yu, 'Pursuing the Capabilities Approach' (n 12) 2116; de Haas, 'Pendulum' (n 19) 16–18; Hein de Haas, 'Migration and Development: A Theoretical Perspective' (2010) 44 International Migration Review 227, 236.

[23] Geiger and Pécoud, 'Migration, Development' (n 13) 371; de Haas, 'Pendulum' (n 19) 8, 10.

[24] Alan Gamlen, 'The New Migration-and-Development Pessimism' (2014) 38 Progress in Human Geography 581, 587–591.

[25] Martin Ruhs and Philip Martin, 'Numbers vs. Rights: Trade-Offs and Guest Worker Programs' (2008) 42 International Migration Review 249, 251; Martin Ruhs, *The Price of Rights: Regulating International Labor Migration* (Princeton University Press 2013).

problematic barriers to labour mobility[26] – for example, they argue that prohibiting recruitment fees ignores migrants' willingness to pay and that governments cannot regulate in an area where they can 'exert little control'.[27]

IOM's past work on labour migration evinces its embrace of migration optimism – not only in its aspirations for developmental economic gains but also in its acceptance of rights tradeoffs in exchange for access to foreign labour markets. Operating labour migration programmes in seventy countries,[28] IOM has actively created labour migration corridors, facilitated governments' efforts to create temporary labour programmes, and even taken on the role of recruiter itself. Its choice of projects has been characterized as a 'deliberate neoliberal calculation as to which areas and which populations are advantageous or not advantageous in appealing to global markets'.[29] IOM-Manila, for example, capitalized on the idea of the Philippines as a 'model' labour export regime, crafting pre-departure training sessions to create 'ideal' migrant workers, who would be 'pro-active and self-responsible' for their own successful integration into Canadian markets.[30] In addition to ensuring the ongoing viability of the Philippines government's objectives for economic development, IOM-Manila's success in promoting this labour stream positioned it to assist other countries (e.g. Indonesia) to develop labour markets for their nationals.[31]

Whereas IOM Philippines' activities built on the country's longstanding practice of sending its nationals to Canada, IOM's work in Guatemala proactively introduced a market logic to Guatemala's migration industry.[32] In

[26] 'Labor Mobility Partnerships (LaMP): Helping Connect International Labor Markets' (Center for Global Development), <www.cgdev.org/page/labor-mobility-partnerships-lamp-helping-connect-international-labor-markets> accessed 29 March 2022 (criticizing the promotion of international standards as 'hav[ing] little to do with local circumstances and needs' and 'leav[ing] many countries with critical unanswered demand for support in an era when labor mobility is increasing and desperately needed').

[27] Rebekah Smith and Richard Johnson, 'Introducing an Outcomes-Based Migrant Welfare Fund' (Labor Mobility Partnerships, 16 Jan 2020), <https://lampforum.org/2020/01/16/introducing-an-outcomes-based-migrant-welfare-fund/> accessed 29 March 2022.

[28] 'Labour Migration' (International Organization for Migration) <www.iom.int/labour-migration> accessed 29 March 2022.

[29] 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, 34.

[30] Gardiner and Bryan (n 3) 1728.

[31] Ibid 1734–1736.

[32] Ibid 1730.

response to Canadian interest in finding a new labour source, in 2003, the Guatemalan embassy proposed creating a temporary worker programme that would bring Guatemalan workers to Quebec for agricultural work – tasking IOM-Guatemala with creating and implementing the programme.[33] IOM was to serve as labour recruiter in order to avoid reliance on private labour recruiters[34] and also to help build the Guatemalan government's capacity to independently manage the programme in the future.[35] Although the programme was ultimately a quantitative success – growing from 215 to 5400 Guatemalan workers between 2003 and 2013 – it drew a great deal of criticism for its mistreatment of the workers.[36] The workers' contracts, which were drafted by IOM-Guatemala, were heavily weighted in favour of the employer, with scant language concerning worker's rights and entitlements under the contract. The contracts placed responsibility for all worker protection on the Guatemalan Consulate in Canada, despite the protection of labour rights being within the purview of Canadian federal and local government agencies and trade unions.[37] The workers ended up experiencing verbal abuse and humiliation, ethnic and class discrimination, harassment for bribes, and a 'naming system' that enabled the blacklisting of workers by growers and thus chilled workers' complaints regarding abusive working conditions.[38] Rather than exercise its authority to oversee worker protections, however, the Guatemalan Consulate focused on disciplining workers – for example, returning workers who complained about abuse back to Guatemala, warning workers that unions were deceptive and best avoided, and instructing workers to permit their employers to hold their passports and identification documents.[39] The Guatemala-Quebec programme ended

[33] Dupeyron (n 3) 248; Gabriel and Macdonald, 'After the International Organization for Migration' (n 3), 1714.

[34] Barber and Bryan (n 3) 1706; Gisele Valarezo, 'Offloading Migration Management: The Institutionalized Authority of Non-State Agencies Over the Guatemalan Temporary Agricultural Worker to Canada Project' (2015) 16 Journal of International Migration and Integration 611.

[35] Valarezo (n 34).

[36] See also Dupeyron (n 3) 246 (describing IOM as 'very liberal, laissez-faire and pleasant at the top of the hierarchy of the field, with employers and member states, and is conversely short-sighted, paternalistic and rude with those who are at the bottom: migrants, migrant workers and refugees'); Valarezo (n 34) (reporting that Guatemalan migrants confronted 'systemic forms of exploitation' including but not limited to denial of information regarding rights, unwarranted repatriation, blacklisting, confinement on the farm, and racial discrimination).

[37] Dupeyron (n 3) 252–254.

[38] Gabriel and Macdonald (n 3) 1715; Valarezo (n 34); Dupeyron (n 3) 247 (describing the 'extremely discriminatory' selection of workers).

[39] Dupeyron (n 3) 252–254.

in 2013, in the wake of a scandal involving the IOM-Guatemala Chief of Mission, who went on to establish his own private recruitment business (staffed by former IOM-Guatemala employees) that later absorbed IOM's prior market share of the recruitment business.[40] Hence, the end result of the programme was to enable origin and destination countries to maximize the economic benefits of the new labour stream, while minimizing their responsibility for the migrant workers' well-being and rights and strengthening, instead of lessening, the privatization of migration governance.[41]

10.1.2   IOM as 'UN Migration'

Given the checkered history of IOM's labour migration projects, the decision to bring IOM into the UN fold as a 'related organization' in 2016 was thus troubling to those concerned with migrant workers' rights protection.[42] The IOM-UN Agreement enables IOM to remain independent and 'non-normative' in its operations.[43] The Agreement reiterates IOM's independent status – rather than clarifying its inclusion, it frees IOM from UN oversight mechanisms and reporting obligations typically required of actual UN agencies.[44] At the same time, IOM rebranding itself 'UN

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[40] Gabriel and Macdonald (n 3) 1716; Valarezo (n 34); Dupeyron (n 3) 250.

[41] In similar vein, in IOM's work to promote Tajik labor migration to Russia and Kazakhstan, IOM was more concerned with maximizing the economic benefits of migration than with protecting the migrant workers. Pleas by Tajik employees of IOM-Tajikistan for IOM-Kazakhstan to address complaints of 'grave' exploitation of Tajik workers in Kazakhstan were met with refusal, not only by IOM-Kazakhstan, but the leadership of IOM-Tajikistan. Karolina Kluczewska, 'When IOM Encounters the Field: Localising the Migration and Development Paradigm in Tajikistan' (2019) 47 Journal of Ethnic and Migration Studies 4457. Another pilot project for which IOM functioned as labor recruiter – bringing Thai workers to Israel to work in the agricultural sector – was also plagued by reports of migrant worker abuse, including the deaths of 122 Thai workers within a five-year span. While the abuses were not directly attributed to IOM conduct, IOM's involvement in establishing this labor migration corridor did little to stave off, much less address, the abuses migrant workers experienced. 'A Raw Deal: Abuse of Thai Workers in Israel's Agricultural Sector' (*Human Rights Watch*, 21 January 2015) <www.hrw.org/report/2015/01/21/raw-deal/abuse-thai-workers-israels-agricultural-sector> accessed 29 March 2022.

[42] Elspeth Guild, Stefanie Grant, and Kees Groenendijk, 'Unfinished Business: The IOM and Migrants' Human Rights' in Martin Geiger & Antoine Pécoud (eds), *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Palgrave Macmillan 2020) 29.

[43] UNGA Res A/70/296, *Agreement concerning the Relationship between the United Nations and the International Organization for Migration* (25 July 2016), Art. 2(3) (emphasis added).

[44] Guild and others, 'Unfinished Business' (n 42) 36–37; Miriam Cullen, 'The Legal Relationship between the UN and IOM: What Has Changed since the 2016 Cooperation

Migration' enables it to stress to the public IOM's parity with UNHCR, a 'real UN agency'.[45] Despite the UN Secretary General's expressed hope during the GCM negotiations that IOM might one day come further into the UN fold as a UN-specialized agency,[46] IOM has remained independent of the United Nations. Traditionally, IOM has also resisted committing to a rights-based approach to its work, with IOM Director General Antonio Vitorino explaining that in the migration policy field, unlike regarding refugees, 'there is no equivalent normative [base], so everything will depend much more on international cooperation' with IOM member states and international organizations.[47] The Terms of Reference that are to guide IOM's designated role under the GCM as the lead agency for the UN Network on Migration (UNNM) require, however, that the UNNM 'prioritize the rights and wellbeing of migrants and their communities of destination, origin, and transit'.[48] This creates the expectation that IOM – now responsible for coordinating UN system-wide efforts to assist States in implementing the GCM – will adopt a rights-based approach to its work.

The notion that there is no normative base from which IOM could pursue a rights-based agenda with respect to migrant work is at odds with international treaty law and the GCM. While the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families ('UN Migrant Workers Convention') and the ILO Conventions pertaining to migrant workers are poorly ratified, many of the treaties' provisions are already contained in international human rights and labour treaties that *are* widely ratified.[49] Indeed, all States have

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Agreement?' in Megan Bradley, Cathryn Costello and Angela Sherwood, *IOM Unbound? Obligations and Accountability of the International Organization for Migration in an Era of Expansion* (Cambridge University Press 2023); Cf. Aust and Riemer (n 4).

[45] Geiger and Koch, 'World Organization' (n 7) 32.

[46] The UN Secretary General noted in providing input on the first draft of the GCM, strengthening the international community's work on migration issues would best be achieved if, in time, 'IOM [was] brought more fully into the United Nations system as a specialized agency, properly equipped for that role.' UNGA, *Making Migration Work for All: Report of the Secretary-General,* UN Doc A/72/643 (12 December 2017) para 73.

[47] Migration Policy Institute, 'A Conversation with António Vitorino, the Director General of the International Organization for Migration' (6 March 2019), <www.migrationpolicy.org/events/conversation-director-general-international-organization-migration> accessed 29 March 2022 (answering a question posed by audience member).

[48] UN Network on Migration, 'Terms of Reference for the United Nations Network on Migration, Mission Statement', <www.un.org/en/conf/migration/assets/pdf/UN-Network-on-Migration_TOR.pdf> accessed 29 March 2022.

[49] Ryszard Cholewinski, 'The Rights of Migrant Workers' in Ryszard Cholewinski, Euan Macdonald, Richard Perruchoud (eds), *International Migration Law* (Asser Press 2007) 255.

human rights obligations towards those within their borders, including migrants, and norms derived from other areas of law (e.g. refugee and labour) apply to migrant workers to varying degrees.[50] Moreover, as a practical matter, fulfilling States' positive obligations to prohibit and prevent trafficking and forced labour entails compliance with a wide range of protections against abusive labour recruitment practices and working conditions.[51]

Indeed, the past fifteen years have brought significant advances in norm development pertaining to migrant workers, as labour migration has increasingly claimed a place on the international agenda. The establishment of the UN High-Level Dialogues on Migration and Development in 2006 – which framed migration as a potential solution to development – enabled labour migration to be accepted as an issue of international concern as opposed to exclusively a matter of domestic law or bilateral agreement. These dialogues, held every few years, helped provide the necessary groundwork for mainstreaming migration into development policy. The dialogues coincided with a 'pendulum swing' towards migration optimism and growing faith that migration could be leveraged to reduce poverty and prompt economic development.[52] Globalization, in enabling increased mobility across borders, has yielded a rapid growth in remittances, which now account for as much as 43% of a country's gross domestic product (GDP).[53] Out-migration for labour has thus become a *de facto* development policy for some countries. The idea of migration as a *solution* to development has thus become a 'mantra' of development

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[50] For in-depth discussion of the various legal regimes relevant to the situation of migrant workers, see Chantal Thomas, 'Convergences and Divergences in International Legal Norms on Migrant Labor' (2011) 32 Comparative Labor Law and Policy Journal 405.

[51] See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319; ILO Forced Labour Convention 1930 (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) C029; Protocol of 2014 to the Forced Labour Convention 1930 (adopted 11 June 2014, entered into force 9 Nov 2016) P029. For a discussion of the relationship between trafficking and broader labor exploitation, see Janie A Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law' (2014) 108 American Journal of International Law 609.

[52] de Haas, 'Pendulum' (n 19) 19 (emphasis in original).

[53] For example, the Global Knowledge Partnership on Migration and Development (KNOMAD) reports the following amounts of remittances as a percentage of GDP for 2021: Tonga (43.9%), South Sudan (37.9%), Kyrgyz Republic (30.1%), Tajikistan (27.8%), El Salvador (26.2%), Nepal (24.8%), and Haiti (15.4%). KNOMAD, 'Remittances Data' <www.knomad.org/data/remittances> accessed 29 March 2022.

institutions and thinktanks[54] – with the 2030 Agenda for Sustainable Development (SDGs) positing a clear relationship between well-governed migration and sustainable development.[55]

Further incentivizing acceptance of labour migration as an international issue were the large-scale movements of migrants (and refugees) in 2015, which severely tested the government's capacity to control their borders and to ignore any longer the rights abuses suffered by migrants. The mass migrations prompted the international community to adopt the GCM, which signified the first attempt by the international community to develop a shared vision of safe and orderly global migration and a framework to facilitate international cooperation to that end. Building on the linkage between migration and development,[56] the GCM attempts to balance three competing interests: (1) border security; (2) access to flexible labour markets; and (3) migrant welfare. While the GCM focuses more on preventing irregular and precarious migration than on creating additional legal migration pathways, it includes a number of provisions that, if implemented, would significantly advance migrant workers' rights.

Among these is GCM Objective 6, which seeks to '[f]acilitate fair and ethical recruitment and safeguard conditions that ensure decent work'[57] – issues for which IOM has staked a claim to expertise and a leadership role. Objective 6 reflects growing awareness and attention to the endemic problem of abusive cross-border labour recruitment, which has become a preoccupation of governments, advocates, and scholars in recent years. The ILO's Fair Recruitment Initiative, launched in 2014, brought greater understanding and visibility to the problem and lay the groundwork for norm development.[58] It helped elevate the 1997 ILO Private Employment Agencies Convention, which prohibits recruitment fees from being charged to workers and reaffirms crucial workplace rights, including the

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[54] Devesh Kapur, 'Remittances: The New Development Mantra?' (United Nations Conference on Trade and Development, G-24 Discussion Paper Series, No. 29, April 2004); Preibisch, Dodd and Su, 'Irreconcilable Differences' (n 12).

[55] UNGA Res 70/1, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc A/RES/70/1.

[56] GCM (n 1) para 6 (noting that the GCM 'is rooted in the 2030 Agenda for Sustainable Development […] and informed by the Declaration of the High-level Dialogue on International Migration and Development').

[57] GCM (n 1) objective 6.

[58] ILO: Fair Recruitment Initiative, *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs* (22 May 2019) <www.ilo.org/global/topics/labour-migration/publications/WCMS_536755/lang--en/index.htm> accessed 29 March 2022.

freedom of association and collective bargaining, and the right to non-discrimination.[59] Building on those norms, in 2016, the ILO developed a set of 'General principles and operational guidelines for fair recruitment' ('ILO Principles and Guidelines') and two years later developed a comprehensive definition of 'recruitment fees and related costs', recognizing that workers ought not to be charged directly or indirectly, in whole or in part, any fees or costs for their recruitment.[60] Offering a wide-ranging set of guidance – for governments, recruiters/employers, and workers – derived from international labour standards, the ILO Principles and Guidelines have become a touchstone for efforts to promote and ensure fair recruitment.

Building on the ILO Principles and Guidelines, through its International Recruitment Integrity System (IRIS), IOM has sought to develop its *own* set of ethical recruitment norms (known as the 'IRIS Standard'), and a plan for their dissemination and uptake by various actors. The ILO Principles and Guidelines articulate a broad set of ethical recruitment norms, articulated in terms of States' and recruiters' respective responsibilities based on international labour standards and related ILO instruments (and cited throughout). Framed as the product of a multistakeholder initiative, the IRIS Standard, in comparison, focuses on a subset of those norms (sans references to relevant international instruments), for which recruiters are to develop management systems to facilitate compliance. Through IRIS, IOM has sought to develop and claim expertise on ethical recruitment issues, operating parallel to, but distinct from, the ILO's Fair Recruitment Initiative. Indeed, while GCM Objective 6 explicitly calls upon States to consider the ILO Principles and Guidelines in developing national policies relating to international labour mobility,[61] it references IRIS (rather than the ILO) as a source of institutional expertise.

IOM/IRIS thus has a crucial role to play in helping States to achieve Objective 6, which sets forth a number of suggested measures States should adopt to address abusive recruitment and employment practices. These include, for example, prohibiting recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers – a measure that recognizes how high recruitment fees can prevent migrant workers from leaving even extreme situations or exploitation. Objective 6

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[59] ILO Private Employment Agencies Convention, 1997 (No. 181) (adopted 19 Jun 1997, entered into force May 10, 2000) C181.
[60] ILO, *General Principles and Operational Guidelines for Fair Recruitment* (n 58).
[61] GCM (n 1) objective 6, para l.

also calls upon States to ensure migrants have access to safe and effective complaint and redress mechanisms for workplace violations 'in a manner that does not exacerbate vulnerabilities of migrants who denounce such incidents'.[62] This measure recognizes and addresses the risk migrant workers face of being subjected to retaliatory termination or deportation, or potential blacklisting from future jobs, should they complain about abuse or mistreatment. Progress on any one of these proposed measures would significantly advance the rights of migrant workers. IRIS's work on ethical recruitment thus offers crucial insights into IOM's commitment and capacity to pursue a rights-based approach, as explored below.

10.2   Case Study: IOM/IRIS and Ethical Labour Recruitment

Through IRIS, IOM 'seeks to ensure that ethical recruitment, protection of migrant workers, transparency, due diligence and provision of remedy are prioritized throughout the recruitment and deployment process'.[63] Whereas foreign labour recruitment used to be mediated through bilateral agreements and State administration of migrant worker programmes, cross-border labour recruitment now rests largely in the hands of a powerful and unregulated private recruitment industry.[64] Recruiters are omnipresent in all migrant work sectors, providing crucial services to employers and migrants including, for example, identifying and interviewing candidates, processing visa documentation, matching candidates with employers, and assisting with travel and accommodations arrangements.[65] While most recruiters operate in ways that are beneficial for workers, governance gaps in this industry have enabled, if not encouraged, abusive practices by some, fueling the human rights violation that is forced labour in our global economy. Through IRIS, IOM seeks to transform the recruitment industry by promoting 'ethical recruitment', which it defines as 'hiring workers lawfully and in a fair and transparent manner

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[62] GCM (n 1) paras 12–13.
[63] 'What We Do' (IRIS Ethical Recruitment) <https://iris.iom.int/what-we-do> accessed 29 March 2022.
[64] Philip Martin, *Merchants of Labor: Recruiters and International Labor Migration* (Oxford University Press 2017); Jennifer Gordon, 'Regulating the Human Supply Chain' (2017) 102 Iowa Law Review 445; Jennifer Gordon, 'Global Labour Recruitment in a Supply Chain Context' (2015) International Labor Organization, Fundamentals Working Papers <www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_377805.pdf> accessed 29 March 2022.
[65] Gordon, 'Regulating the Human Supply Chain' (n 64) 459.

that respects and protects their dignity and human rights'.[66] IOM offers IRIS as a necessary corrective to the exploitation and abuse migrant workers too frequently endure at the hands of their recruiters.

Migrant worker exploitation often begins at the recruitment stage, when workers are misled about the job on offer, and/or charged exorbitant recruitment fees and costs (which can amount to nine months or more of average monthly earnings in some corridors, often taken on as debt to be paid off with their labour),[67] or are misled about the job on offer. Unethical recruiters can remain profitable despite their exploitative practices due to their perpetually large client base – the supply of workers seemingly limitless (especially for low-skilled jobs) compared to the finite demand for their labour.[68] A lax or non-existent regulatory environment enables recruiters to prioritize placing workers rather than ensuring that their jobs are decent. This encourages worker turnover rather than worker retention. Indeed, recruiters may offer financial incentives to employers to entice them to replace existing workers with new workers. Recruiters can then earn fees from both the new worker and the terminated worker, the latter having to pay another recruitment fee for a new placement.[69] Such practices can plunge workers into perpetual debt bondage, unable to pay off the debts accumulated as a result of the (often exorbitant) recruitment fees, such that the work devolves into a form of trafficking and forced labour. Meanwhile, market dynamics make it all the more difficult for *ethical* recruiters – who would shift the costs of recruitment from workers to employers – to compete for space in a market with well-established unethical recruiters who can offer their services to employers at a lower cost.[70] Corruption and kickbacks further skew the market, as recruiters in origin countries are pressured to pay recruiters in the destination countries in order to win bids to supply workers.

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[66] 'Who We Are: Frequently Asked Questions, "What Do We Mean by Ethical Recruitment?"' (IRIS) <https://iris.iom.int/frequently-asked-questions> accessed 29 March 2022.

[67] International Labour Organization, *A Global Comparative Study on Defining Recruitment Fees and Related Costs: Interregional Research on Law, Policy and Practice* (2020) <www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_761729.pdf> accessed 29 March 2022.

[68] Open Working Group on Labour Migration & Recruitment, 'Ethical Recruitment' (Policy Brief #5) <http://mfasia.org/recruitmentreform/wp-content/uploads/2015/03/Policy-Brief-Support-for-Ethical-Recruitment.pdf> accessed 29 March 2022.

[69] Open Working Group (n 68); Amnesty International, *Exploited for Profit, Failed by Governments: Indonesian Domestic Workers Trafficked to Hong Kong* (2013) 72–74 <www.amnesty.org/en/documents/asa17/029/2013/en/> accessed 29 March 2022.

[70] Open Working Group (n 68).

Regulating international labour recruiters poses its own set of chal-
lenges. Where foreign labour recruitment *is* regulated, recruitment prac-
tices have typically come under the purview of domestic labour laws,
which may require licensing, prohibit certain activities and assign (mainly
civil) penalties for non-compliance.[71] The fact that foreign labour recruit-
ment practices span multiple jurisdictions enables easy deflection of legal
responsibility, however, with blame redirected at the parties operating
outside the jurisdiction. Meanwhile, most efforts to prevent and disci-
pline recruiter abuse through registration and licensing requirements
appear to have had little impact, with fines for violations typically too
low to deter future violations.[72] Moreover, the political influence wielded
by the highly profitable recruitment industry in the countries of origin
and of destination may exacerbate the weak or deficient enforcement of
recruitment regulations. Indeed, where there is a persistent lack of decent
work opportunities at home, unethical recruitment practices may become
the accepted norm rather than the exception.[73] In such contexts, aspir-
ing migrant workers may view protections against recruitment abuse as
impediments to securing a livelihood, and workers may even collude with
recruiters to circumvent them to secure jobs abroad.[74]

Of the complex dynamics and array of actors enabling, even fueling,
recruitment abuse, IOM's IRIS initiative has focused on transforming the
private recruitment industry. IRIS has developed – and through a voluntary
certification programme, encouraged recruiters to adopt – a set of ethical
recruitment standards, known as the 'IRIS Standard'. The IRIS Standard calls
upon recruiters to respect all applicable laws related to labour recruitment,
the ILO 'core labour standards' (prohibiting trafficking, forced labour, and
child labour, discrimination, and upholding freedom of association and col-
lective bargaining rights),[75] and relevant norms of professional and ethical

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[71] See, for example, Judy Fudge and Daniel Parrott, 'Placing Filipino Caregivers in Canadian
   Homes: Regulating Transnational Employment Agencies in British Columbia', in Judy
   Fudge and Kendra Strauss (eds), *Temporary Work, Agencies and Unfree Labour: Insecurity
   in the New World of Work* (Routledge 2014) 85–88.
[72] Gordon, 'Global Labour Recruitment' (n 64) 10. By contrast, the regulatory structure
   utilized in Manitoba, Canada – which requires both employer registration and foreign
   recruiter licensing – offers a rare example of effective regulation of transnational brokers.
   See Fudge and Parrott (n 71) 85–88.
[73] Open Working Group (n 68).
[74] Ibid.
[75] The core labor standards are set out in eight fundamental ILO conventions, and are among
   the most widely ratified ILO instruments. The ILO Declaration on Fundamental Principles
   and Rights at Work clarified that all ILO Members are bound to uphold these core labor

conduct.[76] The IRIS Standard also enumerates specific principles: prohibiting recruitment fees and related costs to migrant workers; and ensuring respect for freedom of movement, transparency of terms and conditions of employment, confidentiality and data protection, and access to remedy.[77] Developed through multistakeholder consultations, the IRIS Standard draws from a number of sources, including international human rights instruments, UN Guiding Principles on Business and Human Rights, international labour standards and related ILO instruments, the ILO's General Principles and Operational Guidelines for Fair Recruitment, as well as 'best practice from government regulators and the recruitment industry'.[78]

In hopes of inspiring industry-wide adoption of the IRIS Standard, IRIS collaborates with industry associations (e.g. the Consumer Goods Forum and the Leadership Group for Responsible Recruitment) and other IOM programmes such as IOM's Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) Initiative to encourage recruiters to embrace the IRIS Standard by making the 'business case' for ethical recruitment.[79] IRIS has also developed 'capacity building' programmes for recruitment agencies, employers, suppliers, brands, governments, and civil society organizations, to introduce them to the IRIS Standard.[80] The capacity-building programming aims to enhance recruiters' capacity to meet the IRIS Standard, in hopes of encouraging and readying private recruitment agencies to participate in the IRIS Certification programme. Labour recruiters that send or receive workers from overseas can apply for IRIS certification, which if granted, offers inclusion in a public list of 'IRIS certified labour recruiters' and the right to use the IRIS-certified trademark on their websites and promotional materials. IRIS pitches this as an opportunity for recruiters to 'increase their market visibility and attract new clients and workers'.[81]

standards, regardless of whether they ratified the ILO conventions from which they are derived.

[76] IRIS, 'The IRIS Standard' (2019) <https://iris.iom.int/iris-standard> accessed 29 March 2022.

[77] Ibid.

[78] Ibid., Preamble.

[79] IRIS, 'IRIS Factsheet 1: Overview of IRIS' 2 <https://iris.iom.int/sites/iris/files/documents/Factsheet1-Overview-of-IRIS_2020.pdf> accessed 29 March 2022; 'Corporate Responsibility in Eliminating Slavery and Trafficking (CREST)' (IOM) <https://crest.iom.int> accessed 29 March 2022.

[80] 'What We Do: Capacity Building' (IRIS) <https://iris.iom.int/capacity-building> accessed 29 March 2022.

[81] 'IRIS Voluntary Certification Scheme' (IRIS) <https://iris.iom.int/iris-voluntary-certification-scheme> accessed 29 March 2022.

IRIS describes its certification model as taking a 'management system approach', requiring applicants to demonstrate that 'the way [the recruiter] manages the different, interrelated parts of it[s] business, in order to meet its objectives' meets the requirements of the IRIS Standard.[82] The audit has two phases: the first involves a desk review of the recruiter's business practices based on documentation of the company's policies, operating procedures, contracts, job advertisements, etc.; the second phase occurs on-site and involves interviews with recruiters, workers, and business partners, to verify that a management system is being followed. The auditor is ultimately the one to decide about IRIS Certification, for which there are five possible outcomes – from best to worst level of compliance with IRIS principles: leading, performing, developing, no rating, or alert. After undergoing the certification process, IRIS-certified recruiters will be subject to compliance monitoring, which involves 'lighter' 'surveillance audits' every six months for two years, after which the recruiter will undergo IRIS recertification.[83]

Rather than conducting the certification itself, IRIS outsources the certification process to a third-party 'Scheme Manager'. IOM/IRIS serves as 'Scheme Owner', responsible for developing the IRIS Standard, advocating for ethical recruitment, capacity building, and stakeholder engagement. IRIS appoints a separate 'Scheme Manager' to manage the IRIS certification process, including training and certifying the third-party auditors who conduct the actual audits of the labour recruiters. IOM has appointed as Scheme Manager the Social Accountability Accreditation Services (SAAS), 'an independently managed division' of Social Accountability International (SAI), a US-based charitable, nongovernmental organization that seeks to advance human rights at work.[84] SAI is a prominent multi-stakeholder initiative (MSI) – a collaboration among businesses, civil society organizations, and other stakeholders to advance fair and decent workplace practices through social auditing. Social auditing establishes a set of standards and an audit process by which businesses can be assessed for compliance with the relevant standards. SAI's SAAS division evaluates and accredits auditors to assure they are qualified to hold their clients accountable to social standards.[85] The actual IRIS Certification

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[82] IRIS, 'IRIS Factsheet 2: IRIS Certification System 1'.
[83] IRIS, 'Voluntary Certification' (n 81).
[84] 'About SAI: Mission' (Social Accountability International) <https://sa-intl.org/about/> accessed 29 March 2022.
[85] 'Audit Assurance, Social Accountability Accreditation Services (SAAS)' (Social Accountability International) <https://sa-intl.org/services/assurance/> accessed 29 March 2022.

audits are thus conducted by third-party, SAAS-certified private audit companies, a key shortcoming of its institutional design as discussed further below.

10.3   IRIS: Challenges and Opportunities for a Rights-Based Approach

In undertaking to establish labour recruitment norms and a process for certifying compliance with ethical recruitment, IRIS is not charting new territory. But what is noteworthy – and concerning – is that these efforts carry the imprimatur of 'UN Migration', and the presumed legitimacy that comes with the affiliation with an international institution.

In appointing SAAS as 'Scheme Manager', IRIS is essentially outsourcing the running of the IRIS Certification process to the private enforcement industry. This is in some ways not surprising, as it is consistent with what critics have identified as a tendency by IOM to rely on market-based approaches to migration governance. In its past forays into labour migration management, IOM prioritized creating new migration corridors in order to reap the benefits of increased labour market access, but with insufficient attention to migrant workers' rights protections. The structure of the IRIS certification scheme maintains this prioritization, despite its stated goal of promoting ethical recruitment practices and advancing migrant workers' rights protections. Not only does the IRIS certification process leave migrant workers vulnerable to rights violations by labour recruiters and employers, but it enables States to abdicate their responsibility to protect migrant workers' rights, as discussed below.

10.3.1   *The Perils of Governance by Audit*

In outsourcing to SAAS, IOM in effect places recruiter certification in the hands of a private enforcement industry that has been criticized by scholars and labour advocates for being ill-equipped to identify, much less address, workers' rights violations.[86] The private enforcement industry has grown rapidly since its emergence in the 1990s when cuts to labour inspection budgets and the rise of 'corporate social responsibility' (CSR) norms led to increased reliance on social auditing of firm practices for

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[86] Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance Is Failing and What We Can Do About It* (Polity Press 2020) 120; The American Federation of Labor – Congress of Industrial Organizations (AFL-CIO), *Responsibility Outsourced: Social Audits, Workplace Certification and Twenty Years of Failure to Protect Workers Rights* (2014) 7, 37.

compliance with labour (and environmental) standards. Social auditing has since become a multibillion-dollar business, dominated by large multinational companies – with publicly traded stocks, thousands of employees, and highly paid CEOs – that fiercely compete for market share in the CSR and social auditing industry.[87]

Social auditing has drawn criticism, however, as a poor substitute for labour inspection and enforcement by government entities.[88] Accusing the private enforcement industry of 'brokering in deception', critics argue that these auditors profit off of the impression that they can rid supply chains of labour abuse despite 'mounting evidence of their ineffectiveness' at doing so.[89] Audit firms increasingly resemble the global companies they monitor and assess, with their own long supply chains and incentives to keep costs low and executive salaries and stock values high. Downward pressure can cause audit firms to reduce the amount of time spent on worksites and on auditor trainings, or to outsource the audits to subcontractors who may be inadequately trained to conduct thorough assessments of firm practices.[90] Moreover, because the audit industry is not subject to a set of professional standards, auditors who overlook or conceal problems can do so with impunity as they are rarely held accountable for the content of their reports. The fierce competition among audit firms can even incentivize pandering to the audit targets, in hopes of retaining the targets as clients for future audits.[91]

Given industry dynamics, it comes as little surprise that workers at workplaces deemed compliant with labour standards by private auditors have experienced devasting rights violations. For example, the 2012 Ali Enterprises fire, which claimed the lives of nearly 300 workers in a single garment factory fire in Pakistan, took place at a factory that had passed muster in an audit conducted by an audit firm accredited by Social Accountability International, SAAS's parent entity. As it turned out, the auditors had never set foot in the factory, having instead subcontracted the audit to a local firm

[87] LeBaron, *Combatting Modern Slavery* (n 86) 120.
[88] Genevieve LeBaron, Jane Lister and Peter Dauvergne, 'Governing Global Supply Chain Sustainability through the Ethical Audit Regime' (2017) 14 Globalizations 958; Fransen and LeBaron (n 6); Carolijn Terwindt and Amy Armstrong, 'Oversight and Accountability in the Social Auditing Industry: The Role of Social Compliance Initiatives' (2019) 158 International Labor Review 245; Genevieve LeBaron and Jane Lister, 'Benchmarking Global Supply Chains: The Power of the 'Ethical Audit' Regime,' (2015) 41 Review of International Studies 905.
[89] LeBaron, *Combatting Modern Slavery* (n 86) 149.
[90] Ibid 126.
[91] Terwindt & Armstrong, 'Oversight and Accountability' (n 88) 247.

that had certified the factory despite its lack of fire safety measures, its failure to register with the Pakistani government, and its failure to provide the majority of the workers with formal employment contracts.[92]

Even apart from the problematic dynamics of the audit industry, many aspects of the audit design can undermine the identification of problematic recruiter practices. When auditing a company with a long supply chain, for example, auditors typically assess the Tier 1 companies at the top of the chain, leaving the bottom tiers of the supply chain – where the abusive practices are most prevalent – entirely unexamined. Even when audit scrutiny extends to the bottom of the chain, companies can readily circumvent the discovery of problematic practices. On-site audits are typically announced in advance, enabling audit targets to make disgruntled workers unavailable for interviews, to engage in fraudulent bookkeeping, and to make superficial adjustments to pass inspection.[93] Uncovering problematic practices is further hampered by the fact that audit reports are typically held strictly confidential, thus shielding the audit findings from government or public scrutiny that might otherwise enable the findings to be contested or corrected. Indeed, confidentiality requirements may even prohibit auditors from reporting worker abuses to those positioned (e.g. government agencies and NGOs) to provide assistance or to advocate on the workers' behalf.[94]

While, in theory, the IRIS certification process could involve an audit design that addresses at least some of these deficiencies, it does not appear to do so. IRIS audits are announced in advance,[95] and the audit reports are the property of the labour recruiter and may only be shared with other parties with the express written permission of the labour recruiter.[96] The process does not appear to adequately safeguard against SAAS-certified auditors subcontracting the audits to other firms. While the IRIS Certification procedures include a mechanism for workers (and recruiters) to lodge complaints about labour recruiter performance, or the integrity of the audit, complainants must first pursue their complaints with the auditor; only after exhausting the auditor's complaint mechanism can the complaint be brought before the SAAS.[97] Without meaningful

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[92] AFL-CIO, *Responsibility Outsourced* (n 86) 37.

[93] LeBaron, *Combatting Modern Slavery* (n 86) 133.

[94] Ibid.

[95] IRIS, *IRIS Certification Scheme Manual: General Requirements Document* (issue 2.1, 8 January 2021) sec 4 (audit process requirements).

[96] *IRIS Certification Scheme Manual* (n 95) sec 2.5.

[97] Ibid sec 6.1.

anti-retaliation measures in place, however, workers may reasonably fear being blackballed for future jobs or subjected to retaliatory termination and/or deportation if they complain – thus rendering it unlikely that workers would avail themselves of the grievance mechanism. Moreover, the IRIS certification scheme does not include any vehicle or metric for assessing SAAS's own performance as Scheme Manager. Meanwhile, IOM explains its own recusal from the IRIS Certification process as designed 'to deliver capacity building programmes without conflicts of interest' and also, out of recognition that 'certification is beyond IOM's mandate and expertise'.[98]

10.3.2 Abdicating State Responsibility to Protect Migrant Workers' Rights

The problems of the audit industry and audit design aside, IOM's approach to fostering ethical recruitment raises a host of broader concerns regarding IOM's commitment and ability to protect and enhance migrant welfare. In response to the seemingly intractable problem of recruitment abuse, IOM has adopted a neoliberal, market-based approach that focuses on reforming a highly profitable, unregulated industry through CSR measures that have proven inadequate to meaningfully protect migrant workers.[99] Not only does this approach fundamentally fail to understand the dynamics of the recruitment market, but it enables the continued abdication by States to fulfil their responsibilities to ensure decent work and protect the rights of migrant workers.

IOM's attempt to incite industry-wide change through a voluntary certification system – one IRIS-certified recruiter at a time – seems quixotic when one considers the highly competitive nature of the recruitment market. For example, so long as market norms continue to place the burden of recruitment fees on the workers instead of the employers, IRIS-certified recruiters will be hard-pressed to compete with non-certified recruiters. Cost-conscious employers are far more likely to hire recruiters who charge recruitment fees to workers than recruiters who would shift the costs to the employers. Meanwhile, recognizing that uncertified recruiters

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[98] IRIS Factsheet 2 (n 82) 2.
[99] See, for example, Genevieve LeBaron, *The Global Business of Forced Labor: Report of Findings* (Sheffield Political Economy Research Institute (SPERI) 2018) (finding that 'ethical certification schemes are largely ineffective in combatting labour exploitation and forced labour in tea and cocoa supply chains').

likely have greater access to placement opportunities, workers may actually prefer the services of uncertified recruiters over 'ethical' recruiters, notwithstanding the risk of potential recruitment abuses. Ethnographic studies of migrant worker streams reveal the lengths to which migrant workers will go to secure job opportunities abroad, knowingly engaging in debt-financed migration – even at exorbitant rates and with the expectation of poor working conditions (at least temporarily).[100] Absent a regulatory environment that prevents unethical recruiters from maintaining their market advantage, the benefits of IRIS Certification – for either recruiter or worker – remain unclear.

Even the World Employment Confederation (WEC) – which represents the private employment services industry at the global level – recognizes that 'the best way to promote ethical recruitment is by creating an appropriate regulatory framework for private employment services in countries of origin and of destination'.[101] Only decent recruitment regulation and enforcement – including a prohibition on recruitment fees – can drive rogue recruiters out of the market and enable professional cross-border recruiters to develop 'a decent free-of-charge service to jobseekers'.[102] WEC thus advocates for States to adopt the ILO Convention on Private Employment Agencies (No. 181),[103] which bans the charging of recruitment fees to workers. Curiously, IOM does not cite this treaty in support of IRIS Standard, Principle 1 (prohibition of recruitment fees and related costs to migrant workers), referencing instead (non-binding) ILO instruments.[104] IRIS's focus on transforming the cross-border recruitment industry through voluntary certification without also pressing for government regulation and enforcement of ethical recruitment standards is thus a half-measure at best, doomed to failure. It enables States' abdication of the responsibility under the GCM to 'enhance[e] the abilities of labour inspectors and other authorities to better monitor recruiters'.[105] Moreover, should a State choose to adopt recruitment regulations, it remains unclear what role IRIS Certification ought to play – for example,

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[100] See, for example, Antonella Ceccagno, Renzo Rastrelli and Alessandra Salvati, 'Exploitation of Chinese Immigrants in Italy' in Gao Yun (ed), *Concealed Chains: Labour Exploitation and Chinese Migrants in Europe* (International Labor Office 2010) 89, 135.

[101] 'Fair Recruitment and Migration' (World Employment Confederation (WEC)) <https://wecglobal.org/topics-global/fair-recruitment-and-migration/> accessed 29 March 2022.

[102] WEC, 'Fair Recruitment' (n 101).

[103] ILO Convention on Private Employment Agencies (n 59).

[104] IRIS, 'The IRIS Standard' (n 76).

[105] GCM (n 1) para 22f.

with recruiters potentially using their IRIS Certification as grounds for avoiding State labour scrutiny.

10.3.3   A Better Direction

Despite the apparent launch of IRIS Certification in late 2018, as of this writing, the IRIS website has yet to list any recruiters as having achieved IRIS Certification. Moreover, for a website that is otherwise frequently revised, there have been few updates on the status of the programme over the past year. This suggests the possibility that the certification programme may be stalled – perhaps due to a lack of financial or political support, or perhaps recognition that 'transformative change' via voluntary certification may be difficult to achieve. There are, however, two relatively new IRIS initiatives that could hold nascent potential – if reoriented – for advancing ethical recruitment norms: (1) IRIS's 'Global Policy Network on Recruitment' (GPN), launched in December 2020; and (2) an effort to focus on 'Migrant Worker Voice and Engagement'. As discussed above, a greater focus on States' role (and responsibilities) to ensure migrant worker protection, and on incorporating migrant workers' perspectives into IRIS programming are necessary for IRIS to meaningfully advance ethical recruitment norms and implementation.

The GPN perhaps signifies IRIS's belated recognition of the need to target States as key actors in enabling and promoting ethical recruitment practices, rather than relying primarily on voluntary certification to transform recruiter behaviour. The GPN is 'a Member State-led collaboration to bring together senior policymakers, regulators, and practitioners to address challenges, identify solutions, and highlight promising practices to strengthen recruitment regulation and migrant worker protection'.[106] The GPN emerged from a conference IRIS held in 2019, in Montreal, Canada, that brought together 100 State policymakers from over 30 countries, and produced IRIS's 'flagship resource': the Montreal Recommendations on Recruitment: A Road Map towards Better Regulation'[107] (Montreal Recommendations), which IRIS recommends States now adopt.[108]

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[106] 'What We Do: Global Policy Network on Recruitment' (IRIS Ethical Recruitment) <https://iris.iom.int/global-policy-network-recruitment> accessed 29 March 2022.

[107] Katherine Jones and others, 'The Montreal Recommendations on Recruitment: A Road Map towards Better Regulation' (IOM 2020) <https://publications.iom.int/books/montreal-recommendations-recruitment-road-map-towards-better-regulation> accessed 29 March 2022.

[108] 'What We Do: Stakeholder Engagement' (IRIS Ethical Recruitment) <https://iris.iom.int/stakeholder-engagement> accessed 29 March 2022.

The Montreal Recommendations are intended to provide practical guidance to governments 'to enable more effective regulation of international recruitment and protection of migrant workers'.[109]

The Montreal Recommendations reflect, however, IOM's 'soft touch' when it comes to States' obligations to uphold the human rights and labour rights of migrant workers. The Montreal Recommendations are largely derivative of the ILO General Principles, but unlike the ILO General Principles[110] – which frames its guidance in the language of States' 'responsibilities' and cites extensive treaty law in support[111] – the Montreal Recommendations omit such references. This gives the overall impression that the contents of the Montreal Recommendations are simply the negotiated outcome of a conference, rather than rooted in international legal obligations. IOM would do better to reorient its engagement with States to emphasize States' obligations under international law. Particularly given IOM's role as lead agency under the GCM, IRIS should utilize the GPN to encourage States to implement GCM Objective 6(a): '[p]romote signature and ratification of, accession to and implementation of relevant international instruments related to international labour migration, labour rights, decent work and forced labour'.[112]

The second aspect of IRIS's work that could be redirected to advance a rights-based approach lies in its recent efforts to enhance 'migrant worker voice and engagement'. As this initiative is pitched on its website, IRIS seeks 'to empower migrant workers and the organizations that advocate on their behalf'.[113] IRIS defines 'migrant voice' broadly to include 'migrant-centred activities'. But it lists as examples only training programmes for migrants and support for civil society organizations (CSOs), suggesting a top-down approach to migrant engagement that does not offer migrants a meaningful opportunity to voice their concerns or offer policy input. Moreover, IRIS envisions CSOs being involved in 'overseeing compliance of international recruitment practices and grievance mechanisms that link CSOs in countries of origin and destination'.[114] While, as discussed above,

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[109] IOM, Montreal Recommendations (n 107) 1.

[110] ILO, *General Principles and Operational Guidelines For Fair Recruitment* (n 58).

[111] See ILO, *General Principles and Operational Guidelines for Fair Recruitment – Appendix* <www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536263.pdf> accessed 29 March 2022 (listing the treaty sources for each of the general principles and operational guidelines).

[112] GCM (n 1) objective 6(a).

[113] 'What We Do: Migrant Worker Voice and Engagement' (IRIS Ethical Recruitment) <https://iris.iom.int/migrant-worker-voice-and-engagement> accessed 29 March 2022.

[114] Ibid.

a far more robust grievance mechanism than that currently included in the IRIS Certification process is sorely needed,[115] the apparent outsourcing of both design and implementation of such a crucial mechanism to CSOs suggests IRIS's anaemic commitment (or perhaps lack of expertise) to migrant worker protection. A more concerted effort to centre migrant voices in IRIS programming would better enable IRIS to achieve its stated goal of developing 'an ethical recruitment 'safety net', promoting remedy (when needed), and enhancing holistic safe migration experience for migrants'.[116]

10.4   Conclusion

With IRIS, IOM has sought to address a complex and vexing problem that requires substantive State engagement and commitment to migrant workers' rights protections. Overall, however, IRIS's approach reflects a lacklustre commitment to migrant welfare that is consistent with the market-friendly, neoliberal underpinnings of IOM's approach to migration governance. In outsourcing crucial elements of its programming to unaccountable non-state actors, IOM falls short of its potential – and, indeed, its responsibility under the UNNM Terms of Reference and arguably under its 'due regard' human rights obligation under the 2016 Agreement – as lead global migration agency under the GCM to prioritize migrant workers' rights protections. Notwithstanding its espoused commitment to ethical recruitment, the IRIS certification process lacks a mechanism for ensuring that rights protections are meaningfully implemented. Its approach foregoes the opportunity to press governments to adopt binding treaties and pass regulations – hewing instead to IOM's tendency towards fostering dialogue and inter-state cooperation, and acceptance of non-binding standards. It also fails to appreciate the importance of creating meaningful and safe opportunities for migrant workers to engage in the certification process and to provide input into IRIS programming. Without a baseline normative commitment to migrant workers' rights protection – and labour expertise to guide States towards realizing such a commitment – IRIS offers, at best, the rhetoric, but not the reality, of ethical recruitment practices. Only by redirecting its efforts can IOM/IRIS transform cross-border labour recruitment such that it operates to 'the benefit of all' – that is, not simply States and employers, but also migrant workers.

[115]   See above discussion accompanying note 97.
[116]   IRIS Migrant Worker Voice (n 113).