

MC/INF/263

**Original: English
10 November 2003**

EIGHTY-SIXTH SESSION

**IOM – UN RELATIONSHIP:
SUMMARY REPORT OF THE WORKING GROUP ON
INSTITUTIONAL ARRANGEMENTS**

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1. In December 2002, the Council decided to establish a Working Group on Institutional Arrangements, open to all Member States and presided over by the Chairperson of the Council, to explore the place and role IOM could have in relation to the United Nations system.
2. At the request of the Council, a preliminary report on the IOM – UN relationship was prepared by the Administration and sent on 7 April 2003 to Member States to serve as a basis for discussion by the Working Group on Institutional Arrangements (Annex I). That Working Group met on 15 May 2003, chaired by H.E. Mrs. Amina Mohamed, Chairperson of the Council.
3. As a general proposition, participants underlined the need for IOM to keep its qualities of flexibility, independence, efficiency and responsiveness; they also stressed that IOM should remain the central body providing policy advice and services to the international community on migration. They then considered the more specific issues laid out in the aforementioned report.
4. The majority of the Member States who spoke were not convinced that the advantages of a move to seek a specialized agency status outweighed the disadvantages. Member States therefore invited the IOM Administration to provide supplementary information on a number of aspects and questions they had raised, while noting that at that stage most were in favour of retaining IOM's current status outside the United Nations system.
5. The Chairperson wrote to the Secretary General of the United Nations on 28 May 2003, informing him of the outcome of the afore-mentioned meeting (Annex II).
6. The Working Group met for a second time on 17 October 2003, chaired by H.E. Mrs. Amina Mohamed. It had before it the supplementary information requested at its previous meeting, in the form of an Addendum to the Preliminary Report mentioned above (Annex III). The following paragraphs provide an overview of the Addendum and highlight the deliberations and outcome of that second meeting.
7. The Addendum prepared by the Administration put emphasis on identifying areas where increased cooperation between the United Nations and IOM would be of benefit to IOM's work. It particularly identified areas where the lack of specialized agency status has at times limited or been detrimental to the efficient operations of IOM. The options for the consideration of the Working Group were: (1) to move towards specialized agency status; (2) to seek strengthened relations with the United Nations, without becoming a specialized agency, this option being referred to as "improved *status quo*"; (3) to take no action at this time.
8. The Chairperson recalled that IOM must remain the central body providing policy advice and services on migration and that Member States should discuss the modalities for ensuring that this would be preserved.

9. Concerning the options considered by the Working Group, a very small number of members were explicitly in favour of the first option, i.e. IOM moving towards specialized agency status at this time, on the basis that this was necessary if IOM were to become the reference organization in the field of migration and to be recognized as such. Many other delegations did not discard this option entirely, with some reserving their final position and others feeling that the time was not yet ripe to take a final decision. A very small number of members of the Working Group explicitly opposed modifying the *status quo* in any way at this time and favoured closing the debate on the matter.

10. The second option – “improving the *status quo*” – was, in contrast, largely supported by members of the Working Group. Delegates recognized that there were some constraints for IOM’s operations and effectiveness due to being outside the United Nations system, and called for strengthening the existing IOM-UN Agreement in order to address some of the problem areas. The Administration was called upon by some delegations to initiate inquiries with the United Nations in order to follow this potential middle path and to report back on the outcome. Delegates saw this as a way to address current operational concerns and, at the same time, safeguard IOM’s independence and flexibility by remaining outside the United Nations system.

11. The opinion was also expressed that IOM was now at a crossroads and its present status was no longer adequate to respond to needs, making an evolution necessary. At the same time, however, it was noted that IOM was still undergoing changes and had not completed its adaptation, leaving a question mark as to the final form such an evolution should best take.

12. Emphasis was placed on the need to strengthen further long-standing cooperation with other organizations in order to avoid duplication and improve efficiency, in the mutual respect of the competences of the organizations concerned.

13. In terms of improving the *status quo*, the Chairperson pointed out that from her observations of discussions on migration at the General Assembly, there was little cohesion or interplay with the IOM debate taking place. She urged delegations to communicate the results of the Working Group deliberations to their counterparts in New York. She also undertook to send another letter to the Secretary General, informing him of the outcome of the second meeting of the Working Group and the deliberations of the Council session.

14. No formal conclusions or recommendations were adopted by the Working Group and delegations were urged by the Chairperson to continue considering the issue in preparation for further discussion at the Council on both the process and the substance. It was agreed that a short summary report would be presented to the Council by the Chairperson on behalf of the Working Group.

Annex I



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

WORKING GROUP ON INSTITUTIONAL ARRANGEMENTS

RESTRICTED
WG/IOM-UN/1
Original: English

IOM–UN RELATIONSHIP PRELIMINARY REPORT

7 April 2003

This document contains the preliminary report prepared by the Administration on the IOM-UN relationship, as requested by the IOM Council at its regular Session held in December 2002.

Chapter V of the report was prepared with the assistance of a retired senior United Nations official who served as an external consultant.

This report is preliminary and is submitted for the consideration of the Working Group on Institutional Arrangements. It will be reviewed and completed under the guidance of the Working Group, before being formally presented to IOM Member States at the next regular Session of the Council in December 2003.

OUTLINE

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IOM–UN RELATIONSHIP

I. INTRODUCTION

1. In a letter dated 25 September 2002, the Director General wrote to IOM Member States regarding the advisability of examining the place and role IOM could have in relation to the United Nations (UN) system. In a subsequent letter dated 25 October 2002, he forwarded a note on the IOM-UN relationship setting out the issue and describing possible options, while expressing his intention to devote specific attention to the IOM-UN relationship in his statement to the Council.
2. In his statement to the IOM Council on 2 December 2002,¹ the Director General noted that the renewed consideration of the IOM-UN relationship could be said to have been prompted in large measure by the context underlying the Report of the Secretary-General to the General Assembly dated 9 September 2002 entitled “Strengthening the United Nations: an agenda for further change” (UN document A/57/387). That report identified migration as one of a small number of significant global issues deserving greater attention by the United Nations. The UN was therefore conscious of a gap in coverage and was looking for ways to fill it. Commenting on possible options, the Director General observed that creating a new UN agency for migration was problematic and would doubtless be resisted by existing agencies and many governments; the UN coordination mechanisms had serious limitations as well; IOM was therefore a logical option, either within or outside the UN system.
3. The Director General further noted that “from the IOM Administration’s perspective, the status quo is sustainable. Independence from the UN permits us to operate a light and flexible management structure and avoid bureaucratic entanglements. We can sometimes operate where the UN system is constrained. Some governments may welcome the existence of an alternative that can deliver expeditiously to their satisfaction. Nevertheless, there are disadvantages to outsider status. IOM has to work harder to gain acceptance and recognition, to raise funds, to join inter-agency planning processes and assessment missions, and to acquire the international legal status that comes automatically to UN agencies. Decisions taken by the UN affect us heavily, but we have no voice in their formulation. Moreover, the international community has trouble understanding an international organization that is not part of the international system of governance.”
4. In the general debate, Member States emphasized their desire to maintain an IOM that is efficient, flexible, responsive, reliable and independent, all characteristics which would have to be preserved if IOM were to become part

¹ See MICEM/7/2002, “Statement by the Director General, Mr. Brunson McKinley, at the Eighty-fourth Session of the Council, 2-4 December 2002”.

of the UN system. They further noted that IOM was now well equipped to help meet the growing policy and programmatic challenges of migration management. The consensus was that a decision on the matter was premature and that more information was needed on the precise costs and benefits of the main options, including financial implications for the Organization.

5. At the end of the debate, the Council decided to establish a working group on institutional arrangements, open to all Member States, which would be presided over by the Chairperson of the Council, Ambassador Amina Mohammed of Kenya. The working group would explore the comparative advantages of different options, based on an in-depth study prepared by the Administration, and thereafter report back to the Council.
6. This report is in response to the decision taken by the Council and presents the advantages and disadvantages of the two main options, namely keeping IOM outside the UN system or bringing it into the UN by transforming it into a specialized agency; the “related agency” option will also be addressed, as requested by Member States. Intermediate or mixed options – such as consolidation or merger – are not considered viable or realistic.²
7. This report does not expand on the issue of strategic alliances, understood as a strengthening of the cooperation with UN agencies to avoid duplication and improve efficiency. Such a strengthening will be pursued irrespective of the institutional relationship option ultimately chosen.³ Before examining the various options, a short overview of significant trends in international migration is presented, providing the context in which IOM Member States are invited to reflect on the place of the Organization on the international scene today and in the future.

II. TRENDS IN INTERNATIONAL MIGRATION⁴

8. Patterns of migratory movement have changed considerably over time. Rapid economic advancement in some parts of the developing world is creating boom conditions, while other developing countries are lagging ever farther behind. Unemployment rates in many industrialized countries are

² Consolidation with a UN organ or specialized agency does not appear to be a viable or cost-effective option. A merger or consolidation could be possible only among agencies having similar mandates – for instance in the protection field – and expertise. This option would entail the dissolution of the organizations concerned, with the simultaneous establishment of a new entity, with all the consequences, costs and procedural hurdles attached to such an operation, including liquidation of assets, liabilities and claims, termination or transfer of staff, winding up of financial and operational functions.

³ On the list of agencies dealing with migration and their involvement, see “Compendium of Intergovernmental Organizations Active in the Field of Migration”, IOM, International Dialogue on Migration No. 2, Geneva 2002”.

⁴ See “Trends in International Migration”, MC/INF/256, 31 October 2002; “IOM strategic Planning: Toward the Twenty-First Century”, MC/1842, 9 May 1995.

proving stubbornly high, and economic growth in many is also proving stubbornly sluggish. Technological advances are ensuring that information and individuals can move at less cost and at greater speed than ever before imagined. Demographic trends continue to distinguish an ever younger developing world from an ever more aging industrialized world. New conflict situations are arising: mass movements of people, internally and externally, inexorably follow. Spreading environmental degradation is obliging ever more persons to move on – often irrespective of borders – in search of a place where conditions exist to ensure their survival. Taken together, these trends are painting a vivid picture of growing numbers of potential migrants.

9. These already complex migration dynamics are further compounded by two main trends: increasing economic, political and cultural globalization, and transnationalism in the migration process. With globalization – especially in relation to trade liberalization, global economic integration and electronic communication – has come a much heightened awareness of life and work opportunities in other parts of the world. This awareness, coupled with significant advances in international transport, has led to greater population mobility. Although progress in liberalizing the movement of persons has not proceeded at the same pace as the liberalization of trade in goods and capital, regular and irregular labour migration plays an important role in the international economy. The improved transportation and communications networks have also amplified the phenomenon of transnational migration, whereby migrants maintain and promote ties between their country of residence and their country of origin by travelling back and forth, maintaining family and/or business in both, or by sending remittances on a regular basis, developing networks and sharing skills.
10. Globalization and transnational migration have contributed not only to the volume but also to the patterns and forms of migration movement. Migration, which historically has been relatively unidirectional and permanent in nature, is now increasingly temporary and circular. Nationals of more countries are on the move and more countries are affected by migration than ever before. Countries that were once countries of origin of large emigrant groups are now countries of destination or simultaneously countries of origin, transit and destination. Reports of projected dramatic changes in the demographic make-up of the world's population, and the implications of those changes for migration, have been widely reported.
11. While migration policy formulation and implementation remain largely within the sovereign domain of States, one of the most notable trends in international migration is the growing recognition of the need to develop comprehensive and cooperative approaches to migration management at the regional and international levels. More and more States are seeing that international cooperation is needed to effectively address migration which is, by its very nature, international in scope. Equally, they recognize that it is not sufficient to address individual aspects of international migration in isolation: they must be brought together within a comprehensive framework.

12. Cooperation is needed to fully appreciate and develop the benefits of migration and reduce potential divergences of interest. Governments are increasingly negotiating strategies which support the sustainable development of countries of origin and the labour needs of countries of destination, while giving due regard to the rights of migrants. At the regional level this is seen, *inter alia*, in the proliferation of regional consultative processes on migration. At the international level, a growing number of international conferences and fora of the United Nations organizations and others are addressing specific aspects of migration.

III. IOM RESPONSE TO MIGRATION CHALLENGES

13. The Constitution sets the parameters of IOM's action through its definition of IOM's mandate, and is based on certain fundamental principles and precepts which guide the work of the Organization. These principles and precepts can be broadly summarized as follows: the need to ensure the orderly flow of migration movements; the recognition of the link between migration and economic, social and cultural development; the importance of understanding the causes and consequences of migration and to seek practical approaches to its management; international solidarity in bringing humanitarian assistance to persons in need, be they refugees, externally or internally displaced persons, migrants or other uprooted persons; and attention to the specific situation and needs of migrants, their dignity and self-respect.
14. IOM's objective is to ensure orderly management of migration. In 1995, IOM Member States reaffirmed that IOM, committed to the principle that humane and orderly migration benefits migrants and society, acts to assist in meeting the operational challenges of migration, to advance understanding of migration issues, to encourage social and economic development through migration and to work towards effective respect for the human dignity and well-being of migrants.
15. To fulfil its objective, IOM performs the following functions:
 - provides secure and reliable services for persons who require international migration assistance,⁵ including rapid humanitarian response in emergency and post-conflict situations;⁶

⁵ See list of services enumerated in Article 1 of the IOM Constitution.

⁶ See "Emergency and Post-Conflict Response (1990-2001)", MC/INF/249, 10 May 2002, and "Role of IOM in Emergency and Post-Conflict Situations", MC/INF/260, 18 November 2002, which provide a list of programme activities such as: population stabilization; capacity-building; psychosocial programmes; registration; survey and processing; diaspora outreach services; integration or reintegration assistance.

- is the reference point for information on international, regional and internal migration, providing leadership in the international dialogue on migration;⁷
 - offers expert advice and technical cooperation to States, intergovernmental and non-governmental organizations and others on migration matters;
 - promotes economic and social development through the design and implementation of migration-related programmes, including transfer of qualified human resources, support to diaspora, remittances projects and labour migration arrangements;
 - works towards enhanced protection of migrants' rights and welfare on the one hand, and observance of their obligations to receiving States on the other;⁸
 - undertakes programmes which facilitate the return and reintegration of displaced persons and other migrants, taking into account the needs and concerns of local communities;
 - helps governments and migrants find solutions to the problems and causes of irregular migration, in particular smuggling and trafficking.
16. IOM is able to perform these functions effectively because of the policy and programmatic expertise it has acquired throughout the years through the delivery of specialized services such as: transport, health, technical cooperation, counter-trafficking, mass information, labour migration, assisted return, supported by information gathering, analysis and research.
17. IOM is mandated to act in peace time as well as in post-emergency or conflict situations. It offers its migration expertise to its Member States and to the persons who, according to its Constitution, fall under its mandate, namely migrants, refugees, displaced persons and other persons in need of migration assistance.

IV. OVERVIEW OF MAIN OPTIONS

A. Status quo

18. IOM was created in December 1951 outside the United Nations system for reasons which were relevant in the Cold War context prevailing at that time

⁷ See "International Dialogue on Migration", Eighty-second Session of the Council, 27-29 November 2001; Roundtable on Managing Migration at the Regional Level, June 2002; "Elements of a Comprehensive Migration Management Approach", MC/INF/255, November 2002.

⁸ See "Migrants Rights: IOM Policy and Activities", MC/INF/259, 13 November 2002.

and had led to the politicization and ultimate demise of the International Refugee Organization: hence, likewise, the decision to open membership only to States having a demonstrated interest in the principle of free movement of persons. Over time, IOM has established an important network of institutional and operational links with the United Nations, its funds, programmes and agencies.⁹

19. Today, there are three formal elements on which IOM's overall relationship with the United Nations is based. The first is the observer status in the UN General Assembly (UNGA) that IOM obtained in 1992. The second is IOM's inclusion, by General Assembly resolution, as a "standing invitee" in the Inter-Agency Standing Committee (IASC) mechanism started in 1992. The third element is the Cooperation Agreement between IOM and the United Nations signed in 1996 that provides a formal basis for closer collaboration between the two secretariats.¹⁰ In addition, for the specific purposes of staff security coverage, a Memorandum of Understanding regarding coordination of security arrangements was concluded on 20 March 1998 between IOM and the United Nations.
20. The 1996 Agreement was signed by the Secretary-General of the United Nations and the IOM Director General. The UNGA, in its resolution 51/148 of 13 December 1996, took note with satisfaction of the conclusion of the Agreement; invited the Secretary-General to ensure that the needed cooperation and liaison between the secretariats is undertaken; requested the Secretary-General to foster systematic consultations; and invited specialized agencies and other organizations, funds and programmes to cooperate with the Secretary-General and IOM Director General in order to initiate, maintain and increase consultations and programmes with IOM.
21. The Agreement's main provisions can be summarized as follows:
 - Commitment to cooperate closely and hold regular consultations
 - Reciprocal observership
 - Exchange of information and documentation; optimum use of statistical and legal information
 - Administrative and technical cooperation by responding to requests for cooperation; by IOM taking into consideration recommendations made by the UN and cooperating with the ECOSOC; by using mechanisms such as inter-agency coordinating bodies, subject to their terms of reference
 - Use for IOM staff of UN Certificate if performing functions or travelling on official business for the UN

⁹ See in particular document MC/INF/234 of 30 October 1997 "IOM Cooperation with the United Nations System."

¹⁰ See text of the Cooperation Agreement in the Annex.

- Training and secondment of staff; commitment by IOM to continue to apply in substance the United Nations staff rules and regulations.
22. In practical terms, the increasing operational collaboration that has evolved over the past decade between IOM and a broadening range of UN entities has resulted in more frequent *ad hoc* inclusion of IOM in relevant United Nations Headquarters working groups which, strictly speaking, are internal. This has especially been the case in emergency and/or post-conflict rehabilitation situations, but also extends to a limited number of ongoing consultative processes, e.g. on women and gender equality. Similarly, IOM Chiefs of Mission are frequently invited by Resident Coordinators to participate in the UN Country Team, sometimes as a full partner without reference to IOM's non-United Nations status. In both types of situations, however, whereas the response from the United Nations has often been prompt and positive, the initiative has generally had to come from IOM and inclusion is never automatic nor as of right, and indeed is not always achievable even where it is highly justifiable.

B. Specialized agency status

(i) Definition

23. The term "specialized agency" is used to define those organizations established by intergovernmental agreement and having international responsibilities in economic, social, cultural and other fields that have been brought into relationship with the United Nations. As article 57 of the Charter of the United Nations states:

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, education, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as the specialized agencies.

24. The requirement of "establishment by intergovernmental agreement" means that the agency must be an organization with its own independent governing organs and an international treaty providing its mandate. Non-governmental organizations cannot therefore become specialized agencies. There are two stated reasons for this requirement. Firstly, the specialized agencies form a decentralized system, but their membership should be as similar as possible to the UN membership (for this reason, regional organizations cannot become specialized agencies either). Secondly, the agencies are to perform global functions of supervision and coordination in order to ensure better

cooperation between the Member States; therefore, the States themselves must be responsible for the agency.¹¹

25. In substance, only those organizations which have mandates in the areas mentioned in Article 57 may become specialized agencies of the UN: economic and social affairs, culture, education, health and related fields. This last formula means that the realm of potential activities is fairly wide, although it is not totally unrestricted.¹²
26. The status of specialized agency does not mean that the agency gains any type of monopolistic control over the field in question. The UN itself, through its various organs and programmes, may at any time become involved in the particular field. Other international and non-governmental organizations may also engage in parallel activities in that field.¹³

(ii) Background¹⁴

27. When the United Nations was being established, its founders debated whether to establish one central organization embracing all activities, or a political organization only, leaving specialized cooperation to separate and independent organizations. The latter model of functional decentralization was chosen. Separate organizations were to remain, or become, responsible for specific fields of international cooperation while the functions of the UN itself were to be limited. Some of the reasons for this conclusion were as follows:
 - It was not at that time certain that the UN would be successfully maintained or whether it would follow a similar fate to that of the League of Nations. It was thought that the technical cooperation offered by the specialized agencies should not be made dependent on the success of the UN.
 - It was hoped that by keeping the agencies separate from the UN, political issues would not influence their effective functioning.
 - States could become members only of those agencies whose mandate was of interest, rather than having to participate in every form of cooperation.
28. The present specialized agencies are FAO, ICAO, IFAD, ILO, IMF, IMO, ITU, UNESCO, WHO, WIPO, WMO, World Bank Group (IBRD, IDA, IFC), UNIDO,

¹¹ Simma, B (ed) *The Charter of the United Nations: A Commentary* (1994) at 798.

¹² For example, the IAEA has not been granted the formal status of a specialized agency, due to the fact that its subject area of atomic energy is outside the fields enumerated in Art. 57. See below under "Related Agency".

¹³ Klein, *United Nations Specialized Agencies* in Bernhardt, R (ed) *Encyclopedia of Public International Law*, vol. V (1983) pp. 349-369 at 349.

¹⁴ This section is taken largely from Schermers & Blokker, *International Institutional Law*, 3rd edition, 1999.

and UPU.¹⁵ Some of these pre-date the creation of the United Nations, whereas others were created more recently. By way of example, information on how one of the latter – WIPO – analysed the question of whether or not it would be advantageous to become a specialized agency may be useful. After WIPO's establishment in 1967, it was eventually recognized that the advantages of the status of specialized agency outweighed any perceived drawbacks. The three main advantages cited were (i) WIPO's objectives would receive worldwide recognition; (ii) many developing countries were expected to join WIPO (only a few of which participated in WIPO's predecessor); and (iii) there would be no need to address issues such as fixing of salaries, other working conditions, social security, etc. as the agency would automatically follow the common system.¹⁶

(iii) The specialized agency's relationship with the UN

29. A relationship between a (potential) specialized agency and the UN is initiated and is based on the signing of a relationship agreement. Subject to UNGA approval, it is the Economic and Social Council (ECOSOC) which enters into such agreements with agencies under Article 63 of the UN Charter. These agreements define the terms and conditions whereby the agency will be "brought into relationship with the United Nations". There is no clear obligation on the part of the UN to initiate such relationships, however it is clear from Article 57 that negotiations about the relationship are required. It is assumed that if an international organization applies for the status of specialized agency, the UN will be prepared to enter into negotiations.
30. The following is the normal procedure for entering into a relationship agreement: firstly, ECOSOC adopts a resolution directing a committee to enter into negotiation with the agency; the draft agreement resulting from these negotiations is submitted to ECOSOC for consideration and approval; the draft is then submitted to the General Assembly and to the plenary organ of the agency; it will enter into force on its approval by both bodies. The date of entry into force is fixed in a protocol signed by the UN Secretary-General and the appropriate official of the agency. The agreement is then registered with the UN Secretariat and published in accordance with Article 102 of the UN Charter.¹⁷
31. The relationship agreements have been largely similar in content for all the current specialized agencies. In a preliminary article, the UN recognizes the organization as a specialized agency responsible for taking such action as may be appropriate under its Charter for the accomplishment of the objectives set forth therein. The bulk of the agreement then addresses how

¹⁵ The International Refugee Organization is the only organization which became a specialized agency and was later dissolved.

¹⁶ The additional costs were estimated at some CHF 100,000 in 1972; see WO/CC/III/2, "Relations between the United Nations and WIPO. Report of the Director General", 10 July 1972.

¹⁷ Klein, at 354.

cooperation and coordination with the UN can be organized. To this end, further articles provide for reciprocal representation in the respective organs, consultations and recommendations, the right to propose agenda items, the exchange of information and documents, statistical services, budgetary, financial and personnel arrangements, administrative cooperation, assistance to the UN, right to request advisory opinion from the International Court of Justice, relations with other international organizations and the use of the *laissez-passer* of the UN by staff of the agency. A further article then provides for the implementation of the agreement by a supplementary arrangement entered into by the UN Secretary-General and the chief administrative officer of the agency. The relationship agreements are subject to amendment and revision by agreement of the parties.¹⁸

32. The level of detail and of coordination varies in the distinct relationship agreements which have been concluded. For example, the relationship agreements with the World Bank entities contain special provisions asserting their independence, thereby making the legal basis for coordination requirement somewhat weaker. Their provisions regarding personnel arrangements, for example, do not insist that the agencies follow the UN Common System, rather, consultation only is required with a view to achieving as much uniformity as possible.¹⁹ Further, these agencies have accepted only very conditional obligations to take account of General Assembly (GA) recommendations.
33. In general, none of the current relationship agreements have the effect of subjecting the agency to the “control” of the UN or of placing them in a subordinate legal position. They are in the nature of agreements between equals, and the agencies retain to a large extent their independent character.

(iv) Coordination

34. As mentioned above, the fact of having the status of a specialized agency does not mean that the agency works exclusively in its particular field. There are often overlapping activities between the agencies themselves, and with various organs and sub-organs of the UN itself. Coordination of activities is therefore essential. Various articles of the UN Charter address the issue of coordination with, and among, the specialized agencies. In particular, Article 58 of the Charter states that:

The Organization shall make recommendations for the coordination of policies and activities of the specialized agencies.

35. Pursuant to this Article, the GA and ECOSOC have developed a variety of means for achieving better coordination. These include:

¹⁸ Id.

¹⁹ With the exception of IFAD, which attempted to remain outside the Common System, but this was not accepted by the GA.

- Provisions in the relationship agreements which usually include obligations for information-sharing and discussion, submission of UN recommendations to the appropriate organ of the agency,²⁰ and the submission of reports regularly or when requested. For example, the standard relationship agreement provides for the transmission to the United Nations of “regular reports on the activities of the Organization” and compliance “to the fullest extent practicable” with any request for “special reports, studies or information”. Reports should particularly refer to actions taken pursuant to recommendations of the GA and ECOSOC.
- Establishment of coordination machinery such as:
 - the Advisory Committee on Administrative and Budgetary Questions (ACABQ), which is used by the GA to review financial and budgetary arrangements with the specialized agencies and in the examination of their budgets. At the GA’s request, the Committee has also undertaken specific studies of other questions involved in administrative and budgetary coordination, such as common services and a common salary system. The agencies participate in the deliberations of the ACABQ without a vote. Essentially, however, the specialized agencies are autonomous in financial matters, and they are examined by the ACABQ only with a view to making recommendations. Note that the financial institutions (World Bank Group, IMF) dissociate themselves in their relationship agreements from any kind of financial supervision by the UN.
 - the Administrative Committee on Coordination (ACC) established by ECOSOC resolution in 1946 – now called the Chief Executives Board for Coordination (CEB) – is directed to concern itself with all matters falling within or outside the area of relationship agreements which may become the subject of differences of view between the agencies and the UN and to make recommendations. It is composed of the Secretary-General of the UN and the executive heads of the specialized agencies, and is therefore a high-level, inter-secretariat, coordination group. Other organizations may also take part in its deliberations. The ACC has debated matters such as personnel recruitment, budgetary and financial arrangements, information programmes and publications, procedures for providing technical information, coordination of conference calendars, submission of agency reports, and privileges and immunities.

²⁰ Article 63(2) states that ECOSOC “*may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to Members of the United Nations.*”

C. Related agency status

36. From the original simple concept that the UN would consist internally of six principal and a number of subsidiary organs,²¹ and that externally it would be surrounded by the specialized agencies, the UN system has proliferated into what has been called a “veritable jungle of miscellaneous entities”.²² These include complex subsidiary bodies, which are, in effect, “mini-intergovernmental organizations” such as UNHCR.²³ Such bodies are similar in structure to an intergovernmental organization, but are not established by treaty, rather through a UN resolution. Other entities include the treaty bodies, temporary entities such as conferences and some preparatory commissions, as well as other more difficult to define entities, such as the two international criminal tribunals.
37. Specialized agencies are easily recognizable, as shown above. Despite some differences in the level of connection with the UN, all fall within the definition of Article 57 and have concluded a relationship agreement with the UN. There are however a number of other international organizations “established by intergovernmental agreement and having wide international responsibilities” which for one reason or another have not sought, or have not been accorded the status of “specialized agency”.
38. Referred to as “related agencies”,²⁴ these organizations are still considered as being part of the burgeoning “UN Family”. The related agencies include: the International Atomic Energy Agency (IAEA); the World Tourism Organization; the Organization for the Prohibition of Chemical Weapons (OPCW); the Preparatory Commission for the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO) and the World Trade Organization (WTO).²⁵
39. There are a variety of factors indicating why each of the above agencies are not specialized agencies. Each case will be examined in turn.

²¹ See UN Charter Articles 7, 22, 29 and 68 and Article 26 of the ICJ Statute.

²² Szasz, P. “*The Complexification of the United Nations System*” in Max Planck Yearbook of United Nations Law, vol. 3 (1999) at 2.

²³ Szasz illustrates the substantive interchangeability of these complex organs with specialized agencies, using the example of the International Refugee Organization, a specialized agency, which was dissolved and its functions taken over by UNHCR; similarly UNIDO was first created as a General Assembly-established subsidiary organ, and replaced by the current specialized agency with the same name and substantially the same structure (p. 5).

²⁴ Not all authors agree on the characterization of these five agencies as “related agencies”. The Max Planck Society, for example, refers to IAEA as an “Autonomous Agency”, to the World Trade Organization as a “Cooperating International Body”, and to the others as “Related Agencies”. For simplicity only, they are treated under one section in this paper.

²⁵ Szasz also characterizes the International Sea Bed Authority (ISA) and International Tribunal for the Law of the Sea (ITLOS), both established by UNCLOS, as “related agencies” which have concluded a relationship agreement with the UN resembling the relationship agreements of the specialized agencies. These agreements were submitted directly to the GA, not through ECOSOC.

(i) IAEA

40. This agency is perhaps the most closely related to the specialized agencies, compared to the others listed above, as its relationship agreement with the UN is strikingly similar to the relationship agreements of the specialized agencies. It is often addressed together with the specialized agencies. However, its relationship agreement was not concluded with ECOSOC (as required under Charter Articles 57 and 63 para. 1). This was in recognition that the subject matter – nuclear energy – is not directly related to ECOSOC purposes and that due to its international security-related activities the agency may be required to relate and have access to the Security Council, rather than ECOSOC. The agreement only provides, according to the description of the functions of the agency, for special cooperation with the Security Council and the GA. Under the agreement, the UN recognizes that the Agency “*by virtue of its intergovernmental character and international responsibilities, will function under its statute as an autonomous international organization in the working relationship with the United Nations established by this Agreement*”. However, given the number of similarities between the IAEA and the specialized agencies, it has been said that “... *because nuclear energy also has important economic and social implications, for most practical purposes the Agency has become an inner-circle SA [Specialized Agency] in all but name*”.²⁶ Further, the IAEA was the first related agency to be granted one right which is usually exclusive to the specialized agencies, namely the ability to seek advisory opinions from the International Court of Justice. This is of particular significance since under the UN Charter, only specialized agencies and organs of the UN may request such opinions (Article 96(2)).

(ii) OPCW

41. The OPCW concluded a relationship agreement with the UN in 2000, which entered into force in 2001. In substance, it is also similar to the relationship agreements of the specialized agencies; however, it was not concluded through ECOSOC, and therefore the agency does not fall under Article 57. The reasoning is much the same as for the IAEA, namely that due to the subject matter, the OPCW would need to maintain closer relationships with the Security Council and General Assembly than with ECOSOC. Again, the agreement with the UN grants to the agency the right to seek advisory opinions from the ICJ; it also grants the right for its staff to use the UN *laissez-passer*.

(iii) CTBTO

42. The reason why the CBTBO, an intergovernmental organization established in 1996, is not a specialized agency is for the same reasons as above for the IAEA and the OPCW. It has concluded a relationship agreement with the UN,

²⁶ Szasz, at 38.

which provides for consultation and coordination with the UN, but does not grant it the right to seek advisory opinions from the ICJ. It does not follow the Common System of staff conditions, but as is the case with OPCW, the agreement provides that it will consult with the UN “whenever necessary concerning matters of common interest relating to the terms and conditions of employment of staff”.

(iv) World Tourism Organization

43. In 1975, the World Tourism Organization became an intergovernmental organization, from being a union of travel organizations, specifically to be able to gain the status of a UNDP Executing Agency. In 1977, it concluded an Agreement on Cooperation and Relationship with the UN, which is similar in substance to the relationship agreements of the specialized agencies, with the exception that it does not refer to the Common System. Despite this, however, the Organization has conformed to the Common System of conditions of service for its staff. The Agreement with the UN was entered into through negotiations with ECOSOC and approved by the GA; however, at the time there was never an intention to make it a specialized agency. In its resolution 2529 (XXIV) of 5 December 1969, the GA decided *inter alia* that “An agreement between the United Nations and the Union should be concluded which would establish close cooperation and relationships between the United Nations and the transformed Union, define the modalities of such cooperation and relationships and recognize the decisive and central role that the Union is to play in the field of world tourism in cooperation with the existing machinery within the United Nations”. The Office of Legal Affairs of the UN was asked by the Director and Secretary of ECOSOC in 1976 to provide an opinion on how therefore to proceed with the negotiation of an agreement with the Organization. The Opinion states that “It is clear from the record that the agreement envisaged in resolution 2529 (XXIV), and other relevant General Assembly and Economic and Social Council resolutions, was never intended to bring the latter organization into relationship with the United Nations as a specialized agency in accordance with Articles 57 and 63 of the Charter. All those resolutions, for instance, while recognizing the need for a formal agreement avoid any mention of WTO as a specialized agency of the United Nations”.²⁷
44. However, the Organization may soon gain the status of a specialized agency. In December 2001, the Secretary-General of the World Tourism Organization wrote to the Secretary-General of the United Nations requesting initiation of the process that would transform the WTO into a specialized agency. ECOSOC took up this request at its next substantive session and, on 24 July 2002, adopted by consensus Resolution 2002/24 authorizing its Chairman to appoint a Committee which would pursue negotiation of a relationship agreement between the UN and the WTO. The same resolution requested

²⁷ UNJY 1977, at 215-216.

submission of a draft agreement for consideration by ECOSOC at its substantive session of 2003.²⁸

(v) World Trade Organization

45. The General Agreement on Tariffs and Trade (GATT) was created in 1947 as a temporary arrangement, pending the creation of the International Trade Organization. Originally, GATT had no organs of its own, but gradually developed into an international organization, without ever obtaining the status of specialized agency. In 1994, the WTO was established. There is no intention reflected in its constituent instrument of becoming a specialized agency of the UN, i.e. no reference to entering into negotiations with the UN to seek such a status. Indeed, at meetings prior to the establishment of the Organization, there was opposition by delegates to close links to the UN, mainly due to the concern that the WTO would lose or have to compromise its independence. A decision was also taken that the WTO would not continue its predecessor's participation in the Common System. It was decided that the conditions of service for staff of the financial institutions were better and that the goal of the WTO should be to aim for these conditions. WTO itself has no formal agreement with the UN, there is however an exchange of letters between the Secretary-General and the Director of the WTO which continues the arrangements between the UN and the old GATT Secretariat. This includes the provision and exchange of information, representation at each other's meetings subject to the decision of the meeting organizers, participation of the WTO at the Administrative Committee on Coordination (ACC) – now CEB – and its subsidiary bodies, and cooperation between the secretariats. It enables the WTO to enjoy some of the UN facilities, such as the use of the *laissez-passer*.

V. ASSESSMENT

46. This chapter examines the comparative advantages and disadvantages of status quo, on the one hand, and those of specialized agency status, on the other hand, along with an overview – in the latter case – of some perceived obstacles to soliciting now specialized agency status. The description of related agency status has demonstrated that such status applies to agencies whose mandate does not fall under the terms of reference of ECOSOC, a situation which is not applicable to migration.

A. Comparative advantages and disadvantages of the status quo

47. The “status quo” relationship between IOM and the United Nations (and the United Nations system of organizations, funds and programmes) has been far

²⁸ See “Relationship agreement with the World Tourism Organization. Text of the draft relationship agreement between the United Nations and the World Tourism Organization”, E/C.1/2003/1, 24 February 2003.

from static. It has evolved and grown progressively since IOM received observer status at the United Nations in 1992 and became more active in the work of the General Assembly, and especially since a Cooperation Agreement between IOM and the United Nations was signed in June 1996.

48. Even prior to 1996, IOM had been asked to and did play an important role in the migration-related substantive aspect of the preparations for the 1994 International Conference on Population and Development whose Programme of Action was adopted by consensus by 179 governments and endorsed by the General Assembly. The Programme of Action's 11-page chapter on international migration for the first time in history provided a comprehensive, integrated and balanced global migration policy framework which has the general endorsement of most of the world's governments. Obviously a policy framework in and of itself does not produce actions; agents such as IOM that actively help catalyze and harmonize the actions of the many concerned stakeholders can do that.
49. Since 1996, there have been many examples of increased cooperation and coordination – as called for in the Cooperation Agreement – that have benefited the expanding work programmes of both organizations in the service of their Member States and of migrants themselves. Noteworthy examples include: IOM's ongoing, active involvement in the work of the General Assembly's Second (Economic and Financial) and Third (Social, Humanitarian and Cultural) Committees; in the work of ECOSOC and some of its functional commissions (the Commission on Population and Development, the Commission on the Status of Women, the Commission on Human Rights and others); and at the various world conferences and summits on economic and social development issues that have been held over the past seven years. In 2001, IOM made ten statements before United Nations bodies addressing various items of interest to IOM that were being taken up by these bodies and conferences. In 2002, it made nine such statements. It should be noted that the number of statements made by IOM before these bodies and conferences is larger than the number of statements made by any other intergovernmental organization (with the exception of the European Community) as well as the number of statements made by many United Nations specialized agencies, funds and programmes. IOM is also mentioned by name in operative paragraphs in a number of the resolutions that resulted from the debate on these agenda items.
50. In addition, IOM has been invited to be an active, full partner in all symposia, technical meetings, briefing sessions, and documents and reports dealing with migration and related issues that have been initiated and prepared by United Nations organizations and its funds and programmes, including the Office of the Secretary-General, the United Nations Population Division, the Office for the Advancement of Women, the Office for the Coordination of Humanitarian Affairs and the United Nations Population Fund.

51. IOM's work and association with the United Nations in New York under the "status quo" arrangement has also been cost effective. During most of 2001 and 2002 – and currently – the UN Observer office of IOM in New York was staffed by one senior professional, one junior professional, and the half-time services of one secretary. By comparison, the UN liaison offices of some of the United Nations specialized agencies and other entities (especially the larger ones such as FAO, WHO, UNESCO and UNHCR) employ considerably more staff to carry out their responsibilities.
 52. In summary, IOM in its present configuration is already undertaking many important activities – as well as advocacy work – highly valued by developed, developing and countries in transition and is doing it in the flexible, effective, unobtrusive, low-key manner that many of them prefer.
 53. Turning to disadvantages, the absence of an authoritative United Nations voice on migration becomes more obvious and more keenly felt every day. As a result, the call for and defence of orderly and managed migration is only faintly heard at the United Nations, if at all. IOM is far better known and more active at the United Nations than was the case five years ago, but it is still not known as much as would be desirable, nor is it seen as a full, equal partner in its current configuration.
 54. The status quo increases the possibilities that the United Nations may create its own migration body thereby duplicating IOM's role and work, or that the United Nations may seek to incorporate aspects of IOM's current portfolio of migration work within the framework of other United Nations entities and/or specialized agencies, similarly creating duplication or competition.
 55. Under the status quo arrangement, IOM remains something of an outsider in the strategic decision-making process and its areas of influence remain limited. Moreover, the status quo arrangement makes it difficult to alter and improve the Organization's ability to attract additional budgetary financing for programme implementation.
 56. Without UN status, IOM tends to lose out particularly when different UN agencies operate in the so-called "grey zone" where all appear to be lacking a clear mandate or mandates overlap. UN status may enable IOM to build sustainable funding sources, as partnerships with UN agencies also lead to increased exposure and visibility. It may bring the necessary "automaticity" IOM needs to respond rapidly and responsibly to the challenges at hand without having to spend significant time and resources to promote its role, explain its rationale and seek funding on a project by project basis.
- B. Comparative advantages and disadvantages of the specialized agency status
57. There are time considerations IOM would need to address and confront to become a specialized agency in the near future. Despite the encouraging pronouncements by the Secretary-General and others with respect to the

growing importance of more actively addressing various migration issues and challenges, the time may well not be ripe for IOM to actively take steps aimed at its becoming a specialized agency of the United Nations by 2004 or 2005. In the eyes of a number of close observers, the economic, social and political circumstances are not yet right or propitious. Indeed the enabling environment for such a change has unfortunately deteriorated considerably since 11 September 2001 on many fronts, including the now hugely important national security front. Additionally, the crisis in the asylum system – including its high costs – has eroded support for migration in general. Nor have anti-terrorist measures, the HIV/AIDS pandemic, economic downturns in most developed countries, articles in the media concerning the growing number of migrants in an irregular situation and those smuggled or trafficked helped create an environment supportive of constructive approaches to migration management.

58. The results of recent elections in developed countries, where migration/immigration/asylum seeker policies and migrant rights were issues, have strengthened the hand of those favouring a more restrictive stance on migration. During the immediate future some countries may find it easier and more convenient to continue to focus their attention on the bilateral, subregional and regional migration fronts – as they have over the past five years and in largely the same manner. In many cases they (as well as developing countries and countries in transition) may continue to look to IOM as currently configured to help and to guide them in many of their efforts and endeavours, especially on the subregional and capacity-building fronts.
59. Since IOM was granted observer status at the United Nations in 1992, and again since it signed a Cooperation Agreement with the United Nations in 1996, membership of IOM has greatly increased – from 48 Member States in 1992 to 59 in 1996 and 98 Member States in early 2003. In addition, the number of observer States has remained in the 30 to 35 range, currently numbering 34. While this is an exceedingly encouraging trend, the number of IOM Member States still remains less than any current United Nations specialized agency. Most current specialized agencies of the United Nations system have between 140 and 185 States which are full members of the Organization. Moreover, while IOM's membership has doubled in the past decade and become far more geographically dispersed, it still has few Member States from the Middle East. Additionally, five of the largest countries in the world (China, India, Indonesia, Brazil and the Russian Federation) are presently observers of IOM, but not yet Member States.
60. Staff members of international organizations are often apprehensive of change, reform, transitions, restructurings and repositionings, believing in each such case that some or many of them will lose rights, privileges, seniority and job safety. In the eyes of some IOM staff members, IOM moving from being a 50-plus year old intergovernmental organization to being a United Nations specialized agency could cause some apprehension no

matter how skillfully handled; however, it should be recalled that IOM is, to a large extent, already following the UN Common System.

61. Becoming a specialized agency and thus a full member of the large, active United Nations system would not be without additional costs, both in financial and staff time terms. IOM would be interfacing and participating on a regular basis in the work of numerous additional United Nations bodies – beyond those it interfaces with today – including the Chief Executives Board (CEB) and its major committees, the United Nations Executive Committees on Humanitarian Affairs (ECHA) and Development (UNDG), the United Nations Joint Staff Pension Fund (in case of affiliation to the UNJSPF) and numerous other bodies and committees. IOM would be expected to make an annual report to the ECOSOC and through it to the General Assembly. The ECOSOC and the General Assembly may also make recommendations to the specialized agencies. IOM would also be expected to submit its administrative budget to the ACABQ at least for information and could expect a visit from the 15 ACABQ members once every few years. The Joint Inspection Unit (11 inspectors) would request IOM to utilize its expertise. IOM's involvement in these committees and entities would require more of the time and attention of the leadership of IOM and of its senior staff members in charge of administration, strategic planning, policy and programme development, as would the UN system's integrated and coordinated follow-up implementation of UN world conferences, summits and Millennium Development Goals. Numerous other collaborative and coordinated endeavours of the United Nations system in New York, Geneva and in the Field would also require greater staff time.
62. As the world, Member States, the United Nations system, a large number of NGOs, civil society and regional organizations would increasingly look to IOM – as the UN specialized agency for migration matters – for more information, more guidance, more technical assistance, more strategic planning and more leadership on a wide variety of migration and closely related issues, IOM would in response be authoring more documents, reports, publications, statements and press releases, most of which could be expected to have a broader readership than is presently the case. IOM would also be more involved than currently in various kinds of substantive work related to migration, migration statistics, etc.
63. As a general consideration, *de jure* status is in almost all cases to be preferred to *de facto* status. Such status places a person's or an organization's rights, privileges and immunities, its standing and claims to equality and equal treatment on a far more solid foundation. This applies to IOM in its dealing with the United Nations and the extensive United Nations system of agencies, organizations, funds and programmes. Thus if IOM were to obtain United Nations specialized agency status, it would be accorded additional and enhanced rights, privileges, opportunities, visibility and standing at United Nations Headquarters, in the Field, and in capitals around the world, including:

- (i) Membership in the CEB, the United Nations Chief Executives Board for Coordination, which is chaired by the Secretary-General and includes the heads of IBRD, IMF, WTO, UNHCR, ILO, UNDP and 22 other United Nations organizations; it meets twice a year for two days to discuss policy issues.
 - (ii) Membership in the CEB's two High Level Committees, on Management and on Programmes, that seek to provide system-wide coordination in those and related areas.
 - (iii) Membership in the United Nations Executive Committees on Humanitarian Affairs (ECHA) and on Development (UNDG), which focus on improving planning, coordination, and implementation of UN-supported humanitarian and development projects, programmes and activities being conducted in the Field in over 140 countries.
 - (iv) Full membership in the United Nations country teams – under the resident coordinator system – on all humanitarian, development and policy matters of interest to IOM including Common Country Assessments (CCAs), United Nations Development Assistance Frameworks (UNDAFs), Poverty Reduction Strategy Papers and programmes (PRSPs), security contingency measures and emergency preparedness, as well as more access to a considerable pool of combined resources, including communication resources and use of the *laissez-passer*. IOM would also be able to call on the resident coordinator system in countries where it is not represented (to gather information, facilitate governmental contacts, support missions and visits, etc.).
 - (v) Adequate legal status for the Organization and its staff members under the 1947 Convention on the Privileges and Immunities of Specialized Agencies.
 - (vi) A higher profile for the Organization. Information about the work of IOM would be included, among others, in UN publications, reports, media packets, and web sites, all with global dissemination.
 - (vii) Possible additional funding sources. For example, IOM would gain eligibility for certain sources of funds available directly only to UN entities (e.g. the United Nations Foundation, the Human Security Trust Fund).
 - (viii) Clarity. IOM's formal organizational status would be easier for interlocutors – including governmental officials – to understand.
64. Specialized agency status would not automatically ensure all of the aforementioned desired results. However, specialized agency status would provide many advantages for IOM in its relationship with the United Nations,

with other specialized agencies, and with UN funds, programmes and other organizations. These combined would constitute for IOM a solid framework for pursuing its ultimate aim of playing a major role in the establishment of a safe and orderly management of migration in which States understand and protect the rights of migrants, and in which migrants respect national and international laws.

65. Improved *ad hoc* working arrangements with the various parts of the United Nations system, even if considerably expanded and further refined, are not a substitute for insider status. When IOM is invited to attend meetings of certain UN organs, this is usually only after it has expressed an interest in attending, and its status in the meetings is then only that of an observer, on a footing different from that of the specialized agencies which participate fully and as of right. IOM's inability to participate in the consultative process in all fields of common interest and on a basis of equality with other agencies has not contributed to the fullest coordination in areas where there is possibility of overlapping, or to the proper integration of IOM's work into the total international effort to promote economic and social development.
66. A key point from the discussion of this issue at the December 2002 IOM Council Session would seem to apply to whatever option Member States may decide upon. The essential value of IOM to migrants and to Member States lies in its efficiency, independence, flexibility and responsiveness. These qualities must be preserved in any future new arrangements.

Annex

COOPERATION AGREEMENT BETWEEN THE UNITED NATIONS AND THE
INTERNATIONAL ORGANIZATION FOR MIGRATION

The United Nations and the International Organization for Migration,

ACKNOWLEDGING that the purposes of the United Nations are, inter alia, to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms, and to be a centre for harmonizing the actions of nations in the attainment of these common ends,

ACKNOWLEDGING that the International Organization for Migration, committed to the principle that humane and orderly migration benefits migrants and society, is mandated under its Constitution to assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and work towards effective respect of the human dignity and well-being of migrants,

TAKING NOTE that the relevant resolutions of the United Nations General Assembly, in particular resolution 47/4 of 16 October 1992, and those of the Council of the International Organization for Migration, in particular resolution No. 923 (LXXI) of 29 November 1995, call for intensified cooperation between the two Organizations,

CONSCIOUS of the need for closer cooperation between the United Nations and the International Organization for Migration in matters of common interest, and desirous of further enhancing and strengthening such cooperation,

HAVE AGREED AS FOLLOWS:

ARTICLE I

COOPERATION AND CONSULTATIONS

1. The United Nations and the International Organization for Migration shall act in close collaboration and hold consultations regularly on all matters of common interest.
2. To this end, the two parties shall consider the appropriate framework for such consultations as and when necessary.

ARTICLE II

ATTENDANCE AT MEETINGS

1. In accordance with the applicable rules of procedure and decisions taken by the competent bodies concerning the attendance of meetings by observers, the United Nations shall invite the International Organization for Migration to send representatives to meetings and conferences convened by the United Nations at which intergovernmental organizations have been invited to attend as observers, whenever matters of interest to the International Organization for Migration are discussed.
2. In accordance with the applicable rules of procedure and decisions taken by the competent bodies concerning the attendance of meetings by observers, the International Organization for Migration shall invite the United Nations to send representatives to meetings and conferences convened by the International Organization for Migration at which intergovernmental organizations have been invited to attend as observers, whenever matters of interest to the United Nations are discussed.

ARTICLE III

EXCHANGE OF INFORMATION AND DOCUMENTATION

1. The United Nations and the International Organization for Migration agree to exchange information and documentation in the public domain to the fullest extent possible on matters of common interest.
2. Where appropriate, and subject to the necessary requirements, information and documentation relating to specific projects or programmes may also be exchanged between the parties with a view to ensuring complementary action and effective coordination between the two Organizations.

ARTICLE IV

STATISTICAL AND LEGAL INFORMATION

The United Nations and the International Organization for Migration shall, subject to their respective rules and regulations, make every effort possible to ensure optimum utilization of statistical and legal information, and efficient use of their resources to compile, analyse, publish and disseminate such information.

ARTICLE V

ADMINISTRATIVE AND TECHNICAL COOPERATION

1. The United Nations and the International Organization for Migration agree to strive for the maximum cooperation and coordination to ensure complementary action at headquarters and field levels.
2. Each Organization shall endeavour, in so far as possible and in compliance with its constituent instruments and decisions of its competent bodies, to respond favourably to requests for cooperation, in accordance with procedures to be mutually agreed upon.
3. The International Organization for Migration shall take into consideration any formal recommendations that the United Nations may make to it and, upon request, report to the United Nations on the actions taken by it, within its mandate, in order to respond to or otherwise give effect to such recommendations.
4. The International Organization for Migration shall cooperate with the United Nations Economic and Social Council in furnishing information and rendering assistance in regard to matters of common interest.
5. In order to further strengthen inter-secretariat coordination, various mechanisms will be used, including, when relevant, the appropriate inter-agency coordinating bodies, subject to their terms of reference and rules of procedure.

ARTICLE VI

JOINT ACTION

1. The United Nations and the International Organization for Migration may, through special arrangements, decide to act jointly in the implementation of projects that are of common interest. The special arrangements shall define the modalities for the participation of each Organization in such projects and shall determine the expenses payable by each of them.
2. The United Nations and the International Organization for Migration may, whenever they consider it desirable, set up commissions, committees or other technical or advisory bodies, on terms and conditions to be mutually agreed upon in each case, to advise them on matters of common interest.
3. The United Nations Certificate shall be issued to staff of the International Organization for Migration performing functions or travelling on official business for the United Nations.

ARTICLE VII

COOPERATION BETWEEN THE SECRETARIATS

1. The Secretary-General of the United Nations and the Director General of the International Organization for Migration shall take appropriate measures to ensure effective cooperation and liaison between the secretariats of the two Organizations.
2. In so far as possible, and within the context of their constituent instruments and decisions of their respective competent bodies, the two Organizations shall assist each other in the training and secondment of various categories of staff.
3. To maintain consistency of the personnel policies of the International Organization for Migration with those of the United Nations and other organizations of the United Nations system, the International Organization for Migration will continue to apply in substance the United Nations Staff Rules and Regulations, and deviations from these rules and regulations will be subject to specific approval by States members of the International Organization for Migration.

ARTICLE VIII

IMPLEMENTATION OF THE AGREEMENT

The Secretariat of the United Nations and the Administration of the International Organization for Migration shall consult each other regularly on matters relating to this Agreement.

ARTICLE IX

SUPPLEMENTARY ARRANGEMENTS

The United Nations and the International Organization for Migration may enter into such supplementary arrangements for the purpose of cooperation and coordination as may be found desirable.

ARTICLE X

ENTRY INTO FORCE, AMENDMENTS AND DURATION

1. This Agreement shall enter into force on the date of its signature by the duly authorized representatives of the two Organizations.

2. This Agreement may be amended by mutual consent of the parties. The proposed amendment should be made in writing to the other party and shall enter into force after a period of three months following the expression of such consent.
3. Either of the parties may terminate this Agreement by giving six months' written notice to the other party.

IN WITNESS WHEREOF, the undersigned representatives of the Secretariat of the United Nations and the Administration of the International Organization for Migration have signed the present Agreement.

Signed this 25th day of June 1996 at Geneva in two originals in the English language.

For the United Nations:

(Signed) Boutros BOUTROS-GHALI
Secretary-General

For the International Organization
for Migration

(Signed) James N. PURCELL, Jr.
Director General

MC/INF/263
Annex II
(English only)

Annex II

LETTER SENT ON 28 MAY 2003
BY THE CHAIRPERSON OF THE IOM COUNCIL
TO THE SECRETARY GENERAL OF THE UNITED NATIONS

OFFICE OF THE AMBASSADOR

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PERMANENT MISSION OF KENYA
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SWITZERLAND

Our ref. **KMUNG/IOM/10A**
and date

28th May, 2003 19.....

Mr. Kofi A. Annan
The Secretary-General
United Nations Organization
NEW YORK

FAX NO. 212 963 2155/212 963 8845

Dear Secretary General,

I am writing to you, in my capacity as Chairperson of the Council of the International Organization for Migration (IOM), to inform you about progress in the consideration by IOM Member States of the future place of IOM in the international institutional architecture. This consideration was mandated by the membership during the session of the Council in December 2002, in the light of a combination of factors, not least your own remarks in the chapter "Doing what matters" of your Report to the General Assembly "Strengthening the United Nations: an agenda for further change", dated 9 September, 2002. In this report you identify migration as one of a small number of significant global issues deserving greater attention by the United Nations.

I presided over the first of a series of informal consultations on 15 May, 2003 at which Member States commented on a preliminary report prepared by the Administration on the advantages and disadvantages for IOM of remaining outside the UN system or seeking entry to it as a specialized agency. The Director General of IOM sent a copy of the preliminary report to your Deputy, Louise Fréchette, on 5 May, 2003.

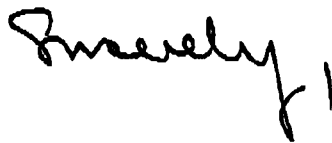
The conclusions of this round of informal consultations can be summarized as follows:

- Migration is of increasing importance to governments and all sectors of society;
- Despite the proliferation of institutional actors, IOM should remain the central body providing services and advice to the international community on migration;
- IOM must keep its trademark qualities of flexibility, responsiveness, independence and efficiency;
- In order to move the consideration of IOM's place in the system along, the Administration should provide supplementary information on a number of aspects and questions raised by the membership, most of them related to cost implications of an enhanced mandate for IOM;
- Member States should consider the question further in the light of a strategy note that the IOM Administration is preparing on the role of IOM in managing current and future migration realities;

The majority of the members who spoke said that they were not convinced that the advantages of a move to seek specialized agency status outweighed the disadvantages, and were thus in favour of retaining IOM's current status outside the UN system.

I shall be convening another round of informal consultations once the requested supplementary information has been provided, and will keep you informed of developments.

Yours



Amina
AMINA C. MOHAMED
AMBASSADOR/PERMANENT REPRESENTATIVE

Annex III



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

RESTRICTED
WG/IOM-UN/2
Original: English
22 September 2003

WORKING GROUP ON INSTITUTIONAL ARRANGEMENTS

Second Meeting - 17 October 2003

IOM-UN RELATIONSHIP

**Addendum to
PRELIMINARY REPORT**

**IOM – UN RELATIONSHIP:
ADDENDUM TO PRELIMINARY REPORT**

I. INTRODUCTION

1. In December 2002, the IOM Council decided to establish a Working Group on Institutional Arrangements, open to all Member States, which would be presided by the Chairperson of the Council, to explore the place and role IOM could have in relation to the United Nations system.
2. At the request of the Council, a preliminary report on the IOM – UN relationship was prepared by the Administration and sent on 7 April 2003 to Member States to serve as a basis for discussion of the Working Group on Institutional Arrangements. The Working Group met on 15 May 2003, under the chairmanship of H.E. Mrs. Amina Mohamed, Chairperson of the Council. Participants underlined the need for IOM to keep its qualities of flexibility, independence, efficiency and responsiveness; they also stressed that IOM should remain the central body providing policy advice and services to the international community on migration.
3. In order to move forward the consideration of IOM's place in the UN system along, the IOM Administration was invited to provide supplementary information on a number of issues raised by participating Member States concerning specialized agency status, as well as on the general context of this review. This report aims to respond to the specific queries raised by the Working Group and should be read in conjunction with the Report submitted on 7 April 2003.

II. ISSUES CONCERNING SPECIALIZED AGENCY STATUS

Context of this review

4. The question of where and how migration is dealt with in the multilateral system has been raised with increasing frequency in recent years, reflecting both the growing numbers of people moving across borders and the increasing complexity of such flows. The Secretary General of the United Nations, for example, in a report to the General Assembly in 2002 entitled *Strengthening the United Nations: an agenda for further change*, identified migration as one of a small number of significant global issues deserving greater attention by the United Nations. In a related development, the Secretary General tasked his then Special Adviser, Mr. Michael Doyle, with the preparation of an internal background report which would lay out: (a) the major issues in migration today; (b) those areas where multilateral organizations in general, and the United Nations in particular, could play a useful role in promoting international cooperation; and (c) how migration is currently covered in the multilateral system, and whether that coverage is adequate.

5. A small internal UN working group was created to work on such a report. IOM was invited to be part of this group, as was one independent expert, in order to broaden the scope of input. Moreover, Mr. Doyle consulted selected migration experts from both the public and private sectors in the course of the working group's deliberations. In March 2003, the working group provided its views and recommendations in an internal report to the Secretary General.
6. While the primary focus of the report was substantive, not structural, it was inevitable that current institutional arrangements for dealing with migration-related issues in the multilateral system would be a significant element. The report attempted a broad overview of the main strengths and weaknesses of present arrangements and, without recommending any specific institutional reforms, delved into some potential future changes – including the possibility of the creation of a specialized agency for migration within the United Nations or the conversion of IOM into such an agency. For the short term, however, the report limited its recommendations to a call for improved mechanisms for coordination and consultation amongst the various agencies working in the migration field.
7. The Doyle report and discussions at the UN level are, however, only one part of the context in which this review is taking place. The reflection of being inside or outside the UN system is one which has been an issue for IOM since its creation. At that time, IOM was deliberately founded outside the system for Cold War, political reasons. Since the end of the Cold War, there has been some consideration within the Organization as to whether a change in IOM status should follow. The current review is an effort to consolidate some of the discussions and bring them to the level of Member States, which have an interest in seeing migration addressed in the broad and cross-cutting way that is necessary to maximize the benefits.

Overhead

8. A number of delegates raised the issue of the overhead, recalling that in IOM it amounts to 12 per cent and applies to staff and services only, while it amounts to 13 per cent in the United Nations and applies to the total amount of any given project.
9. The survey conducted by the Administration shows that the 13 per cent is far from being uniformly applied in the United Nations. While 13 per cent is exceptionally applied, the practice is rather to apply different rates, depending on the agency, the type and size of the project, the supervision exercised by the agency and other factors.

Mobilization of resources

10. It is not envisaged that humanitarian planning and fundraising would dramatically change with a change in status. IOM forms an integral part of the UN Consolidated Appeals Process, at Headquarters and field levels, and in addition is part of the Inter-Agency Standing Committee (IASC). IOM's ability to consolidate its financial project basis in the field of complex humanitarian emergencies and transition planning depends on many factors, such as the country crisis, the needs' assessment and planning process, IOM's added value and expertise in relation to crisis recovery,

mitigation and rehabilitation, as well as the technical merits of the individual projects subsequently proposed.

11. In the development sector, IOM is still seeking to establish a more coherent and integrated linkage to the UN Development Group (UNDG) at the country level, when invited. IOM's role as outsider to the UNDG renders integrated and coordinated national programme planning more difficult. IOM endeavours to participate where possible in Common Country Assessments (CCAs) and the United Nations Development Assistance Framework (UNDAF) to ensure that migration and development issues are recognized and considered, including the need for financial support for programme delivery in support of national development objectives.

Costs of travel, attending meetings, coordination, submission of reports

12. It is in this area where the costs of becoming a specialized agency are best identifiable. In preparing this Addendum, the Administration compared notes with its partner specialized agencies in order to assess the costs they incur in coordinating with, and attending meetings at, the United Nations.
13. In terms of travel for meetings and associated costs, the Director General would be expected to attend meetings of the Chief Executives Board (CEB) twice a year, usually held once in New York and a second time in a European city. Other meetings include necessary attendance at the High Level Committee on Programmes and High Level Committee on Management, entailing four meetings a year each in New York or Europe. Other meetings are held on a more *ad hoc* basis on personnel/budgetary issues, meetings of ombudsmen and so on. As a rough estimate, there would be another five to ten one-week meetings in New York or Geneva on these other issues. As a specialized agency, IOM could attend such meetings as a full member and would decide which ones require attendance. At present, IOM is rarely invited to attend such meetings, and even when it is, it is often only as an observer.
14. Other potential expenses are identified as being linked to Special Sessions of the General Assembly on migration issues. Were they to occur, IOM would likely have to prepare additional reports, events, round tables, etc., without being reimbursed by the United Nations. It is likely that coordination, responses to inquiries and contribution to reports would entail additional work, in Geneva and/or New York; it could require the addition of one professional (P) and one general services (G) position to the IOM core structure in Geneva as well as a strengthening of the Liaison Bureau in New York.
15. As reported by an official of a specialized agency, "it is difficult to attribute specific costs to issues relating to budget presentation, preparing reports, responding to inquiries, etc. Each specialized agency has a relationship agreement with the United Nations, so it is that Agreement that would determine the extent of its activities with the United Nations. ... in general, it is for each specialized agency to determine the extent of cooperation that it wishes to have with the United Nations. ... While the said cooperation may have additional costs, it may also save costs in the sense that the UN machinery may provide very valuable types of information that will obviate the need to

set up additional resources in the areas of budgeting, the Consultative Committee on Administrative Questions (CCAQ), human resources, etc.”

Independence, flexibility, efficiency, responsiveness

16. Would becoming a specialized agency affect adversely these qualities? Any specialized agency has its own Charter, organs, membership, elected Executive Head. There is no perceived loss of independence on the part of the Specialized Agencies approached on that matter. In particular, the IOM Council would still decide, without external interference, on the programmes and budget of the Organization.
17. Concerning flexibility, efficiency and responsiveness, it is acknowledged that the need for coordination may sometimes reduce the immediate response capacity of an organization, especially in emergency situations; however, since IOM is part of the UNSECOORD system, this “inconvenience” already exists with regard to the setting of country ceilings, with the added handicap that IOM is not necessarily invited to inter-agency meetings where division of responsibilities are discussed in post-conflict or emergency situations.
18. Overall, partner agencies did not cite a loss of independence or flexibility. Although some reporting is required, it was the general opinion that being part of the system, and part of the decision-making process, outweighed any such perceived negatives.

Conditions of service of staff

19. While professional (P) staff benefit from the UN common system (the main exceptions being the UN Joint Pension Fund (UNJPF) and some special benefits granted by the UN agencies to staff in non-family duty stations), general services (G) staff are not in a similar situation. Headquarters general service staff and a number of Field Missions benefit from the common system (except UNJPF), but others still have different/lower conditions of service. Making conditions of service fully in line with the United Nations – and the non discrimination deriving from it – would be desirable and justified; cost implications for IOM could be non-existent, since application to IOM by all States of the 1947 Convention on the Privileges and Immunities of the UN Specialized Agencies would in some cases lead to a reduction of staff costs because staff would receive a net salary, tax exempt at the national level. Staff would also be able to benefit from being able to move within the system as internal candidates, a change which could bring benefits to the Organization in terms of the experience of its staff.

Impact on assessed contributions

20. Assessed contributions from Member States are based upon the UN scale. If IOM were to become a specialized agency, this system evidently would not change. However, it can be supposed that as a specialized agency, the membership of IOM would increase even more quickly, thereby reducing in real terms the amount that each country would pay per year, or keeping the existing amount at the same level because

of the need to fund new positions and increased costs referred to under paragraphs 12 to 15 above.

Length of the process

21. Concerns were expressed at the length of the process of seeking specialized agency status, referring by analogy to the process of amending Constitutions of international organizations.
22. Seeking specialized agency status does not require a constitutional amendment. Such a request would necessitate a Council decision, based on Article 1, paragraph 2, and Article 6, littera (e) of the Constitution. The length of the procedure varies; the most recent example – the World Tourism Organization – shows that the request for specialized agency status was addressed to the UN Secretary General on 21 December 2001 and the draft agreement between the World Tourism Organization and the United Nations was examined by the United Nations Economic and Social Council (ECOSOC) in July 2003 and should be formally endorsed by the United Nations General Assembly at its next session this year.¹

III. CONCRETE AREAS CALLING FOR IMPROVEMENT

23. Concrete areas where strengthened cooperation with the United Nations would assist IOM can be summarized as follows:
 - The use of the UN *laissez-passer* by IOM staff. The lack of a uniform, recognized travel document for IOM staff is a serious and practical inhibition to much of IOM's work. Given the international character of its staff, having to obtain visas for staff travel often increases costs, limits the necessary travel of staff, slows down operations or means that certain nationals are unable to be part of IOM operations. IOM would be able to achieve this almost automatically if it were a specialized agency. Theoretically, it could be possible to insert such a right into a revised Cooperation Agreement; however, there are no examples of non-UN agencies whose staff are generally entitled to use the UN *laissez-passer*.
 - The application to IOM and its staff of the 1947 Convention on the privileges and immunities of specialized agencies. The IOM Constitution contains two Articles (27 and 28) dealing with the status, privileges and immunities of the Organization and its staff. However, there is no general convention on privileges and immunities of the Organization. This has resulted in the need for the Administration to negotiate with each Member State specific agreements, sometimes unsuccessfully. These agreements are not uniform, they occasionally follow the UN pattern (1947 Convention), but too often grant IOM and its staff an inferior status, which is financially costly to the Organization. IOM would benefit

¹ See doc. A/15/6 "Transformation of the Organization into a specialized agency of the United Nations", July 2003, note submitted by the Secretary-General of the World Tourism Organization to the fifteenth session of the General Assembly in Beijing in October 2003.

from the 1947 Convention if it becomes a specialized agency. A theoretically possible alternative would be for the IOM Council to decide that all Member States without exception should grant to IOM and its staff members the status, privileges and immunities of the 1947 Convention, ensuring that its relevant ministries are so informed, and amending national legislation as necessary.

- The recognition by the United Nations of IOM's "decisive and central role" in the field of migration as defined in its Constitution and Council's resolutions, as well as its "coordinating role".² The latter improvement presupposes a clear definition and understanding by IOM membership of IOM's strategic objectives (cf. paragraphs 13 to 17 of the 7 April 2003 Preliminary Report, as well as the "Note on IOM Strategy: current and future migration realities and IOM's role", of 11 June 2003).
- Automatic inclusion in the UN Country Team. This is another area where the work of IOM is negatively affected by not being part of the UN system. Often, requests to participate in the Country Team have been turned down, simply because IOM is not a UN agency, even if IOM's work is closely related to the work of UN agencies. Theoretically, if the UN Secretariat agreed, this requirement could be inserted in a revised Cooperation Agreement, and a letter sent from the Secretariat to inform its country offices. Again, there is no precedent of such a privilege being granted to a non-UN agency. It would of course automatically ensue if IOM were to become a specialized agency.
- Access to internal, UN meetings on planning and policy. This may be the main shortcoming of the status quo for IOM, and has a clear negative effect on IOM's work. For example, in Timor-Leste, IOM was an integral part of the humanitarian effort, working with UN partners, yet was not automatically part of the UN discussions and planning. A similar pattern is developing in Iraq. Often in such discussions, there are operational decisions made, affecting IOM's work, yet IOM is not able to take part in them. The only way to achieve automatic access to UN meetings would be for IOM to become a specialized agency.

IV. ARE THERE OTHER OPTIONS?

24. Some options have been excluded *ab initio*, as they would be in direct opposition to Member States' wishes to maintain IOM's independence; this applies particularly to the transformation of IOM into a UN fund, programme or organ.
25. It was suggested that more information could be given on the "related agency status", and that such an option ought to be further explored. Upon further reflection, the Administration concludes that the "related agency status" is not a realistic option insofar as it is granted only to agencies whose mandate does not fall within the terms

² Wording taken from the draft agreement to be concluded between the United Nations and the World Tourism Organization, as approved by the ECOSOC on 10 July 2003.

of reference of ECOSOC. Seeking a related agency status whose contours are still ill defined would be more confusing than helpful.

26. “Improved status quo”. A suggestion was advanced to merely update or strengthen the IOM-UN Cooperation Agreement concluded in 1996, bringing to it whatever improvements might be desirable to protect IOM’s role in the migration field and give the Organization the adequate means to fulfill such role.
27. If IOM Member States decide to try to strengthen the IOM-UN Cooperation Agreement, the Administration would submit such a request for changes to the UN Secretariat. The latter would be in a position to respond as to whether the improvements listed under III above may be obtained by way of amending the 1996 Cooperation Agreement, or whether other mechanisms should be used. The United Nations, of course, would have to agree that extending such privileges to an outside agency is appropriate, which was not the case when the current agreement was negotiated and signed.

V. MAIN ADVANTAGES AND DISADVANTAGES OF THE VARIOUS OPTIONS

28. The advantages and disadvantages of the main options were listed in Chapter V of the 7 April 2003 document. To identify the “main” advantages and disadvantages – as attempted below – does not do justice to the complexity of the exercise and the linkages existing between the various advantages and disadvantages under each option.
29. The main advantages of becoming a specialized agency would be:
 - access to decision-making in terms of being invited to policy and country team meetings;
 - recognition by the United Nations and the international community of IOM’s migration mandate;
 - significantly greater opportunity to place IOM staff on secondment in positions of importance to it, both in the Field and in Geneva and New York;
 - reduction in costs as a result of the application of the 1947 Convention and practical benefits for operations such as the use of the *laissez-passer*;
 - better coordination.

30. Some potential disadvantages could be:

- increased reporting and coordination, therefore a possible loss of flexibility;
- increased travel and meeting costs;
- need to adapt to the United Nations' more bureaucratic and less results-oriented work-style.

VI. CONCLUSION

31. The Administration recognizes a number of areas where strengthened relations with the United Nations could benefit the work of the Organization and thus naturally benefit Member States.³

32. One way to reach this objective, yet “maintain the *status quo*”, could be through the strengthening of the current IOM-UN Cooperation Agreement. Some of the desired changes, however, are not known to be granted outside the UN system, therefore until the UN Secretariat is approached, with the backing of IOM Member States, it is unsure how realistic this option is.

33. The other option would be to seek specialized agency status. As indicated in the note attached to the 25 October 2002 letter sent by the Director General to IOM Member States, “any decision on IOM-UN relationship should be taken by Member States, having regard to the following:

- IOM is an organization dealing exclusively with migration and its Member States want it to play an important and relevant role in the migration field.
- There being no single global organization within the United Nations tasked to deal with all the main aspects of migration, there is no natural point where discussion and action come together.
- The United Nations being the universal organization, a global issue such as migration touching upon so many aspects of economic and social life would have to be dealt with in that context.
- A possible structure for a better institutional arrangement for migration could be the establishment of a UN system-mandated IOM, by incorporating the latter into the UN system as a specialized agency with a clarified division of labour between it and other entities dealing with specific aspects of migration, while retaining current essential characteristics of the Organization”.

³ The Administration is firmly convinced that what is or is not in the interests of IOM is ultimately the same as the interests, or not, of IOM's Member States.