

ADRIANA MACCHIA*

A CONFERENCE ON THE EXTERNALIZATION
OF BORDERS AND THE ROLE OF IOM

(Roma Tre International Protection of Human Rights Legal Clinic;
ASGI – Rome, 5 December 2019)¹

* Law Graduate, University of Roma Tre.

¹ The acts and complete recording of the conference are available on ASGI's website <sciabacaoruka.asgi.it/atti-del-convegno-esternalizzazione-delle-frontiere-e-ruolo-di-iom/>, last accessed April 30, 2020.

The Roma Tre Legal Clinic on International Protection of Human Rights, in collaboration with the Association for Legal Studies on Immigration (ASGI), acting within the framework of its *Sciabaca* and *Oruka* projects, and with the support of Haiku Lugano Foundation, Charlemagne Foundation, FAI and Fuocoammare Fund, organized the conference “Externalization of borders and the role of IOM” which was held at the Roma Tre Law Department on 5 December 2019.

The conference benefitted from the participation of Italian and international scholars and focused on the engagement of the International Organization for Migration (IOM) in projects regarding border control, especially return policies, and IOM’s activities in Africa. The goal was to establish a dialogue regarding IOM’s legal nature, its role in border externalization policies and the use of voluntary return to the country of origin or transit as a migration management instrument.

Professor Alice Riccardi (Roma Tre), Director of the Legal Clinic, opened the conference alongside with Cristina Laura Cecchini and Diletta Agresta, representing ASGI. Professor Riccardi underlined that the conference was set within the framework of various human rights’ protection activities and projects carried out at the Roma Tre Law Department. She also laid out the conference’s main questions regarding the role and obligations of international organizations in border management, their relationships with member states and other international actors, as well as the victim’s access to remedy. Laura Cecchini and Diletta Agresta of ASGI illustrated the association’s efforts in the study of the phenomenon of border externalization and its risks, focusing on ASGI’s projects *Sciabaca* and *Oruka*, carried out with the support of the Charlemagne Foundation and FAI. The projects’ aim is to contest the compression and violation of migrants’ rights stemming from national, European and international migration policies mainly through strategic litigation and the promotion of an international network of European and African actors. The speakers also noted that the IOM, by leading many projects regarding border management, voluntary return, assistance, reintegration and stabilization of migrants, is one of the key implementers of the European Union migration policies and as such benefits from extensive funding both at the Union and national level.

The first presentation was held by Professor Mirko Sossai (Roma Tre), who offered an overview of the IOM’s role in the externalization of borders. Professor Sossai

noted how, despite its large development and expansion, the organization has remained under-researched by scholars mainly due to its complex history, its informality and lack of transparency and the general impression that IOM is merely a service-provider to States. He then analyzed the IOM's structure and nature, underlying that, as an international organization with legal personality, it is potentially responsible for international law violations. He also remarked certain peculiarities of the organization, regarding its mandate, the lack of a human rights dimension and the relationship with member States, which clash with the role that IOM aspires to have within the United Nations' system. Indeed, Professor Sossai noted that the IOM may not be found to aim at the realization of the general interests pursued by the United Nations. Moreover, the IOM is a donor-driven organization, whose lack of transparency and decentralized structure raise questions as to the donors' power to stipulate terms and conditions.

The floor was then left to Professor Cathryn Costello, from the University of Oxford, who focused her presentation on avoiding human rights violations by international organizations. To begin with, Professor Costello underlined how, on one hand, international organizations are subject to international law but, on the other, they enjoy certain privileges and immunities which hinder their accountability. Therefore, new approaches are required to assess and respond to violations, such as the institution of human rights' mechanisms within the organizations. Turning to the IOM, she noted the difficulty to determine the organization's obligations, due to its service-based approach, and the ambiguity of its mandate which is further evidenced by the agreement with the United Nations. She also noted how, also based on the IOM's operational framework, invoking the responsibility of member States remains a viable and easier solution.

The next speaker was Professor Andrea Spagnolo (University of Turin), who explored the possibility of the responsibility of international organizations involved in the management of detention camps in Libya. Citing Article 14 of the 2011 Draft articles on the responsibility of international organizations, Professor Spagnolo noted that such responsibility could indeed be invoked, and that the true difficulty lies in finding a *forum* due to the immunities enjoyed by international organizations. However, he also noted that the acts at stake represent a violation of the *jus cogens* rule which prohibits torture and inhuman and degrading treatment and he evidenced the existence

of an emerging trend which disregards international immunities *vis-à-vis* violations of *jus cogens*.

Subsequently, dr. Jean-Pierre Gauci, senior research fellow at the British Institute of International and Comparative Law, delivered a presentation regarding the cooperation between the European Union and the IOM. Firstly, he offered an overview of the relationship between IOM and the EU: all EU Member States are also members of IOM, however, due to some gaps in the regulatory framework and to the plurality of exchanges, the role of IOM within the Union policies is often unclear. Dr. Gauci evidenced, also noting the risks and opportunities, that the EU both provides extensive project funding to IOM, as showed by the EU Trust Fund for Africa, and uses IOM's services for the implementation of EU migration programs. He also explored the EU's potential responsibility for wrongdoings stemming from these programs, mentioning in particular the possibility of using the concept of due diligence as a way to evade the difficulties of proving a relationship entailing responsibility.

The last presentation was given by Dr. Pascaline Chappart, research fellow at the Institut de Recherche pour le Développement, URMIS Paris, who addressed the issue of voluntary return. She offered an overview of the increasing use of this measure worldwide, denouncing the absence of an adequate legal framework. In particular, dr. Chappart evidenced the contrast between the description offered by the IOM, which defines the voluntary return programs "human-rights based" and "migrant-friendly," and the concerns that were raised as to the context and voluntary nature of the displacements. In this sense, she criticized the ideological framework underlying the very concept of voluntary return. Finally, she described IOM's voluntary return programs implemented in Niger since 2016, as an example of the negative impacts of such practices.