
Rethinking the Global Governance of International Protection

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As readers of the Model International Mobility Convention (MIMC) will note, the first four chapters of the project center primarily on the more-or-less voluntary migration of persons. In contrast, Chapter V is devoted to the situation of individuals who are forced to cross international borders in search of safety and refuge. Whether caused by persecution, generalized violence, or forms of state breakdown and insecurity that expose individuals to serious harm, the MIMC's turn to forced migration signals a shift in attention to persons in need of international protection and the humanitarian considerations these circumstances raise.

In this comment, I will largely focus on providing an analysis and overview of Chapter V and the responsibility sharing provisions of Chapter VIII. I begin by sketching the larger context of contemporary forced migration that informs the approach of the MIMC. From here I discuss how the MIMC addresses the relationship between migration and vulnerability to develop responses to many of the gaps that currently exist in international protection. This will highlight how these provisions aim to both deepen rights protections, by refining the existing framework of the refugee regime, while also expanding the scope of coverage, by accounting for persons with strong claims to protection who fall outside the formal refugee definition articulated in the 1951 Refugee Convention. By way of conclusion I briefly consider some of the enduring difficulties that have beset efforts to develop a more effective, equitable, and truly global approach to international protection and the proposals the MIMC advances for meeting these challenges.

Of all the fields of global migration governance, forced migration is perhaps the most developed in terms of norms and institutions. The emergence of international cooperation in this domain extends back almost a century to the inter-war era in Europe and

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culminated with the post-Second World War emergence of our contemporary refugee regime.¹ The cornerstone of this framework is the 1951 Refugee Convention—with its ground norm of non-refoulement—a legal regime supported by the mandate and competency of the Office of the United Nations High Commissioner for Refugees (UNHCR).² In the context of the Cold War, the 1967 Protocol formally globalized the regime, with this expansion taking place alongside the post-war growth and institutionalization of the UNHCR as a major actor in global governance.³ Despite relatively humble beginnings, the Refugee Convention now includes 145 States Parties, while the UNHCR has become a (if not the)⁴ leading organization in the international humanitarian community.

Although the refugee system represents one of the most institutionalized areas of migration governance, there is also increasingly widespread consensus today that the regime is far from perfect on both a normative and practical level. Most glaringly, the current realities of forced displacement exceed the 1951 Refugee Convention's narrow construction of the grounds for claiming refugee status. Ex-

1. For a comprehensive study of the important but frequently forgotten 'pre-history' of international protection, see CLAUDENA SKRAN, *REFUGEES IN INTER-WAR EUROPE: THE EMERGENCE OF A REGIME* (1995).

2. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; G.A. Res. 428 (V), Statute of the Office of the U.N. High Comm'r for Refugees (Dec. 14, 1950). UNHCR has emphasized the enduring and fundamental significance of the principle of non-refoulement as defined in Article 33(1), which states that "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." See U.N. High Comm'r for Refugees, Note on Non-Refoulement (Submitted by the High Commissioner), U.N. Doc. EC/SCP/2 (Aug. 23, 1977).

3. U.N. General Assembly, Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267. For a definitive account of the institutional development of the refugee regime see GIL LOESCHER ET AL., *THE UNHCR: THE POLITICS AND PRACTICE OF REFUGEE PROTECTION INTO THE TWENTY-FIRST CENTURY* (2008); for an account within a broader view on the evolution of international organizations see MICHAEL BARNETT & MARTHA FINNEMORE, *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS* (2004).

4. Beyond its subsequent transformations in temporal and geographic scope, culminating in the 1967 Protocol, the 1951 Convention's non-refoulement norm (Article 33) is now largely recognized as part of customary international law, binding all States regardless of their accession. Given the considerable development in normative authority and organizational capacity that the UNHCR has undergone by way of becoming the "world's most important humanitarian organization" it is easy to forget that, at its foundation, the organization was allocated a miniscule budget and tightly constrained to "very specific functions within narrow parameters and with almost no institutional or material autonomy." LOESCHER ET AL., *supra* note 3, at 29, 14.

amples of such drivers of displacement that fall outside the explicit Convention grounds include generalized violence and State failure, as well as famine, environmental disaster, and climate-change induced displacement.⁵ The preservation of an individualistic and formally narrow definition—one rooted in and deeply shaped by the historical context of its formation—remains a pressing issue for the refugee regime.⁶ Indeed, at present vast numbers of persons who are assisted by the UNHCR may not, from a legal standpoint, qualify as refugees under the current definition.⁷ While the institutional evolution of the regime was capable of expanding its temporal and geographic boundaries, attempts to further revise this dimension of the scope of international protection have been far less global in reach. Such developments have largely played out in the form of regional instruments, such as the Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention) and Cartagena Declaration, or in the more or less ad-hoc creation of various forms of complementary and temporary protection status by particular States.⁸ The latter trend in turn has produced both inconsistencies in access to protection and arbitrary variations in treatment.⁹

Compounding this issue of coverage, other institutional features of the regime have led to great disparities in how the responsibility to provide international protection is distributed globally. The population of “Persons of Concern” to the UNHCR is currently at a historically unprecedented level: the organization puts the number of

5. The evident absence of coverage under international law for persons displaced by the latter causes can be seen in the UNHCR Handbook, which notes that the 1951 Convention “rules out such persons as victims of famine or natural disaster.” UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, ¶ 39, U.N. Doc. HCR/1P/4/ENGG/Rev. 3 (Dec. 2011).

6. James Hathaway, *A Reconsideration of the Underlying Premise of Refugee Law*, 31 HARV. INT’L L. J. 162–63 (1990).

7. This reality has lead Arboleda to suggest that the “general definitions of refugee status contained in the Statute of the UNHCR and the 1951 Convention have been rendered obsolete by evolving realities in the third world.” Eduardo Arboleda, *Refugee Definition in Africa and Latin America: The Lessons of Pragmatism*, 3 INT’L J. REFUGEE L. 185, 188 (1991).

8. Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S 45; Cartagena Declaration on Refugees, Nov. 22, 1984. For an overview of the state of complementary protection, see JANE MCADAM, *COMPLEMENTARY PROTECTION IN INTERNATIONAL REFUGEE LAW* (2007).

9. More worrisomely, the larger global context of international protection reveals a broader dynamic of vastly uneven treatment and protections gaps, with asylum and expansive rights for recognized refugees in the global north and policies of basic humanitarian relief (and often encampment) for refugees in the global South.

refugees globally at 22.5 million, with a total of 65.6 million persons forcibly displaced worldwide as a result of persecution, conflict, violence, or human rights violations.¹⁰ This expansion in the need for international protection has coincided with inadequate amounts of support for the humanitarian operations of the UNHCR as a result of systematic funding shortfalls.¹¹ These developments have led to rising gaps in protection that affect vast numbers of people. Moreover, responsibility for hosting refugees disproportionately falls on developing States in a context in which support for third-country resettlement remains woefully inadequate, accounting for less than one percent of those in need of refuge.¹² The effects of these trends, alongside broader shifts in the nature of displacement, means that roughly two-thirds of refugees are in what UNHCR calls ‘protracted situations’ in which the average time spent in a refugee camp is measured in decades.¹³

It is against this background of growing gaps in protection and insufficient international cooperation that one should view the 2016 U.N. Summit for Refugees and Migrants.¹⁴ Despite this urgency, States have not yet agreed to a collective solution and it may very well be quite some time until any concrete outcomes emerge at the international level, whether from the proposed Global Compact for Refugees or related initiatives.¹⁵ However, the convening of the Summit itself—amid other efforts to rethink the world’s approach to forced migration—was a clear sign of the widespread recognition of

10. UNHCR, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2016 2 (2017). To put this figure in perspective, if the total population of people in need of international protection were a nation they would form the 21st largest country in the world.

11. For a historical overview of such developments, see GIL LOESCHER, *THE UNHCR AND WORLD POLITICS: A PERILOUS PATH* (2001). To take a recent example, UNHCR reported considerable funding shortfalls for its Syrian refugee assistance efforts for 2015, which remained 38% below the requests made in its humanitarian appeals to donor states. UNHCR, REGIONAL REFUGEE AND RESILIENCE PLAN, 2015–16: 2015 ANNUAL REPORT 8 (2015).

12. UNHCR reports that 189,300 refugees were resettled in 2016, a number that accounts for a small fraction of the total global population of refugees, while simultaneously representing the highest resettlement figures in nearly two decades. In contrast, 84% of the forcibly displaced are hosted by states in developing regions. UNHCR, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2016 (2017).

13. See Sarah Deardorff Miller, *The Mobility Convention’s Contribution to Addressing Socioeconomic Issues in Protracted Refugee Situations*, 56 COLUM. J. TRANSNAT’L L. 303, 303–08 (2018) for further discussion and assessment of the MIMC’s ability to address protracted refugee situations.

14. G.A. Res. 71/1 (Oct. 3, 2016).

15. UNHCR, TOWARDS A GLOBAL COMPACT ON REFUGEES: A ROADMAP (2017).

this pressing global challenge.

The MIMC takes three broad strategies to address the present realities of forced migration and improve international protection. First, it seeks to broadly relocate global responses to displacement within a larger comprehensive and holistic framework for mobility. Second, Chapter V—which is devoted to forced migration—expands the scope of protection to account for the many people not covered by the traditional refugee definition. Third, this chapter proposes strengthening the rights provided under international protection, both revising the schedule articulated in the 1951 Convention in light of contemporary human rights standards, and tying this to provisions supporting greater global cooperation. Finally, the MIMC complements these core strategies by explicitly addressing the inter-state dimension of international protection by way of developing a modest institutional framework for facilitating and implementing global responsibility sharing among States.

The central innovation of the MIMC lies in embedding international protection within a larger mobility framework. This is no trivial improvement on the current state of affairs. As recent work at the intersection of international relations and migration studies has revealed, the refugee regime has become part of a “regime complex:” rather than representing a distinct and independent domain of State coordination and cooperation, the institutional space of the global refugee system is now enmeshed with other mobility regimes in an arbitrary and non-systematic manner.¹⁶ For instance, State cooperation to improve border enforcement under the emerging travel regime may conflict or compromise the refugee regime’s goal of providing effective international protection.¹⁷ Institutional proliferation at the global level has also produced situations of overlapping authority and competition between multilateral organizations that has often proved to be counter-productive. Exacerbating this, the State-centric inflection of refugee law¹⁸ as well as the relatively weak mechanisms for

16. GLOBAL MOBILITY REGIMES (Rey Kowalski ed., 2011); Alexander Betts, *Institutional Proliferation and the Global Refugee Regime*, 7 PERSPECTIVES ON POL. 53 (2009); Alexander Betts, *The Refugee Regime Complex*, 29 REFUGEE SURV. QUARTERLY 12 (2010); Alexander Betts, *Regime Complexity and International Organizations: UNHCR as a Challenged Institution*, 19 GLOBAL GOVERNANCE 69 (2013).

17. Betts, *The Refugee Regime Complex*, *supra* note 16, at 15–16; Betts, *Regime Complexity and International Organizations*, *supra* note 16, at 74–75.

18. T. Alexander Aleinikoff, *State-centered Refugee Law: From Resettlement to Containment*, 14 MICH. J. INT’L L. 120 (1992). An important component of this of course is the territorialized nature of asylum. See RANDALL HANSEN, *MIGRATION POL’Y INST., CONSTRAINED BY ITS ROOTS: HOW THE ORIGINS OF THE GLOBAL ASYLUM SYSTEM LIMIT CONTEMPORARY PROTECTION* (2017), <https://www.migrationpolicy.org/research/constrained->

fairly sharing responsibility in a spirit of international solidarity¹⁹—whether through resettlement or funding contributions—provide opportunities and incentives for States to shirk their moral obligations to assist the forcibly displaced. Under current circumstances this has led to deeply problematic outcomes and an important goal of the MIMC is to address these pathologies of protection by embedding responses to forced migration within a broader mobility framework.

Approaching forced migration holistically, as a key part of the global governance of mobility, provides a way to support cooperation through issue-linkage and shared incentives.²⁰ Governments interested in securing the many advantages of a more comprehensive and effective global migration regime are expected to accept these benefits alongside a commitment to support international protection. Moreover, by creating the conditions for coordinated collective State action, the MIMC provides a framework for international protection that more equitably distributes global responsibility while effectively responding to the needs of forced migrants. In doing so, this approach addresses a core challenge: motivating collective action in a world of divergent State interests. Arguably, it is this difficulty that has most stymied efforts to reform the refugee regime and so I return to this issue in my conclusion.

Another major proposal concerns the narrowness of the traditional refugee definition and the necessity to more explicitly account for the diverse grounds that should justify a claim to international protection. Here the MIMC builds on the work of scholars who have questioned the normative inconsistencies of the 1951 Convention's definition and called for a rethinking of who should have access to refuge.²¹ But this re-thinking and expanding of the scope of protec-

its-roots-how-origins-global-asylum-system-limit-contemporary-protection
[<https://perma.cc/6KQC-N2SN>].

19. For a brief overview of the origins and evolution of responsibility sharing (more often called “burden sharing”), see CHRISTINA BOSWELL, *MIGRATION POL’Y INST., BURDEN-SHARING IN THE NEW AGE OF IMMIGRATION* (2003), <https://www.migrationpolicy.org/article/burden-sharing-new-age-immigration> [<https://perma.cc/8W5F-DKH>].

20. For further discussion of the potential advantages that may lie in leveraging such connections between mobility and migration see Rey Koslowski, *Think Mobility Instead of Migration: Leveraging Visitors, Tourists and Students for More International Cooperation*, 56 COLUM. J. OF TRANS. L. 263 (2017).

21. The literature addressing this matter is legion. For some important interventions consider Andrew Shacknove, *Who is a Refugee?*, 95 ETHICS 274 (1985); ARISTIDE ZOLBERG ET AL., *ESCAPE FROM VIOLENCE: CONFLICT AND THE REFUGEE CRISIS IN THE DEVELOPING WORLD* (1989); Aleinikoff, *supra* note 18; ALEXANDER BETTS, *SURVIVAL MIGRATION: FAILED GOVERNANCE AND THE CRISIS OF DISPLACEMENT* (2013); JOSEPH H. CARENS, *ETHICS*

tion also takes inspiration from regional instruments, like the 1969 OAU Convention and the Cartagena Declaration, as well as the ongoing practices of the UNHCR, all of which provide acknowledgment of the need for a more inclusive coverage.²²

To this end Chapter V introduces a new category of protection for “forced migrants”—a group that includes any individual who, owing to the risk of serious harm, is compelled to leave or unable to return to her or his country of origin.²³ In creating this category the MIMC frames “harm” to include generalized armed conflict and mass violations of human rights, but also threats resulting from environmental disasters, enduring food insecurity, acute climate change, or other events seriously disturbing public order.²⁴ This group thus represents a broader class of which refugees are a subset.

In articulating this status, Chapter V draws on the 2011 EU subsidiary protection framework, while also incorporating elements from a number of alternative sources to significantly modify that approach.²⁵ As framed, all forced migrants are uniformly entitled to international protection in order to avoid creating unjustified hierarchies in protection status.²⁶ In doing so, the MIMC departs from many existing forms of subsidiary or complementary protection, insisting that a normatively coherent and rights-based approach to the

OF IMMIGRATION (2013).

22. Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S 45; Organization of American States, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Nov. 22 1984; UNHCR, UNHCR RESETTLEMENT HANDBOOK 2011 (2011).

23. See Model International Mobility Convention, *International Convention on the Rights and Duties of All Persons Moving from One State to Another and of the States They Leave, Transit or Enter*, art. 125 (2017), http://globalpolicy.columbia.edu/sites/default/files/mimc_document.pdf, [<https://perma.cc/F3Q3-6G88>]. Additionally, while affirming and preserving the historical achievement of the 1951 Convention in securing shared recognition for a universal status for refugees, the MIMC also acknowledges the need to introduce a new common protection category to reflect the broader complex of causes that produce displacement. *Id.* Preamble.

24. *Id.* art. 125.

25. See Council & Parliament Directive 2011/95/EU, 2011 O.J. (L 337).

26. Although the Convention adopts some elements from the EU’s approach to subsidiary protection, it also incorporates insights from the critical literature on complementary protection. See Jane McAdam, *The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime*, 17 INT’L J. REFUGEE L. 461 (2005); MCADAM, *supra* note 8. For consideration of a European example that avoids these problematic divergences by providing for a uniform status, see Immigration Act, § 28 (May 15, 2008) (Nor.).

provision of international protection must begin by addressing vulnerability. This is because the protection needs of a person fleeing civil war or mass human rights violations can be equally urgent to those escaping persecution and thus demands an equivalently robust response.

This expansion of access to international protection represents one of the most ambitious proposals of Chapter V. Yet at the same time, the MIMC also recognizes the need to provide a more provisional form of protection status. This is intended to secure effective refuge in cases where individual status determinations may not be possible and where the need for protection is manifestly justified, but also likely to be temporary in duration. An important reason for this proposal is to provide a formalized and uniform protection status to apply in cases of short-term displacement. This aims to address situations in which individuals should be able to return to their country of origin in the near future and in which it would make both normative and practical sense for them to remain in a State of first asylum in the region.

To develop this form of interim protection the MIMC draws from pre-existing frameworks such as “Temporary Protection Status” in the United States and the 2001 EU Directive on Temporary Protection.²⁷ Like these prior approaches, interim protection status provides a uniform baseline for accessing important rights, such as secure residency, work authorization, and other entitlements. However, the Convention also anticipates concerns with creating a form of “protection status lite” and the possibility that this could be used to erode access to more robust forms of protection. This has been done to account for important criticisms that have been raised against existing approaches to temporary protection.²⁸

The MIMC thus carefully circumscribes interim protection and provides incentives for appropriate implementation. Crucially, the application of interim protection does not preclude an individual’s right to a status determination offering recognition as a forced migrant entitled to international refuge. Moreover, Chapter V draws on the recommendations of the European Council on Refugees and Exiles (ECRE) to insert cessation provisions to ensure that interim protection is indeed only temporary.²⁹ Accordingly, interim protection should normally last for one year and can only be extended by

27. Council Directive 2001/55/EC, 2001 O.J. (L 212); INA § 244, 8 U.S.C. § 1254a.

28. GUY GOODWIN-GILL, *THE CHALLENGES TO INTERNATIONAL REFUGEE LAW IN THE CURRENT CRISIS* (2016).

29. EUROPEAN COUNCIL ON REFUGEES AND EXILES, *POSITION OF THE EUROPEAN COUNCIL ON REFUGEES AND EXILES ON TEMPORARY PROTECTION* (1997).

another year before automatically transitioning to a more stable status.³⁰ After this two-year limit, States should assume that the need for protection still remains, meaning that local settlement and integration should be more fully promoted.³¹ Moreover, these provisions require that time spent under interim protection count toward regularizing status overall. This is important because Chapter V provides for the regularization of status of forced migrants—including a right to access permanent residency status after six years.³² Finally, the MIMC discourages States from applying interim protection in an arbitrary manner by bracketing it off from the resettlement dimension of responsibility sharing arrangements.

The last major proposal of Chapter V is to deepen and strengthen the basic framework of rights afforded to forced migrants. These provisions revisit the protections granted to refugees in the 1951 Convention and raise the bar on those rights. As part of this, the MIMC reworks the non-discrimination provisions of the 1951 Convention, updating these to reflect and cohere with contemporary international standards.³³ These proposals also provide forced migrants with rights equivalent to nationals (rather than just non-nationals) in terms of employment and access to primary and secondary education, as well as freedom of association and access to courts.³⁴ The underlying imperative of these provisions is to upgrade these rights and lay the basis for more effective inclusion. This goal is informed by the emerging body of research that has shown the importance of supporting refugee resilience through enabling and sustaining the livelihoods of displaced persons. Rather than consigning individuals to confinement in refugee camps, such research highlights how supporting the agency and unlocking the economic potential of refugees can benefit both local communities and refugees themselves.³⁵ Tying international protection directly to development

30. MIMC, *supra* note 23.

31. *Id.* art. 155.

32. *Id.*

33. *Id.* art. 133.

34. *Id.* arts. 161–163, 165, 145, 146.

35. ALEXANDER BETTS, ET AL., *REFUGEE ECONOMIES: FORCED DISPLACEMENT AND DEVELOPMENT* (2017); ALEXANDER BETTS & PAUL COLLIER, *REFUGEE: TRANSFORMING A BROKEN REFUGEE SYSTEM* (2017); RANDALL HANSEN, *CONSTRAINED BY ITS ROOTS: HOW THE ORIGINS OF THE GLOBAL ASYLUM SYSTEM LIMIT CONTEMPORARY PROTECTION* (2017). This emphasis on resilience has some precedence in earlier era of refugee protection, one where refugee assistance placed a specific emphasis on livelihoods. See, Evan Elise Easton-Calabria, *From Bottom-up to Top-down: The “Pre-history” of Refugee Livelihoods Assistance from 1919 to 1979*, 28 J. OF REFUGEE STUD. 412 (2015).

assistance—as some scholars have suggested—remains a matter of policy that is likely beyond the scope of a multilateral treaty.³⁶ However, the MIMC recognizes that the goal of effectively establishing such an issue linkage across these areas itself relies upon formally securing robust rights protections for forced migrants—an especially relevant concern given the heightened vulnerability of the displaced and dispossessed to exploitation.³⁷

Most crucially, the MIMC addresses the existing refugee regime's problematic lack of a "right of asylum" in three ways. First, it reworks and strengthens the foundational non-refoulement norm. The key innovations it proposes are to expand protection from refoulement to cover rejection at the frontier, interception and indirect refoulement.³⁸ Second, the MIMC incorporates provisions from the 1974 Draft Convention on Territorial Asylum to formalize a right to be admitted and remain in the territory of a State of first-arrival pending a final status determination.³⁹ Finally, this approach strengthens the protections for forced migrants "unlawfully in the Country of Refuge"—that is, persons in need of refuge who enter a State without authorization. To do so, Chapter V introduces proportionality rules on the use of administrative detention, restricting it to an option of last resort.⁴⁰ These protections are complemented by further limits on the detention of minors and the requirement that States apply all measures in a manner consistent with the best interests of the child.⁴¹

I end by turning to the Convention's Treaty Body provisions for addressing the issue of global responsibility sharing. As noted earlier, a major challenge that confronts our current refugee regime lies in the starkly uneven distribution of responsibility for providing asylum to forced migrants, who are overwhelmingly hosted by developing nations—a problem that is only exacerbated by funding shortfalls in the UNHCR's budget.⁴² These difficulties are the direct result of two flaws in the current refugee regime: its territorialized

36. See, e.g., WORLD BANK, FORCIBLY DISPLACED: TOWARD A DEVELOPMENT APPROACH SUPPORTING REFUGEES, THE INTERNALLY DISPLACED, AND THEIR HOSTS (2017).

37. This is all the more crucial because this dimension is often not sufficiently emphasized in much of the literature on refugee resilience. Arguably, entrenching robust rights protections into the international refugee regime therefore represents a crucial background condition for such initiatives for a variety of reasons.

38. MIMC, *supra* note 23, art. 138(3).

39. *Id.* art. 138; Executive Committee on the High Commissioner's Programme, Draft Convention on Territorial Asylum, U.N. Doc. A/AC.96/508 (1974).

40. MIMC, *supra* note 23, art. 137.

41. *Id.* art. 137(3).

42. See *supra* note 4.

approach toward asylum and the weak to non-existent requirements on States to contribute to international protection, whether through resettlement or funding humanitarian assistance.

Chapter V is largely devoted to articulating, and indeed strengthening, the obligations of States toward forced migrants. However, these proposals are essentially unworkable without a profound modification in the inter-state dimension of international protection, one in which the responsibility to protect takes on a truly collective and solidaristic institutional structure. As various moments in the history of the refugee regime have shown, at an elemental level, responsibility sharing remains acutely connected with the securing of the fundamental right of forced migrants to refuge.⁴³ Yet at the same time, this fact highlights the reality that international protection does not only involve the claims of individuals to assistance from a particular State. Rather, it entails a demand on the State-system as a whole, and with that, to the equitable participation of all States in the provision of safety and the securing of human rights.⁴⁴ The MIMC thus recognizes the necessity of creating fairer and more effective forms of global support and coordination to respond to the situation of forced migrants. This is done by advancing a number of formal mechanisms by which States Parties collectively commit to supporting international protection, both through funding and resettlement.⁴⁵

As elsewhere, these proposals are partially drawn from existing State practice. In looking at how to restructure responsibility sharing, the MIMC adopts aspects of the EU “distribution key”—a framework envisioned to manage the cross-European relocation and intra-EU resettlement of asylum seekers.⁴⁶ Yet the MIMC departs

43. This connection was made most apparent in the outcomes of the 1979 International Conference on Indochinese Refugees, which was held following the declaration of regional states that they had “reached the limit of their endurance” and “would not accept any new arrivals.” The resulting agreement greatly expanded global resettlement quotas in return for the continued commitment of regional states to provide refuge as countries of first asylum. UNHCR, *THE STATE OF THE WORLD'S REFUGEES* 82–86 (2000), <http://www.unhcr.org/3ebf9bad0.html> [<https://perma.cc/FRG2-KSBA>].

44. In a sense, international protection raises questions of justice not only between individuals and states qua actors in the state-system, but also between states as well. For valuable conceptual discussion of these two—ultimately interrelated—dimensions of responsibility, see Matthew J. Gibney, *Refugees and justice between states*, 14 *EUR. J. OF POL. THEORY* 448 (2015) and David Owen, *In Loco Civitatis: On the Normative Basis of the Institution of Refugeehood and Responsibilities for Refugees*, in *MIGRATION IN POLITICAL THEORY: THE ETHICS OF MOVEMENT AND MEMBERSHIP* 269 (Sarah Fine & Lea Ypi eds., 2016).

45. MIMC, *supra* note 23, Chapter VIII, Part III.

46. *Proposal for a Regulation of the European Parliament and of the Council*

from this example both with an eye to the ambitious goal of developing a globally viable solution, which requires a different model for sharing responsibility, while also accounting for the manifest difficulties that the EU approach has confronted in practice. It does so by introducing the concept of “responsibility shares” in order to manage and fairly realize the collective obligation of all States to support international protection.⁴⁷ These shares are assigned annually on the basis of State capacity—by taking into consideration a variety of factors—with the aim of providing a metric to hold States Parties publicly to account.⁴⁸ Recognizing further potential divergences between countries, allowances are made for support to be provided through pledging resettlement visas and by contributing humanitarian funding. Nonetheless, it is required that all States that are parties to the Convention offer some degree of support through *both* resettlement and funding, in a spirit of international solidarity.

In addition, this approach attempts to anticipate and forestall the difficulties of the EU model by focusing on proactive solutions to global displacement. Rather than serving primarily as a remedial (and reactive) response to situations of large-scale influx or subsequent secondary movements, the MIMC proposes an ongoing international framework for equitably and collectively responding to forced migration. This is further complemented by a “Global Planning Platform” created to develop lasting and fair solutions to protracted refugee situations, alongside a “Global Refugee Fund” designed to supplement the responsibility sharing framework.⁴⁹ The latter does so by assisting (primarily developing) States in their resettlement and integration efforts, as well as establishing a pool of resources to fund emergency measures in situations of mass arrivals.⁵⁰

The interlocking and holistic features of the MIMC in themselves should provide a powerful incentive for many States to support such reforms. But by also assuring governments that truly international support will be both immediate and secure, all States should

Concerning Establishing a Crisis Relocation Mechanism and Amending Regulation, COM (2015) 450 final (Sept. 9, 2015). Although never fully tested in either circumstance, the EU distribution key was envisioned for both “emergency” situations as well as a permanent complement to the Dublin Regulation.

47. MIMC, *supra* note 23, art. 211.

48. If the MIMC’s distribution formula were applied, as an illustrative example, to the case of the 120,000 asylum seekers that arrived in Europe in the fall of 2015, this would entail the U.S. accepting a share of 8,726 individuals, while China would have a quota of 8,035 and Japan a quota of 4,616.

49. MIMC, *supra* note 23, arts. 212, 213.

50. *Id.* art. 213.

feel more confident in honoring their moral and legal obligations to extend refuge, while remaining assured that they will never have to do so alone. Indeed, to further maintain global responsibility sharing as a collective obligation of the State system, the MIMC also incorporates recognition of the resettlement needs of forced migrants into the “Visa Mobility Clearing House” put forward in the Treaty Body chapter.⁵¹ Together, the above mechanisms are intended to address some of the larger systemic challenges facing the refugee regime today while also accounting for the formidable collective action problems posed to the much needed reform and transformation of international protection in a world of divergent State interests.

As a product of (albeit, largely scholarly) debate and negotiated consensus, the MIMC’s framework for reforming international protection may strike some readers as boldly radical and unrealistic, while perhaps seeming far too consistent with the status quo and conservative to others. To skeptics, I readily admit that these proposals aim toward long-term reforms that would require a substantial degree of international solidarity and cooperation among States, while conceding that our current moment may not provide a sufficient basis for the energetic and creative multilateralism that would be required to effectively improve the provision of international protection. Yet such elements of common commitment and trust, fortified with institutional incentives that satisfy or align otherwise divergent interests, remain basic to any form of global governance and thus central to this project as a whole.⁵² To those who worry that these reforms may not go far enough in more fully transforming international responses to forced migration, although sympathetic to such concerns, I must insist on emphasizing that these provisions of the MIMC seek to provide an institutional starting point for addressing the tragic realities of our present. In doing so, its approach to international protection takes as given the unresolved tensions of the contemporary State system, not denying that in a fully just world—in which the human

51. In particular, the MIMC obliges States Parties to allocate 10% of annual labor migration visas toward beneficiaries of international refuge. This proposal and the incorporation of labor mobility into refugee policy harkens back to earlier approaches to forced displacement taken during the inter-war era; on this point, see Katy Long, *When Refugees Stopped being Migrants*, 1 *MIGRATION STUD.* 4 (2013). For more on the relevance of a connection between mobility and refugee agency in the past and for our present, see T. Alex Aleinikoff, *Taking Mobility Seriously in the Model International Mobility Convention*, 56 *COLUM. J. TRANSNAT’L L.* 300 (2018).

52. Indeed, it is worth stressing the degree to which even the post-war creation of the refugee regime itself represented a considerable achievement of international cooperation, one accomplished during a moment in which multilateralism and human rights were far from fully ascendant in the global importance they hold today.

rights of all persons were fully respected and globally realized—there would be no need for a refugee regime at all.