

**Megan Bradley, Cathryn Costello, and Angela Sherwood: *IOM Unbound* and the Model International Mobility Convention (MIMC)**

This note draws on our recent edited collection:

*IOM Unbound: Obligations and Accountability in an Era of Expansion* (CUP forthcoming).

The Table of Contents is set out below.

Our intervention addresses the question of the role of international institutions (IOs) in the global governance of mobility, with a specific focus on the International Organization for Migration. Many readers will be familiar with IOM as an increasingly important institutional actor across many areas of migration governance. Five years ago, it became ‘related to’ the UN system with a new version of its agreement with the UN, the 2016 UN-IOM agreement. As a highly flexible and operational institution, established without a norm-setting function on migration, states have often turned to IOM to deal with the evolving challenges of mobility. IOM has also sought to develop roles for itself in diverse fields, in particular relating to data governance and humanitarian assistance to IDPs. Consequently, IOM has dramatically expanded over the years in terms of its size, budget, and functions. It is now one of the largest international organisations worldwide and undertakes a broad range of activities related very broadly to human mobility (and immobility): including humanitarian relief, emergency evacuations, resettlement, returns, border management, counter-trafficking, data collection, and policy development, among others. Attesting to its growing significance, IOM led negotiations for the Global Compact on Safe, Orderly and Regular Migration (GCM); it also currently serves as the Coordinator for the UN Network on Migration.

While IOM is indeed a major player in the global governance of mobility, its roles are often overlooked. Furthermore, much scholarly literature on IOM expresses concerns about the way the organisation often operates ‘for migration control’ instead of in the interests of migrants. IOM has no formal protection mandate under its Constitution and has a reputation for deferring to state’s rights and interests. As scholars note, these features of IOM’s are built into its Constitution and amplified further by its projectized budgetary model and decentralised organisational structure. In brief, these institutional features are seen to make the organisation highly competitive for projects, responsibilities, and funding; and they sometimes drive IOM to become involved in contentious migration management activities that undercut or violate human rights norms. In our recent edited collection *IOM Unbound*, various contributors draw out these aspects of the organisation and their implications for the protection of refugees, migrants, and other categories of mobile people. The book, however, also identifies important shifts in IOM’s understanding and interpretations of its obligations as an IO. These shifts, in turn, suggest that the organisation has come a long way in terms of affirming its commitments to human rights norms and principles. The book sheds light on IOM’s uptake of protection issues within its field operations; its turn to human rights discourses to characterise its programmes; and its development of new policies and frameworks that articulate its commitments to international law.

In our presentation, we suggest that certain practice-related and institutional reforms would be necessary to bring IOM’s interventions more in line with the pro-mobility aims and provisions of the Model International Mobility Convention (MIMC). Contrary to the way IOM styles itself as the ‘migration agency,’ it was not designed with a mandate to facilitate mobility. IOM’s Constitution enables it to carry out activities in relation to a broad category of populations, including refugees and even internally displaced persons, but it is also quite specific that ‘in carrying out its functions, [IOM] shall conform to the laws, regulations and policies of the States concerned.’<sup>1</sup> This is significant, given the ways in which state laws and policies may be designed to restrict movement and may also embody serious human rights violations. As we demonstrate in our Introduction, this high deference to national law is unusual in an IO constitution.

The MIMC’s objective is both ‘to reaffirm the existing rights afforded to mobile people’ and ‘to expand those basic rights in order to address growing gaps in protection and responsibility that are leaving

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<sup>1</sup> IOM Constitution (adopted 19 October 1953, entered into force on 30 November 1954) Article 1.3.

people vulnerable.<sup>2</sup> For forced migrants who may fall under IOM programmes and remit of assistance, the Convention seeks to achieve such objectives by expanding access to asylum; strengthening the non-refoulement norm; reinforcing limits on detention; and promoting responsibility sharing amongst states. Here, some of the Convention's relevant provisions are Article 129, which commits states to 'take measures to support the establishment of a single harmonized asylum procedure' and Article 140 which establishes the duty of states to admit persons whose status has been confirmed by UNHCR and prohibits carrier sanctions. Of further significance is Article 138, relating to the prohibition of expulsion or returns, which appears to expand protection from *refoulement* by covering rejection at the frontier, interception, and indirect *refoulement*.<sup>3</sup> Article 138 states that the 'duty not to *refouler* encompasses any measure attributable to a State which could have the effect of returning a person directly or indirectly to the frontiers of territories where she or he would be at risk of serious harm.'<sup>4</sup> Additionally, Article 137 synthesises key international norms relating to the detention of refugees and other forced migrants unlawfully in a country of refuge.

These goals and aspects of the Convention are important to highlight because they point to crucial aspects of mobility where IOM's policies and practices have often aided states to circumvent their international obligations. In *IOM Unbound*, our contributors show how IOM's assisted 'voluntary' return programmes, and its work in immigration detention centres, may produce these effects, and sometimes result in serious human rights violations attributable to both states and IOM. The book's chapter on immigration detention, for instance, underscores how IOM's normative statements on detention, and its activities in specific detention sites—including its direct management of detention sites in the past and contributions to their improvement and capacity to hold large numbers of detainees—have often legitimised states' detention practices rather than reveal these practices as clear violations of human rights. It is argued in the chapter that such problems arise because of IOM's sovereigntist framing and approach to detention issues, and because of the way its normative interpretations have tended to carve out an operational role for the organisation. To give an example, in Libya, IOM has often given the impression that by offering detainees a way out of detention through its assisted voluntary return programmes, the human rights violation of arbitrary detention is mitigated. Indeed, in many IOM policy statements concerning immigration detention, it has tended to emphasise states' rights to control borders but has left unstated many of the state practices that amount to violations of international law—for instance, the prolonged detention of asylum seekers pending decisions on their claim.

In light of these issues, it would be pertinent for future iterations of MIMC to consider not only how state parties are held accountable to the core principles and provisions of the Convention, but also how the instrument could clarify the obligations and ensure accountability of international organisations like IOM. As currently drafted, Section VIII of MIMC sets out a set of new institutions:

- (1) A treaty body, to monitor and (where states agree) hear complaints (by states, individuals or organisations) about compliance with MIMC, taking the form of 'a multi-stakeholder Committee'.
- (2) Mobility Visa Clearing House - 'At the minimum States Parties will take measures to give preference to refugees and forced migrants in the allocation of at least 10% of all annual labor visas.'
- (3) Remittance Subcommittee

in cooperation with the International Fund for Agricultural Development, the International Organization for Migration and the World Bank will establish a Remittance Subcommittee. 16. The Subcommittee will issue an annual report surveying the facility and costs of remittances from migrants to their designated recipients for the purpose of making recommendations for reducing costs and ensuring reliable delivery of funds.

- (4) Responsibility Sharing (UNHCR)

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<sup>2</sup> Doyle XX

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<sup>4</sup> MIMC, Article 138 (3)

- (5) Comprehensive Global Planning Platform - The Committee in cooperation with UNHCR and IOM will establish a “Comprehensive Global Planning Platform” in cooperation with donor States Parties, the World Bank and foundations.
  - (6) Global Refugee Fund
  - (7) The Committee will establish a voluntary “Global Refugee Fund” inviting the cooperation of UNHCR, IOM, donor States Parties, the World Bank and other relevant agencies. The Global Refugee Fund shall be governed by a Board composed of two members of the Committee as Chair and Chair designate; one representative each invited from UNHCR, IOM and the World Bank; and the four leading donor States and two private donors in the preceding two years.
29. States Parties can allocate financial pledges made in fulfillment of the Responsibility Sharing Mechanism to this Fund.

The institutional framework is elaborate, and entails roles for UNHCR, IOM and the World Bank.

However, MIMC does not clarify IO’s as duty bearers under international law, nor does it address the accountability gap – the ‘who guards the guardians’ issue. At a minimum, MIMC could explicitly envisage IOs as parties to MIMC, and be adapted accordingly, using the Convention on the Rights of Disabled Persons as a model, where the EU is a party. It could also helpfully catalyse an acknowledgement that IOs have obligations under ‘general international law’ and that MIMC could be taken as a guide to the content of their obligations. More significantly, IO actions could also be open to scrutiny by the Treaty body created for MIMC. At present, some UNTBs indirectly scrutinise the actions of IOs. For example, there is a pending complaint before CEDAW concerning the treatment of women migrants in Libya, which impugns the conduct of IOM. The Committee on Enforced Disappearances communicates with both Frontex and possibly ICRC.<sup>5</sup> With some appropriate modification, the MIMC Treaty Body’s jurisdiction in relation to the pertinent IOs could be clarified.

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<sup>5</sup> With thanks to Dr Grazyna Baranowska for sharing this insight from the practice of the Committee.

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