



IS THERE A “LATIN AMERICAN” APPROACH TO MIGRATION GOVERNANCE?

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Abstract

Innovative migration governance mechanisms have been rapidly evolving in Latin America in the last two decades. More recently, new policies have emerged to address both long-standing and unexpected pressing issues, such as the vast and sudden flows from Venezuela and Central America. Focusing on two main sub-regions (Central and South America) and five main areas of state involvement (irregular immigration, border control, diaspora engagement policies, multilateral management of intra-regional mobility, and forced migration), we revisit the argument that a distinctive Latin American approach emerged at the turn of the century. We document growing policy divergence across countries and sub-regions, which is rendering the region increasingly in line with global trends.

Introduction

Latin America has developed new mechanisms of migration governance since the turn of the century. For some, these represented a distinctive approach as, in contrast to trends in the Global North, the region put an emphasis on migrant rights, relatively open border control measures, multilateral efforts to facilitate mobility and coordinate policies, and non-criminalization of irregular migration. These ideas were seen as indicators of a regional normative consensus (Acosta, 2016; Margheritis, 2013). To some extent, however, such cross-regional comparative

view obscures differences in terms of the migration dynamics within the region and probably overestimates the scope of regional trends. Since recent analyses have presented overviews of demographic flows (Avila and Meyer, 2022) and exhaustive accounts of migration policies (Acosta Arcarazo and Harris, 2022), our brief text focuses on the question of whether a distinct Latin American approach to migration governance still exists today.

As migration dynamics have rapidly evolved and become increasingly complex in the last two decades (including a massive displacement of Venezuelan migrants and refugees since 2015), a regional perspective has lately appeared less distinct from other regions. New migration policies across Latin American countries point in a direction of growing divergence (e.g., acceptance of the external-

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ization of migration policies in Central America, a variety of humanitarian responses to intra- and extra-regional flows in South America) (Brumat, 2021). This heterogeneity in the region has been confirmed as of late by a detailed analysis of the social policy responses to migrant and refugee populations during the COVID-19 pandemic (Vera *et al.*, 2021).

Focusing on similarities and differences across Latin America's two main sub-regions—Central and South America—in this essay we delineate what we consider to be the main contours of this development. The analysis proceeds by reviewing five very relevant dimensions of migration governance for this entire region in the current century: irregular immigration, border control, diaspora engagement policies, multilateral management of intra-regional mobility, and forced migration. These dimensions are selected here to cover diverse types of migration flows (i.e., labour migrants, refugees, immigrants, emigrants, etc.), as well as the main areas of state intervention to manage migration (e.g., border control, regional agreements). Although these five items do not constitute a comprehensive overview, they seemed to us to be the most relevant to highlight, considering their particularities vis-à-vis other regions of the world, as well as for internal trends in the region itself. Including trends in these five areas allows us to convey the idea that in all countries migration policies are multidimensional. Rather than being affected by, and primarily concerned with, one type of flow, the governments of Latin American countries are coping with rapidly changing, interconnected migration issues. As our

analysis shows, the region has lately developed diverse approaches to address such complexity.

Tackling irregular immigration

As in other regions, managing migration in Latin America has included important efforts to end irregularity. In parallel to an increase in intra-regional mobility, new forms of precarious mobility have affected most countries in the region. For instance, refugees from Haiti after the 2010 earthquake moved south, mainly to Brazil, and lately moved north again, towards Mexico and the USA. Cubans also obtained permanent or temporary permits in Ecuador, Mexico, and Brazil. Increasing numbers of migrants from outside the region (e.g., Asians and Africans) have taken advantage of lax regulations in South America to enter with the aim of reaching the USA or Canada (OAS, 2016; Yates, 2019).

The distinctiveness lies in how the region approached this challenge. Acosta and Harris (2022) have recently documented that only in the last two decades over 90 regularisation programs have taken place in 18 countries. Furthermore, in South America, multilateral and bilateral agreements tended to facilitate legal residence, such as the Patria Grande agreement by which Argentina (the main recipient of intra-regional migration since the 1990s) regularized Mercosur immigrants, or the 2002 Residency Agreement for Nationals of Mercosur Member States, ratified by all member states of the bloc in 2009. The latter, considered a turning point in the harmonization of migration policies in the sub-region, was initially designed to end the problem of irregular

migration. Drawing on a progressive socio-political agenda, the agreement established migrants' rights to circulate, reside, and exert civil, social, economic and cultural rights. However, as it is explained below, free circulation has coexisted with securitization measures and implementation has been slow and uneven. Regional organizations, typically less institutionalized than in other regions (Nolte, 2016), have undergone internal crises and proved ineffective in critical junctures (Merke *et al.*, 2021). Since massive emigration from Venezuela occurred, the Mercosur Residency Agreement has been de facto suspended in most of the sub-region for the last few years and replaced in practice by ad hoc border control measures. Only Argentina and Uruguay continued applying the Residency Agreement.

In Central America, Mexico and Costa Rica stand out as countries that have reshaped their immigration laws to address irregularity from a human rights perspective (Freier, 2015). For instance, no person can be considered illegal; not carrying valid migration documents cannot be considered a criminal offense or lead to imprisonment. Yet, implementation contradicts policies on paper, especially when it comes to detentions and deportations. Most notably in the case of Mexico, a glaring incoherence has evolved among three levels of policy: rhetoric, law and regulations, and practice (Castillo, 2019) in the last four years. Furthermore, in this sub-region, security concerns are closely linked to the management of migration, providing for the increasing participation of bodies of public or police security in immigration action. This trend is pronounced in Panama, where the National

Migration Service is considered a public security force; Costa Rica, which has a specialized police force, the Professional Migration Police, attached to the immigration authority; and Mexico, where the National Guard has acquired a mandate to support the migration authorities in migration control (Guillén, 2020; Selee *et al.*, 2021).

Controlling borders

For Central America, migration control remains closely linked to relations with the USA. The latest developments include the negotiation of the USA government (under Trump) of "Asylum Cooperative Agreements," which amount to safe third country agreements, with El Salvador, Guatemala and Honduras in 2019. Albeit the Mexican government rejected such an agreement, it accepted something similar: the Migration Protection Protocols (MPP) -also named Remain in Mexico or "Quédate en México" Program in 2019 (Nagovitch, 2019). Biden's attempt to stop it remains a political and judicial battle until today: the Agreements with the countries of the North of Central America (Honduras, El Salvador, Guatemala: henceforth NCA) have been suspended (Blinken, 2021), while the MPP with Mexico is intermittently suspended and reinstated by courts (U.S. Mission to Mexico, 2021). Beyond these agreements, under pressure exerted by Donald Trump, the government of Mexico escalated control operations in its territory, with reports of express deportations in which no information was given to migrants about their opportunity to seek asylum in Mexico, in open contradiction to Mexican laws and to international rules and commitments of refugee protection (Amnesty



International and Instituto para las Mujeres en la Migración, 2021). As Central American countries negotiate bilaterally and each party tries to frame a particular relation with the USA directly, the possibility of developing a regional approach to migration challenges is weakened (Palop-García and Pedroza, 2021; Zepeda, 2021).

In South America, border control has been a key concern within the migration management framework promoted since the turn of the century. Epistemic communities underlined the need to manage migration via multilateral actions to cope with potential tensions. Given a generalized governability problem, the goal was to avoid pressures which might exceed states' capacity to respond (Domenech, 2018). This perspective was put to a test recently: regional free circulation was curtailed and, instead of concerted efforts, the displacement of Venezuelans triggered a number of ad hoc measures to control borders when domestic unrest mounted (Selee and Bolter, 2020; Gandini *et al.*, 2020). In the meantime, an increasing —albeit low— number of refugee claims were processed (Freier and Parent, 2019). Policies at different levels of government showed a reactive and somewhat improvised approach to the emergency (Gandini, 2019). It has been argued that most South American countries have been reluctant to apply the Cartagena protocol in this case because of the domestic cost and long-term implications of granting refugee status to Venezuelans (Freier and Parent, 2019: 58-59). Simultaneously, although formal externalization agreements have not been signed in this sub-region, some countries attempted to out-

source migration management to reduce their own vulnerabilities. A case in point is Ecuador, which relied on social organizations for emergency measures and facilitated transit to Venezuelans so they could move South through a so-called “safe corridor” (Beyers and Nicholls, 2020, among others).

Diaspora engagement policies

Emigration became a permanent demographic feature in Latin America in the past century, with stable corridors to the North (particularly, to the USA). It has increased in this century, reaching a total of 17,612,735 emigrants from South America and 16,198,974 from Mexico and Central America in 2020, and destinations have diversified¹. States of origin have joined a global trend lately: they developed policies to reach out to, and in some cases enfranchise, their emigrants, establish or maintain nationhood bonds, and engage citizens abroad in political and/or economic projects. These policies have expanded in the entire region in the last three decades. While instruments have been similar, there has been considerable variation in terms of timing, modality, and results. In South America, we observe convergence around situating specific diaspora institutions within foreign affairs and consular services in particular, but institutionalization of state diaspora dialogues remains relatively weak. In most countries, domestic issues set the priorities and shape state-diaspora relations. Emigration has low resonance in domestic public and political debates.

¹ <https://www.migrationdataportal.org/regional-data-overview/migration-data-south-america>; <https://www.migrationdataportal.org/de/node/3155>, accessed 15 August 2022.



Thus, some initiatives have waxed and waned, intra-state coordination is relatively weak, and diaspora issues are rarely seen as part of a comprehensive migration policy (Margheritis, 2016). Overall, diaspora engagement is missing as a strategic dimension of foreign policy but has ironically contributed to enhance emigrants' rights and redefined their role as citizens beyond borders (Margheritis, 2022).

For Mexico and Central American governments, emigrant policies are an area that offers an opportunity for inter-state cooperation through initiatives such as Tricamex (a consular cooperation program), which functioned even through the darkest moments of immigration control enforcement under the Trump government and restrictive measures related to the COVID-19 pandemic (Cancillería Guatemala, 2020; Pedroza and Palop-García, 2020). Mexico, which has the largest consular network in the USA, has expanded its reach to its emigrants throughout the last two decades not only in geographic but in substantive terms, offering a range of social services ranging from health provision on-site to financial and psychological consultation. Nonetheless, there is currently a tendency to centralize administration of diaspora policies, stifle its citizen governance elements and to disappear some famous initiatives (e.g., the 3x1 remittances for co-development program), suggesting that some of these dimensions were poorly institutionalized (Palop-García and Pedroza, 2021). Across the sub-region diaspora engagement has focused more on citizenship and political rights (e.g., external voting) than representation mechanisms. For most Central American countries, the focus has also

been on exit policies, that is, providing information to emigrants of their rights and risks along the way (Pedroza and Palop-García, 2017).

Multilateral migration management

The inter-state cooperative dimension of migration policies has been fostered since the turn of the century, although with various degrees of coordination and institutionalization. In South America, for example, the aforementioned Mercosur Residency Agreement is perhaps the best example of a management mechanism which formalised and harmonised accords, even if it has been incorporated unevenly at the national level. It aims at facilitating free circulation. It also awards rights to migrants from member states, including access to legal residency and a number of cultural, social, and economic rights². Multilateral management of migration is also reflected in the principles and declarations agreed upon in regional and global forums. These attained only partial incorporation into national frameworks, though (Finn *et al.*, 2019). In parallel, multilateral cooperation has taken place outside of existing channels (Acosta, Blouin and Freier, 2019), as is the case of the Lima Group at the peak of the Venezuelan exodus. This inter-governmental cooperation remained limited and mostly non-institutionalized. Concrete efforts to address the crisis were mostly led by international and social organizations such as UNHCR (UN High Commissioner for Refugees) and OIM (Organization for International Migrations), which greatly expanded their role. These institutions have been crucial in

² <https://www.mercosur.int/ciudadanos/residir/>, accessed 15 August 2022

expediting emergency assistance, generating information to trace displacements, and defining the crisis narrative (Bugnion and Durand, 2020; Chaves-González and Echeverría-Estrada, 2020).

Across Central America there are some mobility agreements: within the SICA, the CA-4 Convenio Centroamericano de Libre Movilidad (CA-4) between Guatemala, Honduras, Nicaragua, and El Salvador allows for mobility, which, however, has limitations and is known to work differently for different classes of migrants (Kron, 2011). Furthermore, all Central American countries participate in the Puebla Process, a regional forum on migration. Cooperation has waned, however, as violence has risen in the region and, with it, displacement and family separation due to deportations and tighter migration controls in the USA (Castillo, 2020).

In this subregion, Mexico presents a stark contrast: it cooperates with no other country and imposes visas onto most Latin American countries, most recently also to Venezuelans, the one nationality that had benefited from the Mexican application of the Cartagena declaration (Observatorio de Protección Internacional, 2019). A modest intergovernmental effort that deserves a mention is the MIRPS (Marco Integral Regional de Protección y Soluciones) which works between Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico and Panama to aid the implementation of the Global Pact for Refugees in identifying gaps and conducting evaluations. The last time Mexico attempted to put mobility on the table of negotiations for a wide frame of a bilat-

eral agreement with the USA was in 2000, but 9/11 led to a securitization of migration and other areas, with ramifications particularly in the field of migration control in the whole subregion of Central America (Zepeda and Fuentes-Carrera, 2020). Most recently, Mexican policies have made a U-Turn considering that foreign policy authorities had pledged that Mexico would become a model for migration policies and the implementation of the Global Compact for a Safe, Orderly and Regular Migration (GCM) at its adoption in 2018, and that a Mexican ambassador had guided the efforts to draft the GCM. Still at the start of 2019 and under the auspices of the Economic Commission for Latin America and the Caribbean (ECLAC), Mexico sought to implement a “humanitarian” and solidaristic approach to those seeking protection as part of a larger frame of common (sub-)regional development that would have made southern Mexico and NCA a single region for development purposes (ECLAC, 2019).

Forced migration

Refugee flows are a relatively new item in the Latin American migration agenda, although the region has a long historical record in this area and is an innovator regarding important accords, such as Cartagena process. The Cartagena Declaration recognized situations beyond those of the Refugee convention of 1951 and its Protocol of 1967 to include cases in which people flee because their life and freedom or security are threatened by generalized violence, external aggression, internal conflict or massive human rights violations or other circumstances which severely disturb public order (Coloquio

de Cartagena, 1984). The massive arrival of Venezuelans to South American countries (5,083,998 out of a total of 6,133,473 displaced Venezuelans are in Latin American and Caribbean countries³) provided an opportunity to apply this norm, which was already incorporated in national normative frameworks (Ochoa, 2020). However, most transit and destination countries resorted to ad hoc measures and eluded the implementation of the Cartagena Protocol. Brazil is the exception: it recognized *prima facie* thousands of Venezuelans, based on the “human rights massive violations” clause, therefore eliminating interviews and other procedures in the determination of refugee status. Even if controversial, this decision made by Brazil’s CONARE (National Committee for Refugees) in December 2019 is considered by the UNHCR and many experts one of the most relevant ones regarding protection of refugees applied in the region (e.g., Acosta and Madrid Sartoretto, 2020; Zapata and Wenderoth, 2021). Colombia, the main recipient of Venezuelan flows in South America, has also set an important precedent recently: in February 2021, the country provided ten-year temporary protection status to Venezuelans in the country, potentially benefiting over a million persons that resided there irregularly (Deutsche Welle, 2021).

In contrast, there is a stronger history of refugee movements in Central America and Mexico since the wars of 1980s which displaced Guatemalans, Salvadorans and Nicaraguans to Panama, Costa Rica and Mexico (Aguayo, Irigoyen, and

Velázquez, 1985) and even earlier, in the case of Mexico, a country which offered asylum to political refugees fleeing South America and Europe in several periods of the twentieth century. As of lately, the migration profile of these countries has become more complex, becoming also transit countries for refugees seeking to reach USA and of (reluctant) immigration for those unable to move further⁴. USA governments have recently problematized the exodus from Central America as an issue of state failure to provide security and rule of law, but security analysts warned that the ending of TPS (Temporary Protected Status established in the 1990 Immigration Act) in the USA during the Trump administration could itself have perverse effects in fuelling human smuggling and insecurity in the region (Silva Ávalos, 2017). Indeed, the sealing of USA-Mexico borders has contributed to increase of irregular migration, of risks and deaths along the path (Abrego, 2019). In turn, insecurity in the transit through Mexico and the rising costs of smuggling have contributed to the “caravanization” of migration (Fernández de la Reguera Ahedo *et al.*, 2019) and to its framing as a “crisis”. In the face of pressures from dealing with an increase in flows of transit migrants and people applying for humanitarian protection the asylum system in Mexico has faced a momentous challenge, but the Cartagena Declaration has not been applied to Central Americans or Haitians fleeing situations of political turmoil and generalized disorder.

³ <https://www.r4v.info/es/refugiadosymigrantes>, updated 5 May 2022, accessed 8 July 2022.

⁴ See Chapters by Masferrer and Gil in: Masferrer and Pedroza, 2021.

Conclusions

- In the last decade, migration governance in Latin America has evolved in increasingly diverging paths, losing the distinctive edge it had at the turn of the century. Today, it resembles trends in other regions in relation to the securitization of migration and the rise of reluctant attitudes towards upholding refugee commitments and bearing the costs of accommodating incoming flows -even if these developments coexist with significant human rights commitments to migrant and refugee protection on paper.
- Heightened migration flows —especially intra-regional ones— in the last two decades have also made the entire region resemble the global North in terms of crisis narratives and shift from multilateral to national management. While inter-governmental cooperation is still fragmented and intermittent, international organizations have acquired a prominent role lately as they stepped in to fill the gaps in states' responses to challenging situations, such as the displacement of Venezuelans.
- The distinct openness that characterized the region at the start of the XXI Century has further diluted since the onset of the COVID-19 pandemic, which marked a new era of migration controls, with several countries introducing visa requirements and migration controls, mostly in the form of border closures. The medium-term consequences of these closures for migration are just beginning to be felt, as high inequalities among countries (and unequal economic recovery) prompt people to choose riskier paths and make use of smuggling, from which horrific tragedies arise (UN-OCHA, 2020).
- Disaggregating the region into sub-regions leads to a nuanced view of migration governance. In Central America, power asymmetries and the impact of late US politics and policies have undoubtedly structured migration dynamics, with Mexico playing a pivotal role. In South America, intense intra-regional migration seems poorly managed through ad hoc and often contradictory responses. Coordination has been attempted, though not always attained within unstable transit/reception contexts and overlapping regional integration schemes.

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