

REPORT

Security-Migration Nexus

To what extent have the Global Compacts on Refugees and Migration contributed to the establishment of a global regime focused on humanitarianism or securitization?

An examination of the impact of the preparation and implementation of the GCM and GCR in Central and South America

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Correction: this is a revised version of the report clarifying that SDG 10.7 was to
'Facilitate orderly, safe, regular and responsible migration and mobility of
people, including through the implementation of planned and well-managed
migration policies'



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List of acronyms

CAN	Andean Community
CC-SICA	Consultative Committee of the SICA
CONAREs	Meeting of National Committees for Refugees or equivalents of MERCOSUR
COPAREM	Regional Parliamentary Council on Migration
CSM	South American Conference on Migration (also known as Lima Process)
DR-CAFTA	Dominican Republic - Central American Free Trade Agreement
ECOWAS	Economic Community of West African States
FEM	Specialised Migration Forum of MERCOSUR and Associated States
ECLAC	Economic Commission for Latin America and the Caribbean
EU	European Union
GCs	Global Compacts
GCM	Global Compact for Safe, Orderly and Regular Migration
GCR	Global Compact on Refugees
ICHR	Inter-American Court of Human Rights
IACHR	Inter-American Commission on Human Rights
IDB	Inter-American Development Bank
IOM	International Organization for Migration
IPPDH	Institute of Public Policies on Human Rights of MERCOSUR
MERCOSUR	Common Market of the South
MIRPS	Comprehensive Regional Protection and Solutions Framework
NAFTA	North American Free Trade Agreement
OAS	Organization of American States
OCAM	Central America Commission of Migration Directors



ObservaLAtрата	Latin American Observatory of Human Trafficking and Smuggling
ODECA	Organisation of Central American States
PAIM- SICA	Action Plan for a Comprehensive Response of Migration in the Region
RCM	Regional Conference on Migration (also known as Puebla Process)
RCP	Regional Consultation Processes
RNCOM	Regional Network for Civil Organizations on Migration
RSD	Refugee Status Determination
SDG	Sustainable Development Goals
SICA	Central American Integration System
UN	United Nations
UNASUR	Union of South American Nations
UNHCR	United Nations High Commissioner for Refugees
UNDG-LAC	United National Development Group por Latin America and the Caribbean
USMCA	United States, Mexico, and Canada Agreement



1. Introduction¹

In 2015, in part as a result of war in Afghanistan, Syria and Libya, over one million refugees and migrants arrived in Europe along three established routes, from the south across the Mediterranean Sea, from the south-east across the Aegean Sea, and from the east across land and through the Balkan states. What quickly became referred to as a ‘Migrant Crisis’ or ‘Refugee Crisis’ caused an enormous amount of friction within the European Union’s member states regarding who should shoulder responsibility for receiving and hosting these people from their initial entry points in, inter alia, Greece and Italy. The open borders between Schengen area states that for many years permitted free movement across them as part of the fundamental freedoms enshrined in the European integration process, were suddenly closed. In fact, Niemann and Zaun say that the number of asylum claims made ‘uncovered persistent dysfunctions and shortcomings in the Common European Asylum System (CEAS)’ and that the ‘so-called European “refugee” crisis should therefore more accurately be termed a crisis of the CEAS’ (2018, 1). While Germany chose to exemplify openness to migrants, accepting over one million, other EU member states such as Hungary objected to the quotas proposed by the European Commission, and across the EU populist right-wing parties saw the arrival of predominantly Muslim migrants as an opportunity to frame them as an existential threat to European societies. One response to these perceived threats was to increase the role of the military (such as naval patrols), consolidating more than a decade of border management through sophisticated security technologies (Huysmans 2000, Neal 2009). In this sense, the migration policies of the European Union appeared to be following the process of ‘securitization’ outlined by Buzan et. al. (1998), where the construction of an existential threat to a referent object creates acceptance of an exceptional political, legal or institutional response – such as the closing of borders. However, the European Union and its member states are actively committed to respecting international humanitarian law and upholding human rights. As will be discussed in detail below, more elaborate naval patrols of the Mediterranean searching for boats transporting migrants to the EU also aim to *deter* their operation and *reduce* the risk to life those migrants face when undertaking such journeys.

The increasingly sophisticated and military-purpose technologies applied to border control gave rise to an increasing entanglement of securitization and humanitarianism within EU border management. There is a tension or paradox between, on the one hand concerns for the rights and needs of the individual seeking entry, and on the other hand, securing the society (Pallister-Wilkins 2015; Perkowski 2018). This dualism was captured by Claudia Aradau, who showed how trafficked women are framed as simultaneously ‘at risk’ and ‘a risk’ and was

¹ The authors would like to thank two anonymous reviewers for their helpful comments.



subsequently developed to apply to migrants more widely through Foucauldian analyses of border control as biopolitics (Aradau 2004, 2008; Little and Vaughan-Williams 2016). Sovereign authorities simultaneously claim to protect migrants from harm (for example at the hands of smugglers, traffickers or other exploitative behaviour) while creating ever more militarised responses to border regulation purportedly to protect societies from the very same migrants. The clearest example of this is identifying the smugglers facilitating illegal and irregular migration as a *common* enemy of both the migrant *and* the protected society (European Commission 2015; Little and Vaughan-Williams 2016).

The 2015 European migration ‘crisis’ also catalysed the most significant normative developments for the global governance of migration this century. European states called for action at the international level, and the UN General Assembly responded by convening a high-level meeting on large mixed migration flows in September 2016. One factor explaining the new level of intent by all UN members to cooperate in the enhancement of migration governance signalled by the New York Declaration for Refugees and Migrants was the direct link to the Sustainable Development Goals (SDGs) and the Agenda 2030, most specifically Goal 10.7 to ‘facilitate safe, orderly and responsible migration’. Additionally, in contrast to the Millennium Development Goals that were exclusively focused on developing countries, the recognition that the SDGs were applicable to all 193 member states of the UN and the transposition of this logic to the discussion of migration reiterated the need for countries of origin, transit and destination to work collectively. The New York Declaration went well beyond the issues raised in the Mediterranean, and ultimately led to two international agreements: A Global Compact on Refugees (GCR) and a complementary Global Compact for Safe, Orderly and Regular Migration (GCM) which were adopted by the General Assembly in December 2018. The Global Compacts (GCs) are soft law frameworks, and they do not impose any new binding obligations on states. Rather, they draw on existing hard law to bring together relevant binding obligations from a range of different sources, and they additionally establish new non-binding commitments. They set out general plans for international cooperation on a range of issues relating to population movements, refugees and other migrants.

Initial responses to the GCs from refugee and migration experts ranged from the highly optimistic to the highly critical, but as yet there has been no serious analysis of what effect they are having on global migration governance in practice. They were intended to consolidate existing best practices and increase the efficiency of migration policies in states of origin, those of transit and destination states, allowing for safer, more orderly travel, greater awareness of the needs of vulnerable individuals, including the legal protection afforded by refugee status. Yet opinion is divided on how to achieve these aims. On the one hand, a human rights approach prioritises the rights and needs of migrants. On



the other hand, citizens' demands for greater security and the repulsion of arrivals through the use of military technologies. Two years after their agreement, the time is ripe for a preliminary assessment of whether the GCs are starting to succeed in creating a cooperative framework in which states have a 'common understanding, shared responsibilities and a unity of purpose' (UN 2018, §9) in their treatment of migrants and refugees.

Accordingly, the current project addresses two central research questions: how do the Global Compacts on Refugees and Migration serve to securitize or de-securitize migration; and to what extent have the Compacts shaped the regional migration governance of two contemporary so-called migration crises—the migration of over 5 million Venezuelans to other South American countries, and the migration of Central Americans through Mexico to the US.

The role and experience of Latin America in the governance of migration is understudied, and yet can offer unique insights. Latin American states have for many years taken a 'liberal' stance on the movement of migrants and have spoken out against European practices of differentiating between regular and irregular migration, both in their interventions in the discussion of the GCM, their longstanding criticism of the EU Handbook on Returns (2005 and re-issued in 2011) (EU n.d.) with regard to the treatment of Latin American migrants in Europe, and their own practices in managing migration within the continent. Thus, given the EU position that 'human rights must be at the centre of all policies addressing large movements of migrants' (Apap 2019, 7), this working paper provides an alternative perspective on how to pursue a human-rights centred approach to migration governance during periods of intense strain drawing on two similar regions with established regimes. In the terminology of Lavenex (2019), regional migration governance in Central America and South America is fragmented in substantive terms, with both regions prioritising a rights-based approach, while being differentiated in terms of institutionalisation, with the latter being ranked as stronger than the former (although neither as strong as the EU) (Lavenex 2019, 1277-8).

Beyond its policy relevance, this paper also makes an important academic contribution. It speaks to broader scholarly debates on the securitization and criminalization of migration. While there is a significant body of literature on the tension between security and humanitarian responses to migration in Europe and Australia (discussed in sections 3 and 4 més avall), much less has been written about the extent to which this tension characterizes the governance of migration elsewhere in the world. By focusing on Central and South American cases, therefore, this paper helps to address an important gap in our understanding. To what extent do the GCs focus on economic and security aspects of migration governance led to the dilution of the human rights emphasis of the two regional regimes? In addressing this question, the paper additionally contributes to the IR literature on the implementation, localization and contestation of international



norms in practice (Acharya 2004; Betts and Orchard 2014; Deitelhoff and Zimmermann 2020; Risse, Ropp, and Sikkink 2013; Wiener 2004, 2014).



2. Mapping and methodology of the paper

The next section reviews existing literature to outline how both scholarship and practice on the securitization of migration have evolved over the past thirty years. This serves not only to contextualise the present project, but also to argue that the securitization of migration and borders by contemporary liberal states and institutions is characterized by their efforts to reconcile discourse and practices aimed at protecting the nation state *from* migrants and migration on the one hand with their commitments to protect migrants in accordance with international human rights and refugee protection norms on the other hand.

Section 4 combines inductive and deductive reasoning to assess the extent to which the Global Compacts themselves contribute to the securitization or de-securitization of migration and borders. Drawing on literature from migration studies, refugee studies, the study of security (including securitization theories), as well as EU integration, a theoretical framework is developed. The framework comprises five elements of discourse and practice that are constitutive of efforts by liberal states and institutions to frame migrants and refugees as threats to national security at the same time as reaffirming their commitments to humanitarianism and human rights. The framework is then used to analyse the Global Compacts. For each of the five elements, a detailed investigation of its presentation in the two GCs, and of how it came to be there, is conducted. This entails process tracing the incorporation of each element through the consultation process with stakeholders and the zero-draft presented in Mexico in 2017 through to the final text adopted in December 2018, and is based on a thorough search of documentation of all of the preparatory meetings, textual analysis from the zero draft to final draft, and a review of commentaries on the process and drafts.

The next three sections turn to examine migration policy in Latin America. Section 5 draws on secondary literature to provide a brief overview of the main characteristics of migration and migration governance in the region. Section 6 presents the original research on Mexico and Central America, and section 7 on South America. For these two regional case studies, a multi-method data collection strategy involved desk research as well as semi-structured interviews. As for the desk research, the collected data was organized in two categories: 1. documents and sources providing contextual and background information on existing regional mechanisms and instruments before the signature of the GCs in 2018; 2. documents and sources issued by regional and international organizations and processes after 2018. Data included thus, documents issued by regional and international organizations and available in their websites as well as in the webpages of national governments and other relevant institutions and organizations. More specifically, documents included institutional statements, minutes of political and technical meetings, official press releases, partnership



agreements, and institutional reports, among others. The information and data thus collected was complemented with relevant secondary academic literature on the topic. Five semi-structured interviews included academics, experts and policy officers involved in regional processes and organisations in Latin America, and with first-hand knowledge of migration and refugee protection in the region. The interview questionnaire was intended to capture their perceptions as to whether and how change in regional migration and refugee approaches had occurred after the signature of the GCs in 2018. All interviews, including their transcription, were in Spanish. The selected quotes in the text are our own translation. NVivo qualitative software was used to assist the coding and analysis of these documents. To organize the findings, we drew inspiration from the five categories developed for the analysis of the GCs (see Section 4). Based on several readings and a preliminary analysis of the GCs and the collected documents and sources from Mexico, Central America and South America, we adapted these categories and expanded them to reflect the specificities of the cases under study. A coding scheme, combining deductive and inductive reasoning, was thus developed and applied across the corpus of data.

Section eight presents a short overview of the European migration regime as a counterpoint and reflection, given that European migration policy has been extensively studied and that the major valued-added in this working paper is to start a conversation about the regional governance of migration, Section nine concludes.



3. The securitization of migration

A large and growing body of literature examines the securitization of migration in Europe and Australia. In this section we review that literature to document the evolution of scholarship and practice from the latter part of the Cold War to the present. Thus, ideas about security, vulnerability, duties of care, hard-working contribution to society and dependency on social welfare provision infuse the discourse.

a. International migration prior to the end of the Cold War

For much of the Cold War, many liberal democratic states had relatively relaxed immigration policies, in large part for self-interested reasons. For example, many refugees fleeing communist countries were granted asylum in the West, and were actually seen as enhancing security in the sense that they were ideologically on the same side as the receiving countries and allies in the Cold War. Post-war labour shortages in much of Europe also meant immigration was encouraged into the 60s and 70s. Between 1955 and 1961, Germany signed labour recruiting agreements with Italy, Spain, Greece and Turkey (Gibney 2004, 89-90). In the United Kingdom, New Commonwealth citizens had unrestricted entrance rights until 1962 (Gibney 2004, 110-112). The sustained economic growth driven by European integration saw migration from Southern Europe (especially Italy as an original EC member) to the more prosperous northern countries of West Germany, France and the Netherlands. Nation-building states such as Australia, Canada and New Zealand also had growing labour and population requirements, which made them broadly pro-immigration (Gibney 2004, 3).

In the 1980s and 1990s, states in the global north moved to adopt increasingly restrictive asylum policies and practices. This can be understood as the result of four main factors: (1) increasing numbers were seeking asylum in the early 1990s (Gil Loescher 2001, 316, 319; Gibney 2004, 4); (2) refugees were no longer seen to be of ideological and strategic importance (Chimni 1998, 351; Gil Loescher 2001, 13; Gilbert 1998); (3) there was rising domestic unemployment in northern states (Gil Loescher 2001, 316; Gibney 2004, 97, 121); and (4) racism and the changing geography of asylum applicants who were no longer white Europeans fleeing central Europe but 'jet age' refugees able to cover much longer distances, mainly from Africa and Asia (Gibney 2004, 96).

b. The securitization of migration

After the end of the Cold War, a body of scholarship on migration and security emerged, much of which drew—explicitly or implicitly—on Copenhagen School



securitization theory (Buzan 1991; Buzan, Wæver, and de Wilde 1998). Early literature argued that migration issues were no longer the sole concern of ministries of labour or immigration, but had become matters of high international politics—and a central concern of ministers and ministries focused on defence and internal security (Weiner 1992, 91). Societal insecurities were seen to be inflaming public discourse in Europe, which translated into state action against migrants (Loescher and Milner 2004, 7; Rudolph 2003, 613-614). Didier Bigo and fellow security studies theorists of the Paris School pointed to the importance of ‘techniques of government’ in the shaping of public threat perception (Balzacq, Léonard, and Ruzicka 2016, 504). They also noted the decision to bring police authorities into the management of border access taken at this time marked the nascence of the association—which is prevalent today—between criminality and migration, asylum and refugee-seeking (Huysmans 2000, 760). Those seeking to de-securitize migration sought to change the terms of public discourse, arguing that locating migration as a threat to culture and identities was disingenuous, and highlighting the contributions migrants had made to host societies (van Selm 2003, 238).

A central argument in the post-9/11 scholarship was that a qualitative shift in securitization discourses in the West occurred, moving away from a focus on internal or societal security to emphasize the potential links between immigration and transnational crime and terrorism (Loescher and Milner 2004, 8; Rudolph 2003, 615). ‘[A]ttempts by some European governments to present migrants as a threat to national cohesion, culture and welfares systems [means] the aim of securitization theory is to understand why and how this happens, as well as the effects that this process has on the real life of the political community’ (Balzacq, Léonard, and Ruzicka 2016, 495). Concurrently, Williams (2003) argued that securitization theory needed to move beyond concern for speech-acts alone, and devote far more attention to the images of security as ‘communicative acts’, not least those of the 9/11 attacks themselves. The ‘rise of migration on the “security” agenda in Europe must be viewed in the context of how migration is “experienced” by relevant publics. This experience is inevitably constructed in part by the images (and discussions based around them) of televisual media’ (Williams 2003, 526).

There was some debate about whether migration was *increasingly* securitized since 9/11, with most authors claiming that it was, albeit often without robust evidence for all steps in the securitization process (for a review of several key works, see Messina 2014). More compelling evidence was offered for specific claims within this debate. For example, migration in general and asylum in particular were identified with terrorism in media and political discourses (e.g. the 7/7 bombings in London, July 2005 and Somali asylum seekers). Furthermore, at the policy level, these discourses were reflected in increasing immigration controls, with an increase in interdiction, intervention, extraterritorial processing,



carrier sanctions etc. (Afeef 2006; Hampshire 2008; van Selm 2003). Critical works advocating securitization either challenged the empirical basis of the links constructed between asylum/migration and terrorism (i.e. they sought to demonstrate that threat perceptions were disproportionate to the objective threat posed by migration) or argued for the reassertion of liberal values (Gibney 2001, 40).

c. Liberal governance and migration

The most recent wave of scholarship on migration and security has moved beyond earlier work that focused on discourses that constructed migrants as a threat, and policies that centred on increasing immigration controls, to offer more nuanced analyses of how liberal states seek to reconcile ever stricter border security measures with their commitments to human rights and humanitarian response. According to this perspective, then, advocating the incorporation of humanitarian values is not an effective strategy with which to counter strict and even violent immigration controls, because **states and EU institutions have fused humanitarian and security discourses** (Vaughan-Williams 2015). Huysmans (2011) has drawn attention to the fact that for too long more attention has been placed on ‘speech’ than ‘act’, bringing into focus the techniques and practices, often made possible through technology, undertaken in daily life that are woven into surveillance pre-requisite for security governance. The increasing use of mobile phones to access public transport or make ‘credit card’ payments augments the considerable information already yielded from their calls, location and app usage, as is being witnessed in the prosecution of supporters of former President Trump who raided The Capitol buildings in Washington D.C. on 6 January 2021.

The absence of a gender in the Copenhagen School

Elaborations both further substantiating and critiquing the original Copenhagen School focus on speech acts have seen securitization theory develop in a number of directions. Lene Hansen, although central to the Copenhagen School’s continued contribution to the debate on security, pointed out its blind-spot for the importance of gender through the identification of situations in which security threats cannot be verbalised and no attention drawn. Her example of honour-killings in Pakistan demonstrated the power relationship inherent in who is able to speak about security (Hansen 2000), and the extent to which prevailing societal power structures are not taken into account in this work. In the case looked at here, a major proportion of migrants in Central America ultimately seeking entry into the United States are women escaping violence (either domestic or gang-based urban), often with their children. The failure of governments in states such as Honduras to act upon these causes of violence highlights another gendered security consideration, namely the different experiences of violence between men and women during war and ‘peace’.



This carries forward into drawing on Foucault and the concept of governmentality and biopolitics, both applied to the study of security and borders. In stark contrast to Foucault's early work of disciplining discourses that drew on the imagery of the act of using the guillotine (and the exhibitionism of the execution) to show the power of the (modern) state to control its citizens through establishing the practice of discipline to the law, he argues that the mechanisms of control have become increasingly subtle and internalised into the liberal citizen. In place of the punishment against the transgression being captured in a single action (most severely decapitation), self-disciplining actions are accepted as they are experienced among a perceived sphere of liberal choice – this is governmentality. The modern liberal state professes to place the maintenance of citizens' lives at the centre of its political purpose, but in the action of 'looking after' the citizen it nevertheless articulates disciplining discourses. 'A clear and well implemented framework for legal pathways to entrance in the EU (both through an efficient asylum and visa system) will reduce push factors towards irregular stay and entry, *contributing to enhance security of European borders as well as safety of migratory flows*' (EU 2015b, 6, emphasis added). Thus, stricter border security measures are fused with humanitarian goals and human rights commitments not only in the discourses of states, but also in their practices (Vaughan-Williams 2015, 3-4). Because state discourse and practice work to merge security and humanitarian concerns, those seeking to desecuritize migration cannot resort to arguments for the reassertion of liberal values—those values are part of the justification for the security measures they seek to protest.



4. Analysing the Global Compacts

Our analysis of the global compacts serves to address the first research question of this working paper, namely how do the Global Compacts on Refugees and Migration serve to securitize or de-securitize migration? As the preceding literature review makes clear, the EU has been at the vanguard of efforts to bring together security concerns and migration management under a broadly defined humanitarian and human-rights conscious framework. It is also clear that there is a debate about the extent to which this is entirely realisable, and when in doubt, why. While the GCR and GCM are comprehensive approaches to the governance of human mobility across the three distinct dimensions this entails – economic, rights and security (Lavenex 2018) – in this section we focus exclusively on securitization and de-securitization as the processes by which speech acts and practice create increased (or decreased) perceptions of threat that in turn are used to justify exceptional policies (or justify the ending of such policies). We do not expect such speech acts to be conspicuous and explicit. Instead, we process trace how key passages of the final text of the GCs were arrived at, starting from the initial consultations and via the zero-draft, to identify how the final articulation of the migration governance regime represents specific interests. The theoretical approach taken is informed by critical feminist theories, which asserts that ideas held about the social world are interwoven with preconceptions of masculine and feminine attributes in binary forms. Finally, it should be noted that the two documents were drafted in different ways. UNCHR led consultations for the GCR in what was regarded as a cautious effort to prevent backsliding over accepted refugee protection in international law. The GCM was drafted through a broader consultation process including thematic workshops comprised of civil society, experts and states, regional consultation through the UN regional secretariat, and traditional intergovernmental bargaining after the preparation of the zero-draft text.

a. Distinctions and Legal Categories

Scholarship on refugees and migration has long recognized the power of labels and categories in shaping outcomes for migrants (Zetter 1991). Labelling people (e.g. as migrants or refugees) serves to classify complex human situations into discrete, clear-cut categories, each of which not only defines a particular group of persons, but also prescribes an assumed set of needs, and may carry particular entitlements to protection and assistance under domestic and international law (Castles and Van Hear 2005, 11; Zetter 1991, 44). On the one hand, the separation of refugees from migrants can be seen as a reflection of the fact that refugees are entitled to particular protections in international law (and that UNHCR has a particular mandate for refugees). On the other hand, in some cases other migrants may have equal or greater protection needs (i.e., there may



be a mismatch between rights and vulnerability/needs). A complicating factor is that one can be a refugee without having refugee status – one is a refugee by virtue of having met the relevant criteria, whether or not any state (or UNHCR) has recognised one's refugeehood through a process of refugee status determination (RSD); many refugees may never formally be recognized as such.

Because the refugee category carries a set of entitlements, it is important for those people who qualify for that status, and it is equally important for states to identify those who carry this status in order to fulfil their obligations under international law. At the same time, however, when seen through the lenses of critical theory (post structuralism and some schools of feminist theory), the category of 'refugee' is argued to be woven into a number of binaries that lay emphasis on being passive victims (juxtaposed against the receiving state as an active promoter of justice), and vulnerable and in need of protection (in line with established gendered roles where the receiving state is the masculinised protector). The bifurcation helps facilitate refugee containment policies whereby refugees are held in so-called protracted refugee situations in camps and cities in the Global South, where the material conditions and depictions of refugees as passive and immobile contribute to the 'feminization' of asylum, while those on the move to seek asylum in the Global North are perceived as threats and their movement securitized (Hyndman and Giles 2011). The large-scale movement of migrants composed partially of refugees may also facilitate delegitimizing the needs and actions of other migrants, as was seen in the political discourse around boat-arrivals in Australia and the identification of 'genuine refugees' to whom the government was 'committed to providing protection' and 'forum shoppers' as migrants wishing to exploit the system (Parliament of Australia 1999). The bifurcation of refugees and (other) migrants facilitates a construction of refugees as being 'at risk' and other migrants as 'a risk' such that mixed migration flows represent a threat and need defending against.

Within the field of migration, by far the most politicised category is the distinction between 'regular' and 'irregular'. High-income states have often in the past relied on migration to sustain their economic growth, and the same remains true today due to aging populations, although with rapid technological advancements in Artificial Intelligence and automation, the gaps in the labour market will stratify towards highly-skilled and service sector (including nursing and care-provision). Regular migration signifies an individual has an identifiable value to the economy of the state admitting entry.² The rhetorical device of creating binaries inevitably leads to the stigmatisation of the other, evidenced by the fact that 'a significant majority of [UN] Member States rejected the securitization and criminalization of

² 'Regularity' is framed as being law-abiding, 'playing-by-the-rules' and avoiding association with the criminality of smuggling (all liberal conceptions of appropriate public behaviour) and in the case of Australia there was frequent reference avoiding queue-jumping in the orderly processing of refugee status (for example see Prime Minister's Howard's interview regarding the MV Tampa vessel Australian Government 2001).



irregular migration in particular' (UN 2017 b, 4). South American states have been working since the early 2000s towards eliminating classifications based on forms of regularity, discussed in detail below through the provision of regional citizenship across the Common Market of the South (MERCOSUR) members and now including other South American states, and most ambitiously Ecuador's creation of universal citizenship as part of its 2008 constitutional reform (Bauer, 2019). A consequence of these two dichotomies (refugee/migrant, and regular/irregular) together is to overlook the fact that many refugees migrate irregularly, and that migration control policies and practices often have significant impacts on refugees and would-be refugees (Costello 2018, 644).

Another prominent label is 'vulnerable', which may be used to denote a person or a situation (GMG n.d.). As a personal categorisation it is most often associated with women, children, the elderly and people with disabilities, as well as statelessness. Therefore, in the first instance, one may be labelled vulnerable based on gender or other personal characteristics that remain an enduring categorisation throughout the migration process and afterwards upon arrival in the destination state. Vulnerability is also circumstantial and situational (UN 2017a, 5), such as when being smuggled or trafficked, and the categorisation is temporal, although the two may combine, as in the most extreme example of young women trafficked to work in prostitution.

Turning to look at the two Global Compacts, both largely serve to reinforce existing dichotomies, and do little to extend international protection to hitherto unprotected categories of migrant. The bifurcation of refugees and migrants runs from the Secretary-General's report in April 2016 through to the final texts of the GCs themselves, but is stronger in the latter as the New York Declaration included some common provisions on both refugees and migrants, as well as sections that dealt with each category separately (Costello 2018, 643). The human rights of migrants are emphasized, and so is the distinction between refugees and (other) migrants. Indeed, the official discourse here explicitly excludes refugees from the definition of migrant, reinforcing the idea of the refugee as passive and immobile, and of those who move as potential threats.

There are two main gaps in the international legal framework for the protection of forced migrants, and the GCR only partially addresses them. First, there are those who do not meet the criteria for refugee status as defined in the 1951 Convention on the Status of Refugees and its 1967 Protocol—or, where regional instruments have expanded that definition, the criteria in those regions. The GCR does not address the need to protect forced migrants who do not come under 1951 Convention refugee definition. UNHCR made various efforts to extend international protection to non-Convention refugees during the drafting stages (though never tried to include IDPs), but was opposed by states and its proposed inclusive language revised—ultimately leaving the closing of protection gaps to state discretion, but offering a “hook” for potential advocacy (Aleinikoff 2018,



614). Second, there are those who qualify as Convention Refugees, but are in a country that is not party to the Convention or the Additional Protocol. In some cases, non-party states have actively engaged in normative interpretation, participated in UNHCR's Executive Committee, and mirrored international norms in domestic law, and it is possible that the GCR will create an additional nodal point to connect major refugee-hosting states to the international refugee protection regime (Gammeltoft-Hansen 2018, 607).

Turning to the GCM, with regard to the distinctions listed above, the term 'irregular' is mentioned 15 times in the final draft, nearly twice as many as in the zero draft (eight). The increase is due in part to repeated reference to the difference between regular and irregular, and a number of insertions that allow national laws to treat regular and irregular migrants differently, including the possibility of prosecuting the latter (see below for further discussion). While there is still emphasis on criminalising the smuggling operators, those who are smuggled and therefore willingly being transported remain implicated in the illegality of the action. One example of this is the text of Paragraph 14 (13 in Zero draft) where the sub paragraph relating to national sovereignty is greatly strengthened, replacing the zero-draft text 'the right of states to exert their sovereign jurisdiction with regard to national migration policy' with 'the right of states to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law. *Within their sovereign jurisdiction, States may distinguish between regular and irregular migration status*' (UN 2018, 5, emphasis added).

The language of the GCM—and indeed of the UN Secretary-General's report and the New York declaration which preceded the GCM—equates regular with safe and irregular with dangerous – yet irregular migration is dangerous in large part because of the policies and practices of states aimed at deterring such migration (see [border management and non-refoulement section](#) below). Furthermore, refugees very often migrate irregularly, and across the two compacts there is nothing about the journeys refugees make, in part as a result of separating refugees from other migrants.

The second important cross-cutting distinction that has evolved in the drafting process is *vulnerability*. The Global Migration Group definition of 'vulnerable' as situational and personal is useful to understand the changing nature of the categorisation. In the zero draft migrant irregularity is linked to conditions of vulnerability and risk that irregular status brings, thus emphasising the situational. In the final draft, with its greater focus on the criminality of smuggling and the irregular migration it facilitates, one finds more emphasis on the personal – choosing to migrate, including by paying smugglers, to arrive without regular status. One exception to the framing irregularity in purely negative terms is in Paragraph 31(b), regarding Objective 15 to provide basic services to migrants, calling for coordination between authorities to avoid 'exacerbat[ing] vulnerabilities



of irregular migrants by compromising their safe access to basic services' (UN 2018, 24). This is a rare example of identifying irregularity in isolation from its binarized opposite and the preferred regular status.

b. Solidarity

The next dimension that we identified in our review of recent literature on migration and its securitization raises the question of what solidarity means, and how the notion of solidarity fuses concerns for state security and hard border control on the one hand with concerns for the human rights and basic needs of migrants on the other. In remarks in response to the drowning of at least 366 migrants off the coast of Lampedusa in October 2013, for example, the European Commissioner for Home Affairs said that Europe had to “show solidarity *both* with migrants *and* countries that are experiencing migratory flows” (quoted in Vaughan-Williams 2015, 1, emphasis added).

The GCR is focused primarily on burden or responsibility sharing (although these two terms should not be treated as synonyms), shifting the terms of debate towards notions of fairness and solidarity between states, as opposed to between states and individuals (Cantor 2018). In terms of solidarity with individual refugees and other migrants, the report of the SG mentions initiatives to combat xenophobia, and this is included in the GCM but not in the GCR.

In the GCM, the issue of solidarity with migrants is addressed in Objective 17, which is to eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration cohesion. The drafting process from zero text to final text reveals a number of subtle changes, which while appearing to incorporate a concern for human rights, could also be regarded as a toleration of criticism against migrants. The articulation of the objective in the zero draft (Paragraph 31) reads:

We commit to condemn and counter expressions, acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against all migrants, including those based on race, religion or belief, in conformity with international human rights law. We further commit to promote an open and fact-based public discourse on migration in partnership with all parts of society, that generates a more realistic and constructive perceptions of migration.

In the final text, a substantial additional clause is added (UN 2018, 25, emphasis added):

We commit to eliminate all forms of discrimination, condemn and counter expressions, acts and manifestations of racism, racial discrimination, violence, xenophobia and related intolerance against all migrants in conformity with international human rights law. We further commit to promote an open and evidence-based public discourse on migration and migrants in



partnership with all parts of society, that generates a more realistic, humane and constructive perception in this regard. *We also commit to protect freedom of expression in accordance with international law, recognizing that an open and free debate contributes to a comprehensive understanding of all aspects of migration.*

Furthermore, in the elaboration of the action points, point (b) regarding the incitement of violence, adds ‘while upholding international human rights law, in particular the right to freedom of expression’ (UN 2018, 25, emphasis added), while point (c) regarding media coverage of migration in the media and the call for ‘objective and quality reporting’ was augmented in the final text with ‘full respect for the freedom of the media’ (UN 2018, 26). Both additions permit media reporting against the spirit of the action points according to respect for free speech.



c. *Border management and non-refoulement*

The principle of *non-refoulement*,³ according to which a person must not be transferred to a country in which he or she will be in danger, has been eroded in Europe (and Australia) in recent years, as states have used a variety of strategies to prevent people arriving at their borders. Strategies which arguably result in illegal refoulement include interdiction at sea, extraterritorial processing of asylum claims, sanctions imposed on carriers (e.g. airlines) who are fined if they carry migrants travelling ‘irregularly’, without the ‘proper’ documentation and visas, and the use of force at borders (Garlick 2006; Gil-Bazo 2006; ICRC 2017). Offshore asylum policies contain ambiguity in the sense that they form part of *non-entrée* regimes, preventing would-be migrants reaching the borders of destination states, and simultaneously make it possible for refugees who are unable to leave their region of origin to claim asylum (Afeef 2006, 2). Border patrols that use force to deter arrivals at the same time as they throw blankets and bottles of water to the migrants they prevent from crossing into their territory again combine humanitarian and security practices (Pallister-Wilkins 2015). The processing of arriving migrants, performing health checks or other forms of medical assistance is necessary from a humanitarian perspective, and simultaneously provides an opportunity to gather biometric data that can be used to identify the person throughout their entire life with regard to entry and exist of the EU.

The GCs do little to push back against *non-entrée* regimes in the Global North. The zero draft of the GCR produced by UNHCR in January 2018 did not reference even the basic principles of refugee law, apparently because UNHCR did not want to open up discussions on the existing legal framework (Gammeltoft-Hansen 2018, 608). The final text mentions international human rights and refugee law as overall guiding principles, and makes explicit reference to the principle of *non-refoulement* (Gammeltoft-Hansen 2018, 608-609). However, it stops short of saying anything about the ways in which the principle of *non-refoulement* has been breached, and neither does it do anything to identify best practices or to clarify or interpret the principle in any way. The 2016 report of the SG had identified some aspects of non-entrée regimes (without giving them that name) as problematic, but they are not discussed in the GCR and *refoulement* is not mentioned at all in the GCM.

MV Tampa and Australia’s ‘Pacific Solution’

³ The principle of *non-refoulement* is core to international refugee law, and is also a feature of international human rights law more broadly, and of international humanitarian law, such that it applies not only to refugees *sensu stricto*, but also to some other migrants. Formal recognition of refugee status is not required for the application of the principle, and protection from *refoulement* is the right of an asylum seeker, not only of a refugee.

Increased maritime border surveillance and interdiction of migrant boats at sea has been justified by Australia and the EU Commission as a means to prevent the “human tragedies” as the drowning of migrants arriving to Australia and Europe by sea (Little and Vaughan-Williams 2016; Vaughan-Williams 2015, 1). In the case of Australia, the watershed moment was August 2001, when the Norwegian vessel MV Tampa rescued 430 migrants in international waters and forced the captain to sail into Australian waters, contravening coastguard instructions and leading to the Australian navy boarding the ship. Consequently, a number of islands to the north of Australia’s mainland that had served as sovereign territory for the purposes of claiming asylum were excised. The extraterritorial processing of migrants attempting to enter Australia was part of a larger effort to keep arriving migrants at arms’ length under the provisions of the ‘Pacific Solution’ introduced in 2001 by the Howard Government, which also included a policy of intercepting boats at sea and escorting them to ‘offshore processing centres’ in Papua New Guinea and Narau. While the Labor government that came to power in 2007 closed the offshore processing centres the following year, the party was forced to reconcile its human-rights respecting rhetoric with tightening immigration control in the run-up to the 2010 election. The passing of the ‘Anti-Smuggling and Other Measures’ law that same year represented the effort of the government to reconcile humanitarian assistance for victims of criminal smuggling and trafficking with more robust naval patrolling. Although the offshore processing centres were shut in 2008, as part of the reopening process in 2012 a panel of independent experts assessed the proposed new measures, and detailed information about the operation of the centres between 2001 and 2008 was released (Australian Government 2012). The report detailed the conditions under which asylum seekers were detained until their applications were processed (some in excess of three years), as well as the number of women, children and unaccompanied minors. It also details impact on mental health, including PTSD.

The emphasis of the GCR is on promoting international cooperation, rather than on the existing obligations of states, such that it has nothing to say about the *non-entrée* regime established by developed countries, and almost as little about the right to seek asylum (Chimni 2018). Despite the fact that the initial impetus for the development of the two Compacts came from the European migration “crisis”, the GCR does not address the large numbers of refugees arriving in Europe or elsewhere in the Global North: ‘there is no commitment to permit those who arrive to apply for asylum, no rules established for where interdicted and rescued forced migrants should be taken, and nothing to prevent the walls going (or staying) up in Europe’ (Aleinikoff 2018, 611). In this sense, the GCR does nothing to de-securitize migration—and may serve to further erode the principle of asylum. Neither Compact explicitly mentions carrier sanctions, which render irregular movement—of both refugees and other migrants—dangerous, and serve to generate much of the demand for smugglers (Costello 2018). Oblique references in the GCM would seem ‘to bolster, rather than question, the role of carriers in migration control’ (Costello 2018, 648).



In the GCM, Objective 11 addresses the management of borders in an integrated, secure and coordinated manner. The development of the text from the zero draft to final draft reflects the points raised above regarding the strengthening of the categorisation of regular/irregular and the associated issues of legal entry and border crossing and the issue of returns. By bringing together origin, transit and destination states in a single negotiation, the issue of managed return was raised throughout the consultation process, with the third thematic session dedicated to ‘international migration in all its dimensions, including at borders, on transit, entry, return, readmission, integration and reintegration’ (UN 2017c). To this end, Objective 21 addressing cooperation in facilitating safe and dignified return and readmission, as well as sustainable reintegration is also relevant to the management of borders and to conditions under which return does not violate the principles of non-refoulement. Indeed, emphasis was placed on the potential economic and development benefits that accrue from the skills and knowledge repatriated by returning migrants. Paragraph 25 of the zero draft (which became paragraph 27 in the final text) concerns the management of borders and is committed to ‘full respect of the human rights of all migrants, regardless of their migration status’, a clear reference to the effort to decriminalise irregular migration. In the final draft this was changed to ‘facilitating safe and regular cross-border movements of people *while preventing irregular migration*’ (emphasis added) and a new sub paragraph (f) that committed to ‘Review and revise relevant laws and regulations to *determine whether sanctions are appropriate to address irregular entry or stay* and, if so, to ensure that they are proportionate, equitable, non-discriminatory and fully consistent with due process and other obligations under international law’ (UN 2018, 20).

The logic of combining humanitarian and security justification for registration and documentation practices is clearly evident in paragraph 58 of the GCR, which states, ‘Registration and identification of refugees is key for people concerned, as well as for States to know who has arrived, and facilitates access to basic assistance and protection, including for those with specific needs. It is also an important tool in ensuring the integrity of refugee protection systems and preventing and combating fraud, corruption and crime, including trafficking in persons.’

d. Trafficking, smuggling and the criminalization of assistance to migrants

Sovereign authorities at once claim to protect the migrant from harm (for example at the hands of smugglers, traffickers or other exploitative behaviour) while creating ever more militarised responses to border regulation. The clearest example of this is identifying the smugglers facilitating irregular migration as a *common* enemy of both the migrant *and* the protected society (Little and Vaughan-Williams 2016).



Within the EU, anti-trafficking and -smuggling have extended to the criminalization of not-for-profit assistance to migrants. This was not inevitable or accidental, and previous measures to criminalise smuggling exempted those who assisted irregular migration for non-profit purposes. The Schengen Agreement (1985) and the UN Smuggling Protocol (2000) both explicitly stipulate that facilitating the entry or stay of irregular migrants should only be considered a criminal offence if the facilitation is done for financial gain (Carrera et al. 2019, 2). However, the adoption of the so-called Facilitators Package by the EU in 2002 removed the requirement for financial or material gain as a requirement for criminalization, and made it optional for EU member states to exempt those providing humanitarian assistance to irregular migrants from criminal penalties (Carrera et al. 2019, 2).

Several EU countries have not only criminalized the provision of assistance to migrants on paper, but have also prosecuted individuals and civil society groups providing such assistance. The first prosecution of the personnel of a migrant rescue boat operating in the Mediterranean took place in 2004, forcing the German NGO Cap Anamur to suspend its activities (Cusumano 2018, 388). More prosecutions have followed since, and other NGOs have suspended their activities, although to date all the NGOs which have been investigated have also been acquitted (Cusumano and Villa 2020). Other policies stop short of formal criminalisation, but create suspicion and social stigmatization, with the effect of intimidating and disciplining rescuers, and hence contribute to the securitization of migration—and of assistance to migrants (Carrera et al. 2019; Cusumano and Villa 2020).

The report of the SG is quite evenly balanced between calling on states to prevent smuggling and trafficking on the one hand, and highlighting the plight of victims of trafficking on the other hand. His language very much reflects the characterization of the smugglers as a common enemy of both states and migrants.

Objectives 9 and 10 of the GCM refer to strengthening the transnational response to smuggling of migrants and to prevent, combat and eradicate trafficking in persons in the context of international migration. The issues were extensively discussed in the fifth thematic session (UN 2017d, UN 2017e), where the issue of criminalizing the provision of assistance to migrants was explicitly addressed. ‘Reports of acts of intimidation and criminal charges against civil society organisations and volunteers who, without any material benefit, provide aid and humanitarian assistance to irregular migrants are of great concern and may leave those migrants without life-saving assistance’ (UN 2017d, 4). This language draws on the Smuggling of Migrants Protocol of the UNODC to differentiate between profiting from facilitating the arrival of the migrant to their destination state to determine whether or not to prosecute. Immunity from prosecution for those assisting migrants without profiting was not incorporated into the final text.



In addition, an obvious change between the zero draft and the final text is the near-complete removal of the ambition to treat all migrants the same and to decriminalise migration in all forms. Paragraph 23 of the zero-draft included two statements regarding the criminal prosecution of smuggled migrants, namely (1) to ‘ensure that smuggled migrants are not criminalised’ and (2) to ‘ensure that national legislation reflects irregular entry as an administrative, not a criminal offence, penalises smugglers where they have a financial or material benefit’. Regarding the first text, it was replaced by: ‘counter smuggling of migrants by strengthening capacities and international cooperation to prevent, investigate, prosecute and penalise the smuggling of migrants... We further commit to ensure that migrants shall not become liable to criminal prosecution for the fact of having been the object of smuggling, *notwithstanding potential prosecutions for other violations of national law*’ (UN 2018, 18, emphasis added). The second statement, regarding treating irregular entry as an administrative issue, was removed completely.

e. Detention and alternatives to detention

Many European countries detain migrants awaiting deportation (which may include failed asylum seekers, other migrants who are in the country illegally, and migrants who were in the country legally but committed certain types of crime), and sometimes also those awaiting the determination of their status e.g., asylum seekers. In some countries, this latter category includes all those entering irregularly. However, most EU states do not provide statistics on immigration detention, and those that do mostly do not disaggregate them by immigration status, making it difficult to get an accurate picture of immigration detention (Costello and Mouzourakis 2016, 48).

Detention facilities for migrants are given names that make them sound humanitarian (reception centres etc) but function like criminal detention facilities—and with much less of the oversight than is legally required for criminal detention in most liberal democratic states. Public health initiatives within detention settings across the EU exemplify the humanitarian-security ambiguity in state practices, providing some detainees with improved access to lifesaving medical care (though not to long-term care for underlying illnesses) at the same time as creating new opportunities for authorities to ‘know’ and hence potentially better manage otherwise unknown and ungovernable populations (Vaughan-Williams 2015, 4).

The GCM addresses the issue of detention in Objective 13 to use immigration detention only as a measure of last resort and work towards alternative (UN 2018, 21), and the text from the zero draft was carried over with only one substantial addition, which was a commitment to ‘provide access to justice for all migrants...who are or may be subject to detention’ (UN 2018, 22). Whereas detention and the non-penalization of illegal entry to claim asylum are



controversial issues of international refugee law, the GCR fails to address these issues or to push back against backsliding by states in the global north on the existing commitments (Gammeltoft-Hansen 2018, 609).



5. A historical overview of migration in Latin America

Having identified the five components of the migration discourse most pertinent to the securitization of the issue in the GCR and GCM, we now turn to address the second research question of this working paper, which is to what extent have the two Global Compacts shaped the regional migration governance of two contemporary so-called migration crises—the migration of over 5 million Venezuelans to other South American countries, and the migration of Central Americans through Mexico to the US? This brief section provides a historical overview of how migration has been experienced in Latin America, as well as some aspects in which South and Central America diverge. Migration processes are reversible (Durand, 2009). The history of migration in Latin America is no exception to this rule. Whereas the region served as an attractive destination for immigrants from Europe, the Far and Middle East for almost four-and-half centuries starting in the 16th century, from the second half of the 20th century, a fundamental change in migratory flows took place (Durand, 2009; Margheritis, 2017). Since then, one of the characteristics of migration flows in the region has been their expelling nature, which began to be forged in the 1970s as migration flows started between countries in the region and towards the advanced economies of the North, including Europe, the US and Canada while extra-regional immigration declined.

From the perspective of Mexico and Central America, the region has traditionally been an origin, transit, and destination of important human flows. The presence of extra-regional migrants after the 2000s has added complexity to a picture where movements across the region have been quite active. In fact, the presence of the US in the regional scenario has acted as a central pole of attraction to most of these flows. Civil wars in El Salvador, Guatemala, and Nicaragua in the 1980s, natural disasters in the 1990s and various economic crises and high levels of societal violence in the region have driven significant numbers of migrants to the US. Additionally, the traditional flows from Mexico to the US through its porous border has also fed such numbers (IOM, 2019). However, not all migratory flows go in the same direction, Belize, Costa Rica, and Mexico have also become home to sizable numbers of migrants.

By the turn of the twenty-first century, intra-regional population movements were intensified in many of the countries in South America, to the extent that intra-regional migrant population outnumbers the extra-regional one.⁴ However, the

⁴ Migration from other regions of Latin America refers to the arrival of citizens from the Caribbean whereas there is also an increase in the number of immigrants from Africa, economic migrants, asylum seekers, and refugees (i.e., Ethiopia, Somalia, Eritrea, Nigeria, Democratic Republic of Congo, Egypt, among others) and from Asia (i.e., China but also Bangladesh, India, Pakistan, Nepal, Syria, Korea and Japan) (OIM, 2017).



increase in immigration in South American countries is not an isolated fact in the global context. In fact, as the IOM report (IOM, 2015) indicates, so-called South-South migration accounts for 37% of total international migration, exceeding the traditional South-North migration flow (35%). Several factors accounted for this change in migration patterns since the 2000s, which include the more favourable conditions that Latin America had to face the economic crisis of 2008 and the more restrictive policies in the countries of the North. Moreover, between 2015 and 2017 the number of Venezuelan citizens leaving their country increased enormously adding pressure to national and regional migration regimes.

All of this represented a new reality, and certainly new challenges for Latin American governments and societies in these last two decades. These changes in migratory flows led countries in the region to develop and implement new regulatory frameworks, policies, and institutions with a twofold objective: to meet the needs of citizens residing outside their countries, and to respond to migration and the growing visibility of other flows, such as refugees, returnees, and the problem of human trafficking. Regulations and policies were deployed at the national level, though significant advances were also made at the regional level at a time when global institutions had not yet established coordinated mechanisms regarding the international mobility of people (Lavenex et al., 2016). This regional activism in migration in Latin America intensified in the 1990s following similar developments in other regions, with the earlier exceptions of the EU and the Economic Community of West African States (ECOWAS).

Our analysis thus focuses on the regional mechanisms and instruments implemented to respond to these migration movements in two main regions in Latin America: South America; and Mexico and Central America. Within each of these we have analysed the process of policy developments in two regional integration frameworks (MERCOSUR and the Central American Integration System (SICA) and two Regional Consultative Processes (RCP) (the South American Conference on Migration (CSM) and the RCM respectively). The objective was to unravel and explore the institutional mechanisms and instruments in place until 2017 as deployed in the first part of this section. Whereas regional integration frameworks draw on formal and institutionalized arrangements, RCPs rely on informal and soft mechanisms. After setting out the historical and institutional context, we turn to examine the developments in these regional organizations and consultative processes during the drafting process of the GCs, as well as in the first couple of years after their agreement in December 2018. These various events and developments are graphically represented in the timelines included in Annex 1 and 2 of this report.

Mexico and Central America show a well-established trajectory of regional migration governance and the protection of refugees since the 1990s. This trajectory has revolved around regional integration frameworks such as the SICA and RCPs such as the RCM. All of them have defended a rights-centred



approach around the protection of immigrants, refugees and their families, but also the need for regular, safe and orderly flows. The passing of the GCs on migration and refugees does not seem to have impacted the working dynamics of regional mechanisms and instruments as the rights-centred language in these documents was already present. Nevertheless, regional efforts in the field seem to be permeated by the interest of the US to regulate migration flows. This leaves an ambivalent picture where this rights-centred approach defended in the abovementioned regional forums faces national logics focused on containment and border control. From here, it is possible to observe a picture where a rhetoric-practice gap exists as the commitments in regional forums encounter important difficulties on the implementation of measures as borders and human flows keep being securitized by the states.

In the case of South America, this subregion evidences a long and established tradition of regional migration governance and a refugee regime that brings almost all countries in the Americas together, which adds to the subregional schemes as those under MERCOSUR. These norms which are regionally specific have been built on a strong human rights approach which nurtures in regional and international rules and standards. This became especially strong in the 2000s, and since then has imbued most regional policies and instruments both within regional organizations, i.e., MERCOSUR, and RCPs, i.e., CSM. Migration has been strongly associated with development and the respect of human rights. Yet, the Venezuelan political, economic, and social crisis has faced the region with the largest external displacement and humanitarian crisis in its recent history. This has certainly put these liberal principles and existing regional governance mechanisms and practices to the test. In addition, it has given rise to new soft mechanisms, such as the Quito Group established to address the migration of Venezuelans throughout the region.



6. Mexico and Central America

a. An overview of the region

Migration and refugee protection have been key topics in the regional agenda as Mexico and Central American countries (i.e., Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama) have become origin, transit, and destination points of human flows. Their related issues have been particularly visible in the public debate as migrations through the region and from the region to the US and Canada have been subject of intense scrutiny. This is especially evident during the last decade, where on the one hand, violence in Mexico and Central America has pushed hundreds of thousands of people out of the region and on the other hand, the bellicose rhetoric of the Trump administration has deepened the US securitizing agenda concerning border control and the arrival of immigrants from the Global South, including the exceptional policy response of building the border wall. In this context, regional initiatives exist with the aim of managing the phenomenon through dynamics of coordination and consensus-building, mostly, among the states. In the last three decades, building responses with a scope that goes beyond national governments has been discussed in multilateral forums (Segura-Mena, 2016). Scholars and policymakers studying the region agree that efforts in the fields of migration and refugee protection seem to be shaped by the interest of the US to regulate migration flows (Ramírez, et al. 2019; Vera-Espinoza, 2019). This is especially relevant as the US has vested economic interests in the region as evidenced by the North American Free Trade Agreement (NAFTA) and its successor the US, Mexico and Canada Agreement (USMCA), as well as the Dominican Republic - Central American Free Trade Agreement (DR-CAFTA) (Thomas, 2014). Although these agreements have not made large concessions to migrants and their families; still, the prevalent tone has been to focus on regular flows based on high-skilled professionals and temporary trade-related migrants (Lavenex, 2019).

Regional initiatives in the field have been characterised as belonging to the managerial rather than legal side as they are based on non-binding instruments that differentiate among regular and orderly flows from irregular and dangerous ones (Thomas, 2014). The latter has been linked to illegal activities such as human smuggling and trafficking led by organised crime. The input from international organisations such as the International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees (UNCHR), as well as the Inter-American Development Bank (IDB) and the Organization of American States (OAS) has been relevant in enhancing technical capacities of these initiatives.⁵ Normatively speaking, a human rights approach seems to guide

⁵ Examples of such agreements are the cooperation agreement between SICA and the UNCHR signed on April 7, 2014 (Acuerdo de Colaboración entre la Secretaría General del Sistema de Integración



them as they highlight the ultimate goal of protecting the transit and return of immigrants, refugees and their families. However, these initiatives have been born in an environment where states have made important inroads into securing and controlling borders.

b. Institutional design and regional coordination procedures

Within the Mexico and Central American regime, it is possible to identify an evolution in the regional responses aiming to manage the phenomenon that dates to the 1990s as the concrete initiatives around the issue were discussed. The largest integration process in the region is the SICA. The heir of the former Organisation of Central American States (ODECA), the SICA is the outcome of a reform of the ODECA in 1991. It is formed by the governments of Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Nicaragua, and Panama. Although this process did not have a mandate to guide the migration policy of its member states, the SICA has promoted migratory instruments and agreements among their member states over the last two decades. A noteworthy example of SICA's move towards governing immigration in the region is the development of the Regional Integral Migration Policy carried out by the General Secretariat since 2010 (SICA, IOM and UNHCR, 2019). This policy has been formulated under the advice of the IOM and the UNHCR and it includes provisions on the protection of immigrants but also refugees. It treats migration and forced displacement as a multidimensional and multi-causal phenomenon that goes beyond managing them from a militarised and security-services focused approach. Another example is the approval and implementation in 2005 of a free mobility agreement for the transit of citizens across four member states, namely: El Salvador, Guatemala, Honduras, and Nicaragua. Within the SICA, the Central America Commission of Migration Directors (OCAM) is another central element in their approach to immigration. Although it was created in 1990, before the SICA, as an independent body, it has become part of the regional process. For over three decades, the commission's aims have been to coordinate, consult and reach consensus in migration management across the region (OCAM, 2020). Focusing on border management and entry requirements; the OCAM is tasked with training border and migration officers, standardizing common entry requirements, and creating the conditions for the safe and orderly return of regional and extra-regional migrants (OCAM, 2020). Since 1999, the IOM has been responsible for the OCAM's technical office as per an agreement signed between both organisations (IOM, 2016).

Outside the Central American integration effort, regional multilateral forums solely focusing on migration and refugee protection also exist. The most visible one due to its size, age and reach is the RCM also known as the Puebla Process. Created

Centroamericano -SG-SICA y el Alto Comisionado de Naciones Unidas para los Refugiados) and the SICA and the IOM agreement so the latter takes over the OCAM's technical office since 1999 (IOM, 2016)



in 1996 as the outcome of the Presidential Summit Tuxtla II, the RCM includes all the SICA member states plus Canada, Mexico, and the US. It also includes five countries as observers: Argentina, Colombia, Ecuador, Jamaica and Peru. The RCM also has the UNHCR, the IOM and the SICA as regional and international observers. The RCM can be framed under IOM and UN-sponsored efforts in the mid-1990s to promote RCPs that contributed to the global governance of migration (Thomas, 2014). In this context, the Puebla Process seeks to become a forum on migration issues that informs political and policy debates that lead to regional coordination and cooperation (Acosta and Freier, 2015). It also seeks to “strengthen the integrity of each member state’s immigration laws, borders, and national security” (RCM, 2021). Although it is a non-binding mechanism, the Conference issues recommendations that its members should follow (Acosta and Freier, 2015). Accordingly, the RCM is born as a response to the need to tackle the root causes of irregular migration and forced displacement in the region and to offer a framework for orderly migrations (Kron, 2011; Segura-Mena, 2016).

In addition to these initiatives, there are spaces for the incorporation of **civil society actors** around the above-mentioned regional initiatives. The most relevant one is the Regional Network of Civil Society Organisations for Migration (RNCOM). Created in 1996, the network is a forum of discussion for civil society organisations and social leaders from all the SICA member states, Canada, Mexico, and the US. The network’s work mainly occurs within the RCM where they represent non-state actors in the discussions and debates with member states. The aim is to advocate for the protection of the human rights of migrants considering the gender dimension and their non-discrimination. The RNCOM focuses on three thematic axes: consular protection, human smuggling, and human trafficking with a special emphasis on vulnerable population (Canales-Cerón and Rojas-Weisner, 2018). Another relevant space is the Consultative Committee of the SICA (CC-SICA). It is a consultation space with the Central American civil society which is formed by business and social non-state actors. The CC-SICA has been a space where migratory policies such as the Regional Integral Migration Policy have been discussed with these actors. However, their non-binding power and the lack of organisational strength does not provide them with a strong voice in the regional decisions (Morales-Gamboa et al., 2014). As for the sub-national level (i.e., local actors such as regional governments, municipalities or local civil society organizations (CSOs), the presence of actors seem to be absent at the regional level as there are no instances that organise them in the field of immigration and refugee protection (Canales-Cerón and Rojas-Weisner, 2018).

c. International dimensions of Mexico and Central American migration policies



Although the above-mentioned initiatives including state and non-state actors are the most important ones in the field of migration and refugee protection, there are other less central regional specialised processes funded by the US government worth mentioning. The Mesoamerican Programme is an initiative started by the IOM with the financial support from the US State Department (Canales-Cerón and Rojas-Weisner, 2018). It seeks to strengthen the institutional capacities of civil society actors in the identification, assistance, and protection of vulnerable immigrants. Another US funded programme is the Regional Program Mexico and Central America. It funds governments in the region on capacity-building in security, governance, human rights, trade, employment, and migration. Equally relevant are two initiatives specifically related to the prevention and combat of human trafficking. Another initiative is the Regional Parliamentary Council on Migration (COPAREM). Created in 2009 through the Guatemala Declaration, it is formed by members of national parliaments from Central American countries, Mexico, and the Dominican Republic. In the area of human trafficking and smuggling, we also find two initiatives. The first one is the Latin American Observatory of Human Trafficking and Smuggling (ObservaLAtrata) which is formed by civil society actors in 15 countries. It has national chapters in Costa Rica, El Salvador, Guatemala, and Mexico. The other one is the Regional Coalition against Human Trafficking and Illegal Human Smuggling. It is integrated by governments and CSOs to position related topics in the RCM and the SICA.

The Mexico and Central America migration regime has been part of important regional and global debates to build effective international instruments. In this line, countries in the region have signed and ratified important legal instruments such as the Inter-American Convention of Human Rights and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, all countries have signed except for Costa Rica and Panama. As for the protection of refugees, the 1951 Geneva Convention and the 1967 Protocol have been incorporated by all the countries in the region. In this framework, countries in the region signed the 2014 Declaration and Action Plan of Brazil which build on the 1984 Cartagena Declaration on the protection of Refugees. In fact, the Central American civil wars in El Salvador, Guatemala and Nicaragua first inspired the latter. In this context, the Inter-American Court of Human Rights (ICHR), and the Inter-American Commission on Human Rights (IACHR), can be said to also have created a regional protection regime for refugees and other migrants within its human rights framework.

According to Bonicci et al. (2011), the region requires the harmonisation of rights recognized by the national constitutions and international treaties. This situation leads to the need for national governments to establish deeper cooperation and coordination on matters regarding their migrant and refugee populations. It is precisely against this backdrop that the 2016 New York Declaration on Refugees and Migrants marks the starting point of negotiations among the governments in



the region plus the US and Canada to have common positions that contributed to the 2018 GCs. Between 2017 and 2018, countries in the region discussed regional good practices that could be included in a common position to be brought to the negotiation of the GCM. In this case, the RCM and the OCAM acted as coordinators of the regional consultation processes (RCP) done among the member states and civil society actors in the quest for a common position on the Compact. As for the GCR, the UNHCR along with the Inter-American system, the SICA and the United National Development Group for Latin America and the Caribbean (UNDG-LAC) contributed to establishing a Comprehensive Regional Protection and Solutions Framework to address forced displacement in Central America and Mexico (MIRPS – see text box above). Established in 2017 as a coordination mechanism, it is formed by the governments of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, and Panama after the adoption of the San Pedro Sula Declaration (MIRPS, 2017). This venue served as a contact point for a common position on the GC. In the end, the Dominican Republic and the US did not ratify either of the GCs; however, they participated in the negotiations.



d. Mexico and Central America and the Global Compacts

Tamirace Fakhoury (2019) refers to the existence of a ‘rhetoric-practice’ gap where contrasting framings and agendas in the multilevel governance of refugee protection in the Arab world create incongruous responses. This same logic can be observed when looking at the regional efforts to govern migration and refugee protection in Mexico and Central America. Although initiatives such as the SICA, the RCM and the MIRPS show a rhetoric based on strong human rights provisions; such an approach emerged from an environment where borders and human flows are increasingly securitized by the states. This situation is more relevant as the US decided not to join the GCs as they went against the incendiary rhetoric of President Trump and his view on hard borders (The New York Times, December 3, 2017). Unsurprisingly, the US position emerges as a constant challenge to the implementation of non-binding actions debated in integration and consultative processes in the region.

Applying the Global Compact on Refugees in Mexico and Central America

An integral part of the GCR is the Comprehensive Refugee Response Framework (CRRF), which was originally published as an annex to the 2016 New York Declaration. The CRRF is intended to provide a generic framework or template which can be applied in concrete situations of large-scale movements of refugees. The expectation is that UNHCR will develop and initiate a CRRF in each such situation, in close coordination with relevant states, and the overriding goal is to facilitate international cooperation and burden- and responsibility-sharing. However, the CRRF template is arguably weaker than it might have been, because it does not establish any formal structure for coordination, joint operations or accountability (Aleinikoff 2018, 612). Each application of the CRRF in practice is intended to include multiple stakeholders—including the private sector, faith-based groups, and development and humanitarian actors—and may devolve significant power to local authorities and seek to promote refugee self-reliance and refugee participation, but they tend to be driven by states, international organizations and/or regional international organizations.

In response to large numbers of people who have fled their homes and are in need of international protection in the region, Belize, Costa Rica, Guatemala, Honduras, Mexico and Panama adopted the San Pedro Sula Declaration in 2017, agreeing to work together to apply the CRRF template in the form of the Regional Comprehensive Protection and Solutions Framework (MIRPS). El Salvador joined the process in July 2019. Although MIRPS predates the GCs, it represents the application of a framework which is a central component of the GCR.

In certain important respects the MIRPS goes beyond the CRRF template, to the point that it arguably serves to challenge some tenets of the GCs. For example, the MIRPS operates with a more inclusive approach to those in need of protection than that implied by the categories and dichotomies which characterise the GCs, and ‘includes asylum-seekers, refugees, internally displaced persons, deportees with protection needs, as well as the populations affected by violence and insecurity’ (UNHCR 2018, 1). The MIRPS also places emphasis on the rights of migrants, partnering with the Central American Council of Ombudspersons joint border



monitoring and advocacy campaigns for forcibly displaced persons, and committing to ensuring that asylum seekers face no penalty for irregular entry and to providing legal guidance to people in transit with protection needs (UNHCR 2018, 1).

Yet in practice some contradictory policies can be observed, as countries in the region are constrained by pressures from the US to securitise migration and border control (Gómez Castro 2020). In 2019, as Mexico was apparently reaffirming these commitments by assuming the Pro Tempore presidency of the MIRPS and setting out its priorities for the same, it was also agreeing to implement the Migrant Protection Protocols (aka the “Remain in Mexico” policy) with the US. Under the protocols, migrants—including asylum seekers—who enter the US at the Mexican border irregularly or without proper identification, are returned to Mexico while their immigration applications are processed (Gómez Castro 2020, 112-113). Such a policy reinforces rather than challenges the distinction between regular and irregular migration, penalises asylum seekers for irregular entry and—given that migrants often face grave dangers in Mexico—in many cases its application by the US constitutes a violation of the principle of *non-refoulement*.

Regional processes around migration and refugee protection in the studied period seem to entail a desire to regionalise the responses to common challenges such as forced displacement, human trafficking and smuggling as well as the modernisation of the border control systems at the national level. Although these processes are mainly intergovernmental as decisions reached are discussed by the states, **our analysis shows the search for a common framework of action in the region**. This common framework is seen by regional organisations as a process still under construction, where fragmentation and lack of common standards are obstacles to solidify such a path. In this context, a permanent crisis rhetoric seems to permeate in the responses. However, defining such movement under a crisis frame entails labelling certain human flows as unusual and having negative implications for the migrants themselves and for the people receiving them (Sager, 2019).

Overall, regional responses build upon a rights-based approach that comes from previous regional efforts in migration and refugee protection. These efforts seem to be consolidated through the ratification of the GCM and GCR as states in the region contributed through the RCM and the MIRPS (see text box above). In the different documents studied in the selected years, it is possible to read constant references to international legal instruments. This shows how member states in regional forums and the forums themselves already used a right-centred language when referring to immigrants and refugees. In fact, as multiple meeting minutes of the negotiation, the common regional position in the GCs is the outcome of previous dynamics seeking to regionalise responses in these areas. These dynamics are quite evident for the GCM because, so far, the Compact does **not seem to have impacted the language or the practices of regional initiatives as the innovative aspect was already there**. In this case, although the GCM is seen as a useful instrument where Mexico and Central America had a relevant role in the negotiation; regional processes do not consider



it determinant in their core business. This is better explained by a high-ranking officer within the RCM:

The RCM participated a lot in the negotiation of the Global Compact (on Migration). Member states also participated a lot and at the end of 2017, we did a special declaration on the implementation of the Compact (...) The Compact is an additional mechanism (for the countries), as it is not binding, but the countries have obviously given it a lot of responsibility. And yes, we mention it when there are reports or some special declaration, or some important pronouncement. If possible, we mention it for those countries who are part of it. But actually, there has not been much variation (in our work, compared to the past) (Interview CA01).

The situation is slightly different in the case of international protection as a regional response such as the MIRPS is an explicit application of the GCR.

In this scenario it is worth mentioning the work done by international organisations such as the IOM, the UNHCR, and to a lesser extent the IDB and OAS, who acted as norm entrepreneurs, in the words of Lavenex et al. (2016), shaping the different regimes. Their role in regional processes, especially around the time of negotiation and approval of the GCs is quite noteworthy. Their role is not limited to just lending external support but also being part of the different processes. Although such strong cooperation already existed before the GCs; the goal of creating regional arrangements governing migration and refugee protection seem to have qualitatively increased their involvement. The MIRPS exemplifies the clearest example of a mechanism created around the negotiation of the GCR and developed in the region with the technical support of the UNHCR (MIRPS, 2017; 2019). Another example is the SICA which receives technical guidance from the IOM and the UNHCR. As already mentioned, the IOM is responsible for the OCAM's technical office. In this context and in 2019, the IOM and the UNHCR along with the SICA did a baseline study on migration and forced displacement among its member states with the goal of drafting an Integral Action Plan on these topics which have been named PAIM-SICA (SICA, IOM and UNHCR, 2019). This document should serve as the starting point for a common regional policy. As the preface in baseline study reads:

The report, which incorporates elements of the Migration Governance Framework (MiGOF) and the Global Compact for Safe, Orderly and Regular Migration (PMM), will also help the IOM and other regional and international organizations to guide the type of support required in these countries (p.8).

And then in the introduction:

These developments in migration governance, achieved during the last four years, concretize a series of principles, understandings and common commitments shared by the international community. They have had the support and approval of the member countries of SICA, as well as their active



participation, during their preparation and negotiation. This series of instruments for the governance of international migration presents a new paradigm for addressing migration in the world and in the region. It presents an opportunity and a reference point for the harmonization and improvement and development of the migration policies of the member countries of SICA and the regional migration policies of SICA itself (p.36).

Despite such moves towards a rights-based approach at the regional level with the decisive support of international organisations; still, **a deeper analysis of the documents studied show an ambiguous picture where the protection of migrants and refugees is mixed with a framework where states rely on their security forces to implement regional recommendations and policies.** This situation is summarized by Pereira (2019) who explains that migration is seen as a risk and migrants as victims where the combination of both results in subtle measures of migration control with a more humane face.

For instance, the SICA's Secretary General Vincenzo Cerezo framed the regional integration process' approach to immigration as one where they aimed to move away from a securitizing to a humanitarian paradigm. In his words, "the reasons for migrating cannot be analysed just through the security lens but also through the humanitarian ones (...) we want to change the traditional paradigm of what we know as intraregional migration and move to a mobility approach among the countries of the region" (SICA, 2018). However, this discourse faces reality checks as the Regional Migration Policy allocates to the SICA's Council of Ministers of Foreign Affairs the coordination of the policy among the member states and to the Council of Ministers of Interior, Justice and Public Safety the monitoring and implementation (SICA, IOM, UNCHR, 2019). Moreover, in the same baseline study it is mentioned that issues such as training of border patrols in human rights, security and cultural aspects is done partially by the member states.

The advancement of human rights provisions at the regional level in the treatment of migrants and refugees encounters the acceptance of a logic where states have the sovereign right to manage and control their borders. In their study on international migrations in Mexico and Central America, Canales-Cerón and Rojas-Weisner (2018) denounced that states in the region seemed to be concerned with national security. For instance, we note such compromise in an RCM joint declaration with the member states during the negotiation of a common regional position in the GCM where: "We reaffirm that states, in the exercise of their sovereign right to administer their borders, must promote, in accordance with international law, migration control mechanisms that protect and safeguard the human rights of migrants" (RCM, 2017a). However, parallel to this rhetoric, regional processes also seek to decouple from any securitizing implication in managing migration as they see their work as one where human rights provisions are introduced in the states' actions. In fact, their discourse seems to reinforce



this approach where they frame their actions as ‘humane’ and ‘ethical’ and the ones done by the state as ‘in need for improvement’ and ‘in need of internalising human rights provisions.’ This is especially relevant as the studied initiatives are formed by states and are focused mainly on the state action. As a high-ranking official from the RCM claimed:

Of course, we cannot say that security issues and human rights issues are in dichotomy. Quite the opposite. Human rights issues are very present in all immigration control. They have to be, because there will always be rejections at the borders, there will always be deportations, there will always be irregular migration, it must be controlled, and countries have every right to do so. But it does have to be a framework that respects human rights, which has contributed a lot to strengthening dialogue, to strengthen the capacities of the countries, to train officials in these areas (CA01).

Since the 1990s and especially after 9/11 there has been an important shift in the protection of states in the management of borders in the region. National security and the fight against terrorism became top priorities in the containment of foreign threats (Canales-Cerón and Rojas-Weisner, 2018). The ideological underpinnings of such an approach have permeated through the region and how mobility is understood. The influence of the US in shaping regional policies on migration and refugee protection seems to be constant even if they did not join the GCs. In fact, it is quite telling that the RCM and the SICA have not said much on the rise in deportations from the US or the construction of the wall in the US-Mexico border.⁶ Moreover, in the following statement of the US representative, Ms. Margareth Pollack in an RCM meeting to negotiate a common regional position in the GCM this rationale is summarized:

Think, for example, about how to increase cooperation and move towards the investigation, detention and prosecution of migrant smuggling that facilitates irregular and dangerous migration; how to better coordinate the care for vulnerable migrants along irregular migration routes, (and) how to ensure to those who need international protection in mixed migration flows to be identified and provided with adequate attention. During these consultations, it should be discussed how all interested parties can work together to increase legal migration routes, guidelines to ensure respect for the human rights of migrants, improve the treatment of migrants and promote the integration of migrants in their new communities. *It should also include an understanding of the security concerns that all countries share in keeping citizens safe* (RCM, 2017b, emphasis added)

Through the security concerns and states’ control over their borders (c.f. Pécoud, 2018), it is possible to **note the emergence of a rhetoric that differentiates between regular, irregular, and mixed flows at the regional level**. Scholars

⁶ The XXII RCM held in San Salvador (El Salvador) in 2017 mentioned the impact of US migration politics on the Temporary Protection Status for residents from Honduras, Nicaragua, El Salvador and Haiti.



and human rights activists criticize such distinction as it represents a two-folded logic of containment where, on the one hand, the border has a security function for the nation-state as it filters desired and undesired mobility and individuals and, on the other hand, a humanitarian function that helps protecting migrants from criminal actors or threats related to socio-political instability (c.f. Pécoud, 2017).

It is possible to observe a language in regional initiatives that advocate for the benefits of an orderly and safe migration as a strategy to defend the human rights of migrants (Ramírez et al. 2019). The SICA has given steps to precisely work in this direction. Their slogan 'We work so migration is just an option, not the only option' ('Trabajamos para que migrar sea una opción, no la única opción') precisely goes to the heart of this logic of containment. In the case of the RCM, the Conference has strongly advocated modernising the border management of states so they can on the one hand maintain the monopoly of entry and on the other hand protect migrants and those seeking protection.

Despite the previously mentioned situation, it is possible to identify a gap where the language of human rights meets containment actions that may provoke xenophobic and racist attitudes on the borders of the nation-state (Knippen et al. 2015; Rojas, 2016). In this regard, securitizing border control in the fight against human trafficking and smuggling has been noted as a legitimate way that states could act to precisely filter flows. However, it is not fully clear to what extent such actions endorsed by regional processes may contribute to the criminalisation of those migrating or seeking for protection. In this vein, the SICA has been working on the Intersectorial Regional Plan against Organized Crime (PRICCO). Accordingly, efforts should be directed against crimes such as: illegal arms traffic, drug-trafficking, human trafficking and smuggling, and the phenomenon of transnational organised crime in the form of '*maras*' (SICA, 2019). Moreover, the Plan aims to create spaces that facilitate the exchange and information among police forces, the judiciary, armed, migration and customs forces.

Not only that, but such filtering also allows in migrants that might be useful for the labour market demands of the receiving countries. The economic rationale behind such an approach has been defended in regional forums throughout the years and has been consolidated with the signature of the GCM. As the XXI RCM in Omoa and San Pedro Sula (Honduras) stated, the Conference "continues to promote a safe, regular and orderly migration within the region. We are certain that good migration management offers important economic, social, and cultural benefits for sending, transit and receiving countries" (RCM, 2016). For those left behind, the idea is to support development measures that contribute to breaking the root causes of migration. In this sense, the regional process has tended to use a language where actions seem to also work in the direction of the SDGs.

e. A more humane approach to international protection in the region?



An important challenge in the region that emerges in our analysis is the identification among migration flows of those in need of international protection. So, it is not only about the regular/irregular dichotomy but also the one referring to who is a refugee. Chantal Thomas (2014) refers to this particular situation as one where ‘the centrality of economic globalization policies as conceived and enacted in the region in contributing the current disarray need not (and in my view should not) lead to a re-characterization of asylum seekers as mere “economic migrants’ (p.11). Despite legal and policy advances in the protection of refugees, still, it is quite challenging to determine in mixed flows who has the right to seek protection. As multiple reports show, violence and insecurity have become a central factor for internal and international displacement in the region directly affecting the rights of different groups (ICHR 2015, Amnesty International, 2016). In this context, the 2014 Plan of Action of Brazil and the 2016 San José Declaration are seen as important precedents to the goal of strengthening the protection and encouraging solutions for affected individuals (MIRPS, 2019). In the latter declaration, states agreed to “recognize national interests in migration and border management, which includes the importance of striking an appropriate balance between state security and respect for human rights, protection applicable to internally displaced persons and refugees, and the law for those seeking and receiving asylum.”

In this context, the MIRPS represents an innovative intergovernmental process to harmonise standards in the identification and protection of refugees. It is possible to note how in the framework of this initiative civil society actors have gained visibility as they have been able to analyse and give recommendations on how to improve the protection of refugees. In this regard, they advocate for the need to “(i) guarantee a coordinated response in all the MIRPS territories, (ii) facilitate the access to documents in the processes of admission, transit or integration, (iii) the creation and improvement of confidential systems of registration, (iv) health, education and employment programmes, (v) improvement of the technical capacity of public servants and finally, the implementation of policies protecting the rights of displaced population, refugees and returnees” (MIRPS, 2019b). The MIRPS has also granted an important role to the SICA as it promotes regional meetings of national commission of refugees. It also implements alongside the UNHCR specific actions to receive, assist, and protect caravans of displaced persons and migrants. Moreover, in the MIRPS framework, joint initiatives between the SICA and CSOs are encouraged in monitoring forced displacement (SICA, 2020).

The regime around refugee protection seems to offer a more humane face for regional processes but also member states. However, and as civil society actors denounce, there is still a long road to fully implement such recommendations. Connected to this point, MIRPS reports confirm the observations made by CSOs that low institutional capacity in the member states affects the capacity to



recognize and integrate those seeking for protection from violence (MIRPS, 2019). **Our findings suggest a difference in the way migration is treated compared to refugee protection as the latter is strongly grounded in the 1951 Geneva Convention and subsequent regional efforts overseen by the Inter-American System.** However, just as we previously discussed, **these efforts occur in a regional context where the securitization of human flows has strongly permeated the treatment of vulnerable groups.** It is important to acknowledge that speaking about mobility in the region implies speaking of a context where border controls do not seem to clearly distinguish in practice between those economic migrants and those in need of protection.

Regional processes, especially in the last years, have made important attempts to include a **gender perspective** in the language but also in the actions they put forward. Moreover, different documents analysed show how gender is included as an element to be taken into account when monitoring risk situations and when implementing actions on the terrain. While the documents suggest that different instruments have included women and their needs; the focus on them seems to reside more on the side of forced displacement and refugee reception. In fact, the MIRPS along with the UNHCR have released different documents where they consider the situation of women, and also their situation in relation to children and youth. This approach builds on the different regional agreements and legal mechanisms created around international protection before the GCR. Despite this observation, it is still possible to identify the gender approach in migration processes such as the RCM but also the SICA. In these documents, women, as economic migrants, are seen as subject to abuses in the migratory route, the labour market and in the access to social services in transit or destination countries. **One of the most visible efforts in bringing gender to the regional discussion is the RCM-led yearly conference on: “Women, migration and development: a strategic challenge for the region” which started in 2018.** This forum aimed to offer a space of “discussion, dialog and creation of concluding remarks on the experience of the participating delegations on the topic of women in migratory contexts.” Moreover, a high-ranking officer within the conference claimed that:

Since the Salvador conference (in 2017), the approach to the protection of women in migratory contexts was promoted, and an annual congress was also implemented. We already have two in the matter of migrant women. Yes, there have been many recommendations, and it also seeks to train people, because this whole issue, all these human rights issues, are constantly being trained. So, a lot has also been learned from the issues of gender inclusive language, etc.

f. Conclusion

Overall, the Mexico and Central America migration and refugee protection regimes are far from consolidated as they do not offer a fully coordinated system



where multi-level governance arrangements around their related topics are present. The region, due to its geographical position and socio-political reality, will continue to be protagonist of flows as recent reports on human flows travelling through Central America to the US amidst the pandemic shows (BBC, 2021). Although the GCs are important instruments guiding the actions of regional processes and member states, still, implementing such actions at the country level seem to be an important challenge in the region. There are contrasting scenarios in terms of migration governance as the increasing politicization of migration and refugee protection and the disrespect for human rights and refugee law co-exist with a rights-based narrative at the regional level (Acosta and Freier 2015; Jubilut et al. 2019). The presence of the US and its need to shape the agenda in these matters permeate the capacity to formalise these processes. Moreover, the need to build more capacities at different levels seem to make a true governance of migration and refugee protection an elusive goal. Not only that, the inclusion of non-state actors in the different processes is still weak as they do not seem to be overly present in the discussion of regional actions. It is somewhat surprisingly to note that there is little or no presence of sub-national state actors such as regional and local governments. They are essential when creating such regimes in the region; however, their absence in the documents analysed is a point that needs further investigation.



7. South America

a. An overview of the region

Migration is a strongly intraregional phenomenon (Finn et al., 2019). Data shows that 70% of all migrants living in a South American country were born in another South American country (Finn et al., 2019). Since the turn of the century, South America has developed a regional framework for human mobility, which has been characterized as the most developed after the EU regime (Geddes et al., 2019; Lavenex, 2019). Yet, during the 2000s the EU was a negative example in South America (Geddes et al., 2019) as we will discuss below.

The South American regime is made up of both regional institutional frameworks and RCPs. Within these, focus is on (MERCOSUR) and the CSM. In the case of MERCOSUR, migration was not a key pillar of the integration process until recently. Set up as a common market project in 1991, the first initiatives were mostly concerned with the free movement of workers, the portability of social security benefits and the mutual recognition of qualifications (Ceriani Cernadas, 2015).⁷ In time, MERCOSUR has given greater political relevance to migration, leading to the establishment of various instruments to facilitate movement and residence of people within the bloc. A relevant change was introduced with the launching of the Agreement on Residence for Citizens of the States Parties of MERCOSUR and Associated States in 2002, thus paving the way for the intraregional flow of persons under the notion of free movement.⁸

b. Institutional design and regional coordination procedures

The preamble of the MERCOSUR Agreement on Residence makes it clear that the main objective is to solve the migratory situation of intra-regional migrants, while also combating trafficking in persons for the purpose of labour exploitation and those situations which involve the degradation of human dignity. The Residence Agreement thus establishes that nationals of MERCOSUR member states – either full or associated partners - may obtain legal residence - and the right to live and work - in the territory of another state for two years. In doing so, the agreement establishes one main condition for obtaining legal residence in a MERCOSUR member state: the criterion of nationality, which adds to a clean criminal record. It therefore eliminates other requirements as the case of employment or social status. It also establishes that this will be granted regardless of the immigration status with which the applicant had entered the territory of the receiving country; thus, eliminating the application of fines or more

⁷ For a detailed analysis of MERCOSUR rules and regulations during the 1990s, see Brumat (2019).

⁸ See Agreement of Residency for Nationals of Mercosur Member States, Bolivia, and Chile (MERCOSUR/RMI/CT/ACTA N° 04/02).



severe sanctions (Article 3). The right of residence, which is initially granted for two years and may be transformed into a permanent one (Article 5), can be requested by those willing to emigrate but also by those already living in another country as undocumented immigrants. Furthermore, it also **guarantees migrants equal civil rights, equality of treatment with nationals, family reunion, the rights of children of migrants and the right to transfer remittances** (Articles 8 and 9).⁹

From a regional standpoint, the decision to adopt this liberal model of open borders intended to leave behind the very restrictive migration systems inherited from the dictatorships of the 1970s (Ceriani Cernadas & Freier, 2015; Lavenex, 2019). When compared to ongoing global migration policy trends, the agreement was categorized as ‘almost revolutionary’ (OIM, 2014, p. 10). Certainly, the Residence Agreement set a relevant precedent for countries to prioritise the rights of migrants over expulsion (Acosta Arcarazo, 2018, p. 123). While the regional agreement does not address regularisation programmes, it induced many countries to use regularisation programmes to extend the rights established in the agreement to those citizens already residing in the country, with politicians considering regularisations to be a ‘necessary and valid political tool’ (Ceriani Cernadas & Freier, 2015, p. 21). The regional regulatory regime thus set up has a dual character: apart from expanding and promoting migrants’ rights and establishing a right to legal residence, it also enhanced border controls (Brumat, 2020).

Universal Citizenship

As argued by a representative of the Congress of Ecuador, the 2008 Constitution mainstreamed the focus on rights and prioritized human mobility in all public policies, including the National Plan for Living Well (2013-2017) and the National Council for Equality in Human Mobility. Additionally, the 2017 Organic Law on Human Mobility regulated the exercise of rights and obligations relating to human mobility, and which included migrants, people in transit, victims of human trafficking and migrant smuggling and their families, and Ecuadorian returnees, among others. The law established fundamental principles such as the free movement of people, universal citizenship which implied the portability of human rights, the prohibition of criminalization of migration, non-discrimination, and equality before the law. Ecuadorians abroad were entitled to all national government programmes, consular protection, and scholarships, and in Ecuador, all immigrants enjoyed the same rights as Ecuadorians’ (ECLAC Report, pp. 33)

MERCOSUR is an intergovernmental regional bloc, and as such, agreements are then to be implemented at the national level. Hence, national responses may still vary as countries translate regional norms in domestic law. Whereas some

⁹ To the extent that other South American countries including Colombia, Ecuador and Peru have adhered to the MERCOSUR Residence Agreement, other regional regulatory frameworks, as it is the case of that of the Andean Community (CAN) have turned out to be obsolete (Santestevan, 2007).



countries require bilateral agreements, some extend the agreement to new MERCOSUR countries when they sign onto the agreement (OIM, 2014). Timing may also vary. Thus, for example, even if the MERCOSUR Residence Agreement came into force in 2009, Argentina effectively incorporated this regional regulation into domestic law in 2003: Law 25.871 recognised ‘Nacionalidad Mercosur,’ among other regulatory reforms. Additionally, one year later, the country extended the agreement to all South American countries, including the countries who had not signed on (Acosta Arcarazo, 2016), through the Patria Grande Programme. Finally, several countries. i.e., Argentina (2004), Uruguay (2008), Bolivia (2013), and Peru (2015) ‘went further than recognising the rights of Mercosur residents to recognise the right to migrate, and Ecuador established universal citizenship in its 2008 Constitution’ (Bauer, 2019, p. 6).

The Residence Agreement would then inspire and serve as a basis for other relevant developments in the construction of MERCOSUR regional migration regime. These include the creation of the Specialised Migration Forum of MERCOSUR and Associated States (FEM) within the Meetings of the Ministers of Interior in 2003. The FEM was thus the first body exclusively responsible for the ‘comprehensive’ treatment of migration issues.¹⁰ It also marked a turning point as the creation of the FEM entailed the decoupling of security issues from the migration agenda (Brumat, 2020; Nicolao, 2015). The FEM focused on the harmonization of national migration rules, including border control instruments. Secondly, a year later, the objectives and spirit of the FEM were incorporated into the Santiago Declaration on Migration Principles, which established basic principles of migration management to be implemented at the regional level, acknowledged migrants’ rights and their relevant contributions to development both at home and at host countries, while also underscoring the relevance of a multidisciplinary and multilateral approach to migration governance. Finally, in 2010, MERCOSUR took another step forward through the adoption of the Statute of Regional Citizenship, which also included a Plan of Action to be completed by 2021, just as the bloc turned 30. The Statute of Regional Citizenship is based on the implementation of a policy of free movement of persons in the region, equal civil, social, cultural, and economic rights and freedoms for nationals of the MERCOSUR countries and equal conditions of access to work, health and education. Moreover, already in the early 2010s, MERCOSUR extended the Residence Agreement to all South America as Peru and Ecuador joined it in 2011, and Colombia did so one year later. In all, the Residency Agreement has been crucial in structuring ‘MERCOSUR’s stance in other regional and global fora’ (Margheritis, 2015). As put by the then OIM Regional Director for South America, Diego Beltrand, ‘irregular migration was a topic of relevance around the

¹⁰ Made up of 10 countries, including MERCOSUR full and associated member states, the FEM issues resolutions that are then taken to the Meeting of the Ministers of Interior for approval; these are binding norms and once approved by the Common Market Council, MERCOSUR’s highest decision body, they are integrated into the bloc’s regulatory acquis.



world and a complex issue for discussion. Focusing on Latin America and the Caribbean, he said that **the region fought irregularity by promoting the regularization of migrants and giving them rights**. In South America, the Residence Agreement of the Southern Common Market (MERCOSUR) was, he said, an example of a good practice. He spoke of the need to ensure decent work, which was related to the successful integration of migrants. He also spoke of the issue of recognizing skills and qualifications, which could be either a barrier or a tool for integration' (ECLAC et al., 2018, p. 33). Similarly, the then Director of International Affairs of the National Migration Department of Argentina explained that 'since 2009 more than three million people had been granted resident status in the framework of the Agreement. An illustration of the effect is the fact that in 2004, fewer than 19,000 people from the region were granted residence permits, compared with 215,000 in 2016' (ECLAC et al., 2018, p. 34).

The CSM (also known as the Lima Process) has been a key actor in the promotion of a governance approach to migration, together with the CRM above mentioned (Finn et al., 2019; Ramírez G. et al., 2019). Launched in 2000,¹¹ the CSM is one of the 14 RCPs that exist worldwide. The CSM norms and standards rely extensively on the recommendations put forward by the 1992 UN Commission on Global Governance and the 1994 International Conference on Population and Development, where focus is on the relation between international migration and development (Ramírez G. et al., 2019). Just as other RCPs, the CSM decisions are taken by consensus and its deliberations do not result in binding norms and regulations. Yet, these processes are relevant in terms of regional consensus building and attempts to influence regional debates on migration while also establishing action guidelines and recommendations that provide policy guidance for South American governments under the wider idea of migration governance (Ramírez G. et al., 2019). The CSM is aimed at promoting and coordinating initiatives and programs to support and develop international migration policies and more specifically, their relations with regional developments and integration processes. The CSM holds annual meetings of foreign ministers resulting in declarations, which are not binding. Yet, the CSM offers a relevant space to meet and for 'generating and coordinating initiatives and programmes aimed at promoting and developing policies on international migration and its relation to regional development and integration'.¹² It is thus key in terms of socialization and policy learning as participants share knowledge and expertise, but also in terms of 'consolidating a position in the international migration and development arena'. Between 2010 and 2017, CSM documents have prioritized migrants' human rights and the coordination of migration policies across countries, though the first topic is more prevalent (Finn et al., 2019).

¹¹ The CSM builds on the proposal to institutionalize a regional dialogue on migration issued by the 'South American Meeting about Migration, Integration and Development' held in Santiago, Chile in 1999.

¹² Information available on the CSM webpage; last accessed 28 January 2021.



The defence of migrants' human rights was the basis for the creation of the CSM and has imbued its discourse ever since. Moreover, in 2010, the CSM discussed and approved (1) the *Declaration of Principles and Guidelines of the South American Conference on Migration* and (2) the *South American Human Development Plan for Migration*, which reaffirmed the commitment to guarantee the unrestricted and permanent respect for the human rights of migrants and their families. Additionally, other commitments included the implementation of migration regularization processes based on agile and effective mechanisms, as well as avoiding the deportation of citizens of the region for migration reasons. In all, CSM documents have underscored the importance of the respect for the rights of migrants, human mobility, citizenship, return and reintegration irrespective of 'origin, nationality, gender, ethnic origin, age, migration administrative situation or cause of discrimination, as established in the international treaties on the subject, in order to secure the free mobility of South American citizens' (Declaration of Migration Principles and Overall Guidelines of the South-American Conference on Migration, 2010, p. 1), while emphasizing the positive impact of migration and regional integration processes. In line with MERCOSUR Residence Agreement and its approach to migration, the CSM focuses on the human rights of migrants irrespective of their status and underscores migrants' contribution to development in the countries of destination. Thus, the CSM is the only RCP that does not focus on security issues (Lavenex, 2019).

The CSM documents 'also reveal strong and continued support for CAN, MERCOSUR and UNASUR stance and actions (...) including South American citizenship' (Finn et al., 2019, p. 42). This is relevant given the existing overlaps between these various organizations and processes. Made up of all 12 South American countries,¹³ the CSM overlapped then with MERCOSUR, CAN, and the Union of South American Nations (UNASUR) both in terms of membership and agenda. To some extent, the CSM works as a common space fostering convergence between these various regional processes through the exchange of ideas and experiences (Brumat, 2020, p. 164). However, in 2010, member states initiated discussions as to whether and how the CSM should be integrated into the structure of UNASUR, which already in its foundational treaty favoured the need to **consolidate a South American identity as a way to promote a South American citizenship through the progressive recognition of the rights of nationals of a member State residing in another member State**. Secondly, it underscored the need to strengthen regional cooperation in migration based on the respect for migrants' human and labour rights and policy harmonization. Several proposals were put forward starting with the one led by Bolivia that advocated the creation of a South American Council for Migration within

¹³ These include Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela.



UNASUR and the OIM's idea of establishing the CSM as a consultative body of UNASUR, thus keeping the CSM under the lead and guidance of the OIM. In the end, the discussion diluted (Ramírez G. et al., 2019).

c. South America's refugee policies

Beyond migration, South America has also established considerable agreements in **forced migration and refugees**. Freier (2015) identifies five different phases in Latin American refugee policy. The first three refer to the ratification of the 1951 Convention in the 1960s, the ratification of its 1967 Protocol in the 1970s, and the adoption of the constitutional right to asylum.¹⁴ A third phase starts in 1984, when ten South American countries became part of the **Cartagena Declaration of Refugees** as the region attempted to provide a solution to the Central American crisis in a context marked by the paralysis of the Organization of the American States.¹⁵ The Cartagena refugee definition extends protection to 'persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.' This regional agreement provided the basis for further regional declarations and action plans established every 10 years and on its anniversaries. In 1994 the San José Declaration on Refugees and Displaced Persons underscored the relevance of the Cartagena Declaration as a regional protection policy tool while also referring, for the first time, to the need to address the situation of internally displaced persons (Contarini & Lettieri, 2017). Twenty years after Cartagena, countries agreed on the Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America.

In 2012, Latin American countries together with UNHCR agreed to organize a new commemorative event on the 30th anniversary of the Declaration of Cartagena and expressed the intention to 'adopt a new Declaration and Plan of Action to address new protection challenges and the Caribbean in the next International Refugee Conference'. To this end, four sub regional consultation processes were carried out to update this regional normative framework for the protection of refugees, displaced persons and stateless persons; all of which led to the Brazil Declaration and Plan of Action in 2014 (Cartagena +30); thus, anticipating the logic of the consultation processes implemented towards the

¹⁴ All South American countries (except for Guyana) are signatories to the 1951 Convention and the 1967 Protocol on the Statute of Refugees.

¹⁵ The OAS has provided juridical enforcement of refugee protection and asylum while also developing a strong human rights perspective and the notion of burden sharing (Cantor et al., 2015). Yet, the 1970s and 1980s were years of crisis and stalemate at the OAS. Even if this did not stop neither the Inter-American Commission nor the Court of Human Rights, a more political discussion could not be taken within the General Assembly. The Cartagena Declaration runs parallel to the Contadora Group and the Contadora Support Group, which was then transformed into the Rio Group, as countries in the region attempted to give a political and concerted response to the civil war in Central America.

Global Compact (Contarini & Lettieri, 2017). Cartagena +30 is still applied and has been extended to non-regional refugees, i.e. Syrians (Finn et al. 2019).¹⁶ Finally, during the 2000s and to this day, ‘most South American countries have included the expanded definition of refugee from the Cartagena Declaration into their national laws, alongside a human rights-centred approach to refugee protection’ (Brumat & Freier, 2020; see also ECLAC et al., 2018, p. 96).

MERCOSUR has also created an institutional space to approach the protection of refugees with a regional perspective: The Meeting of National Committees for Refugees or State Equivalents Part of MERCOSUR and Associated Countries was created in 2015 (MERCOSUR/RMI/ATA N° 1/2015). This drew on previous non-binding documents - i.e., declarations, meetings minutes and working documents - by the Meeting of the Ministers of Interior and FEM. Already in 2000, the so-called Declaration of Rio on the Institution of Refuge acknowledges and calls for MERCOSUR to harmonize protection policies and strategies. Four years later, the Declaration of Santiago incorporates a safeguard of international protection by reaffirming members states’ commitments to provide and promote international protection for refugees, in accordance with the 1951 Convention. It is worth noting that already the MERCOSUR Residence Agreement allowed refugees to apply for migration regularisation in a state other than the one that determined their status (Bello, 2015). This was explicitly acknowledged by the then Director of International Affairs of the National Migration Department of Argentina: ‘Regulations relating to human mobility materialized in access to justice, recognition of academic qualifications, employment and social security, for instance’ (...); the best option was to favour regular migration’ (ECLAC et al., 2018, p. 34). More specifically, and in relation to the 2004 Santiago Declaration 2004, he argued that this regional declaration favoured ‘a change in the recognition of migrants’ contributions and human rights, in the perception of migration as punishable and in its multidisciplinary treatment’; as a result several changes had been introduced in cooperation and protection, and a specific Protocol on consular services for unaccompanied migrant girls, boys and adolescents was set up, following the guidelines of the IACHR (on the protection of migrant children through state commitments) and the Guide for regional action on early detection of situations of human trafficking at border crossings of MERCOSUR and associated states, which sought to coordinate operating mechanisms to identify and protect victims and to bring those responsible for human trafficking to justice’ (ECLAC et al., 2018, p. 34).

Additionally, and especially since 2011, the FEM broadened its agenda as discussions would include the rights of immigrants, but also those of refugees, asylum seekers and statelessness. Other relevant themes have included children’s rights and the fight against human trafficking (Culpi & Pereira, 2016).

¹⁶ A first triennial evaluation report was published in 2018 (see GARBAP 2018).



This adds to the fact that member states became increasingly concerned with the need to coordinate immigration policy among them and training courses were specifically promoted on International Refugee Protection (Culpi & Pereira, 2016). An important step was taken in 2012 with the Declaration of Fortaleza which includes the principles of protection and standardizes refugee reception policy. The main commitments assumed by MERCOSUR states included: to adopt non-restrictive migration policies, to identify asylum situations in mixed migratory flows, to pay special attention to gender and age issues (especially in cases of unaccompanied or separated children) and not to return refugees and asylum seekers to their countries of origin or territories where their lives are in danger in previous documents. **Furthermore, and as an outstanding feature, it proclaims MERCOSUR (including full and associated member states) as ‘humanitarian protection space’.** As put by the then National Secretary of Justice and President of Brazil’s National Commission for Refugees, Paulo Abrão: **‘We are committed to declaring South America a privileged space for solidarity and humanitarian protection’** and in this respect, ‘the Mercosur Declaration should be seen as the first step in the regional effort to prepare for the celebration of 30 years of the Cartagena Declaration (Cartagena +30), in collaboration with the UNHCR’.¹⁷ In 2015, the MERCOSUR Meeting of Ministers of Interior established the Meeting of National Committees for Refugees or equivalents (CONAREs) , which was set up as a regional forum for the coordination of the Monitoring and Evaluation of the Plan of Action of Brazil (Bello, 2017).

d. South America and the Global Compacts

Through the various mechanisms and instruments established, the region became a relevant actor as shown during its participation in the discussions and negotiations leading to the signing of the GCs. During the negotiations for the GCM, South American countries called for the global recognition of the ‘right to migrate’, for the universality of migrants’ rights and for migration regularization as a solution to irregular migration, rather than promoting expulsion (Brumat, 2020, p. 153). As detailed above, a human rights approach imbued the MERCOSUR Residence Agreement, which was then multilateralized to the whole of South America,¹⁸ and the CSM clearly acknowledged **‘the right of persons to migrate, not migrate and return in a free, informed and secure manner, without criminalizing displacements’** and that **‘no human being will be considered illegal because of his or her involvement in an irregular migration situation’**

¹⁷ See <https://www.acnur.org/cartagena30/mercosur-ampliado-se-compromete-a-fortalecer-el-espacio-humanitario-de-proteccion-a-refugiados/>, last accessed 8 December 2020.

¹⁸ All South American countries have ratified the agreements and apply it except for Venezuela, Suriname, and Guyana.



(Declaration of Migration Principles and Overall Guidelines of the South-American Conference on Migration, 2010, p. 2).

By the time of the adoption of the GCM, Chile abstained as the country did not attend the Marrakech Conference, and Paraguay did not vote. Brazil voted for and signed the GCM but pulled out of the agreement in January 2019 under the Bolsonaro administration.

From a regional perspective, the signing of these two global agreements occurred amidst relevant changes and new challenges. As the economic boom and social distribution strategies of the early 2000s found their limits, some countries saw the emergence of centre right and right-wing governments. Additionally, since 2014 the deep political, economic, and social crisis in Venezuela had resulted in the largest population displacement in the history of Latin America. According to the UNHCR and IOM, more than 5.4 million Venezuelans have fled the country between 2015 and 2020.¹⁹ Thus, it has turned out to be the largest forced displacement in the history of Latin America, and in the world today. Whereas this has certainly challenged the capacity of countries to adequately respond to it, this has been exacerbated by the weakening of regional initiatives, and the promotion of new ones leading thus to institutional overlap. Moreover, countries' responses have also shown variation and heterogeneity in terms of how and to what extent they resorted to regional mechanisms.

Certainly, South American countries and regional initiatives in migration and refugees had always referred to international agreements and standards in this policy area. Yet, in the early 21st century, South America 'adopted distinctive policies and vocabulary in the area of migration' (Acosta & Brumat, 2020). This became especially evident in 2008 after the EU Return Directive, which was rejected by regional organizations (OAS, MERCOSUR, UNASUR, CAN), regional parliaments (Parlatino, MERCOSUR Parliament, Central American Parliament, and the Andean Parliament), and the CSM, which added to the criticisms raised by all Latin American governments (Acosta Arcarazo, 2009). By then, it became clear that **whereas the EU did work as a model in the late 1990s, in the 21st century, its own regional mobility regime was perceived as a counterexample against which regional migration governance in South America should be defined and regulated** (Brumat & Acosta, 2019). This was especially evident in the case of the MERCOSUR regulatory migration regime.

By 2018, references to international norms and standards remained. Yet, when it comes to the effects of the GCs, it is still too early to see whether and how these have affected policy instruments and practices in the region (Interviews SA01 and LAC02). The GCs have been in place for almost two years, including the pandemic year which adds more complexity to migration. The current health crisis

¹⁹ See <https://data2.unhcr.org/en/situations/platform>, last accessed 12 December 2020.



has not only exposed and deepened existing risks for migrants but has also exacerbated women's vulnerabilities. Yet, there are differences in the ways in which these global arrangements are perceived. On the one hand, they are seen as 'global frameworks that greatly help countries to raise awareness of high standards that are not binding' and they are thus 'a guiding principle' as put by an IDB official (Interview LAC01). This is the case even for countries that have not signed the GCM, i.e., Chile (Interviews LAC01 and SA01). On the other hand, these global agreements seem to have had no impact on the regional level so far (Interview LAC02). This becomes apparent when analysing the documents issued by the CSM and MERCOSUR after December 2018, and by the new Quito Process.

In the case of the CSM, references to the Global Compact on Migration can be found in its documents and declarations. In the 2017, the CSM Lima Declaration, based on the idea that regional policies and programs were founded on migrants' human rights, member states encouraged 'the Global Compact for Migration to consider a Global Framework for the Protection of Human Rights of all migrants and their families **based on universal and inter-American instruments on human rights and migrants' rights**'. They also 'propose and promote the inclusion of a **Framework for Assistance and Care of Migrant Women and their families in the Global Compact for Migration**' (Lima Declaration on the Global Compact for a Safe, Orderly and Regular Migration, 2017, pp. 2–3). In that same meeting, the CSM urged for a joint dialogue and action with the CRM to develop 'bi-regional inputs for the Global Compact on Migration' (XVII Conferencia Sudamericana sobre Migraciones. Declaración Final: "La inclusión e integración de las personas migrantes más allá de las fronteras territoriales," 2017). One year later, the last meeting of the CSM took place under the slogan 'South American Citizenship: new culture of free human mobility towards Universal Citizenship'. Apart from acknowledging the progress of the countries in migration issues, and in this sense, 'reaffirming the importance of the MERCOSUR Residence Agreement to facilitate intra-regional mobility and residence' and the need to continue compiling new practices on the subject, the Sucre Declaration also reaffirmed their commitment to the Global Compact on Migration that were to be adopted in Morocco that year.



The Quito Process

In September 2018, the International Technical Meeting on Human Mobility of Venezuelan Citizens in the Region, also known as the Quito Process, was launched under the leadership of Ecuador. The ‘Quito Declaration on Human Mobility of Venezuelan Citizens in the Region’ was signed by 11 countries: Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, México, Panamá, Paraguay, Perú y Uruguay. The main objective of this regional process was to promote communication and coordination between countries receiving Venezuelan refugees and migrants, while also exchanging information and good practices in migration and refuge. Given the failure of other regional mechanisms, i.e., OAS and UNASUR, to deal effectively with the political crisis in Venezuela, the Quito Process was to address the severe humanitarian situation in this country. This first declaration reiterated these countries’ commitment to fight discrimination, intolerance, and xenophobia, to protect vulnerable migrants from human trafficking, to protect children and to combat sexual and gender violence. They also acknowledged the need to ‘continue working on the implementation of public policies aimed at protecting the human rights of all migrants in their respective countries, in accordance with national legislation and applicable international and regional instruments.’ The Declaration also calls to further strengthen the role of both CAN and MERCOSUR ‘to address, in a comprehensive and coordinated manner, the massive flow of Venezuelan nationals and to enable immediate action to be taken to address this humanitarian migration crisis’. Reference to the CSM and the CRM is also made.

In the case of MERCOSUR, the latest Declaration of Presidents of MERCOSUR (July 2020) makes no reference to the GCM. It does however, acknowledge ‘the relevance and contribution of the “Quito Process”, as a regional mechanism that seeks to exchange best practices, articulate coherent and coordinated technical responses to the challenges presented by the human mobility of Venezuelans in the region’. Additionally, all references remain strictly regional in terms of the need to effectively promote the Action Plan of the MERCOSUR Citizenship Statute and the Residence Agreement. The Quito Process is also mentioned in the 2019 Declaration of Presidents of MERCOSUR, where they ‘highlighted the importance of the Quito Process as a model of good practice of international standards for the governance of human mobility, and especially the coordination and harmonisation of measures to address the migration crisis Venezuelan’. In a similar document, the then presidents also ‘ratified the need to ensure respect for the human rights of migrants, regardless of their migratory status, nationality, ethnic origin, gender, age or any other consideration, stimulating to this end the implementation of cooperation mechanisms in the field of migration policy’. In this regard, they welcomed the approval of the ‘Operational Agreement for the Implementation of Mechanisms for the Exchange of Migratory Information among the States Parties of MERCOSUR’, which would facilitate the mobility of persons, expedite border transit, and reduce the documentary requirements for South American citizens to process residences in the region.



It is interesting to note, however, that in 2019, MERCOCIUDADES, the network of cities of the bloc, established a guide for ‘inclusive migration that respects human rights’, where they acknowledge several international agreements dating back to the 1970s, the MERCOSUR Residence Agreement, followed by a referent to both GCs. Similar initiatives have been undertaken by the Institute of Public Policies on Human Rights of MERCOSUR (IPPDH), which has published a Human Rights of Migrants - Regional Handbook in 2017. This adds to specific handbooks on the application of international (i.e., GCM) and regional (i.e. IACHR and MERCOSUR) human rights standards for the protection of children and adolescents in migration contexts, and also on migration, social rights and anti-trafficking policies at the borders of MERCOSUR.

Venezuela, 2013-2020: A multidimensional crisis

Since 2013, Venezuela has undergone a multidimensional crisis resulting from its political and economic systems, and having significant social consequences (Legler, Serbin Pont & Garelli-Ríos 2018). As the country moved from being a limited democracy to an authoritarian regime (Corrales 2020), the economy plummeted as the Gross Domestic Product dropped by 62% between 2013 and 2019 (Bull and Rosales 2020). Social indicators deteriorated substantively in a context marked by food shortage and the decline in the provision of public services, as shown by the shattering of the health care system, which in turn, resulted in rising morbidity and mortality, outbreaks of vaccine-preventable diseases and expanding epidemics of infectious diseases (Page et al 2019). The political and economic collapse of Venezuela resulted in subsequent massive emigration – over five million migrants and refugees have fled the country – and an ongoing humanitarian crisis, which stands as ‘the largest external displacement crisis in Latin America’s recent history’ (IOM, 2020). Established regional mechanisms through the OAS, UNASUR and MERCOSUR, and even by means of the Rio Treaty, were activated to exert pressure on the Venezuelan government in an attempt to encourage a negotiated political solution and/or to rebuild democracy in the country. As these failed to promote the expected results, informal and soft mechanisms were put in place as in the case of the Group of Lima. These add to the Quito Group which was set up with a more limited agenda: that of promoting a regional and coherent response to the migration crisis. In all, the multidimensional Venezuelan crisis has created a regional crisis, putting to test existing regional governance mechanisms.

Since its creation in 2018, the Quito Process has held six meetings.²⁰ Whereas the Final Declarations make no reference to the GCs, they do emphasize the relevant role of the United Nations, and specifically the IOM as part of the UN system. The idea of safe, orderly, and regular migration is mentioned in the first and last declarations of the Quito Process (September 2018 and 2020, respectively). In the last meeting (September 2020), the Group of Friends of the

²⁰ These six meetings include: Quito II, 22–23 November 2018 (Quito); Quito III, 8–9 April 2019 (Quito); Quito IV, 4–5 July 2019 (Buenos Aires); Quito V, 14–15 November 2019 (Bogotá); Quito VI, 23–24 September 2020 (Santiago de Chile).



Quito Process was formally established, comprising Switzerland, the US, Spain, Germany, Canada and the European Union, which will provide technical and financial assistance to the Quito Process, as well as help raise international awareness of the crisis. International cooperation is thus intended to provide economic and financial assistance to the countries that have been compromised by the massive Venezuelan immigration. Countries would then commit to specific actions as established under 'The Road Map of the Buenos Aires Chapter' in July 2019, which included 'a set of eight agreed points covering diverse themes, from facilitating the recognition of educational qualifications to organizing a workshop on human trafficking and smuggling' (Ochoa, 2020, p. 17). They also 'urged that international technical and financial cooperation be increased and strengthened on the basis of the principle of co-responsibility in order to contribute to the efforts made by host countries in implementing the Quito Action Plan on Human Mobility of Venezuelan Nationals in the Region'. Thus, countries would rally the international community for increased support. This was already evident in 2019 as expressed by a former Peruvian Foreign Minister²¹ and Eduardo Stein, the joint UNHCR-IOM Special Representative for Venezuelan refugees and migrants: 'Latin American and Caribbean countries are doing their part to respond to this unprecedented crisis, but they cannot be expected to continue doing it without international help' (UNHCR and IOM, June 2019). This seems to be even more pressing today in the context of the COVID-19 pandemic. The international support to national and regional responses is not only technical but also, and of great importance, of a financial nature. Yet, it seems to be insufficient.

These developments add to the establishment of the Regional Interagency Coordination Platform for Refugees and Migrants from Venezuela by the IOM and UNHCR in September 2018. Under the leadership of UNHCR and IOM, the Platform coordinates the actions of various UN agencies, NGOs, the Red Cross, financial institutions, religious organizations, and civil society actors civil, among others. Within this cooperation framework, UNHCR and IOM launched in December 2018 the Regional Refugee and Migration Response Plan for Refugees and Migrants from Venezuela (RMRP). The 'RMRP sought only to deal with the humanitarian crisis, despite the political and economic causes that have created it' and thus 'offered a coordinated plan supported by 95 organizations and 12 countries' (Chami et al., 2020, p. 11). In line with this objective, the RMRP aims to complement and strengthen the response that is taking place at national and regional level. From a regional perspective, the Quito Process has acknowledged the relevant role of the UNHCR and IOM for their 'technical assistance, follow-up to the Quito Process and support in many ways' (2020 Santiago Declaration). The UNHCR and IOM have now taken over the Technical Secretariat of the Quito Process (Idem). In all, international actors, i.e., UNHCR

²¹ See also <https://andina.pe/agencia/noticia-destacan-medidas-del-grupo-lima-contr-regi-men-maduro-738136.aspx>, last accessed 13 December 2020.



and IOM, who had traditionally played a negligible role in the region, are now gaining protagonism and have been increasingly involved in border controls: ‘And you go to the borders, and the governments always allow a UNHCR presence, an IOM presence, a UNICEF presence at the border crossing in case there are unaccompanied minors...’ (Interview LAC.01).

e. Conclusion

South America evinces hence today greater complexity in terms of regional cooperation mechanisms and practices in migration and refugees. Thus, in the specific case of the Venezuelan exodus, Argentina and Uruguay have drawn upon the existing framework of MERCOSUR residency agreements and have issued unrestricted, two-year, renewable visas to Venezuelans. Other countries, despite being part of this agreement, have devised new and specific visas for Venezuelans, i.e., Brazil, Chile, Colombia, Paraguay, and Peru (Freier & Parent, 2019; Ochoa, 2020). Ecuador initially took a hybrid approach and applied broader laws to the Venezuelan crisis, but in 2019 it began to issue a two-year temporary visa for Venezuelan citizens (Ochoa, 2020). These different national responses show the difficulties in reaching consensus at the regional level to implement already established rules and regulations, and the changing political winds.

This is key to understanding whether and how the region has moved towards a securitization discourse in migration and refugee. Regional declarations both those emanating from the Quito Process and MERCOSUR still refer to the protection of the human rights of migrants, and of those of Venezuelan migrants as well, especially of the most vulnerable groups (Quito Process Declarations 2018, 2019 and 2020; MERCOCIUDADES 2019). Also, reference is made to the need to articulate migration and development with a focus on human rights (Quito Process 2019; MERCOCIUDADES 2019). Yet, in practice, as put by one of the experts (Interview SA.01), there seems to be a strong and transversal consensus among experts that **‘migration policy is highly manipulable administratively (...): this means that an administrative order can be passed to border authorities and personnel to be implemented even if this contradicts the spirit of the Global Compact or other international instruments.** Furthermore, public officials in the area do not seem to have ‘this more, not so pro-migration, not so valued vision of human rights standards in migration matters’ and ‘generally use that type of administrative subterfuge that is also very difficult to investigate’.

Already in 2015, the IACHR acknowledged that some states had tightened immigration policies through various measures including outsourcing of migration controls, securitization of borders, the criminalization of migrants, in particular irregular migrants through the widespread use of immigration detention and summary deportation, and limiting access to procedures for international protection, in particular the procedure for recognition of refugee status (IACHR &



OAS, 2015). Yet, by 2017, this was not the case in South America (ECLAC et al., 2018, p. 93). **Today, however, there seems to be room for a more securitized agenda again** while also manifesting an interest in establishing more modern migration systems. Whereas this is associated with the shift to more right and centre right governments, **this securitization agenda is not entirely new: it is related to the reintroduction of security actors (both state and non-state) into the decision-making process, and the bureaucratic system itself** (Interview LAC.02). This has led to a debate on how to combine security and modernization in migration policies and practices (Idem). To some extent, modernization is associated with technocratization and thus, depoliticization. However, in the case of South America and specifically when it comes to the Venezuelan crisis, the Quito Process was initially framed as a technical space, and was not as critical of the situation in Venezuela and Maduro's government as the Lima Group. Still, one year after its launch, it already acknowledged their concern about 'the deep political crisis in Venezuela, and its negative effects on migration, humanitarian, economic and social issues, which constitute a threat to regional and international peace and security'. Moreover, they called for the international community 'to commit and support a prompt restoration of institutional order in Venezuela'.

As argued in the literature, regionalism in South America, and Latin America more broadly, has been depicted as declaratory (Jenne et al., 2017). We can also talk about an evident decoupling between the regional narrative and the implementation capacity (Interview LAC.01). The latter is being challenged not only by the situation in Venezuela. The pandemic is adding further strain to the regional migration governance regime. Whereas the MERCOSUR Residence Agreement could still work as a framework facilitating mobility and access to rights, much still lays in the hands of national governments, who given the 'economic and political consequences of the COVID-19 may emphasize existing securitization trends in the region' (Acosta & Brumat, 2020, p. 4). This calls for further research as well as the issue of how regional governance migration is framed to respond to the intersecting themes of migration, work, gender, and health.



8. The European Union

This penultimate section of the working paper presents a number of points through which a conversation can begin between EU migration policies and practices, the analysis of the Global Compacts presented above, and the case studies into the governance of migration in regional integration systems of South America and Central America. As noted above, these regions have long histories of placing rights at the centre of the cooperation and coordination of migration policies, to the extent that in South America ‘regional cooperation has so-far hardly addressed the security aspects of migration’ (Lavenex 2019, 1289), although our recent interviews with officials conducted for this working paper suggest that that assessment is becoming less accurate. By contrast, Huysmans (2000), Moreno-Lax (2018) and Bello (2020) are among the many authors who regard migration and security as being increasingly interwoven in the EU’s focus on humanitarian assistance and care on its borders, as well as the perception of the European citizens that immigration is the primary policy concern.²² Given that this working paper is intended primarily for an audience familiar with European policies, the authors propose that a brief discussion of EU migration and refugee policy is sufficient and more attention should be paid to identifying bridges to the original research on Latin America. To this end, this section will consider: (1) the differing degrees of regime complexity in the various regions and the history of security and migration in Europe; and (2) a few specific aspects of the crisis response, including EU participation in the GCM and GCR processes.

a. Migration regime complexity

A central objective of the GLOBE project is to consider the future of global governance, and one of the less-developed policies at the international level is human mobility. As has been discussed above, how states manage migrants and refugees at their borders and seeking entry is extremely varied, with regard to the labels and distinctions applied, the determination of regularity and rights claimable. Lavenex (2019) sets out a framework for measuring the development of migration governance at a regional level in order to facilitate comparative studies. She proposes six criteria in total that span the three primary approaches to migration (economic, rights and security) and two dimensions of institutionalisation (legalisation and formality) (Lavenex 2019, 1276-7). In addition, the configuration of actors in the regional architecture may be characterised as parallel, overlapping or nested, depending on the level of

²² Eurobarometer 84 (Nov. 2015) 58% of respondents answered ‘immigration’ to the question ‘*What do you think are the two most important issues facing the EU at the moment?*’ was the first answer in 27 Member States (excluding Portugal). Eurobarometer 92 (Nov. 2019) recorded 34% of respondents answering ‘immigration’ to the same question. It was ranked first response in all but two member states, (Sweden and Ireland, both of which ranked it second behind the environment).



cooperation between them. Lavenex's survey of five regions shows that the Europe has by far the most complex regional migration regime, in no small part due to the EU; additionally, the economic approach to migration is the most extensively developed and the security approach the least (ibid, 1289). The picture painted is that economic cooperation is a primary driver of regional cooperation on migration, and to the extent that states cooperate in security and the control of borders, the 'most recent and least legalised cluster of regional migration regimes centres around the RCPs [which]...have in common that they mainly focus on migration control' (Lavenex 1289). The research above confirms that the Regional Coordination Process in Central America is not only the primary platform for considering security dimensions, but that the US uses its regional power status to promote its own national interests.

By contrast, the process of controlling migration as a security consideration in Europe has a much longer history and is much more closely interwoven with both primarily the economic approach to migrant management and to a lesser extent the (labour) rights approach. Huysmans (2000) argues that the origins of the securitization of migration in the European Union (EU) can be traced back to the Schengen Treaty of 1985. 'In the 1980s migration increasingly was a subject of policy debates about the protection of public order and the preservation of domestic stability' (Huysmans 2000, 756), fuelled by, and in turn fuelling further, the association of migration exclusively with illegal entry and stigmatising asylum seeking. The upshot of this discourse was to frame migration as a problem that requires 'the police and the related departments in the Ministry of Home Affairs [to] take a prominent role in the regulation of migration' (Ibid, 757). As discussed above, the Paris School of Securitization and key thinkers within it, such as Didier Bigo, locate the origins of the security-migration nexus in Europe in this period. The consolidation of the Single Market required legal and technical steps to be taken that facilitated the free movement of citizens of European states across borders and the corresponding provision of rights and privileges held by nationals of the state they resided in. With the provision of common social security rights, it became necessary to differentiate between nationals, nationals of other EC member states, and third-country nationals. This created another tier of differentiation between EU citizens migrating, and migration from outside the EU, which brought to the fore the phenomenon of 'welfare chauvinism' (and the association of migrants and asylum seekers with 'sponging' off the state that remains prevalent to the present day). From a spatial perspective of sovereignty and territory, the 1985 Schengen Agreement catalysed the trade-off between the remove of internal borders and the need to 'harmonize and strengthen the control of the external borders of the European Community' (Huysmans 2000, 759). The contrast with MERCOSUR is especially prominent on this issue, which has chosen to provide forms of regional citizenship and/or regularise all forms of migration into the South American states without the consolidation of an external border for the regional integration organisation.



Moving swiftly to the last decade, Moreno-Lax (2018) focuses attention on the way border controls and humanitarian concerns have become merged. Her survey of European efforts to police sea borders used by migrants to access EU member states begins with efforts to reach the Canary Islands from the coast of West Africa and operation *Hera* in 2006, through to successive Frontex and CSDP missions using coastguard and naval forces in the Mediterranean (*Hermes, Triton, Sophia*) until the present day (Moreno-Lax 2018, 124-30). Over this period, she identifies a shift from deterring migrants arriving through interception at sea and cooperation with origin states' coastguard services to prevent departures, to one where the risk to life in such crossings turns 'border crossing into a humanitarian issue' and consequently 'border interventions can be substantiated on compassionate grounds' (Ibid, 121). Moreno-Lax is speaking of the widely observed tendency discussed in the literature review above of humanitarianising the security of the borders and the extent to which this is a benign action or not. It is important to reiterate that in both the example of the EU, and in the Australian case that has also informed the discussion, migrants attempt to arrival by boat. The risk to life here is greatest, as 'the overwhelming majority of border deaths occur at sea' (Ibid, 122) and while the US-Mexican border requires in places the crossing of desert which is not without peril (not least dehydration) (Doty 2006), the stark difference with the cases studied in this working paper is that all borders are land borders. Reflecting on the extent to which the security approach to migration has developed in Europe shows a set of unique circumstances that need to be taken into consideration when comparing the security-migration nexus there with Latin America.

b. The Crisis response

As noted at the beginning of this working paper, Niemann and Zaun (2018) argue that the real 'crisis' of 2015 was not simply the arrival of over a million people to Europe from warzones across the Middle East and Asia, but the Common European Asylum System (CEAS) that was supposed to handle them. Indeed, the overarching question they ask is why after 18 years of operation did the system not simply fail, but member states began acting unilaterally, taking steps such as closing borders and in the case of Hungary, constructing a border wall to divert the movement of migrants. Niemann and Zaun's work can therefore be read as an analysis of the 2015 crisis stress-testing the commitment and robustness of European integration. Not surprisingly, given the exceptional nature of events, the institutions buckled. The EU-level political responses to the crisis, such as the publication within a fortnight of *The European Agenda on Security* (EU 2015a) and *The European Agenda on Migration* (EU 2015b), as well as a shortly afterwards the *EU Action Plan against migrant smuggling (2015-2020)* (EU 2015c) complemented policy actions including the increased resources allocated to FRONTEX, the deployment of naval forces in Mediterranean



(Operation Triton) and greater coordination at EUROPOL. ‘As outlined by President Juncker in his Political Guidelines, a robust fight against irregular migration, traffickers and smugglers, and securing Europe's external borders must be paired with a strong common asylum policy as well as a new European policy on legal migration’ (EU 2015b, 6). Without doubt, the arrival of such a large number of people with differing needs and entitlements due to their various statuses was used by populist right-wing parties across Europe to tap into public fears about public order, crime and terrorism that derive from the association of security and migration originating in the 1980s. Even after the number of arrivals fell drastically, the political landscape of Europe continues to resemble the post-functional order described by Hooghe and Marks (2008).

As noted by Lavenex (2019), Regional Coordination Processes (RCPs) are the most common form of cooperation among states on the security/control approach to migration in the regions the studied. It was noted too that RCPs are ‘[f]requently initiated by regional hegemons’ (Lavenex 2019, 1289), as identified above in the case of the US and the RCM, and ‘by external actors such as the EU and the IOM for the African RCPS’ (Ibid, 1289). The governance of migration beyond Europe is of significant importance and interest to the Union, and it has indeed sought to develop greater cooperation with countries and regions of origin, transit and destination. For example, through its “Emergency Trust Fund for Africa”, launched at the Malta Summit of November 2015, the EU has been at the forefront of implementing the Comprehensive Refugee Response Framework (CRRF)—which predates the GCR, but is also an integral part of it. Moreover, on specific issues such as migrant smuggling, EU member states and institutions have played important roles in bilateral and regional initiatives, such as the Rabat, Khartoum, Budapest, Prague Processes, the ACP-EU Dialogue, the EU-Africa Migration and Mobility Dialogues and the Malta Summit devoted to Migration (European Commission 2015, 9).

The final issue to flag attention to is the change that took place between the 2016 New York Declaration being agreed and the December 2018 signing of the two Global Compacts in terms of European support. While the European institutions have demonstrated considerable support of the process, evidenced by the Commission through DG DEVCO allocating €1.7m of funds to assist in the consultation and preparation of the Compacts, (European Parliament 2019, 7) and that the six thematic consultation sessions²³ are striking similar to the suggestions presented by the EEAS to the UNGA on the 15 September 2017²⁴ (although it should be noted that the formal presentation took place five months after the first thematic consultation was held in the previous April), the support of member states is more ambiguous. When the resolution containing the GCM was voted upon in the General Assembly, Hungary, Poland and the Czech Republic

²³ See: <https://www.iom.int/gcm-development-process> (accessed 01/02/2021)

²⁴ <https://www.europarl.europa.eu/cmsdata/131081/eu-input.pdf> (accessed 01/02/2021)



voted against (alongside the US and Israel), while Austria, Bulgaria, Italy, Latvia and Romania abstained. A ninth member state, Slovakia, was missing from the session and therefore did not vote.²⁵ The first of two frequently made objections against the GCM was that 'pro-migration' and right-wing governments of a number of states opposed the document as a basic affront to their beliefs. A second was that the compact was an infringement on national sovereignty, a view that has been rejected by the European Parliament and the EEAS, as well as think-tanks (CEPS 2018) and numerous legal opinions, citing evidence that the GCM is a non-binding, soft-law agreement. Given that the final version of the GCM is closely aligned with European interests, not least the distinction between regular and irregular migration which is so central to the reconciliation of a human-rights centred approach to migration governance hand-in-hand with a securitized border, the failure to find unanimous support from EU member states reiterates the deeper malaise migration management causes within the EU, as Niemann and Zaun point to. The EU was not the only region divided; Chile abstained and Brazil, under President Bolsonaro, withdrew from the Compact.

To conclude, the European Union's history and policy decisions have played an important role in how migration governance is developing at the global level through its input to the Global Compacts, as well as being a referent example of regional regimes managing human mobility in its multiple dimensions. Observing the architecture and policy development in South America and Central America provide an alternative view to Europe's current policy position, and with it, help enlighten future decisions about governance, both within Europe and globally.

²⁵ See UN A/73/PV.60 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/446/30/PDF/N1844630.pdf?OpenElement> (accessed 01/02/2021)



9. Conclusion

The task of this working paper was to examine the security-migration nexus, with specific attention paid to the preparation of the Global Compact on Safe, Orderly and Regular Migration and the Global Compact on Refugees. As pointed out above, while mixed migration flows often include both migrants and refugees (and on occasion some people belong to both categories simultaneously when a refugee uses a smuggler to enter irregularly), the two compacts differ insofar as the former is centred on soft-law recommendations for coordinated best practices, while the latter sought to consolidate (and prevent backsliding) on established international legal provisions. In order to better understand the impact the two compacts have had in the few years since their adoption in December 2018, the cases of South America and Central America and Mexico were examined in depth in order to provide a counterpoint to the extensive literature focusing on the security-migration nexus in the European Union (and oftentimes compared to Australia where similar discourses and practices have been identified). To this end, the paper proposed two research questions. The first asked how do the Global Compacts on Refugees and Migration serve to securitize or desecuritize migration? The second asked to what extent have the Global Compacts shaped the regional migration governance of two contemporary so-called migration crises—the migration of over 5 million Venezuelans to other South American countries, and the migration of Central Americans through Mexico to the US?

To address the first question, an extensive literature review was undertaken of the study of securitising migration in general, and of that process in the European Union in particular. As a general phenomenon, it considered the development of discourses of threat and the association of criminality and undermined public order with asylum seekers, refugees and migrants, as an initial step to justify the use of ever-more sophisticated police and military technologies on the border. Over time, with increased scrutiny and in order to recognise the importance of human rights, the literature identifies a trend towards a humanitarian concern for migrants as victims of smuggling, and in vulnerable situations where there is a need to intervene to preserve the life of the migrant. The criminal smuggler is framed as a common enemy of both the migrant/victim and sovereign authority charged with protection of the state and society. This route to securitising migration is the specific one employed in Europe as identified in the scholarly literature; it need not be the only one (the Australian case has some differences). Nevertheless, based on this literature, the working paper identified five key dimensions of the securitization of migration that facilitate the fusion of sophisticated control technologies and a consideration of human rights in policy and practice. These were (1) distinctions and legal categories (including regular/irregular; migrant/asylum-seeker/ refugee; vulnerability; and the



identification of criminal/victim with regard to culpability); (2) solidarity; (3) border management and *non-refoulement* (regarding the extent to which established legal duties to process those seeking asylum or identify those with refugee status are undertaken or undermined); (d) trafficking, smuggling and the criminalisation of assistance (to establish a common enemy and the objectification of victims vis-à-vis the strategies for saving lives chosen (Moreno-Lax 2018); and finally (e) detention and alternatives to detention. For each example process-tracing was used to establish how language had developed over the consultation process, zero-draft and final agreement, and in which direction. Overall, it was argued that the EU's approach was firmly endorsed in all of these areas, even though opposition to, for example, 'irregularity' was noted from South American states. **Based on these findings, it seemed plausible to expect that if the GCs had an impact in Latin America, it would be in the direction of further securitization.**

The next phase of the research tested these expectations about the development of regional regimes for the management of human mobility in light of the GCM and GCR. Therefore, to answer the second question, a detailed investigation of the institutional architecture of the regional migration regime in firstly Central America and Mexico was carried out, and secondly South America. In both cases, the purpose was to map the historical development regional cooperation organisations, according to the three broad approaches to migration identified by Lavenex (2019) – namely economic, rights-based, or security and border-control.

In many ways, migration is less securitized in South America than perhaps anywhere else in the world, with the CSM or Lima Process the only one of fourteen Regional Consultative Processes worldwide that does not focus on security issues. This may be in part due to fact that a large majority of migrants within South America are from within the region, though it is also worth noting that the CSM has not met since the last meeting held in November 2018, shortly after the setup of the Quito Process. In Mexico and Central America, on the other hand, US influence on regional migration governance appears to have contributed to greater securitization. For very different reasons, then, there is arguably limited scope for the GCs to have much impact in either case—in South America, because under regional agreements states have made more extensive commitments than those contained in the Compacts, and in Mexico and Central America, because the influence of the US (which has not signed up to the GCs) is more significant than global soft law frameworks.

The Venezuelan migration “crisis” in South America is not generally treated as a refugee issue—most countries offered incoming Venezuelans temporary residence permits etc.—and hence refugee governance is largely absent. By contrast, in Mexico and Central America, the CRRF (MIRPS in Spanish) is being implemented, albeit imperfectly. Gaps or weaknesses in implementation in the region appear to be the consequence of a lack of capacity at the state level, rather



than of active contestation of the relevant international norms. South American countries have promoted a “right to migrate”, and argued for the regularization (rather than the expulsion) of irregular migrants. In a sense, then, they challenge the dichotomy between regular and irregular migration that is so central to the GCM. In Mexican and Central American discourse, the dichotomy is more prominent—already prior to the GCs, regional instruments there distinguished regular from irregular migration, and linked the latter with criminal activities.

Under the 2012 Fortaleza Declaration, MERCOSUR states made commitments to non-restrictive migration policies and to the principles of non-refoulement and asylum that go beyond the contents of the GCs, and beyond the practice of many EU states. More recently, we see evidence these commitments are being put into practice through, for example, allowing IOM, UNHCR and UNICEF to be present at border crossings. In Mexico and Central America, there appears to be more discussion of border security and assertion of national sovereignty—within the limits of what human rights law allows. Whereas in Europe, migration has been securitized through discourse and practice that fuse national security concerns of European states with humanitarian concern for migrants, then, in Mexico and Central America, the securitization of migration is understood as distinct from a human rights framework which imposes limits on border control measures, etc. The goal is to balance national security with the human rights of migrants, such that there is seen to be a trade-off between the two, rather than an effort to merge them.

The fact that several South American regional initiatives since the end of 2018 make occasional reference to the GCs, and that there is an ongoing CRRF in Central America, suggest there is broad acceptance for these instruments of global migration governance. At the same time, the GCs seem to be relatively peripheral to the regional and national governance of migration in Latin America. They are used selectively, and are not driving the approaches taken to migration governance in either region. South American states have explicitly decided not to emulate best practices from the Global North, which they see as having failed, and actively promote much greater freedom of movement. We found no evidence of the Compacts being used to legitimize backsliding—indeed any backsliding seemed to occur behind closed doors and hence without the need for public justification—but it remains to be seen how the Compacts are used over the longer term, especially if the region sees significant increases in extra-regional immigration. Perhaps most surprisingly, South American states do not seem to be making reference to the GCR in their calls for greater inter-regional responsibility sharing vis-à-vis Venezuelan migrants and refugees, despite the fact the GCR is centrally concerned with solidarity among states. In Mexico and Central America, despite the existence of a CRRF, pressure from the US and domestic capacity constraints appear to have been the principal drivers of regional and national migration governance in practice.



Finally, in section eight, the paper turned back to Europe in order to briefly reflect on how the examples of regional migration governance in Latin America differed from the European experience. As noted in this working paper and more widely, MERCOSUR decided against using the European model of a common border and the creation of a common, regional citizenship within it, and that of MERCOSUR and the associated states that until very recently has not spoken about security at all. There are a number of important differences between the regions, such as the avoidance of labelling any migration ‘irregular’ (which was advocated for the text of the GCM but rejected), the fact that many (but not all) of the migrants have been inter-regional, and that border crossings do not involve the dangerous waterways that pose considerable risk to life, which is instrumental in the humanitarisation process. From the expert interviews and document searches undertaken to establish the most recent reaction to the compacts, our findings say that while very many Latin American states support them, they continue for the most part along the institutional pathways developed over previous decades. So while the language of the Global Compacts may in theory be used to more strongly influence the securitization of migration, it is not automatically happening.

With regard to the direction of future studies, for the South American case, further research should explore whether and how these liberal views of regional policies and strategies on migration and refuge are put in practice and to what extent they are framed to respond to the intersecting themes of migration, work, gender, and health. This calls for more detailed research at the level of implementation. For the Mexico and Central America case, a research agenda pointing at how states abide to the commitments acquired in regional mechanisms and instruments and their implementation on the ground should be developed. Implementation should also look at the role of civil society as actors contesting and denouncing the securitising agenda of the states in regional and international forums. All of these research lines are relevant to the EU because two decades of linking security to migration in Europe seems, in 2021, to have bolstered politicians on the right, the advocates of (re)nationalisation, sceptics of globalisation and supporters of illiberal politics, intolerance and xenophobia. As the international liberal order finds itself in an increasingly threatened position; as climate change is likely to increase greatly in coming decades forced migration; as the global population is expected to continue growing until 2050 with the fastest growth rates in African continent, migration into Europe is unlikely to stop by its own accord. Just as the study of International Relations is turning to recognise the importance of non-Western ideas as solution of global problems – the emergence of Global IR – the application of lessons from Latin America applied to Europe follows the same rationale.



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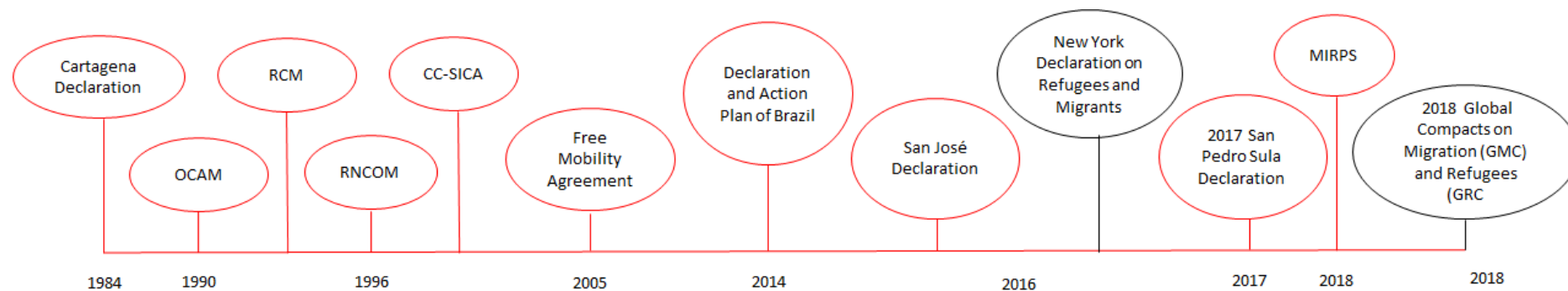
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Annex 1. Central America. Timeline.



Annex 2. South America. Timeline.

