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ARTICLE

Special Issue: Legal Infrastructures

# Unruly Practices at the Border: From Mobility Regimes to Infrastructures in Latin America

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**Abstract**
The aim of this Article is to present a general and nonexhaustive overview of the legal infrastructures that configure cross-border movement in Latin America. It draws on the mobility approach, regime interaction, and—legal—infrastructural studies, which, together, provide a tentative analytical framework for the legal infrastructuring processes that we observe around border regulation in Latin America, an, arguably, understudied but core mobility hotspot. We present—in the form of several vignettes—different outcomes of infrastucturing processes which either enable or impede cross border mobility. This approach reveals the dynamic nature of law surrounding mobility and its apparent contradictions and unintended consequences. It concludes that the shift to an infrastructural account of the law can help us gain a more holistic and, therefore, more realistic understanding of how the law works over time, how it infrastructures crossborder mobility beyond and sometimes against states' intentions and expectations, and how people on the move have more agency than the snapshot image of—forced—migration law conveys.

**Keywords:** Cross-border; Latin America; Migration; Immigration

## A. Mobile People and Static Law: the Challenges of Mapping Legal Mobility Frameworks in Latin America

In August 2020, with the worldwide Covid-19 pandemic in full swing, a mixed group of Venezuelans and Haitians found themselves in legal limbo. They had effectively become stuck on the *Ponte de Amizade* that connects and marks the border between the Brazil and Peru. They had initially been permitted to enter Brazil after presenting undertakings approved by the Brazilian Ministry of Health committing them to adhere to all national COVID-19 protocols but were subsequently deported back to the bridge, and purportedly to Peru, by Brazilian Federal Police on the grounds that the border had been closed due to the pandemic. However, Peru, had in the meantime closed its border for the same reason, so that the group ended up stuck on the border bridge for several weeks, until a Brazilian court issued an order allowing their re-entry into Brazil. Relying on domestic legislation incorporating the *American Convention of Human Rights* (ACHR) as well as the *Cartagena Declaration on Refugees* (Cartagena Declaration), the court found that the latter's humanitarian exceptions clause had not been properly applied by the Federal Police in its

deportation decision. In a follow up case, an unusual alliance of two public law enforcement bodies in Brazil, the federal Public Defender's Office and the Public Prosecutor's Office, and a civil society human rights and a humanitarian organization successfully brought a class action suit against the federal government with the aim to secure a comprehensive halt to deportations linked to COVID-19, arguing that such deportations were in breach of Brazil's constitution and the ACHR—which, as a self-executing human rights treaty, is incorporated into the constitution.[1]

This case, and others that will be examined below, highlight the challenge of accurately mapping the legal frameworks that configure cross-border movement in Latin America. For a conventional—legal— perspective, premised, as it is, on pre-defined borders and a clear cut and singular border regime that defines, through a combination of national and international rules, which circumstances allow for which types of—albeit always exceptional—movement across, seems not to reflect very accurately both the factual and the legal realities on the ground.[2] For these realities feature actual people on the move, who rarely, if ever, conform to the static definitional categories into which the conventional legal framing squeezes them, but whose motives and concomitant actions are both multidimensional and always evolving.[3] Consequently, people continuously adapt to changing contexts but, by doing so, also change these contexts, including the meaning and effect of borders. Thus, not only are people mobile, but so are the circumstances under which they cross borders.

One such circumstance is, of course, the law itself. Although, from the perspective of conventional—legal—analysis, it is—and must be—treated as strictly distinct from "the facts" which comprise people and their circumstances, in the reality around borders it is also a fact itself, one that simultaneously acts on and is acted on by people on the move. Indeed, the law is actually a multiplicity of partly complementary, partly overlapping, and partly incompatible laws that are constantly being engaged during cross-border movement, with particular outcomes being the result of an *ad hoc* and only ever momentary interaction of any of these legal frameworks. Thus, in the above, Brazilian federal executive agencies, for instance, initially leveraged public health exceptions to justify border closures and summary deportations, only to have that particular entanglement overturned by a domestic tribunal drawing on Interamerican human rights law, a decision subject, in turn, to being challenged again on different grounds and with a—potentially—different outcome, and so on.[4]

This is, arguably, the normal way in which the law evolves over time. A series of cases in which different legal frameworks are applied to particular facts, each only ever denoting a snapshot frozen in time. Yet, one that is always subject to change in the future and is, thus, fundamentally contingent. This is, of course, the bread and butter of legal practice and intuitively understood by the legal practitioners involved in these cases, but it is, arguably, not the way in which the law is conventionally represented.[5] That conventional representation sees law as unitary, uniform, unidimensional, and presentist, a code or performative language game that renders definite

[1]For the district court decision, *see* TRF-1 Vara Federal Cível, Ação Civil Pública No. 1001365-82.2021.4.01.4200, Relator: Felipe Bouzada Flores Viana, 13.03.2021 (Braz.). *See also* Florian F. Hoffmann & Isadora d'Avila Lima Nery Gonçalves, *Border Regimes and Pandemic Law in Time of COVID-19: A View from Brazil*, 114 Am. J. Int'l L. Unbound 327, 327 (2020).

[2]T. Alexander Aleinikoff, *Toward a Global System of Human Mobility: Three Thoughts*, 111 Am. J. Int'l L. Unbound 24, 25 (2017); Sara Dehm, *International Law at the Border: Refugee Deaths, the Necropolitical State and Sovereign Accountability*, *in* Routledge Handbook of International Law and the Humanities 341, 354 (Shane Chalmers and Sundhya Pahuja eds., 2020).

[3]Jaya Ramji-Nogales, *Moving Beyond the Refugee Law Paradigm*, 111 Am. J. Int'l L. Unbound 8, 10 (2017); Jaya Ramji-Nogales & Peter J. Spiro, *Introduction to Symposium on Framing Global Migration Law*, 111 Am. J. Int'l L. Unbound 1, 2 (2017).

[4]Hoffmann & Gonçalves, *supra* note 1.

[5]Cormac Mac Amhlaigh, '*Does Legal Theory Have a Pluralism Problem?*', in The Oxford Handbook of Global Legal Pluralism 267, 267 (Paul Schiff Berman ed.).

decisions and thereby produces the degree of certainty deemed necessary for the maintenance of social order—upon which its authority and political legitimacy are premised.[6]

A law that is both plural and indeterminate over time, that does not just structure "the facts" but is part of them; that regulates people but is, conversely, also used, abused, tweaked, manipulated, and occasionally simply ignored. A law, then, that is conceived of as mobile rather than static is still a somewhat provocative proposition. It is, however and arguably, much, closer to the reality of both the law and the people it purports to regulate than its textbook representation, not least in the context of cross-border movement. For the legal reality at the border is fundamentally mobile and much less defined by the conventional paradigm of sovereign control over people and territory than, for instance, the notorious definition of the *Montevideo Convention on the Rights and Duties of States* conveys.[7] What is commonly referred to as the border regime is actually continuously re-enacted in a jazz-like manner, combining set pieces, also known as, different legal regimes, with variations thereon as well as—occasionally—free*er* improvisations.[8] As such, law at the border is less hierarchical and deterministic and more horizontal, interactional, and liquid than the conventional account would have it.[9] Most importantly, it is mobile across space—that is across national territories—, scale—that is across domestic, transnational, and international law—, and, most importantly, across time—that is it keeps changing through the ever-growing chain of decisions or cases and the intended but especially unintended consequences they produce. Consequently, our basic premises are, in essence, that law and—cross-border—mobility can be reconstructed as an infrastructural entanglement, yet that this entanglement is not static but continuously evolves, and therefore changes, over time.

We will, in the following, explore this legal jazz in the context of Latin American border regimes and through the optic of legal infrastructures and infrastructuring processes—a perspective that eclectically draws on a variety of literatures including on the "turn to mobility" in refugee and migration law, on legal pluralist accounts of regime multiplicity and interaction, and on the fast-growing though differently-tuned reflections on infrastructures in and of the law. This is a theoretical agenda for a perspective change that would incorporate "law in practice" into law's conceptual self-representation and, as such, it is broadly situated within a—critical—legal realist horizon.[10] We want to bring this perspective to bear on a cross-section of empirical border mobility scenarios in Latin America, which, we argue, are an excellent case in point for the sort of legal infrastructuring processes that have so far often remained under the radar of more static and presentist regime analyses. Latin America is a good starting point because the region has a long history of—forced and unforced—(*im*)migration and has been a cross-border migration hotspot of both sudden-onset conflict- and disaster-induced displacement as well as of slow*er*-onset mobility especially towards North America.[11] Latin America also features an extraordinarily rich and innovative legal landscape that, despite—or, indeed, because of—the region's ambivalent

[6]Mario Prost, The Concept of Unity in Public International Law (2012).

[7]Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097, 165 U.N.T.S. 3802.

[8]We are grateful to Will Jones for suggesting the jazz metaphor in a review session of this Article at the Center for Global Mobility Law (MOBILE) at the University of Copenhagen.

[9]Nico Krisch, *Entangled Legalities in the Postnational Space*, 20 Int'l J. Const. L. 476, 477 (2022); Nico Krisch, *Liquid Authority in Global Governance*, 9 Int'l. Theory 237, 239 (2017).

[10]*See* Elizabeth Mertz, Research handbook on modern legal realism (Shauhin A. Talesh, Elizabeth Mertz & Heinz Klug eds., 2021); Gregory Shaffer, *The New Legal Realist Approach to International Law*, 28 Leiden J. Int'l L. 189, 193 (2015).

[11]David J. Cantor, *Environment, Mobility, and International Law: A New Approach in the Americas*, 21 Chi. J. Int'l L. 263, 280 (2021); Nieves Fernández-Rodríguez & Luisa Feline Freier, *Latin American Immigration and Refugee Policies: A Critical Literature Review*, 12 Compar. Migration Stud. 15, 15 (2024); Latin America and refugee protection: regimes, logics and challenges (Liliana Lyra Jubilut, Marcia Vera Espinoza & Gabriela Mezzanotti eds., 2021).

political history, is characterized by a pronounced legalist streak in public policy-making and, mostly, strong judiciaries, but also by an often pragmatic and solution-oriented approach to implementation.[12] With regard to the regulation of cross-border mobility, this has resulted in a tendency to creatively entangle international refugee law with regional refugee as well as Inter-American and international human rights law (and with a diversity of domestic instruments) with a view to providing ad hoc solutions to concrete cases or scenarios.[13] The region is, thus, a prime example for the legal infrastructuring of cross-border mobility that we wish to explore here. In the following, we will, first briefly sketch our conceptual premises relating to legal mobility and legal infrastructures, and will then present, in the form of four vignettes, different forms of legal infrastructuring in the region which result in either the enabling or the disruption of mobility.

## B. Mobilizing the Law: From Regimes to Infrastructures

As already mentioned above, our theoretical perspective derives from the need to find a more realist and accurate lens through which to observe and understand the empirical scenario around borders—and legal border regulation- in Latin America. Our starting point is, again, that conventional legal analysis is myopic in this respect and will not accurately capture the actual workings of law*s* at the border, primarily because it holds too static, hierarchical, uniform, and unidimensional a view of both the law and the people it is meant to regulate. The challenge is to construct a conceptual heuristic that provides a better view of the facts on the ground, notably one that includes law among those facts. To that end, we initially draw on three distinct yet interconnected perspectives, namely the mobility approach, regime interaction, and legal infrastructures, which, taken together, provide a tentative analytical framework for the legal infrastructuring processes that we observe around border regulation in Latin America. Each of these perspectives involves growing bodies of literature and ongoing debate thereon, to the point where even the meaning of their core concepts—mobility, regimes, and infrastructures—remains contested and is not consensually defined.[14] Building on the conceptual horizon set out by Byrne, Gammeltoft-Hansen, and Stappert, in their framing paper to this Special Issue, we aim to mobilize a particular reading of these core concepts in order to frame the empirical scenario in our focus.

The first aspect of this perspective "changes" is the so-called mobility perspective. As a scholarly pursuit it is connected to the proposition of a broader mobility perspective or "turn" that is meant to transcend the earlier and narrower focus both on, involuntary, displacement, as in refugee and forced migration studies, and on unidirectional and longer-term movement, as in general migration studies.[15] The mobilities perspective seeks to broaden this horizon to not only include a wider range of movement types but also to highlight that motion is constitutive of virtually all social reality.[16] As such it shifts the emphasis to "complex movements of people,

[12]*See* Ramji-Nogales, *supra* note 3; Cantor, *supra* note 11.

[13]The Oxford handbook of Constitutional Law in Latin America, (Conrado Hübner Mendes, Roberto Gargarella, & Sebastián Guidi eds., 1st ed. 2022). *See also* Fernández-Rodríguez & Freier, *supra* note 11, at 2. (providing five reasons for the comparative significance of Latin America in this respect, notably that the region "displays exceptionally liberal de jure and de facto approaches to the management of human mobility;" "it hosts heterogeneous internal and intra-regional mixed-migration flows;" "it has recently experienced a rapid increase of forcibly displaced people from Colombia, Central America, and Venezuela;" "political responses to these crises have been diverse—leading to policy implementation gaps;" and "Latin American countries present distinct characteristics on variables that have been considered as determinants of migration policy by studies on other regions"for example, regime type, institutional capacity, nature of labor markets, and so on).

[14]*See* William Hamilton Byrne, Thomas Gammeltoft-Hansen & Nora Stappert, *Legal Infrastructures: Towards a Conceptual Framework*, 25 German L.J. 1229 (2024) (framing this same special issue).

[15]Aleinikoff, *supra* note 2; Magdalena Kmak, Law, Migration, and Human Mobility: Mobile Law (1st ed. 2023); Frédéric Mégret, *Transnational Mobility, the International Law of Aliens, and the Origins of Global Migration Law*, 111 Am. J. Int'l L. Unbound 13, 14 (2017).

[16]Mimi Sheller & John Urry, *The New Mobilities Paradigm*, 38 Env't & Plan. A: Econ. & Space 207, 207 (2006); Kmak, *supra* note 15; Thomas Nail, Being and Motion (2019).

objects, and information, and the power relations behind the governance of mobilities and immobilities."[17] It emerged in the early 2000s as a self-critical interpretation of globalization as a phenomenon that challenges the modern norm of sedentarism and territoriality by fostering nomadism and deterritorialization, yet that also unevenly distributes the mobility capabilities on which the latter are premised.[18] The mobilities perspective has aggregated different sub-disciplinary horizons mostly in the social sciences, such as anthropology, cultural studies, geography, migration studies, science and technology studies, tourism and transport studies, as well as sociology, all aiming to transcend the static bias that inheres in the prevalent conception of, Western, modernity.[19] Consequently, static categories such as state, nation, ethnicity, community, place, or home have been problematized from a mobilities perspective as reductive and inadequate accounts of the fluid and ever changing nature of social reality.[20] The turn to mobility is, in essence, an ideology critical intervention against the dominant "static" epistemologies that perpetuate an under-complex and distorted representation of the world.

As a consequence, the mobility perspective has also been leveraged to widen the field of view beyond the dominant focus on forced migration and its specific causalities with a view to complexifying the figure of "the migrant." For, from the mobility point of view, the latter becomes a "multidimensional human being with a complex set of needs, interests, and contributions"[21] whose move across state borders is the result of an interwoven web of spatiotemporal factors. A mobility optic, therefore, simultaneously zooms-out to bring diverse types of cross-border movement into view and into relation with each other, and zooms-in to render visible the complex interaction of variables by which any type of movement is constituted. This has been used to better understand both the particular protection needs and the resilience capabilities of forced migrants but also to shift the focus away from the irregularity and passivity often associated with forced migration and to highlight the ubiquity of mobility and the agency that it always also entails.[22]

As was already set out earlier, the mobility optic can also be brought to bear on the law itself, a move that connects it with the literature on legal regimes, regime multiplicity, and regime interaction, given that borders are legally structured by a plurality of domestic, transnational, and international legal frameworks.[23] That law is both plural and evolves over time has, long been recognized, with legal pluralism being a well-established *topos* in comparative legal scholarship and the "conflict of laws" a core element of legal practice.[24] However, conventional legal analysis has tended to represent pluralization as a process of fragmentation that disintegrates an originally unified law into a host of self-contained laws that operate more or less autonomously from one another and compete for

[17]Mimi Sheller, Mobility Justice: The Politics of Movement in the Age of Extremes 2 (2018).

[18]*Id. See also* Sheller & Urry, *supra* note 16.

[19]*Id.*; Kmak, *supra* note 15; Florian Hoffmann, *Facing* South*: On the Significance of An/Other Modernity in Comparative Constitutional Law*, *in* The Global South and Comparative Constitutional Law 41, 41 (Philipp Dann, Michael Riegner & Maxim Bönnemann eds., 1st ed. 2020).

[20]Sheller & Urry, *supra* note 16, at 211.

[21]Ramji-Nogales & Spiro, *supra* note 3, at 11.

[22]Kmak, *supra* note 15, at 2.

[23]*See id.* at 32 (distinguishing four mobilities of law, which Kmak terms embodiment—of laws— infrastructure, meeting—of laws—and jurisprudence; the approach to legal infrastructures here adopted includes all of these though focusses most directly on what we argue are the most tangible manifestations of infrastructuring processes, notably Kmak´s meeting of laws).*See also* The Routledge Handbook of Mobilities (Peter Adey, David Bissell, Kevin Hannam, Peter Merriman & Mimi Sheller, eds. 2014); Mobile People, Mobile Law: Expanding Legal Relations in a Contracting World (Franz von Benda-Beckmann, Keebet von Benda-Beckmann & Anne Griffiths eds., 2005).

[24]Paul Schiff Berman, Global Legal Pluralism: A Jurisprudence of Law beyond Borders (1st ed. 2012); Nico Krisch, Beyond Constitutionalism: The Pluralist Structure of Postnational Law (1st ed. 2010); Gunther Teubner, *Global Bukowina: Legal Pluralism in the World Society*, *in* Critical theory and legal autopoiesis 1, 1 (Diana Göbel ed., 2019); The Oxford handbook of global legal pluralism (Paul Schiff Berman ed., 2020).

regulatory hegemony.[25] From the conventional position's "internal perspective," such fragmentation is problematic as it undermines the law's capacity to produce legal certainty and, thus, threatens both its overarching authority and its political legitimacy.[26] Fragmentation is, thus, a problem that, from the conventional perspective, needs to be remedied, with the remedy being some form of re-integration of the disparate legal frameworks into a unified law, be it through some coordinated conflict resolution mechanism, through a presumed set of higher-level unifying norms, or occasionally also through simply ignoring the legal reality of fragmentation all together.[27] Yet, the purpose of these remedial moves is not—and could not be—to reverse the empirical reality of fragmentation but rather to re-describe its operation in a way that is compatible with the ideal of a re-unified singular law. This involves two conceptual moves: First, the horizontal interaction of different but empirically equivalent legal frameworks is re-described as a vertical hierarchy of norms, or norm systems; and the time-dynamic "processual" aspect of norm interaction is flattened into a series of discrete and disconnected legal decisions, rather than as an ongoing process.

A different account of the plurality of law has come from points of view deemed "external" by the conventional legal perspective, notably those situated in the social sciences and, in particular, in—legal—sociology, political science, and international relations. Here the focus has been on understanding the causes and consequences of the pluralization of law, with the core concept being that of "legal"regimes. The latter are, by a well-known definition, "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area . . . ."[28] From a more legal-sociological perspective, regimes are taken to attend to specific functional imperatives and are a symptom of the ever-advancing functional differentiation of world society.[29] From a legal pluralist point of view, regime fragmentation is not an *a priori* problem but the normal state of law and the starting point of legal analysis. Accordingly, there have been a number of proposals that reject the re-integration agenda and frame regime multiplicity as fundamentally unproblematic or, indeed, as positively necessary in the globalized world of today. On one side of the spectrum of these approaches are what might be described as more "legal" realist takes on the re-integration agenda, notably proposals that regimes can effectively and, somehow, peacefully cohabit in form of regime accommodation,[30] regime interaction,[31] or regime complexes.[32] On the other side stand autopoietic and evolutionary approaches that see regime collision and the concomitant oscillation of inter-regime irritation, adaptation and, occasionally, substitution as essential and necessary for the maintenance of a global rule of law geared to a functionally differentiated world society.[33]

[25]*Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law* [2006] 2 Y.B. Int'l L. Comm'n 2 U.N. Doc. A/CN.4/L.702; Andreas Fischer-Lescano & Gunther Teubner, *Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law*, *in* CRITICAL THEORY AND LEGAL AUTOPOIESIS 999, 1004 (Diana Göbel ed., 2019).

[26]Martti Koskenniemi, *The Fate of Public International Law: Between Technique and Politics*, 70 MOD. LAW REV. 1, 2 (2007).

[27]Anne Peters, *Fragmentation and Constitutionalization*, *in* THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW 1011, 1020 (Anne Orford & Florian Hoffmann eds., 1st ed. 2016); Pierre-Marie Dupuy, *The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice*, 31 N.Y.U. J. INT'L LAW AND POLS. 791, 792 (1999).

[28]Stephen D. Krasner, *International Law and International Relations: Together, Apart, Together?*, 1 CHI. J. INT'L L. 93, 93 (2000).

[29]Fischer-Lescano & Teubner, *supra* note 25.

[30]HEEJIN KIM, REGIME ACCOMMODATION IN INTERNATIONAL LAW: HUMAN RIGHTS IN INTERNATIONAL ECONOMIC LAW AND POLICY (2016).

[31]Anne Peters, *The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization*, 15 INT'L J. CONST. L. 671, 671 (2017); REGIME INTERACTION IN INTERNATIONAL LAW: FACING FRAGMENTATION (Margaret A. Young ed., 2015).

[32]Karen J. Alter & Sophie Meunier, *The Politics of International Regime Complexity*, 7 PERSP. POL. 13, 14 (2009); Kal Raustiala & David G. Victor, *The Regime Complex for Plant Genetic Resources*, 58 INT'L ORG. 277, 277 (2004).

[33]Fischer-Lescano & Teubner, *supra* note 25.

Somewhere in between are approaches that more directly take into consideration the processual and time-dynamic nature of regime interaction. The theory of regime entanglement does not only postulate that regime interaction is catalyzed—in other words, regimes are entangled—through the particular normative demands of particular empirical "fact" situations—such as a border crossing—but also and more importantly that the entangled regimes are thereby cross-fertilized and effectively altered.[34] For instance, the much discussed "turn" to human rights in refugee law can be seen as a regime entanglement. Human rights law comes to absorb elements of refugee law—as in the de facto incorporation of the Cartagena Declaration into the ACHR by the Inter-American Court of Human Rights (IACtHR)—and refugee law is, conversely, interpreted as implying certain human rights obligations.[35]

Regime entanglement is a promising path towards a better understanding of regime interaction in border regulation scenarios. The, arguably, next step from there is to link it with the broader mobility lens and, thus, to zoom out from individual—case-by-case—entanglements so as to bring the time-dynamic nature of the entanglement process into view, and to simultaneously zoom in to better resolve how people on the ground interact with these border regime entanglements. One way of doing so is to elaborate on the concept of "legal" infrastructures that has attracted growing interest as an alternative to both conventional and legal pluralist approaches—and that is one of the conceptual horizons of this Special Issue.[36] As a general analytical framework, infrastructure studies share some concerns and literatures with the mobility perspective and draw, inter alia, on science and technology studies ("STS"), anthropology, ethnography, architecture, critical geography, feminist theory, and post-colonial studies.[37] Although there is no uniform definition of infrastructures and their specific analytical purchase in these literatures, core characteristics highlighted in most approaches are that they entangle material and immaterial objects in relational, mobile and distributional ways and thereby provide a more accurate vision of how, socio-material, "facts" are constituted—in other words, infrastructured.[38]

The relationship of law and infrastructures is still debated, with infrastructural dynamics, however, being affirmed "as an inherent quality of law itself, due to law's practically constituted socio-materiality and its distributional implications for persons, goods, and capital."[39] However, there have been different ways to bring together law and infrastructure, with some focusing on the "law of infrastructure" and others on "law as infrastructure."[40] In line with the latter perspective, Byrne, Gammeltoft-Hansen, and Stappert argue that legal infrastructures are *sui generis* forms of infrastructures that are distinguished from other types by their normative qualities.[41] They

[34]Thomas Gammeltoft-Hansen & Mikael Rask Madsen, *Regime Entanglement in the Emergence of Interstitial Legal Fields: Denmark and the Uneasy Marriage of Human Rights and Migration Law*, 40 NORDIQUES 1, 1 (2021).

[35]*See* Nikolas Feith Tan & Thomas Gammeltoft-Hansen, *A Topographical Approach to Accountability for Human Rights Violations in Migration Control*, 21 GERMAN L.J. 335, 335 (2020); LATIN AMERICA AND REFUGEE PROTECTION: REGIMES, LOGICS AND CHALLENGES, *supra* note 11.

[36]*See* Byrne, Gammeltoft-Hansen & Stappert, *supra* note 14.

[37]*Id.*; THE PROMISE OF INFRASTRUCTURE (Nikhil Anand, Akhil Gupta, & Hannah Appel eds., 2018); Deborah Cowen, *Law as Infrastructure of Colonial Space: Sketches from Turtle Island*, 117 AM. J. INT'L L. UNBOUND 5, 6 (2023); INFRASTRUCTURES AND SOCIAL COMPLEXITY: A COMPANION (Penelope Harvey, Casper Bruun Jensen, & Atsuro Morita eds., 2019); KREGG HETHERINGTON, INFRASTRUCTURE, ENVIRONMENT, AND LIFE IN THE ANTHROPOCENE (2019). *See also* Sarah Scott Ford, *Not Just New Wine in Old Bottles: Seeing Refugee Law and Human Rights as Entangled Regimes*, 1 INT'L J. CONST. L. 1, 772, 772 (2024).

[38]Byrne, Gammeltoft-Hansen & Stappert, *supra* note 14, at 5.

[39]*Id.* at 12.

[40]Benedict Kingsbury, *Infrastructure and InfraReg: On Rousing the International Law 'Wizards of Is,'* 8 CAMBRIDGE INT'L L. J. 171, 171 (2019); Léna Pellandini-Simányi & Zsuzsanna Vargha, *Legal Infrastructures: How Laws Matter in the Organization of New Markets*, 42 ORGANIZATION STUDIES 867, 891 (2021); MARIANA VALVERDE, INFRASTRUCTURE: NEW TRAJECTORIES IN LAW (2022).

[41]Byrne, Gammeltoft-Hansen & Stappert, *supra* note 14.

assemble materials and practices in and through the continuous and time-dynamic operation of the law, yet, thereby, change the law itself. In other words:

> Legal infrastructural analysis provides a different perspective to fiercely contested debates in legal theory, such as on regime fragmentation, dynamic interpretations by international courts or emerging transnational litigation networks. Here, thinking infrastructurally about law might entail tracing the everyday legal work to make visible how normative regimes are interconnected, reproduced, contested, and maintained; how they constrain and enable processes of circulation; and how law's content may be changed as a result.[42]

As already hinted above, we aim to mobilize this approach to argue that law and cross-border mobility can be reconstructed as an infrastructural entanglement, yet that this entanglement is not static but continuously evolves over time.[43] The emphasis is then on the relational character of regime entanglement and on their dynamic interaction as nodes of a network. However, rather than understanding these regime nodes as controlling their interconnection, the emphasis is instead shifted to the interaction itself; that is, to the *infrastructuring* effect the ever-shifting dynamic of entanglement and disentanglement has on the regimes themselves. Indeed, we hypothesize that regimes, as network nodes, are really constituted by such *infrastructuring* processes which involve a much wider array of elements than any one regime is made up of. These elements are not just the constituent parts of legal regimes, notably a defined set of norms, norm subjects, and institutional framework, but they also include those non-legal elements—whether material or immaterial—that directly or indirectly act on—or rather, in—the regime-constituting infrastructure.[44] Unlike the common conception of infrastructures as somewhat static and inelastic, legal infrastructures as proposed here, are time-dynamic and processual as they consist of the continuous entanglement and disentanglement of legal and non-legal elements.[45]

In the Latin American empirical scenario, such *infrastructuring* engages law in all its multidimensionality: As a set of rules that purport to structure human conduct, but that can be complied with, broken, manipulated, or circumvented; as a regulatory device, of cross-border mobility; as domestic and international human rights and other humanitarian regimes, that can be used to irritate "the law's" regulatory function; as an umbrella of formal legality, that may, however, engender unintended consequences; or as a lacuna, an absence that draws in people and may eventually produce new norms.

## C. Legal Infrastructuring in Action: Four Latin American Vignettes on Enabling and Disrupting Cross-Border Mobility

In this section, we will illustrate legal infrastructural entanglements around borders in Latin America through four vignettes that show how such *infrastructured* border regimes can have mobility-enabling

[42] *Id.* at 21.

[43] William Hamilton Byrne & Thomas Gammeltoft-Hansen, *Untangling the Legal Infrastructure of Schengen*, 9 EUR. PAPERS 157, 157 (2024); Thomas Gammeltoft-Hansen & Florian Hoffmann, *Mobility and Legal Infrastructure for Ukrainian Refugees*, 60 INT'L MIGRATION 213, 214 (2022); Niamh Keady-Tabbal & Itamar Mann, *Weaponizing Rescue: Law and the Materiality of Migration Management in the Aegean*, 36 LEIDEN J. INT'L L. 61, 61 (2023); Thomas Spijkerboer, *The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control*, 20 EUR. J. MIGRATION & L. 452, 453 (2018); Biao Xiang & Johan Lindquist, *Migration Infrastructure*, 48 INT'L MIGRATION REV. 122, 124 (2014).

[44] Jessie Hohmann, *Diffuse Subjects and Dispersed Power: New Materialist Insights and Cautionary Lessons for International Law*, 34 LEIDEN J. OF INT'L L. 585, 585 (2021); Hyo Yoon Kang & Sarah Kendall, *Legal Materiality*, *in* THE OXFORD HANDBOOK OF LAW AND THE HUMANITIES 20, 21 (Simon Stern, Maksymilian Del Mar & Bernadette Meyler eds., 2020).

[45] Mariana Valverde, Fleur Johns & Jennifer Raso, *Governing Infrastructure in the Age of the "Art of the Deal": Logics of Governance and Scales of Visibility*, 41 POL. & LEGAL ANTHROPOLOGY REV. 118, 120 (2018).

and mobility-disrupting effects.[46] The first set of vignettes will discuss how, contrary to initial responses and inherent regime logics, cross-border mobility into Brazil was enabled for those from nearby, Venezuelans, and those from much further away, Afghans. The second set of vignettes, in turn, will consider how that mobility was ultimately disrupted for the same Venezuelans in their transit into Chile, as well as for Ecuadorians moving into Mexico. Although these situational narratives do not aim to convey a comprehensive diagnosis of *de facto* cross-border mobility in Latin America, they do however illustrate how legal infrastructuring processes play out in practice. This infrastructuring approach then contributes to revealing the dynamic nature of law surrounding mobility, allowing us to identify relevant practices, effects, and implementation gaps, and to contextualize apparent contradictions and unintended consequences.

## I. An overview of the mobility regimes

The legal regimes that pertain to mobility in the region are varied, and coexist overlapping and engaging with each other. The Inter-American system for the protection of human rights has progressively recognized and delineated the human rights of migrants, regardless of their migratory status;[47] and of refugees, especially those who fall within the definition of the Cartagena Declaration.[48] Indeed, the Inter-American Court has affirmed that the latter is part of the "*corpus iuris*" for the protection of human rights in the region.[49] The Inter-American Commission has also taken an active role upholding migrant's rights,[50] and has directly addressed the forced displacement of Venezuelans, calling on states to facilitate their movement applying or adopting mobility-enabling measures.[51] Among them, recognizing Venezuelans as "Cartagena" refugees. The Cartagena Declaration expanded the traditional definition of refugees incorporating situations of armed conflict, human rights violations and other circumstances in which a person is forced to leave his or her country, building on international human rights law and international humanitarian law. Although non-binding, the incorporation of the Declaration into domestic law has been almost uniform across countries.[52]

[46]We were inspired in the productive use of vignettes by Maja Janmyr´s excellent contribution on Maja Janmyr, *Ethnographic Approaches and International Refugee Law*, J. Refugee Stud. 1 (2022).

[47]Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion, 2003 Inter-Am. Ct. H.R. 18 (Sept. 17); Elizabeth Salmón & Cécile Blouin, *The Standards of the Inter-American Human Rights System Regarding Migration and Its Impact on the Region's States*, *in* The Impact of the Inter-American Human Rights System: Transformations on the Ground 366 (Armin von Bogdandy et al. eds., 2024).

[48]Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion, 2014 Inter-Am Ct. H.R. 21 ¶ 78-79 (Aug. 19); The Institution of Asylum and Its Recognition as a Human Right in the Inter-American System of Protection, Advisory Opinion, 2018 Inter-Am Ct. H.R. 25 ¶ 132 (May 30).

[49]Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion, 2014 Inter-Am Ct. H.R. 21 ¶ 249 (Aug. 19).

[50]*See, e.g.,* Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, Inter-Am. Comm'n H.R., Resolution No. 4/19 (2019). *See also* Inter-Am. Comm'n H.R., Resolution No. 81/18 (2018) Precautionary Measure 490/18; Inter-American Commission on Human Rights Press Release 206/22, International Protection and Regularization of Legal Status in the Context of Large-Scale Mixed Movements in the Americas (2022); Inter-American Commission on Human Rights, Press Release 263/21, IACHR Condemns Violent, Xenophobic Acts against Venezuelan Migrants in Iquique, Chile (October 5, 2021).

[51]Forced Migration of Venezuelans, Inter-Am. Comm'n H.R., Resolution No. 2/18 (2018) (calling for States to guarantee entry to those seeking international protection, recognizing them as international or Cartagena refugees, even in a "*prima facie* or group determination" manner, uphold the right to non-refoulement and to "expand regular, safe, accessible and affordable channels for migration through the progressive expansion of visa liberalization and easily accessible visa facilitation regimes and/or measures such as complementary protection, temporary protection, humanitarian visas, family reunification, visitor, work, resident, retirement, and student visas, and private sponsorship programs.").

[52]*See* Luisa Feline Freier, Isabel Berganza & Cécile Blouin, *The Cartagena Refugee Definition and Venezuelan Displacement in Latin America*, 60 Int'l Migration 18, 21 (2022) (providing in Table 1 that Cuba, the Dominican Republic, Panama, and Venezuela have not adopted the Declaration into domestic law, and Brazil only incorporated the situation of massive violations of human rights).

Despite its widespread adoption, its actual application is lacking. For instance, only Mexico and Brazil have applied the Cartagena criteria to recognize Venezuelans as refugees.[53]

The region also features free movement agreements, resulting both from regional processes[54] and bilateral arrangements. The two regional schemes—the Southern Common Market's ("Mercosur") Residence Agreement and the Andean Migratory Statute—overlap not only with each other—all countries of the Andean Community are themselves parties to the Mercosur residence agreement—but also with bilateral agreements.[55] Both agreements grant the right to apply for temporary and permanent resident schemes to reside and work. The 2002 Mercosur Residence Agreement benefits both nationals and residents of Mercosur and other signatory associated States,[56] and despite the uneven domestic implementation of its provisions,[57] remains the basis for a significant share of the temporary and permanent residence permits granted intra-regionally.[58] The 2021 Andean Migratory Statute grants a renewable 90-day tourist permit, and two residence permits to Andean citizens: A two-year Andean Temporary Residence, and the Andean Permanent Residence both permitting to freely enter, leave, circulate and remain in the territory, and engage in any activity in equal conditions as the nationals of the receiving country.[59]

Other instruments with a mobility component can range from commerce-oriented regional integration efforts—such as the Pacific Alliance, formed by Chile, Colombia, Peru, and Mexico that abolished visas for the exercise of unpaid activities and to facilitate the movement of businesspeople from these countries;[60] to more socially-oriented integration. An example of this is the Union of South American Nations ("UNASUR"), that advocated for a "South American citizenship" through the progressive recognition of rights between nationals of the twelve member States. Nevertheless, this bloc did not fully consolidate before countries start withdrawing from it.[61] Bilateral agreements allowing visa and passport-free transit for tourism purposes are widespread in the region, alongside specific agreements facilitating cross-border movements of individuals residing in border regions.

[53]Felipe Sánchez Nájera & Luisa Feline Freier, *The Cartagena Refugee Definition and Nationality-based Discrimination in Mexican Refugee Status Determination,* 60 Int'l Migration 37 (2022).

[54]Leiza Brumat, *Four Generations of Regional Policies for the (Free) Movement of Persons in South America (1977–2016)*, *in* Regional Integration and Migration Governance in the Global South 153, (Glenn Rayp, Ilse Ruyssen, & Katrin Marchand eds., 2020).

[55]*See* Free Move Hub, https://www.freemovehub.com/. *See, e.g.*, Ramírez Jacques, Yoharlis Linares, & Emilio Useche, *(Geo) Políticas Migratorias, Inserción Laboral y Xenofobia: Migrantes Venezolanos En Ecuador*, En Cécile Blouin, Después de la Llegada. Realidades de la migración venezolana. Lima (Perú): Themis-PUCP (2019) (explaining the bilateral agreements that Brazil has with Argentina and Uruguay, respectively, which allow nationals of these countries to obtain permanent residence directly, and which contain other privileged provisions for nationals of these countries; or the Ecuador-Venezuela "Migratory Statute", that until 2016 with the adoption of the "UNASUR visa" and despite its high cost, was the preferred instrument used by Venezuelans to reside in Ecuador).

[56]Agreement on Residence for Nationals of States Party to MERCOSUR (2002), between the following member states: Argentina, Brazil, Paraguay and Uruguay and associated States: Bolivia, Chile, Colombia, Ecuador and Perú. Venezuela did not ratify the Residence Agreement before its suspension from MERCOSUR, but Argentina and Uruguay unilaterally extend the benefits to its nationals, as well as to Guyanese and Surinamese nationals.

[57]OIM, *Evaluación Del Acuerdo De Residencia Del Mercosur Y Su Incidencia En El Acceso A Derechos De Los Migrantes*, Cuadernos Migratorios No. 9 (2018), https://publications.iom.int/system/files/pdf/estudio_sobre_la_evaluacion_y_el_impacto_del_acuerdo_de_residencia_del_mercosur.pdf.

[58]OIM & Foro especializado migratorio del MERCOSUR y Estados Asociados, *Movimientos Migratorios Recientes En América Del Sur. Informe Anual 2023.*, (2023), https://publications.iom.int/books/movimientos-migratorios-recientes-en-america-del-sur-informe-anual-2023 (showing that between 2009 and 2022, 3,856,189 Mercosur residence permits are estimated to have been issued in the region, with Argentina leading in the number of permits).

[59]Andean Migration Statute, FAO Decision No. 878, Official Gazette of the Cartagena Agreement No. 4,239 (May 12, 2021).

[60]Pacific Alliance, Framework Agreement (Jun. 6, 2012), Article 3.2.d.

[61]As UNASUR had a left-wing orientation, with the rise of right-wing governments in Argentina, Brazil, Colombia, Chile, Ecuador, Peru and Paraguay in 2019, the countries decided to form another organisation to replace UNASUR, the Forum for the Progress and Integration of South America ("PROSUR"), which also has failed to consolidate.

Finally, domestic law plays a pivotal role in regulating movement across the continent. From constitutions that recognize the right to migrate and guarantee fundamental rights, to laws, decrees and other regulations that in a continuous quite-reactive process establish or derogate visas, implement regularization avenues, or prevent regular mobility. As we will explore below, the normative diversity is vast and is in constant interaction with other regimes and actual movement.

## II. Enabling Cross-Border Mobility

In general, there has been a liberal tendency in migration and asylum laws and policies in the region,[62] while presenting a restrictive approach in practice, a reverse paradox as Acosta and Freier initially describe affecting particularly extra-regional migrants.[63] With the significant increase in displacements within the region, a securitized approach to mobility has been increasingly prevailing among countries.[64] Between these conflicting developments, or even supporting them, the law can also be used around the spaces of control and sovereignty that are borders. Either to resist border closures or to open up possibilities for mobility. Two examples of these *infrastructuring* processes of enabling mobility are examined below.

### 1. Legalities and Pendular Crossings: Border Dynamics between Venezuela and Brazil

The borders between Colombia, Brazil, and Venezuela have historically experienced permeability. With the onset of the Venezuelan influx that has generated a myriad of legal responses that have sought to regulate or restrain movement in the region,[65] both countries have resorted to different infrastructures to respond to or accommodate the border movements of this population. In this section we will particularly explore the border dynamics between Brazil and Venezuela, which reflect a constant contestation and resilience in the face of attempted closures.

The regularized influx of Venezuelan nationals to Brazil has been greatly facilitated by two infrastructuring moves: First, Brazil has relied on the Cartagena definition to recognize Venezuelans as refugees, both following individual assessments, and since 2019, in line with the IACHR resolution on the Venezuelan displacement,[66] on a collective basis.[67] The distinctiveness of the decision to apply the Cartagena definition can be attributed, as has been argued, not only to Brazil's strong commitment to its international obligations, but also to the country's robust institutional refugee system.[68] The second mechanism, a two-year temporary residence permit, results from the interaction of "formal legality"—the Brazilian Migration Law—the *de facto* "lacuna" which prevents intraregional nationals from benefitting from intraregional mobility agreements, for example, the non-ratification of the Mercosur Residence Agreement by Venezuela, and "human conduct" as the Venezuelan movement does not follow the typical refugee

[62]David James Cantor, Luisa Feline Freier, & Jean-Pierre Gauci, *Introduction: A Paradigm Shift in Latin American Immigration and Asylum Law and Policy?*, *in* A Liberal Tide? Immigration and Asylum Law and Policy in Latin America (David James Cantor et al. eds., 2015).

[63]Diego Acosta Arcarazo & Luisa Feline Freier, *Turning the Immigration Policy Paradox Upside Down? Populist Liberalism and Discursive Gaps in South America*, 49 Int'l Migration Rev. 659, 660 (2015).

[64]*See* Fernández-Rodríguez & Freier, *supra* note 11, at 9-11 (providing an overview on the literature examining this phenomenon).

[65]Diego Acosta, Cécile Blouin, & Luisa Feline Freier, *La Emigración Venezolana: Respuestas Latinoamericanas*, 3 Fundación Carolina 1 (2019).

[66]Forced Migration of Venezuelans, Inter-Am. Comm'n H.R., Resolution No. 2/18 (2018).

[67]CONARE, Nota Técnica No. 3, 1 junho 2019; Ministério da Justiça e Segurança Pública (M.J.S.P), Decisões em bloco, https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/institucional/decisoes-em-bloco.

[68]Leiza Brumat & Andrew Geddes, *Refugee Recognition in Brazil under Bolsonaro: The Domestic Impact of International Norms and Standards*, 44 Third World Q. 478, 478 (2023).

mobility patterns, being instead pendulous in nature.[69] Accordingly, with the adoption of a interministerial ordinance consistent with the "humanitarian assistance" provision contained in the Brazilian Migration Law,[70] Brazil unilaterally granted a temporary residence permit to nationals of all neighboring countries non-parties to the Mercosur residence agreement, irrespective of their migratory status, and allowing multiple entries to the country. As is the case with the Mercosur agreement, after the two-year period, the permit can be converted to permanent residence, provided that applicants have no criminal record in Brazil and can prove that they have means of subsistence.[71]

Despite the regular migratory options in place, continuous infrastructural entanglements continue to be developed around the physical borders between Venezuela and Brazil. At the beginning of the political and economic crisis, Venezuela closed its borders with most of its neighbors, on the basis of a state of exception.[72] This closure effectively hindered the mobility of Venezuelans, particularly their right to leave the country, and to seek international protection. Nevertheless, since 2015 a pendular and circular movement from Venezuela towards Brazil began to be observed, driven by the acquisition of food, medicines, and temporary work.[73] As this influx grew more permanent and massive, refugee claims increased exponentially, and the large growth in population started to socially and economically affect the border state of Roraima. The Brazilian government adopted a constitutional provisional measure in February 2018—which became the foundation of "Operation Shelter"—to articulate integrated actions with the aim to organize the "disorganized migratory flow," providing social protection to prevent and remedy situations that entail human rights violations, but also consisted of an operation to securitize the borders ("Operation Control").[74]

A slow and insufficient implementation of these measures led the state government of Roraima to file a civil action against the Brazilian Federal Government before the Federal Supreme Court, alongside a request for a preliminary injunction asking for a temporary closure of the border with Venezuela, or to limit the entry of Venezuelan nationals into the country.[75] The preliminary injunction was denied on the grounds that closing the border or limiting the entry of forcibly displaced persons would be in contradiction with the set of international treaties, domestic legislation, and the *aegis* of the Federal Constitution, which in turn shape Brazilian migration policy. The interconnection of international, regional and domestic legal regimes was recognized

[69]Exit movement monitoring, R4V (June 6, 2023), https://app.powerbi.com/view?r=eyJrIjoiZjNlODQ3YTYtNjdkOC00NGFlLWI3MmUtMWVhZmJmNWY5ZmNhIiwidCI6ImU1YzM3OTgxLTY2NjQtNDEzNC04YTBjLTY1NDNkMmFmODBiZSIsImMiOjh9 (showing that over 80% of returns is temporary and primarily responds to family needs).

[70]Lei No. 13.445, de 24 de maio 2017 Diário Oficial da União [D.O.U] de 25.05.2017 art. 3.VI and art. 14 (Braz.).

[71]Portaria Interministerial No. 9, de 14 de março de 2018, Diário Oficial da União [D.O.U] de 15.3.2018 (Braz.) (granting a resident permit to nationals of border countries where the Mercosur Residence Agreement is not in force). Persons can present expired documents such as national identity cards or passports when applying for a residence permit. The possibility to apply for a residence was renewed through the adoption of the Portaria Interministerial No. 19, de 23 de março 2021, Diário Oficial da União [D.O.U] de 25.3.2018 (Braz.) currently in force.

[72]For example, it closed its border with Colombia in August 2015, with Brazil in December 2016 and with Aruba, Curaçao, and Bonaire later in January 2018. *See* Laura Castellanos, *Venezuela ordena el cierre de la frontera con Colombia por 72 horas,* CNN Español (Aug. 20, 2015), https://cnnespanol.cnn.com/2015/08/20/venezuela-ordena-el-cierre-de-la-frontera-con-colombia-por-72-horas; *Venezuela cierra frontera con Brasil por contrabando de billetes*, SWISSINFO (Dec. 14, 2016), https://www.swissinfo.ch/spa/venezuela-cierra-frontera-con-brasil-por-contrabando-de-billetes/42763796; BBC Mundo, *Oro, coltán y productos alimenticios: por qué Nicolás Maduro ordenó cerrar las fronteras de Venezuela con Aruba, Curazao y Bonaire*, BBCNews (Jan. 7, 2018), https://www.bbc.com/mundo/noticias-america-latina-42594109.

[73]Jarochinski Silva, João, & Sampaio, Cynthia: "As ações decorrentes da migração de venezuelanos para o Brasil – da acolhida humana à interiorização", Direito internacional dos refugiados e o Brasil, Danielle Annoni (coord). Curitiba, Grupo de Estudios de Derecho de Autor e Industrial (GEDAI)/Universidad Federal de Paraná (UFPR), 736-737 (available at https://gedai.ufpr.br/wp-content/uploads/2018/08/livro_Direito-Internacional-dos-Refugiados_FIINAL.compressed.pdf).

[74]Medida Provisória No. 820, de 15 de fevereiro 2018, Diário Oficial da União [D.O.U] de 16.2.2018 (Braz.).

[75]S.T.F. *Governadora de Roraima pede que União feche fronteira do Brasil com a Venezuela* (April 13, 2018), https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=375419&ori=1

and embraced by the Judge Rapporteur, as she relied on the Refugee Convention and the Cartagena Declaration, but also on the human rights protection contained in the San José Declaration on Refugees and Displaced Persons to reject the petition.[76] Subsequent injunctions were filed due to situations of violence, but the Supreme Court ultimately decided to deny the civil action requesting to close the border. It did, however, order the government to transfer additional resources to Roraima to handle the migratory flow.[77] Prior to this decision, the National Parliament had decreed the implementation of a humanitarian response. Grounded on international and national protection of migrants and refugees this "Operation Shelter" pursues a triple function: Border management, reception and refuge of Venezuelans, and the so-called internalization, that is, the relocation of immigrants to other Brazilian regions.[78] The operation thus assembles a logistic response in which various actors co-operate aiming to uphold Brazil's international obligations, but also to maintain control of the border and territory. Led by the armed forces, working alongside other governmental actors, the federal police, international and civil society organizations that rely on the two options described above to grant entry, the operation has become its own humanitarian infrastructure.[79]

The inherent tensions in the dynamic interactions between the regulatory aim to control the flow, through proposing border closures or implementing militarized operations, and the irritation of these efforts arising from the rights and protections contained in the State's human rights and refugee obligations continue and are reproduced in other borders, as illustrated through the example of Ponte de Amizade. Yet Brazil has persisted in creating normative cross-border pathways, as will be discussed in the following vignette.

### 2. Humanitarian Visas: Creating Pathways for the Inter-Regional Movement of Afghans

Since 2020, Brazil has held that Afghanistan is in a situation of grave and widespread human rights violations in terms of the Cartagena Declaration and its Refugee Law 9.474.[80] Such recognition has allowed for a expeditious and simplified process in the recognition of refugee status of Afghans.[81] The return of the Taliban to power in 2021 led to a further increase in the displacement of Afghans, prompting civil society organizations and governmental institutions to urge the Brazilian government to respond.[82] Pursuant to its Migration Law, Brazil adopted yet another interministerial ordinance introducing a humanitarian visa granting the expectation of entry into the country.[83] The ordinance was framed as being grounded on the humanitarian foundations that underpin Brazil's migration policy, its respect for human rights, and international solidarity.[84] Through this unilateral administrative action, Brazil created a mobility pathway for Afghans—allowing entry and eventual residency, as well as the possibility of seeking asylum—but not without obstacles. Due to lack of diplomatic representation, in order to apply for this visa, Afghans

[76]S.T.F.J., Primeira Turma, Ação Cível Originária No. 3.121, Tutela Provisória, Relatora: Min. Rosa Weber, 06.08.2018, 7 (Braz.).

[77]S.T.F.J., Primeira Turma, Ação Cível Originária No. 3.121, Relatora: Min. Rosa Weber, 13.10.2020 (Braz.).

[78]Lei No. 13.684, de 21 de Junho de 2018, Diário Oficial da União [D.O.U] de 22.06.2018 (Braz.).

[79]Carolina Moulin Aguiar & Bruno Magalhães, *Operation Shelter as Humanitarian Infrastructure: Material and Normative Renderings of Venezuelan Migration in Brazil*, 24 Citizenship Stud. 642 (2020).

[80]Lei No. 9.474, de 22 de julho de 1997, Diário Oficial da União [D.O.U.] de 23.7.1997 (Braz.).

[81]Ministério da Justiça e Segurança Pública, *Brasil reconhece situação de Grave e Generalizada Violação de Direitos Humanos no Afeganistão* (Dec. 24, 2021), https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/fique-por-dentro/noticias/brasil-reconhece-situacao-de-grave-e-generalizada-violacao-de-direitos-humanos-no-afeganistao.

[82]Defensoria Pública da União (D.P.U.), Recomendação No. 4657520, 22 de setembro 2021.

[83]Portaria Interministerial No. 24, 03 de setembro 2021, Diário Oficial da União [D.O.U] de 08.09.2021 (Braz.).

[84]Ministério da Justiça e Segurança Pública (M.J.S.P) e Ministério das Relações Exteriores (M.R.E.), Nota à Imprensa No. 109, 3 de setembro 2021 (Braz.).

had to travel to Islamabad, Tehran, Turkey, UAE, Russia, or Qatar as established by the ordinance. The response exceeded expectations. Large numbers of people applied for the visa and arrived in Brazil,[85] a consequence not foreseen by the Brazilian government.

The unexpected number of arrivals, for instance, highlighted inadequacies in Brazil's migration management. First, the lack of adequate shelter to accommodate diverse genders and age ranges led to large numbers of people setting-up tents and staying for days at Guarulhos airport in Sao Paulo, which became the gateway for this migratory flow.[86] Second, administrative problems in accessing embassies and applying for the visa caused the overburdening of public institutions in Brazil. From Afghans seeking assistance by e-mail, or through their relatives who had already arrived in Brazil, to Afghans judicially attempting to obtain Brazilian travel documents to leave Afghanistan and enter Iran to apply for the visa, action that was however rejected by the Tribunal.[87] Third, some of the newcomers opted to continue their movement after arriving to Brazil, mainly towards the global North. Given the lack of legal options to migrate north, most of them do so by land, following precarious routes through the Darién gap between northern Colombia and southern Panama.[88]

In an apparent effort to manage the flow resulting from this new normative mobility path, Brazil reacted using the law to regulate mobility and enacted a new ordinance in 2023 that introduced additional barriers to the movement. First, it introduced a "sponsorship model" whereby visas would be granted contingent on the capacity of shelter provided by authorized humanitarian organizations. Second, the number of embassies authorized to process visas was reduced to just two: Islamabad and Tehran.[89] Although the "sponsorship" model was met with vehement criticism by civil society and some public organisms,[90] the process of registering the humanitarian organizations has yet to commence. Consequently, and since October 2023, the Embassy in Tehran has declined to receive further applications for humanitarian visas, purportedly pending the designation of authorized humanitarian organizations.[91] In the face of this inaction and other administrative issues, those affected have continued to seek recourse through the judicial system. The Federal Justice, for instance, based on the administrative principle of legal certainty, ruled in a writ of mandamus that the Embassy in Tehran should proceed with the processing of the humanitarian visa of a petitioner in terms of the 2021 ordinance, protecting the acquired rights and legitimate expectations of the Afghan concerned.[92] In another ongoing proceeding, the Tribunal Regional Federal (TRF-1) ordered the Federal Government to process the visa application of a family residing in Afghanistan, while the Federal Public Prosecutor's Office requested that the Afghan family be granted entry without a visa.[93]

[85]UNHCR, *Proteção e assistência às pessoas refugiadas afegãs no Brasil* (Apr. 2024), https://www.acnur.org/portugues/wp-content/uploads/2024/05/Afghan-report-April-24-PT-version.pdf (stating that there are approximately 13,133 provisional visas approved, 10,985 issued, and 5,052 people have obtained residence).

[86]DPU, *Missão da DPU faz escuta ativa de afegãos no aeroporto e em abrigos de Guarulhos (SP)*, https://direitoshumanos.dpu.def.br/missao-da-dpu-faz-escuta-ativa-de-afegaos-no-aeroporto-e-em-abrigos-de-guarulhos-sp/.

[87]TRF-3, 6ª Turma, Agravo de Instrumento No. 5020644-82.2022.4.03.0000, Relator: Des. Fed. Valdeci Dos Santos, 18.06.2023 Diário da Justiça Eletrônico [D.J.e], 21.06.2023 (Braz.).

[88]M.J.S.P., *MJSP realiza inspeção no fluxo migratório afegão em Guarulhos* (Feb. 1, 2023), https://www.gov.br/mj/pt-br/assuntos/noticias/mjsp-realiza-inspecao-no-fluxo-migratorio-afegao-em-guarulhos.

[89]Portaria Interministerial No. 42, 22 de setembro 2023, Diário Oficial da União [D.O.U] de 26.09.2023 (Braz.).

[90]Nota Pública sobre a Portaria Interministerial que dispõe sobre a concessão de vistos e autorização de residência humanitários para pessoas afetadas pela situação no Afeganistão (26 de setembro de 2023); D.P.U. Recomendação No. 7110893.

[91]Brazilian Ministry of Foreign Affairs, *Humanitarian Visa for Afghan Citizens* (August 30, 2022, 10:38 AM), https://www.gov.br/mre/pt-br/embaixada-teera/english/humanitarian-visa-for-afghan-citizens.

[92]Roberto Borges Delfim, *Justiça ordena análise de visto humanitário pelo Brasil para afegão até regulamentação de portaria*, MigraMundo (July 4, 2024), https://migramundo.com/justica-ordena-analise-de-visto-humanitario-pelo-brasil-para-afegao-ate-regulamentacao-de-portaria.

[93]Teo Cury, *Família afegã diz ser perseguida pelo Talibã e pede entrada no Brasil sem visto humanitário*, CNN Brasil (July 26, 2024), https://www.cnnbrasil.com.br/blogs/teo-cury/politica/familia-afega-diz-ser-perseguida-pelo-taliba-e-pede-entrada-no-brasil-sem-visto-humanitario.

The continuum of reactions surrounding the humanitarian visa provides an illustrative example of the relational nature between the normative possibilities that regulate mobility, and the actual movement they generate. The restrictions imposed in response to the unanticipated influx of Afghans have been challenged in diverse contexts, and through the mobilization of diverse regimes, in an ongoing contentious process that ends up (re)defining the law.

## III. Disrupting Cross-Border Mobility

Notwithstanding the existence of regional agreements that favor mobility, and states' international obligations, governments also resort to "the law" to infrastructure obstructions and restrictions to movement. Whether through restrictive policies, deterrent measures, the introduction of new requirements, or the suspension of visas, governments seek to control migration flows. In the face of these barriers, people on the move also respond to these decisions, and it is in the unfolding of this dynamic of the different stakeholders that the region's mobility infrastructure is constructed and (re)shaped.

### 1. Infrastructuring a Restrictive Approach to Mobility in Chile

Despite having a dated migration law and a rather fragmented set of regulations, until 2018 the normative possibilities for intraregional mobility towards Chile were relatively liberal, requiring no visas or passports for tourism, and allowing changes of migration status within the territory. With the emergence of the wave of migration from Haiti, and later from Venezuela, the legal framework and institutionality began to reveal insufficiencies, driving legislative and policy changes.

In 2018, Chile together with other countries in the region instituted the Quito Process, a regional consultative process, aimed at coordinating a response to Venezuelans in "situation of human mobility." One of the practices agreed in the first non-binding declaration was to facilitate their entry, for example by accepting expired documents.[94] Despite this declaration, passports requirements and the introduction of visas became widespread, particularly in Ecuador, Peru, and Chile.[95] Indeed, the latter started to adopt a series of restrictive measures that directly impacted the possibility and regularity of Venezuelan's mobility. Among them, the abolition of the widely used "visa for work motives" preventing people, including tourists, from changing to a labor migration status. This was followed by the introduction of new visas tailored to control the inflow of specific populations. In particular the Consular Tourist visa,[96] and the "Democratic Responsibility visa" that quite abruptly introduced barriers to the movement of Venezuelans. The sudden introduction of this visa requirement left hundreds of Venezuelans in-transit to Chile stranded at the border with Peru, as initially application for a visa could only be done at the embassies located in Venezuela.[97] Although the possibility was later extended to all countries with Chilean diplomatic representation, issues remained. From documentary requirements logistically difficult to fulfill by the applicants, but also due to capacity problems at embassies, processing delays, low granting numbers, and the short time that the visa granted for entering the territory.

[94]Declaration of Quito on Human Mobility of Venezuelan Citizens in the Region (Sep. 4, 2018), https://www.procesodequito.org/sites/g/files/tmzbdl466/files/2020-11/Quito%20Declaration%20ENG_0.pdf.

[95]João Carlos Jarochinski Silva, Alexandra Castro Franco, & Cyntia Sampaio, *How the Venezuelan Exodus Challenges a Regional Protection Response: "Creative" Solutions to an Unprecedented Phenomenon in Colombia and Brazil*, *in* Latin America and Refugee Protection 352 (Liliana Lyra Jubilut, Marcia Vera Espinoza, & Gabriela Mezzanotti eds., 2022).

[96]Decree No. 237, Junio 22, 2019, Diario Oficial [D.O.] (Chile) (following Peru's decision, later followed by Ecuador).

[97]A. Jara X. Astudillo & A. Chechilnitzky, *Crisis Migratoria en Chacalluta Comienza a Expandirse*, La Tercera (July 28, 2019), https://www.latercera.com/nacional/noticia/crisis-migratoria-chacalluta-comienza-expandirse/719148.

The COVID-19 pandemic triggered a massive denial of the Democratic Responsibility visas by e-mail, that had a highly judicialized reaction from Venezuelans: More than 300 constitutional actions of protection and *habeas corpus* reached the Supreme Court—and more than 2,000 were presented before the Courts of Appeals—where the Supreme Court majorly ruled that this denial had been an arbitrary and illegal administrative act.[98] The introduction of this visa—and the Consular Tourist visa—did indeed reduce the numbers of Venezuelans entering the country regularly, but it did not halt movement, rather increasing the likelihood of irregular entries.[99] Nevertheless, the Democratic Responsibility visa, and the somewhat fragmented approach was left behind in 2022 with the adoption of a new Law on Migration (Law No. 21.325).[100]

The enactment of this law was met with significant criticism from civil society and political parties due to its robust "securitization" stance. Amidst its legislative process, legislators challenged the draft law, resulting in the Constitutional Court ruling that certain provisions were unconstitutional,[101] but the restrictive approach remained. One of the major normative limitations imposed concerns the institution of asylum. Historically, Chile has displayed a markedly low rate of recognition for refugee status, despite the incorporation of the Cartagena definition into the Refugee Law 20.430,[102] but under the current regulation obtaining this form of protection is nearly impossible. Not only due to the timeframe for submitting an asylum application being exceedingly limited; but also, because any application is subject to a preliminary admissibility assessment—essentially, a pre-interview—before it can even be considered for a refugee status determination.[103]

The legislative changes introduced by Law No. 21.325 have further hindered the mobility of other Mercosur nationals. Despite having signed the Residence Agreement, Chile did not undertake the transposition process of this international treaty into domestic legislation, applying it to nationals of selected countries on a reciprocal basis.[104] The current procedure for applying to "Mercosur residence" also deviates from the Agreement, as it can only be conducted from abroad, which also effectively undermines the regularization objective.

These obstructionist and deterrent measures however have not successfully achieved the desired "orderly and regular" migratory flow,[105] on the contrary, irregular crossings have continued, and coupled with the withdrawal of visas, the virtual impossibility to change

[98]Data extracted from the case-law database of the Chilean Judicial Branch. Accesible at https://juris.pjud.cl/.

[99]Omar Hammoud-Gallego, *The Short-Term Effects of Visa Restrictions on Migrants' Legal Status and Well-Being: A Difference-in-Differences Approach on Venezuelan Displacement*, 182 World Dev. 106709 (2024). *See also Servicio Jesuita a Migrantes*, Anuario Estadístico de movilidad humana en Chile, 20 (2023), https://sjmchile.org/wp-content/uploads/2024/06/Anuario-2023.pdf estimating that in 2022 there were more than 50,000 irregular entries compared to 2018 where the Police Investigation Department only recorded around 6,000.

[100]Law No. 21325, Abril 11, 2021, Diario Oficial [D.O.] (Chile), alongside Decree No. 177, Mayo 14, 2022, Diario Oficial [D.O.] (Chile), which established all temporary residence permits, leaving behind the Democratic Responsibility visa.

[101]Tribunal Constitucional [T.C.] [Constitutional Court], Abril 1 2021, Rol de causa: 9939-2021, CPR (Chile).

[102]Law No. 20430, Abril 08, 2010, Diario Oficial [D.O.] (Chile). Between 2010 and 2023, out of a total of 30,597 formal applications for refugee status, Chile only recognized 957 of them. Of these, only 68 correspond to Venezuelans. Estadísticas migratorias de refugio, Registros administrativos del Servicio Nacional de Migraciones (2010-2023), https://serviciomigraciones.cl/estudios-migratorios/datos-abiertos

[103]A once bureaucratic practice now codified in the current Migration Law and Law No. 21.655, Febrero 20, 2024, Diario Oficial [D.O.] (Chile). *See also*, Fernanda Gutiérrez Merino & Francisca Vargas Rivas, *Trabas En El Ejercicio Del Derecho Humano a Buscar y Recibir Asilo En Chile: El Ingreso al Procedimiento de Asilo*, 36 Rev. Derecho 137, (2023).

[104]Only towards nationals of Argentina, Bolivia, Brazil, Paraguay & Uruguay. Under Secretary for the Ministry of Internal Affairs, Official Circular No. 26.465, December 4, 2009 (Chile). https://www.interior.gob.cl/transparenciaactiva/doc/MarcoNormativoAplicable/200/5647248.pdf

[105]Leiza Brumat & Marcia Vera Espinoza, *Actors, Ideas, and International Influence: Understanding Migration Policy Change in South America*, 58 Int'l Migration Rev. 319, 334–35 (2024).

immigration status or category or to apply for asylum, there has been a rise in irregular crossings and clandestinity.[106] In addition, the conjunction of a consistent practice of expulsion orders and deportations, and measures that prevent and restrict entry in neighboring countries has immobilized people at the borders, particularly Venezuelans.[107] In order to "regain control of the borders," Chile has responded by militarizing the border areas, entrusting the armed forces with identity checks and detention of migrants,[108] and recently proposed to make irregular crossings a crime.

The use of law as a means of restraining movement in this vignette gives us the opportunity to appreciate the ways in which people adapt to the constraints imposed upon them, as also illustrated in the preceding case. Although reactions might be undertaken through judicial channels—such as the constitutionality challenges to the restrictive law, or individually to the denial of visas—the rationale behind the introduction of disruptive measures, or the non-application of the existent mobility infrastructures might be undermined through behaviors that also deviate from the norm, such as irregular entry.

### 2. Dismantling Mobility Pathways: Material Consequences in Mexico and Ecuador

This final vignette, in contrast to the preceding ones, does not delve into the intricacies of judicial processes or legislative reforms that have an impact on mobility. Instead, the focus is on contextualizing a unilateral legislative measure and its *infrastructuring* effect within the larger infrastructure.

In 2018, Ecuador had adopted the most liberal constitution and mobility law in the region. The new constitution guaranteed the right to migrate and recognized that no individual was illegal. Its 2017 Organic Law on Human Mobility also embraced the UNASUR "South American citizenship" and introduced a "UNASUR visa."[109] A wide visa liberalization policy was implemented at that time as well. Presently, Ecuador has increasingly implemented numerous restrictions on mobility, particularly towards Venezuelans from Colombia, creating a significant bottleneck in the southern region.[110]

However, Ecuador has also encountered obstacles to the movement of its own citizens. Since 2018, Ecuadorians have been able to freely travel to Mexico due to the latter's country adoption of

[106] *Servicio Jesuita a Migrantes*, INFORME MONITOREO DEL ESTADO DE LA MOVILIDAD HUMANA Y LA PROTECCIÓN INTERNACIONAL EN CHILE (2023), https://sjmchile.org/wp-content/uploads/2024/03/informe-monitoreo-de-movilidad-humana.pdf; Luis Eduardo Thayer Correa, *Puertas Cerradas y Huellas Abiertas: Migración Irregular, Trayectorias Precarias y Políticas Restrictivas en Chile*, 12 MIGRATION INT'L (2021).

[107] Supreme Decree No. 055-2023-PCM, Abril 14, 2023, GOB (Peru) (declaring a state of emergency at border zones in April 2023, which left hundreds stranded at the border with Chile); *Gobierno peruano promueve espacio de diálogo entre seis países para solución de crisis migratoria,* PRESIDENCIA DEL CONSEJO DE MINISTROS (April 29, 2023), https://www.gob.pe/institucion/pcm/noticias/750752-gobierno-peruano-promueve-espacio-de-dialogo-entre-seis-paises-para-solucion-de-crisis-migratoria. Since July 2024, Perú is requiring Venezuelans to hold a visa and a valid passport to enter the country *see* Resolución de Superintendencia No. 0121-2024-MIGRACIONES, Junio 25, 2024, GOB (Peru). This has left people stranded between the borders, unable to return to Chile due to prior issuance of expulsion orders, and unable to continue forward.

[108] Decree No. 78, febrero 21, 2023, DIARIO OFICIAL [D.O.] (Chile); Decree No. 21.542, Febrero 23, 2023, DIARIO OFICIAL [D.O.] (Chile).

[109] When Ecuador left UNASUR, the Ecuadorian Constitutional Court deemed the denunciation to be constitutional, nevertheless it affirmed that the State must guarantee that the migratory rights of persons who acquired migratory status under the provisions of the Organic Law on Human Mobility were not affected. Corte Constitucional del Ecuador [Ecuadorian Constitutional Court] Junio 18 2019, Dictamen No. 17-19-TI/19, (Ecuador), 6.

[110] Jacques Ramírez, *De La Ciudadanía Suramericana al Humanitarismo: El Giro En La Política y Diplomacia Migratoria Ecuatoriana*, 21 ESTUDIOS FRONTERIZOS 1, 13 (2020).

a visa waiver, a legislative measure adopted with the aim to facilitate tourism and business travel.[111] This mobility pathway was temporarily dismantled in September 2021 in light of the alleged increase in the number of Ecuadorians availing themselves of the visa waiver to engage in remunerated activities in Mexico and not returning to Ecuador, and the claim that criminal networks were using Mexico as a transit country to smuggle Ecuadorians towards the Global North.[112] In 2022, this suspension was prolonged indefinitely.[113] This resulted in the necessity for Ecuadorians to submit an application for a tourist visa at the consulate in Quito in order to travel to Mexico, unless they were beneficiaries of other Mexican migration facilitation measures, for example, being permanent residents of one of the Pacific Alliance countries. In 2023, as a consequence of the diplomatic conflict between the two countries—which has been brought before the International Court of Justice[114]— Mexico closed its embassy in Ecuador, forcing Ecuadorians to resort to the embassies located in Chile, Colombia, or Peru to apply for a visa.

The progressive hindrances to movement—the requirement of a visa, and the obstacles to applying for it—have led Ecuadorians to resume dangerous routes towards the global north, particularly through the Darién Gap.[115] There has also been a dramatic increase in irregularity in Mexico,[116] with more than 136,000 irregular entries of Ecuadorians in the first half of 2024 alone.[117] Yet another unexpected consequence has arisen as a result of the obstacles, and has in turn exacerbate them: Due to low demand, the airline Aeromexico suspended all its commercial flights between Quito and Mexico City, thereby removing direct flights connections between the two countries.[118]

The restrictions imposed on the mobility of Ecuadorians represent just one example of Mexico's attempts to ensure a "safe, orderly, and regular" migration. In 2021, Mexico also suspended the visa waiver with Brazil, and in April 2024 it did so with Peruvian nationals, contravening the mandates of the Pacific Alliance.[119] On the subsequent day, the Peruvian Minister of Foreign Affairs declared that the Peruvian government would also require Mexican nationals to obtain visas, in accordance with the reciprocity principle. However, Peru ultimately retracted this announcement, citing the potential adverse impact on its tourism sector and its continued commitment to the Pacific Alliance.[120]

[111]Acuerdo por el que se suprime el requisito de visa en pasaportes ordinarios a los nacionales de la República del Ecuador, Diario Oficial de la Federación [DOF] 29-11-2018 (Mex.).

[112]Interior-Foreign Affairs Joint Press Release, *Mexico Temporarily Suspends Visa Exemption for Citizens of Ecuador* (August 20, 2021), https://www.gob.mx/sre/prensa/mexico-temporarily-suspends-visa-exemption-for-citizens-of-ecuador?idiom=en.

[113]Acuerdo por el que se suspende de manera indefinida el diverso por el que se suprime el requisito de visa en pasaportes ordinarios a los nacionales de la República del Ecuador, Diario Oficial de la Federación [DOF] 25-02-2022 (Mex.).

[114]Embassy of Mexico in Quito (Mexico v. Ecuador), Request for Provisional Measures, 2024 I.C.J. (April 11).

[115]Juan Pappier & Caitlyn Yates, *How the Treacherous Darien Gap Became a Migration Crossroads of the Americas*, Migration Pol'y Inst. (Sept 20, 2023), https://www.migrationpolicy.org/article/dari%C3%A9n-gap-migration-crossroads.

[116]Unidad de Política Migratoria. Eventos de personas en situación migratoria irregular en México, según continente y país de nacionalidad, 2011-2023, https://portales.segob.gob.mx/es/PoliticaMigratoria/Series_historicas (according to governmental statistics, there were 390 persons in an irregular situation in 2020, 1,384 in 2021, 22,098 in 2022, and 70,453 in 2023).

[117]Instituto Nacional de Migración, Comunicado No. 59/24, (June 16, 2024), https://www.gob.mx/inm/prensa/en-los-primeros-cinco-meses-del-ano-el-inm-identifico-a-1-millon-393-mil-683-personas-extranjeras-que-viajaban-en-condicion-irregular

[118]*Aeroméxico suspende operaciones en Ecuador*, Ministerio de Transporte y Obras Públicas (May 27, 2024) (Ecuador).

[119]Acuerdo por el que se reforma el artículo 2 del diverso por el que se determina la aplicación temporal de visa en pasaportes ordinarios a los nacionales de la República Federativa del Brasil en la condición de estancia de Visitante sin permiso para realizar actividades remuneradas, Diario Oficial de la Federación [DOF] 03-08-2022 (Mex.); Acuerdo por el que se da a conocer la aplicación temporal de la visa de visitante sin permiso para realizar actividades remuneradas en pasaportes ordinarios de las personas nacionales de la República del Perú, Diario Oficial de la Federación [DOF] 05-04-2024 (Mex.).

[120]Press Release No. 004-2024, Ministerio de Relaciones Exteriores (April 10, 2024) (Peru).

The dilemma that arises when mobility-enhancing measures have unintended effects, yet the dismantling of these measures similarly results in the loss of the control that was intended to be regained, illustrates the difficulties of keeping and understanding the law static in the face of movement, as well as the latter's capacity to transform the law. When other non-legal elements, such as the severance of diplomatic relations, but also, social or economic circumstances that may affect the possibilities of access to visas and/or residence, the regular mobility pathways are effectively truncated.

## D. Infrastructural Crossings Beyond Borders

As these vignettes clearly show, "legal" mobility infrastructures and the infrastructuring processes they involve are a reality and help us see more of what actually happens at and around borders in Latin America. By tracing the continuous interactions between the law(s) and mobility in the vignettes, we have gained insight into the multidimensionality of the law and its inherent entanglement, especially when situated in a border context. Brazil's approach, which has been generally welcoming towards mobility, based on human rights, refugee law, and humanitarian principles, coexist in tension with increased flows that in turn generate measures with a controlling aim, which in turn are contested based on the same regimes. Disruptive measures of mobility, such the restrictive approach adopted by Chile are met with constitutional and administrative challenges, as well as the pervasive reality of displacement that generates irregularity and decontrol. The dismissal of existing mobility instruments only aggravates this situation.

The shift to a time—and regime-dynamic account of "the law"—can help us gain a more holistic and, therefore, more realistic understanding of how the law works over time, how it infrastructures cross-border mobility beyond and sometimes against states' intentions and expectations, and how people on the move have more agency than the snapshot image of forced migration law conveys. An infrastructural angle, as it is used here, throws new light onto some of the blind spots and false dichotomies with which conventional forced migration law currently operates. Much of the conventional debate continues to be between a maximalist contention that only a comprehensive new mobility instrument—or set of instruments—is going to resolve the legal lacunae and protection gaps into which many people on the move currently fall, a prospect highly unlikely in the current political climate. The minimalist approach that seeks to overcome these lacunae and gaps by co-opting into migration law whichever other regimes—though especially human rights—promise tactical inroads in terms of enabling mobility and augmenting "state" responsibility on a case-by-case basis. Although this spectrum defines the cognitive horizon within which most migration law operates, it misses what the infrastructuring perspective is able to show, namely that border regulation in practice is less hermetic and controlled, by states, and that those on the move have considerably more agency than is often assumed, and that the particular legal configurations that enable or disrupt mobility are constantly being infrastructured and, thereby, changed. Again, Latin America is a prime case study as it features all the factors that allow for such legal infrastructuring.

That said, a mere change of perspective cannot simply "explain away" the very real difficulties people on the move experience around borders and the Kafkaesque illlegalities that define their movement. An infrastructural perspective does not make borders more, or less, porous as such, but it brings into view how law's fundamental indeterminacy plays out on the ground, notably as a continuous process of re-assembly of moving elements, in which the law is at once the framework within which that process takes place and one of its elements. Yet, that the outcomes of that process are, over time, indeterminate and contingent is precisely the hope that those on the move

and their advocates have in the face of the very determined resistance that an ever growing set of states has to ever more forms of mobility.

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