

SYMPOSIUM

Between Rights and Governance: Migration Experiences in Latin America and Europe

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A. Introduction

Migration constitutes one of the most defining and contested phenomena of our time, challenging legal systems, political communities, and the very grammar of rights. In both Europe and Latin America, patterns of human mobility have intensified and diversified, intersecting with structural inequalities, geopolitical transformations, and shifting regulatory approaches. The International Organization for Migration estimates that there are about 281 million international migrants in the world, which equates to 3.6 percent of the global population.¹ In this evolving landscape, the protection of migrants' human rights emerges not as a settled domain of law, but a field marked by tension, adaptation, and continuous renegotiation.

The present Special Issue aims to contribute to this broader debate by bringing together a range of comparative and single-jurisdiction studies on migrants' rights in Europe and Latin America. By examining the intersections between supranational human rights standards, judicial reasoning, domestic legal frameworks, and administrative practices, the contributions collectively reveal the increasingly complex and hybrid nature of contemporary migration governance.

Migration has historically occupied different political and legal positions in Latin America and Europe. In Latin America, states have often focused on internal displacement linked to armed conflict, institutional violence, socioeconomic inequalities, and, more recently, climate-related pressures, although the region has also experienced significant international migration flows. More recently, the MERCOSUR agreement has also provided further paths for regularized migration in some Latin American countries.² In Europe, post-

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1 International Organization for Migration (IOM), World Migration Report, Geneva 2024, p. xii.

2 On the role of Mercosur and the Latin American developments more broadly see e.g. *Diego Acosta Arcarazo*, Global Migration Law and Regional Free Movement: Compliance and Adjudication –

war migration was strongly shaped by intra-European labour mobility, in particular in the context of the European Union's framework of free movement. At the same time, Europe also received substantial migration from former colonies, Turkey, the Middle East, and Africa. While migration within Europe was not universally accepted, increasing arrivals from outside Europe became especially politicized during the last decade. These differing historical trajectories contributed to distinct legal approaches, with Latin American states often adopting a much more migration-friendly language, which is partly mirrored by more migration-friendly legal frameworks on the ground.³

At the same time, there has also been some convergence between the different regions and perspectives, as the contributions assembled here highlight. In both regions domestic rules intersect with regional frameworks and security and control-based approaches are entangled with and compete with individual rights-based approaches. That said, there is no single universal pattern to how the protection of migrants ultimately unfolds or fails, but rather a variety of legal frameworks, institutional configurations, and normative rationalities that shape migration governance across both regions.

B. European Developments

Across Europe, the regulation of migration and the protection of migrants' rights unfold within a stratified legal environment shaped by the interaction of multiple normative layers—most notably the European Convention on Human Rights, European Union law and domestic legal systems. This configuration generates both opportunities and frictions: while it has contributed to the consolidation of foundational guarantees—particularly through the jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU)—it also leaves significant margins of discretion to States, especially in politically sensitive areas such as border control, asylum procedures and access to social rights.

A central feature of this architecture is the growing role of judicial and quasi-judicial actors in defining the scope and content of rights. This is exemplified by the jurisprudence of domestic constitutional courts as well as the ECtHR, which decided in 1989 in its landmark judgment in *Soering*⁴ that the Convention's prohibition of torture or to inhuman or degrading treatment and punishment also prohibited the removal of persons to other

The Case of South America, *American Journal of International Law Unbound* 111 (2017), pp. 159-164.

3 *Diego Acosta / Luisa Feline Freier*, Turning the Immigration Policy Paradox Upside Down? Populist Liberalism and Discursive Gaps in South America, *International Migration Review* 49 (2015), pp. 659-696.

4 ECtHR, *Soering v. the United Kingdom*, Application no. 14038/88, Judgment of 7 July 1989; for a broader discussion of the European migrants' rights revolution see also *Jürgen Bast*, The Rise of Human Rights Limits to Migration Control. A European Perspective, *American Journal of International Law Unbound* 118 (2024), pp. 208-213.

countries where they would face such treatment. Yet, as scholars have emphasised, this process should not be understood as linear or uniformly expansive.⁵ This ambivalent trajectory is clearly reflected in the Strasbourg Court's migration jurisprudence. While the ECtHR has played a crucial role in affirming core principles—most notably *non-refoulement* and its procedural safeguards—more recent case law suggests a cautious, and at times more deferential, posture *vis-à-vis* State prerogatives.⁶ Rather than signalling an explicit retreat from established principles, this evolution points to their re-articulation, with potential implications for their practical efficacy.⁷

Today, migrants' rights have become perhaps the core issue that shapes perceptions and discourse about the ECtHR, with a letter of first nine,⁸ then 27 European Council member states pushing for more restraint on these matters by the Court.⁹ These demands have now found at least partial expression in the new Chişinău Declaration of May 15, 2026.¹⁰ As others have pointed out, the backlash against the ECtHR appears in many ways ironic given that it has in recent years hardly been a staunch defender of migrants.

At the same time, as Bast and Wessels have emphasized, the European Convention shapes both political and legal discourses about migrants in Europe today—in that sense, albeit only that sense, human rights of migrants' are everywhere.¹¹ However, their protection is constructed through interpretative processes that balance competing interests—such as State sovereignty, managerial considerations of migration control and individual rights—on a case-by-case basis. In this way, the Strasbourg Court not only applies but actively

5 Jürgen Bast / Janna Wessels, *The Trajectory of the European Court of Human Rights in Migration Matters*, MeDiMi Working Paper No. 3, Münster 2025.

6 See, in particular, ECtHR, *N.D. and N.T. v. Spain*, G. C., Nos. 8675/15 and 8697/15, Judgment of 13 February 2020; concerning the compatibility of summary returns at the Spanish–Moroccan border with the Convention; ECtHR, G. C., *M.N. and Others v. Belgium*, Appl. no. 3599/18, Judgment of 5 May 2020, in which the Court denied jurisdiction over applications for humanitarian visas lodged at embassies; and, more recently, ECtHR, *S.S. and Others v. Italy*, no. 21660/18, Judgment of 12 June 2025 where the Court excluded the existence of indirect refoulement attributable to Italy, notwithstanding its substantial involvement in a search and rescue operation conducted by the Libyan Coast Guard.

7 Bast / Wessels, note 5.

8 Open Letter by Italy, Belgium, Denmark, Estonia, Lithuania, Latvia, Poland, the Czech Republic and Austria, 22 May 2025, https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf (last accessed on 29 May 2026).

9 Joint Statement to the Conference of Ministers of Justice of the Council of Europe, <https://www.go.v.uk/government/news/joint-statement-to-the-conference-of-ministers-of-justice-of-the-council-of-europe> (last accessed on 29 May 2026).

10 Council of Europe, Chişinău Declaration, <https://rm.coe.int/pdf/09125948802bc2cc> (last accessed on 29 May 2026).

11 Bast / Wessels, note 5. See also further other scholarly publications in the context of the Medimi-project from different disciplinary lenses on this: <https://www.medimi.de/de/topic/8.publikationen.html> (last accessed on 29 May 2026).

constructs legal standards, in interaction with domestic courts and other supranational bodies.

As Kamilla Galicz in this issue shows, a comparable dynamic can also be observed in the practice of the European Committee of Social Rights, whose interpretative activity has progressively expanded the reach of the European Social Charter, including with respect to people on the move.¹² Through the collective complaints procedure, the Committee has developed a body of quasi-jurisprudence grounded in a flexible and evolutive reading of Charter provisions, frequently interpreted in conjunction with other international human rights instruments and with the Strasbourg case law. Against this backdrop, the definition of rights emerges as the outcome of a composite interpretative process involving multiple actors with different degrees of authority and binding force. This plurality of actors and approaches reflects the diverse institutional logics and mandates that characterise the European human rights architecture but often lacks coherence. That said, the interaction between the ECtHR, the CJEU and national courts undoubtedly contribute to the gradual articulation of common standards of protection—a process in which quasi-judicial bodies such as the European Committee of Social Rights also play a role, albeit through different interpretative techniques and with a distinct normative force.

At the same time, the European order is characterised by a structural transformation in migration governance, often described in terms of securitisation, externalisation and procedural acceleration, as reflected in the new EU Pact on Migration and Asylum.¹³ These trends raise fundamental questions about the resilience of human rights protections and the capacity of existing legal instruments to respond to new forms of control and exclusion. In this picture, human rights law remains indispensable as a normative structure capable of setting limits to State action, even as it is increasingly contested in its scope, effectiveness and legitimacy.

These tensions are clearly visible in the field of social rights, where the gap between normative recognition and effective implementation often becomes more pronounced. In this regard, as illustrated by Galicz's analysis, the European Committee of Social Rights has made a significant contribution in expanding the protective reach of the European Social Charter through an evolutive interpretation, extending key guarantees—with particular emphasis to the right to health—also to migrants, including those in vulnerable or irregular situations. At the same time, however, the paper draws attention to the structural limits of this form of protection, notably in terms of enforcement mechanisms and uneven State compliance, thereby exemplifying the overall challenges affecting the application of human rights standards in the current European migration scenario.

12 *Kamilla Galicz*, (Re)discovering the European Social Charter to Protect the Health of People on the Move in Times of Backsliding, *World Comparative Law* 59 (2026), in this special issue.

13 *Steve Peers*, The New EU Asylum Laws: Taking Rights Half-Seriously, *Yearbook of European Law* 43 (2024), pp. 172 ff.

For this purpose, migrants' rights cannot be understood solely as a set of substantive entitlements but must also be analysed considering the procedural guarantees and interpretative practices through which they are realised. The distinction—and interrelation—between substantive and procedural dimensions is especially salient in the sectors of asylum and migration, where access to rights is often mediated by complex procedures, evidentiary standards and administrative structures. Judicial intervention, therefore, frequently operates not only by recognising or denying specific rights, but by reshaping the conditions under which those rights can be effectively exercised.¹⁴

C. Latin America

In Latin America, migration is also framed and understood through a range of different lenses, varying from more managerial consideration and securitisation narratives to more constitutional and sometimes explicit human rights approaches. In what counts as the most well-known comparative study of migrants' rights in Europe and the Americas, Marie-Louise Dembour has famously argued that the ECtHR's approach has been much more state-centred than the Inter-American Court's (IACtHR) more victim-focused jurisprudence.¹⁵ However, as *inter alia* contributions in this volume show, not only do the two courts start from different premises -the IACtHR does not accept individual complaints and instead relies on the Inter-American Commission and states to refer cases- but the use of human rights frameworks also does not guarantee migrant-friendly outcomes.

As Sofia Reca Milanta's¹⁶ and Lila García's¹⁷ contributions highlight, Advisory Opinions play a pivotal role in shaping migration human rights standards in the InterAmerican jurisdiction which contrasts with the European scenario, where states routinely find themselves in the position of defendant, and where the Court accordingly may have less leeway to manoeuvre than when it is explicitly asked by states to provide an Advisory Opinion. It is particularly in these advisory opinions in which the IACtHR has developed its expansive reading of states' obligations toward irregular migrants, children, refugees, asylum seekers, and, more recently, climate-migration.

Against this background, Sofia Reca Milanta's contribution explores the evolving role of the IACtHR in addressing climate-induced migration, focusing on its landmark Advisory

- 14 Giulia Santomauro, European Court of Human Rights Jurisprudence and National Migration Policies: Exploring the Hermeneutic Tools of 'Proceduralisation' and Margin of Appreciation, in: Maria Grazia Rodomonte / Ludovica Durst (eds.), *Judicial Review, Fundamental Rights and Rule of Law*, Oxon / New York / Turin 2024, pp. 183 ff.
- 15 Marie-Bénédicte Dembour, *When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint*, Oxford 2015, pp. 57, 61, 119, 129
- 16 Sofia Reca Milanta, When Climate Moves People: A Turning Point in the Inter-American Human Rights System, *World Comparative Law* 59 (2026), in this special issue.
- 17 Lila García, Between Sinking Ships and Collective Wins: Human Mobility Standards from the Inter-American System of Human Rights in Argentinean and Mexican Domestic Adjudication, *World Comparative Law* 59 (2026), in this special issue.

Opinion AO-32/2025 on Climate Emergency and Human Rights. The article argues that the IACtHR's jurisprudence reflects a "gradual" convergence between migration and environmental rights. Building on this premise, the author develops an analytical framework to explain the "emerging bridge" through two interconnected dynamics. First, it highlights the "strategic" use of the IACtHR's advisory jurisdiction as a mechanism for normative development in emerging and complex fields. Second, it identifies the consolidation of what she conceptualizes as a "Transformative Social Approach" (TSA) to human rights violations, characterized by the recognition of structural patterns of discrimination, and transformative remedies aimed at addressing systemic inequalities. Against this backdrop, the article argues that AO-32/2025 constitutes a "turning point" by explicitly articulating a normative link between the right to human mobility under Article 22 and the right to a healthy environment under Article 26 ACHR. In doing so, the IACtHR expands the legal understanding of migration beyond traditional categories and advances a comprehensive human rights-based approach to climate mobility.

Within Latin American states, however, the IACtHR's transformative decisions only sometimes and partly translate into progressive rights-focused approaches to migration. Rather, we find a mix of managerial frameworks and human and constitutional rights approaches in many Latin American states, which is not altogether too dissimilar from what we observe in Europe. Perhaps the most interesting insight that emerges from the studies in Argentina, Chile, and Colombia, is that migration governance is not a simple choice between rights and control; the real story is how those two logics are combined inside courts, agencies, and administrative systems. The common thread is that institutional design matters: who decides, through what legal language, and with what effects on regular status or protection.

Focusing on courts, Lila García's contribution examines how the supreme courts of Argentina and Mexico engage with Inter-American human rights standards in migration and asylum adjudication. Through a "systematic" methodological approach, García analyses 49 judgments from 2004 to 2024 and develops four categories—"collective win", "singular victory", "planting for the future?", and "the sinking ship"—to evaluate both the intensity of the use of Inter-American human rights sources and their relationship to the protection ultimately granted in each case. Her analysis reveals that both courts relied on human rights arguments despite significant divergences between jurisdictions. It also highlights the importance of Advisory Opinions as a key tool in shaping rights-based approaches to migration, particularly AO 18/03, AO 25/2018, and AO 21/2014. Last, but not least, the article demonstrates that even fairly strong human rights-based legal frameworks—such as Argentina, which recognizes a "right to migrate"—do not automatically translate into favourable outcomes for migrants or asylum seekers.

At the level of migration governance and public administration, the contributions by Camila Fernández Meijide and Josefina Moya Hansen¹⁸ as well as María Gabriela Trompetero-Vicent¹⁹, explore how rights-based frameworks increasingly coexist with securitized forms of migration management across Latin America. Drawing on legal frameworks and empirical data, Fernández Meijide and Moya Hansen compare migration policies and regularization processes in Chile and Argentina from 2015 to 2025. Although Argentina was historically more rights-oriented and Chile more security-based, the authors argue that both countries have converged towards increasingly restrictive and discretionary forms of regulation. They stress that “irregularity emerges not as a failure of the system but as an outcome of its design and implementation”. In other words, the system does not merely fail to regularize people, it actively produces instability through legal reforms, administrative practices, digitalization, and opaque criteria. Their contribution complements García’s findings by illustrating that the fact that states have incorporated human rights language in their decision-making process does not ultimately guarantee an effective protection of these rights on the ground but may contribute to “managing precarity rather than resolving it”.

The interplay between managerial logics and human rights frameworks also plays a role in Trompetero’s contribution on Colombia, but also provides something of a counterpoint to the previous narratives. The author describes an apparently expansive policy, the Temporary Protection Statute for Venezuelan Migrants (ETPV), but refuses to treat it as a straightforward rights victory. The statute represents an admirable effort to provide regularized stays for nearly two million Venezuelans and thus a pathway to permanent residence. Yet, the policy was largely designed and implemented by the Colombian Migration Office, an institution traditionally oriented toward border control and security. The paper’s core argument is that the ETPV does not mark a paradigm shift; it was “a hybrid governance arrangement produced through the co-production of rights and control.” Biometric registration and long-term documentation fulfilled both administrative functions of control and surveillance and granted access to rights, thus providing a path to integration. So, unlike Fernández Meijide and Moya Hansen’s account, which emphasizes the production of irregularity through increasingly restrictive governance, Trompetero shows a system in which rights can be expanded, but only through the same machinery that also strengthens surveillance and state legibility.

Taken together, the contributions speak to the transformative aspirations on the one hand, and the institutional realities of rights-based migration governance in Europe and Latin America on the other. The articles illustrate how the European Committee of Social

18 Camila Fernández Meijide / Josefina Moya Hansen, Human Rights Protection and Migration: Strategies in Tension under a Framework of Regulation, Security and Order. A Comparative Analysis of Chile and Argentina in a Global Context, *World Comparative Law* 59 (2026), in this special issue.

19 María Gabriela Trompetero-Vicent, Co-Producing Rights and Control: Redundancy and Continuity in Migration Governance in Colombia, *World Comparative Law* 59 (2026), in this special issue.

Rights and the IACtHR have expanded scope of the European Social Charter and the American Convention of Human Rights by interpreting the rights included in a broad manner. At the same time, the contributions highlight the complex and often contradictory realities of migration governance at the domestic level. Across different national contexts, the articles point to the tensions that exist between these transformative normative commitments and contemporary practices of securitization, selective regularization, bureaucratic control, and surveillance.

By placing the European and Latin American experiences on migration governance, the Special Issue highlights the persistent gap between normative ambition and institutional implementation, while contributing to broader comparative debates on the future of migration governance. As most migration world-wide happens within the Global South rather than in a South-North direction, the contributions suggest further areas for research and learning, not least in Europe and North America where migration has become a particularly divisive issue.



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