South American Migration Governance

Assessing the robustness of welcoming migration policies

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Abstract

South America's remarkable migration regime has long been regarded as the paragon of welcoming policies deeply entrenched in human rights. Most political decisions taken in this field may seemingly suggest that the region operates coherently. The sustained efforts of regional organisations, mainly CSM and MERCOSUR, towards achieving an integral regional policy in regard to migrants dates back almost twenty years. But recently appeared contestations in Argentina, Brazil and Chile put at stake those welcoming principles well established as a norm for South America. The shift from a non-securitised approach to a rather restrictive migratory agenda calls for a deep examination of the contestations. This implies determining if they are either validity, affecting the very core of the norm, or applicatory contestations, where the norm's practical aspects are reshaped. Through Deitelhoff and Zimmerman's (2019) norm research theoretical framework, the three abovementioned countries will be analysed in this thesis to prove how their recent national measures have actually exerted an impact on the robustness of the entire region's welcoming norms.

Key words: South America, welcoming policies, migration, norm research, validity contestations, applicatory contestations, human rights, norm's robustness.

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Chapter I – Introduction

Migration is a world-wide phenomenon which all countries deal with on a daily basis. Being such a global issue, the international community might be expected to maintain similar approaches regarding migration regulations. However, against all odds, it faces diverse treatment over different regions. On the one hand, a restrictive attitude towards people's mobility was established in the West, entailing a selective and securitised approach on migration policies (Cernadas & Freier, 2015). This restrictive trend became much stronger after the terrorist attacks in the early 2000s, triggering anti-immigrant sentiments and marking the cornerstone of the increased criminalisation of immigration policies in the US (Cernadas & Freier, 2015). Meanwhile in the EU, this period was characterised by similar restraining discourses and policies, mainly promoted by right-wing parties (Cernadas & Freier, 2015).

On the other hand, the 1990s underwent a new paradigm shift towards an open and non-securitised policy in the migration legislation of South American countries (Margheritis, 2015). It encouraged regional organisations to implement inclusive, progressive and pluralistic tactics, and to make migration's regulation a predominant issue of the socio-political agenda (Margheritis, 2015).

According to a large number of scholars, the approaches to migration policies in South America seem to be rather coherent at a regional scope (Modolo, 2012; Cernadas & Freier, 2015; Margheritis, 2015; Acosta, 2016). The discursive shift towards more welcoming policies at the regional level (at the level of international organisations) emerged in the beginning of the 1990s, which was initially pushed through and strongly promoted by South American states (Acosta, 2016). These countries had just broken free from military dictatorships, which executed securitised and restrictive migration policies; thus, the newly elected governments as well as civic associations wished to establish freedom of movement and to promote and protect the rights of immigrants and their equality with the native citizens' rights (Margheritis, 2015). As a result, following years of restrictive measures, the South American states opted for more open migration policies based on human rights (Acosta, 2016). Therefore, as soon as these countries started to promote a more liberalised approach, the number of intraregional migrants increased dramatically, pushing the countries to collaborate at the regional level on common migration principles and practices. Many agreements on migration regulations were signed within the regional organisations (MERCOSUR, UNASUR, etc.) and the Regional Consultative Processes, such as the South American Conference on Migration (CSM) (Modolo, 2012). Later on, the national states translated these principles into domestic discourse, law and implementation. The translations of jointly accepted principles into national legislations allowed scholars to consider the process of the migration principles' diffusion a coherent process throughout the region, which led to the appearance of the South American migration governance and the establishment of new regional migration norms (Braz, 2018).

Nevertheless, more and more contestations to these well-established *welcoming policies* have begun to emerge in the largest countries of the region (Acosta & Brumat, 2019). The Argentinian government,

via the implementation of an new Decree of Necessity and Urgency in 2017, laid several restrictions on the entry and stay of migrants with criminal records (García, 2017). The newly elected Brazilian president, Jair Bolsonaro, has recently announced the initiation of more restrictive migration policies by withdrawing the country from the Global Compact for Safe, Orderly and Regular Migration (GCM) (Londoño, 2019). Therefore, certain scholars are worried by the increasing amount of contestations in the region, and some even forecast that this might lead to the end of the welcoming practices in South America, marking the beginning of a new, different paradigm (Acosta & Brumat, 2019).

Yet the official research conducted by international body, namely CEPAL, regarding the dynamics of South American migration regulations, do not highlight the urgency of the aforementioned contestations to the regional migration governance (Stefoni, 2018). This topic is silenced at the MERCOSUR level as well, since the countries have not pointed out, so far, any urgent unsolvable challenges which would undermine the core of the regionally-established norms. Notwithstanding the Venezuelan crisis, the MERCOSUR countries signed the updated Action Plan for a MERCOSUR Citizenship (CMS/DEC N°32/17), which showed their commitment to the establishment of a regional citizenship and highlighted the importance of deepening the collaboration on the migration issue (MERCOSUR, 2017). As a result, we see that these recent contestations, while they could be perceived as a threat to welcoming migration policies, the regional and national actors have remained silent on this topic. Still, at the end of the day, the contestations actually do exist, and there is a need for a proper examination on how they influence the robustness of the welcoming policy as a regionally established norm. Thus, there remains a crucial question on the table: are these recently intensified contestations a sign of the complete demolition of the adopted norm, or it is not yet the case?

§1.1. Puzzle and Research Question

As it is mentioned above, the South American region is characterised by welcoming policies which were implemented at the regional level within different organisations. Consequently, these principles were translated into domestic laws and regulations; although not all of them were implemented at the same time, by the same means and with the same scope, they all possessed a certain continuity of the established norm (Margheritis, 2015). Therefore, the South American migration regime, as part of the Latin American regime, was considered to be coherent and possessed a high level of robustness (Cernadas & Freier, 2015).

Still, in the current context of the ongoing Venezuelan crisis and the new shift towards right-wing governments in South American countries, there has been a rise in contestations against such non-securitised migration policies within these states (Quirós, 2018). The more restrictive discourses and contestations which have recently emerged in the three biggest South American countries (Chile, Brazil and Argentina) are framed as a challenge and a threat to the robustness of the migration regime (Quirós, 2018; Acosta & Brumat, 2019). Nonetheless, the regional organisations (MERCOSUR and CSM) do

not proclaim any changes in their welcoming paradigm. Certainly, there is a gap in a coherent and systematic analysis of the new contestations and their influence on the robustness of the regional migration norm.

This question regarding the current level of the norms' robustness calls for a theoretical explanation. To that end, in the given thesis, the IR field of norms research will be applied. The analysis of the norms' diffusion is expected to shed light on the given contestations and their influence on the norm.

Thus, applying the claims of early norms' researchers (Finnemore and Sikkink, 1998) concerning the process of the norm's diffusion, it would be clear that the robustness of the norm has reached a decay, since any type of contestations leads to the norm's vanishing. If we were to follow this line of reasoning, there would not be any question to be examined. However, the contemporary norms research scholars disagree with such a simple view on the contestations and norm's robustness, hence, they stand for a more dynamic perspective, where the contestations do not necessary lead to the automatic norm's disappearance (Deitelhoff and Zimmermann, 2018). Due to the different type of contestations (applicatory or validity) which will be explained in depth in the following section, the norm's robustness can be strengthened, weakened or face a decay. Therefore, if the contestations are not a sign of the immediate and definitive decay of the norm (Deitelhoff and Zimmermann, 2018), then these recent contestations in South America might lead to three varying possible outcomes.

Hence, are these contestations either a sign of the robustness' weakness, strengthening or decay? This puzzle can be translated into the given research question: **To what extent the newly appeared contestations in South American countries contribute to the strengthening, weakening or decay of the robustness of the regional welcoming migration policy?**

§1.2. Theoretical Framework and Methods

The norms' research is a relatively new field in IR, which appeared in the 1990s, yet it already counts with many groups of scholars who possess diverse views on the norm's diffusion (Zimmermann, 2014). Finnemore and Sikkink (1998) developed the concept of *a norm's life cycle*, which describes the three stages of the norm's development: emergence, cascade and internalisation. After the latter takes place, according to the followers of the linear perspective of norm diffusion, the norm enters the stage of decay and forgetting, if contestations increase (Zimmermann, 2014). Thus, for some scholars (Panke and Petersohn 2016; McKeown, 2009) the contestation of already internationalised norms/principles implies an automatic decay. Others (Wiener 2007; Acharya, 2004) do not consider the contestation to be an inevitable vanish of the norms, it could be a sign of either weakening or strengthening. Nonetheless, these two branches of scholars did not precise when the contestation leads to the first or the second result. In this sense, Deitelhoff and Zimmermann (2018) provided a new approach to the contestations, which depicts two types of contestations (*validity* and *applicatory*) along with the analysis of third-party

reactions, which help to go further and analyse which contestations lead to a weakening, decay or strengthening. Such a relationship between the contestation and robustness is innovative, and it actually allows to coherently analyse the norm's dynamics (Deitelhoff and Zimmermann, 2018). It will be precisely this new approach the one that will be applied in the given thesis to analyse the types of countries' contestations regarding the welcoming principles, which will help to answer the research question in a proper and thorough way.

Regarding the methods, the two-level multiple case analysis will be used. For the regional level, two South American organisations, namely MERCOSUR and CSM, were selected. As for the national level, the three most influential countries in the context of migration regulations (Brazil, Argentina and Chile) (Modolo, 2012), which recently expressed the norm's contestations, will be used for the research. Firstly, in order to answer the research question, it is important to commence the analysis by having a look at how the contested norm was initially established at the regional level (in MERCOSUR and CSM) and how it was then translated into the domestic context. The purpose of this step is to trace the norm's appearance and to formulate the norm's core principles, with the aim to, afterwards, examine whether the recently made contestations are undermining the validity of the norm or are just aimed at its adaptation to the new circumstances. In order to do so, Zimmermann's (2014) model of norms' translation will be used. This will make it possible to, firstly, obtain an overview on how and to which extent these principles were implemented in the beginning (under three scopes: into domestic discourse, law and implementation), and, secondly, it will make the contestation analysis more valid thanks to the more detailed analysis of the countries' internal conditions.

The second step is related to the current contestations expressed at the national level in these three countries. The Deitelhoff and Zimmermann (2018) model will be used to qualify these contestations, determining if they are either validity or applicatory. In addition, the third-party reactions will be examined, since they might play a decisive role in how the contestations influence the norm's robustness. Having analysed the countries' contestations, I will come back to the regional level, examining to what extent the contestations contribute to the strengthening, weakening or demolishing of the robustness of the welcoming migration norm.

§1.3. Scientific and Societal Relevance

Regarding the scientific relevance, the given work contributes to the analysis of the norms diffusion processes via conducting a comprehensive and comparative analysis of the dynamics of South American migration as a norm. The research of norms diffusion had never been applied to the topic of migration regimes before, therefore, this will be the first time a migration policy established at the regional level will be taken and analysed as a norm. Moreover, this will also be the first time Deitelhoff and Zimmermann's model (2018) of norms' contestations is tested while assessing the robustness of migration regimes, in this case, the regime of the South American region. Thus, this thesis seeks to

portray an example of how the norms diffusion studies can be applied when analysing the migration regimes of any given region, for instance, the EU migration regime.

As for the societal importance, this research will conduct a systematic and comparative analysis on the migration policy in South American countries, which should provide an explanation to the ongoing regional migration policy at both levels (regional and domestic). There are many documents published by regional and international bodies which are devoted to South American migration governance, but they do not cover the question regarding the migration policy robustness, and how each country separately influence it. Very often they are written in a descriptive way (Stefoni, 2018), without bringing in any theoretical explanation to the processes behind. In addition, the contestations expressed by the countries are a recent phenomenon, which has still not been reflected in these documents. Certainly, there were many academic works written regarding the migration policy of each country (Pando Burciaga, 2020; Olivares Santa Cruz, 2019), yet each covered only one. The given thesis aims at closing the gap in the field of comparative research, as the separate dynamics of each country are brought together to analyse them in parallel with the regional process, and thus provide a clearer picture of the migration governance. This is what distinguishes and makes this thesis innovative.

The present investigation can also be relevant for scholars in assessing the degree of robustness of the welcoming migration policy of the whole Latin American region. Moreover, this analysis may be relevant for South American politicians and other stakeholders when preparing their political strategies, which are bound to include the migration issue.

§1.4. Overview

The given thesis is composed of six Chapters. The Second Chapter is devoted to the theoretical framework and the literature review, where I extensively address the debate between the norms diffusion's theorists. Moreover, it provides the argument why Deitelhoff and Zimmermann's two types of contestations model will be the most appropriate to apply in order to answer the research question. The Third Chapter details the methodological procedure for the case selection and operationalises the formulated indicators and hypotheses. The historical context of how the migration norm appeared at the regional level and how it was initially translated into the domestic discourse, law and implementation of three countries will be addressed in Chapter Four. This chapter will show the diffusion process of the norm from the regional to the national level. The Fifth Chapter, on the contrary, will show how the contestations at the national level influence the robustness of the norm at the regional level. It will start with defining contestations (validity/applicatory) and will end with assessing the overall robustness of the welcoming migration norm. The concluding Sixth Chapter will provide an answer to the research question by summarising all findings. In addition, some solutions will be formulated for the theoretical model used along with a reflection on the expectations and implications. At the end, the generalisations, limitations and some suggestions for further research will be addressed.

Chapter II – Theoretical Framework and Literature review

Introduction

The aim of this thesis is to assess the current robustness of the regionally implemented welcoming migration policies after being contested by several countries. These policies are established norms, which once agreed upon and established, regulate the migration practices in the region and guide each country in the elaboration of their own national laws regarding the issue. This chapter will explain different approaches to the norm's research within the field of IR, which can shed light on the insights of the research question.

Firstly, the notion of the international norm will be introduced. Secondly, the issue of how the international norms emerge, develop and are implemented will be explained. Thirdly, I shall address the theoretical debate on what happens to the norm after it has been internationalised into the domestic legislation of the country. Here two approaches will appear, which possess different views on the norm's contestations and their influence on the established norms.

Since the contestation plays a central role in the debate regarding norms' robustness, a particular attention in the following chapter will be paid to the debate between conventional social constructivist norms scholars and critical norms researchers (Bloomfield, 2015). The former consider that any contestation of the already established norms means the inevitable weakening of its robustness. The latter regard contestations as a sign of weakness or even strength, depending on the context. Nonetheless, these two structuralist approaches lack the dynamics in their view on the relation between contestation and stability of the norm. This problem related to the absence of dynamics is widely addressed by Zimmermann and Deitelhoff (2018) in their recent research about the types of contestations and their influence on the norm's robustness. The following chapter will dive into more detailed explanations of what the given approaches are.

§2.1. International norms: their emergence, development and implementation

To start with, it is important to highlight that the research about the norms and their diffusion became an important field of International Relations in the 1990s (Bloomfield, 2015). That was the time when the expectations for the rapidly spreading liberal norms were rather high. There was a need to examine the international norms in a more systematic way (Bloomfield, 2015).

Talking about the norms, it is crucial to identify what the notion of a norm entails. According to Katzenstein (1996), norms can be understood as standards of suitable behaviour, which actors with a given identity should follow. These standards include expectations on specific ways of acting within a social group (Habermas, 1996). Hence, as the norms are these concrete standards applicable to multiple

actors, they have legitimate power to constrain and/or enable their behaviour (Skinner, 1974). At this point, it is vital to clarify that norms acquire their validity from their joint acceptance by the actors involved in the given social group, and only then shall they obtain it from the actual enforcement (Deitelhoff and Zimmermann, 2018). There are different types of norms, which appear in different forms, but all of them require acceptance and compliance from those establishing them and those who agree to follow them.

Moving further, it is important to look at how new international norms emerge and spread among particular international actors, changing their behaviour. Finnemore and Sikkink (1998) were pioneers in theorising how a norm's emergence and diffusion takes place. They present a conventional constructivist approach of the norms' research, which deems their development as a linear process.

Particularly speaking, the authors proposed the life cycle of the norm, which presents three steps in its diffusion process (Finnemore and Sikkink, 1998). The first step is presented by the emergence of the norm's founders, who focus on the need of a new norm to emerge in a specific field. Later on, as soon as the necessity of that new norm is proclaimed and advocated by certain actors, who at the same time become leaders of the norm's promotion, the second step begins. It is characterised by the attempt to convince the largest number of actors on the necessity and importance of the given norm. The second step is presented with all sort of contestations (validity and/or applicatory), which strictly depend on the context. The third step is the internalisation of the norm by the actors. The entrepreneurs and other norms' followers start to perceive the norm as a "taken-for-granted quality", which constitutes their behaviour (Finnemore & Sikkink, 1998, p.895). Thus, this means that as soon as the first two steps move on to the third, where the norm is widely accepted, contestations should not come up again. The contestations are then allowed to be present only during the diffusion period, but not when the norm is completely internalised (Finnemore and Sikkink, 1998). This norm's cycle appears to be linear, since no further development of the norm after the third step is prescribed.

Here we witness the fact that early constructivist scholars who founded the norms studies in the IR field were focused on the diffusion process of the newly emerged norm, considering the norm to be unchanged once established. According to Hoffmann (2010), the norm is seen as a static variable, which is used to compare the norms of different regions. Wiener (2004), in turn, argues that the early norms studies are focused only on how actors and their behaviour comply with the established norm, yet the norm itself could never be questioned. It results then that the unchallenged presence of the norm is the indication of its validity (Finnemore and Sikkink, 1998). Any type of contestation after its internalisation, hence, means the decay of the norm, which will lead to the potential emergence of another one to take its place.

Nonetheless, over time, it became clear that such a linear approach to the norm's dynamics does not correspond with the current realities (Wiener, 2004). The resistance to the established norms became

more and more visible (Wiener, 2004). At a the time when the critical norms researchers appeared to be very active, arguing that the norms' diffusion is much more dynamic than it was presented by the linear model (Bloomfield, 2015).

To conclude, it is necessary to highlight the importance of early constructivists' contribution to the appearance of the norms' research as a leading field of interest in IR. However, the critical norms researchers moved the discussion further and brought more dynamics into the analysis of the norm's diffusion.

§2.2. Post-implementation process: two approaches to the contestations

Conventional constructivists' approach vs critical norms research

As it was analysed in the previous section, the conventional constructivists do not see any possibility of the contestations to emerge within the already internalised norm. Were they to appear, this would automatically lead to the decline of the present norm and the emergence of another, which, as well as the previous one, will pass through *the norm's life cycle* (Finnemore and Sikkink, 1998). This reasoning regarding the contestations is highly opposed by the critical norms researchers.

This last group of scholars argue that the representation of the norm by former researchers is too static – on the contrary, they try to bring dynamics into it, leading the norm to be contested even after having been internalised (Wiener, 2007). This contestation does not necessarily lead to the weakness of the norm, quite the opposite, it can indicate its strengthening. According to Wiener (2007), the norm has a "dual quality", which entails its stability and mobility (p.51). This implies that the norm is stable while widely accepted, but it is flexible at the same time, meaning that it can undergo any change in case the norm's followers decide to do so (Wiener, 2007). Consequentially, this claim suggests that the scope and content of the norm can be changed if all actors are engaged into the contestation. Following this reasoning, the change or reinterpretation of the norm made by actors might either strengthen or weaken it. Therefore, the critical scholars do not equate the contestations with an automatic negative result, as the early norms scholars did (Bloomfield, 2015).

Having addressed the main points of disagreement among the two branches of scholars, the notion of robustness should be discussed. For the conventional scholars, robustness means no contestations to the existing norm and the actors' full acceptance and compliance (Finnemore and Sikkink, 1998). They deem the contestation as an automatic weakness of the norm's stability, since it leads to the norm's decay.

The critical researchers do not consider the appearance of contestations as an inevitable decay of the norm's robustness. The contestation does not undermine the validity of the norm per se. It can lead, then, to two possible outcomes: strengthening or weakening. Along with the critical scholars, rationalists

(Panke and Petersohn, 2012) also portray the norm decay as a large-scale non-compliance, yet contestations might have different nature, thus, they do not always lead to the decay of a norm's robustness.

So it results that robustness is a relative concept, which at times leads to the strengthening of the norms, at times to its weakening. Nevertheless, at this point it still remains unclear *when* and *why* some contestations lead to the strengthening or weakening of the norm's stability. This aspect was not addressed by the critical approach founders, but it will be discussed in the following section.

Critical approach: the two-level processes of post-implementation

The branch of critical scholars was enlarged with Acharya's work (2004) on the actors' compliance with the external norms. This researcher was the first to examine the two-level process (international – national) and to examine the relations between them regarding norms' acceptance, compliance and contestation (Acharya, 2004). According to him, the process of the contestation might be related to different localisation processes, which can actually even strengthen the norm. By these processes, he referred to the local actors' (national states and their authorities) responses to the external pressure, internalising new norms to fit the pre-existing normative conditions of the country (Acharya, 2004). Thus, this means that even an initial translation of the norm from the international level into domestic legislation normally does possess the actor's own interpretation, modification and adoption of the norm to the domestic and local context. Here, it is important to highlight that for Acharya (2004) the local actors do not always share the same understanding of the norms' implementation, but this does not mean that a different adoption of the norm per se leads to its weakening.

Along with the aforementioned statements, the scholar acknowledges that the process of the norm's contestation can appear even after the internalisation and initial adaptation of the norm under domestic circumstances (Acharya, 2004). In most cases, the norms established at the international or regional level possess a degree of generalisation, due to its inability to suit every particular context, where the norm will actually be applied (Acharya, 2004). Hence, the appearance of the contestations can either contain a more detailed application of the norm, due to the appearance of the new empirical situations, or it may aim at refining the norm (Acharya, 2004). In other words, reinterpreting and reshaping contestations can boost either the weakening or strengthening of the principle, making it more concrete and applicable to the ongoing local processes or leading to its decay. As a result, the local full resistance and non-compliance establishes another form of norm creation, when the local and/or domestic initiatives go back to the international level, inspiring negotiations regarding either improvement of the "old" norm, or creation of a new one.

Amitav Acharya (2004) made a great contribution by theorising the two-level processes of the norm's diffusion, but the questions *when* and *why* the contestations lead to a weakening or strengthening of the

norm remained unanswered. Thus, the question regarding robustness did not receive any further clarifications.

Nonetheless, more contemporary scholars such as Nicole Deitelhoff and Lisabeth Zimmermann (2018), who belong to the branch of critical researchers, succeeded in distinguishing the two types of the norm's contestation, which made it possible to obtain a comprehensive answer to the question stated before. The following section will provide more insights on Deitelhoff and Zimmermann's new approach to assess the contestations and their impact on the norm's robustness.

§2.3. Two types of contestations

Zimmermann and Deitelhoff's (2018) recent research entails a novel point of view on contestations. Being based on the discursive theory of law and normativity, they divided the contestations into two types: validity and applicatory (Zimmermann and Deitelhoff, 2018). This allowed to broaden the beforementioned critical approach and to answer the questions *when* and *why* the contestations lead to different outcomes.

On the one hand, similarly to Acharya (2004), the scholars are focused on the two-level process of the norm's contestations. Yet, on the other hand, their main aim is to identify which type of contestation at a domestic level may lead to the weakening or strengthening of norms at a regional and/or international level (Zimmermann and Deitelhoff, 2018). Therefore, they divide contestations into two types: validity and applicatory. The applicatory contestation questions the adoption of the norm in particular circumstances. It does not undermine the discursive acceptance and practical implementation of the norm's principles, thus, the core of the norm remains untouched and stable. This type can only entail the questions regarding actions which should be applied in a particular situation, or which procedures should be better to use in a particular case, if there are different ones prescribed by the established norm (Zimmermann and Deitelhoff, 2018). The applicatory contestation can even boost the strengthening of the norm, making it more concrete and applicable to specific circumstances. Validity contestation, on the contrary, considers that the problem lies at the very core of the norm, undermining its discursive acceptance and normative righteousness (Zimmermann and Deitelhoff, 2018). They put at stake the justifiability of the norm per se, and lead to the inevitable weakening or even decay of the norm.

Apart from contestations' classification, Zimmermann and Deitelhoff (2018) address the issue of norms' robustness, which, certainly, directly depends on the type of contestation expressed. Yet, notwithstanding the apparent clarity of these two types of contestations and their influence on the norm, in the reality of two-level processes there are more factors, which, in combination with existing contestations, influence the norm's robustness. Therefore, the scholars introduced four additional indicators which help to assess the international norm's robustness, namely: concordance, compliance, implementation and third-party reactions (Zimmermann and Deitelhoff, 2018). The first three indicators

overlap with Zimmernann (2014)'s previous three-stage model of norms' translation, which was discussed in the previous chapter. This model will be used to analyse the initial internalisation of the international migration norms into the domestic legislation in the fourth chapter, and for the analysis of newly appeared contestations in the fifth chapter. Although more detailed operationalisation of these indicators will be present in later sections of the thesis, it is necessary to provide a brief explanation of them here in order to formulate the hypotheses.

As for the concordance, it aims to see if there is a coherence between the understanding of the norm in the domestic and international discourses. The compliance shows how the domestic law reflects the international standards, and the implementation indicator focuses on the functioning of the established principles in daily practices. These three indicators will help to analyse on which stage (discourse, law or implementation) the validity or applicatory contestations emerge. This means that the higher robustness is identified when the norms' followers show widespread discursive acceptance of the norm's core principles (its validity), which in turn guides the actors' actions (at the normative dimension). Nonetheless, when the norm faces discursive rejection by most of the followers and these claims are already unable to guide the actors' actions resulting in non-compliance, then robustness lowers.

The third-parties' reactions is the fourth and most valuable indicator, which influences on how low or high the norms' robustness is (Zimmermann and Deitelhoff, 2018). When contestations appear at any stage (discourse, law or implementation), these reactions are supposed to play a vital role. In case these reactions become highly critical of any validity contestations of the norm, robustness is more likely to experience a weakening, but it will not be lost completely. The open shaming and condemnation of the norm's non-compliance by third-parties will not let the norm vanish, however, its weakening will be present (Zimmermann and Deitelhoff, 2018). Likewise, when the addressees are silent and passive when the norm's validity is contested, or whether they actually support it, robustness truly faces its decay (Zimmermann and Deitelhoff, 2018). Regarding the applicatory contestations, the active third-parties, which are aimed at controlling norm compliance, contribute to the understanding of when robustness is likely to strengthen and when it is not. If the addressees, while checking the applicatory contestations for compliance with the norm's course, do actually support it, robustness strengthens. On the contrary, when the third parties are passive towards contestations or criticise them, robustness will neither strengthen nor weaken.

Thus, the distinction between only validity and applicatory contestations shows whether the norm's robustness moves towards weakening or strengthening, yet the third-party reactions open new possibilities for assessing it. Thus, according to Zimmermann and Deitelhoff (2018), robustness is a relative concept, which depends on the levels of acceptance and compliance assessed together, where the third parties' reaction is also taken into account.

To sum up, it is worth mentioning that Zimmermann and Deitelhoff's new approach to assess the robustness by the type of the actors' contestations is a ground-breaking approach. It provides an actual possibility to make a thorough and comprehensive research on the norm's change. This thesis will use this approach to provide an answer to the research question.

§2.4. The application of Zimmermann and Deitelhoff's model

Having introduced the theoretical debate regarding the relations between the contestations and the norm's robustness, I will explain how Zimmermann and Deitelhoff's approach will be used in order to examine the robustness of the South American migration regime. Moreover, I will formulate the hypotheses which, along with more concrete indicators, will be discussed in detail throughout the next chapter.

Certainly, while applying this approach to the given research, we might expect some states to account for the two types of contestations simultaneously. In order to assess whether these contestations weaken or strengthen the common welcoming regime or lead to its decay, I will, first and foremost, address how the regional norm was initially translated into domestic legislation. Here, Zimmermann's (2014) model of internalisation will be applied. The level of domestic discursive acceptance of the norm, normative compliance (the process of translation into law) and its implementation will be examined in three countries (Brazil, Argentina and Chile).

Later on, the current contestations of the existing norm will be examined by differentiating them into two types: validity and applicatory. In addition, following Zimmermann and Deitelhoff's (2018) four indicators for the robustness' assessment, I will examine at which stage (discursive or normative) a specific type of contestation appears and what the third parties' reaction to them is. Based on this differentiation, it will be possible to assess which contestations prevail in the region and whether they lead to the strengthening, weakening or decay of the welcoming migration norm. These steps will make it possible to obtain a better understanding of the regional climate regarding the common principles and to answer the research question.

As regards the hypotheses, they can be formulated as follows:

1. *If actors, at a national level, express applicatory but not validity contestations regarding the regional welcoming migration policy, and third-party reactions do not stand against them, the robustness of the norm strengthens.*
2. *If actors, at a national level, express applicatory but not validity contestations regarding the regional welcoming migration policy, and third-party reactions do stand against them, the robustness of the norm stays at the same level.*

3. *If actors, at a national level, express validity and not applicatory contestations regarding the regional welcoming migration policy, and third-party reactions do stand against them, the robustness of the norm does experience a weakness but not a complete decay.*
4. *If actors, at a national level, express validity and not applicatory contestations regarding the regional welcoming migration policy, and third-party reactions do not stand against them, the robustness of the norm experiences a decay.*

Having addressed the theoretical framework, the next chapter will be devoted to the operationalisation and more detailed analysis of these hypotheses.

Conclusion

The theoretical debate presented in the given chapter has shown the importance of Zimmermann and Deitelhoff's model when analysing the robustness of the norm. It does not only try to solve the debate concerning which contestations differently influence the norms' robustness and when they do so, but it also provides more tools for its assessment.

Chapter III – Methodology

Introduction

The previous chapter presented two approaches on how the norm changes and what the contestation of the norm entails. Zimmermann and Deitelhoff's approach (2018) was determined as the tool to analyse and explain the increased amount of contestations of the welcoming migration policies in South America. The aim is to see whether these contestations do imply the weakening or decay of the norm's robustness or if it is just another round of adaptation of the norm, which might even strengthen it. This chapter aims to shed some light on the methodological procedures, which will be used in order to assess the hypotheses, by either accepting or rejecting them. Firstly, the format of the case study and the case selection process will be introduced. Secondly, the assumptions and suppositions will be explained. Thirdly, the operationalisation of the formulated hypotheses will be made, and, finally, the sources and data used for the hypotheses' assessment and operationalisation will be addressed.

§3.1. Research design

Multiple Case Study

The research format of the given thesis stems from its aim to conduct an in-depth research on the robustness of welcoming regional migration policies.

According to the aforementioned purposes of the thesis, the multiple case study will suit the best to test the hypotheses. The qualitative analysis involves a much deeper type of assessment than the quantitative research, since the latter works with a large number of cases and does not make any thorough analysis of each and every case (King, Keohane & Verba, 1994). Nonetheless, even though the qualitative analysis dives deeper, it becomes harder to pose generalisations, since by analysing a smaller group of cases the statistical validity might be quite low (King, Keohane & Verba, 1994).

Nevertheless, taking all pros and cons into account, it is vital to mention that the qualitative research adequately suits the theoretical framework selected for the given thesis. The norms' analysis entails a deep and detailed research from the norm's appearance up to its eventual change, strengthen or decline. The whole process should be carefully tracked, this is why the quantitative analysis is of no use here (Gerring, 2008). Moreover, the analysis of the norm's translation into domestic legislation, which requires the examination of the domestic discourse and speech acts, is almost impossible to make with the quantitative research. Additionally, the thesis is focused on South America, which possesses 12 countries. Therefore, if quantitative research had been chosen, it would have needed a larger number of cases in order to achieve better statistical significance and avoid statistical fallacies (King, Keohane & Verba, 1994). This means that it is not purposeful to opt for the quantitative analysis, hence, the study will be made with qualitative methods. It should not be omitted the fact that the research question is

open-ended – unequivocally, the qualitative method will be better for this case. The aim of the thesis is to deeply analyse existing contestations of the norm (a welcoming policy) and to understand their nature: whether they are validity or applicatory. The aim is not just checking if there are any contestations or not, the answer to the research question entails analysing whether the contestations do really undermine the core of the norm, and what is happening to its robustness. Thus, this is extremely hard to do without an in-depth research. This is why the selection of the method went in favour of the qualitative research.

The thesis applies a small-number case study, which makes it possible to handle a more comprehensive investigation of the tendencies regarding the change of migration policies in the region. The selection of several cases over a single case makes it possible to compare how the translation of the norm has occurred and what its change patterns are today.

Hence, taking into account the aforementioned arguments regarding the theoretical framework, the data availability and the necessity of the in-depth explanation, the small-n research can be seen as an appropriate method to reach the aim of the analysis. Certainly, there will be some limitations for the method used, and I will give an overview of them in the last chapter.

Case selection

Since the analysis will include two levels, a regional and a domestic scope, the aim of this section is to discuss the selection process of the regional international bodies and countries to asses.

To begin with, it is important to mention that South America was selected as the focus of the current investigation. The reason behind the decision lies on the fact that Latin America is composed of several parts, which, on the one hand, are connected by several organisations and institutions, but on the other, it possesses different regional organisations that regulate migration flows (Weiffen, 2017). All organisations and institutions together constitute the Latin American migration governance, thus, it is worthy to analyse how all different parts contribute to the Latin American migration regime and to examine if the robustness of the given norm is stable along the whole region. Nonetheless, given to the large extent of such an investigation, it would be unfeasible to fit such a comprehensive research into the size of one thesis. Thus, it was decided to focus on the South American territory within Latin America. However, while referring to only one part of the region, there are still many organisations present, which are overlapping to some extent regarding their regulations on migration policies (Weiffen, 2017).

Due to the two-level research question and its goal to analyse the robustness of the migration regime as a norm in South America, the aim here is to pick cases at the regional and national level. As the main goal is to assess the robustness of the norm within the whole of South America, it makes sense to choose, at the higher level, the regional bodies which 1) are inclusive (according to the number of participants),

2) are progressive and well-working institutions, 3) are directly focused on the regulations of migration policies, and 4) experience a great migration flow.

Regarding national level processes, in order to see whether the norm's robustness is stable or not, we will need, firstly, to apply Zimmermann's (2016) model of norms' translation into domestic legislation and see how the norms were initially addressed, adopted and implemented in the domestic contexts of the countries, and, secondly, if the current norms' contestations are strong today. In order to do so, it would make sense to select several countries which 1) possess the main actorness in the region, 2) have major influence at the regional level and 3) are participants in the selected regional organisation.

As for the regional level, there is a large number of organisations. There are entities which span the whole Latin American region, namely CELAC and OAS. Those include all Latin American countries and provide an all-inclusive platform for the discussion of a wide range of topics where migration regulations play a vital role. However, South America counts with other regional bodies, such as MERCOSUR, UNASUR, The Andean Community (CAN) and The South American Conference on Migration (CSM), where there also exists an overlap in their members (Weiffen, 2017). Given the conditions named above, MERCOSUR and CSM were selected for the regional level analysis.

MERCOSUR is an institution which takes the leading position in the migration governance in the region. The reason why UNASUR, though comprised of all twelve countries, is out of the selection is that the union became extremely weak and is deemed by the member countries themselves as no longer a platform strong enough for this discussion (Barinas Ortiz, 2018). The same occurred with the Andean Community, which is not the leading organisation in the migration issue anymore (Godoy & Gonzáles Arana, 2009).

As for CSM, it is an annual conference which brings all twelve South American countries to the table, and it is particularly devoted to the migration issue. Notwithstanding the fact that it is just a platform for regular discussions, it was the first regional body to initiate discussions on the South American migration policy (Modolo, 2012). In the early 2000s, the CSM highlighted the preliminary benchmarks on the migration issue, and afterwards, the regional organisations, mainly MERCOSUR, were assigned to develop and implement the CSM guidelines into more concrete agreements and declarations (Modolo, 2012). The CSM acknowledges the relevance of the subregional organisations' contributions to the regulation of migration policies. Thus, the CSM is a valuable platform where the countries display their achievements in the migration issue while working together within the subregional organisations, as well as outlining new goals and principles (Modolo, 2012). Boh the CSM and MERCOSUR tend to work together and build parallel processes in guiding migration regulations throughout the region. Although the real implementation of these agreed-upon objectives is in the hands of MERCOSUR, the CSM plays a meaningful role in guiding the migration regulation of all South America. Hence,

MERCOSUR and CSM represent strong and well-working institutions, which was the reason to select them for the analysis of the given thesis.

Regarding the case selection at the national level, it is impossible to deeply analyse twelve regional countries within the scope of the thesis, thus, it was decided to make a selection. Taking into account the parameters, Argentina, Brazil and Chile suited them the best. These three countries account for the leading positions of the region regarding migration issues, and are acknowledged to be the countries which experience the most migration flows. The first two, along with Paraguay and Uruguay, were at the root of MERCOSUR and its Residence Agreement (Modolo, 2010). Chile is one of the leading regional countries, an associated member of MERCOSUR and it is a signatory country of the Residence Agreement as well. Chile experiences one of the major migration flows in South America, more particularly, among the South Cone countries. Migration flows from the central and northern parts of South America have limited routes to reach the lower end of the continent. One of the major routes goes through Chile. This is one of the reasons why this country presents a great relevance when assessing people's mobility.

Having presented the case selection mechanism, the next part will be devoted to the more concrete explanation of the hypotheses' formation.

§3.2. The hypotheses and their operationalisation

The hypotheses formulated in Chapter Two are aimed at solving the research question, which is related to the ongoing situation in the region regarding the migration issue. Nonetheless, as it was already argued, there is a need to look back on the roots of the given policy and assess how the regional migration principles appeared and were incorporated into the domestic realm. This analysis will enable us to outline a substantiated and well-grounded comparison amongst the initially established countries' migration policies and the newly appeared contestations and changes in this field.

Consequently, the first step taken at the regional level of the analysis will be devoted to the assessment of how welcoming the regional migration policy was in the early 2000s. In the second step, it is important, via Zimmermann's (2014) model to trace how the welcoming migration policies, established by the joint declarations and agreements at the regional level, were translated into the national discourse, law and implementation of the given three countries. The final step will be to analyse the currently emerging contestations of the established norm in each country, assessing how the migration discourse has changed. Such a comparison will allow us to observe whether the nature of the recently appeared contestations presents a validity type or if it is just an applicatory of the regional norm. Finally, the last step will go back to the regional level, including the reflection on how these contestations contribute to the norm's robustness change. The further operationalisation part will include several indicators, which

will be used to conduct the two-level analysis. Thus, the following section will explain how the analytical process will be operationalised into the hypotheses, which will be tested (verified or falsified).

1. **Regional Level (1):**

   <u>*Indicators 1a and 1b:*</u>

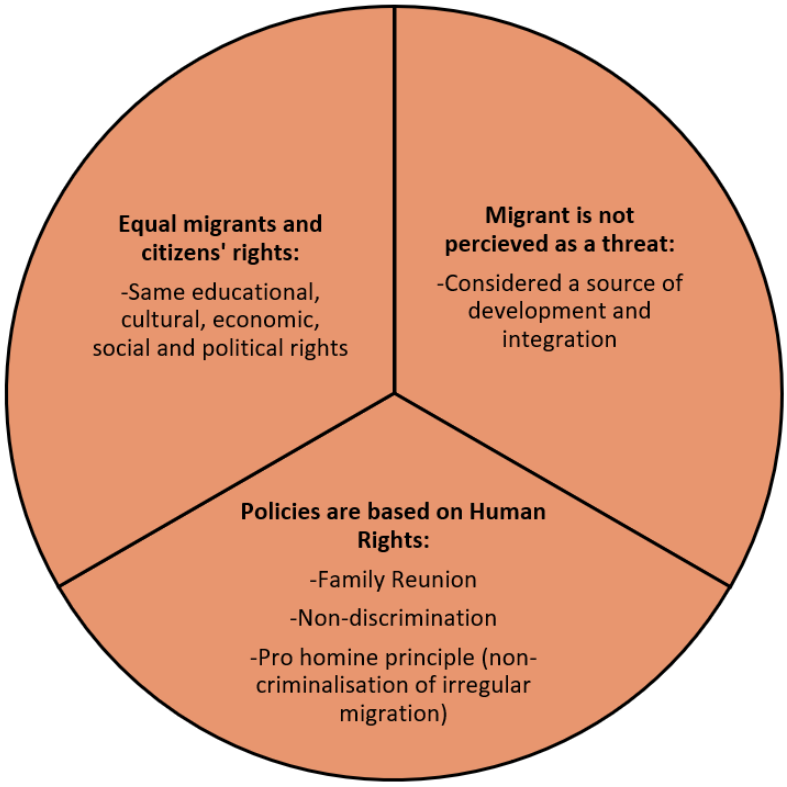
   1a: If regional organisations' migration principles are based on human rights, proclaim the *right to migrate freely* and do not perceive migrants as a threat to its security, their migration policy is welcoming.

   2b: If regional organisations' migration principles are not based on human rights, do not accept the *right to migrate freely*, and portray migrants as a threat to their security, their migration policy is not welcoming.

The MERCOSUR and CSM's key documents will be assessed on how welcoming their principles were at the initial stage of the regional migration norm formation.

As the indicators show a *welcoming migration policy* should entail (1) the negation of the migrant's perception as a threat for the country, (2) the recognition of the equality between migrants and native citizens' rights and (3) the human rights based policies (Figure 1). According to the first point, migrants should not be seen as a problem to the country, but a source for development and integration. The second point places the migrants' and nationals' rights at the same level. As for human rights policies, they entail the family reunion, non-discrimination and pro homine principles. The latter is closely related to the non-criminalisation of irregular migration, which will be analysed in depth in the following chapter when examining particular cases. However, for clarification purposes, it is vital to note that this principle was promoted and put into practice in Latin America by the Inter-American Court of Human Rights, and it became one of the most important principles when discussing about human rights (Fuentes, 2017). It places the individual at the centre of international law, treating each case individually (Fuentes, 2017). This principle seeks to limit the restrictions on a person's freedom and to apply the norm in its broadest way, trying to suit the person's interests the best. In the context of migration regulation, it means that the undocumented (irregular) status of a migrant does not equal a crime, and the migrant should not be perceived as a foreigner, but rather as a human being who cannot lose or be limited in his/her rights (Acosta, 2018). Hence, the undocumented migrant should not be associated with criminality, and they should be granted possibilities to regulate their status without being deported.

Figure 1. Core elements of the welcoming migration policy



Source: Created by author

Here it is clear that if a country possesses this welcoming policy, it does not invoke the emergency actions to secure the country from the migrants' influx (intraregional migration) neither does it entail any framing of the issue in a securitised manner. In the context of this policy, migrant rights account for the economic, social, legal and cultural rights, which should be secured by the state.

To sum up, having assessed the regional organisation's principles and norms regarding migration, the initial translation of the accepted regional norms into domestic discourse and legislation will be checked.

2. **National Level (1):**

   Indicators 2a, 2b and 2c:

   2a: If the translation of regional migration principles into domestic discourse, law and implementation faced validity contestations in the first step, the country showed a complete resistance to the principles.

   2b: If the translation of regional migration principles into domestic discourse, law, and implementation faced applicatory contestations at least on one of the three steps, but no validity contestations, the country processed a half-adoption of the principles.

   2c: If the translation of regional migration principles into domestic discourse, law and implementation faced no contestations whatsoever, the countries fully adopted the principles.

In order to assess how the translation of the regionally established migration principles took place in each selected country, official documents will be analysed. The type of translation will be identified by examining all three steps of translation in each country. These three steps are presented in Zimmermann's (2014) model, which analyses the norm translation in depth. According to the model's founder, the first step is the *domestic discourse,* represented by the domestic discourse regarding the new political context at the regional level. This is an essential step, since it involves outlining the policy's frames and interpretation. This is the moment of domestic contestations, which try to link the newly appeared norm to the existing national world views (Zimmerman, 2014). The validity contestation in this step will lead to a complete resistance of the newly proposed policy, thus, only the applicatory contestations in this step can allow to process the translation of the policy.

The second step of the internalisation is the *translation into law,* showing how the applicatory contestations influenced the regional norm via its reshaping and adaptation it to the country's context. The reshaping entails three possible outcomes: (1) leaving out some parts of the principle, (2) adding any other sections or principles or (3) the modification of some of them.

And lastly, the final step is the *translation into implementation*, since here it is revealed how well the formerly translated law is now being exercised by the authorities and whether there is any reshaping represented by one of the three aforementioned options.

Making an operationalisation of the model in the given circumstances, it is clear that if the country, in the very first step, counts with validity contestations, the regional law has no changes to be internalised, since the country's authorities have shown a complete resistance to it. Nevertheless, the countries that had faced no contestations, and then accepted and adopted the principles in line with the regional organisation, reached the full adoption.

Nonetheless, in case the country possesses only applicatory contestations, but not validity ones, it is situated between resistance and full adoption, and it is a representative of half-adoption. Such a country faces a re-interpretation and/or reshaping of the norm in at least one of the 3 steps, which can lead to adding and/or modifying the frames and practices. Due to the difference in the countries' politics, historical background and current socioeconomic situation, there might be some possible variations on how the norm is adapted to the reality of each country. As long as these changes do not undermine the core message of the principles, the adaptation of the norm to different contexts is permitted. This process does not weaken the principles themselves, but on the contrary, it might detail and even strengthen them.

Therefore, the validity contestations automatically lead to the rejection of the norm, yet the applicatory contestations might lead to its strengthening or debilitation.

By obtaining the results of the beforementioned applications, it will be possible to conclude the level of robustness of the regionally established migration principles at the national level.

3. From the National Level (2) to the Regional Level (2):

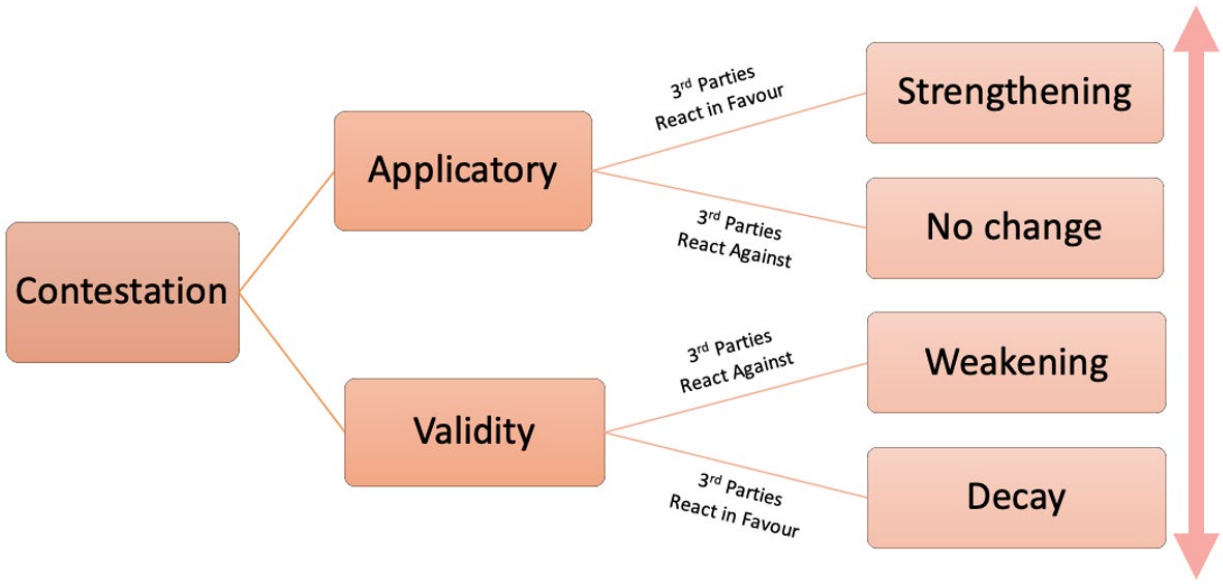
Within the given step of hypotheses' analysis formulated in the Second Chapter will be operationalised. Nonetheless, there is a need of clarifying the terms and steps at this stage of analysis.

First of all, we need to specify what the *national level's actors* are. They are those who create/control/shape the migration policies at the country's level. The selected cases possess different active actors, and those are the governments and other local authorities. All of them are, to a different extent, forming and modifying the migration policy of each country. As regards *the third parties*, they are represented by other countries, the international organisations themselves (the MERCOSUR and CSM institutions), non-governmental regional and domestic bodies and different civic organisations. Their reactions to the changes of countries' migration policy are relevant to assess the common overall attitude towards the present contestations.

As for the steps of the analysis, firstly, the domestic discourse, the insides of the laws and the implementation practices will be analyse to check if they possess any contestations. Secondly, the contestations identified at any step will be divided into applicatory or validity types. Thirdly, the third-parties' reactions will be addressed. The final step will consist in the assessment of the hypotheses and reflecting on how the norm's robustness at the regional level changes.

In order to render the operationalisation more concrete, each hypothesis should be explained in detail. As it is shown in Figure 2, robustness is expected to follow one of the given four directions: strengthening, weakening, reaching a decay or not experiencing any changes.

Figure 2. Contestations' influence on robustness



Source: created by author, adopted from Zimmermann and Deitelhoff (2018)

Hypotheses 1&2:

The first one is aimed at verifying or refuting the supposition that the norm's robustness experiences strengthening if the country only possesses applicatory contestations regarding the welcoming migration policy, and the third-party reactions neither criticise the contestations nor consider that they are harmful to the norm. These contestations should be unanimously backed and not to possess any non-compliance with the norm.

The second hypothesis also refers to applicatory contestations, however, in this case, it is not supported by third parties. Here, if the reactions are negative, the contestations cannot lead to the strengthening, however, they do not cause a debilitation either. The norm's robustness is more likely to remain at the same level.

Hypotheses 3&4:

The final two hypotheses are formulated to assess the impact of validity contestations on the norms' robustness. Hypothesis 3 assumes that if the country contests the core features of the norm, but these contestations are strongly criticised by third parties, it consequently leads to a resistance to the norm and its weakening, but not a complete decay, since other parties still follow the existing norm. These contestations undermine the unanimous compliance, by provoking a lack of coherent implementation which can lead to the necessity of the norm's reshaping, but not to its complete rejection. The norm, in this case, loses its strength to a certain extent, but does not vanish.

Nevertheless, in hypothesis 4, in case the same contestations emerge and other parties do not express any objections to the country's attempts to undermine the core features of the principle, then the norm vanishes. When the validity contestation does not face any judgements or shaming, it is a sign that all other parties are ready for the profound changes, and the currently contested norm is no longer in force.

Having analysed the new contestations in comparison with those that emerged during the initial translation of the principles, it is possible to see whether the robustness of the South American migration policy has undergone any changes. The robustness at the regional level depends on the actions committed by the countries locally. If each country starts to express contestations, they automatically influence the robustness of the norm in general. Certainly, the regional bodies (MERCOSUR and CSM, in this case) can express their criticism, which will be counted as a third-party reaction. However, the nation-states play a decisive role in shaping the robustness. Therefore, by analysing the given hypotheses, it will be possible to understand whether the robustness of the given principle remains at the same level, strengthens, weakens or reaches a complete decay.

§3.3. Data Sources

After the overview of the methodological framework and the operationalisation of the hypotheses, a short outline of the data sources will be made.

First of all, the primary sources of the analysis will be official documents such as declarations, treaties and individual statements of the regional organisations and the countries. These will include:

Regional Agreements:

- CSM Declaration (2000)[1]
- Agreement on Residence for Citizens of the States Parties of MERCOSUR, Bolivia and Chile (2002)[2]
- Declaration on Migration Principles in Santiago de Chile (2004)[3]

Chile:

- Decree-Law 1.094 (1975)[4]
- Presidential Instruction No. 9 (2008)[5]
- Law 20.430 (2010)[6]
- Presidential Instruction on Administrative Measures with immediate effect (2018)[7]
- Boletín 8.970-06 (Proyecto de Ley de Migración y Extranjería) (2018)[8]

Argentina:

- Migration Law No. 25.871 (2004)[9]
- Decree of Necessity and Urgency 70/2017 (2017)[10]

Brazil:

- Law No. 11.961[11]
- The Immigration Law 13.445/2017 (2017)[12]
- Order No. 666 from July 25, 2019[13]

[1] Cited in references as "Declaración de CSM"
[2] Cited as "Acuerdo sobre Residencia para Nacionales de los Estados Partes del Mercosur Bolivia y Chile"
[3] Cited as "Declaración de Santiago sobre Principios Migratorios"
[4] Cited as "Decreto-Ley 1.094"
[5] Cited as "Instrución Presedencial No. 9 sobre la "Política Nacional Migratoria"
[6] Cited as "Ley No. 20.430, Establece disposiciones sobre Protección de Refugiados"
[7] Cited as "Medidas administativas con efecto inmediato"
[8] Cited as "Proyecto de Ley de Migración y Extranjería (Boletín 8970-06)"
[9] Cited as "Ley No. 25.871: Política Migratoria Argentina"
[10] Cited as "Decreto 70/2017. Modificación de Ley N° 25.871"
[11] Cited as "LEI Nº 11.961"
[12] Cited as "LEI Nº 13.445"
[13] Cited as "PORTARIA Nº 666, DE 25 DE JULHO DE 2019"

All primary documents are written in Spanish and Portuguese, however some of them are also officially translated into English. When it is possible, I will use the English version, but for those documents available only in the source language, in order to omit any biases, my translation will be used and specified, where needed. Along with the aforementioned sources, in order to obtain more data, I aim to use the official documents and websites coupled with academic works in the field.

One of the important sources is the video lecture held by Pablo Ceriani Cernandas, an Argentinian scholar and specialist in migration and human rights' issues. He is currently a coordinator of the migration research at the Institute for Justice and Human Rights of the National University of Lanús in Argentina (UNLA). Moreover, he is a former vice-chairperson of the United Nations Committee on the Rights of Migrant Workers and Their Families (CMW) and a former coordinator of several programs at the Argentinian Centre of Social and Legal Studies (CELS). His lecture, published at the official site of Pisa University (Italy) was dedicated to the migration governance of South America, which helped to close the gap in literature regarding weaknesses and challenges that MERCOSUR and regional countries face nowadays.

As for the secondary sources, several academic works were used to obtain information regarding the historical background on the countries' legislations. The media sources were also useful depicting a clearer picture of what discourses prevail amongst the population and leading authorities of the three countries regarding the migration issue.

To conclude, all beforementioned sources helped to structure a coherent impression and conduct a systematic analysis of the migration norm's dynamics in the region.

Conclusion

The given Chapter provided a detailed operationalisation of the indicators and hypotheses as well as the clarification of some terms and principles. Moreover, it possesses an overview of how the following empirical analysis will be structured and which data sources will be used.

Chapter IV – Historical background: regional norms' translation into domestic legislation

Introduction

In this chapter, I will provide historical background on the migration regime in South America, focusing on regional and national levels. Firstly, I will analyse to what extent the migration norms established at the regional level are welcoming, via checking whether the foundation documents are based on human rights as well as on the pro homine principle, that is, if they do not portrait the migrant as a threat and if they enshrine the free movement of persons. Secondly, I will examine how regional migration norms were translated into domestic discourse, law and implementation in Argentina, Brazil and Chile. Therefore, all contestations on these three steps of translation (if there are any) will be checked on being validity or applicatory, in order to identify the scope of the norms' adoption.

§4.1. Regional migration governance: the foundation of MERCOSUR and CSM

Historical background

Many South American countries in the 1970s had a military regime, a fact which contributed to the absence of any regional cooperation at that time. Only when the countries' military dictatorships weakened and came to an end could the regional countries begin a comprehensive dialogue regarding integration issues (Ratto, 2004). The regulation of migration became an important point of discussion during bilateral talks, as well as within the newly appeared regional organisation, the Latin American Integration Association (ALADI), founded in 1980 (Modolo, 2010). Back then, cooperation in all fields was still mainly carried on a bilateral basis. In 1985 and 1986, Brazil and Argentina signed their first agreements on economic cooperation, symbolising a new era of close collaboration (Modolo, 2010).

Meanwhile, in parallel with ALADI's meetings, the two aforementioned countries, along with Paraguay and Uruguay, felt the need of creating a broad and stable common market (Modolo, 2010). The idea of creating MERCOSUR came at a time when South American countries' perspectives on the future development of the region coincided. Most of the countries had just brought their restrictive military regimes to an end and were now focused on liberalisation, openness and de-regulation (Bernal-Meza, 2000). The creation of MERCOSUR was meant to establish and guarantee a democratic development of the region as well as deterring any more military dictatorships from occurring ever again. Hence, it was planned to become not only a common market but also to regulate the socio-political sphere of the countries' cooperation (Margheritis, 2015). Therefore, in 1991, the foundational Treaty of Asunción[14]

[14] "Tratado para la Constitucion de un Mercado Comun entre la Republica Argetina, la Republica Federativa de Brasil, la Republics del Paraguy y la Republica Oriental del Uruguay" or "El Tratado de Asunción"

established a new regional organisation based on free trade, namely, on a "free movement of goods, services and factors of production" (MERCOSUR, 1991). The *free movement* is the keystone of the cooperation between full and associated members.

The establishment of open borders between the countries implied the need of regulating migration conditions. Consequentially, in 1999, the South American Conference on Migration (CSM) was created as a regional forum to bring all 12 South-American countries together (Margheritis, 2015). One year later, in 2000, the first common Declaration on migration initiatives was signed by 12 South American countries. This was the first official document specifically related to regulating migration policies in the whole region (CSM, 2000).

Two years later, in 2002, The Residence Agreement for Citizens of States Parties of Mercosur, Bolivia and Chile was signed (Modolo, 2012) This agreement followed the CSM initiatives in establishing coordinated migration actions by specifying them for the MERCOSUR countries. Thereby, the regional initiatives were internalised by the subregional organisation (MERCOSUR) which later came to unite all regional countries. As I will elaborate further below, this treaty is highly relevant for understanding the migration principles established at the regional level of MERCOSUR. Another crucial agreement on migration regulation is the 2004 MERCOSUR Declaration on Migration Principles, signed in Santiago de Chile (MERCOSUR, 2004). The ratification of the Residence Agreement by all countries happened only in 2009, when the Document officially entered into force; nevertheless, it had previously been de facto in force in several countries.

The CSM Declaration, along with the beforementioned MERCOSUR documents, are the basis of the regional migration principles, thus, this is the reason why they will be taken into consideration for a closer analysis in the following section.

The Migration Issue: Documents' analysis

1. ***CSM:***

The very first CSM Declaration (CSM, 2000) became the initial step of the regulation of migration policies in South America. Albeit short and only highlighting some main principles, it already emphasised the importance to guarantee migrant rights' promotion, protection and defence as well as their equality (Appendix A, Table 1A, Principle 3). Migrant's rights were put at the same level as natives', and, far from labelling a migrant as a threat, they considered them to be a crucial aspect of their subregional integration processes.

Along with the aforementioned, the integrity of migration policies throughout the region, which implied the free movement of persons, was named as another vital principle (Appendix A, Table 1A, Principle 4). The acknowledgement of the importance of subregional organisations in the elaboration,

implementation and promotion of common migration policies shows the attempt of CSM to proclaim coherent regional policies, where all actors (at different levels) are jointly working on the promotion and implementation of the established principles.

Although Declaration does not possess a large number of principles, it mainly focused on making the migration policy safe and based on human rights. Thus, the Declaration was an initial step towards promoting a welcoming migration policy, yet it failed to establish any detailed regulations.

1. MERCOSUR: Residence Agreement and Declaration of Migration Principles

The Residence Agreement and the Declaration of Migration Principles (MERCOSUR, 2002 & 2004) not only followed the first CSM Declaration's principles, but they also developed them further.

The Residence Agreement, similarly to the CSM Declaration, expressed its commitment to the free movement of persons throughout full and associated MERCOSUR member-states. This means that any citizen from a MERCOSUR country could obtain a two-year Temporal Residence Permit when they wish to stay for a long period of time or settle in another state-member country (Appendix A, Table 2A, Article 4). The Agreement established and eased some procedures; thus, by merely presenting a valid passport, a birth certificate and the statement of no international criminal records and no local criminal records for the last 5 years, the person was granted this Permit, which, when expired, could also be easily transformed into a Permanent Residence. These facilitated procedures sought to boost the free movement between MERCOSUR States, deemed an important feature for the regional development and integration.

In addition, the given Agreement has proven to be based on human rights. The document proclaims that any foreign resident should have access to any activity on the same conditions as a native citizen (Appendix A, Table 2A, Article 8). Moreover, the equality of migrants and citizens' social, cultural and economic rights and liberties was established, which entailed the equality of treatment regarding the salaries' amounts, working and education conditions, as well as social securities (Appendix A, Table 2A, Article 9). This document proclaimed and guaranteed the right of family reunion, meaning that the migrants' relatives have a special treatment when applying for Residence.

As for the Declaration of Migration Principles, it equally follows the Residence Agreement in proclaiming human rights (Appendix A, Table 3A, points 3-6 and 9-10), freedom of movement (point 2) and acknowledgement of the role of migration to the countries' development (points 1&7). By proclaiming migration's vital role in the States' formation and its progress, the document advocates for an inclusive and multicultural migration policy. In addition, the document represents a clear statement of non-criminalisation of irregular migration, which shows its commitment to the pro homine principle (point 7). In the Declaration, the States express their firm position against xenophobia, collective deportation and arbitrary detention (point 9).

Outcomes

The three documents analysed above built solid grounds for the proper regulation of migration in the region. Yet they mostly established the moral principles and guidelines to be followed, without detailing how they needed to be taken into practice. Thus, the precise regulations were left to the countries to be elaborated by themselves at the time of the principles' translations into their legislations.

All three acknowledged the same principles of equal rights coupled with the promotion of the social and economic protection of migrants from the violation and abuse of their rights. Thus, this fair and equal treatment of migrants and the priority of family reunion are the essential principles. In addition, the MERCOSUR Declaration is also precisely focused on the non-criminalisation of irregular migration, the non-refoulment principle and the protection of a refugee's status. For the first time, the Declaration explicitly distinguished between the notions of irregularity and illegality.

It is worth noticing that there is no rigid difference between *irregular* and *illegal* migration: as a matter of fact, in many Western official documents as well as in the press, these terms are very often used interchangeably (Paspalanova, 2007). Nonetheless, already in 1975 the UN General Assembly had recommended all UN organisations to rule out the use of the term "illegal migrant", substituting it by "irregular" or "undocumented" (Paspalanova, 2007). Later on, in 2004, the UN International Organisation on Migration (IOM) stated in its glossary on migration law that a person cannot be "illegal", since only their acts can be illegal or criminal, thus, a migrant should only be considered as regular or irregular (IOM, 2004). Since the notion of "illegal" has such synonyms as "illicit", "criminal" or "wrongful", it entails a negative social and political connotation, which automatically leads to stigmatisation, and correlates migration with a criminal act. The irregular migrant is usually an undocumented person who is not necessarily related to the criminal act (Paspalanova, 2007). Migrants can have an irregular status when their documents are, for instance, expired or lost, which does not make them a criminal (Paspalanova, 2007). The labelling of an undocumented migrant as an "illegal person" manipulates the public opinion and leads to anti-immigrant sentiments as well as to the depiction of migrants as a threat (Paspalanova, 2007).

In the South American context, the countries at the regional level have shown their firm position on the issue, opting for the non-criminalisation of irregular migration, clearly stated in the joint Declaration from 2004. The MERCOSUR Declaration (Appendix A, Table 3A point 7) proclaims the necessity to regulate migration flows, without treating the irregular status of migrants as a punishable act by criminal law. Meanwhile, it also claims (point 8) the need to fight against the smuggling and trafficking of persons and other international crimes. Hence, in this document, there is a clear line between what irregularity and illegality mean.

If a person possesses an irregular status, they are not submitted to the automatic detention and deportation, quite on the contrary, they will be given a chance to firstly regulate their status. This is

where the pro homine principle is meant to come into force, meaning that the migrant will be given a great number of possibilities to regulate their migration status before the implementation of expulsion or refoulment. Family reunion (point 6) is admitted to be a principle of great importance, which, once again, confirms that the refoulment is a measure of last resort.

Illegality is not mixed with the general issue of migration policies in South America. Smuggling migrants is a word-widely acknowledged crime, which entails the migrant's conscious decision of entering the country illegally by pursuing some financial or material gain. Those who consciously do so, without any plans to actually stay or settle in the country, are committing an illegal/criminal act. This is where the difference between an irregular migrant and a criminal lies. The migrant who crosses the border illegally with no illicit intentions in mind is different from a criminal who makes use of the illegal entry having only criminal purposes. Hence, already in the foundation documents (Residence Agreement and Declaration on Migration Principles) is irregular migration treated differently from criminality. Countries are expected to prevent crimes, this is why individuals and/or organisations which are involved in illegal activities, such as human trafficking, should be sanctioned. Meanwhile, migrants who are urged to work illegally, on the contrary, will not be sanctioned, since only the physical and legal entities that hire them are liable.

Moreover, as it is mentioned in the Residence Agreement (Appendix A, Table 2A, Article 4) and in the Declaration (Appendix A, Table 3A, point 8), the criminal records are a major issue, which needs to be addressed jointly by the whole region. Along with smuggling and human trafficking, severe international crimes are the main reasons for impeding entry to the country. In fact, those who have been sentenced to a crime over the last five years in the country of origin or of residence may have their entry limited.

To conclude, these three documents complement each other in establishing a firm base of principles for the migration governance in the region. They strongly advocated for a welcoming migration policy, by guaranteeing migrants' rights protection, ensuring the non-criminalisation of irregular migration and combating all types of criminality. The migrant is clearly not seen or treated as a threat. The next step was the translation of these principles into the countries' national legislations. Since the principles of the CSM Declaration were included in the MERCOSUR Residence Agreement, only the latter was needed to be ratified since it already incorporated all principles.

§4.2. Translation of the Regional migration principles to Domestic Legislation

I. *Historical Background:*

Argentina, Brazil and Chile experienced a similar historical event in the XX century: military regimes. The three of them later returned to a civilian regime, but not all of them set their restrictive migration policies, which had prevailed during the military regimes, fully aside.

In 1976, Jorge Videla, a military dictator, rose to power in Argentina. The dictatorship excelled in making restrictions in many fields, migration included. In 1981, new migration Law, known as "Ley Videla" proclaimed the migrant as an enemy; thus, the migrant was truly perceived as a threat to the country's security (Hines, 2010). The deportation procedure was highly strict, which allowed an immediate expulsion of any person who was suspected of representing a threat to the national security or public order (Hines, 2010). Migrants had no possibility to contest or ask to reconsider the authorities' decision concerning their refoulment. The undocumented migrants were submitted to the same restrictive measures of expulsion and possessed no societal or educational rights. In general, this law promoted the immigration only of those who possessed the cultural characteristics desired to be integrated into the Argentine society (Hines, 2010). All aforementioned principles confirm the fact that the "Ley Videla" was inherently discriminative, selective and promoted neither migrants rights' equality nor any right of free movement.

In 1973, Augusto Pinochet became the Chilean leader and ruled the country as a dictator until 1990. The history of Chilean migration regulation is rooted in Pinochet's Migration Law (Decree Law No. 1.094), which was issued in 1975 (Government Junta of Chile, 1975). It was as selective and restrictive as that of Argentina's: no equality of migrants and natives' rights, the expulsion procedure was equally strict and high skilled migrants were more desired than any others (Finn & De Reguero, 2020). These restrictive views of the military regime regarding migration were deeply entrenched into the domestic legislation, which presented a serious obstacle for a successful and fast translation of the more welcoming standards adopted regionally into the national laws (Finn & De Reguero, 2020).

As for Brazil, in 1964 a military dictatorship came to power in the country. In 1980, the military regime adopted a restrictive immigration Law, which became the main document regarding the regulation of migration flows within the country, reaffirming all restrictive practices (CIDOB, 2004). Brazil had been almost a closed country, especially for the intraregional migration, since the authorities of the Fifth Brazilian Republic proclaimed a policy of limited entry for foreigners in order to secure working places for nationals (CIDOB, 2004). For many years, the only way to obtain the residence permit was only by being hired for work in a Brazilian organisation. Brazil, although it had signed the Geneva Convention of Refugees from 1951, was actually open only to highly educated migrants, preferably of European origin (CIDOB, 2004). Although the borders were highly controlled, there appeared a great number of irregular migrants, who certainly lacked any rights in the country (CIDOB, 2004). Taking the aforementioned into account, the Brazilian migration policy can also be qualified as restrictive during the dictatorship era.

II. After the Military Regimes: Translation of the Welcoming Migration Principles:

When the military regimes ended and the regional countries' collaboration started to develop, the regional organisations CSM and MERCOSUR emerged. The first foundational agreements pushed the

countries to translate them into their legislation, changing the previous restrictive migration policies into more welcoming ones. Nonetheless, the three countries which are to be analysed in the given thesis experienced different dynamics of the principles' translation. Here, it is essential to provide the analysis of how the countries started internalising the regional norm.

- **Argentina**

Domestic discourse

The Argentinian society already felt the necessity of a new migration law several years before signing the CSM declaration and the MERCOSUR Residence Agreement. When the dictatorship came to an end in 1983, the human rights discourse in the context of migrants' rights increased, leading to the appearance of the advocacy community (Hines, 2010). The CAREF (Argentinian Commission for Refugees and Migrants) and CELS (Argentinian Centre for Legal and Social Studies) became the leading organisations in promoting and protecting refugees and migrants' rights (Hines, 2010).

In the early 1990s, although the country was ready for new changes, some public officials together with the media were unsatisfied with the high amount of undocumented migrants entering the country, often blaming them for crimes and unemployment (Hines, 2010). Notwithstanding the beforementioned, Argentinian civic organisations were strongly opposing any anti-immigrant sentiments, urging the government to change the migration law (Levit, 1999).

The first step towards a new migration policy was made by the adoption of a new Constitution in 1994 (Levit, 1999). It finally put an end to the severe human rights abuses so common during the dictatorship period. This Constitution established the supremacy of the international law, entailing the direct translation and incorporation of several human rights' agreements signed before by Argentina, such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) (Levit, 1999). This was the best opportunity for human rights' non-governmental organisations (CELS and Lawyers for Civil Rights) and civic organisations (CAREF) to advocate for a new migration law based on human rights' principles (Hines, 2010). The group of lawyers from CELS published annual reports on migrants' rights and their discrimination, focusing on the inadmissibility and inadequacy of the old migration law (Hines, 2010). Nonetheless, as the government did not show any initiatives in changing the law, eight Argentinian human rights' organisations founded the Committee of Organisations in Defence of the Rights of Immigrants, which, by means of negotiations with the government, pushed forward the implementation of a new Migration Law (Hines, 2010). It is of great importance to highlight that the draft version of the new legislation was prepared and brought before national deputies by this Committee. Thus, it is possible to say that the current Migration Law is the product of the combined efforts of national civic and human rights organisations.

The signing of the Residence Agreement in 2002 turned the domestic discourse even more energetic in its advocacy for a new law. Due to the new Constitution, the Residence Agreement, as an international treaty, had to be ratified and incorporated into the domestic law (Hines, 2010). This Agreement, in turn, was also used by domestic actors as an influence for the promotion of the new Migration Law, which was approved by both Chambers (Chamber of Deputies and Senate) and entered into force in 2004 (Hines, 2010).

Summing up, the discourse regarding the ratification of the MERCOSUR Residence Agreement, as well as the adoption of the new Migration Law, at the beginning faced some obstacles from the authorities and the media. They even expressed several validity contestations, however, a great number of non-governmental organisations and civic groups were relentless in advocating for the new Law and pushing it forward.

The Law

When Law 25.871 was adopted, it proved to follow the human rights' paradigm by fully entrenching into national law all principles established by MERCOSUR. This Law deeply changed the perception of the foreigner: it eliminated the negative attitude towards migrants and no longer considered them a "threat" (Appendix B, Table 1B, Article 2). Therefore, the former restrictions on migrants' mobility were changed into freedom of movement (Article 3).

This Law placed the migrants' rights at the same level as human rights (Article. 4). The right to migrate was acknowledged as an essential and inherent right of any person. At this point, the Argentinian legislation even surpassed the Residence Agreement in its welcoming approach. The openness of the nation to the migration influx increased due to the grant of equal rights to migrants, turning their entry to the country and internalisation easier (Article 6). Migrants now benefitted from the unlimited access to justice, public health, social institutions, education and labour on the same basis as native citizens, notwithstanding their migration status (Articles 7, 8, 13, 16). This means that the irregular status is not a crime. Though irregular migrants are asked to promptly regulate their status, irregularity in itself should not be used as an excuse to limit their rights and liberties.

Moreover, family reunion became the major principle of the Law (Article 10), prevailing even under the cases of expulsion (Articles 62&70). The cancellation of the Residence Status and deportation can be exercised only when consciously presenting false documents, smuggling, having final convictions of severe crimes for over five years, having been involved in acts of genocide or terrorism or lacking the reasons which allowed to obtain the current type of residence. Nevertheless, in case the migrant provides proof of having family members in the country, they should be exempted from deportation or cancellation of residence. Clearly, detention and expulsion are seen as a last resort. The appealing procedure for the judicial revision is available through both administrative and judicial means, allowing for a comprehensive revision of the decision taken. This shows that the State, while still combating

criminality, confirms its commitment to the pro homine principle highly promoted by the MERCOSUR foundation documents. What is more, according to Articles 23&28, a special treatment of migrants from MERCOSUR countries (full and associated members) should be guaranteed. Citizens from these countries can be granted the two-year Residence Permit when planning to move to Argentina with the purpose of staying or settling in the country.

As a result, all principles of the open migration policy were untouched and, in some points, even strengthened (Article 4 & 62). Argentina was the first to change the military regime's law (restrictive and anti-democratic) to the much more open model proclaimed at the regional level. This Law emphasised the importance of the consolidation of the migration policy in the hands of MERCOSUR.

The implementation of the Law

The given Law was widely implemented, yet the implementation procedure was not carefully thought through (Domenech & Pereira, 2017). There was an urgent need for regulating how the law had to be implemented in different fields and throughout the whole country. For a long period, Argentina had had a highly strict migration policy, and such a rapid translation to a new type of policy needed proper guidance (Hines, 2010). Even though some new governmental bodies were founded to implement the new Law, it was not enough. It was not easy for the old federal and local institutions to quickly adopt the new regulations. This lack of proper regulations was the main point of critique from human rights' organisations (Domenech & Pereira, 2017). Therefore, the government headed by Néstor Kirchner formed the Committee of Organisations in Defence of the Rights of Immigrants, which included CELS and CAREF, to lobby and control the new regulations to comply with the Law (Hines, 2010).

Nevertheless, I would argue that the implementation of the Law was rather successful. Statistically speaking, during the time of "Ley Videla", there were 800,000 irregular migrants (CELS, 2011). They had no possibility of regulating their status, since when they appeared in front of the officials, they were immediately deported. The new Law led to the decrease in detention and deportation of migrants, since it now was a measure of last resort. This allowed migrants to regulate their status without any fear of deportation (CELS, 2011). Consequently, the number of registered migrants increased, and in 2004 it exceeded 1 million (OECD/ILO, 2018). Furthermore, in 2015, foreigners constituted 5 per cent of the Argentine population accounting for 2.1 million (OECD/ILO, 2018) which shows a positive and fast implantation of the Law. Throughout 2004 to 2015, the number of expulsed irregular migrants or migrants with criminal records accounted only for 10 thousand people (OECD/ILO, 2018).

To conclude, despite some validity contestations expressed by public officials at the discourse level when the principles were still not being translated, the strong and active third-parties succeeded in changing the discourse, effectively leading to the incorporation of the regional principles. The new Argentine Law fully adopted the Residence Agreement and added some specific clarifications for the law's application.

- **Chile**

Domestic discourse

Regarding Chile, in 1990, when Patricio Aylwin won the elections, the democratic rule was finally brought back (Schmidt, 2020). Although the Democratic Alliance of centre-left political parties, called *Concertación* and headed by Patricio Aylwin, won the elections in 1990, putting an end to the military dictatorship, the Alliance did not gain legislative majority (neither in the upper nor in the lower chamber) (Finn & De Reguero, 2020). Thus, the newly elected *Concertación* was forced to negotiate all law projects with the right-wing and centre-rights parties (Independent Democratic Union and National Renewal), who would block any proposal for a new migration law (Finn & De Reguero, 2020).

Therefore, instead of changing the whole law, as the Argentinian neighbours did, the Chilean government made use of executive orders to implement some important amendments to the existing Law without being approved by the Chambers (Pando Burciaga, 2020). In parallel with the amendments, Aylwin, Bachelet and Piñera's governments were constantly trying to push through different projects of migration law, yet unsuccessfully (Schmidt, 2020). In addition, it is worth noticing that both the public opinion and the media were not strongly pro-immigrant, as it was the case in Argentina (Pando Burciaga, 2020). Chile did not experience such a sharp advocacy for a policy change by the civil society.

Chile possessed a relatively closed society regarding migrants. Therefore, their increase in the 2000s led even to a slight rise in anti-immigrants views among the society (Pando Buciaga, 2020). The public surveys showed a rather negative attitude among native citizens, concerned by foreigners occupying their job places (Pando Buciaga, 2020). In 1992, the percentage of foreigners constituted 0.8 per cent of the population, yet in 2005, it reached 1.3 (ANEPE). While a relatively small percentage of foreigners, for Chile this was a great increase in comparison with the dictatorship era.

Although Chile possessed a many human rights non-governmental organisations and civic groups, they were not so influential (Pando Burciaga, 2020). However, this did not stop them from fully backing the amendments the governments were trying to implement. These amendments were the only way to bring in some real changes to the restrictive Law. The most significant of them were Presidential Instruction No. 9 (2008) and Refugee Law No. 20.430 (2010).

The Amendments

These amendments can be analysed in relation to the translation of regional regulations into domestic legislation. Chile also signed the 2002 MERCOSUR Residence Agreement, which urged the government to find a way to translate the adopted initiatives into domestic laws and regulations. The Agreement was ratified in 2005, yet it went into force only in 2009, according to the Circular 26.465[15]

[15] Cited as "Circular No. 26.465"

(Chilean government, 2009). The Agreement was incorporated without any validity contestations, though the Chilean government decided to add some applicatory changes in its implementation. The eased procedures in obtaining two-year Temporal Residence Permits, which were established by the Residence Agreement, applied only to MERCOSUR full-member States. The entry and exit procedures for other countries were still regulated by bilateral agreements.

The Presidential Instruction emphasised the Chilean role as a welcoming country (Appendix B, Table 2B, point 1A). Migration was no longer perceived as a threat to the country's security, but as a source of development (point 1C&D). Chile acknowledges and guarantees the freedom of movement as well as the migrants' rights to family reunion, non-discrimination and equality (point 2A). Likewise, it promotes the refugees' protection and their special treatment by the implemented Law No. 20.430 (Appendix B, Table 3B). Following the principle of non-refoulment, the refugees benefit from a large number of entry and stay possibilities. They cannot be immediately deported in the case of lacking documents, thus, refugees gained the possibility to regulate their status when already residing in the country.

As regards irregular migration, the non-criminalisation principle is openly promoted by the Presidential Instruction (Appendix B, Table 2B, Point 2A). The country is expected to pursue the regularisation of migrants' status, but irregularity in itself is no longer a crime. This means that the pro homine principle is present, just as in the case of Argentina. The country aims to provide migrants with the possibility to regulate their status before the usage of the expulsion procedure.

Nonetheless, Chile also emphasises the great need to fight criminality, clearly distinguishing it from irregular migration. The person with criminal records might be limited from entry; however, the family reunion principle should not be undermined and must be taken into account when exercising the deportation procedure. As regards international crimes, Chile aims to strongly fight migrant smuggling, human trafficking and other severe crimes. This persecution of internationally acknowledged crimes does not confuse the irregularity of stay with criminality.

Thus, the main principles concerning migrants' rights and liberties, stated in the MERCOSUR Declaration and Residence Agreement, were mainly incorporated by Presidential Instruction No. 9 and Law 20.430, aimed at the refugees' protection. Although no new migration law was adopted to replace the old version, these amendments were successful in incorporating the regional migration principles.

Implementation

Michelle Bachelet's Presidential Instruction No. 9 analysed above was the most successful attempt at reshaping the migration policy. Although this executive directive was a great step in the translation of welcoming migration principles into domestic legislation, nevertheless, this was only a directive, which could still be toppled in any case (Schmidt, 2020). Furthermore, despite the fact that Bachelet's

Instruction entered into force and regulated the entry to the country, the migrants' rights and liberties, as stated in the document (Appendix B, Table 2B, point 2A), were never added to the updated version of the 1975 Migration Law. Thus, these instructions were in force de facto, yet de jure they did not explicitly end the previous Law.

Taking into consideration everything mentioned above, the translation of the MERCOSUR principles into Chilean domestic discourse, law and implementation faced several applicatory contestations. The parties in Congress could not agree on the degree of openness to implement, so the projects for a new migration law remained unadopted. However, the centre-left parties found the way to promote human rights along with freedom of movement, but they were urged to make it via executive orders or separate laws tackling some specific categories of migrants and refugees (Schmidt, 2020). Therefore, the country's migration policy was still regulated by the old law, renewed by the implemented amendments (Schmidt, 2020).

The adopted amendments brought about important changes to the migration policy regulations, easing the entry and stay conditions for foreigners. The detention and expulsion of irregular migrants decreased, leading to the increase of regular migrants in the country. In 2017, the number of foreigners living in Chile reached 2 million, representing 7 per cent of the population (Arostegui, 2018). Since no new Law came into force, the way the amendments needed to be implemented was open to question. As a result, State institutions were aided by civic and social organisations on how to apply these modifications (Pando Burciaga, 2020). Consequently, it can be stated that regionally agreed principles underwent a half adoption, since they faced several applicatory contestations, which led to the implementation of several amendments, but no new Migration Law was pushed through.

- ***Brazil:***

Domestic discourse

Brazil, along with Chile, did not change its migration law when the military dictatorship came to an end in 1985. While Fernando Henrique Cardoso's governments submitted a project for a new law to the National Congress, it faced a lot of amendments and was never adopted (Muñoz Bravo, 2020). Some parties were not ready for new opened migration policies after so many years being a closed country with highly strict migration norms (Muñoz Bravo, 2020). During the dictatorship, the bulk of foreigners was constituted by cross-border working migrants, who, as a matter of fact, were often undocumented.

Nevertheless, Cardoso and the following governments managed to promote several amnesties, executive orders and programs which regulated the status of undocumented migrants and granted them equal rights and liberties. The first two amnesties in 1988 and 1998 regulated the status of more than 80 thousand migrants (Muñoz Bravo, 2020). These amnesties and amendments were the government's solution to the ongoing domestic situation, where Congress refused to consider and adopt the new initiative of a

migration law presented by Lula da Silva (Muñoz Bravo, 2020). Due to disagreements between the largest parties in the National Congress, namely between the Brazilian Social Democratic Party (PSDB) and the left-wing Workers' Party (PT) headed by Lula da Silva (2003-2011) and Dilma Rousseff (2011-2016), several projects for the modification of the migration law were blocked (Muñoz Bravo, 2020). Still, many amendments managed to be approved thanks to the civic and other non-governmental organisations, which were gaining more and more strength.

Meanwhile, in 2013-2016, these organisations, along with the Municipal Secretariat of Human Rights and Citizenship (SMDHC), The Coordination Office for Migrant Policy (CPMIg) and the National Immigration Council (CNIg), actively started to advocate for the adoption of a new migration policy (Hugueney and Godinho, 2017). They established platforms and dialogues between the civil society, the government, immigrants and scholars to discuss the migration issue (Muñoz Bravo, 2020). These three years of intense discussions coincided with a strong political and economic crisis, which led to the Dilma Rousseff's impeachment. Despite this turbulent period, the next president, Michel Temer, managed to finally push the law through, adopted in 2017.

From Amendments to Migration Law

In 2005, when Brazil became a leading actor of the regional migration governance in MERCOSUR, it ratified the Residence Agreement, according to Decree No. 925[16].

Meanwhile, in 2009, Lula da Silva adopted one of the largest amnesties in 2009 (Law 11961), regulating not only the status of 45 thousand migrants, but also establishing equal rights for all migrants seeking to stay and settle in the country. It granted the temporal residence to all migrants who were previously impeded from entry, as well as to those staying on an irregular basis (Appendix B, Table 4B, Art. 1&2). The Law clearly stands for the non-criminalisation of irregular migration. The expired residence permit or the illegal entry without a criminal intention does not equal a criminal act, on the contrary, the Law aims at helping these migrants recover their documents or obtain a new Residence Permit and settle in the country.

The criminal issue is set apart from migration irregularity. The clean international and domestic criminal record is an important requirement for obtaining a permanent residence in Brazil (Article 7). Hence, the criminality issue is not mixed with irregularity.

What is more, this Law entrenched the equal rights and liberties which the migrants should benefit from in the country (Article 3). Indeed, the main MERCOSUR migration principles are present even in such a small amendment. As a result, the amendments were a special set of laws which implemented the

[16] Cited as "DECRETO LEGISLATIVO Nº 925"

amnesties for irregular migrants or those who could not enter the country before due to the restrictions of the dictatorship era.

Only in 2017 was the new Immigration Law 13.445/2017 adopted, becoming the most liberal law since 1980. It was the first law entirely based on human rights, and declared the right to migrate as such (Appendix 5B, Table 5B, Articles 3&4). To some extent, it was even more inclusive than the Argentinian 2004 Law, which was widely acknowledged to be the most democratic. For instance, the irregular migrant does no longer face direct expulsion, instead they have 60 days to regulate their status, as indicated in the article devoted to the non-criminalisation of irregular migration (Article 50).

The given law sought to prevent criminality and all kind of severe crimes, imposing entry restrictions for migrants with a specific criminal record (Article 45). Nonetheless, it also possessed several exceptions, according to which the migrant's expulsion could be exempted, even in the case of having said records. The main cause for obtaining the exemption is the principle of family reunification, which must prevail under all circumstances (Article 54). Hence, the given law can be rightfully considered inclusive and welcoming. It does draw a clear line between criminality and migration irregularity. The Law considers deportation as a last resort, giving migrants the chance to regulate their status first. Hence, the Law complies with the pro homine principle, by taking into account every individual situation into account and protecting the migrants' interests.

Implementation

The 2017 Law was implemented after a long period of contestations. When the MERCOSUR principle of open migration policies was brought to the domestic discourse, conservative parties in Congress, which throughout the whole 1985-2017 period had a strong position, blocked the adoption of a new migration law (Wejsa and Lesser, 2018). Nevertheless, despite all contestations under Cardoso, Lula and Rousseff's government, many amendments were passed, deriving in the implementation of the 2017 Law.

For many years, the Brazilian migration policy was regulated in accordance to these amendments, and it became one of the most influential MERCOSUR countries in the field of protection of migrants and refugees' rights (Wejsa and Lesser, 2018). Yet the implementation of the new migration policy in 2017 meant the complete incorporation of the MERCOSUR principles in a coherent list of norms stated within one document. This made it possible to better systematise the regulations existing de facto in the country.

Although 20 articles, which could have made the document even more inclusive, were vetoed, it did not prevent the Law from being finally adopted (Bruno Bogosiano, 2018). The right-wing parties urged Michael Temer to veto some articles, yet, even without them, the law complied with all the standards of a welcoming migration policy. The civil society's groups along with other non-governmental human rights organisations were highly satisfied with the adoption of such a desirable migration law.

Nonetheless, the State institutions still needed more concrete and elaborated regulations on how to rightfully implement the new Law (Bruno Bogosiano, 2018).

Summing up, the Brazilian route towards the implementation of this law was extremely long and full of many political events. The amnesties and amendments led to the implementation of regional principles, while the new Migration Law derived in the full and official adoption of all principles.

§4.3. Outcome

The military dictatorships in South America inflicted substantial damages in a wide array of topics, both on their very own countries and on the region as a whole. Of course, the migration issue was not extent from such ravage. The Migration Laws passed by the authoritarian regimes represented a harsh blow to the human rights of every South American citizen, treating their neighbour countries as unwanted visitors, with an utter disregard for the region's common history and culture. It would take many years of struggle and unrelentless endeavour to bring humanitarian laws back to the field of migration and refugees.

First and foremost, the CSM and MERCOSUR's conjoint efforts must be highlighted: had it not been for the institutions' work, the profound changes that took place in the matters of migration and human rights would have never occurred. The early steps of the CSM Declaration back in 2000 helped to give shape to all the following Laws and Amendments at the national level. It should be noted that both MERCOSUR and the CSM's regional migration policies deeply entrenched themselves in the value and importance of human rights and all it implies: the worth of the pro homine principle and the significance of the family reunion. Indeed, the South American migration policy was more welcoming than ever before.

Argentina was the first to act upon the regional institutions' recommendations, taking matters into its own hands and translating the regional migration norms into its legislation as early as in 2004. With only a few opposers, the country made history with its revolutionary laws and became the model to be followed by all other members of the MERCOSUR community. Soon enough, Brazil and Chile followed in its tracks, but with more obstacles in their ways. The latter two counted with strong right/centre-right parties which opposed any type of opening to the rest of the region, yet the governments together with third parties managed to incorporate the welcoming migration principles.

The vast majority of all these successful translations could only become a reality thanks to the passionate work of civic groups. Their actions ranged from assisting migrants in their paperwork to actively demonstrating against and calling out on any human right violation, even going as far as drafting the very documents needed to be passed in Congress. Quite interestingly, this small yet at the same time powerful contribution of third parties may well be linked to Deitelhoff and Zimmermann's model (2018) where the influence of third parties' reaction does actually influence the outcome of a norm's creation.

All in all, in spite of having the same origin in military dictatorships, Argentina, Brazil and Chile managed to leave those outdated laws behind in order to embrace a new era of conjoint and revolutionary welcoming policies, regardless of the fact that each of them did so at their own pace.

Chapter V – From National to Regional Level: the Contestations' Assessment

Introduction

This chapter will be devoted to the assessment of the hypotheses related to the current contestations of the migration norms established in Argentina, Chile and Brazil. The main aim is to examine whether the contestations presented by the countries are validity or applicatory, along with the evaluation of the third-party reactions to the given contestations.

§5.1. National Level: The Assessment of the Contestations

As it was concluded in the previous chapter, the three countries effectively translated the principles of the MERCOSUR migration policy into their legislation. Though each country followed its own path, to some extent they underwent similar challenges in consolidating their migration policies. Notwithstanding the fact that this norm is relatively new, it has already faced a number of contestations in each state. However, it is crucial to identify the type of given contestation to conclude how they influence the robustness of the principle at the regional level. To such an end, a comprehensive analysis of the contestation in the given three countries is needed.

- **Argentina:**

DNU 70/2017:

Former President Mauricio Macri's administration (2015-2019) decided to implement many changes to the country which proved to be regressive in terms of migration policies (Canelo et al., 2018). The following changes are presented in Appendix C, Table 1C.

Back in 2004, the implementation of Migration Law 25.871 was perceived as revolutionary and a role model for the rest of the South American region. Yet Macri's adoption of new measures was promptly remonstrated by the international community and domestic actors. His Executive Order 70/2017 brought about a series of profound modifications to the existing Law which had been standing for thirteen years as the exemplary case of migration policies.

The DNU represented a step back in migration matters, as it presented many characteristics similar to the 70s dictatorship rule under Jorge Rafael Videla, under which migrants were perceived as a threat to the national consolidation, safety and general welfare: they both were based upon the presumption that the impoverished migrant will become involved in and promote delinquency and disruption in the Argentine society (Canelo et al., 2018). While Videla's Law urged the authorities and other citizens to denounce irregular workers to proceed with their deportation, Patricia Bullrich, who served as Macri's

Security Minister, claimed that Peruvians, Paraguayans and Bolivians came to the country to become involved in criminal activities and drug trafficking operations (Cué, 2017).

Following this line of reasoning, the DNU came as a hard blow to the migration movement in South America as a whole: from 2016 to August 2019, the migrants' deportations almost doubled, amounting to 2,267 people, when during 2012-2015 there had only been 1,256 migrants expulsed (Dragneff, 2019). This substantial spike in expulsions stemmed from the facilitation to deport immigrants from the country with the introduction of a new procedure which eased the removal of foreigners and hindered their defence. Since the adoption of the given Order, by having a final or pending conviction, or having any type of criminal record notwithstanding the prescription period, the person can be expulsed from the country (Appendix C, Table 1C,Art. 29&62). The family reunification principle is now applied only in specific cases, and also exclusively by presenting solid grounds to be filed within three working days (Art. 29&69).

Nonetheless, this policy of fast expulsion of migrants is not devoted to foreigners in general, but only to those who have criminal records or are under final or pending convictions. In any case, this Decree makes the expulsion almost impossible to appeal. The family reunion principle is undermined, since a large number of migrants, notwithstanding the fact that they had families in the country, were promptly expelled (Dragneff, 2019). Therefore, it is possible to argue that the pro homine principle is violated, since with the implementation of the given Decree, major restrictions to human rights were applied. The fact of having family members, including underage children, does not prevail anymore under the expulsion procedure.

To conclude, the new securitised amendments imposed validity contestations to the major principles of the established open migration principles. At the discourse level, the government, along with other public officials, expressed validity contestations, claiming migrants were a threat to the country's security (Cué, 2017). Such a discourse contradicted the earlier established principles, where migrants were considered a source of development rather than a threat. This decree presented validity contestations which limited the migrants' rights to family reunification, and along with it, transformed the Argentinian migration policy into a more restrictive one.

Assessment of the DNU: third-party reactions

As for the third-party reactions, as it was mentioned above, it is was highly criticised by the international community and, in particular, by MERCOSUR countries, expressing their wariness on such anti-immigrant rhetoric and policies (Piqué, 2017). Moreover, the most influential Argentinian non-governmental organisations, namely the Argentinian Commission for Refugees and Migrants (CAREF), the Centre of Legal and Social Studies (CELS) and the Collective for Diversity (COPADI) filed a judicial appeal before federal administrative courts, calling for judicial assistance in the matter ("

Cámara Contencioso Administrativo Federal", 2018). Indeed, the judicial branch ruled against the Decree, labelling it as unconstitutional and against the due process of law (CELS, 2018).

Nonetheless, the Supreme Court has not yet ruled upon the case, even after Alberto Fernández's swearing-in. Thus, Macri's Decree is still currently in force, affecting thousands of migrants every year and allowing the security forces to detain and deport them with almost no just legal procedure.

The Argentinian Institute for Equality, Diversity, and Integration (IARPIDI), a civic human rights organisation founded in 2007, also expressed its concerns and worries with the new Decree. Although it had been issued as a measure of urgency and necessity, it did not prove to be such (Cerani Cernadas, 2017). Statistically speaking, Argentina possesses only 6 per cent of foreign nationals in prison, the remaining 94 per cent are Argentinian nationals (Iñurrieta, 2019). Moreover, the number of foreign prisoners almost did not change throughout the 2002-2016 period, fluctuating between 5.2 and 6 per cent (Cerani Cernadas, 2017). In addition, it is of great significance to state that 30-40 per cent of these foreign prisoners cannot be considered as immigrants (Cerani Cernadas, 2017). They were not Argentinian residents, since they had entered the country only with a criminal purpose: smuggling or trafficking. Thus, according to statistics, the number of foreign prisoners who, while residing in the country, commit crimes is even less. This means that there was no urgency in promoting such restrictive measures.

Furthermore, the discourse held by the public officials provoked a stigmatisation of migrants by linking them to criminality. Migrants with any criminal record now fear to be deported from the country, even if they have been rehabilitated. Likewise, migrants who are now irregular, are also at risk. These are the main points of critique from IARPIDI, CELS and other Argentinian human rights organisations. They unanimously highlight that these measures are unsuccessful in fighting organised crime. Such fast expulsion from the country and only a three-day period for appealing the expulsion decision place undocumented and irregular migrants in poor economic conditions in an extremely vulnerable situation, since they might not even have time to contest this decision. Meanwhile, criminals, by gaining access to more information and better lawyers, might escape the refoulment (Cerani Cernadas, 2017).

It is worth mentioning that the newly elected government, in 2019, promised to review the given Decree, nonetheless, there have been no updates announced by Alberto Fenández's administration so far. Still, local organisations do not stop contesting this Decree, urging the president to abolish it.

Summing up, the restrictive Decree implemented by the previous administration in 2017 shifted the country's welcoming migration regulation to a more restrictive approach. The irregularity of migration started to be more often confused with criminality, undermining the non-criminalisation principle. The restrictive discourse guided by some public officials showed open validity contestations to this principle, so protected by Law 25.871. In addition, the way the Decree was implemented showed that it violated the family reunion principle in multiple cases (Dgraneff, 2019).

Taking into account everything mentioned before, it is possible to conclude that, in the given case, hypothesis 3 is proved to be true: "*If actors, at a national level, express validity and not applicatory contestations regarding the regional welcoming migration policy, and third-party reactions do stand against them, the robustness of the norm does experience a weakening but not a complete decay".* Though validity contestations appeared, the robustness of the norm experiences a weakness, but not a complete decay thanks to strong third-party reactions expressed by domestic NGOs and civic groups. The societal advocacy for migrants' rights along with their fast and energetic reaction does not let the welcoming migration policy to fade away completely, but due to the new regulations, which are still in force, there is a weakening in the welcoming principles throughout the country.

- **Chile:**

In 2018, the Chilean government adopted two measures to change its migration policy. Sebastián Piñera announced the implementation of an executive order, namely Presidential Instruction on Administrative Measures, with immediate effect. In the meantime, a new Project for the Migration Policy was submitted to the two Chambers.

The order allowed the immediate implementation of restrictive measures even while the project was still not approved. This measure, which had been issued by previous governments to incorporate more inclusive and welcoming standards of migration policy, was now used by Piñera to enact restrictive measures without waiting for the Congress's approval.

Presidential Instruction and New Project:

Firstly, it is worth pointing out the type of discourse implemented by the current right-wing government in 2018. In the Presidential Instruction the irregularity of migration tied to the criminality issue (Medidas administativas con efecto inmediato, 2018). The entry to the country on an irregular basis stands now at the same level as a crime. Although the government gave 30 days to all foreigners residing irregularly to regulate their status, the future entry on irregular grounds will not be allowed and will be prosecuted (Appendix C, Table 2C, point 4). This rhetoric is inherently restrictive and contradicts the MERCOSUR principle, which stands for the non-criminalisation of irregular migration. Public officials have not publicly stated that irregularity equals criminality, but in practice, the new regulations will treat them as such. According to the executive order and the new law project, migrants whose Visas or Temporal Residences have expired may no longer extend or obtain a different type of Residence directly in Chile. They are now forced to exit the country by themselves, otherwise they will be deported, in order to apply for a new type of visa from abroad.

Furthermore, the expulsion of irregular migrants is now authorised to be fast, thus, migrants possess little time (only seven days) to present any type of appeal. Such an immediate expulsion is similar to the current Argentinian DNU 70/2017.

The new project of Law clearly states the country's prerogative, in case of necessity, to implement any urgent measures to limit the entry and stay of citizens from certain countries (Appendix C, Table 3C, Article 27). The direct implementation of this article took place in a Presidential Instruction which has proved to be highly selective to different types of migrants. The highest amount of criticism laid on the obligation for Venezuelan citizens to obtain visas to enter the country (Schmidt, 2020). The application for a one year visa can only be made from Venezuela. In the height of a humanitarian crisis, it becomes highly difficult to obtain such a visa (Finn and de Ruego, 2020).

The restrictions of the Chilean government regarding Venezuelan refugees do not violate the MERCOSUR agreements, since Venezuela's membership has been suspended since 2017. Thus, Chile is not obligated to provide any special procedures for them, but it does not undermine the fact that these measures are highly restrictive. In general, Article 27 of the new project provides the government a large room to reshape the migration policy wherever it considers it necessary, which reminds of the restrictive Laws from the dictatorship period.

To make matters worse, labour Visas were separated into 3 types, each with different requirements (Appendix C, Table 3C, point 1). The Visa of Opportunities was cancelled on 30 November, 2018, leaving only two types of Labour Visas, where a university degree is the major requirement. As the President announced, the country highly welcomes graduates from top universities who will bring development and not crime to the country ("Medidas administrativas con efecto inmediato", 2018). Since then, while applying for the Labour Visa (either of International or National Orientation), the migrant gains points according to their professional degree (Departamento de Extranjería y Migración, 2019). Though the new law boasts a commitment to all human rights and freedom of movement, in practice, it results that not all benefit from these freedoms and rights equally. Hence, the Chilean project for the migration law coupled with the new Presidential measures do violate the equality of migrants' rights.

The implementation of the new categories of residence is per se an applicatory contestation, while the way how these categories are used (the selective purposes) represents the validity contestations.

Assessment of the Presidential Instruction and New Project: third-party reactions

As for the third-party reactions, MERCOSUR countries expressed their concerns about such a restrictive policy (Tijoux and Ambiado, 2019). The domestic actors also expressed their strong dissatisfaction with the new Project and the Executive Order, which have already entered into force. According to CADEPU (Cooperation for Promotion and Defence of the People's Rights), the Presidential order and the public officials' discourse promote the stigmatisation of migrants relating them to criminality (CADEPU, 2018). The organisation accuses the President of promoting intolerance and prejudice regarding migration as a phenomenon. FASIC, another civic organisation, expressed its strong criticism to the

government's initiatives concerning the migration policy. It was announced that, before the Executive Order entered into force, there were more than 300 thousand undocumented migrants (FASIC, 2019).

The President gave migrants 30 days to fix their irregular status, yet only half of them (150 thousand) managed to regulate it, due to slow bureaucratic procedures (FASIC, 2019) – the rest were expelled for not meeting the deadline. Consequently, FASIC and other civic organisations elaborated and published the document of "five priority proposals" for the new migration law (FASIC, 2019). It included the non-refoulment principle and promoted the possibility to change the type of residence permit in Chile without being urged to leave the country. Likewise, the document stated the necessity for migrants' equality to access social security along with a protective and inclusive policy towards working migrants (FASIC, 2019). Here, it is clear that Chilean NGOs, as well as the civil society, are strongly opposing the new presidential initiatives.

As for now, the draft version of the new Law is still under review by the Senate, so there is still no legislative approval. Nevertheless, the Presidential Instruction is still in force.

To conclude, it is worth mentioning that, along with some applicatory contestations, there were several validity contestations adopted by the Presidential Instruction. The irregularity of migration is now going hand in hand with criminality. Moreover, the Temporal Visa for work has been cancelled, and the new procedure for working migrants was incorporated. As I have shown above, the three new types of working visas are extremely selective and undermine the equality of migrants' rights and disapprove the inclusiveness of the migration policy.

Hence, similar to the Argentinian case, hypothesis 3 is also applied to the Chilean case. The new migration regulations implemented by the government entail validity contestations, yet third parties' voices are still strong, meaning that the previous, more welcoming practices have experienced a weakness, but not an utter decay, since there are many of those who are willing to defend more welcoming standards.

- **Brazil:**

<u>Discursive Contestations and Order No. 666</u>

As for the Brazilian contestations, as soon as Jair Bolsonaro took office in 2019, he expressed many contestations to the national migration policy. The contestations were mostly expressed at the discourse level. When withdrawing from the Global Pact for Migration, he stated that migration cannot be decriminalised (Lodoño, 2019). He emphasised the right of the country to decide who has the right to enter and who does not, which highlights his commitment to the selective and restrictive migration policy (Lodoño, 2019). These statements, obviously, undermine the principle of non-discrimination and non-criminalisation of migration policy. This discourse represents a validity contestation to the welcoming migration policy, established by Michel Temer's 2017 Migration Law.

Regarding the domestic legislation, Bolsonaro implemented Order No. 666, which entailed several contestations. The amendments included in the Order are targeted at foreigners who have committed or are suspects in serious crimes, like terrorism, organised crime, drugs and arms trafficking, promotion of prostitution and those who act violently in stadiums (Appendix C, Table 4C, Article 2). Now, those who fall under this category can be promptly ordered to exit the country, with a narrow time window of 48 hours for filing any type of appeal. This Document reminds of the Argentinian DNU and the Chilean Presidential Instruction for the fast deportation procedure.

Assessment of the contestations: third-party reactions

The greatest critique from civic and other human right organisations, such as CNIg and CONARE, was the fact that even the suspicion of being involved in any of these acts automatically leads to a direct accusation and fast deportation form the country (Mendez and Menezes, 2019). In this case, now migrants possess almost no time to appeal. Even though terrorism, smuggling and drugs trafficking are serious international cries, violent actions at a stadium cannot be qualified as such. In the last case, the family reunion principle is not mentioned as a cause for non-refoulement. This Order has a limited target and does not cover other important topics related to migration, but it clearly shows that even for a mere suspicion anyone can be deported. This violates the migrants' right to access judicial procedures on an equal basis, and there is nothing stated regarding the right to free of charge legal assistance and interpreter.

As for the international reaction, the UN High Commissioner for Refugees sent a letter to the Brazilian Minster of Justice, Sergio Moro, where he expresses his dissatisfaction with Order No. 666/19 (Appendix C, Table 4C). Although the international reaction was rather rapid, it cannot bind the Brazilian government not to pursue restrictive migration policies.

Having analysed the recent contestations of Bolsonaro's government of the previous welcoming regulations, I would argue that the validity contestations are mainly present at the discourse level. There were not so many at the legislative level, however a strong selective discourse and the promotion of securitised policies do negatively change Brazilian regulations, making them more restrictive (Mendez and Menezes, 2019). Thus, the Brazilian case can also be assigned to hypothesis 3: domestic actors have shown their dissent on how to treat migration, meaning that the norm has effectively weakened, but it has not disappeared yet.

§5.2. Regional Level: MERCOSUR & CSM

After the analysis of the dynamics of the regional norms' translation into the national legislation of the three countries, in this section, I will have a look at the regional level. Firstly, I will provide a background on the essential events which had taken place until before the countries' national contestations began to emerge. Secondly, the problems of the regional migration governance will be explained.

- ***Background***

After the first CSM Declaration was signed in 2000, this regional platform continued holding annual conferences, which always concluded with a new Declaration. During the tenth Conference, in 2010, the countries agreed on the South American Plan of Human Development of Migrations, which once again reinforced the principles regarding migrants' rights. It is important to note that the CSM Declarations continues elaborating general regional guidelines, though then it becomes the responsibility of MERCOSUR and other regional organisations to incorporate these declarations into more concrete practices. Therefore, the major focus of this section will be placed on the MERCOSUR.

The MERCOSUR Residence Agreement and Declaration on Migration Principles was followed by some important documents which are vital to mention. In 2010, when the Residence Agreement entered into force, the countries' governments at the MERCOSUR level adopted the 2011-2021 Plan of Action, which covered three important issues (MERCOSUR, 2010). The first and the most intriguing one was the initiative promoted mostly by the Brazilian President Lula da Silva regarding the Statute of Regional Citizenship, to be implemented by 2021. This Plan was very promising, since it was aimed at initiating the process of integration in South America, already in force in the European Union. At the same time, it was extremely ambitious, since the criminality issue is a much more urgent issue than in the EU. The poverty rate is also much higher, accounting for 29.6 per cent (182 million people) of the region's population in 2017 (ECLAC, 2019). What is more, this poverty rate is different throughout all countries, which constitutes a major obstacle for creating a Regional Citizenship. Nonetheless, it is worth mentioning that this process was planned to be quite different than the European case (Acosta & Brumat, 2019). The countries would still possess their sovereignty, exercise the monitoring procedure of migrants flow, and the borders were not planned to be diminished between South American States. Thus, the role of the state was still paramount, without preventing and undermining the free movement of MERCOSUR States' nationals, who must possess equal social and political rights to the country's citizens (Acosta & Brumat, 2019). This Plan of Action was repeatedly updated and reaffirmed in 2017 by all MERCOSUR member states (MERCOSUR, 2017).

Another important document which was adopted under the auspices of MERCOSUR is the Brazilian Declaration of 2014, known as Cartagena+30 (Bello, 2015). This document was signed by all Latin American countries in commemoration of the Cartagena Declaration of 1984 on Refugees Protection. This Plan emphasised the importance of refugee rights' protection and promoted, once again, the labour mobility within the region. Although it was not a declaration made only by MERCOSUR countries, it was an important document which led to a large discussion at MERCOSUR level regarding common policies on refugees (Bello, 2015). It brought about the establishment of the Forum of CONARES (National Commissions for Refugees) within MERCOSUR, mainly devoted to the elaboration of common policies. The main initiatives which still have not come into force are the creation of Portability

of the Refugee Status and the Mobility Programs (Di Filippo & Ceriani Cernadas, 2016). MERCOSUR still has not adopted any common regional policies and procedures on how to deal with refugees. The refugees' rights protection was adopted by the MERCOSUR Declaration of 2009, yet particular regulations are regulated by each member state separately (Di Filippo & Ceriani Cernadas, 2016). This leads to the situation where persons who obtain a refugee status in Chile, for instance, lose it when they travel to another South American country. Therefore, the Portability Status could grant refugees the possibility of maintaining their refugee status when travelling throughout the region.

As for the MERCOSUR institutions, they have also grown since the adoption of the Residence Agreement. Nowadays, MERCOSUR counts with a large number of institutions which discuss and elaborate initiatives towards migration policies. Amongst them are the Migratory Specialised Forum (FEM), the Working Group on Labour Issues, the Group of High-Level Authorities on Human Rights and Foreign Affairs and the National Commission for Refugees (Di Filippo & Ceriani Cernadas, 2016).

Notwithstanding all progress that MERCOSUR as a regional organisation has reached in almost 30 years, including the Plan of Action, it faced a severe political crisis in 2016 related with Venezuela (Di Filippo & Ceriani Cernadas, 2016). The Venezuelan political and economic crisis derived in the greatest refugee flow in the last century (Camilleri M., Hampson F., 2018), which also negatively influenced neighbouring countries. The economic crisis engendered a political crisis at the regional level as well, so both the Plan of Action and the Portability Status of Refugees were postponed. All countries implemented their own measures towards the refugees' flow; Chile, for instance, introduced visa measures, while Argentina and Brazil showed a much more inclusive attitude by accepting refugees. This crisis exposed the weakness of the MERCOSUR governance, and became one of the causes of the countries' contestations to the welcoming migration policy. The next section will dive into the analysis of some problems which MERCOSUR faced as an organisation.

- ***Challenges:***

It is worth mentioning that MERCOSUR emerged by the accordance of four countries to found an organisation for, first of all, economic purposes. Certainly, the migration issue appeared on the agenda straight after the organisation was established; thus, the countries had to decide how to regulate the movement of persons within the region (Di Filippo & Ceriani Cernadas, 2016). The countries, back in the 2000s, within the CSM, brought the idea of free circulation and migrant rights' approach to the regional level. Later on, the establishment of the Residence Agreement and the Declaration of Principles spread welcoming migration policies throughout the region and united all 12 countries by these standards. Nonetheless, the foundational documents also grant the countries an important role in their migration regulation, implying that the States still possess sovereignty over how they decide to do so. The countries must certainly follow the principles, but they are not strictly bound by them (Di Filippo & Ceriani Cernadas, 2016). MERCOSUR as an organisation does not have any monitoring mechanisms,

such as some sort of supranational institution, to track the implementation of the principles. Indeed, the States have the possibility to shape the migration discourse in different ways. MERCOSUR's institutions can pronounce their criticism to the country's decisions, but they possess no instruments to enforce the MERCOSUR's principles directly.

What is more, there is a lack of coordination among the very MERCOSUR institutions themselves, which often take different and uncoordinated approaches to different issues (Di Filippo & Ceriani Cernadas, 2016). This does not only occur inside MERCOSUR's internal organisation, but even with the CSM as well, since they also suffer from the lack of appropriate coordination. Therefore, everything mentioned above leads to the absence of political coherence amongst regional bodies as well as member countries. All these difficulties led to the MERCOSUR crisis in 2016, when the countries preferred to tackle the problem regarding the Venezuelan migrants' flow separately, instead of implementing a coherent regional Plan of Action.

§5.3. Outcomes

The profound analysis carried on the three countries' restrictive contestations evidenced that they were all of the validity type. There is no doubt they effectively took its toll on the robustness of the region's welcoming policy, yet the role third parties played was paramount to soften the blow.

Had it not been for their quick action in denouncing such measures, the weakening of Argentina, Brazil and Chile's migration norms could have possibly reached an absolute decay. Their prompt response proves that the civil society still stands in favour of protecting migrants' rights and regional welcoming migration policies. But at the same time, it revealed the regional organisations' vulnerability.

In spite of MERCOSUR and CSM's unrelenting work towards achieving proper standards for the whole region, the countries' defiant contestations undermine the efforts made over the past 20 years. Now these organisations face challenges which were unthinkable years ago when the region was working together in pursuit of the same objectives: the MERCOSUR Citizenship and the Portability Refugee Status today are further than ever from being implemented.

If MERCOSUR and CSM's guidelines are meant to be applied on the whole region, why have these contestations dwindled South America's welcoming policies so much? The answer lies on the organisation's high dependence on each state's domestic affairs. This implies that each of them has enough freedom to shape their own domestic legislation however they see fit. The lack of binding power the regional entities has does not allow them to enforce their measures on any country.

It is thus proven that the bottom-up structuring of South American legislation implies that any weakening occurring at the national level will unavoidably weaken the regional level as well. Accordingly, it can be concluded that MERCOSUR's welcoming policy has experienced a pronounced

devitalisation. Its ultimate objectives have been indefinitely postponed, and its regional initiatives, deadlocked.

Chapter 6 – Findings and Conclusions

Introduction

The main aim of this concluding Chapter is to bring together all findings and answer the research question: **To what extent the newly appeared contestations in South American countries contribute to the strengthening, weakening or decay of the robustness of the regional welcoming migration policy?** Moreover, it is of great relevance to provide the reflection on the results and the expectations, which were formulated based on the theory.

Another important goal is to provide a solution to the theoretical model itself. The final part will include the overview of the generalisability and the limitations of the given thesis along with some suggestions for further research.

§6.1. Answering the research question

In order to answer the question on whether the current robustness of the South American migration policy has underwent any changes, the thesis provides several steps.

From Regional to National level:

According to the findings in the fourth Chapter, the welcoming migration policy was initiated at the regional level in 2000. *Indicators 1a* and *1b* aimed to check how welcoming the CSM and MERCOSUR documents were. This step allowed to systematise the main principles, which constitute the core of the migration welcoming norm. As a result, it includes the following principles: (1) the negation of the migrant's perception as a threat to the country, (2) the recognition of the equality between migrants and native citizens' rights and (3) the human rights-based policies.

Having formulated the core of the welcoming migration policy, its translation into the national legislation of the three largest countries of the region was traced. To such end, Zimmerman's (2014) model was used to formulate *Indicators 2a, 2b* and *2c*. It helped to analyse the translation of the international norm to national legislation, which consisted of three steps (discourse, law and implementation). In order for said norm to be fully implemented, there should be no validity contestations at any stage of the process. This means that if at the first step (in the discourse) there are any validity frames, the internalisation process stops.

When applying this model to the current case of the norm's internalisation, the results were quite unexpected. All three states followed their own individual paths in incorporating the regional norm. Argentina was a pioneer in adopting the new principles (Hines, 2010). Although the government and other authorities expressed validity contestations in the beginning at the discourse level, the third-parties (NGOs and civic organisations) showed their strong critique of these discourses and managed diminish

to these frames, convincing the legislative power to pass the new welcoming law, which fully incorporated the MERCOSUR principles (Hines, 2010). In this case, the model was certainly proved.

Regarding Chile and Brazil, each face the same problem as the other at the discourse level – their ruling governments were stopped by other major parties in Congress from incorporating the principles via the adoption of new migration laws. As a result, at the discourse level, the validity contestations were present, which, in its turn, should have brought the internalisation process to a halt. Notwithstanding this fact, the process did not stop. The ruling governments found the way to force the adoption of the norm's principles via amendments, amnesties and executive orders. In collaboration with third parties, the presidents of each country, bypassing the Congress, managed to incorporate and even bring into force the South American welcoming principles enshrine by MERCOSUR.

What is more, Chile still does not have any new migration law, the welcoming migration principles are in force only thanks to the presidential amendments to the old law. As for Brazil, in 2017, a new law was finally approved by all parties and entered in force incorporating all previous amendments and amnesties while including the region's welcoming principles. The third-parties, even though they were not as strong and influential as in Argentina, assisted in the incorporation of these policies. In these two cases, the internalisation of the norm took place (in form of amendments, amnesties and executive orders) notwithstanding the validity contestations from other public officials.

I would like to conclude by stating that the last two cases disproved Zimmerman's theoretical model (2014), showing that, even by having some validity contestations at the discourse stage, the translation of the norm can still occur. Here, it was of great importance to see that the steadfastness of the governments and third parties led to the success in the norms' translation. All in all, we can see, that regardless of the different timespan and the way these translations came about, all three countries incorporated and implemented the same principles.

The given step in the analysis (from regional to national level) helped to understand the crucial role of the main actors who brought about the new principles, and who were those contesting them. Had this step been omitted, it would have been impossible to strike a rightful comparison between the initial and the current processes at the national level. The contestations analysed in the fifth chapter were not only assessed in the comparison with the main documents established at the regional level, but also with the laws and amendments which already existed at the national level. Without a profound understanding of the dynamics which took place in each country before the contestations occurred, their analysis would be completely erred.

From National to Regional level:

- **Contestations:**

The following step, in Chapter 5, was aimed at examining the countries' recent contestations regarding the current welcoming migration norm. The three countries possessed validity contestations to the policies already in force.

Argentina showed validity contestations regarding the non-criminalisation of irregular migration, Macri's DNU 70/2017 entailed the fast expulsion of migrants with any type of criminal record (Canelo et al., 2018). His measures showed the validity contestations present in the country in the form of the violation of family reunion, pro homine and non-refoulment principles, since a great number of people were expulsed without taking into consideration their individual situations. Besides, public officials openly promoted the stigmatisation of irregular migrants by placing them at the same level as criminals, faltering the principle of non-criminalisation of irregular migration.

As for Chile, it also showed validity contestations concerning the equality of migrants' rights and the non-criminalisation of irregular migration. Chile's new Presidential Instruction as well as a the new law project evidenced a restrictive policy towards migrants. Not all foreigners stand on the same grounds for obtaining the Residence Permit, since highly educated migrants now have more chances to obtain a working visa. This clearly undermines the equality of rights and opportunities for migrants. In addition, the irregular entry to the country was equalled to a criminal act, which contradicts the non-criminalisation principle.

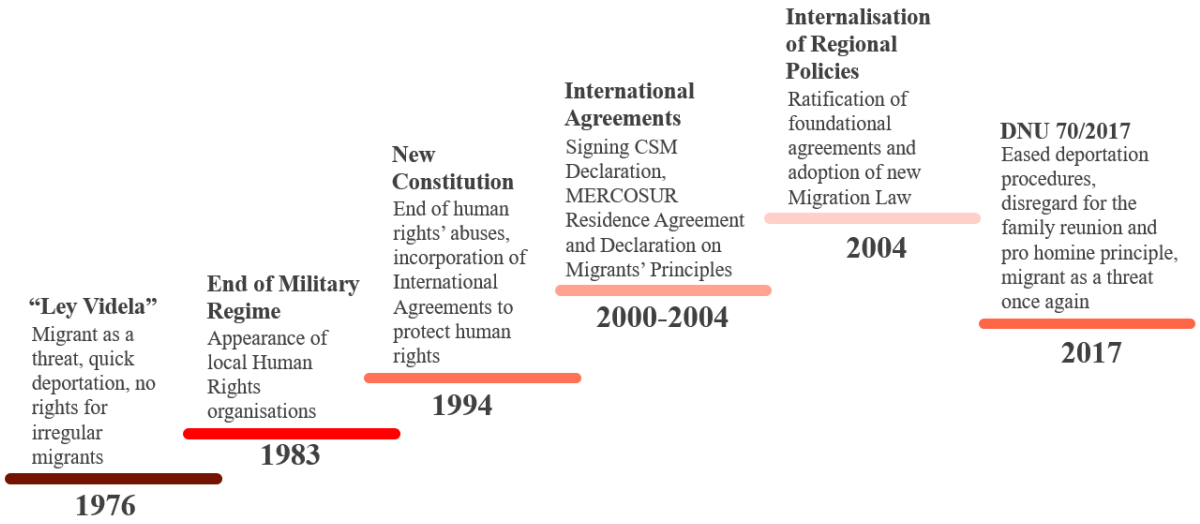
Brazil has also shown validity contestations lately, however, in comparison with Argentina and Chile, they were mostly expressed at discourse level. President Bolsonaro, along with other public officials, initiated a highly restrictive migration discourse, where migrants are clearly portrayed as a threat to the national security. They are no longer a source of development and integration, but a cause of problems and criminality. The new Presidential Executive Order follows Argentinian and Chilean measures of fast expulsion, which undermines the non-refoulment, family reunion and pro homine principles.

All three countries possessed contestations which undermined the core standards of the previously adopted norms. Nevertheless, the countries' society, civic groups and human rights organisations played a pivotal role in presenting their criticism to the contestations implemented by these restrictive governments. This means that the contestations do not express the overall opinion of the countries' society. The welcoming standards have not completely decayed yet, since there are still those defend them. Were we to take all of the aforementioned into account, the third hypothesis "*If actors, at a national level, express validity and not applicatory contestations regarding the regional welcoming migration policy, and third-party reactions do stand against them, the robustness of the norm does experience a weakness but not a complete decay"* is proven to be true for the three exemplary cases.

- **Norm's robustness:**

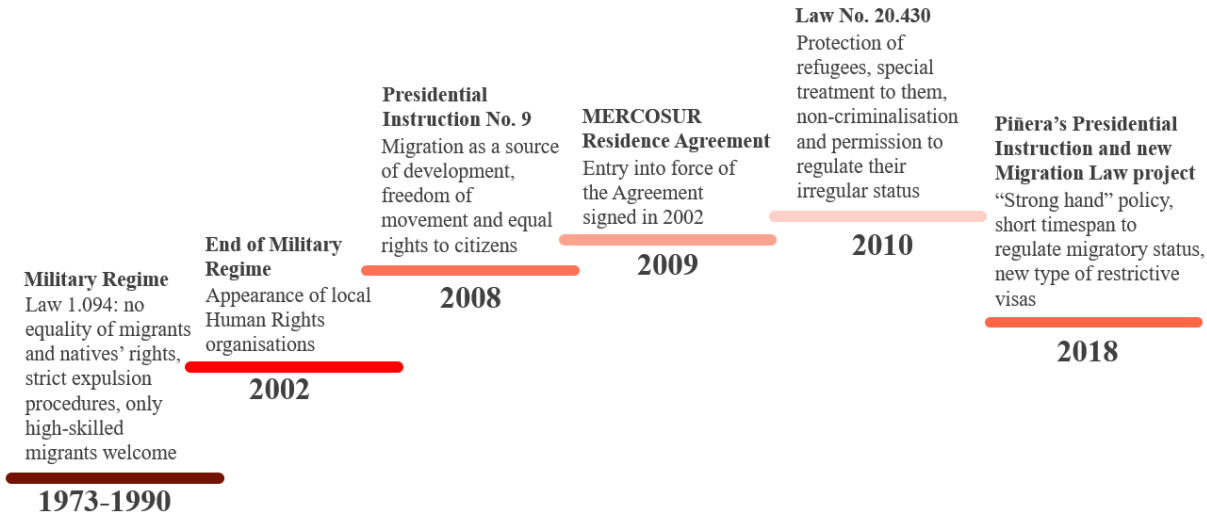
The last step of the analysis was to answer the research question regarding the norm's robustness. From the following figures (Figure 3-5), it stands out that all three countries followed the same pattern regarding the robustness of their migration policies. There was a 10-year period of steady growth and high level of robustness following the ratification of the MERCOSUR Residence Agreement, evidenced by the top arc of the curve.

Figure 3. Timeline of Argentina's migration policy: strengthening and weakening



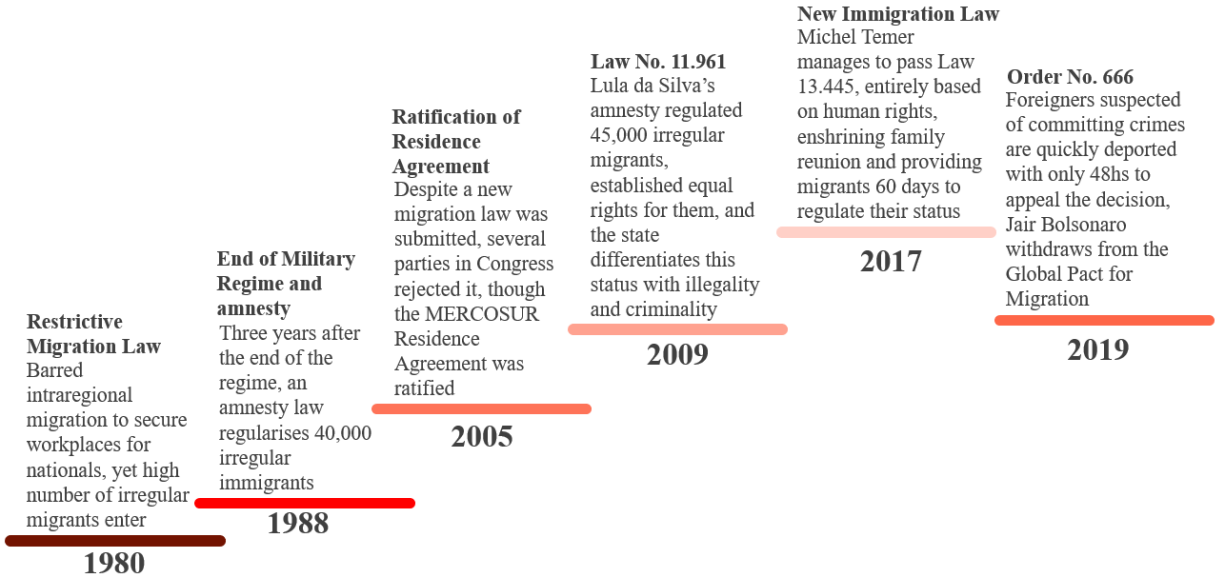
Source: created by author

Figure 4. Timeline of Chile's migration policy: strengthening and weakening



Source: created by author

Figure 5. Timeline of Brazil's migration policy: strengthening and weakening



Source: created by author

Yet what is also notorious from the figures is the sudden drop all three countries have undergone in recent times as a result of the emerging contestations in the region. While in all cases there emerged validity contestations, the third-party reactions to this non-compliance were quite strong – indeed, the robustness has weakened, but it did not reach a decay. Deitelhoff and Zimmermann's model (2018) remains appropriately applicable.

True enough, the contestations at the national level did not lead to radical changes in the regional legislation (MERCOSUR and CSM's), though they weakened the overall robustness in another way. The plan regarding the Statute of Citizenship has been clearly postponed, and the gap in MERCOSUR leadership has become even more visible (Acosta & Brumat, 2019). This non-binding character of MERCOSUR legislation along with the strong sovereign power of the states shows that the progressive process of South American migration governance is facing a severe crisis. The different responses to the Venezuelan situation regarding the treatment of refugees exposed the absence of a supranational power to bind the countries and urge them to implement one coherent policy.

Everything mentioned above proves the presence of bottom-up dynamics, still going strong in the region. As it was analysed in the fourth Chapter, the countries initially promoted and enshrined the regional organisations in a bottom-up approach. Thus, in 20 years, despite the fact that MERCOSUR and CSM became stronger and established many institutions and forums, they still do not possess a supranational power as the EU, for instance, has. Therefore, the changes at the national level can easily climb up to the regional level, and, as a result, influence the norm's robustness either in the short or long term.

§6.2. Implications of the theoretical model

First and foremost, I would like to provide a reflection on the theoretical model used for the analysis. Deitelhoff and Zimmermann's approach (2018) made it possible to comprehensively analyse the contestations to the migration norms established in South America. The division into two types (validity and applicatory) made it possible to, firstly, identify the norm's core, and, secondly, systematise the contestations. This division indeed helped to see *when* and *why* the norm's robustness is strengthening or weakening. The four additional indicators were also of a great importance when tracing the emerged contestations. The first three (concordance, compliance and implementation) were useful in order to see where the contestations appear and how they evolve. However, only the fourth indicator actually introduced changes when assessing the norm's robustness. As it was expected, third-party reactions were a decisive indicator when deciding to which extent the robustness weakens or decays.

The South American case can be considered as a great example of how important the third-party reactions are. If they were omitted and not included in the analysis, the norm's robustness could be wrongly considered to reach a complete decay. Hence, I would argue that this model could be applied to any region where a particular norm is established at the level of any international or regional organisation.

§6.3. Generalisability, limitations and suggestions for further research

With the research question answered, it is now possible to step back and look at the research and its methods, while pointing out its limitations, generalisability and some suggestions for further research.

Firstly, the limitations to the present research should be provided. Regarding the methodological restrictions, the given thesis possesses a relatively number of cases, analysing only three countries. Consequently, it is harder to make a generalisability of the results. Nonetheless, while choosing between a larger number of cases and a deeper analysis of a smaller number of cases, I opted for the latter, carrying out a more profound analysis of the regional processes. The work was explorative in nature, since, for the first time, it applied the Deitelhoff and Zimmermann's model (2018) to norms' studies of the South American case. It was of great importance to examine in-depth all expressed contestations and the third-party reactions towards the established migration policy. Therefore, a large number of cases would have rendered the analysis too shallow and could have led to the omission of important estimations. Moreover, since the selected countries were the most influential ones in the South American region, the case selection was not too limited to be able to make generalisations. Nevertheless, I believe that further research could be devoted to the countries omitted by the given thesis, in order to obtain a complete picture of the migration processes in the region.

Another practical limitation is related to the shortage of MERCOSUR official statements and assessments regarding the implementation of migration principles by member-states. However, the

additional literature, mostly the analysis conducted by South American scholars and non-governmental organisations, helped to fulfil the gaps in the facts.

As regards the generalisability, the given approach can be used when assessing not only the migration policies but any type of norm. I believe that it may be of use to analyse the norm's robustness in any other regional or international organisation, one of which could be the European Union. The EU possesses, on the one hand, some similarities with the MERCOSUR migration governance, yet, on the other hand, it is a rather different case (Rust, 2019). They both proclaim the free movement amongst member states, yet, in the question of eliminating borders, they highly differ. MERCOSUR still expressed its commitment to the countries' borders, whereas the EU integration is on a higher level due to the establishment of a European citizenship (Rust, 2019). The latter also implies the presence of a strong supranational body who effectively monitors regional migration policies. Certainly, the EU countries still have freedom to regulate and control their borders and migration, yet many decisions depend on the EU higher institutions (Rust, 2019). Thus, in the EU case, if there appeared any contestations, the most active third parties, who will express a strong critique, would rather be the EU bodies than civic organisations. It would be extremely interesting to apply Deitelhoff and Zimmermann's model (2018) to the analysis of the robustness of the EU migration governance.

This research also raised additional questions to investigate into. It remains intriguing to examine whether the appearance of all of these contestations in South America is directly linked to the incumbent right-wing parties. Another possible analysis could be related to the examination of migration practices and dynamics in Central America and whether the migration principles adopted by MERCOSUR are also present there. Further investigation of these topics could prove to be quite innovative and may even bring new insights to the migration dimensions in Latin America and/or other regions.

§6.4. Final remarks

The research carried on the topic of South American migration policies through Deitelhoff and Zimmerman's theoretical model (2018) has been uniquely fruitful. The findings outlined in the chapter herein prove that this region's governance follows a bottom-up approach rather than a model more similar to the EU's, where regional norms bind the countries to follow them. There should be no mistake as to MERCOSUR and CSM's outstanding and beneficial work towards achieving a solid migration policy for all member states, providing them with coherence and continuity. Yet, at the end of the day, experience has proven that they are only guidelines, just as Macri, Bolsonaro and Piñera have been able to disregard them and proceed with their own political agendas. This should bring the South American community to seriously reflect on its regional organisations' true power towards achieving one solid block.

Having analysed the migration policies from national to regional level and vice versa, the research question has been appropriately answered and hypothesis 3 has proven as the most adequate out of the four suggested initially. The model suggested in this thesis may well be applied to other regions to analyse similar variables, in order to achieve a high level of generalisability of any given topic.

But here the focus has been placed on the case of South America's three largest countries. Only time will tell if the current weakening of the welcoming migration policies will be stopped in its tracks, or if this is only the beginning of the end of the region's coherence, cohesion and continuity.

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Appendix A

MERCOSUR and CSM documents

Table 1A: Relevant points from CSM Final Declaration

1-	Preserving this association as a coordination Forum for consultations on migratory matters for South American countries.
2-	Assuming that the objectives and activities carried forward in this Forum will be in pursuit of an integral treatment of migratory matters, notwithstanding other similar mechanisms of subregional integration or bilateral agreements.
3-	Joining efforts to guarantee the protection, defence and promotion of the rights of migrants and equality.
4-	Intensifying regional cooperation for achieving the objectives established and the preparation of regional positions on migratory matters.

Source: Declaración de CSM (2000), translated by author

Table 2A: Relevant Articles from MERCOSUR Residence Agreement

Article №	Name	The main features
Article 3	The Application Field	The Agreement is targeted at: ➢ The citizens of the country, which is a full or associated member of MERCOSUR, who are willing to settle in the territory of another country, but are still living in the country of origin. ➢ The citizens of the MERCOSUR country who are currently located in another member country and are willing to settle in its territory.
Article 4	The Type of Residence	The beforementioned migrants are able to obtain the Temporal Residence for a maximum of two years, and must present the following documentation: ➢ Certification of a clean criminal record in the country of origin for the last 5 years. ➢ Sworn statement of lack of international criminal records. ➢ Certification of a clean criminal record in the country of arrival.
Article 5	Permanent Residence	Migrants are allowed to obtain the Permanent Residence when the Temporal Residence has expired.

Article 6	Non-compliance	When the Temporal Residence has expired, migrants should present themselves to the authorities; those who fail to do so in time will be sanctioned.
Article 8	General Norms regarding the Entrance and Stay	The residents are granted access to any activity under the same conditions as the native citizens, in concordance with the country's domestic norms.
Article 9	The Migrants and their Family Members' Rights	➢ Civil rights' equality: equality of social, cultural, economic and labour rights and liberties. ➢ Family reunion: eased requirements for family members to obtain the residence. ➢ Equal treatment: equality concerning salaries, working conditions and social securities. ➢ Special rights of migrants' children: equal educational possibilities.
Article 10	Promotion of Legal Conditions of Employment and Migration	➢ Developing appropriate mechanisms for detecting illegal employment of migrants. ➢ Sanctioning the individuals and organisations that hire migrants on illegal conditions. ➢ Migrants who work illegally are not submitted to sanctions.

Source: Acuerdo sobre Residencia para Nacionales de los Estados Partes del Mercosur Bolivia y Chile (2002), translated by author

Table 3A: Main Points of MERCOSUR Declaration on Migration Principles

1-	Recognising the migrants' contribution to the development of our States.
2-	Strengthening initiatives to ease and regularise migratory flow between the countries in the region.
3-	Respecting human rights and all International Conventions on the subject.
4-	International protection of refugees, based on the 1951 Geneve Convention and its 1967 Protocol.
5-	Fair and just treatment of migrants.
6-	Highlighting the importance of family reunion.
7-	Acknowledging the State's right to exercise control over its borders, yet without treating irregular migration as a crime.

8-	Reaffirming the commitment to fight against illegal migration, human trafficking, trafficking of children and other types of international crimes.
9-	Condemning xenophobia, collective deportation or arbitrary detentions with no legal grounds.
10-	Acknowledging that migration calls for a multidisciplinary and multilateral treatment.

Source: Declaración de Santiago sobre Principios Migratorios (2004), translated by author

Appendix B

National documents (before Contestations)

Table 1B: Relevant articles from Argentinian Migration Law 25.871

Preliminary Title – Argentinian Migration Policy	
Chapter I (Field of Application)	**Article 2:** The notion "immigrant" encompasses any foreigner seeking to enter, travel, live or settle in a transitory, definitive or temporary way in the country.
Chapter II (General Principles)	**Article 3:** The main objectives are: ➢ To establish migration principles in accordance with the international commitments related to human rights, integration and migrants' mobility. ➢ To guarantee the right to the reunion of families. ➢ To promote immigrants' integration into the Argentinian society. ➢ To ensure there is no discrimination towards immigrants ➢ To guarantee the migrants' rights ➢ To ease entry requirements To protect the country's safety from those who have engaged in criminal activities
Title I – Rights and Duties of Foreigners	
Chapter I (Rights and Liberties)	**Article 4:** The right to migrate is acknowledged as an essential inalienable human right. The equality and universality of migrants' rights within the Argentine Republic must be guaranteed.
	Article 6: The immigrants' rights are equal to the nationals', particularly regarding the topics of justice, health, social security, education, social services, work, employment and public property.
	Article 7: Migratory irregularity shall not be an impediment to access education at any level (from primary to university studies), and authorities must provide assistances to such irregular immigrants to rectify their situation.
	Article 8: All immigrants have unlimited access to public health and social assistance regardless their migratory situation.
	Article 10: The State must guarantee the right to family reunification.
	Article 13: All acts that restrict the full exercise of human rights based on religion, political opinion, ethnic groups, nationality, sex, economical condition or physical characteristics that restrict the full exercise of said rights shall be considered discriminatory.
	Article 16: The State must act upon the employment of irregular immigrants notwithstanding the workers' rights regarding their employment to eliminate such irregular labour contracts.
Title II – Admission of Foreigners and Exceptions	

Chapter I (Categories and Terms of Admission)	**Article 20:** There are four categories of Residence: ➢ Permanent Residents ➢ Temporary Residents ➢ Transitory Residents ➢ Unstable Residents: those who have not been granted one of the other categories yet, and lasts 180 continuous days. **Article 22:** Permanent Residents: not only the relatives of Argentine citizens but also those who arrive with the purpose of establishing permanently in the country fall under this category. **Article 23:** Temporary Residents: ➢ An extendable 3-year residence is granted to: migrant workers, persons with earned income, pensioners, investors, scientists, sportspersons and members of religious orders. ➢ An extendable 2-year residence is granted to: students, those who have been granted asylum, refugees and citizens of Party States and Associates of MERCOSUR. ➢ An extendable 1-year residence is granted to: patients with medical treatments and academics. **Article 24:** Transitory Residents: a 90-day residence is granted to: tourists, passengers in transit, borderline neighbourhood transit, International Transport Crew, Seasonal Migrant Workers, Academics, Medical Treatment and Special ones **Article 28:** The final objective of the free movement of people in MERCOSUR must be guaranteed.
Chapter II (Impediments)	**Article 29:** Causes of impediment to enter and stay in the country: ➢ The presentation of false documentation. ➢ Having a final conviction for arms trade, trafficking of persons, money laundering, or illegal activities for three or more years of custody under the Argentine Law. ➢ Having incurred in genocide, war crimes, terrorist acts or crimes against humanity under the International Criminal Court. ➢ Having entered or trying to enter the country illegally. ➢ Having aided others with a lucrative purpose to illegally enter the country. ➢ Having incurred in the sexual exploitation of others. ➢ Not having complied with the requirements in the present law.
Title V – Legality and Illegality of Stay	

Chapter I (Cancellation of Stay)	**Article 62:** Causes of expulsion from the country: ➢ The presentation of false documentation. ➢ Having a final conviction to a malicious crime for over five years. ➢ When the reasons for having been granted a Permanent, Temporary or Transitory Residence have changed. ➢ Having been involved in acts of genocide or terrorism. Cancellations of Stay may be exempted to those who are fathers, son/daughter or spouse to an Argentine citizen. Having legally stayed for over two years in the country as well as the personal and social circumstances of the person must be taken into account for granting an exempt. **Article 69:** Those who cannot leave the country due to a judicial order will be granted the Unstable Residence.
Chapter II (Provisional Remedies)	**Article 70:** In the case a foreigner who has been issued a Cancellation of Stay claims to be father, son/daughter or spouse to an Argentine citizen and it is confirmed to be true, said Cancellation shall be suspended and the foreigner will be released from retention. A migratory regularisation must follow.
Title VI – Appeals Procedure	
Chapter I (Appeals Procedure)	**Article 74:** In the case of Impediment to Enter or Stay or Expulsion from the country, or of the execution of a fine against an immigrant, they may request a revision of the proceedings. **Article 75:** Amongst the available administrative proceedings, the Appeal of Reconsideration may be filed within the ten working days of the notification. **Article 78:** Amongst the available administrative proceedings, the Appeal fixed before a higher administrative authority in assistance may be filed within the five working days of the notification. **Article 80:** The immigrant may choose the judicial means but such choice will automatically close the administrative ones. **Article 84:** Judicial appeals may be filed within 30 working days of the notification. **Article 86:** In the case of lack of financial resources, the immigrant will have the right to free of charge legal assistance and interpreter.
Chapter II (Revision of Decision-Making Acts)	**Article 90:** The decisions of the Home Office and the National Head Office of Migration may be revised by operation of law or by the request of a party in the case of error, omission or abuse of discretion.

Source: Ley No. 25.871: Política Migratoria Argentina (2004), translated by author

Table 2B: Main Points from Chilean Presidential Instruction No. 9

1- Priorities in Migration Policy

A- Chile is a "welcoming country"

Chile is adequately open to migration, and it seeks to receive migrants, who wish to settle in the country, on the non-discrimination basis.

The notion of International Migration entails the movement of person(s) from one geographical unit to another with the aim of permanently or temporarily settling there. This also applies to refugees and displaced persons who were forced to abandon their countries of origin.

B- Integration of Migrants into society

The goal is to passively foster the acceptance of migrants, by respecting their culture but tending towards their appropriate integration into the Chilean society.

C- International Treatment of Migration: bilateral and multilateral accords

The main goal is to promote bilateral and multilateral cooperation in the regulation of migration taking into account migrants' and receiving country's interests. The migration contributes the countries' development.

D- Regulatory and Administrative Abilities

In accordance with the International Human Rights Law, the State is entitled to the right and duty to develop its own legal framework regarding migration with the aim to protect its citizens' security and achieve a high level of well-being. In this context, Chile reserves the right to control the access to national residences, for the benefit of the State and the persons residing within.

2- Principles of the National Migration Policy

A- Principles:

1. **Residence and freedom of movement:** it guarantees the free entrance, movement within the country and exit, in accordance with the established norms. The irregular migration is not considered to be a crime.
2. **Freedom of thought and conscience:** foreigners may express their ideologies and cultures in accordance with the established laws.
3. **Access to justice:** the foreign residents should have the same rights as the natives regarding the access to justice.
4. **Integration and social protection of immigrants:** the foreigners are guaranteed to equality of treatment in the fields of labour, education, social security, cultural rights and individual freedoms.
5. **Non-discrimination:** discrimination against migrants on the basis of race, colour, social or ethnic origins, nationality, religion or sex is prohibited. The State must see to the compliance of this principle.
6. **Regularisation of migrant flow:** the State must ensure migrants possess the required residence permits to carry out their activities.
7. **Family reunion**
8. **Citizens' participation in migration regulation:** citizens have the right to express their opinions on migration policies, which must be taken into account for legislating on the matter.

B- Promotion of safe migration:

The State must prevent and sanction the illegal movement of migrants. In the case migration flow becomes a risk to society's welfare, the State may take measures to restrict the access to the country to those migrants with criminal records.

C- Conditions of persons in asylum and refugees:

Taking into consideration their special circumstances, persons in asylum and refugees will be granted the Temporary Residence.

Source: Instrución Presedencial No. 9 sobre la "Política Nacional Migratoria" (2008), translated by author

Table 3B: Relevant Articles from Chilean Law No. 20.430

Title I – General Provisions	
Chapter III (Fundamental Principles of Protection)	**Article 3:** Those seeking shelter in the country will be ruled by the principles of non-refoulment, non-sanctioning for illegal entry, confidentiality, non-discrimination, fairest possible treatment, and family reunion. **Article 5:** The expulsion of refugees will only be ordered under exceptional circumstances, when matters of national safety or public order demand so. If the expulsion has been ordered, the refugee has the right to appeal via administrative or judicial means. They must also be granted 30 days to seek shelter in another country. **Article 6:** Refugees who illegally enter the country will be granted 10 days to justify the reasons for having done so, with no sanctions entailed.
Chapter V (Rights and Duties of Refugees)	**Article 13:** Refugees and their families will have access to health, education, housing and labour market on the same conditions as other foreigners.
Title II – The Status of Refugee	
Chapter I (Exclusion of the Status of Refugee)	**Article 16:** Those refugees who have committed crimes against humanity, any other serious common offenses or acts against the UN Charter.
Title IV – Termination of the Status of Refugee	
Chapter II (Entry and Filing for Entry)	**Article 26:** Any person within the Chilean territory may request to be recognised as a refugee whether they have entered legally or not.
Chapter V (Other Special Procedures)	**Article 42:** In the case a massive entry of refugees occurs, special procedures will take place to determine the order of entry to the country, whether it be *prima facie*, per groups or other. Aid may also be requested to the United Nations High Commissioner for Refugees.
Title V – Residence, Travel and Identity Documentation	
Chapter I (Documents)	**Article 45:** Refugees and their families will be granted a Permanent Residence in the country.
Chapter II (Free-of-charge)	**Article 48:** Procedures for the determination of the status of refugee as well as those for granting visas and permits will be free of charge.

Source: Ley No. 20.430, Establece disposiciones sobre Protección de Refugiados (2010), translated by author

Table 4B: Relevant Articles from Brazilian Law 11.961

Article 1	Foreigners who entered the country irregularly before February 1, 2009, may request a Temporary Residence.
Article 2	Irregular foreigners will be those who have entered the country illegally, or whose period of stay has expired, or those who benefitted from Law 9.675 but did not complete the necessary procedures for obtaining a permanent residence.
Article 3	Foreigners benefitted by this Law will be guaranteed the right to life, freedom, equality, family reunion, safety, priority and all social Brazilian rights and duties established in the National Constitution.
Article 6	Those who have been granted a residence permit will receive a national identity card lasting 2 years.
Article 7	90 days before the Temporary Residence expires, foreigners may request a Permanent Residence if: **1-** their legal labour sustains their homes and families. **2-** they do not owe any taxes nor possess any criminal records in Brazil or abroad. **3-** they have not spent over 90 continuous days outside the country.
Article 8	Temporary or Permanent Residences may be revoked if the foreigner presents false documentation. They will have 60 continuous days of the notification to present their defence.

Source: LEI Nº 11.961 (2009), translated by author

Table 5B: Relevant Articles from Brazilian Law 13.445

Chapter I – Preliminary Provisions	
Section II (Principles and Guarantees)	**Article 3:** The following principles and provisions rule the Brazilian migratory policies: **1-** Universality, indivisibility and interdependence of human rights. **2-** Rejection and prevention of any form of xenophobia, racism or any type of discrimination. **3-** Non-criminalisation of migration. **4-** Foster regular migration. **5-** Humanitarian reception. **6-** Guaranteeing the right of family reunion. **7-** Equal treatment and opportunities for migrants and their relatives. **8-** Social and labour inclusion of migrants through public policies. **9-** Equal and free access of migrants to social services, programmes and benefits, public facilities, education, legal assistance, work, housing, banking and social security. **10-** Strengthening of economic, political, social and cultural integration of Latin American nations, by promoting freedom of movement and the access to citizenships.

	11- Migration and human development are unalienable rights of all persons. **12-** Rejection of massive deportation practices. **Article 4:** Migrants are guaranteed same conditions as nationals, such as the inviolability of the right to life, freedom, safety and property, as well as the access to public health with no discrimination for nationality or migratory status, access to justice and free legal assistance to those who lack economic means, the right to public education notwithstanding their migrant status, the right
Chapter II – Documentation of Migrants and Visitors	
Section II (Visas)	**Subsection III – Visitor Visa** **Article 13:** Tourism, business, transit, artistic or sports activities, amongst others. **Subsection IV – Temporary Visa** **Article 14:** Investigation, education, health treatments, humanitarian assistance, work, holidays, religious reasons, investments and family reunion. **Subsection V – Diplomatic, Official and Courtesy Visas**
Chapter III – Legal Status of Migrants and Visitors	
Section I (Border Residents)	**Article 23:** Border residents, with a previous authorisation, may enter the country for an easier freedom of movement. **Article 25:** Border residents may have their authorisations cancelled if they present false documentation, change their migratory status, receive a prison sentence or exercise rights beyond those authorised.
Section IV (Residence Permits)	**Article 30:** Residence permits will not be granted to those who have final convictions in Brazil or abroad, unless the crime is a minor offence. The decision may be appealed, and it must be resolved within 60 days. Residence permits will be granted notwithstanding the migratory status.
Section V (Family Reunion)	**Article 37:** Residence permits will be granted to the migrant's spouse or partners, their children, parents or siblings, or those who have Brazilian children in their custody.
Chapter IV – Entry and Exit	
Section II (Impediments of Entry)	**Article 45:** Impediments of entry apply to those who: **1-** Have been deported and the effects of the deportation still apply. **2-** Have final convictions for terrorism, crimes against humanity or war crimes. **3-** Have final convictions for serious offences abroad. **4-** Appear in international organisations' lists of judicial restrictions. **5-** Present false documentation.
Section III (Deportation)	**Article 50:** Irregular migrants will have 60 days to regularise their migratory status.
Section IV (Expulsion)	**Article 54:** The order of expulsion may be appealed within 10 days of the notification. The expulsion will not apply to those who have Brazilian children in their custody, spouses or partners, who have resided in the country since before their 12 years of age, who are over 70 years of age and those who have resided in the country for over 10 years.

Section V (Prohibitions)	**Article 61:** There will be no massive deportations, expulsions nor repatriations.
Chapter VI – Nationalisation	
Section II (Conditions for Naturalisation)	**Article 65:** The Brazilian nationality will be granted to those who: **1-** Have their legal capacity in full, according to Brazilian laws. **2-** Have resided in the country for over 4 years. **3-** Can communicate in Portuguese fluently. **4-** Do not have final criminal sentences or have been judicially rehabilitated. **Article 66:** Special cases: It will also be granted to those who: **1-** Have Brazilian children. **2-** Have a Brazilian spouse. **3-** Have provided a special service to the country. **4-** Have been recommended for their professional, scientific or artistic abilities.
Chapter X – Final and Transitory Provisions	
Article 111: This law does not go against the rights and duties established by the treaties currently in force in Brazil, particularly considering those which are most beneficial for migrants under the scope of MERCOSUR.	

Source: LEI Nº 13.445 (2017), translated by author

Appendix C

National Laws (expressing the Contestations)

Table 1C: Main Articles from Argentinian DNU 70/2017[17]

Title II – Admission of Foreigners and Exceptions	
Chapter I (Categories and Terms of Admission)	**Article 20:** There are four categories of Residence: ➢ Permanent Residents ➢ Temporary Residents ➢ Transitory Residents ➢ Unstable Residents: those who have not been granted one of the other categories yet, and lasts 90 continuous days.
Chapter II (Impediments)	**Article 29:** Causes of impediment to enter and stay in the country: ➢ The presentation of false documentation. ➢ Having any custodial criminal record. ➢ Having a final or pending conviction, or having a criminal record for arms trade, trafficking of persons, money laundering, or illegal activities for three or more years of custody under the Argentine Law. ➢ Having incurred in genocide, war crimes, terrorist acts or crimes against humanity under the International Criminal Court. ➢ Having entered or trying to enter the country illegally. ➢ Having aided others with a lucrative purpose to illegally enter the country. ➢ Having incurred in the sexual exploitation of others. ➢ Having a final conviction or a criminal record for charges of corruption. ➢ Not having complied with the requirements in the present law. ➢ Exceptionally, for humanitarian reasons of family reunion or for aiding justice, foreigners may be admitted as long as they have not been convicted to a malicious crime or have a custodial criminal record of 3 or more years. This exception also extends to those who can provide solid information that leads to stopping crimes related to migration.
Title V – Legality and Illegality of Stay	
Chapter I (Cancellation of Stay)	**Article 62:** Causes of expulsion from the country: ➢ The presentation of false documentation. ➢ Having any custodial criminal record. ➢ Having a final or pending conviction to a malicious crime. ➢ When the reasons for having been granted a Permanent, Temporary or Transitory Residence have changed or spending over two years outside the country. ➢ Incurring in any of the cases of Impediment mentioned above. ➢ Having been involved in acts of genocide or terrorism. Cancellations of Stay may be exempted to those who are fathers, son/daughter or spouse to an Argentine citizen if they have not been sentenced to a final conviction for over three years. The amount of time stayed in the country will be considered, but their personal circumstances will not.
	Article 69: Those sentenced to a deportation will now be ruled by the Special Summarily Migration Procedure.

[17] Modifications to the Law 25.871 (2004) are underlined

	Under this new Procedure, appeals must be filed within the three (3) working days of the notification. This timeframe also applies to the judicial means, to be filed once the administrative means have been exhausted. Once the Special Summarily Migration Procedure has begun, no administrative means may be filed. Once the cancellation has been ordered, the foreigner must be immediately detained to proceed with the deportation.
Title VI – Appeals Procedure	
Chapter I (Appeals Procedure)	**Article 74:** In the case of Impediment to Enter or Stay or Expulsion from the country, or of the execution of a fine against an immigrant, they may request a revision of the proceedings. The administrative means will be deemed exhausted when the foreigner spends over sixty continuous days outside the country. **Article 75:** Amongst the available administrative proceedings, the Appeal of Reconsideration may be filed within the ten working days of the notification. **Article 78:** Amongst the available administrative proceedings, the Appeal fixed before a higher administrative authority in assistance may be filed within the five working days of the notification. **Article 80:** The immigrant may choose the judicial means but such choice will automatically close the administrative ones. **Article 84:** Judicial appeals may be filed within 30 working days of the notification. **Article 86:** In the case of lack of financial resources, the foreigner will have the right to free of charge legal assistance and interpreter. The person must request such assistance to the authorities and prove the lack of financial means within the three working days of the notification, or the administrative steps shall proceed without further process.
Chapter II (Revision of Decision-Making Acts)	**Article 90:** This article has been abolished, no longer may the decisions of the Home Office and the National Head Office of Migration be revised once sentenced.

Source: Decreto 70/2017. Modificación de Ley N° 25.871, translated by author

Table 2C: Chilean Presidential Instruction on Administrative Measures with immediate effect

1- Labour Temporary Visas
1- Labour Temporary Visas Labour Temporary Visas can no longer be requested as of April 23, 2018. Creation of new types of Visas for labour purposes, which can only be requested in the country of origin: **1-** Temporary Visa of Opportunities: lasts for up to one year, extendable for one more. **2-** Temporary Visa of International Orientation: lasts for one year, extendable for one more. This is aimed at foreigners who obtained their degree in one of the 150 best foreign academic institutions in the world.

3- Temporary Visa of National Orientation: lasts for one year, extendable for one more. This is aimed at foreigners who obtained their postgraduate degree in a Chilean university.
2- Haitian citizens
1- Consular Visa of Simple Tourism: lasts for 30 days, only for those without the aim of settling in the country. **2-** Visa of Family Reunion: for spouses, partners and son/daughter to a national, who must not have any criminal records. It lasts one year, extendable for one more. There are only 10 thousand humanitarian visas available per year.
3- Venezuelan citizens
1- Visa of Democratic Responsibility: national Venezuelans who seek shelter in limiting countries without any criminal records. It lasts one year, extendable for one more. It can only be granted in the Chilean consulate in Venezuela.
4- Extraordinary Regularisation Process
1- Those who entered the country irregularly before April 8, 2018 they had 30 days to register and request a Temporary Residence. **2-** This also applies to those living in the country with an expired tourism or residence visa, but they only had 90 days to do so. **3-** Those who had not registered before April 23, 2018 were deported from the country. **4-** After reviewing the applications, the authorities would grant the Temporary Residence to those who qualified for it, which would last for one year. **5-** The cost of the visa is USD90, and the process must be carried in person.

Source: Medidas administativas con efecto inmediato (2018), translated by author

Table 3C: Relevant Articles from Chilean New Project for Migration Law 8.970-06

Title I – Scope of Application	
Article 2: This set of laws rules the entrance, stay, residence, and exit from the country of foreigners, including refugees.	
Title II – Fundamental Principles of Protection	
Paragraph I (Objectives)	**Article 3:** The State must guarantee the economic, social and cultural rights of foreigners, regardless of their migratory condition. **Article 6:** Integration and inclusion must be fostered, respecting the foreigners' culture, traditions, beliefs and languages. **Article 7:** The State must promote safe migration and take all actions towards preventing, suppressing and sanctioning the illegal movement of migrants. **Article 8:** The State must value the contributions of migration to society's development. **Article 9:** Irregular migration is not a cause of crime. **Article 11:** The current set of laws are ruled by the pro homine principle, favouring the most beneficial interpretation of the defence of the migrants' rights.

Paragraph II (Rights and Duties of Foreigners)	**Article 12:** The right of freedom of movement must be guaranteed. **Article 13:** The State will guarantee an equal exercise of migrants' rights, without prejudice to the requisites and sanctions this law and the legal system in general may establish for certain cases. **Article 14:** Migrants must have the same labour rights as nationals, without prejudice to the requisites and sanctions this law and the legal system in general may establish for certain cases. **Article 15:** Foreign residents or those under irregular migratory conditions must have access to the health system pursuant to the requisites the health authority establishes, under the same conditions as nationals. **Article 16:** Migrants with over two years of residence in the country will have access to Social Security and other fiscal benefits under the same conditions as nationals. **Article 17:** Migrants who are minors settled in the country will have access to preschool, primary and secondary school. **Article 19:** The right of family reunion for residents will apply for their spouses or partners, parents, underage children or with disabilities or children under 24 who have ongoing studies.
Title III – Entry and Exit	
Paragraph I (Requisites)	**Article 26:** Foreigners may be granted entry to the country under the following categories: transitory stay or official, temporary or definitive residence. **Article 27:** Foreigners with a transitory stay do not need a previous authorisation. Notwithstanding the foregoing, certain countries may be demanded a previous authorisation or visa issued by the Chilean consulates abroad. The list of countries subject to this requisite will be set by the Home Office, the Ministry of Public Safety and the Ministry of Foreign Affairs. **Article 29:** Under extraordinary circumstances, due to humanitarian reasons, certain foreigners who do not meet the requisites may be granted entry.
Paragraph II (Impediments of Entry)	**Article 32:** Entry to the country is not allowed to those who: **1-** Have final convictions abroad; belong to or finance terrorist groups; are registered in the INTERPOL; have acted against foreign or national safety or against the national sovereignty, according to the Chilean laws. **2-** Have diseases listed by the Chilean health authority as impediments of entry. **3-** Present false documentation or attempt to enter the country illegally. **4-** Have been prohibited the entry to the country. **5-** Have been sentenced or ongoing legal procedures in Chile or abroad to offences related to trafficking of drugs, persons or arms, money laundering, crimes against humanity, genocide, torture, terrorism, homicide, femicide, parricide, kidnapping, child abduction, sexual crimes against minors, child pornography, child prostitution , infanticide, sexual abuse or robbery with either intimidation, violence, homicide or rape. **Article 33:** Entry to the country is not allowed to those who: **1-** Have been sentenced to a crime in the last 10 years or to a simple offence in the last 5 years in a foreign court. **2-** Have been deported from another country in the last 5 years.
Title IV – Migratory Categories	

Paragraph II (Transitory Stay)	**Article 46:** Those with a Transitory Stay may not exceed 90 days in the country, extendable another 90 once only. **Article 56:** Those with a Transitory Stay may not request a residence permit in the country.
Paragraph IV (Temporary Residence)	**Article 67:** Temporary Residence may be granted to family members of nationals or permanent residents. **Article 68:** There are different subcategories within Temporary Residence: family members, foreigners who enter the country to work legally, students, seasonal workers, foreigners looking for labour opportunities, persons in asylum, health issues or religious reasons. **Article 70:** Temporary Residences last for 2 years, except for seasonal workers to whom it may be granted for 4 years.
Paragraph VII (Rejection and Revocation of Residence Permits)	**Article 89:** Those who have had their residence permits rejected or revoked will have 10 days to appeal the ruling.

Source: Proyecto de Ley de Migración y Extranjería (Boletín 8970-06), (2018), translated by author

Table 4C: Relevant Articles from Brazilian Order No. 666

Article 1	This law rules over the impediments of entry, repatriation, summary deportation, reduction or cancellation of stay of a person dangerous to the safety of Brazil or who has acted against the principles and objectives established in the National Constitution.
Article 2	This law applies to those who are suspected in: **1-** Terrorist activities. **2-** Criminal groups or armed criminal associations. **3-** Drugs, persons or arms trafficking. **4-** Children or adolescent prostitution. **5-** Violent records in stadiums: **Paragraph III:** Persons who fall within this category may not enter the country and will be subject to a summary deportation. **Paragraph VI:** No person will be denied entry to the country nor will be repatriated nor will be subject to summary deportation on the grounds of race, religion, nationality, social group or political opinion.
Article 3	Persons who are subject to the aforementioned deportation will have 48hs of the notification to appeal the decision or abandon the country.
Article 6	The order of deportation may be appealed 24hs of the notification.

Source: PORTARIA Nº 666 (2019), translated by author