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## Migrants, Human Rights, and the Armed Forces of the Americas

An analysis on the humanitarian crisis in Venezuela.

Dr. Evan Ellis\* | 23 November 2018



Venezuelan citizens who emigrated to the Dominican Republic to escape the economic crisis, arrive at Santo Domingo's Las Américas International Airport, to return to their country, on October 6, 2018. (Photo: Erika Santelices/AFP)

The United Nations estimates that at least 1.8 million Venezuelans have permanently departed their country since 2016 due to the unlivable conditions there. An additional 1.5 to 2 million more are expected to leave in 2019 as the condition in the region continues to collapse. In recent weeks, the massive flows of refugees have prompted Ecuador and Brazil to each temporarily shut their borders to thousands of Venezuelans literally seeking to walk into their countries.

Further to the north, while the debate over building a wall to more effectively close the U.S.-Mexican border has received much attention, Mexico has also worked with the United States to more effectively control the movement of people (as well as drugs and contraband goods) across its own southern borders with Guatemala and Belize. When the United States changed its wet foot, dry foot policy towards accepting Cuban immigrants, the result played out through migrant crises in Costa Rica's borders with Nicaragua and Panama. In the Dominican Republic, the attempt to seal off the border against immigrants from neighboring Haiti fueled an ongoing controversy within the international community.

The common element of each of these cases is that for even the most generous of countries in Latin America and the Caribbean, the movement of persons, like the movement of licit and illicit goods, ultimately becomes a matter of national sovereignty and border control. Less widely noticed

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is that in many nations of the region it is the national militaries which perform all or part of border control functions, and thus find themselves on the front lines as desperate people move through the region for a range of economic and political reasons.

### Security issues

From April 9-12, 2018, I had the opportunity to participate in a working session of the Conference of American Armies (CAA) in Guatemala City, on the theme of human rights in the context of border control operations and migration-related challenges in the hemisphere. The CAA, part of the Inter-American Human Rights System led by the Organization of American States, brings together land forces from across the Western Hemisphere to strengthen cooperation and address security issues of importance to the region. In the context of the challenge of multiple, massive movements of persons in the region, including Venezuelans and Central Americans among others, the purpose of this essay is to call attention to the little-discussed theme of human rights considerations for militaries of the region in dealing with such movements and some of the challenges and thinking being done by the region's militaries to recognize and meet their obligations in that area.

The importance of addressing such obligations by armed forces in the hemisphere arises from the confluence of three dynamics:

- The increasing irregular flow of persons through the region (including within member states and to and from other regions),
- Associated expansion of illicit flows through the region, such as drugs, cash, weapons, mining products, and contraband goods,
- The continued use of the armed forces in Latin America to meet internal security challenges, including responses to the previously mentioned illicit flows, where the capacity of state organizations is exceeded.

While beyond routine border control operations there is a strong normative presumption against the use of the military in matters involving migrants, the region's armed forces often play a necessary and constructive role supporting civil authorities responding to such challenges (where such a role is consistent with national laws and policies), in a way that not only respects, but advances human rights in the region.

### Migration patterns in the Western Hemisphere

Latin America and the Caribbean are regions increasingly characterized by irregular migration flows driven by both insecurity and economic factors, while at the same time contributing to them. The Continuous Reporting System on International Migration in the Americas of the European Commission's Organisation for Economic Co-operation and Development calculates that migration flows through the region increased by 11 percent in 2015 alone (the last date for which data is available). Such flows include internal displacement within countries—including not only the crisis in Venezuela, but also violence or natural disasters—, as well as displacement to other countries. It may include migration across a single border, such as the flow of Venezuelans into Colombia, or movements of persons across multiple borders, such as the journeys of migrants from Cuba and South America passing through Central America and Mexico to the United States. It also includes immigration from countries outside the hemisphere, such as that from China, Africa, and Syria.

As is well known, a limited number of countries characterized by high levels of violence and limited economic opportunity have become important source countries for migration in the Western Hemisphere. These include the northern triangle countries of El Salvador, Honduras and Guatemala (whose immigrants travel through Mexico toward the United States), Haiti (which sends significant numbers of migrants to neighboring Dominican Republic as well as to the United States and even as far as Chile), and in recent years, Venezuela, whose citizens have departed not only for Colombia, but also to Brazil (particularly Roraima state), Trinidad and Tobago, Panama, the Dominican Republic, and elsewhere.

Although approximately half of immigration within the region is ultimately bound for the United States, other flows from poorer to wealthier countries also occur, including the movement of migrants from Peru, Bolivia, and Paraguay to Argentina and Chile. In recent years, other destinations such as Costa Rica, Ecuador, Panama, and Uruguay have been impacted by significant increases in immigration.

The causes of the aforementioned migratory dynamics are complex, interdependent, and mutually reinforcing, reflecting the interaction of perceptions and actual conditions. Insecurity as a driver of migration may involve personal victimization or that of family or friends, the pressure of extortion, and/or broader perceptions of danger transmitted through traditional and social media. Economic drivers include not only the inability to find a job or otherwise generate income, but also events and costs which make the status quo seem unsustainable, such as a major theft, displacement from one's property, or extortion against one's family or business. Beyond traditional cost-benefit calculations, Venezuela illustrates how the sheer inability to obtain basic necessities such as food and medicine may drive massive outmigration. In the difficult decision to migrate, objective



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conditions are mediated through perceptions, including information from family and friends regarding where opportunities and support networks exist, as well as information from traditional and social media regarding where immigrants are unwelcome.

Immigration has significant effects not only on the society receiving those displaced, but also on those losing them and the countries that they transit. While remittances sent by immigrants from their new homes can benefit family and communities in their former ones, the breakup of families when migrants leave and the vulnerability of those left behind to recruitment by gangs and other ills generate damaging effects on the countries they leave. Moreover, the transit of migrants fuels other parts of the criminal economy in the region. It generates revenues for the smugglers and those who traffic in persons, moving them against their will, or through deception, as well as for criminals who prey upon immigrants by extorting or robbing them (those in transit are notably vulnerable for the combination of their transit status and the cash and other valuables that many carry for the journey), and those who may oblige them to smuggle drugs or engage in other illicit activities during their journey.

#### **The role of Latin American armed forces in border control and migration**

Although civilian authorities almost universally have the lead in border control and migration issues in Latin America and the Caribbean, the regions' armed forces play a variety of roles in support of those authorities as shaped by the individual situation and legal framework of each state. The human rights considerations for such missions, where performed, were the focus of discussion for the CAA meeting in Guatemala City.

While the specific activities of each of the regions' militaries in border control and migration vary as a function of the nations' laws and policies, the superset of such activities can be divided into:

- Those in support of the control of border areas, involving not only immigrants, but other flows, both licit and illicit,
- Special tasks, potentially performed by different countries at different times. The particular tasks in each of these categories involve a range of distinct human rights considerations for the military and other authorities undertaking them.

With respect to frontier control, the interaction with migrants depends in part on whether they are believed to be associated with illicit activities such as carrying drugs or being trafficked against their will, or whether they fall within a category of person of concern because of their potential ties to terrorist groups. In general, most countries of the region do not restrict the exit of immigrants from their territory, although they may insist on the use of official border crossings. In situations where military support for border control involves detentions, there are human rights implications, including the circumstances of the detention and the period of time the detainee is held. Where immigrants are in distress, interactions at both land and maritime borders also may create an obligation to render assistance. Other considerations include limitations on the treatment of migrants at control points, such as respect for the integrity of their person, with special attention required for certain categories of persons such as women and children. It is generally considered that information obtained from the immigrant should also be limited to the purpose of the control activity and handled in a way respectful of the immigrant's right to privacy.

Where interactions involve a confrontation, the use of force must be necessary and proportional, consistent with imperatives such as "legitimate defense", and the use of force in a progressive, differentiated fashion.

Where control activities require immigrants to be taken into custody, a number of other human rights imperatives arise, including minimizing the time in custody (particularly where custody involves the delivery of the immigrant to the competent civil authority, consistent with the laws of each country), as well as ensuring certain minimum conditions during that custody, such as those involving dignified treatment, physical safety, and adequate and appropriate food and medical care.

While armed forces in the region are not traditionally involved in interactions with immigrants beyond the support of military entities for border control in some countries, the United Nations-sanctioned peacekeeping force in Haiti (MINUSTAH), in which armed forces were called upon to administer migrant camps, illustrates that special cases may arise. Alternatively, the military may be called on to interact with immigrants within the national territory for purposes other than removing them, such as the case of Colombia, facing a massive inflow of migrants from Venezuela, where the military could potentially be called upon to provide order and/or assistance to immigrants and others with whom they interact as part of its broader role of maintaining control over and security in the national territory. Each of these situations in which militaries interact with immigrants gives rise to situations with associated human rights obligations for participating militaries, similar to those arising from military involvement in border control activities, as discussed previously.

#### **Recommendations**

The rich discussions at the CAA session suggest a number of promising steps to help the armed forces of the Americas ensure compliance with human rights obligations when they conduct activities in support of civil authorities involving migration, as authorized by their national policies and legal frameworks.

To the extent that militaries of the region engage in border control and other migration-related operations, they must have the knowledge and tools to support that participation in a fashion consistent with the human rights legal obligations discussed in this analysis. Doing so also requires ensuring that doctrine relevant to such activities touches on the relevant human rights considerations, and that participating units are adequately trained with regard to them. The availability of reference materials such as a reference card or booklet for troops that can be carried on their person may be useful in this regard. Moreover, forces participating in interactions with migrants should have the appropriate equipment to facilitate such compliance. This includes the availability of riot gear and nonlethal weapons for interaction with civilians –where such interaction is necessary–, to help ensure proportionality in the use of force. Where possible and permitted by available resources, a desirable practice is to outfit units engaged in such operations involving civilians with monitoring and verification equipment such as body cameras. Such devices not only protect civilians against potential abuse, but also protect the military personnel involved against false or mistaken allegations.

It is important for national militaries to have a clear legal framework that establishes the authorities, responsibilities, and limits in geography and time to govern their actions in internal security operations, such as those involving border control and interactions with migrants, to reduce questions of authority. In the case that the situation requires the national leadership to implement a temporary special legal regime, such as a state of emergency, it is particularly important that the policy action and law be clear regarding what authorities governing armed forces are expanded and which are not.


As a principle, and particularly when dealing with migrants, the military should seek to maintain transparency of their actions and constant communication with relevant governmental partners, non-governmental civil actors (such as local partners and interest groups), non-governmental organizations, transnational organizations, and other states relevant to the action (such as neighbors and/or coalition partners). Such outreach may seem burdensome or superfluous within the culture of the armed forces executing the missions described in this analysis and certainly will not preempt all mistrust or unfair accusations, but is a necessary part of building the confidence of the relevant stakeholders in the context of operations which are likely to be highly sensitive and potentially politicized.

\*The author is research professor of Latin America at the U.S. Army War College Strategic Studies Institute. The analysis presented in this work was inspired and informed by discussions by the name of event, but the opinions and recommendations expressed in this work are strictly those of the author.

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