
Authoritarian borders? Turning authoritarian international law inside-out

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Abstract: Can border control practices be understood as forms of authoritarianism? This paper employs Tom Ginsburg's theory of 'authoritarian international law' to ask whether liberal and/or democratic states may be embracing and contributing to 'authoritarian' norms in their treatment of outsiders and citizens alike in the process of managing presence in their territories. Ginsburg's concept focuses on states championing sovereignty over rights and cooperating to further authoritarian acts. Recent years have witnessed liberal democracies deploy controversial border and immigration control techniques, championing sovereign prerogative over rights-based understandings of their international obligations. Liberal and democratic states have also embraced cooperation to manage or deter migration, including with authoritarian states. Are these states helping to construct an authoritarian international law through border control? Whether they are may hold new answers for the question of whether a liberal society must embrace its principles at or beyond its borders rather than merely within.

Keywords: authoritarianism; borders; international law; liberal democracies; migration; immigration; mobility; mobilities; borders; border control; rights; human rights.

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1 Introduction

In the run-up to hosting the 2022 World Cup, Qatar faced fresh scrutiny for its already widely-denounced treatment of migrant labourers. The pressure to complete preparations in heat so searing that many died (Page and Worden, 2022) appeared to be a particularly egregious consequence of an abusive guest worker regime in which passports could be

confiscated, pay withheld, and the ability to participate in society curtailed (Amnesty International, 2016). Together with restrictions on assembly that impacted migrants' ability to remonstrate for themselves, these comprised a suite of problems which critics seized on the spotlight of the tournament to highlight (Bokat-Lindell, 2022).

Qatar's treatment of migrants has been so integral to conceptions of its repressiveness that it has become a *principal* example illustrating it [Grothe, 2022; Human Rights Watch, (2024), pp.514–516], closely linked to the state's 'authoritarian' nature (see Babar and Vora, 2022). At the same time, understanding as 'authoritarian' similar forms of mistreatment of non-citizens by democratic states (liberal or otherwise) is rarer (Lori 2020). Wage theft, debt bondage, abuse, and hazardous conditions were aspects of Canada's temporary migrant labour programme that a UN Special Rapporteur warned made it a 'breeding ground for contemporary forms of slavery' [UN Human Rights Council, (2024), p.5]. Migrants have also perished in the Mediterranean after European states refused to conduct search and rescue operations (Cusumano and Pattison, 2018). Yet, democracies' expansion of powers focused on curtailing citizens' speech have been more frequently deemed 'authoritarian' than measures imperilling the lives and welfare of non-citizens (e.g., Butler, 2023; Global Witness, 2022).

Recently, misgivings about use of the term in democratic contexts may have started to fall away (see, e.g., Dickson et al., 2025). The second US Trump Administration's increased and intensified raids on and detention, and deportations of migrants (Human Rights Watch, 2025; Parker, 2025) and visitors (Watson, 2025), as well as its wielding of immigration status to silence non-citizens (see American Association of University Professors v. Rubio, 2025) are increasingly understood as part of its 'authoritarian' tendencies (e.g., Altman, 2025; Watson and Zars, 2025; Human Rights Watch, 2026). Yet the term has not always extended to other, more liberal states that have nevertheless acted in illiberal ways in controlling migration. Uses of the term that have previously touched on the treatment of non-citizens have also tended not to explore its appropriateness [see e.g., Ahmed, 2024; Pichl, 2024; Borneman, 2012; Henderson, (1991), p.382], leaving the rationale behind its employment or lack thereof unclear.

One reason may be that how something is 'authoritarian' has long been difficult to define (Malloy, 1992). The term 'authoritarian' – and the related 'authoritarianism' – have had different meanings for different authors in different fields, with some focused on regime type and others on behaviour (Waller, 2022). While some scholars associate the concepts with a lack of or an undermining of accountability (Glasius, 2018), a reduction in means of accountability like courts, the free press, or civil society (Sandholtz, 2019) or with inducing or coercing compliance (Frankenberg, 2022; Smith, 2018), others advocate for limiting their application only to non-electoral regimes (Waller, 2024).

Importantly, however, authoritarianism's association with illiberalism, and not just a lack of democracy, remains a 'core assumption in mainstream political science' [Waller, (2024), p.376] and uses of 'authoritarianism' that focus on a voluntarily established and not entirely pervasive illiberalism can help distinguish it from a potentially stricter 'totalitarianism' (Frankenberg, 2022). At the same time, alternative concepts may not necessarily offer more precise ways to describe how states approach individual issues. 'Illiberalism' or the term 'illiberal' themselves can potentially be associated with a broader, anti-liberal reactionary philosophy (Waller, 2022), while 'populist' or 'populism' can refer to wider programs against a variety of enemies (Frankenberg, 2022).

Policies impacting non-citizens may also not read as ‘authoritarian’ because theorists of the concept do not tend to include states’ *omissions* like failures to regulate employers or to rescue the drowning as deserving of the label, unlike acts. They also tend to focus on domestic conditions and less on cross-border phenomena (see also Tóth, 2017); Fassi et al. (2023) consequently characterise illiberal forms of border control not as authoritarian but a ‘form of liberalism’ centred on citizens’ needs. Yet the application of border and immigration control, at least, to non-citizens often occurs through legal acts as much as omissions, taking it beyond what has been described as ‘lawlessness’ (Gantry and Kochenov, 2025) – while still unanswerable to those it impacts. Border control powers can also involve surveilling, intimidating, and enlisting citizens and centralising state power. In other words, they can involve both the coercive and unaccountable aspects of the definitions of authoritarianism above.

Is there then a way then that, among acts impacting noncitizens, forms of border control (understood as including immigration control) embraced by liberal and/or democratic states could be considered authoritarian? If so, how could these forms be recognised as ‘authoritarian’, precisely, and what might it mean for them to be widespread? This article approaches these questions from the perspective of border control’s relationship with international law.

Doing so is not meant to represent an exclusive method, but may have advantages relative to other approaches. First, examining border control’s relationship to authoritarianism in light of international law can transcend other approaches’ domestic focus, demonstrating how that relationship impacts on rules potentially applicable to numerous states. Second, it may allow for more certainty in applying the concept of ‘authoritarianism’ to border control. A previous attempt to understand border control through the lens of ‘authoritarian neoliberalism’ instead risked ‘lacking a certain degree of precision and clarity’ (Smith, 2018), while the question of whether to privilege regime types or broad definitions in identifying authoritarianism is also less important for international law than state acts’ relationships with specific external obligations.

In the context of border control, that makes human rights – protections of last resort for citizens and non-citizens alike – more central. Lori (2020) has in this vein suggested the use of non-citizens’ rights as a means to compare democracies and autocracies more holistically; human rights standards offer a measure by which to do so. Arendt (1951) also famously argued that *totalitarianism* stemmed in part from non-citizens’ lack of rights, which ultimately undermined those possessed by citizens. In a world in which stronger legal protections for the former exist, however, questions of their dilution – and whether it implicates the lesser category of authoritarianism – may be more significant.

Ginsburg’s (2020) theory of ‘authoritarian international law’ is germane to such an analysis, both for determining what acts might count as ‘authoritarian’ and what broader impact their embrace may have. It focuses on what he calls an ‘authoritarian’ *approach* to international law – in treaties, resolutions, reinterpretations, and international organisations, among other means – that seeks to elevate the position of state sovereignty vis-à-vis international obligations protecting individuals, and has promoted cooperation to maintain and enhance states’ potential to do so. At first sight, it concerns the use of this approach by non-electoral regimes. But it makes little distinction between them and what others have termed ‘illiberal’, ‘populist’, or ‘competitively authoritarian’ (Levitsky and Way, 2002) states that ‘hold elections, but...undermine...the rule of law and the core rights of speech and association’ [Ginsburg, (2020) p. 224].

Ginsburg also acknowledges that more liberal ‘democratic states “...have used international law to do undemocratic things’, including ‘outsourc[ing] repression...design[ing] systems of...sanctions without due process, and reinforc[ing] dictators.’ Nonetheless, he argues that ‘democratic governments...can [still] be thrown out of power by their citizens, if th[ey] are not benefitted by greater security and wealth” (p.259). He implies that this mechanism acts as a safeguard on such states’ ‘authoritarian’ tendencies.”

Yet, as scholars such as Hurd (2020) and Lori (2020) suggest, behaviour may not be so easy to limit to regime type. Ginsburg’s understanding of authoritarian states is informed by his focus on ‘internal security’, which, he claims, they see as ‘a much graver concern’ than external risks (p.230). But not only are non-electoral autocracies often preoccupied with ‘outside interference’ impacting internal security. This article suggests that democracies, and even liberal democracies, may exhibit behaviours akin to those Ginsburg believes contribute to an ‘authoritarian international law’ in part due to what they see as *external* threats, including migrants.

Acts of ‘authoritarian’ border control may therefore be endorsed or at least not disrupted by elections, *because* voters view them as benefitting their ‘security’ or ‘wealth’ – and may help construct an ‘authoritarian’ approach to international law by democratic means. Liberal and/or democratic states doing so may be visible in their patterns of practice that may help shape customary international law, their repurposing of treaties, their forging of multilateral treaty-based collaborations, and their capturing, avoiding, or breaking away from the oversight of international courts to promote border security over individual rights. In the process, they have also narrowed what Ginsburg considers citizens’ ‘core rights’, including their rights to associate for migrant aid and, by concentrating power over border control in executive agencies and removing it from judicial oversight, their rights to democratic participation and accountability. If these acts do not necessarily meet an ‘authoritarian’ threshold, they may at least indicate shifts in an authoritarian direction.

To be clear, this article does not suggest that liberal democracies or democracies more broadly (henceforth, to emphasise the inclusion of even liberal democracies, ‘liberal/democratic states’) may be ‘just as authoritarian’ as non-democracies for engaging in such acts, nor does it seek to justify ‘authoritarian’ states or behaviours by arguing that ‘all’ states engage in such acts. Part of what it may achieve is a further nuancing of rigid distinctions sometimes posed between liberal/democratic and authoritarian states (e.g., Cooley, 2015; White House, 2022). It may also help demonstrate how Ginsburg’s theory can allow examination of *interactions* with or that could affect international law in an ‘authoritarian’ direction rather than understanding the use of international law by autocratic states alone.

In applying and expanding the theory of ‘authoritarian international law’ – a theory concerned with types of state or act rather than criticising the *existence* of states or state powers – this article is also not arguing that every instantiation of border control, or even every move toward stricter border control, is ‘authoritarian’. There are, of course, arguments that there are injustices *inherent* to any form of border control, and advocates of ‘open borders’ challenge any immigration control’s legitimacy (Wilcox, 2009). But to deem any version of the phenomenon ‘authoritarian’ risks stretching that term beyond its usefulness for comparing different forms or levels of border control.

How border control operates with respect to international law is therefore significant when evaluating its ‘authoritarian’ potential under Ginsburg’s theory. Scholars of

mobility (e.g., Shamir, 2005) have focused on how border control functions through trade-offs between movement and security. International law generally requires that individuals be able to exit states [e.g., Universal Declaration of Human Rights 1948, Art. 13(2); International Covenant on Civil and Political Rights [ICCPR] 1966 Art. 12(2)] but leaves entry more to states' discretion, with limited exceptions such as for asylum and the right of *non-refoulement*, or not to be returned to a place of danger (Convention Relating to the Status of Refugees [Refugee Convention] 1951, Arts. 31, 33(1); ICCPR 1966, Arts. 6, 7; Convention Against Torture, 1984, Art. 3) which can grant a 'right of transgress' (Lauterpacht and Bethlehem, 2003; Noll, 2005, p.548). International law also generally requires certain protections related to migration and border control but permits derogations from them when certain state interests require (from, for example, the right to privacy – in temporary, exceptional circumstances), though there is a limit to this flexibility; treatment, for example, still cannot be cruel, degrading, or discriminatory (ICCPR Arts. 4, 12, 17).

This article is concerned with the ways that liberal/democratic states may go beyond the range of options made available by these provisions, undermine them, or create new ones, potentially shifting the balance between movement-related rights and sovereign discretion toward the latter and contributing to a form of 'authoritarian mobility'. It is also concerned with how decisions about these shifts are instituted and overseen, in ways that compose a structure of greater sovereign control vis-à-vis international bodies and more centralised control within states. In doing so, it points to forms of state practice and cooperation that could contribute to larger international legal changes. Such shifts have implications for the 'rule of law' – one concern common to numerous understandings of authoritarianism at both domestic and international levels [e.g., Henderson, 1991; Toth, 2017; Ginsburg, (2020), p.248] – especially if the international rule of law is conceptualised as a 'thick' version [see Chesterman, (2008), pp.340–341] focused on maintaining individual rights or even potentially if it is understood as a 'thin' one (see von Bernstoff, 2019) concerned with inequality of treatment between citizens of migrant receiving states and those of migrants' states of nationality.

At the same time, the article touches on instances in which state practice, even where it may not immediately or formally contribute to lawmaking or -shaping, may be fostering new norms and their broader internalisation (Finnemore and Sikkink, 1998), feeding potential changes in customary international law or preparing the ground for other international legal shifts. Such shifts can be significant as even changes in *expectations* of where the law might go can be 'of immense practical importance...they have a direct impact on the legal practices of states and other actors', while '[t]he assertion of a 'trend' [alone] often plays an important role in international legal argument...in particular about assumptions about community interests or values within the international legal order' [Krieger and Nolte, (2019), p.16]. None of this is to suggest that liberal/democratic states have only been engaged in 'authoritarian' behaviours recently, or that historical migration control could not be understood as 'authoritarian'. Some of the examples reviewed below are longstanding or have longstanding roots. They have also been presaged by earlier and harsher forms of border control and authoritarian mobility. But these precursors do not preclude the potential that there has been a recent intensification in the direction of sovereign discretion relative to the recent past.

The article proceeds in four sections. Section 2 outlines Ginsburg's theory, setting the stage for how it may be applied to border control. Section 3 examines examples of border control that, following Ginsburg's schema, may be contributing to a form of international

legal structure increasingly upholding sovereignty over rights. Section 4 explores reasons why liberal/democratic states might drift toward authoritarian mobility and how their potential application of authoritarian international law to border control could challenge understandings of how such states might interact with international law. Section 5 concludes by reflecting on the value of the analysis at least for suggesting that undemocratic or systemically illiberal states may not be the sole originators of authoritarian international law.

2 Authoritarian international law

Ginsburg's theory emerged in dialogue with work like Slaughter's (1995) understanding of how international law might function among liberal states. For Slaughter, writing in the optimistic 1990s glow about a liberal end of history, most states would soon possess 'disaggregated' forms of sovereignty in which different government organs could cooperate with civil society groups across borders to push those states toward harmonised international legal frameworks. Slaughter characterised authoritarian polities, by contrast, as behaving along the lines of 'traditionally' understood sovereign states, 'black boxes' that largely interacted with other governments and helped form international law through top-level officials, with limited scope for civil society influence.

Slaughter's model has faced challenges. Some argued that it ignored ways cross-border commercial actors influenced authoritarian states, making them more akin to liberal counterparts than she assumed [Berman, 2005; Alvarez, (2001), p.198]. Another critique, however, was that her model took a too sanguine view of liberal states' behaviour and interactions with international law (Alvarez, 2001).

Ginsburg's theory has, however, continued emphasising a significant distinction between liberal and authoritarian states. It echoes Slaughter in framing authoritarian regimes as more likely to behave as 'black boxes', less enmeshed with other states or international legal structures. In Ginsburg's telling, authoritarian states prefer fewer binding commitments, interference with their domestic affairs, and entanglements with international tribunals (p.231).

At the same time, Ginsburg, writing in an era of greater concern about liberalism's future and authoritarian 'threats', has gone further in suggesting that an 'authoritarian international law' could *promote* greater sovereignty as a norm, 'returning us to a world of Westphalian international law, primarily as a defensive measure' (p.228). Its means could include 'mimicking' and repurposing liberal democratic initiatives toward illiberal ends (p.242). Ginsburg sees attempts to influence the content of UN resolutions – such as one reworking cybersecurity law to permit the repression of dissent – as means to shift the character of international law (pp.253–255). Such behaviour, he writes, has included capturing human rights bodies and altering the nature and character of the language of human rights resolutions to prevent support for civil society groups (pp.255–256).

Authoritarian states, he contends, might also use international law as a means to cooperate, crafting treaties to form or guide international organisations for the purpose of maintaining their regimes against internal enemies. He points to, for example, the Association of Southeast Asian Nations' pledge of mutual non-interference, which might sacrifice the self-determination of national minorities facing subjugation by a member state (pp.243–245) or allow assistance in repressing regime opponents (p.231). Ginsburg also notes the China-led Shanghai Cooperation Organisation (SCO)'s mandate to fight

‘extremism’ – defined as ‘changing violently the constitutional regime of a State, as well as a violent encroachment upon public security’. He views these not only as forms of cooperation that have and can lead to multilateral intervention to crush rebellions and prop up regimes in danger, but attempts to establish ‘new norms’ potentially in tension with rights like freedom of expression (pp.251–253).

Finally, Ginsburg observes that collaboration within such groups as the SCO could involve the apprehension and extradition of other member states’ fleeing dissidents (p.253). That actions restricting entry into and the ability to remain in states might constitute an authoritarian form of mobility as much as exit, which has been more traditionally associated with autocratic regimes – circles back to this article’s question of whether liberal/democratic governments, in their acts of border and immigration control, might too be engaging in behaviour that could be considered, in a way, authoritarian. Their own narrowing of rights linked to mobility, which the next section explores, may also present characteristics of Ginsburg’s theory.

3 Authoritarian international law at the borders of liberal/democratic states?

This section explores the potential extension of Ginsburg’s concept to liberal/democratic states’ border control practices. The first part concerns individual state behaviour that is reflective of Ginsburg’s emphasis on an ‘authoritarian’ preference for ‘Westphalian’ autonomy from international obligations: one that weighs the balance between sovereignty and rights toward the former. The second is focused on border control cooperation in the form of treaties, organisations, and institutions in which liberal/democratic states have engaged – with one another and with autocratic states – to support sovereign prerogatives and restrict rights, corresponding to Ginsburg’s reading of how authoritarian states collaborate to promote illiberal ends and norms. The third seeks to evaluate the potential of these examples to indicate the emergence of an ‘authoritarian’ international law of border control.

Many of these examples will not be unfamiliar to readers engaged in recent issues in international migration and refugee law. The focus of this section is therefore not to examine them in detail. As it was for Ginsburg (p.223), the aim is also not to demonstrate conclusively a change in or violation of every international legal rule discussed, nor to definitively establish the development of new norms, but to examine a landscape of possibility – the possibility that an authoritarian international law may be present or emerging in the exercise of border control by liberal/democratic states.

3.1 More ‘Westphalian’ border-states

This part discusses acts of individual states, including legislation and administrative acts and judicial decisions, that move away from respect for individual rights. These moves also encompass behaviours that Ginsburg sees in many of his own examples: an aversion to courts, the repurposing of law or its justification, or reinterpretations or violations indicating potential shifts in the law or broader norms. Such acts may not only represent these states’ individual approaches to international law but shape it more broadly. While Ginsburg does not touch on customary international law as part of his theory, such acts may, where consistent, general, and/or persistent enough among states, point to the

existence of one of its elements (state practice) and even constitute evidence of the second element of *opinio juris* when specially affected states, such as those serving as migrant destinations or protectors of migrants via their nationality, acquiesce to shifts (International Law Commission Draft Conclusions on Identification of Customary International Law 2018 [ILC Draft Conclusions], Concl. 6; 8 Commentary 4; Concl. 10, Commentary 8; Concl. 16). They could also constitute the practice of parties on which interpretation of treaties may be founded (Vienna Convention on the Law of Treaties [VCLT] Art. 31(3)(b)).

Liberal/democratic states' policing of migration has focused, among other things, on limiting already narrow grounds for entry, especially the right to *non-refoulement*. They have consequently defied or sought to defy courts (Wessels, 2024), both international and domestic, in doing so. While 'pushbacks' of potential asylum-seekers in the Mediterranean were successfully challenged in the European Court of Human Rights (ECtHR) (*Hirsi Jamaa and Others v. Italy*, 2012), for example, there are serious allegations that they continue [Luyten, (2022), pp.6–8]. In reaction to the determination in [R (on the application of AAA (Syria) and others), 2023] that Rwanda was an insufficiently safe destination to deport asylum-seekers, legislators also moved to overturn the UK Supreme Court's findings of fact and prominent governing party members proposed legislation blocking the operation of human rights treaties on which the judgement was based in whole or part (Briddick, 2023).

Liberal/democratic states have also directly denied obligations to respect asylum-seeker rights to enter and remain in their territories. Commentators (e.g., Mallory, 2024) have accused recent UK legislation, including the Nationality and Borders Act (NaBA) 2022 and the Illegal Migration Act (IMA) 2023, of making the requirement that asylum-seekers be allowed access to a territory for the purpose of having their claim assessed unavailable for those who arrived by irregular means. Finland and Poland have proposed or adopted legislation suspending asylum rights, arguing that they need to combat 'instrumentalised' migration being used as a Russian 'weapon' against their societies, prompting concerns about such moves' international legality (Easton and Aikman, 2025; United Nations High Commission for Refugees [UNHCR] 2024a). Turns toward 'temporary' protection for asylum-seekers in the Nordic states and beyond have also 'narrowed' the scope of their rights (Scott Ford, 2025).

The move away from rights has extended from asylum-seekers to other migrants. In parallel with the European approach to 'instrumentalisation', the US has also sought to avoid rights concerns by representing the presence of a Venezuelan gang as an 'invasion' justifying war powers for deportation (White House, 2025) – straining the 'strictly required' threshold for derogating from relevant ICCPR emergency provisions (Arts 4, 14). After the move encountered domestic legal obstacles, the government pivoted to classifying them as 'terrorists' to justify the activation of a parallel judicial process involving 'secret evidence' instead (Cheney and Gerstein, 2026).

Attempts by liberal/democratic states to restrict smuggling or trafficking – often justified on the understanding of migrants as victims of criminals who stoke their movement – can not only impinge on one of the few forms of movement available for many asylum-seekers who lack safe pathways, but endanger migrants that they were ostensibly seeking to protect by driving such activities further underground, making them less visible and regulable (Brachet, 2018). In such cases, states may be *repurposing* a language of migrant protection – as Ginsburg asserts authoritarian states do – effectively restricting rights of entry and potentially impacting on rights to life by purportedly

upholding other rights. While such efforts may not always be *conscious* forms of repurposing, others more directly parallel the overt efforts Ginsburg chronicles, with the second Trump administration seeking to find ways that rights to ‘public safety’ may have been violated by other states *permitting* ‘mass migration’ (Hansler, 2025). Actions by Hungary and the US admitting ‘privileged’ refugees like South African whites have also been read as attempts to ‘parody’ asylum by governments that are hostile to it (Szigeti, 2026), a form of repurposing aimed at delegitimizing legal requirements or constraints.

Intensified scrutiny of borders can also impinge on the rights and structures protecting states’ own citizens. The US Supreme Court has, long before Trump’s presidencies (since *United States v. Ramsey*, 1977) permitted the border to serve as a zone of exception from constitutional protections (which for the US fulfil human rights obligations) – a status largely maintained since (US Customs and Border Protection [CBP] 2018). Invasive searches have been one consequence; one report warned that these ‘risk[ed] undermining press freedom as [CBP] agents search...laptops or phones without warrant and question journalists about their reporting’ (Committee to Protect Journalists, 2018). Such searches of journalists increased fourfold to over 40,000 annually from 2015 to 2019 (Bartholomew, 2023). UK legislation similarly gave police powers of detention at ports and airports without reasonable suspicion (Terrorism Act, 2000, Schedule 7), a tool also recently wielded against journalists (Bartholomew, 2023). The breadth of such powers may render them closer to impermissibly ‘arbitrary’ under Article 17 ICCPR (see UN Office of the High Commissioner of Human Rights [UNOHCHR] 1988, para. 8).

The scope of *immigration* control increases the likelihood of its application to citizens further. The US border exception applies within a 100-mile zone extending into the country’s interior – including from its coastlines. This understanding has recently allowed ‘border’ searches anywhere within this zone (Anthony, 2020), tracking citizens’ travel within it, and their detention for ‘suspicious activity’ (Tau and Burke, 2025). Australia has a similar ‘excision zone’ where asylum claims are not permitted, which was extended to the whole mainland of the country in 2013, and against which its High Court has only partially pushed back [Shachar, (2020), pp.41–44, 49].

The second Trump Administration’s setting aside of due process in carrying out deportations has also increased stops and warrantless arrests and home searches across the country (American Immigration Council, 2026) and placed citizens at risk of being unable to prove their right to remain (Cheney, 2025) as they face targeting for reasons that might violate non-discrimination protections [ICCPR Arts. 2(1), 26] instead. US courts also previously eroded protections against immigration-related searches that could impact citizens, including online (Sumaita, 2022). Earlier surveillance by US Immigration and Customs Enforcement (ICE), for example, focused on corporate employment practices could be beyond the boundaries set by current interpretations of the ICCPR’s right to privacy (Tucker and Sugiyama, 2023).

Across western democracies, in fact, the border has not only become an ‘internal’ or ‘shifting’ one (Fauser, 2024; Shachar, 2020) but ‘the border is everywhere’, not only subjecting migrants to control beyond entry, but creating an environment in which citizens must serve or fear the state toward the end of policing migration – making ‘citizens and non-citizens alike...subject to immigration control’ [Consterdine, (2024), p.14] with potential consequences for rights ranging from freedom of conscience to compulsory labour to data protection (ICCPR Arts. 8, 17, 18). The UK, for example, holds employers and/or landlords responsible for ensuring they are not employing or renting to a person without legal status, ‘deputising’ citizens as immigration enforcers

and subjecting them to immigration law sanctions for non-compliance (Griffiths and Yeo, 2021).

Democratic states have, finally, also employed means to control borders and immigration that impact on ‘core’ liberal rights like association, assembly, and expression (ICCPR Arts. 19, 21, 22). They have moved to curtail activities by civil society groups, particularly those engaged in migrant search and rescue operations – which can involve transporting asylum-seekers into their territories – in what has been called the ‘criminalisation of solidarity’ (Soupault, 2026). In some Mediterranean states such groups’ operations have faced bans (Mainwaring and DeBono, 2021; Tazzioli, 2018), with the curtailment of rights justified, like other migration restrictions, on the basis of induced smuggling. Hungary’s government has previously gone further, with laws directed against ‘promoting’ migration or monitoring its conditions [Pichl, (2024), p.228], impacting such groups’ freedom of expression. Where they do not encounter direct legal challenges, pro-migrant groups in southern Europe have faced state intimidation and ‘disciplining’ through oversight [Carrera et al., (2018) p.260]. Although many of these organisations are humanitarian, rather than political, the crackdown on them may invite parallels with limitations on civil society movements that challenge state power by other means.

At the same time, the characterisation of migration issues as ‘emergencies’ has allowed liberal/democratic governments to avoid legislative scrutiny, using such tools as Executive Orders in the US (Parker, 2025) and Spanish royal decrees (Bermejo and Iglesias, 2026). For one author, such bypassing of parliamentary scrutiny transforms executive discretion over migration from a mere rule of law violation to a truly ‘autocratic’ tool (Bornemann, 2026). That does not mean there is never legislative support for such moves, however, as democratic bodies themselves can facilitate the surrender of their own powers and the centralisation of powers over border control. The UK NaBA, for example, gave executive bodies discretion over migrant removals. Parliament only removed such discretion in the IMA to tighten control even further and make removals mandatory [Mallory, (2024), p.720].

3.2 ‘Authoritarian’ border control cooperation

Liberal/democratic states have also engaged in cooperative forms of rights-confronting border control, including by forging bilateral and multilateral treaties and other agreements. Like forms of cooperation reviewed by Ginsburg, these may serve as examples of how international legal instruments themselves can be used toward arguably ‘authoritarian’ ends. In cases where they correspond to movements in state practice, moreover, they can also help confirm emerging customary rules (serving as evidence of *opinio juris*), themselves constitute state practice that can help shift customary international law (ILC Draft Articles Concl. 11), serve as subsequent or other agreements relevant to the interpretation of existing instruments [VCLT 31(3)(a) and (c)], or constitute shifts in soft law or broader norms in favour of sovereignty over obligations toward individuals.

States seeking to return asylum-seekers or refugees in potential violation of the right of *non-refoulement*, for example, require cooperation from other states to do so, as states receiving deportees – who in practice may not have a guaranteed ability to reenter – often must agree to facilitate entry. Returning states thus often seek ‘readmission agreements’, often formal treaties, with them (Ellermann, 2008). But return can often be made to (and

through agreement with) autocratic states where persecution may be likely; the EU has even targeted such states to receive returnees to maximise readmissions (Stutz and Trauner, 2024).

Readmission agreements, however, are far from the only example of potentially rights-confronting or -diluting cooperation by liberal/democratic states for purposes of migration and border control. This section reviews four others in greater detail:

- 1 externalisation agreements that force asylum-seekers and migrant deportees to be removed to or stay in third states
- 2 international institutions focused on managing borders to the exclusion of fundamental rights
- 3 multilateral organisations ‘repurposed’ for rights-restrictive migration control
- 4 extraterritorial border control agreements that can facilitate rights-narrowing practices for all travellers.

3.2.1 Migration externalisation agreements

In recent years, externalisation has become an increasingly prominent form of multilateral border and immigration control cooperation. Its application to asylum-seekers has been among the most the most discussed examples. In agreements inked, for example, between the EU or individual European states, on the one hand, and Turkey and those in North Africa, on the other; between the US and Latin American states; and between Australia and Pacific Island states, the latter states in each pair often serve as holding centres or ‘waiting rooms’ for would-be asylum claimants seeking to move to the former, with host states often agreeing in exchange for financial and/or other inducements (Zaiotti, 2016; Nethery et al., 2022). Such agreements may also require removal of asylum-seekers from their intended destination to the third country, or – in ‘pullback’ operations – lead to their interdiction enroute to their intended destination, such that their right to enter cannot be triggered (Nicolosi, 2024).

Maintaining asylum-seekers in third states may also involve unwarranted detention. It may also confront the right to leave as migrants are unable to move to intended destinations (McDonnell, 2024). Perhaps the most common criticism of migration externalisation agreements, however, has been their tendency to subject asylum-seekers to abuses in host countries [see, e.g., Cantor et al., (2022), pp.143–144; Ligouri, 2019]. European deals with autocratic regimes around the Mediterranean have come in for particular concern, including for legitimating those governments (Moreno-Lax and Lemberg-Pedersen, 2019).

Aspects of the EU’s recent Migration and Asylum Pact have also been understood as extensions of externalisation that – not unlike pullbacks and US border zone exceptions – treat parts of state territory as ‘external’ to it to permit otherwise potentially rights-violative forms of screening and detention before allowing entry to member states (Cassarino and Marin, 2022). By leaving EU border states to manage entry to the bloc in this manner, they not only externalise border control for other EU members but place operational pressure on border states to turn further away from individual protections (Uriarte, 2022). Scholars have consequently characterised externalisation carried out both through agreements with third-party states and at EU borders as contributing to a ‘rule of law deficit’ (Guild et al., 2025).

Other variations of externalisation have involved the EU and its member states aiding governments to prevent incoming migration in ways that might support those governments' authoritarian tendencies (Norman and Micinski, 2022), resettling migrants in third countries, or sending them to temporary locations enroute to their return. Australian and Israeli agreements leading to 'permanent removal' to other states have stood accused of constituting 'constructive' *refoulement* in which conditions are so undesirable in the country of resettlement that those transferred there seek to return home (Bar-Tuvia, 2018). The second Trump Administration has made deals to deport migrants whose home countries would not readmit them to third states with widely-condemned detention practices, like El Salvador, or those with raging armed conflicts, like Sudan, as a deterrent measure (Beitsch, 2026). The EU plans legislation in favour of 'return hubs' – third-country staging areas for deportations – in third countries away from the eyes of oversight, a plan that a Council of Europe (CoE) Commissioner says risks creating 'human rights black holes' (Gil-Bazo, 2026).

For all the concerns levied against it, migration externalisation has rarely been successfully challenged. The UK's Rwanda scheme, also meant for 'permanent removal', faced scrutiny for disregarding Rwanda's potential for rights violations and operating through coercive deportations (see, e.g., UNHCR, 2024b). While ultimately overturned after a change in government, it arguably represented instead a first stab at a recurring policy, with the UK simply seeking other externalisation arrangements (Allinson, 2025) and the notion of 'replicating' it being embraced elsewhere in Europe (Dubois, 2025).

3.2.2 *Multilateral migration management*

A second form of cooperative migration control pursued by liberal/democratic states has come in the form of institutions, born out of interstate agreements or supranational powers, that manage or patrol borders – and prioritise exclusion over individual protections. The European Border and Coast Guard Agency (Frontex), for example, has faced accusations that it pursues a defensive approach to migration over its mandate to protect fundamental rights (Papastavridis, 2010; Marin, 2014). Beyond facilitating cooperation between EU states' border regimes, Frontex has also pursued collaboration with non-EU states that have poor rights records (Uygun, 2023). These problems have been exacerbated by a lack of judicial and democratic oversight of its operations (Fink, 2012; Strik, 2024).

The more broadly multilateral International Organisation for Migration (IOM) has stood similarly accused of prioritising a 'management' approach to migration and building border control capacity while mostly giving lip service to rights (Klabbers, 2019; Pécoud, 2018, Section 4.3). IOM is nominally now linked to the UN but chiefly guided by the priorities of its donor states, especially the US and European governments, although there is a case it has become guided by its own functionalist logic (Klabbers, 2019). With an institutional history of facilitating primarily white European emigration (Bradley, 2023), IOM's 'management' approach is rooted in a deeper history of non-rights-centric structures of Western collaboration which has arguably manifested more recently in its move toward a defensive focus on borders. At the same time, IOM's increasing employment of a *language* of rights could also constitute the kind of 'borrowing' of liberal terminology that Ginsburg identified as a hallmark of authoritarian cooperation in an effort to legitimate less than liberal functions (pp.241–242).

Ginsburg also observes that, because of the sovereignty-affirming nature of authoritarian international law, multilateral organisations facilitating it are also comparatively weak vis-à-vis constituent states. ‘Instead of deep, sovereignty-eroding integration, with extensive delegation to international organisations,’ he writes, ‘we see thinner models of cooperation that demand little of members’ as opposed to subjection to international courts (p.257). Similarly, Frontex, despite emerging from the ‘deep, sovereignty-eroding’ EU, lacks clear compulsory mechanisms vis-à-vis abuses of rights by its members (Guild, 2024). The potential to see IOM as an agent facilitating states’ goals rather than constraining them equally fits this mould.

3.2.3 ‘Repurposing’ international cooperation

While Ginsburg found that authoritarian states cooperated to ‘repurpose’ liberal instruments or institutions to their own ends, others have arguably been or are being ‘repurposed’ by liberal/democratic states to allow a rights-restrictive approach to border control. Liberal/democratic states have sought, for example, to move the European Convention on Human Rights (ECHR) away from interpretations favourable to migrant rights: in 2025, 27 CoE members jointly called for narrowing provisions relating to *non-refoulement*. With governments under pressure from parliamentary resolutions in countries like the Netherlands and Switzerland over the scope of the ECHR to allow for deportations, these calls eventuated in CoE ministers’ Chişinău Declaration, which emphasised concerns about ‘mass arrivals’ and ‘instrumentalisation’ and placed ‘general interests’ and public opinion before individual rights (Glas et al., 2026). In 2025, the head of Greece’s asylum system also called for more restrictive revisions to the Refugee Convention – a position previously taken by the UK – a Dutch liberal party seeking revision of the treaty in the same direction captured the most seats in the country’s elections, and US officials held a side event during the UN general assembly calling for even broader restrictive reforms to the refugee system (O’Leary, 2025).

Even instruments ostensibly intended to have revived the international refugee protection architecture may have actually repurposed it or face repurposing. The Global Compact on Refugees – an initiative pushed by Barack Obama (Epatko, 2017) but rejected by populist leaders including Trump, Orbán, and Jair Bolsonaro (Population and Development Review, 2019) – has nonetheless been understood as ‘exemplif[ying a] drift’ away from rights commitments, in which ‘the centre of gravity moves...toward coordination, persuasion, and voluntary pledging’ [Davutoglu, (2025) p.S184]. The implementation of the complementary Global Compact on Migration (GCM) also risks becoming a mere ‘smokescreen, if not masquerade’ amid the watering down of commitments, including by western democracies (Chetail, 2023).

Multilateral organisations may also be repurposed to narrow border or migration related rights in various ways. Scholars have understood the increasing involvement of NATO – an institution that Ginsburg views as protecting liberal societies – in addressing ‘hybrid threats’ against Europe like ‘instrumentalisation’ as helping to define migration as a security problem, contributing to a reduction in the scope of migrant rights (Kinacioglu, 2023). The EU itself – which Ginsburg suggests as an example of liberal multilateralism, and one associated with internal free movement – might also serve as an example of repurposing. Today, free movement has been challenged by the reintroduction of internal border controls in the Schengen Zone that are justified under

EU law on a temporary, emergency basis but are often used as means of longer-term migration control (Gülzau, 2023) – impacting citizens who are also subject to it.

The EU has increasingly served as a means to facilitate the border control measures of member states in other ways. Beyond managing the evolution of Frontex – itself arguably repurposed given its original rights mandate – it has begun negotiating less formal, bloc-wide readmission agreements for deportees that more easily escape judicial oversight and transparency (Fernando-Gonzalo, 2023), bypassing both international and lower-level courts’ restraints. The European Commission also indicated support for states that shift away from both EU and international legal obligations to migrants if the latter were ‘instrumentalised’ by adversaries [European Commission, (2024), para. 3]. In contrast to international treaty law, its ‘facilitation’ rules moved away from carveouts for humanitarian activities from bans on smuggling, helping justify states’ crackdowns on migrant aid organisations (Soupault, 2026).

The jurisprudence of international courts, too, can be ‘repurposed’, rendering them into tools to expand the scope of sovereign control over migration. In the ECtHR, such repurposing has been effected through what Wessels (2024) terms ‘reverse strategic litigation’ by liberal/democratic CoE states. But ECtHR judges themselves have been willing to entertain restrictions on rights and the expulsion of asylum-seekers in contexts in which they, too, view immigrants as overwhelming border defences ‘en masse’ (ND and NT v. Spain, 2020), to impose higher burdens on claimants in migration cases making the case against state violations (Baranowska, 2023) and to give states a wide margin of appreciation in allowing asylum to be more ‘temporary’ (Schultz and Vedsted-Hansen, 2025).

The ability to repurpose courts by states and shared attitudes with judges may help to explain why, despite less affinity for ‘thick’ international institutions in the context of migration control, liberal/democratic states have not always displayed the antipathy to international tribunals that Ginsburg (p.230) sees as a hallmark of authoritarian international law. That said, liberal/democratic states and societies can behave similarly in instances where judicialisation has not worked in their favour. These have included defiance of ECtHR judgments, noted above, UK concerns about the European Court of Justice’s ongoing influence on migration issues, and UK movements to leave the ECHR regime, primarily over asylum concerns (Mitsilegas and Guild, 2024; Cooke, 2025) – with potential resulting impacts on citizens’ rights going well beyond those rights related to border control.

Continuing engagement, however, could also be explained by states’ liberal commitments in other domains. Other organisations in which liberal/democratic states participate may also have little power to bind them, as is the case with UNHCR’s efforts to monitor the implementation of international refugee law (Woodruff, 2015). In some cases, the costs of disengagement to a broader liberal reputation might be higher than the costs of staying active. Organisations like UNHCR also provide states benefits in the form of refugee aid and hosting efforts that can prevent onward migration to their shores.

3.2.4 *Extraterritorial border control agreements*

One form of border control cooperation that has faced particular concern about infringing rights not just of migrants but travellers in general – a form of externalisation involving the extension of general border operations outside the territory of a state – has arisen less from intent to fortify frontiers than the pursuit of a more efficient mobility. Such

operations include British and French ‘juxtaposed controls’ on either end of the Channel Tunnel (Sangatte Protocol, 1993), British facilities in Belgium and the Netherlands, Hong Kong and mainland China’s controls on their respective territories (Co-operation Arrangement, 2017), Malaysian controls within Singapore (Cheung, 2017), and US ‘preclearance’ in Bermuda, Canada, Caribbean states, Ireland, and the UAE (CBP, 2025). In each example, agreements permit extraterritorial border control, allowing travellers to clear it before catching a flight or train, speeding transit as bureaucracy can take place while waiting to depart rather than adding clearance time at the end of a journey. For some travellers, these systems also place comforting limits on excesses that border control officials may carry out by restraining their exercise of full sovereign powers.

Such agreements have elicited controversy, however, given their application of other jurisdictions’ potentially more restrictive border control mechanisms. Plans to allow travellers to pass through mainland Chinese border controls before boarding a train within Hong Kong sparked protests beginning in 2017 over concerns about whether mainland border control taking place in the territory was consistent with the precedence of local law, with the perception that the latter better upheld civil liberties (Al-Jazeera, 2018). The consensus that produces such cooperation can also be strained by shifts in the immigration law and policy of states operating such facilities. The first Trump Administration’s ‘Muslim ban’ prompted concerns about US preclearance agents violating Canadian constitutional rights (which implement human rights) and an update to the countries’ agreement that expanded US powers to detain travellers who sought to leave the facility (CBC, 2017; Dunn, 2017; BBC, 2017b; Gilbert, 2019) and granted US border officials immunity (Agreement on Land, Rail, Marine and Air Transport Preclearance, 2015, Art. X). Concerns over the ‘Muslim ban’ also led to the Netherlands’ withdrawal from negotiations over allowing US preclearance and Ireland’s ‘complete review’ of US operations in the country over concerns about compliance with human rights obligations, particularly with respect to discrimination (BBC, 2017a; CBC, 2017).

The Hong Kong dispute was settled by a rare exercise of formal mainland authority over the territory: an interpretation that essentially exempted the border zone from the application of local law (Leung Chung Hang, 2018) – which could be read as a *de facto* jurisdictional transfer. But in none of the sovereign liberal jurisdictions where US preclearance had been implemented was it rolled back after controversy, either. Canada has instead seen concerns that the country would lose preclearance as individuals avoid it, with airlines and airports fearing a consequent hit to revenues (Jeffrey, 2025) and the government worried about its reciprocal right to build a facility on US soil to externalise asylum processing (Gilbert, 2025). The Irish minister who responded to its controversy emphasised that there were economic and ‘strategic’ benefits to preclearance (Houses of the Oireachtas, 2017a, 2017b).

The result has been that such agreements endorse and extend one state’s more rights-restrictive forms of border control and effectively – as in the examples of the US border zone and EU Migration and Asylum Pact above – exempt those subject to them from the full protection of local rights at borders. Canada’s implementing legislation affirms that, for immigration purposes, a traveller in a ‘preclearance area’ is now ‘outside Canada’ while on Canadian soil, and lacks rights including the ability to claim asylum (Preclearance Act, 2016, Section 48). In the meantime, new preclearance agreements with the US have continued to be approved – in, for example, Belgium (Hope, 2022).

3.3 *Evaluating the existence of an ‘authoritarian’ international law of border control*

To what extent do the above demonstrate that liberal/democratic states’ border control is authoritarian in an international legal sense, or contributes to an authoritarian international law? Given that definitively determining changes to or the creation of customary international law would require a far more systematic approach to every potential standard or rule, the clearest evidence presented here may lie more in those states’ multilateral commitments or their contributions to changing norms. These are the same indicators that Ginsburg emphasises, and the examples of them above may indicate that liberal/democratic states have gone beyond earlier boundaries of discretion within which states could alter the balance between sovereignty and rights. But it may still be unclear to what extent their doing so is sufficient to reach a threshold to be considered ‘authoritarian’, a general problem identified by those who criticise extending the concept beyond the non-electoral context (Waller, 2024).

Are liberal/democratic states nonetheless *shifting* toward *more* ‘authoritarian’ approaches? Some techniques enumerated above, like externalisation, have old antecedents, though their recent deployment has been far more extensive [Zaiotti, (2016), pp.3–5] and has occurred in spite of a context of more recent legal constraints [Guiraudon, (2003), p.195]. Still, liberal/democratic states are plural and dynamic societies. Courts, parties, and activists fight harsh border control measures; ‘thermostatic opinion’ may already be swinging against the most extreme examples (O’Connor, 2026).

Some liberal/democratic states have also made recent provisions for more expansive migrant rights, like Spain’s recent amnesty for undocumented migrants (Hedgecote, 2026) or Australia’s treaty with Tuvalu providing a migration pathway for citizens of the latter in the context of climate change (Agreement between the Government of Australia and the Government of Tuvalu, 2023). But these are one-time or limited concessions, and stand in contrast with the same states’ other behaviour and constraints on them. Spain remains enmeshed in the EU’s migration architecture. It has even faced threatening pushback from other EU states for being what they view as a potential weak link in their common border control efforts (Hernández-Morales 2026) – inviting parallels to the anti-democratic interventions Ginsburg foresees from what he views as ‘authoritarian’ multilateral organisations like the SCO. Australia, which has a long record of asylum externalisation, recently concluded a secretive deal to deport detained migrants, including asylum-seekers, to Nauru, another Pacific Island state. The deal was a response to popular backlash after a court had ordered them released (Wertheimer, 2025) with what one advocate called ‘ICE-like behaviour’ (Refugee Council of Australia, 2025).

As other examples above also indicate, assertions of extant border-related rights have also faced recent swings against them, whether through circumvention, backlash, noncompliance, or hollowed-out commitments – from the persistence of pushbacks to recurrent attempts to institute extraterritorial border control to efforts to redefine earlier obligations – that have continued across electoral cycles. Between Trump administrations, the US embraced policies continuing to restrict the ability to apply for asylum (Ward, 2023); the successor of Hungary’s ‘illiberal’ Viktor Orbán’s successor has vowed to retain ‘a strict policy’ on migration beyond that of the EU’s pact (Reuters, 2026). Evidence for the balance being tipped one way over another is corroborated by the broader recent trend of a ‘decline’ in concern for human rights (see e.g., Kelly, 2024). If it is unclear that liberal/democratic states have reached a threshold of ‘authoritarian’ act,

the evidence might speak more to movement in that direction, if not always consistently, then generally, despite opportunities for electoral pushback – or even because of electoral pressure.

4 Why liberal/democratic states embrace authoritarian legality at borders

To the extent that there are ‘authoritarian’ tendencies in the border control of liberal/democratic states, they may have emerged not just from recent trends, but structural features of these societies, presenting challenges for some models of how such states interact with international law more generally. Externalisation, for example, can be a means to avoid scrutiny by liberal institutions taking place close to home. As a number of scholars have shown, liberal states may seek to shift responsibilities to supranational or multilateral institutions or to other states that might face fewer such pressures (Guiraudon and Lahav, 2000; Lavenex, 2006; Gammeltoft-Hansen and Hathaway, 2015). But why would such states want to escape their own institutions’ oversight?

The reluctance to surrender preclearance indicates that narrowing the scope of rights can also be premised on economic efficiency or interstate relations – aspects of the ‘wealth’ and ‘security’ Ginsburg sees democracies safeguarding – or even recent trends in liberal societies to ‘confuse...the speed of well-channelled movement with freedom’ (Bigo, 2010) despite trade-offs for privacy and other rights. A preoccupation with security – economic, social, or otherwise – has also given rise to ‘neo-authoritarian’ responses (Borneman, 2012) including legal exceptions in the context of what have been understood as migrant ‘invasions’ and as border control goes beyond fears of terrorism and from securitisation to militarisation (Kinacioglu, 2023) in response to the ‘instrumentalisation’ of a more geopolitically active world.

Another stimulus is an *illiberal* civil society and its defensive attitudes about perceived cultural or economic threats and its capacity to influence liberal/democratic states. One hallmark of Slaughter’s conception of liberal international law was civil society’s role influencing states on the basis both of their own priorities and those forged by international collaborations. It should not have been taken for granted, however, that such groups would embrace liberal values; those emphasising migrant rights may not have been influential even in the 1990s (Giugni and Passy, 2006) whereas anti-immigrant parties have had a ‘contagion’ effect on mainstream ones since (Spanje, 2010) and vigilante groups have placed pressure on domestic politics by threatening to take the law into their own hands (Lyll, 2009; Gardenier, 2022). The emergence of an anti-migration ‘illiberal international’ on either side of the North Atlantic (Benson, 2026) indicates that successful transnational groups and ideas may carry very different valences.

The subsequent breakthrough of a more populist politics in the mid-2010s could be understood as stemming from other causes, including the broader fallout from the global financial crisis, that have helped drive further hostility to migration, though it may have also been directly fed by events such as the 2015 European ‘migration crisis’ (Caiani and Graziano, 2019). Democratic discontent over migration has, either way, played a major role in the concept, embraced by Orbán, of ‘illiberal democracy’, in which majoritarianism eclipses respect for individual rights (Simon, 2014). Majoritarian tyranny has been a wellspring of theory on authoritarian potential (e.g., Abrams, 2022; Nyirkos, 2018) but may not be fully integrated into Ginsburg’s understanding of authoritarianism,

which, while contemplating electoral models, still discusses the concept in terms of rule over, rather than through, majorities (p.228).

Majoritarian defensiveness against outsiders may be reflective of a broader tension between a democratic focus on the needs and desires of citizens and a liberal concern for more widely-held rights. This tension may run especially high when the needs and desires of citizens are pressing – in contexts, for example, of growing economic anxiety or in the fallout from pandemics [Chetail, (2023), p.5]. Scholars have, in this vein, identified migration as a ‘paradox’ for liberal democracies (Hollifield et al., 2008) that could result in a hollow form of asylum rights, provided by a liberal state but held back by a reluctant demos (Lavenex, 2024).

In such contexts, democracies might also have a greater structural aversion to international legal obligations. Alvarez (2001, p.201) argued that democracies might turn away from international commitments due to the impression that the remoteness of processes that led to those commitments’ creation were less sufficiently grounded in the popular will than domestic counterparts; Scott (2020) even noted the potential for civil society-driven international legal processes to appear ‘authoritarian’ to populations that do not participate directly in them. These considerations make it even less likely that democracies’ embedded international legal commitments (see Alter, 2022) will block popular illiberal acts rather than being undermined or transformed by them, especially as democracies have engaged in a transnational ‘borrowing’ of techniques of rights-evasion related to migration [Shachar, (2020), pp.64–67] in a reverse form of Sikkink’s (2011) ‘justice cascade’. They also make it unsurprising that there are arguments expanding migrant rights can require less democratic forms of executive action (Bermejo and Iglesias, 2026) – like Spanish royal decrees, by which the country’s recent amnesty was executed (Real Decreto 316/2026) against a sceptical public (e.g., Junquera, 2026) – or speculation that autocracies might actually have more leeway to resolve political tensions over migration (Natter, 2023).

It would be reductive, however, to see only recent developments or structural tensions within liberal/democratic states as sole drivers of ‘authoritarian’ border control. As Babar and Vora (2022) demonstrate, harsh forms of migration control by Gulf states may emanate from deeper historical causes obscured by a focus on their contemporary political systems; the same could be said for liberal/democratic states. Other scholars have noted how democratic majorities might lack liberal commitments to migrants in the context of their states’ historically colonial – and hence often illiberal – relationships to migrants’ countries of origin (Adamson et al., 2024). Many acts may be amplified by a longstanding problem in border control of racial discrimination (Achiume, 2022) that can be related to ways threats to ‘wealth’ are understood (Smith, 2018) and transcend regime type.

Structural prejudices against certain groups may help explain why ‘liberal’ societies can be captive to the notion that strict border control can go hand-in-hand with a society that respects rights – because rights attach to individuals who matter to them. That enhanced border control excepted from international obligations can impact on ‘fully’ rights-bearing citizens, and that ‘the border is everywhere’, put pressure on that notion. But citizens, especially those who are part of majority in-groups, may still enjoy more respect in many laws and their discriminatory application than visitors or migrants – witnessing a more authoritarian border control for others than themselves.

5 Conclusions: the expansion of ‘authoritarian international law’

Most of the liberal/democratic states discussed above are located in the ‘West’ of North America and Europe. Ginsburg suggests that the latter, in particular, may be displaced as a centre of imagining the future of international law as authoritarian powers do so elsewhere (p.225). A shift toward authoritarian norms among Western states, including those concerned with border control, would therefore emerge from other corners of the Earth. ‘We might expect’, he explains

“that as authoritarian international law expands, it could be accompanied by a retreat of democracies from the pro-democratic international norms that have recently been ascendant. We certainly observe an increasing emphasis on sovereignty among some democracies, including the United States and United Kingdom, with regard to security, trade, and borders”. (p.259)

This picture is corroborated by developments including Algeria’s leadership in ‘repurposing’ implementation of GCM protections and a ‘return of *realpolitik*’ in which western democracies are eager to chase relationships with undemocratic states holding similar attitudes [Chetail, (2023), p.5]. It may ignore, however, ways that illiberal approaches could also arise endogenously in liberal societies. Krieger and Nolte (2019) cite among current challenges to the ‘international rule of law’ both geopolitical factors *and* debates everywhere about the distribution of power between international and domestic levels of governance. Assuming that the latter factors are unimportant may even overestimate the attractiveness and influence of more authoritarian competitors (see Guriev, 2024) and miss other risks. Russia, for example, may have provoked migrant-hostile, rights-restrictive acts in liberal polities through disinformation or ‘weaponised migration’ (Szakác and Bognár, 2021; Petty, 2022). Yet, it also likely exploited fissures that already existed (Braghiroli and Makarychev, 2018).

To the extent that an authoritarian international law of immigration and border control may exist or be emerging, many of the urges toward it may or have come from inside the liberal/democratic West. If so, rather than emanating from autocracies alone, liberal/democratic state practice may be contributing to the existence of or shifts toward what Ginsburg views as an already emerging legal and normative landscape concerned more with sovereign power or discretion more broadly – in ways that autocratic regimes could use to their own ends. Being embedded in ‘an international arena dominated by liberal institutions’ in which non-democratic or more systematically illiberal ‘norm entrepreneurs’ themselves may sometimes lack persuasive power [Debre and Flonk, (2026), p.3], such contributions may even be easier to achieve for liberal/democratic states.

It is not necessary, in other words, to agree that liberal/democratic states have embraced or directly contributed to a form of ‘authoritarian international law’ to draw conclusions from the above. Their gestures in that direction may serve at least to reinforce an existing drift toward authoritarian norms, widely conceived. The discussion in which this article has been engaged might therefore suggest to ostensibly liberal societies some broader consequences of not extending their principles to and, where applicable, beyond their borders rather than predominately among those who are able to escape the consequences of border control within.

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References

- Abrams, B. (2022) 'The rise of despotic majoritarianism', *Democratic Theory*, Vol. 9, No. 1, pp.73–86, DOI: 10.3167/dt.2022.090105.
- Achiume, E.T. (2022) 'Racial borders', *Georgetown Law Journal*, Vol. 110, No. 3, pp.445–508.
- Adamson, D., Chung, E.A., and Hollifield, J. (2024) 'Rethinking the migration state: historicising, decolonising, and disaggregating', *Journal of Ethnic and Migration Studies*, Vol. 50, No. 3, pp.559–577, DOI: 10.1080/1369183X.2023.2269769.
- Agreement between the Government of Australia and the government of Tuvalu concerning the Falepili Union (2023) [2024] ATS 17.
- Agreement on Land, Rail, Marine and Air Transport Preclearance between the Government of Canada and the Government of the United States (2015) 2019 Canadian Treaty Series 14.
- Ahmed, Y. (2024) *Labour Needs to Arrest UK's Authoritarian Slide*, Human Rights Watch, 9 July [online] <https://www.hrw.org/news/2024/07/09/labour-needs-arrest-uks-authoritarian-slide> (accessed 15 May 2025).
- Al-Jazeera (2018) *Protests in Hong Kong over high-Speed Rail Link to China*, 22 September [online] <https://www.aljazeera.com/news/2018/9/22/protests-in-hong-kong-over-high-speed-rail-link-to-china> (accessed 15 May 2025).
- Allinson, K. (2025) 'Shifting responsibility on a spectrum: the UK's responsibility for externalised border control operations', *Laws*, Vol. 14, No. 6, DOI: 10.3390/laws14060085.
- Alter, K. (2022) 'The future of embedded international law: democratic and authoritarian trajectories', *Chicago Journal of International Law*, Vol. 23, No. 1, pp.27–44.
- Altman, H. (2025) *Trump's Authoritarian Playbook*, National Immigration Law Center, 9 June [online] <https://www.nilc.org/resources/trumps-authoritarian-playbook/> (accessed 26 October 2025).
- Alvarez, J. (2001) 'Do liberal states behave better? A critique of slaughter's liberal theory', *European Journal of International Law*, Vol. 12, No. 2, pp.183–246, DOI:10.1093/ejil/12.2.183.
- American Association of University Professors v. Rubio, No. 1:25-cv-10685 (D.Mass.) (30 September 2025).
- American Immigration Council (2026) *How ICE Went Rogue* [online] <https://www.americanimmigrationcouncil.org/fact-sheet/ice-cbp-legal-analysis/> (accessed 21 May 2026).
- Amnesty International (2016) *Qatar: Abuse of World Cup Workers Exposed* [online] <https://www.amnesty.nl/actueel/qatar-abuse-of-world-cup-workers-exposed> (accessed 28 July 2026).
- Anthony, D. (2020) 'The U.S. border patrol's constitutional erosion in the '100-mile zone'', *Penn State Law Review*, Vol. 124, No. 1, pp.391–432.
- Arendt, H. (1951) *The Origins of Totalitarianism*, Harcourt Brace, New York.
- Babar, Z. and Vora, N. (2022) 'The 2022 World Cup and Migrants' Rights in Qatar: racialised labour hierarchies and the influence of racial capitalism', *The Political Quarterly*, Vol. 93, No. 3, pp.498–507, DOI:10.1111/1467-923X.13154.
- Baranowska, G. (2023) 'Exposing covert border enforcement: why failing to shift the burden of proof in pushback cases is wrong', *European Convention on Human Rights Law Review*, Vol. 4, No. 4, pp.473–494, DOI:10.1163/26663236-bja10070.

- Bartholomew, J. (2023) 'Journalists are under threat at border zones', *Columbia Journalism Review*, 2 May [online] https://www.cjr.org/the_media_today/border-ports-entry-threat-press-freedom.php (accessed 15 May 2025).
- Bar-Tuvia, S. (2018) 'Australian and Israeli agreements for the permanent transfer of refugees: stretching further the (Il)legality and (Im)morality of Western externalization policies', *International Journal of Refugee Law*, Vol. 30 No. 3, pp.474–511, DOI:10.1093/ijrl/eeey042.
- BBC (2017a) *Trump Travel Ban: Ireland Reviews US Immigration Points*, 31 January [online] <https://www.bbc.com/news/world-europe-38808035> (accessed 15 May 2025).
- BBC (2017b) *Canada's Concerns about Close Border Ties with US*, 17 February [online] <https://www.bbc.com/news/world-us-canada-38964069> (accessed 15 May 2025).
- Beitsch, R. (2026) 'Trump administration spent \$32M deporting migrants to third countries: democrats', *The Hill*, 13 February, [online] <https://thehill.com/homenews/administration/5737424-trump-third-country-removals> (accessed 21 May 2026).
- Benson, R. (2026) 'Illiberal international: the transatlantic right's challenge to democracy', in Riddervold, R., Rosén, G. and Greenberg, J. (Eds.): *Populism and the Future of Transatlantic Relations: Challenges and Policy Options*, *European Center for Populism Studies*, DOI: 10.55271/rp00137.
- Berman, P. (2005) 'From international law to law and globalization', *Columbia Journal of Transnational Law*, Vol. 43, No. 2, pp.485–556.
- Bermejo, R. and Iglesias, J. (2026) 'Autocratic tools in Spanish democratic migration governance. A critical analysis of the use of royal decree-laws', *Hague Journal on the Rule of Law*, DOI: 10.1007/s40803-026-00272-z.
- Bigo, D. (2010) 'Freedom and speed in enlarged borderzones', in Squire, V. (Ed.): *The Contested Politics of Mobility: Borderzones and Irregularity*, pp.32–50, Routledge, London.
- Bokat-Lindell, S. (2022) 'The Qatar world Cup is Peak 'sportswashing'. But will it work?', *New York Times*, 14 December [online] <https://www.nytimes.com/2022/12/14/opinion/world-cup-qatar-sportswashing.html> (accessed 15 May 2025).
- Borneman, J. (2012) 'Border regimes, the circulation of violence and the neo-authoritarian turn', in Wilson, T.M. and Donnan, H. (Eds.): *A Companion to Border Studies*, pp.119–135, Wiley, Chichester.
- Bornemann, J. (2026) 'Discretionary power: an autocratic tool in migration policies?', *Hague Journal on the Rule of Law*, DOI: 10.1007/s40803-026-00273-y.
- Brachet, J. (2018) 'Manufacturing smugglers: from irregular to clandestine mobility in the Sahara', *Annals of the American Academy of Political and Social Science*, Vol. 676, No. 1, pp.16–35, DOI: 10.1177/0002716217744529.
- Bradley, M. (2023) 'Colonial continuities and colonial unknowing in international migration management: the international organization for migration reconsidered', *Journal of Ethnic and Migration Studies*, Vol. 49, No. 1, pp.22–42, DOI:10.1080/1369183X.2022.2127407.
- Braghiroli, S. and Makarychev, A. (2018) 'Redefining Europe: Russia and the 2015 refugee crisis', *Geopolitics*, Vol. 23, No. 4, pp.823–848, DOI:10.1080/14650045.2017.1389721.
- Briddick, C. (2023) *Supreme Judgecraft*, *Verfassungsblog*, 20 November [online] <https://verfassungsblog.de/supreme-judgecraft> (accessed 15 May 2025).
- Butler, P. (2023) "'Hostile, authoritarian' UK downgraded in civic freedoms index", *The Guardian*, 16 March [online] <https://www.theguardian.com/uk-news/2023/mar/16/hostile-authoritarian-uk-downgraded-in-civic-freedoms-index> (accessed 15 May 2025).
- Caiani, M. and Graziano, G. (2019) 'Understanding varieties of populism in times of crises', *West European Politics*, Vol. 42, No. 6, pp.1141–1158, DOI:10.1080/01402382.2019.1598062.
- Cantor, D. et al. (2022) 'Externalisation, access to territorial asylum, and international law', *International Journal of Refugee Law*, Vol. 34, No. 1, pp.120–156, DOI:10.1093/ijrl/eeac023.
- Carrera, S., Allsopp, J. and Vosyliūtė, L. (2018) 'Policing the mobility society: the effects of EU anti-migrant smuggling policies on humanitarianism', *International Journal of Migration and Border Studies*, Vol. 4, No. 3, pp.236–276, DOI:10.1504/IJMB.2018.10015101.

- Cassarino, J. and Marin, L. (2022) 'The pact on migration and asylum: turning the European territory into a non-territory?', *European Journal of Migration and Law*, Vol. 24, No. 1, pp.1–26, DOI: 10.1163/15718166-12340117.
- CBC (2017) *Canada Looking at Legality of Enforcing Trump Travel Ban on Canadian Soil*, 3 February [online] <https://www.cbc.ca/news/politics/pre-clearance-trump-ban-1.3965666> (accessed 15 May 2025).
- Cheney, K. (2025) 'Judges warn Trump's mass deportations could lay groundwork to ensnare Americans', *Politico*, 10 May [online] <https://www.politico.com/news/2025/05/10/donald-trump-immigration-deportations-due-process-00339319> (accessed 15 May 2025).
- Cheney, K. and Gerstein, J. (2026) 'Trump administration activates never-before-used 'alien terrorist' deportation court', *Politico* [online] <https://www.politico.com/news/2026/07/18/trump-alien-terrorist-deportation-court-01004184> (accessed 27 July 2026).
- Chesterman, S. (2008) 'An international rule of law?', *The American Journal of Comparative Law*, Vol. 56, No. 2, pp.331–361.
- Chetail, V. (2023) 'The politics of soft law: progress and pitfall of the global compact for safe, orderly, and regular migration', *Frontiers in Human Dynamics*, Vol. 5, DOI:10.3389/fhumd.2023.1243774.
- Cheung, C. (2017) *Co-Location of Boundary Control Facilities in Selected Places*, Legislative Council, Hong Kong [online] <https://www.legco.gov.hk/research-publications/english/essentials-1718ise01-co-location-of-boundary-control-facilities-in-selected-places.htm> (accessed 15 May 2025).
- Committee to Protect Journalists (2018) *Nothing to Declare: Why U.S. Border Agency's Vast Stop and Search Powers Undermine Press Freedom*, 22 October [online] <https://cpj.org/reports/2018/10/nothing-to-declare-us-border-search-phone-press-freedom-cbp> (accessed 15 May 2025).
- Consterdine, E. (2024) 'Policing the enforcers: the governmentality of immigration controls', *International Political Sociology*, Vol. 18, No. 2, pp.1–17, DOI: 10.1093/ips/olae008.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (1984) 1465 UNTS 85.
- Convention relating to the Status of Refugees, (1951), 189 UNTS 150.
- Cooke, M. (2025) 'Why are there growing calls for Britain to quit the ECHR – and would it make a difference?', *The Independent*, 29 August [online] <https://www.independent.co.uk/news/uk/politics/echr-uk-leave-eu-migrants-asylum-seekers-small-boats-b2816371.html> (accessed 26 October 2025).
- Cooley, A. (2015) 'Authoritarianism goes global: countering democratic norms', *Journal of Democracy*, Vol. 26, No. 3, pp.49–63, DOI: 10.1353/jod.2015.0049.
- Co-operation Arrangement between the Mainland and the Hong Kong Special Administrative Region on the Establishment of the Port at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link for Implementing Co-location Arrangement (2017) [online] [https://www.tlb.gov.hk/eng/policy/transport/policy/colocation/EN%20Co-operation%20Arrangement%20\(2%20Jan\).pdf](https://www.tlb.gov.hk/eng/policy/transport/policy/colocation/EN%20Co-operation%20Arrangement%20(2%20Jan).pdf) (accessed 15 May 2025).
- Cusumano, E. and Pattison, J. (2018) 'The non-governmental provision of search and rescue in the Mediterranean and the abdication of state responsibility', *Cambridge Journal of International Affairs*, Vol. 31, No. 1, pp.53–75, DOI: 10.1080/09557571.2018.1477118.
- Davutoglu, P. (2025) 'The architecture of containment: refugee protection in a postliberal order', *International Organization*, Vol. 79, No. 2025, pp.S180–S193, DOI: 10.1017/S0020818325101100.
- Debre, M. and Flonk, D. (2026) 'Authoritarian norm entrepreneurs: how autocratic states reshape global norms', *Journal of International Relations and Development*, Vol. 29, No. 9, DOI:10.1057/s41268-026-00373-0.

- Dickson, A., Mainwaring, C. and Tyerman, C. (2025) 'Trump's extremist border policies are part of a global authoritarian moment', *Al-Jazeera*, 19 February [online] <https://www.aljazeera.com/opinions/2025/2/19/trumps-extremist-border-policies-are-part-of-a-global-authoritarian-moment> (accessed 15 May 2025).
- Dubois, L. (2025) *The UK Ditched its Rwanda Plan. The EU is Reviving It*, Financial Times, 7 August [online] <https://www.ft.com/content/e38a5400-5e45-49b7-92bd-569fa3c3e1a0> (accessed 17 November 2025).
- Dunn, T. (2017) *As Trump Travel Ban Takes Effect, Lawyers Mobilize at Canadian Airports*, CBC, 30 June [online] <https://www.cbc.ca/news/canada/toronto/travel-ban-lawyers-airport-1.4184742> (accessed 15 May 2025).
- Easton, A. and Aikman, I. (2025) *Poland Suspends Migrants' Right To Apply For Asylum*, BBC, 26 March [online] <https://www.bbc.co.uk/news/articles/c8719dl587zo> (accessed 12 November 2025).
- Ellermann, A. (2008) 'The limits of unilateral migration control: deportation and inter-state cooperation', *Government and Opposition*, Vol. 43, No. 2, pp.168–189, DOI: 10.1111/j.1477-7053.2007.00248.x.
- Epatko, L. (2017) *U.S. Pulls Out of a Global Pact on the Treatment of Migrants. Here's Why*, PBS News, 4 December [online] <https://www.pbs.org/newshour/world/u-s-pulls-out-of-a-global-pact-on-the-treatment-of-migrants-heres-why> (accessed 25 May 2026).
- European Commission (2024) *Communication from the Commission to the European Parliament and the Council on Countering Hybrid Threats From the Weaponisation of Migration and Strengthening Security at the EU's External Borders*, COM(2024) 570 final, 11 December [online] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024DC0570> (accessed 12 November 2025).
- Fassi, E., Ceccorulli, M. and Lucarelli, S. (2023) 'An illiberal power? EU bordering practices and the liberal international order', *International Affairs*, Vol. 99, No. 6, pp.2261–2279, DOI: 10.1093/ia/iad228.
- Fausser, M. (2024) 'Mapping the internal border through the city: an introduction', *Ethnic and Racial Studies*, Vol. 47, No. 12, pp.2477–2498, DOI:10.1080/01419870.2024.2344693.
- Fernando-Gonzalo, E. (2023) 'The EU's informal readmission agreements with third countries on migration: effectiveness over principles?', *European Journal of Migration and Law*, Vol. 25, No. 1, pp.83–108, DOI: 10.1163/15718166-12340145.
- Fink, M. (2012) 'Frontex working arrangements: legitimacy and human rights concerns regarding 'technical relationships'', *Utrecht Journal of International and European Law*, Vol. 28, No. 75, pp.20–35, DOI:10.5334/ujiel.v28i75.31.
- Finnemore, M. and Sikkink, K. (1998) 'International norm dynamics and political change', *International Organization*, Vol. 4, No. 52, pp.887–917.
- Frankenberg, G. (2022) 'Exploring the topography of the authoritarian: populism, illiberalism and, authoritarianism', *Journal of Illiberalism Studies*, Vol. 2, No. 1, pp.1–14, DOI: 10.53483/VDIU3531.
- Gammeltoft-Hansen, T. and Hathaway, J. (2015) 'Non-refoulement in a world of cooperative deterrence', *Columbia Journal of Transnational Law*, Vol. 53, No. 2, pp.235–284.
- Gantry, S. and Kochenov, D. (2025) 'EU Lawlessness Law', *Columbia Journal of European Law* Vol. 30, No. 1, pp.78–156.
- Gardenier, M. (2022) *Towards a Vigilant Society: From Citizen Participation to Anti-Migrant Vigilantism*, British Academy/Oxford University Press, Oxford.
- Gil-Bazo, M. (2026) 'EU 'return hubs': what are they, and how will they change the rights of migrants and asylum seekers?', *The Conversation*, 1 April [online] <https://theconversation.com/eu-return-hubs-what-are-they-and-how-will-they-change-the-rights-of-migrants-and-asylum-seekers-279692> (accessed 21 May 2026).

- Gilbert, E. (2019) 'Elasticity at the Canada–US border: Jurisdiction, rights, accountability', *Environment and Planning C: Politics and Space*, Vol. 37, No. 3, pp.424–441, DOI: 10.1177/2399654418787190.
- Gilbert, E. (2025) 'Is the end looming for Canada's border pre-clearance program with the United States?', *The Conversation*, 14 October [online] <https://theconversation.com/is-the-endlooming-for-canadas-border-pre-clearance-program-with-the-united-states-266764> (accessed 12 November 2025).
- Ginsburg, T. (2020) 'Authoritarian International Law?', *American Journal of International Law*, Vol. 114, No. 2, pp.221–260, DOI: 10.1017/ajil.2020.3.
- Giugni, M. and Passy, F. (2006) 'Influencing migration policy from outside: the impact of migrant, extreme-right, and solidarity movements', in Giugni and Passy (Eds.): *Dialogues on Migration Policy*, pp.193–213, Lexington Books, Lanham.
- Glas, L., Istrefi, K., Buyse, A. and Heri, C. (2026) *Open-Minded or Open-Ended? The Chişinău Declaration on the ECHR and Migration*, ECHR Blog [online] <https://echrblog.com/open-minded-or-open-ended-the-chisinau-declaration-on-the-echr-and-migration> (accessed 26 May 2026).
- Glasius, M. (2018) 'What authoritarianism is...and is not: a practice perspective', *International Affairs*, Vol. 94, No. 3, pp.515–533, DOI: 10.1093/ia/iyy060.
- Global Witness (2022) *Alarm Bells of Authoritarianism Sounding in the UK*, 22 May [online] <https://www.globalwitness.org/en/blog/uk-governments-policing-bill-erodes-human-rights-and-stifles-action-to-tackle-climate-crisis> (accessed 15 May 2025).
- Griffiths, M. and Yeo, C. (2021) 'The UK's hostile environment: deputising immigration control', *Critical Social Policy*, Vol. 41, No. 1, pp.521–544, DOI: 10.1177/0261018320980653.
- Grothe, C. (2022) *The Long Shadow of Qatar's Human Rights Abuses*, Freedom House, 7 December [online] <https://freedomhouse.org/article/long-shadow-qatars-human-rights-abuses> (accessed 15 May 2025).
- Guild, E. (2024) 'Frontex and access to justice: the need for effective monitoring mechanisms', *European Law Journal*, Vol. 30, Nos. 1–2, pp.136–148, DOI: 10.1111/eulj.12501.
- Guild, E., Mitsilegas, V. and Vavoula, N. (2025) *Lawless Borders: The Rule of Law Deficit in European Immigration Control*, Bristol University Press, Bristol.
- Guiraudon, V. (2003) 'Before the EU border: remote control of the 'huddled masses'', in Groenendijk, K., Guild, E. and Minderhoud, P. (Eds.): *In Search of Europe's Borders*, Kluwer Law International, The Hague.
- Guiraudon, V. and Lahav, G. (2000) 'A reappraisal of the state sovereignty debate: the case of migration control', *Comparative Political Studies*, Vol. 33, No. 2, pp.163–195, DOI: 10.1177/0010414000033002001.
- Gülzau, F. (2023) 'A 'new normal' for the Schengen Area. When, where and why member states reintroduce temporary border controls?', *Journal of Borderlands Studies*, Vol. 38, No. 5, pp.785–803, DOI:10.1080/08865655.2021.1996260.
- Guriev, S. (2024) 'Autocracy in the 21st century', *Tocqueville Review*, Vol. 45, No. 1, pp.61–71, DOI: 10.3138/ttr.45.1.6.
- Hansler, J. (2025) *State Department to Identify DEI Policies and Mass Migration as 'Human Rights Infringements'*, CNN, 21 November [online] <https://edition.cnn.com/2025/11/20/politics/state-department-freedom-speech-human-rights> (accessed 24 November 2025).
- Hedgecote, G. (2026) *Spain Approves Plan to Give Around 500,000 Undocumented Migrants Legal Status*, BBC, 14 April [online] <https://www.bbc.com/news/articles/cy511nln2xvo> (accessed 22 May 2026).
- Henderson, L. (1991) 'Authoritarianism and the rule of law', *Indiana Law Journal*, Vol. 66, No. 2, pp.379–456.
- Hernández-Morales, A. (2026) 'Ceuta crisis: 22 EU leaders gang up against Spain's Sánchez over his migration policy', *Politico*, 1 August [online] <https://www.politico.eu/article/ceuta-crisis-22-eu-leaders-letter-spain-pedro-sanchez-migration-policy> (accessed 10 August 2026).

- Hirsi Jamaa and Others v Italy [2012] ECHR Application no. 27765/09 (23 February 2012).
- Hollifield, J. Hunt, V. and Tichenor, D. (2008) 'The liberal paradox: immigrants, markets and rights in the United States', *SMU Law Review*, Vol. 61, No. 1, pp.67–98.
- Hope, A. (2022) 'New airport procedure for visitors to US', *The Brussels Times*, 4 June [online] <https://www.brusselstimes.com/233396/new-airport-procedure-for-visitors-to-us> (accessed 12 November 2025).
- Houses of the Oireachtas (2017a) *Airport Security – Dáil Éireann Debate*, Wednesday – 8 February [online] <https://www.oireachtas.ie/en/debates/question/2017-02-08/261> (accessed 15 May 2025).
- Houses of the Oireachtas (2017b) *Written Answer No. 85* [online] <https://www.oireachtas.ie/en/debates/question/2017-03-22/section/94> (accessed 15 May 2025).
- Human Rights Watch (2024) *World Report 2024* [online]. https://www.hrw.org/sites/default/files/media_2024/01/World%20Report%202024%20LOWRES%20WEBSPREADS_0.pdf (accessed 17 November 2025).
- Human Rights Watch (2025) *US: ICE Abuses in Los Angeles Set Stage for Other Cities*, 4 November [online] <https://www.hrw.org/news/2025/11/04/us-ice-abuses-in-los-angeles-set-stage-for-other-cities> (accessed 21 May 2026).
- Human Rights Watch (2026) *Sliding Toward Authoritarianism?*, Human Rights Watch [online] <https://www.hrw.org/feature/2026/01/20/sliding-towards-authoritarianism> (accessed 21 May 2026).
- Hurd, I. (2020) 'Legal games – political goals', *AJIL Unbound*, Vol. 114, pp.232–236.
- International Covenant on Civil and Political Rights (1966) 999 UNTS 171.
- International Law Commission (2018) *Draft Articles on Identification of Customary International Law, with Commentaries, in Report of the International Law Commission*, UN Doc. A/73/10, p.119.
- Jeffrey, A. (2025) *Canadian Travellers, Airlines, Airports Could be Hit Financially if Pre-Clearance into U.S. Lost, Says Expert*, CBC, 27 September [online] <https://www.cbc.ca/news/canada/calgary/canadian-airlines-airports-financial-hit-1.7645299> (accessed 12 November 2025).
- Junquera, N. (2026) 'La regularización de inmigrantes divide a los españoles: 38% a favor y 33% en contra', *El País*, 4 May [online] <https://elpais.com/espana/2026-05-04/la-regularizacion-de-inmigrantes-divide-a-los-espanoles-38-a-favor-y-33-en-contra.html> (accessed 15 July 2026).
- Kelly, A. (2024) 'Human rights in decline globally as leaders fail to uphold laws, report warns', *The Guardian*, 11 January [online] <https://www.theguardian.com/global-development/2024/jan/11/human-rights-decline-globally-leaders-fail-uphold-laws-warns-human-rights-watch-annual-report> (accessed 17 November 2025).
- Kinacioglu, M. (2023) 'Militarized governance of migration in the Mediterranean', *International Affairs*, Vol. 99, No. 6, pp.2423–2441, DOI: 10.1093/ia/iia232.
- Klabbers, K. (2019) 'Notes on the ideology of international organizations law: the international organization for migration, state-making, and the market for migration', *Leiden Journal of International Law*, Vol. 32, No. 3, pp.383–400, DOI: 10.1017/S0922156519000165.
- Krieger, H. and Nolte, G. (2019) 'The international rule of law – rise or decline? – Approaching current foundational challenges', in Krieger, H., Nolte, G. and Zimmerman, A. (Eds.): *The International Rule of Law: Rise or Decline?*, pp.3–32, Oxford University Press, Oxford.
- Lauterpacht, E. and Bethlehem, D. (2003) 'The scope and content of the principle of non-refoulement: opinion', in Feller, E., Türk, V. and Nicholson, F. (Eds.): *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, pp.87–177, Cambridge University Press, Cambridge.
- Lavenex, S. (2006) 'Shifting up and shifting out: the foreign policy of European immigration control', *West European Politics*, Vol. 29, No. 2, pp.329–350, DOI: 10.1080/01402380500512684.

- Lavanex, S. (2024) 'The international refugee regime and the liberal international order: dialectics of contestation', *Global Studies Quarterly*, Vol. 4, No. 2, pp.1–12, DOI: 10.1093/isagsq/ksae029.
- Leung Chung Hang, *Sixtus v President of Legislative Counsel and Secretary for Justice* [2018] HKCFI 2657.
- Levitsky, S. and Way, L.A. (2002) 'Elections without democracy: the rise of competitive authoritarianism', *Journal of Democracy*, Vol. 13, No. 2, pp.51–61, DOI:10.1353/jod.2002.0026.
- Liguori, A. (2019) *Migration Law and the Externalization of Border Controls: European State Responsibility*, Routledge, London.
- Lori, N. (2020) 'Migration, time, and the shift toward autocracy', in Shachar, A. (Ed.): *The Shifting Border: Legal Cartographies of Migration and Mobility: Ayelet Shachar in Dialogue*, Manchester University Press, Manchester.
- Luyten, K. (2022) *Addressing Pushbacks at the EU's External Borders*, European Parliamentary Research Service [online] [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI\(2022\)738191_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI(2022)738191_EN.pdf) (accessed 15 May 2025).
- Lyall, J.D. (2009) 'Vigilante state: reframing the minuteman project in American politics and culture', *Georgetown Immigration Law Journal*, Vol. 23, No. 2, pp.257–292.
- Mainwaring, C. and DeBono, D. (2021) 'Criminalizing solidarity: search and rescue in a neo-colonial sea', *Environment and Planning C: Politics and Space*, Vol. 39, No. 5, pp.1030–1048, DOI: 10.1177/2399654420979314.
- Mallory, A. (2024) 'Closing down access to asylum: the illegal migration act's incompatibility with international refugee law', *Brooklyn Journal of International Law*, Vol. 49, No. 2, pp.712–745.
- Malloy, J. (1992) 'Contemporary Authoritarian Regimes,' in Hawkesworth, M., and Kogan, M. (Eds.): *Encyclopedia of Government and Politics*, pp.249–246, Routledge, London.
- Marin, L. (2014) 'Protecting the EU's Borders from ... Fundamental Rights? Squaring the circle between Frontex's border surveillance and human rights', in Holzhaecker, R.L. and Luif, P. (Eds.): *Freedom, Security and Justice in the European Union: Internal and External Dimensions of Increased Cooperation after the Lisbon Treaty*, pp.75–99, Springer, New York.
- McDonnell, E. (2024) 'Challenging externalisation through the lens of the human right to leave', *Netherlands International Law Review*, Vol. 71, pp.118–154, DOI: 10.1007/s40802-024-00252-w.
- Mitsilegas, V. and Guild, E. (2024) 'The UK and the ECHR after Brexit: the challenge of immigration control', *European Convention on Human Rights Law Review*, Vol. 5, No. 1, pp.116–131, DOI: 10.1163/26663236-bja10079.
- Moreno-Lax, V. and Lemberg-Pedersen, M. (2019) 'Border-induced displacement: the ethical and legal implications of distance-creation through externalization', *Questions of International Law*, Vol. 56, No. 1, pp.5–33.
- Natter, K. (2023) 'The il/liberal paradox: conceptualising immigration policy trade-offs across the democracy/autocracy divide', *Journal of Ethnic and Migration Studies*, Vol. 50, No. 3, pp.680–701, DOI: 10.1080/1369183X.2023.2269784.
- ND and NT v. Spain [2020] ECHR Application Nos. 8675/15 and 8697/15 (13 February 2020).
- Nethery, A., Dastyari, A. and Hirsch, A. (2022) 'Examining refugee externalization policies: a comparative study between Europe and Australia', in Nethery, Dastyari, and Hirsch (Eds.): *Refugee Externalisation Policies: Responsibility, Legitimacy and Accountability*, pp.1–24, Routledge, London.
- Nicolosi, S.F. (2024) 'Externalisation of migration controls: a taxonomy of practices and their implications in international and European law', *Netherlands International Law Review*, Vol. 71, pp.1–20, DOI: 10.1007/s40802-024-00253-9.
- Noll, G. (2005) 'Seeking asylum at embassies: a right to entry under international law?', *International Journal of Refugee Law*, Vol. 17, No. 3, pp.542–573, DOI:10.1093/ijrl/eei020.

- Norman, K. and Micinski, N. (2022) 'The European Union's migration management aid: developing democracies or supporting authoritarianism?', *International Migration*, Vol. 61, No. 4, pp.57–71, DOI: 10.1111/imig.13075.
- Nyirkos, T. (2018) *The Tyranny of the Majority: History, Concepts, and Challenges*, Routledge, New York.
- O'Connor, S. (2026) 'Why politicians struggle to read the public on immigration', *Financial Times* [online] 19 May. <https://www.ft.com/content/85c3f0de-9593-44a9-bb99-9f78c3dd4732?syn-25a6b1a6=1> (accessed 22 May 2026).
- O'Leary, N. (2025) 'A taboo has broken': how western powers are pushing to re-write refugee law', *Irish Times*, 31 December [online] <https://www.irishtimes.com/world/europe/2025/12/31/a-taboo-has-broken-a-challenging-year-for-international-law/> (accessed 21 May 2026).
- Page, M. and Worden, M. (2022) *Qatar World Cup Chief Publicly Admits High Migrant Death Tolls*, Human Rights Watch [online] <https://www.hrw.org/news/2022/11/30/qatar-world-cup-chief-publicly-admits-high-migrant-death-tolls> (accessed 15 May 2025).
- Papastavridis, E. (2010) 'Fortress Europe' and FRONTEX: within or without international law?', *Nordic Journal of International Law*, Vol. 79 No. 1, pp.75–111, DOI:10.1163/157181009X12581245929640.
- Parker, A. (2025) *Trump's Executive Orders Promise Systemic Detentions, Deportations*, Human Rights Watch, 23 January [online] <https://www.hrw.org/news/2025/01/23/trumps-executive-orders-promise-systemic-detentions-deportations> (accessed 21 May 2026).
- Pécoud, A. (2018) 'What do we know about the International Organization for Migration?', *Journal of Ethnic and Migration Studies*, Vol. 44, No. 10, pp.1621–1638, DOI:10.1080/1369183X.2017.1354028.
- Petty, A. (2022) 'Migrants as weapons systems', *Journal of National Security Law and Policy*, Vol. 13, No. 1, pp.113–139.
- Pichl, M. (2024) 'Of 'bulwarks' and 'sacred borders': authoritarian refugee policies in Europe', in Frankenberg, G. and Heitmeyer, W. (Eds.): *Drivers of Authoritarianism: Paths and Developments at the Beginning of the 21st Century*, pp.220–237, Edward Elgar, Cheltenham.
- Population and Development Review (2019) 'The Global Compacts on Migration and Refugees: Endorsement and Dissent', Vol. 45, pp.257–262, DOI:10.1111/padr.12241.
- Preclearance Act, S.C. 2017, c. 27 (Canada).
- R (on the application of AAA (Syria) and others) [2023] UKSC 42.
- Real Decreto 316/2026, de 14 de abril, por el que se modifica el Real Decreto 1155/2024, de 19 de noviembre, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, B.O.E. no. 92, 15 April 2016 (Spain).
- Refugee Council of Australia (2025) *First Deportation Under Multi-Billion Dollar Nauru Deal A Dark New Chapter For Australia*, 6 November [online] <https://www.refugeecouncil.org.au/first-deportation-under-multi-billion-dollar-nauru-deal-a-dark-new-chapter-for-australia> (accessed 22 May 2026).
- Reuters (2026) *Hungary Will Continue Strict Migration Policy Under New Government, Says Magyar*, 17 April [online] <https://www.reutersconnect.com/item/hungary-will-continue-strict-migration-policy-under-new-government-says-magyar/dGFnOnJldXRlcnMuY29tLDIwMjY6bmV3c21sX1ZBMzE2NzE2MDQyMDI2UIAx/dGFnOnJldXRlcnMuY29tLDIwMjY6bmV3c21sX0xwQTAWMTMxNjcxNjA0MjAyNIJQMjQ> (accessed 25 May 2026).
- Sandholz, W. (2019) 'Resurgent authoritarianism and the international rule of law', *Southwestern Journal of International Law*, Vol. 28, No. 2, pp.484–505.
- Sangatte Protocol (1993) 'Sangatte Protocol or Protocol between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the French Republic concerning frontier controls and policing, co-operation in criminal justice, public safety and mutual assistance relating to the Channel fixed link', 1991, 1993 UK Treaty Series 70.

- Schultz, J. and Vedsted-Hansen, J. (2025) 'Article 8 ECHR and the 'temporary turn' in European asylum policies', *Maastricht Journal of European and Comparative Law*, Vol. 32, No. 3, pp.250–268, DOI:10.1177/1023263X251338505.
- Scott Ford, S. (2025) 'Brokering in uncharted terrain: the revocation of protection in Norwegian and Danish asylum cases', *Journal of Ethnic and Migration Studies*, Vol. 51, No. 8, pp.2033–2051. DOI:10.1080/1369183X.2024.2441598.
- Scott, S. (2020) 'The imperial over-stretch of international law', *AJIL Unbound*, Vol. 114, pp.242–246.
- Shachar, A. (2020) 'The shifting border: legal cartographies of migration and mobility', in Shachar, A. (Ed.): *The Shifting Border: Legal Cartographies of Migration and Mobility: Ayelet Shacar in Dialogue*, Manchester University Press, Manchester.
- Shamir, R. (2005) 'Without borders? Notes on globalization as a mobility regime', *Sociological Theory*, Vol. 23, No. 2, pp.197–217, DOI:10.1111/j.0735-2751.2005.00250.x.
- Sikkink, K. (2011) *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*, W.W. Norton, New York.
- Simon, Z. (2014) *Orban Says He Seeks to End Liberal Democracy in Hungary*, Bloomberg, 28 July [online] <https://www.bloomberg.com/news/articles/2014-07-28/orban-says-he-seeks-to-end-liberal-democracy-in-hungary> (accessed 15 May 2025).
- Slaughter, A.M. (1995) 'International law in a world of liberal states', *European Journal of International Law*, Vol. 6, No. 3, pp.503–538, DOI:10.1093/oxfordjournals.ejil.a035934.
- Smith, C. (2018) "'Authoritarian neoliberalism' and the Australian border-industrial complex", *Competition & Change*, Vol. 23, No. 2, pp.192–217, DOI: 10.1177/1024529418807074.
- Soupault, J. (2026) 'The criminalization of solidarity in the European border regime', *Alternatives: Global, Local, Political*, DOI: 10.1177/030437542614336.
- Spanje, J.V. (2010) 'Contagious parties: anti-immigration parties and their impact on other parties' immigration stances in contemporary Western Europe', *Party Politics*, Vol. 16, No. 5, pp.563–586, DOI:10.1177/1354068809346002.
- Strik, T. (2024) 'Frontex's expanding mandate: Has democratic control caught up?', *European Law Journal*, Vol. 30, Nos. 1–2, pp.217–237, DOI:10.1111/eulj.12499.
- Stutz, P. and Trauner, F. (2024) 'Democracy matters (to some extent): autocracies, democracies and the forced return of migrants from the EU', *Geopolitics*, Vol. 30, No. 2, pp.704–729, DOI:10.1080/14650045.2024.2382460.
- Sumaita, I. (2022) 'Losing dignity: eroding privacy rights of immigrants in technology-based immigration enforcement', *University of Cincinnati Intellectual Property and Computer Law Journal*, Vol. 6, No. 2, p.3.
- Szakác, J. and Bognár, E. (2021) *The Impact of Disinformation Campaigns about Migrants and Minority Groups in the EU*, Policy Department for External Relations, Directorate General for External Policies, European Parliament [online] [https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653641/EXPO_IDA\(2021\)653641_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653641/EXPO_IDA(2021)653641_EN.pdf) (accessed 15 May 2025).
- Szigeti, P. (2026) 'Parody or death? Refugee law in populist regimes', *Opinio Juris*, 5 January [online] <https://opiniojuris.org/2026/01/05/parody-or-death-refugee-law-in-populist-regimes/> (accessed 22 May 2026).
- Tau, B. and Burke, G. (2025) *Border Patrol is Monitoring US Drivers and Detaining Those with 'Suspicious' Travel Patterns*, Associated Press, 20 November [online] <https://apnews.com/article/immigration-border-patrol-surveillance-drivers-ice-trump-9f5d05469ce8c629d6fecf32d32098cd> (accessed 24 November 2025).
- Tazzioli, M. (2018) 'Crimes of solidarity: migration and containment through rescue', *Radical Philosophy*, Vol. 2, No. 1, pp.4–10.
- Terrorism Act (2000) 'An Act to make provision about terrorism; and to make temporary provision for Northern Ireland about the prosecution and punishment of certain offences, the preservation of peace and the maintenance of order', c. 11, UK.

- Tóth, G.A. (2017) 'Authoritarianism', in Grote, R. et al (Eds.): *Max Planck Encyclopedia of Comparative Constitutional Law*, Oxford University Press, Oxford [online] <https://oxcon.oup.com/display/10.1093/law-mpeccol/law-mpeccol-e205?prd=MPECCOL> (accessed 15 May 2025).
- Tucker, E. and Sugiyama, H. (2023) *Does ICE Data Surveillance Violate Human Rights Law? The Answer Is Yes, and It's Not Even Close*, Tech Policy Press, 14 November [online] <https://www.techpolicy.press/does-ice-data-surveillance-violate-human-rights-law-the-answer-is-yes-and-its-not-even-close> (accessed 15 May 2025).
- UN Human Rights Council (2024) *Visit to Canada – Report of the Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences*, Tomoya Obokata [online]. <https://documents.un.org/doc/undoc/gen/g24/120/97/pdf/g2412097.pdf> (accessed 15 May 2025).
- UNHCR (2024a) *Comments and Observations on the Draft Law Amending the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland*, 12 December [online] <https://www.refworld.org/legal/natlegcomments/unhcr/2024/en/149257> (accessed 12 November 2025).
- UNHCR (2024b) *Analysis of the Legality and Appropriateness of the Transfer of Asylum-Seekers Under the Uk-Rwanda Arrangement: An Update* [online] <https://www.unhcr.org/uk/media/unhcr-analysis-legality-and-appropriateness-transfer-asylum-seekers-under-uk-rwanda-1> (accessed 15 May 2025).
- United States v. Ramsey, 431 U.S. 606 (1977).
- Universal Declaration of Human Rights, (1948) G.A. Res. 217A (III), U.N. Doc. A/810 at 71.
- UNOHCHR (1988) *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation* [online] <https://www.refworld.org/legal/general/hrc/1988/en/27539> (accessed 15 May 2025).
- Uriarte, J.A. (2022) 'The European pact on migration and asylum: border containment and frontline states', *European Journal of Migration and Law*, Vol. 24 No. 4, pp.463–488, DOI: 10.1163/15718166-12340137.
- US Customs and Border Protection (2025) *Preclearance* [online] <https://www.cbp.gov/travel/preclearance> (accessed 15 May 2025).
- US Customs and Border Protection (CBP) (2018) *Border Search of Electronic Devices* [online] <https://www.cbp.gov/sites/default/files/assets/documents/2018-Jan/CBP-Directive-3340-049A-Border-Search-of-Electronic-Media-Compliant.pdf> (accessed 15 May 2025).
- Uygun, A.G. (2023) 'Externalization of the European Union's migration policies: Frontex's cooperation with non-European union countries', in Günar, A. and Saygin, D. (Eds.): *The European Union in the Twenty-First Century: Major Political, Economic and Security Policy Trends*, pp.113–125, Emerald, Leeds.
- Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331.
- von Bernstoff, J. (2019) 'The decay of the international rule of law project (1990–2015)', in Krieger, H., Nolte, G. and Zimmerman, A. (Eds.): *The International Rule of Law – Rise or Decline?*, pp.33–55, Oxford University Press, Oxford.
- Waller, J.G. (2022) 'Illiberalism and authoritarianism', in Laruelle, M. (Ed.): *The Oxford Handbook of Illiberalism*, Oxford University Press, Oxford [online] DOI: 10.1093/oxfordhb/9780197639108.013.1 (accessed 28 April 2026).
- Waller, J.G. (2024) 'Distinctions with a difference: illiberalism and authoritarianism in scholarly study', *Political Studies Review*, Vol. 22, No. 2, pp.365–386, DOI: 10.1177/1478929923115925.
- Ward, M. (2023) 'Biden to replace Trump migration policy with Trump-Esque Asylum Policy', *Politico*, 21 February [online] <https://www.politico.com/news/2023/02/21/biden-trump-migration-policy-asylum-00083873> (accessed 25 May 2026).

- Watson, J. (2025) *U.S. Detention of European and Canadian Tourists Creates fear Over Traveling to America*, PBS News, 21 March [online] <https://www.pbs.org/newshour/world/u-s-detention-of-european-and-canadian-tourists-creates-fear-over-traveling-to-america> (accessed 21 May 2026).
- Watson, T. and Zars, J. (2025) *100 Days of Immigration Under the Second Trump Administration*, Brookings Institution, 29 April [online] <https://www.brookings.edu/articles/100-days-of-immigration-under-the-second-trump-administration> (accessed 26 October 2025).
- Wertheimer, T. (2025) *Australia Deports First Foreign Detainees to Nauru in Controversial Deal*, BBC, 28 October [online] <https://www.bbc.com/news/articles/cvgdp58vkkpo> (accessed 22 May 2026).
- Wessels J. (2024) 'Reverse strategic litigation by governments? Negotiating sovereignty and migration control before the European court of human rights', *AJIL Unbound*, Vol. 118, p.214, DOI:10.1017/aju.2024.36.
- White House (2022) *National Security Strategy*, October [online] <https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf> (accessed 1 May 2026).
- White House (2025) *Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren De Aragua* [online] <https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua> (accessed 15 May 2025).
- Wilcox, S. (2009) 'The open borders debate on immigration', *Philosophy Compass*, Vol. 4, No. 5, pp.813–821, DOI:10.1111/j.1747-9991.2009.00230.x.
- Woodruff, C. (2015) 'Refugee law: improving oversight and accountability', *Georgetown Immigration Law Journal*, Vol. 29, No. 1, pp.147–168.
- Zaiotti, R. (Ed.), (2016) *Externalizing Migration Management: Europe, North America, and the Spread of 'Remote Control' Practices*, Routledge, Abingdon.