

Preparatory Sub-Regional Meetings of San José, Brasilia and Cartagena De Indias

To commemorate the 20th Anniversary of the Cartagena Declaration on Refugees, the Norwegian Refugee Council, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Inter-American Institute of Human Rights and the Governments of Brazil, Costa Rica and Mexico, together with the United Nations High Commissioner for Refugees (UNHCR), issued an invitation this year to governments, experts and various sectors of civil society to analyse the main challenges currently raised by the protection of refugees in Latin America and to identify the lines of action required to protect those needing this protection and to assist countries of asylum in the search for appropriate solutions within the pragmatic, creative spirit advocated by the Cartagena Declaration on Refugees adopted in 1984.

To this end, three preparatory sub-regional meetings were held to obtain the views of a wide range of interlocutors on the most pressing problems regarding the protection of refugees and their possible solutions.

Participants at these three meetings agreed that the Cartagena Declaration on Refugees currently constitutes a useful tool for providing protection for those who require it and that its humanitarian spirit reflects the rich tradition of asylum in Latin America while providing a positive contribution to the development of international refugee law.

During the meetings, participants also re-affirmed the fundamental principles of international protection, particularly the *jus cogens* nature of the principle of *non-refoulement*. They also expressed the widespread conviction that the integral, convergent application of international human rights law, international humanitarian law and international refugee law is crucial to reinforcing the protection of refugees as well as of other persons in need of protection.

Moreover, participants acknowledged the need to strike a balance between the legitimate interests of the State, particularly as regards security, and the humanitarian needs of those in need of protection.

At the same time, they recognized the importance of adopting national legislation on refugees and recommended strengthening internal mechanisms for the protection of refugees and asylum seekers. In particular, they pointed out that efficient internal mechanisms are required to identify refugees and asylum seekers within the framework of mixed migratory flows.

Likewise, participants recognized the importance of using international mechanisms for the protection of refugees' and asylum seekers' human rights, particularly the bodies of the Inter-American human rights system.

They also highlighted the need for the support of the international community to achieve durable solutions, within the framework of the principle of international solidarity, and stated that attention should be paid to the needs of host communities. They also pointed out that international protection strategies and the search for durable solutions must be adjusted to the needs and profiles of the beneficiary populations.

Participants expressed their concern over the use of certain neologisms and terminology on the part of certain authorities that may reduce the protection offered to refugees in the region.

They also stressed the importance of providing training in international refugee law and human rights for the entire state apparatus in order to provide effective protection for asylum seekers, refugees and others in need of protection. Finally, they emphasized the need to promote and spread best practices regarding refugee protection and the promotion of international refugee law and international human rights law.

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The First Preparatory Sub-Regional Meeting of Mexico, Central America and Cuba, was held on 12-13 August in San José, Costa Rica. There, participating States and members of civil society reaffirmed the importance, value and strength of the Cartagena Declaration on Refugees, underlying the need to recover its humanitarian spirit and pragmatic, innovative approach.

During the meeting, participants acknowledged the fact that the effective protection of refugees and the search for durable solutions to their situation are directly linked to the consolidation of democratic institutions and universal respect for human rights. They also pointed out that, together with the normative and institutional developments in the area of refugee protection, the underlying causes that led to the forced displacement of persons should be dealt with.

Those States that have not yet done so were recommended to include the broader refugee definition of the Cartagena Declaration in their national legislation. Likewise, given the need for clearer criteria for the application of this definition, UNHCR was asked to draw up a Handbook on Procedures and Criteria for this issue.

Acknowledging the scope of the migratory phenomenon due, among other reasons, to poverty and unemployment, the Meeting emphasized the need for migrants to be considered and treated as subjects of rights under the law in both transit and reception countries. Within the framework of the new migratory trends characterized by the existence of mixed migratory flows in which refugees and asylum seekers are assumed to be irregular migrants, the Meeting recommended that States adopt the necessary measures and safeguards to

enable them to identify refugees and asylum seekers and provide them with the treatment and protection they require, paying particular attention to the different protection needs based on age and gender. It also recommended that they recognize the special needs of handicapped persons and indigenous people.

The Meeting also suggested that States adopt permanent policies to prevent migratory controls and restrictive border measures from affecting refugees' access to international protection. Attempts were also made to restore the States' political will to reduce the gap between the normative framework and its effective implementation in practice.

In view of the fact that most of the refugees arriving in countries in the region are of urban extraction, particularly men on their own, of productive age, the Meeting acknowledged the challenges raised by this situation in the search for lasting solutions, particularly local integration.

Although participants acknowledged the valuable contribution that NGOs and other civil organizations have made in favour of persons in the region in need of protection, they confirmed that States are primarily responsible for respecting, promoting and protecting the rights of the persons under their jurisdiction. In this respect, they highlighted the importance of national human rights institutions and the use of internal legal mechanisms to protect the rights of asylum seekers and refugees.

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The Second Preparatory Sub-Regional Meeting of the MERCOSUR countries, Bolivia and Chile was held on 26-27 August 2004 in Brasilia, Brazil. Participants seized the opportunity to confirm the validity and legitimacy of the Cartagena Declaration on Refugees while expressing their humanitarian commitment and solidarity towards asylum seekers and refugees.

The Meeting recognized that the Cartagena Declaration, including the broader refugee definition, constitutes a useful, practical instrument of protection. In view of the fact that countries in the region have incorporated the broader refugee definition into their legislation or practice, it recognized the need to clarify and specify criteria for the interpretation of the broader definition, using the jurisprudence of human rights bodies and courts.

Emphasizing the innovative contribution of the Cartagena Declaration on Refugees to economic, social and cultural rights, the Meeting stressed the need to respect the principle of the indivisibility and interdependence of human rights and to stress the complementary, integral nature of the various branches of international law on the protection of the individual. In view of the pressing needs of asylum seekers, refugees and other persons in need of protection, the Meeting recognized the need to provide them with humanitarian treatment, with the assistance of international cooperation, during all the stages of their

displacement. It also recommended providing assistance and facilitating the documentation processes that enable them to legally engage in wage-earning activities.

Confirming the *jus cogens* nature of the principle of *non-refoulement*, participants pointed to the expansion achieved by other human rights instruments in relation to this principle, particularly Article 22(8) of the American Convention on Human Rights and Article 3 of the Convention against Torture.

In view of the negative implications that certain terminology may have for the effective protection of refugees in the region, such as internally displaced persons in transit or the “*asilo-refugio*” confusion, participants suggested drawing up a glossary of legal terms on refugees to avoid confusion.

The Meeting also recommended that States adopt national norms and establish national structures for refugee status determination and provide hearings, with all due guarantees, for asylum seekers. In general, it stressed the importance of national mechanisms for the protection of the human rights of all persons under the jurisdiction of the State and recommended reducing the gap between the normative framework and its effective implementation in practice.

At the same time, participants acknowledged the importance of using the Inter-American System of Human Rights and in this respect, the Meeting recommended requesting an advisory opinion from the Inter-American Court to determine the content and scope of the right of asylum.

The Meeting highlighted the role of non-governmental organizations in assisting persons in the region who need protection. It also recommended that States include civil society in the refugee status determination processes.

Acknowledging the close link between the search for durable solutions and international cooperation, participants recommended the adoption of policies that facilitate the integration of refugees into the productive life of the receiving countries, while at the same time benefiting the host communities. They also recommended that States facilitate the participation of civil society in the adoption and implementation of public policies regarding the integration of refugees.

The Meeting recognized resettlement as a specific manifestation of the principle of international solidarity. On Brazil’s initiative, it recommended establishing a resettlement program within the framework of MERCOSUR countries, which would confirm the fact that Latin America provides protection and is concerned with finding solutions to the problem of its own refugees.

Also with the framework of MERCOSUR, participants pointed to the political will reflected in the Río de Janeiro Declaration on refugee protection to adopt

measures for the identification, reception, protection and assistance of asylum seekers and refugees, and confirmed the need to adopt internal mechanisms for these purposes.

Participants asked UNHCR to request periodic reports, as part of its supervisory responsibilities, on the status of refugees and the implementation of the Convention in countries within the region.

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The Third Preparatory Sub-Regional Meeting, held in Cartagena de Indias, Colombia on 16-17 September 2004, was attended by government representatives from Colombia, Ecuador, Panama, Peru and Venezuela. Participants acknowledged the fact that the commemoration of the 20th anniversary of the Cartagena Declaration provided a valuable opportunity to reinforce a regional process to promote the effective protection of asylum seekers and refugees, as well as that of other persons requiring protection. They also reiterated their countries' political will to find regional solutions to common problems. Furthermore, they stressed the importance of analyzing the Cartagena Declaration in depth in order to update and systematize the respective state practices and doctrine.

Participants acknowledged the fact that the influx of large groups of persons in need of protection often exceeds the possibilities of individual States. Therefore, in addition to political will, the support of the international community is required to cope with these situations. They also recognized the importance of early warning and the prevention of humanitarian crises through the appropriate State institutions, excluding mechanisms to contain the population.

In view of the severity of the problem of forced displacement in the region, participants stressed the need to deal with its causes and implement pragmatic policies and solutions that are coherent, viable and respectful of the principles and norms of international protection, in order to provide effective protection for those in need of it. In this respect, they pointed to the need to reinforce work on the borders to promote the socio-economic development of both those who need protection and the host populations.

Likewise, in view of the fact that most of the uprooted population comprises persons of rural origin engaged in farming activities, with a majority of women and children, participants recommended that protection and local integration programs reflect the specific needs of this population.

They also suggested scheduling regular meetings with participating countries in order to encourage dialogue and cooperation and find appropriate solutions to the humanitarian problem.

Participants advocated the prompt, sustained implementation of the regional resettlement program proposed by the Government of Brazil at the Second Sub-Regional Meeting, to help reduce the impact of the humanitarian situation faced by the countries in the region.

At the same time, by confirming the individual's juridical status as a subject entitled to rights under the law, participants urged states to respect and ensure the norms concerning human rights and humanitarian law, and to attempt to harmonize and integrate them, together with the constitutional and legal norms regarding refugees, in order to guarantee more effective protection for the persons involved. States were also asked to adopt measures to ensure and respect the legal right of refugees to seek and be granted asylum.

Given the need to reinforce the institutional mechanisms created for the determination of refugee status, the Meeting recommended providing them with more technical and financial resources and that UNHCR should provide training and technical advice. It also suggested sensitizing the government officials responsible for identifying and protecting refugees and asylum seekers, as well as local populations, in order to prevent all forms of discrimination.

In view of the terminological confusion that may affect the international protection provided in the region, UNHCR was asked to draw up a glossary of legal terms concerning refugees.

Stressing the importance of cooperation with international organizations, participants agreed to submit a proposal to the Andean Council of Ministers of Foreign Affairs to create an Andean committee of authorities responsible for the issue of refugees and asylum. They also suggested that the Andean Charter of Nations be given a binding status, because of its links with the refugee issue.

Finally, participants recommended reminding cooperating countries of the need to provide support for countries in the region and to draw up a strategic plan to deal with the problem and cover specific problems in the region. It also recommended establishing mechanisms to determine the number of persons in need of protection in order to have a more accurate idea of the scope of the needs raised by the humanitarian crisis.