

Reference Paper for the 70th Anniversary of the 1951 Refugee Convention

Reshaping Asylum in Latin America as a Response to Large-Scale Mixed Movements: A Decade of Progress and Challenges (2009-2019)

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Abstract:

The article reviews a decade of progress and challenges in Latin America and the Caribbean (2009-2019) on how States protect refugees as part of large-scale mixed movements. The article reviews the evolution of the institution of asylum in Latin-American, and how the Cartagena Declaration on Refugees (1984) and the regional instruments that followed, shaped the way in which States understand refugee protection. The article notes how the region progressively moved from the refugee crises to large-scale mixed movements in recent years. It also suggests the need to reshape the tradition of asylum in Latin America by promoting a renewed working paradigm that reinforces the complementarity of national asylum and migration statutes and build asylum capacities.

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1. Introduction

Latin America is internationally renowned for its long and generous tradition of asylum, which in spite of having originated in the nineteenth century, was able to evolve in order to respond with pragmatism to the challenges presented by new regional junctures emerging throughout the years.

Historically, asylum developed as an institution that only protected people persecuted for political reasons. Asylum was understood as a purely discretionary act of the State often granted only to people with a high political profile, both territorially and diplomatically.¹ By the mid-twentieth century, international refugee law started to permeate Latin American asylum. This influence became increasingly necessary in the seventies and eighties,² when Latin American countries had to respond to the Central American refugee crisis. As a result of this integration, the Cartagena Declaration on Refugees was adopted in 1984, together with innovative principles and criteria regarding refugee assistance, protection, and solutions which were agreed to during the International Conference on Central American Refugees (CIREFCA) (1989-1994).³

Since then, asylum has become consolidated as a human right and the States have started to conjoin pragmatism with the norms and principles of the Inter-American System of Human Rights. The new architecture of international refugee protection in the Latin American region was thus constructed.

The evolution of asylum never stopped. The Cartagena Declaration was succeeded by three processes commemorating its adoption, the enactment of legislations on refugee protection, the creation of National Commissions for Refugees (CONAREs), and the implementation of procedures for refugee status determination. The commemorating processes brought new programs and thematic areas of work linchpins focused on durable solutions such as resettlement and borders and cities of solidarity.

In recent years, however, humanitarian situations in Nicaragua, Central America, and Venezuela completely changed the regional landscape, generating unprecedented movements of refugees and migrant persons. Latin American asylum, that was originally conceived to protect asylees and had to evolve to also cover people who were part of large-scale *refugee movements*, had to continue adapting to respond to *mixed movements* of an unprecedented scale in the region.

In the seventies and eighties, Latin America bore witness to its greatest refugee crisis. At the time, it was estimated that 2,000,000 people had been forcibly displaced from their places of origin, most of them within their own country. This figure included 150,000 people recognized or assisted as refugees in Costa Rica (41,000), Honduras (37,000), and Mexico (43,000). However, it did not include those who could qualify as refugees, but never applied for such recognition.⁴

¹ Leonardo Franco, María Laura Gianelli Dublanc, and Alberto D'Alotto, eds., *El asilo y la protección internacional de los refugiados en América Latina y el Caribe: análisis crítico del dualismo "asilo-refugio" a la luz del derecho internacional de los derechos humanos*, 1a. ed, Buenos Aires, Argentina, Siglo Veintiuno Editores, Argentina, 2003, <https://www.acnur.org/fileadmin/Documentos/Publicaciones/2012/8945.pdf>

² Colloquium on Asylum and International Protection of Refugees in Latin America, Conclusions and Recommendations, Tlatelolco, Mexico City, 11 May 1981.

³ CIREFCA, Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin América, CIREFCA/89/9, April 1989, , <https://www.refworld.org/docid/4370ca8b4.html>

⁴ CIREFCA, Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons, CIREFCA/89/14, 31 May 1989, <https://www.refworld.org/docid/3fbb5d094.html>

By the end of 2019, UNHCR estimated that there were 15,650,382 people of interest in the Americas, of which 1,902,133 were people whose applications for asylum were pending. The American Continent became the region receiving the greatest number of new asylum applications world-wide. Besides, the world ranking of ten countries generating new asylum applications was integrated by five Latin American countries: Venezuela (429,900), Honduras (78,100), Guatemala (56,100), El Salvador (54,300), and Nicaragua (52,000). Between 2016 and 2019, 1,600,000 nationals from Central American countries and Venezuela had submitted asylum applications in different countries in the region. During those three years, Venezuela became the country generating the largest number of new asylum applications world-wide.

In 2019, it was estimated that 4,500,000 people felt forced to leave Venezuela: 93,300 were eventually recognized as refugees, 794,500 were asylum seekers, and the remaining 3.6 million remained in an irregular immigration status or managed to acquire another migration status. This trend was on the rise, when, at the beginning of 2020, the COVID-19 pandemic drastically slowed it down.

National asylum systems collapsed due to an exponential increase in the number of asylum applications, a lack of differentiated modalities to process these applications, fear of generating a “pull factor”⁵ and a lack of human and financial resources. Although some countries developed special legal stay arrangements to respond to large-scale mixed movements,⁶ by the end of 2019, thousands of people continued in an irregular migratory status, facing various legal and practical barriers to seek and be granted asylum.⁷

This paper reviews a decade of progress in Latin America and the Caribbean (2009-2019) and, noting the challenges underlying the current humanitarian situations, it suggests the need to reshape the tradition of asylum in Latin America by promoting a working paradigm that reinforces the complementarity of national asylum and migration systems.

2. From the Cartagena Declaration (1984) to the Regional Conference on Refugee Protection and International Migration in the Americas (2009)

The Cartagena Declaration on Refugees (1984) was adopted by a “Colloquium on the International Protection of Refugees in Central America, Mexico and Panama,” as an effort to respond to the humanitarian crisis originating in the large-scale movements of people fleeing from internal conflicts, grave human rights violations, and other situations of indiscriminate violence in Central American countries.

When the Cartagena Declaration was adopted, most countries in the region were not State Parties to the 1951 Convention and its 1967 Protocol, nor to the American Convention on Human Rights (1969). Besides, they lacked both legislation on refugee protection and procedures for refugee status determination.

In the face of this complex scenario, the Cartagena Declaration confirmed the peaceful,

⁵ Cécile Blouin, Isabel Berganza and Luisa Feline Freier, “The Spirit of Cartagena. Applying the Extended Refugee Definition to Venezuelans in Latin America,” *Forced Migration Review*, 2020, 3, <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/cities/blouin-berganza-freier.pdf>.

⁶ UNHCR and IOM, *Respuestas Estatales Sobre Ingreso y Permanencia de Personas Venezolanas En Principales Países Receptores Recomendaciones de Acción*, Document presented at the International Technical Meeting on Human Mobility of Venezuelan Citizens in the Region. Buenos Aires Chapter, 2019.

⁷ ACNUR, Nota informativa del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR). Audiencia temática sobre sistemas de asilo y refugio frente a las situaciones humanitarias en la región, Comisión Interamericana de Derechos Humanos (CIDH) (2020), <https://www.refworld.org/es/docid/5f1c40f14.html>.

non-political, and humanitarian nature of granting asylum; the validity of the principle of *non-refoulement* -including the prohibition of rejection at the border- and the importance of seeking durable solutions. Besides, this Declaration highlighted the need to harmonize international and regional refugee protection systems.

The Cartagena Declaration was a key instrument to address the Latin American “asylum crisis”. Until then, asylum had centered on a merely discretionary approach to protection, focusing exclusively on political considerations and limiting its scope to an individual determination process.

Despite its contributions to various fields, the Cartagena Declaration gained international notoriety for having recommended the adoption of a regional definition of refugee. Apart from containing elements from the Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967), this definition also considers as refugees those people who are fleeing because their lives, safety or freedom are threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.

2.1. The Regional Definition of Refugee in State Practice

Even if it is a non-binding instrument as such, the Declaration has had such great influence that, since its adoption more than 35 years ago, the regional definition of refugee therein proposed has been incorporated into the national legislation of 15 countries,⁸ and has also been applied in practice by other countries.⁹ Supreme Courts and Constitutional Courts¹⁰ have recognized the fundamental value of the Cartagena Declaration and have also noted the binding character of this regional definition.

Constantly, States have recognized the value of this definition through regional instruments such as the San José Declaration on Refugees and Displaced Persons (1994),¹¹ the Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America and the Caribbean (2004),¹² the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (2011),¹³ the Brazil Declaration and Plan of Action (2014),¹⁴ and the 100 Points of Brasilia

⁸ Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Uruguay.

⁹ Although Costa Rica does not incorporate this definition in its domestic legislation, it did apply the regional definition of refugee during the crisis of Central American refugees. UNHCR, “Discussion Paper: The Refugee Situation in Latin America: Protection and Durable Solutions under the Pragmatic Approach of the 1984 Cartagena Declaration on Refugees”, in *Memoir of the Twentieth Anniversary of the Cartagena Declaration on Refugees, 1984 - 2004*, 1. ed (San José: ACNUR, 2005), pp. 24-25 and footnote 45. Also see ACNUR, “Documento de Trabajo. Declaración de Cartagena, Diez Años Después,” in *Memoria Coloquio Internacional - 10 Años de la Declaración de Cartagena sobre Refugiados*, 1a ed. (San José: IIDH - ACNUR, 2005), para. 19 and notes 27-28.

¹⁰ Costa Rica, Colombia, Ecuador, and Mexico.

¹¹ San Jose Declaration on Refugees and Displaced Persons, San Jose, Costa Rica, 7 December 1994, <https://www.refworld.org/docid/4a54bc3fd.html>

¹² Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin América, Mexico City, Mexico, 16 November 2004, <https://www.refworld.org/es/docid/4cf351242.html>

¹³ Brasilia Declaration on the Protection of Refugees and Stateless Persons in the American Continent, Brasilia, Brazil, 11 November 2010, <https://www.refworld.org/docid/4cdd44582.html>

¹⁴ Brazil Declaration and Plan of Action, December 3, 2014, <http://www.refworld.org/docid/5487065b4.html>

(2018).¹⁵

The General Assembly of the Organization of American States (OAS) has firmly supported the Cartagena Declaration, noting its importance, the expressions of support that its principles have received and stating that it is an instrument that guides refugee protection in the Americas as an actual legal framework.¹⁶

Early on, the Cartagena Declaration received similar political support from the Group of Latin American and Caribbean Countries (GRULAC).¹⁷ More recently, the Inter-American Commission on Human Rights (IACHR) reaffirmed the authority of the regional definition as a principle-related issue.¹⁸ Furthermore, the Inter-American Court of Human Rights (IACtHR) has underscored its binding character as forming part of the minimum content of the right to seek and be granted asylum.¹⁹

A recent research suggests that in the current state of international law, the regional definition of refugee has become a norm of particular customary international law (regional custom) for the Latin American countries concerned.²⁰ The UNHCR, in turn, has also highlighted that the regional definition has taken on a position of great importance in Latin America and the Caribbean.²¹

2.2. The Cartagena Commemorative Process: Consolidating Humanitarian Space

¹⁵ The 100 Points of Brasilia: Inputs from Latin America and the Caribbean to the Global Compact on Refugees (2018), <https://www.acnur.org/es-es/5b58eb0c4.pdf>

¹⁶ OAS, General Assembly, Resolution AG/RES. 774 (XV-O/85) (1985); AG/RES. 838 (XVI-O/86) (1986); AG/RES. 891 (XVII-O/87) (1987); AG/RES. 951 (XVIII-O/88) (1988); AG/RES. 1021 (XIX-O/89) (1989); AG/RES. 1040 (XX-O/90) (1990); AG/RES. 1170 (XXII-O/92) (1992); AG/RES. 1214 (XXIII-O/93) (1993); AG/RES. 1273 (XXIV-O/94) (1994); AG/RES. 1336 (XXV-O/95) (1995); AG/RES. 1416 (XXVI-O/96) (1996); AG/RES. 1504 (XXVII-O/97) (1997); AG/RES. 1602 (XVIII-O/98) (1998); AG/RES. 1693 (XXIX-O/99) (1999); AG/RES. 1762 (XXX-O/00) (2000); AG/RES. 1.832 (XXXI-O/01) (2001); AG/RES. 1892 (XXXII-O/02) (2002); AG/RES. 1971 (XXXIII-O/03) (2003); AG/RES. 2047 (XXXIV-O/04) (2004); AG/RES. 2232 (XXXV-O/06) (2006); AG/RES. 2296 (XXXVII-O/07) (2007); AG/RES. 2402 (XXXVIII-O/08) (2008); AG/RES. 2511 (XXXIX-O/09) (2009); AG/RES. 2597 (XL-O/10) (2010); AG/RES. 2826 (XLIV-O/14) (2014); AG/RES. 2887 (XLVI-O/16) (2016); AG/RES. 2908 (XLVII-O/17) (2017); AG/RES. 2941 (XLIX-O/19) (2019); AG/CG/doc.2 (L-O/20) rev. 1 (2020).

¹⁷ GRULAC, Persons Covered by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees (Submitted by the African Group and the Latin American Group), April 6, 1992), <http://www.unhcr.org/refworld/docid/3ae68cd214.html>.

¹⁸ IACHR, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking, Resolution 04/19 (2019), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>.

¹⁹ IACtHR, Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, OC-21/14, 19 August 2014, paras. 76, 77, 79 and 249, <http://www.refworld.org/docid/54206c744.html>; Advisory Opinion OC-25/18, The institution of asylum, and its recognition as a human right under the Inter-American System of Protection (interpretation and scope of Articles 5, 22(7) and 22(8) in relation to Article 1(1) of the American Convention on Human Rights), 30 May 2018, Series A, No. 25, para. 132, <https://www.refworld.org/cases,IACRTHR,5c87ec454.html>

²⁰ Juan Ignacio Mondelli, La obligatoriedad de la definición de refugiado de la Declaración de Cartagena en el derecho internacional, *Corte Constitucional de La República de Colombia. Revista Temas de Derecho Constitucional: Migración. Asilo. Apatridia*. Year 1, no. 1 (2019), <https://www.refworld.org/es/docid/5f3c055d4.html>; *La Fuerza Vinculante de La Definición Regional de La Declaración de Cartagena Sobre Refugiados* (1984), 2018, <https://www.refworld.org/es/docid/5d03d0b54.html>.

²¹ UNHCR, Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions, December 2016, para. 63, <https://www.refworld.org/docid/583595ff4.html>.

Were it not for the Cartagena Declaration, many refugees would have been unable to find the necessary assistance, protection, and solutions in the region, and Latin American asylum would surely have become obsolete as a protection tool for refugees. This explains why for the Latin American countries, the Cartagena Declaration was, is, and will continue to be a fundamental regional instrument. For this reason, countries commemorate its adoption every ten years.

The commemoration of the Cartagena Declaration has led to regional colloquiums in which countries discussed the challenges related to protection, assistance, and solution-seeking in the face of different regional junctures. Commemorative processes have reaffirmed protection's fundamental principles, making it possible to address the emerging new regional junctures. In this way, the consolidation of humanitarian space in the region was favored, thus generating a platform for the progressive evolution of Latin American asylum.

With the commemoration of the Tenth Anniversary of the Cartagena Declaration, the San Jose Declaration on Refugees and Displaced Persons (1994) served to address the situation of refugees and that of internally displaced persons. Within this context, the San Jose Declaration stated that the situation of internally displaced persons is an issue of concern for the international community since it is a human rights theme that may be related to the prevention of causes create refugee flows (conclusion 16).

Ten years later, with the Mexico Declaration and Plan de Action (2004), the Latin American countries shifted from making statements to implementing concrete programs of action, not only related to protection, but also to durable solutions. Since then, CONAREs in the region become increasingly involved in areas new to them, such as resettlement, or local reception and integration efforts through "solidarity cities" and "borders of solidarity" programs.

Lastly, the Brazil Plan of Action (2014) favored the dialogue and cross-fertilization between Latin American and Caribbean countries, which for the first time joined the Cartagena commemoration process. Furthermore, the action pathway continued, adding new strategic work linchpins, such as the incorporation of programs for eradicating statelessness or the programme for quality of asylum.

2.3. The Regional Conference on Refugee Protection and International Migration (2009)

By mid-2006, concerned about making visible the refugees' differentiated protection needs within the context of international migration, UNHCR launched a 10-Point Plan of Action at a global level.²² With this purpose in mind, the Plan of Action identified key work areas and called for action. For UNHCR, "efforts to protect refugees cannot be pursued in isolation from broader trends, policies, and practices shaping global mobility."²³

After the launch of this Plan, different efforts followed in the region to implement it. One major endeavor was the Regional Conference on Refugee Protection and International Migration in the Americas (2009), that was summoned by the UNHCR, the IOM, and the OAS in collaboration with the OHCHR. The Conference, hosted by Costa Rica,

²² UNHCR, Refugee Protection and Mixed Migration: A 10 Point Plan of Action, January 2007, <https://www.unhcr.org/protection/migration/4742a30b4/refugee-protection-mixed-migration-10-point-plan-action.html>

²³ UNHCR, The 10-Point Plan of Action: Refugee Protection and Mixed Migration. 2016 Update, December 2016, <https://www.refworld.org/10pointplaninaction2016update.html>

recommended promoting a sensitive response to the protection of refugees in mixed movements in the region, both nationally and at the level of regional migration processes. It also proposed making better use of the protection mechanisms of the Inter-American System of Human Rights.²⁴

The Regional Conference served for countries to discuss the challenges related to securing international protection in a global and regional context increasingly marked by international migration. A core issue of concern in the Conference was the sustained increase in the number of extracontinental refugees and migrant persons arriving in the region.

As a result of the discussions, a series of conclusions and recommendations were adopted regarding: 1) respect for the human rights of migrants and refugees regardless of their legal status; 2) identification of profile of person at risk and referral mechanisms to CONAREs; 3) differentiated procedures for refugee status determination, victims of human trafficking, unaccompanied children and adolescent, and recognition of specific needs of extracontinental refugees and migrants; 4) durable solutions; and 5) cooperation between stakeholders.

In retrospect, this Regional Conference inaugurated a decade during which the discussion about asylum and refugee protection will be framed within the context of the response to large-scale mixed movements.

3. The Brasilia Declaration (2010)

In November 2010, eighteen Latin American countries adopted the Brasilia Declaration.²⁵ This took place as part the commemoration of the Sixtieth Anniversary of UNHCR, and of the preparatory work for celebrating event of the Sixtieth Anniversary of the 1951 Convention and the Fiftieth Anniversary of the 1961 Convention on the Reduction of Statelessness, that was held in Geneva at the end of 2011.

The Brasilia Declaration was not linked to the commemorative process of the Cartagena Declaration (1984). On the contrary, the 10-Point Plan of Action (2007) and the conclusions and recommendations of the Regional Conference on Refugee Protection and International Migration in the Americas (2009) were still resonating among the countries participating in Brasilia.

The main linchpin of the Brasilia Declaration was to favor “the application of the Mexico Plan of Action [2004] as a regional approach responding to new challenges regarding refugee identification and protection in the context of mixed migration movements.” The issue was how to use the framework of the Mexico Plan of Action to respond to the challenges implied by the mixed movements. Again, the core linchpin of the regional agenda focused on international migration and refugee protection.

The Brasilia Declaration (2010) is perhaps the first regional instrument on refugee protection that more clearly reveals the link between these two issues. For instance, the Declaration notes the need to determine whether migrant person who were victims of trafficking require international protection as refugees. The importance of providing more pathways to regular migration, and adopting migration policies that respect international human rights law and ensure refugee protection was also emphasized.

²⁴ UNHCR, OIM & OAS, Protection Considerations in the Context of Mixed Migration. Summary Report. Regional Conference on Refugee Protection and International Migration in the Americas, San José, Costa Rica, November 19-20, 2009, <https://www.unhcr.org/4bf39baa9.html>

²⁵ Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas, Brasilia, Brazil, 2010, <https://www.unhcr.org/4cdd3fac6.pdf>

The Declaration also underscores the importance of using regional forums on migration to develop protection safeguards for refugees, victims of human trafficking and unaccompanied and separated children.

The Brasilia Declaration (2010) can be deemed as the Latin American imprint on the Ministerial Intergovernmental Event on Refugees and Stateless Persons (2011),²⁶ since its content was disseminated as a regional contribution during this meeting.

4. Cartagena + 30: The Brazil Declaration and Plan of Action (2014)

The process known as Cartagena +30 constituted a forum in which States, UNHCR, civil society, and international organizations reflected upon the progress made by international protection and the challenges it faces, as well as the pragmatic way in which to address them.

As part of the process, four subregional consultations were carried out in: Argentina, for MERCOSUR countries; Ecuador, for Andean countries; Nicaragua, for Mesoamerican countries; and, lastly, Grand Cayman, for Caribbean countries and territories.

The four subregional consultations adopted documents containing both conclusions and recommendations that served to prepare the drafts for the Brazil Declaration and Plan of Action. These drafts were later discussed and negotiated in Geneva by the Group of Latin American and Caribbean Countries (GRULAC) and were eventually adopted by acclamation during the final ministerial meeting held in Brazil.²⁷

Given it constitutes the regional framework that Latin American and Caribbean countries currently use as a roadmap, the adoption of the Brazil Declaration and Plan of Action (2014) constituted another fundamental milestone in the region during the past decade. Even though the implementation of the Plan led to important results in various fields,²⁸ three of the Plan's innovative aspects should be highlighting: 1) cross-fertilization between Latin American and Caribbean countries; 2) eradication of statelessness as a new regional goal; and 3) new protection programs (e.g. Quality Asylum) and solutions. As concerns cross-fertilization, it should be noted that the Brazil Plan of Action was adopted by 28 Latin American and Caribbean countries and three territories.²⁹ This gave the Plan a new regional dimension regarding its scope. It was the first time ever that the Caribbean countries participated in the Cartagena commemorative processes. In this sense, the Brazil Plan of Action favored greater integration of the protection efforts in the Americas, paving the way to a common language between Latin American and Caribbean countries.

A second element to highlight is the eradication of statelessness as a new regional goal. The issue of statelessness was completely absent from the Cartagena Declaration (1984), the San José Declaration (1994), and the Mexico Declaration and Plan of Action (2004). When the process to commemorate Cartagena+30 began, some countries did not fully

²⁶ UNHCR, Pledges 2011. Intergovernmental Ministerial Event on Refugees and Stateless Persons, (2011), <https://www.unhcr.org/4ff55a319.pdf>

²⁷ UNHCR, Information Document, Commemorating the 30th Anniversary of the Cartagena Declaration on Refugees of 1984 'Cartagena +30'." In *Memories of the Thirtieth Anniversary of the Declaration Cartagena on Refugees* (Ecuador, 2015), pp. 12–17.

²⁸ UNHCR, Brazil Plan of Action. First Triennial Progress Report 2015-2017, (2018), <https://www.refworld.org/es/pdfid/5c883e844.pdf>

²⁹ Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Curacao, El Salvador, Ecuador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Surinam, Trinidad and Tobago, Turks and Caicos Islands, Uruguay and Venezuela.

understand the problem of statelessness. Others were ill-informed about its magnitude, thinking, for example, that it was a problem that did not exist in the Americas. In addition, some countries had the idea that the acquisition of nationality by descent (*ius sanguinis*) or by birth (*ius soli*) was sufficient to respond to statelessness.

Since the adoption of the Brazil Plan, countries marked the end of statelessness as a regional goal, and also made great strides towards reaching it. Of the forty adherences recorded in the Americas since the adoption of the conventions on statelessness, twenty occurred between 2010 and 2018, and among these fourteen occurred since 2013. Also, eight new legislations on protection of stateless persons and statelessness determination procedures were passed since 2014. Likewise, legislations in six countries have been amended to align their nationality laws with the international human rights law, including the elimination of gender discrimination. At least six countries have provided facilitated the naturalization of stateless persons.

Finally, with the Brazil Plan of Action, new protection programs and solutions were developed in the region. The Quality Assurance Initiative (QAI) offered a robust methodology to reach refugee status determination procedures to ensure quality standards in the participating countries. Countries like Argentina, Bolivia, Brazil, Chile, Costa Rica, Ecuador, Mexico, Panama, Peru, and Trinidad and Tobago joined the initiative that has currently re-focused to ensure responses in the context of a large-scale refugee movement.

5. The 100 Points of Brasilia (2018): Regional contribution to the Global Compact on Refugees

In February 2018, different Latin American and Caribbean countries and territories met in Brasilia and adopted *The 100 Points of Brasilia*.³⁰ As noted in the document, the countries sought to inspire the States to act, both inside and outside the region, within the context of consultations linked to the negotiation of the Global Compact on Refugees. With this purpose in mind, the countries compiled regional experiences on protecting asylum-seekers, refugees, displaced and stateless persons in the region, reflecting some of the best practices in the implementation of the Brazil Plan of Action. The 100 Points of Brasilia thus sought to contribute through positively influencing the content of the Global Compact on Refugees.

The document highlights the Latin American tradition of granting asylum, starting with the Cartagena Declaration but reflected in various regional instruments. It also refers to the Americas' Comprehensive Regional Protection and Solutions Framework (MIRPS) as a pioneering development that must be acknowledged.

In fact, for the participating countries, *The 100 Points of Brasilia* "illustrates the success of international cooperation regarding international refugee protection and reflects the long history of shared responsibility between countries in the region that started with the Cartagena Declaration (...), the International Conference on Central American Refugees (CIREFCA), the 1994 San José Declaration, the 2004 Mexico Declaration and Plan of Action (...), the 2014 Brazil Declaration and Plan of Action, and more recently the MIRPS related to protection in countries of origin, transit, and destination."

Countries consider the MIRPS "as a pioneering and dynamic subregional initiative which supposes a practical application of Comprehensive Refugee Response Framework

³⁰ The 100 Points of Brasilia: Inputs from Latin America and the Caribbean to the Global Compact on Refugees (2018), <https://www.acnur.org/es-es/5b58eb0c4.pdf>

(MIRPS) (Annex I of the New York Declaration for Refugees and Migrants) and contributes to the development of the Global Compact on Refugees.”

In October 2018, Colombia, speaking on behalf of GRULAC, presented *The 100 Points of Brasilia* to the UNHCR Executive Committee.³¹

6. New Response Mechanisms for Emerging Humanitarian Situations

After the adoption of the Brazil Plan of Action, the new humanitarian situations in the region completely changed the scenario, forcing the countries of the region to rethink, adapt, and redesign the existing response mechanisms, taking global developments such as the New York Declaration into consideration.³²

These new operational responses were accompanied by mechanisms such as the Comprehensive Regional Protection and Solutions Framework (MIRPS) for countries from the *North of Central America and Mexico*, and the Regional Inter-Agency Coordination Platform (UNHCR-OIM) for the current situation in Venezuela (R4V).

6.1. North of Central America and Mexico: Comprehensive Regional Protection and Solutions Framework (MIRPS)

By the middle of the last decade, the movement of people who for diverse causes were internally displaced or who as refugees and migrants abandoned their countries escalated in the face of increasing levels of violence and socioeconomic instability in northern Central America countries.

Since 2018, the situation in Nicaragua also deteriorated, recording a dramatic increase in the number of people fleeing violence and persecution to seek international protection in neighboring countries, mainly Costa Rica and Panama.

The Brazil Plan of Action (2014) had already acknowledged the existence of new international protection challenges and needs caused by transnational organized crime, among other factors. However, with the San José Declaration of Action (2016),³³ the member countries clarified that “migration and displacement in the [so called] Northern Triangle of Central America are multifaceted and have multiple causes, including violence and insecurity, as well as socio-economic factors.”

Besides, member countries have recognized “the need for asylum systems to identify and respond to those in need of international protection within the broader migration context, taking into account the flexibility required in response to large-scale migration influxes.”

Member countries also referred to “the importance of striking an appropriate balance between States’ security and respect for human rights, applicable protection for internally displaced people and refugees, the right to seek and enjoy asylum, and measures to combat human trafficking and smuggling of migrants.”

With the adoption of the San Jose Declaration of Action (2016), member countries became committed to address the various dimensions of the situation, including how to approach the causes underlying displacement and migration in the sending countries,

³¹ Statement of Colombia speaking on behalf of GRULAC, Executive Committee of the UNHCR Programme (2018), <https://www.unhcr.org/uk/5bb217334.pdf>.

³² UN General Assembly, New York Declaration for Refugees and Migrants, Resolution 70/1, A/RES/71/1, (2016). <https://www.refworld.org/docid/57ceb74a4.html>

³³ UNHCR, San José Action Statement, 7 July 2016, <https://www.refworld.org/docid/57a8a4854.html>

how to improve the national asylum systems and the protection response in countries of transit, destination and asylum, as well as how to increase regional cooperation.

With this in mind, after the adoption of the New York Declaration (2016)³⁴ and its Comprehensive Refugee Response Framework (CRRF), Belize, Costa Rica, Guatemala, Honduras, Mexico, and Panama adopted the San Pedro Sula Declaration (2017)³⁵ and agreed to work jointly to implement the Comprehensive Regional Protection and Solutions Framework (MIRPS). In July 2019, El Salvador joined the MIRPS.

In the San Pedro Sula Declaration, participant countries revisited the existing regional cooperation frameworks, including the Brazil Plan of Action (2014) and the San José Declaration of Action (2016) and reaffirmed the States' obligation to efficiently manage migration movements and at the same time ensure respect for the human rights of refugees and asylum seekers.

In November 2019, within the framework of the MIRPS Second Annual Meeting, under Mexico's *pro tempore* presidency, Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, and Panama adopted the Mexico City Declaration³⁶ in which they again expressed concern for the increasing number of people fleeing from their countries to seek international protection. They noted that the people coming from Latin American and Caribbean countries, and from other regions form part of a mixed and multicausal movement, significantly impacting a country's national capacity to receive them.

An important milestone in the MIRPS's new mechanism was the launching of the Support Platform (2019) as a shared responsibility mechanism led by the States and multilateral bodies seeking to support the countries' MIRPS efforts.

This support platform is one of three established during the first Global Refugee Forum (2019) aimed at mobilizing multilateral support to a specific displacement context in line with commitments established in the Global Compact on Refugees.³⁷

The Support Platform emerged from the "MIRPS Group of Friends," a network of cooperating countries that participated in the San Pedro Sula meeting during which the MIRPS was created in 2017.³⁸ In June 2020, the government of Spain assumed the leadership of the MIRPS Support Platform, occupying the *Pro tempore* Presidency for a one-year period. Finally, in May 2020, the OAS Permanent Council unanimously approved the creation of the MIRPS's Specific Fund for Voluntary Contributions (MIRPS Fund),³⁹

³⁴ UN General Assembly, *New York Declaration for Refugees and Migrants*, Resolution adopted by the General Assembly on 19 September, 3 October 2016, A/RES/71/1, <https://www.refworld.org/docid/57ceb74a4.html>

³⁵ San Pedro Sula Declaration as a Regional Contribution to the Global Compact on Refugees, 27 October 2017, <https://www.acnur.org/5b58d75a4.pdf>

³⁶ Mexico City Declaration on International Protection, Shared Responsibility and Regional Solidarity Actions in MIRPS countries, 8 November 2019: <https://www.refworld.org/es/cgi-bin/taxis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5de6a23f4>

³⁷ OAS and UNHCR, III Annual Report of the Comprehensive Regional Protection and Solutions Framework MIRPS 2020 – Implementing the Global Compact on Refugees in Central America and Mexico, 8 December 2020, <https://www.refworld.org/es/cgi-bin/taxis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5fcf9e8d4>

³⁸ The CRPSF's Support Platform includes Argentina, Brazil, Canada, Colombia, France, Uruguay, Switzerland, the United States, and the European Union. Recently, the Economic Commission for Latin America and the Caribbean (ECLAC) joined the Support Platform in order to strengthen the approach to the structural causes of displacement in the sending countries and promote the integration, inclusion, and solution-seeking in the receiving countries.

³⁹ OAS Permanent Council, Resolution CP/RES. 1154 (2286/20), For the Establishment of the Comprehensive Regional Protection and Solutions Framework Fund (MIRPS Fund) and Operational Rule for its Functioning, 27 May 2020, http://scm.oas.org/doc_public/english/hist_20/cp42435e03.docx

following the mandate granted the Secretary General during the OAS's 2019 General Assembly.⁴⁰

The MIRPS Fund is open to receive contributions from OAS members States and observers, as well as other UN member States, international organizations, public or private bodies, whether national or international, and individuals who may wish to make contributions to the Fund.

For the countries participating in the MIRPS, the Fund represents a highly significant instrumental step to have a mechanism that allows them to raise resources with which to implement concrete projects and actions and respond to the specific challenges and vulnerability faced by asylum seekers, refugees, internally displaced people, and persons who have been returned to their country of origin and are in need of protection.

6.2. Venezuela: Regional Inter-Agency Coordination Platform (UNHCR - OIM)

In recent years, Venezuela became the country with the greatest number of new asylum applications world-wide. In 2018, more than 341,000 applications were received, whereas in 2019, 430,000 were submitted. By 2019, it was estimated that 4,500,000 people forcibly left Venezuela: 93,300 were eventually recognized as refugees, 794,500 were asylum seekers and the remaining 3.6 million remained in an irregular migration situation or were able to obtain migration status.

Within this context, in April 2008, the Regional Inter-Agency Coordination Platform (R4V) was established in response to a request that the UN Secretary General made to the UNHCR and the OIM in order to direct and coordinate the response to the large-scale movement of refugees and migrants from Venezuela.

The Platform aims to respond to the protection, assistance, and integration needs of Venezuelan refugees and migrants in Latin America and the Caribbean. According to the New York Declaration, the Platform seeks to strengthen and supplement the countries' national and regional responses.⁴¹

As part of its work, every year the Regional Platform develops a Regional Refugee and Migrant Response Plan for Venezuela (RMRP), launched for the first time in 2019.

The RMRP is a tool to improve coordination and provide a comprehensive response to refugees and migrants, stateless people, and people returned to Venezuela, regardless of their legal status in the receiving country (migration status or international protection status as refugee or stateless person).⁴²

6.2.1. The Quito Process

In September 2018, eleven countries from the region signed the Quito Declaration.⁴³ A regional process was thus inaugurated (the Quito Process) seeking to promote dialoguing and consensus-building among Latin American and Caribbean countries receiving refugees and migrants from Venezuela. Since then, as part of the Quito Process, there have

⁴⁰ OAS General Assembly, Resolution AG/RES. 2941 (XLIX-O/19), Promotion and Protection of Human Rights, 28 June 2019, paragraph iii.6.

⁴¹ It is currently comprised of 41 organizations, including 17 UN agencies, 15 NGOs, five donors, two international financial institutions and the Red Cross Movement. The Regional Platform is replicated nationally through local coordination mechanisms (national platforms).

⁴² UNHCR and OIM, Regional Refugee and Migrant Response Plan for Venezuela (RMRP) (2020), <https://data2.unhcr.org/es/documents/details/73277>

⁴³ "Quito Declaration on Human Mobility and Venezuelan Citizens in the Region" (2018). <https://data2.unhcr.org/en/documents/details/68099>

been six regional meetings.

Although the migratory dimension of the regional response made great strides during the first three meetings, the refugee dimension, particularly the issue related to capacity building for asylum appeared more strongly as of the Fourth Meeting (2019). It was then that as part of the Buenos Aires Chapter Road Map, the participating countries approved the profile of the project entitled “Strengthening the National Refugee Status Determination Systems,” aimed at providing guidelines to develop national strengthening projects of the National Commission for Refugees (NCRs).

Following the Bogotá Chapter (2019), the Joint Declaration of the Fifth Technical Meeting⁴⁴ called the Member States to welcome and implement the recommendations agreed upon in Buenos Aires regarding strengthening the national refugee status determination and the NCRs, according to the capacity and internal legislation of each State.

Lastly, the Joint Declaration of the Santiago Chapter (2020) invited Member States to “implement, in accordance with its internal rights and taking into account its different realities, policies and priorities, recommendations regarding the thematic workshops, including: (...) k. Foster the continuity of dialogue between the national commissions for refugees (CONAREs) (...) which includes the exchange of best practices and procedures for the determination of refugee status, as well as national and regional initiatives and programs.”⁴⁵

The increasing interest of the Quito Process countries to increase asylum capacities and strengthening CONAREs is highly promising since it highlights the international protection dimension involved in the situation of Venezuela, thus underscoring the refugees’ differentiated needs.

6.3. Proliferation of Different Types of Migration Statutes in Response to Mixed Movements from Venezuela

In the Quito Declaration (2018), participant countries committed to “continue to work individually and cooperate as each country deems appropriate and timely, [with] access to regular permanence mechanisms, including the consideration of migratory regularization processes.”

The Quito Process Plan of Action was adopted during the second regional meeting (2018). One of the planned actions was “to promote measures that within the corresponding internal legislations and the possibilities of each State, may allow the States to evaluate and regularize the migration status of Venezuelan nationals in their respective territories and ensure access to the refugee status procedure to those applying in the receiving States.”⁴⁶ During the third meeting to address this situation (2019), the participating countries highlighted the actions carried out by the States in the region to grant regular migration status to Venezuelan nationals.

Following this approach, as part of the response to the movement of refugees and migrants from Venezuela, many countries in the region developed migration statutes to

⁴⁴ “Joint Statement of the Fifth International Technical Meeting on Human Mobility of Venezuelan Nationals in the Region” (2019), <https://www.refworld.org.es/docid/5dd2a58b4.html>

⁴⁵ “Joint Statement of the Sixth International Technical Meeting on Human Mobility of Venezuelan Nationals in the Region” (2020), <https://www.refworld.org.es/docid/5f6e75204.html>

⁴⁶ Plan of Action of the Quito Process on Human Mobility of Venezuelan Nationals in the Region (2018), <https://www.refworld.org.es/pdfid/5bfd87374.pdf>.

provide a legal stay that helps respond to this large-scale mixed movement.⁴⁷ In spite of regional solidarity and remarkable State efforts, thousands of Venezuelan nationals continue in an irregular migratory status, facing legal and practical barriers to seek and be granted asylum.⁴⁸

The proliferation of different forms of migration statutes as a response to mixed movements opened an important debate in the region. The discussion focused on to what extent excessive attention to migration, frequently linked to State discretion, coupled with changes in the domestic political environments can eclipse the refugee dimension and undermine some of the principles underlying the response to people who qualify as refugees because they flee persecution, generalized violence or gross violation of human rights.⁴⁹

The Inter-American Human Rights System recognizes four forms of international protection statutes: 1) refugee status, based on the definitions contained in the 1951 Convention and the Cartagena Declaration (1984); 2) asylee status, based on the Latin American asylum conventions; 3) complementary protection status, based on the *non-refoulement* principle that safeguards any foreigners whose life, security, or freedom may be at risk in their country of origin even if they do not qualify as refugees; and 4) status as stateless persons in accordance with the 1954 Convention.

Temporary protection understood as a pragmatic international protection that offers an emergency response to large-scale mixed movements⁵⁰ has not developed much in the region. Traditionally, countries chose to recognize or treat people as refugees when they considered that they met the regional definition of refugee.

To a great extent, migratory status is supported by State discretion. Internal legislations have great leeway to regulate migration, respecting the limits set by international human rights law and obligations derived from bilateral or multilateral migration agreements (such as the MERCOSUR Residence Agreement). Besides, migratory status is not based on principles pertaining to international refugee law (like banning *non-refoulement* and rejection at the border).

Undoubtedly, migratory statutes can be deemed as *protection* statutes when they safeguard the human rights of migrant persons. Nevertheless, they are not *international protection* statutes, at least in the sense that they are not specially designed to safeguard the protection of refugees and other persons who requires international protection.

While migratory statutes receive different denominations and have diverse scope and content in terms of rights and guarantees, those that have proliferated in the region in recent years, or have been used or adapted to respond to large-scale mixed movements could be grouped into *migratory visas, permits or categories* that:

- 1) *Special migratory categories or regularization programmes*: They are specifically designed to respond to large-scale mixed movements from a specific country.

⁴⁷ UNHCR and OIM, State Responses on Entry and Stay of Venezuelan Nationals in Main Receiving Countries Recommendations for Action, Document presented at the International Technical Meeting on Human Mobility of Venezuelan Nationals in the Region. Buenos Aires Chapter, 2019.

⁴⁸ UNHCR, Briefing Note, Public Hearing on Asylum and Refugee Systems in the Face of Humanitarian Situations in the Region, 6 March 2020, <https://www.refworld.org/es/docid/5f1c40f14.html>.

⁴⁹ Isabel Berganza Setién, Cécile Blouin, and Luisa Feline Freier, "El elemento situacional de violación masiva de derechos humanos de la definición ampliada de Cartagena: hacia una aplicación en el caso venezolano", *Revista Chilena de Derecho* 47 N° 2 (2020): 385-410, <http://ojs.uc.cl/index.php/Rchd/issue/view/1191>.

⁵⁰ UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, 2014, <https://www.refworld.org/docid/52fba2404.html>

Colombia, for instance, adopted the Special Permit of Permanence (PEP in Spanish) and Peru the Temporary Permit of Permanence (PTP in Spanish) for Venezuelan nationals.

Costa Rica also created a new special category for the migratory regularization of foreigners working in the agricultural sector, the application of which is expected to benefit Nicaraguan nationals.⁵¹

- 2) *Migratory statutes based on humanitarian grounds*: granted to people that do not qualify as refugees nor have a right to complementary protection status like that existing in Mexico⁵² or Costa Rica.⁵³ Argentina uses a temporary migratory category for humanitarian grounds for people safeguarded under the *non-refoulment* principle, as well as for those affected by natural disasters.⁵⁴
- 3) *Migratory statuses derived from multilateral conventions or agreements*: In Argentina, the Residence Agreement (MERCOSUR) (2002)⁵⁵ gave rise to a special migratory status for nationals from Member and Partner States (Act 25.871 (2003), Article 23.I), and a regularization program (called *Patria Grande*). This Agreement and visa (MERCOSUR) are also used for Venezuelan nationals.

Regardless of the migratory status in question, some countries also promote migratory regularization through the elimination of requirements or granting facilities to access different existing migratory status. Costa Rica, for example, proceeded to eliminate the requirement to hold a valid passport and apostilled documents for Venezuelan nationals.⁵⁶

7. Internal Displacement

In recent years, increasing internal displacement, often as a step prior to abandoning the country of origin, has been an important element of large-scale movements in the region. Towards the end of 2019, 8,295,002 internally displaced persons had been registered in the Americas.⁵⁷ This figure represented 19 percent of the world population (i.e., 43,503,362 inhabitants). A global report registered more than 602,000 new displacements due to conflict and violence in the region in 2019 and 1,545,000 displacements due to natural disasters and development projects.⁵⁸

During the last decade, internal displacement in the region was characterized by the following three aspects: 1) in Colombia, the number of internally displaced people

⁵¹ Creación De Categoría Especial Bajo Régimen De Excepción Para La Regularización Migratoria De Personas Extranjeras Que Laboren En El Sector Agropecuario, Decreto 41969-MAG-MGP (2019).

⁵² Mexico, Ley sobre Refugiados, Protección Complementaria y Asilo Político, DOF 30-10-2014 (2014).

⁵³ Dirección General de Migración y Extranjería Costa Rica, Creación de Categoría Especial Temporal de Protección Complementaria Para Personas Venezolanas, Nicaragüenses y Cubanas a Quienes se les Haya Denegado Su Solicitud de Refugio, Resolución N° DJUR-0164-10-2020-JM (2020).

⁵⁴ Decreto Art. 616/2010, Art. 23. m).1) and Art. 24.h).

⁵⁵ MERCOSUR, Acuerdo sobre Residencia para Nacionales de los Estados Partes del Mercosur Bolivia y Chile, MERCOSUR/RMI/CT/ACTA N° 04/02 (2002), <https://www.refworld.org/pd/54f46f934.pdf>.

⁵⁶ Ministerio de Gobernación y Policía Costa Rica Dirección General de Migración y Extranjería, Resolución N° AJ-060-04-2019-JM, (2019).

⁵⁷ UNHCR, Global Trends. Forced Displacement in 2019, (2020), p. 82, <https://www.unhcr.org/5ee200e37/>.

⁵⁸ Internal Displacement Monitoring Center (IDMC) and Norwegian Refugee Council (NRC), "Global Report on Internal Displacement 2020" (Geneva, April 2020), p. 52, <https://www.internal-displacement.org/global-report/grid2020/>.

increased.⁵⁹ The number of asylum applications from this country also increased,⁶⁰ even though the number of refugees decreased.⁶¹ At the same time, Colombia became a country of transit and destination⁶² for an extremely large number of refugees and migrants from Venezuela; 2) the issue of internal displacement in the countries in the north of Central America became far more complex; 3) countries such as El Salvador and Mexico recognized the currently existing situations of internal displacement and moved forward in developing legal frameworks or implementing prevention and response measures. This progress relied heavily on Colombia's experience, lessons learned, and best practices.

7.1. Colombia

In Colombia, the internal displacement issue became progressively intertwined with large-scale mixed movements. Many refugees and migrants from Venezuela settled temporarily or permanently in communities of internally displaced people. As a result, Colombia had to consider this new dimension and adapt its response to internal displacement.

Since the signature of the General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace (2016),⁶³ more than 450,000 people were forcibly displaced in Colombia. The most affected areas are located on the borders with Venezuela and Ecuador, as well as the Pacific Coast.⁶⁴

Following up the imposition of the Constitutional Court's decision T-025 (2004),⁶⁵ that then declared the existence of an "unconstitutional state of affairs" and large-scale human rights violations, enabled the development of public policies targeting internally displaced people.⁶⁶

The Victims and Land Restitution Law (2011)⁶⁷ regulated the provision of humanitarian assistance, support, assistance, and reparation for victims of armed conflict, offering tools to help reclaim their dignity. By mid-2020, the Unit for Comprehensive Victim Support

⁵⁹ Colombia went from 4,916,000 internally displaced persons in 2009 to 5,576,000 in 2019, having reached a peak of 7,246,000 in 2016. UNHCR (2020), <https://www.unhcr.org/refugee-statistics/download/?url=7ttW6b>

⁶⁰ In 2009, 64,336 asylum seekers from Colombia were recorded and in 2019 this figure increased to 75,549. UNHCR (2020), <https://www.unhcr.org/refugee-statistics/download/?url=W03g8H>

⁶¹ In 2009, there were 389,753 refugees from Colombia and in 2019 this figure dropped to 189,448. UNHCR (2020), <https://www.unhcr.org/refugee-statistics/download/?url=Y9FeSa>

⁶² In 2019, 1,771,237 refugees and migrants from Venezuela and 8,824 asylum seekers were recorded. UNHCR (2020), <https://www.unhcr.org/refugee-statistics/download/?url=8XXrkZ>

⁶³ Colombia and Revolutionary Armed Forces of Colombia –People's Army (FARC-EP), "General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace" (2016), https://peacemaker.un.org/sites/peacemaker.un.org/files/CO_120826_General%20Agreement%20for%20the%20Termination%20of%20the%20Conflict.pdf

⁶⁴ UNHCR, Update on UNHCR's Operations in the Americas, Executive Committee of the High Commissioner's Programme, Standing Committee, 29 September 2020, <https://www.unhcr.org/5f7306ee4.pdf>.

⁶⁵ Colombia, Corte Constitucional, Sentencia T-025/04, 22 January 2004, https://www.refworld.org/cases/COL_CC.54884c2f4.html

⁶⁶ César Rodríguez Garavito and Diana Rodríguez Franco. *Cortes y cambio social: cómo la Corte Constitucional transformó el desplazamiento forzado en Colombia*. 1a. ed., Bogotá, Dejusticia, 2010. https://www.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_185.pdf

⁶⁷ Ley 1448, Por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones, 10 June 2011, <https://www.refworld.org/docid/4df7289d2.html>

and Reparation (UARIV in Spanish) had registered 8,036,014 victims of forced displacement throughout the years of armed conflict.⁶⁸

Legislative Act 01 (2017)⁶⁹ established: a Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (SIVJRNR in Spanish) created by the Commission for the Clarification of Truth, Coexistence, and Non-Repetition (CEV in Spanish); a Unit to Search for People Deemed as Missing within the Context and due to Armed Conflict; a Special Jurisdiction for Peace (JEP in Spanish); and comprehensive reparation measures for peace-building and guarantees of non-repetition. These transitional justice mechanisms proved to be of extreme importance for supporting victims of conflict.

Other important initiatives include: 1) the Land and Heritage Protection Project facilitating land restitution;⁷⁰ 2) collective protection measures as a mechanism to respond to the protection needs of both community leaders and the communities themselves; 3) legal support centers pertaining to the Ombudsperson's Office, as a strategy to promote the presence of the State in remote urban areas, usually informal settlements; 4) the promotion of the legalization of informal settlements, mostly inhabited by internally displaced people who have no intention of returning.⁷¹

7.2. Northern Central America

Although Colombia reported more than 7.7 million internally displaced people in 2018,⁷² its regulations, jurisprudence, and best practices served as guidelines for important developments regarding internal displacement in countries in northern Central America. Colombia's Act 387 (1997),⁷³ inspired by the Cartagena Declaration and adopted even before the Guiding Principles (1998),⁷⁴ served as guidance for the approval of a special law in El Salvador.⁷⁵ This law followed a Supreme Court order that recognized internal displacement caused by gang violence and insecurity. Following the language used by the Constitutional Court of Colombia (court order T-025), the Court of El Salvador defined this situation as an "unconstitutional state of affair."⁷⁶

⁶⁸ Colombia, Unidad para la atención y reparación Integral de las Víctimas (UARIV), Presentación (Colombia), América Latina y el Caribe: Intercambio Regional sobre la prevención y respuesta a los desplazamientos internos, 25 June 2020, <https://www.globalprotectioncluster.org/wp-content/uploads/Colombia-Presentation.pdf>

⁶⁹ Acto Legislativo 01, Por medio del cual se crea un título de disposiciones transitorias de la Constitución para la terminación del conflicto armado y la construcción de una paz estable y duradera y se dictan otras disposiciones, 4 April 2017, <https://www.refworld.org/es/docid/5ce2d1834.html>

⁷⁰ <https://reliefweb.int/report/colombia/colombia-acci%C3%B3n-social-propone-herramientas-para-devolver-predios-poblaci%C3%B3n>

⁷¹ https://opcionlegal.org/sites/default/files/legalizacion_de_asentamientos_informales.pdf

⁷² Walicki, Nadine, Elizabeth Eyster, and Martina Caterina. "El Plan de Acción GP20: Un Llamamiento a Las Partes Interesadas". *Revista Migraciones Forzadas RMF* 59, n^o Veinte años de los Principios Rectores de los Desplazamientos Internos (October 2018). <https://www.fmreview.org/sites/fmr/files/FMRdownloads/es/PrincipiosRectores20/walicki-eyster-caterina.pdf>

⁷³ Ley 387 de 1997, por la cual se adoptan medidas para la prevención del desplazamiento forzado, la atención, protección, consolidación y estabilización socioeconómica de los desplazados internos por la violencia en la República de Colombia, 18 July 1997, <https://www.refworld.org/docid/3dbd4c6b5.html>

⁷⁴ Principios Rectores de los desplazamientos internos, 11 February 1998, E/CN.4/1998/53/Add.2, <https://www.refworld.org/es/docid/472840db2.html>

⁷⁵ Decreto Legislativo 539 (2020), Ley especial para la atención y protección integral de personas en condición de desplazamiento forzado interno, 23 January, 2020, <https://www.refworld.org/es/docid/5e691b974.html>

⁷⁶ Corte Suprema de Justicia, Sala Constitucional, Amparo 411-2017, Sentencia sobre desplazamiento

The UARIV's experience in relation to the Single Registry of Victims in Colombia was also studied carefully by countries like Mexico and Honduras, inasmuch as it is a governmental system with detailed information about the victims, which facilitates assistance.

7.3. Mexico

At the beginning of 2019, the government recognized the existence of internal displacement in Mexico.⁷⁷ By the beginning of 2020, the Bill for the General Act to Prevent, Assist, and Comprehensively Repair Internal Forced Displacement was submitted to a participatory discussion process involving Federal and State authorities, academics, civil society, representatives of internally displaced people, and international organizations.⁷⁸ By the end of September, 2020, the project had obtained preliminary approval from the Mexican House of Representatives.⁷⁹

8. The First Global Refugee Forum: Pledges of change

The participation in the first Global Refugee Forum was one of the last milestones in the region marking the decade from 2009 to 2019. In mid-December of 2019, this forum was held in order to translate the principle of international responsibility into actions. It also aimed for the States and other key stakeholders to announce voluntary pledges and contributions to reach the goals of the Global Compact on Refugee.⁸⁰

The event, co-organized by UNHCR and Switzerland, was called together with Costa Rica, Ethiopia, Germany, Pakistan, and Turkey. During the Forum, member countries and other key actors in the region presented a total of 160 pledges.⁸¹ In Addition, the MIRPS' support platform was and the Asylum Capacity Support Group (ACSG) were launched.⁸² Twelve countries⁸³ presented a total of 38 pledges related to increasing protection capacities, many of which referred to asylum capacities.⁸⁴ Thus, for example, Argentina offered to establish South-South cooperation programs with at least five countries in the region in order to develop protection tools and refugee status determination procedures

forzado, 13 July 2018, <https://www.refworld.org/es/docid/5b4f72e54.html>

⁷⁷ María Cristina Díaz Pérez and Raúl Romo Viramontes, *La violencia como causa de desplazamiento interno forzado. Aproximaciones a su análisis en México*, 1ª ed. (Mexico City: Consejo Nacional de Población, 2019), https://www.gob.mx/cms/uploads/attachment/file/456109/Desplaz_2019_web_color-comp.pdf.

⁷⁸ Secretaría de Gobernación México, "Presentación (Mexico), Alejandro Encinas Rodríguez, Subsecretario de Derechos Humanos, Migración y Población", *Experiencias Comparadas Sobre Desplazamiento Interno: Sesión de Intercambios Regionales. América Latina y el Caribe: Intercambio Regional sobre la prevención y respuesta a los desplazamientos internos*, 25 June 2020, <https://www.globalprotectioncluster.org/wp-content/uploads/Mexico-Presentation.pdf>.

⁷⁹ Cámara de Diputados México, "Proyecto de Decreto por el que se expide la Ley General para Prevenir, Atender y Reparar Integralmente el Desplazamiento Forzado Interno", Exp. 6578 (2020), https://infosen.senado.gob.mx/sgsp/gaceta/64/3/2020-09-30-1/assets/documentos/CDP_Minuta_Desplazamiento_Forzado.pdf.

⁸⁰ UNHCR, Report of the United Nations High Commissioner for Refugees. Part II: World Compact on Refugees, A/73/12 (Part II) (2018). https://www.unhcr.org/gcr/GCR_English.pdf

⁸¹ UNHCR, "Outcomes of the Global Refugee Forum 2019," May 2020, <https://www.unhcr.org/5ecd458c4.pdf>.

⁸² UNHCR, "Asylum Capacity Support Group Mechanism: Working Modalities," 2020, <https://www.unhcr.org/events/conferences/5defe77b7/asylum-capacity-support-group-mechanism-working-modalities.html>

⁸³ Argentina, Belize, Brazil, Canada, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama and Dominican Republic.

⁸⁴ UNHCR, <https://globalcompactrefugees.org/channel/pledges-contributions>

observing high international standards. Brazil committed to strengthen the refugee status determination system and share its experiences. Costa Rica offered to document those foreigners in an irregular migratory situation who were not granted refugee status. Ecuador committed to strengthen the asylum system, and Mexico to implement simplified and combined procedures to determine refugee' status.

The level of commitment that the countries in the region evidence towards increasing asylum capacities demonstrated during the first Global Refugee Forum reveals that strengthening national asylum systems continues to be an important issue. At the same time, these commitments demonstrate the intention to move forward with innovative approaches, such as South-South cooperation, experience exchange, and best practices, as well as the implementation of new working strategies, such as simplified and combined asylum procedures.

9. Conclusions: Towards Complementarity of Asylum and Migration Systems

With time, asylum in Latin America evolved and adapted to new regional junctures. Asylum went from being understood as an exclusive prerogative of the State to also being conceived of as an individual right. From being a protective response for a few individuals with a high political profile, it became an institution that included people fleeing from persecution and for other reasons beyond the terms of the 1951 Convention. From being a protection instrument focused on individual cases, asylum was integrated with a broader definition of refugee that protects people fleeing from humanitarian crises characterized by widespread violence, armed conflict, or large-scale human rights violations.

To a great extent, the Latin American experience in relation to the large-scale movement of people was forged in a regional context characterized by great movements of *refugees*. The critical humanitarian situation at the end of the seventies and in the eighties was considered as a refugee crisis.⁸⁵

In contrast, during the past decade (2009-2019), the large-scale movements of people in the region have been characterized as *mixed* movements. As a result, countries seek to respond to the situation of refugees and migrants abandoning their countries for a wide variety of reasons, including persecution, indiscriminate violence, and socio-economic factors.

The exponential increase of the number of requests for international protection in some countries led to a collapse of the national asylum systems. In addition to the fact that many people do not qualify as refugees, this led to a proliferation of new types of migratory statutes in the region, which at times include -and at other times do not include- international protection safeguards.

Although the collapse of the asylum systems is currently an enormous problem, it also presents an opportunity in Latin America to replace a working model that has fallen into crisis for a new working paradigm providing better responses to asylum seekers in the context of large-scale mixed movements. This paradigm demands a new evolution of Latin American asylum oriented to achieve greater complementarity between national asylum and migration systems.

⁸⁵ UN General Assembly, Assistance to Refugees, Returnees and Displaced Persons of Central America, Resolution 42/110 (1987); OAS, OAS General Assembly, Legal Status of Asylees, Refugees and Displaced Persons in the American Hemisphere, Resolution AG/RES. 774 (XV-O/85) (1985); Inter-American Action on Behalf Refugees, Resolution AG/RES. 838 (XVI-O/86) (1986); The Situation of the Central American Refugees and Regional Efforts to Resolve Their Problems, Resolution AG/RES. 891 (XVII-O/87) (1987).

For some refugees, migratory statutes may represent a simple way of obtaining legal residence and gaining access to rights or social assistance programs. These statutes can represent an option for people who, given their personal situation, might choose between seeking asylum or applying for a migration visa. In the context of the critical humanitarian situation in Venezuela, for instance, UNHCR has recognized that whenever migratory status is accompanied by appropriate protection safeguards, it might imply a pragmatic protection response.⁸⁶

Nevertheless, asylum systems must always remain open. This implies, first, that asylum seekers must not face legal or practical barriers to seek and be granted asylum. Second, it implies that people may not be legally forced -or pressured in practice- to renounce their asylum application as an inescapable requirement to apply for migration status, which ultimately might never be obtained.

Finally, it is essential that the asylum procedure really functions in practice. Otherwise, seeking asylum would be illusory and a collapse of the asylum procedures would discourage people from applying for protection as refugees, even if they qualify as such. The States have the obligation to effectively guarantee the right to seek and be granted asylum, which includes the establishment of fair and efficient asylum procedures.⁸⁷ In order to achieve this goal, asylum procedures must be fully operational: 1) ensuring that an application will be evaluated within a reasonable time frame; 2) adhering to the norms of due process of law; and 3) the application will be channeled through the (differentiated procedures) that results more efficient (fast and simple) in order for it to be evaluated, particularly in situations of large-scale movements.

In order to provide a better response to large-scale mixed movements, on the one hand, asylum capacities need to be strengthened, in order to thus increase the response's operational capacities, and, on the other, interaction with the migration system needs improving.

Although these systems have their own challenges, regulatory rules, and goals, their strengthening cannot be carried out in isolation, as if the migratory and asylum systems were watertight compartments with no intercommunication. Both systems talk to each other and converge. Hence, a *complementarity approach* must be adopted to expand the benefits of interactions between them.

This complementarity approach implies, first, that the authorities will not seek to substitute one system for another. In order to avoid becoming an exclusively migratory mechanism, the regional response to the problem of refugee protection and its possible solutions must take into account the seventy years spent developing international refugee law principles and criteria.

Second, the complementarity approach implies convergence, and exploring those channels through which the asylum and migration systems cross-fertilize one another. International protection statutes can, for example, offer migratory statutes orientation regarding the development of international protection safeguards (for example, administrative assistance and waiver or flexibilization of documentation requirements,

⁸⁶ UNHCR, Guidance Note on International Protection for Venezuelans – Update I, 2019, <https://www.refworld.org/docid/5cd1950f4.html>

⁸⁷ Inter-American Court of Human Rights, Case of the Pacheco Tineo Family V. Plurinational State of Bolivia. Preliminary Objections, Merits, Reparations and Costs, 2013, 147-149; Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, 2014, 244; The Institution of Asylum and Its Recognition as a Human Right in the Inter-American System of Protection (Interpretation and Scope of Articles 5, 22.7 and 22.8 in Relation to Article 1.1 of the American Convention on Human Rights), Advisory Opinion OC-25/18, 2018, p. 122.

etc.). In turn, migratory statutes can be a regularization channel for refugees who prefer to follow that pathway. This would help avoid a collapse of the asylum procedures or reduce the pressure upon them.

Finally, the complementarity approach must be understood as a way of attaining better integration of the range of migratory statutes and international protection statutes, making available to people a wider variety of solutions that adapt more fully to people's specific needs. Along these lines, complementarity should never function to the detriment of any rights, such as the right to seek and be granted asylum. Thus, for instance, designing a special program that opens up the possibility to request a humanitarian visa in a consulate in the country of origin should not endanger the right to seek asylum at the border when, for valid reasons arising from persecution, the person could not apply for an humanitarian visa in the country of origin.

By the end of 2019, Latin American asylum had reached an inflection point. The collapse of asylum systems placed the old working paradigm in crisis. Although in the face of this scenario, change seems inevitable, the question is in what direction will it go. The future of Latin American asylum depends on this.

Following the recommendation issued by the OAS General Assembly,⁸⁸ the change must first of all strengthen asylum systems in order to increase their ability to respond using a new working model. This model could be based on: a) optimizing mechanisms for identifying international protection needs in accordance with the persons' profile, risks, and vulnerabilities; b) improving referral systems; c) enhancing biometric registration, digital identity, and digital case management systems; d) establishing triage mechanism e) implementing accelerated, simplified and merged refugee status determination procedures; and d) the use of tools such as *prima facie* recognition and group-based determination.

Secondly, a paradigm shift requires improving the complementarity of migration and asylum systems (statuses), thus revisiting this notion to give it a new dimension. Finally, the shift demands increasing the dialogue and synergies between regional processes (for example, the Quito Process, MIRPS, MERCOSUR) and global initiatives (such as, the Asylum Capacity Support Group).

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⁸⁸ OAS General Assembly, Draft Resolution. Promotion and Protection of Human Rights, AG/CG/doc.2 (L-O/20) rev. 1 (October 21, 2020), <http://scm.oas.org/Ag/documentos/>