

Protection for Venezuelans in the spirit of Cartagena? An analysis of the spirit of Cartagena and how the protection policies for displaced Venezuelans in Brazil, Colombia and Peru held up to the standard of the spirit of Cartagena

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Abstract

In the midst of the largest exodus in Latin America and months before the fortieth anniversary of the 1984 Cartagena Declaration on Refugees, a discussion of the Latin American regional refugee regime is timely. This study reviews the protection policies of three receiving countries in Latin America during the Venezuelan displacement crisis for the period of 2015-2021. It begins with an over-arching discussion of the role and importance of regional refugee regimes. It continues with a narrowed focus on the Latin American regional refugee regime, centred around the 1984 Cartagena Declaration on Refugees. Then, it seeks to close a knowledge gap by defining and attributing elements to the 'spirit of Cartagena', an emerging concept stemming from the Cartagena regime.

This broader discussion is put into perspective with a case study on the Latin American response to the Venezuelan displacement. The case study focuses on the forms of protection offered to displaced Venezuelans in Brazil, Colombia, and Peru. Then, an analysis is conducted on whether, and in what ways, the varying policies acted in the 'spirit of Cartagena'. The analysis uses the defining elements of the 'spirit of Cartagena' as a measuring stick against themes of the discussed protection policies. The aim is to evaluate some of the region's responses to the Venezuelan displacement crisis in the context of the notion of the 'spirit of Cartagena'.

The conclusion is that a harmonised response within the regional refugee regime was ideal, however the policies were generally ad hoc, complementary, and temporary. Despite this, the pragmatism of the protection measures still reflected some aspects of the 'spirit of Cartagena'.

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List of abbreviations

1951 Convention	Convention on the Status of Refugees 1951
ACHR	American Convention on Human Rights 1969
ADHR	American Declaration on the Rights and Duties of Man 1948
BDPA	Brazil Declaration and Plan of Action 2014
Cartagena Declaration	Cartagena Declaration on Refugees 1984
CIREFCA	International Conference on Central American Refugees 1989
CONARE	National Committee for Refugees
ETPV	<i>Estatuto Temporal de Protección para Migrantes Venezolanos</i> , temporary protection status for Venezuelan migrants
IAHR	Inter-American Human Rights
IACHR	Inter-American Commission on Human Rights
IDP	internally displaced person
IOM	International Organization for Migration
LAC	Latin America and the Caribbean
MDPA	Mexico Declaration and Plan of Action 2004
MERCOSUR	<i>Mercado Común del Sur</i> , Southern Common Market
NTCA	Northern Triangle countries of Central America
OAS	Organization of American States
OAU Convention	OAU Convention Governing the Specific Aspects of Refugee Problems 1969
PFRSD	<i>prima facie</i> refugee status determination
PEP	<i>Permiso Especial de Permanencia</i> , special stay permit
PPT	<i>Permiso Temporal de Permanencia</i> , temporary stay permit
R4V	Interagency Coordination Platform for Refugees and Migrants from Venezuela
RSD	refugee status determination
SJD	San Jose Declaration on Refugees and Displaced Persons 1994
SOC	spirit of Cartagena
TPSAs	temporary protection or stay arrangements
UNASUR	<i>Unión de Naciones Suramericanas</i> , Union of South American Nations
UNHCR	United Nations High Commissioner for Refugees

1. Introduction

1.1 Introduction

The fortieth anniversary of the 1984 Cartagena Declaration on Refugees (Cartagena Declaration) is upon us and the commemorations conducted by UNHCR and participating countries in honor of this anniversary (Cartagena+40) will commence shortly. It is, therefore, a timely moment to address the spirit of the Cartagena Declaration regime. This study begins with an over-arching discussion of the role and importance of regional refugee regimes. The paper continues with a narrowed focus on the Latin American regional refugee centred around the Cartagena Declaration. Afterward, the study conducts a literature review on an emerging concept stemming from the Cartagena regime, the 'spirit of Cartagena' (SOC). This study attempts to define the SOC and develop a list of attributing factors. Furthermore, this study attempts to use the defining elements of the SOC as a standard of measurement which is then applied to a case study on the Latin American response to the Venezuelan displacement.

The study reviews the protection policies of three receiving countries in Latin America during the Venezuelan displacement crisis for the period of 2015-2021: Brazil, Colombia, and Peru. The aim is to evaluate some of the region's responses to the Venezuelan displacement crisis in the context of the notion of the 'spirit of Cartagena.'

1.2 The primary question and aim

The primary question is: How did the forms of protection offered to displaced Venezuelans in Brazil, Colombia, and Peru during the Venezuelan displacement crisis compare to the 'spirit of Cartagena'? This study attempts to analyze how three countries with a strong regional refugee foundation actually utilized the regional system when faced with a refugee crisis. This paper seeks to add to the base of knowledge regarding the importance and role of regional refugee regimes and specifically the Latin American regime established by the Cartagena Declaration. This study reviews the protection policies of three countries during the Venezuelan crisis in the period of 2015-2021 followed by an analysis of whether, and in what ways, the varying policies acted in the 'spirit of Cartagena'. My aim is to argue that although a harmonised response within the regional refugee regime was ideal, notwithstanding the fact that the policies were generally not within that regime, the pragmatic nature of the protection measures still reflected the SOC.

The three countries were chosen for the analysis based on their differing policy responses and the high numbers of displaced Venezuelans. Colombia received the highest number of Venezuelans; Peru the second highest number of Venezuelans and the highest number of asylum applications.¹ Brazil is one of the few countries which applies the Cartagena Declaration refugee definition and *prima facie* recognition of refugee status. The three countries applied a variety of regularization policies.

1.3 The 'spirit of Cartagena'

The 'spirit of Cartagena' is an emerging concept being applied to Latin America's regional refugee regime. While researching the Cartagena regime and the Venezuelan displacement crisis I uncovered a knowledge gap; the phrase SOC was recurrent, but only one of the articles attempted to define it. Additionally, there have been scholarly articles in the last few years which attempted to use the SOC as an ideal. Those articles argue that Latin American migration policies have failed to adhere to the SOC in the case of the Venezuelan displacement.² However, it is difficult to determine exactly what is meant in these articles since there

¹ R4V (Response for Venezuelans) Interagency Coordination Platform for Refugees and Migrants from Venezuela website (11 June 2023) <<https://www.r4v.info/en/refugeeandmigrants>> accessed 2 August 2023.

² See Luisa Feline Freier, 'Why Latin America should recognize Venezuelans as refugees' (2018) Refugees Deeply <<https://deeply.thenehumanitarian.org/refugees/community/2018/09/28/why-latin-america-should-recognize-venezuelans-as-refugees>> accessed: 13 September 2022; Cécile Blouin, Isabel Berganza and Luisa Feline Freier, 'The Spirit of Cartagena? Applying the extended refugee definition to Venezuelans in

is not an agreed upon definition nor description of the SOC. This paper seeks to resolve that knowledge gap. The first of the secondary questions is: What is the spirit of Cartagena? In an attempt to answer this, I uncover nineteen articles which contain the SOC phrase. Then, I dedicate a section in the literature review to describing how the authors and organizations of these articles conceptualize the concept. Then, I develop a working definition and elements of the SOC. These elements will be my measuring stick to gauge the worth of the protection policies in the case study to answer my other secondary question: Whether the policies of three countries under the Cartagena regime are true to, or reflective of, the spirit of Cartagena?

1.4 Methodology

This study is a qualitative study utilizing desk-based research methods. This is an exploratory case study which seeks to establish a comparative analysis between an academic construct and policy responses to a displacement crisis. Academic articles and books, UNHCR documentation, government policies, secondary literature on policies, international agreements, regional agreements, and media articles were read and evaluated. These data sources were obtained from the University of London database, JSTOR digital library, and other online sources, such as the UNHCR website and the Response for Venezuelans Interagency Coordination Platform for Refugees and Migrants from Venezuela (R4V) website.

1.5 Outline

The study is structured as follows. The second chapter is a review of the existing literature on regional refugee protection, the Cartagena Declaration regime, and the SOC. It contains a short description of the mentions of the SOC and how the authors or organizations conceptualize the phrase, which is then followed by my own list of the elements of the SOC. The third chapter is a case study of the Venezuelan displacement crisis. It contains a quick description of the Venezuelan humanitarian and economic crisis and an overview of the reception of Venezuelans in Latin American and the Caribbean (LAC) which is followed by a more detailed description of the policies of three countries: Colombia, Peru, and Brazil. The fourth chapter is a comparative analysis between themes which emerged from the policies and the elements of the SOC. The last chapter concludes, drawing together the overarching theme of the importance of regional refugee regimes and specifics of the Venezuelan case study, appraising it against the SOC.

2. Literature review

2.1 Regional refugee protection

Refugee protection policies and academia commonly revolve around the global refugee regime, which is rooted in the 1951 Convention Relating to the Status of Refugees (1951 Convention), and its 1967 New York Protocol, and coordinated by the United Nations High Commissioner for Refugees (UNHCR). The 1951 Convention refugee regime has established an internationally recognized basis for refugee rights and has high recognition of power and primacy in international refugee law. However, the global regime is not the only source of refugee protection and rights. In fact, given that 88 percent of forced migrants flee to countries adjacent or within the same regions as their home country, migration is largely a regional issue.³

Regional refugee regimes exist for a variety of reasons including to fill the protection gaps posed by the restrictive 1951 Convention refugee definition and in response to region-specific issues and crises.⁴ Regional regimes are especially effective due to shared cultural norms and economic ties.⁵ Enhanced cooperation and willingness to share responsibility stems from regionally shared interests and values.⁶

Limitations of the 1951 Convention's refugee definition and its applicability to regional issues means that many forced migrants have gone without the coveted legal status of 'refugee' and its ensuing rights. In 1991, Arboleda explained that the international refugee definition had "proven inadequate" to protect those forced to migrate due to conflict, war, economic crises, and other reasons which had surfaced in underdeveloped nations.⁷ Therefore, regional refugee regimes had arisen to mitigate this challenge. There are two well established regional frameworks: the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems (OAU Convention) in Africa and the Cartagena regime grown from the Cartagena Declaration in Latin America and the Caribbean. Both of these regional agreements developed their own refugee definition which utilize the 1951 Convention's definition and add criteria. According to Wood, the regional refugee definitions expand the 1951 Convention's in three ways: the additional elements of the regional definitions are more applicable to objective circumstances in the country of origin; the definitions are more easily applied to situations of generalized harm, this is due to the absence of the discriminatory clause found in the 1951 Convention; and the definitions are more suited to situations of mass influx.⁸ The last expansion resolved the issue of the mass influx of refugees overwhelming the facilities of the host country if the refugee status determination (RSD) was done on an individual basis, as suited to the persecution criteria of the 1951 Convention. According to Fischel de Andrade, remedying this issue was the primary aim of the UNHCR's move for an expanded definition in LAC.⁹

Regional regimes are beneficial in overcoming the discrepancies between the interests of the international community and the interests of a specific region. For example, the Central American conflicts of the late 1970s and early 1980s, which fueled regional colloquia on displacement, exemplified this dichotomy of interests. The armed conflicts in Central America at that time were rooted in social issues of inequality in land,

³ Jennifer Hyndman, 'Commentary. Regional Responses to the International Regime on Refugee Protection' in Liliana Lyra Jubilit, Marcia Vera Espinoza and Gabriela Mezzanotti (eds), *Latin America and Refugee Protection : Regimes, Logics, and Challenges* (Berghahn Books Incorporated New York 2021).

⁴ Stefania Barichello, 'The Evolving System of Refugees' Protection in Latin America' in Gauci, J-P, M. Giuffr  and E. Tsourdi (eds) *Exploring the Boundaries of Refugee Law: Current Protection Challenges*. (Leiden: Martinus Nijhoff 2015).

⁵ Jaya Ramji-Nogales, 'The Role of the "Regional": Shoring Up Refugee Rights?' (Refugee Law Initiative Blog, 7 May 2019) <<https://rli.blogs.sas.ac.uk/2019/05/07/the-role-of-the-regional-shoring-up-refugee-rights/#more-1300>> accessed 26 July 2023.

⁶ Liliana Lyra Jubilit, Marcia Vera Espinoza, and Gabriela Mezzanotti, 'Introduction — Refugee Protection in Latin America: Logics, Regimes, and Challenges' in Liliana Lyra Jubilit, Marcia Vera Espinoza and Gabriela Mezzanotti (eds), *Latin America and Refugee Protection : Regimes, Logics, and Challenges* (Berghahn Books Incorporated New York 2021).

⁷ Eduardo Arboleda, 'Refugee Definition in Africa and Latin America: The Lessons of Pragmatism' (1991) 3(2) *International Journal of Refugee Law* 185, 186.

⁸ Tamara Wood, (2021) 'The International and Regional Refugee Definitions Compared' in Cathryn Costello, Michelle Foster, and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law*. (Oxford University Press 2021).

⁹ Jose Henrique Fischel de Andrade, 'The 1984 Cartagena Declaration: A critical review of some aspects of its emergence and relevance' (2019) 38(4) *Refugee Survey Quarterly* 341, 356.

wealth, and political rights.¹⁰ These conflicts found themselves in the geopolitics of the Cold War which caused the USA and the Soviet Union to support opposing political parties in Nicaragua, El Salvador, and Guatemala. The result was that more powerful countries outside of the region intensified the political situation within the Northern Triangle countries of Central America (NTCA) instead of pacifying it. The countries within the region, however, were the ones who suffered the effects of displacement and regional insecurity which followed. Therefore, while the international community was focused on the ideological outcomes of the region's conflict, the countries within the region, who neighbored the conflict, were focused on shouldering the burdens of, and reducing, the displacement. Countries in the same region are more sensitive to the issues of their neighbours than those countries outside of it. Consensus is easier to reach within geographical regions which lead to better peace-making and peace-keeping; also, solutions are more customizable to the situation when made at a regional level.¹¹ Additionally, regional refugee regimes can facilitate the harmonization of norms and procedures in refugee protection. Harmonisation prevents dissimilar responses and contradictory solutions while also avoiding conflict between States.¹² This has been emphasised in LAC through the Cartagena process which compels States in the region to incorporate global refugee policies while also strengthening a regional approach.¹³

An additional benefit of regional refugee regimes is the involvement of other regional institutions and mechanisms in the framework of refugee protection. In Latin America, the Inter-American Human Rights (IAHR) system aids the protection and assistance of asylum-seekers and refugees in a multitude of ways. The complementary protections of the IAHR system include the protection from refoulement in cases when return could result in violations of the human rights obligations in the 1948 American Declaration on the Rights and Duties of Man (ADHR); a minimum standard of treatment in employment, detention, and due process procedures in asylum claims; and a codification of the human right of asylum in the 1969 American Convention on Human Rights (ACHR) and the ADHR.¹⁴ This bridging between protection frameworks adds validity and strength to regional approaches.

Regional approaches to refugee protection have many benefits, however Fischel de Andrade argues that there are disadvantages to relying on regional regimes: the inexperience and lack of financial and procedural infrastructure of regional organizations to effectively cope with conflicts and humanitarian crises and the risk of deprioritizing the standards developed at the global level.¹⁵ Inexperience and lack of resources are certainly hinderances to effective responses, however there is no reason regional organizations need to perform alone without guidance and support from international agencies, such as UNHCR. As seen in the development of the Cartagena Declaration, UNHCR played a pivotal role in its creation and rise to popularity. Regional approaches are the strongest when they complement and expand the international refugee regime.

2.2 The Cartagena Declaration regime

Latin America has a long tradition of asylum stemming from its history of diplomatic and territorial political asylum which was codified as far back as 1889 in the Treaty of International Criminal Law and the Montevideo Treaty on International Penal Law. Asylum was generally awarded based on political persecution, often only benefited elite individuals, and was very much an expression of state sovereignty. This explains why, despite a strong regional foundation for asylum, displacements in the late 1970s and early 1980s altered the course of tradition. At that time the region lacked an appropriate legal status to protect displaced individuals falling outside of the institution of political asylum. This was true especially in light

10 Barichello (n 4).

11 Jose Henrique Fischel de Andrade, 'Regional Policy Approaches and Harmonization: A Latin American Perspective' (1998) 10(3) *International Journal of Refugee Law* 389, 391.

12 *ibid.*

13 David James Cantor, 'Cooperation on Refugees in Latin America and the Caribbean' in Elena Fiddian-Qasmiyeh, Patricia Daley (eds), *Routledge Handbook of South-South Relations* (Routledge 2019).

14 David James Cantor and Stefania Barichello, 'The Inter-American human rights system: a new model for integrating refugee and complementary protection?' (2013) 17:5-6 *The International Journal of Human Rights* 689.

15 Fischel de Andrade, 'Regional Policy Approaches and Harmonization' (n 11) 392.

of the non-refoulement obligation in the ACHR.¹⁶ In the 1960s, the Inter-American Commission on Human Rights, an organ of the Organization of American States (OAS), identified the lack of legislative and organizational guidance on the assistance and protection of refugees within the regional institutions.¹⁷ Then, the dictatorships in South America in the 1970s and political violence and conflict in Central America in the 1970s-80s led to displacements that the global asylum framework could not protect.¹⁸ These two flows of displacement caused countries in the region to start taking notice of the global refugee framework and spurred ratifications of the 1951 Convention. However, even signing on to the global refugee regime did not provide assistance nor protection to many of the displaced. For example, the Central American crises “created over 2 million refugees and IDPs, but only 150,000 were considered 1951 Convention refugees”.¹⁹ The reality was that the displacements were of a different nature than the previous situations in the region and the displaced persons were unable to find protection through the asylum framework or, for that matter, the 1951 Refugee Convention. Latin America’s focus on refugee protection began with those displacement crises.

In order to assuage the regional instability resulting from the Central American displacements in the late 1970s and the early 1980s, three colloquia were called to bring together government officials, UNHCR, experts, and NGOs in the region. These colloquia were the 1981 Colloquium on Asylum and the International Protection of Refugees in Latin America (1981 Mexico Colloquium), the 1983 Political Asylum and the Refugee Situation (1983 La Paz Seminar), and the 1984 Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (1984 Cartagena Colloquium). The document of conclusions and recommendations from the 1984 Cartagena Colloquium became the 1984 Cartagena Declaration, a multilateral, non-binding agreement which became the basis for the Latin America regional refugee regime. Despite the lack of significant impact of the first two colloquia and declarations, the Cartagena Declaration rose to fame after promotion by the UNHCR in its ExCom Conclusion No. 37 and the 1985 OAS General Assembly resolution.²⁰

2.2.1 The Cartagena Declaration’s accomplishments

The most noted characteristic of the Cartagena Declaration is its expanded refugee definition, which contains similar elements as the OAU Convention definition, utilizes the 1951 Convention refugee criteria, and adds the following elements:

persons who have fled their country because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.²¹

The expansion of the refugee definition and its regional application has become the most focused aspect of the Cartagena Declaration. Although it is very important, the refugee definition is not the only valuable aspect of the Cartagena Declaration. Reed-Hurtado posits four accomplishments other than the expanded refugee definition.²² One, the promotion and consolidation of the ‘humanitarian practises and principles’ called upon to respond to the Central American humanitarian and displacement crisis. Two, the regional acknowledgement of the centrality and importance of the international refugee regime. Three, the acknowledgement that international human rights law, humanitarian law, and refugee law are important elements in response to the issue of displacement. Four, the promotion of the principle of non-refoulement. Likewise, Esthimer explains how the Cartagena Declaration was groundbreaking in these three ways: the inclusion of the generalized violence factor into the refugee definition; the interrelations of human rights,

¹⁶ American Convention on Human Rights 1969 art 22 (8).

¹⁷ Fischel de Andrade, ‘The 1984 Cartagena Declaration’ (n 9) 349.

¹⁸ Cantor, ‘Cooperation on refugees in Latin America and the Caribbean’ (n 13).

¹⁹ Barichello (n 4) 155.

²⁰ Fischel de Andrade, ‘The 1984 Cartagena Declaration’ (n 9).

²¹ Cartagena Declaration on Refugees 1984, Section III.3.

²² Michael Reed-Hurtado (2013) ‘The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America’ UNHCR No. 32 of the Legal and Protection Policy Research Series (2013) PPLA/2013/03 <www.refworld.org/docid/51c801934.html> accessed 28 September 2022.

humanitarian law, and refugee rights; and the emphasis on regional solidarity and, specifically, solidarity through resettlement.²³ Franco and Santistevan de Noriega describe over nine contributions of the Cartagena Declaration including the emphasis on voluntary repatriation in dignity and security, the promotion of the 1951 Convention framework and the ACHR, and the commitment to the goal of self-sufficiency of refugees and economic integration into host countries.²⁴ Some of these concepts, such as the linking of refugee rights and human rights and the connection with regional instruments can be seen in the Cartagena Declaration, in Conclusions 8 and 10. Those conclusions call for States to uphold a minimum standard of treatment of refugees based on the 1969 ACHR and the 1951 Convention²⁵ and call on States to apply the 1969 ACHR to the case of *asilados* (asylees) and refugees present on their territory.²⁶

The Cartagena Declaration has also laid the platform for a regional acceptance of refugee rights, especially the concept of refugee rights as human rights. The Cartagena Declaration built the foundation for the region's refugee regime through its grammar of refugee protection and the built-in revision process. The planned meetings sought to ensure the evolving nature of the refugee framework established by the Cartagena Declaration.

Another important accomplishment of the Cartagena Declaration was the shift in the concept that granting asylum was a sovereign right of the State to a right of individuals. The political asylum framework emphasized the right of States to offer asylum, but not on the right of individuals to receive it.²⁷ Whereas, the regional refugee regime which grew out of the Cartagena Declaration, emphasizes the human right of asylum.

The Cartagena Declaration became more widely acknowledged in Latin America, as seen by the inclusion of the expanded definition into domestic legislation and through the participation in the 10-year-interval colloquia. As such, the Cartagena regime was born. Jubilit, Vera Espinoza, and Mezzanotti posit four pillars of 'the Cartagena Declaration Regime': regional refugee concept and definition; the 10-year interval revision process; the connection of refugee rights with human rights; and dialogue with other systems and regimes.²⁸ As much noted by scholars, the revision and commemorative process is a very important aspect of the Cartagena regime and has become known as the Cartagena process.

2.2.2 The Cartagena process

The region reaffirms its alignment with the principles of the Cartagena Declaration and its commitment to regional issues through 10-year-interval commemorative consultations and declarations. The dedication to renewing the region's affirmation of refugee protection and ensuring that the principles and policies reflect current issues represents a strong aspect of the Cartagena regime. The dedication is evidenced through the following declarations and plans of action which constitute the Cartagena process. The first of the 10-year commemorative meetings produced the 1994 San Jose Declaration on Refugees and Displaced Persons (SJD). It reaffirmed the significance of the Cartagena Declaration, as well as, the connection between refugee law, human rights law, and humanitarian law. The SJD not only emphasized the human rights of refugees, but also those of other migrants (con. 10) and its major contribution to the Cartagena regime was its broadening of the scope of protection to include internally displaced persons (IDPs) (con. 16).

Second, ten years later another regional gathering produced the 2004 Mexico Declaration and Plan of Ac-

23 Marissa Esthimer, 'Protecting the forcibly displaced: Latin America's evolving refugee and asylum framework' (*Migration Policy Institute*, 14 January 2016) <www.migrationpolicy.org/article/protecting-forcibly-displaced-latin-america-evolving-refugee-and-asylum-framework> accessed 5 September 2022.

24 Leonardo Franco and Jorge Santistevan de Noriega, 'Contributions of the Cartagena Process to the Development of International Refugee Law in Latin America' in *UNHCR, Memoir of the Twentieth Anniversary of the Cartagena Declaration on Refugees 1984-2004* (Editorama 2005).

25 Convention Relating to the Status of Refugees 1951, III. 8.

26 ACHR (n 16) III. 10.

27 David James Cantor, 'European Influence on Asylum Practices in Latin America: Accelerated procedures in Colombia, Ecuador, Panama and Venezuela' in Helene Lambert, Jane McAdam, and Maryellen Fullerton, (eds), *The Global Reach of European Refugee Law* (Cambridge University Press 2013).

28 Liliana Lyra Jubilit, Marcia Vera Espinoza, and Gabriela Mezzanotti, (2019) 'The Cartagena Declaration at 35 and Refugee Protection in Latin America' (*E-International Relations*, 22 November 2019) <www.e-ir.info/2019/11/22/the-cartagena-declaration-at-35-and-refugee-protection-in-latin-america> accessed 19 September 2022.

tion to Strengthen the International Protection of Refugees in Latin America (MDPA). It was the next instalment of the Cartagena process and a strong advancement in regional cooperation on refugee protection. The MDPA highlighted the need for solutions of current issues, which were identified as: the high numbers of refugees in urban places and their lack of integration and self-sufficiency; and the high numbers of refugees in border areas and their lack of overall protection. In response to those issues, the plan of action proposed three solidarity programmes: borders, cities, and resettlement, which prompted the acceptance of regional responsibility-sharing. The MDPA focused on the Colombian displacement crisis and although the declaration reiterated that IDPs are a concern to the international community, the plan of action was focused on refugees alone. Also, the MDPA emphasized the voluntariness of repatriation. The Mexico Declaration was unique in being the first declaration to include a plan of action, including three specific and innovative programmes of solidarity, and for the inclusion of subregional actors and other stakeholders.²⁹

Third, the 2014 the Brazil Declaration and Plan of Action, 'A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean' (BDPA), contained the conclusions and recommendations of four subregional consultations. The declaration contains multiple chapters focusing on different elements of the refugee problem, including displaced and stateless persons. It contains efforts to establish or strengthen adequate RSD procedures, proposed programmes to facilitate these goals included 'Quality Asylum'. Meanwhile, 'Borders of Solidarity and Safety' was proposed as a way of enhancing security and the protection of individuals along borders, a renewed effort from MDPA. Durable solutions was also an emphasized theme in an attempt to make solutions more comprehensive, complementary, and sustainable. In this vein, a Labour Mobility scheme was launched, as well as programmes supporting the three traditional durable solutions. Regional cooperation was a highlighted theme of the BDPA. This declaration was unique in many ways: by making the Caribbean a member of the process for the first time; for its eleven, very specific programmes of action; for its recognition of the consequences of transnational organized crime; for distinguishing priorities of sub-regions: the Caribbean and the NTCA; and for the role of non-state actors.³⁰ Fourth, in the year to come, 2024, we are due for another installation of the Cartagena commemorative process, the fortieth anniversary of the Cartagena Declaration.

Subsequent colloquia and agreements are also noteworthy. The 1989 International Conference on Central American Refugees (CIREFCA) produced a Legal Document and Plan of Action which is known for encouraging implementation measures which "ensure the operational capacity of the conceptual developments resulting from the Cartagena Declaration".³¹ The 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas reiterated the right to asylum through three main features: the prohibition of indirect non-refoulement; incorporation of gender, age, and diversity into national law on refugees and IDPs; and the promotion of new mechanisms in response to new situations.³² The 2016 San Jose Call to Action: Protection Needs in the Northern Triangle of Central America was the outcome of a high level round table on mixed migratory movements and violence resulting from organized criminal activity in the NTCA. Lastly, in 2018, South American States initiated the Quito Process, a series of meetings and consultations on problems and solutions of the Venezuelan crisis intended to harmonise the regional response; the Quito Process will be described in the following chapter in section 3.2.

2.2.3 The relevance of the Cartagena regime

Many believe that the Cartagena Declaration is the "cornerstone of refugee law" in Latin America, "setting both normative standards and the regional tone for policies and actions".³³ The Cartagena refugee definition has been called "akin to a customary law"³⁴ and regional customary law.³⁵ However, some scholars

29 Carlos Maldonado Castillo, 'The Cartagena Process: 30 years of innovation and solidarity' (2015) 49 *Forced Migration Review: Disasters and displacement in a changing climate* 89.

30 Castillo (n 29); Cantor, 'Cooperation on refugees in Latin America and the Caribbean' (n 13).

31 Franco and Santisteran de Noriega (n 24).

32 Barichello (n 4).

33 Jubilut, Vera Espinoza and Mezzanotti (n 28).

34 Luisa Feline Freier, Isabel Berganza, Cécile Blouin, 'The Cartagena Refugee Definition and Venezuelan Displacement in Latin America' (2020) 60(1) *International Migration* 18, 20.

35 Juan Ignacio Mondelli, 'La Obligatoriedad de la Definición de Refugiado de la Declaración de Cartagena en el Derecho Internacional'

argue that the Cartagena Declaration is only “the start of a process” with continued relevance.³⁶ Others question the practical significance of it given the ad hoc responses of the region’s policies to the Venezuelan exodus.³⁷ Still others argue against its current relevance; Fischel de Andrade stated that the Cartagena Declaration’s “practical, political, and legal relevance has become obsolescent.”³⁸

Recall that the Cartagena Declaration is not binding; each State decides in what capacity, if any, to incorporate the declaration’s recommendations and conclusions. In some capacity, fifteen out of twenty Latin American countries³⁹ have incorporated the Cartagena refugee definition into their domestic laws.⁴⁰ On one hand, this emphasises the importance of the Cartagena Declaration since the majority of Latin American states have expanded the 1951 Convention’s refugee definition in domestic legislation. However, as Fischel de Andrade points out, only a few of those States utilize the exact wording of the Cartagena Declaration’s definition, while a larger number of States have significantly altered it.⁴¹ The importance of the Cartagena regime as a whole, however, seems to remain vital given the high participation during the commemorative process colloquia. While there were only ten states to initially adopt the Cartagena Declaration, there were thirty-one countries and territories to adopt the BDPA. Additionally, the evolution from only documents to plans of action and implementation programmes, speaks to the growth of the Cartagena regime.

2.3 The spirit of Cartagena

All of these aspects of the Cartagena Declaration, the Cartagena process, and its regime, make up something referred to as ‘the spirit of Cartagena’ (SOC); this phrase is oft-used, however not easy to define. There are at least nineteen references to this concept in academic articles, books, and UNHCR publications. The SOC is a somewhat elusive concept since despite the frequent mentions it does not have a working definition or agreed upon elements. This section contains a categorization of the mentions of the phrase and an attempt to dissect how each author or organization conceptualized the phrase. This is followed by an attempt to formulate a definition and attribute elements to the SOC.

2.3.1 Conceptualizations of the spirit of Cartagena

A few cohesive themes shine through the many mentions of the SOC. In the beginning, the phrase was merely used to represent the idea or essence of the Cartagena Declaration, in the same way that scholars speak of the spirit of solidarity or the spirit of the Global Compact for Refugees. Then, the SOC conceptualizations began to grow to include the idea of the Cartagena definition, human rights emphasis amid refugee protection, a sense of regional solidarity and responsibility-sharing, and pragmatism.

At first, SOC was used loosely to refer to the regime established by the Cartagena Declaration. The first time the phrase appears was in a UNHCR article for the 20th anniversary of the Cartagena Declaration titled ‘Keeping the spirit of Cartagena alive, 20 years later.’⁴² That article sought to revitalize the relevance of the Cartagena Declaration and report on a commemoration meeting in honor of the anniversary. Then, in the same year, the English version of the preamble of the 2004 Mexico Plan included the phrase “the pragmatic and principled spirit of the Cartagena Declaration on Refugees.”⁴³ These same sentiments were expressed

(2019) in Colombia: Corte Constitucional, *Revista Temas de Derecho Constitucional de Colombia* (Imprenta Nacional de Colombia 2019) (as cited in Javier Ochoa ‘South America’s Response to the Venezuelan Exodus: A Spirit of Regional Cooperation?’ (2020) 32(3) *International Journal of Refugee Law* 472, 478.

36 Esthimer (n 23).

37 Diego Acosta, Cécile Blouin, and Luisa Feline Freier, ‘La Emigración Venezolana: Respuestas Latinoamericanas’ (March 2019) *Documentos de trabajo*, 3, 2^a.

38 Fischel de Andrade, ‘The 1984 Cartagena Declaration’ (n 9) 362.

39 Latin American countries: Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, Ecuador, Peru, Bolivia, Brazil, Paraguay, Chile, Argentina, Uruguay, Cuba, Haiti, and the Dominican Republic.

40 Freier, Berganza, and Blouin (n 34).

41 Fischel de Andrade, ‘The 1984 Cartagena Declaration’ (n 9).

42 William Spindler, Nazli Zaki, Juan Ignacio Mondelli, and Jennifer Clark, ‘Keeping the spirit of Cartagena alive, 20 years later’ (*UNHCR*, 11 November 2010) <www.unhcr.org/news/keeping-spirit-cartagena-alive-20-years-later> accessed 16 September 2022.

43 The original document in Spanish reads a little differently. It reads “..*espíritu pragmático y de principios que propugna la Declaración de Cartagena*” and translates as the pragmatic spirit and principles put forth in the Cartagena Declaration. This sentence does not include exactly the phrase *espíritu de Cartagena* as seen in other instances in the Spanish language.

in Franco and Santisteran de Noriega's mention of "the Cartagena approach, known as the "Cartagena spirit", which the authors described as principle-based, but flexible and pragmatic, in its application to the issue of voluntary repatriation.⁴⁴

Then, the phrase began to appear in academic articles in relation to specific aspects of the Cartagena regime. At times, the references to the SOC point to the refugee definition. In 2013, the SOC appears in Reed-Hurtado's article about the Cartagena Declaration's application to situations of armed conflict and violence in Latin America. The author suggests that "contemporary interpretation should recover the 'spirit' of Cartagena and invoke the basic principles of protection" in an argument against the use of the CIREFCA Document in modern interpretation and application of the Cartagena definition.⁴⁵ Esthimer connects the SOC to refugee criteria when she provides examples of countries which "exemplified the spirit of the agreement"⁴⁶ through their acknowledgments that human rights violations qualify as a basis for refugee status.⁴⁷ In 2018, mention of the SOC began to appear in relation to the Venezuelan refugee situation. In UNHCR's 2018 Guidance note on the outflow of Venezuelans there is a reference to the causes of displacement and an implication that the SOC refers to the application of the expanded definition.⁴⁸ In an article on why Latin American countries should recognize Venezuelans as refugees, rather than economic migrants, the author explains that Latin American countries ought to "adhere to the SOC" and grant refugee status and rights to Venezuelans according to the Cartagena definition.⁴⁹ In 2020, in two articles by Blouin, Berganza, and Freier, the authors discuss the regional refugee definition and its application to the Venezuelan situation, including the application of *prima facie* refugee status determination (PFRSD).⁵⁰ Ochoa also mentions the phrase in an analysis of Brazil's application of PFRSD to Venezuelans, by saying that the application was "in line with spirit of the Cartagena Declaration."⁵¹

In other instances, scholars point to the accomplishment of the Cartagena Declaration in linking refugee rights with human rights. In an article about Brazil's refugee-benefiting policies, Ferreira Barreto and Leão refer to the concept of the SOC in describing the incorporation of human rights and non-discrimination in Brazil's constitution, the 1997 law defining refugees using the expanded definition, and a refugee resettlement plan; the article ends with a mention of "the spirit of fraternity and human solidarity" which leads to the next theme: solidarity and responsibility-sharing.⁵² In 2011, the SOC is mentioned in an article about resettlement in solidarity.⁵³ In 2016, the SOC concept appears amidst an observation of the lack of refugee integration policy within Ecuador; this article relates the role of the SOC to durable solutions, including sustainable integration.⁵⁴ In 2019, Fischel de Andrade's critical review of the continued relevance of the Cartagena Declaration mentions the SOC. Interestingly the author notes that, in his opinion, despite the Cartagena Declaration's obsolete relevance, the SOC is still "very much alive and palpable in the region's resolve not to be stuck in past".⁵⁵ He explains that while Latin America lacks a harmonised refugee definition and protection policy, the SOC exists in the fact that Latin American States' domestic policies use an expanded refugee definition which addresses contemporary issues. Fischel de Andrade explains that the SOC emerged from the necessity of a "progressive regime change", one which would accept forced migrants of

44 Franco and Santisteran de Noriega (n 24) para 127.

45 Reed-Hurtado (n 22) 16.a

46 This phrase "spirit of the agreement" comes later in the article after the use of the SOC phrase.

47 Esthimer (n 23).

48 UNHCR 'Guidance Note on the outflow of Venezuelans' March 2018, para 6.

49 Luisa Feline Freier, 'Why Latin America should recognize Venezuelans as refugees' (*Refugees Deeply* 28 September 2018) <deeply.the-newhumanitarian.org/refugees/community/2018/09/28/why-latin-america-should-recognize-venezuelans-as-refugees> accessed: 13 September 2022.

50 Celine Blouin, Isabella Berganza and Luisa Feline Freier, 'The Spirit of Cartagena? Applying the extended refugee definition to Venezuelans in Latin America' (2020) 63 *Forced Migration Review: Cities and Towns* 64; Isabella Berganza, Celine Blouin, and Luisa Feline Freier, (2020) 'The Situational Element of Massive Violation of Human Rights in the Extended Refugee Definition of Cartagena,' (2020) 47(2) *Revista Chilena de Derecho* 385.

51 Javier Ochoa 'South America's Response to the Venezuelan Exodus: A Spirit of Regional Cooperation?' (2020) 32(3) *International Journal of Refugee Law* 472, 490.

52 Luiz Paulo Teles Ferreira Barreto and Renato Zerbin Ribeiro Leão, 'Brazil and the spirit of Cartagena' (2010) 1 (35) *Forced Migration Review: Disability and Displacement* 45, 46.

53 Liliana Lyra Jubilit and Wellington Pereira Carneiro, 'Resettlement in Solidarity: A New Regional Approach Towards a More Humane Durable Solution' (2011) 30(3) *Refugee Survey Quarterly* 63.

54 Esthimer (n 23).

55 Fischel de Andrade, 'The 1984 Cartagena Declaration' (n 9) 362.

armed conflict and violence as refugees.⁵⁶ In this article, the SOC was the result of a progressive drive, an element which motivated the region to adequately respond to displacement issues outside the scope of the 1951 Convention refugee definition.

The only instance of scholars making an attempt to define SOC is the following article by Jubilut, Vera Espinoza and Mezzanotti.⁵⁷ In their 2019 article about Latin America's refugee system, at the time of the 35th anniversary of the Cartagena Declaration, the authors constructed a list of defining elements of the SOC. They suggest that the SOC is complementary to their pillars of the Cartagena regime (discussed in section 2.2.1). The authors describe the SOC as a framework for complementary pathways and protection alternatives to benefit refugees and other migrants for example, humanitarian visas or other legal stay arrangements. The elements of SOC are: "1) a human rights approach to refugee protection...; 2) an expanded humanitarian space; and 3) a constant effort to assess the region's needs and challenges in refugee protection". The authors say the SOC is something that was within the establishment of the Cartagena Declaration, it is in the development of the regime, and it is present in measures to benefit other forced migrants. This article describes the SOC as something which exists alongside the Cartagena regime, something that can benefit forced migrants, whether they are refugees or not; whereas, the other academic articles and UNHCR publications seem to refer to the SOC as the essence of the refugee regime established by the Cartagena Declaration and process. Although, it is logical to separate the definitive aspects of the Cartagena Declaration and its ensuing regime, that article goes too far in separating the SOC from the regime by suggesting that the SOC is something complementary, rather than essential. Furthermore, the three elements are accurate, but insufficient to explain the depth of the SOC, for example the flexibility and pragmatism of the Cartagena regime is an especially important aspect of the SOC.

2.3.2 Elements of the spirit of Cartagena

I would like to propose a working definition and list of elements of the spirit of Cartagena based on its conceptualization in scholarly articles and UNHCR publications and based on the defining features of the Cartagena regime.

The SOC is the essence of the Latin American and Caribbean regional refugee regime, the Cartagena regime, which embodies the region's tradition of asylum in the language of international refugee protection. It can be characterized by the following elements: 1) grammar of refugee protection, 2) expansion of migrant protection, 3) human rights approach, 4) convergence of multiple frameworks, 5) evolving nature, 6) principled and pragmatic, 7) durable solutions, and 8) regional solidarity.

First, the Cartagena regime established the grammar for refugee protection within a region which only had an existing language of *asilo político* (political asylum). Fischel de Andrade described the need for a regime change in Latin America as a result of the conflict-induced displacements happening in the 1970s and 80s.⁵⁸ The Cartagena Declaration installed the global refugee regime into the region while also establishing a regional refugee framework. The emphasis on non-refoulement and the importance of sustainable solutions was imparted to the regional regime.

Second, the expansion of protection for migrants in need of international protection outside of the gamut of the 1951 Convention. The importance of refugee protection and assistance compelled the region to put forth its own declaration and refugee definition. The result was an expansion of the 1951 Convention refugee definition to absorb additional causes of forced migration. Criteria for refugee status in the region came to include the following elements: a) generalised violence, b) massive human rights violations, and c) seriously disturbing public order circumstances. Therefore, in response to the Central American displacement fueled by conflict, the Cartagena definition filled the protection gap created by *asilo político* in Latin American and the gap in the 1951 Convention's refugee definition. Additionally, the Cartagena process further extended the scope of protection to include IDPs⁵⁹; and stateless persons.⁶⁰ The SJD also encourages

⁵⁶ *ibid* 360 footnote 81.

⁵⁷ Jubilut, Vera Espinoza, and Mezzanotti (n 28).

⁵⁸ Fischel de Andrade, 'The 1984 Cartagena Declaration' (n 9).

⁵⁹ Cartagena Declaration 1984: con. III (9); San Jose Declaration on Refugees and Displaced Persons 1994.

⁶⁰ Brazil Declaration and Plan of Action 'A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection

the acceptance of gender-based criteria in RSD.⁶¹

Third, a human rights approach to refugee protection. This concept is exemplified in the following aspects: The crystallisation of the principle of non-refoulement. The strengthening of the concept that asylum is the right of an individual rather than an expression of state sovereignty. The application of the ACHR to refugees, as requested by the Cartagena Declaration.⁶² The inclusion of human rights violations as a criterion of the refugee definition. In other words, a confirmation of the principal of *pro homine*⁶³ or migration regulation with a humanitarian lens.⁶⁴ As well as, the emphasis on the peaceful and humanitarian nature of asylum and refuge.

Fourth, the convergence of multiple protection frameworks is unique in the Latin American regime: a) The overlapping of the global refugee regime and the regional regime; refugee protection in Latin America is imparted through the 1951 Convention with UNHCR and through the Cartagena regime; b) The convergence of international refugee law with international human rights law and international humanitarian law; c) The regional human rights dialogue, such as the support of the IACHR system for refugee rights (as discussed in section 2.1); d) The presence of two distinct frameworks *asilo* (asylum) and *refugio* (refuge) to protect forced migrants.

Fifth, the region's dedication to a living, evolving regime. This dedication and affirmation of the region's commitment to refugee protection is seen in the Cartagena process, the 10-year revision process. It is also obvious in the region's focus on programme implementation through plans of action, including those inspired by protection issues such as the eradication of the causes of displacement and statelessness and durable solutions.

Sixth, the principled, yet pragmatic approach to refugee protection. On one hand, the regime maintains integrity and principle in its focus on refugee rights and protection. On the other hand, it has been praised for its pragmatism and flexibility. Its non-binding nature makes it more easily adapted to new situations of displacement or even security issues in countries of asylum. This pragmatism is seen in the region's acceptance of creative and innovative programmes such as the Labour Mobility scheme and other complementary pathways such as resettlement in solidarity, humanitarian entry visas, humanitarian residency permits, regional residency permits, and regional citizenship.

Seventh, a focus on realistically durable solutions to the situations of forced migration in LAC. The Cartagena Declaration instilled the importance of local integration, self-sufficiency, and voluntary repatriation in dignity and security; all of which was reaffirmed in the MDPA and BDPA.

Eighth, a strong focus on regional solidarity, cooperation, and responsibility-sharing. This solidarity is evidenced in the plans of action produced by the Cartagena process in the MDPA and the BDPA, solidarity through resettlement, for example. Those specific, actionable, and pragmatic programmes are a regional approach which allows States to act from shared interests, fueled by a shared culture, economic motivators, and an appeal for regional security. Additionally, the MDPA and the BDPA both extended responsibility to non-state actors such as civil society, academia, human rights institutions and organizations, and sub-regional actors.

of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean' 2014.

61 San Jose Declaration on Refugees and Displaced Persons 1994, con. 12.

62 Cartagena Declaration (n 21) con. III. 11.

63 Castillo (n 29).

64 Liliana Lyra Jubilut 'Humanitarian Alternative Pathways for Protection for Forced Migrants in Latin America,' in Marie McAuliffe and Michele Klein Solomon, (eds) *Migration Research Leaders' Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration* (IOM 2017) 117, 117.

3. Venezuelan Case Study

3.1 The Venezuelan displacement crisis

The Venezuelan situation, called “a migration of despair”⁶⁵ and “an unprecedented economic and humanitarian crisis”⁶⁶, has led to the largest migratory outflow in the history of Latin America. Between 2013 and 2021 Venezuela’s gross domestic product decreased by 75%.⁶⁷ The country experienced a dramatic economic collapse and hyperinflation which plunged the nation into extreme poverty and hardship. This economic strife happened alongside political unrest caused by opposition to the presidential party and a breakdown in public infrastructure and services. Venezuelans have faced risks to health including food and medicine shortages; lack of access to clean water; a rise in disease outbreaks such as cholera, tuberculosis, and malaria; and lack of medical care.⁶⁸ The country has been experiencing frequent electricity outages and a general lack of public services since 2017. The citizens have suffered exposure to violence, insecurity, corruption, human rights violations including civil and political rights, and political persecution.⁶⁹ As a result of this extraordinarily difficult situation many Venezuelans have left the country in search of livelihood and dignity. According to the Interagency Coordination Platform for Refugees and Migrants from Venezuela (R4V), there are currently over 7 million Venezuelan refugees, migrants, and asylum-seekers worldwide, as reported by host countries.⁷⁰

3.2 The Cartagena regime and the Venezuelan situation

The framework of the Cartagena regime applies to the Venezuelan displacement crisis in at least five ways: Venezuelans are displaced migrants in need of international protection; they suffered human rights violations in their country of origin; they qualify for the application of the Cartagena refugee definition; some of their children have become stateless, and the utilisation of a region-wide approach would harmonise and justify the region’s responses to this humanitarian crisis.

Displaced Venezuelans are migrants in need of international protection due to the socio-economic collapse and political turmoil of the country. This is further exemplified in Betts’s application of his concept of ‘survival migration’ to the situation.⁷¹ ‘Survival migration’ is characterized by migratory movements in situations of an “existential threat” without possible domestic remedy or resolution, thereby forcing citizens to seek aid outside their country of origin.⁷² Venezuelans face threats to survival as a result of food shortages; limited access to clean water, healthcare, and medicines; exposure to violence and insecurity; lack of economic and social growth; and access to most basic services.⁷³ The Cartagena regime is the regional framework for protection of individuals in need of international protection within LAC.

Given the human rights approach of the Cartagena regime, the fact that Venezuelans are victims of human rights violations strengthens the case for their protection. These violations include extra-judicial executions

65 Tomas Paez and Leonardo Vivas, *The Venezuelan Diaspora: Another Impending Crisis?* (Washington, DC: Freedom House 2017).

66 Jorge A Alvarez, Marco Arena, Alain Brousseau, Hamid Faruqee, Emilio William Fernandez Corugedo, Jaime Guajardo, Gerardo Peraza, Juan Yopez, ‘Regional Spillovers from the Venezuelan Crisis: Migration Flows and Their Impact on Latin America and the Caribbean’ (*International Monetary Fund, Departmental Papers* 2022, 019, A001) <<https://doi.org/10.5089/9798400224478.087.A001>> accessed 3 September 2023.

67 Marco Arena, Emilio Fernandez Corugedo, Jaime Guajardo, and Juan Francisco Yopez, ‘Venezuela’s Migrants Bring Economic Opportunity to Latin America’ (*International Monetary Fund*, 7 December 2022) <www.imf.org/en/News/Articles/2022/12/06/cf-venezuelas-migrants-bring-economic-opportunity-to-latin-america> accessed 7 August 2023.

68 Oriana Van Praag, ‘Understanding the Venezuelans Refugee Crisis’ (*Wilson Center*, 13 September 2019) <www.wilsoncenter.org/article/understanding-the-venezuelan-refugee-crisis> accessed 16 September 2022.

69 *ibid.*

70 R4V (Response for Venezuelans) Interagency Coordination Platform for Refugees and Migrants from Venezuela website (11 June 2023) <<https://www.r4v.info/en/refugeeandmigrants>> accessed 2 August 2023.

71 Alexander Betts, ‘Venezuelan Survival Migration as a Development Opportunity: Mission report’ University of Oxford RSC Research in Brief, 12 March (OUP 2019).

72 Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Cornell University Press 2013) 4-5.

73 Oriana Van Praag, ‘Understanding the Venezuelans Refugee Crisis’ (*Wilson Center*, 13 September 2019) <www.wilsoncenter.org/article/understanding-the-venezuelan-refugee-crisis> accessed 16 September 2022.

and the repression of civil and political rights.⁷⁴ The Cartagena refugee definition includes criteria based on a threat to life, security or freedom due to generalized violence or massive violations of human rights or other circumstances which have seriously disturbed public order. Violence in Venezuela is widespread, pervasive, severe, indiscriminate, and is enacted by State and non-state actors.⁷⁵ These factors would qualify as generalized violence according to the factors called for by the UNHCR Guidelines on International Protection.⁷⁶ A massive violation of human rights must be systemic and follow a pattern and, according to Berganza, Blouin, and Freier, can be evidenced through violations of economic, social, and cultural rights.⁷⁷ Venezuelans face persistent violations to civil and political rights, as well as, economic, social and cultural rights.⁷⁸ Public order can be understood as social security and stability with the normal functioning of public services and infrastructure.⁷⁹ All public services have become intermittent, unreliable, and lacking since 2017.

Statelessness was mentioned in the Cartagena Declaration and further emphasized in the SJD. Due to the citizenship laws of Colombia some of the children born of displaced Venezuelans became stateless until 2019 when the Colombian government decreed that children of Venezuelan parents that were born in Colombia would gain citizenship.

The Cartagena regime seeks to harmonise the regional approach to humanitarian crises. UNHCR acknowledged the benefit of well-coordinated, harmonised, and planned responses.⁸⁰ It is also mentioned in a colloquium which led to the Cartagena Declaration, the 1981 Tlatelolco Colloquium, which cites the necessity to harmonise the principles, norms, and mechanisms of the region's protection of asylees and refugees in Latin America; the SJD encourages the harmonization of refugee "rules, criteria, and procedures"⁸¹ and the MDPA recommends the harmonization of refugee legislation; the BDPA also calls for the harmonization of policies to protect displaced, stateless persons, and refugees. The call for a harmonised regional approach to the Venezuelan displacement has been urged by UNHCR and scholars alike.⁸² Additionally, LAC States pledged to a harmonised approach in the Quito Process, as described in the next section.

3.3 Reception of displaced Venezuelans

In the region as a whole, the initial reaction to the Venezuelan displacement crisis was mostly one of solidarity and brotherhood, albeit uncoordinated. Ecuador, for example, allowed Venezuelans to apply for a resident visa after the 180-day tourist visa expired. In Chile, Venezuelans were able to enter the country on tourist visas and then apply for work visas. By contrast, in the Caribbean, Trinidad and Tobago detained and deported Venezuelans as early as 2018.⁸³ In South America the response was more welcoming at first, then as the crisis continued the welcome began to dry up and restrictive policies were enacted. For example, many States began to require Venezuelans to provide passports and proof of a clean criminal record, both of which are extremely difficult for Venezuelans to obtain. There was not a unified or harmonised regional response, in fact there were a variety of responses by countries of reception. Acosta, Blouin, and Freier established six categories of responses to include countries which: used their own frameworks; created specific categories; applied refugee status through the Cartagena Declaration's definition; used special measures to document; criminalized Venezuelans; or chose not to react.⁸⁴ Protection responses included temporary protection schemes, stay arrangements or special stay permits, humanitarian visas, residen-

⁷⁴ *ibid.*

⁷⁵ Luisa Feline Freier, Isabel Berganza, Cécile Blouin, 'The Cartagena Refugee Definition and Venezuelan Displacement in Latin America' (2020) 60(1) *International Migration* 18.

⁷⁶ UNHCR, 'Guidelines on International Protection No. 12', HCR/GIP/16/12, 2 December 2016.

⁷⁷ Freier, Berganza, and Blouin (n 75).

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ UNHCR, 'Guidelines on Temporary Protection or Stay Arrangements' February 2014.

⁸¹ San Jose Declaration on Refugees and Displaced Persons 1994 con. 5.

⁸² UNHCR, 'Guidance Note on International Protection Considerations for Venezuelans – Update I', May 2019.

⁸³ UNHCR, 'UNHCR Regret at Deportations of Venezuelans from Trinidad and Tobago', press release, April 2018 <www.unhcr.org/uk/news/press/2018/4/5addb65d4/unhcr-regret-deportations-venezuelans-trinidad-tobago.html> accessed 25 September 2023.

⁸⁴ Diego Acosta, Cécile Blouin, and Luisa Feline Freier, 'La Emigración Venezolana: Respuestas Latinoamericanas' (March 2019) *Documentos de trabajo*, 3, 2^a.

cy through migratory channels including through MERCOSUR or UNASUR, refugee status under the 1951 Convention or the Cartagena Declaration, and rejection at the border, expulsion or deportation.⁸⁵

As far as the application of refugee law, there has been an overall low number of applications for asylum and an extremely low acceptance rate of asylum applications worldwide and regionally. Despite the inclusion of the Cartagena refugee definition in national refugee laws in many Latin American countries, there were very few cases in which States applied it. Guidance notes from UNHCR in 2018 and 2019 called for states to apply the Cartagena definition and apply refugee status in “group-based determinations” to Venezuelans.⁸⁶ To encourage harmonization, UNHCR also provided a list of minimum standards to ensure adequate treatment of the displaced. Other agencies and organizations also petitioned for the use of the Cartagena definition including OAS, IOM, and Amnesty International. It should be noted, however, that in the beginning of the crisis UNHCR called on states to apply “protection-oriented arrangements” to facilitate legal entry and stay rather than focusing on refugee status.⁸⁷ This may well have been a strategic move to avoid a political statement against Venezuela, given the large numbers of displaced Colombians in Venezuela at the time; or it was a realistic approach based on the assumption that LAC States would be unlikely to apply the Cartagena definition given the lack of its use in the past.

In terms of a regional response to the crisis, some Latin American States⁸⁸ joined in 2018 to establish the Quito Process, a collaboration aimed at coordinating appropriate responses to the influx of Venezuelans. The initial meeting produced the Declaration of Quito on Human Mobility of Venezuelan Citizens in the Region which pledged easy entry without passports and the provision of documentation for Venezuelan migrants. The Second Declaration of Quito produced a plan of action which focused on regularizing the stay of Venezuelans in the region, as well as, regional and international cooperation. Five more declarations followed which reaffirmed solidarity on issues such as the effect of the Covid-19 pandemic and family reunification. It is noteworthy that throughout the many declarations of the Quito Process, neither protection through the refugee framework nor the application of Cartagena definition was recommended. Despite the promises of the Quito Process and pleas for harmonisation from organisations and scholars, States continued to implement ad hoc, impromptu measures. Ochoa stated, a gap exists between rhetoric of cooperation in the Quito Process and reality, that undermines the region’s spirit of cooperation.⁸⁹

The aim of this studies is to determine whether LAC States of reception acted in the spirit of Cartagena. In order to better address this question the focus will be narrowed to only three countries of reception: Colombia, Brazil, and Peru; these three countries responded differently and thereby gives a snapshot of the overall regional response. Also, all three of these countries are signatories of 1951 Convention and its Protocol, have Cartagena inspired national refugee law, and were participating members of the Quito Process.

3.4 Colombia’s response to the Venezuelan situation

Since the beginning of the Venezuelan crisis Colombia has held the number one spot for the highest number of displaced Venezuelans due to several reasons: Colombia shares a land border with Venezuela; has maintained cultural, linguistic, and economic ties to it over the last few decades; and its open borders policy.⁹⁰ Another layer of the cultural ties between the countries is the fact that Venezuela was a major destination country for displaced Colombians prior to the economic collapse, therefore the influx into Colombia now includes returnees and mixed nationality families. Over the course of the Venezuelan exodus, Colombia has offered a variety of policy responses including tourist status, special stay permits, temporary protection permits, temporary work permits, temporary transit permits, circular migration permission, and

85 Van Praag (n 73).

86 UNHCR, ‘Guidance Note on International Protection Considerations for Venezuelans – Update I’ (n 82) para 7.

87 UNHCR, ‘Guidance Note on the outflow of Venezuelans’ March 2018.

88 Initially the Quito Process included Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru, and Uruguay.

89 Javier Ochoa ‘South America’s Response to the Venezuelan Exodus: A Spirit of Regional Cooperation?’ (2020) 32(3) *International Journal of Refugee Law* 472, 490.

90 George Wolfe, ‘Where are Venezuelan migrants and refugees going? An analysis of legal and social contexts in receiving countries’ (*Center for Migration Studies*, 2021) <<https://cmsny.org/publications/venezuelan-migrants-legal-contexts-wolfe-010421/>> accessed 15 September 2022.

limited refugee status.⁹¹ In 2019, in a measure intended to prevent statelessness, the Colombian government granted citizenship to Venezuelan children born in Colombia without requiring the satisfaction of the usual criteria that one of the parents be a resident.

As Venezuelans began to enter the country, initially nothing out of the ordinary was offered and the regular channel of migration remained unrestricted including visitor, migrant, or resident visas. However, these channels were not strong enough to handle the inflow. For example, the tourist visa left the displaced without permission to work and caused irregular status after only ninety days causing it quickly prove unhelpful. From 2017 to 2020, Colombia offered short-term temporary responses through eight programmes, seven of which were two-year Special Stay Permits (*Permiso Especial de Permanencia*, PEP) which afforded regularized stay, work authorization, and access to healthcare, education, and banking.⁹² Self-sufficiency through quickly enacted permission to work was an important element of the PEPs. These programmes were enacted, extended, expanded, and concluded based on executive discretion.⁹³ The eighth programme was the Border Mobility Card issued to facilitate circular migration. Five of the PEP programmes required a passport stamp proving legal entry, a clean criminal record, and a lack of a deportation order. The deadline to apply for PEP was repeatedly extended and the eligibility criteria was expanded, but many Venezuelans were still left unprotected due to the requirements. Obtaining a passport in Venezuela and a police record is prohibitively expensive and time consuming. Two of the seven PEP programmes were implemented to legalize the status of those without documentation. Those programmes were the Administrative Registry of Venezuelan Migrants programme, in 2018, which focused on a census of undocumented Venezuelans, and the Special Permit to Remain for the Promotion of Labour Formalization, in 2020, which focused on the formal labour market. The PEP did not offer any avenue toward permanent residency. Despite the PEP programmes geared toward undocumented Venezuelans, many were unable to maintain regular status due to logistical barriers or the temporary nature of the permits. Therefore, long-term solutions remained elusive for displaced Venezuelans in Colombia even after eight crisis-specific policy responses.

A longer-term solution was initiated in 2021 when the government launched a programme offering ten-year legal status, the Temporary Protection Status for Venezuelan Migrants (*Estatuto Temporal de Protección para Migrantes Venezolanos*, ETPV). The ETPV offers temporary protection which affords regularized status for ten years, access to the labour market, and social services such as health care and education, as well as, the possibility of permanent residency in the future.⁹⁴ The ETPV applies to Venezuelans who were beneficiaries of an entry or stay permit such as PEP; have a refugee application pending or a safe conduct document (*salvoconducto*); proof of entry prior to January 31, 2021; or Venezuelans who entered regularly within the two year period after the initiation of ETPV.⁹⁵ Therefore, ETPV is not open to all Venezuelans in Colombia and has many specific deadlines and time restrictions including date of entry into the country. Some Venezuelans could not prove their date of entry or did not have official identification with which to register. Additionally, misinformation or a failure to meet the requirements for visas due to lack of resources also prevented widespread regularization of status among Venezuelans even under ETPV.⁹⁶

Colombia chose to implement measures of protection for Venezuelans through immigration policies rather than asylum or refugee protection. From 2017-2022, Colombia received 46,480 asylum applications, of which 24,452 were resolved; only 1,362 applicants were recognised as refugees, 3% of the total.⁹⁷ This was

91 *ibid.*

92 Felipe González Morales, 'Center for Law, Justice, and Society (Dejusticia) contributions to the questionnaire on how to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants' (OHCHR, 15 February 2023) <www.ohchr.org/sites/default/files/documents/issues/migration/cfis/regularization/submissions-regularization-dejusticia.pdf> accessed 7 August 2023.

93 Deisy Del Real, 'Seemingly inclusive liminal legality: the fragility and illegality production of Colombia's legalization programmemes for Venezuelan migrants' (2022) 48(15) *Journal of ethnic and migration studies* 3580.

94 Natalia Banulescu-Bogdan and Diego Chaves-González, 'What comes next now that Colombia has taken a historic step on migration?' (*Migration Policy Institute*, 2021) <<https://www.migrationpolicy.org/news/colombia-historic-legalization-what-next>> accessed 10 August 2023.

95 GIFMM, Grupo Interagencial sobre Flujos Migratorios Mixtos Nacional, Guía Legal Sobre El Estatuto Temporal de Protección para Venezolanos (R4V, 2022) <https://www.r4v.info/sites/default/files/2022-07/0622_Gu%C3%ADaLegal_ETPV_PROTECCI%C3%93N_compressed%20%281%29.pdf> accessed 8 September 2023.

96 Del Real (n 93).

97 UNHCR, *Refugee Data Finder* (UNHCR, no date) <<https://www.unhcr.org/refugee-statistics/download/?url=XXid49>> accessed 16 September 2023.

despite its ratification of the 1951 Refugee Convention, the 1967 Protocol, being a signatory of the Cartagena Declaration, and having incorporated an adapted version of the Cartagena definition in its national legislation.

Instead, Colombia's response was comprised of ad hoc measures of temporary protection or stay arrangements (TPSAs) which, due to the country's lack of an immigration law, were based on highly discretionary executive orders. In addition to the failure of the policies to provide a legalized status to all the displaced, the measures are temporary. Del Real argues that the ETPV ten-year protection status equates to liminal legality, an in-between legal status, because it "does not provide a pathway to citizenship, is not a law, and has legal entry requirements and limited eligibility timeframes."⁹⁸ The lack of a direct avenue to citizenship and the discretionary nature of the ETPV questions the durability of the solution.

The Colombian government considered the application of the Cartagena's definition in November of 2019, but instead implemented a new round of PEP and then the ETPV.⁹⁹ By the time the ETPV was created and established, Brazil and Mexico had already applied refugee status to Venezuelans, indicating that precedent had been set. Instead of granting the socio-economic rights and protection against refoulement through refugee status, the policies of the Colombian government were alternative, complementary, temporary, ad hoc, discretionary, and constantly changing, albeit always present. It can be speculated that Colombia avoided a *prima facie* application of the Cartagena definition because it was trying to maintain a working relationship with the Venezuelan government. Or perhaps it was simply because its government department handling refugee cases was extremely small and inexperienced meaning that policies using migration pathways would be more efficient and effective.

3.5 Peru's response to the Venezuelan situation

Peru has the second-highest number of Venezuelans and the highest number of asylum applications in the region.¹⁰⁰ Initially, Peru welcomed Venezuelans; the government started with relatively lax entrance criteria and open borders, but as time wore on and the flow of Venezuelans did not abate, the country's policies became more restrictive.

At first, Venezuelans were able to enter the country with a national identification card and stay on a tourist visa. When the situation worsened in Venezuela and the numbers of those displaced was increasing, Peru enacted a one-year temporary stay permit in 2016 (*Permiso Temporal de Permanencia*, PPT). Criteria for the PPT required proof of legal entry and a clean criminal record.¹⁰¹ The PPT granted work permission and limited access to basic services such as education; it could be extended for one additional year and offered a pathway to receiving a foreigners ID (*carnet de extranjería*) which opened access to more services including healthcare and social services.¹⁰²

In 2018, more restrictive policies accompanied a regime change in Peru which scheduled an end to PPT and effectively began closing the borders to Venezuelans. The deadline to apply and submit documentation was altered and the right to appeal the decision was revoked.¹⁰³

In 2019, Peru established the Safe Migration Plan which allowed the government to deport Venezuelans with criminal records, including those who had falsely claimed to have no criminal record on PPT appli-

98 Del Real (n 93) 16.

99 Celine Blouin, Isabella Berganza and Luisa Feline Freier, 'The Spirit of Cartagena? Applying the extended refugee definition to Venezuelans in Latin America' (2020) 63 *Forced Migration Review: Cities and Towns* 64; Isabella Berganza, Celine Blouin, and Luisa Feline Freier, (2020) 'The Situational Element of Massive Violation of Human Rights in the Extended Refugee Definition of Cartagena,' (2020) 47(2) *Revista Chilena de Derecho* 385.

100 R4V (Response for Venezuelans) Interagency Coordination Platform for Refugees and Migrants from Venezuela (R4V, 11 June) <<https://www.r4v.info/en/refugeeandmigrants>> accessed 2 August 2023.

101 Wolfe (n 90).

102 Luisa Feline Freier and Marta Luzes, 'How Humanitarian Are Humanitarian Visas? An Analysis of Theory and Practice in Lilita Lyra Jubilit, Marcia Vera Espinoza and Gabriela Mezzanotti (eds), *Latin America and Refugee Protection: Regimes, Logics, and Challenges* (Berghahn Books Incorporated New York 2021).

103 Luisa Feline Freier and Nicolas Parent, 'The Regional Response to the Venezuelan Exodus' (2019) 118 (805) *Current history* (1941) 56.

cations, those who caused social disruption, disturbed domestic public order or were deemed a security threat; deportations also included Venezuelans who had an irregular status or had entered the country irregularly and imposed a fifteen year ban on deportees.¹⁰⁴ That same year, the Peruvian government started requiring humanitarian visas for Venezuelans to enter which could be applied for only in the Peruvian consulates outside the country.¹⁰⁵ The humanitarian visas may seem better since they bestowed a foreigner's identification card and access to a wider range of services than the PPT. However, they were much more difficult to obtain due to the requirement of a passport and proof of a clean criminal record; the fact that the visas were only able to be applied for at consulates in Ecuador, Colombia, and Venezuela, rather than at the Peruvian border; and proof of regularized transit through Ecuador.¹⁰⁶

The number of refugee claims spiked and the Peruvian government began requiring that asylum-seekers entering through Ecuador undergo a pre-screening and await an initial decision at a border centre rather than inside the country thereby stripping asylum-seekers of any assistance or protection during that time. In 2020, the government revamped the PPT into a temporary stay permit card (*Carnet de Permiso Temporal de Permanencia*) which focused on regularizing the status of undocumented Venezuelans already in country. There were many drawbacks to this permit: the allotted time to apply was very short, it only applied to Venezuelans in the Peruvian territory at that time, it was only good for one year without a pathway to residency, a passport was required to apply, and high fees were imposed on those overstaying their original permit. Additionally, political responses to Covid-19 further limited the accessibility of migrant rights during and after the pandemic.

Peru is a signatory of 1951 Convention and its Protocol and has incorporated the Cartagena refugee definition into domestic legislation; however, the government declined to apply refugee law as part of the solution to the arrival of displaced Venezuelans. Peru received the highest number of refugee applications in the region, but responded with strict procedures, low case resolution, and a very low percentage of accepted cases. Between 2017-2022, there were 536,320 refugee claims, 10,919 decisions, and only 4,603 recognized, which is less than 1% acceptance rate.¹⁰⁷ Similar to Colombia, although more restrictive, the regularization policies of Peru were ad hoc, complementary, temporary, limited, discretionary, and lacking in transparency. Unlike Colombia, Peru's restrictions severely limited the legal entry and stay for Venezuelans.

3.6 Brazil's response to the Venezuelan situation

Brazil, like Colombia, shares a land border with Venezuela, however, Brazil did not receive as high numbers of displaced Venezuelans due to social and geographical reasons. A popular point of entry is in the border state of Roraima, which is geographically and logistically isolated from the rest of Brazil; it is also the poorest state, which presented challenges for assistance and protection. However, the numbers were still high enough to require Brazil to declare a state of emergency in December of 2017 and allocate federal emergency assistance to Venezuelans in Roraima in 2018.¹⁰⁸ Additionally, early on in the crisis, Venezuelans were applying for refugee status upon entry into Brazil which caused the National Committee for Refugees (CONARE) to quickly become overwhelmed and backlogged.¹⁰⁹

Brazil's policy responses aimed at assistance and protection shares a similar trajectory as Colombia's. First, in 2017 the Brazilian government chose to respond to the increasing influx of Venezuelans by passing

104 Reliefweb, 'Nearly 1,000 Venezuelans who entered illegally deported from Peru so far this month' OCHA services (*Reliefweb*, 26 September 2019) <<https://reliefweb.int/report/peru/nearly-1000-venezuelans-who-entered-illegally-deported-peru-so-far-month>> accessed 13 September 2023; Reuters Staff, 'Peru departs first large group of Venezuelan migrants' (*Thomson Reuters Corporation*, 29 April 2019) <<https://www.reuters.com/article/us-venezuela-migration-peru/peru-deports-first-large-group-of-venezuelan-migrants-idUSKCN1S51ZU>> accessed 13 September 2023.

105 Martha Guerrero Ble, Izza Leghtas, Jimmy Graham, and Daphne Panayotatos, 'From Displacement to Development: How Colombia Can Transform Venezuelan Displacement into Shared Growth' (*Center for Global Development*, 2020) <<https://www.cgdev.org/publication/displacement-development-how-colombia-can-transform-venezuelan-displacement-shared>> accessed 7 September 2023.

106 *ibid.*

107 UNHCR, *Refugee Data Finder* (n 97).

108 UNHCR, 'Response stepped up in Brazil as Venezuelan arrivals grow', 6 April 2018; Gisela Zapata and Vicente Tapia Wenderoth, 'Progressive legislation but lukewarm policies: The Brazilian response to Venezuelan displacement' (2021) 60 (1) *International migration* 132.

109 Zapata and Wenderoth (n 108).

an immigration resolution which bestowed temporary residence permits to migrants from neighboring countries who traveled over land. This was a make-shift extension of the MERCOSUR Residency Agreement to Venezuelan nationals, a “backdoor” inclusion of Venezuelans into the agreement.¹¹⁰ If applicants could show proof of citizenship and a clean police record this measure provided them a two-year residence permit with a range of socio-economic rights and the possibility to request permanent status later. However, this measure prevented arrivals from applying for refugee status if they accepted the two-year permit. The permit policy focused more on quickly regularizing status rather than long-term solutions such as integration.¹¹¹ In 2018, the temporary permit was replaced by a different immigration based policy which granted Venezuelans a two-year authorization of legal stay through Inter-ministerial Ordinance No. 9. In other words, when the first one expired, the government issued another temporary residence permit although with less strict criteria. This one did not require payment for those able to show insufficient funds, did not require the applicant to have entered the country legally, and it still offered a pathway to request permanent residency. During the same time period, in 2018, Brazil launched *Operação Acolhida* (Operation Welcome), a federalized humanitarian response to the displacement crisis. This programme focuses on three areas: admission and regularization at the border; emergency assistance including shelter, food, and healthcare; and voluntary relocation to other states.¹¹²

Three years of buildup of refugee applications, various ad hoc regularization policies, and humanitarian responses passed before a longer-term solution was adopted by the Brazilian government. In 2019, CONARE declared that the Venezuelan situation amounted to serious and generalized human rights violations.¹¹³ Therefore, the Cartagena Declaration’s refugee definition was applied through the Brazilian 1997 Refugee Act. In December 2019, there were 21,432 approved asylum applications in one day, whereas up to that point only 263 applications had been granted.¹¹⁴ CONARE enacted PFRSD, an accelerated process, for Venezuelans who satisfied the following criteria: possession of a national ID, but not necessarily a passport; no criminal history in Brazil; official entry into Brazil; lack of migratory residency; and were eighteen years of age.¹¹⁵ Refugee status offered protection against refoulement and a more permanent sense of stability than the temporary permits, despite having similar socio-economic benefits.

In summary, Brazil maintained open borders with Venezuela, aside from pandemic related closures, and showed a progressively inclusive policy approach to displaced Venezuelans. The government’s decision to allow the *prima facie* application of the Cartagena definition to Venezuelans was commendable and a role model for the region.¹¹⁶ This is not to suggest that the simple policy decision solved everything. Some argue that Brazil’s “lukewarm policies” were motivated by geopolitics, lacked local implementation and transparency, and failed to reach more than a quarter of the Venezuelans in Brazil.¹¹⁷ Despite these drawbacks, Brazil’s policy response moved away from uncoordinated, ad hoc, and temporary measures in favor of a regionally agreed upon course of action. Additionally, Brazil’s humanitarian emergency assistance programme is very strong and pragmatic, aside from its militarization.

110 *ibid* 141.

111 *ibid*.

112 *ibid*.

113 Babar Baloch, ‘UNHCR welcomes Brazil’s decision to recognize thousand of Venezuelans as refugees’ (*UNHCR*, 6 December 2019) <<https://www.unhcr.org/us/news/briefing-notes/unhcr-welcomes-brazils-decision-recognize-thousands-venezuelans-refugees>> accessed 5 September 2022.

114 César Muñoz and Tamara Taraciuk Broner, ‘Brazil Grants Asylum to 21,000 Venezuelans in a Single Day’ (*Human Rights Watch*, 6 December 2019) <<https://www.hrw.org/news/2019/12/06/brazil-grants-asylum-21000-venezuelans-singleday>> accessed 10 September.

115 Asylum Capacity Support Group ‘Brazil: Simplified *prima facie* recognition of Venezuelan refugees’ (*Asylum Capacity Support Group*, 2023) <<https://acsg-portal.org/tools/55071/>> accessed 10 September 2023.

116 A widespread application of the Cartagena refugee definition to the Venezuelan situation was only shared by Mexico.

117 Zapata and Wenderoth (n 108).

4. Analysis of the Venezuelan Case Study in light of the Spirit of Cartagena

4.1 The elements of the spirit of Cartagena juxtaposed against the policies

The unprecedented size and magnitude of the Venezuelan humanitarian crisis and the massive displacement of Venezuelans into LAC marks this as a significant event with which to measure the strength and viability of the regional refugee regime established by the Cartagena Declaration and its process. Blouin, Berganza, and Freier called the Venezuelan situation a “crucial test of the application of the expanded refugee definition” and suggested that if countries in the region continued to avoid the application of the Cartagena definition, it would diminish the SOC¹¹⁸; Freier went even further by saying that the countries would “run the risk of reducing their heralded legislation to mere words and window dressing.”¹¹⁹ The SOC is more than the application of the refugee definition though, an analysis of the elements of SOC is necessary to see how the region’s policies held up against it, despite the frequent avoidance of granting refugee status. This chapter offers a comparison of the elements of the SOC against themes which emerged in the policies of the three countries, followed by a summary of whether, and in what ways, the highlighted Latin American countries acted in the SOC.

This analysis is premised on juxtaposing the proposed components of the SOC (in section 2.3.2) against themes of the policies. Those include refugee grammar; expanded protection scope; human rights approach; convergence of multiple protection frameworks; living and evolving regime; principled and pragmatic nature; durable solutions; and regional solidarity and responsibility-sharing.

There are various themes which shine through the regularization policies of Colombia, Brazil, and Peru. Some themes are seen in a stage of the policies of all three countries, whereas others only occurred in one of the countries. These themes are: border management, TPSAs, the impromptu nature of the alternative or complementary forms of protection, the use of humanitarian visas, liminal legality, changes to the formal asylum process, the application of the Cartagena Declaration’s refugee definition, and the use of PFRSD. Some of these themes align with the SOC, whereas others challenge the sincerity of it.

The first element of the SOC is the existence of a language of refugee protection in Latin America. This refugee grammar exists in the application of the global refugee regime and the establishment of a regional refugee regime. However, the respective state policies included multiple measures outside of the grammar of refugee: TPSAs, humanitarian visa, and the extension of migration policies. To better evaluate this element is broken down into three parts: entrance into host country and protection against refoulement, adjudication of refugee claims, and the application of the norms of the refugee regimes.

The question of entry into a possible host country draws on border regulation. For the most part, aside from pandemic closures, Colombia and Brazil maintained open borders with Venezuela and did not restrict entrance to Venezuelans. Peru initially had open borders, but later installed a policy of limited entry. Peru’s humanitarian visa requirement and pre-screening of asylum seekers were likely deliberate attempts to reduce the number of arriving Venezuelans and avoid the obligations of refugee law. Peru’s decision to close the borders aligned with a political regime change and a rise in xenophobia. This change was accompanied by deportations as well. Colombian and Brazilian borders were likely kept open due to geographically pragmatic reasons, as much as, humanitarian concerns. Overall, aside from the pandemic related policies and Peru’s restrictions, the borders in Latin America remained much more porous and legally open than in other places in the world. Colombia’s and Brazil’s open-door policy showed a respect for the right to seek asylum which precedes an asylum application, Peru’s did not. Refoulement is another issue which could have emerged from the unwillingness to apply refugee law. However, this did not surface as a problem

¹¹⁸ Celine Blouin, Isabella Berganza and Luisa Feline Freier, ‘The Spirit of Cartagena? Applying the extended refugee definition to Venezuelans in Latin America’ (2020) 63 *Forced Migration Review: Cities and Towns* 64; Isabella Berganza, Celine Blouin, and Luisa Feline Freier, (2020) ‘The Situational Element of Massive Violation of Human Rights in the Extended Refugee Definition of Cartagena,’ (2020) 47(2) *Revista Chilena de Derecho* 385, 65.

¹¹⁹ Luisa Feline Freier, ‘Why Latin America should recognize Venezuelans as refugees’ (*Refugees Deeply* 28 September 2018) <deeply.thenewhumanitarian.org/refugees/community/2018/09/28/why-latin-america-should-recognize-venezuelans-as-refugees> accessed: 13 September 2022.

aside from rejections at the border in Peru.

As per the resolution of asylum applications, a trend among displaced Venezuelans reflected a low rate of application for refugee status. This was likely due to lack of information, fear of stigma, or unwillingness to accept a limitation on freedom of circular movement to Venezuela.¹²⁰ Even though there was a low percentage of asylum applications among displaced Venezuelans, the numbers worldwide still tripled every year from 2014-2019.¹²¹ The numbers of applications dipped down in the pandemic years and rose again in 2022.¹²² The general response from receiving countries in LAC was silence, rejection, or very little recognition.¹²³ Remember, from 2017-2022, Peru resolved a mere 2% of refugee claims and granted refugee status to less than 1% of claimants; Colombia resolved 53%, but only recognized 3%.¹²⁴ Both of these countries relied on the 1951 Convention refugee definition instead of Cartagena's expanded version. On the other hand, Brazil applied the regional refugee framework and from 2018-2022, there were 161,892 applications, 84,972 resolutions, and 53,550 recognized, 52% resolution and 33% recognition.¹²⁵

As per adherence to the norms of the global refugee regime, Peru's implementation of the pre-screening of asylum-seekers to be conducted outside the country flew in the face of the norm which dictates that the asylum-seeker is normally within the territory or jurisdiction of the host country. Only a functional asylum system is able to uphold this first element of the SOC.

The second SOC element is the expanded protection scope of the Cartagena regime. As discussed in the previous chapter, the Cartagena Declaration is a non-binding agreement recommending an expanded refugee definition and a minimum standard of treatment for qualifying forced migrants. It is contended that the majority of fleeing Venezuelans do not qualify for refugee status under the 1951 Convention, however, due to the expanded definition, they do qualify as refugees in LAC. As mentioned, Colombia, Peru, and Brazil have adapted a version of the Cartagena definition into their national legislation on refugees. As seen in the statistics from the previous paragraph, however, refugee status was very rarely awarded, in this three country analysis only Brazil applied the Cartagena definition. Many scholars argue that the reason LAC countries avoided the application of the Cartagena refugee status was to prevent a pull factor that would encourage the arrival of more Venezuelans. Whatever the reason, the failure to apply refugee status was contrary to many LAC countries' national legislation and the viability of the regional language of refugee protection established by the Cartagena regime.

Another potential reason for the backlog and prolonged pending refugee claims could have been that the sheer numbers of applications overwhelmed the receiving countries' asylum systems, especially since these countries had tiny government departments for refugee matters. Fortunately, *prima facie* recognition was conceptualized to apply to situations of mass influx and allows for the dismissal of an individual assessment when "readily apparent, objective circumstances in the country of origin" exist which qualify the person as a refugee.¹²⁶ PFRSD is useful when "individual status determination is impractical, impossible or unnecessary in large-scale situations". PFRSD is an excellent method of unburdening asylum systems and constitutes a fair and efficient approach. PFRSD could have been used to accelerate the resolution of the thousands of Venezuelan refugee claims. However, States likely feared applying PFRSD to large numbers due to the potential strain on, already limited, public services. This is more worrisome in under-developed countries lacking the funds or infrastructure to support thousands of refugees, true in all three countries in the analysis, and especially true in the case of Peru because of the very high number of refugee claims.

A possible solution could have been the use of individual assessments with a *prima facie* approach in or-

120 Luisa Feline Freier and Nicolas Parent, 'The Regional Response to the Venezuelan Exodus' (2019) 118(805) *Current history* (1941) 56.

121 *ibid.*

122 UNHCR, *Refugee Data Finder* (UNHCR, no date) <<https://www.unhcr.org/refugee-statistics/download/?url=XKid49>> accessed 16 September 2023.

123 Freier and Parent (n 120).

124 UNHCR, *Refugee Data Finder* (n 122).

125 *ibid.*

126 UNHCR, 'Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status', HCR/GIP/15/11, 24 June 2015 para 1.

der to more slowly grant assistance and protection one-by-one.¹²⁷ UNHCR's Guidance Note on Venezuela recommended the use of PFRSD and the same year Brazil obliged.¹²⁸ Despite Brazil's initial use of ad hoc migration measures, in 2019 the government decreed that Venezuelans were victims of massive violations of human rights and therefore refugees. The Brazilian government decreed a *prima facie* application to some Venezuelan asylum-seekers and implemented an accelerated procedure to grant refugee status under the national refugee law inspired by the Cartagena Declaration's recommended refugee definition. This application was long due in the region and stood out as a role model response, despite the low numbers of affected Venezuelans compared to other countries. The appropriate application of the expanded definition certainly strengthened the SOC, however its lack of use almost everywhere else in the region put the regime in doubt.

The third SOC element is the role of human rights in the Cartagena regime's refugee protection. This includes respect for human rights and a minimum standard of treatment which allows refugees to live in dignity and security. As a whole, the three countries did not enact policies which directly violated human rights. Colombia's TPSAs upheld a minimum standard of treatment for those able to access the PEP and ETPV status, such as access to healthcare, education, and the labour market. Peru's PPT and humanitarian policy had similar benefits. Brazil, likewise, offered access to services and employment through its temporary protection scheme and granting of refugee status.

Nonetheless, one of the themes in the three countries' policies was the liminal legality of the Venezuelans' status. Menjivar's liminal legality describes an "in-between legal status" which affects the everyday life of migrants living in the USA under the Temporary Protection Status programme.¹²⁹ Del Real applied this concept to Venezuelans living in Colombia under the PEP and ETPV programmes where applicants were faced with limited eligibility based on limiting criteria and recipients were left without security because of the discretionary nature of the programmes.¹³⁰ This concept equally applies to the humanitarian visas used by Peru. The shifting deadlines and constantly changing criteria caused many to be left in an irregular status and therefore at risk of rights violations, such as refoulement and victimization of human rights abuses due to an inadequate level of protection and poor access to services. Although a minimum standard of treatment was afforded to those who qualified for those policies, it was a very insecure and precarious status which made it difficult to live in dignity. A standard of liminal legality made up of temporary solutions and discretionary policies challenges the SOC and its human rights approach to the protection of forced migrants. On the other hand, it was clear that the governments of the three countries made efforts to regularize the status of Venezuelans and provide assistance and rights that were within their means.

The Fourth SOC element is the convergence of multiple protection frameworks: the branches of rights-based international law aimed at the protection of forced migrants, a regional asylum framework, a regional human rights framework, and an international and a regional refugee regime. The overlapping protection of international human rights and humanitarian law did not factor in to play. The more important framework was the regional human rights framework, the strong framework of the IAHR system protects the rights of forced migrants who may not qualify for refugee status. However, refugee law should have primacy in situations where the displaced fit the Cartagena expanded definition. This statement has been reiterated by the Inter-American Court of Human Rights in advisory opinions.¹³¹ In 2018, the Inter-American Commission on Human Rights implored OAS Member States to apply the Cartagena definition to Venezuelan asylum-seekers.¹³² In 2019, a working group of the OAS unequivocally stated that Venezuelans fit the Cartagena definition and recommended that OAS Member States apply a *prima facie* approach.¹³³ The poli-

127 *ibid* para 40.

128 UNHCR, 'Guidance Note on International Protection Considerations for Venezuelans – Update I', May 2019.

129 Cecilia Menjivar, 'Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States' (2006) 111(4) *American Journal of Sociology* 999.

130 Deisy Del Real, 'Seemingly inclusive liminal legality: the fragility and illegality production of Colombia's legalization programmemes for Venezuelan migrants' (2022) 48(15) *Journal of ethnic and migration studies* 3580.

131 Javier Ochoa 'South America's Response to the Venezuelan Exodus: A Spirit of Regional Cooperation?' (2020) 32(3) *International Journal of Refugee Law* 472, 490.

132 Inter-American Commission of Human Rights, 'Forced Migration of Venezuelans' Resolution 2/18, 2018.

133 Organization of American States, 'Final Report of the OAS Working Group to Address the Venezuelan Migrant and Refugee Crisis in the Region' OEA/Ser.D/XV.21, June 2019.

cies, for the most part, did not heed the recommendations of the above organizations and instead applied complementary protection pathways.

Fifth, Cartagena as a living and evolving regime. Did the policies uphold the efforts of the region to develop a coordinated response to situations of displacement? Did the countries' policies utilize the established framework including the solidarity programmes in the MDPA and BDPA? To answer these questions the application of another theme of the policies is due, the next theme is the ad hoc, uncoordinated, and impromptu nature of the responses. The response is understandable given the inexperience of the LAC countries in receiving large amounts of displaced persons. However, those responses were unnecessary because LAC has a regional refugee regime already in place. There was a possibility of foreseeing the wave of displacement, considering the deteriorating conditions in Venezuela, which could have invalidated the need for quickly enacted 'emergency' responses. There were already established legal pathways such as the application of refugee law, programmes such as Cities of Solidarity, standardized practises agreed to in the Quito Process, or even the MERCOSUR Residence Agreement. Additionally, given the well-known situation in Venezuela, governments of receiving countries could have chosen to apply Cartagena-inspired national refugee law through group recognition, immediately. Instead, the policies were implemented by highly discretionary executive orders which were subject to change on political whim. The ad hoc quality of the policies was evidenced in the Peruvian government's decision to implement a humanitarian visa requirement for Venezuelans, despite already having a humanitarian residence category in its national legislation since 2017.¹³⁴

A strong characteristic of the SOC is the region's continued dedication to responding to new situations of displacement and developing harmonised regional responses, for example the plans of actions in the MD and the BD. In response to the Venezuelan crisis, these three receiving countries employed policies which failed to utilize the tools developed in the region in the almost forty years of the Cartagena process, as well as, the agreements of the Quito Process. Likewise, the emergency and temporary responses did not live up to the solidarity programmes.¹³⁵ The vitality of the regime is challenged and the sincerity of the participating States is undermined when LAC countries instead choose to implement completely made-up, uncoordinated policies. The unharmonised responses of LAC, as exemplified by the three countries in this analysis, cast doubt on the notions of regional solidarity and harmonization put forth in the colloquia of the Cartagena process. On the other hand, an aspect of the living regime is imbued by its flexibility, as discussed in the next paragraph.

The Sixth and vital aspect of the SOC is that, whilst being principled, it also allows for a pragmatic approach. The Cartagena process reveals a dedication to facilitating the protection of refugees while at the same time it shows a flexibility which keeps it relevant. Flexibility and pragmatism were evident in the legal stay arrangements witnessed in the three countries of the analysis; yet sometimes the policies lacked the principled dedication of the SOC. To exemplify this, another theme of the policies will be evaluated, the utilization of alternative or complementary forms of protection. Complementary pathways serve to provide legal status to forced migrants who should be protected against refoulement, but do not qualify for refugee status. As previously observed, Venezuelans are under the umbrella of the Cartagena refugee definition. However, the policies mainly relied on legal stay arrangements through immigration law and executive decrees.

The three receiving countries applied temporary stay permits at first, Brazil utilized a residence agreement within a regional trading group, and Peru implemented a humanitarian visa, all of which offered alternative or complementary protection. Humanitarian visas are in some contexts a "politically more feasible alternative to protection measures" in situations of forced displacement outside of the criteria of refugee law.¹³⁶ Correctly used, humanitarian visas would be a great example of the pragmatism of the SOC. How-

134 Luisa Feline Freier and Marta Luzes, 'How Humanitarian Are Humanitarian Visas? An Analysis of Theory and Practice in Lilia Lyra Jubilut, Marcia Vera Espinoza and Gabriela Mezzanotti (eds), *Latin America and Refugee Protection: Regimes, Logics, and Challenges* (Berghahn Books Incorporated New York 2021).

135 João Carlos Silva, Alexandra Castro Franco, and Cyntia Sampaio, 'How the Venezuelans Exodus Challenges a Regional Protection Response: "Creative" Solutions to an Unprecedented Phenomenon in Colombia and Brazil' in Lilia Lyra Jubilut, Marcia Vera Espinoza, and Gabriela Mezzanotti, (eds) *Latin America and Refugee Protection: Regimes, Logics, and Challenges* (Berghahn Books, Incorporated 2021).

136 Freier and Luzes (n 134).

ever, in the case of Peru's policy, the criteria was prohibitive, designed to prevent the entry of Venezuelans and control migration. Peru's policy exemplified "the restrictive application of the humanitarian visa".¹³⁷ On the other hand, Colombia's ETPV policy was inclusive and did not restrict migration, only regularization. It provided legal status and access to basic services to over one million Venezuelans without difficult bureaucratic procedures. The ETPV is an example of a flexible, ad hoc approach within the SOC. Although it has been argued that the legal status afforded, including resident status, is less protective than refugee status due to the limitations of the policy.¹³⁸ As noted, the policies were highly discretionary and often politically motivated, thereby offering solutions which were not principled nor durable, albeit pragmatic in their speed and breadth of application. Those policies were appropriate emergency responses, but insufficient as long-term solutions to this prolonged displacement crisis.

Seventh, durable solutions is a strong aspect of the Cartagena regime which emphasizes voluntary repatriation, local integration, self-sufficiency, and long-term solutions. Repatriation and return has not been much of a theme in the policies in this analysis. There were rounds of deportations from Peru in 2019 and some temporary returns to Venezuela during the Covid-19 pandemic, but the time for repatriation to Venezuela has not arisen. Local integration and self-sufficiency are strengthened by access to the labour market, education, and housing, coupled with an absence of discrimination and a feeling of permanence and choice.

Issues of local integration are reflected in another theme of the policies, the use of TPSAs. In the 1990s, UNHCR advocated for TPSAs in situations of mass influx which could overwhelm the asylum systems of the host countries and conceptualized them as a "return oriented protection mechanism".¹³⁹ UNHCR says that TPSAs should not be used to replace refugee protection or to be applied in prolonged situations.¹⁴⁰ Ochoa explains how these parameters shine a bad light on the use of TPSAs in the context of the Venezuelan situation considering that the Cartagena definition has been repeatedly shown to be applicable and the displacement has certainly become prolonged.¹⁴¹ TPSAs were seen in all three countries considered in this analysis and most evident in Colombia's ten-year visa. Temporary measures give fewer rights and lack a feeling of permanence compared to refugee status.¹⁴² TPSAs have an "unclear long term impact" which affects the viability of the response as a durable solution and disrupts integration. Colombia implemented the ETPV as an answer to this issue, but ten years is not likely a long enough response considering the gravity of the situation in Venezuela.¹⁴³ I agree with Gonzalez Balyk's statement that "while Colombia's new 10-year visa is certainly worthy of praise and is more in the spirit of the Cartagena Declaration, it is still a temporary policy."¹⁴⁴ Furthermore, the TPSAs were utilized at the cost of avoiding the application of refugee law and thus contributed to invalidating regional agreements and domestic legislation.

The TPSAs used in the three countries and the Peruvian humanitarian visas failed to offer durable, long-term solutions and created a precarious situation for Venezuelans, in comparison to less discretionary permanent residency pathways. On the other hand, Colombia's ETPV offers immediate access to the formal labour market, as did Colombia's PEP and Peru's PPT programmes, which facilitates a quick avenue to self-sufficiency. If the ETPV offered a more secure status, such as protection against policy changes, it would be more viable as an appropriate measure encouraging integration and self-sufficiency.

Eighth, a crucial aspect of the SOC is the notion of regional solidarity and responsibility-sharing. As discussed, as a whole the receiving countries avoided closing their borders and maintained a welcoming

¹³⁷ ibid 283.

¹³⁸ Liliana Lyra Jubilit and Rachel de Oliveira Lopes, 'Forced Migration and Latin America - Peculiarities of a Peculiar Region in Refugee Protection' (Archiv des Völkerrechts 2018); Del Real (n 130).

¹³⁹ Ochoa (n 131).

¹⁴⁰ UNHCR, 'Guidelines on Temporary Protection or Stay Arrangements', February 2014.

¹⁴¹ Ochoa (n 131).

¹⁴² A Selee and J Bolter, 'Colombia's Open Door Policy: An Innovative Approach to Displacement?' (2021) 60(1) *International Migration* 113 as cited in Lana Gonzalez Balyk, 'La solidaridad o la soledad? Cooperation and tensions in the regional state response to Venezuelan migration crisis' (2022) 16(3) *Studies in Social Justice* 612.

¹⁴³ Ochoa (n 131).

¹⁴⁴ Lana Gonzalez Balyk, 'La solidaridad o la soledad? Cooperation and tensions in the regional state response to Venezuelan migration crisis' (2022) 16(3) *Studies in Social Justice* 612, 623.

approach to Venezuelans, until Peru's closure in 2019 and pandemic closures. Also, the legal stay arrangements, despite their limitations and drawbacks, were efforts to regularize the legal status of Venezuelans. Despite the fact that Peru's humanitarian visa was restrictive, it did offer a pathway for legal entry and stay. Colombia regularized the stay of over one million Venezuelans through the ETPV policy and Brazil granted refugee status to 20,000 Venezuelans in one day when it first applied the Cartagena definition to the situation.

None of these countries responded by completely closing their borders or outright rejecting any responsibility for the thousands of arriving Venezuelans. These facts reflect the acknowledgment of host countries of the necessity of pragmatic approaches to the humanitarian crisis in Venezuela and the impact of displacement in the region. On the other hand, some aspects of the policies rejected responsibility-sharing, such as Peru's requirement that Venezuelans had to obtain the humanitarian visa before entering the country, which resulted in many Venezuelans being stranded in Ecuador and Colombia.

The Cartagena Declaration, and colloquia that followed, emphasized solidarity and international cooperation. The Quito Process was a regional effort to prioritize that cooperation in the face of the Venezuelan crisis. Unfortunately, there were many instances which cast doubt on the actualization of these proclamations, such as requiring Venezuelans to have a passport to apply for legal entry or stay. Also, considering the recurrent use of temporary solutions, Ochoa (2020) states that the favoring of TPSAs in LAC undermined regional solidarity and cooperation.

I agree that some of the temporary measures increased the likelihood of onward movement which affected other countries in the region and I agree that there were more wholistic responses which could have been used; however, looking at the bigger picture, the TPSAs and other complementary protection pathways did not necessarily invalidate notions of solidarity and cooperation. Whereas the restrictive policies of Peru based on politics and xenophobia which resulted in higher numbers of Venezuelans without protection is an example of practises rejecting solidarity.

4.2 Summary of comparison

On one hand, the policies of Colombia, Peru, and Brazil in response to the Venezuelan displacement crisis fell short of the SOC. The Quito Process failed to uphold the ideals of refugee protection in the region and the participating countries failed to follow through with the promises of the Quito Process. Additionally, previous plans of action pledging solidarity and cooperation were not adhered to, such as Borders of Solidarity and Cities of Solidarity. The issue of liminal legality affected the viability of the solutions as comprehensive and sustainable, as called for by the BDPA. Peru's border closure was severely restricting and not cooperative. Despite the limited application of the Cartagena refugee definition in the past, LAC could have implemented a harmonised response fully in the spirit of cooperation and responsibility-sharing of the SOC through the PFRSD application of the Cartagena Declaration.

On the other hand, in other ways the policies reflected the SOC. The complementary, alternative, and ad hoc policies were pragmatic, they offered human rights protections, a minimum standard of treatment, and integration through employment to large numbers of displaced Venezuelans in a mostly effective and immediate manner. In some instances, where refugee status was arguably better because of protection against refoulement or rights security, in practise there was not a difference. For example, in Brazil and Colombia, refoulement was not an issue. Likewise, all of the TPSAs and other complementary measures awarded work permission and access to basic services. For example, Colombia's PEP programmes emphasized immediate regularized status and self-sufficiency. Brazil's use of PFRSD to extend refugee status under the Cartagena definition was the role-model use of the region's grammar of refugee and its much celebrated expanded definition.

5. Conclusion

This study analysed Latin American protection policy responses to the Venezuelan displacement crisis, exploring the knowledge gap regarding the 'spirit of Cartagena'. It sought to consider four themes. First, the role and importance of regional refugee regimes was explained and further exemplified by the Latin American regime of the Cartagena Declaration. Second, the notion of the SOC was addressed and broken down into elements. Third, a case study was presented of a contemporary displacement crisis in Latin America; three Latin American countries' protection policies for Venezuelans were reviewed and themes were identified. Fourth, an analysis of whether the policies were within the SOC was conducted.

First, regional refugee regimes were shown to be an important aspect of refugee protection. Regional regimes fill the protection gap of the 1951 Convention's narrow refugee definition and apply global refugee law to contemporary or regional displacements. Regional regimes are strong because of the solidarity and willingness to cooperate which grows from a shared interest in peacekeeping and commerce due to geographical closeness and a sense of brotherhood stemming from shared culture. Regional regimes promote the harmonisation of response and facilitate the role of other region-level organizations. Regional refugee regimes promote assistance and protection for refugees in a crucial way. In Latin America and the Caribbean, the Cartagena regime plays an influential role in shaping state policy. Latin America has a celebrated tradition of asylum which was formulated into a grammar of refugee protection by the Cartagena Declaration. The Cartagena Declaration has many accomplishments including, but not limited to, the expanded refugee definition and the ten-year revision process. The Cartagena process revitalizes the regime every ten years by maintaining its relevance and influence. Recalling that the Cartagena Declaration is not a signed treaty, its power is expressed through use and acknowledgement in national laws and subsequent international agreements.

Second, the study demonstrated the prevalence of the notion of 'spirit of Cartagena' in academia and UNHCR publications since 2004. The importance of the SOC stems from the fact that the Cartagena Declaration is 'soft law'. As demonstrated, various LAC countries have internalized some of the suggestions of the Cartagena Declaration, however, with irregularities. The letter of the law is not as important here as the spirit of the law. This concept of the 'spirit of Cartagena' became a way to talk about the importance and influence of this soft law declaration and the subsequent colloquia, declarations, and plans of action. Some conceptualizations of the phrase were listed and synthesized to create the first working definition of the SOC. The study then taxonomized eight elements of the SOC, enabling a comparison of policies against the whole of the Cartagena process including the Cartagena Declaration, in spite of its 'soft law' nature.

Third, the study focused on a case study of the largest displacement crisis ever to occur in Latin America, the Venezuelan crisis which started in 2015 and continues to this day. Three countries of reception from the region were chosen because of their high numbers of Venezuelans and because of the range of protection policies utilized. The policies were summarized and a list of themes were identified and described. That was followed by an analysis which attempted to identify whether, and in what ways, the highlighted Latin American countries acted in the SOC. This analysis is meant to shine light on the relevance and vitality of the Latin American regional refugee regime through the lens of the Venezuelan situation. The idea was to reveal whether countries with a strong regional refugee regime develop policy based on the regional regime or only national interests and laws.

Lastly, the analysis' key conclusions. Pragmatism is a crucial characteristic of the SOC; functional and effective protection policies are very important in an underdeveloped region riddled with swaying politics and few resources. Speaking in broad strokes, in almost every category of the measurement standard, the policies upheld the SOC while, at the same time, undermined it. On the one hand, the countries did not outright reject solidarity by completely barring entry to Venezuelans or by conducting refoulement or indiscriminate deportations. Aside from the pandemic, Colombia and Brazil kept their borders open; Peru limited entry, but maintained legal entry pathways. The governments developed policies to regularize stay and provided access to the labour market, healthcare, and education. On the other hand, the policies were discretionary, constantly changing, and produced less than ideal solutions; they were based on immigra-

tion law or executive decrees which developed ad hoc and complementary protection measures. Those policies were enacted instead of applying previously agreed upon norms through the regional refugee regime and sometimes violated promises made in the Quito Process which was intended to harmonise the regional response. In the name of the SOC, Brazil made the largest effort in applying the Cartagena definition, however the impact was lessened by the low number of Venezuelans in Brazil; whereas Colombia and Peru had the highest numbers of Venezuelans meaning that Colombia's ETPV program had more impact.

A structured, harmonised, and region-wide policy response would have been ideal. The refugee regime is established to define the recipients and the standards of protection to be provided. The best response of Latin America countries to the Venezuelan displacement would have been a widespread and immediate *prima facie* application of refugee status using the Cartagena refugee definition. However, implementation of ideals is not always feasible. For example, Peru had an extremely high number of refugee claims, much more than the capacity of the government's refugee department, thereby making it very difficult for the government to respond within the formal asylum system. Whereas Colombia had a high number of its own displaced citizens in Venezuela and, in an attempt to keep them safe, the government may not have wanted to engage in the formal asylum system to avoid offending the Venezuelan politicians. It can be suggested that inexperience and lack of infrastructure and resources shaped much of the policies, while political will and hints of solidarity shaped the rest. The SOC is multi-faceted and complex just like the motivators of displacement and the responding protection policies. The region's response to the Venezuelan displacement put the Cartagena regime in danger of extinction through lack of use, however the spirit of Cartagena was still evident in the pragmatism of the approaches.

An analysis of how countries of reception act within a region, taking into consideration the limitations of resources and policy guidance, in light of the regional refugee regime, allows for a more accurate understanding of refugee policies in that area. Rather than using the global refugee regime as the standard, using the region's own guidelines to gauge the efficacy of its refugee policies will draw more balanced conclusions. By understanding the regional goals and limitations we are better able to analyze response policies. Utilising the spirit of Cartagena as a measurement in this study allowed the analysis to gauge the integrity of the refugee policies in Latin American and the Caribbean against the backdrop of its own creation, the regional refugee regime. With an eye on the fortieth anniversary of the Cartagena Declaration the hope is that the Cartagena regime continues to recall the suggestion of the 1981 Mexico Colloquium, to "adapt the valuable tradition of asylum in Latin America to the current problems in the region" including displacement and an increasing number of asylum seekers.¹⁴⁵