



Regional Cooperation and Refugee Protection in Latin America: A ‘South-South’ Approach

TRISTAN HARLEY*

ABSTRACT

Since the introduction of the 2004 Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America (MPA), Latin American countries have rapidly expanded their refugee protection mechanisms to assist those persons seeking asylum from persecution. These changes have occurred through the rapid growth of national laws establishing obligations on nation states to protect refugees in the region, as well as new commitments at the regional level to share responsibility for providing protection assistance. Under the MPA, Latin American nations have recognized that the regional nature of many refugee problems calls for ‘South-South’ cooperation in refugee protection. This cooperation is premised on the principle of ‘regional solidarity’, and the acceptance that countries in the South need to work together to share protection responsibilities towards refugees. This article addresses how Latin American governments have developed and implemented this ‘South-South’ approach to refugee protection in Latin America, and examines the merits of this regional approach for both Latin America and the international refugee law regime.

1. INTRODUCTION

Since the introduction of the 2004 Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America (MPA), Latin American countries have rapidly expanded their refugee protection mechanisms to assist those persons seeking asylum from persecution. These changes have occurred through the rapid growth of national laws establishing obligations on nation states to protect refugees in the region, as well as new commitments at the regional level to share responsibility for providing protection assistance. Under the MPA, Latin American nations have recognized that the regional nature of many refugee problems calls for ‘South-South’ cooperation in refugee protection.¹ This approach is premised on the principle of ‘regional

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¹ Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America (MPA) (16 Nov 2004) ch III.

solidarity', and the acceptance that countries in the South need to work together to share protection responsibilities towards refugees.

As a regional cooperation framework, the MPA establishes numerous non-binding commitments on nation states for sharing the protection needs of refugees. These commitments target the needs of refugees in a variety of circumstances: refugees in urban centres who have difficulty accessing health, education and employment services; 'invisible' refugees in border areas who have previously not been able to obtain any kind of protection assistance; and refugees seeking a durable solution in a third country because they are unable to return to their home country and unable to be locally integrated in the country of first asylum. Latin American countries have sought to tackle these problems through innovative solutions to refugee status determination, protection assistance, and regional resettlement networks. While many Western states have implemented refugee policies designed to discourage or deflect refugees from entering the developed North,² Latin American states have fostered a sense of regional solidarity and genuine responsibility sharing in the area of refugee protection within the developing South.³

This article addresses how Latin American governments have developed this 'South-South' approach to deal with particular refugee issues in Latin America, and examines the merits of this approach for both Latin America and the international refugee law regime. Following an initial overview of refugee protection and the right to asylum in Latin America (part 2), and the motivations that underpin regional cooperation (part 3), this article assesses the implementation of the MPA since its inception in 2004 (parts 4 and 5). Finally, the article concludes by considering more generally the potential of regional solidarity and 'South-South' cooperation in international refugee law, and how governments can work together to enhance the protection of refugees both in Latin America and abroad (parts 6 and 7).

2. REFUGEE PROTECTION AND THE RIGHT TO ASYLUM IN LATIN AMERICA

Refugee protection in Latin America is marked by an extensive legal framework that places binding obligations on states and grants rights to refugees in the region. At an international level, twenty-eight countries in the Americas region are parties to the 1951 Convention relating to the Status of Refugees (Refugee Convention)⁴ and twenty-nine countries have adopted the 1967 Protocol.⁵ Only Cuba, Barbados, Grenada, Guyana,

² See M Foster, 'Protection elsewhere: The legal implications of requiring refugees to seek protection in another state' (2007) 28 MJIL 223, 223; also MJ Gibney, 'Forced Migration, Engineered Regionalism and Justice between States' in S Kneebone and F Rawlings-Sanaei (eds), *New regionalism and asylum seekers: challenges ahead* (Berghahn Books 2007) 57, 57–58.

³ MPA ch III.

⁴ Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 Apr 1954).

⁵ Protocol relating to the Status of Refugees, opened for signature 31 Jan 1967, 606 UNTS 267 (entered into force 4 Oct 1967) (1967 Protocol). The American states that are parties to the 1951 Refugee Convention are: Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Uruguay. The United States of America and Venezuela are only parties to the 1967 Protocol. Saint Kitts and Nevis is only a party to the 1951 Convention (meaning that it has no legal obligation to recognize contemporary refugees). See United Nations Office of Legal Affairs, 'Status of Multilateral Treaties Deposited with the Secretary-General', <<http://treaties.un.org/>>; also JCM González, 'El derecho de asilo y la protección de refugiados en el continente americano' in UNHCR (ed), *La protección internacional de refugiados en las Américas* (UNHCR 2011) 51, 53.

and Saint Lucia have not signed on to the obligations contained in either of the two legal instruments. Nationally, most countries in Latin America have mechanisms in place for the recognition of refugees,⁶ and fourteen countries have included the wider refugee definition outlined in the 1984 Cartagena Declaration on Refugees (Cartagena Declaration) in their respective national laws.⁷ At a regional level, many countries have adopted Latin American declarations such as the Cartagena Declaration and the MPA.

In Latin America, refugee protection is historically framed around the granting of asylum rather than the prohibition of *refoulement*. Unlike other regions in the world, Latin American countries have been significantly more willing to provide individuals with a right to asylum at a national level, and many states provide for the right to asylum in their national constitutions.⁸ Although Latin American countries do not offer asylum unconditionally, there is a proud tradition, spanning many centuries, of countries in the region being generous in providing asylum to people fleeing political persecution. Furthermore, since the nineteenth century, Latin American nations have used regional agreements to grant asylum on a discretionary basis to persons facing political persecution. In 1889, Argentina, Bolivia, Paraguay, Peru, and Uruguay signed the Montevideo Treaty on International Penal Law, which established protections against forcible return for political asylum seekers and provided that ‘political refugees shall be accorded inviolable asylum.’⁹ Similarly, in 1954, the Caracas Convention on Territorial Asylum recognized the sovereign right of states to grant asylum to persons ‘persecuted for their beliefs, opinions, or political affiliations, or for acts which may be considered as political offenses.’¹⁰

In addition to these treaties, Latin America’s tradition of asylum has also been expanded by the evolution and incorporation of international refugee law in Latin America since the mid-twentieth century. The widespread adoption of the 1951 Refugee Convention and the 1967 Protocol in the region has required Latin American countries to recognize other types of asylum seekers within their borders, not only those persons fleeing political persecution.¹¹ As is widely known, article 1A(2) of the 1951 Refugee Convention recognizes refugee status for persons who have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion.¹² The term ‘well-founded fear of persecution’ in the

⁶ For more on the RSD mechanisms in Latin America, see F Piovesan and LL Jubilut, ‘Regional Developments: Americas’ in A Zimmermann (ed), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary* (OUP 2011) 205, 214.

⁷ Cartagena Declaration on Refugees (adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 Nov 1984) in ‘Annual Report of the Inter-American Commission on Human Rights’ (1984–85) OAS Doc OEA/Ser.L/V/II.66/doc.10, rev 1, 190–93. The 14 countries are Argentina, Belize, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay. Ecuador recently removed the broader refugee definition from its refugee legal framework (see part 6 of this article).

⁸ There are currently 15 countries in Latin America that provide for a right to asylum in their national constitutions. These are Bolivia, Brazil, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Venezuela. Each constitutional recognition of the right to asylum differs in content and form.

⁹ 1889 Montevideo Treaty on International Penal Law (adopted by the First South American Congress on Private International Law in Montivideo on 23 Jan 1889) OAS Doc OEA/Ser.X/1 34, arts 15, 16 and 23 in particular. See also AB Johnson, ‘Montevideo Treaty on International Penal Law: 1889–1989 - 100 years of treaty making on asylum issues’ (1989) 1 IJRL 554, 555.

¹⁰ 1954 Caracas Convention on Territorial Asylum, OAS Doc OEA/Ser.X/1 34 (entered into force 29 Dec 1954), art 2. On the same day, the 1954 Caracas Convention on Diplomatic Asylum, OAS Doc OEA/Ser.X/1 34 also entered into force.

¹¹ See E Arboleda, ‘Refugee Definition in Africa and Latin America: The Lessons of Pragmatism’ (1991) 3 IJRL 185, 200.

¹² Refugee Convention, art 1A(2).

Refugee Convention has a wider evidentiary threshold for the determination of refugee status than the regional political asylum treaties, which demand proof of actual or anticipated persecution.¹³

In the 1980s, Latin American countries sought to widen this definition even further to deal with gross human rights violations occurring within the region, particularly in Central America. In 1984, the Cartagena Declaration recommended that the definition of a refugee should be broadened in all of Latin America to include:

Persons who have fled their country because their lives, safety 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.¹⁴

In developing this definition, Latin American participants recognized the need to implement a regional approach that, as Arboleda indicated, conformed 'with the tenets of humanitarianism, as well as the dictates of pragmatism.'¹⁵ While the Cartagena Declaration did not define each of the terms incorporated in the wider definition, in practice these terms have generally been applied, as Piovesan and Jubilit note, in situations of civil war or conflict, dictatorships, or in cases in which the national government is unable to guarantee the life, security or liberty of its citizens.¹⁶ In its practical implementation, the Cartagena Declaration does not differentiate between the wider Cartagena definition and the 1951 Convention definition in terms of the level of protection owed to refugees following the positive determination of refugee status.¹⁷

The implementation of international refugee law in Latin America has led to the co-existence of two distinct systems of asylum in the region: the older political asylum system and the more recent refugee law system. While these two systems have often been confused (primarily because the various legal instruments use the same or similar terms interchangeably), there are some notable differences between them. In the political asylum system, refugees are granted asylum on a discretionary basis for political reasons only, and the government decision to grant asylum is considered a constitutive act (meaning that it is the decision itself that makes the person asking for asylum a refugee, not the particular circumstances that the person finds themselves in).¹⁸ In the more recent refugee law system, refugee status is determined in accordance with the 1951 Refugee Convention, and often the 1984 Cartagena Declaration, and the decision to recognize refugee status is declaratory.¹⁹ As the second system is much broader

¹³ See Arboleda, above n 11, 199.

¹⁴ Cartagena Declaration, Conclusion 3.

¹⁵ Arboleda, above n 11, 185.

¹⁶ Piovesan and Jubilit, above n 6, 219.

¹⁷ Arboleda, above n 11, 202.

¹⁸ Piovesan and Jubilit, above n 6, 213.

¹⁹ The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status outlines that: '[a] person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee'. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (UNHCR 1979, re-edited 1992) 28.

in scope and applies in the national laws of many Latin American countries, it is more commonly used in Latin American asylum claims. However, there are still some applications being made under the older political asylum system.²⁰

In the more recent refugee system in Latin America, article XXVII of the 1948 American Declaration of the Rights and Duties of Man (American Declaration)²¹ and article 22(7) of the 1969 American Convention on Human Rights (American Convention)²² establish the right to seek asylum. Both articles XXVII and 22(7) of the respective instruments provide that every person has the right to seek and receive asylum in a foreign territory in accordance with the legislation of the receiving state and international agreements. In article XXVII of the 1948 American Declaration, this right applies to persons being pursued in cases ‘not resulting from ordinary crimes.’²³ In article 22(7) of the 1969 American Convention, this right applies to those persons ‘being pursued for political offenses or related common crimes.’²⁴ On several occasions, the Inter-American Court of Human Rights has stated that the scope and content of these two provisions relate directly to the norms established by international agreements, and in particular the principle of *non-refoulement* in article 33 of the 1951 Refugee Convention.²⁵ Article 33(1) provides that:

[n]o Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.²⁶

Various regional instruments in Latin America have reinforced the importance of the principle of *non-refoulement* for the protection of refugee rights. Article 22(8) of the American Convention on Human Rights stipulates that in no case may an alien

²⁰ On 18 Aug 2012, Ecuador granted political asylum to Wikileaks founder Julian Assange under the older system at the Ecuadorian Embassy in London, England. See *Comunicado del Ministerio de Relaciones Exteriores Comercio e Integración, Declaración del Gobierno de la República del Ecuador sobre la solicitud de asilo de Julian Assange* (Quito), 18 Aug 2012 <<http://cancilleria.gobec/declaracion-del-gobierno-de-la-republica-del-ecuador-sobre-la-solicitud-de-asilo-de-julian-assange/>>. See also B Saul and J McAdam, ‘Assange’s asylum bid is baseless and Ecuador’s motives are suspect’ *The Australian* (Sydney, 21 June 2012), <<http://www.theaustralian.com.au/national-affairs/opinion/assanges-asylum-bid-is-baseless-and-ecuadors-motives-are-suspect/story-e6frgd0x-1226403503760>>.

²¹ American Declaration of the Rights and Duties of Man (approved by the Ninth International Conference of American States), 2 May 1948, OAS Res XXX.

²² 1969 American Convention on Human Rights (entered into force 18 July 1978), OAS Doc OEA/Ser.K/XVI/1.1.doc.65, Rev 1, Corr 1 of 7 Jan 1970.

²³ American Declaration, art XXVII.

²⁴ American Convention, art 22(7).

²⁵ This means that the scope of the right to asylum at a regional level in Latin America is directly linked to the international framework of refugee protection and the developments in international refugee law. However, while these provisions establish the right to seek and receive asylum, there has not yet been a juridical decision which considers directly whether this right is more generous than art 14 Universal Declaration of Human Rights, which provides for the right to seek and enjoy asylum. For more, see González, above n 5, 64; also Universal Declaration on Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN doc A/810 (10 Dec 1948), art 14. For more on the importance of art 33 in the Latin American context, see *Haitian Center for Human Rights v United States of America* (Inter-American Court of Human Rights, Case 10.675, Report No 51/96, 13 Mar 1997) 155–63.

²⁶ The only exception to the duty of *non-refoulement* is art 33(2) of the Refugee Convention. This provision allows states not to honour art 33(1) if there are reasonable grounds to believe that the refugee poses a danger to the security of the receiving state. For more on the scope of art 33(2), see JC Hathaway, *The Rights of Refugees under International Law* (CUP 2005) 342–55.

be returned to a country where his right to life or personal freedom may be violated because of his race, nationality, religion, social status, or political opinions.²⁷ Similarly, the 1984 Cartagena Declaration reiterates the importance of the principle of *non-refoulement* as ‘a corner-stone of the international protection of refugees.’²⁸ It states that the principle of *non-refoulement* has *jus cogens* status and specifically prohibits rejection at the frontier.²⁹ More recently, in the 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (Brasilia Declaration), eighteen countries restated their ‘unrestricted respect for the principle of *non-refoulement*, including non-rejection at the border and indirect *non-refoulement*’.³⁰

3. REGIONAL COOPERATION AND REFUGEE PROTECTION

Since the emergence of international refugee law in the twentieth century, international legal instruments have repeatedly referred to the need for international cooperation in the protection of refugees. In the Preamble to the 1951 Refugee Convention, the High Contracting Parties specifically recognized that:

The grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.³¹

Similarly, the United Nations, in many of its General Assembly resolutions and UNHCR Executive Committee Conclusions, has repeatedly stressed the importance of international cooperation as a fundamental principle in the international refugee regime.³² For example, in Executive Committee Conclusion No 100, UNHCR reaffirmed ‘the importance of international burden and responsibility sharing in reducing the burdens of host countries, particularly developing countries.’³³ Similarly, in an expert meeting on international cooperation in Amman, Jordan, on 27–28 June 2011, participants expressly recognized the need for international cooperation amongst origin, host, and destination countries to deal with refugee challenges.³⁴

Despite the obvious importance of international cooperation for the protection of refugees, neither parties to the 1951 Refugee Convention and/or 1967 Protocol, nor UNHCR, have been able to agree upon a guiding framework outlining how states should cooperate with one another. Although there have been a few examples of

²⁷ American Convention, art 22(8).

²⁸ Cartagena Declaration, ch III, para 5.

²⁹ *ibid.* For more on *jus cogens* status of *non-refoulement*, see J Allain, ‘The *jus cogens* Nature of *non-refoulement*’ (2001) 13 IJRL 533; also Hathaway, above n 26, 28–31.

³⁰ Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (adopted by the countries present at the ‘International Meeting on Refugee Protection, Statelessness and Mixed Migration Movements in the Americas’, 11 Nov 2010).

³¹ Refugee Convention, Preamble.

³² See A Klug and C Inder, ‘Introductory Note to the Amman Summary Conclusions on International Cooperation to Share Burdens and Responsibilities’ (2012) 24 IJRL 468, 468.

³³ UNHCR Executive Committee, Conclusion No 100 (LV), ‘International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations’ (2004).

³⁴ ‘Expert Meeting on International Cooperation to Share Burdens and Responsibilities’ (2012) 24 IJRL 471.

substantial cooperation at the regional level³⁵ - most notably after the Second World War,³⁶ after the War in Vietnam,³⁷ and during the civil conflicts in Central America during the 1980s and 1990s -³⁸ these regional frameworks were primarily *ad-hoc* arrangements that responded to specific protection needs and circumstances. However, the post-Second World War resettlement plan, the Comprehensive Plan of Action for Indo-Chinese Refugees, and the CIREFCA Declaration were not designed to establish a long-term, coherent framework for international cooperation and refugee protection.

In the absence of an international regime for state cooperation, refugee commentators have stressed that the unequal distribution of refugee protection responsibilities threatens to undermine the entire international refugee law framework.³⁹ According to UNHCR's 2011 Global Trends data, at least three-quarters of refugees in the major refugee-generating regions remain within their region of origin.⁴⁰ Significantly, developing countries continue to host four-fifths of the world's 10.5 million refugees,⁴¹ and the forty-eight least developed countries in the world are currently responsible for providing asylum to almost one quarter of these refugees.⁴² These statistics highlight that countries that border refugee-generating countries are habitually overburdened with influxes of refugees because most refugees cannot seek asylum further afield. Furthermore, many of the protection responsibilities owed to refugees unfairly fall on countries that are less able or unable to support refugees.

As a way of addressing this imbalance in international refugee protection, the UNHCR Executive Committee has, on several occasions, encouraged regional bodies or groupings to work together to share responsibility for providing greater protection to refugees in their respective regions. In Executive Committee Conclusion No 22, UNHCR recommended that 'action should be taken bilaterally or multilaterally at the regional or at the universal levels' and '[p]rimary consideration should be given to the possibility of finding suitable solutions within the regional context.'⁴³ Similarly, in Executive Committee Conclusion No 81, UNHCR encouraged 'States and UNHCR

³⁵ These examples of cooperation did include some involvement of international actors, particularly in the strategic use of resettlement to third countries, but cooperation principally occurred at the regional level.

³⁶ For more on the resettlement of refugees after the Second World War, see A Suhrke, 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action' (1998) 11 JRS 396, 403–05.

³⁷ In 1979, the UN Secretary General negotiated an informal agreement amongst various international participants to deal with the mass-influx of refugees fleeing from Vietnam, Cambodia and Laos. This deal involved (in lay terms) countries of first asylum granting asylum to refugees in the short term in return for third countries, such as the United States and Australia, resettling refugees in the long term. Ten years later, in 1989, participating countries signed a more formal agreement for the protection of refugees in the region. For more see R Towle, 'Processes and Critiques of the Indo-Chinese Comprehensive Plan of Action: An Instrument of International Burden-Sharing?' (2006) 18 IJRL 537; also S Kneebone and F Rawlings-Sanaei, *New Regionalism And Asylum Seekers: Challenges Ahead* (Berghahn Books, 2007) 11–18.

³⁸ See Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons, International Conference on Central American Refugees (CIREFCA), 31 May 1989, Doc CIREFCA/89/13/Rev.1. For more on the development of CIREFCA, see A Betts, 'Comprehensive Plans of Action: Insights from CIREFCA and the Indochinese CPA' (2006) 120 New Issues in Refugee Research.

³⁹ See JC Hathaway and RA Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997) 10 Harvard Human Rights Journal 115; also T Kritzman-Amir, 'Not in my Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2008–2009) 34 Brooklyn Journal Of International Law 355.

⁴⁰ UNHCR, *Global Trends 2011: A Year of Crises* (UNHCR 2012) 11.

⁴¹ *ibid* 2.

⁴² *ibid* 11.

⁴³ UNHCR Executive Committee, Conclusion No 22 (XXXII), 'Protection of Asylum-Seekers in Large-Scale Influx' (1981).

to continue to promote, where relevant, regional initiatives for refugee protection'.⁴⁴ In encouraging these regional initiatives, UNHCR did not explain its particular motivations for regional approaches to refugee protection, nor did it deliberate on the potential pitfalls of promoting regionalism over universalism in the international refugee protection framework.

UNHCR's tacit acceptance of regionalism as a tool for refugee protection reflects an optimism about regional protection that is based primarily upon positive experience. Unlike other areas of international law, where regionalism has often been seen as fragmenting the overarching universal approach, regional initiatives within international refugee law have primarily strengthened the international refugee protection regime. The two main regional instruments that have been developed since the 1951 Refugee Convention – namely the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention)⁴⁵ and the 1984 Cartagena Declaration in Latin America – have fundamentally built upon the rights guaranteed in the 1951 Refugee Convention and expanded the categories of persons who warrant protection. Both these regional instruments specifically call for states who have not already done so to become party to the 1951 Refugee Convention as modified by the 1967 Protocol as part of their regional approach.

However, while these regional instruments demonstrate the potential for regional initiatives to strengthen the international refugee protection regime, these examples do not allow for an unqualified acceptance of regionalism as a tool for refugee protection. As Mathew indicates, 'regionalism is not necessarily a positive development for refugees'.⁴⁶ Regionalism can create disparities in treatment between different regions in the world, and it can undermine the pursuit of universality in refugee rights protection. Furthermore, since the 1990s Western states have 'engineered' regionalism, as Gibney argues, by cooperating with each other to ensure that most refugees and asylum seekers remain within their region of origin and outside the Global North.⁴⁷ Gibney shows that regionalism has not just been used as a tool to share responsibility for providing protection to refugees, but also to deflect responsibility away from Western states. These policies have prevented the 'globalization of asylum', and have ensured that the costs of providing asylum to refugees still fall primarily on the world's poorest states.⁴⁸

If regionalism cannot be simply accepted as a positive development in international refugee law, what, then, are the primary motivations for promoting regional cooperation in refugee protection? Perhaps the most compelling argument in favour of regional cooperation is the belief that regions working together are more able to effectively and efficiently manage the protection needs of refugees. In an era of increasingly complex migration flows, regional approaches are often more suitable than global or national approaches because refugee movements are frequently regional in location and impact. In circumstances that attract regional participation, regional bodies are better placed to respond because they have regional-specific knowledge and are more capable of

⁴⁴ UNHCR Executive Committee, Conclusion No 81 (XLVIII), 'General Conclusion on International Protection' (1997).

⁴⁵ Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, opened for signature 10 Sept 1969, 1001 UNTS 45 (entered into force 20 June 1974).

⁴⁶ P Mathew, 'Courting Disaster: Regionalism and refugees through the eyes of the judiciary' (unpublished).

⁴⁷ Gibney, above n 2, 58, 63.

⁴⁸ *ibid* 58.

coordinating and tailoring protection programmes to the particular needs of refugees.⁴⁹ For refugees, this regional cooperation can result in greater certainty in finding sanctuary, and greater opportunity for the enjoyment of basic social and economic rights, such as the right to work or the right to an adequate standard of living.

A second motivation for regional cooperation in refugee protection is the greater possibility of uniform agreement between nation states in the region. In an international political environment where refugee rights seem unlikely to be universally accepted, yet alone universally implemented, regional agreement is often seen as a more realistic and achievable goal. As Claude indicated in his work on international organization, regional approaches to international problems are often more suitable because they confine state commitments to manageable sizes within segments of the globe that share common loyalties and/or cultural practices.⁵⁰ While 'rational regional divisions are often difficult to establish' and 'boundaries determined for one purpose are not necessarily appropriate for other purposes',⁵¹ these regional approaches are often preferred over global approaches because universal approaches can be hindered or rendered ineffective by too many competing cultural, economic and political interests.⁵²

With uniform agreement at the regional level, nations can harmonize their laws and create disincentives for refugees to make irregular secondary movements. Standardized procedures for refugee protection throughout a region dismantle many of the push and pull factors that influence refugees to move onwards in search of protection. This depletion in onward movement in turn decreases the demand for people smugglers and human traffickers. As UNHCR stated in its Discussion Paper as part of the Asia Pacific's 'Bali Process' in 2010, more uniform and consistent asylum procedures reduce 'forum shopping' and correspondingly decrease regional smuggling and trafficking of refugees.⁵³ For refugees, this motivation in regional cooperation can be beneficial if it results in greater protection throughout the region. However, it may also be problematic in situations where there is uniform absence of protection and where states only consider refugee rights when they are compatible with national security and border control policies.⁵⁴

Finally, a third motivation for regional cooperation in refugee protection is the pursuit of regional stability. Since the immediate effects of refugee issues are most severely felt in the immediate region, nation states can be motivated to develop regional initiatives that alleviate some of the tensions caused by the unequal distribution of refugees. In 1969, the OAU Convention specifically mentioned that refugee problems are a source of friction among many states and it is desirable at the regional level to eliminate the source of such discord.⁵⁵ The Organization of African Unity consequently sought to find solutions to the problems of refugees specifically within the African context.⁵⁶

⁴⁹ See UN Regional Commissions, *The Regional Dimension of Development and the UN System* (UN Regional Commissions, Nov 2011) 5–6.

⁵⁰ Inis L Claude, *Swords Into Plowshares: The Problems and Progress of International Organization* (Random House 1964) 102.

⁵¹ *ibid.*

⁵² See also C Schreuer, 'Regionalism v. Universalism' (1995) 6 EJIL 477.

⁵³ UNHCR, 'Regional Cooperative Approach to address Refugees, Asylum-Seekers and Irregular Movement' (UNHCR Discussion Paper, Nov 2010) 5.

⁵⁴ This is particularly a concern in the Asia Pacific region, where few states are parties to the Refugee Convention and the needs of refugees are frequently not met.

⁵⁵ 1969 OAU Convention, Preamble, 3.

⁵⁶ *ibid.*, Preamble, 8.

Similarly, the desire to minimize inter-state conflict caused by the unequal distribution of refugees can also be aligned with the fear of states being individually over-burdened by refugee influxes. As Suhrke has indicated, this motivation has ‘all the attractions of a good insurance scheme ... Since most states at one time and at one level or other must deal with refugees, they have an overriding interest in developing common responses.’⁵⁷

In circumstances that call for regional action, regional bodies can implement various initiatives to meet the protection needs of refugees. Regions can collaborate in initiatives such as research and training development, institution and programme sharing, linked jurisprudence, and combined efforts to tackle root causes of flight. Additionally, participating nations can allocate distinct protection roles according to differing levels of expertise and capacity. Nations can assign tasks such as processing refugee claims, hosting refugees temporarily, resettling refugees permanently, and providing financial support. For nation states, regional cooperation in this sense allows for more appropriate and efficient solutions to refugee influxes, reduced financial expenditure (through the elimination of duplicative processes where appropriate) and better diplomatic relationships between participants. For refugees, this cooperation can result in enhanced protection and the greater likelihood of receiving assistance closer to home.

As a consequence of these motivations, nation states have increasingly sought to use regional mechanisms to meet the protection needs of refugees. Regional initiatives have been implemented in already existing regional bodies, such as the European Union and the Organization of American States (OAS), as well as new regional bodies, such as the Asia Pacific Bali Process. While each region has approached regional cooperation in different ways, all regions have had to consider how states should cooperate with one another at the regional level, and what kinds of regional commitments would best serve the interests of refugees and states alike. In the following sections, this article explores the regional initiatives that Latin American states have developed through the Mexico Declaration and Plan of Action, and how these initiatives have been progressively implemented in the region since 2004.

4. REGIONAL COOPERATION IN LATIN AMERICA: THE MEXICO DECLARATION AND PLAN OF ACTION

In November 2004, the MPA established a new guiding framework for refugee protection in Latin America. This regional framework sought to identify the main challenges that the Latin American region faced with regard to the protection of refugees, and aimed to develop practical courses of action to address these challenges ‘within the pragmatic and principled spirit of the Cartagena Declaration.’⁵⁸ Following a meeting in Mexico City on 16 November 2004, to commemorate the twentieth anniversary of the 1984 Cartagena Declaration, twenty Latin American governments adopted the MPA. These governments recognized the need to move beyond the empty political rhetoric calling for greater state participation in refugee issues and to establish concrete plans of action for providing durable solutions to refugees in the region.

As a means of developing regional cooperation and refugee protection in Latin America, the MPA framework promoted the principles of regional solidarity and

⁵⁷ Suhrke, above n 36, 398.

⁵⁸ MPA, Preamble.

responsibility-sharing in refugee protection issues. Rather than seeing the obligation of providing protection to refugees as a burden, the participating governments emphasized their humanitarian duty to work positively together and to share the responsibility for protecting refugees. The participating governments recognized that the implementation of this duty was particularly urgent given the humanitarian crisis taking place in Colombia and the growing numbers of forcibly displaced peoples in the Andean region.⁵⁹

At the time, countries of first asylum, such as Ecuador, had already indicated that they could not take on all the enormous costs (both social and economic) involved in providing protection to refugees inside their borders.⁶⁰ They explicitly stated that they needed the support and cooperation of the wider Latin American and international community in order to adequately support the mass influx of refugees arriving from Colombia.⁶¹

To address the practical needs of refugees at the time, the MPA established three courses of action for enhancing refugee protection in the region. The first course of action, the 'Cities of Solidarity Programme for Self-Sufficiency and Local Integration', sought to address the problems faced by the growing number of refugees living in large urban centres in Latin America.⁶² This programme, which pre-empted UNHCR's 2009 policy on refugee protection in urban areas, innovatively recognized cities as legitimate protection places for refugees.⁶³ The programme aimed to promote self-reliance and local integration of refugees in urban areas through access to education, health services, employment, and microfinance opportunities.⁶⁴ Furthermore, the programme sought to enhance cooperation between governments, UNHCR, and civil society organizations, and also to attract financial assistance from the wider international community.⁶⁵

The second course of action established under the MPA, the 'Integrated Borders of Solidarity Programme', aimed to develop the presence of state institutions, UNHCR, and civil society projects in the border regions of the countries neighbouring Colombia. One of the principal concerns that participating countries expressed in the development of this programme was the lack of information regarding the true scale of the refugee problem in the Andean region and the particular characteristics of the Colombian humanitarian crisis. Many Colombian asylum seekers in the region had not officially sought international protection in neighbouring countries at the time for reasons including fear of persecution, lack of information, economic limitations (such as transport costs), or not wanting to seek asylum (possibly for fears of discrimination).⁶⁶

Consequently, the Borders of Solidarity programme sought to obtain reliable data on the number of undocumented Colombians residing in border regions who needed

⁵⁹ *ibid*, ch I.

⁶⁰ See MPA, ch III(2); also *Ministerio de Relaciones Exteriores Comercio e Integración, Política del Ecuador en materia de refugio (Gobierno Nacional de La República del Ecuador, 2008)* 7, 44.

⁶¹ See *ibid* 7, 44.

⁶² According to UNHCR, two-thirds of all asylum seekers and refugees in Latin America reside in cities. See UNHCR, *The State of the World's Refugees: In Search of Solidarity* (OUP 2012) 193.

⁶³ See UNHCR, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas* (UNHCR Sept 2009).

⁶⁴ See UNHCR, above n 62, 160.

⁶⁵ MPA, ch III(1).

⁶⁶ See *Ministerio de Relaciones Exteriores Comercio e Integración*, above n 60, 20–21.

international protection, and looked to provide solutions to these ‘invisible’, ‘vulnerable and marginalized’ people.⁶⁷ At a practical level, the Borders of Solidarity programme sought to establish and reinforce refugee status determination mechanisms in the border areas, as well as to implement health, sanitation and education services. The MPA recognized that lack of refugee status documentation could result in potential violations of *non-refoulement*, as well as marginalization and exploitation of refugees in the workforce.⁶⁸ The programme also sought to implement infrastructure improvements and other income-generating activities that would benefit both refugees and the local host communities.⁶⁹

The third and final programme developed under the MPA was the ‘Regional Solidarity Resettlement Programme’. This programme was heralded as the most innovative in its approach to finding durable solutions for refugees, and has consequently received the most amount of public commentary.⁷⁰ This programme emerged from a preparatory meeting held in Brasilia on 26–27 August 2004, where the Brazilian Government put forward the idea to create a regional resettlement programme for refugees in Latin America.⁷¹ The programme invited countries to resettle refugees ‘at an opportune time’ in an attempt to alleviate some of the pressures placed on host countries receiving large influxes of refugees.⁷² The programme did not place any further legal obligations on states. It simply encouraged a positive humanitarian approach to the reception of asylum seekers, and appealed to participating countries’ desire to promote their humanitarian ideals through positive action.

In addition to these three programmes of action, the MPA also encouraged other practical ways for governments and other regional entities to further protect refugees. The MPA recommended that countries in the region harmonize their national laws in accordance with international legal principles. Additionally, the MPA requested the media to promote ‘the values of solidarity, respect, tolerance and multiculturalism’ in their publications.⁷³ Furthermore, the MPA sought to advance legal research and doctrinal development, as well as training for refugee workers and capacity-building for undeveloped programmes. In proposing these programmes, Latin American governments recognized that the MPA needed to be both aspirational and practical in its approach.⁷⁴ Furthermore, there was an overarching belief amongst Latin American states that refugee rights should develop incrementally in the region, rather than through rapid change.⁷⁵

⁶⁷ MPA, ch III(2). For more on the invisibility of Colombian refugees in the Andean region, see M Gottwald, ‘Protecting Colombian Refugees in the Andean Region: The Fight against Invisibility’ (2004) 16 IJRL 517.

⁶⁸ For more on the right to work, see P Mathew, *Reworking the Relationship Between Asylum and Employment* (Routledge, 2012).

⁶⁹ See UNHCR, above n 62, 193.

⁷⁰ See, eg, LL Jubilit and WP Carneiro, ‘Resettlement in Solidarity: A New Regional Approach Towards a More Humane Durable Solution’ (2011) 30 RSQ 63; also A Guglielmelli White, ‘A pillar of protection: solidarity resettlement for refugees in Latin America’ (June 2012) 239 *New Issues in Refugee Research* 1.

⁷¹ MPA, ch III(3).

⁷² *ibid.*

⁷³ MPA, Declaration.

⁷⁴ Latin American governments divided the MPA into two parts: the Declaration and the Plan of Action. This division separates the aspirational elements of the MPA from the practical plan of action.

⁷⁵ See generally, MPA ch II.

After the announcement of the MPA, the OAS adopted a resolution, in 2006, that welcomed the MPA and urged both member states and the international community to collaborate in the development of the three programmes.⁷⁶ UNHCR similarly expressed their approval of the MPA. In a meeting in Geneva, on 4 October 2005, UN High Commissioner António Guterres stated that the MPA was ‘the most sophisticated operational instrument to protect and assist refugees in the world.’⁷⁷ Furthermore, Guterres proclaimed that ‘[t]he spirit of solidarity between neighbours is the best guarantee for refugees.’⁷⁸

On 11 November 2010, eighteen governments reinvigorated their support for the MPA by signing the Brasilia Declaration.⁷⁹ This declaration resolved, inter alia, that the MPA should remain as the guiding regional framework for dealing with refugee protection in Latin America, and that the programmes aimed at enhancing refugee protection in the region should be revitalized and expanded.

5. THE IMPLEMENTATION OF THE MEXICO PLAN OF ACTION

Since the introduction of the MPA in 2004, there have been notable developments in the application of refugee protection in the Latin American region. The MPA has prompted several countries in the region to implement new constitutional guarantees and legislative provisions that provide assistance and protection to refugees. A growing number of countries have been willing to participate in the MPA’s regional resettlement program. Countries bordering Colombia have implemented new ways to identify and protect refugees in their respective border areas in accordance with the Borders of Solidarity programme. Finally, many countries in the region have developed new relationships with UNHCR and implemented new mechanisms of protection, including new refugee status determination processes.

5.1 Cities of Solidarity

Under the Cities of Solidarity programme, UNHCR has signed agreements with at least sixteen different cities across six different countries in the region to enhance the protection of refugees.⁸⁰ Under these agreements, the majority of these cities have committed to assist refugees in urban centres with programmes focused on financial support, emergency housing, medical services, education, work opportunities, and small-business support.⁸¹ Cities participating in the programme include Mendoza, San Luis, Rosario, Cordoba, and Buenos Aires in Argentina; Porto Alegre in Brazil; San

⁷⁶ OAS General Assembly Resolution 2232: Protection of Asylum Seekers, Refugees, and Returnees in the Americas (6 June 2006) 4th sess, OAS Doc AG/RES 2232 (XXXVI-O/06).

⁷⁷ UNHCR, ‘Action Plan based on solidarity offers the best guarantee to protect refugees in Latin America’, UNHCR (Geneva), 6 Oct 2005, <<http://www.unhcr.org/434563ae2.html>>.

⁷⁸ *ibid.*

⁷⁹ The countries that adopted the Brasilia Declaration are Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela. Both the United States of America and Canada participated in the meeting as observers but did not approve the Declaration.

⁸⁰ See A Durango and S Aguilar, ‘“Ciudades Solidarias” trabajan para integración de refugiados en las Américas’, ACNUR (Quito; Lago Agrio), 11 Nov 2010, <<http://www.acnur.org/t3/noticias/noticia/ciudades-solidarias-trabajan-para-integracion-de-refugiados-en-las-americas/>>.

⁸¹ See F Varoli, ‘Cities of Solidarity: local integration in Latin America’ (2010) 34 *Forced Migration Review* 45, 45.

Felipe and La Calera in Chile; Desamparados in Costa Rica; Quito, Lago Agrio, San Lorenzo, Esmeraldas, and Cuenca in Ecuador; Montevideo in Uruguay; and Maracaibo in Venezuela.

To develop urban programmes of action, UNHCR has actively worked with local municipalities under the Cities of Solidarity pillar. UNHCR has focused strategically on integrating refugees into programmes already in place for local nationals, instead of establishing parallel programmes for refugees in urban centres.⁸² In instances where UNHCR has recognized protection shortfalls in particular cities, local municipalities and UNHCR have developed programmes which support refugees, as well as migrants and nationals in need.

For example, in the municipality of Desamparados in Costa Rica, the municipal government, UNHCR, and NGOs have developed the *Casa de Derechos* (House of Rights), which offers legal assistance, psychosocial care, and micro-credit opportunities for refugees, migrants, and other Costa Ricans.⁸³ The micro-credit division of this programme, which is run by UNHCR's implementing partner APRODE, has been successful to the extent that the programme now self-replenishes and does not need any further donor support to operate. This programme has assisted at least 500 people to start up small businesses in Costa Rica, particularly women.⁸⁴ In the city of Quito, the municipal government similarly developed a plan in 2009 to promote and guarantee the human rights of persons in situations of human mobility.⁸⁵ Under this plan, the *Casa de la Movilidad Humana* (House of Human Mobility) offers legal, psychological, and technological development support to refugees, internally displaced peoples, migrants, and Ecuadorians returning from abroad.

In Quito, the municipal government has also implemented a number of marketing campaigns to target discrimination and xenophobia against Colombian refugees in the city. These campaigns, which have marketing slogans such as *Ponte en el zapato del otro* (Put yourself in the shoes of another), have sought to enhance the visibility of refugees in the city and foster local integration.⁸⁶ These campaigns are particularly important in Ecuador. The Latin America Faculty of Social Sciences (FLACSO) conducted a study based in Quito and Guayaquil that indicated in 2012 that 52 per cent of the refugee population feel that they are discriminated against due to their Colombian nationality, gender, sexual orientation, refugee status, ethnicity, or social-economic condition.⁸⁷

In the various cities participating in the Cities of Solidarity programme, the programme's success has largely depended on the level of political will of local governments to engage in refugee protection issues. As the MPA did not establish any criteria for

⁸² UNHCR, *The Mexico Plan of Action to Strengthen International Protection of Refugees in Latin America: Main Achievements and Challenges During the Period 2005–2010* (UNHCR Oct 2010) 18.

⁸³ *ibid.* 19.

⁸⁴ *ibid.*

⁸⁵ On 18 Feb 2009, the Metropolitan District of Quito adopted Municipal Ordinance 0271. This ordinance, along with the District Plan of Human Movement, regulates the promotion and protection of the rights of people living in situations of human mobility in Quito.

⁸⁶ See A Durango and S Aguilar, "Ciudades Abiertas" busca integración de refugiados y migrantes en América Latina, ACNUR (Quito), 13 Oct 2010, <<http://www.acnur.org/t3/noticias/noticia/ciudades-abiertas-busca-integracion-de-refugiados-y-migrantes-en-america-latina/>>.

⁸⁷ C Ortega and O Ospina, "No se puede ser refugiado toda la vida...": Refugiados urbanos: el caso de la población colombiana en Quito y Guayaquil (FLACSO, 2012) 120–21.

determining what cities would need to do in order to be considered a City of Solidarity, cities have greatly differed in their level of commitment to the programme. In some cities, municipal governments have continued to enhance the protection services available to refugees through innovative programmes of action to assist refugees. However, in other cities, the act of becoming a City of Solidarity has primarily been symbolic and few programmes have been established after the agreement.

The involvement of NGOs in the Cities of Solidarity programme has also varied dramatically between cities. While cities such as Desamparados in Costa Rica and Montevideo in Uruguay have strong participation from numerous NGOs,⁸⁸ NGOs working in areas of refugee protection in other cities have largely operated outside of the banner of the MPA's Cities of Solidarity programme. This may be due to coordination difficulties between the local municipalities, UNHCR, and the NGOs in the cities in question, or it may reflect a broader lack of ownership of the Cities of Solidarity programme among NGOs.

Similarly, the ability of refugees to access education, health services, and income generation services has also varied considerably among the cities participating in the programme. Although the MPA's Cities of Solidarity programme was principally designed to increase access for refugees to services that allow them to enjoy their cultural, social, and economic rights, refugees still encounter various obstacles in accessing services in some of the Cities of Solidarity. As the resolutions from the 'Open Cities' Meeting (*Encuentro de Ciudades Abiertas*) of municipal governments on 11–12 October 2010 indicate, special attention still needs to be given to: (a) understanding the full dimension of the refugee situation; (b) establishing policies targeted at the removal of discrimination and xenophobia; and (c) including refugees in the local public policies and programmes.⁸⁹

While these challenges remain in relation to the protection of refugees in urban centres, the Cities of Solidarity programme has drawn upon the MPA regional framework to establish commitments for municipal governments at a local, grass-roots level. The Cities of Solidarity programme recognizes that solidarity can be achieved not only through international diplomacy, but also through the active participation of lower level governments. Consequently, municipal governments in the Latin American region have used the non-binding commitments made under the MPA to implement local, institutional reforms. These reforms have been implemented with the assistance of civil society organizations, as well as the active involvement of UNHCR.

5.2 Borders of Solidarity

Under the 'Borders of Solidarity' programme, governments have made significant progress in alleviating the needs of refugees in border regions. In Ecuador and Costa Rica, refugee status determination (RSD) centres have been established in border areas with large numbers of refugees, and significant attempts have been made to keep national borders open to persons fleeing persecution. The decentralization of RSD away from

⁸⁸ See UNHCR, above n 82, 19.

⁸⁹ J Arcantales and J Herreros, *Mesa 3: Trata, tráfico, refugio y grupos de atención prioritaria en la migración (mujeres, niños y niñas). Ciudades Solidarias: Grupos de atención en la migración: Protección a población refugiada que habita en las ciudades* (Paper presented at the Encuentro de Ciudades Abiertas, Quito, 11–12 Oct 2010), <<http://encuentrociudadesabiertas.wordpress.com/>>.

the capital cities has allowed nations such as Ecuador, and organizations such as UNHCR, to more accurately identify the number of persons in need of international protection as a result of the Colombian crisis. Additionally, this decentralization has allowed for a much higher number of refugee status recognitions.

Since the implementation of the MPA in 2004, countries bordering Colombia, and UNHCR, have completed several studies to determine the profile and characteristics of Colombians in need of protection under the Borders of Solidarity programme.⁹⁰ In Chile, Ecuador, and Venezuela, these studies have greatly increased the visibility of refugees residing in these border areas. These studies have found that refugees in border areas often live in situations of severe vulnerability due to inadequate provisions of basic services and infrastructure, high levels of poverty and unemployment, low presence of national and international institutions, and high levels of crime.⁹¹ Furthermore, women, indigenous peoples, and Afro-Colombians face further vulnerabilities in these border regions.⁹²

As a response to these findings, UNHCR has worked with local and national governments in the border areas to develop small infrastructure projects to assist both refugees and local villagers under the Borders of Solidarity programme. According to UNHCR's 2010 review of the MPA, UNHCR completed 392 projects in 198 border communities between 2008 and 2010 to assist more than 100,000 refugees and local nationals under the Borders of Solidarity programme.⁹³ These projects have primarily focused on developing basic services and infrastructure in these border regions to assist both refugees and local nationals in need.

On several occasions, these projects have received external funding, including from other Latin American governments. In September 2010, for example, Brazil agreed to financially assist Ecuador with the local integration of 15,000 refugees in the border province of Sucumbíos in Ecuador.⁹⁴ Under the terms of this agreement, the Brazilian government is funding projects in the areas of education, sexual and gender-based violence, and water and sanitation infrastructure with the assistance of UNHCR.⁹⁵ The purpose of these projects is to facilitate the integration of Colombian refugees in these border communities, while at the same time developing basic infrastructure and services that benefit Ecuadorian nationals.

These projects represent a new form of regional cooperation in Latin America. As UNHCR's deputy representative for Ecuador, Luis Varese, stated:

These are the first primary schools to be opened by UNHCR with Brazilian funds in Latin America within a South-South cooperation framework. Within the sphere of regional integration, it is very important for these bonds of cooperation among our nations to take root and for us to make contributions that bring home the message that continental solidarity is indeed possible.⁹⁶

⁹⁰ UNHCR, above n 82, 11.

⁹¹ *ibid.*

⁹² *ibid.*

⁹³ *ibid.* 13.

⁹⁴ S Aguilar, 'Brazil helps ease local integration of refugees in northern Ecuador' (UNHCR, Lago Agrio, 17 Feb 2011), <<http://www.unhcr.org/4d5d4afd6.html>>.

⁹⁵ *ibid.*

⁹⁶ *ibid.*

Colombia, although being the source country of refugees, has also contributed some funding to financially assist Ecuador with the arrival of refugees in the border areas.⁹⁷

In addition to these projects, countries bordering Colombia have increased access to RSD procedures by developing offices to register and assess refugees in these border areas. As part of the Borders of Solidarity programme, Ecuador implemented an Enhanced Registration Programme between March 2009 and March 2010 to deal with the large backlog of asylum applicants residing in these border areas.⁹⁸ In this one-year period, Ecuador recognized 27,740 refugees under both the 1951 Refugee Convention definition and the wider Cartagena definition.⁹⁹ The Ecuadorian government made these RSD determinations individually, often within a one-day timeframe. To assist decision makers, the Ecuadorian government also developed a manual outlining how to apply the broader Cartagena definition to these claimants. This is the first time that the wider refugee definition has been applied so routinely and to such a large number of applicants in the region.

In Panama, the government has constructed three offices in the provinces of Darién and San Blas.¹⁰⁰ Similarly, in Venezuela, the National Office for Refugees has established three Regional Technical Secretariats in Maracaibo, San Cristóbal, and Guasdalito.¹⁰¹

While the Borders of Solidarity programme has made significant advances in the areas of RSD and protection services, the programme has also experienced some difficulties in terms of the development of asylum and protection for refugees. In the aftermath of the Enhanced Registration Programme, Ecuador has implemented much more restrictive policies for asylum seekers arriving at its borders. These changes have probably been implemented due to new perceived security risks, and/or possibly due to changes in the diplomatic relationship between Colombia and Ecuador.¹⁰²

Under article 8 of Ecuador's Executive Decree 1182, persons entering Ecuador can no longer claim refugee status under the broader refugee definition contained in the Cartagena Declaration.¹⁰³ Furthermore, Decree 1182 establishes more stringent time and admissibility requirements for application and appeal in the RSD process that are adversely affecting asylum seekers who do not or cannot immediately apply for asylum due to reasons such as fear, lack of knowledge, or urgent health situations.¹⁰⁴ These restrictions are beginning to affect thousands of refugees who continue to flee Colombia due to generalized violence and internal conflict.

⁹⁷ See *Colombia hizo aportes a Ecuador para sus refugiados, pero se requiere de más, según Gobierno, Ecuador Inmediato* (Quito, 1 Mar 2013), <http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_usuario&id=192401&umt=colombia_hizo_aportes_a_ecuador_para_refugiados_pero_se_requiere_mas_segun_gobierno>.

⁹⁸ UNHCR, above n 82, 11.

⁹⁹ UNHCR Americas, 'UNHCR in Ecuador' (UNHCR June 2012).

¹⁰⁰ UNHCR, above n 82, 12.

¹⁰¹ *ibid.*

¹⁰² Another argument suggested is that Ecuador has made these changes because the international community has not sufficiently assisted Ecuador with the large numbers of refugees arriving at its borders.

¹⁰³ *Decreto 1182: Reglamento para la aplicación en el Ecuador del Derecho de Refugio establecido en el Art. 41 de la Constitución de la República, las normas contenidas en la Convención de las Naciones Unidas de 1951 sobre el Estatuto de los Refugiados y en su Protocolo de 1967* (30 May 2012) art 8.

¹⁰⁴ Art 12 provides that persons entering Ecuador must apply for refugee status within fifteen days of arriving in Ecuador, and art 48 establishes that any appeal must be lodged within five days of the decision, arts 19 and 20 of the Executive Decree also establish a pre-admissibility procedure in Ecuador's RSD process, see *ibid.*

In the case of Venezuela, large numbers of refugees still face problems with regard to registration and documentation of their migratory status in the border areas near Colombia. According to UNHCR's 2010 evaluation of the MPA, UNHCR estimates that in addition to 15,000 asylum seekers and refugees, there are still approximately 120,000 people in need of international protection residing in the border states of Zulia and Táchira in Venezuela.¹⁰⁵ These people have yet to receive international protection, and the Venezuelan government and UNHCR have yet to identify their particular vulnerabilities.

While these examples illustrate particular difficulties associated with the development of the Borders of Solidarity programme, the long term effectiveness of the programme is something that can be built upon. The MPA's approach to border regions in Latin American countries represents a significant departure from international approaches to border control, international security, and refugee protection. The implementation of the MPA's Borders of Solidarity programme in the countries surrounding Colombia has principally functioned on the legal basis that refugees should be allowed access to asylum, rather than denied entry at fortress walls.¹⁰⁶ Latin American countries have supported this approach even when armed militias, as Jubilut and Carneiro highlight, have been infiltrating neighbouring countries.¹⁰⁷ Furthermore, the MPA's Borders of Solidarity programme has increased the presence of national and international institutions in these border regions, and created new services to support both refugees and local nationals.

5.3 Regional Resettlement in Solidarity

Since its introduction in 2004, five countries in Latin America have participated in the MPA's Regional Solidarity Resettlement Programme. Chile and Brazil, which had already been resettling small numbers of refugees since 1999 and 2002 respectively, began resettling refugees in 2004 under the MPA framework.¹⁰⁸ In January 2005, Argentina voluntarily agreed with UNHCR to resettle small numbers of refugees in accordance with the MPA.¹⁰⁹ In June 2007, both Paraguay and Uruguay signed Memoranda of Understanding (MOUs) with UNHCR to participate in the MPA resettlement programme.¹¹⁰ In the case of Uruguay, the government approved this MOU as a federal law.¹¹¹

All the agreements made between these governments and UNHCR establish conditions for resettlement and place obligations on states for the resettlement of annual

¹⁰⁵ UNHCR, above n 82, 14.

¹⁰⁶ See P Mathew, 'Responsibility, Regionalism and Refugees: what lessons for Australia?' in A Francis and R Macguire (eds), *Protecting Refugees and Displaced Persons in the Asia Pacific Region* (Ashgate, forthcoming) 9.

¹⁰⁷ Jubilut and Carneiro, above n 70, 74.

¹⁰⁸ See UNHCR (Division of Internal Protection), *UNHCR Resettlement Handbook* (UNHCR, 2011) 66.

¹⁰⁹ See UNHCR (Division of Internal Protection), *UNHCR Resettlement Handbook: Argentina* (UNHCR, 2011) 2. Argentina shortly followed this commitment with new legislation in Nov 2006 that enhanced the protection of refugees. See *Ley 26.165: Ley general de reconocimiento y protección al refugiado* (Argentina), 28 Nov 2006.

¹¹⁰ UNHCR, *Memorandum de Entendimiento para el Reasentamiento de Refugiados en el Paraguay entre el Gobierno de la República del Paraguay y el Alto Comisionado de las Naciones Unidas para los Refugiados*, 28 June 2007, <<http://www.unhcr.org/refworld/docid/47f9fad0.html>>.

¹¹¹ See *Ley No. 18.382: Apruébase el Acuerdo Marco para Reasentamiento de Refugiados con el Alto Comisionado de las Naciones Unidas para los Refugiados* (Uruguay), 15 June 2007, <<http://www.unhcr.org/refworld/docid/4b0d4b5c2.html>>.

quotas of refugees. The respective governments determine these annual quotas in consultation with UNHCR, based upon financial resources and absorption capacity. Since 2010, all the countries receive refugees based on the definition stated in the Refugee Convention, as well as the wider definition expressed in the 1984 Cartagena Declaration.¹¹² This wider definition is applicable, even if it is not utilized in the country of first asylum.

In each of the resettlement agreements, each participating state and UNHCR outline particular criteria for the strategic use of refugee resettlement. These criteria require refugees to have particular needs or vulnerabilities in order to qualify for resettlement. Generally, these criteria fall within five principal categories: legal and physical protection needs (which includes threats of *refoulement* and arbitrary detention); survivors of violence and torture (particularly in situations that could lead to further traumatization); women-at-risk (where gender poses particular protection problems); unaccompanied children and adolescents (where a best interests of the child determination supports resettlement); and refugees without the prospect of local integration within the country of first asylum.¹¹³

In addition to these requirements, the Argentinian and Brazilian agreements also include a further criterion that requires refugees to have no past criminal history. Argentina's system is particularly stringent in this regard, requiring criminal records from the refugee's country of asylum, or a 'global criminal record' of the refugee (a general statement by the government in the first country of asylum).¹¹⁴ Brazil, on the other hand, assesses this criterion on an individual basis without the need for documentation.¹¹⁵

According to UNHCR data from January 2013, over 1,200 people have been resettled so far in Argentina, Brazil, Chile, Paraguay, and Uruguay under the MPA programme.¹¹⁶ Almost all the refugees who have benefited from the programme are Colombians who initially sought refuge in Ecuador and Costa Rica during the Colombian humanitarian crisis.¹¹⁷ A small group of Palestinian refugees from Iraq have also been resettled in Brazil and Chile. These cases of resettlement represent approximately 20 per cent of all Colombian resettled refugees.¹¹⁸

While these numbers are smaller than those for other regions, such as Europe and North America,¹¹⁹ they represent a significant development in the responses from Latin

¹¹² Prior to 2010, Chile only accepted refugees under the Refugee Convention definition.

¹¹³ Each agreement slightly differs in content and form with regards to these criteria. For more, see *Sesión Especial Sobre Temas de Actualidad del Derecho Internacional de los Refugiados: Protección a los Refugiados y Programa de Reasentamiento* (Documento presentado por la Delegación de Argentina, 29 Jan 2008) OEA/Ser.G CP/CAJP/INF.79.08 corr. 1, 1–3; UNHCR, *Memorandum de Entendimiento para el Reasentamiento de Refugiados en el Paraguay entre el Gobierno de la República del Paraguay y el Alto Comisionado de las Naciones Unidas para los Refugiados*, 28 June 2007, <<http://www.unhcr.org/refworld/docid/47fdadc0.html>>; *El Acuerdo Marco para Reasentamiento de Refugiados en Chile entre el Gobierno de la República de Chile y el Alto Comisionado de las Naciones Unidas para los Refugiados* (5 Jan 1999); *Ley No 18.382: Apruébase el Acuerdo Marco para Reasentamiento de Refugiados con el Alto Comisionado de las Naciones Unidas para los Refugiados* (Uruguay), 15 June 2007, <<http://www.unhcr.org/refworld/docid/4b0d4b5c2.html>>; and UNHCR (Division of Internal Protection), above n 108, 243–96.

¹¹⁴ UNHCR (Division of Internal Protection), above n 109, 6.

¹¹⁵ UNHCR (Division of Internal Protection), *UNHCR Resettlement Handbook: Brazil* (UNHCR, 2011) 3.

¹¹⁶ These statistics were obtained from the UNHCR Regional Legal Unit in Costa Rica on 7 Mar 2013.

¹¹⁷ UNHCR, above n 82, 16.

¹¹⁸ See UNHCR, above n 82, 20.

¹¹⁹ The United States of America alone had an approximated target of 62,000 UNHCR resettlement admissions in 2011. See UNHCR (Division of Internal Protection), *UNHCR Resettlement Handbook: United States of America* (UNHCR 2011) 1.

American nations to refugee protection and resettlement. These resettlement cases demonstrate a symbolic commitment from Latin American countries in the Southern Cone to the principle of regional solidarity and responsibility sharing. This commitment is particularly important given that current trends in refugee protection outside of Latin America centre upon the reluctance of Western states to provide protection to refugees and the deliberate attempts of many Western states to prevent asylum claims being made at their borders.¹²⁰

At the same time, these resettlement cases have also expanded the protection space for asylum seekers arriving in these resettlement countries. In Latin American countries in the Southern Cone, refugee issues have become more visible in communities and participating governments have received more funds to develop programmes to assist refugees as a result of the Resettlement in Solidarity programme. In the cases of Argentina and Uruguay, participation in the resettlement programme has been coupled with new national laws establishing safeguards and protections for refugees. The protection programmes created under the Borders of Solidarity programme have created numerous protection benefits for both resettled refugees and asylum seekers alike. These programmes have also been incorporated directly into the Cities of Solidarity programme.

However, while the MPA regional resettlement programme is a positive regional development that 'has opened the door to the expansion of resettlement to countries beyond traditional developed countries,'¹²¹ participating governments still face several challenges in relation to its practical implementation. Even though refugees in resettlement countries have access to housing, the right to work, access to education, and preliminary micro-credit finance options, they still continue to face difficulties in becoming self-sufficient. These difficulties are linked to the lack of resources with regard to integration initiatives, as well as the short period of time resettlement countries have had to pilot appropriate local integration programmes for refugees in the region.

The fact that only 1,200 refugees have been resettled under the programme so far also illuminates some other challenges that Latin American countries faced when dealing with the resettlement of refugees for the first time. On many occasions, the respective governments did not reach the annual quotas that they agreed to with UNHCR.¹²² Furthermore, following the resettlement selection processes, less than half of the applicants resettled to the third country.¹²³

According to Guglielmelli White, the difference between the number of cases submitted for resettlement and the number of refugees resettled is due to the cautious approaches taken by governments, the reluctance of certain refugees to relocate within the region, the consideration of the integration potential of applicants during the

¹²⁰ Guy Goodwin-Gill and Jane McAdam indicate that: 'the developed world, in particular, expends considerable energy in trying to find ways to prevent claims for protection being made at their border, or to allow for them to be summarily passed on or back to others. "Interdiction", "pre-inspection", "visa requirements", "carrier sanctions", "safe third country" concepts, "security zones", "international zones", and the like are among the armoury of measures currently employed', GS Goodwin-Gill and J McAdam, *The Refugee in International Law* (3rd edn, OUP 2007) 50.

¹²¹ Guglielmelli White, above n 70, 22.

¹²² *ibid* 6.

¹²³ *ibid*.

determination process, and changes in circumstances occurring during resettlement delays.¹²⁴

As part of the development of the Regional Resettlement in Solidarity programme, states will need to consider how they can address these challenges in the future to allow for more refugees to be resettled in the region. The Regional Resettlement in Solidarity programme is an important component of the MPA due to its commitment to the principles of responsibility sharing and regional solidarity. It is also an important durable solution for vulnerable groups of refugees who are unable to locally integrate in the country of first asylum and who are unable to safely return to their country of origin.

5.4 Legal developments

In addition to the three Solidarity programmes, the MPA has also prompted numerous Latin American governments to implement changes to their national laws with respect to the rights of refugees. As the UNHCR review of the MPA in 2010 indicated, normative regulation on refugees since 2004 has been intense.¹²⁵ Four countries have enshrined the right to asylum in their respective national constitutions since 2004.¹²⁶ Furthermore, governments have enacted new legislation on refugee protection in Argentina (2006), Uruguay (2006), Ecuador (2009, 2012), Nicaragua (2008), Colombia (2009), Chile (2010), Costa Rica (2010), Mexico (2011), and Bolivia (2012). According to UNHCR, Argentina, Brazil, Chile, Costa Rica, Guatemala, and Panama are also considering further reforms.¹²⁷

In many of these legislative changes, governments have referred either directly or indirectly to the MPA as a motivating factor for implementing reform.¹²⁸ With the exceptions of Costa Rica and Ecuador, which have adhered to the refugee definition outlined in the 1951 Refugee Convention and 1967 Protocol, all of the legislative changes that Latin American countries have made since the MPA have included the wider refugee definition proposed by the 1984 Cartagena Declaration. Also, thirteen countries in the region have recognized gender as an additional ground of persecution in their national definitions of refugee-hood, or acknowledge that persecution may be linked to the individual's gender.¹²⁹ Mexico and Nicaragua have additionally included new forms of complementary protection for those persons who do not fall within the refugee definitions.¹³⁰

This strengthening of the legal framework greatly enhances the ability of refugees to assert their human rights within the Latin American region. As Goodwin-Gill has outlined, 'where there is law and principle, so there is strength and the capacity to oppose. Where there are merely policies and guidelines, everything, including protection, is

¹²⁴ *ibid* 19.

¹²⁵ UNHCR, above n 82, 2.

¹²⁶ These countries are Ecuador (2008), Bolivia (2009), the Dominican Republic (2010), and Mexico (2011).

¹²⁷ UNHCR, above n 82, 3.

¹²⁸ See, eg, *Política del Ecuador en materia de refugio (Gobierno Nacional de La República del Ecuador, 2008)* 15; ACNUR, 'Chile adopta ley de protección de refugiados', ACNUR (Santiago de Chile), 10 Mar 2010, <[http://www.acnur.org/t3/index.php?id=559&tx_ttnews\[tt_news\]=1184](http://www.acnur.org/t3/index.php?id=559&tx_ttnews[tt_news]=1184)>.

¹²⁹ See UNHCR, 'Refugee Protection and International Migration in the Americas: Trends, Protection Challenges and Responses' (Paper presented at the Regional Conference on Refugee Protection and International Migration in the Americas: Protection Considerations in the Context of Mixed Migration, San José, Costa Rica, 19–20 Nov 2009), 43, n 81.

¹³⁰ See UNHCR, above n 82, 3.

negotiable, and that includes refugees.¹³¹ The intense legislative development of refugee rights in the constitutions and national laws of these Latin American countries signifies a legal shift from a 'soft law' framework of protection to a more legally binding 'hard law' framework of protection. In this new protection system, states are more accountable for their treatment of refugees, both nationally and internationally, and refugees are more capable of ensuring that states do not breach their obligations.

As a consequence of these legislative developments, refugees and NGOs have increasingly been able to use strategic litigation to strengthen the rights of refugees in Latin America. On 21 February 2012, the Inter-American Commission on Human Rights filed an application for the Inter-American Court of Human Rights to review Case No 12.474, *Familia Pacheco Tineo v Bolivia*.¹³² This case will allow the court to consider, for the first time, violations of refugee status determination procedures and the principle of *non-refoulement* under the American Convention.¹³³ Additionally, the court will also consider the right to seek and receive asylum under article 22 of the American Convention.

In Ecuador, Asylum Access Ecuador and the Legal Clinic of the Universidad San Francisco de Quito are currently challenging the constitutional validity of Ecuador's Executive Decree 1182.¹³⁴ These organizations allege, inter alia, that Ecuador's new decree violates the rights of refugees guaranteed in the 2008 Ecuadorian constitution and other international human rights instruments.¹³⁵ The Constitutional Court of Ecuador has indicated that they will hear the substantive arguments of at least one of these challenges in the near future.¹³⁶

These cases of strategic litigation highlight that refugees are now more aware of their rights in the region, as well as the remedies available to them. Furthermore, there are now more specialized legal services available in Latin America to support refugees to legally defend themselves.

6. THE POTENTIAL OF REGIONAL SOLIDARITY AND 'SOUTH-SOUTH' COOPERATION

Latin America's unique implementation of the principle of regional solidarity in refugee protection represents a significant conceptual shift in the perception of asylum seekers and the responsibility of nation states to protect refugees. Unlike some other regions in the world, Latin America's commitment to regional solidarity and the generous tradition of asylum continues to shape the regional diplomatic framework. This commitment has been supported by the recognition of the importance of a 'South-South' approach to refugee protection, as well as a belief in the importance of reciprocity of protection.

¹³¹ GS Goodwin-Gill, 'Refugee identity and asylum's fading prospect' in F Nicholson and PM Twomey (ed), *Refugee Rights and Realities: Evolving International Concepts and Regimes* (CUP 1999) 221, 233, 240.

¹³² See IACHR Media Center, 'IACHR Takes Case Involving Bolivia to the Inter-American Court', IACHR Press Releases, 23 Feb 2012, <http://www.oas.org/en/iachr/media_center/PReleases/2012/022.asp>.

¹³³ The other main case in the Inter-American Court of Human Rights that considers the rights of refugees is *Haitian Center for Human Rights v United States of America* (Inter-American Court of Human Rights, Case 10.675, Report No 51/96, 13 Mar 1997).

¹³⁴ See Asylum Access Ecuador, *Comunicado de Prensa: Acción Pública de Inconstitucionalidad es aceptada a trámite por la Corte Constitucional de Ecuador* (Asylum Access Ecuador, 27 Mar 2013).

¹³⁵ *ibid.*

¹³⁶ *ibid.*

In the Latin American region, 'South-South' cooperation has emerged as a regional initiative in refugee protection because the region now hosts refugee-source countries, countries of first asylum, and industrialized countries that are capable of providing third-country resettlement options, as well as financial and practical support. Furthermore, Latin American states have recognized that 'South-South' cooperation can more efficiently and adequately provide temporary and durable solutions to refugees. In the MPA, Latin American states have particularly sought to utilize the cultural, economic, historical, and social bonds that exist among states in the region to facilitate this regional cooperation. They have emphasized the importance of utilizing 'the spirit of Cartagena' to bolster support for regional cooperation, and have stressed the value of regional solidarity, both between nation states and towards refugees.

'South-South' cooperation also has prospered in Latin America because many of the countries in the region have experience as refugee source countries and recognize the importance of international protection. In promoting the MPA's programmes of action, many politicians have highlighted that they have personally received international protection as refugees as a result of conflicts occurring in their countries in the second half of the twentieth century. Consequently, they have stressed that the MPA is not just about helping others, but also about reciprocating and offering the benefits of protection to a new generation of people in need.

As the former Mayor of Montevideo, Ricardo Ehrlich, indicated, one of his motivations for making Montevideo a City of Solidarity was his belief in the need to give back to the international community after having personally been a refugee.¹³⁷ Similarly, the then Chilean president, Michelle Bachelet, herself a former refugee, stated:

Thousands of women and men had to leave our land and experienced the warmth and humanity of other countries. Today it is our turn to give because we are now a democratic, free and pluralist society, with good levels of employment, social peace and human development. Today we must extend our hands to those who need us.¹³⁸

This belief in the need for reciprocity in protection is a driving factor in the commitment of states to the protection of refugees.

The conceptual incorporation of regional solidarity in the MPA also reflects a unique humanitarian attitude towards asylum. The MPA noted that the previous conception of 'burden-sharing' in the regional and international asylum framework inferred a negative perception that refugees were themselves a 'burden'.¹³⁹ This perception limited the capability of nations to promote the moral and humanitarian values associated with providing protection to refugees.

Regional solidarity as practised in Latin America, in contrast, has allowed for a more positive approach to the reception of refugees. It has focused on the moral benefits of

¹³⁷ This is cited in Varoli, above n 81, 45.

¹³⁸ UNHCR, 'Southern Latin America opens its arms to asylum-seekers', *UNHCR News Stories* (Buenos Aires), 27 Aug 2009, <<http://www.unhcr.org/4a969d716.html>>. For more examples of politicians expressing the importance of reciprocity in refugee protection, see Durango and Aguilar, above n 86, 2.

¹³⁹ See MPA, ch III(3); Jubilit and Carneiro, above n 70, 70; and PH Schuck, 'Refugee burden-sharing: a modest proposal' (1997) 22 *Yale Journal of International Law* 243 for an example of the concept of burden-sharing.

providing protection, and on the need to share responsibility for assisting those who have suffered violations of their human rights. Furthermore, regional solidarity has departed from the sovereign focus of asylum protection as a unilateral response to a problem and, instead, has focused on collective action and collective political will.

Through the MPA's push for regional humanitarianism, participating countries have been politically able to confront nationalist prejudice and exclusion, and tackle the challenge of how to mobilize national opinion in the name of regional values.¹⁴⁰ As Goodman suggests, the concept of solidarity in the protection of refugees creates an impulse amongst nation states to arouse humanitarian values.¹⁴¹ It creates a contest for national identity whereby nations raise the level of protection they offer refugees in order to be able to say “*we welcome you because we are people who are inclusive and caring*”.¹⁴²

Within Latin America, humanitarian ideals and regional solidarity have been the principal motivators for ‘South-South’ cooperation. While government statements promoting the protection of asylum seekers have been intrinsically linked to development goals and the marketing of a national ‘imagined community’ that is sympathetic to human rights victims,¹⁴³ Latin American states have not focused on explicitly linking other regional issues, such as trade, development, or regional security, to the area of refugee rights protection as a way to encourage regional cooperation.¹⁴⁴

The significant progress that Latin American states have made towards meeting the protection needs of refugees highlights the potential for regional protection frameworks to operate within the international refugee law regime. Unlike some other regions in the world, regional cooperation in Latin America has greatly enhanced the provision of refugee protection throughout the region. Latin American states have been willing to work together to find creative solutions to meet the needs of refugees, and they have developed a mixture of binding legal obligations and voluntary processes to work towards this goal.

As the tenth anniversary of the MPA and the thirtieth anniversary of the Cartagena Declaration approach, Latin American governments will be able to reflect upon how they have been able to promote regional cooperation in Latin America, and how they have been able to share the responsibility of meeting the protection needs of refugees. While it is clear that some disparity still remains between the levels of protection offered to refugees in Latin American countries, the willingness of Latin American governments to work together within a ‘South-South’ framework is something that can be built upon.

In preparation for the tenth anniversary of the MPA, it is likely that governments will form four sub-regional groups (Mexico and Central America, the Caribbean, the

¹⁴⁰ See J Goodman, ‘Refugee Solidarity: Between National Shame and Global Outrage’ in D Hopkins, J Kleres, H Flam and H Kuzmics (eds), *Theorizing Emotions: Sociological Explorations and Applications* (Chicago University Press 2009) 269, 271.

¹⁴¹ *ibid* 274.

¹⁴² *ibid*.

¹⁴³ See B Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (3rd edn, Verso Books 2006).

¹⁴⁴ Alexander Betts has shown that linkage to other regional governance issues such as securitization can encourage nation states to cooperate in the area of refugee protection. However, this has not been the focus of the MPA. See A Betts, ‘North-South cooperation in the refugee regime: the role of linkages’ (2008) 14 *Global Governance* 157; also A Betts, ‘International Cooperation in the Refugee Regime’ (2010) *Refugees in International Relations* 53.

Andean region, and the Southern Cone) to discuss how Latin American governments can continue to advance regional cooperation and refugee protection over the next ten years. These sub-regional groups are then likely to meet to develop a new declaration and plan of action based on the principles of regional solidarity and 'South-South' cooperation. This meeting will likely include UNHCR and other international organizations, as well as civil society groups and academics.¹⁴⁵

In this framework, it is likely that the MPA will remain as a relevant blueprint for regional cooperation. The three pillars of the MPA - Cities of Solidarity, Borders of Solidarity and Regional Resettlement in Solidarity – still remain important and relevant programmes for the Latin American region. These programmes should be built upon to ensure that refugee protection and the quality of asylum is enhanced in the region. In particular, governments should seek to increase access for refugees to protection services in urban centres, and address issues of discrimination and urban violence. In the border areas, governments should seek to ensure that borders remain open for refugees, and that refugees have access to fair and efficient RSD procedures that guarantee due process rights.¹⁴⁶ Under the Regional Resettlement in Solidarity programme, states should seek to gradually increase the number of vulnerable refugees who have access to this programme.

In addition to these three programmes, governments should also seek to address new challenges emerging in the region that are generating forced displacement. This will likely involve addressing new forms of violence, such as the increasing level of gang violence in Central America.¹⁴⁷ It will also likely involve addressing new challenges relating to the increasing number of unaccompanied minors in need of protection, as well as particular issues relating to Afro-Colombian and other indigenous groups. Challenges relating to the large numbers of internally displaced peoples, particularly in Colombia, may also be addressed.

7. CONCLUSION

Since its implementation in 2004, the MPA has been a valuable regional framework for states to cooperate with one another and share the responsibility to protect refugees. Under the MPA, Latin American states have made notable advancements in the level of protection provided to refugees in the region. Through the Cities of Solidarity programme, UNHCR and municipal governments have innovatively worked together to incorporate refugees into local and national programmes to facilitate the integration of refugees in urban centres. In the Borders of Solidarity programme, Latin American governments have greatly increased the visibility of refugees residing in the border areas near Colombia, and have developed appropriate protection services to assist these people in need. Under the Regional Resettlement in Solidarity programme, governments

¹⁴⁵ Civil society organizations, such as Asylum Access in Ecuador, *Asociación de Consultores y Asesores* in Costa Rica, and *Sin Fronteras IAP* in Mexico, have also developed the Cartagena +30 Civil Society Initiative to develop proposals and recommendations for the improvement of refugee protection in Latin America. See K Sarmiento and L Parker, *Regional Advocacy: Cartagena +30 Civil Society Initiative* (Asylum Access Ecuador 2013).

¹⁴⁶ See K Sarmiento, J Soley and A Guglielmelli White, *Refugee Status Determination in Latin America: Regional Challenges and Opportunities - The national systems of Brazil, Colombia, Costa Rica, Ecuador and Mexico* (Asylum Access Ecuador 2013) 6–7.

¹⁴⁷ See UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* (UNHCR Mar 2010) 1.

in the Southern Cone have demonstrated their commitment to regional solidarity by resettling over 1,200 refugees, primarily from Ecuador and Costa Rica.

The success of the MPA as a plan of action for Latin American governments is something that can be built upon in the region. The MPA establishes protection measures for refugees with a focus on human security rather than national security, and many Latin American governments utilize the MPA to celebrate humanitarian ideals when providing protection to refugees. While the benevolence and generosity that Latin American nations have shown towards refugees seems unique within the international refugee landscape, the success of Latin America's push for regional solidarity and 'South-South' cooperation in the protection of refugees may influence how other regions in the world respond to the influx of refugees at their doors.