

The Global Compact on Refugees and Latin America

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The Global Compact on Refugees (GCR) turns one this month, having been presented by the United Nations High Commissioner for Refugees (UNHCR) and affirmed by the United Nations General Assembly on December 17, 2018. Adopted by 181 states (with the United States and Hungary voting against, the Dominican Republic, Eritrea and Libya abstaining, and Israel, Micronesia, Nauru, North Korea, Poland, Tonga and Turkmenistan not voting) (Rush, 2018), it is the newest universal norm in refugee protection and marks a turn towards a development-based approach in the tackling of refugee issues (Jubilut and Casagrande, 2019). This turn can be seen in its choice of main objectives, both directly (in the easing of pressures on host countries and the enhancing of refugee self-reliance) (GCR, para. 7) and indirectly (through the seeking of new durable solutions) (GCR, paras. 94-96, 100) and the search of expanded access to third country solutions (GCR, para. 7, 94-96)[1].

As most rights-related and human rights-guided norms (GCR paras. 5 and 9), as well as due to (i) the current international scenario of restrictive pressures and measures on migration at large and (ii) that the GCR aims to “seek to operationalize the principles of burden- and responsibility-sharing to better protect and assist refugees and support host countries and communities” (GCR para. 5), the main challenge of the GCR regards its implementation[2]. In this context, assessing current scenarios to highlight good practices and possible shortcomings may be a constructive first step in improving its chances of success and enhancing its impacts.

In this sense, Latin America is posited as an interesting case study as it seems to encompass key trends in refugee protection – both in terms of challenges being faced by multiple actors and in terms of *avant-garde* practices (Jubilut, Vera Espinoza and Mezzanotti, 2019). Latin America can be seen as experiencing competing scenarios of refugee protection, that might, on the one hand, impact GCR implementation, and on the other hand, depend on the document to further integral protection for refugees[3]. Moreover, by assessing pathways for GCR implementation from Latin America’s context, it might become clear that a dual lens is needed for it to succeed: on the one hand, the need for the GCR to dialogue with regions’ context and existing systems to build on them and tailor actions, and, on the other hand, the role the GCR can play in aiding the improvement of refugee protection, i.e. showing that a bidirectional pathway is needed for enhancing refugee protection from the GCR, by assessing how existing regimes can assist it but also how it can benefit from existing structures.

Current Challenges in Refugee Protection in Latin America

Latin America has both advancements and challenges in terms of refugee protection. Challenges stem from actual and political scenarios. And advancements relate to the region experiencing forced migration from within and into the region at an unprecedented scale: Venezuelan refugees are considered to compose the largest forced displacement movement in the region; refugees from the North of Central America continue to be displaced (both in primary and secondary movements) (IACHR, 2018), Nicaragua has been experiencing a crisis since April 2018 with the forced displacement of persons as a by-product; Haitians are still on the move (which is relevant as they could be considered refugees by the regional definition stemming from the Cartagena Declaration on Refugees of 1984 (Cartagena Declaration), which, in its 3rd conclusion, allows for recognition of refugee status due to gross and generalized violations of human rights (Audebert, 2017; Jubilut, Madureira and Levy 2018); and displacement continues for Colombians albeit the peace process. Even more recently, massive protests and demonstrations connected to public policies have erupted in Chile and, simultaneously, although not related, the political scenario in

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Bolivia has rapidly escalated into civil unrest[4], as well as national strikes have been reported in Colombia, and, even though international displacement is not yet being reported, it might follow as a consequence.

These factual scenarios are met with restrictive policies towards migration in general and with the building of walls, the securitization and criminalization of migration, and the development (or strengthening) of political rhetoric against migration (forced or otherwise), as well as with the refusal of perceiving these forcibly displaced persons as refugees, thus resulting in the denial of their rights as such; hence creating a challenging political scenario for refugee protection. Furthermore, the mentioned recent unrests also might render human mobility to and within the continent more difficult as States authorities tend to, in these circumstances, direct their focus inwards and might adopt restrictive measures against foreigners

However, the region also experiences practices praised for (i) adopting human rights-based approaches (Murillo, 2015; Jubilut and Lopes, 2018), (ii) embracing actions based on responsibility-sharing and on solidarity (Grandi, 2017) many years before “burden and responsibility-sharing” amongst States became a widely discussed topic by the international community, and made its way into the GCR (for instance in paras. 1, 2 and 3), and (iii) implementing humanitarian spaces of protection (Grandi, 2017; Jubilut, 2017). These are mainly based on the Cartagena Declaration – which in 2019 celebrated its 35th anniversary – and the regime it created. From the mentioned possibility of including as refugees persons fleeing gross and generalized violations of human rights, to the proposal and implementation of the resettlement in solidarity, cities of solidarity and borders of solidarity initiatives, in addition to the establishment of complementary protection alternatives (such as humanitarian visas), Latin America has developed and/or pioneered good practices in (direct and indirect) refugee protection. Such practices take into account both the needs of refugees and of host communities, which is a key approach of the GCR (GCR, paras. 1 and 5, for instance).

The “Humanitarian Spirit” in Refugee Protection in Latin America and Expanded Protection

Another characteristic and essential aspect of refugee protection in Latin America is its humanitarian spirit. With examples dating back from the late 19th century (with the asylum treaties) and the first half of the 20th century (such as protection for those fleeing the Spanish Civil War, the Portuguese dictatorships, and World War II, as well as for Palestinian refugees (Grandi, 2017), this humanitarian spirit was reinforced and sedimented in the Cartagena Declaration, from when the “spirit of Cartagena” has been said to be at play in the region.

The Cartagena Declaration is the outcome of an Academic Colloquium that sought to address issues relating to the protection of those forcibly displaced within the region who were usually moving in larger groups, especially regarding the flows in Central America. Neither the form or the motives for displacement happening in this area at the time – not unlike some forced migrants from the region today – were understood to match the international definition of a refugee and thus these persons were left outside the protection standards set forth in the 1951 Convention relating to the Status of Refugees or its 1967 Protocol.

Moreover, the displacement witnessed in the region at the time, as well as those in the 1960s and 1970s did not exactly match definitions and protection regimes from the regional treaties regarding political and diplomatic asylum (Arboleda, 1995), therefore a new regime needed to be imagined to face the on-going challenges. The Cartagena Declaration was said response, establishing a regional framework for protection[5].

Creating new criteria for Refugee Status Determination (RSD), and expanding protection in Latin America, may be said to be the *ethos* of the Cartagena Declaration.

The Cartagena Declaration, even if non-binding, has served as a beacon for RSD procedures in the region, with definition that reinforces the role of the objective situation of the country of origin on the causes that prompted forced migration as a criterion for refugee status. This impact of the Cartagena Declaration on RSD has been further developed in Latin America – both at national and regional levels, with 16 States currently incorporating the Cartagena Declaration in its national procedures and it being a part of regional human rights protection system within the Organization of American States[6].

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The Cartagena Declaration, however, is recognized for more than the regional definition of refugee – adding to the international criteria, the fleeing due to massive and generalized human rights violations as well as generalized violence, foreign aggression, internal conflicts, or other circumstances which have seriously disturbed public order as reasons for protection as a refugee, given that, as mentioned, it has imbued the “spirit of Cartagena” or “humanitarian spirit” into State and regional practice. This “spirit” can be understood as encompassing “1) a human rights approach to refugee protection (...), 2) an expanded humanitarian space and 3) a constant effort to assess the region’s needs and challenges in refugee protection” (Jubilut, Vera Espinoza, Mezzanotti, 2019).

Furthermore, the “humanitarian spirit” is reinforced by the Cartagena review process, which takes place every ten years with the aim of analysing the protection needs of refugees in Latin America (Jubilut, Casagrande e Lopes, 2020). The outcomes of the review process have been documented in the San Jose Declaration on Refugees and Displaced Persons (1994), also known as Cartagena +10; the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America (MPA) (2004), also known as Cartagena +20; and, the Brazil Declaration and Plan of Action: a Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean (2014), also known as Cartagena + 30.

The Cartagena review process has strived to address shortcomings and protection gaps that have progressively arose in the region over the last nearly 35 years (Jubilut, Casagrande e Lopes, 2020). The review process has constantly kept the “humanitarian spirit” in the regional agenda, as it allows for the current application of standards in line with and emerging from International Human Rights Law, International Refugee Law and International Humanitarian Law, and not only aims to improve but also enlarge the protection of forced migrants in Latin America. It has also been instrumental to the progressive engagement of other States from the region, that did not originally take part, to fully engage with the Cartagena Declaration in 1984, with numbers going from 10 States in relation to the original document to 31 in the 2014 Declaration and Plan of Action (Jubilut, Vera Espinoza, Mezzanotti, 2019).

GCR Implementation in Latin America’s Current Scenario

These contexts of advancements and challenges in refugee protection in Latin America need to be taken into consideration in relation to GCR implementation strategies in the region, so as to build on existing good practices and assist in solving shortcomings. In this sense it is relevant to recall the GCR objectives, which are “(i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity” (GCR, para. 7), and, see how they (might) dialogue with refugee protection in Latin America.

Easing pressure on host countries, refugee self-reliance and access to third country solutions have been part and parcel of the debates and solutions presented by the Cartagena Declaration review process, most notably in Cartagena +20 and Cartagena +30.

Cartagena+20 has a focus (MPA. chapter 3) on durable solutions, namely integration in urban areas and border regions and resettlement. Two programmes were proposed and later implemented with such aim: the “Cities of Solidarity[7]” programme for self-sufficiency and local integration and the “Borders of Solidarity” programme.

The “Cities of Solidarity” programme focuses on self-reliance in the urban context and in socio-economic integration, highlighting that due consideration should be given to socio-economic realities and social exclusion, as well as to the socio-economic profiles of the beneficiaries (MPA, chapter 3), and suggesting, *e.g.* the establishment of micro-credit systems and the simplification of procedures for authentication and recognition of certificates and diplomas issued abroad (MPA, chapter 3, section 1).

The “Borders of Solidarity” programme foresees the formulation of a Regional Strategic Plan to address the protection, basic assistance and integration needs of all populations in need using a territorial approach, promoting social and economic development for persons in need of international protection and local hosting communities alike, taking due account of specific protection needs and overlapping vulnerabilities, and taking gender, age, disability and

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belonging to ethnic minorities into account (MPA, chapter 3, section 2). The programme “calls attention to new forms of thinking about border zones and border lives and how different actors might dialogue to improve the reception, assistance, and protection of displaced groups” (Moulin, 2009), and attempts to simultaneously take into consideration the needs of refugees and hosting communities in the borders. It could be argued that, although regional approaches have not yet achieved full coordination, strategies to tackle Venezuelan migration to the region have followed international protection standards and can be said to implement, at least to some extent, the Borders of Solidarity programme (Jubilut and Fernandes, 2018).

Regional initiatives towards the protection of forced migrants (thus including refugees) have been praised (Jubilut and Ramos 2014, Grandi, 2017, Jubilut and Lopes 2018). Latin America has adopted alternatives for forced displacement with humanitarian lenses such as humanitarian entry visas, humanitarian residency permits, regional residency permits, and regional citizenship (Jubilut, 2017; Grandi, 2017), benefiting both refugees or as forms of complementary protection (i.e. to other forced migrants). In this sense, the region has enhanced availability and flexibility of pathways for regular migration (thus contributing for the fulfilment of objective 5 of the Global Compact for Safe, Orderly and Regular Migration) and complementary pathways for admission to third countries (GCR, para. 94), hence increasingly expanding access to alternative third country solutions for refugees, as long as these solutions do not exclude the right to apply and be granted asylum/refugee status[8].

Furthermore, since the 1990s and 2000s UNHCR has established new partnerships to implement another form of access to third country solutions in the region: resettlement. Such partnerships focussed in emerging resettlement countries including Latin America (Jubilut and Carneiro, 2011). The practice of resettlement in Latin America gained new colours in 2004 with Cartagena +20 (Jubilut and Carneiro, 2011; Jubilut, 2017; Jubilut and Zamur, 2018), as solidarity became a key ingredient of the practice, both in terms of easing pressure on hosting countries (namely Ecuador and Costa Rica) (Jubilut and Carneiro, 2011) – therefore, implementing an objective of the GCR 14 years prior to this documents’ existence – and on refugees that still needed international protection as a determining factor on refugee selection. Resettlement in Solidarity[9] schemes (MPA, chapter 3, section 3) have been implemented in Brazil, Chile, Argentina, Paraguay and Uruguay (Jubilut and Carneiro, 2011; Ruiz, 2015) to respond to regional migration flows, also being expanded for extra-continental refugees, mainly Palestinians (Jubilut and Carneiro, 2011; Ruiz, 2015) and Syrians (Jubilut, 2017; Jubilut and Zamur, 2018).

Cartagena +30, in turn, reinforces issues and initiatives brought forth by previous documents and also highlights the relevance of protection, of ensuring safety and security through regional cooperation and of the development of tools to address human trafficking and statelessness (issues of interest of the GCR, respectively in para 56 and paras. 82-83) Albeit these matters not being new to the region, they have been a constant alongside human mobility trends, and particular cases, such as the restrictive interpretation of nationality legislation towards children of migrants, have been at the forefront of the debate at national and regional level with actual cases bring brought before the Interamerican Human Rights System and the region committing to end statelessness by 2024 (Grandi, 2017).

Conclusion

As seen, Latin America has progressed in refugee protection, even in topics of interest of the GCR and in practices that might be considered positive steps in this document’s implementation. The region has interesting existing structures that should be taken into consideration in the implementation of the GCR.

The regional structures of protection resulting mainly from the Cartagena Declaration and its regime and from Latin America’s “humanitarian spirit” have managed to achieve creative and cooperative solutions in the region, however there are still shortcomings and some innovations fall short of full implementation due to structural and contextual problems. The GCR represents an opportunity to reignite some of the protection solutions that have been on the table in Latin America, as well as an opportunity to learn from solutions that were implemented and produced both good practices as well as experiences to learn from.

The GCR reinforces the need of cooperation towards protection. It has the potential to serve as a tool to persuade States that regional cooperation and responsibility sharing are key and should be above any political agenda in the

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area of human mobility.

In this sense, assessments and the development of strategies for the implementation of the GCR in Latin America need to adopt a dual lens focusing, on the one hand, on building on the region's on-going practices (i.e. on what the region can teach regarding the implementation of the GCR), and on the other hand, by grasping how the GCR can benefit the protection of refugees in the region (i.e. on what the GCR can teach the region). In this bidirectional model to guide GCR implementation refugee protection might be enhanced in Latin America, but perhaps inspirations can also arise to be replicated globally in improving the chances of success of the GCR after its first anniversary, as well as ascertaining protection to refugees.

Notes

[1] For more on development on the GCR see, for instance, GCR paragraphs 1, 3, 4, 8, 9, 20, 23, 26, 32, 35, 36, 44, 64, 65, 85, 88, 89 and 90.

[2] See, on this matter, for instance, Gilbert 2018

[3] Jubilut and Apolinário, 2008, define integral protection as the combination of refugee status-related rights and all the plethora of human rights a person is entitled to.

[4] It is interesting to note that after the resignation of Evo Morales on 10 November 2019, it was announced that Mexico has granted Mr. Morales political asylum, followed by Argentina which also granted him international protection through refugee status.

[5] Regional Refugee Law has as an earlier example in the African regime, when in 1969, the then Organization of African Unity (African Union since 2002) agreed on the Convention Governing the Specific Aspects of Refugee Problem in Africa. This Convention follows the refugee definition presented by the 1951 Convention and its 1967 Protocol but goes further stating – in its article 1(2) – that persons compelled to leave their place of habitual residence and seek refuge in places outside their countries of origin or nationality owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of their country of origin or residence can also be recognized as refugees.

[6] This is relevant even if implementation problems (on which see Reed-Hurtado, 2013) exist.

[7] In the original “*Ciudades Solidarias*” or “*Cidades Solidárias*”, also translated into English as “Solidarity Cities”.

[8] On this, see, for instance, Jubilut, Andrade and Madureira, 2016; Casagrande, 2017.

[9] In the original *Reasentamiento Solidario* or *Reassentamento Solidário*, and also translated as “Solidarity Resettlement”.

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