

INTRODUCTION

Refugee Protection in Latin America

Logics, Regimes, and Challenges

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Introduction

Refugee protection in Latin America is distinctive, with unique characteristics that range from contextual to conceptual aspects. Contextually, the region has hosted as well as produced refugees, a trend that has generated almost even numbers of refugees from and within the region in the past (Jubilut and Lopes 2018) with a current increase of intraregional refugees (United Nations High Commissioner for Refugees [UNHCR] 2019a: 68, 74). Moreover, Latin America comprises countries of origin, destination, and transit¹ (Jubilut and Lopes 2018). On the conceptual aspects, the region's recognized long-standing commitment to refugee protection has been developed over the past two hundred years (Fischel de Andrade 2014); from the institutionalization of exile since the processes of independence in South America (ibid) and the adoption of the right of asylum in the American Convention on Human Rights in 1969, until the more recent creation of praised mechanisms of responsibility sharing, solidarity, and cooperation (Grandi 2017).

Latin America is also unique due to the coexistence of different protection regimes and systems (Jubilut and Lopes 2018), from the international, regional and national levels. These include (i) the universal regime that

stems from the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention),² its 1967 Protocol Relating to the Status of Refugees (1967 Protocol)³ and the 2018 Global Compact on Refugees,⁴ (ii) the dialogue among International Human Rights Law, International Refugee Law and International Humanitarian Law; (iii) the coexistence of political asylum and refuge; (iv) the 1984 Cartagena Declaration on Refugees (Cartagena Declaration)⁵ and the regime derived from its review process; (v) the Inter-American Human Rights system within the Organization of American States; and (vi) national legislation either specific to refugees or generally focusing on migrants including refugees; or even complementary protection measures that, albeit targeted to persons outside the protection of International Refugee Law, can, in practice, benefit refugees.

Latin America, thus, presents a complex, and still little known, scenario of refugee protection, that has both positive aspects and shortcomings. The norms and practices that emerged from this multilevel architecture have increased the spaces of refugee protection and have generated some examples of good practices in terms of ascertaining protection and/or implementing access to rights, as well as adopting innovative actions toward refugees and other migrants. However, many challenges remain in terms of implementation and integral protection (meaning the combination of the rights of refugees that stem from this condition and the human rights they are entitled to as human beings; Jubilut and Apolinário 2008; Vera Espinoza 2018a). These are more exposed nowadays given the region is witnessing the massive displacement of Venezuelans, one of the fastest-escalating (Freier and Parent 2018) and largest refugee flows, with close to 5.2 million Venezuelans living abroad as of June 2020, 80 percent of whom are in the region or the Caribbean (Response for Venezuelans [R4V] 2020a). In addition, there is the ongoing displacement of thousands of people from the North of Central America (NCA; comprising El Salvador, Guatemala, and Honduras) (UNHCR 2019b); which has Latin American countries as origin, destination or transit—as some aim to enter the United States. There is also the displacement of Colombians even after the 2016 peace agreement (Casey 2019), of Nicaraguans from April 2018 onward, and of Haitians since the 2010 earthquake, among other groups of both intra- and extraregional refugees. At the same time, the numbers of internally displaced people (IDPs) in the region continue to increase (Internal Displacement Monitoring Centre [IDMC] 2020).

The patterns of displacement have been further shaped by the impacts of COVID-19 in Latin America. Alongside the exacerbated vulnerabilities of displaced populations as a result of the sanitary crisis (Bengochea et al. 2021) and its negative impacts in their process of integration (Jubilut and Jarochinski Silva 2020), there is also emerging migration patterns, such as return and forced immobility, as a result of the unprecedented context of

border closures⁶ and pandemic mitigation measures (Vera Espinoza, Zapata, and Gandini 2020). All of this context of increased mobility coexists with the difficulties and/or unwillingness of governments to adequately protect refugees (and other migrants), when they are either destination or transit countries.

Despite the enhanced academic, media, and policy interest that these current scenarios have attracted, there is still a scattered understanding of some of the key legal documents, actors, and structures that conform refugee protection in Latin America. A comprehensive approach, able to connect and problematize the different aspects that establish the architecture of refugee protection in the region, is also lacking. This book aims to be a tool in filling this gap. Adopting an interdisciplinary approach, it explores the main regimes and documents of refugee protection (or those that can benefit refugees) in the region and reviews their emergence, development, and effects.

This contribution is particularly timely in light of the Global Compact on Refugees and its strong emphasis on regions,⁷ as well as in relation to global debates on fairness in responsibility sharing and cooperation to deal with some of the largest refugee displacements since World War II (Cantor 2019; UNHCR 2019c).

Thus, aiming to contribute to an increased comprehension of the region in terms of refugee protection, as well as to present suggestions on how to improve it, this book orbits around three aspects that together allow for the comprehensive understanding of Latin America's architecture of refugee protection: logics, regimes, and challenges.

About Refugee Protection in Latin America

Logics of Refugee Protection in the Region

The Creation of the "Latin America" Concept

To understand the architecture of refugee protection in Latin America it is relevant to reflect on some of the historic and circumstantial aspects of the region. At least two factors could be raised in that respect: (1) the foundation of the concept of "Latin America" and its development throughout historical circumstances in the second half of the nineteenth century (Mignolo 2005); and (2) the current context of the region vis-à-vis its historic path and going forward. Such notions allow one to better understand the reasons why refugee protection and integration in Latin America are so distinctive.

The forging of the concept "Latin America" can be traced to two main assumptions. The first is the arrival of white Latin Europeans to the region and the construction of a white elite in Latin America (Quijano 2015; Mignolo

2005), even though there is predominance of persons of Indigenous, African, and multiracial descent in the region (Wade 2010; Morrison 2007). That elite has been leading Latin American democracies by “granting” rights to non-whites while at the same time keeping the formal structures of power in their own hands (Acosta 2018; Gobat 2013). A tension between inclusion and exclusion based on race, thus, marked the foundations of Latin America since colonization and may still root current challenges to human rights in general, and refugee protection and integration in particular, in the region (Mignolo 2005).

The second major historical factor around the forging of the Latin America concept is its political drive: toward the second half of the nineteenth century Latin American countries united around the idea of resisting a North American expansionist endeavor toward southern countries in the Americas (Gobat 2013). A white imperialist mind-set prevailed in the leading of this regional initiative, but with an anti-imperialist political purpose against the United States (*ibid.*). Whereas local struggles for democracy also took place in some countries in Latin America at the time, a treaty designed by Chile, Peru, and Ecuador in 1856 called for an anti-United States alliance for the purpose of preparing to resist any United States-led expansion (*ibid.*). This coming together of countries can be seen as a constitutional moment for the notion of “Latin America” as representative of a regional sentiment.

This idea of “Latin America” appears to be a consequence of several common grounds that come from centuries and for different purposes, such as colonial backgrounds (related to metropolis with Latin background, i.e. Portugal, Spain, and France), shared cultural traces, geographical location, and/or developing nations status. It also allows for the continental countries of Mexico, Central America, and South America⁸ to be referred to as a unity, in the concept of “Latin America”. Even though different manners of grouping these States exist, for the purposes of this book Latin America is understood (unless otherwise expressly mentioned) as comprising Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, French Guyana,⁹ Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname,¹⁰ Uruguay, and Venezuela.¹¹

This unity does not mean homogeneity, given that there are particularities among and within States in the region. However, it is useful to think in terms of refugee protection, both regarding impacts of the States’ past that have effects in today’s policies and in relation to mutually adopted actions, mainly due to this concept of being part of a collectivity titled “Latin America”.

Latin America as a scenario of refugee protection today reflects the region’s contrasts, with several different nationalist approaches and initiatives, shaped by ancient racial and social hierarchies that lead to discrimination

and unequal distribution of wealth and political power, but also with common grounds in the issue, as well as collective actions being undertaken, that together constitute examples of regional Refugee Law.

Regional Refugee Protection

Regional Refugee Law is relevant to refugees' protection considering it can lead to the expansion of the international framework by being "a *locus* for new norm-creation" (Jubilut and Lopes 2017: 36), as well as by producing specific and tailored responses to more-localized circumstances (Jubilut and Ramos 2014).

Regional law can be said to fall under what is conceptualized as *regionalism*, meaning most formal structures and processes of regional cooperation, including laws promulgated and enforced by established regional bodies (Ramji-Nogales 2019), with clear legal standards and enforcement mechanisms. However, a dual analysis is necessary to capture the "more complex notion" of regionalism associated to refugee protection (Kneebone and Rawlings-Sanaei 2007: 3), by considering the role of different actors and historical processes, and even recognizing that there are limits to what "can be achieved by regional approaches alone" (ibid. 3; Jubilut and Ramos 2014). In this sense, it is necessary to comprehend alongside regionalism the idea of *regionalization*, meaning the more informal processes of exchange, a de facto and manifold process (Grugel and Hout 1999: 10), to understand comprehensively regional approaches to refugee protection (Geddes et al. 2019).

These regional approaches have been identified as a strategic tool to deal with the "increasing scope, scale and complexity of population movements" (Jubilut and Ramos 2014: 66), that many times are not effectively covered by the international legislation or by individual States. At the same time, the greater cohesion of interest and values that countries of the region tend to share would facilitate cooperation and encourage greater regional responsibility sharing (Barichello 2016; Jubilut and Lopes 2017; Schuck 1997). It is relevant, then, to better delineate the concept of region.

Despite cultural similarities, there are no natural regions (Geddes et al. 2019: 5). Instead, "regions are made and re-made" (Grugel and Hout 1999: 9) as they are decided and formed through political negotiation and the interests of different actors. Regions in this context are mostly understood as geographically proximate political constructs made of interrelated units with shared aims of social, political, economic, or organizational cohesiveness (Cantori and Spiegel 1970). Regions "sit between the global and the national" (Geddes et al. 2019: 5), which explains their multilevel reach and scope, as well as the diverse range of actors involved in their processes, including states, regional organizations, international organizations, and civil society, among others. This multileveling of characteristics and associated

interdependencies aids in comprehending the multidimensional complexities of Latin America's approach to refugee protection.

First, it is essential to point out the coexistence of regimes for the protection of refugees in Latin America, which occur in the regional-international level, regional-regional level, regional-national level, and national-international level, as will be explored below. This interaction also happens among Refugee Law and other branches of Law, such as International Human Rights and International Humanitarian Law, and within Refugee Law itself. This complexity is relevant given that, as explored in this volume, regional initiatives need to be underpinned by a strong set of norms on refugee protection as well as States' commitments, and these several interactions might contribute to that.

Second, in the region there are more institutionalized approaches and other more informal arrangements that can also influence and shape refugee protection in practice. While this book focuses on more-formal patterns of cooperation, the analyses of many of them also touches on the role of informal processes and of non-state actors. This multilevel analysis is timely since said components gain relevance in a scenario of competing logics in refugee protection such as the one that currently exists in Latin America.

Current Logics at Play in Refugee Protection in Latin America

Latin America has a long tradition in ascertaining the right of asylum (Alto Comisionado de las Naciones Unidas para los Refugiados [ACNUR] n.d.; Fischel de Andrade 2014), which is implemented through either political asylum or refugee status,¹² two forms of protection that coexist in the region. Political asylum has a more discretionary basis, given that it leaves to States the decision of its granting, as well as a more limited scope, as it pertains only to protection in the face of actual political persecution. Refuge, on the other hand, is vested with the nature of a right, and can be implemented only when the normative criteria is met (Jubilut and Lopes 2018, 2019). Moreover, it applies to cases when, “as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (1951 Refugee Convention, Article 1, A, 2).

In the case of Latin America, not only political asylum and refuge coexist, but the latter has also more breadth. This is so given that, in 1984 countries of the region gathered at the Colloquium on the International

Protection of Refugees in Latin America, Mexico and Panama, and adopted the Cartagena Declaration.¹³ This nonbinding legal document established other criteria for refugee status determination (RSD) in the region, determining that “the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees 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” (Cartagena Declaration on Refugees 1984: 3rd conclusion). In this sense the regional refugee status definition added to the international criteria (that requires individualized well-founded fear of persecution), the possibility of recognition by focusing on the objective situation of the country of origin (Jubilut and Carneiro 2011: 67; Reed-Hurtado 2013, Jubilut 2018), thus expanding the scope of protection.

The Cartagena Declaration, despite its soft law nature, not only enlarged the refugee definition to be applied in Latin America,¹⁴ but also became the cornerstone of the current, and complex, architecture of refugee protection in the region (Jubilut 2018). This is so given that it set up a revisional process with meetings taking place every ten years in order to assess the region’s challenges and needs in terms of refugee protection. The resulting products of these meetings have been the 1994 San José Declaration on Refugees and Displaced Persons (SJD),¹⁵ the 2004 Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America (MPA)¹⁶ and the 2014 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 (Brazil Declaration and Plan of Action).¹⁷

The Cartagena Declaration and its revisional process have developed Latin America’s tradition toward implementing the right of asylum (Jubilut and Lopes 2018) and have aided the region in adopting a common grammar of refugee protection, one that focuses on solidarity and responsibility sharing (Jubilut, Vera Espinoza, and Mezzanotti 2019).

Mainly due to this, Latin America has been long considered an example of South-South cooperation and solidarity (Harley 2014). Academics and practitioners alike have praised the latter as one of the key characteristics of the Latin American approach to refugee protection (Lavanchy 2006; Maldonado Castillo 2015). In this context, the principle of solidarity has been linked to the “generosity that can be found in the Latin American tradition of asylum” (Barichello 2016: 196) and to the conceptual shift from burden to responsibility sharing in refugee protection (Jubilut and Carneiro 2011). Solidarity, linked to the perception of shared problems and solutions in dealing with refugees’ plight, has contributed to norm development in the region

(Cantor and Barichello 2013; Harley 2014). As some authors have pointed out, however, the idea of solidarity is not totally unselfish (Vera Espinoza 2018a), and has facilitated the establishment of the branding of generosity aimed to appeal to States and international donors alike (Kneebone 2016). This dual understanding of solidarity is relevant given that it allows for the exploration of both the utopian ambitions of the region and the limitations of its implementation (Menezes 2016).

Moreover, if, on the one hand, solidarity can be said to be a guiding principle of refugee protection in Latin America, the acknowledgment of its limitations also sheds light on other logics currently at play in the region. First, Latin America has not been exempted from global trends and is experiencing an increase of anti-immigrant sentiment alongside increases in xenophobia and discrimination¹⁸ (Brumat, Acosta, and Vera Espinoza 2018; Jubilut, Vera Espinoza, and Mezzanotti 2019).

Second, interests other than refugee protection seem to be influencing current policies and directly impacting the issue. For instance, the region has not showcased homogeneous behavior but rather a plethora of different approaches within a spectrum that goes from countries accepting to be safe third countries (e.g., Honduras¹⁹) or being both a safe third country and an offshoring processing center (e.g., Guatemala²⁰), to others being pressured but not accepting to being safe third countries albeit changing their national practices (e.g., Mexico²¹); refusing to do so (e.g., Panama²²), or even having said agreements declared unconstitutional (e.g., Canada in relation to the United States in terms of NCA refugees and other migrants).²³ A scenario of competing logics is, thus, at play in Latin America, and it is important to highlight it so as to prevent refugee protection from being jeopardized.

Third, nationalistic and populist governments that do not positively value migration and have adopted, if not practices, at least a rhetoric against migrants in general²⁴ (which can directly impact refugee protection) are in power in the region.²⁵ This has generated a general politicization of migration that has influenced debates and policies around migration and displacement (Brumat, Acosta, and Vera Espinoza 2018; Jubilut, Vera Espinoza, and Mezzanotti 2019)

However, and on the other hand, there are still positive examples in the region, such as the resettling of persons from the NCA to Uruguay²⁶ and to Brazil²⁷ as well as national practices of interiorization (i.e., national relocations)²⁸ in light of large flows of refugees, which are being justified as tools for migration management and for better chances of integration (see Jarochinski Silva, Castro, and Sampaio in this volume).

A fourth aspect in terms of logics at play in the region is the notion, linked to the principle of solidarity, of creative regional responses to deal with refugee protection, particularly in relation to complementary pathways for protection (Jubilut 2017a), such as with humanitarian visas (as in the

cases of Brazil (see, e.g., Jubilut, de Andrade, and Madureira 2016) Chile,²⁹ Peru³⁰ Argentina³¹ and Mexico³²) (see Freier and Luzes; and Sánchez-Mojica in this volume), and regional instruments deriving from the Mercado Común del Sur (MERCOSUR; Southern Common Market) (see Brumat in this volume). The case of the Venezuelan flow showcases the application of distinct and uneven measures by the countries of the region in terms of protection of refugees (and other migrants) (Freier and Fernández; Jarochinski Silva, Castro, and Sampaio; and the Annex in this volume; Jubilut and Fernandes 2018). At the same time, the ongoing number of arrivals has raised political tensions in some countries, frustration over scarce resources, and fears of xenophobia, all of which demand greater support and involvement of the international community (Betts 2019a), which has been slow to respond (Betts 2019b).

These Latin American responses and their effects need to be analyzed in the long term and in comparison to the reception of other refugee groups as well as to Refugee Law, which, in the regional context, takes the form of several regimes.

Regimes of Refugee Protection in Latin America

The concept of regimes designating “intervening variables standing between basic characteristics of world politics such as power, capabilities, and state behaviours” (Yoshimatsu 1998: 6) was introduced in 1975 by John Ruggie (*ibid.*: 5). Regimes are also understood as the different sets of rules norms and principles, and decision-making processes (Krasner 1982) and “can facilitate informal contact and communication among officials, and permit governments to attain objectives that would otherwise be difficult or impossible” (Yoshimatsu 1998: 7), and, in this sense be a “causal or constitutive variable that may be useful in explaining cooperation” (Haggard and Simmons 1987: 495), given that they are “*examples* of cooperative behavior, and *facilitate* cooperation” (*ibid.*: 495; emphasis in the original).

Given that regimes can be understood as “multilateral agreements among states which aim to regulate national actions within an issue area” (*ibid.*: 495), they can be international or regional, or even subregional, in nature; and multiple regimes can coexist in the same issue area.

This coexistence has become increasingly complex over time. It is generally accepted that the aftermath of World War II generated a common global space of interactions at the global level (Betts 2013), with several institutions mandated to act with clear scopes and little overlapping (*ibid.*). Further developments in the international arena led to the rising of new institutions and the permanent oscillation in the scope and purpose of existing ones (Betts 2013; Blokker and Schermers 2000). Overlaps in scope and purpose have become more and more frequent and have generated the need

for a methodological approach that literature convened to name as “regime complexity” (Betts 2013: 69).

Regime complexity derives from the plurality of institutions with overlapping scopes and purposes, which results in some of these institutions becoming challenged and others becoming reinforced (Henning 2019). Such a scenario defines regime complexity “as a set of international institutions that operate in a common issue area and the (formal and informal) mechanisms that coordinate them” (ibid.: 26). These institutions can be constituted as organizations at the bilateral, plurilateral, regional, or global levels, as well as less formal arrangements that operate in common areas with coordinating mechanisms. Whereas regime complexity has been criticized for undermining international cooperation and leading to the inconsistency of rules and obligations, it has been advocated for allowing decentralization, flexibility, and adaptability (ibid.).

Regime complexity in refugee protection is anchored, from a normative perspective, in the 1951 Convention and its 1967 Protocol. Institutionally, its traditional foundation is the UNHCR³³ (Betts 2013, 2015), created in 1950.³⁴ The regime complexity is based on the assumption that, with time, refugee protection has started to coexist with several areas and international organizations that have implications to refugee protection, such as humanitarianism, human rights, migration, peacebuilding, and so on (Betts 2013). Some of these areas overlap with refugee protection regime in scope, others in purpose, while still others are complementary (ibid.). The latest example of this overlap is the coexistence of the UNHCR and the International Organization for Migration (IOM) within the UN system, even before the IOM joined the UN as a related organization in 2016³⁵ The IOM has a broad mandate based on “an extensive definition of “migrants”” (Pécoud 2018: 1625), therefore including refugees considering that they are forced migrants (Jubilut and Casagrande 2019). Although the IOM and the UNHCR have had a complex relationship, they have cooperated on several occasions (Pécoud 2018). What the inclusion of the IOM into the UN system means for refugee protection in terms of budgeting, resource allocation, and norm setting has yet to be seen, but it already reinforces the regime complexity in refugee governance.

This amalgam of different sets of regimes, rules, and institutions that complement each other, sometimes overlapping, and shape States’ responses in terms of refugee protection is the refugee regime complexity in its initial form. It is, however, possible to expand this theoretical scheme to even better understand the complexity of the current refugee regime, especially in Latin America. Whereas refugee regime complexity deals with the complementary and overlap of Refugee Law with other branches of Law and/or other issues, it is also relevant to bear in mind that within Refugee Law there are several regimes at play simultaneously.

Within Refugee Law there is the coexistence of (i) international-regional regimes, which have as its most developed examples the African Refugee Regime³⁶ and the protection of refugees in Latin America; (ii) international-national regimes; (iii) regional-national regimes, which would allow for the comprehension of the implementation of Refugee Law in the national level; and also (iv) regional-regional regimes. All of these are essential to understanding refugee protection in Latin America.

This book assumes that several regimes of refugee protection are at play in Latin America: (1) the Regime of the Cartagena Declaration: the Cartagena Declaration and its revision process (see chapters by Fischel de Andrade, Rushing, and Lizcano Rodriguez; Vera Espinoza; and Arnold-Fernández, Sarmiento Torres, and Kallas in this volume); (2) the Regime of the Inter-American Human Rights System: deriving from Inter-American Commission on Human Rights' (IACmHR) decisions and documents and the rulings of the Inter-American Court of Human Rights (IACtHR) (see Botoero; Casagrande in this volume); (3) the regional dialogues with the international regime on refugee protection and other pertinent international documents (see Mondelli; Jubilut, Mezzanotti and Lopes in this volume); and (4) national responses and legislation rooted in the region's tradition toward displacement (see Brumat in this volume; Freier and Fernández in this volume). There is, thus, a coexistence within a regime complexity that challenges consistency, but delivers flexibility and adaptability in the protection of refugees (and other migrants).

In order to review this complexity in a comprehensive way, this book often uses the term “architecture,” aiming to explore the overall framework where those different regimes coexist. This complex architecture of refugee protection in Latin America has expanded spaces of protection and produced relevant examples of good practice, and, at the same time, has seen the increase of actors, processes, and interests that have resulted in some implementation challenges. The overall regional architecture has been successful (Acosta and Oehler 2019), but it is not immune to political change, lack of willingness by States to follow commitments and or traditions, and competition for limited resources, leaving several challenges to be faced.

Challenges of Refugee Protection in Latin America

Four key current set of challenges can be explored in an assessment of some of the contradictions in the region, as well as in identifying areas to consider when outlining suggestions for improvement: (1) contextual challenges stemming from the current “crisis” of displacement, (2) traditional protection challenges, (3) political challenges, and (4) challenges in terms of integral protection.

1. Contextual Challenges Stemming from the Current “Crisis” of Displacement

Of the world’s 79.5 million displaced persons due to conflict, persecution violence, or human rights violations (UNHCR 2020: 2), at the end of 2019 Latin America hosted 14,138,901 persons of concern according to the UNHCR (*ibid.*: 76), and was experiencing relevant intraregional displacement flows that demand actions to ascertain protection.

The largest of these flows—in fact the largest in the history of Latin America—is the displacement from Venezuela (UNHCR 2019c) (see Jarochinski Silva, Castro, and Sampaio in this volume). With officially 5,563,687 Venezuelans displaced by 5 March 2021 (R4V 2020a) and an estimated more than 6.5 million displaced by the end of 2020³⁷ Latin American countries have taken in an estimate of 80 percent of those displaced (*ibid.*). This displacement has been met both by ad hoc national (Jubilut and Fernandes 2018; Acosta, Blouin, and Freier 2019) and regional initiatives, with the adoption, in November 2019, of the Regional Response for Refugees and Migrants from Venezuela for 2020³⁸ encompassing both protection and integration concerns.

A second flow to be mentioned is the displacement from the NCA (El Salvador, Guatemala, and Honduras) (see Nelson-Pollard in this volume) resulting from those fleeing from gang-related and gender-based violence (Anker and Palmer 2014; Cantor 2014; Ziff 2019), and mainly heading toward the United States through Mexico (Vera Espinoza 2019). This displacement has been described as “soaring” (UNHCR n.d.) and has reached 470,000 in 2020 (*Ibid.*), a total that included relevant numbers of unaccompanied or separated children (Jones and Podkul 2012; Musalo, Frydman, and Ceriani Cernadas 2015).³⁹

The same subregion has started to experience a new displacement flow from Nicaragua due to a crisis that began in April 2018 following protests against a social security reform (MigraMundo 2019), and that escalated to severe violations of human rights (UNHCR 2019d). Even though this movement is too recent for analysis, it is estimated that more than 102,000 have already fled internationally, with Costa Rica being the main destination country (UNHCR n.d.). This displacement flow has started to be assessed together with the mentioned NCA displacement under the Comprehensive Regional Protection and Solutions Framework (MIRPS, from the acronym in Spanish for *Marco Integral Regional de Protección y Soluciones*), adopted in 2017 as a framework for shared responsibility.⁴⁰ Alongside this increased regional mobility, new displacements resulting from the social and political strifes of 2019 might also occur in the region (including internal displacement), for instance in Bolivia (IDMC 2020: 58), and migrants deciding to move to other countries as a result of political instability and rising xe-

nophobia, for instance in Chile (Noticias ONU 2019) and Ecuador (R4V 2020b: 115), whereas new mobility flows have started to occur as a result of the COVID-19 pandemic (Vera Espinoza, Zapata, and Gandini 2020).

Apart from these more recent flows, Latin America also experiences the continuation of older displacements, as in the cases of Cubans⁴¹ but more especially in the voluminous cases of Colombians (see Carneiro in this volume) and Haitians (see Sánchez-Mojica in this volume). Regarding the former, estimates state that during the sixty-year-old conflict more than 7 million persons were displaced (Miroff 2016). Although the 2016 Peace Agreement brought hopes of changing this scenario, the reality is that forced displacement has continued (Casey 2019; see Carneiro in this volume). In relation to the latter, and even though it can be argued that Haitians would better fit the description of environmentally displaced persons (see Sánchez-Mojica in this volume), it is relevant to point out their displacement in a refugee-related book in Latin America, given that, even if Haiti is considered to be outside Latin America and instead part of the Caribbean, Haitians' displacement has turned into a large and continuous migratory flow in the region and gave rise to several humanitarian initiatives of protection based on the refugee regimes, as well as due to the fact that they could be recognized as refugees themselves under the Cartagena Declaration (Jubilut, Madureira, and Levy 2018).

Latin America also receives extra-regional refugees and other migrants, with continued flows from Africa (Yates 2019), new displacements from Asia (*ibid.*), and the arrival of smaller groups of refugees from Syria (Rodríguez Camejo 2017). In the case of the first two groups, the numbers are said to be growing; most migration is through regular pathways and Latin America can be both a destination and a transit region (Yates 2019).

Some of these patterns of displacement are not new and have already shaped the architecture of refugee protection in the region (see Fischel de Andrade and Vera Espinoza in this volume). Previous displacement crises such as the 1980s refugee situation in Central America prompted the emergence of the Cartagena Declaration, whereas the displacement of Colombians as a result of the internal conflict was the background of the Mexico Plan of Action and Declaration. In this sense, it is relevant to note how practical challenges shape Latin America's refugee protection, as well as to analyze the current challenges in this area to explore whether the region will continue with this tradition.

2. Traditional Protection Challenges

A second setting of challenges being witnessed in Latin America regarding refugee protection relates to traditional protection aspects, which have a more normative nature. In this regard, the challenges do not pertain to lack

of legal structures (given that all States in the region, apart from Guyana, are party to the 1951 Refugee Convention and/or its 1967 Protocol, and have developed regional regimes of protection), but rather violation of existing norms.

These violations can occur in relation to (i) safe access to territories, which can lead to rights violations and/or fatalities;⁴² (ii) access to safe territories, linked to the cornerstone *non-refoulement* principle of Refugee Law, (iii) access to RSD procedures, (iv) adequate RSD procedures, (v) as well access to rights during RSD procedures, such as the right to not to be subject to torture or detention and family protection; and (vi) respect of rights peculiar to specific groups, such as women, children, the elderly, persons with disabilities, and LGBTI+ (lesbian, gay, bisexual, transgender, and intersex, plus other sexual and gender orientations and identities) refugees (Jubilut 2017b). These violations can occur directly or be camouflaged and therefore be more difficult to be perceived, as for instance, although a ban on *non-refoulement* has not been implemented, the imposition of limits or requirements for entry (such as valid passports) might render protection impossible.⁴³ Another example is the creation of complementary protection alternatives, not to increase the humanitarian space of protection by benefiting forced migrants other than refugees but as a way to minimize protection under Refugee Law. In light of the COVID-19 pandemic, all of these challenges seem to be reinforced, both in Latin America (Vera Espinoza, Zapata, and Gandini 2020; Bengochea et al. 2021) and globally (Jubilut 2020).

In terms of the current scenario in Latin America, which is different from scenarios in other regions, these traditional protection violations seem to be more on specific rather than systemic bases, but nonetheless impose challenges for protection.

3. Political Challenges

Alongside the challenges imposed by current displacement flows and violations to rights pertaining to traditional refugee protection, there are political challenges in the protection of refugees in Latin America.

Some of these challenges have already been mentioned, but it is relevant to recap, particularly with relation to (i) the lack of political will toward improving access and conditions for refugees and other migrants, (ii) the rise of populist governments, (iii) the rise of anti-immigrant sentiments and the adoption of anti-immigrants rhetoric, (iv) the rise of xenophobia and racism, (v) the politicization of migration, and (vi) the externalization of asylum (Brumat 2019; Vera Espinoza 2019; Jubilut 2017b; Jubilut, Vera Espinoza, and Mezzanotti 2019). All of these contribute to the creation of an environment that may put the regional architecture of protection in jeopardy, and create a contrasting scenario with Latin America's traditions of refugee protection.

Moreover, political choices might impact access to rights, such as the use of detention as a deterrent against migration. Such use of detention has been impacted by COVID-19, and has led the IACtHR to render a resolution granting provisional measures to guarantee rights for detained migrants during the pandemic.⁴⁴ This also relates to integral protection.

4. Challenges in Terms of Integral Protection

The last set of challenges to be explored relate to the ascertaining of refugees' human rights. These rights should be respected alongside the rights deriving from their status as refugees, such as the above-noted integral protection, which are particularly relevant in a developing region.

Even if, and maybe due to the fact that, as noted, the challenges in traditional protection topics in Latin America do not seem to be systemic, there is scope to move beyond them and to foster integral protection as a core principle of the regional approach. Although safe access and adequate procedures for status determination are key for refugees' protection in the region, less emphasis has been placed on the need to enhance access to rights (especially economic, social, and cultural rights) and services. Integral protection results in protection that guarantees both access to the country and to RSD, as well as a holistic approach to integration (Jarochinski Silva and Jubilit 2018; Jubilit and Apolinário 2018; Vera Espinoza 2018a, 2018b).

The four challenges outlined here, together with the refugee regime complexity in Latin America and the current contrasting logics that underpin the refugee architecture in the region discussed above, demonstrate the importance of understanding the logics, regimes, and challenges in refugee protection in Latin America as a way to facing the current scenario in seeking integral protection for refugees in the region. This book contributes toward this goal.

About the Book

The book analyzes the frameworks, current state, and challenges of refugee protection in Latin America. Adopting an interdisciplinary approach, the book unpacks the main documents and processes that compose the refugee protection regimes in the region, as well as national practices stemming from the dialogues with the international and regional regimes, together with other forms of (complementary) protection that can benefit refugees, reviewing their emergence, development, and effects. While the book is comprehensive in scope, and explores a large number of key documents and processes, it is regional in its focus.

It aims to bring attention to, and information on, this insufficiently well-known region and its practices in refugee protection. The characteristics of refugee protection in Latin America need to be divulged not only as a way of thinking about better practices and solutions within the region *in se*, but also as a way to compare with other regions regarding good (and also inadequate) practices.

Overview of the Book

The book gathers a diverse group of leading scholars and practitioners from Latin America, with authors from/or established in Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Panama, and Peru, and commentators from within the region (Argentina and Mexico) and outside it (Australia, Canada, and the United States). Some of those authors from Latin America are established elsewhere such as in Spain, Norway, Switzerland, and the United Kingdom. Authors of the foreword (Hathaway) and conclusion (Moulin) are respectively American-Canadian and Brazilian, and the annex was researched and written by an American author based in Norway.

The book draws from a diverse range of theoretical and methodological approaches, both from academics and from practitioners. These different perspectives contribute to an interdisciplinary analysis, description, and assessment of regional approaches to refugee protection and the complex architecture of laws, policies, actors, and policies that make up the refugee regimes in Latin America.

Presentation of Chapters

The book has seventeen chapters (including this introduction and the afterword). Most chapters have a normative base, but the analyses are interdisciplinary, considering that each of them also addresses geopolitical, social, and economic impacts, and aims to describe the existing scenarios and to present assessments seeking the betterment of the regional regimes and of refugees' integral protection.

The book is divided into five parts:

Part I. The Regime of the Cartagena Declaration: encompassing chapters on the Cartagena Declaration (Fischel de Andrade), San José Declaration on Refugees and Displaced Persons (Rushing and Lizcano Rodriguez), Mexico Declaration and Plan of Action (Vera Espinoza) and the Brazil Declaration and Plan of Action (Arnold-Fernández, Sarmiento Torres, and Kallas);

Part II. The Regime of the Inter-American Human Rights System: with a chapter focusing on the main aspects of the system as well as on the IACmHR (Botero) and the other on assessing the rulings of the IACtHR (Casagrande);

Part III. Regional responses to the international regime on refugee protection: focusing on documents adopted by the region that are related to international documents, such as the Brasilia Declaration, related to the 1951 Refugee Convention⁴⁵ and the Statelessness Conventions (Mondelli), and the 100 points of Brasilia, related to the Global Compact on Refugees (Jubilut, Mezzanotti, and Lopes);

Part IV. Other forms of protection beyond the regional refugee regime: focusing on national initiatives and practices such as those stemming from MERCOSUR's norms (Brumat), humanitarian visas (Freier and Luzes) and national migration laws—in an assessment of how they can directly or indirectly benefit refugees (Freier and Fernández); and

Part V. Current Regional Refugees “Crisis”: including the displacement of Venezuelans (Jarochinski Silva, Castro, and Sampaio), Central Americans (Nelson-Pollard), Colombians (Carneiro) and Haitians (Sánchez-Mojica).

Each of the three first parts are dedicated to a specific Latin America regime of regional protection of refugees; the fourth brings together examples of national regimes in the region and the fifth examples of current displacement “crisis” and regional and/or national responses to them (within the logics, regimes and traditions of Latin American). This effort in “compartmentalization” aims to clarify the architecture in play in the region. Each part of the book ends with a short commentary chapter (by Kneebone for part I, Anker for part II, Hyndman for part III, Ceriani for part IV, and Calderón for part V), as a way to creating dialogues from the standpoints of each of the regimes and case-studies.

To round up the book an annex is presented (with an extended version available online), highlighting the main documents in the Regime of the Cartagena Declaration and the Regime of the Inter-American Human Rights System, as well as good practices in play in Latin America regarding refugee protection. Said practices were considered as “good” as they increase refugee protection, adopt a human-rights approach and/or set Latin America apart as a region in refugee protection in a positive way.

With this, the book aims to be a useful analytical, descriptive and assessment tool in understanding the architecture of refugee protection in Latin America, through its regimes, logics, and challenges.

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Notes

1. Another dimension that can be mentioned is the one relating to return. Countries in Latin America—such as Mexico and Colombia—have started to experience being countries of return and to face the challenges regarding this dimension of migration governance. This affects forced migration in general, and probably also refugees (in what can be seen as a violation of *non-refoulement* if the return is not voluntary); however current aggregated data (for Mexico) does not separate in the different legal categories of forced migrants (Vera Espinoza 2019).
2. Available at <https://www.refworld.org/docid/3be01b964.html>.
3. Available at <https://www.refworld.org/docid/3ae6b3ae4.html>.
4. Available at https://www.unhcr.org/gcr/GCR_English.pdf.
5. Available at <https://www.refworld.org/docid/3ae6b36ec.html>.

6. Information about border closure in the region is available at <https://www.inmovidadamericas.org/cierre-fronteras>.
7. See the Global Compact on Refugees (UN 2018: 6, paras. 28, 29).
8. Latin America is often said also to include the Caribbean States, which share either an Iberian-led or French-led colonial past. For the purposes of this book, the more restricted definition is applied, given that its focus is on refugee protection and this is the model used by UNHCR (2019b). In this sense, when the Caribbean States are included, this is spelled out with reference to “Latin America and the Caribbean”.
9. French Guyana is an exception to the Iberian metropolis having been colonized by the French, and also in terms of independence given that it is still connected to France.
10. Suriname is an exception to the Iberian metropolis having been colonized by the Dutch.
11. The list including the independent Caribbean states would add Cuba, Dominican Republic, Haiti, and Trinidad and Tobago. Puerto Rico could be added to the list, although it has a peculiar standing in International Law. To complete the list of independent Caribbean states, albeit not connected to Latin America, one would add Anguilla, Antigua and Barbuda, Aruba, Barbados, Bahamas, Bonaire, Cayman Islands, Curaçao, Dominica, Grenada, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Vincent and the Grenadines, Trinidad and Tobago, and Turks and Caicos. Even though Haiti would be outside the realm of Latin America adopted by this book, Haitian displacement is included in the analysis since it is one of the major flows both in recent years and ongoing in the region, as well as due to the connections it shares with neighbouring Dominican Republic and the rest of the continent.
12. For more on these different institutes see Jubilit and Lopes (2019).
13. The Cartagena Declaration also creates the spirit of Cartagena that inspires refugee protection in the region. For more on that, see Jubilit, Vera Espinoza, and Mezzanotti (2019).
14. The Cartagena Declaration suggests a definition of a refugee that includes persons who “have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, mass violations of human rights, and other situations that have seriously disturbed public order.”
15. Available at <https://www.refworld.org/docid/4a54bc3fd.html>.
16. Available at <https://www.refworld.org/docid/424bf6914.html>.
17. Available at <https://www.refworld.org/docid/5487065b4.html>.
18. See, e.g., <https://www.nbcnews.com/news/latino/latin-america-fears-rising-discrimination-xenophobia-against-venezuelan-migrants-n1068536>.
19. See, e.g., <https://www.reviewjournal.com/news/politics-and-government/us-assembly-pact-with-honduras-seals-northern-triangle-1856857/> and https://www.bbc.com/news/world-us-canada-49834644?mc_cid=e34d386373&mc_eid=84714ec347.
20. See, e.g., <https://www.telesurenglish.net/news/Guatemala-Social-Organizations-Reject-Safe-Third-Country-Deal-20190727-0002.html>, <https://www.justsecurity>

- .org/65967/offshore-processing-in-guatemala-a-deeper-look-at-the-u-s-asylum-deal/, and <https://cnnespanol.cnn.com/2019/09/10/alerta-el-gobierno-de-guatemala-si-podran-negociar-con-ee-uu-el-ser-tercer-pais-seguro-resuelve-la-corte-de-constitucionalidad/>.
21. See, e.g., <https://noticias.uol.com.br/ultimas-noticias/afp/2019/09/06/mexico-afirma-que-reduziu-em-56-o-fluxo-migratorio-para-os-eua.htm>, and <https://www.reuters.com/article/us-mexico-usa-immigration-exclusive/exclusive-mexico-opposes-u-s-plan-to-make-it-take-asylum-seekers-document-source-idUSKBNIK23BA>.
 22. See, e.g., https://www.telesurenglish.net/news/Panama-to-US-We-Wont-be-Your-Safe-Third-Country-20190822-0014.html?mc_cid=dae983f22a&mc_eid=8%E2%80%A6.
 23. On the other hand, it has been reported that Panama has adopted restrictive policies toward extra-regional refugees (<https://africetimes.com/2019/08/30/for-african-migrants-will-panama-become-the-new-libya/>).
 24. See, e.g., <https://blogs.eui.eu/migrationpolicycentre/migration-rise-right-south-america-increasing-anti-immigration-sentiment-southern-cone/>.
 25. See, e.g., <https://voxeu.org/article/deep-recessions-large-immigration-waves-and-rise-populism>.
 26. See, e.g., <https://www.acnur.org/portugues/2017/12/04/refugiados-da-america-central-chegam-no-uruguai/>.
 27. See, e.g., <https://www.iom.int/news/brazil-iom-unhcr-partner-support-resettlement-refugees-central-america-0>.
 28. See, e.g., <https://www.unhcr.org/news/briefing/2019/3/5c8b6cd44/5000-venezuelans-find-new-homes-brazils-internal-relocation-programme.html>.
 29. In 2018 the Chilean government announced that it will issue up to ten thousand humanitarian visas a year to Haitians who already have relatives in Chile. More information can be found at <https://www.economist.com/the-americas/2018/04/12/chile-gives-immigrants-a-wary-welcome>. In August 2019 the government published Resolution no. 3.042 that provides permits to Venezuelan migrants without passport to allow family reunification or for humanitarian reasons. See <https://www.leychile.cl/Navegar?idNorma=1135162>.
 30. See, e.g., <https://reliefweb.int/sites/reliefweb.int/files/resources/Venezuela%20IOM%20Regional%20Response%20Overview.pdf>.
 31. See <https://www.unhcr.org/uk/news/stories/2017/11/5a0586774/syrian-refugees-reap-benefits-argentinas-new-visa-rules.html>.
 32. See, e.g., <https://www.nytimes.com/2019/01/25/world/americas/migrant-caravan-honduras-mexico.html> and <https://www.bbc.com/mundo/noticias-america-latina-45898633>.
 33. UNHCR's Statute was adopted by the United Nations General Assembly Resolution 428 (V) of 14 December 1950 and is available at <https://www.unhcr.org/4d944e589.pdf>.
 34. The UNHCR was created as a subsidiary organ of the UNGA, thus technically differing from specialized agencies that are independent international organizations created by specific treaties, and therefore with specific members and budgets. However, recently the UNHCR has been presenting itself as the UN

- refugee agency. To respect its interdisciplinary nature, this book did not interfere with the authors' choice in calling the UNHCR an agency or not.
35. See <https://news.un.org/en/story/2016/07/535282-general-assembly-decision-makes-international-organization-migration-part-un#:~:targetText=The%20United%20Nations%20General%20Assembly,its%20social%20and%20economic%20dynamics>.
 36. Which has in the 1969 OUA Convention Governing the Specific Aspects of Refugee Problems in Africa its cornerstone. Available at <https://www.refworld.org/docid/3ae6b36018.html>.
 37. Available at <https://r4v.info/es/documents/details/72315>. For more on responses to the Venezuelan displacement see Baeninger and Jarochinski Silva 2018; and Gandini, Lozano Ascencio, and Prieto 2019.
 38. Available at <https://r4v.info/es/documents/details/72315>. For more on responses to the Venezuelan displacement see Baeninger and Jarochinski Silva 2018; and Gandini, Lozano Ascencio, and Prieto 2019.
 39. Moreover, there are high number of IDPs in the NCA, with figures estimated at more than 943,000 in 2019 (IDMC 2020), as well as drought-related displacements and displacements due to food insecurity that affect 3.3 million persons in Guatemala alone (Centro Scalabrano de Estudios Migratorios [CSEM] 2019), characterizing migration from the region as a mixed migratory flow.
 40. See https://www.unhcr.org/news/press/2019/11/5dc6849c4/unhcr-welcomes-commitment-central-american-states-mexico-address-forced.html?mc_cid%E2%80%A6.
 41. See, e.g., <https://www.migrationpolicy.org/article/cuban-migration-postrevolution-exodus-ebbs-and-flows>; <https://www.theguardian.com/world/2019/sep/03/more-cubans-seek-asylum-in-mexico-amid-clampdown-on-legal-path-to-us> and <https://www.radiotelevisionmarti.com/a/bajo-riesgos-continuos-migrantes-cubanos-por-latinoam%C3%A9rica-/231832.html>.
 42. According to the IOM, at least 514 migrants have lost their lives in the Americas in 2019 (<https://www.iom.int/news/americas-migratory-routes-reach-grim-milestone-over-500-deaths-so-far-2019-3>).
 43. For more on this in the case of Venezuelans see <https://www.unhcr.org/news/press/2019/8/5d67c6e94/situation-venezuelan-refugees-migrants-needs-greater-global-attention.html>.
 44. The ruling was rendered in the *Velez Looor* case, and is a resolution by the President of the Court. The resolution is available in Spanish at https://www.corteidh.or.cr/docs/medidas/velez_se_01.pdf.
 45. As the cornerstone of Refugee Law the 1951 Convention does not appear only in one part or chapter but rather is a transversal topic throughout the book.

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