

latin american society

## Latin America's refugee protection mechanism and its constraints —an analysis based on Venezuela's refugee protection issues

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Abstract: Latin America has always been regarded by the international community as a model for regional cooperation in the field of refugee protection. The "Cartagena Declaration" adopted by the Latin American region in 1984 defined refugees in the broadest terms. Many countries in Latin America have adopted the "Cartagena Declaration". The Tagena Declaration incorporated the definition of refugees into domestic law, promoting regional cooperation in refugee protection. In addition, Latin America has also adopted a number of regional refugee protection plans such as the Mexico Declaration and the Brazil Declaration. However, through the Judging from the regional practice of Venezuelan refugee protection, Latin America's advanced regional refugee mechanisms are more based on rhetorical politics. According to the Latin American refugee mechanism, Venezuelan asylum seekers meet the criteria for refugee status identification. Latin American countries should initiate a large-scale refugee influx. The popular "preliminary refugee determination" mechanism determines the refugee status of asylum seekers. However, Latin American countries except Brazil do not identify refugees in accordance with the "Cartagena Declaration". Instead, they use "temporary protection or stay arrangements" "The mechanism provides temporary protection for asylum seekers and even closes the door to refugees. The effectiveness of the Latin American refugee mechanism and the willingness and ability of refugee-receiving countries are the main factors restricting the implementation of the Latin American refugee mechanism. Refugee protection in Latin America It provides a useful

perspective on the plight of refugee protection worldwide. Keywords: Refugees, international refugee mechanisms, regional cooperation, Latin America, Venezuela. About the author: Wu Haotan, Lecturer, Institute of International Strategy, Party School of the Central

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(1) The origin and definition of refugees.

The origin of the word "refugee" can be traced back to France in the 16th century. In 1573, the Calvinists who fled from the Netherlands to France to escape persecution by the Spanish rulers were called "refugees" in French. "Refugee" (Réfugié). At the same time, the definition of refugee is closely related to the formation of modern nation-states and the international system. With the signing of the "Peace of Westphalia" in 1648, refugees under the nation-state system also emerged. By the 18th and 19th centuries, the creation and protection of refugees had been integrated into the construction process of European countries. Newly established nation-states after revolutions, such as Italy, Germany, and France, often caused large numbers of people to flee during the establishment process. For example, during the period from 1789 to 1815, France, Italy and Poland in the 1840s and 1950s. In the middle and late 20th century, the independence of a series of former colonial countries in Asia, Africa and Latin America and the outbreak of international and regional conflicts caused a large-scale refugee flow to emerge again. At the same time, the refugee crisis was far away. It broke out far beyond the geographical limits of Europe and spread across the world.

The current international refugee mechanism was truly established only after the adoption of the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (referred to as the "1967 Protocol") and the establishment of the United Nations High Commissioner for Refugees. Prior to this, The emergence of international treaties on refugees and international organizations such as the United Nations Relief and Relief Agency and the International Refugee Organization (International Refugee Organization) Refugee agencies, but these treaties and agencies only target refugees in one or certain countries and lack universal applicability. United Nations The establishment of the UNHCR and the Convention Relating to the Status of Refugees and its 1967 Protocol have gradually developed into current refugee institutions and laws with universal application, constituting the core content of the current international refugee mechanism. Among them, the 1951 Convention Relating to the Status of Refugees The Convention and its 1967 Protocol define the concept of refugees in the current international refugee mechanism. As of September 2019, a total of 146 countries around the world have ratified the 1951 Convention relating to the Status of Refugees, and 147 countries (region) ratified the 1967 Protocol. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol have therefore become the most widely applicable refugee law documents.

According to Article 1(1) of the 1951 Convention relating to the Status of Refugees, "refugee" is defined

Gan Kaipeng: «Research on European Refugee Policy». Xiamen: Xiamen University Press, 2011, page 17.

University Press 2008 pp 55-56 Edward

Keene Beyond Anarchic Society: Grotius Colonialism and Order in World Policies 2002  
dam Watson The Expansion of International So  
Xiao: «The international refugee mechanism and the global The Prospects of Refugee Governance», Published in "Foreign

Affairs Review", Issue 3, 2018, Page 134, UNHCR, States, Parties, Inc. 967 Protocol Relating

to the Status of Refugee". // - us/ 5d9ed66a4 [2021-11-01]



International Refugee Mechanism

First of all, the international community has stipulated the core principle for solving the refugee problem - the "principle of non-refoulement" (principle of non-refoulement). The principle of non-refoulement comes from the rights of refugees under international refugee law. Right to push back ¶ No The right to refoulement specifically refers to the right enjoyed by refugees when they flow into the receiving country. The receiving country shall not push them back in any way to their life and freedom because of their race, religion, nationality, membership of a certain social group or certain political affiliation. The right not to be refouled is the most basic and core right granted to refugees by international law. Based on this right, the international community must protect refugees when protecting refugees. The most basic principle to be followed is the "non-refoulement principle". Following the non-refoulement principle means abiding by borders and not rejecting people, not refouling outside the territory, not extraditing, not deporting, and not pushing back large-scale influxes of people. At the same time, no refoulement The principle has the characteristics of "customary international law". This means that compliance with this principle applies not only to countries that have signed and ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, but also to the few countries that have not signed or ratified the Convention. Countries that have ratified the Convention and its Protocols

Secondly, on the basis of the principle of non-refoulement, international refugee law also provides three major durable solutions to refugee problems, namely voluntary repatriation, local integration and resettlement. (4) Voluntary repatriation (voluntary repatriation) Refers to freedom of expression for refugees to return home On the basis of willingness, eligible refugees will be returned to their home countries. ¶ In 1983, the United Nations General Assembly officially recognized voluntary repatriation as "the most ideal and durable solution to the refugee problem." ¶. Local integration means that refugees are granted some kind of A form of permanent legal status that allows them to stay indefinitely in the country of first asylum and fully participate in the social, economic and cultural life of the refugee-receiving country. 7 According to the special law on local integration issued by the United Nations Refugee Agency in 2002,

¶ Liu Guofu: «International Refugee Law», Beijing: World Knowledge Press, 2014, page 106. Referring to the definition of customary

¶ international law by the International Court of Justice in the North Sea Continental Shelf Case, there are several characteristics that a legal treaty must meet to become customary international law: First, ¶ Legal treaties that become customary international law cannot have reservations for contracting states. Second, legal treaties that become customary international law should have the characteristics of creating norms. Third, legal treaties that become customary international law should be drafted extensively and representatively. The participation and ratification of states. Fourth, legal treaties that become customary international law should be widely and consistently practiced by all countries. The principle of non-refoulement conforms to the above four characteristics, and therefore has the characteristics of customary international law.

¶ Guys S Goodwin - Gill and Jane McAdam ¶ The Refuge e in International Law : Oxford University Press 2007 p 346 Sometimes these three options are also

¶ divided into two categories: (1) voluntary repatriation, (2) integration (receiving country integration or Third country integration)UNHCR ¶ Louise Holborn Refugees: A Problem of Our Time e: The Work of the United Nations High Commissi Oner for Refugees¶ Meuchen Scarecrow Press¶ 1975¶ p 88 Liu

¶ Guofu: «International Refugee Law» Beijing: World Knowledge Press, 2014, page 358

¶ ¶ / ¶ / ¶ 1983 ¶ ¶

¶ he Rights of Refugees under International Law ¶ Cambridge: Cambridge University Press 2005 p p 977-978 Barbara E. Harrell-Bond (Barbara Harrell-Bond) emphasized that the local integration of refugees means that the host community and the refugee community can coexist and share common resources. without exceeding Greater conflict within the receiving community itself, see Barbara Harrell-Bond¶ Imposing Aid: Emme rgency Assistance to Refugees¶ Oxford: Oxford UniversityPress¶ 1986¶ p 7¶



To sum up, in the face of the increasingly severe refugee problem, the international community has introduced a complete set of international refugee mechanisms. First of all, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol have updated the definition of "refugees" with the times. This advanced definition provides an international legal basis for many refugees to obtain refugee status and corresponding rights. Secondly, the international refugee mechanism provides a core principle, three major solutions and an executive agency for the international community to respond to refugee issues. This mechanism is based on theory The international protection of refugees has been strengthened at both the practical and practical levels.

## 2. Regional refugee mechanisms in Latin America

In addition to the international refugee mechanism, Latin America has established a regional refugee mechanism that is higher than the international refugee mechanism. First, Latin American countries adopted the Cartagena Declaration in 1984, which regulates "refugees". carry out It provides a broader definition than the international refugee mechanism, providing greater possibilities for more displaced people to fight for refugee status and corresponding rights. Second, Latin America has adopted a series of regional refugee protection plans based on the international refugee mechanism. For example, the "Mexico Declaration" and "Brazil Declaration" adopted in 2004 and 2014 respectively have strengthened the regional protection of refugees. Latin America has therefore established a good image in the international community as a model of regional refugee mechanisms, and has been recognized by the United Nations. The UNHCR and other international organizations have repeatedly

commended them. (1) Regional refugee definition in Latin

America For potential refugees, obtaining refugee status is crucial. Only by meeting the refugee definition and obtaining refugee status can refugees obtain corresponding employment, education and a series of rights. The international refugee mechanism provides countries around the world with basic guidelines for the definition of refugees. However, this definition is only based on the persecution of individual refugees because of their race, religion, nationality, political opinions or belonging to a certain social group. In addition, other reasons for displacement cannot be used as criteria for defining refugees. This has resulted in a large number of displaced people who cannot meet the refugee definition standards of the international refugee mechanism being unable to obtain corresponding refugee rights. Latin America has introduced regional refugee mechanisms to The international refugee mechanism has been supplemented, providing the possibility for more displaced people to obtain refugee status.

The "Cartagena Declaration" adopted in Cartagena, Colombia, in 1984 defined refugees in the broadest terms in the world. The primary reason for the promulgation of this declaration was the outbreak of epidemics in Latin America in the 1970s and 1980s. There have been several large-scale refugee flows. The first wave of refugees originated from the civil war that broke out in Nicaragua in 1978. In 1978-1979 alone, about 100,000 Nicaraguans died, and about 200,000 others fled to neighboring countries to seek refuge. Chapter 1 The second wave of refugees came from El Salvador. The country's civil war that broke out in 1980 lasted for 12 years, causing about one-third of its labor force to flee to Nicaragua, Mexico and other countries.





Its 1985 Executive Committee resolution emphasized that it "pays attention to the "Cartagena Declaration" and welcomes regional solutions to the refugee problem in the region". This resolution was subsequently cited by the 1985 OAS General Assembly. The resolution also called on its member states to "Cartagena Declaration » Addressing refugee issues in its territory.

Most Latin American countries have incorporated refugee laws into their domestic legal systems and adopted the definition of refugees in the Cartagena Declaration. Therefore, it can be said that Latin American countries are at the forefront of the world in building regional refugee

mechanisms. (II) Regional refugee mechanisms in Latin

America Latin America has established a regional refugee mechanism that is higher than the standards of the international refugee mechanism. The second manifestation of this is that the region has introduced a series of regional plans aimed at strengthening refugee protection. Among them, in 2004 The "Mexico Declaration" adopted in 2014 and the "Brazil Declaration" adopted in 2014 are important representative mechanisms of regional refugee protection mechanisms in Latin America. These two mechanisms advocate strengthening cooperation among regional countries and independently solving refugee problems, and have received high attention from the international community. Praise by United Nations Secretary-General and former High Commissioner of the United Nations High Commissioner for Refugees Guterres praised Latin American

countries for being "brave, generous and visionary" in solving refugee problems after the signing of the "Brazil Declaration". The main introduction of the "Mexico Declaration " In view of the following new characteristics of the refugee flow in Latin America: First, at the beginning of the 21st century, more and more refugees in Latin America gathered in cities; second, more and more Colombian refugees gathered at the borders of Ecuador, Panama and Venezuela. In order to strengthen Latin American In November 2004, it was jointly organized by the United Nations Refugee Agency, the Norwegian Refugee Council, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Inter-American Institute of Human Rights and the governments of Brazil, Costa Rica and Mexico. A new round of seminars on the refugee issue in Latin America was held and the "Mexico Declaration" was adopted. After judging the new situation of the refugee issue in Latin America, the declaration put forward specific measures to strengthen refugee protection in the region. First, strengthen the research and publicity on the refugee protection mechanism in Latin America. It is proposed to publish the "Procedures and Standards for the Implementation of the Cartagena Declaration" and the "Concepts and Legal Terminology of International Refugee Law" manuals to provide relevant information on refugee governance. personnel to conduct training on the "Latin America International Refugee Protection Training Project", strengthen the connection between regional countries' domestic laws and international refugee mechanisms, and increase civil society support and training for refugee go

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Ü UNHCRÜ "Cartagena + 30: Latin America and the Ca ribbon Adopt a Common Plan of Action"Ü Decemb er 2014 <https://cartagena30.acnur.org/en> [2022-05-05] In the «Mexico Declaration» Prior to its introduction, Latin American

Ü countries in 1994 On the 10th anniversary of the adoption of the Cartagena Declaration in 2007, the San Jose Declaration for Refugees and Displaced Persons (referred to as the San Jose Declaration) was adopted in San Jose, the capital of Costa Rica (now San Jose), with a strong emphasis on internal displacement. International protection issues for the population (people who have not fled their country of origin)



The purpose is to help refugees obtain necessary jobs in refugee-receiving countries and meet their self-sufficient living needs.

The "Mexico Declaration" and the "Brazil Declaration" are the most representative and innovative action plans for Latin American countries to independently solve regional refugee issues after the "Cartagena Declaration". Many of the two declarations The content has exceeded the protection level of the international refugee protection mechanism and provided a reference sample for regional refugee protection mechanisms around the world.

### 3. Review of Venezuela's Refugee Protection Practices

Latin America has established a refugee mechanism that is higher than international standards, but whether this mechanism can be implemented still needs to be tested in practice. The regional protection of Venezuelan refugees provides the possibility to test the effectiveness of this mechanism. According to «Cartah The large-scale asylum seekers caused by the economic and social crisis in Venezuela that began in 2014 meet the definition of refugees. Receiving countries in Latin America should treat Venezuelan asylum seekers under the "Preliminary Refugee Declaration" (PFRSD) mechanism. However, in reality, When Venezuelan asylum seekers seek asylum in many Latin American countries, they are not treated as refugees, but are treated under the "Temporary Protection or Stay Arrangements" (TPSAs) mechanism. This reality reveals the dilemma in the implementation of Latin America's refugee protection mechanism.

#### (1) Refugee status determination

mechanism The 1951 Convention relating to the Status of Refugees and its 1967 Protocol are universal legal documents for determining refugee status internationally, while the 1984 Cartagena Declaration is specifically applicable to Latin America. Refugee legal documents. According to the "Cartagena Declaration", the determination of refugee status mainly depends on whether the asylum seeker's life, safety and freedom are subject to widespread violence, foreign invasion, civil strife, large-scale violations of human rights or other situations that seriously disturb public order. flee their country due to threats. However, this standard is generally only applicable to refugee status recognition on an individual basis, and is difficult to apply to refugee status recognition for large-scale asylum seekers. This is because when faced with a large-scale influx of asylum seekers, At that time, it was difficult for the receiving country to have the ability and resources to identify each individual individually. Therefore, in order to quickly identify refugee status for large-scale asylum seekers, the "preliminary refugee identification" mechanism provides a good solution. This mechanism is based on "Whether the obvious and objective circumstances in the country of origin or former habitual residence of the asylum seekers meet the conditions for defining refugees" are used to quickly provide group refugee status identification for large-scale asylum seekers. Specifically, according to the 2015 United Nations Refugee Agency's "Article 2 International Protection Guidelines No. 11» "Prima refugee" (prima facie refugee) status can be obtained as long as it complies with any refugee legal document (including the 1951 "Refugee Refugee Regulation").

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Countries that have incorporated the "Cartagena Declaration" into their domestic laws to define refugees, thus providing an ideal case for refugee protection practice in Latin America.

(3) Regional protection practices and restrictive factors for Venezuelan refugees. Through

the above description of Venezuelan asylum seekers, we can find that Venezuelan asylum seekers do not meet the definition of refugees under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. However, they are in line with the definition of a refugee in the 1984 Cartagena Declaration. This is because the situation in Venezuela has caused the life, safety and freedom of the people to be threatened by widespread violence, large-scale violations of human rights or other situations that seriously disturb public order. As for those countries who have fled their country, as a signatory of the Cartagena Declaration or a country that has incorporated the definition of refugees in the Cartagena Declaration into its domestic law, it should initiate the "preliminary refugee determination" mechanism to determine the refugee status of Venezuelan asylum seekers. However, in reality, Venezuelan asylum seekers face completely different treatments. First, the asylum application of Venezuelan asylum seekers is directly rejected. For example, the Peruvian government announced in August 2018 that it would no longer provide temporary asylum seekers after October 31, 2018. Second, obtain a visa and related fees from the asylum seeker. For example, Chile requires Venezuelan asylum seekers to apply for a humanitarian visa from the Chilean consulates in Caracas and Puerto Ordaz, Venezuela, before they can obtain a Chilean asylum seeker. "Temporary protection or stay arrangements", and Argentina, Chile, Ecuador, Paraguay, and Peru also ask Venezuelan asylum seekers for visa fees or stay fees ranging from US\$14 to US\$220. Third, they arrange asylum seekers with temporary measures. For example, although Brazil and Uruguay allow Venezuelan asylum seekers to stay permanently and do not ask for fees from Venezuelan asylum seekers, the two countries have only launched the "temporary protection or stay arrangement" mechanism and have not formally recognized the refugee status of the asylum seekers. Faced with this situation,

Due to Venezuela's worsening domestic crisis and the difficult situation of regional cooperation, the United Nations High Commissioner for Refugees issued a document in May 2019 calling on Venezuelan asylum-seeking countries to launch a "preliminary refugee determination" mechanism to determine the refugee status of asylum seekers. Under this initiative, Brazil In December 2019, we took the lead in launching preliminary refugee identification for Venezuelan asylum seekers in accordance with the refugee definition standards of the Cartage

Later, this provision was canceled on June 24, 2019, and Chile instead allowed Venezuelan asylum seekers to apply for visas at any Chilean consulate in Latin America. However, for Venezuelan asylum seekers who had nothing, this still caused problems for them to enter Chile for asylum. There was a big obstacle. Chile's Ministry of Foreign Affairs "Servicos Consulares 2019 // ramites/visa-de-responsabilidad-democrati ca [2021-09-17]

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