Policy Briefs

November 2018

Responsibility-sharing in the refugee field: lessons from Latin America

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The present document elaborates upon the presentation made by the author during the International Conference on «The international protection of refugees in Europe and elsewhere: A critical appraisal on achievements and perspectives», held on 19 October 2018 in the University of Pisa. The mentioned Conference has been the conclusive event of the Jean Monnet Module “EU Migration Law, Human Rights and Democratic Principles”, financed under the Erasmus+ Programme of the European Union.

**ABSTRACT**

This Policy Brief helps to open the horizons of these sometimes insular debates about regional responsibility-sharing by presenting some observations on the distinct context of Latin America. It shows that developments in Latin America may contribute to our understanding in at least five distinct areas: (i) acknowledging the value of wider forms of cooperation; (ii) articulating ‘regional’ responsibility-sharing; (iii) integrating the role of the country of origin; (iv) recognising the importance of immigration tools; and (v) reflecting on the role of international law.

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**Suggested quotation:**


This Policy Brief was uploaded on 12 November 2018.
Policy Brief

November 2018

RESPONSIBILITY-SHARING IN THE REFUGEE FIELD:
LESSONS FROM LATIN AMERICA

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1. Introduction

This Policy Brief helps to open the horizons of these sometimes insular debates about regional responsibility-sharing by presenting some observations on the distinct context of Latin America. It asks: does Latin America practice responsibility-sharing? If so, then how does it look in that region? More broadly, what might we – as scholars and practitioners in the refugee law field – learn from the law and practice on responsibility-sharing in such contexts beyond Europe?

By engaging with these questions, this Policy Brief shows that developments in Latin America have the potential to contribute to our understanding of regional responsibility-sharing in at least five distinct thematic areas: (i) acknowledging the value of wider forms of cooperation; (ii) articulating ‘regional’ responsibility-sharing; (iii) integrating the role of the country of origin; (iv) recognising the importance of immigration tools; and (v) reflecting on the role of international law.

2. Regional context for responsibility-sharing

We start from a rather unpromising point. Latin America has a fantastic range of intriguing concepts and practices on refugee protection. However, with a few exceptions, responsibility-sharing does not seem to be part of the institutional or conceptual furniture of refugee protection in Latin America. At least this is how it may appear on the face of things.

There might be good reasons as to why this is so. From the legal standpoint, Latin American States have tended to be relative latecomers to the international refugee law regime. By contrast, the region has a longstanding tradition of political asylum. The legacy of that tradition is a persisting emphasis on sovereign discretion rather than legal
obligation or responsibility in the response by Latin American governments to refugee arrivals. Historically, the relevant inter-State relationship (and negotiation) has thus been between the country of asylum and the country of origin, rather than between different countries of asylum on sharing of the responsibility for arrivals.

Pragmatically, too, there may be peculiarities of the region that help to explain why responsibility-sharing has rarely seemed like an imperative within Latin America. Firstly, the current number of refugees small in comparison with some other regions and the region is relatively more prosperous than certain others. Secondly, Latin America has also been quite insulated from refugee flows from outside the region, such that most refugees are culturally quite similar to their hosts. Integration of refugees has, for Latin America, thus arguably posed less acute challenges than for other regions.

3. Development of a regional approach in Latin America

At the same time, a more careful analysis of the Latin American refugee history shows that the region has, in fact, experienced several large and disruptive refugee situations. Despite the fact that these refugee flows have often been concentrated within particular sub-regions of Latin America, they have tested the capacity of frontline States that has promoted thinking on regional approaches. As a result, a framework built up around three key moments develops ideas and mechanisms for regional cooperation between States in Latin America on refugees.

The first of these moments was around political conflict and violence in Central America in the 1980s that displaced some two million people, including an estimated one million outside their countries. In 1984, frontline States in this sub-region gathered and adopted the Cartagena Declaration on Refugees. This soft law instrument set out both principles and standards for responding to refugee situations in the region, including the famous ‘expanded’ refugee definition, and has been revisited every ten years. In 1987, another regional conference on refugees (CIREFCA) led to development projects to integrate refugees into the successful regional peace process in pertinent States.

The second moment arrived in the 1990s and 2000s with the explosion of political violence and insurgencies in the Andean sub-region, notably Peru and Colombia. The long-running Colombian conflict in particular displaced approximately half a million people outside the country, alongside the millions who remained as internally displaced persons (IDPs). In 2004, at the 20-year anniversary of the Cartagena Declaration, States across Latin America adopted the regional Mexico Plan of Action. This created ‘solidarity’ resettlement as a mechanism of south-south cooperation in Latin America.

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Finally, in the 2010s, gangs and other violent actors have again provoked displacement in Central America. In 2014, 30 years after the Cartagena Declaration, Latin American and Caribbean States adopted the Brazil Declaration and Plan of Action. This contains an ostensibly south-south principle of ‘common but differentiated responsibility’ that speaks to distinct roles for States of origin, transit and destination in responding to Central American displacement. Commitments based on a ‘whole of society’ approach were also made at the sub-regional level by States in the 2016 San Jose Action Statement and the 2017 pilot for the Comprehensive Refugee Response Framework. These efforts are being strained now by the need to allocate resources to deal with the Venezuelan crisis.

4. Implications for responsibility-sharing debates

Clearly, then, Latin American States have developed an important framework of regional approaches to refugee situations. This illustrates that regional responses are not confined to the CEAS. What, though, does this Latin American regional framework tell us about responsibility-sharing? It is the contention of this policy brief that there are at least five different aspects of this framework that can usefully feed into discussions about responsibility-sharing at the regional and global levels.

4.1. The value of wider forms of cooperation

In focusing on responsibility-sharing, we should not lose sight of the importance of wider forms of international cooperation between States in responding to refugee situations. Responsibility-sharing is only one such measure. In Latin America, the focus has been on promoting a common or shared regional approach and regional identity on refugee issues. This has been crucial in gradually shifting practice away from the political asylum emphasis on discretion and towards a feeling of shared legal responsibility towards refugees. The Cartagena Declaration framework is not only a positive example of lasting value in the region but also provides a basis for common action by Latin American States.

4.2. Articulating ‘regional’ responsibility-sharing

The ‘south-south’ processes around the Cartagena Declaration framework articulate responsibility-sharing through the appealing (to Latin American governments) concept of ‘solidarity’ at the regional level. The concept certainly requires unpacking but its use illustrates how relevant mechanisms can be created without using the sometimes challenging language of ‘responsibility-sharing’. At the same time, despite such discourse, we should recognise that these ‘south-south’ or ‘regional’ processes are rarely exclusively so but rather integrate external actors such as northern States (which funded projects for CIREFCA etc) and UNHCR (which organises the Cartagena process meetings).

4.3. Role of the country of origin

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6 The latter was adopted as the Comprehensive Regional Protection and Solutions Framework (known as MIRPS by its Spanish acronym).

The involvement of the country of origin in refugee protection may generate concerns about the cessation of refugee status. Nonetheless, possibly reflecting the positive side of the political asylum legacy, the country of origin is well-integrated in Latin America regional frameworks on cooperation. CIREFCA acknowledged the country of origin’s role not just in receiving returning refugees but also in addressing the situation of IDPs. Integrating attention to IDPs in the refugee response appears too in the Cartagena framework implementation of ‘common but differentiated responsibility’. There are a range of other developments in Latin America that reinforce the potentially positive roles that the country of origin can play in a regional response to a refugee situation.

4.4. Importance of immigration tools

Moving beyond the formal regional frameworks, Latin American States also use immigration law tolls in ways that contribute to responsibility-sharing. In practice, alongside the relatively minor impact of the regional ‘solidarity resettlement’ programme, many Colombians moved from Ecuador to live as MERCOSUR citizens in countries in the Southern Cone region, thereby helping to share the burden of the Colombian refugee crisis. This led to discussions about the ‘portability’ of refugee status within that sub-regional bloc. Moreover, it points to the potential of the market as an allocation mechanism, at least in these contexts. Other recent trends involve countries such as Brazil using national law immigration tools such as ‘humanitarian visas’ to promote global (rather than regional) responsibility-sharing by facilitating the movement of Syrian refugees to Brazil.

4.5. The role of international law

Finally, it is worth noting that the achievements of Latin America on cooperation and responsibility-sharing in the refugee field have been secured without additional development of international law. Indeed, all of the regional mechanisms pertaining specifically to refugees in Latin America take the form of soft law or policy. This suggests that we need to think carefully about where the objective of promoting refugee responsibility-sharing by States truly requires new international law standards. Similarly, it raises questions about how non-legal methods for promoting responsibility-sharing can be most effective in different regional and global contexts.

Perhaps, then, despite its apparent peculiarities, Latin America does have something interesting to offer wider debates on responsibility-sharing in the refugee field?

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8 Article 1C of the 1951 Refugee Convention.
9 See, for example, the treatment of IDPs etc by the country of origin in the Brazil Plan of Action.
10 This includes the role of Central American consulates in assisting their nationals overseas not just with their situation (sometimes) as irregular migrants but also as putative refugees seeking asylum, as well as government cooperation in arrangements for the processing of asylum claims in-country (through the Central American Minors programme) or in neighbouring third countries (through the Protection Transfer Arrangement project) by governments such as that of the USA and with UNHCR assistance.
11 The Common Market of the South (MERCOSUR by its Spanish acronym) is a sub-regional organisation for the economic integration of certain countries in the Southern Cone and, more recently, Andean sub-regions.