

Expert roundtable
Interpretation of the extended refugee definition contained in the
1984 Cartagena Declaration on Refugees
Montevideo, Uruguay
15 and 16 October 2013

**Summary Conclusions on the interpretation of
the extended refugee definition in the 1984 Cartagena Declaration**

The Office of the United Nations High Commissioner for Refugees (UNHCR) convened an expert roundtable on the interpretation of the extended refugee definition contained in the 1984 Cartagena Declaration on Refugees (Cartagena Declaration), in Montevideo, Uruguay, 15-16 October, 2013. The expert roundtable was organized as part of the Cartagena+30 events to mark the 30th anniversary of the Cartagena Declaration, in 2014, and a broader project to develop Guidelines on International Protection on the refugee status of persons fleeing armed conflict and other situations of violence.¹

The background to the expert roundtable is that the Cartagena Declaration, in particular the extended refugee definition contained in Conclusion III (Cartagena refugee definition), remains a solid protection tool for the Americas region, yet there is a need for further guidance on its interpretation in respect of the current protection challenges in the region. These Summary Conclusions will contribute to guide the interpretation of the Cartagena refugee definition to persons fleeing *inter alia* the broader effects of armed conflict and other situations of violence. They also explain its relationship to the 1951 Convention and the 1967 Protocol (hereafter jointly referred to as the 1951 Convention).

Participants included experts from six countries in the region drawn from government, the judiciary, legal practitioners, international organizations, NGOs, and academia.

These Summary Conclusions do not necessarily represent the individual views of participants or UNHCR, but reflect broadly the themes and understandings emerging from the discussion.

A. Overarching considerations to guide interpretation

Protection-oriented, purposeful interpretation

The Cartagena Declaration on Refugees is a regional protection instrument, adopted in 1984 by a group of experts from several Latin-American countries,² as the result of a colloquium on International Protection for Refugees and Displaced Persons in Central America, Mexico and Panama held in Cartagena de Indias, Colombia. The colloquium focused on the legal and humanitarian problems affecting those displaced by conflict and violence in Central America, and because of this focus, serves as a common and neutral language for States and other stakeholders to develop a harmonized regional refugee protection framework in the context of humanitarian crises. The Cartagena Declaration reaffirms the centrality of the right to asylum and the principle of *non-refoulement*, the importance of searching actively for durable solutions, and the necessity of co-ordination and harmonization of universal and regional systems and national efforts.

Although included in a non-binding regional instrument, the Cartagena refugee definition has attained a particular standing in the region, not least through its incorporation into 14 national laws and State practice. The Cartagena Declaration, as a protection instrument, has at its

¹ For more on the broader project, see UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence, Roundtable 13 and 14 September 2012, Cape Town, South Africa*, available at: <http://www.refworld.org/docid/50d32e5e2.html>.

² Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela.

foundation the commitment to grant the treatment provided by the 1951 Convention to individuals not covered by the classic refugee definition, but who are nevertheless in need of international protection.³ It drew inspiration from the 1969 OAU Convention governing Specific Aspects of Refugee Problems in Africa (OAU Convention), which incorporates a similarly worded extended refugee definition, as well as the doctrine of the Inter-American Commission on Human Rights.⁴ As such, its interpretation is to be informed by international and regional human rights and humanitarian law, especially the norms and standards of the 1969 American Convention on Human Rights, and the evolving case law of the Inter-American human rights bodies. Its adoption represented a humanitarian and pragmatic response by Latin American States to the movements of groups of persons from conflict and other forms of indiscriminate threats to life, security and freedom.

Furthermore, the humanitarian- and protection-orientation of the instrument calls for an inclusive, evolving and flexible interpretation.⁵ Nonetheless, some guidance as to the scope of the definition's terms is needed to ensure consistency and predictability across the region and across cases, suggesting that where the ordinary meaning is not clear, the text should be given a purposive or teleological interpretation.

Interplay between the universal and regional refugee definitions

The 1951 Convention is the primary legal instrument for the protection of refugees, as recognised also by the Cartagena Declaration. The 1951 Convention's definition of a refugee is centred on persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. There is a perception that this definition does not easily map onto the size, scale and character of many modern conflicts or violent situations and refugee movements.⁶ Yet, the 1951 Convention makes no distinction between refugees fleeing peacetime or conflict situations and further, the impact of a conflict on an entire community can strengthen, rather than weaken, the risk to any particular individual. Moreover, methods of warfare are often used as forms of persecution.⁷

At the same time, it is recognized that persons fleeing from situations of indiscriminate violence without the necessary element of persecution linked to a Convention ground are not refugees within the meaning of the 1951 Convention.⁸

The wording of the Cartagena Declaration suggests the complementary nature of its extended regional refugee definition, to encompass a broader category of persons in need of international protection who may not meet the 1951 Convention definition. This approach

³ See Recommendation E of the Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1, available at: <http://www.refworld.org/docid/40a8a7394.html>.

⁴ Conclusion III (3), Cartagena Declaration on Refugees.

⁵ There was consensus on the need to move beyond the, overly legalistic, approach presented in "Principles and Criteria for the protection and assistance of Central American refugees, returnees and internally displaced in Latin America" (CIREFCA, 89/9, April 1989, available online at: <http://www.refworld.org/docid/4370ca8b4.html>) and rather focus on new developments in State practice and the value of the interpretation of the evolving case law of the Inter-American human rights bodies.

⁶ Such a view may be related to an interpretation out of context (or misinterpretation) of paragraphs 164 and 165 of the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, 1979, re-issued December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

⁷ UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence*, supra note 1.

⁸ Caution should be exercised in applying the 1951 Convention definition as the source of the violence may seem on the surface to be generalized. Upon closer examination of the context, however, it may become evident that the situation in fact involves the targeting of particular individuals or groups of individuals for reasons recognized by the 1951 Convention. Violence is often not undertaken for its own sake, but has a deeper underlying purpose or target.

reflects its principal purpose as a practical tool for extending protection in humanitarian situations beyond those foreseen by the 1951 Convention definition. There may, however, be situations that might trigger the application of both refugee definitions, cases of overlap, or where it cannot be precluded that some persons might meet the criteria of both definitions.⁹

Given that there is no difference in the status or rights afforded to persons recognised as refugees under either the Cartagena refugee definition or the 1951 Convention definition at the national level, both in terms of legislation and State practice, dual recognition should not be of material consequence in most cases. For the purposes of legal certainty, however, a proper interpretation of each definition is to be encouraged, with a sequential procedural approach to adjudication being recommended.¹⁰ Adjudicators need also bear in mind that the Cartagena protection system should be implemented in a manner that strengthens and complements, rather than undermines, the 1951 Convention regime.

B. Substantive analysis of the elements of the Cartagena refugee definition

“Hence 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, security 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.”¹¹

Scope of the Cartagena refugee definition

The extended refugee definition of the Cartagena Declaration aims to provide protection from situational or group-based risks. The five “situational events” of the Cartagena refugee definition are characterized by the indiscriminate, unpredictable or collective nature of the risks they present to a person or group of persons, or even to the population at large.

As with any refugee claim, the Cartagena refugee definition requires an examination of the situation in the country of origin as well as the particular situation of the individual or group of persons who seek protection as refugees. The focus of the refugee assessment is, however, on the exposure of the individual or group of persons to the risks inherent in the five situations contained in the definition. An illustrative example of this would be civilians caught between confrontations between armed groups fighting for control over the territory, which endangers the lives and security of anyone living in the area. The risk for the individuals in this situation stems from being “in the wrong place at the wrong time”. This example underlines the temporal and spatial/geographical dimensions of the risk, essential components of the Cartagena refugee definition. The Cartagena Declaration also covers the indirect effects of the five situational events – including poverty, economic decline, inflation, violence, disease, food insecurity and malnourishment and displacement.

At the same time, the Cartagena refugee definition is not intended to be an all-encompassing definition for every situation in which persons are compelled to leave their countries of origin and cross an international border. While States may choose to apply the Cartagena refugee definition to persons compelled to leave because of natural or ecological disasters, they are not strictly speaking protected pursuant to the Cartagena refugee definition.

As the Cartagena definition focuses on indiscriminate threats or risks, authorities are advised where possible to adopt a consistent approach to persons fleeing the same country (or area

⁹ In some cases, for example, persons fleeing a situation of indiscriminate violence may also have a fear of persecution in terms of the 1951 Convention refugee definition.

¹⁰ A sequential procedural approach means that a claim for refugee status would be assessed, first, pursuant to the 1951 Convention definition and only if the claim fails in that assessment would the Cartagena extended definition be considered.

¹¹ Conclusion III (3), Cartagena Declaration on Refugees.

within a country) in similar circumstances. This would contribute towards removing protection gaps in the region, and inconsistency between cases.

Elements of the Cartagena refugee definition

The Cartagena refugee definition contains three criteria: i) the person needs to be outside his/her country; ii) the country in question is experiencing at least one of the situational events; and iii) the person's life, security or freedom is threatened (at risk) as a result of one or more of the situational events.

(i) Outside country of origin

For the purposes of the extended definition, the concept "out of the country" is to be interpreted in line with the 1951 Convention refugee definition's understanding of this term, to encompass not only the country of nationality/citizenship but also, the case of stateless persons, the country of habitual residence.

(ii) Situational events

Guided by the protection-purpose of the Cartagena Declaration, the situational events mentioned in the extended refugee definition are to be given their ordinary meaning, wherever possible, and interpreted in an evolutionary way so they remain relevant to apply to new or unpredictable events or situations.

"Generalised violence" is not a term of art, nor does it have a strict or closed definition. Adopting a case-by-case approach, the term would encompass situations characterised by violence that is indiscriminate and sufficiently widespread to the point of affecting large groups of persons or entire populations compelling their flight.

As it is not a term found in international humanitarian law (IHL), participants strongly argued that it should not be circumscribed by the interpretation of the term in the CIREFCA document, which appears to restrict its application to situations of armed conflict as defined under IHL.¹² Drawing instead on international human rights law, the more appropriate approach was considered to be that of identifying indicators of the type and level of violence persisting in the country of origin.¹³ Situations of generalised violence would clearly include situations involving massive as well as serious violations of human rights. Notably, it is not always the intensity of the violence that would render it generalised, but rather its geographic spread and density.

Situations of generalized violence would encompass violence carried out by state as well as non-state actors, in the latter in situations where the will or capacity of the state to provide

¹² CIREFCA, supra note 5.

¹³ The Inter-American Commission on Human Rights (IACHR) has referred to similar indicators when describing situations of "widespread violence" in some countries in the region. These include, but are not limited to, the following: a) the number of violent incidents as well as the number of victims of those incidents is very high; b) the prevailing violence inflicts heavy suffering among the population; c) violence manifests itself in most egregious forms, such as massacres, torture, mutilation, cruel, inhuman and degrading treatments, summary executions, kidnappings, disappearances of persons and gross breaches to IHL; d) the perpetration of acts of violence is often aimed at causing terror and, eventually, creating a situation such that individuals are left with no option other than flee the area affected; e) violence can emanate from state and non-state agents, and when it emanates from the first, or from others acting at the instigation or with the acquiescence of state's authorities, the authors enjoy impunity; f) where violence emanates from non-state agents, authorities are unable to effectively control them; and g) the level and extent of violence is such that the normal functioning of society is seriously impaired. For a more detailed analysis see for example: IACHR, "Violence and Discrimination against Women in the Armed Conflict in Colombia", Chapter II, OAS/Ser.L/V/II. Doc. 67, 18 October 2006, p.11; IACHR, "Report on the Situation of Human Rights in Jamaica", Chapter II Citizen, Security and Human Rights and Chapter Chapter III Administration of Justice, OAS/Ser.L/V/II.144 Doc. 12 10 August 2012, pp.5 and 27; IACHR, "Report on the Situation of Human Rights in the Republic of Guatemala", *Introduction, Conclusions and Recommendations*, OAS/Ser.L/V/II.53 doc. 21rev.2. 13 October 1981; and IACHR, "Report on the Situation of Human Rights in the Republic of Guatemala", *Conclusions and Recommendations*, OAS/Ser.L/V/II.61 Doc. 47 rev.1. October 5, 1983.

protection to those under its jurisdiction is inadequate. That said, it is the situation on the ground, and the risk that such violence presents, that is at issue – rather than the question of state responsibility.

The effects of this type of violence would also be a relevant consideration, including whether the violence is sustained over time and/or space.

“*Foreign aggression*” is related to the terms “aggression”, “war of aggression” and “act of aggression” as defined under international law. The CIREFCA document equates the concept to the definition provided by UNGA Resolution 3314 (XXIX) of 1974, as including “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any manner inconsistent with the Charter of the United Nations, as set out in this definition.”¹⁴ The same approach is followed in Article 8bis of the Rome Statute of the International Criminal Court,¹⁵ equating it to the crime leading to an international armed conflict as understood under IHL. The reference to international armed conflict was accepted by participants as the correct interpretation of “foreign aggression” for the purposes of applying the Cartagena refugee definition, consistent with the object and purpose of the Declaration, and as widely understood both in its national and international senses.¹⁶ Thus, persons fleeing the effects of an international armed conflict would be covered by the Cartagena refugee definition, applying the “foreign aggression” component.

It was acknowledged that the term “*internal conflicts*” in the Cartagena refugee definition has traditionally been interpreted by Latin American countries to reflect “non-international armed conflict” (NIAC) provided by Article 1 of Protocol II to the Geneva Conventions of 1949 and under the conditions of application set in Article 3 common to the Geneva Conventions of 1949. While accepting that internal conflicts so characterised would be covered by the Cartagena refugee definition, it was stressed that this narrow approach does not match the protection purpose of the Cartagena Declaration and, keeping the approach in line with other regional protection instruments and the intention of the drafters of the Cartagena Declaration to respond to humanitarian crises, IHL was considered to be informative, though not determinative of whether an internal conflict exists, as should the qualifications made by the parties involved or affected by it.¹⁷ There are situations of armed violence, for example, that may not meet the threshold of a NIAC for IHL purposes or where the status of the situation is unclear, yet the life, security or freedoms of civilians are at risk and they are in need of

¹⁴ UNGA res. 3314(XXIX), 14 Dec. 1974, Annex, Article 3 enumerates the following acts, regardless of a declaration of war, as qualifying as aggression: “the invasion or attack by the armed forces of a State of the territory of another State, military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; the blockade of the ports or coasts of a State by the armed forces of another State; an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; the sending by or on behalf of a State of armed bands, groups, irregular or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.” See, CIREFCA, *supra* note 5. See, also, *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*; *Merits*, International Court of Justice (ICJ), 27 June 1986, available at: <http://www.refworld.org/docid/4023a44d2.html>.

¹⁵ See, for summary, <http://www.iccnw.org/?mod=aggression>.

¹⁶ See, also, ICRC, *How is the term "Armed Conflict" defined in international humanitarian law?* Opinion Paper, March 2008, available at: <http://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm>: “The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation.”

¹⁷ For example, while a UN Security Council designation of a situation as a non-international armed conflict would be sufficient for the purposes of the Cartagena refugee definition; such a qualification cannot be a requirement. See, also, UNHCR, *Expert Meeting on Complementarities between International Refugee Law, International Criminal Law and International Human Rights Law: Summary Conclusions*, July 2011, para. 24, available at: <http://www.refworld.org/docid/4e1729d52.html>.

international protection. Likewise, the classification of a particular situation of armed violence as a NIAC is far from straightforward, involving at times political – rather than legal – considerations.¹⁸

Participants pointed to useful interpretative guidance on “*massive violations of human rights*” in the jurisprudence of the Inter-American Court of Human Rights (the Court). The term “*massive*” has been seen in relation to the scale or magnitude of the violations reported; for example, in contexts where the precise identification of victims is difficult due to the extent of the human rights violations perpetrated against groups of persons or entire communities.¹⁹ Additionally, where the effects of the violations go beyond the actual/direct victims to reach other segments of the population or even the society as a whole, the Cartagena refugee definition would be activated. The elements of planning and organisation on the side of the perpetrator, whether state or non-state, could also be indicia, although not a requirement. In cases of non-state actors, state responsibility is engaged where the authorities are either unwilling or unable to protect its citizens by failing to prevent, investigate, prosecute and sanction these violations. In this context, forced displacement may, in itself, amount to a massive violation of human rights²⁰ or lead to other serious human violations. The Cartagena Declaration makes no distinction between the types of rights that may be at issue for protection purposes, although protection would only be provided where such massive violations of human rights give rise to threats to life, security or freedoms.

It is important to note that such pronouncements of the Inter-American Commission or the Court are not required to qualify a situation as one of massive violations of human rights. That said, the existence of such pronouncements, or provisional²¹ or precautionary measures,²² in a given context would be a strong indication that such a situation exists. The statements of international human rights bodies or courts might also be used as reference material.

A similar approach is found in the CIREFCA document, which refers to situations where “violations are carried out on a large scale and affect the human rights and fundamental freedoms as defined in the Universal Declaration of Human Rights and other relevant instruments”.²³ It further refers to, and has been followed in state practice, both “qualitative” (serious, gross) and “quantitative” (consistent) criteria, such as “gross and consistent pattern” of human rights violations. Importantly, however, should the human rights violations, despite being massive, single out or target particular persons or groups of persons on account of their

¹⁸ By way of comparison, see also *Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides*, C-285/12, European Union: Court of Justice of the European Union (CJEU), 30 January 2014, available at: <http://www.refworld.org/docid/52ea51f54.html>, in which the CJEU in interpreting the term “internal armed conflict” as used in Article 15(c) of the European Union’s *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 30 September 2004, OJL 304/12, stated that because the concept of “internal armed conflict” is not the term used in IHL it should be given an autonomous interpretation, to cover the situation in which a state’s armed forces confront one or more armed groups or in which two or more armed groups confront each other within the territory of a state. No requirement of intensity or organization of the parties was required, according to the CJEU.

¹⁹ The regulations of the Court, approved in 2009, foresee in its Article 35 that in situations in which it is not possible to identify the victims of “massive or collective” human rights violations, the petition or communication submitted by the Commission (Inter-American Commission on Human Rights) to the Court can nevertheless be exceptionally admitted for judgment.

²⁰ In most cases force displacement comes as a consequence of grave and extended violations of human rights.

²¹ Provisional measures are an instrument used by the Court to prevent irreparable harm to the rights and freedoms ensured under the American Convention on Human Rights of persons who are in a situation of extreme gravity and urgency. The measures are ordered ex officio or at the request of a party and result in a protection request to the respondent state of the alleged victim(s).

²² Article 25 of the Rules of Procedure of the Commission establishes that, in serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case, as well as to persons under the jurisdiction of the State concerned, independently of any pending petition or case.

²³ CIREFCA, paragraph 34, supra note 5.

race, religion, nationality, membership of a particular social group or political opinion, the person or group would be a 1951 Convention refugee.

“*Other circumstances which have seriously disturbed public order*”, and its counterpart in the OAU Convention, is the less clearly understood phrase. In the regional context, it is the least applied when determining cases under the Cartagena refugee definition. The notion of “*public order*”, while not having a universally accepted definition, can be interpreted in the context of the Cartagena refugee definition as referring to the peace and security/stability of the society and the normal functioning of the institutions of the state. This can take place in times of conflict and/or peace.

In the jurisprudence of the Inter-American Court of Human Rights, it has been defined by reference in part to the recourse of states to Article 27 of the American Convention on Human Rights (ACDH)²⁴ in cases of declaration of a state of emergency.²⁵ However, a declaration of a state of emergency should not be seen as a prerequisite for existence of a “circumstance disturbing public order,” albeit it would ordinarily be indicative of such a situation.

The relationship between the “public order” situation and the other situations in the Cartagena definition was discussed. It was considered by some that the inclusion of the language of “other” could reflect an intention to provide states with some flexibility to grant protection in circumstances that either do not meet the threshold of violence of the other four situations reflected in the Cartagena refugee definition, or which do not match the character of the other situations. While it is open to states to adopt an interpretation that the Cartagena refugee definition can provide protection to persons fleeing natural disasters, for example, it was accepted that such an approach is not proscribed.²⁶

A novel suggestion was put forward by one participant that for the Cartagena refugee definition to be activated/triggered, it would only be necessary to meet the threshold set in the “other circumstances which have seriously disturbed public order” element of the definition (taking into account that the other four situational events presuppose/imply the alteration of the public order).²⁷ Others cautioned against such an approach, however, as the ground is the least applied by state practice and hence there seems to be the least common understanding regarding its interpretation. Further, such an interpretation could lead to rendering immaterial the other four situations of the definition, limiting in fact the scope of the Cartagena refugee

²⁴ Article 27. Suspension of Guarantees: “1. *In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin. (...)*”

²⁵ Corte IDH. Caso *Bámaca Velásquez Vs. Guatemala*. Fondo. Sentencia de 25 de noviembre de 2000. Serie C No. 70, par. 143, 174. Véase también Corte IDH. Caso *Juan Humberto Sánchez Vs. Honduras*. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 7 de junio de 2003. Serie C No. 99, par. 86 y 111; Corte IDH. Caso *Baena Ricardo y otros Vs. Panamá*. Fondo, Reparaciones y Costas. Sentencia de 2 de febrero de 2001. Serie C No. 72, par. 126, 127, 168, 172.; Corte IDH. Caso *Hilaire, Constantine y Benjamin y otros Vs. Trinidad y Tobago*. Fondo, Reparaciones y Costas. Sentencia de 21 de junio de 2002. Serie C No. 94, par. 101.; Corte IDH. Caso *Del Caracazo Vs. Venezuela*. Reparaciones y Costas. Sentencia de 29 de agosto de 2002. Serie C No. 95, par. 127. Véase también Corte IDH. Caso *del Caracazo Vs. Venezuela*. Fondo. Sentencia de 11 de noviembre de 1999. Serie C No. 58, par. 2.e); Corte IDH. Caso *Bulacio Vs. Argentina*. Fondo, Reparaciones y Costas. Sentencia de 18 de Septiembre de 2003. Serie C No. 100, par. 124; Corte IDH. Caso *Zambrano Vélez y otros Vs. Ecuador*. Fondo, Reparaciones y Costas. Sentencia de 4 de julio de 2007. Serie C No. 166, par. 51 y 52. Ver también, Caso *Montero Aranguren y Otros (Retén de Catia)*. Sentencia de 5 de julio de 2006. Serie C No. 150, párr. 78.

²⁶ CIREFCA, supra note 5.

²⁷ See D.J. Cantor and D. Trimiño Mora “A simple Solution to War Refugees? The Latin American Expanded Definition and its relationship to IHL” in D.J. Cantor and J.F. Durieux (eds.), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Martinus Nijhoff, 2014), page 10, “It is also, quite simply, beside the point, since the ‘other circumstances’ element functions as a general minimum threshold that renders precise definition of the preceding elements largely irrelevant for the purposes of qualification for refugee status. A focus on ‘circumstances seriously disturbing public order’ as the main referent for the objective situation element is therefore appropriate, as persons fleeing the situations described by other elements will also fall into this more general one.”

definition and its object and purpose of extending refugee protection to persons fleeing different circumstances.

(iii) *Risk to life, security or freedom*

The third element or criterion of the Cartagena refugee definition is the link between one of the “situational events” and the risk this poses to the “life, security or freedom” of the individual or group of individuals. The “threat” or “risk” element set out in the extended definition connotes the possibility of harm being inflicted on a person or group of persons; it does not imply that the harm has actually materialised. The link to “life, security or freedom” likewise should not be interpreted in a manner as to curtail or restrict the scope of protection granted to persons fleeing these situations of violence unnecessarily, such as to import an individualised assessment as to risk equivalent to the 1951 Convention definition.²⁸ In fact, proximity of – temporal and/or spatial/geographical – or imminence of the threat would suffice to justify the need for international protection under the Cartagena refugee definition.²⁹ In most cases, the situational event will per se be such as to establish the link/risk automatically. State practice has also recognised *sur place* claims.

The “threat” element is distinct from the concept of “well-founded fear” in the 1951 Convention definition, in that it should be understood as requiring a lower threshold of proof. The concept of persecution is also completely absent in the Cartagena refugee definition, therefore, there is no requirement under the Cartagena refugee definition of a discriminatory, intentional or individualised aspect of the harm feared. In fact, the Cartagena refugee definition was oriented towards group situations. The focus of this definition is not on the personal circumstances of the individual fleeing the harm/danger but on the objective circumstances in the country of origin. The personal circumstances of the individual will not, therefore, play a determining role.³⁰

C. Procedural approaches in individual procedures

State practice has generally followed a *sequential* or *phased* approach in relation to the application of the 1951 Convention definition and the Cartagena refugee definition. However, this practice is not consistent across the region.

States have resorted to other procedural approaches, in particular circumstances, to deal with country-specific situations, for example.³¹ This may be the case when an increase in the numbers of asylum applications from one country is being registered. In these cases, a “*nature of the flight*” or “*pragmatic*” approach may be preferred, where the Cartagena refugee definition is applied as the most efficient/expeditious way to provide protection to persons fleeing the country because of a Cartagena-related event.³² Alternatively, some countries have followed a “*unified/single procedure*” providing for a parallel analysis of both definitions without entailing a prioritization of one over the other, but determining the protected status under the one most suited to address the protection situation the applicant faces.³³

²⁸ Doing otherwise would make it largely redundant as a tool for extending the scope of international protection provided under the 1951 refugee definition.

²⁹ In generalised violence situations the threat may be self-evident and only the proximity, in terms of time and/or place, needs to be established for the risk element to be fulfilled.

³⁰ But it is certainly informative of the risk the individual may face.

³¹ There may be circumstances, however, where authorities choose to apply the Cartagena refugee definition, without a previous analysis of the classic refugee definition. The reasons for this may vary. Such circumstance may include, among others, trying to ensure consistency in the evaluation of claims from the same country or to achieve procedural efficiency. A possibility of overlap between the two refugee definitions may also arise in such situations.

³² In Argentina, the recognition of refugee status under accelerated determination status procedures for Syrians fleeing the armed conflict on their country is one example of this practice.

³³ This is the practice of Mexico and was applied also under the Enhanced Registration exercise by Ecuador.

Regardless of the procedural approach preferred, the 1951 Convention refugee definition and the Cartagena refugee definition are not cumulative and the rejection of refugee status needs to be justified against both definitions.

A good practice identified in applying the Cartagena refugee definition is that national asylum authorities regularly assess and update information on specific country situations which could qualify as experiencing a Cartagena event, indicating which one of these applies and using it to determine refugee status.

Regardless of the procedural approach applied, in the 14 countries where the Cartagena refugee definition is incorporated into domestic legislation, no differentiation is made in terms of status, documentation or associated rights and solutions for refugees.

Group recognition (prima facie)

State practice makes no particular distinction between the application of the Cartagena refugee definition on a group basis (*prima facie*) or within individual procedures. Both cases have been practised, although the most common is to maintain individual status determination procedures irrespective of the refugee definition applied, or the size of the caseload. In this vein, legislation in some countries³⁴ provides specifically for cases of mass influx of refugees but the mechanisms³⁵ to be applied are the same if recognition is based on 1951 Convention refugee definition or in the Cartagena refugee definition. Further discussion on appropriate procedures – whether *prima facie* or individual procedures – is required.

Sur place recognition

Sur place recognition of refugee status is applicable to the Cartagena refugee definition in the same terms as for the 1951 Convention refugee definition, according to state practice. This is so, as the “*threat*” element of the definition connotes the possibility of harm being inflicted on a person; it does not imply that the harm has actually materialised. A person who has not been at risk of harm at the time of departure from his or her country [for example, because he or she moved for study or work purposes], may nonetheless still qualify as refugee under the Cartagena refugee definition where there is a reasonable possibility that the harm will come to be if the person remains in the country or if he or she returns to it. This is in line with the purpose of the Cartagena refugee definition of extending protection to those who are at risk of the effects of conflict and violence but who do not meet the requirements of the 1951 Convention refugee definition. State practice has recognised this understanding by extending refugee protection under the Cartagena definition to refugees “*sur place*” and in situations where there is no other right to legally stay in the country and the person cannot be returned.³⁶

Internal Flight Alternative (IFA)

State practice is mostly consistent in holding that IFA is not relevant, nor generally applicable, to the Cartagena refugee definition because of the nature of the situations causing flight. For state practice, it seems that the logic of applying the Cartagena refugee definition *per se* or on a situation- or group-basis precludes the possibility of analysing internal relocation alternatives.

Cessation and exclusion considerations

Provisions contained under Articles 1 C, E and F apply to the Cartagena refugee definition in the same manner as under the 1951 refugee definition, with the same due process guarantees

³⁴ Bolivia, Chile, El Salvador and Peru.

³⁵ These are procedural standards that do not distinguish if the person is recognised following one or the other of the applicable refugee definitions. In some cases they refer to the provision of a “temporal protection status” until individual determination can be carried out.

³⁶ Jurisprudence from Argentina, Brazil and Ecuador support this finding.

regardless of the size of the refugee population concerned and following UNHCR's guidelines.³⁷

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³⁷ See, on Article 1F, UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.refworld.org/docid/3f5857684.html>; UNHCR, *Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of Refugees*, 7 February 2006, available at: <http://www.refworld.org/docid/43f48c0b4.html>.