

SAN JOSE DECLARATION ON REFUGES AND DISPLACED PERSONS

Adopted by the International Colloquium in Commemoration of the "Tenth Anniversary of the Cartagena Declaration on Refugees",

San José, 5-7 December 1994

CONCLUSIONS AND RECOMMENDATIONS

I

Commemorating the Tenth Anniversary of the **Cartagena Declaration on Refugees**, which has, for the past decade, proven its validity and usefulness in addressing the problems of human displacement in the region;

Recognizing that the said Declaration constitutes an efficient instrument of international protection by serving as a source of guidance for the humanitarian practices of States and by encouraging the adoption of legislative and administrative measures based on the principles contained therein;

Recognizing the importance of the Central American experience which has, amongst other achievements, enabled the mass return of thousands of refugees and the closing of the majority of camps in the region, thus providing opportunities for finding appropriate solutions to a regional crisis;

Stressing that, pursuant to the adoption of the Cartagena Declaration, a significant process in the search for durable solutions has been initiated, whereby such solutions have been integrated within the framework of convergence between respect for human rights, peace-building and linkage with economic and social development;

Appreciating the generous efforts made, with the valuable support of the international community, during the past decade of economic and political crises, by countries of the region to provide protection and humanitarian treatment to persons forced to abandon their homes, while remaining determined to continue the concerted search for solutions to alleviate the human suffering of these persons and help them to resume normal life;

Confirming that the consolidation of democracy in the continent has laid the basis for finding solutions to the challenges of the past decade and for firmly addressing those of the present;

Underscoring the contribution made to this process by the ***Procedure for the Establishment of a Firm and Lasting Peace in Central America (Esquipulas II)***, as well as the Tripartite Commissions for Voluntary Repatriation, and the achievements made possible by the ***Declaration and Concerted Plan of Action in favour of Central American Refugees, Returnees and Displaced Persons*** adopted by the International Conference on Central American Refugees (CIREFCA), held in Guatemala City in May 1989; this experience being viewed as a guiding framework for dealing with similar situations in other regions of the world;

Appreciating the valuable contribution of the documents on ***Principles and Criteria for the Protection and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America (1989)*** and the ***Evaluation of the Practical Application of those Principles. and Criteria (1994)***, which elaborated on the Cartagena Declaration;

Taking into consideration the influence which the Cartagena Declaration and its aforementioned related elaboration have had beyond the Central American region, through the incorporation of some of its provisions into legal measures and administrative practices of other Latin American countries, as well as in its widespread dissemination in academic circles of the Continent;

Recognizing the admirable efforts which the Inter-American Institute of Human Rights has made in identifying and promoting areas of convergence between International Refugee Law, International Human Rights Law, and International Humanitarian Law;

Welcoming the incorporation of the United Nations Development Programme (UNDP) in the efforts to find solutions to the problems of refugees, returnees and displaced persons through their joint sponsorship of CIREFCA, other technical cooperation efforts and the initiation of human development programmes in favour of the affected populations;

Appreciating in particular the outstanding work of UNHCR in the region in fulfilment of its mandate, as well as the creative approach applied thereto, which has enabled the opening of a 'humanitarian space' which has favoured peace-building and the attainment of new horizons in the field of Refugee Law;

Noting with satisfaction the references made to the Cartagena Declaration and the accomplishments of CIREFCA by the General Assembly of the United Nations, the General Assembly of the Organization of American States, the Executive Committee of the High Commissioner's Programme, and other international fora;

Also bearing in mind the conclusions of the First Regional Forum on Gender Focus in working with Refugee, Returnee and Displaced Women (FOREFEM),

held in Guatemala City in February 1992, as well as those of the Partnership in Action Conference between UNHCR and the non-governmental organizations (PARINAC, Caracas, June 1993 and Oslo, June 1994) which, together with the CIREFCA follow-up mechanisms, in the spirit of the Cartagena Declaration, have strengthened cooperation with non-governmental organizations and the beneficiary populations;

Recognizing the challenges posed by the new situations of human displacement in Latin America and the Caribbean, including, in particular, the increase in internal displacement and forced migration due to causes other than those provided for in the Cartagena Declaration;

Considering that human rights violations constitute one of the causes of displacement and that, therefore, the safeguarding of those rights is an integral element for both the protection of the displaced and the search for durable solutions;

Also considering that the protection of human rights, and the strengthening of the democratic system are the best means of preventing conflict, refugee flows and serious humanitarian crises;

In compliance with the request to hold this Colloquium made in Conclusion No. 71 (XLIV) of the Executive Committee of the High Commissioner's Programme, as well as by the General Assembly of the Organization of American States at its 24th Session, and including the preparatory technical meetings of Caracas in March 1992, Montevideo in May 1993, and Cocoyoc in March 1994;

II

The participants in the Colloquium have reached the following **conclusions**:

First. To recognize the overriding importance of the Cartagena Declaration in addressing refugee situations generated by the Central American conflicts of the past decade, and, consequently, to stress the appropriateness of resorting to the Declaration in order to find solutions both to pending problems and to the new challenges posed by uprootedness in Latin America and the Caribbean.

Second. To reaffirm the validity of the principles contained in the Declaration as elaborated in the documents ***Principles and Criteria for the Protection and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America (1989)***, as well as in the ***Evaluation of the Practical Application of those Principles and Criteria (1994)***, and to reiterate, in particular, the value of the refugee definition contained in the Cartagena Declaration, which, by being based upon objective criteria, has constituted an

effective humanitarian instrument in support of State practice in extending international protection to persons in need thereof, beyond the scope of the 1951 Convention and the 1967 Protocol.

Third. To stress the complementary nature and convergence between the systems of protection to persons established in International Human Rights Law, International Humanitarian Law and International Refugee Law, and, with the aim of establishing a common legal framework, to reiterate the convenience for those States which have not yet done so to adhere to the pertinent international instruments. In this context, the Colloquium makes an appeal to the States party to the 1969 American Convention on Human Rights to adopt the domestic measures required to ensure the full application and promotion of its provisions, as well as supervision by the pertinent bodies provided for therein.

Fourth. To encourage the commitment of the governments, non-governmental organizations and the jurists of the region in favour of the promotion, development and harmonious application of international human rights law, humanitarian law, and refugee law.

Fifth. To urge governments to encourage, with the collaboration of UNHCR, a process of progressive harmonization of rules, criteria and procedures concerning refugees, based on the 1951 Convention and the 1967 Protocol relating to the status of refugees, the American Convention on Human Rights, and the Cartagena Declaration.

Sixth. To encourage governments to seek humanitarian solutions, within a coordinated framework, to pending problems of refugees and persons displaced as a result of situations which have now been resolved, or which are in the course of being resolved, by reinforcing voluntary repatriation and reintegration programmes in their places of origin, and considering, whenever possible, programmes to facilitate local integration, the issuance of essential documentation and the normalization of their migratory status, with the aim of preventing such problems from becoming new sources of tension and instability.

Seventh. To call upon governments to increase their region-wide cooperation in admitting refugee groups, including those fleeing from situations foreseen in the Cartagena Declaration, as well as to encourage concerted efforts to find solutions to the problems which generate such forced displacement.

Eighth. To reiterate the responsibility of the States to eliminate, with the support of the international community, the causes of forced mass exodus and, in this way, ensure that refugee status is only granted for as long as required.

Ninth. To underscore the importance of fostering full observance of economic, social and cultural rights, in an effort to contribute to their development and to their legal protection.

Tenth. To reaffirm that refugees as well as those persons who migrate for other reasons, including economic ones, have human rights which should be respected at all times and in all circumstances and places. These inalienable rights should be respected before, during and after their flight or return to their places of origin, with a view to ensuring their well-being and human dignity.

Eleventh. To stress the advisability of improving the situation of refugee and displaced children, taking into account the specific provisions in this regard set forth in the 1989 Convention on the Rights of the Child.

Twelfth. To underline the importance of addressing the needs of refugee and displaced women and girls, particularly those in a vulnerable situation, in the field of health, security, employment and education, as well as to encourage the inclusion of gender-based criteria in the examination of claims for refugee status.

Thirteenth. To recommend the full participation of affected populations, especially women's groups and indigenous communities, by encouraging the development of mechanisms which facilitate concerted action in the design and implementation of programmes aimed at resolving situations affecting refugees, returnees and displaced persons.

Fourteenth. To encourage an integrated approach to the solution of problems of forced displacement, particularly as regards voluntary return and repatriation, within the framework of coordinated efforts in order to ensure, in addition to the security and dignity of the beneficiaries, the durability of solutions. In this sense, reintegration and rehabilitation efforts should be linked to medium and long-term sustainable development efforts intended to alleviate and eradicate extreme poverty, satisfy human needs, and strengthen respect for human rights, with due regard for civil, political, economic, social and cultural rights.

Fifteenth. To stress the contribution of the United Nations and the Organization of American States to the peace process in Central America and the Caribbean through peacekeeping operations and mechanisms for verification of compliance with specific agreements in the field of human rights. At the same time, to urge the organizations responsible for those operations to favourably consider requests made by concerned States that they continue to carry out their activities.

Sixteenth. To affirm that the problem of the internally displaced, albeit the fundamental responsibility of the States of their nationality, is nevertheless of concern to the international community because it is a human rights issue which can be linked to prevention of causes which generate refugee flows. In this regard, persons in this situation should be assured of the following:

(a) application of human rights norms and, when applicable, International Humanitarian Law as well as, by analogy, certain relevant principles of Refugee Law, such as non-refoulement;

(b) recognition of the civilian character of displaced populations and of the humanitarian and apolitical nature of the treatment afforded to them;

(c) access to effective protection by the national authorities and to essential assistance, with the support of the international community;

(d) attention to those rights which are crucial for their survival, security and dignity, as well as other rights such as adequate documentation, ownership of land and other assets, and freedom of movement, including the voluntary nature of return; and

(e) the possibility of attaining a dignified and safe solution to their displacement.

Seventeenth. To support the work of the Representative of the Secretary General of the United Nations for the Internally Displaced; within this framework, to foster and contribute to the preparation of an international declaration founded on a set of principles and basic rules for the protection and humanitarian treatment of internally displaced persons whatever their situation or circumstances, without prejudice to the basic right to seek asylum in other countries.

Eighteenth. To note with particular interest the efforts initiated by the Permanent Consultative Group on Internally Displaced in the Americas, as a regional inter-agency forum dedicated to the study and consideration of the acute problems faced by the displaced within their own countries for reasons similar to those that result in refugee flows.

Nineteenth. To stress the positive contribution made by the churches, the non-governmental organizations and other sectors of civil society in providing assistance and protection to refugees, returnees and the displaced in Latin America and the Caribbean, through the coordination of their activities with those of the governments and the international organizations.

Twentieth. To call upon States to urge existing regional fora dealing with matters such as economic issues, security and protection of the environment to include in their agenda consideration of themes connected with refugees, other forced displaced populations and migrants.

Twenty-first. To urge governments and relevant international organizations to take account of the specific needs of indigenous populations affected by the situations of uprootedness, with due respect for their dignity, human rights, cultural identity and the links which they maintain with their ancestral lands. In situations of uprootedness, the affected population should be consulted directly

and specialized approach and the full participation of indigenous populations in assistance programmes and in the planning of durable solutions in their favour, should be guaranteed.

Twenty-second. To support the efforts of the Latin American and Caribbean countries in the implementation of sustainable human development programmes, whose impact is crucial for both the prevention of and solution to the problems of uprootedness and forced migration; and to invite donor countries, financial institutions and the international community to collaborate in these efforts through technical and financial cooperation projects.

Twenty-third. To urge UNHCR to encourage the Latin American and Caribbean countries to disseminate and promote, at all possible levels, the norms relating to the protection of refugees, including those that emanate from the Cartagena Declaration, and their linkage with norms of International Humanitarian Law and, in general, to human rights; and to urge the Inter-American Institute of Human Rights to continue its dissemination and promotion efforts in this regard, in close collaboration with other competent organizations.

III

The participants in the Colloquium therefore,

Recommend:

- That the foregoing Conclusions be duly taken into account in the search for solutions to pending problems related to refugees, returnees and displaced persons, and in addressing new challenges currently being faced throughout the continent;
- That the present document be proclaimed as the San José Declaration on Refugees and Displaced Persons;
- That the working documents, presentations and reports, as well as the Conclusions and Recommendations adopted and other documents of the Colloquium, be published, and that the Inter-American Institute of Human Rights, the United Nations High Commissioner for Refugees, academic institutions and non-governmental organizations adopt the necessary measures for the widest distribution of this publication;
- That UNHCR and the Inter-American Institute of Human Rights, with the support of other pertinent organizations, be requested to sponsor a study of the scope of Article 22 (7) of the American Convention on Human Rights, as it relates the right to asylum, as integrating the right to seek and be granted asylum (Refugio) on the basis of those causes set forth in the refugee definition

contained in the Cartagena Declaration, and that this study be subsequently submitted to the consideration of States;

- That the co-organizers be entrusted with officially forwarding the contents of the present Declaration to the Secretary General of the United Nations, to the Secretary General of the Organization of American States and to the Heads of State and Government of the American Continent, so that they in turn submit them to the competent organs;

- That the participants be requested to forward the contents of the present Declaration to their respective governments, so as to contribute to the application of its contents, to its dissemination as well as to its presentation to the Executive Committee of the UNHCR's Programme;

- That an extension of the mandate of the Representative of the Secretary General for Internally Displaced Persons be promoted, and that he considers incorporating the relevant Conclusions of this Colloquium in the reports he presents to the United Nations Human Rights Commission and the United Nations General Assembly;

- That the co-organizers and the Government of Costa Rica, with the support of UNDP, intercede before the World Bank, the International Monetary Fund and the Inter-American Development Bank, as well as before bilateral aid agencies, in order for them to include the specific needs of displaced populations within programmes aimed at the alleviation and eradication of extreme poverty;

- That the message sent to the Colloquium by the United Nations High Commissioner for Human Rights be acknowledged with thanks, and that the contents of the present Declaration be forwarded to him.

Finally, the participants in the Colloquium express their deep appreciation to the United Nations High Commissioner for Refugees and to the Inter-American Institute of Human Rights and, in addition, to the Government of Costa Rica for initiating and carrying out this important event. The participants express their gratitude for the personal interest shown by the President of Costa Rica, Mr. José María Figueres Olsen, and took the liberty to ask him, as he deems appropriate, to inform the participants of the Summit of the Americas, to be held in Miami from 9 to 11 December 1994, about the celebration of this Colloquium.

San José, 7 December 1994