

## 7. Refugee protection in Brazil (1921–2014): an analytical narrative of changing policies

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Brazil has recently seen the number of asylum-seekers rise from 566 in 2010 to 5,256 (from 67 different nationalities) in 2013, a year that registered a recognition rate of 45 per cent and a total of 513 refugees resettled since 2002.<sup>1</sup> As a consequence of the almost ten-fold increase in the number of asylum-seekers in only four years, the refugee procedure has recently been streamlined.<sup>2</sup> A growing body of literature has analysed Brazilian practice on refugee protection which focuses mostly on the 1997 Brazilian Refugee Act and on Brazil's emerging role as a resettlement country. The Brazilian refugee legislation has been heralded as a model refugee law for the region and the country regarded as the regional leader in the field of resettlement.

But does this favourable perception regarding the Brazilian refugee regime hold true? Are the good intentions displayed by Brazil translated into practice? If not, what are the key areas needing improvement? Are Brazilian interests limited to the protection of refugees on its territory or does it also envisage a broader, regional or international perspective? Have migration considerations ever played a role in the protection of refugees in Brazil? And to what extent does a historical perspective help in understanding the Brazilian refugee regime?

This chapter attempts to answer these questions through a historical and legal approach. The first section covers the role of Brazil in the interwar and the immediate post-World War Two periods. The second part deals with the protection of refugees in Brazil from the establishment of the contemporary international refugee regime until 1997, when the Brazilian Refugee Act was enacted. The final section analyses selected aspects of both the Brazilian refugee legislation and the public policies devised for refugees.

1 UNHCR, 'Refúgio no Brasil – uma análise estatística (2010–2013)'.

2 Resolução Normativa no. 18, 30 April 2014, *Diário Oficial da União (DOU)*, 13 May 2014, Seção 1, pp. 29–31.

## Brazil and the pre-United Nations High Commissioner for Refugees regime (1921–52)

### *Focus on migration during the interwar period*

Two major facts need to be considered when analysing refugee influxes to Brazil during the interwar period. Firstly, as a result of its limited participation as a League of Nations member state, Brazil was not actively involved in the international community's initiatives on behalf of refugees.<sup>3</sup> In fact, in a report covering the period immediately before Brazil's withdrawal from the League of Nations, the Brazilian representative stated that 'despite Brazil's profound sympathy for the suffering of refugees the country could not receive them if they were to create on its territory the same problems that the League was trying to address in Europe.'<sup>4</sup> Secondly, the dynamics of its domestic politics drove Brazil to deal with refugees, not under international legal standards but rather under domestic colonisation and immigration laws,<sup>5</sup> which towards the mid 1930s were no longer favourable to migrants, let alone to refugees. Against this backdrop it is interesting to note that in the period from 1921 to 1930 Brazil's immigrant intake numbered 203,822, whereas from 1931 to 1940 only 22,282 entered the country;<sup>6</sup> and in 1941–7 a total of 50,224 foreigners migrated to Brazil (34,960 of them once the war was over, that is, from 1945–7).<sup>7</sup>

The abrupt reduction in immigration in the 1930s resulted from the introduction of a restrictive immigration policy, through the 1934 Brazilian Constitution, which included a quota system. This was followed by the adoption of the 1937 Constitution by the *Estado Novo*,<sup>8</sup> which established a National Department of Immigration and Division of Land and Colonization and created the legal framework for an even more restrictive and severe immigration policy.<sup>9</sup>

3 Brazil was a founding member of the League of Nations but left on 14 June 1926.

4 MFA, *Relatório Apresentado ao Presidente da República dos Estados Unidos do Brasil pelo Ministro de Estado das Relações Exteriores*, p. 26.

5 In 1934, for example, the MFA's legal advisor stated that Brazil had no interest in adhering to the 1926 and 1928 arrangements on behalf of Russian and Armenian refugees, and that foreigners who wanted to migrate to Brazil should be accorded the hospitality and the rights conferred by its domestic legislation, there being no need for a special legal regime; cf. MFA, *Memorandum*, from Clovis Bevilacqua to Minister Nabuco, Rio de Janeiro, 12 March 1934.

6 Ribeiro, 'O Departamento Nacional de Imigração', pp. 53–72.

7 Neiva, *Deslocados de Guerra*, p. 22 and Lesser, *O Brasil e a Questão Judaica*, p. 319.

8 'Estado Novo' or 'New State' was the name of the authoritarian government installed by President Getúlio Dornelles Vargas, which lasted from 1937 to 1945. It was modelled on the *Estado Novo* regime in Portugal, established in 1933 by António de Oliveira Salazar.

9 Cf. Decreto no. 3175, 7 April 1941, *DOU*, 9 April 1941, Seção 1, pp. 7123–4.

The fact that the state of Brazil was not party to the League of Nations' legal framework aimed at protecting refugees, and privileged an immigration policy void of humanitarian considerations and focusing solely on the benefits migrants could offer the country, does not mean that no refugees went to the country.<sup>10</sup> They were accepted, provided they met the immigration requirements – refugeehood or the need for protection rarely being one of them.

The first refugees to reach Brazil were Russians, who fled from the civil war that followed the 1917 Russian Revolution. Some consider that the Russian civil war ended in November 1920 – apart from the struggle in the Far East, which continued until 1922 – with the defeat of the White Russian, anti-Bolshevik General Pyotr Nikolayevich Wrangel, and the evacuation of his army from Crimean ports.<sup>11</sup> General Wrangel's defeated army formed the nucleus of an emigration movement, which comprised civilians leaving for political or economic reasons, and the persecuted aristocracy and bourgeoisie. The first 268 Russian refugees bound for Brazil were evacuated from the Turkish peninsula of Gallipoli prior to August 1921, together with 1,029 refugees who sailed from the Greek island of Lemnos between February and September 1921.<sup>12</sup>

In November 1920, as a result of the Russian offensive, some 135,000 refugees belonging or connected to Wrangel's force were evacuated from the Crimean ports and transported to Constantinople; France had secured from Brazil an offer to take some 20,000 settlers, but General Wrangel prevented these men from leaving as he still considered his force to be subject to the Russian government.<sup>13</sup> For the innumerable others whom the Union of Socialist Soviet Republics, founded in 1922, did not want to readmit, or who were deprived of their citizenship by the Russian expatriation decree of 28 October 1921, the League of Nations High Commissioner for Refugees, Dr Fridtjof Wedel-Jarlsberg Nansen, succeeded in effecting their resettlement in European and overseas countries, where they also adopted new nationalities. Among these countries, Brazil deserves special mention.<sup>14</sup> In 1924, many Russian families were sent from Germany to Brazil.<sup>15</sup> At the end of the 1930s, there were some 2,000 Russian refugees in Brazil, who had arrived in the early years of emigration from Constantinople and the Balkans, and who were of military origin and mostly working in offices and factories in São Paulo.<sup>16</sup>

10 Brazil only signed the 1924 'Plan for the Issue of a Certificate of Identity to Armenian Refugees'.

11 Simpson, *The Refugee Problem – Report of a Survey*, p. 67.

12 *Ibid.*, pp. 71–2.

13 Macartney, *Refugees – The Work of the League*, pp. 12–13.

14 Reut-Nicolussi, 'Displaced persons and international law', p. 37.

15 Macartney, *Refugees*, pp. 33–4.

16 Simpson, *The Refugee Problem*, p. 481.

By 1924, the main political difficulties regarding the resettlement of Russian refugees appeared to have been solved by Dr Nansen and the problem had been reduced to that of providing work for refugees. The International Labour Organization (ILO) took up this task on 1 January 1925. It fielded missions to several South American countries to investigate opportunities for resettling refugees in agricultural colonies. Experimental colonies had already been established in Brazil,<sup>17</sup> such as the German colony of Uvá.<sup>18</sup> Difficulties of refugee assimilation, corruption and infrastructure underdevelopment were reported and forced the ILO to cease all support for resettlement to Latin American agricultural colonies in 1929.<sup>19</sup>

Regardless of ILO policies, Brazil kept its immigration and land-settlement policy until the mid 1930s. This did not directly target refugees, which does not mean, however, that refugees did not migrate to Brazil. They did, either individually or through the implementation of Brazil's immigration policy, which did not differentiate them from ordinary economic immigrants. As for those who migrated at their own expense, examples include some 500 Portuguese opponents of the Salazar regime who found refuge and livelihood in Brazil, joining an already large community of Portuguese economic immigrants. Although the general Brazilian population did not welcome (self-) declared refugees, they could usually find work.<sup>20</sup>

As to those who migrated within the framework of Brazil's immigration policy, a typical example is that of a colonisation company from the Brazilian State of Santa Catarina, which made a settlement offer for Saar refugees to the Nansen International Office for Refugees in 1935. A representative from the Nansen Office was sent to investigate the conditions and concluded that the area was suitable for the settlement of up to 50 Saar families.<sup>21</sup> At that time, Brazil's continuous need to populate the country, to promote the development of land settlement, and to realise its agricultural potential met the need for emigration from Europe, which was actively advanced by the ILO.<sup>22</sup>

Brazil was initially hospitable to German Jewish refugees, who numbered about 40,000 towards the end of the 1930s.<sup>23</sup> But in November 1937, after the installation of the new constitution under the Estado Novo, the

17 Le Conte, 'Colonisation et émigration allemandes en Amérique', pp. 83–105; Lambert, 'Les Allemands au Brésil', pp. 186–207.

18 de O. Brito, *A Colônia Alemã do Uvá (1924–1954)*.

19 Yundt, *Latin American States and Political Refugees*, p. 9.

20 Simpson, *The Refugee Problem*, p. 171.

21 Yundt, *Latin American States*, p. 11.

22 Cf. for example Lopes, 'Land settlement in Brazil', pp. 152–184; '[Reports and enquiries] immigration and settlement in Brazil, Argentina, and Uruguay: I', pp. 215–52; Maurette, *Quelques aspects sociaux de développement présent et future de l'économie brésilienne*.

23 Inman, 'Refugee settlement in Latin America', p. 185.

immigration policy, especially towards Jews, was reversed. Measures already taken to prevent the entry of new refugees were strengthened and many of the 3,000 already in Rio de Janeiro were threatened with expulsion.<sup>24</sup> Brazil then instructed its representatives in Europe to request baptismal certificates of all prospective immigrants, which meant the automatic exclusion of Jews unless they apostatised,<sup>25</sup> which many did. Under the influence of Pope Pius XII, Brazil agreed to issue 3,000 entry visas on behalf of 'non-Aryan' Christians. The 1,000 entry visa quota given to the Brazilian Embassy in the Vatican was, however, almost completely taken up by Ambassador Hildebrando Accioly, who issued 959 visas. This was counteracted by the 2,000 entry visas the Brazilian Embassy in Berlin should have issued on behalf of Jews who had converted to Christianity, which were blocked for political and diplomatic reasons.<sup>26</sup> There were other cases of entry visas issued with the sole purpose of protecting the Jews by allowing them to go to Brazil, but they were the result of individual initiatives. These included the entry visas Souza Dantas, the Brazilian Ambassador to France, issued on behalf of 473 European Jews of various nationalities, contrary to Ministry of Foreign Affairs (MFA) instructions.<sup>27</sup>

The 1921–47 period in Brazil was therefore characterised by both a disconnect from the refugee problem and a dramatic change in immigration policy and figures. As to the former, the general population did not particularly welcome refugees and the administration was neither moved by humanitarian reasons nor bound by legal instruments to receive them. This disconnect did not prevent their arrival as ordinary immigrants, provided they satisfied the domestic legislation on immigration. The drastic change in policy of the mid 1930s significantly diminished the number of refugees who went to Brazil, the doorway being virtually shut to those who were Jewish. It was only when World War Two and the Estado Novo regime ended in 1945 that the restrictions imposed on immigration for more than ten years also came to an end. However, the impact of immigration policy (re-)liberalisation was not significant because in practice, despite the main political actors having been replaced, the majority of the bureaucracy had already been indoctrinated by a decade-long restrictive policy.<sup>28</sup>

24 Simpson, *The Refugee Problem*, p. 481.

25 Davie, *Refugees in America – Report of the Committee for the Study of Recent Immigration from Europe*, p. 11.

26 Milgran, *Os Judeus do Vaticano*.

27 Koifman, *Quixote nas Trevas – o embaixador Souza Dantas e os refugiados do Nazismo*.

28 Lesser, 'Repensando a política imigratória brasileira na época Vargas', pp. 277–87; Bertonha, 'O Brasil, os imigrantes italianos e a política externa fascista, 1922–1943', pp. 106–30.

*Brazil and the International Refugee Organization (IRO)*

When the UN was established it was confronted with a situation graver than that faced by the League of Nations: it is estimated that, in the period 1939–47, 53,536,000 people were displaced from their cities or countries of origin.<sup>29</sup> With the end of the war, most returned to their homes, or what was left of them; however, approximately one million people did not wish to return to their countries of origin. The controversy ‘repatriation *v.* resettlement’ – the latter regarded by western states as the best solution, the former being the aim of Eastern Bloc countries – led both to the creation and demise of the IRO. Repatriation was not implemented on a large scale. Of the ‘last million’, only 73,000<sup>30</sup> were repatriated, a figure that represents around six per cent of the total number under the IRO’s mandate.<sup>31</sup> In turn, 1,038,750 people<sup>32</sup> were resettled to 65 countries, the majority of whom were non-European.

After 1945, unlike in the interwar period, Brazil established, as one of its foreign policy goals, participation in several international community policies and programmes, particularly those led by the Western Bloc. One way of doing so was to demonstrate *willingness* to accept the resettlement of European refugees and displaced persons. By this means, it not only participated in UN initiatives but also attracted a qualified labour force to its territory – a convenient combination of humanitarian principles and political expediency at both international and national level. Even though Brazil has never become an IRO member state, the rhetoric it used when participating in the multilateral forum searching for solutions for the ‘last million’ was forceful.<sup>33</sup> However, the *extent* of its participation was rather limited.

When, in 1946, the Economic and Social Council (ECOSOC) took charge of the problem of refugees and displaced persons, Brazil actively participated in its meetings and decisions. In one session of the Special Committee on Refugees and Displaced Persons’ Sub-Committee on Definitions, the Brazilian delegate asserted that Brazil could offer ‘real assistance [and] efficient collaboration’ in resettlement, cooperating in this way for the achievement of humanitarian results through receiving a ‘great number of refugees and displaced persons’.<sup>34</sup> He further asserted: ‘we want to reinforce

29 Ginesy, *La Seconde Guerre Mondiale et les Déplacements de Populations*, p. 70.

30 Cf. Moussali, ‘The evolving functions of the Office of the United Nations High Commissioner for Refugees’, p. 85; Chen, *The Theory and Practice of International Organization*, p. 165; Ruiz de Santiago, ‘Derechos humanos y protección internacional de los refugiados’, p. 236.

31 Plender, *International Migration Law*, p. 400; Stoessinger, *The Refugee and the World Community*, p. 111.

32 IRO, *IRO: Statistical Report for 1951*.

33 Silva, ‘O Brasil e os Organismos Internacionais para as Migrações’, pp. 145–8.

34 UN, *Exposé du Délégué du Brésil, 16 avril 1946 – Comité Spécial des Réfugiés et Personnes Déplacées – Sous-Comité des Définitions*, p. 1.

our European origin, following a selection as rigorously as possible<sup>35</sup> and then clarified that Brazil was not interested in workers who wished to establish themselves in cities, because there was ‘a concern to protect the national worker against the occurrence of possible competition’.<sup>36</sup>

A little later, before the Special Committee on Refugees and Displaced Persons’ Sub-Committee on Documentation, the Brazilian delegate reiterated that, as a general condition, only farmers, technicians and qualified workers should immigrate, in a spontaneous or organised fashion, to Brazil.<sup>37</sup> From the start, the Brazilian representatives made it clear that any humanitarian move was conditional on the satisfaction of both domestic expediency and needs. The needs were twofold: skilled manpower in the booming industrial state of São Paulo, and development of agriculture, raising of livestock, and settlement in the less advanced states.<sup>38</sup> Careless about accuracy and risking the raising of expectations that could not be met (as in fact they were not), the Brazilian delegation affirmed that the country could annually receive between 100,000 and 200,000 immigrants (refugees included), who would assist in the task of populating the country and developing the national wealth.<sup>39</sup>

In July 1947, when the IRO Preparatory Commission became operational, Brazil signed the IRO Constitution and indicated that it wanted to cooperate and to be legally bound – through the subsequent deposit of its ratification instrument – by that constitution. By signing it Brazil was allowed to participate actively in the meetings of the IRO Preparatory Commission at its Geneva headquarters.

Hélio Lobo, the Brazilian delegate at the IRO Preparatory Commission, who had been its vice-president for a time,<sup>40</sup> was among the Brazilian authorities more dedicated to the immigration process of refugees and displaced persons. Brazil was the first country to plan the resettlement of such persons from Austria<sup>41</sup> despite the fact, according to Mr Lobo, that there was a ‘discouraging trend [in Brazil] regarding the immigration of displaced persons’, which was due to propaganda and an ‘isolationist prejudice’.<sup>42</sup> He asserted, however, that he ‘did not believe that Brazil will miss the opportunity to prove once more

35 Ibid., p. 2.

36 Ibid.

37 UN, *Renseignements Fournis par la Délégation du Brésil – Comité Spécial des Réfugiés et Personnes Déplacées – Sous-Comité de Documentation*, p. 2.

38 Holborn, *The International Refugee Organization*, p. 402.

39 UN, *Renseignements Fournis par la Délégation du Brésil*, pp. 7–8.

40 *Journal de Genève*, ‘Naissance de l’O.I.R.’.

41 *Weltpresse*, ‘Erster transport von versetzten Personen nach Brasilien’; *Wiener Kurier*, ‘Erster DP-Transport nach Brasilien im Jänner 1948’.

42 *Journal de Genève*, ‘Le problème des réfugiés – uniquement, un peut de bonne volonté de la part de chaque nation’.

its spirit of cooperation and its humanitarian sentiments', notwithstanding that any 'decision has to be in conformity with the interests of our country'.<sup>43</sup> However, contrary to a true spirit of cooperation and humanitarian sentiments, Brazil's antisemitic political elite adopted highly selective immigration laws that were unfavourable to the Jews<sup>44</sup> or – just like Argentina and Chile – established patterns of discrimination against certain immigrant groups, such as the Jews, who were considered undesirable and therefore refused entry.<sup>45</sup>

After signing the IRO Constitution, Brazilian authorities seriously began to contemplate ratifying it in order to become an IRO member state. Despite the fact that the 'high political tenor' of IRO activities did not pass unnoticed, some diplomats tried to underline, solely under the immigration perspective, the 'high value' of refugees and displaced persons. They also emphasised that it was in Brazil's immediate interest to promote their arrival, given the 'migratory market which was momentous, had a high intrinsic value' and allowed for 'the reception, under a cost-sharing scheme [...] of a higher number of better qualified immigrants through the IRO'.<sup>46</sup> Financial considerations, however, held Brazil's ratification process back.<sup>47</sup>

Brazilian participation in IRO activities was rather peculiar. The country's policy-makers recognised the need to get involved in UN initiatives, particularly those backed by the Western Bloc. Statements by Brazilian representatives seemed to reflect a commitment to the IRO – when, in fact, they expressed only good *intentions*. The ornamental effect of Brazilian diplomatic performance soon bore fruit: it gained substantial prestige which resulted in the special privilege of being assigned a seat on the IRO's General Council, another reason being that 'everything indicated in Geneva that our country [Brazil] would ratify the IRO Constitution and have a role in the policy of the organization'.<sup>48</sup>

Receiving refugees and displaced persons was also of benefit beyond the execution of Brazilian foreign policy. Brazil's additional reasons for supporting the IRO's activities were the convenient convergence and combination of humanitarian sentiments and principles that prevailed in the aftermath of World War Two – which appeared to have been somewhat irrelevant during the interwar period – and the opportunity to receive a skilled and qualified labour force to meet domestic demand. That need was obvious, not only due to so many years of a restrictive immigration policy having been implemented,

43 *Journal de Genève*, 'Le problème des réfugiés'.

44 Vernant, *The Refugee in the Post-War World*, p. 623.

45 Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, p. 52.

46 MFA, *Memorandum* (Classified), ref. COO/601.34(00), from J.P. do Rio Branco to J. Latour, Rio de Janeiro, 10 Nov. 1947, p. 11.

47 Fischel de Andrade, 'Brazil and the International Refugee Organization (1946–1952)', pp. 82–4.

48 Lobo, *A Organização Internacional para os Refugiados e o Brasil*, p. 10.



but also because of the economic gains resulting from European immigration.<sup>49</sup> However, the overwhelming majority of the refugees who migrated to Brazil went by themselves, without IRO support. They benefited from extensive employment opportunities and found the adjustment somewhat easier than in other Latin American countries.<sup>50</sup>

Although the resettlement of refugees and displaced persons was in the interest of Brazil's post-World War Two foreign and immigration policy, and also in line with humanitarian imperatives (which may have inspired Brazilian authorities), out of the 1,038,750 million refugees and displaced persons resettled by the IRO, only 28,996 had gone to Brazil by the time the IRO office in Rio de Janeiro was closed on 31 January 1952.<sup>51</sup> Brazil never became an IRO member state.<sup>52</sup>

## Protection of refugees in Brazil before the Refugee Act (1951–97)

### *First steps*

During the 1950s, Brazil had an ambiguous stance regarding refugees. On the one hand, it *signed* the 1951 Convention relating to the Status of Refugees (1951 Convention) on 15 July 1952, but *ratified* it many years later (*infra*). It also never responded to the 1953 request for *agrément* on behalf of Paul Doyle, who was to be appointed representative of the United Nations High Commissioner for Refugees (UNHCR) to Brazil;<sup>53</sup> as a consequence the High-Commissioner gave up the idea of opening a UNHCR office in Brazil. On the other hand, 5,449 refugees were resettled in Brazil between 1 February 1952 and 31 March 1954,<sup>54</sup> and 2,135 refugees were resettled between 1 January 1954 and 28 February 1955.<sup>55</sup> Furthermore, between 1956–8 some 5,300 European refugees were also resettled (the majority Hungarian)<sup>56</sup> and, in the late 1950s, 697 'Old Believers' – Russian religious dissenters who refused to

49 de Avila, *Economic Impacts of Immigration – the Brazilian Immigration Problem*.

50 Stoessinger, *The Refugee*, p. 129.

51 IRO, *Letter*, ref. G-2067, from S. Stansby to J.N. da Fontoura, Rio de Janeiro, 7 Jan. 1952, p. 1; Vernant, *The Refugee*, p. 622.

52 For a thorough study of Brazilian refugee-related activities during IRO's lifespan, see de Andrade, 'Brazil and the International Refugee Organization (1946–1952)', pp. 65–88.

53 UNHCR, *Letter*, ref. G.XV.2/5/4/4, from G.J. van Heuven Goedhart, High-Commissioner, to Vicente Rao, Minister of Foreign Affairs, Geneva, 17 Dec. 1953.

54 UN, *Report of the United Nations High Commissioner for Refugees*, General Assembly, Official Records: 9th session, p. 17.

55 UN, *Report of the United Nations High Commissioner for Refugees*, General Assembly, Official Records: 10th session, p. 16.

56 Loescher, *Beyond Charity*, pp. 68–70.

accept the liturgical reforms imposed upon the Russian Orthodox Church by the patriarch of Moscow, Nikon (1652–8) – were also resettled in Brazil.<sup>57</sup> Upon arrival in the country, resettled refugees were treated like ordinary foreigners, since Brazil was neither a party to the 1951 Convention, nor did it have domestic legislation regulating the granting of refugee status.

The 1959–1960 World Refugee Year (WRY) had a significant impact on Brazil. Following the official visit of High Commissioner August Lindt,<sup>58</sup> the country created a WRY national committee and self-established three goals: 1) a financial contribution to UNHCR equivalent to US\$30,000; 2) the reception of 700 refugees of European origin who were in Hong Kong; and 3) the ratification of the 1951 Convention.<sup>59</sup> The financial contribution was partially made;<sup>60</sup> the European refugees were resettled from the Far East; and in 1960 Brazil ratified the 1951 Convention, opting for the geographical limitation and for introducing reserves regarding Articles 15 and 17. A decade later, in 1972, Brazil acceded to the 1967 Protocol relating to the Status of Refugees.

Following the April 1974 Carnation Revolution in Portugal, Portuguese and Angolan refugees went en masse to Brazil, such that an estimate made in September 1975 put 26,000 of them on Brazilian territory.<sup>61</sup> They did not, however, enjoy refugee status, since Portuguese nationals benefited from special migratory status in Brazil. What had a lasting impact on refugee protection in Brazil was the arrival of refugees fleeing the dictatorships of Chile (1973–90), Uruguay (1973–85) and Argentina (1976–83). The Chileans were the first to arrive, in April 1976, followed by the Argentinians in late 1976 and the Uruguayans in 1977.

At the beginning regional refugees were protected by the Catholic Church but, given the tension between the National Conference of Bishops of Brazil (CNBB) and the military regime (1964–85), the government requested, in 1977, that UNHCR open a small office, attached to the UNDP, in Rio de Janeiro. The Church continued to play a key role, however, both in Rio de Janeiro and in São Paulo, leading to the then Archbishop of São Paulo, Dom Paulo Evaristo Arns, being awarded the Nansen Medal in 1985.<sup>62</sup> The 5,000 or

57 UNHCR, *A Mandate to Protect and Assist Refugees – 20 Years of Service in the Cause of Refugees: 1951–1971*, p. 64, and ‘Entrevista com o Ministro Ilmar Penna Marinho’, p. 5.

58 *Jornal do Brasil*, ‘Alto Comissário da ONU no Rio para discutir o Ano Mundial do Refugiado’.

59 MFA, *Declaração do Delegado do Brasil*, ref. Del.Bras./Genebra/no. 185/1959/Anexo.

60 UNHCR, *IOM*, ref. 27/3/4 GEN, ‘Governmental contribution to UNHCR programmes’, from V.A.M. Beerman to the High-Commissioner, Geneva, 9 April 1962.

61 *Jornal do Brasil*, ‘Brasil só trata do caso de refugiados angolanos com o Governo de Luanda’, p. 4.

62 Arns, *Da Esperança à Utopia*, p. 417; *Refugiés*, ‘Médaille Nansen 1985 au Cardinal Arns’, vol. 22, p. 7.

so South American refugees who approached UNHCR were resettled mainly in Sweden and France, but also in Switzerland, Canada and the Netherlands. The majority, however, preferred to live illegally in Brazil,<sup>63</sup> so that they could be close to their countries of origin and also live in a Latin American environment where they could easily integrate.

In 1979 and 1981 two groups of Vietnamese refugees, totalling 150, who had been rescued by Brazilian oil tankers in South-East Asia, arrived in Brazil.<sup>64</sup> Since Brazil still implemented the geographical limitation to the 1951 Convention, the Vietnamese refugees were granted residence permits. The same was done in 1981 for 35 Cuban refugees arriving in Brazil after having joined some 10,000 Cubans who had occupied the Peruvian Embassy in Havana. At the beginning the Brazilian authorities managed their integration, but once the majority of Cuban refugees started protesting against their internment in an experimental agricultural farm, UNHCR stepped in and granted them financial aid, which enabled them to start their own businesses.<sup>65</sup>

Since the informal opening of its office in 1977, UNHCR slowly obtained the trust of the Brazilian authorities. It did so by resettling thousands of South American refugees in Europe and by providing assistance to Vietnamese and Cuban refugees who did not enjoy refugee status because Brazil still applied the 1951 Convention's geographical limitation. In 1982, Brazil officially accepted the establishment of an UNHCR office in the country.<sup>66</sup> Then, in 1984, the Brazilian authorities agreed to grant residence permits on a case-by-case basis to South American mandate refugees – that is, refugees recognised by the UNHCR under the refugee definition captured in its 1950 Statute – who preferred to remain in Brazil rather than to be resettled.<sup>67</sup> The redemocratisation process was about to start and to bring about an era of liberalisation of refugee and immigration policies that was immediately (though slowly) set in motion.<sup>68</sup>

63 In 1979 it was estimated that 70,000 refugees lived illegally in São Paulo (30,000 to 40,000 of whom were Argentinians), and that 20,000 Uruguayans lived in the southern city of Porto Alegre; cf. Padovani, 'Os refugiados', pp. 10–12. Two years later it was estimated that 300,000 refugees (36% from Chile, 31% from Argentina and 21% from Uruguay) lived in Rio de Janeiro and São Paulo; cf. *Jornal do Brasil*, 'Refugiados já são 300 mil', p. 14. Despite these significant figures they were not bothered by the police; cf. *Folha de São Paulo*, 'Problemas dos refugiados exigem ação constante, afirma dom. Paulo', p. 5.

64 *Jornal do Brasil*, 'Refugiados vietnamitas chegam ao Rio', p. 23; *O Estado de São Paulo*, 'Fim da aventura: os refugiados chegaram', p. 20; *Folha de São Paulo*, 'Destino de vietnamitas será decidido pela ONU'.

65 *Jornal do Brasil*, 'Refugiados cubanos já são comerciantes em Curitiba', p. 24.

66 MFA, *Note Verbale* no. 132, from Álvaro Gurgel de Alencar, Deputy Permanent Representative at the UN, to Poul Hartding, High-Commissioner, Geneva, 20 July 1982.

67 UNHCR, *Mr. Zollner and Mr. Benamar's Mission to Brazil*, pp. 1–5.

68 El Chichini, '[Brazil] Liberalization: a new era', pp. 32–3.

*Redemocratisation and the drafting of the Refugee Act*

On 15 March 1985, the very day a civilian administration took office after 21 years of military dictatorship, the Ministry of Justice's legal advisor, Marcelo Cerqueira, said that 'Brazil (...) will be a refuge for political exiles. Brazil's doors are open. (...) We are here to work for democracy and freedom. Any foreigner suffering from political persecution can seek our help. Without even making an appointment in advance.'<sup>69</sup> The emotive rhetoric sounded like Brazilian diplomat statements made from the UN in the late 1940s and early 1950s, but this time was not void, and the redemocratisation of Brazil slowly enabled the country to change its record and become more open to refugees.

In 1986, 50 Iranian Bahá'í families were resettled in Brazil<sup>70</sup> and the following August the Conselho Nacional de Imigração (National Immigration Council – CNI) authorised the issuance of work permits to mandate refugees.<sup>71</sup> In November 1987, the CNI adopted a decision that allowed the issuance of temporary residence permits to some South American mandate refugees favouring repatriation in the medium term rather than resettlement.<sup>72</sup> A year later the 'granting of political asylum' (*concessão de asilo político*) was enshrined in the newly enacted 1988 Constitution as one of the principles that govern Brazil's international relations.<sup>73</sup> On the international plane, in late 1989, Brazil withdrew the geographical limitation to the 1951 Convention<sup>74</sup> and, in late 1990<sup>75</sup> and early 1991,<sup>76</sup> it withdrew at the domestic and international legal planes, respectively, all reservations to the 1951 Convention.

Not least as a result of UNHCR lobbying,<sup>77</sup> in mid 1991 Brazil published an interministerial ordinance<sup>78</sup> (*Portaria interministerial*) and a service instruction<sup>79</sup> (*Instrução de serviço*), which aimed to regulate some aspects of the refugee situation in the country. However, neither drafting of these legal instruments

69 UNHCR, *Cable*, ref. HCR/BRA/0038, from UNHCR Office in Rio de Janeiro to HQs, 27 March 1985.

70 Fischel de Andrade and Marcolini, 'Brazil's Refugee Act: model refugee law for Latin America?', pp. 37–9; Barreto, 'Lei Brasileira de Refúgio – sua história', p. 18.

71 El Chichini, '[Brazil] Liberalization', p. 33.

72 See Resolução no. 17, *DOU*, 23 March 1988, Seção 1, p. 4877.

73 See Art. 4 (X) of the 1988 Brazilian Constitution, *DOU*, 5 Oct. 1988, Seção 1, pp. 1 *et seq.*

74 *International Journal of Refugee Law*, 'Brazil and Italy: geographical limitation to the 1951 Convention withdrawn', p. 279.

75 See Decreto no. 99757, *DOU*, 4 Dec. 1990, Seção 1, p. 23,223.

76 MFA, *Note Verbale*, no. 29, from Ronaldo Mota Sardenberg, Permanent Representative to the UN, to Javier Pérez de Cuéllar, Secretary-General, New York, 5 Feb. 1991.

77 UNHCR, *Memorandum*, ref. 073, 'Reporting on UNHCR activities 1990–1991', from Jaime Ruiz de Santiago, OCM Brazil, to HQs, Brasília (25 Feb. 1991), para. 2.

78 Portaria interministerial, *DOU*, 30 July 1991, Seção 1, p. 15,165.

79 Instrução de serviço, *DOU*, 5 Sep. 1991, Seção 1, pp. 18,633–5.

benefited from UNHCR comments and both left much to be desired.<sup>80</sup> As a result of the comments and instructions received from the UNHCR's regional office and headquarters (HQs) in Buenos Aires,<sup>81</sup> the Chief of Mission, Jaime Ruiz de Santiago, submitted to his counterparts at the MFA an aide-mémoire with recommendations on how the interministerial ordinance and the service instruction could be improved, particularly in relation to establishing a refugee status determination (RSD) system.<sup>82</sup> Neither the interministerial ordinance nor the service instruction was ever altered. The authorities deemed there was no need to invest in serious lawmaking, since there were almost no asylum-seekers, most refugees were integrated, and the 322 refugees who were not integrated received assistance from the UNHCR.<sup>83</sup>

The situation changed dramatically from early 1993 onwards with the arrival of African (mostly Angolan) refugees. As a result of the resumption of the Angolan civil war after the September 1992 elections, the cheap (US\$100) airplane ticket from Luanda to Rio de Janeiro, and the fact that Brazil was the only country issuing tourist visas to Angolans, 430 Angolan and 93 Zairian asylum-seekers arrived in Brazil from early January to late April 1993.<sup>84</sup> The RSD was carried out by the UNHCR Office in Brazil, initially supported by a mission from its headquarters,<sup>85</sup> and used as a legal basis for mandate refugee status, the traditional refugee definition enshrined in paragraphs 6 and 7 of the 1950 UNHCR Statute. As a consequence, the rejection rate was almost 35 per cent,<sup>86</sup> which posed a problem to both the authorities, who were eager to help the victims of the Angolan civil war get out of their country but did not want

80 For instance, the Brazilian authorities did not assume the responsibility for RSD, leaving that work to the UNHCR.

81 Cf. UNHCR, *Memorandum*, no. 60, ref. ARG/HCR/0253 and ARG/BRA/HCR/0484, 'Portaria interministerial du 29/07/91 et instrução de serviço no. 01/91 du 02/09/91 – memos acnur/bra 0362 / 0374 / 0412 des 26 et 30 août et du 16 septembre 1991', from Teresa Tirado, Regional Office in Argentina, to HQs' Regional Bureau for Latin America and the Caribbean, Buenos Aires, 2 Oct. 1991, and UNHCR, *Memorandum*, ref. 600.BRA, 'Portaria interministerial no. 394 of 29 July 1991 and instrução de serviço no. 1.91', from Debora Elizondo, HQs' DIP, to Regional Office in Argentina and OCM in Brazil, Geneva, 10 Oct. 1991, para. 7.

82 UNHCR, *Letter*, ref. HCR/0468, from OCM in Brazil to the MFA, Brasília, 24 Oct. 1991.

83 According to UNHCR statistics, on 31 Dec. 1992 UNHCR assisted 109 Europeans, 47 Africans, 21 Vietnamese, 85 Latin Americans and 60 Asians, which was achieved through its implementing partners *Cáritas* in São Paulo (120 persons) and in Rio de Janeiro (105 persons), and the Tolstoy Foundation in São Paulo (97 persons); cf. UNHCR, *Memorandum* (cable), ref. BRA/HCR/0081 and BRA/ARG/HCR/0136, 'African asylum-seekers in Brazil', from Jaime Ruiz de Santiago, OCM in Brazil to HQs, Brasília, 9 June 1993.

84 UNHCR, *Statistics of Angolan and Zairian Asylum-Seekers (from 1.01.93 to 30.04.93)*.

85 UNHCR, *Note for the File*, 'Asylum-seekers in Brazil', drafted by Sanda Kimbimbi, Rio de Janeiro, 31 May 1993.

86 UNHCR, *Memorandum* (cable), ref. BRA/HCR/088, 'HCR/BRA/0174 – Angolan asylum-seekers in Brazil', from the OCM in Brazil to HQs, Brasília, 16 June 1993.

them to be in Brazil illegally, and to the UNHCR, which was also concerned about the potential return of rejected asylum-seekers to Angola.<sup>87</sup> The solution found was somewhat pragmatic, creative and humanitarian: UNHCR – under pressure from human rights NGOs to do so<sup>88</sup> – introduced an appeal system which recognised those asylum-seekers rejected in the RSD procedure initially carried out. When analysing asylum-seekers' claims, it used the broader refugee definition recommended by the 1984 Cartagena Declaration. By the end of 1993, the Cartagena refugee definition was commonly used<sup>89</sup> and its application accepted by the authorities, who wanted to 'render flexible the traditional concept of a refugee and widen the humanitarian reception of persons who had escaped from a situation of generalized conflict'.<sup>90</sup>

The arrival of the Angolans – but also of other African refugees, that is, the Zairian and Liberian refugees – was a critical element used by the UNHCR to lobby in favour of a refugee law. After all, it is in states' interests to avoid both unregulated policies and a factual situation not envisaged by the law. In 1995, the refugee population in Brazil already stood at 2,000, but UNHCR was still conducting RSD interviews, and successful asylum-seekers were recognised as mandate refugees before UNHCR recommended them for recognition as convention refugees by the Brazilian authorities.

The UNHCR office's objective was to ensure that refugee legislation was enacted by South American countries and that – since the refugee situation was similar in the whole sub-region – the refugee legislation and RSD procedures therein embodied were harmonised through a regional approach.<sup>91</sup> To that end, in August 1995, it organised a workshop in Buenos Aires, which was attended by government representatives of Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay, as well as NGO representatives, experts and UNHCR staff. During the workshop UNHCR presented its 'Guidelines for

87 UNHCR, *Memorandum* (cable), ref. HCR/GBR/0508, HCR/GFR/0343, HCR/RUS/0329, 'Forcible return of rejected Angolan asylum-seekers', from HQs to its offices in Great Britain, France and Russia, Geneva, 30 March 1993, para. JJJ, annex to *Memorandum* (cable), ref. HCR/BRA/0127, 'Returnability of Angolan asylum-seekers and general background info on Angola', from HQs to OCM in Brazil, Brasília, 24 April. 1993.

88 UNHCR, *Memorandum* (cable), ref. BRA/HCR/0122, 'African asylum seekers in Brazil', from OCM in Brazil to the Director of the Americas Bureau at HQs, Brasília, 9 Aug., para.1.

89 UNHCR, *Memorandum* (cable), ref. ARG/HCR/0609 and ARG/BRA/HCR/1102, 'Regional Protection Officer's mission to Brazil', from the Regional Office in Argentina to HQs and to the OCM in Brazil, Buenos Aires, 6 Dec. 1993, para. 3. The Cartagena Declaration can be viewed at [www.refworld.org](http://www.refworld.org) (accessed 6 Jan. 2015).

90 Tarrisse da Fontoura and Goidanich, 'O Brasil e a questão dos refugiados', p. 165.

91 Fischel de Andrade, 'Regional policy approaches and harmonization: a Latin American perspective', pp. 389–409.

the harmonization of legislation and national procedures with the norms and principles of international refugee law'.<sup>92</sup>

The UNHCR office discussed these guidelines with its interlocutors in Brasília, who asked it to produce a draft Refugee Act. In early 1996, the UNHCR office handed the draft to the MFA. Based on Brazilian acceptance of UNHCR practice and Brazilian diplomats' statements in favour of the Cartagena Declaration pronounced at the UNHCR Executive Committee<sup>93</sup> (ExCom), the draft included a broader definition of a refugee which reflected the Cartagena Declaration. The Ministry of Justice, however, deleted the expanded definition from the document, so that the draft Refugee Act the Executive sent to Parliament in May 1996 contained only the traditional 1951 Convention refugee definition.

The UNHCR representatives lobbied intensively at the two Houses of Parliament and, unfailingly supported by the Church, managed to introduce an expanded refugee definition stating that a refugee is also someone who 'due to gross and generalized violation of human rights (...) is compelled to leave his or her country of nationality to seek refuge in a different country'. The UNHCR/Church duo also lobbied successfully for an accelerated legislative procedure, and the Refugee Act was enacted in July 1997.<sup>94</sup> The passing of the Act was the result of various factors: namely, the redemocratisation process begun in 1985, the need to react to the arrival of numerous African refugees in the early 1990s, and the human rights policy that the Fernando Henrique Cardoso administration (1995–2002) had started to implement.

The three-and-a-half decades that elapsed between the signature of the 1951 Convention and the redemocratisation of Brazil in 1985 were marked by a significant shift in the work of the UNHCR. Brazil gave the organisation a cold shower by not granting the *agrément* for the first UNHCR representative to Brazil in 1953, by ratifying the 1951 Convention with the geographical limitation and reservations to Articles 15 and 17, by granting non-European refugees (Cubans, Vietnamese, Iranians) ordinary migratory status, and by having South American refugees resettled in Europe. However, since the end of military rule in 1985, the apparent political indifference to refugees gave way to a more liberal application of migration rules which benefited refugees. Brazil applied its migration legislation in a rather flexible way towards refugees and

92 The guidelines are reproduced in Irigoin Barrene (ed.), *Derecho de Refugiados en el Sur de América del Sur*.

93 MFA, *Brazilian Delegation Statement*, 42nd ExCom Session, Geneva, Oct. 1991, p. 2; MFA, *Statement by the Delegation of Brazil*, 43rd ExCom Session, Geneva, 6 Oct. 1992, p. 2; and MFA, *Statement by the Brazilian Delegation*, 44th ExCom Session, Geneva, 6 Oct. 1993, para. 9.

94 Cf. Lei no. 9474, *DOU*, 23 July 1997, Seção 1, pp. 15822–4.

became fully bound by the 1951 Convention. But a proper refugee policy still did not exist.

Following the arrival of Angolan, Zairian and Liberian refugees, UNHCR put pressure on the authorities to take responsibility for all aspects of safeguarding asylum-seekers and refugees. A window of opportunity was opened with the Fernando Henrique Cardoso administration, which was human rights-oriented.<sup>95</sup> The combination of a factual situation – that is, the ‘refugee problem’ – and of officially endorsed human rights values enabled UNHCR to implement in Brazil the strategy it had developed for the South American region. The result was a comprehensive Refugee Act which included an expanded refugee definition and identified national authorities as the primary actors responsible for refugee protection.

## Refugee legislation and public policies (1997–2014)

### *The Brazilian Refugee Act*

Brazilian diplomats acknowledged that the Refugee Act ‘was done after careful study and in close cooperation with UNHCR’,<sup>96</sup> but that was an understatement: the UNHCR virtually drafted the Act. The instructions the Brasília Office had received from the Regional Representation in Argentina was to draft a proposal based on the August 1995 ‘Guidelines for the harmonization of legislation and national procedures with the norms and principles of international refugee law’. The guidelines were, however, limited to access to an RSD procedure, the decision-making process (including the application of exclusion clauses and an appeal procedure), the documentation of refugees, the application of the principle of family unit and the cessation of refugee status.<sup>97</sup>

As the then UNHCR Protection Officer in Brazil (1994–8), I had the privilege of writing the UNHCR Refugee Act draft proposal, which was partially inspired by Portuguese asylum legislation.<sup>98</sup> The text went way beyond the guidelines and, despite the (mostly cosmetic) modifications introduced during the parliamentary debates, its original structure and provisions were kept. The UNHCR draft proposal dealt with the characteristic aspects of refugee status (Title I), such as the refugee definition, the principle of family unity, exclusion clauses, and the corresponding legal status; the entry into the territory and the application for refugee status (Title II); the refugee status determining

95 Moreira, ‘Redemocratização e Direitos Humanos: a política para refugiados no Brasil’, pp. 117, 188.

96 MFA, *Statement by the Delegation of Brazil*, 48th ExCom Session, Geneva, 15 Oct. 1997, p. 6.

97 Cf. ‘Guidelines for the harmonization of legislation and national procedures’.

98 Lei no. 70/93 (‘reguladora do Direito de Asilo em Portugal’), [Portugal] *Diário da República*, no. 229/93, 29 Sep. 1993, Série I-A, pp. 5448–53.



authority, that is, the National Committee for Refugees – (CONARE) (Title III); the refugee procedure (Title IV), inter alia the provisional residence permit and appeal procedures; the effects of refugee status on extradition and expulsion procedures (Title V); the cessation and loss of refugee status (Title VI); durable solutions (Title VII); and final provisions (VIII), which refer to the urgent character of the RSD procedure and include a hermeneutical clause. The 1997 Refugee Act adopted an identical structure.

Due to editorial constraints and to the fact that an analysis of the Brazilian Refugee Act has already been ably made elsewhere,<sup>99</sup> this sub-section will deal with only three aspects. The first is the definition of a ‘refugee’. In addition to the classic interpretation, which reproduces the 1951 Convention refugee definition, Brazil also regards a refugee as someone who ‘due to gross and generalized violation of human rights [...] is compelled to leave his or her country of nationality to seek refuge in a different country’.<sup>100</sup> As already indicated, this broader definition was inserted during the parliamentary debate which took place after the Ministry of Justice removed the definition originally included in the 1996 UNHCR draft Refugee Act proposal, which was worded similarly to 1984 Cartagena Declaration’s Recommendation III.

The complementary refugee definition captured in the Brazilian Refugee Act varied somewhat from, and ended up being much narrower than, the original wording recommended by the Cartagena Declaration,<sup>101</sup> or the initial UNHCR draft proposal. Not only that, CONARE senior staff regard the expression ‘gross and generalized violation’ as indeterminate, difficult to apply and unclear, which means that instead of using the ambiguous ‘gross and generalized violations’ to develop legal doctrine and guidance, CONARE dismisses its use.<sup>102</sup> In fact, Brazil subsumes recognition according to the broad refugee definition only if status is granted under the strict 1951 Convention definition, the broader interpretation rarely being used as an autonomous source for recognition.<sup>103</sup>

While in Europe UNHCR advocates for a thorough analysis of eligibility under the 1951 Convention refugee definition, before moving to the sort of expanded definition that enables the accordance of another, less protective legal

99 Cf. Jubilut, ‘Refugee law and protection in Brazil: a model for South America?’, pp. 22–44 and Jubilut and Apolinário, ‘Refugee status determination in Brazil’, pp. 29–40.

100 Lei no. 9474/97, Art. 1 (III).

101 That is ‘persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order’; cf. *La Protección Internacional de los Refugiados en América Central: México y Panamá*, p. 336, also available at [www.refworld.org](http://www.refworld.org) (accessed 6 Jan. 2015).

102 Cf. Reed-Hurtado, *The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America*, p. 22.

103 Ibid.

status – that of ‘subsidiary protection’ – in Brazil, the eligibility authorities do not hesitate to use the broader refugee definition the Refugee Act provides for. This is because, regardless of the definition used to provide international protection, the status provided will be exactly the same: refugee status.

The second interesting aspect is that an appeal against a first-instance negative RSD decision is decided by the Minister of Justice, which means that the appeal decision-making procedure has an administrative but also a (potential) political nature. *Mea culpa*, a judicial review should have been explicitly envisaged when UNHCR drafted its Refugee Act proposal. Despite the theoretically possible judicial review of the administrative decisions rejecting – but also granting – refugee status, since the Refugee Act’s enactment in 1997, Brazilian case law concerning the judicialisation of refugee law – and in particular of refugee eligibility – is still at a very early stage. The emerging academic doctrine, however, has strongly supported the judicial review of RSD administrative decisions.<sup>104</sup>

On a final and more positive note, it may not pass unnoticed that the CONARE is more than an eligibility organ. Although the 1995 guidelines called for the establishment of national eligibility committees, the UNHCR Office in Brazil opted for suggesting a wider competence that goes beyond eligibility determination and encompasses the provision of guidelines and the coordination of the various actions necessary to the effectiveness of refugee protection, assistance and legal support (Art. 12, IV) and, as a corollary, the implementation of durable solutions (Arts. 42–6). Furthermore, CONARE’s very composition<sup>105</sup> facilitates the sense of ownership by the most relevant actors involved in refugee protection, which by definition ought not to be limited to eligibility determination.

### *Public policies*

In the realm of public policies two areas may indicate a change of vision regarding the political importance of refugee protection in Brazil. The first is Brazil’s involvement with durable solutions, in particular local integration and resettlement. As to the former, Brazil has, since 2007, begun to establish public policies on integration, including the creation of Committees on Refugees in the states of Rio de Janeiro and São Paulo.<sup>106</sup> Furthermore, in late 2012, Brazil agreed to grant permanent residency to almost 2,000 former Angolan and Liberian

104 Jubilut, ‘A Judicialização do Refúgio’, pp. 175–7; Ramos, ‘Novas tendências do Direito dos Refugiados no Brasil’.

105 CONARE is composed of representatives from the Ministries of Justice, Foreign Affairs, Labour, Health, and Education and Sports, together with members of the federal police (whose remit includes foreigners), the civil society, and the UNHCR (with no voting right); cf. Lei no. 9474/97, cit., Art. 14.

106 Jubilut, ‘Enhancing refugees’ integration: new initiatives in Brazil’, pp. 46–7.

refugees<sup>107</sup> who represented 40 per cent of the refugee population in Brazil. The country was the first in Latin America to adopt UNHCR's recommendation following the application of the cessation clauses to those caseloads.

In relation to the other durable solution, Brazil was responsible for suggesting that a Solidarity Resettlement Programme should be established, based on responsibility sharing with a view to supporting Latin American countries which host large refugee populations.<sup>108</sup> That initiative was preceded by Brazil's resettlement experience during the IRO's (supra) post-war resettlement initiatives, the mid 1980s resettlement to Brazil of about 50 Iranian Bahá'í families (supra), Brazil's 1997 Refugee Act (Arts. 45 and 46), and a pilot project initiated in 2002.<sup>109</sup> In addition, Brazil, Argentina, Chile, Uruguay and Paraguay have subscribed to the Solidarity Resettlement Programme by signing framework agreements with UNHCR. From 2004 to December 2011, almost 1,000 persons were resettled to the Southern Cone. The Programme is one of the three strands relating to durable solutions (the other strands are Cities of Solidarity and Borders of Solidarity) of the Mexico Plan of Action (MPA), which was adopted by 20 Latin American countries in 2004.<sup>110</sup>

Over the past years, the Solidarity Resettlement Programme has also made an important contribution to the extension and consolidation of concerned countries' protection networks, including in Brazil, in great part due to its decentralisation policy. As a result of this policy, the programme is now being implemented in more than 20 cities in Brazil. Another significant development has been that Brazil and other Latin American resettlement countries now agree to receive cases from extra-regional asylum countries, for example, from Palestine<sup>111</sup> and Syria.<sup>112</sup> The Brazilian authorities deem that this wide engagement with resettlement opens the door for south-south cooperation.<sup>113</sup>

107 See the administrative circular, Portaria no. 2650, *DOU*, 26 Oct. 2012, Seção 1, pp. 24–5.

108 Jubilit and Carneiro, 'Resettlement in solidarity: a new approach towards a more humane durable solution', pp. 63–86.

109 Fischel de Andrade and Marcolini, 'A política Brasileira de proteção e de reassentamento de refugiados', pp. 168–76.

110 Piovesan and Jubilit, 'Regional developments: America', pp. 221–4.

111 In 2007 Brazil accepted a group of 117 Palestinians who had been refugees in Jordan; cf. MFA, *Statement by Brazil*, 58th ExCom Session, Geneva, 2 Oct. 2007, p. 3.

112 Brazil has been cooperating with UNHCR's humanitarian response in Syria's neighbouring countries since the end of 2012 while facilitating the processing of both Brazilian visas and family reunification; cf. MFA, *Brazilian Statement at the High Level Segment on 'Solidarity with Syrian Refugees and Host Countries'*, 64th ExCom Session, Geneva, 30 Sep. 2013, p. 1. Furthermore, in September 2013 Brazil decided to grant special humanitarian visas for Syrians and other nationals affected by the conflict in Syria and who wish to seek asylum in Brazil. It was the first country in the region to adopt such an approach towards Syrian refugees.

113 MFA, *Statement by the Permanent Representative of Brazil*, 60th ExCom Session, Geneva, 28 Sep. 2009, p. 3.

A recent evaluation of the Solidarity Resettlement Programme in Argentina, Brazil and Chile<sup>114</sup> concluded that in order for this initiative to continue in the future, barriers to refugee integration should be identified and alternative, creative ways of addressing them should be designed with the collaboration of all partners involved – NGOs, governments and UNHCR. The diversification of resources and partnerships was also highlighted as important, as well as the need to strengthen good practice and sustainability opportunities.

The second area indicating a change of vision vis-à-vis the refugee question is Brazil's aid policy, in particular humanitarian aid. In recent years, Brazil has become one of the world's biggest supporters of poor countries. It gives up to US\$4 billion a year of assistance, broadly defined.<sup>115</sup> Brazil's provision of aid to developing countries is not new. Having been active in south-south cooperation for at least 40 years, the volume of resources and the number of partner countries and technical projects has increased significantly, placing the country in the international aid landscape.<sup>116</sup> Brazil's aid is provided through technical cooperation, peace-keeping missions, in-kind contributions, humanitarian assistance and contributions to multilateral development agencies. Brazil's 'diplomacy of generosity' translates into a policy of lavish assistance and helps it to compete with other developing countries for soft-power.<sup>117</sup>

While Brazil's contribution to UNHCR is not as high as that provided in 2012 to the United Nations Relief and Works Agency (US\$7.49 million) or to the World Food Programme (US\$82.54 million, mostly provided through in-kind contributions), it has increased significantly in the last years. After contributing US\$50,000 in 2005 and US\$30,000 in 2007, the Brazilian contribution to UNHCR increased from US\$50,000 in 2009, to US\$3.5 million in 2010, US\$3.75 million in 2011, and US\$3.63 million in 2012.<sup>118</sup> Most of Brazil's contribution to UNHCR is aimed at emergency humanitarian assistance.<sup>119</sup> The country's own development challenges have not hampered the solidarity shown to other countries<sup>120</sup> faced with major refugee influxes or internally displaced people situations.

114 White, 'A pillar of protection: solidarity resettlement for refugees in Latin America'.

115 Cf. *The Economist*, 'New sources of aid, charity begins abroad – big developing countries are shaking up the world of aid'

116 Cabral and Weinstock, 'Brazil: an emerging aid player', p. 1.

117 *The Economist*, 'Brazil's foreign-aid programme – speak softly and carry a blank cheque'.

118 See UNHCR, '2015 UNHCR regional operations profile – Latin America: Brazil'.

119 MFA, *Statement by the Permanent Representative of Brazil*, 61st ExCom Session, Geneva, 4 Oct. 2010, p. 1.

120 MFA, *Statement by the Permanent Representative of Brazil*, 62nd ExCom Session, Geneva, 5 Oct. 2011, p. 2.

## Conclusion

Almost a hundred years ago, in the early 1920s, the international community, through the League of Nations, took the first steps towards founding a refugee protection regime. Brazil did not participate either in the institutional or in the legal frameworks that were established at the international level to protect refugees in the interwar period. The considerations that led Brazil to accept Russian, Portuguese and German refugees, among others, were mostly of a migratory – rather than of a humanitarian – nature. From the mid 1930s until the end of World War Two, Brazilian immigration policy became extremely restrictive and few immigrants made their way to Brazil. Towards the end of that period the arrival of Jewish refugees was stemmed significantly through the implementation of a policy which intentionally hindered their immigration.

In the immediate post-World War Two period, Brazil seemed to be receptive to the idea of being involved in international actions on behalf of refugees, but in practice its actions (or lack thereof) left much to be desired: out of the one million refugees and displaced persons resettled by the IRO, only some 29,000 went to Brazil, which in the end did not become an IRO member state. Furthermore, at that time its policy towards refugees was still migration-oriented and therefore still influenced by the restrictive policy that prevailed during the *Estado Novo*.

From the early 1950s to the mid 1980s, Brazil was somewhat peripheral to the refugee protection regime promoted by the UNHCR and the 1951 Convention. It was a founding member of the ExCom and the first South American country to become a state party to the 1951 Convention, but in practice it accepted very few refugees due to having opted for the geographical limitation allowed for by the 1951 Convention. Therefore, when South American refugees arrived by the thousands in the country in the late 1970s, they were resettled to Europe or had their presence tolerated in the territory, but without being granted refugee or any other protective status.

The end of the military dictatorship in 1985 was the first major event to trigger the country's meaningful participation in the international refugee regime. Following its redemocratisation, Brazil received Iranian Bahá'ís through resettlement, authorised the issuance of work and residence permits to some mandate refugees, captured the 'granting of political asylum' as one of the principles that govern its international relations in the 1988 Constitution, and withdrew the geographical limitation and reservations that were still applicable to the 1951 Convention. In the early 1990s, however, no refugee legislation had yet been adopted and the few asylum-seekers who arrived in Brazil had their refugee claims processed by the UNHCR, which provided assistance to them and to those who were granted refugee status.

The second major event that led Brazil to participate more meaningfully in the international refugee regime was the arrival of significant numbers of African refugees from early 1993 onwards. These flows caused substantial pressure on the authorities, who needed to act and could not shy away from their international legal commitments. In the beginning Brazil relied upon the UNHCR to continue both undertaking refugee eligibility and assisting asylum-seekers and refugees. But then a third major event took place: in early 1995, Fernando Henrique Cardoso, a former political exile, took office as Brazil's president and set out an administration that was human rights-oriented. The existence of both a 'refugee problem' to be tackled and a human rights-sensitive administration was the perfect combination that produced a window of opportunity seized upon by the UNHCR, which lobbied successfully in favour of a Refugee Act.

Between the mid 1980s and the mid 1990s, there was a change of paradigm in Brazil. The redemocratisation of the country, the existence of a refugee problem, and the introduction of human rights-oriented public policies did away with the migration considerations that had prevailed in the past when dealing with refugees, replacing them with a humanitarian approach.

Since the adoption of the Refugee Act – the first to be enacted in South America – Brazil has made strides in refugee protection on both the domestic and the international planes. It was, for instance, the first country in Latin America to adopt UNHCR's recommendations vis-à-vis the local integration of Angolan and Liberian refugees by granting them permanent residency, and also the first in the region to introduce special humanitarian visas for Syrians. It is undisputable that nowadays 'in Brazil, refuge is a state policy and is understood as a part of [the country's] democratic values'.<sup>121</sup>

There is, however, room for improvement. To a certain extent Brazilian refugee legislation is exemplary and has inspired and indeed been used as a model by other Latin American countries. It is not perfect though: Brazil may want to consider an amendment to the provision on the appeal decision-maker, who ideally should not be the Minister of Justice but rather a judicial body. In relation to the implementation of the refugee definition, CONARE may want to contemplate developing legal doctrine and guidance on claims that fall squarely on the broader refugee definition, instead of subsuming recognition according to the broad refugee definition only if status is granted under the strict 1951 Convention definition.

121 MFA, *Statement by the Permanent Representative of Brazil*, 61st ExCom Session, Geneva, 4 Oct. 2010, p. 2. In the previous year Brazil's Permanent Representative to the UN asserted that 'Refuge is a state policy in Brazil. It is an important element of the Brazilian democracy and of the country's tradition of openness. It is one of the pillars of our human rights policy'; cf. MFA, *Statement by the Permanent Representative of Brazil*, 60th ExCom Session, Geneva, 28 Sep. 2009, p. 1.

Another area where Brazil has been a model to other countries is that of resettlement – it has been receiving resettled refugees for more than a decade. Even though the figures are rather modest, the country has suggested and promoted the establishment of the Solidarity Resettlement Programme and thus attracted the involvement of other Latin American countries in implementing this durable solution. There still exist, however, areas for continued development, in particular in identifying barriers to refugee integration, in designing alternative and creative ways to address them, and in diversifying resources and partnerships.

A further and final area of development at the international plane that is worth mentioning is Brazil's support of UNHCR's activities. On the political front Brazil has hosted, for example, the events that led to the adoption of the 2000 Rio de Janeiro Declaration on the Institution of Refuge, the 2010 Brasília Declaration on the Protection of Refugees and Stateless Persons in the Americas, and the 2012 Mercosur Declaration of Principles on the International Protection of Refugees,<sup>122</sup> adopted in Fortaleza. It also hosted the Cartagena +30 Process in Brasília, in December 2014, an event to mark the Cartagena Declaration's 30th anniversary. On the financial front, Brazil has increased its contribution to the UNHCR budget substantially since 2010, being ranked 23rd among the country donors to UNHCR in 2012.<sup>123</sup> Brazil's policy and activities on behalf of refugees and the work of UNHCR are in line both with its human rights and humanitarian policies, and with its strategy to assert its regional leadership (including south-south cooperation), and a meaningful – though still modest – role at the global level.

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122 All these documents are available at [www.refworld.org](http://www.refworld.org) (accessed 6 Jan. 2015).

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