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Protecting Colombian refugees in the Andean region: the fight against invisibility

Martin Gottwald

UNHCR Caracas, Venezuela

E-mail : gottwald@unhcr.org

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Evaluation and Policy Analysis Unit

**Evaluation and Policy Analysis Unit
United Nations High Commissioner for Refugees
CP 2500, 1211 Geneva 2
Switzerland**

**E-mail: hqep00@unhcr.org
Web Site: www.unhcr.org**

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Introduction

In his book *The Pursuit of Unhappiness*¹ Paul Watzlawick, tells the story of Nasruddin, the Sufi sage, who was crawling around the campfire in front of his desert tent when a friend walked by. “What are you looking for?” “My key.” At this his friend got on his knees and joined in the search, soon another friend came by and there were three of them helping, then a fourth. Soon, a fifth friend came by and asked, “What are you looking for?” “My key.” “Oh, where did you lose it?” “In my tent.” “In your tent?” Then why are all of you looking for it out here?” “Because the light is better here.”...

What this trivial joke shows is that while constructing a subjective reality based on personal interests rules are bound to emerge. When the US Committee for Refugees published the paper “Colombia’s Silent Crisis: One Million Displaced by Violence” in 1998 it focused on internal displacement and the scant attention it has attracted internationally.

Since then Colombia’s conflict has significantly widened and worsened, causing not only internal displacement but also ever growing refugee outflows to neighbouring countries in the Andean region and beyond. Strong political and security interests of key actors striving to prevent the conflict and the protection of its victims from becoming international have meant that the external displacement of tens of thousands of Colombians since the end of the 1990s has remained virtually invisible.

The purpose of this paper is to shed light on the hitherto virtually unknown plight of refugees in Colombia’s neighbouring countries and the unwillingness of most governments to acknowledge the problem and grant international protection. The document will first explain how in Colombia in the 1990s ever stronger armed non-state actors gradually expanded throughout the entire territory and started directly targeting the civilian population, particularly in border departments, thus triggering large refugee movements into neighbouring countries’ territories.

The paper will then describe how the foreign policy and security interests of Colombia, its neighbouring countries and other key actors led to the emergence of informal rules and deterrent measures which have prevented refugee streams from becoming visible and obtaining international protection.

The document will thereafter highlight how refugees struggle in neighbouring countries with pressing security and humanitarian needs as a result of their invisible and irregular status. Finally, the paper will stress how UNHCR and NGOs have thus far striven to cope with the challenge of protecting invisible refugees. It will set out strategies to make the existence and plight of the refugees visible and to meet their pressing protection needs.

While Brazil, Peru, Ecuador, Panama and Venezuela share a 6000-kilometre border with Colombia, both the impact of the Colombian conflict on them and their governments’ response to spill-over conflicts have differed. Whereas Colombia’s most violent departments are at the boundaries with Ecuador, Panama and Venezuela,

¹ Paul Watzlawick, “The situation is hopeless, but not serious” (*The Pursuit of Unhappiness*), 1982.

by contrast Brazil and Peru neighbour scarcely populated jungle areas and are thus less exposed to refugee movements. This paper will therefore mainly focus on the former asylum countries and contrast the restrictive policies of Venezuela and Panama with the humanitarian stance of Ecuador.

The evolution of Colombia's conflict

The history² of Colombia's conflict has been characterized by a gradual evolution from an ideology-based conflict to a conflict driven by economic interests and territorial control. The international community has acknowledged the complexity of the conflict; any attempt to briefly summarize its evolution risks oversimplifying complex facts.³

In the "Era of Violence" (1948–1965), the two sharply divided traditional political parties (Liberals and Communists) began to organize in self-defence groups that later transformed themselves into peasant guerrilla forces launching a bloody civil war. In due course the armed forces and the police, through the employment of US counter-insurgency tactics including rural militias and civic-action programmes, managed to subdue the irregular groups though not to pacify the country.

The period that followed saw the rise and transformation of the insurgency. The FARC (Revolutionary Armed Forces of Colombia), founded by peasants in 1965, with the support of the Soviet Union, adhered to a communist ideology. The ELN (National Liberation Army), founded by Colombian university students in 1965 as an insurgent organization with close ties to Cuba, aimed to topple the regime, push back "US imperialism" and implement far-reaching socio-economic reforms.

After the collapse of the Soviet Union in 1991, the FARC went its own way in the great isolation of rural Colombia. Bereft of any meaningful ideological ties and financed mostly by extortion, kidnapping and "taxes" obtained in exchange for the protection of drug traffickers and thousands of small and large coca farmers, the FARC significantly expanded its ranks, consolidated its territorial control, including in smaller urban centres, and enhanced its military capability. It became a national insurgency, with military fronts in most parts of the country, whereas the ELN remained a regional movement in the northern departments of the country.

During the 1990s, insurgent groups shifted from traditional guerrilla tactics of dispersed and mobile forces that "hit and run" to the permanent occupation of territory by means of larger units capable of repelling attacks by government forces. This implied a significant increase in recruitment, with the FARC reaching 17,000 fighters and 10,000 militia, whereas ELN combatants amounted to some 3500.

² This section draws on the Latin American Report No. 1 "Colombia's Elusive Quest for Peace", International Crisis Group, ICG, Latin America Report No. 1, 26 March 2002.

³ The Representative of the UN Secretary-General on internally displaced persons stresses in paragraph 20 of his report dated 11 January 2000 (E/CN.4/2000/83/Add.1) on his follow-up mission to Colombia that "it is important to recall the complexity of the conflict owing to the multiplicity of actors and interests involved".

The emergence of so-called paramilitary forces in the early 1980s was closely related to the expansion of the illegal drug trade and the government's counter-insurgency efforts. In the beginning, the role of the paramilitary cadres, among them active service and retired army and police personnel, former insurgents and emerald miners, was mainly to protect large landowners and drug barons from guerrilla extortion, kidnapping and assassinations. The paramilitaries were partially organized and armed by the Colombian military and participated in campaigns of the regular armed forces against the guerrilla groups, in the middle Magdalena Valley, north of Bogota.

With traditional army operations failing against insurgency, the paramilitary groups gradually expanded their radius of operations, moving towards the department of Cordoba on the Atlantic coast and then west into Uraba and south into Meta and Putumayo. After a temporary decline in the early 1990s, the paramilitary groups began to emancipate themselves from the army commanders, drug barons, large landowners, industrialists and bankers who had been their masters. Numbering 850 in 1992, they had grown to more than 8000 by 2001, achieving by the end of the 1990s a united paramilitary structure across Colombia funded mainly by involvement with drug traffickers.

Similarly, since 1998 the armed forces have been subject to profound administrative, organizational and strategic changes intended to enhance their performance in defence and security planning, counter-insurgency and counter-narcotics operations. While in 1998 the army's strength was 133,000 soldiers of whom approximately 40,000 were combat troops, in early 2002 this ratio has increased to 150,000/55,000, equipped with new equipment provided by the US.

The administrations of Colombia and the US conceived in 1999 the controversial "Plan Colombia" as a comprehensive package, covering economic, fiscal and financial policy, peace, national defence, judicial and human rights, counter-narcotics, alternative development, social participation and human development. However, the plan was widely perceived as a measure geared at improving the Colombian military's capacity to wage war not only against drugs, which provide the main source of revenue for the insurgency, but against the insurgency.

In February 2002, negotiations to end the most dangerous confrontation of Colombia's decades of civil war collapsed after four years of fruitless peace discussions between the government and the guerrilla groups (FARC, ELN). The demilitarized zone for the guerrilla in the south of Colombia came to an end, raising fears of a further deterioration in the armed conflict and the humanitarian crisis.

The impact of the conflict on the civilian population

As the initial ideology-based conflict evolved into a conflict over the drug industry and territorial control, the humanitarian consequences of the conflict for the civil population dramatically increased.⁴ Until the 1990s the insurgency led a mainly "hit

⁴ This section draws *inter alia* on the "Profiles in displacement: follow-up mission to Colombia", Report of the Representative of the Secretary-General on internally displaced persons (E/CN.4/2000/83/Add.1), 11 January 2000; "Report of the United Nations High Commissioner for

and run” guerrilla war directed against the armed forces in key areas in the interior of the country.

At this time violations of humanitarian law and human rights of the civilian population by the army and insurgents were a by-product of the conflict rather than the primary intention of the armed actors. Already, by then, individuals with a prominent profile who feared persecution by the armed actors had difficulty in finding security anywhere in the country and had to seek international protection outside Colombia. However, the civilian population fleeing combats between the armed actors could usually still relocate to safer areas of the country where the armed actors were not yet established.

In the 1990s the insurgency gradually expanded its sphere of influence and gained territorial control over areas with significant production of coca, oil, bananas and coffee, bordering Panama (Uraba region), Ecuador (Putumayo) and Venezuela (Arauca, North Santander). Paramilitary groups soon started expanding their radius of operation to dispute territories conquered by the guerrilla groups, considering the civil population in these territories as the guerrillas’ socio-economic basis and thus a military target. Territorial control was viewed as an effective way of “strengthening one’s hand” for any possible negotiations with the Colombian government – the armed groups believing that the greater their territorial control, the stronger their opportunities for dialogue.

Civilians have thus come to be considered by the irregular groups as a military objective, with the result that the non-combatant and protected status of the civilian population has become severely degraded. Violations of humanitarian law and human rights such as extrajudicial and arbitrary executions (often in the form of massacres or collective killings) enforced disappearances, tortures, hostage-taking and attacks against the civilian population and civilian targets were suddenly no longer a by-product of the conflict but a deliberate mean of counter-insurgency.

Equally, forced displacement has become an objective in itself. Entire areas are “cleansed” of the support they are suspected of providing to the “enemy” via mass displacement of whole communities. When the land concerned is of strategic value in military or economic terms, it is repopulated by supporters of the forces conducting the displacement. Frequently these mass displacements are announced in advance, with those who fail to follow the order to move find themselves at risk of massacre or other serious attack upon their physical security. By contrast, armed confrontations between the irregular groups have been rare.

With the armed groups dramatically increasing the number of combatants, purchasing ever stronger armament and systematically spreading their operations to the entire territory, access to the safe areas for internal displacement, available until the 1990s, came to an end. Given the generalized nature of the conflict, today risk-free areas are extremely limited if they exist at all. People targeted by any armed group for

Human Rights on the human rights situation in Colombia” (E/CN.4/2002/17, 28 February 2002); “International protection considerations regarding Colombian asylum-seekers and refugees”, UNHCR, 2002; and “Colombia: Report on Forced Displacement 1998–1999”, Project Counselling Service, 1999.

individual persecution will not find effective protection and safety in any part of the country. In this way, agents of persecution have demonstrated that they have a national presence and an ability to act both in rural and urban areas. Armed groups have been able to track down of IDPs anywhere in the country.

To summarize, from the mid-1990s the threat by the armed irregular groups to the civilian population throughout the entire country, particularly in the departments bordering Venezuela, Panama and Ecuador, increased to such an extent that an increasing number of groups and individuals started to cross the country's international boundaries and seek international protection.

The political and security interests of the key actors

In line with the “theory of constructivism” key actors in and around Colombia have constructed the reality of a conflict, based on their political and security interests, without an international dimension.

With as much as 75 per cent of Colombia's territory either controlled or contested by insurgent and paramilitary forces, the Colombian government's primary interest has been to identify measures to strengthen the state and regain control over its territory, while internationally striving to show its ability to cope with the conflict. As a result the humanitarian costs of the conflict have not been duly recognized and the conflict's international dimension, including refugee outflows and operations by Colombia's irregular groups in the territories of neighbouring countries, has been minimized.

The government's endeavours have been aimed at seeking international support for its counter-insurgency strategy. At the same time it has downplayed the issues of forced displacement and seeking the prompt return of refugee groups to Colombia. It should be noted however that the government has sought to alleviate the plight of Colombians in neighbouring countries from a migration point of view, encouraging particularly Panama and Venezuela to accord better treatment to Colombian migrants.

Sharing a 6000-kilometre of border, Colombia's neighbours' interests have been political and security related. Politically speaking, many have perceived refugee outflows as a result of the US backed Plan Colombia. This perception has been expressed in stronger terms since left-leaning populists re-emerged as leaders of state in Venezuela, Brazil and Ecuador; advocating economic nationalism, railing against the free-trade, macro-economic and counter-drug policies promoted by the US and elevating nationalism to centre stage. Keeping informal contacts with Colombia's insurgent groups, *inter alia* through the São Paulo Forum, a hemispheric umbrella group for Latin American Marxist and socialist parties, former guerrilla organizations and active rebel groups, these leaders have rejected the US expanding military support for Colombia, considering it part of a more ambitious long-term strategy to gain direct control over oil and other natural resources in South America.

To their mind, the Bush administration is backing what they perceive as a conservative government in Colombia while increasing US military and economic presence in other Andean countries with substantial energy, mineral and forest

resources. Conversely, their position has been that these two countries (Colombia and the US) have to contain the conflict within Colombia, thus declining to assume responsibilities under international refugee law. In addition, political turmoil in various neighbouring countries has meant that only limited attention has been paid to the humanitarian consequences of Colombia's conflict. Lacking knowledge of international law and limited institutional capacity to deal with refugee flows have further compounded this situation.

Colombia's 6000-kilometre border are for the most part remote jungle, mountain and desert areas, difficult to access and secure. This border has been the centre of large-scale smuggling and lawlessness, trespassed by insurgents, government security forces and drug and arms traffickers. Neighbouring countries fear that Colombia's conflict will spill over to their territories, especially given the unstable political and economic conditions in Venezuela, Ecuador and Peru.

It is noteworthy that Colombia's guerrilla groups have established a permanent presence in virtually all the border areas of neighbouring countries, for rest, supply and preparation of military operations against Colombia's army and paramilitary forces. Whereas the Venezuelan government has been accused of not only knowingly tolerating insurgents on its territory but also maintaining support, other neighbouring countries have been simply unable to effectively protect their border areas, and thus had to tacitly allow insurgent operations in their territories, while striving to avoid international attention.

Against this background, it is hardly surprising that neighbouring countries have tried to keep forced populations movements off their territories and shed as little light as possible on the presence of those refugee groups that have managed to enter. Special reference has to be made to Ecuador's stance which has been characterized not only by the above political and security considerations, but also by a humanitarian tradition, commitment to international obligations and concern over its international image.

The priorities of the United States in the Andean region have been to target the narcotics industry which affects its own territory, to contribute to a negotiated solution of Colombia's conflict and, since 11 September 2001, to adopt a tougher stance against Colombia's guerrilla and paramilitary (labelled as terrorist groups by the US government) groups. American interests are reflected in the sharp increase of counter-narcotics aid and, most importantly, the Plan Colombia.

Although originally Plan Colombia was designed to be a comprehensive package comprising not only military aid but social and economic cooperation, it has been perceived internationally as a measure principally geared at improving the Colombian's army capacity to wage war not only against drugs but also against insurgency. Human rights organizations have criticized the Colombian and the US governments for not being interested enough in ending support for paramilitary forces at all levels and for not holding members of the Colombian security forces accountable for human rights abuses. The US Congress and the media also expressed concern regarding the regional implications of the conflict, particularly the problem of

drug cultivation, money-laundering and trafficking expanding beyond Colombia's borders.

In response, the Bush administration, in its first year, moved from a Colombia-centred to a regional plan, dubbed the "Andean Regional Initiative", which includes Bolivia, Ecuador, Brazil, Peru, Panama and Venezuela. This plan focuses on strengthening security measures taken by neighbouring countries in border areas and provides development aid to border communities. Rejecting criticism that Plan Colombia has contributed to the worsening of the crisis, the US government has appeared more inclined to label population movements from Colombia to neighbouring countries as migration rather than forced displacement. This explains why the US has channelled humanitarian funds into neighbouring countries mainly through organizations such as the International Migration Organization without protection mandates.

Finally, as traditional guerrilla controlled territories became disputed by the paramilitary groups and the army, Colombia's insurgents have over recent years trespassed the country's international boundaries more and more and established a permanent presence in the border areas of neighbouring countries. These are the same areas where refugee groups and individuals have been arriving. First and foremost interested in safeguarding their operations, insurgent groups have been more than interested in keeping international attention on neighbouring countries' border regions low. Refugees having contact with international organizations would make the guerrillas' presence visible and risk making it a major international issue.

In the case of Venezuela, insurgent forces have furthermore considered that making the plight of refugees in border areas visible would not only undermine their own cause but also that of the Chavez administration with which it has reportedly enjoyed close relations. Against this background it is not surprising that the guerrillas have pressured some refugee groups which have crossed into neighbouring countries under the insurgents' auspices not to apply for international protection, while discreetly requesting humanitarian aid through local NGOs.

The reaction of neighbouring countries to refugee movements

Having explained the key actors' interest in concealing the international dimension of the Colombian conflict, neighbouring states, with the exception of Ecuador, adopted restrictive policies when major forced population movements started at the end of the 1990s. These policies have shaped the informal rules of communication and engagement between key actors and refugees.

As the conflict expanded to Colombia's border departments in the mid-1990s the civil population became a military target with fewer possibilities of relocating internally. Neighbouring states started preparing themselves for spill-over effects such as refugee group outflows. Venezuela⁵, Brazil⁶, Peru⁷, Panama⁸ and Ecuador⁹ militarized their

⁵ Theatres of operations – large operational centres to supervise various military bases in the area – were established in the border states of Apure (TO1, 1995) and Tachira (TO2, 1997), with some 20,000 soldiers stationed in 104 military bases and check points along the border.

borders and established strict control over the admission to their territory. In Venezuela and Ecuador, this control was complemented by contingency planning. Whereas in 1996 Venezuela's army elaborated an internal plan for refugee flows in which refugee groups were meant to receive humanitarian assistance for a couple of days and then return to Colombia, Ecuador's plan was established in close cooperation with UNHCR and civil authorities and foresaw reception and protection of refugees in accordance with international standards.

In addition to neighbouring countries' desire to prevent the conflict from becoming international, little knowledge of international refugee law and limited institutional capacity meant that neighbouring countries did not make preparations for setting up new or reinforcing existing individual refugee status determination procedures or establishing tripartite mechanisms with UNHCR.

Panama

Paramilitary groups first entered the region of Uraba at the Panamanian border in 1996, provoking the first outflows of refugees groups in September 1996 and March 1997. This amounted to some 1000 people moving to Panama's border provinces of Darién and San Blas. Panama's government was quick to declare these groups "irregular migrants", that for security reasons "Panama cannot be the solution for the problems of Colombia's displaced populations" and that the "forced displacement of Colombians has to be resolved by the Colombian government". The governments of Panama and Colombia then quickly organized, without involving UNHCR or any other humanitarian organization, the forced return of refugees, some of whom were killed upon their return to Colombia.¹⁰

Venezuela

In May 1999 paramilitaries reached the department of North Santander bordering Venezuela and starting attacking the guerrilla stronghold of Catatumbo. Various refugee groups (4000 people) crossed into Venezuela's border area. While some refugees merely requested temporary protection and the government's help to return to another area of Colombia, the majority clearly sought permanent international protection.

⁶ The Brazilian Government militarized its border in 2000 through "Operação Calha Norte" deploying some 3,000 soldiers in various military bases along the Colombian border.

⁷ The Peruvian Government decided in 1998 to militarize its 1600-kilometre border with Colombia along the Putumayo River on national security grounds. This has included the dispatch of more than 2000 soldiers to prevent spill-over effects from the Colombian conflict (incursion of guerrilla, narco-traffic) into Peru.

⁸ The Panamanian Government had dispatched by 1997 some 1000 police officers to key border locations on the Atlantic and Pacific coasts as well as in the centre of the province of Darién, following violent paramilitary incursions and guerrilla movements.

⁹ The Ecuadorian government has, since 2000, increased the presence of the army from 5000 to 12,000 fearing the transfer of coca transplants from Colombia to Ecuador's border areas as well as incursions from irregular armed groups.

¹⁰ See the report of the Colombian NGO CODHES, <http://www.derechos.org/nizkor/colombia/libros/despl/10.html>

Notwithstanding, the Venezuelan army implemented its 1996 contingency plan, providing temporary humanitarian assistance and returning refugees, with the proactive involvement of Colombia's civil and military authorities, to their country of origin where some of the refugees were subsequently killed. It is noteworthy, that neither UNHCR nor any other humanitarian organizations were granted access to the refugees. The governments of Colombia and Venezuela held a bilateral meeting where they categorized all persons forcibly crossing the international boundary as "internally displaced in transit" and established an ad hoc procedure for these population movements basically consisting of short-term humanitarian assistance and the prompt return to Colombia.¹¹

Ecuador

In the second half of 2000, an armed stoppage by the guerrilla and violent clashes between insurgents and paramilitary groups over territorial control in Colombia's border department of Putumayo resulted in the outflow of an estimated 9000 Colombians to Ecuador, out of which some 7000 used the Ecuadorian territory for transit and returned to another border department in Colombia. By contrast to the restrictive policies applied by the governments of Venezuela and Panama, the Ecuadorian government protected the 2000 refugees under a *prima facie* scheme, registering, documenting and assisting them in accordance with international standards and in close cooperation with UNHCR and other humanitarian agencies.

Brazil and Peru

Colombia's departments bordering Brazil and Peru are jungle areas with no roads and are scarcely populated by indigenous communities. While the guerrilla have used these areas for rest, recreation, training and preparing for operations against the army, the army and paramilitaries groups have not disputed the guerrilla's territorial control. Indigenous communities, some of which have been forced to provide supplies to the guerrilla and labour for the cultivation of coca, have thus been spared from massacres. Nonetheless, it cannot be denied that individuals and smaller groups have been reportedly displaced into the remote areas of Peru and Brazil, fleeing forced recruitment and other forms of persecution by the guerrilla.

To summarize, once cross-border movements of refugee groups started in 1996, Ecuador adopted a liberal stance towards forced population movements to its territories. It acknowledged that refugees from Colombia flee violations to human rights and humanitarian law and it guaranteed their admission and protection. In contrast, the governments of other neighbouring countries such as Venezuela and Panama heavily militarized their borders, applied non-admission and deportation policies in cooperation with the Colombian government and used terminology which suggested the non-international character of displacement.

¹¹ See the joint report of Venezuelan and Colombian NGOs on <http://www.derechos.org/nizkor/venezuela/doc/refu.html>

It is worth highlighting that, with the exception of Ecuador, at no stage did the neighbouring countries considered applying the Cartagena Declaration. They had signed this declaration in 1984, in the context of Central American conflicts, to widen the regional refugee protection regime to victims of “generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order”. In the absence of a regional protection scheme, refugee protection was thus dealt with by restrictive national security concepts.

International image concerns and modified deterrent measures

In reaction to strong international criticism over Venezuela’s and Panama’s initial reaction to cross-border refugee flows, the governments of neighbouring countries strove to reconcile concern over their international image with their national interest of preventing the Colombian conflict from spreading to their territories and keeping refugee movements invisible.

At end of the 1990s, Brazil, Panama, Venezuela and Peru started to adopt refugee legislation in coordination with UNHCR, in what has been welcomed by UNHCR and NGOs as major progress towards providing effective protection to refugees in the Andean region. It is noteworthy that while in principle these laws enshrined relatively fair eligibility procedures for individual cases, they did not establish a detailed protection framework to deal with the specific cross-border displacement situations at the border.

While the governments of Panama and Venezuela presented national refugee legislation to the international community as evidence of their compliance with international obligations, in practice they refrained from applying the laws; denying that refugees were crossing into their territories. With migration law and security concepts of the armed forces remaining indiscriminately in force, border officials have not assumed any protection functions with regard to Colombians in need of international protection. People crossing the borders have been labelled as irregular migrants, guerrillas or criminals and have been detained and deported.

Official statistics reflect the reality that only a minor percentage of the overall refugee caseload has managed to access eligibility procedures: between 1 January 2000 and 1 October 2002 officially Panama received a mere 284 asylum-seekers from Colombia, Venezuela 972 and Peru 131. By contrast, Ecuador’s liberal asylum policy has meant that in the same period some 9000 applications were filed by Colombian asylum-seekers.

A second strategy related to international image has been to invite UNHCR to bilateral meetings dealing with cross-border movements that have been held between Colombia on the one hand, and Ecuador and Panama on the other. While tripartite meetings between Colombia, Ecuador and UNHCR have been successful in elaborating joint policies for cross-border displacement that are consistent with international standards, meetings with Panama were less productive, as the

Panamanian government insisted in “prompt return” of the refugee population as the only durable solution.

Strained relations with Colombia and political turmoil in Venezuela have meant that no tripartite mechanisms have been set up between these two countries. In 2001 Colombia signed a bilateral agreement with Peru on cross-border displacement of Colombian refugee groups which advocates humanitarian assistance only for a short time followed by prompt “voluntary” repatriation as the only durable solution. Equally, new contingency plans in Venezuela and Panama have avoided dealing with the international protection needs of refugees.

It is interesting to note that even Ecuador’s initially liberal approach has become more restrictive as more and more refugees have appeared and applied for international protection. Ecuador stopped applying the Cartagena Declaration for individual refugee recognition and rejected an ever-growing number of asylum applications on restrictive eligibility grounds.

Finally, the Andean region’s restrictive approach to refugee protection can be seen by the fact that Colombia, which hosted the conference which led to the 1984 Cartagena Declaration and its wider refugee definition, eliminated this definition from its national legislation in 2002. This action reinforced the erroneous impression that there are no refugees in the Andean region and therefore there is no need for a wider refugee regime.

The invisible coping mechanisms of refugees

In accordance with the theory of constructivism, the informal terms of communication between governments of neighbouring countries and Colombians in need of international protection were set when the first group outflows occurred, between 1996 and 1998. Militarization of the border and non-admission policies and deportation procedures carried out by neighbouring countries together with the Colombian government made clear to refugees that any attempt to cross the boundary officially and apply for asylum would be met with detention or deportation. Given the lack of relocation alternatives within Colombia, refugees thus had to identify alternative mechanisms to ensure admission to neighbouring countries’ territories and obtain some sort of protection.

Different social and ethnic groups in need of international protection have coped with their protection needs in different ways.

Indigenous populations

The worsening of Colombia’s conflict meant that indigenous populations living in the remote areas of Colombia’s border departments became a target of Colombia’s irregular groups. Since the late 1990s thousands of them have crossed into Venezuela, Panama, Peru and Ecuador, fleeing individual persecution or territorial cleansing, to join their tribes on the other side of the border. As there are no state authorities or humanitarian organizations in these remote jungle areas and outside contact has been limited, these refugees have not filed any official asylum applications and do not

appear in official statistics. The lack of understanding of their particular situation has also led some humanitarian organizations to downplay their protection needs.

Rural refugees

The vast majority of Colombians in need of protection in border areas has been people of *mestizo* or African descent from rural areas, mostly women and children, fleeing death threats, targeted persecution and/or indiscriminate massacres by guerrilla groups or paramilitaries. When these refugees first crossed into neighbouring countries between 1996 and 1999 in large groups they faced non-admission and deportation. They learned that attempts to find refuge in neighbouring countries have to be discreet and anonymous, on an individual or family basis instead of large groups which attract the attention of border officials and central authorities.

The cross-border displacement of some smaller groups has taken place under the auspices of the guerrilla. The proximity to the Colombian border has allowed some to continue working during the day on Colombian territory while spending the night across the border in neighbouring countries. Contacts with military and civil authorities further inland are avoided as these contacts, including applications for asylum, bear the risk of deportation on the grounds of irregular entry. Occasionally, assistance has been sought from national and international humanitarian agencies.

Other rural refugees who have managed to cross irregularly into neighbouring states have found informal routes into the slums of urban centres both along the border and further inland. They have kept silent over the reasons of their flight and avoided any contact with state authorities. As they do not possess adequate documentation they are under permanent risk of being returned to Colombia, except for those who can afford to purchase neighbouring countries' identity cards on the black market.

The rapid growth of local slums at the borders since 1997 is an indication of the size of this movement. It is unrealistic to consider that this growth is the result of economic migration, considering the present hostile political and economic conditions in particular in Venezuela and Ecuador today; here there are few incentives for improving one's economic situation. A conservative estimate of this group is that 100,000 refugees have fled to Colombia's neighbouring countries since the mid-1990s.¹²

Ecuador's experience is an indicator of the scale of the problem: given the country's humanitarian policies towards refugees between mid-2000 and end of 2002 some 20,000 refugees have officially entered the country out of which more than 10,000 applied for refugee status. Despite being able to apply for asylum in Ecuador officially, it is safe to assume that an even larger number of people have opted not to apply and to hide as irregular or regular migrants further inland, fearing that official registration with authorities would allow Colombia's irregular groups to trace them.

¹² See *inter alia* the "World Refugee Survey 2002" where the US Committee for Refugees estimates that for Ecuador and Venezuela only between 100,000 and 125,000 Colombians are living in refugee like circumstances.

Urban middle class refugees

A third group of refugees is people from urban areas. These are mostly educated people belonging to Colombia's middle class. They usually have a more stable economic background and arrive on an individual basis, often by air. Most of these people have experienced individual persecution by one of Colombia's armed groups. The experience of Costa Rica, which is situated north of Panama and thus not neighbouring Colombia, gives an indication of the size of this group.

Until 16 April 2002 Costa Rica had no visa requirements for Colombians. Between mid-2000 and April 2002 more than 8000 Colombian arrived and applied for refugee status. The vast majority of Colombian asylum-seekers were professionals (lawyers, teachers, medical doctors) from urban areas with some formal education. The overwhelming majority entered Costa Rica legally by air, with valid passports. When the government eventually adopted visa requirements, the number of asylum-seekers dropped dramatically.

The protection and assistance needs of refugees

A fundamental question arises, given Colombian refugees' coping strategies, whether any international intervention is required? For a number of reasons Colombia's invisible refugees in neighbouring countries are in need of international protection.

First, the invisibility has not protected them effectively against forced return by state authorities to Colombia and thus to the persecutors they have been fleeing from. In Venezuela and Panama thousands of undocumented Colombians are deported without any procedural guarantees every month, particularly without any assessment as to whether their life or liberty is at risk upon return to Colombia.

The lack of documentation resulting in refugees not being able to exercise their political, civil, social, economic and cultural rights is a second reason. Access to public services such as education and health has been hampered for those with irregular migration status. As refugees do not possess proper documentation and permits they have been also prevented from finding regular employment and have had to seek employment in the informal economy or in illegal activities such as supplying guerrilla groups or cultivating and trafficking drugs.

Third, refugees of all groups have become increasingly vulnerable – regardless of their migration status – to persecution by the paramilitary and guerrilla groups from Colombia that have been operating in the territories of neighbouring states. These guerrilla groups have proved their ability to trace individuals wherever they are. In addition, irregular armed groups have been constituted in Venezuela and Ecuador which have started to target Colombians in need of international protection. An indicator of this development may be the murder rate of Colombians in the border regions of Ecuador and Venezuela which has risen dramatically over the past two years.

Finally, the restrictive asylum and migration policies of neighbouring countries have proven inadequate to prevent Colombia's conflict from spilling over: paramilitary and guerrilla groups have significantly stepped up their operations in all neighbouring countries, coca cultivation and drug processing operations have been transferred and refugee flows significantly augmented.

The international silence over these phenomena has largely contributed to making things worse. Acknowledging the presence of large refugee groups as well as registering and documenting asylum-seekers would allow neighbouring states to reduce irregular border crossing, and thus carry out considerably more efficient control over their territories and diminish other spill-over effects such as the border crossing of the non-civilian population.

Constraints of humanitarian agencies in accessing and protecting refugees

For various reasons, international and national humanitarian organizations have had serious difficulties in meeting the protection and assistance needs of Colombian refugees in neighbouring countries.

Colombia focus

Taking account of the interests of key actors, the international community has shown considerably more interest in the resolution of the Colombian conflict and the provision of humanitarian assistance to internally displaced populations within Colombia. One major reason for this is that despite key actors within Colombian society downplaying the humanitarian consequences of the Colombian conflict particularly regarding internal displacement, international consensus puts the number of IDPs at well beyond the one million threshold.¹³ As a result international humanitarian action has had to be taken.

As major donor countries have earmarked the bulk of funding to the Colombian crisis, the operations of under-funded UN agencies and non-governmental organizations in neighbouring countries have been limited to smaller general programmes in the capitals and have not encompassed refugee related activities at the border. Generally, the non-governmental organizations in neighbouring countries have been unfamiliar with refugee protection requirements and suffer from weak institutional capacities. By contrast, international organizations and NGOs in Colombia have been considerably stronger and better funded.

It is interesting to note that since the end of the 1990s some NGOs in Colombia have started showing interest in the topic of refugee protection in Colombia's neighbouring countries. As their focus, however, has been limited to viewing refugee movements as

¹³ See *inter alia* the Latin American Report No. 1 of the International Crisis Group on "Colombia's Elusive Quest for Peace", 26 March 2002, where it highlights that "in 2000, the Representative of the UN Secretary General on internally displaced persons, Francis Deng, catalogued the situation of such individuals in Colombia as among the gravest in the world" and that "there are over a million internally displaced persons in the country with new displacements continuing to occur".

one of several consequences of internal displacement, their reports have not reflected the genuine dimension of external displacement and have to a certain extent contributed to the distortion of the objective reality.

Humanitarian organizations hindered

UNHCR and its NGO partners have experienced serious difficulties in effectively addressing national security and political interests in neighbouring countries, especially in Venezuela and Panama. In these countries, UNHCR has been accused of “making up the presence of refugees for justifying its presence”.

Venezuela, Panama and Brazil have shown little interest in facilitating UNHCR’s access to remote border areas where refugees have fled, either questioning the need “as there is no forced cross-border displacement” or referring to precarious security conditions at the border. Nor have they been willing to implement refugee laws at the border, give up their non-admission policies, and set up fair and efficient refugee status determination procedures. In sum, traditional capacity building activities such as training and legal advice have not managed to change states’ constructed reality that no refugees except economic migrants are crossing into their territories nor change their restrictive asylum policies.

Access to refugees difficult

Access to refugees has been extremely difficult. Those refugees who contacted humanitarian agencies for protection and assistance received, in some cases, very limited assistance and the pledge that their protection needs would be discussed with the government. Not only did the governments of Venezuela and Panama fail to take appropriate action but refugees were also subject to deportation and other deterrent measures. Confidence in the effectiveness of UNHCR and other humanitarian organizations has been reduced, and the benefits of officially applying for refugee status perceived as lagging way behind the costs. Additionally, in some cases insurgent groups discouraged refugees from contacting humanitarian organizations out of fear that access by agencies would jeopardize their operations in the border areas of neighbouring countries.

No protection regime in place

With all neighbouring countries refuting the applicability of the wider refugee definition of the 1984 Cartagena Declaration and the great variety of displacement situations in the border areas the different profiles and needs of refugees have not been adequately addressed. In particular, the absence of a complementary protection regime for border areas has meant that refugee laws remained inapplicable. Instead military concepts are applied, which focus on non-admission and prompt return to Colombia.

The role of UNHCR and other humanitarian organizations

In response to the numerous challenges confronting refugee protection for states, as well as for UNHCR, and on the occasion of the 50th anniversary of the 1951 convention relating to the status of refugees, UNHCR set in train, in December 2000, the Global Consultations on International Protection. The purpose was to provoke both reflection and action to revitalize the 1951 convention framework and to equip states to better address the challenges in a spirit of dialogue and cooperation. The Agenda for Protection, which was adopted by UNHCR's Executive Committee in October 2002, was a product of this consultative process.

The agenda focuses on suggested activities to strengthen international protection of asylum-seekers and refugees and to improve implementation of the 1951 convention and its 1967 protocol. Among other activities, the agenda outlines:

- Goal 1 (strengthening implementation of the 1951 convention and 1967 protocol) – the “provision of complementary forms of protection to those who might not fall within the scope of the 1951 Convention, but require international protection”;
- Goal 2 (protecting refugees within broader migration movements) – the “better identification of and proper response to the needs of asylum-seekers and refugees, including access to protection within the broader context of migration management” and “more effective cooperation to strengthen protection capacities in refugee-receiving countries”;
- Goal 4 (addressing security-related concerns more effectively) – “the resourcing of states for securing the safety of refugees and for the separation of armed elements from refugee populations”;
- Goal 5 (redoubling the search for durable solutions) – “the realization of comprehensive durable solutions strategies, especially for protracted refugee situations”.

Refugee visibility

As long as the perception prevails that Colombia's conflict has produced mostly internal displacement and that external displacement to neighbouring countries has been limited to the few individual cases that appear in official statistics, governments of neighbouring countries, major donors and the UN system will not acknowledge the need for a stronger humanitarian response. Hence the importance of tackling the reality constructed by the key actors in the region and bringing the international dimension of refugee flows to the light.

To this end, in September 2002, UNHCR adopted the “International Protection Considerations Regarding Colombian Asylum-seekers and Refugees” which are intended to inform countries of asylum and NGO partners and facilitate the adjudication of Colombian asylum applications. The document provides information on the context of the conflict in Colombia and details particular groups at risk. It also

discusses the protection needs of those Colombians who are vulnerable to the massive human rights violations and generalized violence prevalent in their country and who are unable to obtain effective national protection.

As the “international protection considerations” focus mainly on those Colombians in need of international protection who have filed asylum applications and thus appear in official statistics, it has been necessary to complement the guidelines and assess the protection needs of those Colombian refugees in neighbouring countries who have not applied for refugee status. To this end, UNHCR has started a regional survey that aims to measure the scope of forced displacement from Colombia to the border areas of Ecuador, Venezuela and Panama that neighbouring countries and the international community have labelled as “traditional migration movements” and specify the profile of individuals in need of international protection through contacts with key institutions such as local civil authorities and non-governmental actors.

The results of this survey will be shared with the international community, international organizations as well as the governments and NGOs of neighbouring countries at the end of 2003 at a regional conference. The survey may substantially contribute to raising awareness of the objective reality of forced cross-border displacement in the Andean region and ease the access of Colombian refugees to international protection and durable solutions.

Enhanced operational capability

Given the unwillingness of the governments of Venezuela and Panama to implement refugee laws, UNHCR has started to step up its operational capacity and that of its non-governmental partners of the protection network along the border. The establishment of offices and antennas in border areas in Ecuador, Venezuela and Panama have enabled UNHCR and NGOs to improve access to people in need of international protection.

Monitoring activities, referral of asylum applications to host governments and contacts with local authorities will be complemented by the setting up of a country-wide electronic registration system run by UNHCR and NGOs, a systematic pre-status determination with special focus on separating genuine refugees from undeserving cases, the evaluation of assistance needs, the issuing of protection letters to asylum-seekers and the systematic relocation of threatened asylum-seekers to safer areas. These activities will go hand in hand with efforts to improve the implementation of refugee laws and thus the response of governments.

Specific regional protection regime for border areas

While one major reason for neighbouring countries’ unwillingness to acknowledge refugee movements has been the fear that Colombia’s conflict might become international, another reason has been that the armed forces have perceived international and national refugee law as weakening national security strategies at the border.

As discussed, national laws have not afforded sufficient provision for displacement situations at the border nor have governments acknowledged in practice the relevance of the 1984 Cartagena Declaration in the Andean context. Hence the need to either revitalize the declaration based on jointly agreed specific guidelines for its application, and/or elaborate, together with the governments of Colombia and neighbouring countries, a specific regional protection regime for border areas. This should aim to reconcile national security interests with fundamental protection principles and complement existing refugee laws and refugee status determination procedures.

This regime has first to encompass an “extended” refugee definition tailored to the Colombian conflict. It then needs to set out the different cross-border displacement situations in the Andean region, i.e. refugees using neighbouring countries’ territories merely for transit; groups and individuals who do not want to apply for refugee status but simply request temporary international protection for a short period of time; and groups and individuals who wish to apply for refugee status. The regime then has to define, in accordance with international refugee law and standards, the rights applicable to each group, particularly as far as distance from the border and freedom of circulation are concerned. Finally, specific guidelines for the application of the extended refugee definition ought to be developed together with neighbouring countries and jointly implemented in border areas.

The topic of refugee protection in the Andean region has to be mainstreamed in the activities of regional political organizations. While actors such as the Organization of American States – both its political institutions and the Inter-American Human Rights System – the Andean Community of Nations and Mercosur (Southern Common Market), have occasionally dealt with the topic of refugee protection in general, they have not become systematically involved with the protection of Colombian refugees and the definition of regional refugee protection standards. It is thus of the utmost importance to encourage these organizations to adopt a more ambitious stance and contribute through policies and funding to the protection of refugees in the Andean Region.

Conclusion

Through the 1990s Colombia’s conflict gradually expanded to cover the entire country and from the mid-1990s to spill over into neighbouring states. Colombia’s irregular groups have set up permanent presence in the border areas of neighbouring countries to rest, supply, process and traffic drugs, to establish and maintain supportive links with irregular armed groups recently founded in some neighbouring countries and to carry out military operations against targets in both Colombia and neighbouring countries.

Refugees have been a major outcome of these developments. While up to the mid-1990s the number of refugees fleeing to neighbouring countries was limited to individuals with no alternative options within Colombia, the dramatic expansion and deterioration of the conflict, particularly in Colombia’s border departments, have forced an ever growing number of Colombians to cross into neighbouring countries.

A conservative estimate puts the number at 100,000 people over the last five years who have fled in search of international protection to border areas and urban centres in Ecuador, Panama and Venezuela. Among them have been individuals falling under the 1951 Convention, people and groups of all ethnic groups fulfilling the elements of the wider refugee definition of the 1984 Cartagena Declaration and individuals with other protection needs.

Keen to prevent the Colombian conflict from becoming international, neighbouring countries have denied the conflict's spill-over effects, particularly the steadily growing refugee flows, and adopted deterrent measures to protect their territories, through military operations along the border, the adoption of non-admission policies against refugees and the systematic deportation of Colombians entering irregularly.

This strategy has proven inadequate: not only have Colombia's irregular groups further expanded their operations in neighbouring countries, but an ever increasing number of refugees have managed to bypass border controls by hiding in remote areas or finding informal ways into society, as no fair refugee status determination procedure exists. Only a few have managed to integrate; the vast majority living under irregular migration status in constant fear of being returned to Colombia or attacked by Colombia's irregular groups and struggling to meet essential humanitarian needs. With the exception of Ecuador, the restrictive attitude of neighbouring countries has meant that most refugees have not been allowed to apply for asylum or any other international protection.

Undoubtedly, if neighbouring countries and the international community acknowledged the regional impact of Colombia's conflict, the recognition of the presence and plight of refugees in neighbouring countries would likely ensue. As this acknowledgement is unlikely to occur, UNHCR's role is to shed light on the presence and plight of Colombian refugees in the Andean region and remind neighbouring countries that the key to international refugee protection is to be found in their territories. Against this background UNHCR has adopted a two-fold strategy in the Andean region.

Firstly, to tackle the artificial reality that Colombia's conflict has only produced internal displacement. This can be done by sharing with governments and NGOs international protection considerations regarding Colombian asylum-seekers and refugees and by launching a survey in the border areas of Ecuador, Panama and Venezuela which aims to improve UNHCR's access to Colombians in need of international protection and identify their needs.

Secondly, to make the presence of refugees visible. The establishment of country-wide systems by UNHCR to electronically register and provisionally document Colombian asylum-seekers should achieve this.

However, once refugee flows have been made visible the fundamental question arises as to how to get governments to protect them. To this end, a specific protection regime has to be agreed with governments for the variety of cross-border displacement situations. This must reconcile national security interests with the

fundamental protection needs of Colombian refugees. This regime should complement and thus reinforce international and national refugee law and regional standards such as the 1984 Cartagena Declaration.